Docket Call

Vol. 28 No. 4
Spring 2012
Martha E. Hulley, Ed.

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

In this issue:

A Young Lawyer and the Supreme Court of Virginia

Shelly Collette

The first case I ever tried went to the Supreme Court of Virginia.

High on the unexpected win of an estate litigation case in Prince William County, I thought it was the end of the road. Much to my surprise the case was appealed to the Supreme Court of Virginia. Everyone told me the Court wouldn't grant cert. "The Court rarely ever takes estate cases." Wrong.

So at the age of 30, just months after my first trial, I found myself preparing to argue before the Supreme Court of Virginia. Sure, my clients could hire an appellate firm to prepare the brief, but I knew the case better than anyone. Note to everyone: Preparing a brief is the most stressful thing I and my law clerks, Heather Hickman, Esq. and Robert Barna, have ever done in our careers. It involves every second of your time, every ounce of your emotion and attention for 25 days after you receive the appellant's brief.

I was almost physically ill my first time at the Supreme Court of Virginia. I excused myself to use the restroom after an argument and discovered that you are not allowed back in the Court until the argument is finished. I had to wait outside the courtroom and as soon as the doors opened, naturally the next case called was mine.

It helped not going first, but not much. The intensity of the bench before me (not to mention the height of the bench itself!) was very intimidating. I almost passed out when it was my turn to argue; but I manned up, presented my case and argued for twelve minutes. It was the quickest twelve minutes of my life.

Though the case was reversed and remanded (not in my favor) I felt good about the decision. It was listed as one of the most notable Supreme Court decisions of 2009. The Court accepted my interpretation of the law and created new law in Virginia based on my arguments. That helps me sleep at night.

In 2010, I had a will overturned for lack of testamentary capacity and undue influence. But feelings of vindication were again short-lived when I received the notice of appeal. No way could I have two estate cases heard before the Supreme Court of Virginia within three years of one another. No way was the Court going to grant cert in another estate case so close to the last. Wrong again.

There are not many differences between the first and second time arguing before the Court. The physical illness was gone, but the intimidation and awe remained. I don't think those feelings will ever change no matter how many times I have the privilege to argue before the Court.

Despite the disappointment for my clients, I never underestimate the fact I have had the fortune to win two estate cases that I ultimately argued before the Supreme Court of Virginia. I've learned that even if you win, it may not really be over. The Supreme Court takes estate cases more often than you think and, despite your best efforts and the legal minds consulted, no one knows why the Court takes your case, what point the Justices want to make, or what area of law the Court may want to change or expand. Fortunately or unfortunately, your case is one the Court has eagerly awaited.

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Supreme Court continued from front page

Below are the tips I find most important to young lawyers who find themselves presenting oral arguments before the Court.

Tips for Practice in the Supreme Court of Virginia:

1. Go to Richmond the night before your argument to get settled.
2. Bring someone with you to watch the argument and take notes of the following: the opponent's arguments, your arguments, the questions presented by the justices, the reactions of each justice to the arguments and comments by fellow justices.
3. Be early. Listen and observe cases presented prior to your argument.
4. Be cognizant of the timer and the lights during your argument.
5. If you are the appellant, do not forget to ask for rebuttal time at the beginning of your argument and stop your argument early.
6. Know the record! If your case is based on a standard of review that is clear error, knowing the appendix and the facts of the case is paramount. If your case is based on a de novo standard of review, know the law, cases that support it, and the facts in your case that support the position you want the Court to adopt.
7. Do not speak until the justice is finished asking you a question. Begin your answer with "yes" "no" or "the difference here is X." Do not be afraid to ask the justice for an explanation to his/her question so that you can give the appropriate answer.
8. Moot before your argument. Pick at least three colleagues to act as justices (Thank you to Heather Hickman, Esq., Marc Cummings, Esq., and Thomas Silis, Esq.).
9. Pay attention to the question that is being asked. Keep your answers clear, concise, and limited to the questions presented before moving back to your own argument.
10. You will not get through the entirety of a prepared argument. Take a notepad to the podium with only bullet points of the facts and law you believe are most important to support your position. If questioned by the justices on a particular point, keep your pen at the last point made on your list and once questioning is finished move on to the next point you think the Court should consider. Always thank the Court for their time.
11. Be in awe of where you are and what you are doing. It's the highest court in Virginia and it's OK to be scared, intimidated, and extremely impressed all at the same time.
12. Dress appropriately. If arguing before the Supreme Court of Virginia isn't the place to wear Louboutins for the first time, then I don't know where is.
13. Breathe. And as my mother said to me, "There are always winners and losers. It's all in how you played the game."

