

DOCKET CALL NEWSLETTER

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Young
Lawyers
Conference



Virginia State Bar

Opting-In: Balancing Work and Life

Suzanne F. Garwood

In October, Lisa Belkin announced in *The New York Times* that an “opt-out” revolution was afoot. As proof of this, Belkin introduces us to Katherine Brokaw. Brokaw reveals that she chose being a stay at home mom to her three children over pursuing the partnership track at her law firm because “[s]ome people define [partnership] as success. I don’t.” Belkin also introduces us to Sarah McArthur Amsbary, a former theater artist and teacher

who earned her master’s degree in English. Amsbary believes that “[m]aternity provides an escape hatch that paternity does not. Having a baby provides a graceful and convenient exit.”

Of course, the sentiments of Brokaw and Amsbary are not universally shared by professional women. Many professional women do not have the luxury of—or desire to—simply “opt out” of the profession. For these women, the definition of success is achieving lives that are professionally and personally rewarding.

Given that many women are choosing to opt-in to a career as well as a family, another revolution is afoot—the work/life balance revolution. This is not to say, however, that work/life balance is a women’s issue. Far from it. This is especially true in the context of law firm life where achieving a work/life balance transcends gender differences and may prove to be the key to the retention of attorneys of either gender. And, thanks to Belkin for throwing a spotlight on the stories of women such as Brokaw and Amsbary, law firms are taking steps to put

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2004 Professional Development Conference

Daniel L. Gray

Over 75 lawyers attended the third annual Professional Development Conference in Charlottesville on March 12th and 13th. For a nominal registration fee of \$115, participants availed themselves of 7 CLE credits, including 2 ethics credits. Conference participants were treated to a variety of programs on the topic of litigation, including sessions on Virginia evidentiary privileges, legal writing, hearsay, legal malpractice, bar counsel and practice before Virginia’s trial and appellate courts, the court of appeals and the Virginia Supreme Court.

The conference’s speakers and faculty included judges D. Arthur Kelsey and Walter S. Felton, Jr., of the Virginia court of appeals; Judge Michael P. McWeeney, chief judge of the Circuit Court of Fairfax County; Judge J. Howe Brown, Jr., formerly of the Circuit Court of Fairfax County; and Judge James F. Almand of the Arlington County Circuit Court; Jeannie P. Dahnk, current Virginia State Bar president; and former Virginia State Bar President Joseph A. Condo participated as a conference panelist.

The Young Lawyers Conference developed the Professional Development Conference several years ago as a means for Virginia’s young lawyers to meet and learn in an inexpensive, collegial and professional atmosphere. This year’s conference was implemented by Joshua David, David, Kamp & Frank, LLC, Newport News; Kathleen Dolan, Venable, LLP, Washington, D.C.;

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Attorneys from across the state gathered in Charlottesville for the 3rd Young Lawyers Conference Professional Development Conference. The program offered over a dozen sessions on the nuances of a litigation practice.

Message from the President

Kathleen Uston



Sun, Sand, Ocean Breezes, Drinks with Umbrellas—

Come to the Beach!!

Kathleen Uston

As I write this message to the YLC membership, spring in the metro Washington area is in full bloom, the weather is finally turning and, naturally, my thoughts have turned to the beach.

Our annual trek to Virginia Beach marks, of course, the winding down of another bar year; therefore, I want to take this opportunity to thank you for allowing me to serve this past year as your president. This was truly one of the most memorable and important years of my career. I had the great fortune of meeting so many of Virginia's young and new attorneys at myriad YLC events held over the course of a year that was a very busy one for the YLC, and a year that is far from over!

This year, you **definitely** want to attend the VSB Annual Meeting, and you'll be glad you did. On Friday morning, the YLC will host the "Run in the Sun"—come test your time against some of Virginia's best runners (including VSB President-elect, David Bobzien.) Also on Friday morning, the YLC, together with Lawyers Helping Lawyers, will conduct a timely CLE titled, "Am I My Colleague's Keeper?"—good for two ethics credits.

