

# Virginia Lawyer

VOL. 68/NO. 1 • June 2019

VIRGINIA LAWYER REGISTER

The Official Publication of the Virginia State Bar



## Meet 2019–20 VSB President Marni E. Byrum

Construction Law and Public Contracts

A Letter from the Honorable Donald W. Lemons

Disciplinary Summaries and Rule Changes

Highlights of the 81st Annual Meeting

**\$112.5 million**  
The largest research-related False Claims Act  
settlement in U.S. history.



**Meet the team.**

Kathy Wright, Michael Finney, Andrew Bowman, Matthew Broughton,  
Monica Monday, Scott Sexton, Greg Haley.

**When the litigation is complex.**



**GENTRY LOCKE**  
Attorneys

Roanoke | Lynchburg | Richmond | [gentrylocke.com](http://gentrylocke.com)

## Features



### 2019–20 VSB PRESIDENT

- 10 **Marni E. Byrum: Building Homes, Breaking Ceilings**  
by Jackie Kruszewski

## CONSTRUCTION LAW AND PUBLIC CONTRACTS

- 21 **Construction Law and Public Contracts Section**  
by J. Barrett Lucy, section chair
- 22 **Delivering Infrastructure Better, Faster and Cheaper: Lessons in Shifting Risk and Reducing Life-Cycle Cost for the Public Owner**  
by Charles V. McPhillips
- 26 **Teaming Agreements in Virginia: Are They Enforceable?**  
by Jack Rephan
- 29 **Protecting Payments on Construction Projects from Bankruptcy Estate Claw-Backs**  
by Karen Stemland



## Access to Legal Services

- 32 Chief Justice Lemons Reminds Lawyers to Report Pro Bono
- 32 Lawyers Engage with Medical-Legal Partnership

## VIRGINIA LAWYER REGISTER

- |   |   |
|---|---|
| 52 Disciplinary Summaries   | 54 Chief Justice Lemons Reminds Lawyers to Report Pro Bono            |
| 54 Disciplinary Proceedings   | 54 Highlights of the June 13 Virginia State Bar Council Meeting       |
| 54 Legal Ethics Committee Seeks Comment on Safekeeping Property Rule  | 55 Dues Statements Mailed   |
| 54 Supreme Court of Virginia Advisory Committee Seeks Comments        | 55 Bar Welcomes New Council Members                                   |
| 54 Supreme Court of Virginia Amends Access to Judicial Records Rule   | 55 President's Committee Releases Report on Lawyer Well-Being         |
| 54 Supreme Court of Virginia Amends Rules                             | 55 Scam Involving Severance Agreement Targeting Lawyers               |
| 54 Supreme Court of Virginia Amends UPL Rules                         | 55 Pre-Law Institute Wins National Award                              |
| 54 Supreme Court of Virginia Amends Mcle Rule                         | 55 Nominations Sought for Two Pro Bono Awards                         |
| 54 Supreme Court of Virginia Approves \$30 Attorney Wellness Fund Fee | 55 Volunteers Sought for Board and Committee Vacancies                |
| 54 Supreme Court of Virginia Amends Rule Governing Court Costs        | 56 VSB Clients' Protection Fund Board Pays \$39,322.02 to Petitioners |

## Noteworthy

### VSB NEWS

- 34 Highlights of the June 13, 2019, Virginia State Bar Council Meeting
- 35 Brian L. Buniva Is President-Elect for 2020–21
- 35 Dues Statements Mailed: What's Different This Year?
- 36 Bar Welcomes New Council Members and Conference Leadership
- 37 In Memoriam
- 37 Past Presidents' Dinner
- 38 Indigent Criminal Defense Seminar
- 38 President's Committee Releases Report on Lawyer Well-Being
- 39 2019 Family Law Seminar
- 39 VSB's Roache to Lead Association of Government Accountants
- 40 2019 Techshow Recap
- 41 VSB Honors Attorneys
- 43 Bar Associations Receive Five 2019 Awards of Merit
- 44 Admission & Orientation Ceremony
- 44 Health Law Section Announces Writing Competition Winners

## Departments

- 6 Forum
- 50 CLE Calendar
- 57 Professional Notices
- 59 Classified Ads
- 59 Advertiser's Index
- 60 81st Annual Meeting

## Columns

- 14 President's Message
- 16 Executive Director's Message
- 18 Ethics Counsel's Message
- 20 Legal Aid
- 45 Law Libraries
- 46 Future of Law Practice
- 47 Technology and the Practice of Law
- 48 Risk Management

# Virginia Lawyer

The Official Publication of the Virginia State Bar

[www.vsb.org](http://www.vsb.org)

**Editor:**

Deirdre Norman  
(dnorman@vsb.org)

**Creative Director:**

Caryn B. Persinger  
(persinger@vsb.org)

**Assistant Editor:**

Jackie Kruszewski  
(jkruszewski@vsb.org)

**Advertising: LLM Publications**

Ben Oerther  
(beno@llmpubs.com)

VIRGINIA LAWYER (USPS 660-120, ISSN 0899-9473) is published six times a year by the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026; Telephone: (804) 775-0500. Subscription Rates: \$18.00 per year for non-members. This material is presented with the understanding that the publisher and the authors do not render any legal, accounting, or other professional service. It is intended for use by attorneys licensed to practice law in Virginia. Because of the rapidly changing nature of the law, information contained in this publication may become outdated. As a result, an attorney using this material must always research original sources of authority and update information to ensure accuracy when dealing with a specific client's legal matters. In no event will the authors, the reviewers, or the publisher be liable for any direct, indirect, or consequential damages resulting from the use of this material. The views expressed herein are not necessarily those of the Virginia State Bar. The inclusion of an advertisement herein does not include an endorsement by the Virginia State Bar of the goods or services of the advertiser, unless explicitly stated otherwise. Periodical postage paid at Richmond, Virginia, and other offices.

**POSTMASTER:**

Send address changes to

VIRGINIA LAWYER

MEMBERSHIP DEPARTMENT

1111 E MAIN ST STE 700

RICHMOND VA 23219-0026

## Virginia State Bar Staff Directory

Frequently requested bar contact information is available online at [www.vsb.org/site/about/bar-staff](http://www.vsb.org/site/about/bar-staff).

## Virginia State Bar

### 2019–20 OFFICERS

Marni E. Byrum, President  
Brian L. Buniva, President-elect  
Leonard C. Heath Jr., Immediate Past President  
Karen A. Gould, Executive Director and Chief Operating Officer

### EXECUTIVE COMMITTEE

Marni E. Byrum, President  
Brian L. Buniva, President-elect  
Leonard C. Heath Jr., Immediate Past President  
Maryse C. Allen, Prince William  
Ann B. Brogan, Norfolk  
Eugene M. Elliott, Roanoke  
Eva N. Juncker, Falls Church  
Jay B. Myerson, Reston  
William T. Wilson, Covington

### CONFERENCE CHAIRS AND PRESIDENT

Conference of Local and Specialty Bar Associations – Lewis A. Martin III  
Diversity Conference – Chidi I. James  
Senior Lawyers Conference – John D. Eure  
Young Lawyers Conference – Farnaz F. Thompson

### COUNCIL

#### 1st Circuit

Damian J. (D.J.) Hansen, Chesapeake

#### 2nd Circuit

Ryan G. Ferguson, Virginia Beach  
Steven G. Owen, Virginia Beach  
Jeffrey B. Sodoma, Virginia Beach

#### 3rd Circuit

Meredith B. Travers, Portsmouth

#### 4th Circuit

Ann B. Brogan, Norfolk  
Gary A. Bryant, Norfolk  
Neil S. Lowenstein, Norfolk

#### 5th Circuit

Thomas G. Shaia, Suffolk

#### 6th Circuit

J. Daniel Vinson, Emporia

#### 7th Circuit

Benjamin M. Mason, Newport News

#### 8th Circuit

Marqueta N. Tyson, Hampton

#### 9th Circuit

W. Hunter Old, Williamsburg

#### 10th Circuit

Charles H. Crowder III, South Hill

#### 11th Circuit

Dale W. Pittman, Petersburg

#### 12th Circuit

P. George Eliades II, Chester

#### 13th Circuit

Dabney J. Carr IV, Richmond  
Leah A. Darron, Richmond  
Eric M. Page, Richmond  
Cullen D. Seltzer, Richmond  
Sushella Varky, Richmond  
J. Tracy Walker IV, Richmond  
Henry I. Willett III, Richmond

#### 14th Circuit

Craig B. Davis, Richmond  
Stephanie E. Grana, Henrico  
Marissa D. Mitchell, Henrico

#### 15th Circuit

Jennifer L. Parrish, Fredericksburg

#### 16th Circuit

R. Lee Livingston, Charlottesville  
Palma E. Pustilnik, Charlottesville

#### 17th Circuit

Adam D. Elfenbein, Arlington  
Jennifer S. Golden, Arlington  
Gregory T. Hunter, Arlington  
Joshua D. Katcher, Arlington  
William H. Miller, Arlington

#### 18th Circuit

Barbara S. Anderson, Alexandria  
Stacey Rose Harris, Alexandria  
John K. Zwerling, Alexandria

#### 19th Circuit

Brian C. Drummond, Fairfax  
David J. Gogal, Fairfax  
Richard A. Gray, Fairfax  
Chidi I. James, Fairfax  
Douglas R. Kay, Tysons Corner  
Daniel B. Krisky, Fairfax  
David L. Marks, Fairfax  
Gary H. Moliken, Fairfax  
Jay B. Myerson, Reston  
Nathan J. Olson, Fairfax  
Dennis J. Quinn, Tysons  
Wayne G. Travell, Tysons  
Edward L. Weiner, Fairfax  
Michael M. York, Reston

#### 20th Circuit

R. Penn Bain, Leesburg  
Susan F. Pierce, Warrenton

#### 21st Circuit

G. Andy Hall, Martinsville

#### 22nd Circuit

Eric H. Ferguson, Rocky Mount

#### 23rd Circuit

Eugene M. Elliott Jr., Roanoke  
K. Brett Marston, Roanoke

#### 24th Circuit

Eugene N. Butler, Lynchburg

#### 25th Circuit

William T. Wilson, Covington

#### 26th Circuit

Nancy M. Reed, Luray

#### 27th Circuit

R. Cord Hall, Christiansburg

#### 28th Circuit

William M. Moffet, Abingdon

#### 29th Circuit

D. Greg Baker, Clintwood

#### 30th Circuit

Greg D. Edwards, Jonesville

#### 31st Circuit

Maryse C. Allen, Prince William

### MEMBERS AT LARGE

Denise W. Bland, Eastville  
Afshin Farashahi, Virginia Beach  
Atiqua Hashem, Richmond  
Eva N. Juncker, Falls Church  
B. Alan McGraw, Tazewell  
Lenard T. Myers Jr., Norfolk  
Lonnie D. Nunley III, Richmond  
Patricia E. Smith, Abingdon  
A. Benjamin Spencer, Charlottesville

# THE TOP 5 CYBER SECURITY TIPS



1

## Keep hardware and software as current as possible.

You don't need to be first in line for the latest and greatest, but don't be the last in line either. Once software becomes unsupported, it is unethical to use it because it is no longer receiving security updates and is vulnerable to hackers. Apply patches as soon as they are available to reduce vulnerability to an attack or compromise.

2

## Backup all data.

Don't forget to periodically conduct a test restore of the backup and make sure your backups are impervious to ransomware – either backed up in the cloud or agent-based. Talk to your IT provider to learn more. Backups should be encrypted with a user-defined encryption key, whether on-site, off-site or stored in the cloud. If using a cloud vendor, the vendor should not have access to the decryption key.

3

## Develop a password policy.

The policy should mandate the use of strong passwords (14 characters or more with upper and lower case, numbers, and special characters) and require that passwords be changed on a regular basis. The use of a password manager can make this task quite easy. Consider enabling two-factor-authentication (2FA) when available.

4

## Mandate that all work-related internet sessions be encrypted.

Prohibit the use of public computers and unsecured open public Wi-Fi networks. Access to the office network must always occur through the use of a VPN, MiFi, smartphone hotspot or some other type of encrypted connection.

5

## Provide mandatory social engineering awareness training to everyone at the firm at least once a year.

Technology alone cannot protect your data. The greatest vulnerability comes from the folks who use your network. Cyber attacks are successful because someone did something stupid like clicking on a link, opening an e-mail attachment, or verifying an ID and password when they shouldn't have.



For a malpractice insurance quote, please visit:

[www.alpsnet.com/get-a-quote](http://www.alpsnet.com/get-a-quote)

**Correction: Still alive**

I was surprised to read of my untimely death on page 49 of the April issue. After checking with our doctor, I am pleased to report that both my wife, Elsie Munsell (former US Attorney, Eastern District, Virginia) and I are alive and kicking in Illinois.

George P. (Skip) Williams  
Carol Stream, IL

Note from the editor: The staff at *Virginia Lawyer* regrets the error.

**Letters**

Send your letter to the editor to:  
norman@vsb.org or  
Virginia State Bar,  
*Virginia Lawyer Magazine*,  
1111 E Main St., Suite 700,  
Richmond VA 23219-0026

Letters published in *Virginia Lawyer* may be edited for length and clarity and are subject to guidelines available at [www.vsb.org/site/publications/valawyer/](http://www.vsb.org/site/publications/valawyer/).

**TOWNCENTER PARTNERS**  
**LITIGATION FINANCE**  
 roni@yourtcp.com  
 ALL CASE TYPES  
[www.yourtcp.com](http://www.yourtcp.com)  
**STRICTLY CONFIDENTIAL**  
 PH. 703-570-5264

THE LAW OFFICES of  
**HOWELL & YOUNG**  
*Integritas in omnibus*  
Wise Counsel and Tireless Advocacy

- Protecting Family Businesses
- Enforcing Judgments
- Litigating Construction & Real Estate Disputes

618 Village Dr, Ste J, Virginia Beach, VA 23454  
 757-227-5030 • [howellandyoung.com](http://howellandyoung.com)

**Jest Is For All** by Arnie Glick



GLICK

*“Wonderful news -- the negligence case against you got thrown out. The plaintiff’s lawyer couldn’t establish what the standard of care is of a reasonably prudent chicken.”*

**FREE HOUR**  
 of Legal Research  
 For New Clients Only

Use only the free hour, or apply the free hour to a larger project.

**Briefs • Trial Memos • Motions  
 Legal Research**

.....  
**35 Full-Time Attorneys**  
**50,500 Attorneys Served**  
**173,500 Cases**  
 .....

**4,907 Virginia Attorneys have used**

**National Legal Research Group**  
 CHARLOTTESVILLE, VA

Call for a free consultation  
 1-877-689-6432

**Ad@nlrg.com**  
**www.nlrg.com**



# LAWPAY IS FIVE STAR!



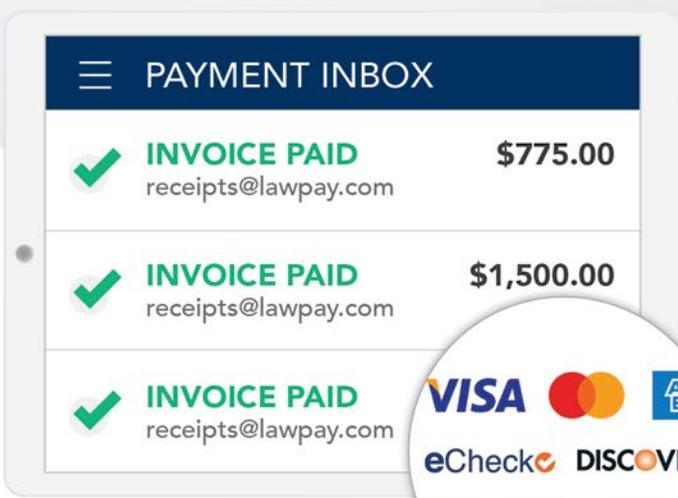
In our firm, it's actually fun to do our billings and get paid. I send our bills out first thing in the morning and more than half are paid by lunchtime.

**LawPay makes my day!**

– Cheryl Ischy, Legal Administrator  
Austin, Texas



Trusted by more than **35,000** firms and verified '5-Star' rating on Trustpilot



## THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

Now accept check payments online at **0% and only \$2 per transaction!**

**866-965-2559** or visit [lawpay.com](http://lawpay.com)

# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION



OVER  
**\$1.2 MILLION DOLLARS**  
PROVIDED IN ATTORNEY REFERRAL FEES IN 2018\*

\*All fee sharing in compliance with VA Ethics Rule 1.5(e)

**Your Referral, Our Fight!**

Helping those injured in car, truck, or motorcycle accidents as well as other serious injury and wrongful death cases.

---

CALL US TO DISCUSS OUR GENEROUS FEE SHARING PROGRAM IN WHICH WE CARRY ALL LITIGATION COSTS.

**757-455-0077**  
**COOPERHURLEY.COM**

 **COOPER HURLEY INJURY LAWYERS**

**Appeals**



**only**

When it comes time to appeal or to resist an appeal, call Steve Emmert at (757) 965-5021.

**L. STEVEN EMMERT**  
**www.virginia-appeals.com**  
emmert@virginia-appeals.com  
SYKES, BOURDON, AHERN & LEVY  
VIRGINIA BEACH

*Legal*  
**ELITE**  
Super Lawyers

VIRGINIA'S  
**Leaders**  
IN THE **Law**  
Rated AV by  
Martindale Hubbell

**THE BEST**  
**LAWYERS**  
IN  
**AMERICA**

We are employee benefits specialists dedicated to the needs of Virginia law firms.

*Simplifying the Employee Benefits Experience*

## FOUR WAYS WE HELP YOU WIN:

- 1 Group Health Insurance
- 2 Individual Health Insurance
- 3 Term Life Insurance
- 4 Disability Insurance

## VIRGINIA STATE BAR MEMBERS' INSURANCE CENTER

an affiliate of Digital Benefit Advisors endorsed by the Virginia State Bar

Robert Spicknall, CEBS, President | P: 877.214.5239  
E: [bspicknall@vsbmic.com](mailto:bspicknall@vsbmic.com) | [www.vsbmic.com](http://www.vsbmic.com)

## Marni E. Byrum: Building Homes, Breaking Ceilings

by Jackie Kruszewski

MARNI BYRUM and Martha McQuade showed up to help build a Habitat for Humanity house in Costa Rica in 2003 and were met with more than a little skepticism. The three men at the construction site were unsure what to make of two small women lawyers from America, especially since they spoke only English and the men spoke only Spanish.

“The first day, they’re sort of looking at us like we’re an oddity,” Byrum says. “Like, what are you doing here? Are you just going to be in my way?”

There were no cranes or bulldozers. Foundations lines were marked by string to be dug by hand. Byrum and McQuade worked at the rock-hard ground and, after that, followed the builders around, watching what they were doing, moving in to help when they could.

“By the end of the second day, they were engaging us,” says Byrum. “And by the third day, we had very specific tasks to do.”

Sifting rocks out of sand to make concrete, tying rebar, placing concrete blocks for walls — Byrum and McQuade kept showing up every day, and that made all the difference. “At the end of our ‘vacation,’ they seemed genuinely sorry to see us go, and we hated to leave!”

The sense of accomplishment you get building a house is unique, Byrum notes, but not unlike practicing law. “No matter how small the job is you’re working on, you’re making a difference in someone’s life,” she says. “You do both to make a difference.” Byrum’s dedication to the law, service, and her professional organizations began a new chapter in June when she was sworn in as the Virginia State Bar’s 81st president for the 2019–20 year.



Byrum says she can’t pinpoint when she decided to be a lawyer — perhaps in high school debate class. She didn’t know any lawyers growing up. But she knew that she wanted to join their ranks.

Born in Keysville, Virginia, a small town south of Farmville boasting two traffic lights and surrounded by tobacco fields, she found her first mentor in elementary school. An administrator, Betty Hunter-Clapp, was the first woman Byrum knew in a leadership position. “She was the first role model I had for someone who could, as a woman, show me that there really shouldn’t be any limitations,” Byrum says.

As for many people, Byrum’s first interaction with a lawyer was during one of the worst periods of her life. On July 31, 1973, just after Byrum graduated from Richmond’s Douglas Freeman High School, Delta flight 723 tried landing in low clouds and heavy fog at Boston’s Logan Airport. Its landing gear struck a seawall, and the plane crashed. All 89 people on board died, Byrum’s father among them.

The family engaged a lawyer and was part of a class action suit. That

first, heartbreaking contact with the law left a lasting impression but did nothing to disabuse her of her interest in becoming a lawyer. Byrum later took an aviation accident law class and studied the case stemming from the crash. She remembers long conversations with her professor, grappling with the objective legal implications of the deeply personal tragedy.

Political science was considered the major for aspiring lawyers at the time, and Byrum — as a teenager — met with the head of the political science department at Virginia Tech. He won her over to their program versus the University of Virginia’s or William & Mary’s. “[The Tech political science department] was really growing and invigorating,” Byrum says. “And Dorothy James, who was about to become chair, was really on the cutting edge of a lot of things happening in the political science field.”

That James would be the only woman political science department chair in Virginia was also appealing. Byrum graduated from Tech in three years in 1976. Though she shortened her stay for financial reasons, “I do regret spending just three years in Blacksburg because it was, and is, a wonderful place.” She’s still actively involved at the university, visiting several times a year.

When it was time to choose law school, the beaches of Malibu beckoned. Well, sort of. The Pepperdine School of Law was actually housed in a warehouse in Anaheim at the time, Byrum is quick to note. But a professor at Tech recommended she consider the school, as it offered unique courses and had a small student-faculty ratio.

In her first year, she was exposed to arbitration and alternative dispute resolution and found a passion. The

school was just beginning to develop a specialty in dispute resolution. Though she considered transferring to a school in Washington, D.C. to be closer to family, California offered opportunities that the east coast did not. “In southern California, people don’t want to work for the Federal Trade Commission,” Byrum says. “They want to work for Universal Studios. So, I had a lot more choice for really good internship opportunities.”

Of course, arbitration wasn’t something she could just graduate from law school into; labor and employment law offered a pathway. Her first job was with the Federal Labor Relations Authority—the authority’s first year as a full-fledged agency, dealing with labor and employment issues involving government employees. Byrum worked in its arbitration appeals division, among others, before she left to go into private practice, where her case work shifted mostly away from labor and into employment. It’s stayed there for 35 years.

Byrum describes her practice as employment negotiations and litigation—discrimination, wrongful termination, security clearance work, disability with clients from all sectors and a few small businesses. “It’s been pretty broad-based,” she says. “I have a lot of variety, even though I practice in one field.”

One memorable case that reminds Byrum of her calling to the law happened in the mid-1990s, when she represented a developmentally challenged young man who had been sexually harassed and assaulted by a group of his male co-workers. She tried the case in the Fourth Circuit under Title VII of the Civil Rights Act. After a number of disparate circuit interpretations, when the U.S. Supreme Court, in *Oncale v. Sundowner*, eventually addressed the issue of whether Title VII applied to same-sex sexual harassment, Byrum’s case was among those cited and her position upheld.



Byrum refers out worker’s compensation cases, but her work in Virginia employment law often dovetails with the legal boundaries of it. In the 1980s, Byrum worked with her state delegate to amend the worker’s comp statute after the Supreme Court of Virginia issued an opinion that held a woman’s sexual harassment was a risk of employment—so therefore fell under the statute and left it as her only remedy. Byrum, working with the support of the Virginia Women Attorneys Association (VWAA), helped to amend the statute to exclude sexual harassment.

She shares worker’s comp lawyers’ frustration with what she sees as challenges in Virginia employment law. “The laws are not particularly favorable to employees in Virginia,” she says. “Employers push the envelope, and frequently I’m sitting across the table from someone saying, ‘All I can do is try to negotiate for you, because the law doesn’t require the employer to do anything.’”

For Byrum, the charge is to move the ball a little bit, tweak the law, and offer more options, more coverage for clients. “I still feel like this is what I went to law school for,” she says.

In law school, Byrum was active in the American Bar Association Law Student Division, and she continued her

1. Byrum at a Habitat for Humanity Women Build in Pennsylvania.

2. Byrum at a Habitat build in Costa Rica.

3. A young Byrum helps the Tuckahoe Lions Club get out the vote.

4. Byrum, then president-elect of the Arlington County Bar Association, in 1995 with Roberta Cooper Ramo (left), the first woman president of the American Bar Association. ABA President George Boshwell Jr. is on the right.



1. A *Virginia Lawyers Weekly* cover from 1987 when Byrum was the new president-elect of the Virginia Women Attorneys Association.

2. A 1955-themed birthday party with Byrum's spouse, Martha McQuade.

3. Byrum and McQuade hiking a volcano in Costa Rica.

4. (next page) Byrum "wrestling" an alligator on a trip to New Orleans for the Southern Conference of Bar Presidents Meeting in Oct. 2018.

involvement with the ABA while she worked at the federal agency. When she left the government, looking for a way to have more immediate impact, she landed with the VWAA, where she served in leadership roles for many years.

