

Planning for the Unexpected: Bar Gains Insight from Attorney with Disability

by Dawn Chase

“DIVERSITY” IS NOT LIMITED to categories such as race, ethnicity, gender, and sexual preference.

Diversity also includes persons with physical or mental conditions that can limit the ability to sustain day-to-day activities. It includes people with family situations that interfere with work schedules and workplace settings. Disability is a category that cuts through all others.



Richardson

So says attorney John Y. Richardson of Norfolk, who hopes that more people whose lives are complicated by disabilities can take their place alongside other lawyers in the Virginia State Bar. If the bar welcomes the perspectives of the widest swath of Virginians, people with disabilities should be among them, he says.

The voices of attorneys with disabilities are essential to planning for the population of aging lawyers, younger lawyers who manage care of elderly parents, and the many people who, because of technological advances, can participate in the workplace as they never could before.

Richardson, fifty-six, is well-known to the Virginia State Bar. He is a deputy city attorney for Norfolk. He is a member of the bar’s governing council and its Professionalism Committee, and he is on the faculty of the Harry L. Carrico Professionalism Course.

Last year, he was chair of the Conference of Local Bar Associations. In March, he organized a Diversity in the Professions program at Norview High School in Norfolk. (Story on page 28.) He also is a past president of the Norfolk & Portsmouth Bar Association.

And, along with a life committed to paid and volunteer work, good friends, and an insatiable interest in many subjects, Richardson wrestles daily with disability on two fronts.

When he was thirty and engaged in high-stakes litigation — an admiralty case representing suppliers of coal that had the propensity to spontaneously combust — his infant daughter, Marie, was diagnosed with a birth defect and seizure disorder that left her nonverbal, blind, unable to walk or feed herself, and totally dependent on others for care.

For Richardson, health insurance took on heightened importance. Much of his volunteer time became dedicated to the local community services board that provides assistance to

VSB Provides Resources, Makes Decisions Affecting People with Disabilities

The Virginia State Bar is well aware that lawyers, like everyone else, are stricken with unexpected events that can disrupt their careers.

The Virginia Board of Bar Examiners long has accommodated the needs of persons with visual impairments, learning disabilities, and other challenges when they take the bar exam.

That’s why the agency has a Personal Insurance for Members Committee to ensure that lawyers in firms of every size have access to medical, disability, and life insurance. It’s why the VSB Council endorses a broker — the Virginia State Bar Members’ Insurance Center — that makes available affordable products to provide coverage throughout our far-flung state. (www.vsbmic.com)

That’s why the VSB helps support Lawyers Helping Lawyers, which conducts confidential assessments and helps lawyers with addictions and depression get services and support that they need. (<http://www.valhl.org/>)

To prepare lawyers for the unexpected, volunteer Frank O. Brown Jr., who makes his career in estate planning, travels across Virginia to urge lawyers to plan for the unexpected demise of their practices and put in place safeguards to protect their clients and families. (<http://www.vsb.org/site/publications/planning-ahead>)

Through its regulatory function, the VSB occasionally has to put a disabled lawyer under an impairment suspension, when there’s a potential for client harm.

And it sometimes has to intervene when a practice has been abandoned through death or disability — a problem that likely will increase as the population ages, said Assistant Ethics Counsel Leslie A.T. Haley.

In the best circumstance, a lawyer will have made his or her own provisions, the practice will settle efficiently, and clients will be taken care of.

In a good situation, the VSB can find other lawyers who will step in voluntarily to make sure pending matters are handled on time, to distribute monies held in trust, and to return or dispose of client files appropriately.

In a worst case, the bar has to pay a receiver to close out a practice. Receiverships are a huge and unpredictable expense for the bar. (See Executive Director’s column, page 16)

Even though it’s not required under the Rules of Professional Conduct, the VSB would like to see every lawyer have a practice settlement plan in place, and an attorney “buddy” designated to administer it, Haley said.

VSB leaders make many decisions to assist attorneys with practice planning, and to protect the public in the aftermath of illness and death. They need in their midst lawyers who have insights into how those decisions can be most effectively applied and implemented fairly. Those lawyers might themselves have a disability, or they might have experience assisting others with disabilities.

That is why John Richardson (see story this page) wants disability to be a category in the quest for diversity in the bar.