On Friday afternoon, pencil in the YLC Annual Awards Luncheon, with a reception preceding, to which all YLC mem-

bers are invited. Robert J. Grey, Jr., ABA president-elect, will receive the Friend of Conference Award, the R. Edwin Burnette Young Lawyer of the Year will be named and honored, we will bid adieu to "retiring" board members, and will also be hosting, for the first time, a reunion luncheon for past board members and YLC leaders.

On Friday evening, YLC officers will host tables for our membership at the banquet, at which Mr. Grey will deliver the keynote address, and the YLC-sponsored "Dance Under the Stars" immediately follows. Come dance to the fantastic Johnny Artis Band, back by popular demand! Johnny rocked the house at the ABA Meeting in D.C. not long ago—you will not be able to stay in your chaise lounge!

It doesn't end there. On Saturday morning, the YLC, with the Education of Lawyers Section, is conducting the showcase program titled, "Get a Life! Creating, Maintaining, and Living with, the Complete Lawyer," a practical, hands on program featuring speakers of national prominence that no Virginia attorney, nor their significant other, will want to miss!

Then the *piece de resistance*—the YLC (read Shawn Copeland) has challenged VSB Executive Director Tom Edmonds and his executive committee assassins to a volleyball face off on Saturday afternoon. This is a duel that will go down in annual meeting annals to be sure, and should be good for a lot of laughs, not to mention the sponsored libations.

In addition to all of our scheduled events, there will be ample time to relax on the beach with your family, catch up with friends, colleagues and members of your local judiciary by the pool, and spend a few days relishing the collegiality unique to the Virginia State Bar.

Come to the beach! I look forward to seeing you there.

A solo practitioner, Katie Uston is the YLC President and can be reached at law@uston.com.

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Docket Call welcomes contributions from members of the YLC.

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Becoming Unwired

*Todd J. Beckett
and Jennifer I. Campbell*

"In the airport, I pulled up the latest motions on the Sims case, made annotations then sent it off to a paralegal for preparation and filing. I put together the final interrogatories on the Birch case on the plane and while I was stuck in traffic. Oh, and you should have seen the face of Mrs. Roth when I jumped online in the deposition and found that her 'expert doctor' was under sanctions for Medicare fraud. She actually turned to her attorney and said 'Is that fair?'"

Wireless technology used to be difficult and expensive but today it is becoming the competitive edge which separates the dinosaurs from the survivors.

How is this possible? Laptops, along with wireless cards using the 802.11g, can provide access to all of your office's applications, programs and files, as well as the Internet. Basically, wireless systems operate on the same frequency as cordless 2.4 GHz phones. Each computer gets a wireless receiver that "attaches" to a wireless base station. These stations can be placed wherever they are necessary to assure signal strength throughout an office.

Wireless systems offer many advantages for law offices. Laptops can be used anywhere in your office and are fully functional on your network. That means they can be utilized from the conference room or library, just as well as they can from your desk. Wireless also allows for easy increases or decreases in manpower. Temporary offices, rented office space and "war rooms" can easily be set up and restructured without any hard wiring or construction at all. As a result, wireless systems can save you a lot of money and let you provide more efficient services to your clients. A complete wireless infrastructure is easy to install and can be built from scratch in just a couple of days. A number of wireless systems for both your office and your home are available at your local electronics stores. They cost between \$70 to \$120. To the right, we depict a sample setup with Linksys equipment (see "Wireless Toolkit"), but other vendors such as Dlink, and Netgear have great products on the market, too.