Shelly Collette is an attorney with Silis & Associates in Alexandria. She can be reached at shelly@silislaw.com.

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that support the claim should be attached to the proof of claim. See FRBP 3001. Recently amended Federal Rule of Bankruptcy Procedure 3001 includes additional requirements in certain individual debtor cases.

What Is the Effect of Filing a Proof of Claim?

A properly executed proof of claim that is filed in accordance with the Bankruptcy Code/Rules and any applicable order constitutes *prima facie* evidence of the validity and amount of the claim. Therefore, properly filed proofs of claim are deemed valid unless and until objected to by the debtor or trustee (or in rare cases, other interested parties). By filing a proof of claim, a creditor generally submits itself to the jurisdiction of the Bankruptcy Court, and may waive its right to a jury trial in litigation relating to the subject of the proof of claim. Accordingly, before submitting a proof of claim, it is important to carefully consider any potential implications of submitting to the Bankruptcy Court—these implications vary on a case by case basis.

For more information on proofs of claim, please see 11 U.S.C. §§ 501 and 502 and Federal Rules of Bankruptcy Procedure 3001-3007.

Rosa J. Evergreen is an attorney in the Bankruptcy and Corporate Restructuring group at Arnold & Porter LLP in Washington, DC. She can be reached at rosa.evergreen@aporter.com.

President's Message

Christy E. Kiely

As the bar year winds to a close, I thought I would use my final President's Message to share with you two of the most important insights I have gleaned.

Our Self-Funded Status Matters

We all know from our dues statement each year that the VSB is funded by member dues. But you may not realize this is the only source of VSB funding. I used to gloss over that fact, not appreciating its significance. I do appreciate it now.

The Virginia State Bar is self-funded and self-regulated. We are part of the judicial branch of government, under the exclusive control of the Supreme Court of Virginia. We are not part of the executive or legislative branches. The VSB staff are state employees, but are not paid with tax dollars. Indeed, as President George Shanks has noted many times this year, not one penny of VSB money comes from tax dollars. We receive none of the Commonwealth's general revenue funds.

Why does this matter? Because not everyone understands that the VSB's funds, including its accumulated reserves, come exclusively from member dues. Not long ago, the executive branch attempted to take $5 million of the VSB's money to use for general state spending. It took a significant and intense response from the VSB, led by then-President Irving Blank, to repel that effort. We do not want to go through that again. So I will do my part to spread the message: our dues fund the VSB, and our money should be used solely for VSB matters.

What Exactly Is "Council"?

Our professional careers are regulated by the VSB, yet few young lawyers have a true grasp on how it is organized. "Council" is an unfamiliar concept to many, understood only vaguely. So let me fill in the details. Council refers to the Bar Council, the governing body of the VSB. Council consists of the current President, President-Elect and immediate Past-President of the VSB, members elected from the 31 judicial circuits, several at-large members, and the Chairs of the Bar's four Conferences, *ex-officio* (myself presently included).

Council oversees a number of committees and boards, including the Disciplinary Board and MCLE, as detailed on the VSB website (http://www.vsb.org/site/about/committees-and-boards). Council meets about three times a year at different locations around Virginia. Its meetings are open to the public, and all manner of business is discussed. I can tell you from first-hand observation that our profession is in the hands of wise and thoughtful lawyers.

The VSB Executive Committee is a related but distinct group, consisting of a small subset of Council members. The "EC" meets bi-monthly and is empowered to act as necessary between Council meetings.

Christy E. Kiely practices employment law at Hunton & Williams LLP in Richmond. She can be reached at ckiely@hunton.com.

Ethics Corner

Emily F. Hedrick

The Virtual Law Office

A "virtual law office" arrangement, where a lawyer primarily works from home or another informal location but rents a shared conference room space for the purposes of receiving mail, phone calls, and meeting with clients, is generally permissible, subject to a few significant limitations. First, the lawyer must take steps to insure the confidentiality of any client information received or stored in the rented office. This includes mail, phone messages, and files, and is especially important if the office includes shared electronic equipment such as a fax machine or copier.

