

Virginia Lawyer

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VIRGINIA LAWYER REGISTER

The Official Publication of the Virginia State Bar



Ted Smith



Paul Gill



Brian Lytle



Melissa Robinson



Susan Tarley



Lisa Wilson



Joe Bowen



Frank Hilton



Christopher Corbett



Tom Edmonds

Your Clients' Protection Fund

Civil Conspiracy
Marijuana Legalization
Virginia Values Act
Virtual Depositions



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About the cover:

The Clients' Protection Fund (CPF) Board sponsored this issue of *Virginia Lawyer* and in keeping with the social distancing rules caused by the pandemic, created a cover that reflects the legal profession's new normal. Thank you to CPF staff liaison Vivian Byrd (left) for assisting with the issue, and welcome to incoming CPF Board Chair Peter M. Mellette (right). Cover art montage by Kaylin Bowen. Not Pictured: Mary Yancey Spencer, CPF board member.



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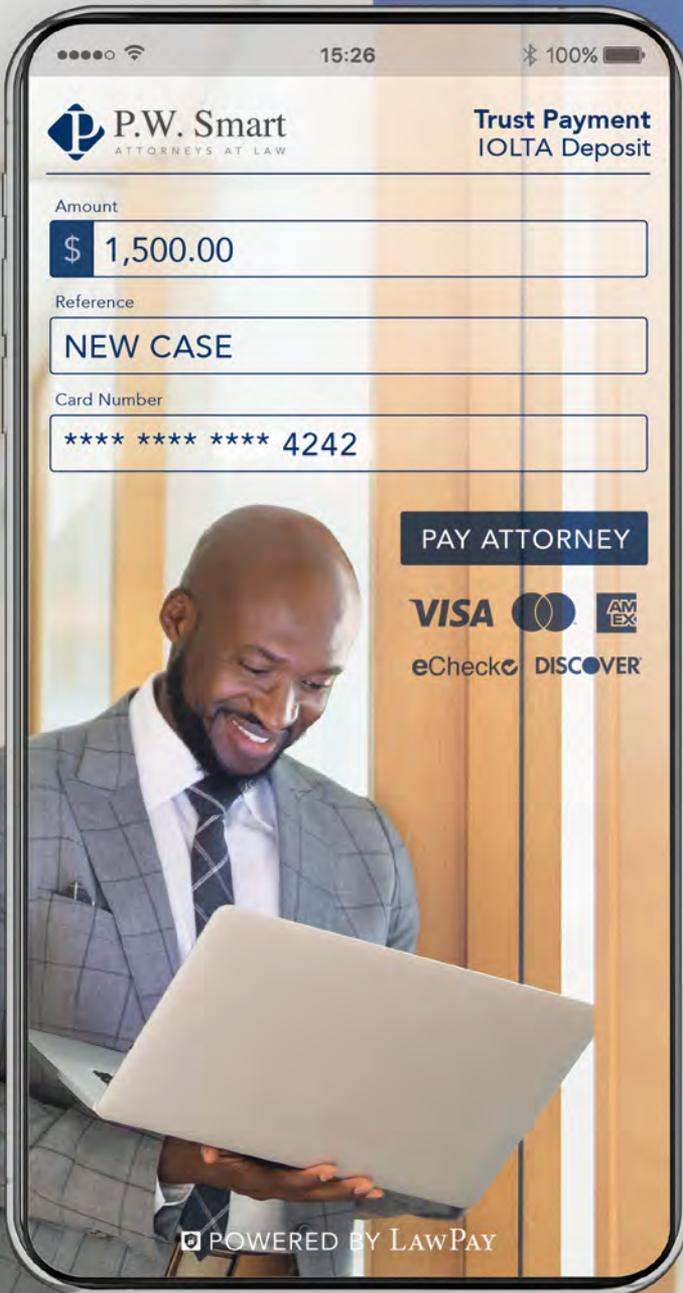
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President's Message

by Brian L. Buniva



The Time is Now

IN APRIL 1945, GERMANY was on the brink of unconditional surrender, Japan would follow just four months later, bringing the end to World War II. President Franklin D. Roosevelt finished his last speech which he intended to deliver to the nation on Thomas Jefferson's birthday, April 13th. That speech was never delivered. President Roosevelt died the day before. Among the brilliant words the president never had the chance to utter in his last message to the American people were the following: "Today we are faced with the pre-eminent fact that, if civilization is to survive, we must cultivate the science of human relationships—the ability of all peoples, of all kinds, to live together and work together, in the same world, at peace."

Thankfully, today we are not embroiled in the most destructive war in human history. We are living in a time, however, that is unprecedented due both to the COVID-19 global public health crisis and to the cries for justice rising from the most marginalized members of our society. How shall we lawyers respond to these unprecedented times? Shall we shy away with our heads in the sand churning out billable hours, or shall we find ways either through existing programs or through the development of new ones, to help people "...to live together and work together, in the same world, at peace?" I urge us to do the latter.

There isn't a person in the world who at one time or another didn't need help to get where they needed or wanted to go. Many of us received that support from our parents or other family, but it is rare indeed to receive needed

assistance from an acquaintance, much less from a perfect stranger. Now more than ever is the time for lawyers to redouble our efforts and help perfect strangers.

Abraham Lincoln once quipped, "I'm a success today because I had a friend who believed in me and I didn't have the heart to let him down." Not all of us might have had that same sort of motivation, but unquestionably we all have had help to get where we are. Now, in these difficult times, it is right and just that we take the professional gifts we have been given, and "pay it forward." But how? What is the right thing to do? What can we as individual lawyers, do to "pay forward" the gift of being members of our noble profession? One way is to join the efforts of the Virginia State Bar and our legal aid societies.

The VSB provides many, many opportunities for us to make meaningful contributions to our society. **There are innumerable committees, and boards on which we can serve the public and the Bar.** The VSB has five standing committees (Access to Legal Services, Budget and Finance, Lawyer Discipline, Legal Ethics, and Professionalism), seven special committees (Bench-Bar Relations, Better Annual Meeting, Judicial Candidate Evaluation Committee, Lawyer Insurance, Lawyer Referral, Resolution of Fee Disputes, and Technology and the Future Practice of Law), three Boards (Clients' Protection Fund, Disciplinary, and the Mandatory Continuing Legal Education), 17 disciplinary district committees, and the VSB/VBA Alternative Dispute Resolution Joint Committee. Active engagement on these committees and boards is not only personally rewarding, but enables each of us to

contribute to the improvement of our profession and our society through VSB volunteer work.

One VSB program that is supported by every member of the Bar through an annual contribution of a mere \$10 is the Clients' Protection Fund (CPF). The CPF is governed by a fourteen-member board, consisting of lawyers and lay people, appointed by your VSB Council. The fund was established nearly 50 years ago to make monetary awards to clients who have suffered financial losses due to the rare, dishonest conduct of lawyers after the client has exhausted all other means to obtain a financial recovery. This volunteer board investigates each claim, ensures that the claim meets the criteria for an award, and reimburses the client/victim up to a maximum of \$75,000. The CPF Board works long hours in providing this incredible service to wronged members of the public on behalf of the VSB.

But in addition to the VSB "paying it forward," individual lawyers providing legal services to individuals pro bono or at low bono rates is arguably even more significant. **Lawyers are uniquely qualified to assist in closing the chasm separating those who need legal services from those relatively few who receive legal services.** Now, in this time of civil unrest and economic stress caused by the pandemic, it is more important than ever for we lawyers to "pay it forward" and answer the urgent call for our help through volunteering with legal aid societies, drafting wills for our first responder heroes, or volunteering for public interest programs designed to help those with unmet legal needs. The Bar needs you. The Courts need you. And our less fortunate brothers and sisters need you desperately. 🍷

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Executive Director's Message

by Karen A. Gould



Taking Care of Your Money: What We Do with Annual License Renewal Fees

INCLUDED IN YOUR LICENSE renewal package this year was a letter from Virginia State Bar president Brian L. Buniva, immediate past president Marni E. Byrum, and myself. The letter stated in part:

Your annual license renewal fees wholly fund the VSB without any taxpayer revenues from the general fund. As a public service agency, we strive to ensure that the VSB operates in the most cost-efficient and effective manner. The \$250 annual dues have not increased in the last 20 years, yet the VSB continues to meet the needs of our lawyers and the public... Bar leadership and staff are always mindful of containing and, where possible, reducing costs.

The VSB staff is mindful that the mission of the Virginia State Bar is (1) to protect the public, (2) to regulate the legal profession of Virginia, (3) to advance access to legal services, and (4) to assist in improving the legal profession and the judicial system. This mission statement guides the bar's priorities and goals.

Approximately 250 Virginia non-compensated attorneys assist in the regulation of the profession by volunteering on the Disciplinary Board and the disciplinary district committees and on the MCLE Board. Eighty-one attorneys sit on the VSB's governing body, Council, which proposes rules and rule changes that govern attorney conduct. These rule changes are then approved (or not) by the Supreme Court of Virginia before becoming effective. The professional staff at the VSB assists these lawyer volunteers in accomplishing their objectives.

Prosecutors, investigators, and support staff comprise the VSB Discipline Department where they enforce the Virginia Rules of Professional Conduct. The VSB prosecutors are dedicated to rigorous enforcement of the Rules of Professional Conduct and prosecution when necessary. The Clerk's Office is a separate and distinct entity within the VSB, which serves an important record-keeping function for the disciplinary system.

The Ethics Hotline, available through both the phone and email, is a valuable resource for members. It is staffed by the VSB's four ethics attorneys who provide ethical advice and answer legal ethics questions. Ethics Counsel Jim McCauley authored an article on Rule of Professional Conduct 1.18 in the June 2020 *Virginia Lawyer*, entitled "Rule 1:18: You Didn't Hire Me But Your Adversary Just Did!" Ethics articles and columns are regularly included in *Virginia Lawyer* magazine.

The Regulatory Compliance Department has 14 employees to field inquiries from members on the status of their compliance with MCLE requirements or dues payments, as well as inputting data regarding that compliance. The MCLE staff also supports the MCLE Board in its course approval process.

While the vast majority of our members never have any contact with the Discipline Department, it cannot be overlooked that over 60 percent of bar dues are dedicated to supporting the bar's regulatory mission, protecting the public from lawyers who fail to take their ethical obligations seriously or, worse, take advantage of their clients.

In 2018, the Clients' Protection

Fund fee was reduced to \$10, where it has remained. The fund balance as of April 30, 2020, was approximately \$10.6 million. The CPF Board authorized \$30,659 in reimbursements to former clients of eight Virginia attorneys at its latest meetings in September 2019 and February 2020. The Clients' Protection Fund was created by the Supreme Court of Virginia in 1976 to reimburse persons who suffer a quantifiable financial loss because of dishonest conduct by a Virginia lawyer whose law license has been suspended or revoked for disciplinary reasons, or who has died and did not properly maintain client funds. The fund is not taxpayer funded but is rather supported by Virginia lawyers who pay an annual fee. Payments from the CPF are discretionary and are not a matter of right.

The VSB's expense budget for FY2021 (July 1, 2020 – June 30, 2021) is \$14.7 million, with projected operating revenue of \$13.5 million. No Commonwealth of Virginia state agency is permitted to engage in deficit spending, nor will the VSB do so. It has money in reserve, which will be used to offset the deficit. The VSB goes through an extensive budgeting process, which involves review and approval by the Standing Committee on Budget & Finance, the Executive Committee, Council, and the Supreme Court of Virginia. Dues have been level at \$250 for over 20 years, a result, in part, of the efforts of VSB staff in reducing or maintaining costs.

If you have suggestions for how the VSB can improve services to Virginia lawyers, please let me know. I may be reached at gould@vsb.org. ☺

Executive Director *continued on page 44*

Appeals only



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Deputy Executive Director's Message

by Cameron M. Rountree



Join the VLRS: Free, Prescreened Referrals and a Benefit to Your Community

GREETINGS FELLOW VIRGINIA LAWYERS! I have the privilege of supplementing *Virginia Lawyer's* normal monthly columns of ethical and regulatory foreboding with something a little different. I wanted to take this opportunity to highlight an exciting and positive aspect of the Virginia State Bar that aims to help Virginia lawyers generate fee-paying clients. That's right, fee-paying clients. Now that I have your rapt attention . . .

Let's face it, under normal conditions, communication with the VSB may raise alarm: "Has a complaint been filed against me?" "Have I certified my CLEs for this year?" "Did I really answer that bar exam essay about bailment correctly?" But when a call or email from the friendly staff of the Virginia Lawyer Referral Service (VLRS) finds you, there's no need to fret. They're reaching out to let you know that they have pre-screened a potential client who requires your specific legal services, in your actual legal market. That's why you should consider joining the VLRS right now—particularly because the remainder of 2020, a one-year membership is FREE.

For those unfamiliar, the VLRS is the VSB's in-house lawyer referral service that has operated since 1977 to enhance and support one of the VSB's core missions—advancing the availability and quality of legal services provided to the people of Virginia. **In fiscal year 2019, the VLRS received and answered over 14,000 telephone calls, responded to 377 emails and provided 609 online requests from potential clients, throughout the Commonwealth, seeking the services of a Virginia lawyer.** The VLRS

referred 4,042 of those inquiries to its 300+ lawyer-panel-members.

So how does it work? Most importantly, the VLRS provides you with screened referrals. Of the 15,000 potential clients who call the VLRS every year, roughly two-thirds have needs that cannot be met by a private practitioner. Whether it's an inability to pay, a misunderstanding in the need for a lawyer, or even a mistaken belief about whether a legal issue exists, the VLRS staff, like the bivalves of the Rappahannock, filters requests to those within your practice focus; saving you and your support staff valuable time. If there's a match between a potential client's needs and your services, then, in exchange for a \$35 consult fee paid to the VLRS by the potential client, they get to swipe right and have you provide them with a consultation of up to 30 minutes. If an engagement is reached, at the conclusion of the representation, you remit a 15 percent fee back to the VLRS—for fees in excess of \$500.

As a panel member of the VLRS, lawyers get a host of benefits, including: prescreened referred callers with legal concerns; access to potential clients via client self-generated referrals 24 hours a day; listing of up to 10 referral categories of law; access to a personalized user profile on the VLRS website; and knowledge that a potential client can pay a fee. All of this is in exchange for a one-year panel membership cost of \$95. If, like me, you went to law school to avoid math, I've been told that works out to be about \$8 per month, but that will only kick in after your introductory free year's membership, if you sign up now.

The VLRS is a useful resource in a typical year, but as we all understand, 2020 is anything but a typical year. The novel coronavirus and associated illness—COVID-19—have disrupted traditional legal marketing. In-person consultations and appointments that once could be relied on to build rapport and establish an enduring attorney-client relationship, now must take place through impersonal telecommunication devoid of interpersonal connection but replete with audio latency and uncomfortable reprisals of the phrase, "No, you go ahead." While the VLRS can't take the place of physical meetings, it can augment your existing marketing strategies. And, as with any challenge, opportunity abounds. **In the past several months the VLRS has seen a surge in the need for lawyers with experience in employment matters, housing law, estate planning, consumer law and domestic relations.**

But wait, there's more. Here's a great part of the program. As I mentioned, for members with less than five years of bar membership, and those who have never participated in the VLRS, you can now get a one-year free VLRS panel membership. So, if the potential to pad your book of business isn't enough of a motivator, or an ability to help moderate-income potential clients doesn't impel you to action, then perhaps the absence of a financial barrier (a bar, if you will . . . relish the pun) can help push you to commit. Consider joining the VLRS today. Call now because, as always, VLRS staff members are standing by, (804) 775-0591. ☺

The Clients' Protection Fund Issue

by Susan Tarley, Chair



THE CLIENTS' PROTECTION FUND was established in 1976 to make monetary awards to people who have suffered financial losses because of the dishonest conduct of Virginia lawyers. The fund is managed by a fourteen-member board appointed by the Virginia State Bar Council. Board members investigate all petitions from clients for payments from the fund. The Board hears each petition and determines the amount of loss.



The total amount paid during FY 2019–2020 was \$30,659 for ten claims. The Board denied seventeen (17) petitions, and fourteen (14) petitions were rejected for not meeting the CPF rule requirements. Three (3) claims were withdrawn by the petitioners. As of June 30, 2020, there were thirty-six (36) pending claims.

The total amount paid for the operating expenses of the CPF for the fiscal year was \$4,221.00. In addition, the fund paid \$15,357.00 for receivership cases initiated by the Virginia State Bar.

The fund began the fiscal year on July 1, 2019, with a cash balance of \$10,157,966. The Clients' Protection Fund \$10 assessment from all active attorneys totaled \$326,355. Interest income for the fiscal year, totaled \$207,574. The fund received restitution from the attorney general's collections, debt set-off, and individual restitutions in the amount of \$12,132 net of attorney's fees for collection services. As of June 30, 2020, the cash balance in the fund was \$10,650,622.

Previously, in 2018–2019 forty-four (44) new petitions were received. The total amount paid during 2018–2019 was \$132,303.48 representing twenty-five (25) claims. The Board denied seventeen (17) petitions, and twelve (12) petitions were rejected for not meeting the CPF rule requirements. One (1) claim was withdrawn by the petitioner and one (1) conditional approval claim was closed by the Board. As of June 30, 2019, there were eleven (11) pending claims. The Board reviewed and investigated forty-five (45) claims during the year.

The Board is to be commended for the many hours spent investigating and deliberating claims, and for the work of its various committees including the public awareness and strategic planning committees.

Appreciation is extended to board members Donna Sue Baker, Adam D. Elfenbein, Margaret A. Nelson, and Kenneth Murov who retired in 2019 after their years of service on the Board.

The Board welcomed Joseph Meek Bowen, Christopher Anthony Corbett, Brian Dean Lytle, and Lisa Ann Wilson as new members for fiscal year 2019–2020.

As chair, I am retiring after six years on the CPF Board and express great appreciation to all of the board members and staff that I have met and worked with over the years.

Peter M. Mellette, Esquire, will be joining the CPF Board as a new member for the fiscal year 2020–2021, and we extend a warm welcome to Peter. 

Susan Bradford Tarley is a partner with Tarley Robinson, PLC, in Williamsburg. She maintains a real estate practice that includes community association law, corporate and business matters, real estate development and residential and commercial real estate transactions. Tarley serves as chair for the VSB's Clients' Protection Fund Board and is co-chair of the Common Interest Community subcommittee of the VSB Real Property Section. She received her law degree from George Mason University School of Law and her undergraduate degree from Pennsylvania State University. Tarley also served as a Substitute Judge for the Ninth Judicial Circuit from 1998–2016.

What Is Virginia's Clients' Protection Fund?

by David B. Oakley

Rationale and History of Virginia's Clients' Protection Fund Board

As attorneys, we owe certain duties to our clients, and our clients trust us with some of the most important matters in their lives. The legal profession in the Commonwealth is largely self-governing. This autonomy allows our profession to remain largely free of regulation by the government. However, with this independence and self-regulation comes a heightened responsibility to administer the justice system in the public interest and not in our own self-interests or the interests of our profession. **We are not only responsible for our own actions, but as a profession, we must take responsibility for the actions of our fellow attorneys, especially when attorneys abuse their power and the trust of their clients.**

To further these goals, Virginia lead the way in being one of the first states to establish a client protection fund. Now, every jurisdiction in the United States and Canada have client protection funds. Virginia's Clients' Protection Fund (the "Fund") promotes public confidence in the legal industry and upholds the "administration of justice and the honor and integrity of the legal profession."¹ The Bar Council was given permission to establish the Fund in order to provide a system where clients—or other persons owed a fiduciary duty by an attorney—could be reimbursed for all or part of losses incurred due to the dishonest conduct of a member of the Virginia State Bar.² The Fund is evidence of Virginia lawyers' dedication to holding themselves to the highest ethical standards.

Fund Statistics

At the close of the 2019 fiscal year, the Fund had reimbursed over \$7.1 million to 1,673 petitioners who suffered financial losses due to the dishonest conduct of Virginia licensed attorneys since its inception. In 2019 alone, 25 petitioners were reimbursed \$132,303. However, the number and size of claims submitted to and paid by the Fund can vary wildly in any given year. For example, in 2010,

218 petitioners' claims were approved, and the Fund paid out over \$900,000 that year. In other recent years, the Fund has approved as few as 16 claims (2009) and paid out as little as \$61,458 (2002).

For the partial fiscal year of 2020 (7/1/2019–6/4/2020) the Fund received 58 petitions, 24 of which have been closed. Of the closed petitions, 14 were rejected on a jurisdictional basis, two were withdrawn, five have been paid, and three were denied. The number of claims in any given year can vary greatly based in part that a single attorney can create a large number of claims.

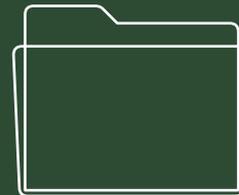
Contributions to the Fund come largely from an annual assessment to Virginia licensed attorneys. That money is managed by the Fund and invested conservatively. As of April 30, 2020, the Fund's balance was approximately \$10.6 million. In some years, the investment income has been sufficient to pay for all approved claims. Unfortunately, most years it is not.

Statutory Information and Management of the Fund

Va. Code § 54.1-3913.1, statutorily created the Fund as a special fund of the Virginia State Bar that consists of monies transferred to it from the State Bar Fund and the Virginia State Bar's Administration and Finance Account. Although the Supreme Court of Virginia is authorized to adopt rules assessing members an annual fee of up to \$25 to endow the Fund, the current assessment is only \$10 per year.³

The Fund is restricted to the following types of investments:

1. Interest-bearing deposits, in federally insured banks and savings institutions (including certificates of deposit as authorized by Va. Code §§ 2.2-4407, 4509 and 4518);
2. Direct obligations of the Commonwealth of Virginia and the United States Government, and securities of entities created by Congress and authorized to issue such securities; provided that no such obligation or security



shall have a maturity beyond ten years from the date of the investment; and provided further that the interest, discount or other gain or income realized from any such investment, net of any bank or brokerage charges incurred in connection therewith, shall automatically become a part of the Fund; and

3. Corporate notes as authorized by Va. Code § 2.2-4510.”⁴

The Fund is governed by a panel of 14 members (the “Board”), one of whom is a non-lawyer, who are appointed by Bar Council. Four of the members are at large, while the other 10 are spread across the 10 disciplinary districts across the Commonwealth.⁵ Board members are assigned petitions to investigate and make recommendations to the Board. **The Fund is considered a remedy of last resort, and not all claims are eligible. For example, if a petitioner is able to obtain reimbursement from other sources, it may not be eligible.** Similarly, The Board does not approve claims that are merely malpractice or negligent rendition of legal services. Similarly, collateral losses are not reimbursable by the Fund.⁶

In order to have a compensable claim, a petitioner must establish:

- 1) the loss is quantifiable and caused by the dishonest conduct of the Virginia licensed attorney acting in a fiduciary or attorney-client relationship; and
- 2) the attorney is not currently licensed to practice law in Virginia, e.g. license suspended or revoked, attorney has died, etc.

Board members are responsible for investigating claims to determine whether a petition meets all requirements for reimbursement. In most cases Petitioners are not represented by an attorney when making a claim and critical facts may be missing in the

initial petition. By interviewing the petitioner, the attorney accused of dishonest conduct and other relevant parties, the Board member investigators can fill in any missing gaps.

At the close of the 2019 fiscal year, the Fund had reimbursed over \$7.1 million to 1,673 petitioners who suffered financial losses due to the dishonest conduct of Virginia licensed attorneys since 1976.