While the advantages of using wireless are many, there are a few concerns that should be noted. Foremost, you must be sure that your system is secure. The majority of wireless systems use an encryption scheme called WEP (Wired Equivalent Privacy). WEP is about as secure as talking in Pig Latin. It is annoying, but hardly effective. Fortunately, the industry has come up with two good solutions. One is called WAP, but it is still difficult to setup and requires a considerable support infrastructure. The other is using VPN (Virtual Private Network) to encrypt all of your traffic. Either an SSL or PPTP VPN will work, but don't let your IT department or consultant put in one based on IPSec. IPSec is great for machine to machine communications, but is not really optimal for user level authentication and encryption. Specific products for these features are outside the scope of this article, but great products exist from Sonicwall and Microsoft. The real key is you probably want something that offers a software client to give maximum flexibility to your mobile warriors.

Wireless technology is quickly becoming a safe way to increase your productivity and allow your firm a competitive edge. Consider it as an option the next time you upgrade your systems.

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Wireless Toolkit

- 1 WCG200 Router/Firewall
- 1 WPC54G card for every laptop
- 1 WUSB54G USB connector for every desktop computer
- 1 VPN software concentrator

Opting in—

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an end to the opt-out revolution by joining the work/life balance revolution.

Despite growing awareness of the work/life balance issue, the phrase “work/life balance” eludes definition. By its very nature, the phrase is ephemeral, having meaning only when applied to an individual in the context of that individual’s career. Work/life balance could mean working a shorter work week, working flexible hours, working non-traditional hours or having convenient child care arrangements. So, for purposes of this article, work/life balance will simply mean finding a career path that incorporates suitable career development without sacrificing family obligations.

Clear evidence that the work/life balance revolution is gaining momentum is all around us. On March 12, 2004, the National Association of Women Lawyers (“NAWL”) put on a special program on “Taking Charge of Your Career: Best Practices for Women Lawyers and Their Firms,” aimed at discussing issues relating to work/life balance issues for female associates. The program featured lawyers from Virginia and the District of Columbia, all of whom are accomplished in their area of practice and who serve as much-needed role models to younger associates looking for guidance on how to manage professional and personal demands. NAWL is offering the program again on October 22 in New York. Information about the program is available at www.nawl.org.

More evidence of the growing work/life balance revolution is in the work being done by the Project for Attorney Retention (“PAR”), which is funded by the Alfred P. Sloan Foundation and supported by the Women’s Bar Association of the District of Columbia. An initiative of the “Program on WorkLife Law” at the American University Washington College of Law, PAR began studying part-time work at law firms in the District of Columbia in 2000 and set forth its findings in a report entitled “Balanced Hours: Effective Part-Time Policies for Washington Law Firms.” In a companion study, PAR reported on corporate law departments in “Better on Balance?” The reports, along with additional work/life balance materials, can be found at PAR’s Web site at: www.pardc.org/.

Although much work remains to be done in making work/life balance a law firm reality, PAR and NAWL are raising awareness of the issue. And it appears that law firms are listening. For example, in March 2004, the District of Columbia office of Kirkpatrick & Lockhart welcomed six new partners, five of whom are women. The fact that one of the women works a flexible schedule offers proof that law firms are joining the work/life balance revolution and helping to redefine success, not simply as making partner, but as achieving career development that is not at the expense of family.

Suzanne Garwood is an associate in the Washington, D.C. office of Kirkpatrick & Lockhart L.L.P. You may reach her at sgarwood@kl.com.



(Above): Friday evening’s dinner and reception offered the attendees a chance to mingle and relax in the beautiful new Abbott Center at the Darden School.



(Left): Barbara A. Williams, VSB bar counsel, spoke to a packed room as she discussed the attorney disciplinary system and “Your Relationship with Bar Counsel.”

(Below): The Hon. D. Arthur Kelsey, Glenn C. Lewis, the Hon. Walter S. Felton, VSB President Jeannie P. Dahnk, YLC President Katie M. Uston and YLC board member and PDC chair, Daniel L. Gray celebrate the conclusion of a successful conference.



