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Cover: Virginia State Bar members at the Midyear Legal Seminar in France last November visited the beaches of Normandy. Among their stops was the American Cemetery and Memorial, where 307 tombstones bear the inscription, “Here rests in honored glory a fallen comrade, known but to God.” Photo by Sharon D. Nelson
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VIRGINIA BEACH
President’s Message

by Sharon D. Nelson

Clients’ Protection Fund Protects the Public

THE VIRGINIA STATE BAR has many missions but one primary mission is protection of the public. One way our bar members serve that purpose is by financing the Clients’ Protection Fund (CPF).

The fund exists to help people who have suffered a financial loss because of the dishonest conduct by a Virginia lawyer. It helps them get some, if not all, of their money back. It also helps enhance the reputation of our profession. While the bad conduct of a few reflect poorly on the profession, the efforts of the rest of us to compensate those who have been harmed demonstrate our devotion to protecting the public.

This year, we are asking the General Assembly to remove the sunset provision on the $25 assessment that has financed the CPF since 2007.

The two questions we hear most often about the Clients’ Protection Fund are:

Why should some lawyers pay for the misconduct of others? My answer would be that we are charged with regulating the bar and protecting the public. There is no way to proactively prevent bad behavior (I wish there were) so the best we can offer is partial compensation in the event of a defalcation. Bear in mind that this fund is not used in cases where negligence or malpractice is alleged — it is only intended to cover misconduct.

Why do we have a separate contribution for the CPF instead of simply using bar dues? These monies should not be commingled in any general fund, but rather kept separate and held inviolate for the protection of clients who have been the victims of dishonest counsel.

The CPF was founded in 1976. It is operated by a fourteen-member board appointed by the VSB Council. It contains lawyers and lay members who investigate all petitions from clients, discuss the petitions, and act on them.

Individual awards from the CPF are limited to $50,000 per petitioner. The cumulative cap on awards for any one lawyer is 10 percent of the net worth of the fund when the first claim is made. At its October 4, 2013, meeting, the VSB Council agreed to refer a proposed limit increase back to the Clients’ Protection Fund Board for consideration of a gradual phase-in of a $100,000 per claim limit increase.

The VSB has paid more than $5 million since the fund was founded. In the last fiscal year (2012–13) the fund paid $325,008, representing thirty-four claims and involving seventeen attorneys. As of June 2013, there were forty-one pending claims.

As of December 31, 2013, the cash balance in the fund was slightly more than $7.2 million. An actuarial study of the fund concluded in 2005 that the fund should have a balance of $9 million to pay claims from interest earned. The findings from that study were used to procure authority for the $25 assessment currently paid by all active attorneys licensed in Virginia. That authority ends on June 30, 2015, which is why the VSB Council is asking the Virginia General Assembly to eliminate that sunset provision. Another actuarial study done in March 2013 also recommended that the $25 assessment be continued beyond the scheduled sunset date.

Most Virginia lawyers will remember the infamous case of Woodbridge lawyer Stephen Thomas Conrad, who stole an estimated $3.7 million in the early 2000s from more than 100 clients before being sent to prison. While most cases do not involve this much money, clearly cases like this are the reason the CPF is needed.

One case from 2012 involved Virginia Beach lawyer Brian Gay. In 2006, Gay became the executor of the estate and trustee for the trust of a Virginia Beach resident who died that year. The trust was funded by $520,000 in life insurance proceeds and was meant for the man’s children, who were minors. Instead, Gay stole almost $400,000. He was caught, convicted, and sentenced in January 2012 to sixty months in prison.

The three children who had been cheated filed petitions with the CPF and the fund paid each $50,000 in June 2012.

Like everyone, I wish we could spot the bad apples in the barrel and discard them before the miscreants infect the vast majority of lawyers who are men and women of honor and high professional standards. Since we cannot, we are left to do what we can do — protect the public by ensuring that we can remediate at least some of the financial loss suffered.

As a footnote, the CPF is the subject of one our first five website informational videos, which you may find by simply doing an Internet search on “Virginia State Bar Clients’ Protection Fund.” The same search will produce a result which directs to frequently asked questions about the CPF.
VSB.org: A Member Benefit

VSB.org — the Virginia State Bar’s website — helps you with your membership obligations and your practice.

There you’ll find the Member Login, where you can:
• download your dues statement and pay your dues,
• certify Mandatory Continuing Legal Education,
• conduct research on Fastcase, and
• update your contact information with the bar.

At VSB.org, you also can link to:
• Latest News on VSB regulation, programs, and practice information;
• the Professional Guidelines that contain the Rules of Professional Conduct;
• Rule Changes, proposed and approved;
• the Ethics Hotline;
• Meetings and Events; and
• Search Resources for locating Virginia attorneys and checking their status with the state bar.

VSB.org will keep you current and connected.
Client Funds and Safe Deposit Boxes
If you have been keeping client funds in a safe deposit box rather than a trust account, best retrieve those funds immediately and place them in your trust account. Rule 1.15 of the Rules of Professional Conduct was amended effective November 1, 2013, making clear that those funds need to be maintained in a trust account.

Name Anomalies
Is it ethical to practice using one name and be licensed under another? With the revisions to the advertising rules effective July 1, 2013, the Supreme Court of Virginia clarified through new Comment 3 to Rule 7.5 that lawyers should practice using the official name under which they are licensed or seek an appropriate and legal change of name from the Supreme Court of Virginia. The problem most frequently occurs with women who are licensed under one name and then marry or get divorced. Continuing to use a different name other than the one under which you are licensed can be a misleading communication, violating Rule 7.1.
http://www.courts.state.va.us/courts/scv/amendments/2013_0415_rules_7_1_7_5.pdf

Conflicts and Government Lawyers
Changes were also made by the Court on November 1, 2013, to the “revolving door” conflicts provisions for former and current government lawyers, allowing a conflict to be waived for a lawyer in government service with consent from a private client and the appropriate government agency (Rule 1.11(d)). This provision parallels section (b), which allows for informed consent to conflicts created by a lawyer’s move from government service to private practice.

Rule 5.4(d)(2)—Nonlawyer Officers in Law Firms
Rule of Professional Conduct 5.4(d)(2) was amended to bring the rule into alignment with Virginia Code § 54.1-3902(B)(1). The statute permits a nonlawyer to serve as the secretary, treasurer, office manager, or business manager of a professional entity that is authorized to practice law. The rule’s prohibition against a lawyer practicing in a law firm in which a nonlawyer serves as a corporate officer was modified by providing an exception when a nonlawyer corporate officer is authorized by law. The rule change was effective November 1, 2013.

Rule 5.5. Comment [13]—Temporary Practice by Foreign Lawyers
Comment 13 to Rule 5.5 applies to lawyers not admitted in Virginia that wish to practice in Virginia on a temporary basis. The amendment to Comment [13] deleted the last sentence which seemed to allow temporary practice only for lawyers admitted in a foreign nation, thus excluding domestic U.S. lawyers not admitted in Virginia. The amendment clarifies that foreign lawyers admitted in both the U.S. or a foreign country may engage in the limited scope of practice authorized under Rule 5.5(d)(4)(iv).
http://www.vsb.org/docs/SCV-order-Rule5_5-121313.pdf

Amended Advertising Rules
Substantial changes were made to the advertising rules effective July 1, 2013. To summarize:
• The terms “fraudulent” and “deceptive” are removed from Rule 7.1. A communication that is “false or misleading” violates the rule.
• The disclaimers required for advertising specific or cumulative case results has been removed from Rule 7.2—which has been eliminated in its entirety—and is now Rule 7.1(b). The disclaimer shall:
  ° (i) put the case results in a context that is not misleading; (ii) state that case results depend upon a variety of factors unique to each case; and (iii) further state that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer.
  ° The disclaimer shall precede the communication of the case results.
  ° When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the

Executive Director’s Message
by Karen A. Gould

2013 Changes in Ethics Rules Can Affect the Way You Practice Law, and a Request for Comments on Proposed New Rule 5.8
text used to advertise the specific or cumulative case results.
• Rule 7.3 addresses in-person and written solicitation of potential clients. The amendments to Rule 7.3 remove the current per se prohibition of in-person solicitation in personal injury and wrongful death cases. Effective July 1, 2013, in-person and written solicitation will be improper only if:
  • the potential client has made known to the lawyer a desire not to be solicited by the lawyer; or
  • the solicitation involves harassment, undue influence, coercion, duress, compulsion, intimidation, threats or unwarranted promises of benefits.
• Rule 7.3 also regulates payment or rewards to persons for recommending employment, prohibiting a lawyer from giving anything of value to a referral source except that the lawyer may:
  • pay the reasonable costs of advertisements or communications permitted by this Rule and Rule 7.1;
  • pay the usual charges of a legal service plan or a not-for-profit qualified lawyer referral service (note that the lawyer referral service must be a non-profit entity);
  • pay for a law practice in accordance with Rule 1.17; and
  • give nominal gifts of gratitude that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer’s services.
• Rule 7.3’s regulation of written solicitations has been simplified with regard to the “ADVERTISING MATERIAL” labeling requirement.
• Rule 7.4 regulates claims of specialization and expertise. The current rule is substantially unchanged by the amendments.

**Proposed New Rule 5.8**
The Standing Committee on Legal Ethics asks for your comments on Proposed Rule 5.8, which is based on Florida RPC 4-5.8 and is not derived from an ABA Model Rule of Professional Conduct. The proposed rule codifies a number of the suggestions from legal ethics opinions on departing lawyers’ obligations into more concrete steps to follow. It does not change the committee’s interpretation of a lawyer’s obligations in these circumstances, but it does make clear that these are obligations, not suggestions, and establishes default rules for situations where the lawyer and firm cannot agree on how to proceed, or where the client does not respond to the required notification.

Because of the significance of this issue, and the acrimony that often accompanies a firm departure or dissolution, the committee believes that it will be helpful to have a rule of professional conduct that explicitly dictates how and under what circumstances clients must be notified, rather than relying exclusively on advisory opinions. The full text of the proposed rule is set forth below. Please send any comments you may have regarding the proposed rule by March 6, 2014, to publiccomments@vsb.org.

**Proposed Rule 5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms**

(a) Absent a specific agreement otherwise:
  (1) Neither a lawyer who is leaving a law firm nor other lawyers in the firm shall unilaterally contact clients of the law firm for purposes of notifying them about the anticipated departure or to solicit representation of the clients unless, after bona fide negotiations, the lawyer and an authorized representative of the law firm have been unable to agree on a joint communication to the clients concerning the lawyer leaving the law firm; and
  (2) A lawyer in a dissolving law firm shall not unilaterally contact clients of the law firm unless, after bona fide negotiations, authorized members of the law firm have been unable to agree on a method to provide notice to clients.

(b) When no procedure for contacting clients has been agreed upon:
  (1) Unilateral contact by a lawyer who is leaving a law firm or the law firm shall not contain false or misleading statements, and shall give notice to the clients that the lawyer is leaving the law firm and provide options to the clients to choose to remain a client of the law firm, to choose representation by the departing lawyer, or to choose representation by other lawyers or law firms; and
  (2) Unilateral contact by members of a dissolving law firm shall not contain false or misleading statements, and shall give notice to clients that the firm is being dissolved and provide options to the clients to choose representation by any member of the dissolving law firm, or representation by other lawyers or law firms.

(c) In all instances, notice to the clients shall provide information concerning potential liability for fees for legal services previously rendered, costs expended, and how any deposits for fees or costs will be handled.

(d) In the event that a client of a departing lawyer fails to advise the lawyer and law firm of the client’s intention with regard to who is to provide future legal services, the client shall be deemed to remain a client of the law firm until the client advises otherwise.
(e) In the event that a client of a dissolving law firm fails to advise the lawyers of the client’s intention with regard to who is to provide future legal services, the client shall be deemed to remain a client of the lawyer who primarily provided legal services to the client on behalf of the firm until the client advises otherwise.

Comment

[1] Although there may also be significant business and legal issues involved when a lawyer leaves a law firm or a law firm dissolves, this rule addresses the rights of the clients to be fully informed and able to make decisions about their representation. Accordingly, the rule emphasizes both the timing and the content of the required notice to clients. Upon the departure of a lawyer or the dissolution of the law firm, the client is entitled to notice that clearly provides the contact information for the departing lawyer, the status of the client’s file and any other property, including advanced legal fees, in the possession of the lawyer or law firm, and information about the ability and willingness of the lawyer and/or firm to continue the representation, subject to Rule 1.16. Nothing in this rule or in the contract for representation may alter the ethical obligations that individual lawyers have to a client as provided elsewhere in these rules. Likewise, lawyers may have fiduciary, contract, or other obligations to their firms that are outside the scope of these rules.

[2] While this rule requires the departing lawyer and the law firm to make a good faith effort to make a joint communication to the departing lawyer’s clients, the duty to communicate with clients and to avoid prejudicing the clients during the course of representation requires prompt communication when the lawyer primarily responsible for those clients is leaving the firm.

Accordingly, the negotiations required by section (a)(1) of this rule must be initiated promptly once the lawyer has decided to leave the firm, and if these negotiations fail, either the lawyer or the law firm, or both, must promptly communicate with clients as provided by section (b)(1) to ensure that they are informed about the lawyer’s departure and their options for continued representation. If continued representation by the departing lawyer and/or by the law firm is not possible, the communication shall clearly state that fact and advise the client of the remaining options for continued representation, including the client’s right to choose other lawyers or law firms.

[3] For purposes of contact with a client by a lawyer departing a law firm, “client” refers to clients for whom the departing lawyer is currently handling active matters or is otherwise playing a principal role in the delivery of legal services.

[4] While clients have the right to choose counsel, such choice may implicate obligations. Those obligations may include a requirement to pay for legal services previously rendered and costs expended in connection with the representation as well as a reasonable fee for copying the client’s file. See Rule 1.16(e).

[5] Lawyers involved in either a change in law firm composition or a law firm dissolution may have duties to notify the court if they represent clients in litigation. In either case, a lawyer who is counsel of record before a court must file a motion to withdraw or a motion for substitution of counsel if he no longer represents the client. See Rule 1.16(c).

Beginning April 14, 2014, the Virginia State Bar address will be

1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

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“Not in Good Standing” Search Available

The Virginia State Bar offers the ability to search active Virginia lawyers’ names to see if they are not eligible to practice because their licenses are suspended or revoked using the online Attorney Records Search at http://www.vsb.org/attorney/attSearch.asp.

The “Attorneys Not in Good Standing” search function was designed in conjunction with the VSB’s permanent bar cards.

Lawyers are put on not-in-good-standing (NGS) status for administrative reasons — such as not paying dues or fulfilling continuing legal education requirements — and when their licenses are suspended or revoked for violating professional rules.

The NGS search can be used by the public with other attorney records searches — “Disciplined Attorneys” and “Attorneys without Malpractice Insurance” — to check on the status and disciplinary history of a lawyer.

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Senior Citizens Handbook

Now Available

The new Senior Citizens Handbook is an invaluable resource updated with the latest information on a wide variety of subjects including an overview of just about everything a senior would want to know about the law. It also includes a list of community-service organizations that provide aid to senior services in a large variety of areas.

For more information, or to order copies of the Senior Citizens Handbook, please e-mail Stephanie Blanton at blanton@vsb.org or call (804) 775-0576.
Pilgrimage to the D-Day Beaches

by Sharon D. Nelson
Bloody Omaha.
That’s what the valiant survivors called Omaha Beach when they spoke of June 6, 1944. On that day, the ocean was red with blood, the beach sands turned crimson, and body parts were strewn everywhere. Of the five landing sites, it was Omaha that became hell on earth as American soldiers had to make their way, with no cover other than an occasional patch of marsh grass, across the sands of low tide and up steep cliffs that were fiercely defended by German forces.

The Virginia State Bar Midyear Legal Seminar in Paris last November was spectacular — we enjoyed great education, wonderful museums, parks, and churches, and reveled in the wonderful cuisine and French wines that Paris afforded.