Second, a lawyer may not advertise the address of a "virtual office" as a location of the firm. Often the best arrangement for a lawyer whose only office is a virtual office is to use a post office box as the firm's address on advertisements/public communications, and to explain the virtual office arrangement on a case by case basis when setting up meetings with clients/prospective clients. It is misleading to advertise an office location that is not a bona fide location of the firm where clients can expect to find the lawyer, or at least her own support staff, on a regular basis.

Emily F. Hedrick is Assistant Ethics Counsel for the Virginia State Bar in Richmond. She may be reached at hedrick@vsb.org.

Family Law Corner

Andrew R. Tank

Nine Points About Petitioning for Protective Orders

A protective order for family abuse is an extraordinary remedy. A respondent can be prohibited from having any contact with the petitioner (who is usually his spouse), be ordered to vacate his home, pay child and spousal support, and lose temporary custody of his children. For a petitioner who loses a protective order hearing, the result can be equally devastating, particularly if he has been the victim of abuse but has not been able to prove it. So the stakes are high. My first hearing that lasted longer than 10 minutes was regarding a petition for a protective order, and I have done more since then. Here are a few things I have learned along the way about representing petitioners:

1. You need proof. Understand that you are going to have to prove an incident of domestic violence, e.g., punching, kicking, slapping. Scary words, threats, menacing behavior, invasion of privacy, and creepiness is probably not going to cut it.

2. Do not forget about the fear. If the petitioner can prove an incident of abuse, but then slept in the same bed with the respondent that night, that is going to raise some questions about whether she is really scared of the respondent.

3. For goodness sake read the statutes, i.e., Virginia Code § 16.1-253.1. (Preliminary Protective Orders), § 16.1-253.1. ("Permanent" Protective Orders), and §16.1-228 (Relevant Definitions). [1]

4. Get to the abuse man! Protective Order hearings are typically scheduled for 30 minutes. The judge will probably not have much patience for a lot of background and context.

5. Commit to the story. Be prepared for the possibility that the judge will limit you to what your client wrote in his affidavit, and also for the possibility that the judge will let you go beyond it. Some judges will hold you to the affidavit; others will not.

6. Corroboration is key. Pictures, witnesses, medical records, police reports: These are all things that will help your chances.

7. Be aware of context. If the parties are going through a divorce, expect the judge to be suspicious that the petitioner is using a protective order hearing to gain leverage in the divorce case. This is particularly true if the alleged incidents of abuse happened years ago.

8. Be prepared to win. You will be a big hero to your client and basking in the glory of victory. But what happens next? If there are kids, how will visitation be arranged? If the respondent has to leave the home, he has to get his stuff out. There are arrangements to be made.

9. Be prepared to lose. Prepare your client for the possibility. This is tough, but you have to explain to your client that Protective Orders are not given out easily. The respondent has rights, and it is the petitioner's burden of proof. If you lose, your client might have to go home and see the respondent that night. Or if he cannot face that possibility, other arrangements have to be made. Make sure your client has a back-up plan.

There you have it, my nine pieces of advice for representing petitioners in protective orders. Why nine and not ten? No reason. Good luck!

Andrew R. Tank practices family law at Surovell Isaacs Petersen and Levy, PLC in Fairfax. He may be reached at atank@siplfirm.com.

1 Note that this statute was amended effective July 1, 2011. For a summary of the changes, see "Expansion of Virginia Protective Order Laws" by Cory Goriup at http://www.smillaw.com/blog/2012/03/expansion-of-virginia-protective-order-laws.shtml.

VSB 74th Annual Meeting June 13–17, 2012

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Bankruptcy Bullets

Rosa J. Evergreen

Welcome to the latest installment of Bankruptcy Bullets, a quick reference guide intended to assist attorneys in navigating the sometimes intimidating and often confusing arena of bankruptcy law. This article provides a brief explanation regarding proofs of claim, and what to expect if you or your client needs to file a proof of claim in a bankruptcy case.[1]

What Is a Proof of Claim?