Conference—

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Sherry Soanes, Rees, Broome & Diaz, PC, Vienna; William Porter, Blankenship & Keith, PC, Fairfax; and Jerry Hall, Hunton & Williams, McLean. For more information concerning the 2004 conference or the upcoming 2005 conference, please contact Daniel L. Gray, at (703) 222-3333 or dgray@shoun.com.

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YLC Beat

Suzanne F. Garwood

Annual Meeting

From June 16th through the 20th, Virginia Beach will once again host the Virginia State Bar's Annual Meeting. Along with the traditional "Run in The Sun," volleyball tournament and sandcastle competition, some highlights from the upcoming meeting include:

- **Banquet Featuring ABA President Elect Robert J. Grey, Jr.** President Elect Robert J. Grey, Jr. is a partner at Hunton & Williams. Mr. Grey can be expected to discuss some of those issues he has identified as key issues facing the profession, including jury reform, international arbitration and dispute resolution and the protection of civil liberties in the wake of international terrorism.
- **Showcase CLE on the "Sniper Trials."** On Friday, June 18, the Criminal Law Section is sponsoring the showcase CLE: "Virginia in the Spotlight: An Inside Look at the Malvo and Muhammad Sniper Trials." The CLE will feature prosecutors and defense attorneys involved in the Virginia cases.
- **Special Saturday Morning Program.** The YLC and its co-sponsor, the Section on the Education of Lawyers in Virginia, are hosting: "Get a Life! Creating, Maintaining and Living with the Complete Lawyer." The program will feature the Honorable Carl Horn III, U.S. magistrate judge for the Western District of North Carolina. Judge Horn, a former chief assistant U.S. attorney (1987-93), is the author of the Fourth Circuit Criminal Handbook, *Horn's Federal Criminal Jury Instructions for the Fourth Circuit* and *LawyerLife: Finding a Life and a Higher Calling in the Practice of Law*, which is reviewed in this issue.

Registration forms for the meeting and hotels are available at the VSB's Web site at: www.vsb.org/anmtng/forms04.pdf

Oliver Hill/Samuel Tucker Minority Pre-Law Institute

In its third year, the Oliver Hill/Samuel Tucker Minority Pre Law Institute will be held from July 18-23. The institute is co-sponsored by the Virginia State Bar Young Lawyers Conference and the Millennium Diversity Initiative and hosted by Virginia Union University.

The institute encourages minority students in the Richmond area to consider a future as a legal professional. During the program, students will live on the Virginia Union campus. The institute's curriculum stresses academic readiness and includes mock trials, mock law classes, financial planning and seminars on career opportunities, the college admissions process and making choices that may affect the student's goals. The faculty is comprised of law school professors, judges, visiting guest lecturers, state and local bar members, college students and high school teachers.

Interested students can obtain an application: (i) from their guidance counselor or principal; (ii) Program Director Jennifer McClellan at 804-772-1512 or jennifer.l.mcclellan@verizon.com; or (iii) www.vayounglawyers.org/pdf/oliverhill04application.pdf. Application materials are due by May 28, 2004.

Upcoming Events

- June 16-20, 2004—VSB 66th Annual Meeting, Virginia Beach
- July 18-23, 2004—Hill/Tucker Law Institute—Richmond
- August 5-10, 2004—ABA Annual Meeting, Atlanta, Georgia

Got News?

YLC members are encouraged to submit news or events for publication to the YLC homepage at www.vayounglawyers.org. Submissions should not be longer than 1,000 words and reviewed carefully for corrections so that all necessary materials have been included. All submissions to the YLC homepage are subject to editorial review to ensure consistent content with YLC standards and procedures. The submission form is available at: www.vayounglawyers.org/submittevent.shtml. For further information, e-mail Jacqueline McIntyre at Jacqueline_McIntyre@vaed.uscourts.gov.