Amid all the fun, the trip to the Normandy beaches was sobering. There we sat, at a cute seaside restaurant, savoring our moules frites and homemade pizza, quaffing the local wine, and gazing at a beach that gave no hint of anything other than tranquility. It is often true that the bloodiest battlefields give way to nature’s restorative powers over time until the horrors of the past are invisible.

The beach we saw was beautiful, though the view of the steep cliffs that we knew our soldiers had to scale was ominous and made the words “Bloody Omaha” resonate in our hearts.

For those readers who may not entirely recall their high school history classes and Operation Neptune (the D-landings) — a subset of Operation Overlord (the Battle for Normandy) — the British, American, and Canadian airborne troops mounted a furious assault in Normandy just after midnight on June 6. Starting at 6:30 a.m., an amphibious landing of Allied infantry and armored divisions hit the beaches.

They were darned lucky. Inclement weather, which postponed the invasion by a day, helped to keep the element of surprise, though soldiers stuck on the turbulent ocean waters were horrendously seasick. Also helpful was Operation Bodyguard, designed to divert German attention (and the attention of Adolph Hitler in particular) from Normandy and focus attention on the Pas-de-Calais as the probable invasion site. The many ruses worked.

The Supreme Commander of the Allied Expeditionary Forces was General Dwight D. Eisenhower. The command of ground forces was assigned to General Bernard Montgomery (universally known as “Monty” — fondly by some, not so fondly by others). The D-Day assault was the largest amphibious invasion in world history, taking place along a fifty-mile segment of the Normandy coast that was divided into five sectors — Utah, Omaha, Gold, Juno, and Sword.

The Normandy American Cemetery and Memorial contains the graves of 9,387 American military dead, most of whom lost their lives in the D-Day landings and ensuing operations. Three Congressional Medal of Honor winners are buried there, including Brigadier General Theodore Roosevelt Jr. 307 tombstones bear the inscription, “Here rests in honored glory a fallen comrade, known but to God.”

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The Germans had an extensive defensive system, centered on the Atlantic Wall which was constructed pursuant to an order by Hitler. The “wall” stretched from Norway to Spain but was most highly fortified in the regions facing the English Channel. General Erwin Rommel firmly believed that any Allied landing would be made at high tide. He had the wall fortified with pill boxes (dug-in guard posts with holes through which soldiers could fire), artillery, machine gun positions, and vast quantities of barbed wire. He also laid hundreds of thousands of mines to discourage any landings along the wall.

Those in command of Operation Neptune determined that they would attack at low tide to minimize the effectiveness of the landing obstacles that might have sunk boats and drowned men. There was a powerful drawback though — the men were exposed to defensive fire over a much greater area of beach.

As the morning of June 6 unfolded, some of the worst fears of Operation Neptune’s commanders were realized. Many men drowned in shallow water, weighted down by heavy packs. As they made the long trek to the cliff walls, many were cut down by German artillery fire.
There was no remaining trace of that carnage when the lawyers of the VSB visited. We began our morning at Pointe du Hoc, the highest point between Utah Beach to the west and Omaha Beach to the east. The Germans had fortified the area with concrete casements and gun pits. On D-Day, the United States Army Ranger Assault Group successfully assaulted Pointe du Hoc after scaling the cliffs. We could see and walk through the casements and look out the holes through which German soldiers shot—we could also see the large craters in the earth formed by the Allied bombings during the night before the troops landed.

This assault was actually easier than anticipated, as the Germans had moved some of their equipment farther inland in response to earlier Allied bombings. It was curious that you could feel the war more there than at Omaha Beach, simply because of the craters and the casements. At Omaha the horrific bloodshed left no lasting visual reminders.

It was a somber visit for us as we carefully read the signs along the way and tried to imagine what the day must have been like for the brave men who scaled those cliffs.

Then we were off to Omaha, where, as previously recounted, we had a delightful French lunch in tranquil surroundings that gave no hint (other than a sign and a monument) of their history.

Included in our tour was one of the many D-Day museums where we strolled amid the tanks, the artillery, the small mementos of daily life—diaries, cigarettes, field toilet paper in a can, powdered eggs. These were the things many of us had seen in the history books, but seeing them in person made them real.

And then there were the medals, so many of them belonging to Americans who gave their lives in a country not their own, for the sake of freedom.

It was those Americans we went to see on our last stop, at the American Cemetery. If you have been to Arlington National Cemetery, the sight would seem familiar. There are rows upon endless rows of identical tombstones with white crosses and Stars of David atop them, neatly laid out—all those who died being equal in death.

The American Battle Monuments Commission administers the cemetery, which shows loving care, and is located on French soil honored by a nation grateful for its liberation by the Allies. Fittingly, it overlooks Omaha Beach and the English Channel. It is amazingly restful to walk the pathway overlooking ocean waters, beautifully graced by trees and gardens.

There is a small but lovely chapel with an altar that reads, “I give unto them eternal life and they shall never perish.” On the outside of the chapel, there is an inscription that reads, “This chapel has been erected by the United States of America in grateful memory of her sons who gave their lives in the landings on the Normandy beaches and in the liberation of Northern France. Their graves are the permanent and visible symbol of their heroic devotion and their sacrifice in the common cause of humanity.”

Inside, I was especially struck by an inscription, “Think not only upon their passing—remember the glory of their spirit.”

The cemetery also contains massive boards depicting the actual chain of events that occurred on June 6, 1944, which our wonderful and knowledgeable guides helped us to understand.

Fittingly, it overlooks Omaha Beach and the English Channel. It is amazingly restful to walk the pathway overlooking ocean waters, beautifully graced by trees and gardens.

We spent a lot of time in the cemetery—the grounds are fairly large. The Normandy American Cemetery and Memorial in France is on the site of the temporary American St. Laurent Cemetery, established by the U.S. First Army on June 8, 1944, and the first American cemetery on European soil in World War II. The
cemetary consists of 172.5 acres and contains the graves of 9,387 of our military dead, most of whom lost their lives in the D-Day landings and ensuing operations. Father and son are buried side by side and thirty-eight pairs of brothers. Three Congressional Medal of Honor winners are buried there, including Brigadier General Theodore Roosevelt Jr.

Roosevelt was the only general on D-Day to land by sea with the first wave of troops. At 56, he was the oldest man in the invasion, and the only man to serve with his son on D-Day at Normandy (Captain Quentin Roosevelt II was among the first wave of soldiers to land at Omaha beach while his father commanded at Utah Beach). His arthritis was so bad that he had to use a cane. He had a serious heart condition and had been urged by his doctors and his colleagues not to take part in the landings. He had actually been denied permission to participate several times but he wrote a heartfelt petition saying in part, “I personally know both officers and men of these advance units and believe that it will steady them

Three Congressional Medal of Honor winners are buried there, including Brigadier General Theodore Roosevelt Jr.
to know that I am with them.” He was finally and reluctantly given permission to go.

His leadership was phenomenal that day. He did indeed steady the nerves of his men, reciting poetry and recounting anecdotes of his father. When things didn’t go as planned at Utah Beach and he discovered that the landing craft had drifted more than a mile off course, he devised a new plan, personally touring the area, acting as a traffic cop in all the confusion, and personally greeting the men on each craft that landed and explaining “the new plan.” The GIs, seeing him fearlessly walking on the beach, ignoring the artillery fire as clods of earth rained on him, were reassured by the general’s calm and began to execute the new plan, ultimately achieving their mission. Years later, when General Omar Bradley was asked to name the single most heroic action he had ever seen in combat, he replied, “Ted Roosevelt on Utah Beach.” Six days later, while resting in a converted sleeping truck captured from the Germans, he suffered a fatal heart attack.

I walked with friend and colleague Bill Wilson around the Walls of the Missing, in a semicircular garden on the east side of the memorial. Inscribed on the walls are 1,557 names of those who were missing and presumed dead. Rosettes mark the names of those since recovered and identified. Bill and I quietly read aloud to one another the names of the Virginians we found on the walls. We thought of what an additional sadness it must have been for the families not to have the closure of having their sons buried with their comrades.

As is so often the case, in the midst of our solemnity, there was levity. Bill remembered a story from his youth which caused us both to chuckle. His mother had purchased a box of Clark Bars, to be sent to his uncle fighting in World War II, and hidden them in a closet. Bill (naturally) found the box and consumed every last one of the candy bars. It did not go well for him when his mother discovered his misdeed. I sent him a Clark Bar for Christmas in good-humored memory of our walk together that day. Curious how odd moments can nurture a friendship.

Along with many of the other lawyers and spouses who walked the grounds of the cemetery that day, I found myself wiping away tears from time to time. I had always been moved by the stories of the bravery of the men who scaled the cliffs of Normandy, but nothing could so impress itself on my heart as the sight of all those crosses.

The most wrenching words were on 307 crosses. They said, “Here rests in honored glory a fallen comrade, known but to God.”

So many who could not be identified met the horrors of that day, no doubt frightened but also brave, with their bodies so badly damaged that only God would know them. That was when the sacrifice of all these young men hit me the hardest. While I wiped tears from my eyes, I prayed, as countless visitors before me had — and as many of my colleagues were doing as we walked quietly and reverently amid the dead.

Then we returned to our buses for the ride back to our hotel. Every one of us will always carry Normandy and the memory of the men who fell for freedom’s sake in our hearts. May we be worthy of — and protect — the freedom for which they gave their lives.

Sharon D. Nelson, president of the Virginia State Bar, is the president ofSensei Enterprises Inc., a digital forensics, information security, and information technology firm based in Fairfax.
Little did the Bedford boys know when they joined the National Guard for a dollar a week that they would soon be spearheading the largest amphibious assault in history at the beginning of the great crusade against Nazi tyranny. Bedford was the home location for Company A, 1st Battalion, 116th Brigade, 29th Infantry Division. Because of personnel transfers, only thirty-five men from Bedford remained in Company A on D-Day. The men had trained extensively in the United States and England, but had never seen battle. Now they were going to be in the first wave of men to hit Omaha Beach.

In 1944, Bedford had a population of 3,200. The citizens were aware that their men had played an important role on D-Day, but they could not have imagined the impact that role would have on the town. They would have to wait until mid-July for word about any casualties.

On July 16, 1944, Elizabeth Teass turned on her telegram machine at Greene’s Drugstore and received telegram after telegram notifying families of the death of their sons, brothers, and husbands. Nineteen soldiers lost their lives on June 6, 1944, the greatest per capita loss of any community in the U.S. The National D-Day Memorial was erected in Bedford because of this sacrifice.

In 1988, Bob Slaughter, from Roanoke and a member of Company D in the third wave on D-Day, formed a committee to explore building a memorial. For many years, the idea of a memorial in Roanoke or Bedford had been discussed. It was determined that the memorial should be in Bedford and some of the land was donated for the project. In 1996, Senator John Warner introduced legislation for the memorial to be built in Bedford. The memorial is on nine acres and consists of three plazas, each representing a specific stage for D-Day.

The English garden represents the planning phase and includes plants and flowers depicting the patch worn by members of the Supreme Headquarters of the Allied Expeditionary Force. A monumental sculpture of Dwight D. Eisenhower overlooks the garden under a garden folly with the battle map set in mosaic tile on the ceiling.

The middle plaza depicts the invasion and contains a stylized landing scene. Sculptures of soldiers head toward the shore. Beside one of the bronze sculptures lies a Bible. Air jets beneath the pool represent the German bullets being fired as the soldiers debarked their landing craft to assault the beaches. The plaza is surrounded by plaques given to commemorate the valor of the fallen soldiers and divisions of the Allied forces.

As you move through the forty-four foot, six-inch granite archway inscribed with the operational code name “Overlord,” you will see a bronze rendering of a soldier’s battlefield grave marker titled “Final Tribute.” The names of the five beaches are inscribed around the arch base: Utah, Omaha, Gold, Juno, and Sword. The plaza is flanked by the flags of the Allied nations.

The National D-Day Memorial also is committed to education. An education center is being planned that will include the Arnold M. Spielberg Theater, exhibit spaces, research, and archival space. Victory gardens are planted every year and are used to educate school children. Family days at the memorial include demonstrations and displays of World War II artifacts. Veterans are available for questions.

The National D-Day Memorial is a beautiful and serene monument. It is truly an experience for visitors of all ages and an opportunity to preserve the memory of D-Day. The National D-Day Memorial Foundation receives no federal funding and is primarily supported by private donations.

D-Day Memorial Honors the Bedford Boys

by Linda S. Westenburger

Linda S. Westenburger is secretary for the board of directors of The National D-Day Memorial Foundation. The National D-Day Memorial Foundation is a non-profit, privately funded foundation. For more information on the memorial or to contribute, contact the National D-Day Memorial Foundation at 800-351-D-Day or www.dday.org.
President-elect Martingayle Seeks Members for Virginia State Bar Committees With Terms Commencing July 1, 2014

As you know, much of the work of the Virginia State Bar is done through its committees, and we need members willing to serve. Appointments will generally be for a three-year term, running from July 1, 2014, to June 30, 2017, with the possibility of another three-year term to follow. The work of the committees is time consuming and in most cases requires committee members to set aside substantial time to fulfill the requirements of the job.

To encourage participation — and recognizing the time constraints — members are generally limited to serving on only one committee. The number of available positions is quite limited, but I will attempt to accommodate as many people as possible.

The committees are as follows:

**Standing Committees:**
- Budget & Finance
- Lawyer Discipline
- Legal Ethics
- Professionalism
- Unauthorized Practice of Law

**Special Committees:**
- Access to Legal Services
- Bench-Bar Relations
- Communications
- Information Technology
- Lawyer Malpractice Insurance
- Lawyer Referral
- Midyear Legal Seminar
- Personal Insurance for Members
- Resolution of Fee Disputes
- Technology and the Practice of Law

*Lawyer member vacancies on Standing Committees are limited due to requirements for a specific number of Executive Committee and Council members to serve on each committee.

If you would like to be considered for appointment to any of the VSB committees listed, please complete the form below or download the form at [http://www.vsb.org/site/about](http://www.vsb.org/site/about) and return it to the Virginia State Bar office by February 28, 2014, by mail, fax or e-mail to Asha B. Holloman:

Virginia State Bar
707 East Main Street, Suite 1500
Richmond, VA 23219-2800
holloman@vsb.org

| VSB Committee Preference Form (term commencing July 1, 2014) (Please type or print) |
|---|---|---|---|
| Name: | VSB Attorney No.: | |
| Address: | | |
| City/State/Zip: | Phone No.: | Email: | |

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☐ Check here if you have never served on a VSB committee.

To assist us in the committee selection process, please provide the following information:

- [ ] Private Practice
- [ ] Corporate Counsel
- [ ] Government attorney
  - [X] Commonwealth
  - [ ] City/County
  - [ ] Federal
- [ ] Other

Attach a separate sheet with additional comments (i.e., qualifications and reason for wanting to serve).
Many are familiar with the Affordable Care Act provision that requires employers with fifty or more employees to provide health insurance. In 2013, this requirement was delayed from January 1, 2014, to January 1, 2015. This provision should have minimal impact on the Virginia legal community as most law firms of this size currently provide health insurance to their employees. A more significant requirement is for all individuals to have health insurance in 2014, or pay a fine equal to the greater of 1 percent of annual income or $95. This fine will increase in 2015 and again in 2016.

Most importantly, the year 2014 brings health insurance changes to law firms with fewer than fifty employees and to sole practitioners. For decades health insurance plans have been medically underwritten. In other words, the rates have been a function of the individual’s or group’s health history. In 2014, individuals and groups up to fifty employees will become community rated; there will no longer be a medically underwritten environment for fully insured health insurance products. Insurance companies will base their premiums on age, dependents’ ages, where one resides, and smoker status. Insurance companies must discontinue asking about or basing health insurance rates on medical history. Ultimately, this will result in some no longer paying higher premiums and being penalized for having medical conditions. It will also result in people no longer being rewarded with lower premiums for being in good health.