A proof of claim is a written statement submitted in a bankruptcy case for the purposes of setting forth the amount and asserted basis of a claim that arose prior to the bankruptcy filing against the entity or person in bankruptcy.[2] The term "claim" is defined very broadly under the Bankruptcy Code, and includes any right to payment, including obligations that are contingent, unmatured, disputed, and/or unliquidated. *See* 11 U.S.C. § 101(5). The proof of claim form must conform substantially to Official Form B10, which can be found on the United States Courts' website at http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx.

Why File a Proof of Claim?

If a creditor fails to file a proof of claim by the deadline established in the bankruptcy case, unless an exception exists exempting such creditor from being required to file a claim, the creditor generally waives its claim, the right to vote on any proposed plan of reorganization or liquidation, if applicable, and the ability to share in the distribution of any assets of the bankruptcy estate.

Who Should File a Proof of Claim?

The chapter under which the bankruptcy case was filed can impact whether a creditor needs to file a proof of claim to preserve its claim. For example, in a chapter 11 case, filing a proof of claim is generally not required if the claim is properly listed on the debtor's schedules of assets and liabilities[3] (and is not listed as disputed, contingent, or unliquidated) because the debtor's schedules are deemed to constitute evidence of the validity and amount of the claim. *See* 11 U.S.C. § 1111. If, however, a claim is not scheduled (or the creditor disagrees with scheduled amount), or the claim is listed as disputed, contingent or unliquidated on the debtor's schedules, the creditor must file a proof of claim to be entitled to participate in any distribution. In a chapter 7 or 13 case, generally all creditors must file proofs of claim to participate in any distribution.

Is there a Deadline for Filing a Proof of Claim?

A deadline by which proofs of claim must be filed (often referred to as a "bar date") is typically set in each bankruptcy case. Pursuant to Federal Rule of Bankruptcy Procedure 3002(c), in chapter 7, 12 and 13 cases, unless an exception exists, a proof of claim must be filed within 90 days after the first date set for the "341 meeting of creditors."[4] In chapter 9 and 11 cases, unless a local rule provides otherwise, the deadline to file a proof of claim is generally established upon a motion to the Bankruptcy Court by the debtor. Once the Bankruptcy Court approves the motion or otherwise establishes the date by which proofs of claim must be filed in the bankruptcy case, a notice of the bar date should be mailed to all known creditors. If a proof of claim is not actually submitted to, and received by, the clerk of the Bankruptcy Court or the claims agent for the debtor, if applicable, by the bar date, such claim may be deemed time-barred.[5]

What Are the Requirements for Submitting a Proof of Claim?

Section 501 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 3001-3005 govern the manner in which proofs of claim must be completed and submitted. As noted above, proofs of claim must substantially conform to Official Form B10. The bar date notice and proof of claim form should contain instructions regarding how to complete the proof of claim. The proof of claim requires, *inter alia*, the following information: (i) the name of the debtor and the bankruptcy case number; (ii) the name and address of the person or entity asserting the claim; (iii) the amount of the claim; (iv) the basis for the claim; and (v) the type and priority of the claim. An original signature of the creditor or its authorized agent is required on the proof of claim form. Copies of any documents

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1 The rules for filing proofs of claim vary depending on the priority and nature of the claim being asserted and the chapter under which the debtor filed for bankruptcy protection (please refer to the Fall 2010 Bankruptcy Bullets by Martha Hulley for an explanation of the different chapters). This article highlights only the general rules and does not go into detail about the different types of claims or bankruptcy chapters; however, before filing a proof of claim, a creditor should carefully consider the priority and nature of the claim and the chapter under which the debtor filed for protection.

2 Claims that arise after the bankruptcy filing are typically addressed in the ordinary course or submitted by means of a request for allowance of an administrative expense in the bankruptcy case. The issue of whether a claim "arose" prior to, or after, the bankruptcy petition date can be complicated.

3 Unless extended by the Bankruptcy Court, a debtor is generally required to file its schedules of assets and liabilities, which includes a list of creditors holding claims, within fourteen days from the petition date. See FRBP 1007(b) and (c).

4 In some chapter 7 cases, the trustee may file a "no asset report" with instructions that creditors need not file a proof of claim because there are no assets to distribute in the bankruptcy case and/or the "341 notice" may direct creditors not to file a proof of claim unless the trustee files a notice of assets (often referred to as an "Asset Notice"). If an Asset Notice is subsequently filed in the bankruptcy case, proofs of claim generally must be filed within 90 days after the date of such Asset Notice.

