Is the Virginia Supreme Court Aiding and Abetting Uncertainty About the Tort’s Existence?

By Dustin M. Paul and Jennifer L. Eaton

The phrase “aid and abet” traces its origin to the Renaissance “when embellishing terms with synonyms was common.” More than five centuries later, the legal doublet appears dozens of times throughout the Code of Virginia in a number of surprising and varied statutes. Most of those statutes address criminal conduct, but the status of “aiding and abetting” on the civil side of the docket remains an open issue. For decades, plaintiffs in both Virginia state and federal courts have had mixed success asserting claims that a defendant aided and abetted the commission of a tort.

At least three times since 2004, the Supreme Court of Virginia has considered a claim of aiding and abetting a breach of fiduciary duty. While the Court began to shape and explain the elements of the claim, it has expressly reserved an answer to the question of whether the claim even exists. The Court’s avoidance of the issue has led to divergent conclusions by lower courts regarding whether the tort is viable in the Commonwealth.

The concept of civil liability for aiding and abetting is not new. The Restatement (Second) of Torts specifically addresses the topic, providing that an injured party can recover damages when the defendant: 1) knows that another’s conduct constitutes a breach of duty and 2) gives substantial assistance or encouragement to a person engaging in such conduct. This test is nearly identical to the elements that the Supreme Court of Virginia has suggested constitute aiding and abetting. Additionally, at least two Virginia circuit courts have cited to and relied upon this portion of the Restatement to decide cases.

In Virginia, the history of opinions considering a claim for civil aiding and abetting stretches back more than a century. The Supreme Court of Virginia considered the legal theory in a case involving conduct during the Civil War. In Patterson v. Horsley, the Court considered a trust set up to provide income for a family, with the primary asset of the trust being railroad bonds. The trustee sold the bonds in exchange for a personal guarantee from a third party, who eventually paid back a portion of the debt using currency from the Confederacy. Suit was brought against both the trustee and the bond purchaser. The Court entered judgment against the purchaser, finding that the sale was a breach of fiduciary duty and that the purchaser was liable because he had notice of the breach of trust.

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With publication of this newsletter, we are weeks away from the 79th Annual Meeting of the Virginia State Bar in Virginia Beach, Virginia. We also are weeks away from the end of my second term as Chair of the Litigation Section. Through this letter, I offer thanks to the following individuals who have furthered the work of the Litigation Section over the last two years:

- The efforts of the Litigation Section would not be possible without the support which we receive from the Virginia State Bar. I have had the pleasure of working with Bet Keller and Stephanie Blanton at the Virginia State Bar during the last two years. They do so many things to make our Section run smoothly. Not only are they an asset to the Virginia State Bar but also to the lawyers who get a chance to work with them on projects.

- The Litigation Section has provided the financial backing for the Law in Society essay competition which awards monetary prizes to high school students based on their written submissions on a yearly essay topic. 2017 will be the last year this competition is offered, and we thank Gordon Hickey and Dee Norman for their work on this contest during the last two years.

- The Litigation Section publishes two newsletters each year. Jennifer Franklin is a Professor of the Practice at William & Mary Law School and also serves as editor of the Litigation Newsletter. She has kept our publications on time and ensured the quality of the articles published. We always are looking for articles so please contact Jennifer if you are interested in submitting an article for publication.

- Special thanks to the members of the Board who have written articles, organized CLEs, graded essays for the Law in Society competition, drafted minutes, and participated in Board meetings. We are proud to have a diverse Board, with lawyers and Judges from across the Commonwealth from public service to private practice. To the extent that you are interested in participating in the Litigation Section, please contact a Board member.

Please join us on Friday, June 16th at 8:30 a.m. at the Sheraton Oceanfront as the Litigation Section co-sponsors a showcase CLE on expert witnesses with the Construction and Public Contracts Section and the Joint ADR Committee. Our speakers include the Honorable Robert S. Ballou, Brian C. Riopelle at McGuire Woods, and Lauren P. McLaughlin at BrigliaMcLaughlin PLLC.

The Litigation Section also will sponsor a spring webinar with Virginia CLE exploring the topic of social media for litigators on May 10 with a replay on May 24. The two hour webinar will be offered at a discount to Litigation Section members, and it will include one hour of ethics credit. ♦
and because the breach was “committed at his instance and for his benefit.”

Between 1877 and 2004, however, the trial courts of Virginia were left adrift to consider aiding and abetting torts without reliable navigational aids. During that time, the closest the Court came to addressing the issue was in *Pike v. Eubank*. *Pike* did not concern business litigation like most aiding and abetting cases; instead, it was a suit by an arrestee against two police officers who he claimed assaulted him. The testimony of the plaintiff at trial was that one officer held his arms while another officer struck him. The trial judge granted a motion to strike at the close of the trial. On appeal, the Supreme Court of Virginia reversed. The Court quoted, with approval, a legal encyclopedia stating that “all others who aid, abet, counsel, or encourage the wrongdoer by words, gestures, looks or signs” are liable for assault and battery. The Court therefore found that the plaintiff had provided sufficient evidence to support a verdict against the officer who held him under an abetting theory.

With such limited guidance, at least two Virginia trial courts rejected the theory of civil aiding and abetting prior to 2004. In 1990, Judge Middleton of Fairfax County Circuit Court rejected the concept of “an independent action for aiding and abetting.” Similarly, in 1992 Judge Chamblin of Loudoun County Circuit Court granted a demurrer to a claim for aiding and abetting fraud, explaining that the cause of action was not recognized in Virginia because “aiding and abetting is a criminal concept and not a civil concept.” Judge Wooldridge of Fairfax County Circuit Court was less certain in 1994 when ruling in *Dotson v. Lillard*; there, while expressly withholding a decision regarding whether Virginia law recognized the cause of action, he ruled that a complaint failed to state a cause of action for aiding and abetting.

In contrast, the U.S. Court of Appeals for the Fourth Circuit came to the opposite conclusion with respect to the viability of the cause of action at nearly the same time in *Tyson’s Toyota, Inc. v. Globe Life Insurance Co.* Relying upon *Patterson*, the Court issued an unpublished decision and summarized Virginia law as providing that “one who aids and abets a third party’s breach of fiduciary duty may be held liable for providing such assistance.”

