

DOCKET CALL NEWSLETTER

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Young
Lawyers
Conference



Virginia State Bar

Annual Celebration of Women and Minorities in the Profession

Lexine Walker

On January 22, 2003, about 100 guests from around Virginia attended the Ninth Annual Women and Minorities in the Profession Bench-Bar Dinner. This year's guests of honor were Judges Beverly Snukals and Richard Taylor of the Circuit Court for the City of Richmond, Judge Clarence Jenkins of the Juvenile and Domestic Relations District Court for the City of Richmond and Judge Teresa

Chafin of the Juvenile and Domestic Relations District Court for Russell County. The Honorable Leroy Hassell, Sr., Chief Justice of the Supreme Court of Virginia, was this year's keynote speaker.

Jennifer McClellan, co-chair of the Women and Minorities in the Profession Committee, and Jimmy F. Robinson, Jr., 8th District Representative on the Board of Governors, agreed that this year's dinner was very successful. McClellan noted that the dinner allows young lawyers from around Virginia to interact in an informal setting with each other and with prominent figures in the legal profession. Each year's dinner has offered abundant opportunities for networking and professional development, as well as recognition for the judicial honorees.

In his address, McClellan added, Chief Justice Hassell emphasized the importance of community involvement, especially the significance of working with children. "Justice Hassell is committed to supporting the efforts of the committee," McClellan said.

McClellan encourages young lawyers to participate in all the Committee's activities, including preparation of the *Directory of State, Local and Specialty Bar Organizations* and involvement with the Oliver Hill/Samuel Tucker Minority Pre-Law Institute. The institute gives high school students an in-depth introduction to the legal profession through mock classes and trials, and the directory helps boost the involvement of female and minority attorneys in bar associations and activities. The committee also puts on seminars for undergraduate students considering the legal profession. For more information on the Women and Minorities in the Profession Committee, please contact Jennifer McClellan at (804) 772-1512 or by e-mail at jennifer.l.mcclellan@verizon.com. You may also contact Jimmy Robinson at (540) 983-9392 or by e-mail at jimmy_robinson@gentrylocke.com.

"Wills for Heroes" Program Update

Heather Dawson

In a demonstration of massive support, George Mason University School of Law is partnering with the Arlington County Bar Association, the Virginia State Bar Young Lawyers Conference and other bar organizations and law firms to provide free wills, powers of attorney and advance medical directives for Arlington County's "first responders"—firefighters, police, sheriff's deputies and other emergency personnel. This massive undertaking involves providing testamentary documents to over 1,200 Arlington County emergency personnel. In the wake of the 9-11 attack on the Pentagon, the need for such a public service is great, as there does not exist a program to offer such services for the county's emergency personnel.

Professor Leslie Woodruff, a trusts and estates professor at George Mason University School of Law, and Elizabeth Wildhack, chair of the Arlington County Bar Association's Trusts and Estate Section Special subcommittee, have worked with the VSB YLC and the VBA YLD to develop three basic will forms, as well as an advance medical directive and a "springing" power of attorney. Virginia CLE provided invaluable assistance in developing and coding the forms into a document assembly program donated by LexisNexis. Implementation of the program will now embark upon a three-step approach.

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Lexine Walker is an attorney with LexisNexis. You may reach her at lexine.walker@lexisnexis.com.

Message from the Editor:

An Open Challenge and an Invitation

Jeffrey Hamilton Geiger

Along with death and taxes, the pages of your bar journals will inevitably greet you with missives from bar leaders decrying lawyer incivility and the public's perception of the legal profession. The refrain typically includes a plea "to get our message out," and "to showcase the good deeds of lawyers that go unnoticed," accompanied by a call for congeniality in the profession: treat others as you wish to be treated.

I am listening. Yet, in the trenches of the day-to-day practice of law, the distinction between zealous representation and unprofessional conduct is not so tightly drawn. Should I interpose an objection to the discovery? Do I agree to request for a continuance? Like it or not, the allusion to war, a reference on all of our minds of late, is appropriate. No matter on which side of the "v." you fall, litigation is nuclear war. The fallout reaches far beyond the ultimate result, verdict or even parties. If you are in doubt, watch a contested child custody hearing. Abraham Lincoln said it best in preparing a law lecture:

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man.

Still, reasonable people can differ. Principle does count, civil actions will be filed and criminal complaints will be issued.