5 In certain circumstances a creditor may seek leave of the Bankruptcy Court to file a late claim, typically under a theory of "excusable neglect."

Criminal Corner

Richard G. Collins

Virginia Code § 19.2-74 limits the situations in which a law enforcement officer may make a warrantless arrest of an individual for a misdemeanor rather than release that individual on a summons. Virginia generally follows Fourth Amendment principles regarding search and seizure rights. However, 19.2-74 provides greater protection than the Fourth Amendment in this context: the Fourth Amendment permits an officer to arrest a person who has committed a misdemeanor in his presence without the restrictions found in the Code.

Virginia does not apply the exclusionary rule for statutory violations. *Janis v. Commonwealth,* 22 Va. App. 646, 651, 472 S.E.2d 649, 652 (1996). However, the Virginia Supreme Court has used § 19.2-74's restrictions on misdemeanor arrests to justify exclusion of evidence obtained in relation to an arrest unauthorized by that statute. *See Lovelace v. Commonwealth*, 258 Va. 588, 522 S.E.2d 856 (1999). Unfortunately, a recent United States Supreme Court opinion significantly limits that statute's utility for the criminal defense attorney.

In *Virginia v. Moore*, 553 U.S. 164, 128 S. Ct. 1598 (2008), the Supreme Court held that Virginia's additional protections against misdemeanor arrests did not extend the reach of the Fourth Amendment exclusionary rule. Portsmouth police stopped a car that Moore was driving. The officers determined that Moore was driving with a suspended license. Pursuant to § 19.2-74, the officers should have released Moore on a summons. Instead, they arrested him, searched him incident to arrest, and located drugs on his person.

Moore filed a motion to suppress, arguing that his arrest violated Virginia law and therefore triggered the exclusionary rule. The trial court disagreed and convicted him. His case eventually landed in the U.S. Supreme Court. The Court noted that "[w]e are aware of no historical indication that those who ratified the Fourth Amendment understood it as a redundant guarantee of whatever limits on search and seizure legislatures might have enacted." *Id.* at 169. Reviewing the history of the Fourth Amendment, the Court noted that the Amendment was originally a restriction only on federal power, incorporated common law doctrine and that its reasonableness standard existed independent of legislation. Therefore, the Court analyzed Moore's arrest "in light of traditional standards of reasonableness." The Court cited its "long line of cases" finding warrantless arrests for minor crimes committed in an officer's presence "constitutionally reasonable." Virginia's statutory protections were therefore irrelevant in determining the lawfulness of Moore's arrest, which the Court located squarely within its long-standing rule.

So how does *Moore* impact § 19.2-74's application in a criminal case? Clearly, the exclusionary rule no longer offers any remedy for arrests in violation of that statute. However, I submit that the statute's protections still apply in at least one Fourth Amendment area: the inevitable discovery doctrine.

Faced with a situation in which an officer's actual search violates the Fourth Amendment, prosecutors commonly rely on the inevitable discovery doctrine to justify the search: since the officer could have obtained the evidence through other lawful means, it did not matter that the actual search was unreasonable. The inevitable discovery doctrine applies when "the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 104 S. Ct. 2501 (1984). The modifier "lawful" offers an opening even after *Moore*.

For example, an officer locates an individual under the age of 21 who shows signs of alcohol consumption, but not to the extent that would justify an arrest for drunk in public, a misdemeanor for which § 19.2-74 explicitly authorizes an arrest. Based on his observations, the officer conducts a pat down, and locates a weapon. The individual is then prosecuted for possession of a firearm by a convicted felon. The Commonwealth concedes that the officer lacked the requisite information to justify a pat down, which requires a reasonable, articulable suspicion that the suspect is armed and dangerous. The Commonwealth may argue that the officer had probable cause to believe the individual was committing the misdemeanor of underage possession of alcohol in his presence, thereby permitting admission of the firearm under the inevitable discovery doctrine. Clearly, if the officer had *actually* arrested the individual for underage possession, *Moore* would require rejection of any motion to suppress. However, in order for the Commonwealth to rely on the inevitable discovery doctrine, the officer must have been able to lawfully arrest the individual. Such an arrest would have been unlawful pursuant to § 19.2-74, meaning that the inevitable discovery doctrine would not save this search. In this context, at least, § 19.2-74 still serves an exclusionary rule purpose.