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Legal Ethics Corner

Jeffrey Hamilton Geiger

Q violation of the *Virginia Rules of Professional Conduct* does not give rise to a private cause of action in and of itself. *Ayyildiz v. Kidd*, 220 Va. 1080, 1085-86, 266 S.E.2d 108, 112 (1980). However, ethical lapses frequently spawn all sorts of claims for legal malpractice. For example: a frequent source of bar complaints comes from the disgruntled client, who complains of inattentiveness and lack of communication. Rule 1.3 requires that a lawyer act with diligence, and Rule 1.4 mandates that a lawyer shall keep a client reasonably informed about the status of a case. Failing to return a client's phone calls can become very expensive when you add up the cost of responding to a bar complaint and dealing with the resulting legal malpractice action when the case you were handling for the client does not turn out precisely how he or she thought it would (regardless of the merits).

While there are a number of practice tools one can use to avoid such a predicament (such as promptly returning the phone call), it is critical (though not mandated) to procure lawyers professional liability insurance. It is all too true that lawyers get sued in alarming numbers on frivolous grounds. In today's insurance market, getting insurance can be easier said than done, given stricter underwriting and dramatically rising premiums. There are, however, a number of steps that can be taken to improve your ability to obtain insurance, and, concomitantly, reduce malpractice and ethics complaints. Here are a few tips:

- **Do Not Dabble.** Limit your practice. It is one thing to be a general practitioner. It is quite another to also handle the occasional initial public offering or trademark prosecution.
- **Do Not Sue Your Clients for Fees.** While exceptions must be made for business reasons, nothing leads to a malpractice claim more quickly than suing



your client because they did not pay your final bill for \$300. If you must sue, get another attorney to make certain there are not any skeletons lurking in the file and have another firm perform the collections action.

- **Avoid Conflicts of Interest.**

Even before the first meeting with a potential client, run a conflicts search. Use a conflicts of interest system that includes existing, former and declined clients, as well as adverse parties.

- **Document Client Communications.** In real estate, it is all about location. In legal malpractice cases, it is all about documentation. Write it **all** down. If you decline or withdraw from representation, send a confirmation letter. If you agree to represent a client, get an engagement agreement, outlining the scope of the legal services. If you receive a settlement demand, send it to the client. At the end of the representation, send a closing letter.
- **Multiple Calendars.** Here are seven dirty words your insurer never wants to hear: "Oops, I missed the statute of limitations." Maintain two calendars, one of which is accessible by computer, and both of which are maintained by two people.
- **Become an Ethics Guru.** According to many insurers, you can never have enough ethics and law office management training. Go crazy and take three hours of ethics classes each policy year.
- **Do Not Do Business With Clients.** Putting aside the ethical implications of advising a company with whom you are also engaged in business dealings, insurers think it smells rotten.

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LawyerLife: Finding a Life and a Higher Calling in the Practice of Law

Lexine Walker

Judge Carl Horn III, spent 11 years in private practice after law school. He has written extensively about the practice, including the *Fourth Circuit Criminal Handbook*, and is a widely traveled CLE lecturer. He has been a U.S. magistrate judge in North Carolina's Western District for another 11 years. So Judge Horn is no stranger to the practice of law. He is also not a frustrated escapee who packed it in and headed for greener pastures when the stress of lawyering mounted. In other words, he isn't trying to sell something.

Judge Horn is a veteran attorney and seasoned judge who is very concerned about a profession he clearly loves, one which he has called a "profession 'in crisis'." His book, *LawyerLife: Finding a Life and a Higher Calling in the Practice of Law*, combines sobering statistics and truly horrific stories with an inspirational peek at what the practice of law can be. What sets *LawyerLife* apart from many other books like it is Judge Horn's conviction that lawyers need not choose between law and their lives. This is really a book about what we can do to make the practice of law something to be proud of again, to regain the freedom to enjoy our lives again and to make the practice a better place for ourselves and our clients. That sounds like a tall order. In his conversational, eminently readable style, Judge Horn manages to do all those things in well under 200 pages.