That led to her entrée into the Virginia State Bar, when the president at the time came to the association to recruit. Byrum's first committee was a special committee on prepaid

legal services — a slippery slope to the illimitable joys of bar service. Kathleen O'Brien, the first female president of the bar in 1994–95, then appointed her to the Standing Committee on Legal Ethics.

"That's probably the area and the committee that I consider to be my home in the Bar," Byrum says. "It's a wonderful place. It is, I think, the hardest working committee in the Bar. And I say that because when you serve on that committee, you must learn the rules, you must study the rules, you see how they have evolved over time. You must come to the meetings prepared to really engage in a conversation about the questions that are being asked."

Byrum chaired Legal Ethics three times. From there, she helped re-write the foreign practice rules and develop corporate counsel rules as chair of the Multi-jurisdictional Practice Task Force. "That was a very engaging committee, because it brought to the table discussion on how law practice is done in other parts of the world, versus how it's done in Virginia, and what that would mean when those practitioners came to Virginia to continue their broader practice."

And the list of committees and boards goes on. Byrum says she's always liked being involved in organizations, and she loves the Bar.

"Maybe I'm just a glutton for punishment," she jokes. "But really, I chose a profession that is rule-driven; and

the Virginia State Bar has offered me the opportunity to engage with lawyers all over the state who care about the practice of law as a profession, and who want to maintain the integrity of that profession at its highest level."

Engaging more people in the VSB — its work, its opportunities, and its future — is Byrum's primary goal for her presidential year. Inclusion, diversity, and engagement are her themes. "My goal is to try to involve more people in the state Bar. We all have to belong, and we all need to be in this together," she says. "I'm interested in having as many as possible people, opinions and viewpoints included. I want everyone to know they have a voice in what is going on."

She doesn't mean diversity only in the most immediate connotations. Byrum recalls asking a young lawyer in Abingdon if he was active in the state bar and getting looked at as if she had two heads. "He said, 'You know how far Richmond is?'" Distance is a hurdle to involvement in certain parts of the state. "And I recognize that, so I'm going to be looking at other ways that we can facilitate involvement other than getting in a car to drive to Richmond." Geographic diversity is among the keys to having the face of the Bar reflect what society looks like, Byrum says. And that is her goal.

As the first openly LGBTQ president of the bar, Byrum is proud to embody that goal, too. "It's important to me," she says of finally having that representation in the presidency. "And it's important to a lot of people." Her voice chokes as she remembers talking to lawyers who felt excluded or not represented in the Bar. "I want to change that. I don't want anyone to feel like they can't, or shouldn't, both count and participate. It doesn't matter who you are. This is your Bar and you need to be a part of it."

Byrum met McQuade through their law fraternity, and, after 18 years together, they were married in 2004 outside Toronto. "At that time, there was no state

in the United States that unequivocally allowed us to marry, but Canada did. So, we decided to go there and, happily, a good number of our closest friends and family came too.”

In 2006, Byrum and McQuade, a family lawyer, went into practice together, with offices walkable from their home in Alexandria — not far from Old Town, the train station, and the iconic Masonic Temple. Most of the time, their cases don’t overlap, but they have had clients who needed both a family and employment lawyer. “We work well together and just enjoy each other’s company,” says Byrum, when faced with incredulity at the idea of working with a spouse. “It works for us!”

McQuade has been active in both District of Columbia and Virginia State Bar boards and committees, as well as human rights groups. Habitat for Humanity has taken them to construction sites across the United States, in addition to the Costa Rica trip, which Byrum calls a remarkable experience. “We had some wonderful conversations with our host family, sitting there with our dictionaries in the evenings.” They’ve been back to Costa Rica several times.

As for more relaxing pastimes, Byrum counts golf among her favorite activities. Playing Pebble Beach in California was a highlight. And Byrum calls McQuade a “phenomenal gardener,” so they enjoy working on and spending time in their yard. They’re also big fans of the D.C. area theater scene.

“The quality of theater in this area is just remarkable,” Byrum says. She served for several years on the board of Horizons Theater — at the time, the oldest continuously producing women’s theater in the country. Through Horizons, she was a Helen Hayes nominator, helping choose nominees and winners for the prestigious theater awards. Serving on that board was a unique experience — a completely different world, Byrum says. Though, “It doesn’t really matter what kind of

organization you get involved in or what kind of board you serve on: If you’re a lawyer, they always want to tap into some piece of that legal skill that you have.”

Service — that is a theme of Byrum’s life and career. And a commitment to the organizations that shape the legal profession in Virginia. She thinks often of her work with the Legal Ethics Committee and how the rules of the Bar can inform how lawyers are perceived. “The rules are a floor, not a ceiling,” she says. “We as attorneys are held to a high standard for a reason.”

And Byrum seeks to represent the best of that standard as president.

**Quotes that inspire Marni Byrum:**

*Be like the bird, who  
Pausing in  
her flight  
Awhile on boughs  
too slight,  
Feels them give way  
Beneath her,  
And yet sings,  
Knowing she hath wings.*

~Victor Hugo

*Love life, engage in it,  
Give it all you’ve got.  
Love it with a passion,  
Because life truly does give back,  
Many times over,  
What you put into it.*

~Maya Angelou



**Marni E. Byrum**

McQuade Byrum PLLC

**Virginia State Bar:**

- Executive Committee
- Bar Council
- Legal Ethics Committee
- Budget and Finance Committee
- Future of Law Practice Committee
- Better Annual Meeting Committee
- Bench-Bar Relations Committee
- Diversity Conference
- Judicial Candidate Evaluation Committee
- Task Force on Membership Rules
- Multi-Jurisdictional Practice Task Force
- Rule 1A:3 Study Committee
- Prepaid Legal Services Committee
- Long Range Planning Committee
- Legal Education Conclave Committee
- Section on the Education of Lawyers

**Other Affiliations:**

- Virginia Women Attorneys Association
- Virginia Tech – various boards and councils
- FINRA Arbitrator
- National Arbitration and Mediation
- Arbitration Associates
- Boyd-Graves Conference
- Arlington County Bar Association
- Alexandria Bar Association
- District of Columbia Bar
- American Bar Association
- Federal Bar Association
- Virginia Employment Lawyers Association
- Metropolitan Washington Employment
- Lawyers Association
- Virginia 4-H Foundation
- Equality Virginia
- Legal Services of Northern Virginia
- Horizons Theatre

**Education:**

- Virginia Tech, B.A.
- Pepperdine University School of Law, J.D.

**Family:**

Marni lives in Alexandria with her spouse, Martha McQuade

# President's Message

by Marni E. Byrum



## Inclusion, Diversity, Engagement

I AM HONORED and humbled that you have entrusted me with the leadership of the Virginia State Bar. As the 81st president, I pledge to you that I will be a good steward.

Before beginning this journey, however, I must stop to acknowledge and thank past presidents Len Heath and Doris Causey for their guidance, their vision, and their tireless service. To the 33 men and women who preceded them and with whom I have had the privilege of working on projects, committees, task forces, and council, I thank you for your friendship, support, and encouragement.

In preparing this column, I have tried to reflect on the path that has brought me here. I recognize that it isn't just my involvement with the VSB for the last 35 years. No, it is more that I have found purpose, satisfaction, and even joy in that involvement.

Now, as I look forward to my year, I will focus on encouraging others to be involved, as I seek broader participation by our members. I know your first response may be why: Why should I be involved? And throughout my year, I hope to address that question on many levels and get you engaged.

As a mandatory bar, the VSB obviously requires you to belong, but nothing requires you to engage. I would say to you, however, that engagement by a diverse and inclusive membership makes us a better and stronger Bar. The new president of the New York Bar has described it as a "moral imperative" that our Bar associations reflect the face of our society. During

my term, I want to identify the source of our members' reluctance to be involved and explore methods to address those concerns, so that, ultimately, more lawyers are active in our Bar.

Engaging more lawyers in the VSB, its work, its opportunities, its future — is my goal for the year. Inclusion, diversity and engagement are my themes. I want to encourage and include as many people as possible. Each of us has an opportunity to have an impact, and I am interested in having a diverse group of opinions and viewpoints at the table.

*If you are not yet involved,  
where do you start?*

*There is truly a plethora  
of opportunity.*

I recognize that my presidency represents diversity. But diversity comes in many forms — race, gender, sexual orientation — but also geography, practice areas, types and sizes of firms.

If you are serving on a Virginia State Bar committee, task force or council — thank you! You already appreciate the benefit of being engaged in the Bar. So, I am asking each of you who are already active to seek out at least one new person to get involved in the VSB. Tell them WHAT brought

you to the table and WHY you find work with the VSB to be rewarding, educational, or just fun — and get them engaged as well.

If you are not yet involved, where do you start? There is truly a plethora of opportunity. The VSB has 4 conferences, 5 standing committees, 7 special committees, 3 boards and 17 disciplinary committees. If you think you have to travel to Richmond just to be involved, think again. The disciplinary committees are local to your area. In addition, three times a year the Conference of Local and Specialty Bar Associations brings its Solo and Small-Firm Forum to a community near you.

For me, the most rewarding engagement to date has been my service on the Standing Committee on Legal Ethics. Reviewing, drafting and interpreting the rules of professional conduct gave me an opportunity to see how those rules actually impact our day to day practice. It also gave me a true understanding of the rules as a floor to our ethical obligations rather than a ceiling. And, perhaps most importantly, it gave me an appreciation for the quality and accomplishments of our VSB ethics staff.

So, I ask each of you to consider how you might be engaged. We each have a responsibility to maintain and advance our profession. A VSB which reflects the face of our community and our clients and, yes, an inclusive profession makes us all stronger.

The VSB includes and needs every one of us. I look forward to working with you.



Fastest smartest malpractice insurance. Period.

800.906.9654  
GilsbarPRO.com

## Norman A. Thomas, PLLC

VIRGINIA APPELLATE LAWYER

Dedicated to achieving beneficial client outcomes through a passionate attitude and craftsmanlike approach to the practice of appellate law.

1015 East Main Street, Lower Level  
Richmond, VA 23219  
[www.NormanThomasLaw.com](http://www.NormanThomasLaw.com)  
(804) 303-9538



Confidential help for substance abuse problems and mental health issues.

For more information, visit [www.valhl.org](http://www.valhl.org) or call our toll free number:

**(877) LHL-INVA**

Lawyers Helping Lawyers is now  
Virginia Judges and Lawyers Assistance Program



Doctor. Lawyer. Consultant-In-Chief.

Family Medicine Boarded physician and licensed Virginia Attorney to assist with review of medical records from a medicolegal standpoint:

- Medical Malpractice
- Personal Injury
- Workers Compensation
- Insurance Litigation

\*Qualified in Virginia as an expert witness.

Call for your **free** consultation today.

**Deborah A. Armstrong, J.D., M.D.**  
Medical Legal Consultant  
[mdjpromotionsllc.com](http://mdjpromotionsllc.com)  
804.539.4031  
[drdebarmstrong@hotmail.com](mailto:drdebarmstrong@hotmail.com)



# Executive Director's Message

by Karen A. Gould



## All Good Things Are Born of Change

A NEW VSB YEAR BEGAN this month with the passing of the baton from Immediate Past President Leonard C. Heath Jr. to President Marni E. Byrum. In between practicing law in Alexandria, Marni has been working on presidential appointments to committees, as well as her first presidential column which appears in this magazine. The bar's many volunteers, including its officers, continue to help carry out the bar's mission of protecting the public, regulating the legal profession in Virginia, advancing access to legal services, and assisting in improving the legal profession.

This past year was focused on the health of Virginia's lawyers, initiated by the National Task Force on Lawyer Well-Being and brought to the Commonwealth by Virginia Supreme Court Justice William Mims and the Committee on Lawyer Well-Being of the Supreme Court of Virginia. Len Heath made well-being the cornerstone of his year as president, forming the Virginia State Bar President's Special Committee on Lawyer Well-Being, which has issued its report.<sup>1</sup> Several changes have been made to the MCLE Board's regulations to make it easier to get MCLE credit for attending courses that will contribute to lawyer wellness.

Other changes regarding lawyer well-being include a comment added to Rule of Professional Conduct 1.1 by the Supreme Court of Virginia stating: "Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law."<sup>2</sup> Lawyers suffering from an "Impairment" as that term is

defined in Paragraph 13 can now retire with dignity from the practice of law, even when charged with disciplinary offenses, but they cannot resume the practice of law in Virginia.<sup>3</sup> Bar prosecutors can refer attorneys to a lawyer assistance program,<sup>4</sup> such as the Virginia Judges and Lawyers Assistance Program (formerly known as Lawyers Helping Lawyers), marking the first time an exception has been made in the rule on the confidentiality of disciplinary investigations.

Other plans to help Virginia's lawyers with wellness will be carried out as a result of the collection of a \$30 well-being assessment. With this assessment, the Supreme Court of Virginia will contract with Virginia Judges and Lawyers Assistance Program to provide support to lawyers in need throughout the Commonwealth of Virginia.

The Virginia State Bar has had some positive changes as well. The new developments reflect positive hiring decisions made in conjunction with the maturing of the organization's leadership team. Over the last several years, the bar's long-term (30+ years) management employees have retired. Fiscal Executive Susan Busch was replaced by her long-time deputy, Crystal Hendrick. Former Norfolk Deputy Clerk DaVida Davis replaced the retiring clerk of the disciplinary system, Barbara Lanier. Demetrios Melis, previously with the Virginia Department of Professional & Occupational Regulation, replaced Gale Cartwright as the director of regulatory compliance. Bar prosecutor Renu Brennan replaced Mary Yancey Spencer as deputy executive direc-

tor in 2016, but with the retirement of Edward L. Davis as bar counsel, Brennan returned to the department of professional regulation as bar counsel as of February 2019. The new deputy executive director is Cameron Rountree, a former Williams Mullen lawyer from Norfolk. Long-time Bar Services Director Elizabeth Keller was replaced by Maureen Stengel, who has handled the professionalism courses since the program began. Lastly, HR Director and Facilities Manager Diane Anderson was replaced by Randy Webne, who came to us from the Virginia Museum of Fine Arts.

Your VSB senior management team remains strong, renewed, and devoted to its core mission of the betterment of the legal profession in the commonwealth. If you have questions regarding these developments, or any other VSB issues, please do not hesitate to contact me at [gould@vsb.org](mailto:gould@vsb.org).

### Endnotes

- 1 The Report of the Virginia State Bar President's Special Committee on Lawyer Well-Being can be found on the VSB's website at [www.vsb.org/docs/VSB\\_wellness\\_report.pdf](http://www.vsb.org/docs/VSB_wellness_report.pdf).
- 2 Rules of Supreme Court of Virginia Pt. 6, § II, Rule of Professional Conduct 1.1, comment [7].
- 3 Rules of Supreme Court of Virginia Pt. 6, § IV, Paragraph 3(d) ("A disabled or retired member who has not filed a declaration with the Clerk of the Disciplinary System and the Virginia State Bar's Membership Department that the member will not seek transfer from the Disabled and Retired class of membership pursuant to Paragraph 13-23 may submit a petition to the executive director in writing for reinstatement...") and Paragraph 13-23(A) ("A finding of Impairment or transfer to the Disabled and Retired class of membership under Paragraph 13-23.K may be utilized

*Change continued on page 19*

# We take the calls, you get the clients.

Join the VLRS for pre-screened referrals for your business and your profession.

Each year, the Virginia Lawyer Referral Service helps thousands of Virginians find a lawyer, and these Virginia lawyers help bridge the gap that often occurs when people find themselves in a potential legal quandary.

Best of all, the first year of membership is free to all newly admitted lawyers.

[www.vlrs.net](http://www.vlrs.net)



**Virginia Lawyer Referral Service.**  
**Let's Build Your Practice Together.**

## Virginia Judges and Lawyers Assistance Program 2019 Fall Retreat

Wintergreen Resort  
Friday and Saturday, September 6–7, 2019

Enjoy fellowship and food at Wintergreen Resort at a beautiful time of year!  
Agenda and registration available at [www.valhl.org](http://www.valhl.org). For more information, call us at (804)644-3212 or email at [jleffler@vjlap.org](mailto:jleffler@vjlap.org)





## Back to Basics (Part II)

THE DISCUSSION OF THE FIVE ethical basics to forming and maintaining good attorney-client relationships continues with the last two: conflicts and confidentiality.<sup>1</sup>

Determining whether a conflict exists or could develop is the key to the formation of an attorney-client relationship. Once formed, maintaining the confidentiality of a client's information is essential to preserving the relationship and the trust of the client.

There are three general categories of conflicts: conflicts between existing clients (Rule 1.7), conflicts with former clients (Rule 1.9), and conflicts created by prospective clients who only consult with, but never hire, the lawyer. (Rule 1.18).<sup>2</sup> Before accepting any representation, a lawyer must determine if any of these conflicts exist. To do that, a lawyer or law firm must have a system in place "to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest."<sup>3</sup> A conflict review must include the clients and former clients and consults of ALL lawyers who practice together, because one lawyer's conflicts impute to all lawyers in a firm or office under Rule 1.10.

Concurrent conflicts exist if the representation of any one existing client will be adverse to, or have a detrimental effect upon, another existing client. Taking action for one client that will result in harm to another existing client, or if there is a risk that confidential information of one client will have to be used or disclosed in another client's case, will create an incurable conflict. The lawyer's duty of loyalty

cannot be so compromised.

Conflicts with a former client exist if the lawyer attempts to represent an adverse party to a former client in the same or a substantially related matter as the former representation; or, if the lawyer has confidential information gained from a former (unrelated) representation that should be used against the former client in order to represent the current client. Conversely, if *none* of these conditions exist, there would be no conflict and a lawyer may represent a new client against a former client. Rule 1.9 does not prohibit *ever* being adverse to a former client. Rule 1.9(a) also allows that a lawyer may cure a conflict if she can disclose and get consent from the current and former clients to allow her to represent the current, adverse client.

If a lawyer consults with a prospective client regarding possible representation, but the individual does not hire the lawyer, the information the lawyer gained in that consultation is still protected as confidential and the consult can create a conflict for the lawyer to subsequently represent an adverse party, per Rule 1.18. If the lawyer learned information that could be "significantly harmful" to the prospective client, the lawyer cannot later represent an adverse party in the same or a substantially related matter. If no such information is learned, the lawyer could later represent an adverse party. Rule 1.18(d) allows that imputation may be avoided, and another lawyer in a firm could represent an adverse party, if consent is obtained from both the prospective client and current, affected client, or if notice is given to the prospective client and the

consulting lawyer is screened from any involvement in the representation. Consent is required if the consulting lawyer did gain "significantly harmful" information from the prospective client. The consulting lawyer would still not be able to be involved in the representation thereafter. Notice to the prospective client and non-consensual screening is permitted if the consulting lawyer avoided "exposure to more disqualifying information than was reasonably necessary" during the consultation and believes that the screen will be effective. See Rule 1.18(c) and (d) and Comment [7]. Prompt notice must be given to the prospective client that a screen has been set up.

Unless a rule specifically provides for use of screening to cure a conflict [see e.g., Rules 1.18(d)(2)(i) or 1.11(b)], unilateral screening to cure imputation of a conflict is *not permitted*. Conflicts can only be cured through disclosure to affected clients and obtaining informed consent.

Intertwined with conflicts analyses is the lawyer's duty to keep client information confidential. This duty is critical to maintain any attorney-client relationship and assure that a client can communicate fully and freely with the lawyer even if information is legally damaging or embarrassing to the client. Confidential information includes: information protected by the attorney-client privilege, other information the lawyer gains during the representation the disclosure of which would be embarrassing or detrimental to the client, or any other information that the client has specifically asked the lawyer to keep confidential.<sup>4</sup> A lawyer cannot voluntarily reveal any

information that falls within these categories unless the client consents, or unless circumstances exist that permit or require disclosure without client consent under Rule 1.6(b) and (c). Examples of permissive disclosure are: when a lawyer is ordered by a court to disclose information or when there is a controversy between the lawyer and the client related to the representation and the lawyer must disclose confidential information to defend herself or support a claim against the client. An example of required disclosure is when a client expresses an intent to commit a crime “reasonably certain to result in death or substantial bodily harm to another or substantial injury to the financial interests or property of another” and the lawyer must disclose this information to prevent the crime from occurring. Rule 1.9(c) requires a lawyer to keep former client information confidential if disclosure would disadvantage the former client unless the information has become “generally known,” or disclosure would be permitted or required under Rules 1.6 and 3.3.

The take-aways: be diligent in checking for conflicts, and protect and preserve clients’ confidential information. These “basics” can ensure a positive attorney-client relationship.

Endnotes:

- 1 For Part I of “Back to Basics,” see the February 2019 issue of *Virginia Lawyer* magazine, where competence, communication, and control are covered.
- 2 Not discussed in this article are special conflicts of interest under Rule 1.8 of the Rules of Professional Conduct.
- 3 Rule 1.7, Comment [3]
- 4 Rule 1.6(a)

**Change** *continued from page 16*

by Bar Counsel to dismiss any pending Complaints or allegations of Misconduct on the basis of a finding of Impairment or a transfer to the Disabled and Retired class of membership militating against further proceedings, which circumstances of Impairment shall be set forth in the Dismissal.”). See also Paragraph 13-23.K. Transfer of Membership Status (“Bar Counsel may terminate and close an Impairment Proceeding if the Respondent transfers to the Disabled and Retired class of membership pursuant to Part 6, Section IV, Paragraph 3 of the Rules of Court and files a declaration with the Clerk of the Disciplinary System and the Virginia State Bar’s Membership Department that the Respondent will not seek transfer from the Disabled and Retired class of membership. The declaration shall be endorsed by the Respondent and the Respondent’s counsel or Guardian Ad Litem. Termination of the Impairment Proceeding shall not be considered a final order in an Impairment Proceeding under Paragraph 13-30. The Respondent’s transfer to the Disabled and Retired class of membership and filing of the declaration pursuant to this subparagraph may be utilized by Bar Counsel to dismiss any pending Complaints or

allegations of Misconduct on the basis of transfer to the Disabled and Retired class of membership, militating against further proceedings, which shall be set forth in the Dismissal.)

4 Rules of Supreme Court of Virginia Pt. 6, § IV, Paragraph 13-30.M. Disclosure of Information to Lawyer Assistance Program. (“If Bar Counsel believes that an Attorney may benefit from the services of a Lawyer Assistance Program, Bar Counsel may make an informal referral to a Lawyer Assistance Program and may share information deemed confidential under this Paragraph as part of that referral. Bar Counsel shall not share information that is protected from disclosure by other state or federal privacy laws. Bar Counsel may, but shall not be required to, notify the subject Attorney of the informal referral or transmission of confidential information to the Lawyer Assistance Program. Unless the subject Attorney has signed a release allowing the Lawyer Assistance Program to share information with Bar Counsel, the Lawyer Assistance Program shall not report information about the subject Attorney to Bar Counsel, and Bar Counsel shall not receive such information from the Lawyer Assistance Program.”)

## *Mentor a Young Lawyer*

The Young Lawyers Conference Mentorship Network, in partnership with the Senior Lawyers Conference, helps newer lawyers learn from experienced lawyers — retired lawyers, too!

Fill out the online form at <http://bit.ly/YLCSLC>

if you are willing to help.



# Lawyers in the Park: Legal Aid Lawyers Plan to Improve the Lives of Mobile Home Residents

A DECADE AGO, sub-prime mortgages and the foreclosure crisis wreaked havoc on the lives of Virginia homeowners.

Last year, Professor Matthew Desmond's research, publicized at Eviction Lab, broadcast that Virginia renters were evicted by the tens of thousands each year, their lives thrown into disarray by forced displacement. Scattered amidst these homeowners and renters, in communities often lacking simple amenities like gutters and curbs, street lights and green space, are thousands of families living with an in-between status — homeowners who are nonetheless subject to the inclinations of a landlord. These residents of Virginia's manufactured home communities own their homes, but not the land on which they sit. They pay hundreds of dollars each month in rent to manufactured home park owners, but they have little power to make changes in their communities and are sometimes exploited by park owners.

"We often see park owners allowing the infrastructure of the parks to fall into decline, even as they are raising residents' lot rent," said Joe Cizek, a lawyer at the Virginia Poverty Law Center who specializes in advocacy for residents of manufactured home parks. "These owners know the residents are at their mercy. It can cost up to \$8,000 to move a manufactured home, and most residents don't have this money." In fact, residents of manufactured home parks tend to have incomes around half that of the area median income. "They're stuck, and the owners reap the benefits of this."

But Cizek and other Virginia legal aid attorneys are determined to

change this dynamic. In the Roanoke and Shenandoah Valleys, and the areas in and around the cities of Richmond and Fredericksburg, legal aid programs are collaborating with Cizek and others at VPLC to improve the conditions of Virginia's manufactured home parks and the rights of the people who live there.

"I see a lot of clients who purchase manufactured homes directly from the park owner under some sort of rent-to-own deal, and those almost never benefit the resident," noted Patrick Kelly, an attorney at the Legal Aid Society of Roanoke Valley. Kelly explained that under these deals, which many times are not reduced to writing, residents usually forfeit all the money paid if they default. Unfortunately, the law going into effect on July 1 that sets standards for rent-to-own contracts for stick-built homes doesn't apply to manufactured homes. "Even when the resident makes all the payments, the park owner rarely has a title to give them. I suspect the homes sold through these deals are homes that remained in the park after their owners were evicted." Kelly is developing an expertise in lawsuits that seek redress for residents that fall prey to park owners' unlawful rent-to-own arrangements.