Richard G. Collins is an attorney with Bartlett & Spirn, P.L.C. located in Williamsburg. He can be reached at rcollins@bartlettspirn.com.

YLC Northern Virginia Minority Pre-Law Conference

On February 25, 2012, George Mason University School of Law hosted undergraduate students from around the Commonwealth of Virginia for the 2012 Northern Virginia Minority Pre-Law Conference. Sponsored by the Young Lawyers Conference, the day-long conference provided students interested in legal careers with information to successfully transition into law school.

YLC's President-Elect, Brian R. Charville, gave opening remarks regarding the roles and importance of the Virginia State Bar and the Young Lawyers Conference. A panel of law admissions officers, who discussed the admissions' processes and application components, followed his remarks. Next, students discussed LSAT test strategies, tips and scoring with Griffon Preparatory, a testing preparation service located in Northern Virginia. Following the LSAT panel, students were introduced to lawyers from varying practice areas, who shared insights on their career paths as well as highlighted the diversity of opportunities within our profession. Ninth District Representative and conference liaison, Rachael A. Sanford, moderated this panel.

The conference included a luncheon at which students interacted with law students, lawyers and conference participants in a relaxed setting. The Law School Fair, a forum representing law schools from around the country, provided students with an opportunity to learn admission requirements, tuition rates, and financial aid opportunities specific to each law school. Representatives from American University, Catholic University, Charlotte School of Law, Duke University, George Mason University, Howard University, Liberty University, Regent University, Seton Hall University, University of Baltimore, University of the District of Columbia, University of Maryland, University of Memphis, University of Richmond, Washington & Lee University, West Virginia University, and William & Mary University participated.

The Council on Legal Education Opportunity (CLEO) informed participants of benefits and opportunities available to prospective law school students. Afterwards, students participated in a mock law class led by Professor Tun-Jen Chiang of George Mason University School of Law, which focused on critical thinking and case analysis. Ending the day, students gained perspectives from current law school students and recent graduates regarding school/life balance, career placements and law school experiences.

The success of the conference is attributed to extraordinary participation of YLC members. For their time, participation and dedication to the conference, I thank: Richard Cheng; Patrick Chiang; Bernadette Chimner; Christopher Doval; Jennifer Everett; M. David Falcon; Stefanee Handon; K. Vanessa Rodriguez; and, D. Margeaux Thomas. Special thanks are extended to Maureen Stengel and Catherine Huband of the Virginia State Bar; Brian R. Charville, Macel H. Janoschka, Rachael A. Sanford and Carson H. Sullivan of the Young Lawyers Conference Executive Board; and, Bianca Mack of George Mason University School of Law for her assistance with the conference.

Brian T. Wesley
Chair, 2012 Northern Virginia Minority Pre-Law Conference

Brian T. Wesley practices law at Reynolds Wesley, P.C. in Richmond, Virginia. He can be reached at bwesley@reynoldswesley.com.

A Day in the Life of a Criminal Law Attorney

Clarissa T. Berry

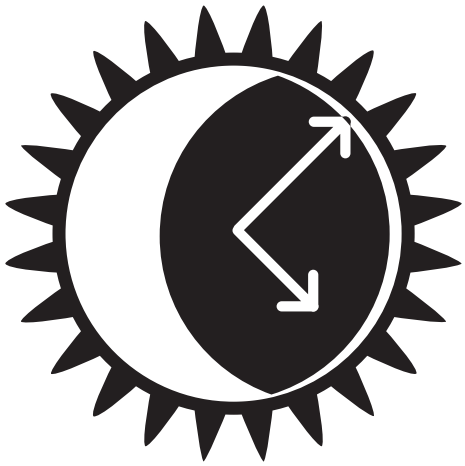
After practicing for a couple of years with a general practice firm in Culpeper, I made the decision to limit my practice to criminal law when I struck out on my own. Since then I have attempted to limit it even further to court-appointed representation of indigent defendants. I do take retained cases of various practice areas, and I have a few clients with business and civil litigation needs, but the bulk of my practice is indigent representation —And I love it.

While many jurisdictions have moved to a Public Defenders Office, Culpeper and Madison, the two counties I practice in, use a pool of private practice attorneys who qualify as court-appointed attorneys.

