

# Roanoke Hosts 2018 Disciplinary Conference

by Jackie Kruszewski

“The people who most love rules within a profession of people who love rules.”

That’s how one member of the disciplinary system jokingly referred to himself and other attendees of the bar’s Committee on Lawyer Discipline’s annual Disciplinary Conference, which met in Roanoke on July 26 and 27. Called to serve on the boards and committees that form the core of the bar’s self-regulatory mission, attendees endured conference room lighting and hotel coffee for a chance to meet their far-flung colleagues and strengthen the dynamic disciplinary process that serves Virginia lawyers and protects the public.

“What the people in this room do goes to the heart of what the Virginia State Bar is all about,” said President Leonard C. Heath Jr. in his Friday remarks.

There was continuing education for returning members of the committee, the Disciplinary Board, and members of the 17 disciplinary district committees, as well as orientation for new members of the latter two. New members heard from and questioned a variety of speakers including VSB intake staff, an investigator of lawyer misconduct, and bar counsel.

Training for all attendees took the form of vignette sessions, where a cross-section of members and bar staff discussed a hypothetical sanctions scenario. The roughly 150 attendees also heard about trends in complaints and investigations, and recent developments in the disciplinary system.

Wellness initiatives took center stage in a Friday morning speech from Supreme Court of Virginia Justice William C. Mims. A panel focused on the intersection of lawyer wellness and the disciplinary system — on how recognizing mental health or substance abuse problems in fellow lawyers can prevent cases from ever entering the disciplinary system, while preventing harm to clients.

*Conference continued on page 52*



1. Members of the disciplinary system and bar staff at the opening remarks on July 26.  
2. New members of the disciplinary district committees listen to and ask questions of Robert E. Baker, an investigator for the bar in Southwest Virginia.



3. Bar Counsel Ned Davis leads a panel about recent developments in the disciplinary system.  
4. Breakout sessions comprised of a cross-section of disciplinary system members discuss a hypothetical sanctions scenario.

## Why did you volunteer to serve in the disciplinary system?

Public service has always been very important to me. And at the end of the day, the most important aspect of being a lawyer is integrity and the trust that the public has in us.

**Lisa Wilson**

deputy commonwealth’s attorney for Arlington  
chair of the Disciplinary Board and 12 years of service in the system



I felt like it was important to protect members of the public from the very few attorneys that don’t understand what it means to earn the privilege to practice law, the privilege to defend the Constitution, to help people that need our expertise. We get those cases — attorneys who try to take advantage of unsophisticated clients. I wanted to be a part of the process that held them accountable, because I couldn’t have them be a negative reflection on the profession that I love.

**Tony Pham**

superintendent of Virginia Peninsula Regional Jail in Williamsburg  
9 years of service in the disciplinary system



As an investigator, I saw the clients that lost their last \$500 getting an unethical attorney. If we’re going to continue being a self-regulating profession, we all have to be involved and take a pro-active role in making sure that we adhere to the highest professional standards.

**Mary Beth Nash**

senior assistant county attorney, Roanoke  
new member on 8th district disciplinary committee



I’ve always considered the practice of law to be a very high calling and something that requires a very high standard of conduct, and I don’t have much truck with those who get a license and then abuse the privilege. A license to practice law is a privilege, not a right. So, I’ve felt that the disciplinary system, particularly operated in Virginia, is very beneficial, not only for the profession, but to the public.

**David Schultz**

recently retired from private practice  
30 years of service in the disciplinary system



# Wellness as a Path to Preventing Lawyer Discipline

by Jackie Kruszewski

Supreme Court of Virginia Justice Williams Mims likes to drive SAABs, even though, he’s told, only “weird, quirky people” are SAAB owners.

Plenty of cars have only four or five cylinders and run fine, said Mims at the bar’s 2018 Disciplinary Conference. But with a 6-cylinder SAAB—if one breaks, as they frequently do, the car goes wonky. Humans, according to the justice, are like SAABs, and our cylinders are the six dimensions of wellness: social, physical, emotional, occupational, intellectual, and spiritual.