Bottom line: Nothing I am saying is new and I do not propose any prescriptions that have not been offered in the past. But then again, I do not believe the pejorative "system" is broken. With seven law schools located in the commonwealth, do we have too many lawyers? Is society overburdened with regulation when legal "answers" require turning to some two dozen volumes of the *Code of Virginia*? Does the business of law and the billable hour place legal representation in the hands of the few? Perhaps, in asking such questions, there exists a grain of truth in the popular response to each, even if it is merely anecdotal. But maybe not.

That being said, I offer an open challenge. Speak. No one is looking for sharp rings of indignation or appeals to moral purpose. And no one proposes installing a pulpit, or even a soapbox, within these pages. Instead, I look forward to hearing from you about matters that matter.

* * *

With a challenge, there is also an invitation. The Young Lawyers' Conference is presenting the third installment of its annual Professional Development Seminar on March 14–15, 2003. The seminar, aptly titled, "Seizing the Future," addresses issues confronting lawyers in their first decade of practice.

With the deadline for obtaining your continuing legal education months away, you are understandably pondering why you should travel to the University of Virginia during March Madness for yet another conference?

First, education. Headlined by a presentation on the recent session of the General Assembly, Chris Nolen, special counsel with the Office of the Attorney General, will provide an inside view of the workings of our legislature. Seminar topics will also include programming, directed specifically toward litigators and transactional attorneys: trial experts, venture capital, intellectual property and jury selection.

Second, professional development. As in the past, the seminar includes courses in ethics and the disciplinary process, along with more earthly discussions on marketing, business development and practice management for solo and small firm practitioners.

Third, networking. Call it what you want, but the seminar offers the premier opportunity to meet and reacquaint yourself with colleagues, bar leaders and future managing (and referring) attorneys from throughout the state. If getting to know one another is a step toward civility in the profession, then the seminar is a good, long walk in the right direction.

Take a friend, make a friend, meet a friend. I look forward to seeing you there.

Jeff Geiger is counsel in the Richmond office of Sands Anderson Marks & Miller. You may reach him at jgeiger@sandsanderson.com.

R. EDWIN BURNETTE, JR. YOUNG LAWYER OF THE YEAR AWARD

Seeking Nominations



The Virginia State Bar Young Lawyers Conference is seeking nominations for the R. Edwin Burnette, Jr., Young Lawyer of the Year Award.

This award honors an outstanding young Virginia lawyer who has demonstrated dedicated service to the YLC, the profession and the community.

The nomination deadline is May 1, 2003. Letters of nomination and any supporting materials should be sent to:

O'Kelly E. McWilliams, III
Pepper Hamilton, LLP
600 Fourteenth Street, NW
Washington, DC 20005-2004
FAX (202) 220-1665
mcwilliamso@pepperlaw.com

Professional Development Seminar Schedule

❖ ❖ Friday, March 14th ❖ ❖

10:00–10:04 A.M.	Welcome
10:05–11:00 A.M.	Focus on General Assembly: A View from the Inside — Part I
11:00 A.M.–12:00 P.M.	Breakout Session <ol style="list-style-type: none"> 1. Litigation: Gut Instinct, Voir Dire and Jury Selection 2. Transactional: Ethics of Altering Attorney Alliances
12:00–1:30 P.M.	Lunch
1:30–2:30 P.M.	Breakout Session <ol style="list-style-type: none"> 1. Litigation: Electronic Research for Litigators 2. Transactional: Intellectual Property Law for the Business Lawyer
2:30–3:30 P.M.	Breakout Session <ol style="list-style-type: none"> 1. Marketing Yourself, Marketing Your Practice: The New Face of Business Development 2. Hanging Out Your Shingle: Tips on Managing Your Own Firm

3:30–3:45 P.M.	Break
3:45–4:45 P.M.	Avoiding Virginia State Bar's Disciplinary System
5:00–6:00 P.M.	Networking Reception
6:00–7:30 P.M.	Dinner

❖ ❖ Saturday, March 15th ❖ ❖

8:30–9:30 A.M.	Ethics of Altering Attorney Alliances — Part II
9:30–10:20 A.M.	Breakout Session <ol style="list-style-type: none"> 1. Litigation: Experts from A to Z: How to Find Them, How to Protect Them and How to Prepare Them 2. Transactional: Legal Issues in Venture Capital Financing
10:30–11:20 A.M.	In-House Counsel Roundtable: What You Need to Know
11:30 A.M.	Adjourn

6.5 MCLE Hours (approval pending)

Wills for Heroes —

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First, volunteer attorneys and law students will attend a training seminar, introducing the volunteers to the program. In the second phase, the “first responders” will attend a presentation regarding the benefits and effects of estate planning in general and the specific documents being offered. Finally, volunteer attorneys, along with George Mason law students, will meet with emergency personnel to prepare and supervise execution of the documents. The documents will be prepared using laptop computers donated by Hunton & Williams and printers donated by McGuireWoods LLP. Funding was provided by the Virginia Law Foundation to assist the program in Arlington and across the Commonwealth.