Another duty of Board members is to publicize activities of the Fund to the public and members of the Virginia State Bar. To accomplish this duty, in recent years the Board has created a CLE (approved for 1.0 hour of ethics credit), updated its website⁷, utilized social media and its online presence to publicize recent decisions of the Board, and publish articles and news releases in various publications including the *Virginia Layer Register*, see page 56 for a report on recent paid petitions in this issue. The Fund has also undertaken efforts to publicize its activities amongst Spanish speaking community in the Commonwealth. Without public awareness of the Fund, the Fund cannot accomplish its mission. 💰



David B. Oakley is a shareholder at the law firm of Poole Brooke Plumlee PC, and he has been a member of the Clients’ Protection Fund Board since 2016.

Endnotes

- 1 CPF Rules, Preamble § 1.A.
- 2 Rules of Sup. Ct. Va. Pt. 6, § IV, Para. 16.
- 3 Rules Sup. Ct. Va. Pt. 6, § IV, Para. 16.

- 4 CPF Rules, Preamble § 1.E.
- 5 CPF Rules, Preamble § 2.
- 6 CPF Rules, Preamble § 4.A.
- 7 www.vsb.org/site/public/clients-protection-fund

The CPF Process: How Active Lawyers Give to Make the Profession Better and to Protect the Public

by Susan Bradford Tarley

The purpose of the Clients' Protection Fund (the "CPF") is to promote public confidence in the administration of justice and the honor and integrity of the legal profession by providing a reimbursement mechanism for those who suffer a financial loss because of the dishonest conduct of a Virginia lawyer who is no longer practicing law for one of the reasons articulated in the CPF Rules.¹ The CPF has been successful in its mission because of the annual funding by Virginia lawyers, the dedicated volunteer service of VSB members, the unwavering work and support from VSB staff and counsel, and the steadfast commitment of the Virginia State Bar Council.

The CPF is funded entirely by Virginia lawyers with the annual fee being collected on the VSB dues statement. We remain one of the few professions that continue to be self-regulated and this modest \$10 fee is a critical component to our self-regulation.

For the criminal defense client, delay and having to obtain new counsel may have severe negative impact on their freedom.

The CPF fund is managed by the 14-member CPF Board, whose members are appointed by the Virginia State Bar Council. The CPF Board reviews, investigates, and makes decisions on petitions filed by persons who have suffered a financial loss because of the dishonest conduct of a Virginia lawyer.

The CPF process is relatively straightforward: Once a petition for reimbursement is filed, staff and counsel for the Virginia State Bar CPF Board initially vet the claim. As part of this process, a CPF Board member is assigned as the investigator to the case. All claims, regardless of monetary amount, are fully investigated and discussed.

The CPF Board member will review documents, interview the petitioner and lawyer

as necessary, analyze the alleged defalcation to determine whether it fits within the CPF rules, and draft a report with a recommendation on whether the petitioner's claim should be reimbursed. The CPF Board meets three times a year and those member reports are addressed at these meetings.

When the CPF Board member presents a report, board members ask questions and engage in a robust discussion relating to the claim, and the behavior of the lawyer involved. Eventually, a board member makes a motion to approve or deny the claim.

When the CPF Board investigates a claim, we hear about the devastating impact suffered by clients whose lawyers have dishonestly taken their money. **In an all-too-typical fact pattern, the client hired an attorney to assist them with a serious issue in their life—the need to file for bankruptcy protection, help in handling a criminal charge, or assistance in prosecuting a personal injury action.** When the lawyer wrongfully pays themselves an unearned retainer, or fails to disburse settlement funds, the client is not only harmed by the loss of the money, but the lawyer's failure to perform legal services furthers the detrimental effect on the client. For the bankruptcy client, creditors continue to pursue the client. For the criminal defense client, delay and having to obtain new counsel may have severe negative impact on their freedom. For the personal injury settlement, the client does not financially recover from the loss of employment, or the payment of medical bills, exacerbating an already tenuous situation.

It is very rewarding to be able to help claimants whose lives have been turned upside down by the acts of a dishonest lawyer. In my experience, claimants are very appreciative for the work the CPF Board performs. Many claimants tell us that they were skeptical about the process, but because the CPF Board member listened to the effect that the lawyer's behavior has had on the claimant,

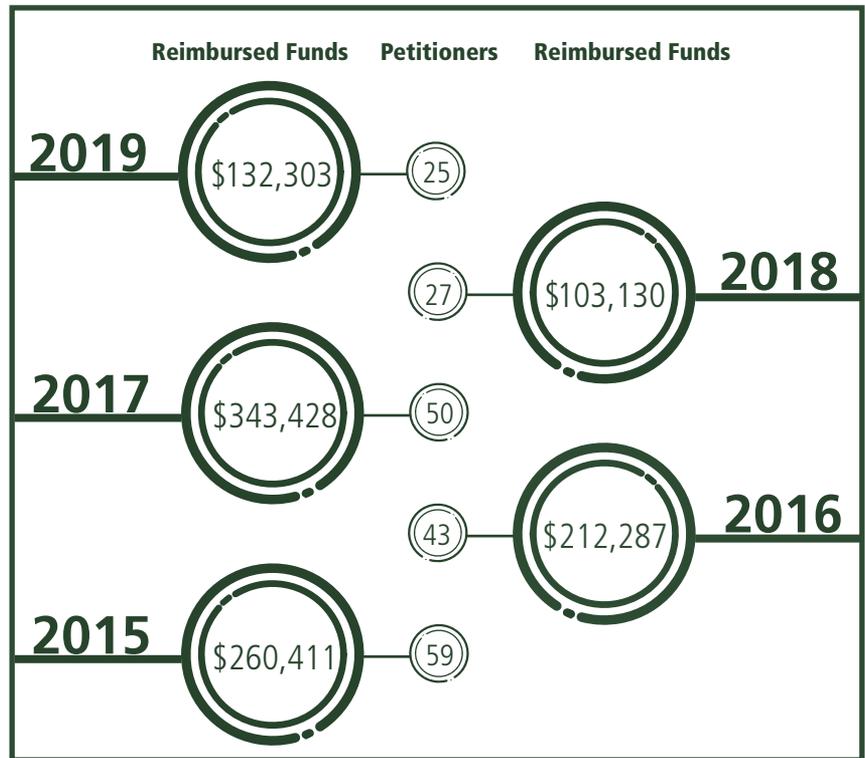
and because the CPF Board member vigorously investigated their claim, claimants tell us that the CPF Board has restored their faith in the legal system.

The CPF is a true team effort by our Virginia legal profession to protect the public. I am honored to have served on the CPF for six years, where I have enjoyed working with a great group of attorneys, and I have learned a great deal from them in our lively and thought-provoking discussions. Thank you to everyone on our team for making the CPF work efficiently and effectively in protecting the funds of clients in Virginia. ©

Endnotes

1 CPF Rules, Section 4, B. Eligible claims arise from cases in which a member: (1) has been disbarred or suspended from the practice of law, or transferred to another class of membership, pursuant to any provision of Paragraph 13, of Part 6, Section IV of the Rules of the Supreme Court of Virginia; or (2) has voluntarily resigned from the practice of law in Virginia; or (3) has died; or (4) has been adjudicated incompetent; or (5) has been the subject of a bankruptcy case that would stay, reduce or discharge the claims of the member's past or present clients; or (6) whose whereabouts are unknown to the Petitioner after reasonable efforts to locate the member.

BY THE NUMBERS:



Virginia Lawyers Make Things Right



Jason Blye and his daughter

Jason Blye of Stephens City became involved with the Clients' Protection Fund Board after his attorney — whose license has been revoked — took his money and then failed to represent him in a custody case. The lawyers of Virginia, through the CPF Board, compensated Blye almost \$5,000 for his financial losses.

Said Blye, "It took a while for me to realize how badly I had been treated. For most things, I just take the loss and move on. But this involved my daughter. The reimbursement was probably the only positive thing to come out of a very hard situation."

CLIENT TESTIMONY

Here's to the Lay Person: Providing a Public Perspective for Lawyers

by Deirdre Norman

Only a select few professions refer to those outside the profession as lay people: doctors, the clergy and the law.

In this usage, a lay person is someone who has not become socialized into the group in question by sharing the same training and viewpoints, and as such they provide a necessary counterpoint to the cohesive perspectives within the profession.

Though he is a member of the Methodist clergy, when it comes to the law, the Rev. Dr. Theodore “Ted” Smith is one such counterpoint — the sole lay person on the Clients’ Protection Fund board who, as a nonlawyer, assists the board in understanding and empathizing with people who have suffered a financial loss due to a lawyer’s malfeasance.

For over a decade Smith has been giving the lawyers of the Virginia State Bar a lay person’s perspective on the law. His first interaction with the Bar came when the Honorable Rossie D. Alston Jr., now of the U.S. District Court for the Eastern District of Virginia, asked him to be on a disciplinary committee in Alexandria.

Laughs Smith, “Rossi actually approached me and said, ‘The Virginia State Bar is an organization of lawyers and a few nonlawyers, and we need someone who’s ignorant of the law. You’re perfect.’”

The fund benefits the average lawyer from a perspective of trust and credibility with the public... Lawyers want the public to believe that they’re trustworthy, that they’re capable, that they’re professional.

Smith was willing, and he began first with a disciplinary district committee, and then transitioned onto the Standing Committee on Lawyer Discipline. From there, he moved onto the Disciplinary Board and then later began his current service to the Clients’ Protection Fund Board. In all of these roles, he has served purely as a volunteer: Someone



Ted Smith

willing to help Virginia’s lawyers with the process of self-regulation.

According to Smith, the lawyers of the Virginia State Bar have worked tirelessly to include nonlawyers in the process of self-regulation.

“In my experience with all of my Virginia State Bar committee service, there really is a respect of lay people who are volunteering,” Smith said. “Very often when questions arise about a lay person’s perspective, a public perspective, or what the average citizen who has no connection to the law or to the legal field thinks, I have encountered a great respect and an intentional effort to hear the lay perspective.”

Smith said that going from the disciplinary process to the Clients’ Protection Fund Board was a natural move because, “much of what we see as a part of the Clients’ Protection Fund is a direct result of action from the disciplinary process.”

According to Smith, the Clients’ Protection Fund doesn’t involve itself in the disciplinary process, but rather steps in to

focus on “the fiduciary part of the situation.” The Board investigates the petitions, reviews the files, talks to the petitioners, and also tries to make contact with the lawyers involved to hear their version of what occurred before awarding restitution.

Unsurprisingly, lawyers who find themselves on the other end of a CPF award are often not pleased because that lawyer must reimburse the Fund before they can activate their license again. That said, the vast majority of Virginia’s lawyers will never have any interaction with the disciplinary process nor the Clients’ Protection Fund.

Smith believes that Virginia lawyers should see the CPF as an inexpensive form of lawyer advertising. “I would hope and encourage lawyers to understand that the Clients’ Protection Fund performs a service for them that they really can’t perform for themselves.

“It is a very fair process, and for just \$10 they are getting more value for money in terms of lawyer reputation than any other advertising they could buy. So, lawyers should have confidence that they’re paying a very small fee into something that has great results for the profession, even though they will likely never have direct contact with it,” Smith continued.

Ultimately, said Smith, the goal of the CPF is to make things fair and to make sure everyone, including the lawyers accused of taking unearned fees, gets heard. “It’s important that everyone gets a fair shake,” Smith said.

The most important part of the process, according to Smith, is the opportunity for all involved to have their side of the story explained. “Both lawyers and petitioners—when a petition is filed and when there’s a dispute—people want to be heard and they want to know that their situation was well-considered and with full fairness in the process.”

Though every active lawyer contributes to the Fund, many aren’t really sure what it does, or how it improves the legal profession. Smith said that from the public perspective it’s a great benefit: “The fund benefits the average lawyer from a perspective of trust and credibility with the public. Most lawyers depend on trust, the public trust and confidence to do business. Lawyers want the pub-

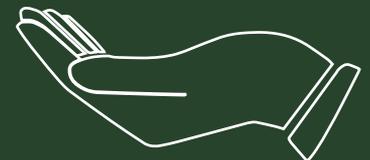
lic to believe that they’re trustworthy, that they’re capable, that they’re professional.”

The board investigates the petitions, reviews the files, talks to the petitioners, and also tries to make contact with the lawyers involved to hear their version of what occurred before awarding restitution.

Because lawyers are paid in advance for their work, clients put their faith in the lawyers’ abilities to safeguard that money and keep it in trust until the fees are earned. If that money is taken or stolen by just one lawyer, the entire system is blemished. “From my perspective, the Clients’ Protection Fund provides a place where the average lawyer can say ‘we have a system of accountability. We have several systems of accountability.’”

In his professional life, Rev. Dr. Smith is a United Methodist pastor, working as Director of Connectional Ministries (similar to a chief of staff) for the United Methodist Church of Virginia. A native of Virginia, Smith received degrees from Virginia Wesleyan University, Emory University, and Wesley Theological Seminary before embarking on his career with the United Methodist Church. But what’s most amazing about his lengthy resume, beyond his numerous mission trips to Africa, Korea, Russia, Cuba, and other far-flung places, is his extensive list of volunteer service.

There is an old saying that “If you want to get something done, ask a busy person.” And for the Virginia State Bar, that aphorism has proven true for over a decade. Ted Smith has given countless hours to making sure that the lawyers of the Commonwealth have the opinion of the general public in mind when making decisions that protect Virginians while simultaneously improving the profession. ⁵



Practical Guidance for Virtual Depositions Under Pandemic Conditions

by Michael T. Gwinn



How do you pass a document across a table 2,000 miles long? Attorneys across the United States and abroad have had to grapple with these and other questions while conducting depositions during the pandemic.

Virtual conference platforms have proven to be useful for conducting depositions in the face of social distancing and travel restrictions. Virtual depositions provide unique challenges. This article provides practical advice on how to conduct virtual depositions with as few deviations from normal practice as possible.

Special Considerations for Virtual Depositions

In-person depositions require a minimum of four parties: the deponent, the attorney taking the deposition, the attorney defending the deposition, and the court reporter. Virtual depositions require a fifth role: the conference technician. The conference technician's responsibility is to host and moderate the conference room and to display documents on screen as requested.

The attorney acting as second chair can fill this role if necessary, but it is a distraction and

not recommended. The conference technician is involved in the minute to minute operation of the virtual deposition platform. The second chair will not be available for other tasks if they are preoccupied with showing exhibits and muting microphones. Additionally, most court reporter companies provide a conference technician at no extra charge as part of their virtual deposition service.

Second, more stakeholders will attend virtual depositions than in-person depositions. Many stakeholders will not observe in-person depositions because of the travel time and expense as well as practical limits on the number of people that can fit in the room. Virtual depositions do not require travel and there are no practical limits to the number of people that can attend. Attorneys taking virtual depositions can expect a larger audience and more client involvement than normal.

Finally, the attorney taking the deposition has less control over virtual depositions. Internet connections can fail and computers can crash. Attorneys taking virtual depositions should make contingency plans in case a technical failure brings the deposition to a sudden end.

Preparing for the Virtual Deposition

The first priority for a virtual deposition is to check to make sure it is feasible. After you have selected a court reporter service, arrange for a communications check as soon as possible. **At a minimum, the conference technician should have a test call with each of the attorneys involved and the deponent to ensure that their internet connection and conference equipment are adequate.**

Once the technical issues have been resolved, the parties should agree to a governing time zone if the key participants are geographically dispersed. The deponent's time zone often makes the most sense.

Exhibits are a significant logistical hurdle for virtual depositions. Unlike in-person depositions, parties cannot share documents around the table. There are two solutions to the exhibits issue: printing and shipping or digital. In either case, counsel must plan in advance how to direct the deponent's attention to documents the deponent will be questioned on.

The post office is open, and litigation support vendors will print and ship documents to the deponent despite the pandemic. This can help prevent any issues with the deponent being unable to view the documents. This method is not perfect. First, it is more expensive than simply emailing the documents. Second, the documents will normally have to arrive the day before the deposition, which may give the deponent and defending counsel insight into your line of questioning. Finally, last minute additions to the printed exhibits may be impossible.

The second option is to share digital copies of the exhibits or have the conference technician display the documents through a shared screen. This method bears no additional cost but includes its drawbacks. Certain video conferencing platforms allow the conference technician to give limited control of the document to the deponent, but others do not. If the conference technician has to retain control of the document, the deponent will need to tell the technician to scroll the document, zoom in, etc. This is cumbersome and will slow down the process. For depositions that involve detailed reports and other large documents, this may be impracticable. Furthermore, the conference technician and the deponent may be unable to view or display exhibits that

require specialized software, such as mapping programs and data analysis programs.

In either case, each page of each exhibit should be clearly numbered. Clear document numbering allows the parties to guide each other to the page they are looking at with less room for miscommunication or confusion. Emails and spreadsheets should be transformed into PDFs so they can be accurately numbered for ease of reference. Native files, such as emails or Excel spreadsheets, should be avoided because they are difficult to display and navigate.

Techniques developed during COVID-19 social distancing may be useful time and cost saving measures well after the pandemic subsides.

Conducting the Virtual Deposition

The considerations and etiquette that apply to all virtual conferences apply with even greater force to virtual depositions. Participants who are not speaking should mute their microphones. Additionally, everyone but the deponent, the attorney taking the deposition, and the attorney defending the deposition should turn off their video to avoid distraction. The key participants in the deposition should take steps to prevent any disturbances or interruptions by others—2-legged or otherwise—while the deposition is on the record.

At the start of the deposition, all of the participants should pin or lock the deponent's window as the primary display in the system settings. Most video conferencing platforms alternate between speakers. Even if everyone but the key participants is muted, it can be disorienting for the window to switch between the attorneys and the deponent mid-sentence. Locking the screen on the deponent keeps the focus where it needs to be and minimizes the number of times the primary screen changes between participants. The screen may still alternate between the conference technician's shared screen and the

Virtual Depositions continued on page 51



Michael T. Gwinn is an associate at Smith Pachter McWhorter PLC, located in Tysons Corner. His practice focuses on Government Contracts and Construction litigation.

Civil Conspiracy:

An Analysis of Common Law and Statutory Business Conspiracy Claims Under Virginia Law

by David N. Anthony, Timothy J. St. George, and H. Scott Kelly

Virginia recognizes two tort claims for civil conspiracy — one under the common law and the second under Virginia Code §§ 18.2-499–500. This article discusses these two causes of action which are often the subjects of business litigation.

Background

As early as 1888, in the case of *Crump v. Commonwealth*, the Supreme Court of Virginia recognized the viability of a claim for a conspiracy to injure a person in his trade or occupation.¹ In *Crump*, members of a union attempted to compel a mercantile business to become a union office and employ members of the union. When the mercantile business refused, the union members attempted to destroy its business through boycotts and threatening patrons. In upholding the criminal convictions of the union members, the Court recognized that “a conspiracy or combination to injure a person in his trade or occupation is indictable.”²

In 1933, the Supreme Court of Virginia in *Werth v. Fire Companies’ Adjustment Bureau*³ acknowledged the ability for a plaintiff to sue at common law for civil conspiracy in noting that:

A conspiracy consists of an unlawful combination of two or more persons to do that which is contrary to law, or to do that which is wrongful and harmful towards another person. It may be punished criminally by indictment, or civilly by an action on the case in the nature of conspiracy if damage has been occasioned to the person against whom it is directed. It may also consist of any unlawful combination to carry out an object not in itself unlawful by unlawful means. The essential elements, whether of a criminal or actionable conspiracy, are, in my opinion, the same, though to sustain an action special damages must be proved.

In 1964, the General Assembly enacted Virginia’s business conspiracy statute. The statute is similar to an old Wisconsin statute, but its remedies are stricter.⁴ Surprisingly, no legislative history exists for the statute.⁵ Due to the year of its enactment and its similarity to statutes passed in other states around the same time, many refer to it as the “Anti-Sit-In” Act.⁶

The business conspiracy statute is found in sections 18.2-499 and 18.2-500 of the Virginia Code — the criminal chapter of the Virginia Code.⁷ Under section 18.2-500, “[a]ny person who [is] injured in his reputation, trade, business or profession by reason of a violation of § 18.2-499” may seek relief in a civil court. In turn, Virginia Code § 18.499 imposes liability on:

Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act . . .