Cizek believes that there are many issues to be litigated on behalf of manufactured home park residents, but most residents don't know to bring these issues to legal aid. Cizek, Kelly and other legal aid lawyers on the team will be conducting on-site "Know Your Rights" sessions for the residents. "I've found these sessions to be a great entrée into the community," Cizek added

that in one community, his Know Your Rights session was followed by a meeting with residents about the extreme drainage problems in the park. "Pools of standing water built up in yards, streets, under homes. Some residents had to wade through a foot or more of water to get to their front doors." The owner sold the park before Cizek could take legal action against him. The prospectus for the sale, which Cizek obtained, showed that the park netted \$200,000 per year in profits.

While the legal aid attorneys representing manufactured home park residents plan on doing all they can to get park owners to improve living conditions in the parks, Cizek and his colleagues have more ambitious long-term goals. They plan on working with interested residents and nonprofits, including the newly formed nonprofit Manufactured Home Community Coalition of Virginia, to establish resident-owned communities throughout Virginia. There are over 1,000 such communities throughout the country, and at least one report found them to be better maintained, more stable, and more valuable than investor-owned communities. And, most importantly to these legal aid lawyers, in resident-owned communities the residents can make their own decisions and control their community, and in the process create a better place to live.

*Christine E. Marra, Esq. is the director ACES (Advocates for Credit, Employment and Shelter) at the Virginia Poverty Law Center and concentrates in community development.*



# Construction Law and Public Contracts Section

by J. Barrett Lucy, section chair

The Construction Law and Public Contracts Section appreciates the opportunity to present three articles that address important legal issues within the construction industry. Our authors discuss infrastructure improvements within the context of public-private partnerships; whether teaming agreements are enforceable under Virginia law; and, protecting payments on construction projects from bankruptcy estate claw-backs. Once again, Arnie B. Mason, the chair of our publications committee, selected focused authors from within our section to share their professional knowledge about these important issues. We believe that you will find these articles insightful and useful to your practice.

In **“Delivering Infrastructure Better, Faster and Cheaper,”** Charles V. “Chuck” McPhillips outlines an approach to the procurement process with several benefits, including saving taxpayer money. Chuck emphasizes the importance of the public owner taking into consideration potential significant costs beyond initial project costs. Chuck discusses the necessity to shift and curtail project risks. He also compares different public-private partnership models and introduces us to a hybrid model known as the “New American Approach.”

In **“Teaming Agreements in Virginia,”** Jack Rephan reviews the enforceability of teaming agreements in Virginia. As Jack explains, there are multiple issues that must be considered within the context of teaming agreements. Jack provides a detailed summary and analysis of the applicable case law impacting teaming agreements and offers some guiding principles to bear in mind when drafting a teaming agreement or, alternatively, challenging the enforceability of a teaming agreement.

In **“Protecting Payments on Construction Projects,”** Karen Stemland offers best practices for structuring transactions on construction projects to minimize the bankruptcy estate’s ability to reclaim transaction funds. She explains the five elements that a trustee must prove to establish a voidable preference. Karen next discusses a recent case addressing the interplay of bankruptcy estate claw-backs and joint check

payments. Karen also proposes solutions to practitioners confronted with a possible claw-back scenario on a construction project.

Our section offers impressive educational and networking opportunities to its members. We sponsor multiple CLEs throughout the year, provide access to the Construction Law Handbook — a valuable resource that indexes and digests construction law cases from Virginia’s federal and state courts, and put out a semi-annual newsletter updating our members about recent judicial decisions and new legislation. Our section also maintains an informative website that provides, among other information, details of upcoming events.

Finally, during our two-day CLE at the Boar’s Head Inn on November 1–2, 2019, our section will celebrate 40 years of providing service to its members. As always, attendees will receive the benefit of hearing from extraordinary speakers, including judges, lawyers, and experts, discussing critical legal issues faced by our clients. The program also provides our members with impressive networking opportunities in a fantastic venue. We hope that you will join us in Charlottesville and take advantage of this opportunity to further develop your construction-law based practice.

I encourage you to join our section, and to contact me for additional information about the benefits of being a member.



**J. Barrett Lucy** is a partner with Freeman, Dunn, Alexander, Gay, Lucy & Coates, P.C. in Lynchburg and focuses his practice on civil and commercial litigation, including disputes in the construction and government contracting arenas. Lucy has an active transaction and litigation practice. He is the chair of the board of governors of the Construction Law and Public Contracts Section of the Virginia State Bar.

# Delivering Infrastructure Better, Faster and Cheaper:

## Lessons in Shifting Risk and Reducing Life-Cycle Cost for the Public Owner

by Charles V. McPhillips



### I. Overview: Re-Engineering the Procurement Process to Save Taxpayer Dollars

With our “crumbling national infrastructure” constantly in the news, I submit that, in appropriate circumstances, a properly structured public-private partnership (P3 project) can save time and money for a public body that wants to deliver new and much-needed infrastructure to its constituents. The cost savings are particularly significant when, as a wise steward of the taxpayers’ money, the public body weighs the total cost — and risk — of *operating and maintaining* that infrastructure over its useful life (or what should be its useful life).

**Under pressure in a budget-constrained environment to deliver a new road, a new school or a new municipal building, public owners often feel compelled to disregard the reality that most of a facility’s total life-cycle costs will be incurred in the “out**

**years,” operating and maintaining the structure over its expected life.**

Here lies the Achilles heel in the traditional public procurement process: the taxpayer bears the risk that the significant costs of keeping a facility open for business over its useful life will exceed what is anticipated. Far too often nothing — or nothing realistic — is budgeted!

The result is the staggering cost of deferred maintenance and neglected highways, bridges, schools and other public buildings. **By hastening the early demise of our infrastructure, deferred maintenance necessitates major renovations and capital replacements, piling extra operation and maintenance costs upon the taxpayer that can range anywhere from 6 to 40 times what proper maintenance would have cost.<sup>1</sup>**

In large part due to the insidious cost of deferred maintenance, the American Society

of Civil Engineers (ASCE) gives our national infrastructure a grade of D+ (C- in Virginia).<sup>2</sup>

By focusing attention on a facility's total lifecycle costs, a P3 can promote longer-term thinking for the benefit of the taxpayer. For example, one study in Canada found a 24 percent lifecycle cost saving by using a particular P3 model known as Design/Build/Finance/Operate/Maintain (DBFOM).<sup>3</sup>

McKinsey & Company echoes this finding in a 2017 survey of published studies measuring the cost savings from utilizing the P3 approach throughout Europe in social infrastructure projects, such as schools, clinics, etc. The consensus finding of this study was a 20 percent cost savings.<sup>4</sup>

## II. The Goal: Reducing Life-Cycle Costs

It is crucial that the public owner weigh both the initial project costs (design, construction and financing) *and* the potentially far larger life-cycle costs (operations, maintenance and capital replacements) under each alternative procurement method. Failure to do so is short-sighted and costly to the taxpayer.

A Value for Money (VfM), or Life Cycle Cost Analysis (LCCA), compares the risk-adjusted cost to the public sector of owning and operating a public facility over its lifespan under each alternative. Such an analysis accounts for all of the following costs:

- Project Financing Costs, including Issuance Costs
- Up-Front Design and Construction Costs
- “Risk-related costs”: Cost Overruns or Time Delays
- Project Income from User Fees
- Utility Costs
- Other O&M Costs, including Personnel Costs
- Capital Replacement Costs
- End of Life Costs: Residual Value
- Non-Monetary Costs (Quality Trade-Offs)

The Commonwealth of Virginia recently conducted a successful VfM exercise with respect to the I66 Express Lanes now under construction between the Capital Beltway and US15 in Haymarket. The state calculated that it would

cost \$600 million to self-perform the project using a traditional procurement approach. It then asked private developers if they could improve on that outcome. In return for a 50-year concession to collect tolls from operating the express lanes (two in each direction), a consortium headed by the Spanish firm Ferrovial (through its subsidiary Cintra) offered a \$500 million upfront payment *to the state*, together with a commitment for \$800 million in public transit improvements and another \$350 million in “hand-back” I-66 corridor improvements over the term of the concession, meaning Virginia should receive an expanded I-66 in well-maintained condition upon hand-back at the 50-year mark.

## III. The Challenge: Shifting and Curtailing Project Risks

In order to curtail total project costs, it is axiomatic that risk should be shifted to the party best able to control that risk. To meet this challenge, here are just a few of the project risks (and costs) that may be shifted to the private developer through a properly designed P3 procurement.

### Design Risk

In a traditional fixed-price, design-bid-build procurement (DBB), the design team and the construction team are placed in separate camps, resulting in adversarial finger-pointing when things go wrong. **Although the construction team may have grave concerns over the “constructability” or cost of certain design concepts, “value engineering” is usually deferred until after the project is fully designed, bid and awarded. The result is that necessary design changes occur too late in the game, and at the owner’s risk and greatly increased cost.** Moreover, the private developer is not incentivized to “design” or construct the facility with the goal of extending its useful life while conserving future operation and maintenance costs.

### Inaccurate Cost Estimates

In a traditional procurement, the budget is usually developed based on assumptions and estimates, rather than actual bid costs and differing or unforeseen site conditions — subsurface conditions (e.g., underground utilities), historic resources, endangered species

—all remain on the owner’s side of the risk ledger. Likewise, contingencies for “constructability” issues, scope gaps between subcontractors, and subcontractor defaults are usually priced into the bid. The public owner pays for these assumptions, estimates and contingencies while being unable to benefit from any potential cost savings if the contingencies do not materialize.

### Construction: Cost and Schedule Overruns

The time it takes to execute the rigidly sequential traditional procurement process inevitably increases the material and labor costs over the course of the project. In addition, the facility remains unavailable for public use during the extended period required to design, bid and then build the project. Labor and materials that were available (or affordable) at the beginning of the planning process may be unavailable (or unaffordable) later when the time for construction finally arrives.

### Financing

In contrast to a public owner’s need to postpone a project until all funding is in hand (and helplessly watch construction prices rise in the meantime), a private developer is usually willing to proceed with a P3 project even if the public owner’s payments are contingent upon (“subject to”) appropriations occurring in future years. The P3 market has grown to accept the “subject to appropriations” contingency as relatively low risk, provided that the facility is viewed as a long-term necessity (e.g., a highway or school, as opposed to a public golf course).

### Operations and Maintenance

In a traditional DBB procurement, the public owner retains not only the risk of deferred maintenance but also the risk that its design team did not adequately plan for the intended use or “program” of the facility. **Under a P3, the private developer can be held to performance standards that will affect its ultimate compensation for the project, incentivizing the developer to design and construct the facility to last and to execute the program efficiently.** With a “handback guarantee,” the public owner is typically assured that the facility will be turned over at the end of the stated project term (e.g., 40 years later), in a condition considered “85 percent new.” The result is an extended life for the asset and reduced capital replacement costs to the public owner.

## IV. The End Game: Shifting Life Cycle Costs and Risk to the Private Sector: DBOM v. DBFOM

Various P3 models shift risks to the private developer. Each P3 model also offers an opportunity to reap savings during the stage of a project when a majority of its lifetime costs are actually incurred — i.e., during operations and maintenance of the facility.

The DBOM model (i.e., without the “F”) reserves the financing and capital requirements to the public owner. After completing the design and construction of the facility, the private developer (or its O&M teammate) is paid to operate and maintain the facility.

Without the investment of equity or debt capital as required under the DBFOM model — i.e., without “skin in the game” — the DBOM private developer may not be sufficiently motivated to design and build the facility with a view toward extending its useful life and maximizing its efficiency in serving the intended program.

As described below, there are two versions of the DBFOM model — a “privately financed” version and a “tax-exempt” version — that address this shortcoming.

Under the “privately financed” DBFOM model, the private developer accepts the risk and responsibility for a facility’s total life-cycle costs in return for the opportunity to earn “availability payments” from the public owner or a “concession” by which the private developer is paid back by revenues directly derived from the operation of the project (e.g., tolls). Under the former scenario, the public owner retains “user demand” or “tollbooth” risk, while in the latter, the private developer accepts that risk.

**In either DBFOM scenario, the private developer is incentivized to design and construct the project to extend the projected lifespan of the facility and to reduce the cost of operating and maintaining the facility over the term of its O&M agreement with the public owner (e.g., 40 years).** It “pays” the developer to select more durable building materials and HVAC systems than would have been specified when upfront construction costs are the overriding concern. Further, the performance metrics used in determining the developer’s availability payments, plus the handback guarantee, provide powerful incentives to resist the short-term seductions of deferred maintenance.

For an “availability payment” version to succeed from the taxpayer’s perspective, the public owner and private developer must agree on detailed performance standards that will govern whether the developer earns all or a reduced share of the potential contractual payments for keeping the facility open and operating. Done correctly, an availability-payment deal should enable the public owner to budget predictable costs into the future that are vulnerable neither to general economic conditions (inflation, interest rates, etc.) nor to unforeseen costs of operating and maintaining the facility — most, if not all, of these risks are transferred to the private developer.

In the debate over the DBFOM model, adherents of the traditional procurement structure object that the public sector can borrow money more cheaply than the private developer can raise its equity and debt capital.

Entering this debate, as if on cue, is a hybrid model known as the “New American Approach,” a publicly-financed version of a DBFOM structure. In this approach, a 501(c)(3) non-prof-

it owner issues “63-20” tax-exempt lease revenue bonds to finance the design, development and construction of the project by a private developer. After the facility is delivered, the governmental entity pays rent equal to the non-profit owner’s debt service and administrative costs *plus* budgeted operating and maintenance costs. Once the bonds are paid off, ownership of the facility is transferred to the government.

Proponents of this New American DBFOM option argue that it achieves lower financing costs (essentially the equivalent tax-exempt municipal revenue bonds) and a shorter, less expensive commitment to any single O&M contractor, while avoiding any windfall to a private developer intent on a cash-out refinancing after the project is stabilized. In response, proponents of the privately funded DBFOM option tout its greater degree of risk-shifting to the private developer, who is more powerfully incentivized to make *value-added* decisions during design and construction, and to avoid deferred maintenance thereafter when it will be saddled with operations and maintenance costs for the 30–40 year term of the project, after which it must hand over the facility to the public owner in a “like-new” condition.

**In any DBFOM scenario, however, the public owner does not suffer the relentless inflation of construction prices while it sits impatiently through multiple municipal or state budget cycles waiting to fund its capital improvement plan.** Moreover, under each DBFOM approach, the public owner’s payment obligations commence only after a completed facility is delivered, in contrast to a traditional procurement in which the public owner often must borrow its project costs up front, including the added cost of carrying “capitalized interest” on the project.

For these reasons, the various DBFOM models are truly the state of the art in systematically aligning the interests of the public owner and the private developer, incentivizing the

design, construction, operation and maintenance of durable, cost-effective infrastructure that efficiently serves the objectives of public owners who are answerable to current and future taxpayers. ☺

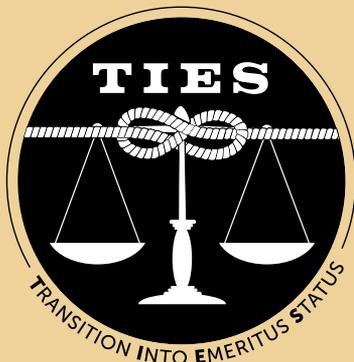
#### Endnotes

- 1 William D. Eggers & Tiffany Dovey, *Closing American’s Infrastructure Gap: The Role of Public-Private Partnerships*, at 5 (Deloitte 2007); see also David Tod Gersch, *The Disastrous Effects of Deferred Maintenance* (available at [www.linkedin.com](http://www.linkedin.com)) (2017) (His “inverse-square rule for deferred maintenance” states that, if maintenance of a failing part is deferred until the next level of failure, the resulting expenses will be the square of the cost of the failed part.); and The National Council for Public-Private Partnerships, *Testing Traditions: Assessing the Added Value of Public-Private Partnerships*, at 5, 12 (2012).
- 2 ASCE, *2017 Infrastructure Report Card: A Comprehensive Assessment of America’s Infrastructure*; see also ASCE, *Failure to Act: Closing the Infrastructure Gap for America’s Economic Future* (2016).
- 3 The National Council for Public-Private Partnerships, *Testing Tradition: Assessing the Added Value of Public-Private Partnerships*, at 10 (2012).
- 4 Michael Della Rocca, *The Rising Advantage of Public-Private Partnerships*, at 4 (McKinsey & Co.) (Apr. 2017).



**Charles V. McPhillips** has more than 30 years of business law practice, emphasizing public-private partnerships, government-contractor business transactions, international business transactions, mergers and acquisitions, and corporate/limited liability company law. McPhillips is a fellow of the Virginia Law Foundation. He earned his law degree at the University of Virginia (Order of the Coif) and received a bachelor’s degree from Hampden-Sydney College (Phi Beta Kappa). He can be reached at (757) 624-3178 or [cvmcphillips@kaufcan.com](mailto:cvmcphillips@kaufcan.com).

## You’re retiring, but your law degree doesn’t have to.



### Transition into emeritus status and practice only pro bono.

For questions about the program, contact the  
VSB Pro Bono / Access to Legal Services department  
at (804) 775-0522.

To start the application process toward emeritus status,  
call (804) 775-0530.

# Teaming Agreements in Virginia: Are They Enforceable?

by Jack Rephan



Teaming agreements are widely used in Virginia and elsewhere by prime contractors and subcontractors who regularly contract with the federal, state, and local governments for the provision of services, construction, and other projects to meet the needs of the government and other public bodies. For this reason, it is essential that the contractors and subcontractors be aware of the law in Virginia, and the fact that Virginia courts have refused to enforce teaming agreements as unenforceable “agreements to agree.” As detailed in this article, several guidelines may be gleaned from case law in Virginia to improve the chances of drafting an enforceable teaming agreement.

## I. The Significance of Teaming Agreements

The use of teaming agreements is rather well established with respect to submitting proposals or bidding upon federal

government contracts for the acquisition of supplies, services, construction, research and development and information technology. In fact, the federal procurement regulations encourage the use of teaming agreements.<sup>1</sup> Teaming agreements can also provide opportunities for disadvantaged and small businesses to participate in federal or other public construction or procurement contracts.

Prospective prime contractors and subcontractors should consider carefully whether a proposed teaming agreement is an enforceable contract before entering into such an agreement. **A successful bidder or awardee who relies on the expertise and pricing submitted by a particular subcontractor will want assurance that, if awarded the prime contract, the proposed subcontractor will enter into the proposed subcontract. Absent a binding teaming agreement, the proposed subcontractor will be free to walk away, exposing the prime contractor to the possibility of a substantial increase in cost to engage a different subcontractor.** Unlike the law in some other jurisdictions, the theory of *promissory estoppel* in Virginia will not provide the prime contractor with a cause of action against the prospective subcontractor.<sup>2</sup>

Similarly, the prospective subcontractor

wants assurance that it will receive the promised subcontract for the work if the prime contractor is awarded the job. Without an enforceable teaming agreement, however, the prospective subcontractor likely has no remedy, despite a potentially substantial amount of money spent to support the prime contractor's preparation of the bid or proposal that produced an award of the prime contract.

## II. Case Law in Virginia

As the cases discussed below demonstrate, there are decisions in both state and federal courts in Virginia that have refused to enforce what the parties believed to be a binding and enforceable teaming agreement. **These decisions illustrate that the terms of the teaming agreement play a critical role in whether a Virginia court will enforce a teaming agreement.**

The earliest decision of the Supreme Court of Virginia concerning the enforceability of teaming agreements is that of *W.J. Schafer Associates, Inc. v. Cordant, Inc.*<sup>3</sup> In *W.J. Schafer*, Cordant entered into a teaming agreement with Ogden for the purpose of submitting a proposal to the Air Force for a contract to convert personnel records from microfiche to electronic data. After Cordant was awarded the prime contract, it attempted to negotiate a contract with Ogden for the purchase of image scanning equipment known as "digitizers" made by its corporate affiliate, Schafer. After negotiations failed, Cordant instead contracted with another company to replace the Schafer digitizers and sued Cordant and Schafer for breach of contract.

In *W.J. Schafer*, the Supreme Court of Virginia held that the teaming agreement was unenforceable because: "There was no mutual commitment by the parties, no obligation to sell the digitizers or on the part of Cordant to purchase them, no agreed purchase price for the product, and no assurance that the product would be available when needed."<sup>4</sup>

In *EG&G, Inc. v. The Cube Corp.*,<sup>5</sup> EG&G and The Cube Corporation (Cube) entered into a teaming agreement for the purpose of submitting a proposal to NASA with Cube to serve as the prime contractor and EG&G as the subcontractor. Judge Terrence Ney, for the Circuit Court of Fairfax County, granted specific performance of the teaming agreement. In doing so, the court emphasized

that the evidence showed that the parties operated for a brief time under a letter agreement and agreed to work together in an "exclusive relationship," that "EG&G would be a subcontractor ... and perform a substantial amount of the work ..." and that the parties would "do more than just 'negotiate in good faith' to arrive at a final subcontract."<sup>6</sup>

In *Cyberlock Consulting, Inc. v. Information Experts, Inc.*,<sup>7</sup> a subcontractor sued a federal government contractor for allegedly breaching a teaming agreement. Two teaming agreements were at issue, one which attached a form subcontract as an exhibit and another that failed to do so. Both teaming agreements contained an integration provision stating that each agreement represented the entire agreement of the parties, and both agreements established the percentages of work to be performed by Cyberlock and Information Experts (IE).

After IE was awarded the prime contract, the parties failed to agree on the terms of a subcontract. As a result, Cyberlock sued IE for breach of contract, fraud and unjust enrichment. In making its decision, the federal district court in *Cyberlock* described the essential requirements for enforcement of a contract in Virginia:

For a contract to be enforceable, "there must be mutual assent of the contracting parties to terms reasonably certain under the circumstances." *Allen v. Aetna Cas. & Sur. Co.*, 222 Va. 361, 364, 281 S.E.2d 818 (Va. 1981). Mere "agreements to agree in the future" are "too vague and too indefinite to be enforced." *W.J. Schafer Assocs., Inc. v. Cordant, Inc.*, 254 Va. 514, 519, 493 S.E.2d 512 (Va. 1997). In considering whether an agreement is an enforceable contract or merely an agreement to agree, courts consider whether the document at issue includes the requisite essential terms and also whether the conduct of the parties and the surrounding circumstances evince the parties' intent to enter a contract.<sup>8</sup>

Based on these principles, the court granted IE's motion for summary judgment and dismissed Cyberlock's breach of contract suit. The court found that the agreement was clear and unambiguous, such that without any parol evidence as to the parties' intent, the court concluded that "any seemingly

mandatory language to award Cyberlock” a subcontract was modified by the following provisions in the teaming agreement:

(1) the award of such work would require the negotiation and execution of a future subcontract; (2) the award of such work was dependent on the success of such future negotiations; (3) any future executed subcontract was subject to the approval or disapproval of [the government]; and (4) suggesting that the framework set out for the work allocation in a future subcontract potentially could change as it merely was based on the work anticipated to be performed by Cyberlock as then-presently understood by the parties.<sup>9</sup>

On April 28, 2016, the Supreme Court of Virginia held in *Navar, Inc. v. Federal Business Council*<sup>10</sup> that the teaming agreement was unenforceable as “merely an agreement to agree to negotiate at a future date.”<sup>11</sup> The teaming agreement provided that, if awarded the prime contract, the prime contractor would negotiate in good faith with the prospective subcontractors and enter into subcontracts with them “upon arriving at prices, terms and conditions acceptable to the parties.”<sup>12</sup> The teaming agreement also provided that it would terminate if the parties were unable to reach an agreement on the terms of a subcontract after good faith negotiations. Significantly, the Court cited and quoted from the courts’ opinions in both *Shafer* and *Cyberlock* in reaching its decision that the teaming agreement before the Court was unenforceable.

A little over a year later, the Supreme Court of Virginia again addressed the issue of the enforceability of a teaming agreement in *CGI Federal, Inc. v. FCI Federal, Inc.*<sup>13</sup> In *CGI*, the parties entered into a teaming agreement to bid on a visa processing contract with the United States Department of State. The teaming agreement required the parties to enter into “good faith negotiations for a subcontract”<sup>14</sup> if FCI were awarded the prime contract and provided for termination of the teaming agreement if the parties were unable to reach agreement on a subcontract within 90 days after the prime contract award. Citing *Navar*, the Court ruled that the parties never agreed to the final terms of a subcontract but only agreed to negotiate in good faith the terms of a subcontract in the future and, thus, CGI could not rely on the agreement to obtain a subcontract for work from FCI.