Each attorney in the pool is assigned a day on which all defendants who request and qualify for court-appointed attorneys are assigned to him/her. Depending on the number of attorneys in the pool and the number of court days, this means I have five or six days a year. In addition, I receive additional appointments throughout the week when various conflicts and circumstances arise or for an appointment on a day when there is not a regularly scheduled attorney. The pay is not much ($120 for a misdemeanor in district court), but as long as I am paying the mortgage, it's enough for me.

Practicing in a smaller community where the courts do not meet each day means that my weeks are fairly predictable: general district court on Mondays, Wednesdays, and Thursdays with circuit court on Tuesdays. On court days, I generally end up in the courthouse for the majority of the day between my cases, checking court files, talking to officers about upcoming cases, and making arrangements with the interpreter to talk to my Spanish-speaking clients.

I am President of the Culpeper Bar Association, so I try to get a lot of that business conducted while I'm in the



courthouse. Right now things are quite busy as we work towards convincing the General Assembly to fund our judicial vacancy, so I check in with the Clerk's Office to make sure we have enough substitute judges coming, talk with other attorneys to get the latest scuttlebutt out of the Richmond, and try to soothe worries of the local legal community. There was also a new sheriff who took office in January, so I frequently meet with his subordinates to work on courthouse security issues.

When I am not in court, I am taking care of the behind-the-scenes matters. As a solo practitioner, I not only engage in the "normal" attorney activities of case research, client/witness interviews, but I also conduct the administrative side of things: filing, correspondence, billing, etc.

I spend a lot of my time talking to clients and their families. Being charged with a crime is incredibly stressful, and it's made worse because many times my clients are unfamiliar with the system. "What happened? What happens next? Will I go to jail?" When I answer the fourteenth phone call in three days in the hopes this time my answer is different than the past thirteen times, I try to remember "there but for the grace of God go I."

Over the past few years, I have represented high school classmates, friends, and even the guy who grew up next door. So, when I am asked by friends and family, "How can you represent *these* people?" it's a simple answer: The Constitution and the Bill of Rights apply to everyone, even criminals. As my mother taught me when I was younger, two wrongs don't make a right. Just because my client is accused of wrongdoing does not give the Commonwealth carte blanche to run roughshod over my client's rights. That's all I do, protect my client's rights and make sure he gets a fair shake. A fellow defense attorney described what we do as "quality control."

Clarissa T. Berry is an attorney practicing in Culpeper, Virginia. She can be reached at ctberrylaw@gmail.com.

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Government Contract Chat

Nicole Brakstad

Yesterday … All My Troubles Seemed So Far Away: Bid Protest Deadlines at GAO

Typically when litigators think about statutes of limitation, they think in terms of years. In the federal government contracting world, however, protest rights expire within mere days. File one day late, and your troubles will be here to stay.

First, what is a *bid protest*? Under federal law, an aggrieved government contractor may challenge the terms of a solicitation or an award or a proposed award of a contract for procurement of goods and services by government agencies by filing a formal, written objection. *See* 31 U.S.C. §3551(1)(A)-(D). While there are other options, disappointed vendors typically file bid protests at the U.S. Government Accountability Office ("GAO").

Protests seeking to change the language of a solicitation (for example, where the technical specifications are drafted to favor a competitor's product) must be filed prior to the due date for the receipt of proposals or quotes. 4 C.F.R. § 21.2(a)(1). Most protests, however, are filed after a bidder receives notice from the agency of an award—or notice of the agency's intent to award—to a competitor. In those cases, the protest deadlines are a little trickier. Generally speaking, an unsuccessful bidder has 10 days to file its protest. Unfortunately, the "10-day rule" is not as simple as it seems. Under this rule, a protest must be filed:

> [N]ot later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held.

4 C.F.R. § 21.2(2)(2). Further complicating matters, under the Federal Acquisition Regulations ("FAR"), a "required" debriefing must be requested no later than three days after the bidder receives notice of the award or intent to award. *See* FAR 15.505(a)(1) (pre-award) and FAR 15.506 (post-award).

Moreover, a disappointed bidder must analyze both its long-term and short-term goals prior to filing a protest. For example, while a bidder may have 10 days to file a protest after a requested and required debriefing, in order to obtain the automatic stay of contract performance that accompanies a timely protest, a protest must be filed within five days of the date of the required debriefing. FAR 33.104(c). This "automatic stay" may be especially important for unsuccessful incumbent contractors who choose to challenge the procurement.