The statute specifically allows for the recovery of treble damages and “the costs of suit, including a reasonable fee to plaintiff’s counsel.”⁸ The statute also provides for damages if a plaintiff proves an attempted business conspiracy.⁹

Stating a Claim for Common Law Conspiracy Under Virginia Law

Under Virginia law, the prima facie elements for common law conspiracy are:

1. A combination of two or more persons;
2. To accomplish, by some concerted action;
3. Some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means; and
4. Resultant damage caused by the defendant’s acts committed in furtherance of the conspiracy.¹⁰

As the Supreme Court of Virginia recently commented: “The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use an unlawful means.”¹¹ A plaintiff cannot maintain a claim for common law conspiracy when the unlawful act underlying the claim does not allow for an award of damages.¹² Ordinarily, the issue of whether a conspiracy caused the alleged damage is one for the jury’s decision.¹³

Stating a Claim for Statutory Business Conspiracy Under Virginia Law

Under Virginia law, a plaintiff must prove three elements to state a prima facie cause of action under Virginia’s business conspiracy statute:

1. A combination of two or more persons;
2. For the purpose of willfully or maliciously inuring a plaintiff in reputation, trade, business, or profession; and
3. Resulting in damage to the plaintiff.¹⁴

To prove attempted business conspiracy, a plaintiff must prove that a person attempted to procure the participation or cooperation of another to enter into a business conspiracy¹⁵ and resulting damage to the plaintiff.¹⁶ Proof of a civil conspiracy must be shown by clear and convincing evidence.¹⁷

Proving Civil Conspiracy Claims

I. A Combination of Two or More Persons to Accomplish, by Some Concerted Action — Necessary Elements for Common Law and Statutory Business Conspiracy Claims

Both the common law and statute require a combination of two separate actors in a concerted action.¹⁸ “Concerted action” reflects the statutory requirement that a plaintiff ultimately prove that someone “combined, associated, agreed, mutually undertook, or concerted together” with someone else in the conduct at issue.¹⁹ A plaintiff must prove then, to be successful in his or her claim, that the defendants “combined together to effect a preconceived plan and unity of design and purpose.”²⁰ After all, this “common design is the essence of the conspiracy.”²¹ A common law conspiracy claim only requires proof of a “tacit understanding” — an express agreement is not a necessary component of the claim.²²

The “two or more persons” requirement, however, is not satisfied by proof that a principal conspired with one of its agents that acted within the scope of his agency.²³ Under such a circumstance, a conspiracy is a legal impossibility because a principal and an agent are not separate persons for purposes of the conspiracy statute. This rule is commonly referred to as the “intracorporate immunity” doctrine.²⁴ That doctrine holds that where the agents or employees of a corporation are acting within the scope of their employment, “then only one entity exists” — the corporation — and “[b]y definition, a single entity cannot conspire with itself.”²⁵ To the contrary, an agent

or employee acting outside the scope of his employment or agency can be liable for a civil conspiracy to injure a person’s business.²⁶

The question of what is within the scope of employment is not always clear, but “[b]oth the Fourth Circuit and the state courts of Virginia take a ‘fairly broad view of the scope of employment.’”²⁷ “Generally, an act is within the scope of employment if it is ‘naturally incident to [the master’s] business . . . done while the servant was engaged upon the master’s business, and did not arise wholly from some external, independent, and personal motive on the part of the servant to do the act upon his own account.’”²⁸ An act may be prohibited by the employer, tortious, or even criminal to be done yet fall within the scope of employment. The test “is not whether the tortious act itself is a transaction within the ordinary course of business of the [employer], or within the scope of the [employee’s] authority, but whether the service itself, in which the tortious act was done, was within the ordinary course of such business or within the scope of such authority.”²⁹

Further, employees are not the only agents who fall under the doctrine as both Virginia federal and state courts have applied the intracorporate immunity doctrine to corporate directors.³⁰ Federal courts do apply an exception to this rule where an officer or director has a stake or a purpose “independent of his interest in the corporation’s success.”³¹ For instance, in *Greenville Publishing Company v. Daily Reflector, Inc.*,³² the Fourth Circuit observed that an exception to the intracorporate immunity doctrine “may be justified when the officer has an independent personal stake in achieving the corporation’s illegal objective.”³³ A Virginia state court has found that this federal personal stake exception is different from the scope of employment test and explained that the personal stake exception “applies primarily in antitrust actions, such as where a corporate director with a personal stake in another business conspires to use the corporation to eliminate competitors for that personal business interest, thus, hijacking the corporation for his own personal, illegal, ends.”³⁴ In fact, courts have held that the exception was meant to apply only to circumstances in which the “conspirator gained a direct personal benefit from the conspiracy, a benefit wholly separable from the more general and indirect corporate benefit always present under the circumstances surrounding virtually any alleged corporate conspiracy.”³⁵ The Supreme Court of Virginia has not adopted the personal stake exception.³⁶

In sum, Virginia courts consistently have held that a conspiracy cannot form in the following situations:

- A single entity cannot conspire with itself.³⁷
- A corporation cannot conspire with its wholly-owned subsidiary.³⁸
- Partners cannot conspire when they are acting within the scope of their partnership.³⁹
- If the conspiracy involves the breach of a contract, one of the conspirators must be a third party to that contract.⁴⁰

II. Some Criminal or Unlawful Purpose or Some Lawful

Purpose by a Criminal or Unlawful Means — A Necessary Element for Civil Conspiracy Claims

The key and essential element for a common law conspiracy is the criminal or unlawful nature of the underlying conduct.⁴¹ A complaint will be deficient unless sufficient facts alleging an unlawful act or unlawful purpose are present.⁴² Typically, courts do not struggle with whether a plaintiff has made sufficient factual allegations of an unlawful act or unlawful purpose as such facts either are present in the complaint or not. **The Supreme Court of Virginia has held that allegations accusing employees of forming a combination to breach their contractual, employment, fiduciary, and other duties to their employer, including the supposed unlawful conversion by them of their employer's confidential and proprietary information, stated sufficient unlawful purposes.**⁴³ Virginia courts have held that the following instances are not unlawful acts or unlawful purposes for purposes of establishing this element:

- Truthful business competition;⁴⁴
- The enticement of a competitor's employee to leave his employment so long as no means are used and the employee's employment is terminable at will;⁴⁵ and
- Mere breach of contract⁴⁶

Where the unlawful act or unlawful purpose is the commission of a tort, the Supreme Court of Virginia recently emphasized that a plaintiff must establish that the underlying tort was committed to recover for a common law claim of civil conspiracy.⁴⁷ In other words, "where 'there is no actionable claim for the underlying alleged wrong, there can be no action for civil conspiracy based on that wrong.'"⁴⁸

III. For the Purpose of Willfully or Maliciously Injuring a Plaintiff in Reputation, Trade, Business, or Profession— A Necessary Element for Business Conspiracy Claims

In a series of three cases involving the business conspiracy statute, the Supreme Court of Virginia has altered the malice standard applicable to business conspiracy claims from an actual malice standard to a legal malice standard.⁴⁹ Beginning in 1986 with the case of *Greenspan v. Osheroff*,⁵⁰ the Court adopted a "primary overriding purpose" standard, holding that:

[W]hen the fact-finder is satisfied from the evidence that the defendant's primary and overriding purpose is to injure his victim in reputation, trade, business or profession, motivated by hatred, spite, or ill-will, the element of malice required by Code § 18.2-499 is established, notwithstanding any additional motives entertained by the defendant to benefit himself or persons other than the victim.

Six years later, in the case of *Tazewell Oil Co. v. United Virginia Bank*,⁵¹ the Court appeared to move away from the primary and overriding purpose standard set forth in *Osheroff*. In a 4-3 decision, the Court held that sufficient evidence of a conspiracy existed because, among other things, the defendant's

action "exhibited a willful disregard for Tazewell's rights."⁵² Surprisingly, the majority opinion in *Tazewell* made no mention of the "primary overriding purpose" standard set forth in *Osheroff*.⁵³ In his dissenting opinion, Judge Whiting chided the majority for ignoring *Osheroff*, stating that the "primary and overriding purpose" test should have been applied to determine whether the defendants had acted with actual malice.⁵⁴

Three years later, the Court once again addressed whether the conspiracy statute required proof of actual malice in *Commercial Business Systems, Inc. v. BellSouth Services, Inc.*⁵⁵ **Definitively rejecting that requirement, the Court concluded that only proof of legal malice was necessary, i.e., that defendant acted intentionally, purposely, and without lawful justification.**⁵⁶ Distinguishing *Osheroff*, the Court explained that its statement about a conspirator's "primary and overriding purpose" was made in the context where the conspirator had both legitimate and illegitimate motives for his actions and ruled that:⁵⁷

In any event, we do not think that, as a general proposition, the conspiracy statutes require proof that a conspirator's primary and overriding purpose is to injure another in his trade or business. The statutes do not so provide, and such a requirement would place an unreasonable burden on a plaintiff.⁵⁸

Courts consistently have followed the legal malice standard set forth in *Commercial Business Systems*.⁵⁹ Further, in pleading a claim for business and common law conspiracy, keep in mind that a plaintiff must allege an unlawful act or unlawful purpose because "there can be no conspiracy to do an act the law allows."⁶⁰

An additional requirement for this second element is proving that the injury was to "reputation, trade, business, or profession." The Supreme Court of Virginia has held that §§ 18.2-499 and 500 "apply to business and property interests, not to personal or employment interests."⁶¹ Virginia federal courts have also made this business / personal distinction.⁶²

IV. Resulting in Damage to the Plaintiff — A Necessary Element for Common Law and Statutory Business Conspiracy Claims

A. Actual, Treble and Punitive Damages

Plaintiff must prove that they sustained damages from the alleged interference in a conspiracy claim.⁶³ Business conspiracy claims have been a favorite claim for lawyers because § 18.2-500 allows for the recovery of treble damages. It provides that one who is "injured in his reputation, trade, business or profession by reason of a violation of [section] 18.2-499 may sue therefore and recover three-fold the damages by him sustained . . . and without limiting the generality of the term, 'damages' shall include loss of profits."⁶⁴ The Supreme Court of Virginia, in *Advanced Marine Enterprises, Inc. v. PRC, Inc.*,⁶⁵ also permitted the recovery of punitive damages and treble damages in the same action because "awards of punitive and treble damages

were based on separate claims involving different legal duties and injuries.”⁶⁶ Importantly, Virginia courts consistently have held that damage to one’s personal employment interest is not actionable under the statute.⁶⁷

B. Injunctive Relief and Attorneys’ Fees and Costs

In addition to damages, the business conspiracy statute also allows for permanent injunctive relief and injunctive relief during litigation to restrain one from continuing the conspiratorial acts.⁶⁸ Further, the conspiracy statute allows for “reasonable counsel fees to complainants’ and defendants’ counsel.”⁶⁹ One court has held that a defendant is entitled to its attorneys’ fees even when the case is dismissed pursuant to its demurrer.⁷⁰ Of course, a party seeking to recover their attorneys’ fees must prove that the fees were reasonable and necessary.⁷¹

Pleading Civil Conspiracy Claims

Virginia state and federal courts appear to have differing standards for pleading common law and statutory business conspiracy claims. The Supreme Court of Virginia had held that “traditional notice pleading and demurrer standards apply in reviewing conspiracy claims.”⁷² To survive an attack by a dispositive motion, a plaintiff must allege the existence of the elements of the claim in more than “mere conclusory language.”⁷³ A plaintiff must allege “concerted action, legal malice, and causally related injury . . . set[ting] forth core facts to support the claim.”⁷⁴ Moreover, for statutory business conspiracy claims, “it is not enough for [a] plaintiff merely to track the language of the conspiracy statute without alleging the fact that the alleged co-conspirators did, in fact, agree to do something the statute forbids.”⁷⁵ Ordinarily, a complaint should contain factual details of the time and place and the alleged effect of the conspiracy in order to withstand a demurrer or motion to dismiss.⁷⁶ From the federal court’s perspective, a statutory business conspiracy requires a heightened pleading to prevent “every business dispute over unfair competition [from] becoming a business conspiracy claim.”⁷⁷

Defenses to a Civil Conspiracy Claim

I. Statute of Limitations

One point is clear: a conspiracy cause of action accrues when damage is first sustained by the plaintiff.⁷⁸ The length of the limitations period running from the accrual point is unclear, however, and the Supreme Court of Virginia has held that the “applicable statute of limitations is determined by the type of injury alleged.” If the alleged cause of action is for personal injuries, it is subject to a two-year statute of limitations, but if the alleged cause of action is for injury to property, it is subject to a five-year limitations period.⁷⁹



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The Virginia Values Act & Other Workers' Rights Laws:

How Virginia Vaulted to the Forefront of LGBTQI+ Protections

by L. Leigh R. Strelka, N. Winston West IV, and Polly the Office Dog



The Virginia General Assembly made history this year in passing a host of new laws expanding employee protections in the workplace.

The Commonwealth of Virginia is the first Southern state to provide sweeping anti-discrimination protections for the LGBTQI+ community, and now provides many robust workplace protections for employees in general. This article, as part of a series of articles discussing Virginia's new employment laws, will focus on protections for LGBTQI+ em-

ployees and the Virginia Values Act, generally. The Virginia Values Act ("VVA") was passed as SB 868 and amends a large swath of the Code of Virginia.

Current Status of LGBTQI+ Protections

The importance of the VVA's protections for LGBTQI+ employees cannot be fully appreciated without understanding the paltry legal recourse available to LGBTQI+ discrimination and retaliation in the workplace before the United States Supreme Court's June 2020 decision in *Bostock v. Clayton Cnty.*¹ There is still uncertainty that sufficient LGBTQI+ employees' legal remedies are available under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. The Fourth Circuit Court of Appeals currently has two cases that might state sexual orientation is not protected by Title VII.² The federal district courts in Virginia have issued conflicting opinions in the face of unsettled Fourth Circuit law. To be sure, the Fourth Circuit must clarify its precedents in light of *Bostock*.

As the briefest bit of background, the United States Supreme Court has weighed in on the topic of LGBTQI+ workplace protections at various points since the late 1980s. Beginning in *Meritor Savings Bank v. Vinson*,³ the Supreme Court has made clear that "sex" in the Title VII context must be read broadly. However, the Supreme Court's next two cases, *Price Waterhouse v. Hopkins* and *Oncale v. Sundowner Offshore Servs.*,⁴ expanded Title VII's definition of "based on [...] sex." Justice Scalia, in writing for a unanimous Court in *Oncale*, took an expansive view of Title VII, stating "[o]ur holding that ['terms and conditions of employment'] includes sexual harassment must extend to sexual harassment of any kind that meets the statutory requirements."⁵ The facts in *Oncale* alleged that a homosexual male supervisor

sexually discriminate against a heterosexual male subordinate employee.

The Seventh and Second Circuit Courts of Appeals⁶ relied on the *Price Waterhouse* and *Oncale* line of cases to hold that Title VII does protect LGBTQI+ employees from discrimination and retaliation based on sexual orientation. Both Circuit cases found that sexual orientation was so entwined with sex that it was clear Title VII included sexual orientation.

Fourth Circuit case law still presents a significant obstacle to the success of a LGBTQI+ discrimination claim. Specifically, in *Proud v. Stone*, the Fourth Circuit carved out a safety net for employers by holding that a “strong inference” of nondiscrimination exists where the “same actor” — the supervisor who both hired and terminated the employee — made the employment decisions within “a short period of time.”⁷

As a result, direct evidence of animus towards LGBTQI+ individuals has been found insufficient to overcome the *Proud* inference and extend workplace protections to these employees.⁸ Examples of direct evidence found insufficient to overcome *Proud* include no punishment for a male subordinate employee who was openly insubordinate to the gay and female plaintiff’s authority in profane terms, statements, such as “the problem with gay people is my preacher has to marry them,” and a male supervisor giving implied consent to the plaintiff’s male co-equal counterpart to surveil this plaintiff during working hours.⁹ Accordingly, the implication of the *Proud* inference could derail Title VII protections for LGBTQI+ employees by essentially permitting sex-based discrimination, so long as the LGBTQI+ individual was employed for a short period of time and the “same actor” was involved in the discriminatory conduct.

The VVA, as written, overcomes these significant issues found in federal jurisprudence with respect to LGBTQI+ employees. **While the Supreme Court’s recent decision in *Bostock* held that LGBTQI+ employees are protected under Title VII, the significant hurdles for plaintiffs still exist.** In the federal courts, for example, a plaintiff must still overcome the *Faragher/Elzerth* affirmative defense, and the *Proud* inference, as discussed above. The VVA writes on a clean slate, giving a plaintiff the opportunity to litigate on a level playing field in state court.

Virginia Values Act LGBTQI+ Protections

The VVA, which went into effect on July 1, 2020, essentially revises and reinvestigates the formerly toothless Virginia Human Rights Act (previously only applying to employers with between 5 and 15 employees and providing precious few remedies within the previous private right of action¹⁰). **The VVA creates a private cause of action against employers with fifteen or more employees in most instances (in some situations, such as employees who were discriminatorily terminated from employment, five employees is sufficient) and, of particular note, prohibits discrimination on the basis of sexual orientation and gender identity in housing, public and private employment, public accommodations, and access to credit.** Accordingly, Virginia has made it clear that sexual orientation and gender identity are protected characteristics within the Commonwealth in all aspects of life.

The Commonwealth of Virginia is the first southern state to provide sweeping anti-discrimination protections for the LGBTQI+ community...

Virginia Values Act in General

VVA legislation also extends important protections to Virginians on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions (lactation included), age, marital status, disability, and status as a veteran.

However, before a civil cause of action may be brought in a court of the Commonwealth, an aggrieved individual must file a complaint with the Division of Human Rights (“DHR”), participate in an administrative process, and receive a notice of right to commence a civil action. This tracks with the similar requirement under many federal laws (such as Title VII), which require a complainant to file a charge with the Equal Employment Opportunity Commission (“EEOC”), participate in the administrative investigative process, and receive a notice



of right to sue prior to filing suit in a federal district court. Of note, although the VVA does not specifically appear to address the timing of such filings, there is a catchall provision indicating that the deadlines should conform to EEOC requirements. Accordingly, the general presumption is that clients should file with DHR within 300 days and, subsequent to a notice of right to commence a civil action, the client will have 90 days to file a lawsuit in Virginia's state courts.

With regard to damages, unlike Title VII, which has capped damages based upon number of employees, the VVA provides for uncapped compensatory damages and injunctive relief. Punitive damages are capped at \$350,000 by the general limitation on punitive damages.¹¹ Additionally, the VVA “may” award attorneys’ fees. Trust us, we will be asking for them.

Not only has a private right of action for nonpayment of wages now been created, but the new law expands the Virginia Department of Labor & Industry enforcement options.

Wage Theft

While the list of Workers’ Rights passed in Virginia’s 2020 Legislative Session is expansive,¹² an analysis of a particularly noteworthy

set of laws follows. Wage theft — particularly for hourly workers who could not afford to hire an attorney on an hourly basis and who had no possibility of being awarded attorneys’ fees on the back end of a successful matter — has been an ongoing and unaddressed issue in the Commonwealth for decades. Not only has a private right of action (including claims for retaliation and whistleblower protections) for nonpayment of wages now been created, but the new law expands the Virginia Department of Labor & Industry (“VDOLI”) enforcement options. VDOLI now has the power to review wage records of all employees of a particular employer to determine whether wage theft is more widespread and, accordingly, could result in a collective action.

It is particularly helpful that the law provides an explicit attorneys’ fees provision:

“If the court finds that the employer knowingly failed to pay wages, the court shall award the employee reasonable attorney fees and costs and the employer is subject to a civil penalty not to exceed \$1,000 for each violation. If the court finds that the employer’s failure to pay wages was willful and with intent to defraud the employee, the court shall award the employee triple the amount of wages due and reasonable attorney fees and costs.”¹³

Fronting the cost for legal counsel without the possibility of receiving attorneys’ fees on the back end of a matter is often prohibitive, so we anticipate, based solely on how frequently

we have received inquiries on this topic in the past, that this will be a “hot spot” of litigation in the months and years to come.

All in all, we celebrate these new protections for Virginia’s workers and look forward to future lively debates with our defense bar colleagues. ☺

Endnotes

- 1 No. 17–1618 (U.S. June 15, 2020).
- 2 *Wrightson v. Pizza Hut of Am., Inc.*, 99 F.3d 138 (4th Cir. 1996) (addresses LGBT rights vis-à-vis Title VII, as these individuals were collectively known then, in dicta); *Murray v. N. Carolina Dep’t of Pub. Safety*, 611 F. App’x 166 (4th Cir. 2015) (per curiam).
- 3 477 U.S. 57, 64 (1986).
- 4 523 U.S. 75 (1993).
- 5 *Oncale*, 523 U.S. at 80.
- 6 *Hively v. Ivy Tech Cmty. College of Ind.*, 853 F.3d 339 (7th Cir. 2017) (en banc); *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 132 (2d Cir. 2018) (en banc).
- 7 *Proud v. Stone*, 945 F.2d 796 (4th Cir. 1991).
- 8 *Spencer v. Town of Bedford*, 801 F. App’x 130 (4th Cir. 2020) (per curiam).
- 9 Compare Brief for Plaintiff, *Spencer v. Town of Bedford* (Case No. 6:18-cv-31; Docket No. 39) (detailing factual issues regarding plaintiff’s treatment) with *Spencer v. Town of Bedford*, Case No. 6:18-cv-31, 2019 U.S. Dist. LEXIS 87358, 2019 WL 2305157 (W.D. Va. May 23, 2019) (finding factual issues described by plaintiff to be insufficient to overcome *Proud* inference).
- 10 See Va. Code Ann. § 2.2-3903 (repealed July 1, 2020).
- 11 Va. Code Ann. § 8.01-38.1.
- 12 A non-exhaustive list of other notable employment-related bills passed this Session include:
 1. HB 123 & SB 838 – Private Right of Action for Nonpayment of Wages
 2. HB 336 & SB 49 – Expanding DOLI Wage Theft Enforcement
 3. HB 337 & SB 48 – Prohibiting Retaliation for Reporting Wage Theft
 4. HB 30, Item 120 #1h – Adding More DOLI Enforcement Staff
 5. HB 395 & SB 7 – Raising the Minimum Wage
 6. SB 78 – Removing Exemption for Piece-Rate Workers
 7. SB 804 – Removing Exemption for Domestic Workers
 8. HB 1407 & SB 744 – Prohibiting Worker Misclassification and Empowering Department of Taxation to Investigate and Penalize Violations
9. HB 984 & SB 894 – Private Right of Action for Misclassified Workers
10. HB 1199 & SB 662 – Protection for Workers Who Report Misclassification
11. HB 1646 – Sanctions for Contractors Who Misclassify Workers
12. HB 56 – Prohibiting Misclassification of Tipped Workers
13. SB 868 (Virginia Values Act) – Adding a Private Right of Action to the Virginia Human Rights Act and Expanding Coverage
14. HB 827 & SB 712 – Prohibiting Pregnancy Discrimination
15. HB 1049 – Prohibiting Discrimination Based on Sexual Orientation and Gender Identity
16. HB 330 & SB 480 – Prohibiting Non-Compete Agreements for Low Wage Workers and Creating a Private Right of Action
17. HB 798 – Whistleblower Protection Law
18. HB 1201 & SB 380 – Permitting Localities to Impose Bidding Criteria for Contractors
19. HB 358 & SB 182 – Authorizing State and Local Authorities to Require Project Labor Agreements
20. HB 582 & SB 939 – Permitting Localities to Collectively Bargain with Public Employees
21. HB 833 & SB 8 – Requiring Prevailing Wages for Public Works Contracts
22. HB 1252 – Prohibiting Discrimination in Apprenticeship Programs
23. SB 548 – Addressing Unemployment Insurance Qualifications and Work-Sharing Program
24. SB 9 – Expands Occupational Disease Presumption for Workers’ Compensation
25. HB 46 – Requires Employer Notification of Intent to Accept or Deny Workers’ Compensation Claims
26. HB 55 – Establishing Worker Cooperatives as a Category of Cooperative Associations
- 13 HB 123 & SB 838.



After two federal clerkships and time practicing employment defense at a large regional firm, **L. Leigh R. Strelka** joined forces with her spouse, Tommy Strelka, to form a boutique law firm focused on employee rights and quality of life for all attorneys/staff. When she is not wrangling Tommy, she is wrangling six-year old twins and practicing yoga.



Winston West received his Bachelor of Science degree from the University of Richmond, before receiving his law degree from the Washington and Lee University School of Law. After law school, West joined Strelka Employment Law as an associate. West is particularly interested in the vindication of rights protected by Title VII, the Virginia Values Act, and Section 1983.



Polly the office dog is a young Newfoundland who heads up Strelka Employment Law’s Canine Practice Group. She focuses on taking naps on the feet of our clients and providing them with calming emotional support when they visit the office. She is also a very good girl.

What Does Marijuana Decriminalization Mean for Virginia?

by the Hon. Joseph A. Migliozi and Emily Wilson, judicial intern

The legalization of marijuana has brought immense financial wealth to both the United States and the individual states that have legalized cannabis.

The two states who have made the most revenue from marijuana sales and distribution are California and Colorado. Colorado has made \$1.65 billion, while California has profited as much as \$2.75 billion. US retail sales of marijuana in 2020 has reached \$7.5 billion and is projected to be about \$8.7 billion in 2021.¹ One in five Americans are using some form of legal cannabis, and that number is expected to grow. As more states legalize marijuana, the US will continue to earn more revenue, yet more Americans will begin using cannabis as a result.

The Decriminalization of Marijuana in Virginia

Beginning on July 1, 2020, a new law, passed and signed by Virginia Governor Ralph Northam and the Virginia General Assembly, took effect. This new law reduces penalties for offenses involving the possession of up to one ounce of marijuana to only a civil violation, which means there will be no arrest and no criminal record for the person found in possession.²



This new law reduces penalties for offenses involving the possession of up to one ounce of marijuana to only a civil violation...