In *InDyne, Inc. v. Beacon Occupational Health & Safety Services*,<sup>15</sup> InDyne filed suit and moved for summary judgment claiming that the teaming agreement between it and its potential subcontractor, Beacon, was unenforceable. Beacon unsuccessfully attempted to distinguish *CGI*, *Navar* and *Cyberlock* by arguing that its teaming agreement with InDyne “spoke in definite terms regarding (1) scope of work ... (2) price, (3) commitment, and (4) duration and place of performance.”<sup>16</sup> Nevertheless, even though the teaming agreement did fix the price, the court declared the teaming agreement unenforceable because it only required

InDyne to “enter into negotiations” and “make every effort to subcontract” to Beacon, and called for the agreement to “remain in effect until . . .” the prime contractor and subcontractor, “after negotiating in good faith” were unable to reach an agreement.<sup>17</sup> As in *Navar*, *CGI* and *Cyberlock*, the teaming agreement was held unenforceable based on language that left the terms of the proposed subcontract to good faith negotiations.

### III. Guiding Principles

What then is required to make a teaming agreement enforceable? Now that the Supreme Court of Virginia has twice echoed what it held in *Shafer* and what the Eastern District of Virginia held in *Cyberlock*, **Virginia law on the enforceability of teaming agreements is clear that a mere requirement for the parties to negotiate in good faith the terms and conditions of a subcontract will not suffice to render a teaming agreement enforceable.**

Although a lower court decision, the *Cyberlock* case provides some guidance. In *Cyberlock*, the court held the teaming agreement to be enforceable based upon several notable provisions, including the following:

- An exhibit attached containing a “Statement of Work” covering the period of performance, place of performance, requirement for key personnel, format of the contract, and project management for the work that Cyberlock would be performing for IE.
- An attachment with the specific subcontract the parties intended to use upon award of a prime contract.
- A requirement that, if a prime contract was awarded to IE, IE would enter into the subcontract with Cyberlock within 5 business days from the date of the award.
- The failure of the parties to agree upon the terms of a subcontract was **not** listed as an event that would result in the termination of the teaming agreement.

More broadly, several principles may be gleaned from the case law in Virginia with respect to drafting an enforceable teaming agreement:

1. Avoid language in the teaming agreement making an award of a subcontract subject to “good faith negotiation” of the terms of a subcontract;
2. Negotiate as many of the essential terms of a subcontract as possible before the teaming agreement is entered into and attach a copy of a proposed subcontract containing those terms and conditions as an exhibit to the teaming agreement;
3. Include in the teaming agreement a statement that a subcontract will be awarded to the subcontractor if the prime receives an award of a prime contract in the form attached to the teaming agreement;
4. Include language in the teaming agreement that it is the intent of the parties to enter into a binding contract in

*Agreements continued on page 31*

# Protecting Payments on Construction Projects from Bankruptcy Estate Claw-Backs

by Karen Stemland



On a construction project, if a contractor or subcontractor is at risk of bankruptcy, lower-tier subcontractors or suppliers may refuse to furnish labor or supply goods or services absent payment protection. To protect payments, the transaction will need to be structured to prevent interference from the potentially bankrupt entity. Though historically contractors and owners used joint check agreements to provide such protection, this approach recently has failed to protect the payee due to potential payment claw-backs by bankruptcy estates. This article addresses best practices for structuring transactions on construction projects to minimize the bankruptcy estate's ability to reclaim transaction funds.

## I. Bankruptcy Estates May Reclaim Payments Deemed "Preferences," Subject to Exceptions

Subject to certain exceptions, Section 547 of the Bankruptcy Code allows a debtor or trustee to recover or "claw-back" certain payments or "preferences" made to a creditor a short time (usually 90 days) before a bankruptcy filing.<sup>1</sup> To establish a voidable preference, a bankruptcy trustee must prove the following five elements:

- (1) a transfer of an interest of the debtor in property to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made on or within 90 days before the date of the filing of the petition (or between 90 days and one year for insiders); and that
- (5) enables such creditor to receive more than such creditor would receive if:

- (a) the case was a Chapter 7 bankruptcy matter;
- (b) the transfer had not been made; and
- (c) such creditor received payment of such debt to the extent provided by the Bankruptcy Code.<sup>2</sup>

**In construction, a bankruptcy estate could reclaim good faith payments for properly performed work as voidable preferences.** As the case study below demonstrates, a simple joint check agreement likely is not sufficient to protect the payment from claw-back.

**(a) Case Study**

Recently, in *Gold v. Myers Controlled Power, LLC*,<sup>3</sup> the trustee of a bankrupt subcontractor tried to recover an alleged “preferential transfer” made by joint check to the debtor and supplier within 90 days of the bankruptcy filing. In response, the supplier argued two main defenses to the trustee’s recovery of the alleged preferential transfer.

First, the supplier argued that the joint check was not a preferential transfer because it did not belong to the debtor’s estate. Instead, the parties intended the joint check to be held in trust pursuant to a joint check agreement.

Second, the supplier argued that, even if the joint check was a preferential transfer, an exception in the Bankruptcy Code should apply concerning claw-backs of “substantially contemporaneous exchanges” for new value. This exception applies where a transfer is both: (1) intended to be a contemporaneous exchange for new value given to the debtor; and (2) is in fact a substantially contemporaneous exchange. The exception is intended to encourage creditors to continue to deal with debtors by preventing trustees from avoiding payments that were intended to support new transactions, not antecedent debts.<sup>4</sup>

**(b) The Result**

The court rejected the first argument because the joint check agreement itself constituted a voidable preference. The joint check agreement was executed within the 90-day preference period and involved a transfer of a property interest—namely, the transfer of the debtor’s interest in check proceeds. The joint check agreement itself, therefore, qualified as a voidable preference and failed to create a constructive trust.

The court also rejected the supplier’s second argument regarding application of the exception for “substantially contemporaneous” exchanges of new value. Despite finding an intent to create a substantially contemporaneous exchange for new value, the court held that the respective gaps in time of 44 days and 23 days between equipment release and payment were “too long to be considered truly ‘contemporaneous.’”

Though the standard for “substantially contemporaneous” is fact-specific and “flexible,” most courts conclude that it requires delivery of goods or services within less than approximately two weeks of payment.<sup>5</sup> Delays between transfer and payment of longer than two weeks generally will not qualify as “substantially contemporaneous.”<sup>6</sup>

**II. Implications for Structuring Payment Transaction**

If an entity on a construction project is showing signs of potential bankruptcy, such as failing to pay subcontractors or suppliers, transactions should be structured carefully to avoid payment claw-backs by the bankruptcy estate. To avoid becoming voidable preferences, joint check agreements should be instituted prior to the 90-day window, if possible.<sup>7</sup>

**Because it is difficult to predict the timing of bankruptcy, the safest way to protect payments from potential bankruptcy claw-backs is for the transaction to qualify under one of the Bankruptcy Code’s exceptions to claw-backs.** The Bankruptcy Code provides multiple options for structuring transactions to avoid bankruptcy estate claw-backs. Potentially applicable exceptions include:

- (1) payments made in the ordinary course of business or financial affairs of the debtor and transferee pursuant to ordinary business terms;
- (2) after the alleged preferential transfer, creditor gave subsequent “new value” or credit to the debtor which remains unpaid; and
- (3) payments that are part of a “contemporaneous exchange” for new value.<sup>8</sup>

Of these, the “substantially contemporaneous” exchange exception applies commonly on construction projects.

To fall within the “substantially contemporaneous” exchange exception, the payment must be made less than two weeks after the transfer of services and materials. As case law demonstrates, delays of longer than two weeks prevent application of the exception and render the payment voidable as a preference. To prevent this, payments to lower-tier entities on a construction project should be issued at about the same time as the provision of new materials or services.

In short, recent case law demonstrates that joint check agreements may themselves be considered voidable preferences and fail to protect payments from bankruptcy estate claw-backs. If an entity on a construction project is at risk of bankruptcy, therefore, best practices include structuring the transaction to qualify under one of the Bankruptcy Code’s exceptions to claw-backs, including “substantially contemporaneous” exchanges for new value. ☞

Endnotes

- 1 See 11 USC 547(b).
- 2 See *id.*; accord *Gonzales v. Sun Life Ins. Co. (In re Furr’s Supermarkets, Inc.)*, 485 B.R. 672, 681, 2012 Bankr. LEXIS 5878, \*1 (N.M. Bankr. 2012).
- 3 588 B.R. 447, 2018 Bankr. Lexis 2188, 2018 WL 3601835 (E.D. Va. Jul. 25, 2018).
- 4 *Campbell v. Hanover Ins. Co. (In re ESA Env’tl Specialists)*, 709 F.3d 388, 397-98, 2013 U.S. App. LEXIS 4231, \*20, 2013 WL 765705 (4th Cir. 2013).
- 5 See *Pine Top Ins. Co. v. Bank of Am. Nat. Trust & Sav. Ass’n*, 969 F.2d 321, 328 (7th Cir. 1992) (exchange was substantially contemporaneous despite two to three week delay); *In re Payless Cashways, Inc.*, 306 B.R. 243, 252 (8th Cir. 2004) (payment by electronic funds transfer within 15 days of delivery was substantially contemporaneous); *Matter of Anderson-*

- Smith Assocs.*, 188 B.R. 679, 689 (Bankr. N.D. Ala. 1995) (nine-day delay between the extension of new credit and payment was substantially contemporaneous exchange).
- 6 See *In re Furr's Supermarkets, Inc.*, 485 B.R. 672, 738 (Bankr. N.M. 2012) (check dated at least two months after provision of services was not substantially contemporaneous); *In re Interstate Bakeries Corp.*, No. 04-45814, 2012 Bankr. LEXIS 5823, \*15-16, 2012 WL 6614969, at \* 5 (Bankr. W.D. Mo. 2012) (31 days between invoice and payment was not substantially contemporaneous); *In re Messamore*, 250 B.R. 913, 920 (Bankr. S.D. Ill. 2000) (delay of 50 days was not substantially contemporaneous); *In re McLaughlin*, 183 B.R. 171, 176 (Bankr. W.D. Wis. 1995) (32 days between attachment and perfection of a security interest was not substantially contemporaneous); *In re Freestate Mgmt. Servs., Inc.*, 153 B.R. 972, 984 (Bankr. D. Md. 1993) (24 days between loan and repayment was not substantially contemporaneous); *In re Arctic Air Conditioning, Inc.*, 35 B.R. 107, 109 (Bankr. E. D. Tenn. 1983) (payment after 30 days was not substantially contemporaneous); *In re Arnett*, 731 F.2d 358, 363 (6th Cir. 1984) (33-day delay was not substantially contemporaneous).
- 7 See, e.g., *Mid.-Atlantic Supply, Inc. of Va. v. Three Rivers Aluminum Co.*, 790 F.2d 1121 (4th Cir. 1986) (holding that under the joint check arrangement, the Debtor "had not the slightest interest in the check," and there was a constructive trust in favor of supplier); see also 11 U.S.C. § 541(d) (providing that property to which the debtor has bare legal title, held in trust for another, is not property of the estate).
- 8 11 USC 547(c).



**Karen Stemland** is of counsel at Woods Rogers PC, where she focuses on construction, litigation, insurance, energy, and real estate matters. Stemland has co-authored chapters on commercial general liability insurance in Virginia Insurance Law and insurance coverage in the Virginia Construction Law Deskbook. She graduated cum laude from Georgetown University Law Center. Prior to law school, Stemland worked in the Antitrust Division of the U.S. Department of Justice. In addition to her law practice, she is the secretary of the Charlottesville-Albemarle Bar Association and serves on the Board of Directors of Foothills Child Advocacy Center.

**Agreements** *continued from page 28*

- accordance with the terms of the teaming agreement;
5. Avoid any provision that makes the inability of the parties to reach an agreement on the terms of a subcontract an event that causes the teaming agreement to terminate; and
6. Engage an attorney familiar with government contracting to review any teaming agreement before it is signed. ◊



**Jack Rephan** is shareholder in Pender & Coward, PC. After serving as a law clerk for the U.S. Court of Claims, Rephan has been in the private practice with a legal career that has covered a broad range of areas of the law including construction law, government contract law and civil litigation. He serves as an arbitrator and mediator for the American Arbitration Association's national panel of construction arbitrators and mediators. He has been a guest lecturer on construction law at the Regent University School of Law and is the author of numerous articles on construction and public contract law.

**Endnotes**

- 1 The FAR provides:  
Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to: (1) complement each other's unique capabilities; and offer the Government the best combination of performance, cost, and delivery for the system or product being acquired. 48 C.F.R. § 9.602(a).
- 2 *W.J. Schafer Assocs., Inc. v. Cordant, Inc.*, 254 Va. 514, 516, 493 S.E.2d 512, 521 (1997).
- 3 254 Va. 514, 493 S.E.2d 512 (1997).
- 4 *W.J. Schafer*, 254 Va. at 515, 493 S.E.2d at 520.
- 5 63 Va. Cir. 634, 2002 WL 31950215 (Fairfax Cir. Ct. Dec. 23, 2002).
- 6 *Id.* at \*8.
- 7 939 F. Supp. 572 (E.D. Va. 2013), *aff'd*, 549 F. App'x 211 (4th Cir. 2014).
- 8 *Id.* at 580.
- 9 *Id.* at 581–82.
- 10 291 Va. 338, 784 S.E. 2d 296 (2016).
- 11 *Id.* at 347, 784 S.E.2d at 300.
- 12 *Id.* at 342, 784 S.E.2d at 297.
- 13 295 Va. 506, 814 S.E.2d 183 (2018).
- 14 *Id.* at 515, 814 S.E.2d at 188.
- 15 No. 118CV756LMBMSN, 2018 WL 5270331 (E.D. Va. Oct. 23, 2018).
- 16 *Id.* at \*3.
- 17 *Id.* at \*1.

**Join the Construction Law & Public Contracts Section**

The Construction Law and Public Contracts Section is a group of attorneys in public, private and in-house practice interested in the construction and public contracting and litigation, who represent public and private owners, contractors, engineers, architects, manufacturers, and suppliers, and provide a wide variety of legal services including contract drafting and negotiation and dispute resolution, including arbitration, mediation and litigation. The section provides a forum for its members to share research, experiences and ideas. Section members receive a discounted registration fee for its annual Fall seminar in Charlottesville. Members also receive the section's semiannual newsletter, and the *Construction Law Handbook*. The section also sponsors an annual Federal and State Public Contracts seminar in Fairfax.

Visit [www.vsb.org/site/sections/construction](http://www.vsb.org/site/sections/construction)

# Chief Justice Lemons Reminds Lawyers to Report Pro Bono

In a letter going to all Virginia lawyers in the mid-June dues statement, Supreme Court of Virginia Chief Justice Donald W. Lemons asks lawyers to engage in pro bono service, and to take the time to voluntarily report their activities.

While not obligatory, pro bono reporting assists the Court and the Virginia State Bar with gathering the information that assesses the gap between the need for pro bono service and the

actual supply. Frequently asked questions about voluntary pro bono reporting may be found at [www.vsb.org/site/members/voluntary\\_pro\\_bono\\_reporting\\_faqs](http://www.vsb.org/site/members/voluntary_pro_bono_reporting_faqs).

The Chief Justice reminds lawyers who may have concerns about the skills needed to take on a certain pro bono case that the Virginia Law Foundation has a free pro bono learning portal that may be accessed at [www.vacle.org/](http://www.vacle.org/)

[Free\\_Pro\\_Bono\\_Content-pg222.aspx](http://www.vsb.org/site/members/voluntary_pro_bono_reporting_faqs).

Attorneys unable to volunteer their time can fulfill their pro bono goals by donating to legal aid and other Qualified Legal Service providers, contributions which can also be reported under the new rule. The Legal Services Corporation of Virginia website ([www.lscv.org](http://www.lscv.org)) provides a list of all Virginia legal aid organizations and a simple way for lawyers to make monetary donations.

# Lawyers Engage with Medical-Legal Partnership

In May, lawyers from central Virginia joined VCU Health doctors, attorneys, and administrators on two tours of VCU Health's Medical-Legal Partnership in Richmond.

Virginia attorneys from large companies, small firms, and law schools toured the Massey Cancer Center and new Children's Hospital of Richmond to view up-close the facilities that bring doctors, patients, and lawyers together for a holistic care model that is growing in popularity at health centers across the country.

Operating in a volunteer capacity since 2011, but made an official, staffed program last year, the Medical-Legal Partnership was featured in *Virginia Lawyer* magazine's February 2018 issue.

On Tuesday, Allison Held, associate general counsel of the partnership, explained how legal resources located on site — in some cases, a lawyer's office right across the hall from an exam room — meant breaking down the silos that create a barrier to access.

A lawyer can help a parent of an asthmatic child terminate a lease where a neighbor's second-hand smoke is adversely affecting the child's health or compel a landlord to provide a mold-free living environment. A lawyer can

help a cancer patient forced into early retirement recover his possessions or home and receive benefits owed to him.

Reducing outside stressors on patients getting health care has a number of benefits, noted Harry Thalhimer, chair of the MCV Foundation Board of Trustees, not the least of which is getting better faster.

Thalhimer noted the need for financial contributions, but Held also listed a number of legal areas where the partnership could use pro bono help from lawyers:

- Estate planning
- Employment
- Insurance
- Public benefits
- Consumer law
- Housing
- Financial planning
- Family law
- Immigration

Lawyers interested in volunteering may contact the VSB's Crista Gantz at [gantz@vsb.org](mailto:gantz@vsb.org) or (804) 775-0522. The MCV Foundation collects donations for the partnership at [mcfoundation.org](http://mcfoundation.org).



Photos (from top to bottom): Allison Held of the Medical-Legal Partnership; Sheryl Garland, director of the VCU Office of Health Innovation, highlighted health disparities in the Richmond region; Harry Thalhimer of the MCV Foundation Board.

CHIEF JUSTICE  
DONALD W. LEMONS

JUSTICES

S. BERNARD GOODWYN  
WILLIAM C. MIMS  
ELIZABETH A. MCCLANAHAN  
CLEO E. POWELL  
D. ARTHUR KELSEY  
STEPHEN R. MCCULLOUGH

SENIOR JUSTICES

CHARLES S. RUSSELL  
ELIZABETH B. LACY  
LAWRENCE L. KOONTZ, JR.  
LEROY F. MILLETTE, JR.

# SUPREME COURT OF VIRGINIA



100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219-2334  
(804) 786-6455  
WWW.COURTS.STATE.VA.US

CLERK  
DOUGLAS B. ROBELEN  
EXECUTIVE SECRETARY  
KARL R. HADE  
CHIEF STAFF ATTORNEY  
K. LORRAINE LORD  
REPORTER OF DECISIONS  
KENT SINCLAIR  
STATE LAW LIBRARIAN  
GAIL WARREN

April 10, 2019

Dear Members of the Virginia State Bar:

I wrote you at this time last year alerting you to the opportunity to voluntarily report your pro bono contributions as part of your bar license renewal. I am writing now to encourage you to make that voluntary report on your 2019 renewal application.

Rule 6.1 of the Rules of Professional Conduct establishes an aspirational goal for lawyers to devote at least two percent of their professional time to pro bono service. In 2018, the Supreme Court of Virginia added Paragraph 22 to § IV of Part Six of the Rules of Court to provide for voluntary reporting of pro bono service and contributions. “Annual Dues Statement Section 5,” included with the Annual Dues Statement, provides a space where you can make these voluntary reports.

Pro bono legal service is an important professional obligation and can also be a source of great personal satisfaction. If you were able to engage in pro bono practice or make contributions in 2018, I hope that you will take the time to report your contributions so that we can gather reliable data regarding this important effort in Virginia.

If you have no hours or contributions to report this year, I encourage you to engage with your colleagues, your local bar associations, your nearest legal aid office, the Virginia Access to Justice Commission, or the Virginia State Bar to learn more about the opportunities for pro bono service. If you are concerned about whether you are knowledgeable enough to take on a given case, consider the free CLE resources that the Virginia Law Foundation makes available to help lawyers handle pro bono cases in practice areas unfamiliar to them.<sup>1</sup>

We know there is a substantial gap between the current need for pro bono services and the number of attorneys who are providing these services. But we need the data that voluntary reporting can provide to determine the full extent of that gap in Virginia. So please, take the time to report your pro bono contributions and encourage your colleagues to do the same.

Sincerely,

A handwritten signature in black ink that reads "Donald W. Lemons".

Donald W. Lemons

<sup>1</sup> The link is here: [https://www.vacle.org/Free\\_Pro\\_Bono\\_Content-pg222.aspx](https://www.vacle.org/Free_Pro_Bono_Content-pg222.aspx).

## Highlights of the June 13, 2019, Virginia State Bar Council Meeting

At its meeting on June 13, 2019, in Virginia Beach, the Virginia State Bar Council heard the following significant reports and took the following actions.

### **Access to Legal Services Committee**

Council approved by unanimous vote the proposed amendments to VSB bylaws changing the Access to Legal Services Committee from a “Special” to “Standing” Committee. Effective immediately.

### **Rules of the Supreme Court of Virginia Part 6, Section IV, Paragraph 13**

Council approved by unanimous vote the proposed amendments to Paragraph 13. The changes (1) eliminate two “dismissal” sanctions that create a disciplinary record; (2) clarify and enhance the transparency and uniformity of the VSB’s disciplinary process while protecting the confidentiality of medical, psychological, treatment, and other sensitive information in public disciplinary proceedings; and (3) ensure the rules are consistent with procedure and practice. The proposed rule changes will be presented to the Supreme Court of Virginia for approval.

### **Legal Ethics Opinion 1750**

Council unanimously approved revisions to LEO 1750 – Lawyer Advertising and Solicitation. The revisions to this LEO remove citations to now-withdrawn Lawyer Advertising Opinions (LAOs) 0101, 0102, 0104, 0105, and 0113. The Committee withdrew those LAOs, along with seven others, on August 1, 2018, because they were obsolete, superseded by amendments to the Rules of Professional Conduct, or restated in whole or in part in LEO 1750.

The proposed revisions also include a substantial revision to section B of the LEO, on the use of the phrase “no recovery, no fee.” The proposed changes will be presented to the Supreme Court of Virginia for approval.

### **Legal Ethics Opinion 1872**

Council unanimously approved revisions to LEO 1872 – Virtual Law Office and Use of Executive Office Suites. The revisions update references to Rule 1.6(d), on a lawyer’s duty to protect confidential information, and Rule 7.1, on advertising; the revisions also remove references to former Regulation 7 Governing Applications for Admission to the Virginia Bar Pursuant to Rule 1A:1

of the Supreme Court of Virginia since that regulation has been modified and no longer requires that lawyers admitted to practice by motion maintain a physical office space. The proposed changes will be presented to the Supreme Court of Virginia for approval.

### **Rule 4.4(b) – Respect for Rights of Third Persons**

Council approved by unanimous vote the proposed amendments to Rule 4.4(b). The proposed changes add paragraph (b), which codifies the guidance currently found in LEO 1702 regarding a lawyer who receives privileged information that was inadvertently sent. Specifically, paragraph (b) requires that a lawyer who receives information relating to the representation of the lawyer’s client and who knows that the information is privileged and was inadvertently sent must immediately terminate review or use of the information, promptly notify the sender, and abide by the sender’s instructions, if applicable, to return or destroy the information. The proposal added Comments [2] and [3] to further explain the scope of the rule. The proposed changes will be presented to the Supreme Court of Virginia for approval.

## Check Your MCLE Hours Online Now

The Mandatory Continuing Legal Education compliance deadline is October 31, 2019. Go to <https://member.vsb.org/vsbportal/> to review your MCLE record.

Please apply for any non-approved courses now to avoid a new late application fee for applications received over 90 days after course attendance.

Reminder: Of the 12.0 CLE hours required each year, 2.0 must be in ethics and 4.0 must be from live, interactive programs. If you have any questions, please contact the Regulatory Compliance Department at (804) 775-0577 or [mcle@vsb.org](mailto:mcle@vsb.org).

## Brian L. Buniva Is President-Elect for 2020–21

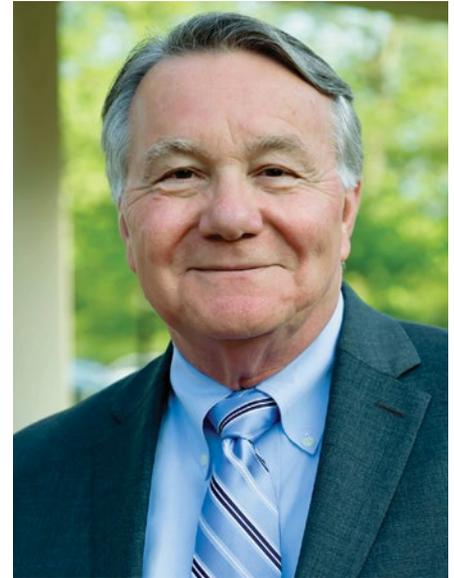
Brian L. Buniva of Richmond is the Virginia State Bar president-elect for 2020–21. Buniva was unopposed in his bid for the presidency. Buniva will succeed current President Marni E. Byrum of Alexandria on June 2020.

Buniva has practiced law for almost 40 years, including working for the Virginia Attorney General’s Office, solo practice, practicing in small, medium-sized and large firms, as in-house counsel for an international manufacturing company, and in his current role at B.L. Buniva Strategic Advisor, PLLC.