One strategy we used for our clients during the fall of 2013 was an “early renewal-December 1, 2013 strategy.” This allowed for a “healthy” group or individual to delay community rating and to maintain medically underwritten or “healthy” (lower) rates for most of 2014. On the December 1, 2014, renewal date, these people will be required to be community rated or begin receiving average rates.

A second strategy we offered and will continue to use in 2014 is to encourage “unhealthy” individuals and groups with high rates to “re-enroll” in 2014 prior to their normal annual renewal date. The objective of this approach is to receive average rates from the community rated approach sooner rather than maintaining high rates from their medically underwritten plans.

As the administrator for the Virginia State Bar Insurance Plans (health, life, and disability insurance) and broker/agent for many law firms and individuals, we will continue to search for the best way to deliver health insurance. In 2014 we will likely see some health insurance companies begin to offer “self-funding” to law firms with as few as ten or twenty-five employees. Historically, self-funding for health insurance has only been available to law firms with at least 200 employees. A group can be self-funded and also limit its liability or the amount of risk it assumes with proper “specific and aggregate stop loss” claims protection. The importance of this “self-funding” approach is that a group that is self-funded is not technically fully insured. An insurance company may medically underwrite a self-funded group and offer lower premiums to groups they deem healthy or of good risk. This approach may enable a “healthy” law firm with at least ten to twenty-five employees to avoid higher rates associated with community rating.
For those who don’t know the difference between a copay and a COBRA, health insurance can be confusing and frankly boring at times. A friend of mine recently said his health insurance policy, which he reviewed for the first time in many years, was “an insomniac’s delight.”

Yet health insurance is big news these days, and with good reason. The money spent on getting and staying well is clearly on the rise. Our U.S. economy devotes nearly 18 percent of its gross domestic product to healthcare. That amount has nearly tripled since 1970. Per capita spending on health insurance in 2010 was nearly $8,500 in the U.S. — more than in eighteen developed countries including Canada, the United Kingdom, Spain, Italy, Germany, and France. Average annual family premiums for health coverage were a mere $6,400 in 2000. For 2013, those premiums jumped to an estimated $16,300.

PPOs, HMOs, POS plans, high-deductible plans, and more — of course it is confusing. But for busy attorneys, taking the time to learn what they need to know to protect themselves, their livelihood, and their family is important. Given the cost of health insurance, it becomes even more important. With the implementation of the Patient Protection and Affordable Care Act of 2010 well underway, at least a modest degree of understanding of the insurance market is a necessity.

Virginia attorneys are fortunate to have help answering questions and getting guidance through the maze of insurance coverage and cost options. The VSB’s Personal Insurance for Members Committee keeps an eye on trends in life, health, and disability insurance. This group of outstanding volunteer attorneys from across the commonwealth, along with the bar’s endorsed agent and his staff, meets quarterly to review trends in coverage, cost, and participation.

Our committee is fortunate to have a team of insurance professionals, headed by Robert Spicknall, administrator of the Virginia State Bar Insurance Plans, the VSB’s endorsed agent, to advise us. Bob is also available to help individual members of the bar with decisions on coverage obligations, options, cost, and comparison among carriers. He and his staff counsel not only groups with fifty or more participants but solos as well. They are only a phone call away.

Together, we serve all of Virginia’s more than 30,500 active VSB members and some 19,000 non-corporate and in-house counsel and their families. The Personal Insurance for Members Committee and Spicknall and his staff are here to serve you. Our pledge is to help monitor that boring insurance market. We might even be able to find a carrier to cover your insomnia.

Endnotes:
2. Ibid.
Georgia is an ancient country in the process of becoming a new country, and Virginia State Bar Ethics Counsel James M. McCauley went there last November to help it along the way.

“The bar hosted a delegation from Georgia in the fall of 2012 and I got very interested in what they were trying to do in this little country,” McCauley said. “They’re very pro-West.”

That delegation from Georgia comprised Ekaterine Gasitashvili, chair of the GBA Ethics Commission; Tamar Khubuluri, a member of the GBA Ethics Commission; and Irina Lortkipanidze, the bar development and institutional strengthening specialist with the East-West Management Institute Judicial Independence and Legal Empowerment Project. That Georgia Bar Association (GBA) delegation was in Virginia to study and observe, with the cooperation and assistance of the Virginia Board of Bar Examiners, the procedures used to administer the bar exam and character and fitness review of applicants. Also, Washington and Lee University Professor James E. Moliterno has traveled to Georgia and assisted the GBA in the development of its Code of Professional Ethics for Lawyers and its procedures for disciplinary proceedings. “Like any rules, it’s always in a state of amendment,” McCauley said of their ethics code.

McCauley’s visit to Georgia was part of the project made possible thanks to the Judicial Independence and Legal Empowerment Project (JILEP) in Georgia administered by Herbert D. Bowman, chief of party; Giorgi Chkheidze, deputy chief of party; and Irina Lorkipanidze, legal association advisor. The East-West Management Institute is implementing JILEP in Georgia, a four-year initiative funded by the
United States Agency for International Development and the European Union.

On November 20, McCauley spoke at an international conference in Tbilisi, the country’s capital, on the role of legal ethics advisory opinions in the professional regulation of lawyers. Two days later, he met with the Ethics Commission of the GBA to suggest improvements in their process for generating and issuing legal ethics opinions to members of their 3,500-member bar.

Georgia is a democratic republic with a parliamentary form of government. It is working on its constitution and developing an ethical system for lawyers and also working on writing advisory opinions similar to our practice of offering legal ethics opinions. “They have implemented a hot line,” McCauley said. “They’re emulating our system.”

It’s a big change. “They came from what was in place under the Soviet Union when they were occupied for seventy years,” McCauley said. They did not have an adversarial system that “put parties to the trouble of meeting a burden of proof.”

“They have a tendency to have decisions that are skewed disproportionately toward the government and prosecutors,” McCauley said. But, they are trying to fix that, to break away from the Russian influence and require the government to satisfy that burden of proof.

At the same time, the country is working through political upheaval. After gaining independence from the Soviet Union in 1991, the country struggled under the leadership of Eduard Shevardnadze. He was deposed by revolution in 2003 and Mikhel Saakashvili became president. The country wanted to join the European Union and NATO. “That really irritating Putin and Russia to the point where Russia boycotted Georgian exports,” McCauley said. In 2006, Russia and Georgia fought a war over two territories, which the Russians now occupy. In 2012, Giorgi Margvelashvili was elected president.

Trying to develop and fine-tune a legal system under these conditions is difficult enough, but a very large unemployment rate in the country makes it even harder. “It’s hard for these countries that are trying to peel away from the Russian influence,” McCauley noted. Georgia remains pro-Western and would still like to join NATO, but it also realizes it has to live with Russia, its neighbor to the north.

McCauley also travelled around the country and the capital city of Tbilisi. He visited Gori, the hometown of Joseph Stalin — “The tour guides didn’t come across as extremely enthusiastic about Stalin,” McCauley said — and The Cave City of Vardzia, where ancient leaders hid during invasions. His hotel room in Tbilisi overlooked Freedom Square, where Georgians celebrated their country’s independence in 1991.

McCauley continues to keep in touch through the Internet with the friends he made when they visited Virginia in 2012 and when he visited them in Georgia last November. And he no doubt will continue to work with them as they struggle to build a legal system based in large part on Virginia’s ethics model.
Tenth Annual
Indigent Criminal Defense
Advanced Skills for the Experienced Practitioner

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“Not in Good Standing” Search Available at VSB.org

The Virginia State Bar offers the ability to search active Virginia lawyers’ names to see if they are not eligible to practice because their licenses are suspended or revoked using the online Attorney Records Search at http://www.vsb.org/attorney/attSearch.asp.

The “Attorneys Not in Good Standing” search function was designed in conjunction with the VSB’s permanent bar cards.

Lawyers are put on not-in-good-standing (NGS) status for administrative reasons — such as not paying dues or fulfilling continuing legal education requirements — and when their licenses are suspended or revoked for violating professional rules.

The NGS search can be used by the public with other attorney records searches — “Disciplined Attorneys” and “Attorneys without Malpractice Insurance” — to check on the status and disciplinary history of a lawyer.

Have You Moved?

To check or change your address of record with the Virginia State Bar, go to the VSB Member Login at https://member.vsb.org/vsbportal/. Go to “Membership Information,” where your current address of record is listed. To change, go to “Edit Official Address of Record,” click the appropriate box, then click “next.” You can type your new address, phone numbers, and email address on the form.

Contact the VSB Membership Department (membership@vsb.org or (804) 775-0530) with questions.
Cohabitation
Gay Marriage
Equal Access
Equitable Distribution

Family Law’s Greatest Hits

by Carl J. Witmeyer II, VSB Family Law Section Chair

The Family Law Section of the Virginia State Bar is honored to present these articles. This endeavor has been primarily promoted by the vice chair of our group, Rich Garriott of Virginia Beach, along with his able CLE committee.

In this edition of Virginia Lawyer there is an interesting article concerning the repeal on the cohabitation statute involved in child custody cases, by Afshin Farashahi. This article provides great insight into the difficulties that arise in custody cases where cohabitation is involved, even when the best interest of a child or children require that the custodian be allowed to have a partner share his or her residence with the children.

Professor Lynne Marie Kohm of the Regent Law School has written a wonderful article on the status of marriage law in all fifty states. As always, Professor Kohm has prompted a very good discussion on the differences between conjugal marriages and consensual marriages, and the ideological shifts in family law.

Rich Garriott examines the other side of the coin, so to speak, on whether all Virginians now have equal access to the courts. This will also be the subject of our showcase CLE at the VSB annual meeting in June 2014.

Finally, my good friend Don Butler provides the historical perspective on the Family Law Section board of governors’ roll in enacting Virginia’s equitable distribution law, which is now 32 years old.

Each of these individuals has done an exemplary job discussing these issues.

Obviously, these articles and the showcase CLE that will be presented during the annual meeting at Virginia Beach in June have been given added importance by Attorney General Mark R. Herring’s January 23 announcement that he would not allow his office to defend current litigation pending against Virginia. He swore to uphold and defend the United States and Virginia constitutions and that he would defend the laws of the commonwealth when they are challenged on constitutional grounds. Saying that he wanted “Virginia to be on the right side of history,” he has indicated that he would not allow the office of the attorney general to defend this litigation.

This is an ongoing debate that does not seem to have any consensus.

We hope you enjoy this addition of Virginia Lawyer.
Civis Romanus Sum, “I am a Roman Citizen,” is the phrase that was used by all citizens of Rome to invoke their rights. Civis Romanus Sum is the phrase spoken by St. Paul when he demanded his right to a trial not in the hinterlands of the empire but in the Courts of Law in Rome itself. And, as a citizen, he was granted the right he was entitled to and sent to Rome for trial.
DO ALL VIRGINIANS HAVE EQUAL ACCESS TO THE COURTS?

The right to access the courts of law and equity is one of the fundamental rights every citizen of the United States has. However, this is not a right original to the American system of justice. It is a right that we as inheritors of the Roman and English systems of justice have had for more than two millennia.

The June 26, 2013, decision by the United States Supreme Court in United States v. Windsor, et al placed a spotlight on the issue of same-sex relationships and, more importantly, the growing number of legal same-sex marriages throughout the United States. Currently, sixteen states, and the District of Columbia, recognize same-sex marriage. However, if the same-sex couple is married in a state that recognizes such a marriage and then relocates to Virginia, the couple’s relationship is considered void ab initio under the Virginia Constitution and Virginia Statute. Furthermore, Virginia refuses to recognize legal same-sex unions from other states pursuant to a strong public policy exception to the Full Faith and Credit Clause of the United States Constitution.

As a direct result of Virginia’s refusal to recognize legal marriages from other states, Virginia has now placed certain citizens of the commonwealth in legal limbo. Under the current state of Virginia law, same-sex couples who for whatever reason wish to divorce find that their access to the courthouse is barred. As a direct result, same-sex couples with residency in Virginia are faced with the Hobson’s choice of either remain married or pick-up and relocate to another state where same-sex marriage is recognized to obtain a divorce and obtain appropriate adjudication of their respective property rights. Either option would be extremely disruptive to the family above and beyond the marital discord that is taking place.

This article explores the history of the long-standing tradition of the right of every citizen to have access to the judiciary. It will then explore the impact that Virginia’s ban on divorce has on the fundamental rights of these couples in denying them basic freedoms afforded to every other American citizen.

The concept of “The Rule of Law” is often bantered about by those who wish to differentiate what we call free societies from those ruled by dictators such as Iran, North Korea, and communist Cuba. We use this term to pat ourselves on the back and congratulate ourselves that we live in societies with protections of our individual freedoms and where disputes are not solved in the streets but in courts of law. We use the term “The Rule of Law” to describe what has been called “The Miracle of the Common Law.” Under the Common Law, laws are not written down in abstract and then applied to particular disputes. They build up case by case. “They come not from the state but from the people. The Common Law isn’t a tool of government but an ally of liberty.” The Common Law and the protections that inure from it was best described by John Adams: “the liberty, the unalienable, indefeasible rights of men, the honor and dignity of human nature…and the universal happiness of individuals, were never so skillfully and successfully consulted as in that most excellent monument of human art, the Common Law of England.”

However, the protections afforded to every citizen by the Common Law can only be exercised to access to the courts. Although we like to think that free access to the court system in order to adjudicate differences between individuals and in order to protect our fundamental freedoms as purely an Anglo/American virtue, the right to access to courts far predates either of our two societies. During the Roman Republic and Empire, every Roman citizen had the right to sue in the courts and be sued. They had the right to have a legal trial and to defend themselves and they had the right to appeal the decisions of magistrates to a higher court. The right afforded to every Roman citizen of a trial to adjudicate contractual differences, to adjudicate property rights, and to adjudicate criminal accusations has followed us through the millennia.

During the Roman Republic and Empire, every Roman citizen had the right to sue in the courts and be sued.

Trials were common in post-Roman England and the right to access to the courts was formally given to English citizens first by Henry I of England in 1100 when he assumed the throne. Under the Charter of Liberties of Henry I, Henry reinstated the rights of citizens to obtain judgments from the courts when contractual disputes arose. This fundamental right of every citizen was once again reinforced when John of England executed the Magna Carta. “The Writ called Praecipe is not to be issued to anyone in respect to any free tenement in such a way that a free
The idea that all persons have equal access to courts to adjudicate their differences has been reiterated throughout the history of the United States. The idea that all persons have equal access to courts to adjudicate their differences has been reiterated throughout the history of the United States. The right of access to the courts has continued to be held as one of the most fundamental rights every citizen enjoys. “The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution.” Additionally, the framers of the Constitution of Virginia were well aware of the necessity of access to the courts and due process in preserving free government. “That no free government, nor the blessings of liberty can be reserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed saved in a society where law is respected and due process is observed.”

One fundamental principle has sewn a thread throughout the history of the last 2,000 years: That access to the courts, due process, and the Rule of Law are essential to preserving a society where all citizens share equal rights and equal freedoms.

Notwithstanding the language in the Virginia Constitution regarding equal access to the courts and equality among all “men,” Virginia currently denies a segment of its population free exercise of their liberty rights. Article 15-A of the Constitution of Virginia specifically prohibits same-sex unions within the commonwealth. It goes further than prohibiting same sex marriage; it further prohibits any legal status of relationships of unmarried individuals and intends to approximate and design quality significance that tends to “approximate the design, qualities, significant or effects of marriage. Nor shall this Commonwealth through its political subdivisions create or recognize another union, partnership or other legal status to which is assigned the rights, benefits, obligations, qualities or effects of marriage.”

Notwithstanding Virginia’s constitutional and statutory bar to same sex marriage, Virginia cannot deny to give full faith and credit to a valid divorce decree from another state. It is settled case law that no state may, on public policy grounds, refuse to give full faith and credit to a valid judgment issued by another state’s court. Based on Virginia’s bar on gay marriage, there is currently a dichotomy of persons who have access to Virginia courts. For example, a gay couple who divorces in New York, Massachusetts, or Maryland, may enforce a judgment from that court in Virginia to distribute property in Virginia. However, a same-sex couple who resides in Virginia who do not have access to the courts in the states where they were married cannot ask the Virginia courts for relief of their property that is held in Virginia.