The issuance of the Fourth Circuit’s opinion in *Tyson’s Toyota* appears to have persuaded several state court trial judges to accept the cause of action. For some unknown reason, Loudoun County remained the epicenter for written opinions in aiding and abetting litigation. In 2002, the Court considered *Sherry Wilson and Co. v. Generals Court, L.C.* Although the court had rejected the theory a decade earlier, Judge Horne held that “[w]here one aids and abets a fraud, they may be held liable for the damages sustained as a result of the actions of the principal.” This rationale was affirmed a year later in *Priester v. Small*, where the cause of action was recognized yet again.

The federal courts that have considered Virginia law echo the conflicting opinions found in Virginia state courts. Some courts have been definitive that a cause of action for aiding and abetting exists under Virginia law, while others have been just as resolute that the cause of action does not exist.

Given this uncertainty, it is interesting that the Supreme Court of Virginia has not yet attempted to fill the void. To the contrary, the Court appears to be avoiding the issue. As discussed above, the Court established the potential elements of the claim without ruling on the existence of the claim in 2004. The issue of whether the claim exists was again before the Court in 2009 in *Goodman & Co. v. Costa Brava Partnership, III*. There, the court—in an unpublished Order—echoed its ruling in Halifax and avoided the issue, considering its elements without explicitly accepting the tort. Three years later, the Court again had the opportunity to address the issue in *21st Century Systems, Inc. v. Perot Systems Government Services, Inc.* In *21st Century*, a plaintiff had successfully asserted a claim of “aiding and abetting breach of fiduciary duty” at trial. But the claim was not subject to an assignment of error, and the Court did not address whether the cause of action is recognized in Virginia, thereby rejecting yet another opportunity to address the viability of the aiding and abetting cause of action.

The existence of the tort was before the Supreme Court again in its 2016 term as an assignment of error in *WarehouseMaster Company Inc. v. Virginia International Terminal, Inc.* But the Court dismissed that appeal as improvidently awarded before a decision was reached.

Accordingly, the Supreme Court of Virginia has still...
not made a ruling on the existence of a claim under Virginia law for aiding and abetting a tort. Without clear guidance from the Supreme Court of Virginia, the viability of the claim remains uncertain in the Commonwealth. Litigants can find authority on both sides from state and federal courts, but there is little hope of predicting how any specific court will rule.

(Endnotes)

1. BRYAN GARNER, GARNER’S DICTIONARY OF LEGAL USAGE 41 (3d ed. 2011).
2. See, e.g., VA. CODE § 63.2-523 (2015) (criminalizing conduct that “aids or abets another person” in trafficking in food stamps); id. § 19.2-81.2 (2015) (allowing a correctional officer to detain any person who the officer believes is “aiding or abetting a prisoner” in the commission of a felony); id. § 18.2-166 (2015) (making it unlawful when one “aids or abets” a telephone company employee in disclosing the names of the telephone company’s customers without consent of the company).
4. See, e.g., Halifax, 604 S.E.2d at 412 (assuming “’arguendo’ that Virginia recognizes a cause of action for aiding and abetting a breach of fiduciary duty”).
7. See Halifax, 604 S.E.2d at 412 (establishing the elements of the tort to include both knowledge that another breached a duty and that the defendant “somehow recruited, enticed, or participated” in the breach).
8. Best Med. Int’l, Inc. v. Wittmer, 73 Va. Cir. 504 (Fairfax Cty. 2007) (considering but not deciding whether a tort of aiding and abetting exists); Wynder v. Laventure, 33 Va. Cir. 438 (Northampton Cty. 1993) (denying a demurrer to a complaint alleging that multiple drivers were acting in concert and caused a car accident).
9. 70 Va. 263, 270 (1877).
The Price of Silence: Legal and Ethical Issues Arising from Confidentiality Provisions in Settlement Agreements

by E. Kyle McNew

It happens at some point in just about every mediation. Things are moving along, and the negotiation is two or three moves away from a deal on the major term, usually money. The mediator comes in the room and presents the other side’s most recent move. And then, if you are representing the plaintiff, the mediator, almost as an aside, says something along the following lines: “And, of course, if the case settles, the defense will have a settlement agreement they will need signed, and they’ll want confidentiality. I assume that won’t be a problem.”

Well, yes and no. The introduction of confidentiality into a settlement agreement might seem like a routine part of any settlement, but it actually raises legal and ethical issues that the attorney must consider before going forward. This article highlights some of those issues, and then returns to the original question posed by the mediator: will that be a problem?

A. Issues for the Client.

The lawyer’s first job is to think about what confidentiality means for the client. Of course the client needs to understand that confidentiality means exactly that. But there is at least one other issue that the lawyer needs to think about, and it is one that everyone hates: taxes. In most personal injury cases, and in certain aspects of divorce cases, money received as a result of a settlement is not taxable. But that is only because the tax code treats what that money represents as being nontaxable. If a settlement includes consideration for anything other than the nontaxable damages, then there will be a tax implication for that portion of the settlement.

That brings us back to confidentiality provisions. Dennis Rodman has done many things for this world. He did great things for the Chicago Bulls, he advanced the cause of body art, and he even attempted to normalize relations with North Korea. But for lawyers, he gave us one more thing to worry about when we are settling cases.

While diving for a loose ball during an NBA game, Mr. Rodman fell into some photographers on the sideline, and kicked one in the groin. The photographer made a claim for personal injury, and before suit was filed reached a confidential settlement where Mr. Rodman paid $200,000 in return for a release. The photographer, of course, did not report the money on his tax returns for that year because he believed it to be compensation for personal injuries. We know all this because the IRS later audited the photographer and determined that a portion of the $200,000 was taxable as consideration for keeping the settlement confidential, not for the personal injuries themselves. The Tax Court ruled that, given the facts of the case, $80,000 of the $200,000 settlement was for confidentiality, and thus taxable. The same basic analysis would apply to any confidential settlement involving money. If confidentiality is a material term of the settlement, then it has some value. The party receiving confidentiality is theoretically paying some amount for the confidentiality—separate and apart from what the defendant is paying to compensate the plaintiff for her damages—so that amount would be taxable.

In this situation, the plaintiff’s lawyer at the very least has to inform his client about the potential tax implications. And when the client had previously believed that the entirety of the settlement would be tax free, now the client is hearing that she may have to pay taxes on some portion of the settlement because the defendant wants confidentiality, and the client may not be happy. So, what to do? There have been various suggestions on how to deal with this issue: from refusing to agree to confidentiality, to making

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the defendant pay an additional, separate amount in return for a stand-alone confidentiality agreement, to apportioning a portion of the settlement amount to confidentiality, and more. Which of those options is permissible and appropriate depends on the specific situation, and is beyond the scope of this article. But suffice to say that the mediator’s suggestion that confidentiality should not be a problem is not as breezy of a subject as might be thought.