Buniva has served on Bar Council and the council’s Executive Committee

and has chaired the Administrative Law and Environmental Law Sections for both the VSB and the Virginia Bar Association. He served for many years as co-chair of the VSB Special Committee on Bench-Bar Relations. In his role on council he has stated, “My goals are to be a servant leader, protect the public, enhance the standing of our profession, improve access to justice, and be a voice for the independence of lawyers and the judiciary.”

A graduate of Georgetown University, Buniva received his law degree from the University of Richmond.



## Dues Statements Mailed: What’s Different This Year?

Virginia lawyers’ annual renewal statements for the 2019–20 year were mailed on June 17, and the deadline for renewal is July 31 — either received by mail or online at the VSB member portal. Delinquency fees will be assessed on all late dues and fees.

What’s new this year on the statement?

- **Attorney Wellness Fund assessment:** A \$30 wellness fund assessment is required beginning this year for all active lawyers. An initiative of the Supreme Court of Virginia, the assessment will fund a judges and lawyers assistance program and other activities that improve lawyer wellness.
- **Voluntary Pro Bono reporting:** All active members are encouraged to report their pro bono contributions for the first time this year, which will

be recorded anonymously unless an attorney chooses to provide a name and/or bar ID.

As a reminder, the Clients’ Protection Fund assessment on active lawyers was reduced from \$25 to \$10 last year. This is the second year that change is reflected on your dues.

And, if you’re considering retirement, the court made changes to the requirements for Emeritus status in December 2017, which makes it easier to transition to pro-bono-only work.

Please contact the Regulatory Compliance Department of the Virginia State Bar at (804) 775-0530 if you have questions about your dues statement.

Read more at [www.vsb.org/site/news/item/dues\\_statements\\_2019](http://www.vsb.org/site/news/item/dues_statements_2019).

The image shows a sample of the Virginia State Bar 2019-2020 Annual Dues Statement form. It includes sections for member information, a list of dues items (such as Administrative Law, Health Law, and Client Protection Fund), and a certification regarding professional liability insurance. The form is titled "ANNUAL DUES STATEMENT 2019-2020" and includes the VSB logo and contact information.

# Bar Welcomes New Council Members and Conference Leadership

On July 1, twenty-five Virginia lawyers began three-year terms — some their first and others their second — on the Virginia State Bar Council. New conference chairs started their leadership terms as well.

This year marked the highest voter turnout since the VSB began electronic balloting. The Bar thanks Virginia lawyers who took the time to vote and those who volunteer to serve.

## Conference of Local and Specialty Bar Associations chair

Lewis A. Martin III

## Diversity Conference chair

Chidi I. James

## Senior Lawyers Conference chair

John D. Eure

## Young Lawyers Conference president

Farnaz F. Thompson

## 1st Circuit

Damian J. (D.J.) Hansen

## 2nd Circuit

Jeffrey B. Sodoma

## 3rd Circuit

Meredith B. Travers

## 4th Circuit

Ann B. Brogan

## 5th Circuit

Thomas G. Shaia

## 6th Circuit

J. Daniel Vinson

## 13th Circuit

Eric M. Page  
Cullen D. Seltzer

## 16th Circuit

Palma E. Pustilnik

## 17th Circuit

Adam D. Elfenbein  
Greg T. Hunter  
Josh D. Katcher

## 19th Circuit

David J. Gogal  
Douglas R. Kay

## 20th Circuit

R. Penn Bain

## 22nd Circuit

Eric H. Ferguson

## 23rd Circuit

K. Brett Marston

## 24th Circuit

Eugene N. Butler

## 26th Circuit

Nancy M. Reed

## 27th Circuit

R. Cord Hall

## 29th Circuit

D. Greg Baker

## 31st Circuit

Maryse C. Allen

## Council at-Large appointments:

Denise W. Bland, Eastville  
Atiqua Hashem, Richmond  
Patricia E. Smith, Abingdon

*See the full list of Bar Council and Executive Committee members on page 4.*



Martin



James



Eure



Thompson



Hansen



Sodoma



Travers



Brogan



Shaia



Vinson



Page



Seltzer



Pustilnik



Elfenbein



Hunter



Katcher



Gogal



Kay



Bain



Ferguson



Marston



Butler



Reed



Hall



Baker



Allen



Bland



Hashem



Smith

## In Memoriam

**Michael Edward Anderson**  
Washington, DC  
June 1956 – August 2018

**The Hon. E. Everett Bagnell**  
Suffolk  
August 1937 – May 2019

**Russell Leroy Boraas Jr.**  
Montpelier  
April 1944 – April 2019

**Henry Lee Carter**  
Orange  
September 1935 – May 2019

**William E. Casselman III**  
Boston  
July 1941 – September 2018

**Howard E. Copeland**  
Norfolk  
January 1944 – April 2019

**Emmett R. Costich II**  
Rockville  
September 1946 – February 2019

**David Brooke Delaney**  
Floyd  
September 1948 – February 2019

**George A. Depaoli**  
Vienna  
December 1934 – March 2019

**Linda Jeanne Desell**  
Springfield  
October 1950 – October 2018

**Wilbur Everette Edwards Jr.**  
Virginia Beach  
March 1946 – March 2019

**Ralph Lyttelton Feil**  
Charlottesville  
July 1945 – January 2019

**Frederick Gale Fellowes Jr.**  
Vienna  
January 1930 – July 2018

**Richard S. Glasser**  
Norfolk  
December 1941 – March 2019

**Roger Gaylord Hopper**  
Urbanna  
February 1935 – April 2019

**Walter Herbert Peake III**  
Roanoke  
September 1958 – April 2019

**Richard N. Levin**  
Portsmouth  
May 1943 – December 2018

**John O. Marsh Jr.**  
Winchester  
August 1926 – February 2019

## Past Presidents' Dinner

In April, the former and current presidents of the Virginia State Bar met at the University of Richmond Jepson Alumni Center to discuss the goals, objectives, and current issues affecting the Bar. The evening also included a remembrance of recently passed former President David P. Bobzien.

Front row (l to r): President-elect Brian L. Buniva, Joseph A. Condo, Doris Henderson Causey, Immediate Past President Leonard C. Heath Jr., President Marni E. Byrum, Jean Patricia Dahnk, Irving M. Blank, Michael A. Glasser. Back row (l to r): VSB Executive Director Karen A. Gould, Howard W. Martin Jr., Kathleen O'Brien, Edward L. Weiner, Sharon D. Nelson, Michael W. Robinson, Edward B. Lowry, Raymond J. Diaz.

Not pictured: Jon D. Huddleston



## Indigent Criminal Defense Seminar

The Leroy R. Hassell Sr. Indigent Criminal Defense Seminar drew 900 lawyers from around the Commonwealth to hear speakers from around Virginia and the United States. The free advanced skills seminar is presented to the indigent defense bar and held at the behest of the Chief Justice and Justices of the Supreme Court of Virginia.

The event is named after former Chief Justice Leroy Rountree Hassell Sr., who believed that equal protection under law meant that the poor should receive the same quality of representation as those of means, and the seminar was created as a measure to ensure this basic fairness. Presented in Richmond, the seminar was also livestreamed in Harrisonburg and Wytheville.

Topics included: “The Fourth Amendment in the Digital Age,” “Public Defender Strategies for Creative Motions Practice in Juvenile Court,” “Digital Evidence,” and “Ethics in the Digital Age: Protecting Your Data, Your Client, and your License.”



(l to r) The Hon. Angela E. Roberts, Bonnie H. Hoffman, Julie E. McConnell, Jerald R. Hess, Brad M. Lindsay, W. Edward Riley IV, and Elizabeth J. Lancaster.

(l to r) Marni E. Byrum of McQuade Byrum in Alexandria, Matthew Mitchell of Tactical Tech in New York, NY, and Alice Fontier of The Bronx Defenders in Bronx, NY



## President's Committee Releases Report on Lawyer Well-Being

A special committee formed by 2018–19 VSB President Leonard C. Heath Jr. released its final report on lawyer well-being in May.

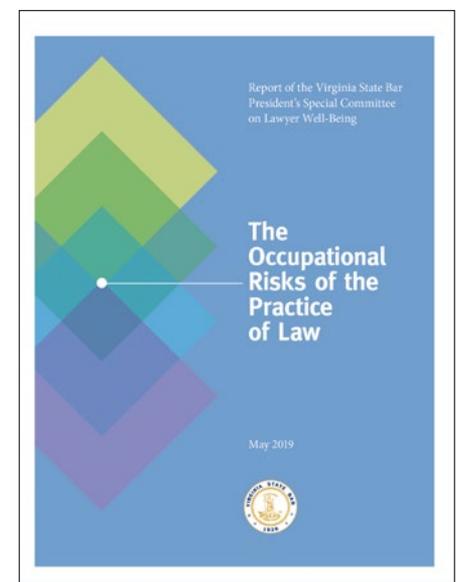
The committee was tasked with identifying specific aspects or characteristics of the practice of law that might serve as a risk to a lawyer's well-being. President Heath refined a matrix of these risks, and the report adds substantive, narrative explanation of the risks.

The occupational risks fall into four categories: Physical Risks, Mental and Emotional Risks, Adaptation Risks, and Self-Actualization Risks.

The report also includes an extensive bibliography with further sourcing.

Members of the committee — and contributors to the report — included former presidents of statewide bars, a law professor, a senior vice president of the Virginia State Bar's endorsed lawyer professional liability carrier, staff from the Virginia State Bar, an employee of The Virginia Judges and Lawyers Assistance Program (Lawyers Helping Lawyers), and lawyers representing a diverse cross-section of the legal profession.

The Virginia State Bar encourages lawyers to read the full report at [www.vsb.org/docs/VSB\\_wellness\\_report.pdf](http://www.vsb.org/docs/VSB_wellness_report.pdf).



## 2019 Family Law Seminar

The Family Law Section and Virginia CLE brought over 250 lawyers and members of the judiciary to the Jefferson Hotel in Richmond. Peter W. Buchbauer of Buchbauer & McGuire in Winchester won the Betty A. Thompson Lifetime Achievement Award, which was presented by Carl J. Witmeyer II of The Witmeyer Law Firm in Ashland. In his acceptance remarks, Buchbauer reminded the audience that, “In the work we do, we have the power to change someone’s world for good or for worse, and it’s your approach that’s going to make the difference. It’s important that we use the power we have to advocate...for the right things.”

Photos (top to bottom): Peter Buchbauer and his colleagues from the Buchbauer & McGuire firm in Winchester.

Lawyers listen to Anthony K. Bird discuss “Vocational Rehabilitation Experts” during the CLE presentation.

Peter Buchbauer with his wife, Jane, and their children.



## VSB’s Roache to Lead Association of Government Accountants

VSB Senior Accountant Danielle Y. Roache has been elected president of the Richmond chapter of the Association of Government Accountants (AGA), which strives to advance the accountability of government financial professionals.

A graduate of Virginia State University with a Master of Accounting from the Keller School of Management, Roache works in the bar’s finance department under Director Crystal T. Hendrick, who also belongs to the AGA. Roache, who previously worked for the Department of Conservation and Rec-

reation, came to the VSB after first being mentored by another AGA member.

Roache has held a number of positions in the AGA since 2006, but will now lead the organization as well as serving on its executive committee and as its assistant treasurer.

Roache says she was always good at math and that her teenage job at a fast-food restaurant helped her a surprising amount with her future accounting profession. “That is where I learned to count change in my head,” she says.

Though working for thousands of

lawyers and being the treasurer of a professional organization may seem daunting, Roache laughs, “I don’t worry about anything much except not disappointing my parents.”

And so far, she has done a very good job at that.



## 2019 Techshow Recap

Almost 300 lawyers and IT professionals attended the Techshow CLE program in Richmond where they received seven hours of credit, including five ethics. Speakers from around the country covered topics ranging from “Ethics in the Digital Era” to “Working Securely from the Road & Abroad” to the information-packed “60 Tech Tips in 60 Minutes.”

### Seth B. Royster

“Well, with the legal profession, we tend to move a little slower than a lot of other professions and technology is rapidly changing the world we live in. So, I figured this would be a good opportunity to see how technology is impacting the legal profession and hopefully come away from it better informed. I’m from Portsmouth, at Cooper Spong & Davis, where I do a mix of real estate, corporate law and some litigation.”



### Natalie Harris

“I work with Cognicion in Richmond. We’re an eDiscovery services provider. I came today to receive your CLE credit particularly. And I attend the Techshow because it focuses on the growing area of technology and law. And it helps too, to keep you more aware of the advancements in this area. This is my second year here, and I really enjoy it.”



### Walter T. Camp

“I’m delighted to be here as a solo practitioner who is a mediator, as well as an attorney. I’m hoping to come here to find things that’ll help my practice be more secure, but also a lot more efficient and mobile. I’m based in Virginia Beach, but I practice throughout the Tidewater area.”



### Sally J. Moore,

attorney and  
**Shannon  
McManus,**  
Firm  
Administrator.



Moore: “I wanted to come because we have a small to midsize firm and we are trying to increase our technology and efficiency to keep up with the rapid change of the 21st century.”

McManus: “I want to make sure that we are competitive, and that our tech resources are compatible with whichever path we choose to grow on. Our firm is McKenry Dancigers Dawson in Virginia Beach and for the most part we do primarily insurance defense, a little personal injury and some business and maritime law.”

### Melissa Jackson Howell

“I practice employment law with the Howell Law Group in Norfolk. I’m now in my seventh year of having my own practice, and I just want



to make sure that our firm has the most current and updated tech information to be able to offer to our clients the most efficient and current services that we possibly can.”



The Hon. Cleo E. Powell of the Supreme Court of Virginia with VSB President Leonard C. Heath at the Techshow.



Virginia State Bar  
**TECHSHOW**

Join us at the VSB Techshow next year on April 27, 2020, at the Greater Richmond Convention Center.

## Bar Leaders Institute

Save the Date: March 6, 2020 • Lewis Ginter Botanical Garden, Richmond

The Bar Leaders Institute (BLI) is a one-day program sponsored by the Conference of Local and Specialty Bar Associations to train and provide resources to current and prospective local and specialty bar leaders. Details will be posted on the CLSBA Calendar as soon as they are available at <http://bit.ly/CLSBAcalendar>.

# VSb Honors Attorneys

The Virginia State Bar presented the following awards during its Annual Meeting.

## Tradition of Excellence

*Presented by the General Practice Section*

### John Randolph

**“Randy” Nelson** of Lynchburg. The award recognizes a Virginia lawyer who “embodies the highest tradition of personal and profes-



sional excellence in Virginia, enhances the image and esteem of attorneys in the Commonwealth, and has devoted significant amounts of time, efforts, and/or funds to activities that benefit their community.” In his nomination, David Neumeyer, executive director of the Virginia Legal Aid Society, noted that Nelson “truly embodies the award’s promotion of personal and professional excellence.” Debby Hudgins, Virginia Legal Aid Society pro bono coordinator, stated that Nelson was one of the original lawyers to volunteer when the VLAS was founded in 1991, and that he has closed over 30 cases for them. Says Hudgins, “Randy has made house calls for clients that were home-bound and defended a VLAS client in a jury trial that took more than fifty hours.” Lynchburg Vice Mayor MaryJane Tousignant Dolan states that Randy “presents with the utmost sense of integrity, honor, civility, and well researched and thought out reasoning when stating his case as pertains to challenges on issues facing the city.”

## William R. Rakes Leadership in Education

*Presented by the Section on the Education of Lawyers in Virginia*

### Thomas A. Edmonds

of Richmond. Edmonds is being honored for his long-standing and dedicated contributions to the field of



legal education in both an academic setting as well as an administrative setting as former executive director of the Virginia State Bar. In his nomination letter, George A. Somerville of Harman Claytor Corrigan & Wellman, P.C., stated, “... you will find no individual in Virginia who more fully exemplifies a lifelong commitment and demonstration of excellence in the areas that the Section on Education of Lawyers has identified as criteria for this award.”

John A.C. Keith, co-founder of Blankingship & Keith wrote, “Tom Edmonds has demonstrated his abiding interest in the education of lawyers in countless ways.” During his tenure as dean of the University of Richmond Law School, the law school increased grants to students for financial assistance; included law students in the Virginia Tuition Assistance Grant Program; created and developed a law firm scholarship program; and established the Robert R. Merhige Jr. Center for Environmental Studies.

## Legal Aid Lawyer of the Year

*Presented by the Standing Committee on Access to Legal Services*

### Palma Pustilnik,

senior staff attorney and director of Sexual Assault Advocacy Services at the Charlottesville office of Central Virginia Legal Aid Society. The award



recognizes those who exhibit:

1) innovation and creativity in advocacy; 2) experience and excellence in service; and 3) impact beyond his or her own program’s service area. Pustilnik was nominated by her supervisor, Robin J. Leiter-White, who noted that, “While most legal aid attorneys might appear in different courtrooms several times a week, Palma frequently is appearing in different courtrooms several times a day. Despite the stressful nature of her cases, Palma always manages to be ‘the most

reasonable person in the room’ — a favorite line of hers.” Martin Wegbreit, the director of litigation for CVLAS and the very first winner of the Virginia State Bar Legal Aid Award in 1992, said in his nomination of Pustilnik, “Simply stated, in the Commonwealth of Virginia, there is no attorney more experienced, expert, forceful, knowledgeable, or steadfast in the area of domestic abuse and sexual assault than Palma Pustilnik.”

## Clarence M. Dunnville Jr.

### Achievement

*Presented by the Diversity Conference*

### Michael HuYoung

of Barnes & Diehl in Richmond. HuYoung was one of the founding members of the VSb’s Diversity Task Force, the group that laid the groundwork



that eventually established the Diversity Conference. A former chair of the Diversity Conference, he continues to support and lead the Diversity Conference, serving on its Board of Governors for two terms, and helping to create the Law Student Mentor/Mentee program at the VSb Annual Meeting. HuYoung continues to promote the mission of the Diversity Conference and is a leader and mentor for diversity and inclusion within the Virginia’s legal profession and the public it serves. In her nomination, Carole Capsalis of Turner & Kinney in Leesburg said, “Throughout his legal career, Michael has devoted his time, energy and leadership to make significant, demonstrable, and outstanding contributions to fostering, encouraging, and facilitating diversity and inclusion in the Commonwealth of Virginia. Michael’s herculean efforts shepherded the new conference through the uncharted waters of an unfunded conference.”

**Oliver White Hill Student Pro Bono**

*Presented by the Standing Committee on Access to Legal Services*

**Zachary McDonnell** of the William & Mary Law School class of 2019. McDonnell performed 1,195 hours of pro bono service during his law school years after graduating summa cum laude from the College of William & Mary in 2015. In her nomination letter, Rebecca Green, professor of practice at William & Mary Law School, said “In my thirteen years of teaching at William & Mary Law School, I have never encountered a student more committed to public service than Mr. McDonnell.” Rachel G. Widenhouse of the Avalon Center, which assists victims of domestic and sexual violence said, “Mr. McDonnell has comprehensive insight into what domestic and sexual assault survivors face in the court room.” Widenhouse went on to note that additionally, “Mr. McDonnell dedicated entire days to mulching the children’s playground and transitional housing unit flower beds.” It was this kind of effort that led Ann H. Kloeckner, Executive Director of Legal Aid Works, to write, “His dedication to the mission of civil legal aid is rare and exemplary.”



**R. Edwin Burnette Jr. Young Lawyer of the Year**  
*Presented by the Young Lawyers Conference*

**Nicolle Vasquez Del Favero** of Hampton Roads. Vasquez, an assistant attorney with Military Sealift Command under the Office of General Counsel for the Department of the Navy, is an active member of the Military Spouse Juris Doctor Network and has served on its nominating and pro bono committees, as well as helped with state bar rule change efforts regarding military spouse provisional admission policies. In her work with the pro bono committee, Vasquez assists surviving



spouses of service members by providing legal referrals to attorneys based on their individualized needs. “While most attorneys in the legal profession treat pro bono as just an aspirational goal, Nicolle actively works toward this goal,” writes Milena Radovic in her nomination of Vasquez.

**Local Bar Leader of the Year**

*Presented by the Conference of Local and Specialty Bar Associations*

**Barbara S. Anderson** of Alexandria, a principal of the Life & Estate Planning Law Center. In his nomination, G. Christopher Wright, president of the Alexandria Bar Association, noted that Anderson has been a member of the Alexandria Bar Association since 1984 with increasing responsibility, including serving on the board of directors from 2004 to 2012 and serving as president from 2010 to 2011. Said Wright, “Barbara is a leader, mentor, and role model. Her dedication to service has shaped the Alexandria community at large and the Alexandria and Virginia legal communities.” Anderson’s support of the community includes mentoring younger lawyers, working with the local legislature to find a judicial appointment for the Circuit Court after the early retirement of the Chief Judge, and laying the groundwork for the Senior Law Day program for the City of Alexandria that connects seniors to local advocates who can assist with legal, financial and life care issues.



**Specialty Bar Leader of the Year**

*Presented by the Conference of Local and Specialty Bar Associations*

**Sarah M. Saville** of Newport News, immediate past president of the Greater Peninsula Women’s Bar Association. As the 2017–18 president of the GPWBA, Saville increased its participation in pro bono and com-



munity service projects, adding two new projects to its docket – a pro bono clinic with the Legal Aid Society of Eastern Virginia and a “Walk in their Shoes” team to benefit the Center for Sexual Assault Victims. Saville also formed a court appointed committee to host CLE programs to assist attorneys in maintaining their qualifications for guardian ad litem and indigent defense appointments. As immediate past president, she proposed and formed a formal mentorship program for the bar, addressing the unique challenges female attorneys face in the workplace. In her nomination letter, Christine M. Andreoli of Williamsburg notes that Saville is only in her seventh year of practice but has served the association for five of those years, since 2014. “She stepped up and agreed to serve as secretary at a time when the association lacked volunteers,” writes Andreoli. “Since then, she has dedicated herself to improving the GPWBA so that it can better serve its members and the larger community.”

**Bar Association of the Year**

*Presented by the Conference of Local and Specialty Bar Associations*

**Hill Tucker Bar Association (HTBA).** Formerly known as the Richmond Chapter of the Old Dominion Bar Association, the HTBA is one of the oldest, historically African-American bar associations in the Commonwealth of Virginia. It consists of legal practitioners, judges, law professors, in house counsel, politicians, and law school students of all experience levels and representing various practice areas and legal interests, as well as the private and public sectors. The HTBA was nominated by President Veronica D. Brown Moseley who highlighted the bar’s 2018–2019 platform of “Educating & Empowering” — a multi-level thematic approach to improving the legal profession and helping the community. A series of programs called “Pathway to the Next Level” sought to create awareness about opportunities in various areas of practice and service, equipping members with inside information regarding a variety of career paths. “The HTBA far exceeded the goals of its mission,” Brown-Moseley writes.

## Bar Associations Receive Five 2019 Awards of Merit

The Virginia State Bar's Conference of Local and Specialty Bar Associations (CLSBA) has recognized bars across the Commonwealth for special projects that have assisted Virginians with access to justice or enhanced the profession and quality of legal services in Virginia.

This year's winners are:

**Virginia Women Attorneys Association (VWAA) Loudoun Chapter** – The Legal Aid Clinics

The group partnered with Legal Services of Northern Virginia (LSNV) to provide evening clinics on topics suggested by LSNV. The first clinic covered uncontested divorces while the second focused on offers in compromise (debt relief). Volunteers worked with LSNV to provide assistance in the areas of greatest need.

**Hill Tucker Bar Association (HTBA)** – Educating and Empowering: Pathway to the Next Level

The HTBA, one of the oldest historically African American bar associations in the Commonwealth and one of the most diverse, created a multi-prong program to encourage diversity and awareness of the legal profession in academia, the federal court system, the judiciary, and in public service. The HTBA created a series of panels lead by legal luminaries who shared information, mentoring, experiences, and insights with attendees on how to navigate the pathway of their choosing. Moderators and panelists included the Honorable David Eugene Cheek, Delegate Jennifer Carroll Foy, Veronica Brown-Moseley of the Boleman Firm, VSB Immediate Past President Doris Henderson Causey, and Cynthia Hudson, chief deputy attorney general of Virginia.

**Metropolitan Richmond Women's Bar Association (MRWBA) and Hill Tucker Bar Association** – Balancing the Scales: Women in the Law

The MRWBA and HTBA jointly organized and hosted an evening that focused on gender disparities in the legal profession and discussions of how to improve them. On October 18, 2018, the MRWBA and HTBA hosted a screening of *Balancing the Scales: Women in the Law*, an award-winning film by Sharon Rowen that spans 20 years of interviews with women lawyers, including the Hon. Ruth Bader Ginsburg of the U.S. Supreme Court, the Hon. Carol Hunstein, Chief Justice of the Georgia Supreme Court, and women lawyers from across the country. Filmmaker Sharon Rowen moderated the discussion at the University of Richmond Law School, with panelists Doris Henderson Causey of Central Virginia Legal Aid Society and Jennifer McLain McLemore of Williams Mullen.