The recent decision in Windsor has created dichotomy within the states. We now have a segment of the population who are able to marry and divorce in certain states and a segment of the population who can marry in certain states but cannot divorce in certain states; however, that segment who cannot divorce in certain states are now being denied their right to redress their grievances in court regarding their property and support rights when they do decide to divorce if they are residents of those states. As such, Virginia’s current position of ignoring the fact that there are same-sex couples who may have...
the ability to come to this commonwealth and enforce foreign decrees regarding equitable distribution and spousal support but that their own residents are unable to have access to the very same judicial determinations citizens of other states are allowed is, in fact, a denial of due process which has been guaranteed by both the United States and the Virginia Constitution of all Virginia citizens. It is ironic that the current constitution of Virginia denies access to the courts to a significant segment of the population, given that Virginia's original constitution was drafted by the very founding fathers who found due process of law, access to the courts, and judicial adjudication of the differences between citizens so imperative.

Endnotes:
2 Virginia Code Ann § 45.3 (Michie 2013)
4 Id.
5 Cicero, “In Verrum II v.162
6 See the Charter of Liberties of Henry I, 1100
7 Magna Carta, June 15, 1215
8 Id.
9 Thomas Jefferson “The Declaration of Independence” July 4, 1776
10 The Constitution of the United States of America, Amendment 5
11 The Constitution of Virginia, Article 1, Section 11
12 Chambers v. Baltimore and Ohio Railroad Company, 207 U.S. 142,148 (1907)
13 Rilyn v. Schapiro, 708 F.2d 967 (971) (5th Cir. 1983)
14 Constitution of Virginia, Article 1, Section 15
15 Section 1 of the Constitution of Virginia states “all men are by nature equally free and independent and have certain inherent rights, of which, when they enter an estate of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring or possessing property, and pursuing and obtaining happiness and safety.” Article 1, Section 1, Constitution of Virginia
16 Constitution of Virginia, Section 15-A

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Marriage is important to the Virginia domestic relations code. It is also important to a strong Virginia. The pace at which marriage has been revised around the United States may have Virginians, and even lawyers, understandably a bit uncertain about the law on marriage in Virginia. This article will clarify Virginia law on marriage, provide an overview of recent legal events surrounding marriage regulation, and discuss the effects of those events on Virginia family law.

The Current Status of Marriage in the Fifty States

Virginians defined marriage by state referendum in 2006 with a law that is now contained in Article 1, Section 15 A of the Virginia Constitution. Virginia is one of thirty states that have defined marriage. Those states are Nebraska, Nevada, Oregon, Hawaii, and Wisconsin (which define marriage as between one man and one woman but give legal rights and or status to same-sex civil unions or domestic partnerships); Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Utah. Five states have revised marriage judicially to expand it to same-sex couples: Massachusetts, Iowa, Connecticut, Vermont, and California. Eleven states have done
Recent Supreme Court Decisions on Marriage

In the summer of 2013 the Supreme Court of the United States handed down two major rulings on marriage. *U.S. v. Windsor*, the federal case on the application of the unlimited marital deduction to the estate of a same-sex spouse on New York, expressly held that states have the right to regulate family law (and stating that fact *in dicta* at least twenty-nine times). According to the Social Security Administration, in order for a same-sex couple to claim marriage benefits, they must be validly married and currently residing in a state that recognizes same-sex marriage. These rulings have led to uncertainty in state marriage law that is worthy of discussion.

Many of the express statements of the Supreme Court on marriage regulation uphold a state’s ability to enact laws. Declaring that “[t]he recognition of civil marriages is central to state domestic relations law applicable to its residents and citizens”, and the “definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities’”, and the “states… possess full power over the subject of marriage and divorce…” [clarifying that] “there is no federal law of domestic relations.” The Court maintained that respect for the principle of state regulation of marriage by stating that federal courts are prohibited from adjudicating “issues of marital states even when there might otherwise be a basis for federal jurisdiction.” The notion that state regulation controls is important enough to the Court to remind us that the “significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.”

Because family law extends into almost every other area of law, the effects that these twin rulings of *Windsor* and *Perry* will have on state marriage law will take shape in state conflicts with other states (regarding inter-state recognition of marriage, and interstate family mobility), federal conflict with states, and family law policy substance. These areas present several conflicts of law. Among these conflicts are those within and between agencies of the federal government.

Federal agencies’ responses to the removal of a federal marriage definition are inconsistent with differences within the federal government itself that currently divide along the lines of how marriage definitions are determined — based either on “place of celebration” or “place of residence.” For example, marriage is essential to the tax code. IRS rules state that marriage definition and validity are based on the place of celebration. According to these rules, regardless of where a same-sex couple resides, if their marriage was validly entered or “celebrated” in a state recognizing same-sex marriage, that marriage is valid for federal purposes. This IRS rule is in direct contradiction to the Social Security requirement.

Many of the express statements of the Supreme Court on marriage regulation uphold a state’s ability to enact laws.
Nothing in Windsor or Perry demands a collapse of Virginia’s marriage law; rather, they work to uphold Virginia’s ability to regulate marriage.

Implications for Marriage Law in Virginia

The Windsor Court observed that “[m]arriage laws vary in some respects from State to State,” giving several examples. Here, the Court understands that state marriage regulation decisions are “an important indicator of the substantial societal impact the State’s classifications have in the daily lives and customs of its people.” Therefore, Virginia law on marriage remains firmly intact, even after these rulings, defining marriage as that state-sanctioned relationship between one man and one woman. Virginia’s constitutional amendment on marriage supports the ability of husbands and wives to contribute to the common good through the creation and perpetuation of the family, while simultaneously not working to prohibit same-sex couples from entering into ordinary contractual relationships.

In fact, the Virginia Supreme Court has determined that a child has a protected liberty interest in knowing and having a relationship with both his father and his mother.

Nothing in Windsor or Perry demands a collapse of Virginia’s marriage law; rather, they work to uphold Virginia’s ability to regulate marriage. Yet, a federal constitutional challenge has commenced against Virginia’s marriage amendment in the federal district court for the Eastern District of Virginia in Bostic v. Rainey. At least twenty-seven lawsuits of this type have been filed against state marriage amendments. The “right to marry” was first found to be fundamentally protected by the United States Constitution in Loving v. Virginia. The “right to marry a person of the same sex,” however, has not been afforded that constitutional protection, even with Windsor and Perry.

The pressure, however, from Windsor and Perry is formidable. Several states, such as New Jersey and Illinois, have dropped or amended their marriage laws because of this pressure.

Two Views of Marriage

Both the majority opinion and a dissent in Windsor discuss the two alternate views of marriage — the “conjugal” view and the “consent-based” or revised view of marriage. Under the conjugal view, “the institution of marriage was created for the purpose of channeling heterosexual intercourse into a structure that supports child rearing.” Indeed, the link between marriage and procreation is a hallmark of the conjugal view, inextricably linking the relationship to procreation normatively, a view that fundamentally represents society’s interest in the ordering of adult relationships for the benefit of children and therefore society as a whole. Governments support married men and women as a public structure for their unique service of creating and raising children — the future public — as necessary to the common good. This view holds romance as the spark that begins lifetime commitment and works to perpetuate society. Consequently children and family are a prominent concern in conjugal marriage-based family law and policy.

The consent-based or revisionist view of marriage “defines marriage as the solemnization of mutual commitment — marked by strong emotional attachment and sexual attraction — between two persons.” Since procreation is not central to this view of marriage, the sex of partners is irrelevant to the definition. This notion of
marriage centers on adult autonomy and commitment. In this view marriage is an emotional bond where partners seek emotional fulfillment and remain as long as they find that fulfillment. This view of marriage is ultimately subject to one’s own desires. It holds romance as perpetuating the self-focused version of heterosexual marriage that has led to its decline, something that family law divorce lawyers generally understand well. The Supreme Court explicitly contrasted the conjugal view with the “new insight” that allows “same-sex marriage . . . for couples who wish to define themselves by their commitment to each other.” 26 These two views of marriage are in direct contrast— one focusing on children, the other focusing on adults.

The Court in Windsor clearly protected states’ rights to expand marriage, but also left states that choose to protect conjugal marriage free to do so. Its rhetoric, however, exposes those states to legal and political challenge by lending weight to the nation’s highest court to the arguments favoring marriage expansion and by hinting that it would deliver a ruling requiring states to recognize same-sex marriage if given the opportunity. 27 The Windsor Court ruled that the United States Constitution forbids the federal government from holding exclusively to a conjugal view; it did not forbid the states from holding that view.

States like Virginia that have fostered conjugal marriage will feel the effect of Windsor in that even if they are legally free to continue ascribing to a traditional definition of marriage post-Windsor, the pressures engendered by Windsor’s rhetoric will make it more difficult to actually do so. The federal case filings are evidence of that. Nonetheless, under the express holding in Windsor, states are authorized and empowered to define marriage as a union of one man and one woman. The majority went to great lengths to highlight state authority to regulate marriage. It also stopped short of declaring same-sex marriage an inherent or fundamental right, instead basing its decision on the fact that same-sex marriage is “a dignity conferred by states.” 28 Whether that holding depends on equal protection or due process, or some new constitutional protection for “stigma,” is unclear from the language of the opinion; but the Court is explicit about one thing: “This opinion and its holding are confined to those lawful [state-sanctioned] marriages.” 29

Viewed together, the ruling and rhetoric of the Supreme Court of the United States indicates that states are permitted to continue upholding traditional marriage. The evidence here seems to indicate that Virginia law remains deeply committed to children and to married men and women.

Ideological Shifts in Family Law
It is generally recognized that continued revision and expansion of marriage will affect marriage as an institution, either strengthening or weakening it. The changes to family law coming as a result of more widespread recognition of same-sex marriages are likewise difficult to predict with precision.

Family law will change dramatically for states assuming revised marriage laws. Changes in marriage law bring changes to adoption law, and to parentage. Some state jurisdictions which have revised marriage laws may need to encourage conjugal marriage to deal with plummeting birthrates, something that has become an emerging trend in international family regulation. 30 George Mason Law Professor Helen Alvare contends in her article published by Stanford’s Law and Policy Review, titled The Turn Toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors, that among other concerns over marriage revision, artificial reproductive technology (ART) will be greatly relied upon to build families for same-sex parents. 31 As same-sex marriages become more prevalent, demand for ART will naturally rise, which will bring with it a host of parentage and custody implications. The most profound effects of marriage revision may lie in the impact upon family law effectuated by the acceptance of the underlying ideology. This ideological shift centers on the conception of the meaning of marriage. Both revisionists and conjugal marriage supporters value love, commitment, and rights as well as procreation in marriage; these values are not mutually exclusive. Thus, it is not a matter of substituting these aspects completely, but rather of substituting them as the primary basis and justification for civil marriage. Since family law policies reflect the ideologies they are built upon, changes to various aspects of family law can be expected. 32

Additionally, full acceptance of the consent-based theory of marriage allows for the legal definition of marriage to continue to be expanded and revised in other directions. That is not to say that all advocates for same-sex marriage would like to see other requirements for entry into marriage loosened, or even that all reasoned arguments for same-sex marriage necessarily lead to other forms of marriage expansion as well. That
would simply not be true. Rather, it is important to explore how expanding the definition of marriage can logically lead to greater marriage expansion. This is evident in Brazil where a threesome sued to legalize their relationship as a legally sanctioned throuple marriage. Legal recognition for it would be consistent with the ideology expressed in Windsor, that individuals can define themselves by their commitment to one another.

The ideological shift from traditional marriage to an expanded view of marriage to protect same-sex families brought about by Windsor will change family law.

Other Implications
In addition to continued marriage revision, widespread acceptance of the adult-centered rhetoric of Windsor will have ramifications for various aspects of family law and for those, especially professionals, who interact with it. For some, conjugal marriage carries an implicit child-centered approach; adults sacrificing their own autonomy for their children's best interests. Adult-centered approaches, such as the revisionist or consent-based understanding of marriage “view marriage as more of a self-seeking than a self-giving institution, and thus steer marriage and families in a direction precisely opposite that which is needed to reconnect these institutions to children and to the larger society.” Practically, the effects of exchanging a best interest of the child mindset for an adults-oriented approach would ripple through parentage determinations, child custody determinations, and child support, areas of family law that have traditionally been dominated by the best interest of the child standard. Professor Alvare makes this point clearly:

[M]arriage is not a tool for adults to feel better about being different, but an important element to express state interests in the well-being of children. Parents' interests are not unimportant; marital happiness is a terribly important component of adult happiness. Yet in the eyes and on the scales of the law, the state is more vigorously protective of children's interests and looks to strong marital unions as the way of assuring these. This is why the state can interfere with parents in cases of child abuse, why divorcing parties may never have the last word about child support or custody, why adoption procedures attend so much more closely to the interests of the child than even the deepest longings of would-be parents, and why recent federal and state lawmakers efforts about marriage, divorce, and welfare all have children as their rallying cry.35

The ideological shift from traditional marriage to an expanded view of marriage to protect same-sex families brought about by Windsor will change family law. While the Supreme Court of the United States has confused the issue, states remain possessed with abilities to regulate marriage and their own domestic relations law. Virginia’s marriage amendment and domestic relations law provide the foundation for a strong commonwealth for the common good.


Endnotes:
6 Id. at 17.
7 Id. citing Desylva v. Ballentine, 351 U.S. 570 (1956).


12 See IRS to Recognize All Gay Marriages Regardless of State, New York Times, Aug. 30, 2013, http://www.nytimes.com/2013/08/30/us/politics/irs-to-recognize-all-gay-marriages-regardless-of-state.html (discussing the need to file individually if a state does not recognize the marriage as valid; and discussing the tremendous discrepancy in defining marriage according to the “place of celebration” or the “place of residence” standard).


15 Windsor, 570 U.S. at 18, citing the differences between age requirements for Vermont and New Hampshire, and consanguinity variances between Iowa and Washington, noting the welcomed qualification that “these rules are in every event consistent within each State.” Id.

16 Id. at 20.


21 388 U.S. 1 (1967).

22 See David Mascii, Supreme Court’s DOMA decision driving same-sex marriage efforts in states, PewResearchCenter, Oct. 21, 2013, http://www.pewresearch.org/fact-tank/2013/10/21/supreme-courts-doma-decision-driving--...-


24 Windsor, 570 U.S. at 115.

25 Id. at 116 (J. Alito, dissenting).

26 Id. at 29.

27 Id.

28 Id. at 41.

29 Id. at 49.


31 Helen M. Alvaré, The Turn Toward the Self in the Law of Marriage & Family: Same-Sex Marriage & Its Predecessors, 16 STAN. L. & POL’Y REV. 135, 136 (2005). See also Why I Need to Find My Father, W. Daily Press (Eng.), Jan. 23, 2004, at 8 (citing “feelings of revulsion at the clinical method by which we were produced; a sense of loss and grief for deliberately severed relationships with unknown biological kinfolk; a fear of accidental incest; anger and frustration at the lack of respect shown for our missing genetic origins...”).

32 Id. (where Professor Alvaré tracks how arguments exalting adult desires over the interests of children and the good of society have effected family law in terms of permitting no-fault divorce and virtually unrestrained use of artificial insemination (ART) and then exploring how these same self-focused arguments underlie the advancement of same-sex marriage).


34 Alvaré, supra note 30, at 136.

35 Id. at 187.

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Enactment of Virginia’s Equitable Distribution Law:
A Memoir in Mixed Metaphors

by Donald K. Butler

Equitable distribution in Virginia is now in its thirty-second year, and it occurred to me that many lawyers now practicing never knew a time when there wasn’t a “divorce industry.” At a recent meeting of the Virginia Chapter of the American Academy of Matrimonial Lawyers, I took a poll of the thirty-six lawyers there and found a full third had never practiced when there was no Marital Property Act. Since this demographic is composed of some of the more experienced lawyers, for the bar as a whole it can safely be assumed that the percentage admitted to practice after 1982 is significantly higher.