The decriminalization of simple marijuana possession charges allows for a civil penalty and no more than a \$25 fine. This differs from prior law, in which a first offense was punishable by a maximum fine of \$500 and a maximum jail sentence of 30 days, and subsequent offenses were a Class 1 Misdemeanor. The current law also decreases from a Class 5

Felony to a Class 6 Felony the penalty for distribution or possession with intent to sell more than one-half ounce but not more than five pounds of marijuana.³

The United States Constitution does not explicitly mention anything about marijuana or any drugs in general. However, it is acceptable for the federal government to ban drugs on the basis of their dangerous effects on human health and public safety. Because of the 10th Amendment, any power not specifically given to the federal government is reserved for the states. Since marijuana is not mentioned in the Constitution, each state has the ability to determine their position regarding marijuana use. When it comes to the federal government legalizing marijuana, not much has changed. Nevertheless, cannabis is now legal in 33 states and that number will continue to grow. It is now a question of when marijuana will be legalized, not if.⁴

Prosecution of Marijuana Charges

In Virginia's Fairfax and Arlington counties, Commonwealth Attorneys, are no longer prosecuting adults charged with possession of small amounts of marijuana for personal use. This movement began when Fairfax County Commonwealth, Attorney Steve T. Descano and Arlington County Commonwealth, Attorney Parisa Dehghani-Tafti won their respective elections in November of 2019, where they both promised sweeping criminal justice reform. Both Descano and Dehghani-Tafti agreed that the prosecution of possession of small amounts of marijuana does little to protect public safety, disproportionately leads to the incarceration of minorities, saddles defendants with damaging felony and misdemeanor convictions, and drains resources that can better be allocated to prosecute more serious and violent crimes. Commonwealth, Attorneys in these counties will continue to pursue cases against individuals charged with distributing marijuana and conspicuous public consumption of marijuana. The Commonwealth's Attorney offices will make a case-by-case determination regarding whether the facts qualify as "simple possession" of

marijuana or not.⁵

Other prosecutors in states across the country are also refusing to pursue criminal charges for the possession of cannabis. Prosecutors in New York City, Baltimore, and St. Louis have all stated they will not be spending valuable time and resources on pursuing marijuana convictions they perceive to be a petty crime. Although the possession of marijuana remains illegal under federal law, the nation's attitude has shifted regarding cannabis policies.

In St. Louis, prosecuting attorneys have begun dismissing most marijuana related charges because they believe their time would be better spent on other cases. In New York City, aside from cases that impact public safety, cannabis prosecutions have dropped from 5,000 to 200 a year. Lastly, in Baltimore, prosecutors will continue to pursue marijuana trafficking and distribution cases, but resources will largely be redirected to addressing violent crimes and dangerous drug syndicates.⁶

Marijuana Use and Driving Under the Influence

As the most-used recreational drug in the US, marijuana is often combined with alcohol consumption. Marijuana is not only associated with heavy drinking, but also the development of alcohol use disorders.⁷ Continually, while alcohol primes the brain for a heightened response to marijuana use, early exposure to cannabis decreases brain reactivity to dopamine, leading to an increased vulnerability for alcohol addiction.⁸ There is some evidence supporting the belief that alcohol causes a faster absorption of Tetrahydrocannabinol (“THC”). THC is the main psychoactive compound in cannabis. So, when marijuana and alcohol are used simultaneously, they can amplify the effects of each other.⁹

Blood Alcohol Content (“BAC”) testing and THC level testing during traffic stops are very different and should be taken into consideration. When an individual consumes alcohol, it is easier to track how it is absorbed in and eliminated from the body. It is concurrently easy to test a person's BAC, which is a good indicator of their inebriation level.

However, THC, which is the main psychoactive compound in cannabis, is much harder to test and in many situations is not a reliable way to determine whether a person is driving

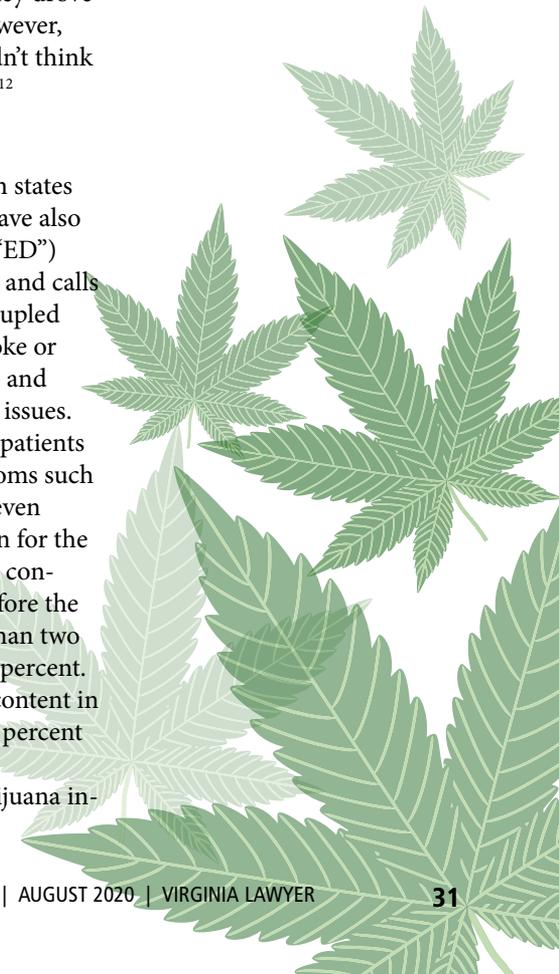
under the influence (“DUI”). It is possible to detect the THC content in an individual through the testing of his or her blood or urine, which is not practical during a normal traffic stop. **There is no uniform law for determining how THC level testing should be used during traffic stops and there is no uniform guide for how to conduct drug screening. There is also no breathalyzer for determining THC and no national testing standard for driving under the influence of marijuana, which can lead to significant issues when an individual is pulled over for a traffic stop.**¹⁰

When it comes to the statistics behind driving under the influence of marijuana, almost all states who have legalized marijuana have seen an increase in drivers operating motor vehicles while “high” on marijuana. In Colorado, traffic fatalities increased by 16 percent in the three years after legalization compared to the average within the state in the final four years before legalization. Research studies conducted in Norway have concluded that marijuana use increases the risk of a vehicle collision by 30 percent compared to a sober driver.¹¹ Also, 69 percent of marijuana users have admitted to driving under the influence of marijuana at least once in the past year and 27 percent have admitted they drove under the influence almost daily. However, many recreational users said they didn't think it affected their ability to drive safely.¹²

Increased Emergency Room Visits

As marijuana has become legalized in states across the US, hospitalization rates have also increased. Emergency Department (“ED”) visits have nearly doubled since 2010 and calls to Poison Control have almost quadrupled since 2006.¹³ Inhaled marijuana (smoke or vapers) and marijuana-infused foods and candies have led to the most medical issues. After using marijuana in these ways, patients were admitted to the ED with symptoms such as: vomiting, racing heartbeats, and even psychotic episodes.¹⁴ The main reason for the upsurge in ED visits is the increasing concentrations of THC in marijuana. Before the 1990s, THC concentration was less than two percent, gradually increasing to four percent. Then, between 1995 and 2015 THC content in the marijuana flower surged to a 212 percent increase.¹⁵

Common ways to consume marijuana in-

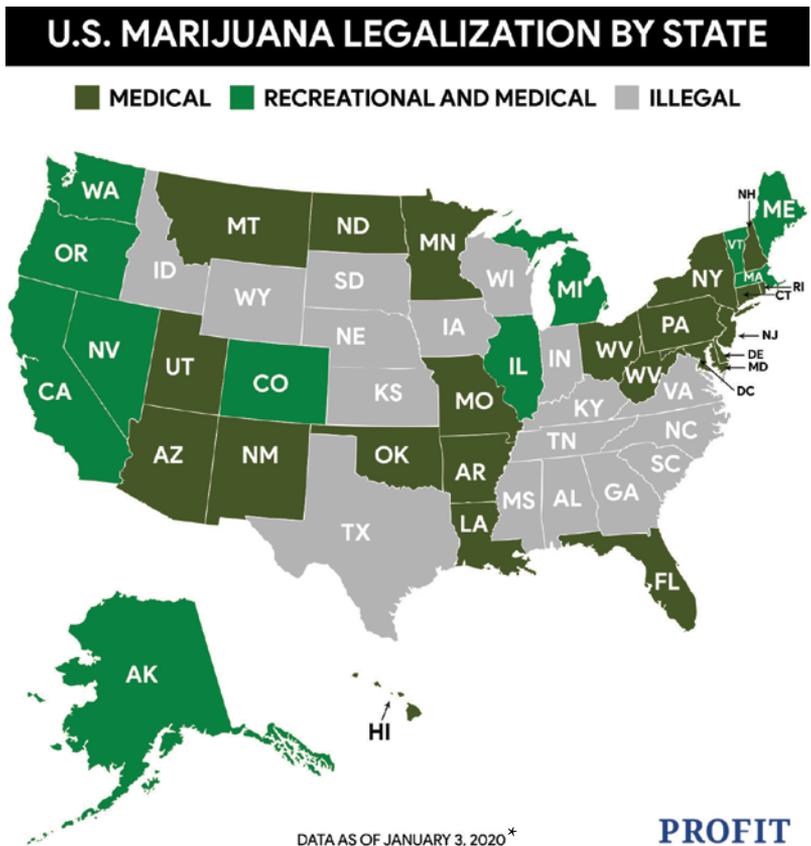


clude eating edibles and vaping. While the effects of smoking marijuana only take a few minutes, the effects of edibles take between 1-3 hours, because food is absorbed into the bloodstream through the digestion process in the liver. However, slower absorption may result in users consuming too large of an amount because the desired effects take longer to occur. The varying amount of THC in edibles further exacerbates this issue.¹⁶ Cannabis vaporization has become more popular because of its discreet manner of use.

Vaping involves inhaling heated oil through a device, often referred to as an e-cigarette. Many people believe vaping is a safer way to consume marijuana because it doesn't involve inhaling smoke. New research suggests that marijuana vaping has caused lung issues and even death.¹⁷

Medical Marijuana

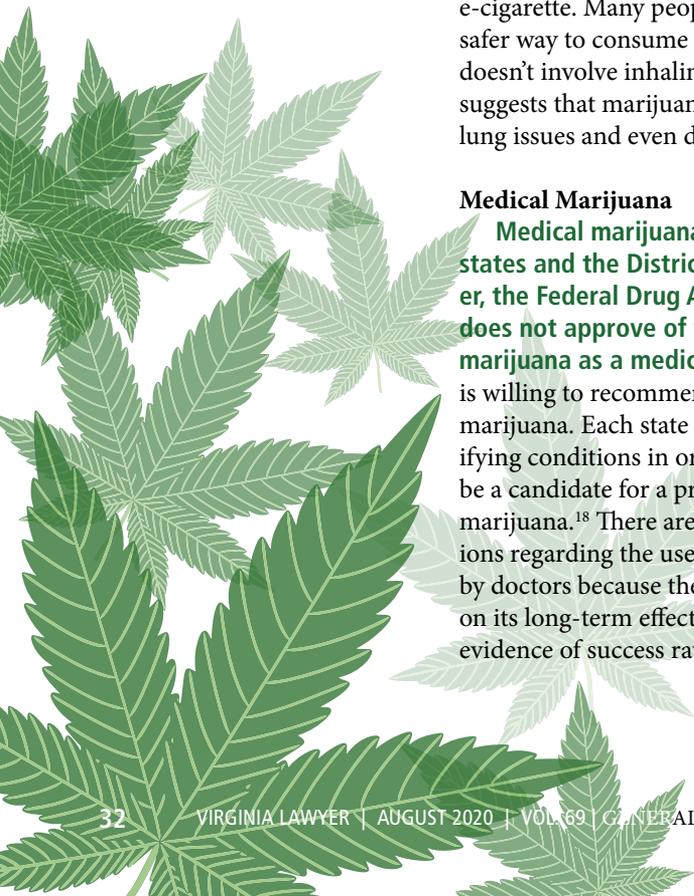
Medical marijuana is now legal in 33 states and the District of Columbia; however, the Federal Drug Administration (FDA) does not approve of the use of medical marijuana as a medicine. Not every doctor is willing to recommend or prescribe medical marijuana. Each state has its own list of qualifying conditions in order for the patient to be a candidate for a prescription for medical marijuana.¹⁸ There are differing medical opinions regarding the use of medical marijuana by doctors because there has been little testing on its long-term effects. There is also little evidence of success rates. However, many



patients defend the use of medical marijuana and the community support is strong.

Marijuana Trafficking Under Legalization

The legalization of marijuana in states across the nation has had a large impact on the number of trafficking charges in the US. As more states have moved to legalize cannabis, federal marijuana trafficking prosecutions have consistently declined since 2012. Advocates postulate that the state-level marijuana reform has helped curb illicit trafficking by creating a regulated market for consumers to obtain the products.¹⁹ The marijuana industry has been continuously booming beginning with Colorado and Washington State legalization in 2012. The marijuana industry has now become the fastest growing job sector of the US economy.²⁰ Only time will tell how marijuana decriminalization will impact Virginia in tax revenues, job growth, and a variety of other issues both positive and negative, seen in other states that have already legalized marijuana. ♻️



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- 1 Dwight K. Blake, *Marijuana Statistics 2019, Usage Trends, and Data*, AM. MARIJUANA (June 4, 2020, 3:22), <https://americanmarijuana.org/marijuana-statistics/>.
- 2 WNDU, *Virginia Governor Signs Bill to Decriminalize Marijuana*, KCB D (June 4, 2020, 5:06), <https://www.kcbd.com/2020/05/25/virginia-governor-signs-bill-decriminalize-marijuana/>.
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- 4 Javier Hasse, *When Will the Federal Government Legalize Marijuana*, GREEN ENTREPRENEUR (June 4, 2020, 5:07), <https://www.greenentrepreneur.com/article/350123>.
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The Hon. Joseph A. Migliozi is a frequent contributor to *Virginia Lawyer* magazine, working with interns and clerks on a variety of topical articles. He was appointed to the Norfolk Circuit Court bench in 2014 after serving as a judge in the Norfolk General District Court and as the southeastern district's capital defender in death penalty-eligible cases.



Emily Wilson attends the College of Charleston where she is studying Political Science with a minor in Crime, Law, and Society. She served as a summer intern for Judge Joseph A. Migliozi and the Norfolk Court System, with the objective of attending law school upon graduation.

Why did I join the VJLAP Team? The quick answer is that it made sense.

by Janet P. Van Cuyk

Generally, when I have struggled in life, I turned inward, shut out the world, and tried to power through it. That met with mixed success at best, but it was my way of doing things. I now know that if I am to successfully emerge from difficult times, I need honesty and the support of others. Recently, I needed help to catch my bearings. In my search for balance and wellness, the Virginia Judges and Lawyers Assistance Program (VJLAP, formerly Lawyers Helping Lawyers) crossed my path, a familiar path, only this time as a career opportunity.

For years, I worked on the same floor as the Lawyers Helping Lawyers' office in Richmond; and, when it moved, I had its sign on my office door. After leaving that job, and the sign behind, I reached out to VJLAP for assistance. It was the only place I even considered because of its insular existence. I knew if I talked with them, that was it. No one would ever know about it unless I told them. No referral.

No insurance. No nonsense.

Fast forward a couple of years. Professionally, I had pressed the reset button and was looking for an opportunity where I would have a sense of purpose and could grow professionally. Joining VJLAP was one of those coincidences with no other explanation than it was meant to be. I am a lawyer and social worker. I could join VJLAP and promote and support its mission—a mission which I wholeheartedly embrace. Reading the many reports on our profession at risk and learning that Virginia was expanding its VJLAP bandwidth to reach even more who may be struggling, whether it be with finding balance or addressing mental health or substance use concerns, the opportunity sounded right up my alley. I could be that beacon of hope for a colleague just like the light that had guided me years ago.

I recently caught up with one of my former directors. Her response on my VJLAP adventure was simply “That

makes sense.” I am grateful that Virginia has embraced this stage of wellness and that I have joined this team and become part of a confidential, safe harbor that understands. ☺



Janet Van Cuyk is a lawyer and social worker who joined the Virginia Judges and Lawyers Assistance Program in 2020 as the Tidewater Regional Program Manager. She has worked directly with adolescents and adults with mental health concerns and other stressors in a variety of settings and, in a legal capacity, in a law firm and in state government. Van Cuyk has an undergraduate degree in Psychology and Sociology from Boston College; a Master in Social Work degree from Virginia Commonwealth University; and her law degree from the University of Virginia.



Confidential help for substance abuse problems and mental health issues.

For more information, visit <https://vjlap.org>
or call toll free 24/7: 1-877-545-4682

Lawyers Helping Lawyers is now Virginia Judges and Lawyers Assistance Program

Got an Ethics Question?



The VSB Ethics Hotline is a confidential consultation service for Virginia lawyers. 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/.

Pro Bono Attorneys Urgently Needed to Address Legal Needs from COVID-19 Disaster

by Steven Fischback

As with other disasters, the COVID-19 pandemic is spawning waves of new legal needs for those unable to afford attorneys. Specifically, COVID-19 has caused a huge surge in unemployment following the closing of non-essential businesses to prevent the virus' spread. According to the Virginia Employment Commission ("VEC"), the number of initial claims for unemployment benefits filed from mid-March through the June 27, 2020 filing week totaled 906,734 or 22 percent of pre-pandemic, nonfarm employment. Only 40% of those who filed are still receiving unemployment benefits; and, between mid-April through mid-June, the Commission determined that up to 80,000 claims will require review by a hearing officer. By comparison, approximately 59,000 hearings were conducted by VEC in all of 2019.

The loss of employment earnings produces a cascade of crises for the newly unemployed, resulting in multiple legal needs. Here is an example: Ms. Jones applied for unemployment benefits at the beginning of June after her contract work dried up due to COVID-19. After receiving a negative eligibility determination, she applied for pandemic unemployment assistance. After hearing nothing for several weeks she tried several times to reach VEC by phone and couldn't get through. She finally reached someone after remaining on hold for 3 hours, only to be told that she is in the queue for a deputy fact-finding determination. Without income, Ms. Jones could not pay rent and her landlord sued her for eviction. Ms. Jones sought help and received advice from the Eviction Legal Helpline to request a continuance under a new law that permits judges to continue eviction cases for non-payment of rent for 60

days for tenants who lost income due to COVID-19. At court she appeared pro se; the judge denied her request and ordered her evicted. She is now trying to keep her internet service on so she can search for both housing and employment.

The economic impact of COVID-19 is exacerbating the eviction crisis, and Ms. Jones is not the only tenant facing an imminent loss of housing as a result. Between July 6 through August 28 over 11,000 eviction case are scheduled to be heard, with most scheduled in July. The dockets for August and September are likely to grow even larger, as the federal eviction moratorium enacted by Congress covering about 25 percent of Virginia's apartments will expire on July 25; and the extra \$600 per week of pandemic unemployment benefits will end the same day.

Between July 6 through August 28 over 11,000 eviction case are scheduled to be heard, with most scheduled in July. The dockets for August and September are likely to grow even larger...

The sudden loss of income creates strains on family relationships. Requests for legal assistance on domestic violence matters have increased since the onset of the pandemic. Legal aid programs also report increased request for assistance with garnishments, as creditors seek payments from family members who did not lose their jobs but whose households still lost income.

The Virginia State Bar has created an easy on-line sign-up form for those

attorneys who wish to volunteer time to assist households affected by the COVID-19 crisis. That form is available at: bit.ly/COVIDprobono The form asks for information regarding the type of cases the volunteer is interested in working on and the distance from their offices that volunteers are willing to travel to assist clients. The information submitted will be tabulated and volunteers will be connected with pro bono coordinators of the various Qualified Legal Services Providers (QLSPs) in Virginia.

There are opportunities to provide remote legal assistance as well as in person assistance. Note that the recently adopted Limited Scope Appearance rule permits volunteer attorneys to provide less than full representation to indigent Virginians in court when acting on a referral from a QLSP. Myriad opportunities to provide limited scope

representation outside of court are also offered through legal aid and other pro bono programs, including the VPLC Eviction Legal Helpline and Virginia Free Legal Answers. Most engagements provide malpractice coverage to the volunteer attorneys. Training opportunities are available through legal aid, the VSB, and other channels.

The COVID-19 public health crisis is likely to last several months, and the impact will be felt for years. Given the

Access to Legal Services

unpredictability of the virus' spread, it is hard to anticipate all the legal needs the crisis will engender. However, what is certain is that the existing network of civil legal aid providers and current roster of pro bono volunteers is not capable of handling the increased demand for legal assistance for indigent Virginians. Please consider volunteering and filling out the sign-up form. **Even a few hours of your time will mean the world of difference for a family in need.** 🌟



Steve Fischbach is the Litigation Director for the Virginia Poverty Law Center, the state support center for all Legal Aid programs in Virginia. Fischbach helps legal aid attorneys develop impact litigation cases, particularly in the areas of housing and racial justice. He has also been tasked with helping the legal aid community develop a coordinated response to the COVID-19 pandemic. In the last General Assembly session, he co-authored the Virginia Environmental Justice Act, which establishes environmental justice as the policy of the Commonwealth. He received his undergraduate degree from Brandeis University and his law degree from Boston University Law School.

NOMINATE A PRO BONO ALL-STAR

A COLLEAGUE, FRIEND, OR EVEN
YOUR OWN ORGANIZATION!

The committee on Access to Legal Services seeks nominations for the:

2020 LEWIS F. POWELL JR. PRO BONO AWARD

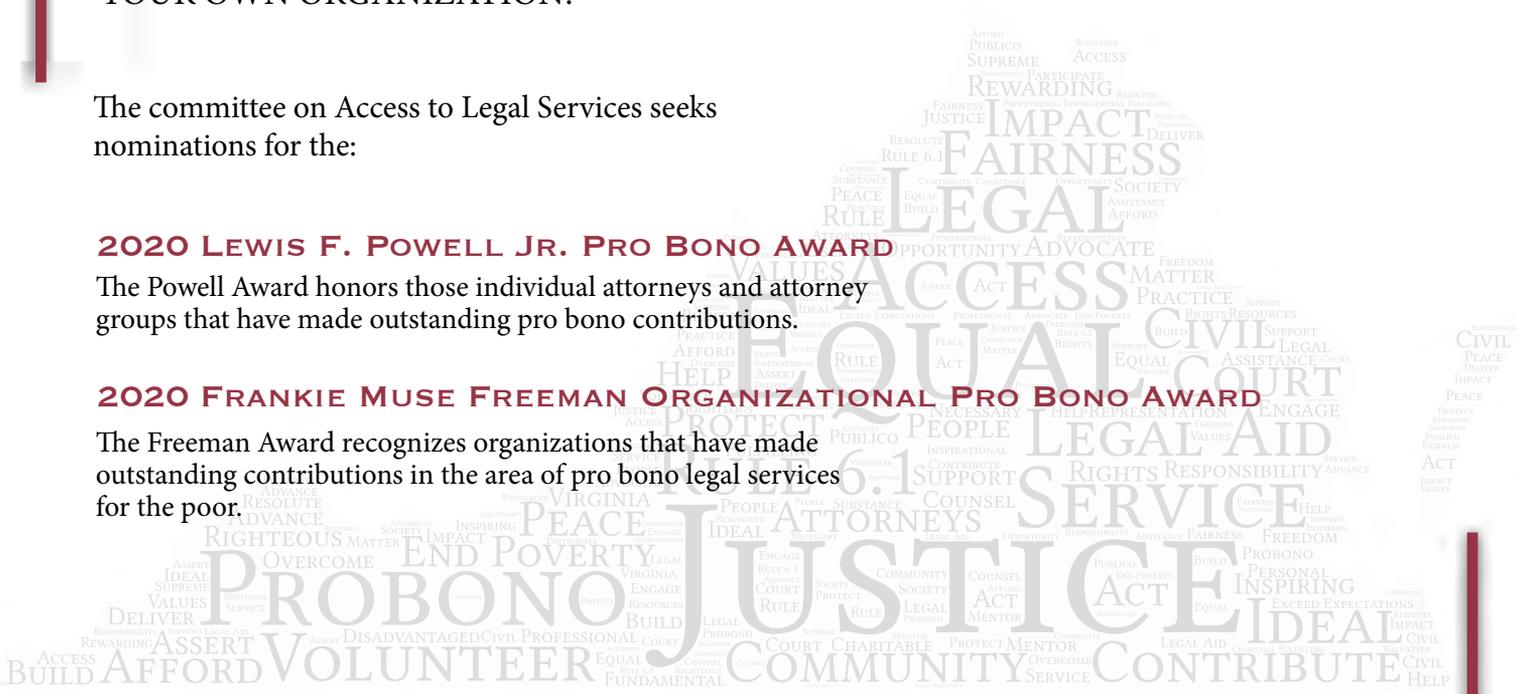
The Powell Award honors those individual attorneys and attorney groups that have made outstanding pro bono contributions.