Much of the book recounts the results of studies conducted by the American Bar Association (whose publishing house produced the book) and other state bar associations to examine lawyer job satisfaction. Some of the numbers are striking, like this one: In a 1991 report, the North Carolina Bar Association's Quality of Life Task Force found that 11 percent of lawyers responding to its 1989 survey had considered taking their own lives at least once monthly in the year preceding the survey. A 1992 California survey showed that three quarters of responding lawyers did not want their children to follow the same career path. Despite their relative age, the statistics create a big picture that is familiar to plenty of young lawyers, and Judge Horn's purpose for including so many discouraging results is twofold. For unhappy practitioners, it is encouraging to see that others—many, many others both near and far away—share the same dissatisfaction and have done so for years. For happier, more fulfilled lawyers, the numbers

make this a real problem, one with the power to affect the bottom line.

But making the reader aware of the problem is only part of the book's mission. The real success of the book is Judge Horn's multifaceted solution. With insightful accounts from lawyers, professors and therapists who specialize in dissatisfied lawyers (the mere existence of such a specialty is cause for concern), Judge Horn reveals his own commitment to change the practice from within. The book does describe some lawyers who left the practice altogether, but its focus is on those who found or made a place for themselves inside the profession. Even those who have left did not seize the first opportunity to run off to a distant beach, far from the practice; they have sought out new ways to help lawyers who are nearing the breaking point.

The centerpiece of the book is what Judge Horn calls "the world's first 12-step program for lawyers." The steps start with simple, common sense directives ("establish clear priorities" or "develop and practice good time management"), but from there, Judge Horn's approach takes an inspirational turn. His advice on the importance of living beneath one's means, generosity and its resulting profits and saying "no" to certain clients is powerful and practical; there's even a mathematical process, designed to help determine the composition of your client base, that is sure to make you smile. The last step, "face yourself for a marathon," encourages those in this particular recovery movement to be gentle and patient with themselves along the way. Judge Horn doesn't whitewash the fact that following these steps demands courage. He is also frank in his assessment that the most powerful instruments for change within the practice of law are practitioners themselves.

LawyerLife is also remarkable for its extension to law schools and law firms. Judge Horn indicates that many of the problems that emerge within the practice have their foundations in law schools that inadequately prepare new lawyers for the actual practice of law and law firms that treat new lawyers like "human capital" with little regard for their personal or professional well being. He reports that change is coming on both fronts. However, law schools are devoting more attention to

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MARKETING MANNA

Mary L.C. Daniel

Business cards are like miniature passports for lawyers. Everywhere we go, we are expected to have them and pass them out.

Consider your ideal client and your ideal practice then make a unique business card that would catch their attention. The typeface and format can be casual or formal; artwork can be cartoon-like, classical, or have a stylish graphic arts appearance. A child's Guardian ad Litem could have a colorful card with large, curvy print that does not include a fax number. My card is printed in gold ink on blue paper, with my family shield for a more sophisticated look. An artist friend has a card that looks different from every angle. Your firm may not be willing to pay for these cards at first, but it is a worthwhile expense coming out of your own pocket. It is fun to design and an excellent way for starting conversations.

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Book Review—

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professionalism, including the work-life balance, and firms are also getting in on the movement. Their appearance in the book is encouraging; if the 12-step program is to start a grassroots movement, then law schools and law firms would do well to take notice.

There's a lot to like about *LawyerLife* and plenty of power in its brevity. It holds the answers and resolutions to many of the questions and doubts held by dissatisfied lawyers, especially to those new to the practice who may already be asking, "Is this all there is?" Judge Horn has produced a refreshing affirmation that the practice of law is worth it, that it is something we should still be proud of, and that as its caretakers we can and should restore the lawyer's traditional role as counselor. Lawyers, young and old, law students, and even those friends and family members who always have a lawyer joke at hand would all benefit from the wisdom of this book.

Judge Horn will be speaking at the annual meeting on June 19 at 9:45 a.m. He will be joining a panel to discuss the quest for work-life balance and the "12-step program."

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