It then occurred to me that those who were not members of the Virginia State Bar before 1982 would not be aware of the significant role that the Board of Governors of the Family Law Section played in the drafting and passage of this significant and revolutionary body of law. “Revolutionary” is more apt than “ground breaking” because at that time Virginia was in a distinct minority of states that had not enacted marital property laws, and was a harbor to archaic notions of the economic role of women in our society.

Back then, there were very few lawyers who were identified as divorce lawyers (the term “family law” was not even in our legal lexicon) because the only issues in divorce cases were child custody, child support, alimony, and fault, which was a significant issue because any fault grounds, including desertion and cruelty, would be an absolute bar to entitlement to spousal support. The insignificance of divorce practice in those days is illustrated by the Richmond Bar Association’s “pre-Goldfarb” published fee schedules which suggested charging $250 to $350 for uncontested divorces, but for contested divorces it could be as much as $500 to $750. It was rare for anyone to use time records in determining the fees charged for a divorce case.

While most other states had adopted marital property laws in various forms by 1982, few lawyers in Virginia were familiar with this concept, and even the savviest lawmakers were bemused by it. One in particular was the legendary speaker of the house, A.L. Philpott. Whenever any proposed legislation came before the House Courts of Justice Committee, the first thing the members wanted to know was, “What does Mr. Philpott...
think about it?” He was a powerful legislator and country lawyer whose initial reaction to this radical reform called marital property laws was that it would create chaos in the land records. Until he was convinced otherwise, he thought that classifying property titled to one spouse as marital would have a disastrous effect on titles to real estate. Thus it was to overcome this unfounded concern that our statute specifically provides in Code §20-107.3(B) that the parties’ rights and interests in marital property “shall not attach to the legal title of such property and are only to be used as a consideration in determining a monetary award.”

To get this reform movement started, someone had to learn about equitable distribution, and then choices had to be made about which version best suited Virginia. For example, should Virginia adopt the unitary concept of property or dual classification? More fundamentally, what did these terms even mean? Of course, the customary legislative study committees were appointed, but few members really knew much about divorce law. Thus the onus fell on the Board of Governors of the Family Law Section who eagerly seized the opportunity to fashion a completely new remedy that would change the way divorce law is practiced in our state.

Those board members were a hard-working and collegial group, and this collegiality was no doubt enhanced by some of the meeting venues. While many were held in banal offices around the state, some were held at places such as The Homestead, the Boar’s Head Inn, and other upscale resorts. But make no mistake about it, the opulence of the workplace was not the only reward for these lawyers’ dedication. This is because once the laws were enacted, these lawyers were among the few who understood how equitable distribution worked, and therefore they had a corner on the market at the inception of this new “industry.”

The membership of the board over these years varied slightly, but the essential core remained intact. Of those members, four later became recipients of the State Bar’s Lifetime Achievement Award in Family Law, including me, Arthur E. Smith of Roanoke, Morton B. Spero of Petersburg, and most notably, Betty A. Thompson of Arlington, for whom the award is now named. As she was throughout the years after the adoption of Code §20-107.3 until her recent death, Betty was a driving force behind the legislation and its perennial amendments to improve and fine-tune the statute. Betty belonged to national bar groups where she rubbed elbows with some of the more prominent family law attorneys in the country who were familiar with marital property laws, and she mined those hills for useful information and experiences.

Equitable Distribution started out like many laws in Virginia — by getting a foot in the door. That door cracked open in 1977 when Code § 20-107 (there was no 107.1 and .2 and .3) was amended to provide that in addition to spousal support, the court could award “a lump sum payment based upon the property interests of the parties after considering the contributions, monetary and non-monetary, of each party to the well-being of the family.” While some of that language is familiar and repeated in the current statutes, that is all there was to it — no list of factors, no criteria for or definitions of marital and separate property, and no provision for a division or award of any property itself, including pensions or retirement plans. It was nothing more than a little lagniappe in addition to spousal support that a court could award in some cases. However, this limited remedy was seldom used at the trial level because it was so acutely amorphous, and during its short five-year life, there were no appellate cases addressing it. Of course, all of that changed once the genuine article became law. In fact, the raison d’ être for the court of appeals was to deal with the anticipated avalanche of appeals — a good call as it turns out.

After the statute was enacted in 1982, the board provided further guidance for the constant revisions required as lawyers and courts identified flaws in it. Eventually the Coalition on Family Law (another Betty Thompson brainchild) was formed to serve this purpose. After thirty-two years, they are still tending this garden in that fertile ground plowed and planted by the Board of Governors of the Family Law Section.

Donald K. Butler practices in Richmond with Batzli Stiles Butler PC. He is a recipient of the Virginia State Bar’s Lifetime Achievement Award in Family Law. He served two terms on the Board of Governors of the Family Law Section and was its chair. He is past president of the Virginia Chapter of the American Academy of Matrimonial Lawyers.
When the 2013 General Assembly repealed the criminal statute that prohibited cohabitation, it most likely realized that its action would not affect the practice of criminal law, given that the statute was not enforced. The repeal of Virginia Code § 18.2-345 will instead have its impact outside the area of criminal law, namely, in family law. This development comes several years after the Supreme Court of Virginia declared that Virginia Code § 18.2-344, prohibiting fornication, is unconstitutional. (In that case, the Court relied on the U.S. Supreme Court’s ruling in Lawrence v. Texas, which struck down the anti-sodomy statute in Texas.) Even though the statute prohibiting cohabitation’s cousin, adultery, is still on the books, it is subject to serious constitutional challenge if the opportunity ever arises. For family law practitioners, this means that the cohabiting household may not be, and should not be, automatically ruled out as an alternative for the child’s primary residence.

Public Policy Based on Anti-Fornication and Anti-Cohabitation Statutes
While the cohabitation statute was not enforced, it was still relied upon, along with the fornication statute, as the basis for public policy pronouncements by the Supreme Court of Virginia. For example, in an employment law case, the Court made it clear that there are public policies in the commonwealth “against fornication and lewd and lascivious behavior” and that these policies are “embodied” in Va. Code § 18.2-344 (fornication statute) and § 18.2-345 (cohabitation statute). That public policy has also become instrumental in child custody cases. There is a general prohibition of cohabitation when children are involved. Some courts routinely make it a part of custody and visitation orders that no one of the opposite sex, not related by blood or marriage, may stay overnight while the parent has the child. And courts that do not routinely order such prohibition are likely to do so if the issue is raised by one of the parties.

Similarly, guardians ad litem (GALs) have felt obligated to recommend a prohibition against cohabitation in custody and visitation cases no matter what the facts may show. One of the Virginia State Bar’s public information pamphlets, prepared by the Family Law Section and...
titled Marriage in Virginia, summarizes the current law:

An important consideration for people considering living together is the custody of children. If a child’s other parent objects to the living situation in the household, he or she may persuade a court to change the child’s custody or visitation accordingly. Parents have a duty to act in their child’s best interests in all situations. Cohabitation outside of marriage may present inappropriate situations for children. In such cases, a court will act in the best interests of the child in any visitation or custody modification. Courts in Virginia still view marriage as being in the best interests of the children.

Many agree that children should not be exposed to cohabitation — no matter how much family structures have changed in the last few decades. But the recently repealed statute criminalizing cohabitation had contributed to, or formed the sole basis of, the sometimes outright prohibition of cohabitation in custody and visitation cases. This had been done by either granting physical custody to the non-cohabiting parent or by granting physical custody to the cohabiting parent on the condition that the cohabiting parent ceases the cohabitation. Additionally, the orders prohibited the non-custodial parent from having overnight guests of the opposite sex who were not related by blood or marriage during the times that the child was visiting that parent.

This sentiment had been reinforced by appellate decisions in divorce cases in which adulterous relationships in the open were condemned. In Brown v. Brown, a 1977 case, the Court affirmed a trial court’s ruling that gave custody of the children to the father based upon the mother’s living arrangements with another man after the parents’ separation. While the case involved a mother living with another man while she was still married to the children’s father, the sentiments expressed by the Court had been similarly applied to cohabitation cases where the parties were divorced or were never married to each other.

Notably, the Court of Appeals of Virginia — which is in effect the court of last resort in domestic relations cases — has shown more flexibility. In Sutherland v. Sutherland, for example, the court of appeals affirmed a trial judge’s award of custody in a divorce case to the mother even though the mother was living with another man. The court of appeals declared that Brown did not establish a per se rule and that it had relied on other factors, such as the mother having a dirty house, in affirming the award of custody to the father. As the Sutherland court stated, “The controlling consideration is always the child’s welfare and, in determining the best interest of the child, the trial court must consider all the facts.”

Despite the flexibility shown by the court of appeals, judges generally rule, and the GALs generally recommend, against cohabitation when the issue comes up in a custody or visitation case. With the repeal of the cohabitation statute, however, juvenile court and circuit court judges, and the GALs, have more leeway to examine a cohabitation situation without automatically rejecting it as an option.

Factors to Consider in Cohabitation Cases

Many judges and GALs will continue to rule against and recommend against cohabitation in custody and visitation cases no matter which criminal laws are repealed. Even absent a moral objection to cohabitation, many would rather have children not live in a cohabiting household. But the ideal situation is sometimes not the realistic one.

The cohabiting household may not be the better alternative in most custody cases. But this means that it may be the better alternative in some cases. For example, the cohabiting parent may be significantly more involved and attentive than the other parent when it comes to the child’s education and health. Moreover, the cohabiting parent’s partner may bring resources to the household and a measure of security to the cohabiting parent and the child, especially at night. The only way to know is for the judges and the GALs to seriously examine all alternatives available.

The cohabiting household may not be the better alternative in most custody cases. But this means that it may be the better alternative in some cases.

Va. Code § 20-124.3 lists ten factors that the courts are to consider in custody and visitation cases. Since no specific provision is made for considering cohabitation issues, the last factor on the list, “such other factors as the court deems..."
But there will be times that the best interests of the child require that the other parent be the custodial parent and be allowed to have a partner share the home.

Conclusion
Undoubtedly, it is tough to seriously consider a cohabiting household for custody purposes when the other parent points out that his child should not be exposed to unmarried people living together. While that parent’s motivation may be legitimately questioned — parties in family law cases are certainly known to use many tools, including children, to make life more difficult for the other party — the motivation of the objecting parent should not be relevant.

But there will be times that the best interests of the child require that the other parent be the custodial parent and be allowed to have a partner share the home. Many judges and GALs are reluctant to contemplate such a possibility. The statute prohibiting cohabitation reinforced this tendency, if not outright caused it. With the repeal of that statute, the outright rejection of cohabitation should give way to an unbiased evaluation of all feasible alternatives to determine what is truly in the best interest of the child.

Endnotes:
3 The repealed § 18.2-345 provided:
   If any persons, not married to each other, lewdly and lasciviously associate and cohabit together, or, whether married or not, be guilty of open and gross lewdness and lasciviousness, each of them shall be guilty of a Class 3 misdemeanor; and upon a repetition of the offense, and conviction thereof, each of them shall be guilty of a Class 1 misdemeanor.

The maximum penalty for a Class 3 misdemeanor is a fine of $500; the maximum penalties for a Class 1 misdemeanor are 12 months in jail and a fine of $2,500. Va. Code § 18.2-11.


6 Va. Code § 18.2-365: “Any person, being married, who voluntarily shall have sexual intercourse with any person not his or her spouse shall be guilty of adultery, punishable as a Class 4 misdemeanor.” The maximum penalty for a Class 4 misdemeanor is a fine of $250. Va. Code § 18.2-11.

7 In 2004, a case from Shenandoah Valley made headlines when a man was prosecuted for adultery. With the backing of civil liberties’ groups, he made known his intention to mount a constitutional challenge. However, in a plea deal, he agreed to do 20 hours of community service in return for the dismissal of the charge. The fact that the defendant used to be the city attorney for the
jurisdiction may have also led to the notoriety of the case. Michelle Boorstein, *Virginia Adultery Case Goes from Notable to a Nonevent*, WASH. POST, August 25, 2004, at B04.


9 Natalie Angier, *The Changing American Family*, N.Y. TIMES, November 25, 2013 (describing the changing family structure and citing statistics such as 1) 41 percent of babies today are born out of wedlock and 2) from 1996 to 2012 the number of cohabiting couples increased from 2.9 to 7.8 million), reprinted in part as *What’s a Typical American Family?*, THE VIRGINIAN-PILOT, November 28, 2013, at 1.

10 Of course, in the appropriate circumstances, courts will need to modify their standard language to take into account gay couples and use language such as “romantic partners” rather than “guests of the opposite sex.”


12 The Supreme Court of Virginia was seemingly condemning all cohabitation, no matter the marital status of the offending parties, when it stated: “An illicit relationship to which minor children are exposed cannot be condoned.” *Brown*, 218 Va. at 199, 237 S.E.2d at 91.

13 Va. Code § 17.1-410 provides in relevant parts: When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in . . . [c]ases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption . . . .

Notwithstanding the [foregoing] provisions, in any case other than an appeal pursuant to § 19.2-398, in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court . . . .


15 Id. at 43, 414 S.E.2d at __.

16 Id. at 43-44, 414 S.E.2d at __.

17 Va. Code § 20-124.3 lists these factors: 1. The age and physical and mental condition of the child, giving due consideration to the child’s changing developmental needs; 2. The age and physical and mental condition of each parent; 3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child’s life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child; 4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members; 5. The role that each parent has played and will play in the future, in the upbringing and care of the child; 6. The propensity of each parent to actively support the child’s contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child; 7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child; 8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference; 9. Any history of family abuse as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and 10. Such other factors as the court deems necessary and proper to the determination.

18 Of course, there would be an incentive on the part of the parent and the partner to say that they have future plans of getting married. But such healthy skepticism should not diminish the significance of this factor.

Afshin Farashahi is a solo practitioner in Virginia Beach and is a former prosecutor with the Virginia Beach Office of the Commonwealth’s Attorney. He focuses his practice in criminal defense and in representation of children as a guardian ad litem. He is a graduate of the University of Virginia School of Law and of James Madison University. He may be contacted at farashahilaw@suiteslaw.com.
Nominations Sought for Committee Vacancies

Volunteers are needed to serve on the Virginia State Bar’s boards and committees. The Nominating Committee will refer nominees to the VSB Council for consideration at its June meeting.

Vacancies in 2014 are listed below. All appointments or elections will be for the terms specified, beginning on July 1, 2014, unless otherwise noted.

EXECUTIVE COMMITTEE:
6 vacancies (3 current members who are not eligible for reappointment and 3 current members are eligible for reappointment). Filled from ranks of the council for 1-year terms, by council election.

CLIENTS’ PROTECTION FUND BOARD:
3 lawyer vacancies (1 current lawyer member from the 6th disciplinary district who is not eligible for reelection; 2 current lawyer members from the 3rd and 8th disciplinary districts who are eligible for reelection.) May serve 2 consecutive 3-year terms. Elected by council.

JUDICIAL CANDIDATE EVALUATION COMMITTEE:
6 lawyer vacancies (of which 1 vacancy is to be filled by a member from the 27th, 28th, 29th or 30th judicial circuits; 1 vacancy is to be filled by a member from the 10th, 21st, 22nd or 24th judicial circuits, 1 vacancy is to be filled by a member from the 17th or 18th judicial circuits; 1 vacancy is to be filled by a member of the 6th, 11th, 12th, 13th or 14th judicial circuits; and 2 current members-at-large are not eligible for reelection). May serve 1 full 3-year term. Elected by council.

VIRGINIA LAW FOUNDATION BOARD:
3 vacancies (of which 2 current lawyer members are eligible for reelection) and 1 lay member (who is not eligible for reelection). May serve 2 consecutive 3-year terms. Elected by VLF Board on recommendation of council.