B. Issues for the Attorney

More often than not, the party requesting confidentiality will want the other party’s attorney to be independently bound by the confidentiality provision. The confidentiality provisions tend to be about as broad and comprehensive as the English language will permit, prohibiting the client and the attorney from disclosing any facts of the case and the terms of the settlement. More and more often in recent years, the provisions specifically speak to, and prohibit, the attorney’s ability to make any reference to anything about the case on his or her website, or in settlement reports such as the Virginia Lawyers Weekly. This is so, even if the lawyer takes efforts to scrub any information that would permit a third party to determine who the parties were, who the insurer was, who opposing counsel was, etc. The introduction of this kind of confidentiality provision raises important ethical considerations for the attorney which, surprisingly, have not yet received any real attention from the State Bar.

1. Duty of Confidentiality to the Client – Rule 1.6

Regardless of whatever the proposed confidentiality agreement might say, the lawyer first and foremost has a duty of confidentiality toward her client. Virginia Rule of Professional Conduct 1.6(a) prevents the attorney from disclosing information that “would be embarrassing or would be likely to be detrimental to the client,” and Comment 18 makes clear that this duty extends beyond the termination of the representation.

Of course, what information would be embarrassing or detrimental to the client if made public is not clear from the Rule, and so it is necessarily a contextual determination. But it is not too much of a stretch to think that a client might reasonably find it embarrassing for information like his injuries in a personal injury case, or details about his divorce in a domestic case, to become public. Nor is it a stretch to think that the client might find it detrimental for the public to learn how much money he received or how much he has to pay.

Thus, the attorney needs to proceed with caution when considering whether to disclose any aspect of a settlement. One approach, of course, would be for the attorney to try to make the disclosure anonymous, such that a third party could not connect the information with a specific client. And in some situations, this may be a reasonable, effective method. But it probably is not full proof. For example, in a small town, the facts of and parties involved in a case may be well-known. So if the lawyer discloses the details of the settlement of that case, people will likely be able to put two and two together no matter how much the lawyer scrubs identifying facts from the disclosure. Thus, the wiser course for the attorney is to avail herself of the language in Rule 1.6(a) that prohibits disclosure of confidential information “unless the client consents after consultation.”

2. Conflicts of Interests Created by Confidentiality Provisions – Rule 1.7

If the attorney feels like she has done a good job and has achieved a good result for her client, and if the client consents, the attorney may want to disclose some information about the case and the resolution in her marketing efforts. But the other side may not be willing to finalize the settlement unless the attorney agrees to be bound by the confidentiality provision. Thus, the introduction of the confidentiality clause places a wedge between the client’s interests in resolving the case and the attorney’s interests in marketing her business.

Virginia Rule of Professional Conduct 1.7(a) prohibits a lawyer from representing a client if the representation would involve or create a concurrent conflict of interest, which is defined to include situations that pose a significant risk that the representation of the client would be “materially limited by . . . a personal
The State Bar has not dealt with the conflict of interests created by confidentiality provisions in settlement agreements. However, the Bar has dealt with the conflict of interest created by other aspects of settlement agreements, and that analysis would seem to apply with equal force to confidentiality provisions.

In LEO 1858, the State Bar dealt with a then-common scenario of a defense attorney in a personal injury case demanding, as a condition of settlement, that the plaintiff’s attorney agree to indemnify the defendant and insurance company against future lien claims in the event liens were not paid from the settlement proceeds or by the plaintiff. The question presented was whether it was ethical for the plaintiff’s attorney to be part of the settlement agreement via these indemnification provisions. The State Bar found that this scenario presented several ethical problems. As relevant here, the Bar found that the proposed indemnification agreement created a conflict of interest between the attorney and his client.

Because the insurer will not agree to the settlement in the absence of an indemnification agreement, the lawyer’s personal interest in avoiding liability for the debts of his client may be at odds with his client’s desire to settle the case. The lawyer cannot reasonably be expected to provide an objective evaluation of whether the settlement is in his client’s best interests when a settlement of any amount could result in personal liability for the lawyer, while any outcome of trial ensures that the lawyer will not be personally liable.

Thus, it would violate Rule 1.7 for the attorney to enter into the proposed indemnification agreement. Moreover, because “the insurer, through its counsel, refuses to offer a settlement that does not include this provision,” the defense attorney who communicated this demand would violate Rule 8.4(a) by inducing the plaintiff’s attorney to violate Rule 1.7.

It is hard to see how the same analysis would not apply to one party’s insistence upon the other party’s lawyer agreeing to a confidentiality provision in a settlement agreement. The lawyer’s interests in promoting her successes “may be at odds with [her] client’s desire to settle the case.” Further using the words of the Bar, “the lawyer cannot reasonably be expected to provide an objective evaluation of whether the settlement is in [her] client’s best interests when a settlement of any amount would result in [inability to publicize the lawyer’s success], while any outcome of a trial ensures that the lawyer [can publicize the result].” If the client settles and there is a confidentiality provision binding the lawyer, then the lawyer knows she will not be able to publicize her good work and the good result she received for her client. But if the case goes to trial and the client wins, the lawyer will be able to trumpet her success from the rooftops. Thus, an attorney-binding confidentiality provision in a settlement agreement has a similar potential to create a wedge between attorney and client as did the indemnification provision declared impermissible in LEO 1858. And if the attorney agreeing to the confidentiality provision would violate Rule 1.7, then under the reasoning of LEO 1858 the defense attorney demanding the inclusion of the provision would violate Rule 8.4(a) by inducing the other attorney to violate Rule 1.7.

Because there is not yet State Bar guidance directly on this issue, attorneys are probably safe to request attorney-bound confidentiality provisions in settlements and also safe to agree to them. That said, each attorney is his or her own first line of ethical enforcement. If an individual attorney believes that the reasoning of LEO 1858 precludes attorney-binding confidentiality provisions as a condition of settlement, then that attorney would certainly be justified in refusing to even discuss the inclusion of such a provision in a proposed settlement.