The idea for “Wills for Heroes” was hatched by Anthony Hayes, who, as Chair of the ABA Young Lawyers Division Special Committee on 9-11 Legal Assistance, provided wills for over 300 emergency personnel in South Carolina. The Virginia Bar Association Young Lawyers Division and the Virginia State Bar Young Lawyers Conference plan to take the program statewide. The Arlington program will serve as a model for implementation across the commonwealth and other states.

To ensure the success of this program, volunteer attorneys are needed to attend one of two sessions sponsored by George Mason University School of Law. The first training session will take place from 9 A.M. to 12 P.M. on Saturday, February 22, 2003 at George Mason's Arlington campus. A second training session will take place on Tuesday, February 25 from 6 P.M. to 9 P.M. To reserve a

Marketing Mana

Mary L.C. Daniel

Community service can be a major investment in your practice. Consider your ideal client and what they consider to be important. Then volunteer to fill a need in that important cause. Business lawyers should participate in the Chamber of Commerce; transactional lawyers do well to volunteer with the Bankers' Association and the local Board of Realtors; domestic relations lawyers who coach youth sports and participate in PTA activities receive the first phone call by parents in need of assistance.

Apply yourself genuinely and wholeheartedly to these volunteer activities, and prospective clients will notice.

Mary L. C. Daniel practices with The Daniel Group, P.C. in Winchester. You may reach her at mdaniel@ntelos.net.

spot at the training session, or for additional information about the program and how to volunteer, please contact volunteer coordinators Heather Dawson at heatherdawson@ofplaw.com, or Carson Sullivan at csullivan@mcguirewoods.com.

Heather D. Dawson is an associate with Odin Feldman & Pittleman, P.C. You may reach her at heather.dawson@ofplaw.com.

VIRGINIA STATE BAR
YOUNG LAWYERS CONFERENCE

Seizing the Future: A Professional Development Seminar

March 14–15, 2003

University of Virginia's Darden School • Charlottesville



- Focus on General Assembly: A View from the Inside
- Gut Instinct, Voir Dire and Jury Selection
- Electronic Research for Litigators
- Intellectual Property Law for the Business Lawyer
- Marketing Yourself, Marketing Your Practice: The New Face of Business Development
- Hanging Out Your Shingle: Tips on Managing Your Own Firm
- Avoiding Virginia State Bar's Disciplinary System
- Ethics of Altering Attorney Alliances
- Experts from A to Z: How to Find Them, How to Protect Them and How to Prepare Them
- Legal Issues in Venture Capital Financing
- In-House Counsel Roundtable: What You Need to Know

6.5 MCLE Hours (approval pending)

For further information, see the schedule on page 3, check the VSB Web site at www.vsb.org/sections/yl or contact Maureen Stengel at (804) 775-0517 or stengel@vsb.org.

To register, please fill out the form below, and send it with your check for \$115 (**made payable to the Virginia State Bar**) to Bar Services, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219-2800. Space is limited and registration will be on a first come/first served basis. Walk-in registration will be accommodated if space is available. If you have a disability that requires special accommodations, please contact the VSB in advance of the program.

Hotel Accommodations: Sponsors Hall at the Darden School's hotel property has a block of sleeping rooms reserved. If you wish to stay overnight, please indicate this on your registration form and enclose the room cost in your registration fee. Directions to UVA Darden School and Sponsor's Hall will be mailed under separate cover.

Meals: Thanks to our generous sponsors, your lunch, dinner and breakfast are included in your registration cost.

Written Materials: Each participant will receive outlines and materials of the presentations at the program.

Cancellations: Refunds will be given for cancellations received in writing by March 1, 2003. You may send your request to the VSB or stengel@vsb.org.



REGISTRATION FORM:

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

VSB ID # _____

____ Registration for the 2003 YLC Professional Development Seminar **\$115**

____ Overnight accommodations at Sponsors Hall **\$100**

__ smoking

__ non-smoking

Total _____

Legal Ethics Opinion

Jeffrey Hamilton Geiger

Q Great. Now I have to sit through the entire criminal docket. All I wanted to do was to set my case for trial! At least I am not the poor sap that just got six months in jail. Well, the guy is smart enough, at least, to ask about his right to appeal the case to the circuit court. I can't believe that! The Commonwealth's Attorney just stood up in open court, and in front of the defendant, and told the judge that if the case is appealed, he is going to request a jury. He even had the clerk note her request for a jury on the warrant. Talk about a threat. If the "criminal" thinks the judge is tough, wait until he appears before a jury of his peers. I know that crime doesn't pay, but can the Commonwealth's Attorney ethically make such a statement in front of the defendant?



mitigate the degree of the offense, or reduce the punishment, except when disclosure is precluded or modified by order of a court; and

- e. not direct or encourage investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case to make an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 [concerning trial publicity].