VIRGINIA CLE COMMITTEE:
6 lawyer vacancies (of which 6 lawyer members are eligible for reelection to 1-year terms). Elected by VLF Board on recommendation of council.

AMERICAN BAR ASSOCIATION DELEGATES:
2 vacancies (of which 1 present delegate is eligible for reelection and the other vacancy will be filled by president-elect designate Edward L. Weiner). May serve 3 consecutive 2-year terms. Elected by council. Term commences September 1, 2014.

Nominations, along with a brief résumé, should be sent by March 28, 2014, to VSB Nominating Committee, c/o Asha Holloman, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800.

Conference of Local Bar Associations Announces New Award for Bar Association of the Year

The Bar Association of the Year Award will be presented for the first time at the CLBA Annual Meeting and Breakfast on June 13, 2014, at the Sheraton Virginia Beach Oceanfront Hotel. As a conference of local and specialty bar associations, it is fitting that the CLBA recognizes a member bar association that has best fulfilled the attributes member associations strive to attain. Award criteria is on the website at http://www.vsb.org/docs/conferences/clba/barassoc.pdf. The CLBA encourages applications that demonstrate the impact bar associations have made on their communities and the legal profession.

Lawyers Helping Lawyers

Confidential help for substance abuse problems and mental health issues. For more information, call our toll free number:
(877) LHL-INVA
or visit http://www.valhl.org.
The Virginia State Bar TECHSHOW
May 19, 2014 | Richmond Convention Center
403 North Third Street Richmond, VA 23219

Agenda  Please indicate your choice for each session.
8:00–8:30 Registration
8:30 Welcome—VSB President Sharon D. Nelson,	CLBA Chair Eugene M. Elliott Jr, and Chief Justice of the
Supreme Court of Virginia Cynthia D. Kinser
8:45–9:45 First Sessions
☐ The MAC Lawyer (Brett Burney—Burney Consultants, Chagrin Falls, OH /Reid Trautz—Lawyer & Practice Management Advisor, Fairfax, Virginia)
☐ Preventing Law Firm Data Breaches
(Sharon Nelson and John Simek—President and Vice-President, Sensei Enterprises)
9:55–10:55 Second Sessions
☐ Moving Your Practice to the Cloud (Brett Burney)
☐ Taking Your Law Firm Paperless (Britt Lorish—Affinity Consulting Group, Roanoke, VA)
11:05–12:05 Third Sessions
☐ Time/Billing/Accounting/Case Management Software for Lawyers
(Natalie Kelly—Director of Law Practice Mgmt at State Bar of Georgia /Britt Lorish)
☐ The Future of Law (Jim Calloway—Director of Mgmt Asst Program at Oklahoma Bar Assn, Oklahoma City, OK)
12:05–12:45 Lunch
12:45–1:45 Fourth Sessions
☐ The iPad for Litigators (Tom Mighell—Contoural, Inc.)
☐ Microsoft Office Tips for Lawyers (Debbie Foster—Affinity Consulting Group, Tampa, FL)
1:55–2:55 Fifth Sessions
☐ The Virtual Lawyer (Natalie Kelly)
☐ The Mobile Lawyer (Tom Mighell/Reid Trautz)
3:05–4:05 Sixth Sessions
☐ Ethical and Effective Alternative Billing (Jim Calloway)
☐ Technology for the Small Law Office (John Simek/Mike Maschke—Chief Executive Officer, Sensei Enterprises)
4:15–5:15 Plenary—60 Tips in 60 Minutes
Sharon Nelson, Debbie Foster, Jim Calloway, Tom Mighell

Register now for this FREE conference.
E-mail or mail this sheet to Paulette J. Davidson, Davidson@vsb.org
Virginia State Bar | 707 East Main Street, Suite 1500 | Richmond, Virginia 23219-2800

Name

Address
____________________________________________________________________________________________________________________
City ____________________________________ State ___________ Zip Code ______________________________

Phone
____________________________________________________________________________________________________________________

E-mail address* __________________________________________________________
____________________________________________________________________________________________________________________

Space is limited and first come/first served. *Confirmations and materials will be sent via e-mail.
The Virginia State Bar TECHSHOW is sponsored by the VSB Conference of Local Bar Associations.
In Memoriam

Charles L. Apperson
Bowling Green
December 1923 – December 2013

William Kent Bowers
Harrisonburg
October 1955 – October 2013

Richard Neil Farmer
Charleston, West Virginia
August 1951 – January 2014

The Honorable J. Peyton Farmer
Bowling Green
November 1933 – November 2013

The Honorable Walther Balderson Fidler
Sharps
April 1923 – November 2013

Willard R. Finney
Rocky Mount
August 1926 – January 2011

The Honorable Louise Jean Bowler Gisvold
Mt. Pleasant, Michigan
October 1939 – January 2014

George Hopkins Guy Jr.
West Point
December 1934 – January 2014

R. Bruce Hughes
Falls Church
January 1923 – November 2013

Thomas F. McPhaul
Norfolk
January 1931 – February 2012

Daniel Kurt Moller
Reston
September 1949 – October 2013

Allan R. Plumley Jr.
Arlington
January 1933 – December 2013

Earl Edward Shaffer
Arlington
June 1926 – November 2013

Roland Hugh Shubert
Herndon
November 1933 – October 2013

The Honorable Frank M. Slayton
South Boston
August 1932 – October 2013

Richard Julian Stahl
Fairfax
December 1945 – November 2013

Waller redd Staples III
Richmond
October 1938 – December 2013

Wayne B. Stone Jr.
Malvern, Arizona
September 1930 – November 2012

Gerard Francis Treanor Jr.
Arlington
July 1943 – October 2013

Paul Yale Virkler
Richmond
May 1949 – October 2013

The Honorable A. W. Whitehurst
Norfolk
May 1927 – November 2013

Local and Specialty Bar Elections

Bristol Bar Association
Helen Eckert Phillips, President
Sheri Ann Hiter, Vice President
Eric McKendrey Anderson,
Secretary-Treasurer

Charlottesville-Albemarle
Bar Association
Palma Elyse Pustilnik, President
James Page Williams, President-elect
Crystal Sue Shin, Secretary
Brian Andrew Craddock, Treasurer

Virginia Association of Criminal
Defense Lawyers
Douglas Anthony Ramseur, President
John Raymond Maus, President-elect
Cynthia Ellen Dodge, Secretary
Kristie Lee Kane, Treasurer

Virginia Association of Defense
Attorneys
John Ryan Owen, President
Kathleen Mary McCauley,
President-elect
Brian Nelson Casey, Secretary
Carlyle Randolph Wimbish, III,
Treasurer

Virginia Law Foundation
James Vincent Meath, President
John Daniel Epps, President-elect
Irving M. Blank, Vice President
The Virginia Law Foundation Inducts Fellows Class of 2014

The Virginia Law Foundation inducted twenty-eight Virginia lawyers at its 2014 Class of Fellows dinner ceremony on January 23 in Williamsburg, during The Virginia Bar Association’s annual meeting. Induction as a Fellow of the Virginia Law Foundation is a special honor conferred by the VLF board on selected Virginia attorneys, law professors, and retired members of the judiciary who make outstanding contributions to the legal profession and in their communities.

Class of 2014 Inductees:
Honorable Joanne F. Alper (Arlington)
Donald S. Culkin (Leesburg)
C. Thomas Ebel (Richmond)
Hugh M. Fain III (Richmond)
Morris H. Fine (Virginia Beach)
Daniel LeRoy Fitch (Harrisonburg)
Linda D. Frith (Roanoke)
Philip G. Gardner (Martinsville)
Richard Ellis Garriott Jr. (Virginia Beach)
Stephanie E. Grana (Richmond)
Phoebe P. Hall (Richmond)
F. Warren Haynie Jr. (Lottsburg)
William H. Hefty (Richmond)
Stephen A. Isaacs (Richmond)
Linda M. Jackson (McLean)
Martha J.P. McQuade (Alexandria)
Honorable Nathan H. Miller (Harrisonburg)
Jay B. Myerson (Reston)
James F. Neale (Charlottesville)
Stephen Edward Noona (Norfolk)
Lonnie D. Nunley III (Richmond)
W. David Paxton (Roanoke)
Henry R. Pollard IV (Henrico)
Sandra M. Rohrstaff (Alexandria)
Thomas R. Scott Jr. (Grundy)
C.J. Steuart Thomas III (Staunton)
Lori D. Thompson (Roanoke)
Stanley P. Wellman (Richmond)

2014 John C. Kenny Pro Bono Award

The Richmond Bar Association’s 2014 John C. Kenny Pro Bono Award was given posthumously to Benjamin R. Lacy IV on January 23. The award was presented to members of Mr. Lacy’s family during a ceremony at the Omni Hotel in Richmond. Pictured (left to right) are Mr. Lacy’s daughter Callie Brackett, wife Sandy Lacy, son-in-law Alex Brackett, and RBA President Anne Scher. Mr. Lacy was with Sands Anderson for twenty-seven years. He assisted the Greater Richmond Bar Foundation’s Pro Bono Clearinghouse beginning in 2001 when the organization was started. He also served on the board of the Central Virginia Chapter of the Juvenile Diabetes Research Foundation. In January, 2013, the Virginia General Assembly passed a resolution honoring Mr. Lacy for his devotion to serving others through pro bono work.
Is there a Pro Bono Gap in Virginia?

by Joanna L. Suyes, chair, VSB Access to Legal Services Committee, and
John E. Whitfield, executive director, Blue Ridge Legal Services

The “Justice Gap” is yawning wider, leaving more and more low-income Virginians confronting a tilted playing field in our civil justice system.

How much pro bono legal work is being performed each year by Virginia lawyers? This is a timely and important question. At a time when Virginia's legal aid programs are reeling from the double whammy of severe federal funding cuts and collapsing revenues from Interest on Lawyer Trust Accounts, there is a pressing need for pro bono legal work on behalf of low-income Virginians. Over the last three years, Virginia’s legal aid programs have lost more than one-fifth of their attorneys because of these funding losses, even while the state's poverty population has increased 32 percent over the last decade. The “Justice Gap” is yawning wider, leaving more and more low-income Virginians confronting a tilted playing field in our civil justice system. With lawyers effectively holding the keys to the courthouses, low-income Virginians who cannot afford an attorney are locked out of that system. Is it realistic to ask Virginia’s lawyers to do more? Are Virginia lawyers doing all the pro bono work that can be expected of them? Or is there a “Pro Bono Gap” between the aspirational goals of Rule 6.1 of the Rules of Professional Conduct and the actual performance of Virginia’s lawyers?

Last year, the Virginia State Bar’s Access to Legal Services Committee set out to try to shed some light on these questions. As a starting point for our analysis, Rule 6.1 of the Rules of Professional Conduct provides that every Virginia lawyer should render at least 2 percent per year of her or his professional time to pro bono legal services. Assuming 2,000 hours worked per year, this results in a goal of at least 40 hours of pro bono legal services annually per attorney. According to VSB membership reports, there are 23,478 active Virginia lawyers practicing in the commonwealth. If each of them met the minimum aspirational goal established by Rule 6.1, Virginia lawyers would log a total of 939,120 hours of pro bono legal services annually.

Pro Bono Work Through Legal Aid-Sponsored Pro Bono Programs

As an initial step to see how Virginia lawyers as a group were performing against this benchmark, we compiled and analyzed existing case data from Virginia’s legal aid societies. Each of Virginia’s legal aid programs operates pro bono programs involving the members of their local bar associations. They routinely report their case-closing statistics to the Legal Services Corporation of Virginia (LSCV) and the VSB, including attorneys who have participated in pro bono activities through the local legal aid offices during the year, as well as the total number of pro bono hours donated by those volunteer attorneys. Aggregating these statistics, we learned that just over 1,000 attorneys (4.3 percent) of the 23,478 active Virginia lawyers participated in pro bono activities sponsored by the legal aid programs, donating more than 19,000 hours.

Pro Bono Work Through Freestanding Pro Bono Programs

We recognized that the legal aid pro bono case statistics, while representing an important, foundational component of pro bono work in Virginia, did not portray the full picture of pro bono work in Virginia. We know that there are a number of independent freestanding organizations scattered around the state that operate their own pro bono programs. Unfortunately, these organizations do not report their case statistics to the VSB, as they are not licensed as legal aid societies under the VSB’s legal aid society regulations. Accordingly, we undertook to survey them in an effort to gauge the amount of pro bono work being performed under their auspices — perhaps the first ever statewide survey of non-legal aid pro bono programs.

We compiled a list of organizations through the state that might potentially be sponsoring pro bono activities for Virginia lawyers. We generated a list of thirty-two organizations that appeared to operate some form of pro bono program. These included some well-stab-
lished pro bono organizations such as the Community Tax Law Project and the Northern Virginia Pro Bono Law Center, as well as law firm–sponsored programs, law school–sponsored programs, faith-based initiatives, and other specialty niche programs. In the spring of 2013, we contacted each of these organizations and provided them with a link to an online survey designed to solicit basic data on their pro bono programs: the number of pro bono cases concluded in the last year, by region, if available; the number of participating pro bono attorneys; and the number of hours of legal services donated by these attorneys in the cases they concluded. If the organizations did not have exact numbers, we asked that they provide us with their best estimates.

We received responses from twenty-four of the organizations. The eight organizations that did not respond to the survey appeared either to be defunct or not currently sponsoring a pro bono program. Some responding organizations indicated they did not actually have a pro bono program; others indicated that they collaborated with a legal aid program or another organization, meaning that their data would be redundant. When we weeded these out, we had fourteen organizations responding to our survey that operated their own pro bono program independently of a legal aid program. Two of these organizations indicated that they did not keep track of the data we requested: they did not know how many pro bono cases were concluded, how many attorneys assisted, or how many hours they donated. The remaining twelve organizations were able to provide at least some of the data we were seeking, although a majority of them indicated they were providing rough estimates, not actual counts.

Compiling this data, we found that there is a significant amount of pro bono work being undertaken through the independent pro bono organizations (compared to the 3,561 cases handled by pro bono attorneys volunteering through legal aid–sponsored pro bono programs). The majority of these pro bono cases were in northern and central Virginia. The largest single category of legal work being undertaken by non-legal-aid-sponsored pro bono programs was immigration law. The independent pro bono programs reported that approximately 1,100 attorneys assisted over the last year, donating about 17,500 hours.

A Pro Bono Gap?

We then combined the data from the legal aid–sponsored pro bono programs and the independent pro bono programs. We found that 2,093 Virginia lawyers participating in organized pro bono programs concluded a total of 5,363 pro bono cases over the previous year, donating 36,698 hours of legal services. This suggests that less than 9 percent of Virginia’s active lawyers rendered any pro bono legal services through an organized pro bono program, whether sponsored by a legal aid society or by another organization. Remember, we had determined that Rule 6.1 established an aspirational benchmark of 939,120 hours of pro bono legal services performed annually by the 23,478 attorneys actively practicing within Virginia. Comparing the aspirational goal set by Rule 6.1 with the best data we were able to compile for pro bono work performed through organized pro bono programs, we found that, as a statewide community, we are performing less than one-twenty-fifth of the pro bono work that the rule expects of us—3.9 percent, to be precise.

The graph below dramatically depicts the Pro Bono Gap that we found.

Having made this dramatic point, we acknowledge that there is undoubtedly a great deal of pro bono work being undertaken by Virginia’s lawyers on an ad hoc basis, rather than through any organized pro bono program. Lawyers certainly render pro bono legal services to needy folks referred to them through their churches, synagogues, and other faith groups, by friends and neighbors, from colleagues, or simply when a prospective client with a compelling story appears at their office lacking the ability to pay for their services.