3. Confidentiality as a Restriction on the Right to Practice – Rule 5.6(b).

As stated above, the typical attorney-binding confidentiality provision is written as broadly as the English language will allow. The provision would prohibit the attorney from disclosing any facts or circumstances of the case, including those that are already a matter of public record by virtue of their having been filed in the court’s case file. Instead of just prohibiting the attorney from publicizing the amount of the settlement, the provisions would prohibit the attorney from even publicizing that she handled the case at all, who the parties were, what the case involved, what the allegations were, etc.

Though, again, our State Bar has not addressed the
issue, other state bars have looked at what implications these provisions have on the attorney’s Right to Practice as provided for in Rule 5.6. That Rule prohibits a lawyer from “offering or making . . . an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a controversy, except where such a restriction is approved by a tribunal or a governmental entity.”

Though typically thought of as applying to situations in which, as a condition of settlement, a lawyer agrees not to represent any future clients in claims against the settling party, the Committee commentary to Rule 5.6 makes clear that the purpose of the Rule is to broadly and generally prohibit any restrictions on the lawyer’s right to practice in order to foster the public’s “unrestricted choice of legal representation.”

Bars in other jurisdictions, including the District of Columbia, South Carolina, and North Dakota, have addressed this issue and have determined that broad, all-encompassing confidentiality agreements in settlement provisions run afoul of materially identical versions of Rule 5.6(b) because they reduce the amount of information available to the public when choosing legal representation. For example, the District of Columbia Bar determined that because the underlying rationale for its Rule 5.6 is “the intent to preserve the public’s access to lawyers who, because of their background and experience, might be the best available talent to represent future litigants in similar cases, perhaps against the same opponent,” a confidentiality provision that would prohibit an attorney from publicizing or disclosing public information about a case the lawyer has handled would violate Rule 5.6. The South Carolina State Bar has reached essentially the same conclusion, as has the State Bar of North Dakota. However, they all conclude that a prohibition on disclosing non-public information about a settlement—namely the amount, payor, etc.—would not violate Rule 5.6.

Under these opinions, Rule 5.6 would permit an attorney to agree to refrain from placing something like “resolved products liability case involving defective table saw for $3.2 million” on the attorney’s website. But the Rule would not permit the attorney to agree to a prohibition against putting something like “handled products liability case against Acme, Inc. in which the plaintiff alleged that a defect in the design of its Model 1234 Table Saw resulted in the plaintiff’s finger being amputated, and in which $20 million was demanded” on her website because such a prohibition would restrict the attorney’s right to practice and would inhibit the public’s ability to find a lawyer with experience litigating table saw cases. Indeed, under the logic of these opinions, Rule 5.6 would prohibit confidentiality of any publicly available information, which in Virginia would include the terms of wrongful death settlements or any other settlement that was subject to court approval.

4. So, Will Confidentiality be a Problem?

These other state bar opinions interpret a Rule 5.6 that is materially identical to Virginia’s Rule 5.6. So, when the mediator comes in and asks if confidentiality will be a problem, an attorney in Virginia, in addition to the Rule 1.7 concerns discussed above, would be well justified in refusing to be party to any settlement agreement that would prohibit the attorney from publicizing public information about the case. And this raises an interesting practical question. In the Acme Table Saw hypothetical, which would Acme prefer: (A) an attorney website blurb like “resolved products liability case involving defective table saw for $3.2 million,” or (B) an attorney website blurb like “handled products liability case against Acme, Inc. in which the plaintiff alleged that a defect in the design of its Model 1234 Table Saw resulted in the plaintiff’s finger being amputated, and in which $20 million was demanded,” such that “defect,” “Model 1234,” and “$20 Million” pops up any time someone Googles Acme table saws? Might it actually be better for Acme to permit the former if it avoids the latter?

Of course, under the reading of Rule 5.6 discussed above, an attorney could not actually agree to refrain from the latter in return for permission to disclose the settlement amount without specific identifying information. But if given the option, most attorneys would probably prefer to highlight the specifics of the settlement without identifying information than to simply publicize the publicly available specifics of the case. This outcome would moot the Rule 1.7 concerns discussed above because it would not place the attorney’s interests at odds with the client’s. It would also further the goals of Rule 5.6 because it is more beneficial for a prospective client seeking representation
to know that an attorney actually achieved a good result in a certain type of case than to know just that the attorney handled that type of case with no information about the outcome.

Because of lack of official guidance from our State Bar thus far, these are issues that each attorney must resolve for himself or herself in conjunction with the client. But no attorney should see confidentiality as a foregone conclusion when settling a case.

*Endnotes*

2. Va. R. Prof. Conduct 1.6(a) & cmt. 18.
3. Id.
5. See Va. LEO 1858 (2011)

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Largely because of the expense of litigation and the advent of the digital age and internet access, courts are facing more and more parties who choose to represent themselves without the assistance of a lawyer. Dealing with pro se litigants creates some special issues for the lawyer on the opposing side, judges presiding over the matter, and all those connected to the court system.¹

This article will address the civil side of this conundrum, due to the fact that most criminal defendants are entitled to the appointment of counsel under the Sixth Amendment to the Constitution, as construed by Gideon v. Wainwright.²

Pro se litigants typically present to the Court in two ways: first, where both parties are pro se, and litigating the matter against each other, and second, when one party is pro se and the other is represented by counsel. I have observed that “pro se v. pro se” most commonly occurs in appeals from the Juvenile and Domestic Relations District Courts. They range from Protective Order cases to custody and support matters. I learned very quickly that parties need, and generally expect the Court to “guide” them in the process of trying a case. It is my practice to outline the overall procedure to the parties, and then frequently through the use of questions by the Court, elicit or guide the parties through the presentation of relevant testimony.

Otherwise, they may offer little relevant evidence, testimonial or otherwise, to support their side of the case.

By outlining the procedure the Court will follow, and asking some pointed questions if a party has little to say (or is rambling about irrelevant matters), the Court is usually able to get to the bottom of a dispute, and resolve it. Generally, the parties—win or lose—appreciate the Court’s attempt to come to a fair result. More challenging is attempting to “instruct” the parties on evidentiary rules, including hearsay, methods of examining witnesses, or presenting documentary evidence. The Court has to walk the fine line between giving assistance to a pro se litigant (in order to seek a fair trial), while not allowing it to become representation.³

Potentially more problematic is the second category of pro se cases, where only one party is represented by counsel. The Court’s overt guidance in this situation can understandably be a source of consternation to (retained) counsel. The tension between providing meaningful access to courts for pro se litigants by providing them some latitude at trial, must be balanced against maintaining the impartiality of the tribunal. The Court tries to keep the ‘playing field’ as level as possible without showing favoritism or bias. Most
attorneys know the thorny position of the Court and do not attempt to ‘bulldoze’ the non-lawyer, due to their superior knowledge and experience.