2020 FRANKIE MUSE FREEMAN ORGANIZATIONAL PRO BONO AWARD

The Freeman Award recognizes organizations that have made outstanding contributions in the area of pro bono legal services for the poor.

The nomination deadline for both awards is August 21 (5 p.m.).

For more information contact Cris Gantz at (804) 775-0522, cgantz@vsb.org or visit <http://bit.ly/vsbprobono>.



Unanimous, Bipartisan Act Aims to Help Owners of Heirs' Property

On Monday, July 20, 2020, at Blakely Farm in McGaheysville, Governor Ralph Northam signed into law the Uniform Partition of Heirs Property Act, a unanimous, bipartisan act designed to assist landowners with heirs' property and tenancy-in-common property in Virginia. Featured in Virginia Lawyer in 2018, the issue and the ensuing enactment was the work of many Virginia lawyers and volunteers, and the tenacious work of North Carolina-based Black Family Land Trust (BFLT).

According to Ebonie Alexander, executive director of the BFLT, "Nineteen diverse organizations to include land trust and other conservation organizations pulled together to get the Uniform Partition Heir's Property Act passed during the 2020 session of the general assembly."

In 1920, there were more than 900,000 black-owned farms in the United States comprising 14 percent of the total farmland. By 1974, this number had fallen 95 percent to just 46,000 black-owned farms. Of the remaining farms today, many are owned by multiple people after the original owners passed away, often without a will.

According to Alexander, the key issue is educating the public. "heir's property is not an issue of race, gender, ethnicity, or social class. It is an issue of education: making sure that clients, whether they own a condo in northern Virginia or 100 acres in Augusta County,



Governor Ralph Northam and Ebonie Alexander at the Uniform Partition of Heirs Property Act official signing. The mountain in the background is owned by BFLT client, NBA and UVA basketball star Ralph Sampson's family in the Blakely Family Trust. Photo by Jack Mayer

have a will and other estate planning documents in place to ensure that property does not get caught in an heirs property situation."

Research from Auburn and Tuskegee Universities estimates that there are 150,000 to 175,000 acres of heirs' property currently owned by people of any race or ethnicity in the 36 southside counties in Virginia. This property is conservatively valued at \$650 million.

Heirs property disproportionately impacts middle and low-income families and communities that do not have access to affordable legal services to protect their property rights and the

families' inherited wealth.

Pro bono attorneys are needed to serve on the Black Family Land Trust Legal Services Advisory Committee to assist the organization with connecting landowners in need of free and low-cost legal services to willing lawyers. Additionally, the new law does open some channels for funding to pay for legal work. The VSB will be working with the BFLT to do a CLE on the new law in the coming months. Interested lawyers are asked to contact Director of Access to Legal Services Crista Gantz at cgantz@vsb.org.

2020 Mandatory Professionalism Courses Canceled

Due to the COVID-19 health crisis, the VSB has canceled all Mandatory Professionalism Courses for calendar year 2020. Course attendance compliance deadlines have also been extended. Members who are required to attend the

course will be notified by email as soon as courses are scheduled in 2021. If you have any questions, email professionalismcourse@vsb.org.



Lawyers Helping Healthcare Workers

The Wills for Healthcare Heroes Initiative provided basic estate planning packages to essential frontline healthcare workers who are working onsite in facilities treating COVID-19 patients. **The program is chaired by attorneys Melissa Moser, Nicolle Vasquez Del Favero, and Tyler Rosá.**

Wills for Heroes (a joint initiative of the Young Lawyers of the Virginia State Bar and Virginia Bar Association) served 70 clients. The Greater Richmond Bar Foundation (GRBF) partnered with VCU Medical in Richmond for this initiative, and they served 48 clients, meaning 118 healthcare workers were assisted with estate planning.

Wills for Heroes had 24 lawyers participate while the Greater Richmond Bar Foundation had 25 lawyers volunteer. VCU Medical teammates involved in this initiative included a core group of three working on this project with the VCU-specific logistics, as well as six VCU volunteer notaries.

Based on data collected from volunteers, the average hourly rate of a volunteer attorney was \$338, and average time spent per client was 3.8 hours. Using these data points, Wills for Heroes provided frontline healthcare workers approximately \$90,000 in legal work, and the GRBF provided approximately \$62,000 in time, for a total of approximately \$152,000 in legal services provided.

The legal community of the Commonwealth truly stepped up to give back to our healthcare heroes, who are putting their lives on the line caring for patients during the COVID-19 pandemic.

As the Virginia Wills for Heroes co-chairs, we are happy with the successes of this initiative and the relationships we have built with VCU Medical and GRBF. We have also learned a lot about navigating the logistics of virtual clinics. We held a debriefing meeting to discuss what went well and what can be improved for future events.

Cities in the Commonwealth served through this initiative by Wills for Heroes include:

Suffolk	Glen Allen
Carrollton	Sandy Hook
Virginia Beach	Chesterfield
Chesapeake	North
Smithfield	Chesterfield
Norfolk	Richmond
Mechanicsville	Powhatan
Hampton	Williamsburg
Henrico	Providence
Ashland	Forge
Midlothian	Moseley
Gloucester	

Healthcare facilities whose workers Wills for Heroes served included:

VCU Health Systems
 VCU Department of Family Medicine and Population Health
 Virginia Treatment Center for Children/Virginia Commonwealth Health
 Virginia Commonwealth University Medical Center
 Sentara Obici Hospital
 Fairfax County Virginia Health Department
 Sentara Norfolk General Hospital
 Naval Medical Center Portsmouth
 Hanover County Community Services Board
 VCU McGuire VAMC Richmond
 Jackson Center, Ambulatory Care Psychiatry
 Sentara Careplex Hospital
 BSMH Memorial Regional Medical Center
 Sentara Virginia Beach General Hospital
 Chesapeake Regional Medical Center
 Bon Secours Maryview Medical Center
 Sentara Princess Anne Hospital
 Emergency Physicians of Tidewater/Sentara Leigh Hospital



top left: Melissa Moser
 above: Tyler Rosá
 left: Nicolle Vasquez Del Favero

Healthcare Professionals served by Wills for Heroes through this initiative include:

Nurse Practitioner
 Radiologist
 Respiratory Therapist
 QAPI Manager
 Child Neurologist
 Director of Molecular Diagnostics Laboratory
 Professor of Pediatrics
 Fiscal Technician
 Emergency Physician
 Registered Nurse
 Clinical Coordinator
 Administrative Assistant Coordinator
 Palliative Care Nurse Practitioner
 Physician
 Director of Nursing and Operations
 Xray Technologist

RN Educator
 Quality Improvement Nurse
 Pharmacist
 Communicable Disease Public Health Nurse
 Director of Clinical Laboratories
 Echocardiographer
 Pediatrician
 Clinical Pharmacist
 Clinical Coordinator of NeuroScience ICU
 SLP
 Certified Nurse Midwife Provider, Women’s Health Department
 Social Worker
 Attending Surgeon
 Flight Nurse

Attending Physician
 Clinical Instructor
 Nurse Manager
 Associate Professor of Psychiatry
 Assistant Professor
 Physician Hospitalist
 Oncology Nurse Navigator
 Medical Provider
 Accreditation Coordinator/Patient Safety
 Anesthesiologist
 Eye Surgeon
 Physical Therapy Assistant
 Registered Nurse Emergency Department
 Physician Assistant
 Administrative Associate

Disciplinary Board Goes Virtual During Pandemic

The Disciplinary Board officers traditionally meet each year in April at the VSB office to discuss Board issues. This year, due to the COVID pandemic, the meeting was cancelled.

In April, Governor Northam signed a bill that amended parts of VFOIA making it easier for public bodies to meet using electronic participation.

The Disciplinary Board was introduced to the Microsoft Teams virtual meeting software in June, when they conducted the New Member Orientation using that platform (two Board Officers, four new members, and two VSB staff participated in the training).

Because that meeting went so smoothly, Sandra Havrilak, chair of the Disciplinary Board for 2019–20, and

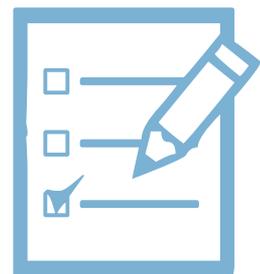
DaVida Davis, clerk of the Disciplinary System for the VSB, decided to conduct the chairs meeting virtually.

On June 30, the Disciplinary Board chairs meeting convened electronically via Teams. The officers were able to view the meeting materials within the Teams platform and engaged in a lively discussion of issues concerning the Board.

The full Board (20 members, along with former members) normally gathers each July at the Disciplinary Conference for an administration meeting at which the Board votes on and implements changes to processes, board orders and forms and procedures in keeping with any Paragraph 13 revisions.

Though only five Board members were on the virtual call, because the Rules state that a quorum of the Board

is five members, the officers were able to vote on and adopt the necessary changes virtually to ensure that there were no lapses and that the Board continues to operate in line with all requirements of the Rules.



In Memoriam

Mitchell Edward Abbott
Los Angeles, California
July 1950 – April 2020

William Fleming Branch
Ashland
June 1946 – May 2020

Richard Lee Burger
Glen Allen
June 1957 – September 2019

Franklin Clemmer Coyner
Stuarts Draft
December 1946 – July 2020

Howard Brook Craddock
Charlottesville
June 1953 – May 2020

Kristian Mark Dahl
Fergus Falls, Minnesota
December 1969 – February 2020

Charles F. Donnelly
Triangle
February 1949 – May 2020

Natalie Green
Waterford
January 1984 – March 2020

James E. Haluska
Herndon
August 1948 – May 2020

Vernon Keeve Jr.
Fredericksburg
April 1953 – May 2020

Patricia Sugrue Ketchum
Cambridge, Massachusetts
January 1938 – November 2019

Jack O. Kingsley
Virginia Beach
January 1927 – March 2020

Ruth Ellen Kuhnel
Roanoke
April 1962 – May 2020

Frank E. Lynch
Wilmington, Delaware
November 1940 – June 2020

Charles Stanley Mitchell
Falls Church
August 1942 – February 2020

Thomas H. Monahan
Jupiter, Florida
October 1933 – January 2020

Thomas L. Phillips
Rustburg
October 1928 – December 2019

John Wallis Raymond
Williamsburg
December 1940 – October 2019

Howard Andrew Reckson
Silver Spring, Maryland
April 1959 – June 2020

Thomas Hunt Rose Jr.
Stony Creek
February 1942 – October 2019

James Joseph Sakolosky
Elizabeth City, North Carolina
February 1941 – April 2020

Matthew John Schewe Jr.
Oakton
November 1948 – May 1920

Peter K. Stackhouse
Alexandria
May 1944 – May 2020

James Hiram Street
Grundy
May 1958 – July 1920

Matthew Samuel Throop
Richmond
April 1973 – May 2020

Michael Greenlee Van Ness
Lexington
August 1970 – March 2020

Clifford Robert Weckstein
Roanoke
March 1949 – June 2020

In Memoriam

If you have a family member, colleague, or friend who was a VSB member and has passed away, please email membership@vsb.org so that we may update their records and include them in In Memoriam.

Upcoming Webinars: Opportunities for CLE

VJLAP Annual Retreat

Six one-hour course offerings



**Webinar, September 17, 12:00–4:00 p.m. (3 sessions)
and September 18, 9:00 a.m.–12:00 p.m. (3 sessions)
CLE (pending)**

Sponsored by the Virginia Judges and Lawyers Assistance Program

The sixteenth annual VJLAP fall retreat will be held virtually via Zoom this year. Registration is required prior to joining the sessions. Registration affords participants the opportunity to attend one, some, or all of the sessions. Attendance will be tracked for CLE purposes only (CLE credits are pending).

Register at <https://bit.ly/JLAPRetreat20>

Human Rights Ordinances and Commissions —

Directing Your Locality on the Path to Racial and Social Equity

**Webinar, August 27, 12–1:30 p.m.
1.5 hours live CLE (pending)**



Sponsored by the VSB Local Government Section

As Virginia localities take action to address concerns related to racial inequity, many are exploring the idea of establishing a local human rights commission under Va. Code 15.2-853. What are these commissions? What are their powers and duties? How do they work, and how are they staffed? Virginia local government attorneys can be prepared to advise their governing bodies on these topics by attending this 1.5 hour webinar.

Register at <https://bit.ly/inequitywebinar>

Ready for Election Day?



**Webinar, September 10, 2–3:30 p.m.
1.5 hours live CLE (pending)**

Sponsored by the VSB Local Government Section

The November 2020 General Election promises to be an historic day. The COVID-19 pandemic will continue to challenge the administration of elections. Local government attorneys need to be prepared to field questions as well, from local election officials. This 1.5 hour webinar will offer a “the lay of the land,” introduce important legal and practical considerations on and related to Election Day, and prepare local government attorneys.

Register at <https://bit.ly/readyforelection>

Virginia CLE, the non-profit educational division of the Virginia Law Foundation, sponsors many virtual CLE courses. For details, see <https://www.vacle.org/>.

Two Sides of the Coin —

Documenting Engagements & Dealing with Collections Problems

**Webinar, October 21, 1–2:00 p.m.
1.0 hours live CLE (pending)**

Presented by ALPS, this program starts with a discussion of the importance of documenting scope of representation on all new matters — to include detailing the specifics of what should be included in a well-written engagement letter. The program then shifts to a discussion on how billing practices can help avoid collection problems, including practical tips on how to minimize the likelihood of a malpractice claim.

Register at <https://bit.ly/collectionswebinar>

Research in the Age of Coronavirus

by Joyce Manna Janto

The current pandemic has upended our lives. Lawyers are working from home, losing access to their law libraries. Even if they had access to the library, some publishers suspended shipments so material might not be updated. Lawyers who used print in lieu of expensive online services have had to find alternatives. The need for free online legal resources has never been more pressing. Fortunately, in Virginia, this isn't difficult. All three branches of government in the Commonwealth have a robust internet presence.

Executive orders and directives issued by Governor Northam can be found on his official webpage.¹ Material from former governors is archived but still available online.² Not only are the opinions of the Attorney General³ from 1996 to the present accessible, but the Annual Reports of the Attorney General⁴ from 1883 to the present are online.

If you are unsure if an administrative agency has a website you can check with Virginia.gov.⁵ It provides a list of agencies with a link to the agency's official website. These websites provide contact information, news releases, and other documents. Many of these websites will provide relevant regulations and agency decisions. The Virginia Register of Regulations⁶ as well as the Virginia Administrative Code⁷ are available online. Not only is the current issue of the Register available, the archive contains every issue published. Both the Register and the Administrative Code are fully searchable.

There are several options to track legislation. The Division of Legislative Services (DLS) website⁸ and the Legislative Information System⁹ (LIS) have a wealth of material. One can find information about the General Assembly and all of the legislative action from the past session under the "Publications" link.

The archive of bills contains all enrolled bills from 1995 to the present.¹⁰ One little known but useful document on these sites is In Due Course: Changes to Virginia's Laws.¹¹ It lists changes to the Code of Virginia scheduled to take effect in July of each year. Aside from the DLS and LIS websites, there are other free sources to track Virginia legislation. LegisScan,¹² and Richmond Sunlight,¹³ are two of the best. LegisScan permits tracking of legislation from previous sessions. If you are interested in Virginia politics in general, Vapap¹⁴ is a good source. The Virginia Red Book¹⁵ provides a "Who's Who" of Virginia politics.

The official version of the Virginia Code¹⁶ is online, but the annotations aren't. The annotations are copyrighted by LexisNexis, the company that publishes the official code under contract to the state. Overall, the availability of Virginia case law from official sources is limited. The Virginia Supreme Court¹⁷ and Court of Appeals¹⁸ post opinions, orders, and rules on their websites. Circuit Court materials vary by jurisdiction.

Case law is readily accessible through Fastcase. Many lawyers forget they have free access to Fastcase by virtue of their VSB membership. Some may dismiss the "free" service, feeling that it couldn't compare to Lexis or Westlaw since "you get what you pay for." They forget that Fastcase isn't really free, it's paid for out of bar dues.

If you haven't logged into Fastcase in a while you may be surprised. Fastcase has a wide array of Virginia sources. As expected, it provides the code, regulations, and the opinions of the both the Supreme and Court of Appeals. It also has circuit court decisions, access to certain dockets, and ethics materials. Authority Check provides the status of cases and statutes. A search in the code or case databases will also

retrieve suggested secondary content related to your search. Fastcase has licensing agreements with several publishers including the ABA, James Publishing, and HeinOnline. Fastcase isn't limited to Virginia materials. It provides access to other states and federal cases, statutes, rules and regulations. The system also has decisions from selected federal administrative agencies. The search engine in Fastcase is comparable to those of Lexis and Westlaw. It supports Boolean as well as natural language searching and allows post-filtering of results.

Alumni of the University of Richmond School of Law have an additional avenue for free legal information. By registering with the Alumni Office¹⁹ alumni have access to HeinOnline. This database is a collection of many prominent legal journals and law reviews, available in PDF. It also includes foreign and international law resources, the Congressional Record and other congressional publications, the Federal Register, C.F.R., federal legislative histories, and the U.S. Presidential Papers. ☪

Endnotes

- 1 www.governor.virginia.gov/executive-actions/

Libraries *continued on page 47*



Joyce Manna Janto is the Deputy Director of the University of Richmond Law School Library. She has a law degree from the University of Richmond and a Master of Library Science degree from the University of Pittsburgh. She teaches Legal Research, Advanced Legal Research, Virginia Legal Research, and Professional Responsibility. Janto is also the editor of "Guide to Legal Research in Virginia."

Courtroom Videoconferencing: The Upsides of the New Normal

by Brandon K. Fellers

The way courts function has drastically changed in response to the COVID-19 pandemic, altering the judicial system as we know it. These changes have brought forth various obstacles, including: increasing docket size due to backlog; safety concerns for litigants and court personnel; unavailability of witnesses; and constitutional questions. An urgency to develop and implement new ways to function was addressed by The Supreme Court of Virginia by promoting technology in the courtroom in its March 16, 2020, judicial emergency order, and subsequent extension orders, encouraging courts to use telephonic or video technology, as provided in the Code of Virginia, for all necessary hearings or trials.¹

For civil cases in circuit courts, the Court approved Rule 1:27 on January 9, 2020, which went into effect March 15, 2020.² **This Rule allows civil litigants in circuit courts to present remote testimony via videoconferencing.** For state criminal cases, the Code includes several provisions allowing non-trial hearings by videoconferencing, as long as the equipment meets the standards set forth in §19.2-3.1(B).³ The advantages of using videoconferencing outweigh the disadvantages, and hopefully litigants embrace progress and see the benefits of the new normal: courtroom videoconferencing.

Safety/Costs: As COVID-19 made in-person litigation difficult and risky, courts adjusted policies to comply with social distancing and a stringent cleaning regimen. Videoconferencing significantly reduces the health threat associated with defendants, victims, or witnesses coming to court for possible exposure. Eliminating the need for transporting defendants from jail facilities to court also reduces the potential threat to health of court personnel,

witnesses, and the public.⁴ Additionally, lawyers save the travel expenses of meeting with their clients or witnesses by videoconference.⁵

Constitutional concerns for criminal defendants: The most controversial issue in videoconferencing is satisfying the Confrontation Clause of the Sixth Amendment under the U.S. Constitution. With respect to prosecution witnesses, videoconferencing may satisfy confrontation issues as long as the government meets standards set forth in the U.S. Supreme Court case of *Maryland v. Craig* and its progeny.⁶

Increased court efficiency: Videoconferencing allows litigants to appear in multiple jurisdictions which would otherwise be impossible due to travel. Additionally, the reduction in transportation time could allow for faster case processing, which would reduce docket backlogs.⁷

Technical issues: As with all new things, there are practical hurdles with all parties familiarizing themselves with the technology and how to deal with issues surrounding problems with audio, video, or a network connection.⁸ As time goes by, Courts and litigants have continued to address this learning curve.

Greater access to justice system: Videoconferencing increases access to the legal system for victims, witnesses, experts, interpreters, or other stakeholders who otherwise would not be able to participate due to the burdens of the time and costs of traveling to court.⁹

As technology continues to evolve, lawyers must strive to learn and grow with it, not resist it. **After the pandemic, many courts will return to old ways. Yet our trial by fire in the use of videoconferencing will undoubtedly benefit the future landscape of our judicial system.** ☞

Endnotes

- 1 http://www.courts.state.va.us/news/items/covid/scv_emergency_orders.pdf
- 2 http://www.vacourts.gov/courts/scv/amendments/rules_1_27_and_4_5_and_5a_25.pdf (citing Virginia Code §17.1-513.2 for statutory authority).
- 3 Examples include Virginia Code §37.2-910(annual hearings for sexually violent predators); §19.2-82(hearings before the magistrate); §18.2-67.9(testimony of child victims in sexual assault cases); §19.2-169.6(psychiatric determination of in-patient admission); §19.2-187(analysis during preliminary hearing or sentencing or any hearing other than trial if offered by accused); §16.1-260(juvenile intake appearances); §16.1-250(juvenile detention hearings); §16.1-285.2(juvenile serious offender reviews).
- 4 Davis, Robin, Billie Jo Matelevich-Hoang, Alexandra Barton, Sara Debus-Sherrill, and Emily Niedzwiecki, *Research on Videoconferencing at Post-Arrest Release Hearings: Phase I Final Report*, Fairfax, Va.: ICF International, May 29, 2015, at 25.
- 5 Bridenback, Mike L., *Study of State Trial Courts Use of Remote Technology*, Williamsburg, Va.: National Association

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For resources for legal professionals during COVID-19, please visit: <http://www.vsb.org/docs/PATH-resources.pdf>.

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Ethics Hotline

VSB staff attorneys provide ethics advice to lawyers.

Ethics Opinions

Attorneys may request written opinions on ethical issues from the **Committee on Legal Ethics**. Opinions are published in *Virginia Lawyer* and on the Bar's website.

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Website: www.vsb.org

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- Administering the Virginia Free Legal Answers website (virginia.freelegalanswers.org);
- Encouraging contributions to pro bono publico services to address unmet legal needs;
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- Managing Voluntary Pro Bono Reporting and related initiatives;
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- Partnering with stakeholders to build coalitions to identify and address areas of emerging need, redundancies, or gaps in service or information.

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a nonprofit corporation that provides substance abuse and mental health services to impaired judges, lawyers, and law students, receives financial support from the VSB. A statewide network of volunteers and a professional staff assist Virginia JLAP in its mission. Individuals may call for confidential help. The VSB disciplinary system also makes referrals to JLAP when misconduct cases involve mental health or substance abuse issues.