Unfortunately, we have no mechanism in place for tracking the amount of
pro bono work being undertaken by Virginia’s lawyers outside of organized pro bono programs. However, a recent study by the American Bar Association may help us to extrapolate this in a very rough fashion. In March 2013, the ABA released a report titled “Supporting Justice III: A Report on the Pro Bono Work of America’s Lawyers.” In this study, the ABA undertook a statistically sampled and weighted survey of nearly 3,000 lawyers across the United States, eliciting information about their performance of pro bono work. Among its findings, the study found that slightly more than a fourth (27 percent) of the pro bono work performed was through a legal aid program, while roughly another fifth (21 percent) was through a non-legal aid pro bono program. The balance (52 percent) of the pro bono work performed by American lawyers comprised ad hoc pro bono cases informally referred by other lawyers, family, friends, judges, religious organizations, and other sources.

Assuming the same breakdown applies in Virginia, we can extrapolate that roughly an equal amount of pro bono work is being undertaken outside of organized pro bono programs, thereby doubling the numbers our data initially suggested. If that assumption is true, then the amount of pro bono undertaken annually by Virginia lawyers would be more in the range of 76,000 hours. Even so, Virginia lawyers would be performing only about 8 percent of the pro bono legal work envisioned by Rule 6.1.

**Regional Variations**

We analyzed our pro bono data by region to see if there were any significant variations in pro bono participation across the state. The Legal Services Corporation, the conduit for federal funding for civil legal services, has divided Virginia into six regions; we used those geographical subdivisions for our analysis.

We found that the central Virginia region (Richmond, Petersburg,
Charlottesville, and surrounding counties) boasted the greatest number of pro bono cases handled through the legal aid-sponsored programs and the independent pro bono programs, followed by northern Virginia, and the Valley. In contrast, the eastern, southern, and southwestern regions had comparatively very few pro bono cases.

The northern region had the greatest number of attorneys participating in organized pro bono programs, and the greatest number of hours of donated legal services, followed by central Virginia. This is not surprising, since so many lawyers live and work in those areas.

We then compared the number of pro bono cases, attorney volunteers, and donated hours in each legal aid region to the number of attorneys overall in each region to gauge relative levels of participation. We found that the Valley region led the rest of the state in terms of the number of pro bono cases handled per lawyer, followed very closely by central Virginia. The other regions of the state trailed significantly.

The Valley region clearly dominated the other regions of the commonwealth in the percentage of attorneys participating in organized pro bono programs. More than 16 percent of Valley attorneys participated in organized pro bono programs in the previous year. Central Virginia followed (about 10 percent), with northern Virginia coming in next (a little over 8 percent).

Looking at the number of pro bono hours donated per capita, the Valley and central Virginia clearly led the state, each with about two hours of pro bono work donated per attorney per year. The northern region came in third, followed at a distance by southside, southwest, and eastern Virginia.

There are clearly significant variations in pro bono metrics among the various regions of Virginia, with some regions out-performing others. However, a common theme across the entire state is the gap between the aspiration goal set by Rule 6.1 and the current level of pro bono in any region of the state.

**Conclusion**

Because we do not have any systematic mechanism for Virginia lawyers to report the amount of pro bono legal services they have rendered annually outside of the legal aid-sponsored pro bono programs, the data we analyzed to reach our conclusions was incomplete. However, even if that data understates the true level of pro bono legal work in Virginia by half, the finding would be the same: While many Virginia attorneys are doing an admirable job in providing pro bono legal services as suggested by Rule 6.1, far too many Virginia attorneys are falling far short of the aspirational goals set by the rule. By closing this Pro Bono Gap—the difference between the aspirational goals of Rule 6.1 and the actual performance of the Virginia bar as a whole in undertaking pro bono work each year—we could make progress towards closing the Justice Gap while demonstrating our commitment to the Rule of Law and the principles of equality and justice under law.
Nominations Sought for
Virginia Legal Aid Award

Since 1992 at the Virginia State Bar’s Annual Meeting in Virginia Beach, an outstanding legal aid attorney has received the Virginia Legal Aid Award. Established by the bar’s Special Committee on Access to Legal Services, the award is presented at a luncheon for interested members of the legal aid and pro bono communities.


While there is no official form to complete, the Access Committee asks that nominations be in writing and include a description of how the nominee exhibits the following qualities in his or her work:

• Innovation and creativity in advocacy;
• Experience and excellence in service;
• Impact beyond his or her own program’s service area.

The nominee must be a member of the Virginia State Bar and an employee of a legal aid society licensed by the VSB to operate in Virginia.

The deadline for bar receipt of nominations and all supporting material is 5 p.m. Friday, March 28, 2014. Please submit all nominations to Access to Legal Services Committee, c/o Karl A. Doss, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800. Direct questions to (804) 775-0522 or e-mail doss@vsb.org.

Nominations Sought for
Oliver White Hill Law Student Pro Bono Award

The Oliver White Hill Law Student Pro Bono Award was inaugurated by the Virginia State Bar in February 2002. Established to honor extraordinary law student achievement in the areas of pro bono publico and under-compensated public service work in Virginia, the Hill Law Student Award is administered by the Bar’s Special Committee on Access to Legal Services.

Presentation of the award is reserved for extraordinary achievements of outstanding students. The Access Committee will annually review nominations to determine if there should be a designee. This year’s award will be presented at the VSB’s Annual Meeting in June.

There is no nomination form to complete. Please forward narratives and references, identifying the candidate and the candidate’s law school, and explain how the nominee meets award criteria. All entries, including endorsements and other supporting material, are due by 5 p.m., Friday, March 28, 2014. Electronic submissions may be e-mailed to the Virginia State Bar Special Committee on Access to Legal Services c/o Karl A. Doss at doss@vsb.org. Mailed submissions must be received by the deadline at the bar’s address, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800. Please inquire by telephone, (804) 775-0522, if you have not received acknowledgment of receipt of a nomination within five days.

The Access Committee invites submissions from law school deans, law school professors, and others, including non-bar members and organizations that are sufficiently familiar with candidates whose work meets or exceeds criteria listed on the VSB website at http://www.vsb.org/site/pro_bono.
Virginia attorneys practicing in the areas of family law and domestic relations have an abundance of state resources to help them stay current. Among these print publications are the Virginia Practice Series, Virginia CLE publications, the Virginia Domestic Relations Case Finder, handbooks and form books, annual surveys in the University of Richmond Law Review, and Virginia Lawyers Weekly. In addition, there are several online sources that are readily accessible that provide valuable information with frequent updates and analyses.

**Family Law Prof Blog**
http://lawprofessors.typepad.com/family_law/

This blog is edited and updated by academics, yet it can be helpful to practitioners. The blog editors often briefly discuss news articles, pending legislation, and editorials, keeping readers updated on new developments but allowing them to draw their own conclusions. The editors also alert readers to new academic articles on family law topics, linking to open-source databases where readers can access the articles for free without a journal subscription.

**Social Science Research Network (SSRN)**

SSRN is an online repository of scholarly research articles and related materials, covering a number of topics. Many legal scholars provide their articles and working papers in SSRN before publication in other journals, and because many articles are free to download, you do not need to have a subscription to the published journals. Users can search SSRN for specific topics, or they can access the Family & Children’s Law eJournal to find articles that have been categorized into the eJournal. SSRN users do not need to register to download documents, but a free registered account does allow a user to set alerts and monitor for updates.

**Virginia LIS Legislation**
http://leg1.state.va.us/lis.htm
http://leg1.state.va.us/cgi-bin/legp504.exe?000+sbj+020 (Domestic Relations topic)
http://leg1.state.va.us/h015.htm (Lobbyist-in-a-Box)

Every year, domestic relations lawyers, divorce attorneys, and family law practitioners anticipate new laws and amendments taking effect in Virginia as the result of General Assembly actions during the most recent session. The Virginia LIS website allows users to keep track of bills as well as enacted legislation. The site also features the “Lobbyist-in-a-Box” subscription option — you may track up to five bills in one profile without charge. Beyond that, paid subscriptions are available for automatic tracking.

**Virginia State Bar Family Law Section**
http://www.vsb.org/site/sections/family/scforms
http://www.vsb.org/site/sections/family/resources-and-links

The Family Law Section of the Virginia State Bar provides a website and many suggested links and forms that would assist practitioners in addition to the public. Some pamphlets and publications, such as *Spare the Child: A Guide to Parenting During Family Dissolution* and *Divorce in Virginia* are intended to better educate clients about family law.

**Family Law Reporter**
http://www.bna.com/family-law-reporter-p6014/ (subscription only)

Bloomberg BNA’s Family Law Reporter is a weekly service that delivers updates on court decisions, legislative and regulatory news, and other family law developments. The service also provides full-text of cases and other statutory and regulatory material. BNA Insights, articles written by practitioners, also examine recent decisions and their potential impact on your practice.

**Divorce Discourse**
http://divorcediscourse.com/

Honored in the 2013 ABA Journal Blawg 100, this site from Lee Rosen provides marketing and management advice for family law practitioners, including suggestions on networking, client management, finance, and technology. Rosen was formerly the law practice management editor of the ABA’s *Family Advocate*.

**ABA Journal Blawgs**
http://www.abajournal.com/blawgs/topic/family+law

The *ABA Journal* maintains a listing of blogs in the family law arena. Many of these blogs are infrequently updated; however, some of them have very precise topic coverage and may be useful on finding additional resources.
“America is at a historic turning point for automotive travel. Motor vehicles and drivers’ relationships with them are likely to change significantly in the next ten to twenty years, perhaps more than they have changed in the last one hundred years.”¹ These advancements in automotive technologies will impact courthouses, law offices, and legislatures throughout the country. This article offers a brief glimpse into the efforts to classify exactly what constitutes an “automobile vehicle” and then takes a brief sojourn through some legal issues likely to arise as a result of autonomous vehicles’ ascendance.

What is an Autonomous Vehicle?

Google’s self-driving car, the most publicized of any currently being developed, incorporates several systems. Google outfitted the vehicles with an $80,000 roof-mounted, cone shaped laser along with front and rear mounted radar. The sensory technology feeds the computer data while taking advantage of highly-detailed Google maps on board. The National Public Radio (NPR) technology correspondent who reported on this story remarked on the ease at which the vehicle responded to traffic conditions, like the vehicle being cut-off, with aplomb. In fact, the radar’s signals, which bounce off of surfaces, allowed the car to “see” a vehicle in front of an eighteen-wheeler that the human passengers could not.²

The first problem autonomous vehicles present to state and federal policy makers is one of classification. What is autonomy? When does a vehicle cross the line from a series of augmented control systems to truly driving itself? Several states that are in the process of enacting, or who have enacted, legislation paving the way for testing autonomous vehicles have all grappled with defining “autonomous vehicles.” Virtually all states have coalesced around the same definition of vehicular autonomy, which can be defined as: “a motor vehicle that uses artificial intelligence, sensors and global positioning system coordinates to drive itself without the active intervention of a human operator.”³ California's legislators chose to define “autonomous technology” as the technology that has the capability to drive a vehicle without the “active physical control or monitoring by a human operator.”⁴ California Senate Bill No. 1298 goes on to define an “autonomous vehicle” as any vehicle “equipped with autonomous technology that has been integrated into that vehicle.” Id. Lastly, the National Highway Traffic Safety Administration (NHTSA) in its Preliminary Statement of Policy Concerning Automated Vehicles eschews a single overarching definition of autonomous vehicles, but rather views these vehicles in terms of a “continuum” of automation. The NHTSA offers five levels of automation, with vehicle systems ranging from zero (absolutely no automation) to level four (complete automation).⁵ The NHTSA discourages states from adopting any specific road regulations applicable to autonomous vehicles in order to give the technology time to develop and mature.

The Likely Societal Benefits of Automated Vehicles

Developments in automotive technology will likely concentrate upon the ability to eliminate the undoubtedly most dangerous cog in the automotive system: the human operator. Roughly 90 percent of car accidents result from human error.⁶ In addition to the increased safety, there are other possible benefits we can all appreciate: vehicle control systems that accelerate and decelerate with the flow of traffic could reduce fuel consumption and traffic congestion is one. Another benefit is the development of communication between vehicles regarding road conditions and highway infrastructure, thus reducing congestion and traffic accidents.

There are also likely economic benefits that flow from the ascent of vehicle automation manufacturing. Governor Rick Snyder of Michigan signed a bill in December 2013 allowing the operation of autonomous vehicles on Michigan roads. Snyder declared: “by allowing the testing of automated, driverless cars today, we will stay at the forefront in automotive technological advances . . .”⁷ There is hope among many that the new production techniques and developments needed for autonomous vehicle construction would help bolster America’s manufacturing sector, leading to new high-paying career fields.

The Legal Ramifications of Autonomous Vehicle Development

The impact on the legal industry is speculative at this point, but change is coming. According to a 2005 report by the U.S. Justice Department, nine out of ten tort cases in federal district courts were personal injury cases (including motor vehicle claims, product liability, marine, and medical malpractice claims). The elimination of motor vehicle tort claims from federal and state dockets represents a boon for underfunded courts across the country, but also the gradual redundancy of many legal industries serving the needs of those involved in car accidents and traffic stops.⁸ Change would not only be limited to civil torts and insurance law; the ramifications for criminal law and privacy law are multi-
tudinous. Autonomous vehicles could mean the end of traffic court and “smart” or autonomous vehicles could someday soon simply refuse to start for any operator exhibiting signs of intoxication. Constitutional law concerns abound. What expectation of privacy is there in an autonomous vehicle? The now infamous National Security Agency metadata scandal makes it clear that law enforcement could most likely store the data shared between vehicles and satellites regarding the whereabouts of individual vehicles. There is little certainty as to how these developments will play out over the coming decades, but the arrival of these new vehicles will undoubtedly change the look of the legal landscape as much as they change the American roadway.

Endnotes:
1 The opening line from the National Highway Transportation Safety Administration (NHTSA) report Preliminary Statement of Policy Concerning Automated Vehicles.
2 The story can be viewed here: http://www.npr.org/blogs/alltechconsidered/2012/02/17/147006012/when-the-car-is-the-driver.
5 The NHTSA report Preliminary Statement of Policy Concerning Automated Vehicles offers an insightful attempt at classifying the varying degrees of automation, and by doing so, educates the reader as to the current state of technological development in the automotive industry.
7 In November, 2013, the University of Ann Arbor Michigan announced a plan to make Ann Arbor the first American city with a shared fleet of networked, driverless vehicles by 2021. For more on Michigan’s autonomous vehicle development see the December 29, 2013, AP article “Lawmakers: Law that allows self-driving vehicles tests on Michigan roads will boost auto industry.”
8 The reader can access the full report “Federal Tort Trials and Verdicts, 2002-2003” online at http://www.bjs.gov/content/pub/ascii/fttv03.txt.

Research continued from page 51

ABA Family Law Section
http://www.americanbar.org/groups/family_law/publications.html
http://www.americanbar.org/groups/family_law/resources/family_law_in_the_50_states.html (fifty-state survey)
The Family Law Section of the American Bar Association has numerous publications. While some are available only to section members, some Family Law Quarterly articles and eNewsletter updates are available online for free. The section also maintains a useful 50-state survey on laws, updated annually.

Twitter
For those who need instant updates, there are a few Twitter feeds that provide frequent family law updates. While the tweets are brief, most often include links to the original article or website post:
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https://twitter.com/Family_Law
https://twitter.com/search?q=%23FamilyLaw&src=typd

Suzanne B. Corriell is associate director for reference, research, and instructional services at the University of Richmond’s Muse Law Library. She is the immediate past president of the Virginia Association of Law Libraries.

Justin S. McLeod is an attorney at the Richmond law firm of Chaplin & Gonet, practicing civil litigation with a concentration in subrogation and insurance law.
Introduction to Virginia’s Sentencing Guidelines

Six-hour seminars approved for six CLE credits, February 25 through April 2 at several locations. Sponsored by the Virginia Criminal Sentencing Commission. Details at http://www.vcsc.virginia.gov/training.html. The introduction seminar is designed for the attorney or criminal justice professional who is new to Virginia’s sentencing guidelines. The seminar will begin with general background information and progress to detailed information on scoring each of the guidelines factors to include changes beginning July 1, 2013. Register by completing the form and submit to the commission. Space may be limited. Purchase manual separately. $125 fee waived for judges, commonwealth’s attorneys, P&P public defenders, and staff.