Unfortunately in some cases, counsel will take advantage of the situation by excessively using hearsay or leading questions as they present their case, knowing that in most instances a pro se will not object. This issue can be compounded by counsel objecting to the same tactic when it is done by the pro se. The better (and fairer) approach is to proceed as if counsel were representing the opposing side, thus obviating the necessity for the Court to intervene sua sponte on the pro se’s behalf. Playing by the same rules for each side is not only the right thing to do, it is also a form of courtroom civility. “[T]he Court should not sit by and allow impolite conduct between counsel and witness.”

Another typical scenario is a pro se providing “evidence during argument,” when the pro se fails to understand the difference between the two. This failure can have serious consequences for a pro se. However, the Court can attempt to minimize this problem by advising the pro se of this difference early on, or giving leave to reopen the evidence at a later point, so that a pro se’s opportunity to present the case is preserved.

Occasionally (and unfortunately), the Court will encounter “professional” pro ses; these are not single case litigants, but self-proclaimed “issue” advocates with philosophical motives who use (and abuse) the system to challenge, delay, harass and generally create much unnecessary work for all involved in the legal system, in the name of a cause (theirs or some purported group).

These individuals, who fortunately are few in number, can normally be identified by certain indicies of their behavior. Seventeen separate indicies that run in common among such litigants, were identified by Judge Everett A. Martin Jr. in In re: Michael A. Scott, justifying his issuance of a pre-filing injunction of any new litigation against a particular party. Provided that a Court does “not completely prohibit future pro se filings…” and the orders are “narrowly tailored” such restrictions are permissible.

On other occasions, courts have imposed sanctions against pro se parties under Va. Code §8.01-271.1 for filing cases with an improper purpose. Contempt is also a possible remedy under Va. Code §18.2-456. However, a finding of contempt is probably the least effective remedy due to the many pitfalls associated with making such findings.

One way to manage unruly pro se litigants is to allow them to proceed down their chosen path, which often leads to termination or dismissal of their case through their own actions or omissions, when they run afoul of the substantive or procedural requirements of the law. Even pro se litigants must comply with the Rules of Court; the right of self-representation is not a license to refuse to comply with the relevant rules of procedural and substantive law. Although sometimes it takes courage to insist upon the rule of law, the Court cannot take the path of least resistance and allow it to serve as a reward to certain unscrupulous litigants.

Fortunately, the majority of pro se litigants are simply trying to right a ‘perceived harm,’ and navigate a complex and foreign legal system (to them), where strict enforcement of procedural and evidentiary rules may result in denial of their claim or defense over substance. Fortunately for the Courts and pro se parties, there are now a plethora of standard pleading forms and information found on the internet and the Va. Supreme Court website, which provide guidance for the genuinely conscientious pro se. It is, after all, important to remember that people in this country have a constitutionally guaranteed right to self-representation, and it is our duty as professionals to allow that opportunity to be exercised.

**Conclusion**

Courts can expect increased numbers of pro se litigants at all levels in the future. All participants in the court system should recognize this, and although there is not an easy solution for the unique challenges presented by pro se litigation, try to deal with each individual in a manner deserving of their demeanor, and the underlying merits of their cause.

* The author wishes to acknowledge the assistance of Jodi Hitt Nash, Esq. in the preparation of this article.

(Endnotes)

1. The Court is relying on its own experience for this assertion, but believes the statistical evidence would bear this out.

**VIEW FROM THE BENCH — cont’d on page 12**
Observations from the Gallery of a Courtroom
by Kristan B. Burch

In early 2015, I was assisting a client with some construction issues, and that work included observing a jury trial in which the client was represented by insurance defense counsel. My job was to attend the trial and address insurance coverage issues. Sitting in the front row of the gallery in the courtroom, I made some notes regarding my observations as I watched two experienced lawyers try this case to a jury in Circuit Court.

This experience provided me a rare opportunity to observe a trial from start to finish without having to handle a single argument or witness. It was like returning to my first job as a law clerk, except that I better understood what the lawyers were doing and why. Unlike the lawyers participating in the trial, I had more time to watch the jury and listen to the testimony of the witnesses.

While my observations during this trial certainly are not ground-breaking, they are a good reminder for litigators trying cases to a jury.

1. **Talk directly to the jury.** It was clear from his opening statement that the plaintiff’s lawyer had tried many jury trials. He had a unique ability to talk directly to the jury, in a casual, yet effective manner, with few to no notes. He stood at the corner of the jury box and had a conversation with the jury during his opening statement. It was as if he was sitting down to eat dinner with them or meeting them for a drink as he told the story of what had happened to his client. His ease in front of a jury made a real difference in his ability to connect with the jury.

2. **Do not use big words.** This case involved some complicated construction issues. Instead of getting bogged down in details or big words associated with such details, the lawyers broke down each of the issues and provided simple explanations that the jury could follow. This ultimately permitted the jury to assign fault as they were able to understand the issues of the case.

3. **Keep explanations big picture.** Similar to the point on big words above, keep the explanations for events as big picture as possible. Lawyers have lived a case, sometimes for years, and they have a tendency to get down in the weeds and want to show every email, letter, or photograph to try and prove a point. The jury cannot possibly learn as much as the lawyers know about a case during the days of trial so keep explanations big picture, with consistent themes, which the jury can follow. Little points which the lawyers may think make all of the difference frequently are lost on the jury.

4. **The jury is everywhere.** I noticed more than usual that the jury was everywhere during the trial. They were in the hallway before and after court, they were in the parking lot outside the courthouse, and they were in restaurants at lunch. I saw the jury consistently watching the lawyers and clients interact with each other and with staff members. It was a good reminder that the jury is watching the lawyers and the clients even when the jury is not in the jury box so everyone needs to be on their best behavior at all times.

5. **Ensure that witnesses treat others with respect.** Similar to lawyers and client representatives, fact and expert witnesses need to be on their best behavior while testifying and spending time in the courtroom. The jury notices when a witness is rude to lawyers or their staff, even if it occurs when they are not on the witness stand. Similarly, witnesses should be respectful to the Judge and the court staff with whom they interact. Witnesses should appear composed, and they should focus...
their time and effort on their testimony, as opposed to attacks on other witnesses or counsel.