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his daughter. His flexibility for long hours and job travel was greatly reduced—he had to stay close to home to help his wife, Karen, parent a child with never-ending medical, school, child care, and transportation issues—as well as the two healthy sons who followed.

When he was in his early forties, the other shock hit: Richardson was diagnosed with young-onset Parkinson’s disease, a progressive, degenerative neurological illness.

Richardson knew he had decisions to make, but the emotional reaction to the diagnosis carried a power to freeze him in place. “It made it easier to stay where you were,” he said. He likened the choices before him to the *Let’s Make a Deal* game show: trading “what’s in your hand” for “what’s behind the door. . . . The dangers are unknown.”

But Richardson, a graduate of Virginia Military Institute, stoically embarked on career and estate planning.

He took stock: His medium-sized law firm had good benefits, but, as a member of the firm’s management team, Richardson knew the cost of those benefits would rise for the entire firm as a result of his diagnosis. He knew that, to cover the increasing costs of premiums and medicines he would require, he would have to shift more and more of his paycheck into health costs.

His litigation practice involved intense deadlines, long hours, and high stress. His partners depended on his productivity and management skills. They didn’t have the resources to cover for him. They were game, however. The firm went out of the way to accommodate his restrictions and his needs.

“But, as anyone with a degenerative condition knows, the more you accommodate, the more reliant you are on the system that supports you,” Richardson said.

In consultation with his doctor, he took a courageous look at the possible trajectory of his illness and listed new priorities:

- He needed stimulating work that would continue to support his family, allow him to use his skills and keep him involved with people.
- He needed affordable health insurance that would cover his medications.
- He needed to get vested in a disability plan.
- He needed less stress, fewer clients, and regular hours.
- He needed other attorneys and support staff to back him up on days when his energy or mental acuity was low.
- He needed a work location close to home.

Full disclosure was his policy from the time he got his diagnosis. “I made it known to my firm,” he said. The firm offered him alternatives in compensation, work, and time requirements in order to permit him to stay, but “I chose not to

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Adapting to Disability: Advice for Lawyers

Barbara Ann Williams is a former VSB bar counsel, a member of the board of Lawyers Helping Lawyers, and deputy counsel and ethics counsel for McGuireWoods LLP. She is very familiar with delicate situations in which a lawyer’s decision to soldier on through illness worries colleagues, who fear that clients might be at risk.

In some cases, colleagues may misunderstand the illness or the lawyer’s control over the situation. In other cases, the lawyer might be incapable of assessing his or her own degree of impairment.

Williams recommended that a lawyer who has a chronic illness that might affect performance in his or her practice should have three things in place:

- She should be particularly careful about the area of practice she chooses. High-stress practices with many deadlines, such as litigation, are not well suited to certain illnesses.
- She should have a support network that includes trusted medical advisors, people in the workplace, and “family members who can help bridge the periods when they might be out of work” due to the illness.
- She should be honest with clients about her disease and how she manages it, and she should be honest with herself about her capabilities.

James E. Leffler, executive director of Lawyers Helping Lawyers, added that lawyers as a profession are particularly prone to denial when they are faced with a diagnosis of a debilitating illness, “because lawyers in general have been so successful and high-functioning for such a long period of time. It’s such a blow to their ego. It’s completely contradictory, and they hate that.”

For lawyers who anticipate they will face a time when they should not be practicing, Leffler offered this advice: Make a pact with others whom you trust, and agree that you will listen to them when they say it’s past time for you to be practicing.

“The earlier you can do that, the better,” Leffler said. “Denial is like a slippery slope. You don’t recognize you’re in denial when you’re in denial.”

Haley said that if attorneys or judges suspect a lawyer is impaired, they can approach it first by going to the lawyer himself, his law firm, or his family. Their goal, she said, should be to help the lawyer.

However, if a lawyer has evidence that significant public harm is possible or money is being mishandled, the professional rules require that the matter be reported.

Lawyers sometimes can satisfy the rules by enlisting Lawyers Helping Lawyers, which can help an impaired lawyer recognize the issues without the involvement of bar disciplinary authorities, Haley said.

But in some cases, a report to bar discipline is in order. The VSB tries to resolve many inquiries informally before it files disciplinary charges, but in extreme cases it can push for an impairment suspension of a law license, as a public protection measure.