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Provide education and networking opportunities in 20 areas of substantive law. Each section elects officers, and most publish newsletters about legal developments. They post their programs and news on the VSB website. The sections are supported by section dues, which range from \$10 to \$35. The sections are:

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| Administrative Law | Family Law |
| Antitrust Franchise and Trade Regulations | General Practice |
| Bankruptcy Law | Health Law |
| Business Law | Intellectual Property Law |
| Construction Law and Public Contracts | International Practice |
| Corporate Counsel | Litigation |
| Criminal Law | Local Government Law |
| Education of Lawyers | Military Law |
| Environmental Law | Real Property |
| | Taxation |
| | Trusts and Estates |

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The Diversity Conference (DC) was established in 2010 to bring together Virginia State Bar members interested in promoting diversity and inclusion in the legal profession and in ensuring that Virginia meets the legal needs of an increasingly diverse population. Diversity refers to, among other things, race, age, ethnicity, gender, religion, education, disability, socioeconomic status, and sexual orientation.

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A vehicle for new attorneys to get involved with the Virginia State Bar. Membership is automatic for members who are 36 and younger or in their first three years as Virginia lawyers. No additional dues are charged. Members receive the YLC's online newsletter, *Docket Call*. Conference activities include admis-

sion and orientation programs, no-bills nights, minority recruitment conferences, emergency legal services after large-scale disasters, Wills for Heroes, and other community outreach projects.

Senior Lawyers Conference

For all members age 55 and older, this conference focuses on issues of interest to senior lawyers and promotion of the welfare of senior citizens. The SLC produces a Senior Virginians Handbook, and provides speakers to encourage lawyers to plan for closing out their practices in the event of disability or death. It also helped revise the state's laws for guardianship of adults.

Conference of Local Bar & Specialty Bar Associations

Provides support to 124 local and specialty bar associations in Virginia. The

CLSBA sponsors a Bar Leaders Institute each year to help new local and statewide bar officers plan their bar year; produces *So You're 18*, a booklet on legal responsibilities for new adults; maintains an information database; and makes executive committee and staff members available for technical assistance or presentations to bars.

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Legal Aid Award
Lewis F. Powell Jr. Pro Bono Award

Lifetime Achievement Award
Local Bar Leader of the Year Award (CLSBA)
Oliver W. Hill Student Pro Bono Award
R. Edwin Burnette Jr. Young Lawyer of the Year Award (YLC)
Specialty Bar Leader of the Year Award (CLSBA)
Tradition of Excellence Award
Traver Scholar Award
William R. Rakes Leadership in Education Award

But wait, there's more:

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Spanning several beachfront hotels in Virginia Beach, it draws hundreds of lawyers, judges and their families for social and educational activities sponsored by VSB practice sections, committees and conferences.

The Clients' Protection Fund reimburses clients who suffer a quantifiable financial loss because of the actions of a Virginia lawyer who has been disbarred or suspended for disciplinary reasons, or has been adjudicated incompetent, or, more rarely, a lawyer who has died without maintaining client funds that he or she should have been maintaining, such as unearned fees. The fund is a remedy of last resort for clients who are not able to obtain reimbursement from other sources, such as the lawyer involved.

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The Virginia Lawyer Referral Service provides callers in need of legal help with VSB members in good standing who have agreed to take referrals.

The Virginia State Bar and The Virginia Bar Association support the **Virginia Law Foundation**, a nonprofit organization that makes grants to projects that educate the public about the law and the legal profession and advance justice in the Commonwealth.

Guidelines to Closing Your Law Practice

by Mark Bassingthwaighte

A lawyer can decide to close a practice for any number of reasons. Disability, retirement, disbarment, a move out-of-state, or a career change are the more common ones we hear. While the specific steps that need to be taken can vary significantly depending upon the reasons behind the closure, this article seeks to provide some general guidance on the principal issues that will arise.

At the outset, understand that in many instances the process of properly closing a law practice can easily take six to twelve months, and sometimes longer, because the obligations to protect client confidences as well as the interests of the client make closing a law practice more difficult than closing other types of businesses. Finally, note that jurisdictional rules do differ, and a review of your local rules and ethics opinions, perhaps coupled with a call to your local bar counsel would be well advised early on in the process.

First, determine what files can be finalized prior to closing and then set aside time to follow through. **You will need to make a decision as to when to stop taking on new matters and also when to notify staff as they will be interacting with the public as well as current and past clients once the news breaks.**

Second, write and send a letter to all clients with active matters that cannot be closed in order to advise them of the upcoming change. Typically, these letters will inform the client of any relevant time limitations or time frames, provide instructions as to how and where they may obtain a copy of their file, and advise them to find a new attorney as quickly as possible. An offer to assist the clients in finding a new attorney by providing a few names or the phone number to a local lawyer referral service would also be appropriate. Don't overlook the importance of setting forth your file retention policy and providing

post-closure contact information in the event a client needs a copy of their file in the future. For this reason, some jurisdictions also require that a similar letter be sent to past clients. Where called for, these initial letters are usually followed up with a full accounting of client funds that remain in the trust account and/or a statement of fees owed by the client.

As clients respond to these letters, remember to retain your original file and return to the client any original documents and/or client property such as original wills, deeds, stock certificates, signed contracts, promissory notes, etc. Again, clients get copies of your file; you get copies of their original documents. Don't forget to document the disposition of the files should questions arise post closure. Have clients sign an authorization to release their file to their new attorney or sign an acknowledgement that they picked up a copy of their file.

On matters that have pending court dates, depositions, or hearings, have a conversation with the client in order to discuss how to proceed. A request to reset a hearing or a request for an extension or continuance may be called for and, once received, confirmation of the granted request should be sent to opposing counsel and your client. For cases before a court or administrative body, obtain client permission to submit a motion and order to withdraw as the attorney of record and at an appropriate time verify that all motions to withdraw have been granted. If the client has obtained a new attorney, make certain that a Substitution of Counsel is filed.

If, over the course of your career, you failed to review and destroy old files that no longer needed to be retained, now is the time to begin. The costs to maintain closed files can be significant, and you have an ethical obligation to take care of this. Don't burden a spouse by leaving

this for them to deal with should your spouse outlive you.

When you originally closed the file, you should have separated all the original documents that belong to the client and returned them to the client. If you did not, do it now. In fact, a review of every file prior to destruction is a good idea as sometimes original documents were overlooked when the file was initially closed.

Remember that in most jurisdictions the file belongs to the client, and some clients will want their original file as opposed to having it destroyed. This means that you can't simply decide to destroy client files absent client awareness and approval. If you did not obtain the client's instructions when you closed any given file, seek those instructions now. Many attorneys will simply send letters to their clients' last known addresses. Once you learn their wishes, carry them out. If you are going to destroy a file, make sure you follow through with the notion of destruction. "Destruction" does not mean leaving the file in a dumpster behind the office. You should incinerate or shred these files. You cannot compromise your client's confidences, even in file destruction. Again, document your actions. Track the client name, file matter, method of disposition (destroyed, returned) and date of disposition.

Turning to one specific business concern, contact your malpractice insurance carrier well in advance of closing. Begin the process of learning about the options for obtaining an extended reporting endorsement (ERE — more commonly referred to as a "tail policy"). This endorsement is not a new policy. It simply provides an attorney the right to report claims to the insurer after a policy has expired or been cancelled. Again, it is important to note that under most ERE provisions the purchase of the endorsement is not one of

additional coverage or of a separate and distinct policy. This means no coverage will be available for a wrongful act that takes place during the time the ERE is in effect. So, if a claim arises several years post retirement out of work done in retirement, for example writing a will as a favor for a friend, there would be no coverage for that claim under the ERE. That's worth remembering. ☺



Mark Bassingthwaight, ALPS risk manager, has conducted more than 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. His webinar on Best Practices for Client Selection in the ALPS CLE library is at <http://alps.inreachce.com>. He can be contacted at: mbass@alpsnet.com.

Libraries *continued from page 42*

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| 6 | for Presiding Judges and Court Executive Officers, April 2016, at 4; Center for Legal and Court Technology, Report to the Administrative Conference of the United States: <i>Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings</i> , Williamsburg, Va., 2014, at 18. | 7 | 497 U.S. 836 (1990). See <i>U.S. v. Yates</i> , 438 F.3d 1307 (11 th Cir. 2006) (applying the <i>Craig</i> test to deny videoconferencing of witnesses from Australia); <i>United States v. Gigante</i> , 166 F.3d 75 (2d Cir. 1999) (allowing a witness suffering from fatal cancer to testify through videoconferencing); <i>United States v. Nippon Paper Industries Co.</i> , 17 F. Supp. 2d 38 (D. Mass., 1998) (allowing videoconferencing of cooperating Japanese witness who refused to come to the United States to testify). | 8 | Webster, Lawrence P., and Daniel J. Hall, <i>Evaluation of Videoconferencing Technology: Mesa Arizona Municipal Court</i> , Denver, Colo.: National Center for State Courts, May 2009. | 9 | Devoe, Daniel, and Sarita Frattaroli, <i>Videoconferencing in the Courtroom: Benefits, Concerns, and How to Move Forward</i> , Boston, Mass.: Massachusetts Social Law Library, 2009, at 24 (discussing survey of federal appellate judges who cited technical problems as the leading concern for videoconferencing). |
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II. Intracorporate Immunity Doctrine

The intracorporate immunity doctrine states that “there must two persons to comprise a conspiracy, and a corporation, like an individual, cannot conspire with itself.”⁸⁰ Thus, a plaintiff alleging that a corporation conspired with its agents acting within the scope of their employment, fails to state a proper claim because the alleged conspiracy would involve only one entity.⁸¹ The intracorporate immunity doctrine does not apply when the agent acts outside the scope of his or her agency relationship at the time of the wrongful conduct.⁸²

Conclusion

Common law and statutory business conspiracy claims represent an important piece of the landscape of Virginia business litigation. Claims brought under Virginia’s business conspiracy statute will remain a favorite among trial lawyers because, if successful, they allow for the recovery of treble damages and attorneys’ fees. Nonetheless, attorneys should not blindly allege civil conspiracy claims, whether under the common law or Virginia Code §§ 18.2-499 and -500, for the mere hope of obtaining enhanced remedies. Instead, as with any claim, counsel should ensure that necessary facts exist to

allege these claims. **Virginia lawyers, however, can expect to see many more cases brought under Virginia’s business conspiracy statute because of the evolution of the malice standard from actual to legal as set forth in the Supreme Court of Virginia’s decisions in Greenspan, Tazewell Oil Co. and Commercial Business Systems, Inc.** The ruling that a plaintiff must merely prove legal malice instead of actual has lowered the evidentiary burden of proving a claim under the statute, which together with the broader categories of potentially recoverable damages, likely will generate more civil conspiracy claims. ☺

Endnotes

- 1 84 Va. 927, 934, 6 S.E. 620, 624 (1888) (affirming conviction for conspiracy to boycott a business).
- 2 *Id.*
- 3 160 Va. 845, 854, 171 S.E. 255, 258-59, cert. denied, 260 U.S. 659 (1933) (citations omitted).
- 4 Joseph E. Ulrich & Killis T. Howard, *Injuries to Business under the Virginia Conspiracy Statute: A Sleeping Giant*, 38 Wash. & Lee L. Rev. 377 (1981).
- 5 *Id.*
- 6 *Id.* at 378.
- 7 See generally, Sexton, J. Scott, *What’s in a Word? The Tortured Life of the Virginia Conspiracy Statute* Va. Code §§ 18.2-499 and -500, VSB Litigation News (Spring 2004) (providing an excellent discussion of statutory business conspiracy claims in Virginia).
- 8 Va. Code § 18.2-500(A); see also *AV Auto., LLC v. Preske*, No. CL 2018-7749, 2019 Va. Cir. LEXIS 27 (Fairfax Feb. 11, 2019).
- 9 Va. Code § 18.2-499(B); see also *Waytec Elecs. Corp. v. Rohm & Haas Elec. Materials, LLC*, 459 F. Supp. 2d 480, 492 (W.D. Va. 2006) (concluding that “to prove attempted business conspiracy, a plaintiff must prove that a person attempted to procure participation or cooperation of another to enter into a business conspiracy”); see also *Schur v. Sprengle*, 84 Va. Cir. 418 (Richmond Cty. 2012).
- 10 *Commercial Bus. Sys., Inc. v. BellSouth Servs., Inc.*, 249 Va. 39, 48, 453 S.E.2d 261, 267 (1995); *Glass v. Glass*, 228 Va. 39, 47, 321 S.E.2d 69, 74 (1984).
- 11 *Almy v. Grisham*, 273 Va. 68, 81, 639 S.E.2d 182, 189 (2007); *Commercial Bus. Sys.*, 249 Va. at 48, 453 S.E.2d at 267 (stating that “[t]he foundation of a civil action of conspiracy is the damage caused by the acts in furtherance of the conspiracy”) (citations

- omitted).
- 12 See *Efessiou v. Efessiou*, 41 Va. Cir. 142, 146 (Fairfax 1996) (sustaining demurrer to conspiracy claim for alleged combination to affect a fraudulent conveyance); see also, *Fid. Nat’l Title Ins. Co. v. Wash. Settlement Grp., LLC*, 87 Va. Cir. 77 (Fairfax 2013) (same).
- 13 *Commercial Bus. Sys.*, 249 Va. at 48, 453 S.E.2d at 267 (citing *Middlesboro Coca-Cola v. Campbell*, 179 Va. 693, 702, 20 S.E.2d 479, 482 (1942)); see *Ameur v. Gates*, 950 F. Supp. 2d 905, 918 (E.D. Va. 2013) (questions regarding the scope of employment certification that fall under the Westfall Act are decided by the court and not the jury even if relevant state law would provide a jury trial on such issues).
- 14 *CaterCorp., Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 28, 431 S.E.2d 277 (1993); see also *Allen Realty Corp. v. Holbert*, 227 Va. 441, 449, 318 S.E.2d 592, 596 (1984) (“To recover in an action for conspiracy to harm a business, the plaintiff must prove (1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business, and (2) resulting damage to plaintiff”); *Virginia Vermiculite, Ltd. v. W.R. Grace & Co.-Conn.*, 144 F. Supp. 2d 558, 601 (W.D. Va. 2001), aff’d sub nom. *Virginia Vermiculite Ltd. v. Historic Green Springs, Inc.*, 307 F.3d 277 (4th Cir. 2002) (“The elements of a statutory conspiracy claim under the Virginia Conspiracy Act are: (1) concerted action (2) legal malice; and (3) causally-related injury.”); accord *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 108 F.3d 522, 526 (4th Cir. 1997) (“CQC was liable for statutory conspiracy if clear and convincing evidence showed that: (1) CQC attempted to conspire with one or more of the other defendants to harm Adelphia; (2) CQC

- acted with legal malice towards Adelphia; and (3) the conspiratorial actions of CQC and one or more of the other defendants caused Adelphia to suffer damages.”); see also *T.G. Slater & Son v. Donald P. & Patricia A. Brennan LLC*, 385 F.3d 836, 845 (4th Cir. 2004) (“A claim for statutory civil conspiracy under Virginia law must allege (1) two or more persons combined, associated, agreed, or mutually undertook together to (2) willfully and maliciously injure another in his reputation, trade, business, or profession.”); *Virginia Model Jury Instructions – Civil*, No. 40-300 (2008).
- 15 Va. Code § 18.2-499(B).
- 16 *Id.* § 18.2-500.
- 17 *Multi-Channel TV Cable Co.*, 108 F.3d at 526; *Simmons v. Miller*, 261 Va. 561, 578, 544 S.E.2d 666, 677 (2001); see also *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 216, 754 S.E.2d 313, 318 (2014).
- 18 *Bay Tobacco, LLC v. Bell Quality Tobacco Prods., LLC*, 261 F. Supp. 2d 483, 499 (E.D. Va. 2003) (“the plaintiff must first allege that the defendants combined together to effect a ‘preconceived plan and unity of design and purpose, for the common design in the essence of the conspiracy’”); *Hecht v. Am. Bankers Ins. Co.*, No. 3:04cv00098, 2005 U.S. Dist. LEXIS 25883, at *15 (W.D. Va. Oct. 21, 2005) (concluding that “there is no evidence that Griffin suggested ABIC withdraw from the seminar, let alone agreed or concerted in that action. Indeed, it is clear from the facts that any conspiracy claim against Griffin himself would fail. Hence, there is no evidence that a conspiracy existed, and plaintiff’s claim necessarily fails on this point”).
- 19 *Schlegel v. Bank of America, N.A.*, 505 F. Supp. 2d 321, 325 (W.D. Va. 2007) (citing Va. Code § 18.2-499); see also *Bumgarner v. Fischer*, No. CL 18-4351, 2019 Va. Cir. LEXIS 3, at *3-4 (Richmond Cty. Jan. 17,

- 2019)
- 20 *Bay Tobacco*, 261 F. Supp. 2d at 499 (internal quotation marks omitted).
- 21 *Id.*
- 22 *Tyson's Toyota v. Globe Life Ins. Co.*, No. 93-1359, No. 93-1443, No. 93-1444, 1994 U.S. App. LEXIS 36692, at *15 (4th Cir. Dec. 29, 1994).
- 23 *Charles E. Brauer Co. v. Nationsbank*, 251 Va. 28, 30, 466 S.E.2d 382, 386-87 (1996) (finding that a bank and its agent were considered one person); *Heard Constr., Inc. v. Waterfront Marine Constr. Co.*, 91 Va. Cir. 4, 10 (Chesapeake Cty. 2015).
- 24 *Id.*; see also *SecureInfo Corp. v. Telos Corp.*, 387 F. Supp. 2d 593, 617 (E.D. Va. 2005) (granting defendant's demurrer on business conspiracy count because "an agent may not conspire with its principal under the intracorporate immunity doctrine").
- 25 E.g., *Fox v. Deese*, 234 Va. 412, 428, 362 S.E.2d 699, 708 (1987); see also *Wonderland I, LLC v. Peck*, 91 Va. Cir. 83, 85 (Norfolk 2015).
- 26 *Meeko Corp. v. Chesterfield Commerce Ctr.*, 14 Va. Cir. 149, 152-53 (Chesterfield Cnty. 1988); see also *Nathan v. Takeda Pharm. Am., Inc.*, 83 Va. Cir. 216, 224 (Fairfax 2011).
- 27 *United States v. Domestic Indus., Inc.*, 32 F. Supp. 2d 855, 861 (E.D. Va. 1999) (quoting *Gutierrez de Martinez v. United States Drug Enforcement Admin.*, 111 F.3d 1148, 1156 (4th Cir. 1997), cert. denied, 522 U.S. 931 (1997)).
- 28 *Domestic Indus.*, 32 F. Supp. 2d at 861 (quoting *Jamison v. Wiley*, 14 F.3d 222, 237 (4th Cir. 1994)).
- 29 *Martin v. Cavalier Hotel Corp.* 48 F.3d 1343, 1351 (4th Cir. 1995) (quoting *Commercial Business Sys. v. Bellsouth Servs.*, 249 Va. 39, 45, 453 S.E.2d 261, 265 (1995)). In *Bellsouth Servs.*, the Supreme Court of Virginia held that the evidence presented a jury issue on whether acts were within the scope of employment where the "conduct was outrageous and violative of [the] employer's rules" and the employee's "motive was personal," but the "willful and malicious acts were committed while [the employee] was performing his duties . . . and in the execution of the services for which he was employer." 249 Va. at 46, 453 S.E.2d at 266. See also *Doe v. United States*, 912 F. Supp. 193, 195 (E.D. Va. 1995) (denying summary judgment on the grounds that whether sex abuse by a psychiatrist during therapy sessions was within the scope of his employment was a jury issue); *Tomlin v. IBM, Corp.*, 84 Va. Cir. 280, 285 (Fairfax 2012) (whether or not act was in scope of employment is affirmed to be a jury issue).
- 30 See, e.g., *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 769-70 (1984) (holding that, under the Sherman Act, a corporation cannot conspire with a wholly-owned subsidiary or with its officers and directors because they are not separate actors pursuing separate economic interests); *Williams v. 5300 Columbia Pike Corp.*, 891 F. Supp. 1169, 1175 (E.D. Va. 1995) (relying on *Copperweld* and Fourth Circuit cases to hold that a conspiracy could not exist between individual directors and between the directors and their corporation); *Bowman v. State Bank of Keysville*, 229 Va. 534, 540-41, 331 S.E.2d 797, 801 (1985) (stating that, with respect to a tort action for conspiracy to induce the breach of a contract, where the defendants were a bank and a group of its directors, "a third party is necessary to create an actionable conspiracy" because "a corporation, like an individual, cannot conspire with itself"); *Softwise, Inc. v. Goodrich*, 63 Va. Cir. fwestfall576, 577-78 (Roanoke Cty. 2004) (stating the rule: "The corporation is an artificial entity that only acts through its agents, directors and employees. If an employee acts in the scope of her employment and, thus, acts as an agent of the corporation, then only a single entity exists: the corporation" and then applying it to sustain a demurrer because there were no allegations that the director had acted outside the scope of her employment).
- 31 E.g., *Williams*, 891 F. Supp. at 1175; *Foster v. Wintergreen Real Estate Co.*, 81 Va. Cir. 353, 360 (Nelson Cnty. 2010).
- 32 496 F.2d 391 (4th Cir. 1974).
- 33 *Id.* at 399.
- 34 *Softwise, Inc. v. Goodrich*, 63 Va. Cir. 576, 578 (Roanoke 2004).
- 35 *Selman v. Am. Sports Underwriters, Inc.*, 697 F. Supp. 225, 239 (W.D. Va. 1988).
- 36 *Id.* at 578 & n.13; *Little Professor Book Co. v. Reston N. Point Village Ltd. P'shp.*, 41 Va. Cir. 73, 79 (Fairfax Cnty. 1996); see also *Tomlin v. IBM, Corp.*, 84 Va. Cir. 280, 289 (Fairfax 2012).
- 37 *Fox*, 234 Va. at 428, 362 S.E.2d at 708 ("If the defendants were acting within the scope of their employment and, therefore, were agents of the City, then only one entity exists—the City. By definition a single entity cannot conspire with itself."); *Perk v. Vector Res. Group*, 253 Va. 310, 485 S.E.2d 140 (1997) (ruling that demurrer properly sustained since defendants are not separate entities but rather agents of each other); see also *Wonderland I, LLC v. Peck*, 91 Va. Cir. 83, 85-86 (Norfolk 2015).
- 38 *Advanced Health-Care Servs. v. Radford Cmty. Hosp.*, 910 F.2d 139, 145-46 (4th Cir. 1990) (Two wholly owned subsidiaries by the same parent corporation are legally incapable of conspiring with one another for purposes of antitrust law.).
- 39 *Saliba v. Exxon Corp.*, 865 F. Supp. 306, 313 (W.D. Va. 1994) (holding that "where the alleged co-conspirators are the two general partners in a partnership, acting within the scope of partnership affairs, only one entity exists—the Partnership"), aff'd, 52 F.3d 322 (4th Cir. 1995).
- 40 *Stauffer v. Fredericksburg Ramada, Inc.*, 411 F. Supp. 1136, 1139 (E.D. Va. 1976) (citing and discussing *Worrie v. Boze*, 198 Va. 533, 95 S.E.2d 192 (1956)); *Chaves v. Johnson*, 230 Va. 112, 120, 335 S.E.2d 97, 102 (1985) (recognizing interference with a contract as a basis for civil liability under § 18.2-500); *Gulledge v. Dynacorp, Inc.*, 24 Va. Cir. 538, 540-41 (Fairfax Cnty. 1989) (noting that "[a]lthough a party to a contract may conspire with a third party to interfere with its own contract, a party to a contract acting alone cannot interfere with its own contract").
- 41 *Hechler Chevrolet v. General Motors Corp.*, 230 Va. 396, 402, 337 S.E.2d 744, 748 (1985); see also *Kirchner v. McAninley*, No. CL-2010-5279, 2011 Va. Cir. LEXIS 27, at *11-12 (Fairfax Mar. 14, 2011).
- 42 *Id.*
- 43 *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 26, 431 S.E.2d 277, 281 (1993); accord *Int'l Paper Co. v. Gilliam*, 63 Va. Cir. 485, 493 (Roanoke 2003); *Lance v. Wells Fargo Bank, N.A.*, 99 Va. Cir. 115, 117 (Chesapeake Cty. 2018) (conversion can serve as the underlying tort for conspiracy in some instances).
- 44 *Hechler Chevrolet*, 230 Va. at 402, 337 S.E.2d at 748.
- 45 *Id.*
- 46 *Station # 2, LLC v. Lynch*, 280 Va. 166, 174 (2010) (mere breach of contract is not enough to constitute an unlawful act for the purposes of the conspiracy statute).
- 47 *Almy*, 273 Va. at 80-81, 639 S.E.2d at 188 (refusing to recognize a civil conspiracy claim based on an agreement to intentionally inflict emotional distress); *Citizens for Facquier County v. SPR Corp.*, 37 Va. Cir. 44, 51 (Facquier Cnty. 1995) (ruling that a violation of Va. Code § 8.01-271.1 cannot serve as the basis for a common law conspiracy claim).
- 48 *Firestone v. Wiley*, 485 F. Supp. 2d 694, 703 (E.D. Va. 2007) (quoting *Citizens for Facquier County*, 37 Va. Cir. at 50); *Glass*, 228 Va. at 54, 321 S.E.2d at 78 (holding that defendant's "actions being lawful, whether they acted in a spirit of actual malice, hostility, or ill will towards plaintiff is of no legal consequence").
- 49 *Urbanski, Michael F., Expanding the Reach of Virginia's Business Conspiracy Act, VSB Litigation News* at ** 4-6 (Winter 1998-99) ["Urbanski"].
- 50 232 Va. 388, 398-99, 351 S.E.2d 28, 35-36 (1986); see also *Conway v. Peace*, 28 Va. Cir. 226, 227 (Chesterfield Cnty. 1992) (granting motion to strike due, in part, to plaintiff's failure to establish that defendant's primary and overriding purpose was to injure plaintiff); *Gerald A. Schultz & Assoc., P.C. v. LaLonde*, 17 Va. Cir. 387, 389 (Richmond Cty. 1989) (applying the "primary and overriding purpose" standard).
- 51 243 Va. 94, 413 S.E.2d 611 (1992).
- 52 *Osheroff*, 243 Va. at 109, 413 S.E.2d at 620.
- 53 *Urbanski*, at *5.
- 54 *Osheroff*, 243 Va. at 116, 413 S.E.2d at 623.
- 55 249 Va. 39, 47, 453 S.E.2d 261, 266-67 (1995).
- 56 *Id.* at 47, 453 S.E.2d at 267.
- 57 *Id.*
- 58 *Id.*