**The Prince William County Bar Association, Inc. (PWCBA)** – So You're 18 Video

The PWCBA created a training video that compiled some of the best presentations given by lawyers to high school students throughout the county and in Manassas and Manassas Park on the many legal issues and obligations surrounding reaching the age of majority. The PWCBA puts on almost 100 presentations each year, and this 12-minute video aims to help future presenters, as well as teachers and students, with understanding and absorbing some of the content-heavy information included in the robust *So You're 18* program. The film was filmed at Manassas park High School and edited by Little Film Studio.

**Roanoke Bar Association** – Barrister Book Buddies/Barrister Book Buddies 2.0 For 19 years, the lawyers of the Roanoke Bar Association have teamed up with Roanoke City Public Schools to help improve reading in all grades. In September 2018, the Roanoke Bar expanded the program to include Books & Breakfast, in which two under-served



Above, top: Film maker Sharon Rowen (center) with Jennifer McLain McLemore of Williams Mullen (left) and VSB Immediate Past President Doris Henderson Causey (right) at the *Balancing the Scales: Women in the Law* event at the University of Richmond.

A Roanoke lawyer and Book Buddy reads *Don't Bump the Glump* to local elementary school students.

elementary schools are open for a free breakfast, book reading, and the option to select a free book to bring home. The Books & Breakfast program is a joint program with Turn the Page and Roanoke City Schools. These book programs now include 32 lawyer buddies reading to over 500 students a month in four schools in disadvantaged areas. In the last year, 2,000 books have been distributed to the children who participate in the program

The conference makes information on winning projects available to other groups that want to consider similar programs. For information, contact Paulette J. Davidson at Davidson@vsb.org or (804) 775-0521.

# Admission & Orientation Ceremony

The Virginia State Bar welcomed 185 new lawyers from law schools across the country on June 5 in Richmond. They were sworn into the profession by the Supreme Court of Virginia and included James “Jim” P. Wojtasiewicz of Reston, a graduate of William & Mary Law School, who is beginning a law career after 35 years in the Foreign Service. Congratulations to all.

Photos:

1: Nick Garifo (center with glasses), graduate of the University of Virginia School of Law, with his family.

2: James “Jim” P. Wojtasiewicz of Reston, a graduate of William & Mary Law School and former Foreign Service officer.

3: Yolanda T. Beasley of Virginia Beach (right), graduate of Syracuse University College of Law, with a family member.

4: Judson Peverall (center), graduate of the University of Richmond School of Law, with his family.

5: Dominique Byse of Chesapeake, graduate of Michigan State University College of Law, getting his packet.

6: Rodney Charles Patrick (center right), graduate of Samford University School of Law, with his family.



# Health Law Section Announces Writing Competition Winners

The Health Law Section’s student writing competition for students at Virginia law schools for the 2018–19 academic year has selected this year’s top entries and awarded prizes totaling \$3,000.

Contestants submitted papers on health law issues or the practice of health law. Entries were judged by a committee of the Health Law Section on the basis of subject matter originality, relevance to health law, quality of analysis and research, and quality of writing.

The winning entries are:

1st Prize and \$1500: Jonah Hein of the University of Virginia for *The Parents (Don’t) Know Best: Increasing Immunization Access for Minors*

2nd Prize and \$1000: Megan E. Italiano of William & Mary Law School for *Does VA Medicaid Expansion Change the Landscape for COPN?*

3rd Prize and \$500: Svitlana Makoviy of William & Mary Law School for *Achieving the Goals of the Value-Based Purchasing Program: Defining a Standard for External Data Use*

The Health Law Section intends to hold the competition again for the 2019–20 academic year. If you have questions or would like more information about the competition, please contact Sara Heisler, [saraheisler@orthovirginia.com](mailto:saraheisler@orthovirginia.com).

*Save the Date*

Young Lawyers Conference

**Bench-Bar Dinner**

October 29, 2019

Hilton Hotel, Downtown  
Richmond

# Construction Law Resources — Demystifying a “Separate Breed of Animal”

by Marie Summerlin Hamm

Noted construction law practitioner Philip Bruner once observed that, “Like other highly complex fields of human endeavor, the construction process has spawned its own unique customs, practices, and technical vocabulary, which in turn led courts and legislatures to develop legal principles consistent with industry realities. Construction law has derived much of its uniqueness from industry experience, customs, and perceived foreseeable risks, which in turn have shaped evolving principles of common law and statutory law applicable to the built environment.”<sup>1</sup> Construction law, to put it rather mildly, is complicated. One federal district court aptly described a construction contract as “a separate breed of animal.”<sup>2</sup> This article highlights recently published resources certain to benefit Virginia practitioners looking to build their knowledge of construction law from the ground up.

## ABA Publications

A long-overdue follow-up to a predecessor volume published in 2000, *MORE Sticks and Bricks: A Lawyer’s Guide to Advanced Construction Systems and Techniques* is a comprehensive guide that covers a multitude of basic construction concepts. Written by nationally recognized engineers, architects and contractors, the volume is designed to help lawyers understand the construction process from foundation to finish. Building systems and materials are covered in detail. The discussion is structured with both the novice and the knowledgeable practitioner in mind. The same holds true for the treatment of construction means and methods. Much attention is given throughout to

terminology and technology, with plenty of glossaries, bibliographies, photos and figures included for illustration and visual interest. The 360-page volume, edited by Belinda Ann Bacon, Levi W. Barrett, and Suzanne M. McSorley, is available in softbound format with discounted pricing for members of the ABA Forum on Construction Law.

## Wolters Kluwer Publications

Wolters Kluwer’s annual *Construction Law Update*, edited by Neal J. Sweeney and Chad V. Theriot, has been a construction industry favorite for 26 years. In the 2019 edition, expert authors provide timely, practical analysis on issues including: federal contracting; licensing laws; OSHA standards; surety bonds, indemnity claims and defenses; cybersecurity and cyber threats on construction; and arbitration in international construction projects. The volume also addresses recent developments impacting six major geographical regions of the United States: Southeast, Northeast, Southwest, West, Northwest, and Midwest. A softbound single volume is available. It is also accessible on the Cheetah™ platform.

## Virginia CLE Publications

*39th Annual Construction and Public Contracts Seminar*

This annual publication is pulled directly from the content of the November meeting of the Construction Law and Public Contracts Section of the Virginia State Bar, but unquestionably stands alone as a reference work of import. The resource not only provides a review and analysis of federal and state decisions and legislative developments impacting construction and public contracts from

the past year, it also covers pressing issues including: Design-Build; Mechanic’s Liens; Delay and Loss of Productivity Evidence; Pass-through Claims; Environmental Considerations; and Licensing. There is also an ethics update from the venerable and venerated Thomas E. Spahn. Conference attendees receive a copy of the CLE materials. The title is also available for purchase on the Virginia CLE website in print or searchable PDF via download, USB Flash Drive, or CD-ROM.

## Virginia Practice Series

Volume 14 of the trusted *Virginia Practice* series covers *Construction Law*. The recently released 2018–2019 Edition includes summaries and analysis of statutes, regulations, and cases. Written by Peckar & Abramson PC partners Michael A. Branca, Mark R. Berry, and Jesse S. Keen, the title covers a range of issues including: Licensing; the Virginia USBC; Public Contract Formation, Performance, Claims, and Dispute Resolution; Public Private Partnerships; Private Contract Formation, Enforcement, Disputes and Dispute Resolution; Fraud; Damages; Liability; Liens and Bonds; and more. This treatise also explores the interrelation of federal procurement and fraud statutes with Virginia law. Published by Thomson Reuters, this heavily footnoted resource provides research references to relevant West Key Numbers as well as to other respected construction titles. Each volume of the *Virginia Practice Series* is available as a softbound book as well as electronically in both Westlaw Edge and via the ProView™ eReader.

Resources continued on page 49

# The Aerojet Decision and the False Claims Act: A Harbinger of Things to Come

by Jonathan V. Gallo

A recent decision from the Federal District Court for the Eastern District of California has confirmed what many government contract attorneys had predicted: that non-compliance with federal cybersecurity procurement regulations could form the basis for actions under the Federal False Claims Act. The case, *United States ex rel. Markus v. Aerojet Rocketdyne Holdings, Inc.*, represents the first in a potential flood of civil actions based on allegations that a government contractor failed to comply with federal cybersecurity procurement regulations.

## The Decision — Background

Brian Markus (the plaintiff/relator in the *qui tam* action), brought the case against his former employer, defendants Aerojet Rocketdyne Holdings, Inc. (ARH) and its wholly-owned subsidiary, Aerojet Rocketdyne, Inc. (AR).<sup>1</sup> Markus worked for the defendants as the senior director of Cyber Security, Compliance, and Controls from June 2014 to September 2015.<sup>2</sup> The defendants' customers include the Department of Defense (DoD) and the National Aeronautics & Space Administration (NASA).<sup>3</sup> In his Second Amended Complaint (SAC), Markus alleged that the defendants fraudulently entered into contracts with the federal government despite knowing that they failed to meet the minimum cybersecurity standards required to be awarded government contracts.<sup>4</sup> The court's decision focused on the cybersecurity requirements found in DoD's Federal Acquisition Regulations Supplement (DFARS) 252.204-7012 and NASA ac-

quisition regulations found in 48 C.F.R. §1852.204-76.

## The FCA Claims — Materiality

Markus brought two fraud claims under the FCA: (1) promissory fraud under 31 U.S.C. § 3729(a)(1)(A), which imposes liability on anyone who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval” and (2) false or fraudulent statement or record under 31 U.S.C. § 3729(a)(1)(B), which imposes liability on anyone who “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.”<sup>5</sup> According to the court, outside of the context where the actual claim for payment itself is literally false or fraudulent, the Ninth Circuit recognizes two doctrines that attach liability to allegedly false or fraudulent claims: (1) false certification, (express or implied) and (2) promissory fraud, also known as fraud in the inducement.<sup>6</sup> The elements of both are: (1) a false statement or fraudulent course of conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out money or forfeit moneys due.<sup>7</sup>

In their motion to dismiss, the defendants argued Markus failed to satisfy the materiality requirement. First, because AR had disclosed to the government its failure to comply with the requirements.<sup>8</sup> The court rejected this argument and ruled that Markus had pled with sufficient particularity that the defendants had not fully disclosed the extent of AR's non-compliance with the relevant regulations.<sup>9</sup> The defendants' also argued, that since

both DoD and NASA continued to enter into contracts with AR after discovering their non-compliance, materiality was not met.<sup>10</sup> The court also rejected this argument and ruled that Markus had alleged sufficient facts that AR's misrepresentations could have affected the government's decision to enter into and pay on the contracts at issue.<sup>11</sup> Defendants' also argued that AR's noncompliance did not go to the central purpose of the contracts, which pertained to missile defense and rocket engine technology, not cybersecurity.<sup>12</sup> The court ruled that Markus alleged that all of the relevant contracts incorporated DoD's and NASA's requirements and that failure to comply could have affected AR's ability to handle technical information pertaining to missile defense and rocket engine technology.<sup>13</sup> The court also rejected the defendants' argument that the government never expected full compliance from the defense industry because it constantly amended the regulations and attempted to ease the burdens on the industry, and ruled that even if the government never expected full technical compliance, the realtor properly pled that the extent to which a company was technically compliant still mattered to the government's decision to enter into a contract.<sup>14</sup>

## Future Cases

The *Aerojet* decision is likely the first of many cases alleging FCA violations based on non-compliance with government cybersecurity procurement regulations. Attorneys practicing in the

*Aerojet continued on page 49*

# Four Ways A Case Management System Can Make Your Life Better

by Brandon S. Osterbind

Most lawyers live in their calendars, but typically rely on memory for getting things done. The thought hits you — then escapes you — while you were in the shower. Later, you check your calendar, because that has your deadlines.

Perpetually responding to urgent deadlines keeps you in what Stephen Covey calls quadrants 1 and 3. Quadrant 1 tasks are those that are important and urgent. Quadrant 3 tasks are those that are unimportant and urgent. Most people live in these quadrants. I believe part of our lawyer wellness problem comes from spending too much time here. Lawyers rarely get to function in quadrant 2, which holds important but not necessarily urgent tasks.

Technology can help. By using a case management system (CMS), you can prevent many common mistakes that result in bar complaints, malpractice claims, and job dissatisfaction.

## Automating Deadlines

Hard deadlines dominate the worry and stress that lawyers carry with them when they go home every night. Lawyers often manually count days, calendar when things are due and, at the last minute, begin working on them.

CMS software can automate your deadlines and send reminders when those deadlines are approaching. If you enter the trial date, your CMS automatically calendars your hard and soft deadlines. And, you take the risk of human error out of the equation.

## Automating Tasks

Just like automating deadlines, a good CMS can automate tasks. If you have a deadline, you can automate a task

reminder 30 days before your deadline. Instead of starting it at the last minute, you can now apply critical thought to the task. You can put it down for a couple days, re-read it, and make corrections. Now you are working in quadrant 2, instead of quadrants 1 and 3.

## Automating Document Production

A robust CMS will automate the standard parts of your recurring documents, so you don't have to retype or copy and paste information more than once.

As a personal injury lawyer, I request medical records nearly every day. About five years ago, my team stopped manually creating documents. Instead, we created templates for every provider we could think of. Now, we click a button and hit print. The CMS merges the information into the document. The letter is complete and there is no risk that I typed the wrong information. We have also created a template for different types of complaints, discovery requests, and expert designations, to name a few. The risk of human error is virtually gone, and the standard information is always correct. This allows us to relax a little bit more and even enjoy doing quadrant 2 important work.

## Client Portals for Communication

Lawyer-client communication issues generate one of the most common bar complaints. If you spent all day talking on the phone, nothing would get done. But your clients are entitled to know the status of their case and you have a duty to tell them. A CMS with a client portal solves this problem by sharing all documents coming in and out of your office so your client can see them in real time.

Your client is automatically updated as to the status of the case and can message substantive questions directly through your CMS.

## Conclusion

Implementing a CMS takes a commitment of time and money. But if you want to work in quadrant 2 — doing important but not urgent work — there is no better alternative. Working in quadrant 2 increases your general wellness, improves your family and home life, and makes you a better lawyer. While technology is not a silver bullet, I am convinced that my CMS has brought me more peace of mind and improved my ability to represent more clients. It can do the same for you.



**Brandon S. Osterbind** is an injury lawyer in Lynchburg, Virginia and is a graduate of Liberty University School of Law. He serves on the Virginia State Bar's Special Committee on Technology and the Practice of Law, is an Apple enthusiast, and is lover of all technology that makes life easier.

# How Past Representations Can Become a Current Problem

by Mark Bassingthwaighe

Malpractice claims alleging a conflict of interest have been a serious concern for insurers for years. One of the reasons is this: Conflict claims can get expensive fast, if for no other reason than they almost always boil down to an attorney putting his or her financial interests above everything else. So not good, particularly if a jury has any say in the matter.

As a risk guy working in the malpractice insurance arena, I've taken a number of calls over the years from attorneys wanting help in working through a potential conflict situation. These are the calls that both challenge and fascinate me the most. Suffice it to say, before becoming a risk manager, I had no idea how complicated and crazy some of the conflict fact patterns could get.

Given the frequency of conflict questions that come my way, I wanted to share a little advice concerning one particular conflict resolution misstep lawyers sometimes make with Rule 1.9 of the Rules of Professional Conduct, commonly known as the "past client rule." Let's begin with a fact pattern. Nine years ago, Attorney Smith defended a prosecutor in an ethics probe. Six years ago, Attorney Smith made a lateral move and joined the firm of Jones, White and Parker. Attorney Parker, one of Smith's current partners, has been asked by the city, a long-term client of the firm, to defend the city in a gender discrimination suit. The employee suing the city happens to be the prosecutor that Smith represented nine years ago. The question is: May Attorney Parker accept the new matter?

At the outset, let's assume that Attorney Smith properly closed her file nine years ago by sending a closure letter to the prosecutor once the ethics probe was resolved; because, if that never happened, there could be an argument that the prosecutor remains an inactive current client and we'd need to review Rule 1.7, the current client rule. With documentation that the prosecutor is a past client in place, however, we're clearly now dealing with Rule 1.9.

Thinking about Rule 1.9 part (a), which most of us readily recall, it's tempting to look at the above fact pattern and conclude that even though the situation involves the same person, the same employee, and the same position there's no conflict because a gender discrimination suit and an ethics probe are not the same matter, nor are they substantially related matters. The conflict resolution misstep that sometimes occurs is in stopping here because this is all the attorney remembers Rule 1.9 saying. Unfortunately, the decision to stop here ignores the fact that it is the same person, same employee and same position, and it's a potential misstep because Rule 1.9 part (c) (which prevents Attorney Smith from using information relating to or gained in the course of her prior representation to the disadvantage of her former client) has been overlooked.

Prior to the firm agreeing to represent the city, Attorney Smith would need to review her file to see if any information was learned that could be used to her former client's disadvantage. If the answer is yes, then the firm cannot represent the city. Yes, it's Smith's

partner, Attorney Parker, who would be defending the city, but the information Smith has will be imputed to her partner under Rule 1.10, the imputation of conflicts rule.

Conflict of interest situations are something every lawyer should take very seriously. The above fact pattern actually occurred. Learn from the missteps of others. The above-referenced firm (name has been changed) ended up being disqualified by the judge. One must always remember that there's more to Rule 1.9 than the question of whether the past and current matters are the same or substantially related. Rule 1.9 also requires you to consider any information that exists in your files that you may have forgotten about. Forget that, and you could find yourself facing a similar outcome.



**ALPS Risk Manager Mark Bassingthwaighe, Esq.**, has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting our on-demand CLE library at [alps.inreachce.com](http://alps.inreachce.com). Mark can be contacted at: [mbass@alpsnet.com](mailto:mbass@alpsnet.com).

**Resources** *continued from page 45*

A review of these resources will undoubtedly assist lawyers new to navigating the complex area construction law develop a solid understanding of not only the myriad of legal issues that can arise, but also of common construction terminology, timelines, technology, and techniques.

Endnotes:

- 1 Philip L. Bruner, *The Historical Emergence of Construction Law*, 34 WILLIAM MITCHELL LAW REVIEW 14 (2007).
- 2 *Paul Hardeman, Inc. v. Ark. Power & Light Co.*, 380 F. Supp. 298, 317 (E.D. Ark. 1974).



**Marie Summerlin Hamm**, a past president of the Virginia Association of Law Libraries, serves as law library director at Regent University School of Law. She contributed the Courts and Case Law chapter in the most recent edition of *A Guide to Legal Research in Virginia* and frequently authors on the topics of legal research and legal education.

**Aerojet** *continued from page 46*

government contracting space should take notice of the *Aerojet* decision and be familiar with the federal cybersecurity procurement regulations in order to appropriately advise their clients.

Endnotes:

- 1 *United States ex rel. Markus v. Aerojet Rocketdyne Holdings, Inc.*, No. 2:15-cv-2245 WBS AC, 2019 U.S. Dist. LEXIS 78018, (E.D. Cal. May 8, 2019).
- 2 *Id.* at \*2.
- 3 *Id.*
- 4 *Id.* at \*4-5.
- 5 *Id.* at \*6.
- 6 *Id.* at \*6-7.
- 7 *Id.* at \*8.
- 8 *Id.* at \*9.
- 9 *Id.*
- 10 *Id.* at \*11-12.
- 11 *Id.* at \*12.
- 12 *Id.* at \*13-14.
- 13 *Id.* at \*14.
- 14 *Id.* at \*14-15.



**Jonathan Gallo** has practiced law for over twenty years and is of counsel at Vandeventer Black LLP. He is a member of the firm's cybersecurity and data privacy group and the government contracting group. Gallo's practice focuses on issues concerning data privacy and security, data breach planning and response, cyber risk liability and legal compliance, software development and licensing, and other technology related issues. Jonathan frequently presents on data privacy and security related issues and has written numerous articles on data privacy issues for multiple industries.



## Reasons YOU Should Use the VSB Fee Dispute Resolution Program

1. It's cheap – \$20.
2. It's quick – mediation is scheduled within 30 days of the mediator's appointment, and arbitration is scheduled within 45 days of the arbitrator's appointment.
3. It's smart – many legal malpractice claims arise from disputes over legal fees.
4. It's informal.
5. It's conducted by Supreme Court certified mediators and VSB trained arbitrators.
6. It's confidential – mediation and arbitration are confidential, unless both parties agree otherwise in writing. Attorney arbitrators are subject to Rule 8.3 reporting obligations.
7. It's fair and convenient.
8. It's good for you.
9. It's good for the client.
10. It's good for the profession.

It's one of the VSB's best kept secrets. Let's change this!

For information on the program, go to our website at [www.vsb.org/site/members/fee\\_dispute\\_resolution](http://www.vsb.org/site/members/fee_dispute_resolution) or contact Stephanie Blanton at (804) 775-0576

**Danny Burk, attorney/mediator:**

"The entire program is a solid example of the bar helping maintain its relationship with clients. Lawyers who participate give their clients a chance to present their views in a safe and comfortable environment. I can say that, at least to date, each case that I've mediated ended with a resolution and closure."



## Stay connected with the Virginia State Bar!



@Vastatebar



Virginia State Bar



/viriniastatebar



@viriniastatebar

# CLE Calendar

## INTRODUCTION TO SENTENCING GUIDELINES

(6 Hours — Approved for 6 CLE & VIDC Re-certification)

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, 2019. Register by completing the form and submit to the Commission. Cost \$125.00 (Paralegals \$62.50). Purchase manual separately. (Fee waived for Judges, CAs, Public Defenders, P&P and staff. Limited

fee waivers are available for attorneys) Same content as in previous years.

[www.vcsc.virginia.gov](http://www.vcsc.virginia.gov)

JULY 26 — VIRGINIA BEACH  
Tidewater Community College  
9:30-5:00 (#708)

*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 August 22 through October 12. Send information by July 17 to [norman@vsb.org](mailto:norman@vsb.org). For other CLE opportunities, see Virginia CLE calendar and "Current Virginia Approved Courses" at [www.vsb.org/site/members/mcle-courses/](http://www.vsb.org/site/members/mcle-courses/) or the websites of commercial providers.*

## Virginia State Bar Harry L. Carrico Professionalism Course

July 16, 2019, Roanoke

August 27, 2019, Tysons Corner

December 5, 2019, Richmond

See the most current dates and registration information at [www.vsb.org/site/members/new](http://www.vsb.org/site/members/new).

## Virginia CLE Calendar

Virginia CLE will sponsor the following continuing legal education courses. For details, see <http://www.vacle.org/seminars.htm>.