6. **Witnesses and clients should make consistent eye contact with the jury.** During trial, some of the witnesses at trial did not make eye contact with the jury which appeared to affect the jury’s interest in their testimony. The more effective witnesses position themselves so they face the jury when they testify, making consistent eye contact with the jury. Witnesses who come down from the witness stand to show exhibits or to explain photographs also appear to establish a better connection with the jury. Similarly, the client representatives who sit at the table with counsel need to make eye contact with the jury. Clients have to walk a fine line such that they appear interested, but not to a level that makes the jury uncomfortable.

7. **Determine an effective way to publish exhibits to the jury.** Depending on how the courtroom is set up and what technology is available, determine in advance an effective way to publish exhibits to the jury. Lawyers may think a certain letter or photograph is critical, but if the jury sees it for only seconds on a screen, the jury may not understand the significance of the exhibit or even remember it. Do not underestimate the importance of the jury holding a letter or photograph in their hands.

8. **Be careful with technology in the courtroom.** No matter how much preparation is made, technology sometimes fails. Be prepared for how you are going to handle such failures. The jury will see you if you are short with a paralegal or other staff member when a Power Point does not work. Similarly, if a lawyer is not tech savvy, he should structure his presentation accordingly because his lack of knowledge on electronics will be evident to the jury and affect his presentation. Technology in the courtroom, however, can be very effective in certain cases when used for certain purposes. Lawyers should play to their strengths and incorporate technology accordingly.

9. **Conduct focused cross examinations.** In this trial I observed that the most effective cross examinations were short, with the lawyers getting quickly in and out on cross after addressing some specific points of contention. The jury appeared to lose interest when cross examination of a witness was longer than direct examination. This was particularly true for experts, and it demonstrated the difficulties of trying to impeach an expert using his own report – a document which the jury never previously has seen and which may not be an exhibit. Lawyers end up in difficult positions when they ask questions without being certain how the witnesses will respond. Not all cases or witnesses are the same so these points on cross examination do not apply to all cases. With that said, the consistent observation which I made during this trial was to tailor cross examination such that the jury continues to listen to the questions being asked by the lawyers and the answers being given by the witnesses.

10. **Avoid appearing defensive.** Not every ruling or witness is going to go as planned. Lawyers have to maintain their composure and regroup such that they call their next witness and proceed with trial. Being overly defensive when dealing with the Judge or other lawyers can make an unfavorable impression on the jury.

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**View from the Bench cont’d from page 10**

5. 79 Va. Cir. 299 (City of Norfolk 2009).
7. See Davis v. Allen, 44 Va. Cir. 237 (City of Richmond 1997) (same case filed six or more times previously); Morrissey v. Jennings, 60 Va. Cir. 179 (City of Richmond 2002) (pro se had no good faith belief in validity of claim); Lepelletier v. Will Neshbett Realty, LLC, 88 Va. Cir. 285 (2014) (pro se Plaintiff pursued vexatious claim for improper purpose).
MARCH SESSION 2017

Author: Cleo E. Powell, J. (McClanahan, J., concurring)
Date Decided: March 9, 2017
Lower Ct: Theodore J. Markow, J. Designate (City of Richmond)

Facts: Deceased was walking near train tracks, listening to headphones, unaware that a train was approaching. An extension of the train struck and killed Deceased. Defendants raised contributory negligence in their demurrer, and Plaintiff contended that the last clear chance doctrine created a question of fact as to whether Defendants could avoid collision. The trial court granted the demurrer.

Analysis: The last clear chance doctrine applies either for a helpless plaintiff or an inattentive plaintiff. The doctrine may apply even when the plaintiff’s negligence was continuing up to the point of the accident. A defendant’s negligence can be an efficient intervening cause which renders the plaintiff’s contributory negligence remote. The doctrine views whether the plaintiff is negligent, whether the defendant is also negligent, and then assesses which party had the last opportunity to avoid the accident. Here, there is a question of fact whether the doctrine applies.

Result: Reversed and remanded.

FEBRUARY SESSION 2017

Author: S. Bernard Goodwyn, J.
Date Decided: February 23, 2017
Lower Ct.: Nolan B. Dawkins, J. (City of Alexandria)

Facts: Plaintiff, an at-will employee, was threatened by another employee at work. Defendant employer met with Plaintiff and the other employee to encourage them to follow company aspirations, but no further investigation occurred. Plaintiff expressed concern that the Defendant’s action was insufficient and did not provide adequate protection. Plaintiff obtained a preliminary protective order against the threatening employee, who was served at work. The Defendant then terminated Plaintiff’s employment. Plaintiff filed suit against Defendant, alleging a Bowman violation. The trial court granted Defendant’s demurrer. Plaintiff appealed, claiming the termination was in violation of the public policy set forth in the statutory provisions for protective orders.

Analysis: The Bowman doctrine presents a “narrow” exception to the employment at-will doctrine when an employer violates public policy in discharging an
employee. There is not a violation here, as the termination did not violate the stated public policy of protection of health and safety, nor did the termination violate the public policy to protect the Plaintiff’s health and safety.

**Result:** Affirmed.

**Case:** Forest Lakes Community Ass’n v. United Land Corp. of Am., 795 S.E. 2d 875 (2017).

**Author:** D. Arthur Kelsey, J.

**Date Decided:** February 16, 2017

**Lower Ct:** Paul M. Peatross, J. Designate (Albemarle County)

**Facts:** Two homeowners associations filed suit for trespass and nuisance against a shopping center and related parties for sediment discharge that gathered in the associations’ lake. The Defendants filed pleas in bar, claiming that the sediment had been collecting in the lake in question for more than five years before the plaintiffs filed suit. Plaintiffs countered that the sediment discharge constituted a continuing trespass, and Defendants argued that the discharge was intermittent. The trial court heard evidence in a plea in bar hearing, and granted the plea in bar.

**Analysis:** The statute of limitation for property damage accrues when the first measurable damage occurs. Subsequent, compounding, or aggravating damage does not start a new limitations period. If recurring damage will occur indefinitely, there is but one cause of action and future damages must be brought in that action. When temporary damage occurs, however, each event may create a new limitations period. Here, the fact that the trespass may be continuous does not alter the result. Sufficient evidence supported the trial court’s findings.