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take it.” He left the firm and explored other options, working for a while at the U.S. Department of Defense.

The timing was fortuitous, Richardson said. Bernard Pishko, whom he had worked with in private practice, had just been appointed Norfolk city attorney and was assembling an experienced legal team. He approached Richardson, who accepted quickly.

Pishko, said he was delighted to get Richardson on board. “It was a real bargain for a city attorney to have such an accomplished lawyer,” he said. When Pishko thought about the long term, he decided the complications that might arise are no different from any employee’s. Health issues, pregnancies, and changes in career goals affect many workers’ performance and tenure.

With the city job, Richardson was able to check off all the priorities on his list. He assists Pishko with a variety of tasks essential to Norfolk. A civil engineer before he became a lawyer, Richardson draws on that and his litigation experience to help downtown development projects — including light rail — from preliminary design and property acquisition through construction and operation. He advises civil facilities and the departments of finance, public works, and development.

From his desk job in City Hall, Richardson is one of the rarely seen hands who guide Norfolk in its growth and service to its citizens.

Today, Parkinson’s is taking a toll. Richardson’s motor skills are declining. Speech is difficult sometimes. After a night of disrupted sleep — a common problem with the disease — he is fatigued in mind and body. He has reluctantly given up some outside activities, such as working at a soup kitchen, which he did weekly for about ten years. He also gave up coaching soccer — his passion for more than a decade.

Though Richardson is more unsteady in body, in Pishko’s view Richardson is still the man he hired. “His contributions are invaluable,” he said. “He’s talented. He is an especially wise person with incredible character, and an incredible lawyer. The Parkinson’s hasn’t taken anything away. It has not robbed him of his talents and wisdom.”

Just as with most employees, “There are some days when it’s harder for him to work — it’s slower for him. ... But the vast majority of the time, he’s firing on all cylinders.”

“A lot of people would say I’ve done as well as you can do,” Richardson said. “A person I know who was diagnosed the same time I was died two years later.”

He continues to contribute to the profession as a devoted volunteer. He makes friends wherever he goes. “I can get comfortable with most people,” he said.

And Richardson keeps dreaming. Case in point: his March 19, 2009, Diversity in the Professions program, which brought Virginia Chief Justice Leroy R. Hassell Sr. home to his alma mater and gave two hundred students a chance to see that

there’s a path into the law and other professions from Norview High School.

After the program, Richardson celebrated its success at a local restaurant with “J.C.” — Rear Adm. Julius S. Caesar, a former neighbor and one of the program’s speakers — and Derek Mungo, a co-worker in the city attorney’s office, and a Norview alumnus who helped Richardson with the event.

All agreed the Chief Justice seemed to have been touched by the experience, and all marveled at the dedication of the school principal and the promise of the students.

Talk turned to stories — memories of Richardson’s experiences coaching the neighborhood kids. Caesar’s description of a tour in Afghanistan. Mungo’s accounts of mission work in Chicago and, now, a Norfolk housing project.

It was a sweet time — a pause for camaraderie before Caesar hit the road for Washington, D.C., and Mungo and Richardson returned to the office.

There are a lot of uplifting times around Richardson, who savors people. His humor is penetrating, based on careful observation, but always gentle. There’s a centering effect being around him.

His older son just graduated from college (VMI, like his Dad). His younger son is working and attending a local college. Marie lives in a group home now, with mother Karen, who is a nurse, watching over her care.

Recently, people have expressed concern as they see more external signs of his illness. “People will tell you that I ignore realities.” On the other hand, his doctor has told him “I may be the best judge of what I can do.”

He knows his friends’ concern is well-intentioned, but he gets irritated at it — particularly when he feels people are making judgments about what he is capable of doing.

Since his diagnosis, he has pushed through every day, finding his own reality in the face of the stereotyping and doubts of others. He hopes he and others with that experience can bring to the table ideas for how the bar can support lawyers with disabilities, and how it can compassionately address problems that arise.

Richardson occasionally runs into one of his former adversaries or now-retired judges he once practiced before. “They always ask me, every time I see them, ‘Are you still working?’”

“I don’t think there’s any question I can do what I’m doing,” he said. “You stop working, you stop living.” ■