July 9  
**Essentials of the False Claims Act and the Virginia Fraud Against Taxpayers Act**  
Live — Charlottesville/Webcast/Telephone  
11 AM-1 PM

July 10  
**Essentials of Federal Sentencing, with Lessons from the Manafort Case**  
Webcast/Telephone  
NOON-2 PM

July 11  
**Essentials of Title Examination**  
Live — Charlottesville/Webcast/Telephone  
NOON-2 PM

July 12  
**Essentials of Handling Drug Cases in Virginia**  
Live — Charlottesville/Webcast/Telephone  
NOON-2 PM

July 15  
**Choosing a Virginia Business Entity**  
Live — Charlottesville/Webcast/Telephone  
NOON-2 PM

July 16  
**Essentials of Probate**  
Webcast/Telephone  
10 AM-NOON

July 18  
**Representing the Juvenile Criminal Defendant: Navigating the Juvenile Justice System**  
Live — Charlottesville/Webcast/Telephone  
NOON-2 PM

July 19  
**Essentials of Handling Drug Cases in Virginia**  
Webcast/Telephone  
NOON-2 PM

July 23  
**45th Annual Recent Developments in the Law 2019: News from the Courts and General Assembly**  
Video — Abingdon, Charlottesville, Danville, Fairfax, Hampton, Richmond, Roanoke  
9 AM-4:25 PM

**Essentials of Handling Drug Cases in Virginia**  
Webcast/Telephone  
NOON-2 PM

July 24  
**45th Annual Recent Developments in the Law 2019: News from the Courts and General Assembly**  
Video — Ashburn, Harrisonburg, Lynchburg  
9 AM-4:25 PM

**Essentials of Foreclosure**  
Live — Charlottesville/Webcast/Telephone  
10 AM-1:15 PM

July 25  
**45th Annual Recent Developments in the Law 2019: News from the Courts and General Assembly**  
Video — Tysons, Winchester  
9 AM-4:25 PM

July 25  
**What Virginia Attorneys Need to Know About Commercial Property Assessed Clean Energy (C-PACE) Financing**  
Webcast/Telephone  
10 AM-NOON

**Essentials of the False Claims Act and the Virginia Fraud Against Taxpayers Act**  
Webcast/Telephone  
1-3 PM

July 26  
**Essentials of Virginia Zoning Law**  
Webcast/Telephone  
10 AM-NOON

July 29  
**Representing the Juvenile Criminal Defendant: Navigating the Juvenile Justice System**  
Webcast/Telephone  
NOON-2 PM

**Choosing a Virginia Business Entity**  
Webcast/Telephone  
3-5 PM

July 30  
**Essentials of Copyright**  
Live — Charlottesville/Webcast/Telephone  
NOON-1:30 PM

July 31  
**Essentials of Title Examination**  
Webcast/Telephone  
10 AM-NOON

August 6  
**Essentials of Contracts in Virginia**  
 Live — Charlottesville/Webcast/Telephone  
 NOON–2 PM

August 7  
**Cybersecurity for the Real Estate Practitioner**  
 Live — Charlottesville/Webcast/Telephone  
 10 AM–NOON

August 8  
**Essentials of Copyright**  
 Webcast/Telephone  
 NOON–1:30 PM

August 13  
**Essentials of Advocacy: An Advocate's Top 40**  
 Live — Charlottesville/Webcast/Telephone  
 11 AM–NOON

August 14  
**Essentials of Foreclosure**  
 Webcast/Telephone 10 AM–1:15 PM

**Essentials of Drafting Deeds**  
 Live — Charlottesville/Webcast/Telephone  
 3–5 PM

August 15  
**Organizing and Operating Nonprofits**  
 Live — Fairfax 9 AM–4:15 PM

August 20  
**The Articulate Attorney®: Public Speaking for Lawyers**  
 Video — Abingdon, Alexandria, Charlottesville, Fredericksburg, Norfolk, Richmond, Roanoke, Tysons 9 AM–12:15 PM

**Essentials of Contracts in Virginia**  
 Webcast/Telephone  
 NOON–2 PM August 21

**Special Needs Planning for Family Law Attorneys**  
 Live — Charlottesville/Webcast/Telephone  
 NOON–2 PM

**The Articulate Attorney®: Public Speaking for Lawyers**  
 Video — Ashburn, Warrenton  
 9 AM–12:15 PM

August 22  
**Organizing and Operating Nonprofits**  
 Live — Charlottesville  
 9 AM–4:15 PM

**The Articulate Attorney®: Public Speaking for Lawyers**  
 Video — Virginia Beach, Winchester  
 9 AM–12:15 PM

## Want to brush up on your legal research skills?

Fastcase is **free to all VSB members** (a \$995 per year value) and has a number of free webinars to assist you with improving your legal searches. Registration and handouts here: [www.fastcase.com/webinars](http://www.fastcase.com/webinars)

**Introduction to Boolean**  
 Thursday, July 18, 2019  
 1:00 – 2:00 PM ET

**Ethics and Legal Research**  
 Thursday, July 25, 2019  
 1:00 – 2:00 PM ET

**Introduction to Legal Research on Fastcase**  
 Thursday, August 1, 2019  
 1:00 – 2:00 PM ET

**Data Analytics: Fastcase and Docket Alarm**  
 Thursday, August 8, 2019  
 1:00 – 2:00 PM ET

**Introduction to Boolean**  
 Thursday, August 15, 2019  
 1:00 – 2:00 PM ET

**Ethics and Legal Research**  
 Thursday, August 22, 2019  
 1:00 – 2:00 PM ET

Reach

# 50,000 Lawyers

Across Virginia and Across the USA!

Free design services when you advertise with us.



LLM Publications | Ben Oerther  
 503-445-2226 | beno@llmpubs.com  
[www.vsb.org/docs/VSB-LLM.pdf](http://www.vsb.org/docs/VSB-LLM.pdf)

Virginia CLE®

**International Destination CLE  
 Vienna, Austria 2019**

**November 8–15, 2019**

MCLE Credit: 9.0 (Ethics: Pending)  
 Live-Interactive Credit: 4.0

[www.vacle.org](http://www.vacle.org)

## DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Virginia Supreme Court Part 6, § II, eff. Jan. 1, 2000) or another of the Supreme Court Rules.

Copies of disciplinary orders are available at the link provided with each summary or by contacting the Virginia State Bar Clerk's Office at (804) 775-0539 or [clerk@vsb.org](mailto:clerk@vsb.org). VSB docket numbers are provided.

---

---

### DISCIPLINARY BOARD

#### Alexander Maxwell Ace

Leesburg, VA

18-070-111423, 19-070-114290

Effective April 1, 2019, the Virginia State Bar Disciplinary Board revoked Alexander Maxwell Ace's license to practice law based on his affidavit consenting to the revocation. By tendering his consent to revocation at a time when allegations of misconduct are pending, Ace acknowledges that the material facts upon which the allegations of misconduct are pending are true. Rules of Court, Part 6, Section IV, Paragraph 13-28. RPC 1.3 (a), (b); 1.4 (a), (c); 1.16 (a)(2), (c), (d)

[www.vsb.org/docs/Ace-040219.pdf](http://www.vsb.org/docs/Ace-040219.pdf)

#### John Michael Cassell

Charles Town, WV

19-000-114956

Effective April 26, 2019, the Virginia State Bar Disciplinary Board revoked John Michael Cassell's license to practice law in the Commonwealth of Virginia. This was a reciprocal revocation based on the January 10, 2019, revocation of his West Virginia law license by the West Virginia Supreme Court of Appeals. Rules of Court, Part 6, Section IV, Paragraph 13-24

[www.vsb.org/docs/Cassell-050319.pdf](http://www.vsb.org/docs/Cassell-050319.pdf)

#### James Stephen Del Sordo

Manassas, VA

18-053-110776

Effective April 26, 2019, the Virginia State Bar Disciplinary Board suspended James Stephen Del Sordo's license to practice law in the Commonwealth of Virginia for one year and one day for violating professional rules that govern safekeeping property, depositing funds, disbursal of funds, record-keeping requirements, and misconduct. RPC 1.15(b)(5), 1.15(c)(1), 1.15(d)(3), 1.15(d)(4), 8.4(c)

[www.vsb.org/docs/DelSordo-050719.pdf](http://www.vsb.org/docs/DelSordo-050719.pdf)

#### Peter Robin Estes

Springfield, VA

19-000-114800

Effective May 17, 2019, the Virginia State Bar Disciplinary Board revoked Peter Robin Estes' license to practice law in the Commonwealth of Virginia. This was a reciprocal revocation based on his October 19, 2016, disbarment from the practice of law in the State of California. Rules of Court, Part 6, Section IV, Paragraph 13-24

[www.vsb.org/docs/Estes-052419.pdf](http://www.vsb.org/docs/Estes-052419.pdf)

#### Steward Lee Gitler

Alexandria, VA

19-052-113926

Effective May 8, 2019, the Virginia State Bar Disciplinary Board suspended Steward Lee Gitler's license to practice law in the Commonwealth of Virginia for 90 days for violating professional rules that govern misconduct. This was an agreed disposition of misconduct charges. RPC 8.4 (b), (c)

[www.vsb.org/docs/Gitler-051319.pdf](http://www.vsb.org/docs/Gitler-051319.pdf)

#### Daniel Robert Goodwin

Vienna, VA

17-000-108658

On May 17, 2019, the Virginia State Bar Disciplinary Board suspended Daniel Robert Goodwin's license to practice law in the Commonwealth of Virginia for three years based on his February 10, 2017, conviction of a felony in the United States District Court for the Eastern District of Kentucky. The suspension is effective March 15, 2017, the date of Goodwin's summary suspension.

Rules of Court, Part 6, Section IV, Paragraph 13-22

[www.vsb.org/docs/Goodwin-053019.pdf](http://www.vsb.org/docs/Goodwin-053019.pdf)

#### Elizabeth Christine Griffin

Mechanicsville, VA

18-033-111299

Effective May 31, 2019, the Virginia State Bar Disciplinary Board issued a public reprimand with terms to Elizabeth Christine Griffin for violating professional rules that govern fairness to opposing party and counsel and misconduct. This was an agreed disposition of misconduct charges. RPC 3.4 (d); 8.4 (b)

[www.vsb.org/docs/Griffin-060319.pdf](http://www.vsb.org/docs/Griffin-060319.pdf)

#### Michael Denis Kmetz

Norfolk, VA

18-022-109905

The Virginia State Bar Disciplinary Board suspended Michael Denis Kmetz's license, effective June 1, 2019, to practice law in the Commonwealth of Virginia for nine months, with terms, for violating professional rules that govern competence, diligence, communication, and the safekeeping of property. This was an agreed disposition of misconduct charges. RPC 1.1; 1.3 (a); 1.4 (a); 1.15 (a)(1), (b)(5), (c)(1, 2, 4), (d)(4)

[www.vsb.org/docs/Kmetz-051519.pdf](http://www.vsb.org/docs/Kmetz-051519.pdf)

#### Gary L. Lumsden

Roanoke, VA

18-080-110504

Effective March 28, 2019, the Virginia State Bar Disciplinary Board revoked Gary L. Lumsden's license to practice law based on his affidavit consenting to the revocation. By tendering his consent to revocation at a time when allegations of misconduct are pending, Lumsden acknowledges that the material facts upon which the allegations of misconduct are pending are true. Rules of Court, Part 6, Section IV, Paragraph 13-28

[www.vsb.org/docs/Lumsden-040219.pdf](http://www.vsb.org/docs/Lumsden-040219.pdf)

## Jason Allen Spittler

Luray, VA

18-070-112538

Effective May 17, 2019, the Virginia State Bar Disciplinary Board revoked Jason Allen Spittler's license to practice law in the Commonwealth of Virginia based on violations of the rules of professional conduct governing competence, diligence, communication, safekeeping of property, declining or terminating representation, and bar admission and disciplinary matters. RPC 1.1; 1.3 (a); 1.4 (a); 1.15 (b)(4); 1.16 (d); 8.1 (c), (d)

[www.vsb.org/docs/Spittler-060619.pdf](http://www.vsb.org/docs/Spittler-060619.pdf)

## Travis Joseph Tisinger

Berryville, VA

18-070-112910

Effective April 4, 2019, the Virginia State Bar Disciplinary Board revoked Travis Joseph Tisinger's license to practice law based on his affidavit consenting to the revocation. By tendering his consent to revocation at a time when allegations of misconduct are pending, Tisinger acknowledges that the material facts upon which the allegations of misconduct are pending are true. Rules of Court, Part 6, Section IV, Paragraph 13-28.B. RPC 1.15 (c)

[www.vsb.org/docs/Tisinger-040419.pdf](http://www.vsb.org/docs/Tisinger-040419.pdf)

## Harry Tun

Washington, DC

19-000-115047

Effective March 28, 2019, the Virginia State Bar Disciplinary Board suspended Harry Tun's license to practice law in Virginia for one year. This was an imposition of reciprocal discipline, based on disciplinary action by the District of Columbia Court of Appeals, and an agreed disposition of charges. Rules of Court, Part 6, Section IV, Paragraph 13-24

[www.vsb.org/docs/Tun-041219.pdf](http://www.vsb.org/docs/Tun-041219.pdf)

## Nancy Beth White

Richmond, VA

19-033-114923

Effective April 2, 2019, the Virginia State Bar Disciplinary Board suspended Nancy Beth White's license to practice law in the Commonwealth of Virginia for 30 days with terms for violating the terms of a public reprimand imposed on June 25, 2018. This was an agreed disposition of charges. Rules of Court, Part 6, Section IV, Paragraphs 13-20

[www.vsb.org/docs/White-040319.pdf](http://www.vsb.org/docs/White-040319.pdf)

## Angela Dawn Whitley

Richmond, VA

18-032-110094, 19-000-115036

Effective April 2, 2019, the Virginia State Bar Disciplinary Board suspended Angela Dawn Whitley's license to practice law in the Commonwealth of Virginia, issuing a 90-Day Suspension for VSB Docket No. 18-032-110094, and a 90-Day Suspension for VSB Docket No. 19-000-115036, with the suspensions to run consecutively. This was an agreed disposition of charges. Rules of Court, Part 6, Section IV, Paragraph 13-18.O. RPC 1.4 (a), (b); 8.1 (c)

[www.vsb.org/docs/Whitley-040419A.pdf](http://www.vsb.org/docs/Whitley-040419A.pdf)

## DISTRICT COMMITTEES

### Scott Gregory Adams

East Boothbay, ME

19-070-114659

Effective May 13, 2019, pursuant to Virginia Rule of Professional Conduct 8.5(a) and (b), a Virginia State Bar Seventh District Subcommittee issued a public reprimand without terms to Scott Gregory Adams for violating Maine's professional rules that govern respect for the rights of third persons, inadvertent disclosures, and misconduct. This was an agreed disposition of misconduct charges. Maine Rules of Professional Conduct 4.4 (b); 8.4 (c), (d)

[www.vsb.org/docs/Adams-052019.pdf](http://www.vsb.org/docs/Adams-052019.pdf)

### Daniel Lewis Hawes

Broad Run, VA

18-052-110973

Effective May 20, 2019, a Virginia State Bar Fifth District Subcommittee issued a public reprimand without terms to Daniel Lewis Hawes for violating a professional rule that governs respect for the rights of third persons. This was an agreed disposition of misconduct charges. RPC 4.4

[www.vsb.org/docs/Hawes-052119.pdf](http://www.vsb.org/docs/Hawes-052119.pdf)

### James Randall Perkins

Marion, VA

18-102-112145, 19-102-114315

Effective May 29, 2019, a Virginia State Bar Tenth District Subcommittee issued a public reprimand without terms to James Randall Perkins for violating professional rules that govern diligence, communication, and declining or terminating representation. This was an agreed disposition of misconduct charges. RPC 1.3 (a) (b); 1.4 (a), (b); 1.16 (d), (e)

[www.vsb.org/docs/Perkins-053019.pdf](http://www.vsb.org/docs/Perkins-053019.pdf)

### Christopher Matthew Reyes

Fredericksburg, VA

19-060-113717

Effective May 24, 2019, a Virginia State Bar Sixth District Subcommittee issued a public reprimand without terms to Christopher Matthew Reyes for violating professional rules that govern scope of representation, diligence, communication, and bar admission and disciplinary matters. This was an agreed disposition of misconduct charges. RPC 1.2 (a); 1.3 (a), (b); 1.4 (a); 8.1 (c), (d)

[www.vsb.org/docs/Reyes-052819.pdf](http://www.vsb.org/docs/Reyes-052819.pdf)

### Rebecca Winslow Thacher

Manassas, VA

18-053-111919

Effective May 7, 2019, a Virginia State Bar Fifth District Subcommittee issued a public reprimand without terms to Rebecca Winslow Thacher for violating a professional rule that governs respect for the rights of third persons. This was an agreed disposition of misconduct charges. RPC 4.4

[www.vsb.org/docs/Thacher-050819.pdf](http://www.vsb.org/docs/Thacher-050819.pdf)

## DISCIPLINARY PROCEEDINGS

### Suspension – Failure to Pay Disciplinary Costs

		Effective Date	Lifted
Alexander Maxwell Ace	Leesburg, VA	May 7, 2019	
Gary L. Lumsden	Roanoke, VA	May 9, 2019	May 16, 2019
George Ernest Marzloff	Ruther Glen, VA	May 28, 2019	
Eva Lavonne S. Plum	Craigsville, VA	May 15, 2019	
Brian Austin Revercomb	King George, VA	May 17, 2019	
Travis Joseph Tisinger	Berryville, VA	May 13, 2019	
Cherie Anne Washburn	Lynchburg, VA	May 21, 2019	

### Impairment

Christopher Ryan Jones	Chesapeake, VA	April 9, 2019
------------------------	----------------	---------------

## NOTICES TO MEMBERS

### LEGAL ETHICS COMMITTEE SEEKS COMMENT ON SAFEKEEPING PROPERTY RULE

The Virginia State Bar's Standing Committee on Legal Ethics is seeking public comment on proposed amendments to Rule 1.15 of the Rules of Professional Conduct governing the safekeeping of property. Comments are due July 19. [www.vsb.org/site/news/item/ethics\\_cte\\_seeks\\_comment](http://www.vsb.org/site/news/item/ethics_cte_seeks_comment)

### SUPREME COURT OF VIRGINIA ADVISORY COMMITTEE SEEKS COMMENTS

The Advisory Committee on Rules of Court for the Supreme Court of Virginia is seeking public comment on two proposals for amendments to the Rules of Court. Comments are due August 25. [www.vsb.org/site/news/item/scova\\_committee\\_seeks\\_comments](http://www.vsb.org/site/news/item/scova_committee_seeks_comments)

### SUPREME COURT OF VIRGINIA AMENDS ACCESS TO JUDICIAL RECORDS RULE

On April 18, the Supreme Court of Virginia amended the Rules of Court to include Part 11, Access to Judicial Records. The amended rule took effect on June 17. [www.vsb.org/site/news/item/SCV\\_amends\\_access\\_rule](http://www.vsb.org/site/news/item/SCV_amends_access_rule)

### SUPREME COURT OF VIRGINIA AMENDS RULES

On April 26, the Supreme Court of Virginia amended four Rules of Court concerning a number of types of court papers and documents. [www.vsb.org/site/news/item/scv\\_amends\\_rules](http://www.vsb.org/site/news/item/scv_amends_rules)

### SUPREME COURT OF VIRGINIA AMENDS UPL RULES

On April 26, the Supreme Court of Virginia adopted amendments to the Rules of Court governing the Unauthorized Practice of Law after considering a petition approved by the Council of the Virginia State Bar. The amendments took effect on July 1. [www.vsb.org/site/news/item/scv\\_amends\\_upl\\_rules](http://www.vsb.org/site/news/item/scv_amends_upl_rules)

### SUPREME COURT OF VIRGINIA AMENDS MCLE RULE

Also on April 26, the Supreme Court of Virginia adopted an addition to Rules of Court governing MCLE compliance, requiring

active members to affirm that they have attended at least one hour of lawyer well-being education within the past three years. [www.vsb.org/site/news/item/scv\\_amends\\_mcle\\_rule](http://www.vsb.org/site/news/item/scv_amends_mcle_rule)

### SUPREME COURT OF VIRGINIA APPROVES \$30 ATTORNEY WELLNESS FUND FEE

On May 31, the Supreme Court of Virginia approved an amendment to the Rules of Court governing the Virginia State Bar to allow for a \$30 Attorney Wellness Fund fee to be collected on the dues statement of all active Virginia lawyers. [www.vsb.org/site/news/item/wellness\\_fund\\_fee](http://www.vsb.org/site/news/item/wellness_fund_fee)

### SUPREME COURT OF VIRGINIA AMENDS RULE GOVERNING COURT COSTS

On June 7, the Supreme Court of Virginia amended Rule 1:24 that governs the requirements for court payment agreements for the collection of fines and costs assessed against defendants convicted of a criminal offense or traffic infraction. [www.vsb.org/site/news/item/scv\\_amends\\_court\\_costs](http://www.vsb.org/site/news/item/scv_amends_court_costs)

### CHIEF JUSTICE LEMONS REMINDS LAWYERS TO REPORT PRO BONO

In a letter going to all Virginia lawyers in mid-June via the dues statement, Supreme Court of Virginia Chief Justice Donald W. Lemons asks lawyers to engage in pro bono service, and to take the time to voluntarily report their activities. See page 33 for a copy of the letter or read it online: [www.vsb.org/site/news/item/report\\_pro\\_bono\\_2019](http://www.vsb.org/site/news/item/report_pro_bono_2019)

### HIGHLIGHTS OF THE JUNE 13 VIRGINIA STATE BAR COUNCIL MEETING

At its meeting on June 13 in Virginia Beach, the Virginia State Bar Council heard several significant reports and took a number of actions regarding the Access to Legal Services Committee, legal ethics opinions on advertising and law offices, and Rule 4.4 on respect for the rights of third persons. [www.vsb.org/site/news/item/highlights\\_council\\_061319](http://www.vsb.org/site/news/item/highlights_council_061319)

## DUES STATEMENTS MAILED

Dues statements were mailed June 17. The annual dues and fees must be received at the Virginia State Bar by July 31, or delinquency fees will be assessed. Read about what's new on your dues statements this year on page 35 or online: [www.vsb.org/site/news/item/dues\\_statements\\_2019](http://www.vsb.org/site/news/item/dues_statements_2019)

## BAR WELCOMES NEW COUNCIL MEMBERS

Twenty-five Virginia lawyers will begin three-year terms on the Virginia State Bar Council on July 1, 2019. This year marked the highest voter turnout since the VSB began electronic balloting. See page 36 for names and photos by circuit. [www.vsb.org/site/news/item/new\\_council\\_members\\_2019](http://www.vsb.org/site/news/item/new_council_members_2019)

## PRESIDENT'S COMMITTEE RELEASES REPORT ON LAWYER WELL-BEING

A special committee formed by VSB President Leonard C. Heath Jr. released its final report on lawyer well-being in May. Read more on page 38 or online: [www.vsb.org/site/news/item/presidents\\_committee\\_report](http://www.vsb.org/site/news/item/presidents_committee_report)

## SCAM INVOLVING SEVERANCE AGREEMENT TARGETING LAWYERS

Many law firms and attorneys in multiple states have been approached by someone claiming to have a severance agreement from the Tractor Supply Company. [www.vsb.org/site/news/item/scam\\_involving\\_severance\\_agreement](http://www.vsb.org/site/news/item/scam_involving_severance_agreement)

## PRE-LAW INSTITUTE WINS NATIONAL AWARD

The Oliver Hill/Samuel Tucker Pre-Law Institute won first place in the 2019 Embracing Diversity Challenge hosted by the American Bar Association (ABA) Young Lawyers Division. Co-sponsored by Young Lawyers Conference and the Diversity Conference, the institute reaches future lawyers at an early age to provide them with exposure and opportunity to explore the legal profession. [www.vsb.org/site/news/item/national\\_award\\_for\\_institute](http://www.vsb.org/site/news/item/national_award_for_institute)

## VOLUNTEERS SOUGHT FOR BOARD AND COMMITTEE VACANCIES

Volunteers are needed to serve the Virginia State Bar's boards and committees. The Nominating Committee will refer interested lawyers to Bar Council for consideration at its October meeting. All final appointments are made by the Supreme Court of Virginia, and new appointees may serve 2 consecutive 3-year terms.

**Vacancies in 2020 are listed below. All appointments will be for the terms specified, beginning on July 1, 2020.**

### Council Members at Large:

3 lawyer vacancies

One at-large member is not eligible and 2 at-large members are eligible for reappointment to a second term.

### Disciplinary Board:

5 lawyer vacancies and 2 lay member vacancies

One lawyer member is not eligible and 4 current members are eligible for reappointment to a second term. One lay member is not eligible and 1 lay member is eligible for reappointment to a second term.

Prior district committee service is required.

*New this year:* a writing sample, responding to the hypothetical disciplinary vignette, must be submitted to be considered. See [www.vsb.org/site/news/item/volunteers\\_2019](http://www.vsb.org/site/news/item/volunteers_2019) for the vignette.

### Mandatory Continuing Legal Education Board:

5 lawyer vacancies

One member is not eligible and 4 current members are eligible for reappointment to a second term.

A letter of interest and a brief résumé, along with the writing sample for Disciplinary Board applicants, should be sent by **August 2, 2019**, to:

Leonard C. Heath Jr.

Chair, Nominating Committee, Virginia State Bar

1111 E. Main St., Suite 700

Richmond, VA 23219-0026

Or emailed to [nominations@vsb.org](mailto:nominations@vsb.org).

## NOMINATIONS SOUGHT FOR TWO PRO BONO AWARDS

The Access to Legal Services Committee of the Virginia State Bar is seeking nominations for the

Lewis F. Powell Jr. Pro Bono Award and the Frankie Muse Freeman Organizational Pro Bono Award.

The awards will be presented at a ceremony during the Virginia Pro Bono and Legal Aid Conference in October.

**The nomination deadline is August 16, 2019, at 5 PM.**

[www.vsb.org/site/sections/pro\\_bono/awards](http://www.vsb.org/site/sections/pro_bono/awards)

## VSB CLIENTS' PROTECTION FUND BOARD PAYS \$39,322.02 TO PETITIONERS

At its most recent meeting in Richmond on May 3, 2019, the Virginia State Bar Clients' Protection Fund Board approved five new payments totaling \$39,322.02.

In the largest awards of the meeting, two former clients of Robert Lyman Isaac Shearer Jr. were awarded \$11,500 and \$10,000 as reimbursement for fees they paid to Shearer as clients. In both cases, Shearer was hired for custody matters and did not fulfill professional obligations. The bar suspended Shearer's license for three years in June 2018.

The board also approved a \$9,947.02 payment to a former client of Beverly Anne English, as reimbursement for funds that the attorney collected in a divorce proceeding but failed to remit to the petitioner. English's license was revoked in February 2017.

A former client of Bryan James Waldron received \$6,375 for reimbursement of client funds the attorney misappropriated. The petitioner had also filed a disciplinary complaint that led to Waldron's license revocation in September 2018.

Finally, one petitioner was reimbursed \$1,500 for payments made to his attorney, Renay Melitta Fariss, prior to her death in November 2018. The VSB encourages lawyers to take

a moment to plan ahead for protecting their clients' interests in the event of death or disability.

The Clients' Protection Fund was created by the Supreme Court of Virginia in 1976 to reimburse persons who suffer a quantifiable financial loss due to qualifying conduct or status of a Virginia lawyer. The fund is not taxpayer funded but is supported by Virginia lawyers who pay an annual fee of up to \$25. The Supreme Court of Virginia has set the current annual fee at \$10 per Virginia lawyer with an active license status.