- 59 See *Simmons v. Miller*, 261 Va. 561, 578, 544 S.E.2d 666, 677 (2001) (holding that the statute does not require the plaintiff to prove that “a conspirator’s primary and overriding purpose is to injure another in his trade or business”); *Advanced Marine Enters., Inc. v. PRC, Inc.*, 256 Va. 106, 117, 501 S.E.2d 148, 154-55 (1998) (holding that “Code §§ 18.2-499 and -500 do not require a plaintiff to prove that “a conspirator’s primary and overriding purpose is to injure another in his trade or business”); *Galaxy Computer Servs., Inc. v. Baker*, 325 B.R. 544, 555-56 (E.D. Va. 2005) (holding that statutes merely require proof of legal malice); *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 108 F.3d 522, 526-27 (4th Cir. 1997) (holding that Adelphia cable only need to prove that Charlottesville Quality Cable Operating company acted with legal malice when it interfered with Adelphia’s distribution rights); *Williams v. Dominion Tech. Partners*, 265 Va. 280, 292 (2003) (holding that employee did not breach his fiduciary duty of loyalty to his employer when he accepted employment with a competitor; and, thus did not act with legal malice); *Xtreme 4x4 Ctr., Inc. v. Howery*, 65 Va. Cir. 469, 475 (Roanoke Cty. 2004) (holding that alleged defamatory statements were merely matters of opinion, therefore, legal malice standard was not met); *Feddeman & Co. v. Langan Assoc.*, 260 Va. 35, 45 (2000) (where court held that “the failure of legal justification ‘may include a breach of [one’s] fiduciary duty or assisting someone to breach their fiduciary duty.’”); *Int’l Paper Co. v. Brooks*, 63 Va. Cir. 494, 496-97 (Roanoke Cty. 2003) (holding that “for IPC’s business conspiracy claims to survive, they must provide enough core facts to support the inference that Brooks acted with the requisite legal malice”); *Atlas Partners II v. Brumberg, Mackey & Wall, P.L.C.*, No. 4:05cv0001, 2006 U.S. Dist. LEXIS 983, at *25 (W.D. Va. Jan. 6, 2006) (stating “that damaging plaintiffs may not have been their primary purpose is immaterial under Virginia law.”).
- 60 *R & D 2001, L.L.C. v. Collins*, CL-2005-7021, 2006 Va. Cir. LEXIS 131, at *8-9 (Fairfax Cnty. 2006) (quoting *Hechler Chevrolet v. General Motors Corp.*, 230 Va. 396, 402, 337 S.E.2d 744 (1985)); *Commercial Roofing & Sheet Metal Co. v. Gardner Eng’s, Inc.*, 60 Va. Cir. 384, 386 (Fairfax Cnty. 2002) (sustaining defendant’s demurrer to statutory conspiracy claim because plaintiff failed to allege an unlawful act or an unlawful purpose); *Station #2, LLC v. Lynch*, Case No. CL06-6106, 2008 Va. Cir. LEXIS 41, at *14 (Norfolk Cty. April 30, 2008) (sustaining demurrer to § 18.2-499 count as plaintiff did not make allegations suggesting that defendant used any illegal means); *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 215 (2014).
- 61 *Andrews v. Ring*, 266 Va. 311, 319, 585 S.E.2d 780, 784 (2003) (a case where a former school board member filed a civil conspiracy charge against the local prosecutor and county building inspector after the latter two sought criminal charges against him). The court did so based on the origin of those sections in the antitrust statutes and based on principles of statutory construction, which it applied to construe “reputation” in light of “trade, business or profession.” Id.
- 62 See *Buschi v. Kirven*, 775 F.2d 1240, 1259 (4th Cir. 1985) (agreeing with the federal district courts, which “have consistently held that a right of action is ‘afforded [under these statutes] only when malicious conduct is directed at one’s business, not one’s person,’ and that the statute ‘focuses upon conduct directed at property, i.e., one’s business’ and applies only to ‘conspiracies resulting in business-related damages.’”); see also *Inman v. Klockner-Pentaplast of Am., Inc.*, 467 F. Supp. 2d 642, 654 (W.D. Va. 2006) (holding, in a former employee vs. former employer case, that “Plaintiff’s professional reputation and stock ownership in his own company, however, are employment interests, not business interests. A plethora of cases reveal that employment interests are not covered by the Virginia civil conspiracy statutes.”); *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 267 (W.D. Va. 2001) (also a former employee vs. former employer case, stating that “In order to state a claim under Section 18.2-499, courts have held that the conspiracy must be one to injure the plaintiff ‘in his business.’”); *Picture Lake Campground, Inc. v. Holiday Inns, Inc.*, 497 F. Supp. 858, 863-64 (E.D. Va. 1980) (stating that “[t]he purpose of this statutory action is to provide a remedy for wrongful conduct directed towards one’s business, including injury to one’s property interest.”) (emphasis added); *Campbell v. Bd. of Supvrs.*, 553 F. Supp. 644, 645 (E.D. Va. 1982) (limiting claims under Va. Code § 18.2-499 to conduct which limits a “business” and not personal employment interests); *Ward v. Connor*, 495 F. Supp. 434, 439 (E.D. Va. 1980) (ruling that a plaintiff cannot recover under a statutory business claim for harm to his personal reputation and not to any business interest), rev’d on other grounds, 657 F.2d 45 (4th Cir. 1981); *Moore v. Allied Chem. Corp.*, 480 F. Supp. 364, 375 (E.D. Va. 1979) (holding that “statutory coverage [under § 18.2-499] is afforded only when malicious conduct is directed at one’s business, not one’s Person”); *Loria v. Regelson*, 39 Va. Cir. 536, 541 (Richmond Cty. 1996) (ruling that “[n]o conspiracy exists under § 18.2-499 of the Code when damage to professional reputation of an individual is alleged”).
- 63 *Gallop v. Sharp*, 179 Va. 335, 19 S.E.2d 84 (1942); see also *Saks Fifth Avenue, Inc. v. James, Ltd.*, 272 Va. 177, 189-90, 630 S.E.2d (2006) (concluding that the plaintiff failed to carry its burden of proof that the defendants’ wrongful conduct proximately caused plaintiff’s alleged damages); see *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 215 (2014).
- 64 Va. Code § 18.2-500(A); *Lynnwood Tech Holdings LLC v. NR INT. LLC*, 2017 Va. Cir. LEXIS 52, *169 (where the court held that expected or projected profits are not a reasonable basis to estimate damages).
- 65 256 Va. 106, 501 S.E.2d 148 (1998).
- 66 *Id.* at 124, 501 S.E.2d at 159; see also *Wilkins v. Peninsula Motor Cars*, 266 Va. 558, 561 (2003) (ruling that court did not err in awarding plaintiff treble and punitive damages).
- 67 *Jordan v. Hudson*, 690 F. Supp. 502, 508 (E.D. Va. 1998), aff’d, 879 F.2d 98 (4th Cir. 1998) (ruling that postmaster’s statutory business claim should be dismissed as a matter of law because he alleged his co-workers conspired to injure him in his trade and reputation, which caused him to be demoted. The section does not apply to employment interests); *Inman v. Klockner-Pentaplast of Am., Inc.*, 467 F. Supp. 2d 642, 654 (W.D. Va. 2006) (ruling that the employee failed to state a claim under the statute because his professional reputation and stock ownership in the company, were employment interests and not business interests); *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 267-68 (W.D. Va. 2001) (holding that to the extent a plaintiff attempts to base his claim for conspiracy to his personal reputation or employment, as opposed to business interests, he fails to state a claim); *Orantes v. Pollo Ranchero, Inc.*, 70 Va. Cir. 277, 281 (Fairfax Cnty. 2006) (holding that statute applies only to “conspiracies resulting in business related damages”); *Almy v. Grisham*, 273 Va. 68, 81(2007) (no cause of action for conspiracy to intentionally inflict emotional distress); but see *Fitzgerald v. Farrell*, 63 Va. Cir. 1, 4 (Loudoun Cnty. 2003) (concluding that police officer’s business conspiracy claim survives a demurrer where his claim that two homebuyers and homeowner conspired to have him indicted because they were unhappy with the work he did on their houses as a private contractor was an injury to his reputation or profession); *Hunter v. Simpson*, 93 Va. Cir. 366, 369 (Henrico Cnty. 2016)
- 68 Va. Code § 18.2-500(B).
- 69 *Kent Sinclair & Leigh B. Middleditch, Jr., Virginia Civil Procedure*, § 2.26 (4th ed. 2003).
- 70 *Dove v. Dayton Town Council*, 39 Va. Cir. 159, 169 (Rockingham Cnty. 1996).
- 71 *Chawla v. BurgerBusters, Inc.*, 255 Va. 616, 623, 499 S.E.2d 829, 833 (1998).
- 72 *Virginia Civil Procedure* § 2.26 (4th ed. 2003) (quoting *Luckett v. Jennings*, 246 Va. 303, 307, 435 S.E.2d 400, 402 (stating that “the trial court is required to consider as true all material facts that are properly alleged, facts which are impliedly alleged, facts which may be fairly and justly inferred from the facts alleged”).

- 73 *Gov't Employees Ins. Co. v. Google, Inc.*, 330 F. Supp. 2d 700, 706 (E.D. Va. 2004); see also Casola, Francis H., *Virginia Business Torts, Chapter 8, Conspiracy to Injure a Business* (VaCLE 2006); *Bay Tobacco, LLC v. Bell Quality Tobacco Prods.*, 261 F. Supp. 2d 483, 499 (E.D. Va. 2003) (noting that a claim for conspiracy asserted in mere conclusory language “is based on inferences that are not fairly or justly drawn from the facts alleged”); *Heard Constr., Inc. v. Waterfront Marine Constr. Co.*, 91 Va. Cir. 4, 10 (Chesapeake Cty. 2015).
- 74 *Kayes v. Keyser*, 72 Va. Cir. 549, 552 (Charlottesville Cty. 2007) (quoting *Atlantic Futon v. Tempur-Pedic, Inc.*, 67 Va. Cir. 269, 271 (Charlottesville Cty. 2005)); see also *M-Cam v. D'Agostino*, No. 3:05cv6, 2005 U.S. Dist. LEXIS 45289, at * 7-8 (W.D. Va. Sept. 1, 2005) (observing that a plaintiff’s allegation that the defendants combined together to effect a “preconceived plan and unity of design and purpose, for the common design is the essence of the conspiracy”).
- 75 *Kayes*, 72 Va. Cir. at 552 (quoting *Johnson v. Kaugers*, 14 Va. Cir. 172, 177 (Richmond Cty. 1988)); see also *Corinthian Mort. Corp. v. Choicepoint Precision Mkt, LLC*, No. 1:07cv832, 2008 U.S. Dist. LEXIS 28129, at * 18-19 (E.D. Va. April 4, 2008) (requiring a plaintiff asserting a statutory business conspiracy claim to allege that defendant intentionally and purposefully injured plaintiff’s business).
- 76 *Kayes*, 72 Va. Cir. at 552; *Firestone v. Wiley*, 485 F. Supp. 2d 694, 703 (E.D. Va. 2007) (stating a claimant must allege “some details of time and place and the alleged effect of the conspiracy”); *Harper Hardware Co. v. Power Fasteners, Inc.*, Civil Action No. 3:05cv799, 2006 U.S. Dist. LEXIS 3821, at *15 (E.D. Va. Jan. 19, 2006) (finding a plaintiff’s conclusory allegations that did not detail the facts relating to the “method of the alleged conspiracy or how it was carried out” to be insufficient).
- 77 *Schlegel*, 505 F. Supp. 2d at 325-26 (quoting *Gov't Employees Ins. Co.*, 330 F. Supp. 2d at 706 (E.D. Va. 2004)); *First Hand Communications, LLC v. Schwalbach*, Civil Action No. 1:05cv1281, 2006 U.S. Dist. LEXIS 87844, at *15 (E.D. Va. 2006) (an allegation that the parties were “working together in a scheme” is not enough to survive a motion to dismiss); but see *Country Vintner, Inc. v. Louis Latour, Inc.*, 272 Va. 402, 414-15, 634 S.E.2d 745, 752 (2006) (rejecting defendant’s argument that plaintiff was merely dressing up a violation of the Wine Franchise Act in reversing trial court’s decision that the Act preempted common law or statutory business conspiracy claims).
- 78 See *Eshbaugh v. Amoco Oil Co.*, 234 Va. 74, 76-77, 360 S.E.2d 350, 351 (1987) (a cause of action for conspiracy under Code § 18.2-500 accrues when one is “injured in his . . . business.”); see also *Gallo v. Sharp*, 179 Va. 335, 338, 19 S.E.2d 84, 86 (1942) (cause of action for conspiracy accrues when the acts committed in furtherance of the conspiracy result in damage); *Lance v. Wells Fargo Bank, N.A.*, 99 Va. Cir. 115, 117 (Chesapeake Cty. 2018).
- 79 *Willard v. Moneta Bldg. Supply*, 262 Va. 473, 482, 551 S.E.2d 596, 600 (2001). *Dunlap v. Cottman Transmission Sys., LLC*, 287 Va. 207, 221-222 (2014).
- 80 *Bowman v. State Bank of Keysville*, 229 Va. 534, 541, 331 S.E.2d 797, 801 (1985); *Foster v. Wintergreen Real Estate Co.*, 81 Va. Cir. 353, 360-61 (Nelson Cnty. 2010).
- 81 *Simmons v. Miller*, 261 Va. 561, 578-79, 544 S.E.2d 666, 676-77 (2001); *Fortress Holdings II, LLC v. Patty*, 95 Va. Cir. 402, 408-09 (Norfolk 2017).
- 82 *Grayson Fin. Am., Inc. v. Arch Specialty Ins. Co.*, No. 2:05cv461, 2006 U.S. Dist. LEXIS 7302, at *9-10 (E.D. Va. Feb. 6, 2006); *Phoenix Redevelopment Corp. v. Rodriguez*, 403 F. Supp. 2d 510, 517 (E.D. Va. 2005) (finding the intracorporate immunity doctrine inapplicable when the defendant was not an employee and agent at the time of the wrongful conduct).

Virtual Depositions *continued from page 21*

deponent’s, but the deponent will never leave your monitor if the deponent is pinned.

The deposing attorney should incorporate the conference technician into the deposition plan. First, instruct the conference technician to pull up the exact part of the document that you would like to discuss. The deponent may look at the documents in hard copy or a separate window, but this method will help everyone locate the language under scrutiny. Second, make sure that the documents are clearly labeled and organized so the conference technician can find them. Finally, if needed, direct the conference technician to point to or highlight specific text or sections of the document. The conference technician can highlight or draw boxes around segments you would like to discuss.

Finally, make sure that the deponent testifies on the record about

any individuals that are in the room with the deponent, the nature of any documents referenced, and any communications received during the deposition. In an in-person deposition, the attorneys normally have complete control over who is in the room, what documents are brought into the room, and any communications the deponent receives during the on-the-record portion of the deposition. In contrast, in a virtual deposition, another person might be in the room but out of camera view. Similarly, the deponent could be prompted by email or text message without the deposing attorney’s knowledge.

This can be mitigated by requesting the deponent to declare on the record: who is in the room during the deposition; that the deponent did not receive any communications during the deposition; and to identify all documents examined in response to questions.

Conclusion

Virtual depositions can be a useful tool to keep discovery moving forward despite the numerous disruptions caused by COVID-19. Additionally, the techniques developed during COVID-19 social distancing may be useful time and cost-saving measures well after the pandemic subsides. Adapting this guide to your own practice can help mitigate difficulties and maximize the benefits of virtual depositions. ☺



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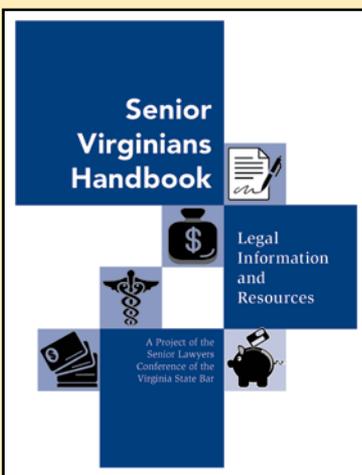
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DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) 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. VSB docket numbers are provided.

DISCIPLINARY BOARD

Vincent Mark Amberly

20-053-118687

Leesburg, VA 20176

Effective July 13, 2020, the Virginia State Bar Disciplinary Board accepted as an agreed disposition an additional 30-day suspension of Vincent Mark Amberly's license to practice law in the Commonwealth of Virginia as sanction for violating the terms of a public reprimand issued to Amberly by the Fifth District Section III Subcommittee on February 21, 2017. This was an agreed disposition of misconduct charges.

<https://www.vsb.org/docs/Amberly-071520.pdf>

Daniel Matthias Kincheloe

Glen Allen, VA 23059

20-000-119103

Effective July 6, 2020, the Virginia State Bar Disciplinary Board revoked Daniel Matthias Kincheloe'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 miscon-

duct are pending, Kincheloe acknowledges that the material facts upon which the allegations of misconduct are predicated are true.

Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 12-22

<https://www.vsb.org/docs/Kincheloe-070720.pdf>

DISTRICT COMMITTEES

Todd Russell Lewis

17-041-109047

Arlington, VA 22201

Effective June 17, 2020, pursuant to Virginia Rule of Professional Conduct 8.5(a) and (b), the Virginia State Bar Fourth District, Section I Subcommittee issued a public reprimand without terms to Todd Russell Lewis for violating Maryland's professional rules that govern competence, diligence, and safekeeping property. This was an agreed disposition of misconduct charges.

Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-15

<https://www.vsb.org/docs/Lewis-061820.pdf>

David B. Parks, Sr.

20-010-116823

Duck, North Carolina 27949-4481

Effective June 24, 2020, the Virginia State Bar First District Subcommittee issued a public reprimand without terms to David B. Parks Sr. for violating professional rules that govern diligence and communication. This was an agreed disposition of misconduct charges.

Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-15

<https://www.vsb.org/docs/Parks-062420.pdf>

MCLE ADMINISTRATIVE SUSPENSIONS

Virginia State Bar members who have been administratively suspended for failure to comply with the Mandatory Continuing Legal Education requirements for 2019 are listed at www.vsb.org/site/members/administrative-suspensions#MCLE.

The requirements are described in Part 6, Section IV, Paragraphs 17, 13.2, and 19 of the Rules of the Virginia Supreme Court. The VSB has been unable to contact some of these attorneys.

The Bar requests that members report the location and practice status of any person on the list by contacting the MCLE Department at (804) 775-0577 or MCLE@vsb.org. The list was posted online July 7, 2020. To determine whether a listed attorney has fulfilled MCLE obligations after that date, contact the MCLE Department.

DISCIPLINARY PROCEEDINGS

Respondent's Name	Address of Record	Action	Effective Date
Disciplinary Board			
Vincent Mark Amberly	Leesburg, VA	30-Day Suspension	July 13, 2020
Daniel Matthias Kincheloe	Glen Allen, VA	Revocation	July 6, 2020
District Committees			
Todd Russell Lewis	Arlington, VA	Public Reprimand	June 17, 2020
David B. Parks, Sr.	Duck, NC	Public Reprimand	June 24, 2020
Suspension – Failure to Pay Disciplinary Costs		Effective Date	Lifted
Babak Bagheri	Chevy Chase, MD	June 18, 2020	
William Franklin Burton	Chevy Chase, MD	June 30, 2020	
Michael Anthony Cole	South Boston, VA	June 23, 2020	
Michael Anthony Cole	South Boston, VA	June 29, 2020	
Joseph Dee Morrissey	Henrico, VA	June 24, 2020	
Kathryn Suzanne Pennington	Virginia Beach, VA	June 18, 2020	
Rodyn L. Quinteros	Woodbridge, VA	June 30, 2020	July 8, 2020
John B. Russell, Jr.	Bon Air, VA	July 17, 2020	

NOTICES TO LAWYERS

Judicial Council Seeks Comments on Court of Appeals Restructure

In the 2020 Session, the General Assembly passed Senate Joint Resolution 47 (SJ 47), requesting the Judicial Council of Virginia to study the jurisdiction and organization of the Court of Appeals of Virginia. The Virginia State Bar, on behalf of the Supreme Court of Virginia, is seeking comments from lawyers regarding the Joint Resolution.