**Result:** Affirmed.

**Case:** The Funny Guy, LLC v. Lecego, LLC, 795 S.E.2d 887 (2017).

**Author:** D. Arthur Kelsey, J. (Mims, J., filed dissenting opinion in which Goodwyn and McCullough, JJ., joined.)

**Date Decided:** February 16, 2017

**Lower Ct:** Daniel E. Ortiz, J. (Fairfax County)

**Facts:** The Funny Guy, LLC performed work for Lecego but was not paid. The Funny Guy filed suit for breach of contract, and Lecego demurred on the grounds that the parties did not have a meeting of the minds. The trial court sustained the demurrer. One year later, The Funny Guy filed another suit for breach of contract and quantum meruit, again contending that Lecego failed to provide required payment for the services The Funny Guy provided. Lecego filed a plea in bar for res judicata on the grounds that these alternate grounds could have been pled, and should have been pled, in the original suit. The trial court granted the plea in bar.

**Analysis:** The Funny Guy claims that the second suit should proceed because it asserts a different cause of action: Lecego’s breach of its promise to pay what it owed, as opposed to Lecego’s initial breached obligation to pay. Res judicata does not utilize the “same evidence” test. The facts here arose from a single, underlying dispute. Claims can be joined in a suit so long as they arise out of the same transaction or occurrence. If the claim can be joined because it arises out of the same transaction or occurrence, the pleading party’s failure to include it will subject it to a res judicata bar. Determining whether a claim should be included under Rule 1:6 as arising under the same transaction or occurrence requires an analysis of several factors, namely “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” If the claims can be joined under Rule 1:6, they must be joined or be barred by res judicata unless a res judicata disqualifying principle applies.

**Result:** Affirmed.

**Case:** Ricketts v. Strange, 796 S.E.2d 182 (2017).

**Author:** William C. Mims, J.

**Date Decided:** February 16, 2017

**Lower Ct:** Joseph W, Milam, Jr., J. (City of Danville)

**Facts:** Plaintiff was injured in a motor vehicle accident on February 3, 2012 and filed a complaint against the defendant for injuries plaintiff received. Defendant moved for summary judgment on the grounds that Plaintiff lacked standing to pursue the claim because Plaintiff had previously filed a Chapter 7 bankruptcy petition. Plaintiff had not listed the personal injury action as an asset in the bankruptcy matter, and the circuit court granted the motion for summary judgment on the grounds that the claim could be asserted only by the trustee in bankruptcy.
Analysis: Filing a petition in bankruptcy creates a bankruptcy estate and a trustee is appointed to administer it. The petitioner’s legal and equitable interests in property, including a debtor’s then-pending causes of action, transfer to the trustee. Virginia law permits a debtor to exempt assets from the bankruptcy estate provided the debtor follows the statutory procedure, including by sufficiently identifying the asset. The debtor must provide enough information that a reasonable investigation by the trustee would reveal the claim asserted. Here, the debtor failed to provide sufficient information.

The trial court was correct not to amend the complaint to permit the claim to be brought in the name of the bankruptcy trustee. A misnomer “arises when the right person is incorrectly named, not where the wrong person is named.” Here, the wrong person was named.

Similarly, it would not have been appropriate for the trial court to substitute the trustee as plaintiff pursuant to Rule 3:17 due to Plaintiff’s incapacity. Plaintiff was incapable of prosecuting the claim from the outset, so Rule 3:17 is inapplicable to Plaintiff.

Result: Affirmed.

* * *

January Session 2017

Author: Elizabeth A. McClanahan, J.
Date Decided: January 19, 2017
Lower Ct: Edward A. Robbins, Jr., J. (City of Colonial Heights)

Facts: Plaintiff filed a personal injury complaint against Defendant. Defendant admitted liability, and the case proceeded to trial on the issue of damages. At trial, Plaintiff contended that her vehicle was impacted, that she was pushed forward, and that no part of her body struck any part of the vehicle. Photographs at trial did not depict any discernible property damage to Plaintiff’s vehicle. Plaintiff was transported by ambulance to a hospital and sought treatment for back pain. She later received physical therapy.

A non-treating orthopedic surgeon testified on Plaintiff’s behalf at trial, contending that Plaintiff suffered injuries from the crash and incurred $73,000 in medical bills. Defendant did not challenge the amount of the bills but argued they were not related to the crash.

The jury returned a verdict for Plaintiff but awarded zero dollars in damages. The trial court denied on the intended part of the patient’s body, but by operating on a structure different from the one targeted.

Whether a technical battery occurred generally hinges on the question of consent, and this turns on whether the patient consented to the procedure and whether the patient had informed consent. Here, the Plaintiff did not show that the procedure in question was “against the patient’s will or substantially at variance with the consent given.” The facts must permit an inference that “the physician intended to disregard the patient’s consent regarding the procedure of the scope of the procedure.” Here, that was not the case, as the patient consented to the procedure.

The next issue is whether the Defendant breached the standard of care by failing to disclose the Plaintiff of the risks. Such a claim, however, sounds in negligence and would require the aid of expert opinion, which the Plaintiff did not obtain.

Result: Reversed and final judgment.

* * *
Plaintiff’s request to set aside the jury’s verdict.

Analysis: On appeal, the Supreme Court examined whether the Plaintiff had submitted sufficient evidence to “require” the jury to award her damages. The evidence at trial was in conflict and it depended on the credibility of the witnesses. The medical evidence in question was based on Plaintiff’s subjective complaints and did not have an objective basis. The jury was free to discount this evidence, and the Defendant’s admission of liability was not sufficient to carry Plaintiff’s burden of proof.

Plaintiff also appealed the trial court’s exclusion of Defendant’s racially tinged post-collision statement to Plaintiff. To the extent Plaintiff suffered any emotional anguish related to Defendant’s statement, that anguish was not related to the duties breached by Defendant.

Result: Affirmed.
by the contractor for a one-year period, and the contract did not contain a period of limitations.

Twelve years after the contractor completed work, Virginia Tech discovered defects in the construction and asserted a claim against Hensel Phelps. Hensel Phelps settled with Virginia Tech and then brought claims against the subcontractors. The subcontractors filed pleas in bar based on the statute of limitations, which the trial court granted. Hensel Phelps appealed.

Analysis: Hensel Phelps claimed that the subcontractors waived the statutes of limitations for their claims, but the contract does not expressly identify this waiver, nor does the contract demonstrate the intent of the parties to waive the statutes of limitations. And, to the extent that Virginia Tech is not subject to a statute of limitations, such a limitations waiver was not incorporated into the contract.