The analogy framed his July 27 remarks at the annual conference that brings together members of the bar’s disciplinary system for training, education, and professional fellowship. Mims offered advice on and examples from each of the six dimensions, as well as stories of his personal experience trying to achieve balance.

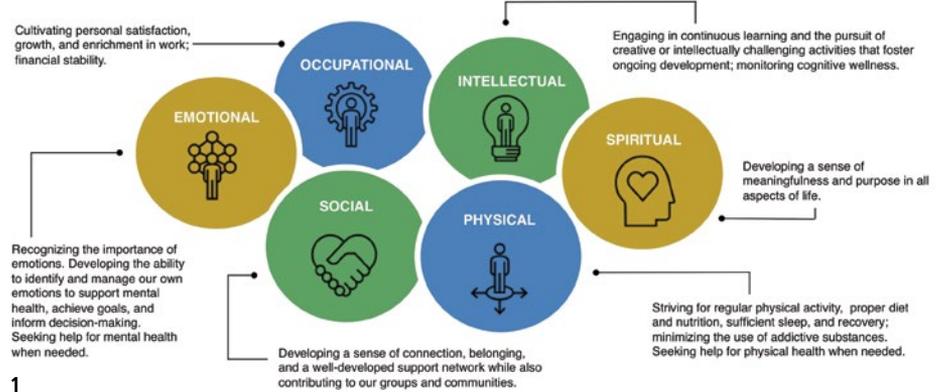
The justice said he struggled with depression after a particularly busy four years that ended with his appointment to the court. “I had reached the pinnacle of professional success, but I really believe that I had neglected my emotional health, my behavioral health.”

Mims regrets not seeing a counselor during that time, but he did write out a list of names of four people he could call if he felt himself sliding deeper. “I made a commitment to myself that I would talk with these people. And I then did.”

Wellness and lawyer well-being are the focus of a statewide committee chaired by Mims, and fellow committee members joined him on a panel at the conference about the intersection of lawyer discipline and wellness. The committee formed last year in response to an ABA-initiated task force on lawyer well-being whose August 2017 report on the topic is now a rallying point for bars across the country grappling with the outsized impact of mental health issues and substance abuse on the legal community.

## Defining Lawyer Well-Being

A continuous process in which lawyers strive for thriving in each dimension of their lives:



1

“People who go to law school are usually high achievers,” said VSB President Leonard Heath. “They’ve usually done very well in undergrad, and statistically, after the first semester, exactly 50 percent of those students are going to be in the bottom half of their class. They get very hard on themselves.”

Problems can arise as early as the second year of law school, the task force’s report showed. And they are often later compounded by professional stresses like billable hours. Former VSB President Doris Henderson Causey and Assistant Bar Counsel Katie Uston spoke on the panel about the vicarious trauma that lawyers can experience when they handle clients’ difficult cases. And Lawyers Helping Lawyers Executive Director Tim Carroll advocated for his organization as a resource for Virginia lawyers.

“Vicarious trauma is a perfect example,” Mims said of the value of the nonprofit lawyer assistance organization. “A nonlawyer might wonder why an individual is having PTSD symptoms. But a lawyer would understand that that person had just finished a horrific murder trial. Or that person was just guardian ad litem in a case of terrible sexual abuse.” Lawyers Helping Lawyers offers a safe, confidential space in a profession-specific setting.



1. Graphic: courtesy of Anne Brafford, “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change”
2. Supreme Court of Virginia Justice Mims leads a panel on the intersection between lawyer wellness and the disciplinary system with Assistant Bar Counsel Katie Uston, Bar President Leonard C. Heath Jr., Lawyers Helping Lawyers Executive Director Tim Carroll, and Immediate Past President Doris Henderson Causey.
3. Bar members and staff make time for self-care and wellness Friday morning with a group walk and run.