Please email your comments by August 21, 2020 to:

SJ47study2020@vacourts.gov.

www.vsb.org/site/news/item/judicial_council

Supreme Court of Virginia Amends Eviction Order

On June 22, 2020, the Supreme Court of Virginia amended its Fifth Judicial Emergency order due to COVID-19 to allow courts to immediately begin hearing eviction orders and unlawful detainer actions unrelated to the ability to pay rent.

www.vsb.org/site/news/item/scv_amends_eviction_order

Supreme Court of Virginia Extends Judicial Emergency Through July 19, 2020

On June 22, 2020, the Supreme Court of Virginia issued its Sixth Judicial Emergency Order in response to COVID-19, to be in effect until July 19, 2020. The new Order permits courts to begin

hearing all unlawful detainer actions and issuing writs of eviction on June 29, 2020, establishes a Jury Task Force to address the eventual reinstatement of jury trials in the Commonwealth, and directs all chief circuit court judges to develop “a plan for their circuit that describes how and when they will be able to safely conduct jury trials.”

www.vsb.org/site/news/item/SCV_sixth_judicial_emergency

Court of Appeals of Virginia Issues Second COVID-19 Order

On June 23, 2020, the Court of Appeals of Virginia issued its second order extending its March 18, 2020, order until further notice as a result of the COVID-19 pandemic. The Court of Appeals of Virginia stated in the Order that all oral arguments will be held virtually through at least October 31, 2020.

www.vsb.org/site/news/item/CAV_order2

Compliance and COVID: Annual Renewal/MCLE Extended and Paperless

Virginia lawyers’ annual renewal statements for the 2020-21 year were mailed on June 24. Lawyers are now able to renew their licenses and pay annual dues completely online in the lawyer portal. Due to the COVID-19 pandemic the annual dues deadline has been extended from July 31 until September 30, 2020. Please contact the Membership Department at membership@vsb.org or (804) 775-0530 if you have questions about your dues statement.

www.vsb.org/site/news/item/compliance_covid

NOTICES TO LAWYERS

Supreme Court of Virginia Issues Seventh Judicial Emergency Order

On July 8, 2020, the Supreme Court of Virginia extended the Declaration of Judicial Emergency due to expire on July 19 until August 9, 2020. This is the Court's seventh order since the Period of Judicial Emergency began on March 16, 2020 due to the COVID-19 pandemic. The Court stated that for district and circuit court cases, there shall be no further tolling of statutes of limitation or other case-related deadlines. Similarly, in the Supreme Court of Virginia, tolling will cease beginning July 20, 2020. Thus, the tolling period for statutes of limitations and deadlines will now be limited to March 16 through July 19 of 2020.

www.vsb.org/site/news/item/SCV_seventh_judicial_emergency

Board of Bar Examiners Offers New Options Due to COVID

Due to the COVID-19 pandemic, the Virginia Board of Bar Examiners (VBBE) has authorized additional options for the July 2020 bar exam. All timely-filed applicants for the July 2020 bar examination now have three options: the usual two-day exam in Roanoke on July 28 and 29; a one-day essay exam in Richmond on September 10, 2020; or the traditional two-day exam in Norfolk in February 2021. Every timely-filed applicant for the July 2020 exam may sit for either the July or September exam (but not both), or they may carry forward to the February 2021 exam. There is no fee or penalty for any of these three options. All timely-filed applicants for July 2020 may also opt to carry forward (without fee) to September 10, 2020, or to February 2021.

www.vsb.org/site/news/item/bar_exam_options

Amendments to Paragraph 13-6.D, Quorum Requirement for Disciplinary Board Proposed

The Virginia State Bar Disciplinary Board proposes amending the Rules of the Supreme Court of Virginia Part 6 Section IV, Paragraph 13-6 D. regarding the quorum requirement of the Disciplinary Board for purposes of considering an Agreed Disposition of a disciplinary matter. The proposed changes may be inspected below or at the office of the Virginia State Bar between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Any individual, business, or other entity may file written comments in support of or in opposition to the proposed changes with Karen A. Gould, executive director of the Virginia State Bar, not later than September 4, 2020. Comments may be submitted by mail to 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026 or by email to publiccomment@vsb.org.

www.vsb.org/site/news/item/DB_amendments_proposed

Supreme Court of Virginia Extends Judicial Emergency Through August 30, 2020

On July 29, 2020, the Supreme Court of Virginia issued a unanimous eighth order extending the Declaration of Judicial Emergency in response to Covid-19 through August 30, 2020. This order applies to all courts of the Commonwealth, and extends the Period of Judicial Emergency from March 16, 2020 through August 30, 2020, replacing the seventh order that was set to expire August 9, 2020.

www.vsb.org/site/news/item/scv_extends_judicial_emergency_august_30_2020

VSB Diversity Conference Proposes Amendments to Bylaws

The Virginia State Bar Diversity Conference Board of Governors proposes amending its Bylaws regarding meetings.

The proposed changes are to Section 4.4 Meetings. The proposed changes to paragraph 4.4(b) require that at each meeting of the Board of Governors, three (3) voting members of the Board of Governors shall constitute a quorum for the transaction of business. A new paragraph 4.4(c) clarifies that one member shall constitute a quorum of an organizational structure or committee meeting for the transaction of business. The proposed changes may be inspected below or at the office of the Virginia State Bar between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Any individual, business, or other entity may file written comments in support of or in opposition to the proposed changes with Karen A. Gould, executive director of the Virginia State Bar, not later than September 4, 2020. Comments may be submitted by mail to 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026 or by email to publiccomment@vsb.org.

www.vsb.org/site/news/item/vsb_DC_bylaws

Nomination Sought for MCLE Board

A volunteer is needed to serve on the Virginia State Bar's MCLE Board. The Nominating Committee will refer nominees to the VSB Council for consideration at its October meeting. All appointments are made by the Supreme Court of Virginia. The vacancy in 2021 is listed below. All appointments or elections will be for the terms specified, beginning on July 1, 2021. Mandatory Continuing Legal Education Board: 1 lawyer vacancy. May serve 2 consecutive 3-year terms.

Nominations should be sent by September 4, 2020, to nominations@vsb.org or mailed to:

Marni E. Byrum, Chair

VSB Nominating Committee

Virginia State Bar

1111 E. Main St., Suite 700

Richmond, VA 23219-0026

www.vsb.org/site/news/item/board-vacancies

NOTICES TO LAWYERS

The Virginia State Bar Clients' Protection Fund Board

authorized payments totaling \$24,905.00 in reimbursement to former clients of six Virginia attorneys at its most recent meeting on June 9, 2020.

In the largest award of the meetings, one petitioner, a client of George Ernest Marzloff¹ of Culpeper, was awarded \$10,500 as reimbursement for fees that the attorney collected for an unlawful detainer/damages case against a former day care that had been a tenant. The investigator found insufficient work on the attorney's part. A second former client of Marzloff was granted \$2,000 for failure to do sufficient work to earn a fee for a bankruptcy case.

Marzloff's license was revoked² in August 2019 after being suspended for three years effective December 7, 2018, for misconduct related to the petitioner's and additional cases.

Two petitioners recovered \$4,000 and \$2,000, respectively, for fees paid to Jahangir Ghobadi³ of Sterling regarding their individual cases. In the former, Ghobadi failed to provide sufficient services in a request to file a writ of habeas corpus on behalf of a man convicted of first-degree murder and conspiracy. The investigator found that he has performed some of the services he was retained for but failed to complete the work. The requestor was granted half the requested recompense.

In the latter investigation against Ghobadi, he was found to have not followed the client's explicit prohibition against requesting financial support in an uncontested divorce proceeding. He also requested an ore tenus hearing despite knowing the parties involved did not satisfy the one-year separation requirement. Ghobadi had his license revoked in June 2019 for this and one additional misconduct case.

The board approved a \$2,000 payment to a petitioner to reimburse for a real estate case in which Marc Ericson Darnell⁴ of Newport News did not resolve the clients' case due to his suspension. The investigator found that Darnell had completed significant work against the case and granted half the requested \$4,000 should be awarded. Darnell's license was suspended for

three years beginning September 18, 2019.

A petitioner received \$3,000 as reimbursement for funds that the attorney Kathryn Suzanne Pennington of Virginia Beach received for a reformation of a trust to provide for her special needs brother. The attorney was found to engage in dishonest conduct including failure to file any of the documents she claimed to have submitted on the client's behalf. Pennington's license was revoked⁵ by consent on May 11, 2020, for numerous infractions after a suspension⁶ was ordered on March 13, 2020.

A former client of Vincent Mark Amberly⁷ of Leesburg was awarded \$800 by the board for failing to act on a trademark application in a timely manner, or forwarding the USPTO Office Action notice to the client, thereby losing the application to the trademark office. A six-month suspension was issued on January 5, 2020, for Amberly.

The board approved the payment of \$605 to a petitioner against Stephen John Weisbrod of Hampton for failing to file a request for a no-fault divorce for 15 months and then refusing to refund the fee despite a clear obligation to do so. Weisbrod transferred to permanent disabled/retired status effective November 27, 2019.

A chart of the amounts paid as a result of the two meetings follows. The board delays the release of the final chart, as the awards given to new petitioners are subject to a 30-day appeal period.

The Clients' Protection Fund was created by the Supreme Court of Virginia to reimburse persons who suffer a quantifiable financial loss because of dishonest conduct by a Virginia lawyer whose law license has been suspended or revoked for disciplinary reasons, or who has died and did not properly maintain client funds. 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 are not a matter of right.

If you have any questions, you may contact Vivian R. Byrd, administrator to Clients' Protection Fund by email at (804) 775-0572.

¹ vsb.org/docs/Marzloff-081519.pdf

³ vsb.org/docs/Ghobadi-071919.pdf

⁵ vsb.org/docs/Pennington-051120.pdf

⁷ vsb.org/docs/Amberly-022120.pdf

² vsb.org/docs/Marzloff-110518.pdf

⁴ vsb.org/docs/Darnell-091919.pdf

⁶ vsb.org/docs/Pennington-031720.pdf

Docket Number	Lawyer's Name	City of Record	Amount Paid	Type of Case
19-555-003215	George Ernest Marzloff	Culpeper, VA	\$10,500.00	Unearned fees/Landlord/Tenant
20-555-003222	Jahangir Ghobadi	Sterling, VA	\$2,000.00	Unearned fees/Immigration
20-555-003239	George Ernest Marzloff	Culpeper, VA	\$2,000.00	Unearned fees/Bankruptcy
20-555-003245	Marc Ericson Darnell	Newport News, VA	\$2,000.00	Unearned fees/Real Estate
20-555-003246	Jahangir Ghobadi	Sterling, VA	\$4,000.00	Unearned fees/Immigration
20-555-003254	Kathryn Suzanne Pennington	Virginia Beach, VA	\$3,000.00	Unearned fees/Trusts
20-555-003257	Vincent Mark Amberly	Leesburg, VA	\$800.00	Unearned fees/Patents, Trademark & Copyrights
20-555-003270	Stephen John Weisbrod	Hampton, VA	\$605.00	Unearned fees/Family Law

**In a pandemic, juris doctors are often needed
as frequently as medical doctors.**

And after the pandemic, they are needed more.



A pandemic creates legal struggles that go far beyond the initial health crisis.

The COVID-19 pandemic has greatly increased the demand for pro bono attorneys. You can even volunteer virtually and help via the phone or internet. To volunteer, please fill out the COVID-19 Volunteer Interest Form at bit.ly/COVIDprobono. Or, simply contact Cris Gantz at cgantz@vsb.org to discuss ways you can make a difference.

Professional Notices

The **Richmond Bar Association** has named **T. O'Connor Johnson**, a partner at Hundley & Johnson, as the Association's 136th president. Johnson's practice specializes



Johnson

in personal injury cases involving automobile accidents, traumatic brain injuries, nursing home negligence, motorcycle and trucking accidents, catastrophic injuries, premises liability, among others.

Other officers elected at the virtual Annual Meeting were: **John W. Anderson** of Spotts Fain, PC, president-elect; **R. Braxton Hill IV** of Christian & Barton, LLP, vice president; **Hon. Jacqueline S. McClenney** of the Richmond General District Court, honorary vice president; **Julie M. Cillo** of Owen & Owens PLC, secretary-treasurer; and **Daniel E. Lynch** of Lynch Seli, P.C., immediate past president. **Corey S. Booker** of Whiteford Taylor & Preston, LLP, **Lisa J. Hedrick** of Hirschler and **John A. Merrick** of Merrick Brock, PLLC were elected to serve on the board of directors.

Geoff McDonald, founder and president of Richmond-based **Geoff McDonald & Associates** is a member of the legal team that recently won a **\$40.5 million**



McDonald

settlement against Banner Life and related company William Penn Life Insurance of New York, accused of illegally increasing premiums for 7,600 existing life insurance policyholders.

Geoff McDonald & Associates joined three other law firms in representing policyholders who received notices from Banner Life that their monthly payments would increase by as much as 1,000 percent. McDonald and co-counsel and partner, Frank H. Hupfl, represented their client who was notified that his monthly premium had increased from \$285 to \$1,860.

After five years of litigation the case was resolved with a settlement that included these terms:

- a common settlement fund of \$22.5 million awarded to the three named plaintiffs and a class representing over 10,000 members,
- an agreement that the insurance companies will forgo similar rate increases for five years and \$18 million in equitable, non-monetary relief, and
- the collective value of the proposed settlement benefits of \$40,749,525.

The Richmond law firm of **Christian & Barton, L.L.P.** has added **Timothy G. McCormick** as an associate.



McCormick

He will focus his practice on public utility regulatory matters including energy and telecommunications issues. McCormick previously served in the U.S. Marine Corps both as a combat officer and a litigation attorney. He holds degrees from the University of Maryland School of Law and Saint Joseph's University.

Miles & Stockbridge, a leading business law firm with more than 220 lawyers in the mid-Atlantic region, has announced the launch of an initiative to support Black businesses by providing introductory legal counsel at no cost or a reduced cost.



Greene

The Miles & Stockbridge **Black Business & Start-Up Initiative** will focus on helping to eliminate or lessen some of the barriers uniquely experienced by Black entrepreneurs and businesses, such as a lack of funding (particularly as it relates to legal expenses) and a lack of access to a network experienced in the challenges confronting all businesses.

«Our Board of Directors met in mid-June to discuss and share what specific steps we, as a law firm, could take inside and outside to address social injustice,” said **Nancy Greene**, chairman of Miles & Stockbridge. “Using our legal experience and talents to help Black entrepreneurs is a concrete way we as lawyers can be of real help—in our lane—to support the cause of greater

economic opportunities and justice for the Black community.”

As a starting point, Miles & Stockbridge will work with emerging or start-up companies, owned at least 50 percent by Black owners, meeting one of the following criteria: less than five years of operating history; less than \$500,000 of annual revenues, or fewer than 10 employees.

Joshua Pretlow Jr. of Suffolk has accepted an offer to become general counsel for the **Virginia, Maryland & Delaware Association of Electric Cooperatives**, effective



Pretlow

July 1. He has been general counsel for Community Electric Cooperative since 1974, and during his decades of service there, played an integral role as a legal resource to other cooperative attorneys.

The position of in-house general counsel was created at the October 2019 meeting of the VMD Association's board of directors to succeed the decades-long relationship the Association maintained with the firm of LeClairRyan, which has since dissolved.

Yi Shen has joined Shannon Mullins & Wright LLP as an associate focusing on Civil/ Commercial Litigation, Construction & Real Estate



Yi-Shen

matters, Business Law and Wills, Trusts & Estates matters. Shen's litigation experience includes motions practice, managing discovery, and serving as second chair in civil matters, including breach of contract, real estate, trusts & estates, probate and commercial instruments. He also assists clients with business organization & licensing, real estate, negotiating contracts, probate, and trusts & estates.

Kerns & Kastenbaum PLC has moved. The Richmond firm, specializing in litigation, personal injury, and real estate law, is now located at 4900 Radford Avenue in Richmond and at www.kernskast.com online.



Kerns & Kastenbaum

Positions Available

REAL ESTATE ATTORNEY (HARRISONBURG)



Flora Pettit PC, an AV rated law firm, is seeking an attorney with experience in commercial real estate to join its Real Estate, Finance & Development team in its Harrisonburg, Virginia office. Three or more years of experience strongly preferred.

The successful candidate must be licensed to practice in Virginia and have an interest and background in commercial real estate law, including experience drafting and negotiating real estate transactional documents (e.g., leases, lease amendments, purchase and sale agreements, easements, covenants, etc.). Experience with 1031 exchanges, finance, development and/or land use is a plus. Applicants should have strong interpersonal skills and be hard working, energetic and committed to the community.

Flora Pettit offers competitive salary, health, life and disability insurance, 401(k), and a working environment that highly values its attorneys and their professional development.

Please send resumes and salary requirement to: Flora Pettit PC, Attn: Scott M. Raney, P.O. Box 2057, Charlottesville, VA 22902 or by email to smr@fplegal.com.

CRIMINAL LAW ASSOCIATE (HARRISONBURG)

Big Valley Law is seeking a driven and ambitious

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Phone: (540) 433-1103
rhahn@bigvalleylaw.com

FIRST AMENDMENT CLINIC LEGAL FELLOW (CHARLOTTESVILLE)

The First Amendment Clinic at the University of Virginia School of Law is hiring a legal fellow for the 2020–2021 and 2020–2022 academic years. The Clinic, a partnership between UVA Law and the Reporters Committee for Freedom of the Press, provides direct representation for journalists and amicus support in First Amendment and media law cases. The fellow will research and develop cases, provide media law training for local journalists, assist with docket management, supervise the Clinic's ten students, participate in state and federal litigation, and assist in developing curriculum. Additional information: www.rcfp.org/work-at-rcfp/.

VWC OMBUDSMAN (FLEXIBLE LOCATION)

The Virginia Workers' Compensation Commission seeks a member of the Virginia State Bar in good standing for the VWC Ombudsman position in Virginia. Primary responsibilities include impartially educating unrepresented parties, including injured workers, employers, insurance carriers, and other prose parties, with navigating the workers' compensation system; adhering to ethical and legal standards; and promoting and developing the Ombudsman program. Work location is flexible based on the selected candidate's home address and regular overnight travel may be required. Qualifications: Member of the Virginia State Bar in good standing; Mediator certification and experience a plus. Must pass criminal background check and complete Statement of Economic Interest. Starting salary: \$115,000. The Commission offers an excellent state benefits package. To apply: <https://virginiajobs.peopleadmin.com/postings/191064>. EOE

REAL ESTATE ASSOCIATE (RESTON)

Odin, Feldman & Pittleman, PC is seeking a real estate associate attorney with 0–2 years of real estate experience to represent the firm's clients in general real estate matters, including transactions, leasing, zoning, land use, lending, and development matters. Virginia Bar admission required. Visit our website at www.ofplaw.com for more details.

ASSOCIATE (CHARLOTTESVILLE)

Royer Caramanis PLC in Charlottesville has an immediate opening for a full-time associate in our busy transactional practice serving Charlottesville, Richmond and the Mid-Atlantic region with a focus on real estate (commercial, development and residential) and banking matters. One to two years real estate experience is strongly preferred; active Virginia State Bar license required (no exceptions). Only candidates with strong drafting, organizational and interpersonal skills will be considered. Ability to be effective in a fast-paced environment is essential. Contact Chip Royer: croyer@rc.law.

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Letters

Send your letter to the editor to dnorman@vsb.org. 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/.

Jest Is For All

by Arnie Glick

David Learns That Techniques Used
In IP Business Transactions Do Not Work
On First Dates



GLICK

“Before I tell you more about myself, I will have to ask that you sign a Non-Disclosure Agreement.”

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The Last Word *continued from page 62*

which features a column edited by the legal writing professors at the University of Oregon. The second is the Michigan Bar Journal's *Plain Language* column—a regular feature that's been offering tips for simplifying legal writing for more than three decades. ☺



Joe Fore is an Associate Professor of Law, General Faculty and Co-Director of the Legal Research & Writing Program at the University of Virginia School of Law. Have a comment, a question, or an idea for a future column? Email him at jfore@law.virginia.edu or connect with him on Twitter (@Joe_Fore).

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A Legal Writing Reading List

by Joe Fore

August brings the start of a new academic year. And as I'm finishing the syllabi for my fall courses, I thought it might also be helpful to put together a list of resources that you, too, could use to improve your legal writing in the months ahead. Look, I certainly hope that this column provides useful information. But it's definitely not the only source of legal writing guidance. And, besides, one bi-monthly column isn't enough space to pass along all the great advice that's out there. So—along with this column, of course—consider these your reading assignments for the upcoming semester.

Books

I know, I know; your shelves are already stuffed with too many books gathering dust. So the last thing you need is a long, boring tome on grammar and punctuation. So I won't recommend any of those. Instead, I want to suggest two, short, focused books that efficiently balance good, general writing advice with tips specifically for legal writing: Bryan Garner's *Legal Writing in Plain English* and Ross Guberman's *Point Made*. (The former offers more generic legal writing guidance, while the latter is aimed more at persuasive writing.)

I'm also a huge advocate for effective formatting in legal writing. How your writing looks, visually, on the page greatly impacts its effectiveness. So, in my view, Matthew Butterick's *Typography for Lawyers* is a must-read. (Though, as noted below, there's an online version of his book that features much of the same content.)

Websites and blogs

While books are great, legal writing blogs and websites are, often, more useful—not to mention more affordable. Fortunately, there are a number of fantastic online resources with plenty of good, bite-sized lessons. I'd recommend that you bookmark these on your laptop

and resolve to pick up one new tip per day.

- *Lady Legal Writer*. This blog is managed by Georgia State law professor Megan Boyd and has earned multiple awards from the *ABA Journal* as one of the top law blogs in the country. Most of Professor Boyd's posts examine notable briefs and judicial opinions, and they're chalk-full of helpful persuasive writing lessons. ladylegalwriter.blogspot.com
- *Legible Blog*. This fantastic blog—run by University of Texas legal writing professor Wayne Schiess—is updated frequently with short, focused, practical advice that you can immediately put to use. (Readers of this column will notice that I probably cite to Professor Schiess's work more often than anything else.) This website also has a great tagging system that allows you to find posts in a wide range of categories that you might be interested in—from document design to grammar tips. sites.utexas.edu/legal-writing
- *Scribes (The American Society of Legal Writers) Writing Tips*. This site features separate pages devoted legal writing, internet-based research, and grammar, respectively. scribes.org/writing-tips
- *LawProse Blog*. Run by Bryan Garner's consulting company, LawProse, this blog offers more than 300 individual legal writing lessons. Most posts, helpfully, included crossreferences to Garner's books and to related blog posts on the site. lawprose.org/law-prose-blog
- *Legal Writing Pro*. This blog is authored by Ross Guberman and features several categories of posts, including dissections of judicial opinions and briefs, usage and grammar pointers, transactional drafting lessons, and advice for new lawyers and summer associates. legalwritingpro.com/articles



- *Typography for Lawyers*. As with Matthew Butterick's book of the same name, this site is a gold mine for anyone looking to improve the visual impact of their writing (which should be everyone). It has tons of tidbits about page layouts, text formatting, spacing, and fonts. This site also has helpful sample documents—including resumes, contracts, letterheads, and motions—to show how to put the lessons into practice. typographyfor-lawyers.com
- *Adams on Drafting Blog*. Run by contracts expert Ken Adams, this blog features nearly 15 years of posts all about transactional drafting. Many of the blog posts also have lively comment sections with conversations and debates among practicing attorneys, giving some interesting insights into real-world practice. adamsdrafting.com/blog

Other bar journal columns

Many other bar publications—both at the state and local levels—also feature regular columns devoted to legal writing. In fact, much of the advice you see in *The Last Word* originated from ideas in these other columns. There are two that I particularly recommend. The first is *The Legal Writer* column from the Oregon State Bar Bulletin,

The Last Word continued on page 61

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