Fastcase is offering a number of webinars that may offer CLE credit. Check with Fastcase at http://www.fastcase.com/webinars/.

March 4
Introduction
2:00 PM
https://www1.gotomeeting.com/register/184471104

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2:00 PM
https://www1.gotomeeting.com/register/264811256

March 11
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2:00 PM
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March 19
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April 7
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April 21
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4:00 PM
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Virginia Lawyer publishes at no charge notices of continuing legal education programs sponsored by nonprofit bar associations and government agencies. The next issue will cover April 14 through July 19. Send information by March 12 to hickey@vsb.org. For other CLE opportunities, see Virginia CLE calendar and “Current Virginia Approved Courses” at http://www.vsb.org/site/members/mcle-courses/ or the websites of commercial providers.
Virginia CLE Calendar
Virginia CLE will sponsor the following continuing legal education courses. For details, see http://www.vacle.org/seminars.htm.

February 20
**Estate Planning Bootcamp**
Video — Abingdon, Warrenton
9 AM—4:05 PM

February 20
**Capacity Issues in Executing Wills and Trusts**
Telephone
NOON—1 PM

February 25
**Hot Topics for In-House Counsel 2014**
Video — Abingdon, Alexandria, Richmond, Roanoke
9 AM—1:15 PM

February 26
**Hot Topics for In-House Counsel 2014**
Video — Charlottesville, Tysons Corner
9 AM—1:15 PM

February 26
**Decision-Making Capacity: Medical and Legal Issues**
Telephone
NOON—2 PM

February 27
**Estate Planning Bootcamp**
Video — Hampton, Winchester
9 AM—4:05 PM

February 27
**Advanced Legal Writing: The Tips That You Need to Take Your Practice to the Next Level**
Webcast/Telephone
10:30 AM—NOON

February 27
**Electronic Evidence in Family Law: Perry Mason Goes Digital**
Live — Charlottesville/Webcast
NOON—1:30 PM

March 3
**The Legacy of Watergate — Ethics of Representing an Entity Under the Current Model Rules**
Video — Charlottesville, Dulles, Norfolk, Richmond, Roanoke
9 AM—12:15 PM

March 3
**Ethics Jamboree**
Video — Charlottesville, Dulles, Norfolk, Richmond, Roanoke
1 AM—4:15 PM

March 4
**Representation of Children as a Guardian ad Litem 2011**
Video — Alexandria, Charlottesville, Norfolk, Richmond, Roanoke
8:30 AM—5:15 PM (RICHMOND VIDEO BEGINS AT 9 AM)

March 4
**The Legacy of Watergate — Ethics of Representing an Entity Under the Current Model Rules**
Video — Tysons Corner
9 AM—12:15 PM

March 4
**Ethics Jamboree**
Video — Tysons Corner
1 AM—4:15 PM

March 5
**Representation of Children as a Guardian ad Litem 2011**
Video — Tysons Corner
8:30 AM—5:15 PM

March 5
**Tom Spahn on Litigation Ethics**
Live — Charlottesville/Webcast/Telephone
NOON—2 PM

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Call for Nominations

Award of Merit Competition
The VSB Conference of Local Bar Associations recognizes outstanding projects and programs of Virginia bar associations.

Bar Association of the Year Award
The VSB Conference of Local Bar Associations will present this award for the first time in June 2014. As a conference of local and specialty bar associations, it is fitting that the CLBA recognizes a member bar association that has best fulfilled the attributes member associations strive to attain. The CLBA encourages applications that demonstrate the impact bar associations have made on their communities and the legal profession.

Local Bar Leader of the Year
The VSB Conference of Local Bar Associations recognizes past and presently active leaders in their local bar associations who have continued to offer important service to the bench, bar and public. The award serves as a continuing monument to the dedication of local bar leaders. It also serves to emphasize the importance of close cooperation between the Virginia State Bar and local bar leaders.

VSB Conference of Local Bar Associations nominations are due April 25, 2014.
Awards will be presented at the CLBA Annual Meeting and Breakfast on June 13, 2014, at the Sheraton Virginia Beach Oceanfront Hotel.

Clarence M. Dunnaville Jr. Achievement Award
VSB Diversity Conference recognizes individuals who are examples of excellence that members of the bar can emulate to meet its mission and goals of fostering, encouraging, and facilitating diversity and inclusion in the bar, the judiciary, and the legal profession. Nominations are due April 25, 2014. The award will be presented at the VSB Annual Meeting in June. Contact Rupen R. Shah at rshah@co.augusta.va.us. More information is available on the Diversity Conference website.

R. Edwin Burnette, Jr. Young Lawyer of the Year Award
The VSB Young Lawyers Conference honors an outstanding young Virginia lawyer who has demonstrated dedicated service to the Young Lawyers Conference, the legal profession and the community. Nominations are due April 1, 2014. The award will be presented at the VSB Annual Meeting in June. Contact Maureen Stengel at (804) 775-0517 or stengel@vsb.org. More information at http://www.vsb.org/site/conferences/ylc.
March 6  
**Decision-Making Capacity: Medical and Legal Issues**  
Telephone  
NOON–2 PM

March 6  
**Electronic Evidence in Family Law: Perry Mason Goes Digital**  
Webcast  
2–3:30 PM

March 7  
**Social Media Law 2014: Keeping Up with the Evolving Law of Emerging Media**  
Live — Charlottesville/Webcast/Telephone  
NOON–2 PM

March 7–8  
**18th Annual Advanced Real Estate Seminar**  
Live — Williamsburg  
FRIYDAY: 1–5:25 PM; SATURDAY: 8 AM–12:20 PM

March 11  
**12th Annual Advanced Seminar for Guardians ad Litem for Children —2012**  
Video — Abingdon, Alexandria, Charlottesville, Norfolk, Richmond, Roanoke  
9 AM–4:30 PM

March 12  
**Representation of Children as a Guardian ad Litem 2011**  
Video — Abingdon  
8:30 AM–5:15 PM

March 12  
**12th Annual Advanced Seminar for Guardians ad Litem for Children —2012**  
Video — Tysons Corner  
9 AM–4:30 PM

March 13  
**Forty-Fourth Annual Criminal Law Seminar 2014**  
Video — Alexandria, Charlottesville, Danville, Hampton, Norfolk, Richmond, Roanoke  
8:15 AM–4 PM

March 13  
**Social Media Law 2014: Keeping Up with the Evolving Law of Emerging Media**  
Webcast/Telephone  
1–3 PM

March 19  
**Forty-Fourth Annual Criminal Law Seminar 2014**  
Video — Dulles, Lynchburg  
8:15 AM–4 PM

March 21  
**Hot Topics in Business Bankruptcy Law**  
Live — Fairfax  
9 AM–4:30 PM

March 25  
**Representation of Incapacitated Persons as a Guardian ad Litem —2012 Qualifying Course**  
Video — Abingdon, Alexandria, Norfolk, Richmond Roanoke  
9 AM–4:05 PM

March 25  
**Tom Spahn on Litigation Ethics**  
Webcast/Telephone  
NOON–2 PM

March 26  
**Representation of Incapacitated Persons as a Guardian ad Litem —2012 Qualifying Course**  
Video — Charlottesville, Tysons Corner  
9 AM–4:05 PM

March 27  
**Forty-Fourth Annual Criminal Law Seminar 2014**  
Video — Winchester  
8:15 AM–4 PM

April 2  
**Protect Yourself and Your Clients: Techniques for Preventing Privilege and Confidentiality Waivers**  
Live — Charlottesville/Webcast/Telephone  
NOON–2 PM

April 9  
**Ethics Update for Virginia Lawyers 2014**  
Live — Charlottesville/Webcast/Telephone  
NOON–2 PM

April 10  
**POAs, Advance Medical Directives, and the Ethics of It All**  
Live — Charlottesville/Webcast/Telephone  
NOON–3 PM

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**Got an Ethics Question?**

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Non-lawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue “E-mail Your Ethics Question” box on the Ethics Questions and Opinions web page at http://www.vsb.org/site/regulation/ethics/.
A Note from the Editors: We Want Your Ideas

The February 2014 issue of *Virginia Lawyer* is an example of our new approach of bringing you a wider range of interesting articles on a law-related issue. Like every issue, it includes a number of articles with a pre-arranged focus—in this case, family law—and several other features.

We know there are many other articles out there by and about the members of the Virginia State Bar that are just looking for a place to appear. We would like to open up our magazine to those articles.

Upcoming theme issues are planned on Lawyers Helping Lawyers, the Senior Lawyers Conference, trusts and estates, and construction law.

We want *Virginia Lawyer* to serve our members. We will continue to educate, inform, and even entertain our readers. We might publish debates among two or more of our members on an issue. We might print interesting profiles by and about our members. A lawyer might want to explore a controversial or evolving point of law. We might get an article from a lawyer just returned from doing pro bono work in another country. We might feature some of the services we offer at the VSB or some of the work done by our committees.

We want your ideas. If you have an idea for an interesting article on a law-related issue that is not tied too closely to the daily news—we are, after all, a periodical, not a daily—please let us know about it. Send a note to Editor Rodney A. Coggin at coggin@vsb.org or Assistant Editor Gordon Hickey at hickey@vsb.org.
Andrew C. Baird III has joined Christian & Barton LLP in Richmond as an associate in the firm’s health care and business law departments. Prior to joining the firm, he was a law clerk for the U.S. Senate Health, Education, Labor and Pensions Committee, and the Department of Health and Human Services, Office of Inspector General.

Mark G. Bong has become associated with Dyer Immigration Law Group PC. He will focus his practice on criminal and domestic relations issues which will complement the firm’s immigration practice.

Lester C. Brock III has been named a partner at Harman Claytor Corrigan & Wellman. He concentrates his practice in construction, premises and products liability litigation.

Hale Carlson Baumgartner PLC and Jean Galloway Ball PLC have merged to form Hale Ball Carlson Baumgartner Murphy PLC.

Joseph P. Covington has joined Smith Pachter McWhorter PLC as a partner to lead a practice group dedicated to white collar defense, investigations, and compliance counseling, augmenting the firm’s existing capabilities in these areas.

Lauren R. Darden and Travis W. Vance have been named as partners Wharton Aldhizer & Weaver PLC. Darden focuses her civil litigation practice in the areas of employment law, insurance defense, workers compensation defense, personal injury litigation and corporate and commercial litigation. Vance advises and represents clients in a variety of complex civil litigation disputes, including personal injury, corporate, construction, transportation, and employment law matters.

Daniel L. Fitch, of Wharton Aldhizer & Weaver PLC, has been selected as a fellow of the Virginia Law Foundation.

Robert “Harrison” Gibbs Jr. has been named a shareholder at Mellette PC. He focuses his practice on health care law, mental health law, and transactional law.

James C. Gould and Thomas R. Dwyer have joined Ogilvy Government Relations. They previously worked in a strategic alliance with Ogilvy through their boutique government relations firm, GDS Strategies.

Thomas G. Haskins has joined the Richmond office of Carrell Blanton Ferris & Associates PLC. He focuses his practice on estate and trust planning, business law, and related litigation.

Sheri A. Hiter and R. Lucas Hobbs, both partners in the Bristol law firm of Elliott, Lawson & Miner PC, have been honored with a 2013 Special Projects Award from the Local Government Attorneys of Virginia Inc. The attorneys were recognized for their work in a United States Supreme Court case, McBurney v. Young, in which the brief they co-authored assisted in obtaining a successful outcome from the court.

Linda M. Jackson, a shareholder who practices in the Northern Virginia and Washington DC offices of Littler, the world’s largest employment and labor law practice representing management, has been named a fellow of the Virginia Law Foundation.

Brian J. Lubkeman, formerly a partner at McGuireWoods LLP, has joined BrigliaHundley as a shareholder and Amy Sanborn Owen has joined the firm. Owen will also bring her real estate, employment law, and business and commercial litigation team, formerly of Cochran & Owen LLC, to the firm.

Laura E. May has joined the Richmond office of Eckert Seamans Cherin and Mellott LLC as an associate in the Litigation Division. She concentrates her practice in the area of general commercial litigation.

Kishka F. McClain, and Amy J. McMaster have been elected partners at Venable LLP. The five new partners from Venable’s Washington, DC; Los Angeles, CA; and Tysons Corner offices represent a broad cross section of the firm’s practice groups including regulatory, labor and employment, environmental, bankruptcy and creditors rights, and commercial litigation.

Julie A. Ortmeier was promoted to vice president, general counsel and secretary of CARFAX Inc. in August 2013. She has been with Carfax since July 2008, most recently serving as deputy general counsel.

Robert J. Proutt Jr. has joined Christian & Barton LLP in Richmond as a partner, where he will continue his legal practice focused on commercial real estate transactions and natural resource restoration, and mitigation banking.

Christopher L. Rogan, Peter H. Miller, and Eric V. Zimmerman have joined their law practices to form a new firm, RoganMillerZimmerman PLLC. The firm will be located on the third floor of 50 Catoctin Circle, NE, in Leesburg. Rogan focuses his practice on bankruptcy and insolvency matters, as well as employment, corporate and business transactions and litigation. Miller focuses his practice in areas of domestic relations and general corporate advice.
Zimmerman has a general practice involving real estate and estate planning matters and provides overall corporate and personal counsel.

Janie L. Rhoads has been named counsel to MercerTrigiani law firm. Her practice will continue to focus on the representation of developers and builders in the acquisition, financing, development, and sale of property as well as in the creation of planned unit developments, mixed-use projects, and industrial, commercial, residential, and conversion condominiums.

Sara J. Ross has been promoted to shareholder/principal in Chadwick, Washington, Moriarty, Elmore & Bunn PC.

Leslie Ann Shaner has joined the Richmond office of Carrell Blanton Ferris & Associates PLC. Her practice focuses on the division of retirement benefits, estate and trust planning and litigation, special needs trusts, elder law, and Medicaid planning.

Gerard M. Stegmaier, of Wilson Sonsini Goodrich & Rosati PC, moderated a panel at Harvard Business School on raising early stage capital. Stegmaier also recently judged the concept competition at the University of Virginia’s Darden School of Business.

John Tarley Jr. and Susan B. Tarley of Tarley Robinson PLC in Williamsburg participated in a panel discussion and student counseling for the Law Careers program of the College of Liberal Arts at Pennsylvania State University.

ThompsonMcMullan is pleased to announce that David R. Ruby and Neil S. Talegaonkar are now shareholders of the firm as of January 1, 2014. Rebecca C. Bowen, Zachary D. Cohen, Sherry A. Fox, Thomas D. Lane, and Andrea J. Yoak were elected as new directors of the firm.

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More information and complete media kits are available online at http://www.vsb.org/site/publications/valawyer, or you can contact Linda McElroy at (804) 775-0594 or mcelroy@vsb.org.

VSB Staff Directory

Frequently requested bar contact information is available online at www.vsb.org/site/about/bar-staff.

For confidential, free consultation

available to all Virginia attorneys on questions related to legal malpractice avoidance, claims repair, professional liability insurance issues, and law office management, call McLean lawyer, John J. Brandt, who acts under the auspices of the Virginia State Bar at

(703) 852-7867 (direct dial)
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- Unpublished: May, 1994 – latest opinions

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**Virginia Circuit Court**
- 31 Circuits, various dates

**Legal Ethics & Unauthorized Practice**
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**Workers’ Compensation Commission**
- Published: Vol. 64 (1985) – latest volume (2000)
- Unpublished: 1993 – latest opinions

**Virginia Constitution**
- Complete

**Virginia Code**
- Complete and current

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  Amendments back to 1994

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**U.S. Fourth Circuit Court of Appeals**
- 450 F.2d (1971) – latest opinions

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