Payments from the Clients' Protection Fund are discretionary and not a matter of right. Contact Vivian R. Byrd, administrator to the Clients' Protection Fund, at [cpf@vsb.org](mailto:cpf@vsb.org) or (804) 775-0572 for more information.

While the VSB does not name petitioners in news summaries, recipients of Clients' Protection Fund disbursement are a matter of public record. Contact the administrator or review the public meeting materials for the May meeting. The VSB website has more information at [www.vsb.org/site/public/clients-protection-fund](http://www.vsb.org/site/public/clients-protection-fund).

A chart of the amounts paid as a result of May's meeting follows.

Docket Number	Lawyer's Name	City of Record	Amount Paid to Petitioner	Type of Case
18-555-003177	Robert Lyman Isaac Shearer Jr.	Springfield, VA	\$11,500	Unearned fees/Family Law
19-555-003188	Beverly Anne English	Virginia Beach, VA	\$9,947.02	Unearned fees/Family Law
19-555-003192	Bryan James Waldron	Oakton, VA	\$6,375	Unearned fees/Real Estate
19-555-003201	Robert Lyman Isaac Shearer Jr.	Springfield, VA	\$10,000	Unearned fees/Family Law
19-555-003210	Renay Melitta Fariss <b>Deceased</b>	Chesterfield, VA	\$1,500	Unearned fees/Family Law



## 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 "Email Your Ethics Question" link on the Ethics Questions and Opinions web page at [www.vsb.org/site/regulation/ethics/](http://www.vsb.org/site/regulation/ethics/).

**Joseph W. H. Mott** has been named the Justice Attaché at the U. S. Embassy in Kabul, Afghanistan. He will serve as the senior Department of Justice official in the country and is the primary liaison to the Afghan judiciary and Attorney General's Office, as well as providing technical advice and assistance. Mott is an Assistant U. S. Attorney on a one-year detail from the U. S. Attorney's Office in Roanoke.



Mott

**Gordon & Rees, LLP**, a full-service national law firm with over 900 attorneys located throughout the country has opened a Williamsburg office. The new office is comprised of former LeClairRyan lawyers, including **William W. Sleeth III** (who will serve as office managing partner), **Susan Childers North**, **Gregory S. Bean**, and **Brett C. Herbert**.



Sleeth



North



Bean



Herbert

**James V. Davidson** of Richmond has been promoted to partner at **Hunton Andrews Kurth LLP**. He focuses his practice on all aspects of capital markets, mergers and acquisitions, corporate finance, and real estate transactions, with a particular emphasis on REITs. An undergraduate of Miami University, Davidson received his law degree from New York University School of Law.



Davidson

**Kaufman & Canoles, P.C.** is pleased to announce that **Neil Talegaonkar** has joined as Of Counsel in the firm's expanding Richmond office. Talegaonkar's practice is a mixture of counseling, negotiation, and litigation. He advises employers on compliance with federal and state laws and represents employers, executives, physicians, and other professionals on the employment agreement front.



Talegaonkar

**McGuireWoods** partner **Michele Satterlund** has been elected president of the Metro Richmond Women's Bar Association. Satterlund, also a senior vice president at McGuireWoods Consulting, will focus on growing the association's membership during her yearlong term. At McGuireWoods, Satterlund represents national and international companies in the technology, pharmaceutical, transportation, healthcare and manufacturing industries.



Satterlund



**Breit Cantor Grana Buckner** has been formed by the merger of Cantor Stoneburner Ford Grana & Buckner (Richmond) and Breit Drescher Imprevento (Virginia Beach). The new firm will specialize in catastrophic injury and wrongful death cases. Together the firms have over 150 verdicts and settlements in excess of \$1 million. Four Breit Cantor Grana Buckner attorneys have served (or will serve in 2020) as president of the Virginia Trial Lawyers Association and three have served as president of the Virginia Chapter of the American Board of Trial Advocates as well as held leadership roles in the Brain Injury Association of Virginia, American Association for Justice, the Lewis Powell Inn of Court, and the Metro Richmond Woman's Bar Association, as well as numerous other legal, professional, and charitable organizations.

**Daniel E. Lynch**, principal of Lynch Seli, P.C., became the Richmond Bar Association's 135th president when he took office on June 1st. Other officers elected at the Annual Meeting held on April 17 were: **T. O'Connor Johnson** of Hudley & Johnson, PC, President-Elect; **Hon. Richard S. Wallerstein** of the Henrico Circuit Court, Honorary Vice President; **John W. Anderson** of Spotts Fain, PC, Vice President; **R. Braxton Hill IV** of Christian & Barton, LLP, Secretary-Treasurer; and **Terrence L. Graves** of Sands Anderson



PC, Immediate Past President. **A. Tevis Marshall** of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., **W. Benjamin Pace** of Williams Mullen and **Carole E. Yeatts** of the University of Richmond School of Law were elected to serve on the Board of Directors.



Habeeb



Finnicum



Graham

**Gentry Locke** attorneys **Gregory D. Habeeb**, **Andrew D. Finnicum**, and **Travis J. Graham** recently obtained a \$2.1 million settlement in a commercial vehicle crash that took the lives of two siblings in Scott County. Gentry Locke successfully argued that Virginia's omnibus insurance statute should apply to the Tennessee-registered van involved in the crash because the van was principally garaged and used in Virginia at the time of the fatal crash.

Chesterfield Deputy County Attorney **Michael Chernau** was honored by the Local Government Attorneys of Virginia, Inc. (LGA) with the 2019 A. Robert Cherin Award for Outstanding Deputy or Assistant Local Government. Chernau was selected for the award in recognition of his "distinguished public service that reflects a personal commitment to the highest ethical and professional principles and enhances the image of local government attorneys in the Commonwealth." Chernau has served in the Chesterfield County Attorney's Office for 28 years.



Chernau

**Libbey Van Pelt** has joined the firm of **Blankingship & Keith, P.C.** as counsel in its personal injury practice. Van Pelt's practice focuses on serious personal injury cases, including wrongful death, products liability and inadequate security matters. A former Assistant U.S. Attorney for the District of Delaware, she has extensive experience in all phases of litigation, including complex commercial litigation, white-collar defense, and construction and engineering litigation. Van Pelt earned her law degree from Stanford Law School, where she was an editor of the *Stanford Law Review* and *Stanford Law & Policy Review*.



Van Pelt

# Professional Notices

**Gretchen M. Ostroff**, who is Of Counsel in the Norfolk office of **Vandeventer Black LLP**, has been named a Diversity Fellow in the ABA Forum on Construction Law. Gretchen's practice involves contracts, claims, and litigation on public- and privately-funded construction projects, with an emphasis on transportation.



Ostroff

**Evolution Divorce & Family Law** has hired **Rebecca L. Zimmerman** as an attorney. Zimmerman previously practiced family law at Nichols Zauzig Sandler in Northern Virginia, following a judicial clerkship in the Prince William County Circuit Court with the Hon. Richard B. Potter (ret). Zimmerman is also a past recipient of the VSB Young Lawyers Conference's Significant Service Award.



Zimmerman

**Paley Rothman** is pleased to announce that **Michelle Chapin** has been elected a shareholder



Chapin



Summers

of the firm and **Jessica Summers** has been named a Principal. **Chapin** joined the firm in 2012, and concentrates her practice in estate planning. She speaks regularly to bar associations, the World Bank, and community organizations and has received numerous accolades for her estate planning work. She is a member of the Virginia, Maryland and D.C. bars. **Summers** joined Paley Rothman as a law clerk in 2011 and became an Associate in 2012 after passing the Virginia Bar. She is also a member of the Maryland and D.C. bars. Summers works with companies and organizations on a wide range of matters, including establishing and implementing effective employment policies, drafting employment agreements, maintaining employee benefit plans, addressing corporate planning issues, and monitoring and advising clients on legislative and regulatory developments.

**Robert Luther III** has joined the Washington D.C. office of **Jones Day** as Of Counsel, where his practice focuses on strategic counseling, regulatory issues, and litigation. He will continue to teach at the Antonin Scalia Law School at George Mason University.



Luther

**Shyrell Reed** has joined **Moran Reeves Conn** as a partner. Reed most recently practiced with LeClairRyan and is accomplished in healthcare litigation, malpractice defense, professional liability defense, and workers' compensation defense.



Reed

Community associations attorney **Lucia Anna (Pia) Trigiani** has concluded 10 consecutive years of service under three different Virginia governors as chair of the Virginia Common Interest Community Board (CICB), a board charged with licensing and certifying common interest community managers throughout the state. A principal and partner with MercerTrigiani law firm, she is a leading authority on common interest community ownership community associations.



Trigiani

The Judicial Council of Virginia has named the Honorable **Wilford Taylor Jr.**, retired judge of the 8th Judicial Circuit of Virginia, as the recipient of the 2018 Harry L. Carrico Outstanding Career Service Award.



Taylor

**Eckert Seamans** is pleased to welcome **Cody T. Murphey** as an associate in the firm's Richmond office and Litigation Division. He focuses his practice in commercial litigation, including matters related to regulated and non-regulated utilities. Prior to joining Eckert Seaman, Murphey served as an assistant attorney general in the Office of the Attorney General of Virginia, where he represented the interests of utility consumers before the State Corporation Commission and the Federal Energy Regulatory Commission.



Murphey

**Gentry Locke** is pleased to announce that Partner **Travis J. Graham** has been named the recipient of the firm's annual Pro Bono Promise Award. The award recognizes pro bono work that exceeds the 2 percent yearly aspirational goal set by the Supreme Court of Virginia, either quantitatively or qualitatively. Travis logged more than 200 hours of pro bono time in 2018.



Graham

**Harman Claytor Corrigan & Wellman** welcomes **Kenneth C. Hirtz** to the firm's Richmond office as Of Counsel. Hirtz joins the firm after 13 years as CNA Insurance staff counsel. He will focus his practice on the defense of motor vehicle, premises, and professional liability, commercial litigation and medical malpractice defense.



Hirtz



The Hampton Bar Association has installed the 2019 Executive Board. The 2019 Officers are as follows: **Dywona (Dee) Vantree-Keller**, President; **Romeo Lumaban**, President Elect; **Veronica Meade**, Secretary; **Christopher Young**, Treasurer; **Andrew Behrns, J. Robert Harris**, and **Christina James**, Board of Directors; **Carter Phillips**, Immediate Past President. The oath was administered by **Linda B. Smith**, Clerk of the Hampton Circuit Court.

Washington, DC based lawyer **Leslie McAdoo** of McAdoo Gordon & Associates, PC has written a book entitled *The Top 25 "Quick Questions" About Security Clearances ANSWERED!* that assists U.S. federal job applicants and government employees who are applying for a higher level of security clearance.



McAdoo

**William ("Bill") Jaffe**, an special education attorney has joined **Belkowitz Law, PLLC** after working as attorney advisor for the District of Columbia Public Schools' Office of General Counsel, where he represented the school district in Individuals with Disabilities Education Act ("IDEA"), school discipline, and employee misconduct cases. Jaffe has also worked for the U.S. Department of Justice and the Office of the New York Attorney General.



Jaffe

Email your news and professional portrait to [dnorman@vsb.org](mailto:dnorman@vsb.org) for publication in *Virginia Lawyer*.

**Positions Available**

**EMPLOYMENT LAW/LITIGATION ASSOCIATE (TYSONS CORNER)**

IslerDare PC, one of Virginia's preeminent management-side labor, employment, and employee benefits boutique firms, is seeking an associate for its Tysons office with 2 to 7 years' experience in representing employers before the EEOC and in federal and state litigation and in providing counseling on employee relations issues. Sophisticated employment practice in small firm environment with competitive salary and benefits, including health/dental/vision, retirement, and disability. Send résumés by email to [careers@islerdare.com](mailto:careers@islerdare.com).

**ASSOCIATE ATTORNEY (ROANOKE)**

Glenn Feldmann Darby & Goodlatte, an established mid-size law firm in downtown Roanoke seeks an attorney to join its local government practice. An ideal candidate will have more than 3 years of local government practice. Candidates should have a strong academic record, exemplary interpersonal skills, and driven to succeed. Other areas of experience include contracts, real estate, land use, civil right law, and employment law. Virginia State Bar membership required. Glenn Feldmann Darby & Goodlatte offers a competitive salary commensurate with experience and provides excellent benefits. To apply, you must send letter of interest with salary requirement, résumé, and writing sample, or requests for additional information, to [employment@glennfeldmann.com](mailto:employment@glennfeldmann.com).

**REAL ESTATE SPECIALIST (ARLINGTON)**

Arlington County Government has an opportunity for an experienced Real Estate Specialist to be responsible for negotiating and drafting agreements on behalf of Arlington County for property vacations or abandonments, encroachments, acquisitions, easements, license agreements, leases and the

sale of real property. A full job description, salary range, and instructions for applying online may be found at [www.careers.arlingtonva.us](http://www.careers.arlingtonva.us).

**Office Space**

**OFFICE SUITE (HENRICO)**

600 sq. ft. office suites available at Raintree Office Park, 1899 Billingsgate Circle, Henrico. Each suite has its own entrance, in-suite bathroom, front and back rooms. Freshly painted. Landlord pays water/sewer. No common area maintenance fee. Seasonably landscaped. Quiet neighborhood. Call (804) 272-2203.

**Services**

**LITIGATION FINANCE & LAWSUIT FUNDING**

You have the case, now you need financial backing to take it to the finish line. Towncenter Partners LLC funds litigation cases for plaintiffs & plaintiff law firms only. Nationwide & internationally. For more information about our services, please visit our website. All information is kept strictly confidential and we will execute a NDA. Contact Roni at [roni@yourtcp.com](mailto:roni@yourtcp.com) or (703) 570-5264 to discuss your case/cases. All advances are Non-Recourse and TownCenter Partners only collects if the case is won! Our Mission Is Justice.

**VIRGINIA LAWYER REFERRAL SERVICE**

For over 30 years, our referral specialists have been helping Virginia lawyers build their practices with prescreened callers in need of legal advice. Visit our [www.vlrs.net](http://www.vlrs.net) to learn more about becoming a Virginia Lawyer Referral Service panel member.

**Business Opportunities**

**LAW PRACTICE SALE (FAIRFAX COUNTY)**

Active Alexandria general practice (near Ft. Belvoir) of over 40 years for sale. All aspects negotiable. Please call (703) 360-2300 or (703) 863-2636.

**Virginia Claims Prevention Hotline**

Your VSB membership gives you access to **free legal advice** on issues ranging from starting a law practice to closing a law practice to anything and everything that may trigger a malpractice claim.

**Call (703) 659-6567 or Toll free: (800) 215-7854**

for a confidential, free, risk management consultation with John J. Brandt, JD, LL.M., all at no cost to VSB members. **Powered by ALPS.**



More info:

[www.vsb.org/site/members/your-risk-manager](http://www.vsb.org/site/members/your-risk-manager)

**Website Advertisements & Classified Ads**

*Virginia Lawyer* is distributed to members of the Virginia State Bar, judges, law libraries, other state bar associations, the media, and general subscribers. Total circulation is over 50,000.

The VSB website has almost 34 million hits per year and almost 12 million (page views) impressions.

Please contact Dee Norman at (804) 775-0594 or [dnorman@vsb.org](mailto:dnorman@vsb.org) if you are interested in advertising in *Virginia Lawyer* or at VSB.org.

**ADVERTISER'S INDEX**

ALPS Corporation	5
Barnes & Diehl	back cover
Cooper Hurley PLLC	8
Deborah A. Armstrong J.D, M.D.	15
Gentry Locke	inside front cover
Gilsbar Insurance Services	15
Howell & Young	6
L. Steven Emmert	8
LawPay	7
National Legal Research Group	6
Norman Thomas	15
Towncenter Partners	6
Virginia State Bar Members' Insurance Center	9



## Sand, Sun, and Speeches at the 2019 Annual Meeting

Relatively cool summer weather welcomed nearly 500 lawyers and their families to the 2019 Annual Meeting in Virginia Beach in June. Virginia State Bar sections and conferences hosted meetings, lunches, and 12 hours of showcase CLEs, as well as receptions for attorneys, judges, and members of the Bar community.

Marni E. Byrum of Alexandria was inducted as the new president, and Brian L. Buniva of Richmond became president-elect. Immediate Past President Leonard C. Heath Jr. of Newport News passed the baton to Byrum with the words: “Be well, do good.”

Byrum told the crowd that diversity, inclusion, and engagement would be the focus of her year as president, defining diversity as everything from geography to practice areas to personal and cultural affiliations, and expressing a desire that the leadership of the Bar reflect the entire Bar.

“Engagement by a diverse and inclusive membership makes us a better and stronger bar,” Byrum said. “Each of us has an opportunity to have an impact.”

At the Bar Council meeting, members acted on a number of rules and opinions to send to the Supreme Court of Virginia for approval. At the general session for all lawyers, Byrum reviewed Council and Court actions for the year.

Awards were presented to winners of the Legal Aid Award, the Rakes Leadership in Education Award, the Tradition of Excellence Award, the Dunnville Diversity Achievement Award, the Oliver White Hill Law Student Award, the Burnette Young Lawyer of the Year, to winners of several awards from the Conference of Local and Specialty Bars, and to 50-year members of the Bar.

During his acceptance of the Tradition of Excellence Award, Randy Nelson of Lynchburg noted, “A Bar license is not a license to unduly profit from



1: (l-r) VSB President-elect Brian L. Buniva of Richmond, President Marni E. Byrum of Alexandria, and Immediate Past President Leonard C. Heath Jr. of Newport News.

2: Retired Supreme Court of Virginia Justice Elizabeth B. Lacy swears Byrum into office at the Friday evening banquet.

3: Heath passes the ceremonial presidential baton to Byrum.

**“Engagement by a diverse and inclusive membership makes us a better and stronger bar,” Byrum said. “Each of us has an opportunity to have an impact.”**

continued on page 62



See more photos on our Flickr album: <http://bit.ly/AMpics>

- 1: Thomas A. Edmonds (left) of Richmond, recipient of the William R. Rakes Leadership in Education Award, with the award's namesake, William R. Rakes.
- 2: General Practice Section Chair Christopher C. Johnson presents John Randolph "Randy" Nelson (right) of Lynchburg the section's Tradition of Excellence Award.
- 3: Robin Leiter-White presents Palma Pustilnik (right) of Charlottesville with the 2019 Legal Aid Award. Both work at the Central Virginia Legal Aid Society.
- 4: Michael HuYoung (center) of Richmond, recipient of the 2019 Clarence M. Dunnville Jr. Achievement Award, with his wife, Brenda, and daughter, Paula.
- 5: Outgoing President Leonard C. Heath Jr. receives a parting gift from VSB Executive Director Karen Gould.
- 6: VSB President-elect Brian L. Buniva presents a speaker's gift — a board from which to hang race medals — to Supreme Court of Virginia Justice William C. Mims at the legal aid luncheon.
- 7: The Hon. R. Edwin Burnette Jr. (left), namesake of the Burnette Young Lawyer of the Year Award, with the 2019 winner, Nicolle Vasquez Del Favero of Hampton Roads.
- 8: Zachary McDonnell (second from left) holds his Oliver White Hill Law Student Pro Bono Award with Associate Dean Robert E. Kaplan (left), Dean Davison M. Douglas (back) and Professor Rebecca Green of McDonnell's alma mater, William & Mary Law School.



human distress. It's a contract...that obligates attorneys to use their abilities and training to promote and improve human virtues and conditions."

At the legal aid luncheon, guest speaker Justice William C. Mims of the Supreme Court of Virginia spoke about justice and mercy — and the inspiration he found in the work of the award winners and the legal aid community. "Extending mercy is an integral part of the ideal of justice that we fight for every day," said Mims. "I believe that sowing the seeds of mercy is our highest calling. ... You all do justice with mercy every day of the week, and I want to thank you so much for that."

The most popular CLE was "Judicial Squares," which featured a game-show-style panel comprised of judges from around the state, as well as Justice Mims. The Honorable Rossie D. Alston Jr. acted as emcee for lawyer teams answering questions on legal issues ranging from discovery to court procedure to Constitutional rights.

Other fun was had during the 5k race sponsored by the Young Lawyers Conference and *Virginia Lawyers Weekly*, morning yoga sessions on the beach, a tennis tournament sponsored by MichieHamlett, family bingo sponsored by Walker Jones PC, the opening reception and the banquet, sponsored by the VSB Members Insurance Center and the McCammon Group, and much more.

If you would like to get involved or have suggestions regarding the annual meeting, please contact Maureen Stengel at [stengel@vsb.org](mailto:stengel@vsb.org) or (804) 775-0517. We hope to see you next year in Virginia Beach!



1: (left to right) Stacy E. Lee, Jasmine R. McKinney, Avnel Coates, Veronica D. Brown-Moseley, Christina Parrish, the Hon. Marilyn C. Goss, and the Hon. Angela E. Roberts of the Hill Tucker Bar Association receiving the Bar Association of the Year Award for 2019.



2: Charles "Chuck" M. Lollar Sr. (left) and Immediate Past President Leonard C. Heath Jr. (right) present Barbara S. Anderson of Alexandria with the Local Bar Leader of the Year Award.

3: The Hon. Rossie D. Alston Jr. acts as emcee at the CLE "Judicial Squares," featuring (from left to right) the Hon. Robert G. MacDonald, the Hon. Daniel E. Ortiz, Justice William C. Mims, the Hon. Marilyn C. Goss, the Hon. Angela E. Roberts, the Hon. David W. Lannetti, the Hon. Donald M. Haddock Jr., and the Hon. Manuel A. Capsalis.



4: Lollar (left) and Heath (right) present Sarah M. Saville of Newport News with the Specialty Bar Leader of the Year Award.

5: Outgoing Bar Council members, from left to right, Joseph M Bowen, David B. Neumeyer, Former Bar President Doris Henderson Causey, Lee H. Turpin, Immediate Past President Heath, Luis A. Perez, Chuck Lollar, Daniel M. Schieble, Christine H. Mougins-Boal, Brian T. Wesley, and Beverly P. Leatherbury

6: Runners are off! At the Friday morning 5k on the boardwalk, sponsored by *Virginia Lawyers Weekly* and the Young Lawyers Conference.

7: Tennis players at the tournament sponsored by MichieHamlett.



Join us next year for the  
**VSB 82nd Annual Meeting**  
 June 18–20, 2020,  
 in Virginia Beach

1: The recipients of the Senior Lawyers Conference 50 Year Award for lawyers who have been members of the Bar for 50 years — flanked by VSB President Marni E. Byrum (seated left), Senior Lawyers Conference Immediate Past Chair Carrollyn Charles Cox (seated, second from left), and VSB Immediate Past President Leonard C. Heath Jr. (right).

2: Mentors and mentees from the Diversity Conference’s mentor/mentee program at the conference’s welcome reception Thursday evening.

3: CLE “Finding Civility in Discovery” with (left to right) the Hon. F. Bradford Stillman, Thomas E. Spahn, former VSB President Michael W. Robinson, Hon. Jan L. Brodie (Ret.), and Nathan J.D. Veldhuis.

4: University of Virginia School of Law Professor A. Benjamin Spencer with his family at Family Bingo sponsored by Walker Jones PC.

5: Robert M. Worster III speaks at the CLE “Proactive Wellness: How to Identify, Understand, and Mitigate Lawyers’ Occupational Risks” with the VSB’s Prescott L. Prince, Graham K. Bryant, and former VSB President Sharon D. Nelson.

6: Yoga by the Sea on Friday morning.

7: VSB President Marni E. Byrum pulls raffle tickets from the box at the Saturday closing reception.

8: Former VSB President Kevin E. Martingayle acts as course marshal at the Friday morning 5k.



**BARNES  
& DIEHL**  
ATTORNEYS AT LAW

**BarnesFamilyLaw.com**

A Tradition of Experience and  
Devotion to Family Law



**Ed Barnes**



**Larry Diehl**

● **Congratulations  
Ed Barnes &  
Larry Diehl  
on their recent  
awards!**

● **Ed Barnes  
VA Lawyers Weekly  
Hall of Fame  
2018**

● **Larry Diehl  
VA Lawyers Weekly  
Hall of Fame  
2019**

● **Ed Barnes  
#1 is All Practice Areas  
Virginia Super Lawyers  
2018**

● **Larry Diehl  
#2 is All Practice Areas  
Virginia Super Lawyers  
2019**

**Richmond/Chesterfield Office**

Boulders VI  
7401 Beaufont Springs Drive,  
Suite 200  
Richmond, VA 23225  
Phone: (804) 796-1000  
Fax: 804-796-1730

**Henrico Office**

Three Paragon  
6806 Paragon Place,  
Suite 110  
Richmond, VA 23230  
Phone: (804) 762-9500  
Fax: 804-762-9654

**Hanover Office**

Lockwood Office Building  
9097 Atlee Station Road,  
Suite 319  
Mechanicsville, Virginia 23116  
Phone: (804) 569- 5515  
Fax: 804-569-5501