A contractor's choice of dispute resolution also matters for deadline purposes. If a protest was initially filed with the contracting agency, a GAO protest must be filed not later than 10 days after the protester learned of "initial adverse agency action." 4 C.F.R. § 21.2(a)(3). Further, GAO will not consider matters that were untimely when first filed with the contracting agency. *Id.*

But what if yesterday came suddenly? Under the regulations, a protest that is untimely on its face will be dismissed. 4 C.F.R. § 21.2(b). GAO may consider an untimely protest where exceptional circumstances beyond the protester's control caused the delay in filing the protest, or where the protest presents novel or significant issues of interest to the procurement community. 4 C.F.R. § 21.2(c). This exception, however, is used sparingly. Therefore, contractors who provide products and services to the federal government should take special precautions to anticipate deadlines and provide their attorneys with sufficient time to assess and draft protest documents.

Nicole Brakstad is an attorney with LeClair Ryan, P.C. in Richmond. She can be reached at nicole.brakstad@leclairryan.com.

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Immigration Remedies for Victims of Crimes Against Women

A 2-hour CLE presented by the Virginia State Bar Young Lawyers Conference Immigrant Outreach Committee

June 8, 2012, 1:00 – 3:15 pm

George Mason School of Law, 3301 Fairfax Drive, Arlington, Virginia 22201

The Virginia State Bar's Young Lawyer Conference, Immigrant Outreach Committee is hosting a two-credit Virginia CLE at the George Mason School of Law School. This dynamic CLE focuses on the federal remedies available to undocumented immigrant victims of domestic or sexual violence. Our distinguished speaker, Natalie Nanasi, Senior Staff Attorney at the Tahirih Justice Center, will review the elements of certain federal visa petitions available to eligible undocumented immigrant victims of domestic or sexual violence and review the forms that are essential to said petitions. Don't miss this opportunity to learn about how you can assist an extremely vulnerable and appreciative population of low-income victims of domestic or sexual violence.

Agenda

- 1:00 – 2:00 Basics of immigration, including the agencies involved. Explanation of VAWA Self-Petitions and Battered Spouse Waivers, with relevant forms & templates.
- 2:15 – 3:15 Explanation of U-Visas, with relevant forms & templates. Overview of T-visas and Gender Based Asylum, and an introduction to pro bono opportunities at Tahirih Justice Center.

Faculty: Natalie Nanasi, Senior Immigration Staff Attorney, Tahirih Justice Center

Natalie Nanasi is a graduate of the Georgetown University Law Center, where she received a JD and a Certificate in Refugees and Humanitarian Emergencies, and Brandeis University. She is the Senior Immigration Staff Attorney and Pro Bono Coordinator at the Tahirih Justice Center's Washington, DC area office. Natalie has been with Tahirih since 2007, when she joined the organization as an Equal Justice Works (EJW) Fellow. Natalie's work as an EJW Fellow focused on the U visa, a form of immigration relief for victims of certain serious crimes. As part of her fellowship, she regularly educated local, state and federal law enforcement entities about immigration options available to victims of crime and co-authored "The U Visa: An Effective Resource for Law Enforcement." Natalie currently serves on the Board of the Virginia Sexual and Domestic Violence Action Alliance; as a consultant for the Department of Justice, Office for Victims of Crime, Training and Technical Assistance Center; and as a mentor for Georgetown Law's Public Interest Law Scholars Program. Prior to joining Tahirih, Natalie served as a law clerk to the Honorable Lynn Leibovitz of the District of Columbia Superior Court. As a law student, Natalie was a Senior Articles and Line Editor for the Georgetown Immigration Law Journal and interned at Whitman Walker Clinic Legal Services, where she assisted in representation of HIV-positive immigrants. She also received an Equal Justice Foundation Fellowship for her work at the South Asia Human Rights Documentation Center in New Delhi, India. Prior to law school, Natalie volunteered as a rape crisis counselor and assisted single teenage mothers at a transitional residence facility in Boston. Natalie is fluent in Spanish and Hungarian.

Registration Form

❒ Materials provided at CLE: $40 ❒ Materials emailed to you: $10

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