Hensel Phelps is not correct that the contract contains indemnification provisions that create a different statute of limitations. But Hensel Phelps did not pursue the claim on the basis of indemnification, and the provisions indicate that any indemnification duty required proper performance of the contract, and was not a freestanding indemnification provision.

Result: Affirmed.

OCTOBER SESSION 2016

Author: Lawrence L. Koontz, Jr., S.J.
Date Decided: October 27, 2016
Lower Ct.: Jane Marum Roush, J. (Fairfax County)

Facts: Two entities participated in the sale of a corporation pursuant to a merger agreement. Airbus entered into a merger agreement with Metron. Shareholder Rep Services (SRS) acted as the agent for the Metron shareholders. The agreement contained a number of provisions, such as the financial books would comply with GAAP, that Metron had no liabilities, and that Metron had no expected losses due to any government contracts. The agreement contained a number of caps that limited the amount of damages that could be assessed.

Airbus filed suit against Metron, contending that Metron’s breaches of the agreement caused more than $18 million in damages. In a bench trial, the trial judge assessed damages against Metron at over $9 million, with nearly $4 million in attorneys’ fees awarded. SRS appealed.

Analysis: Here, there is no dispute that the terms of the agreement are unambiguous. The agreement contains caps that limit the amount of damages that can be awarded and the trial court erred by not limiting the defendant’s damages to the cap set forth in the agreement.

Result: Reversed and final judgment.

Author: Elizabeth A. McClanahan, J.
Date Decided: October 27, 2016
Lower Ct: James F. D’Alton, Jr., J. Designate (Prince George County)

Facts: Prasad purchased a house at a public auction. Before the auction, Prasad viewed the public records associated with the property, including the property cards. Unbeknownst to Prasad, the card for the property in question listed the proper address but pictured the incorrect property. Prasad spent more than $23,500 renovating the incorrect property. The property owner’s attorney contacted Prasad and ordered him to leave the premises.

Prasad filed suit against the Washingtons, the property owners, after they refused to pay him for the work he performed on their house. Prasad sought relief under a constructive trust theory as well as under an implied contract in law.

At trial, Prasad admitted that he did not obtain title insurance, did not retain an attorney, and did not read the deed to his lot prior to closing. The trial judge awarded Prasad judgment on a quantum meruit basis in the amount of $23,508 and imposed a lien in that amount on the Washingtons’ house.

Analysis: Based on the evidence at trial, Prasad had both actual and constructive notice that he was on the Washingtons’ property when he performed the work in question. That so, the trial court erred by imposing a constructive trust. Relevant title information about which a purchaser should be aware is imputed to him under Virginia law, and the purchaser’s failure to exercise due diligence caused him

Author:  Cleo E. Powell, J.

Date Decided:  October 27, 2016

Lower Ct:  Craig D. Johnston, J. (Prince William County)

Facts:  Robinson filed a wrongful termination action against her former employer, the Salvation Army, after she refused her store manager’s requests to engage in fornication. Robinson had recorded inappropriate statements made by the manager and played them to the human resources manager for the employer. Robinson’s employment was terminated shortly afterward.

The trial court granted the Salvation Army’s motion for summary judgment, contending that firing someone for refusing to engage in fornication was one time a *Bowman* claim, but no longer was based on U.S. Supreme Court precedent. Robinson appealed.

Analysis:  The statute that was previously addressed by the Supreme Court of Virginia was held unconstitutional insofar as it applied to private, consensual conduct. To the extent Robinson’s claim is based on such private conduct, it is barred as a matter of law. In addition, this case does not provide a basis for a *Bowman* claim, as such a claim would require the Court to determine that Robinson was encouraged to engage in “public fornication, prostitution, or other such crimes.” The record does not provide any basis for such a claim.

Result:  Reversed and final judgment.

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Author:  S. Bernard Goodwyn, J. (McCullough, J., filed a dissenting opinion, in which Mims, J., joined.)

Date Decided:  October 27, 2016

Lower Ct:  Harry T. Taliaferro, III, J. (Richmond County)

Facts:  The estate of Elliott filed suit against Carter for gross negligence on the grounds that Carter, Elliott’s boy scout leader who knew that Elliott could not swim, walked with Elliott  150 yards into a river on a sandbar then swam back to shore, electing to leave Elliott and another boy scout who did not know how to swim, without a supervisor to help them back. Both boys fell into the river while attempting to return to shore. Carter swam back but only one of the boys was rescued from the water. The defense filed a motion for summary judgment on the grounds that there was not a complete lack of care shown by the evidence, which is the standard required for gross negligence. The trial court granted the motion for summary judgment, claiming that there was evidence of slight care that existed.

Analysis:  Gross negligence requires a plaintiff to show that the defendant did not exercise any degree of diligence and care. When reasonable minds could not differ upon the conclusion that negligence has not been established, the trial court can dismiss the claim as a matter of law.

Here, the facts show that Carter exercised some degree of care in supervising Elliott. This is shown by the facts that Elliott was able to walk on the sandbar without assistance, that there is no allegation that Carter was aware that the sandbar presented a hidden danger, that Carter instructed Elliott to walk back along the sandbar, and that Carter attempted to swim back to Elliott after Elliott had fallen in the water. This shows that Carter demonstrated some degree of care, and that is sufficient to dismiss the case.

Result:  Affirmed.
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The Litigation Section is sponsoring the spring webinar “Social Media for Litigators: Admissibility and Ethical Requirements” with Virginia CLE. The CLE will take place on Wednesday, May 10 from noon to 2:00 p.m. via Live Webcast, Live Telephone, and Live on Site at Virginia CLE, with a replay via Webcast or Telephone with Live Q&A on May 24. The two hour CLE is offered at a discount to Litigation Section members, includes one hour of ethics credit, and features speakers Les S. Bowers at Gentry Locke and David W. Thomas at MichieHamlett.

Join us on Friday, June 16th at 8:30 a.m. at the Virginia State Bar’s 79th Annual Meeting in Virginia Beach! The Litigation Section, the Construction and Public Contracts Section and the Joint ADR Committee, are co-sponsoring a showcase CLE on expert witnesses. Our speakers include the Honorable Robert S. Ballou, Brian C. Riopelle at McGuire Woods, and Lauren P. McLaughlin at BrigliaMcLaughlin PLLC.

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