Clearly, dangling the prospect of a jury predisposed to entering a stiffer sentence may appear intimidating or threatening. Indeed, where the defendant is *pro se*, the commentary to Rule 3.8(b) notes that it "is intended to protect the unrepresented defendant from the overzealous prosecutor who uses tactics that are intended to coerce or induce the defendant into taking an action that is against the defendant's best interests, based on an objective analysis," through, for example, false representations. Yet, there is no indication that the prosecutor's stated intention to proceed with a jury is, in any way, false or fraudulent.

Here, the specific rules governing prosecutorial conduct do not proscribe the "offending" statements made in court. In reviewing a similar matter, the Standing Committee on Legal Ethics stated that "[t]he committee opines that nothing in the provisions of broad application governing attorney communications, nor the specific provisions directed at prosecutors prohibit the remarks of the Commonwealth's Attorney in the presence of the represented defendant." Legal Ethics Opinion 1768. Bottom Line: The prosecutor can tell the defendant that he will request a jury in the event the defendant elects to appeal his case to the circuit court.

A Victory at all costs is not sanctioned in either the civil or criminal sides of the practice of law. Indeed, under the *Virginia Rules of Professional Conduct*, prosecutors are held to an even higher ethical standard. That is understandable, as "a prosecutor has the responsibility of a minister of justice and not simply that of an advocate." Appropriately entitled "Additional Responsibilities of a Prosecutor," Rule 3.8 addresses prosecutorial conduct, stating that:

A lawyer engaged in a prosecutorial function shall:

- a. not file or maintain a charge that the prosecutor knows is not supported by probable cause;
- b. not knowingly take advantage of an unrepresented defendant;
- c. not instruct or encourage a person to withhold information from the defense after a party has been charged with an offense;
- d. make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence which the prosecutor knows tends to negate the guilt of the accused,

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Docket Call welcomes contributions from members of the YLC.

SEND SUBMISSIONS TO: Publications Dept., Virginia State Bar, 707 E. Main St., Suite 1500, Richmond, VA 23219-2800

VSB Annual Meeting—June 18–22

Suzanne F. Garwood

Mark your calendar for June 18–22, 2003, to head to Virginia Beach for an event you will not want to miss. The Young Lawyer's Conference is working hard to support the 65th Annual Meeting of the Virginia State Bar, which promises to be a very interesting session.

Education. Pairing up with the Military Law section, the YLC is presenting a panel discussion on the law relating to enemy combatants, prisoners of war and terrorists. In light of the recent decisions regarding Yaser Hamdi, an American born detainee at the Norfolk Naval Station brig, who was captured as an alleged enemy combatant during ongoing military operations in Afghanistan, this promises to be a lively forum. The decisions concerning Hamdi can be accessed at the Web site maintained by the U.S. Court of Appeals at <http://pacer.ca4.uscourts.gov/opinions/opinion.php>.

The panel will be moderated by Gary Solis, an Adjunct Professor of Law and Chief of the Oral History Unit, Marine Corps Historical Center at Georgetown University Law Center. Dr. Solis served his country as a Marine Corps judge advocate and military judge. Panel members include Colonel Patrick Finnegan, a professor at the U.S. Military Academy; Fredric Lederer, chancellor professor of law at the William & Mary

Marshall-Wythe School of Law; and Jennifer Elsea, a legislative attorney of American law for the Library of Congress.

Athletics. The young lawyers will host two athletic events. On Friday morning, there will be the annual "Run in the Sun" 5K race, with trophies to be awarded to the top three male and female finishers. Awards will be given for the top three finishers in each age division. The run is to take place on the boardwalk with light refreshments after the race for all competitors. Start your training now!

For those of you into team sports, there will also be a volleyball tournament. Talk to your colleagues now and form a team. Friendly games between rivalries are encouraged! Issue your challenge now and start practicing your serve. More information on organizing a team or challenging a rival can be obtained by contacting Maureen Stengel at the Virginia State Bar. She can be reached at stengel@vsb.org.

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.

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