A focus on wellness works in tandem with the disciplinary system and the bar’s mission of self-regulation and self-discipline, panel members stressed. “To the extent that an attorney’s alcohol abuse, drug abuse, or depression impacts

Wellness continued on page 52

## Conference *continued from page 50*

In addition to professional camaraderie, attendees have a chance to develop a level of consistency in the disciplinary process. While there are no uniform standards for punishment in the system, there is a framework for the factors to be considered by the board and committees, and the conference serves as an annual opportunity for centralized consideration of factors.

The conference was held at the Hotel Roanoke this year, a new location from previous years and one that came with some bar exam nostalgia. David Schultz, who recently took retirement status and served over 30 years on various disciplinary system boards and committees, said the location brought back memories of June 1968. “I always said that I would come back because I enjoyed taking the bar,” he said. “This was the perfect opportunity.”

## What does professional self-regulation mean to you?

It means we’re in charge of making sure that we behave. And if we fail to do our job of properly self-regulating ourselves, that privilege could be taken away.

### **R. Lucas Hobbs**

private practice in Bristol  
12 years of service in the disciplinary system



To self-regulate puts a higher degree of pressure on us. We’re here to serve the public, to protect the public, and in every facet of the bar I’ve worked in, we remind people of that.

### **Sandra Havrilak**

family law in Fairfax  
first vice chair of the Disciplinary Board and 10 years of service in the system



It’s the ability to govern ourselves by implementing rules written by lawyers who know what it means to practice, what it means to govern a trust account, to protect client money, to communicate with your client diligently, and so on. Self-regulation is an absolutely critical component of being a lawyer and one that we have to cherish.

### **Tony Pham**

## What’s the value of the annual conference?

There are different things that you can pick up on and learn about the ethics rules, how they’re applied, and about how to handle yourself as someone who’s adjudicating these cases. When an attorney finds themselves before us, it’s a serious matter, so I feel like I need to be as prepared as I can be to resolve that.

### **Michael Angelo Beverly**

Office of the City Attorney in Norfolk  
second vice chair of the Disciplinary Board and 9 years of service in the system



It’s constant learning. And it gives us a chance to all get together – all the different components of the disciplinary system, because for the rest of the year, we operate in our little silos. We interact, but not directly, so this gives us a chance on both a social and professional level to actually interact face to face.

### **Lisa Wilson**

## Wellness *continued from page 51*

their ability to practice ethically, that is not a defense to ethical misconduct,” said Uston.

The disciplinary system’s primary commitment is to public protection. “If someone needs to be removed from the pool, you remove them from the pool,” said Heath.

Mims said the key to the wellness initiative is an attempt to intervene before misconduct is committed. “Better than punishing a lawyer for doing something wrong is preventing the wrong from ever being committed,” he said.

Being pro-active, added Uston, “that is also protecting the public.”

A report from the statewide committee coming out in the next few months will make specific recommen-

dations for Virginia legal institutions in the public sector, the private sector, as well as the judiciary and law schools. A few examples include incorporating wellness into mandatory professionalism programs and discouraging alcohol-centric events in school and at firms.

Several of the bar’s recent rule changes and legal ethics opinions — some proposed and some already adopted — get a head start on some recommendations. They, for example, offer lawyers a chance to retire with dignity in certain circumstances and allow VSB counsel to do a one-way referral to Lawyers Helping Lawyers of an attorney that bar counsel feels may need assistance.

It’s adding tools to the toolbox, panel members said. But it also places a duty on lawyers to be self-aware, to practice self-care — and on firms to be responsible for making sure their lawyers are doing so.

Ending his speech on spiritual wellness, Mims related the story of a rabbi who kept a piece of paper in each pocket, both with a statement from the Talmud. “One said, ‘O man, you are but dust.’ And the other one said, ‘For you the world was created,’” said Mims. “If we remember that we are but dust, but for us the world was created, we have balance.”

As for those six-cylinder SAABs? Well, you might be better off with a different car.