

Highlights of the Virginia State Bar Council Meeting

October 15, 2010

At its meeting on October 15, 2010, in Charlottesville, the Virginia State Bar Council heard the following significant reports and took the final actions:

UPL Prosecution

The council voted 64 to 1 to seek legislation in the 2011 General Assembly to extend the statute of limitation on prosecution of unauthorized practice of law and to increase the penalties for committing UPL, a misdemeanor under current law. Under the proposal, Virginia Code § 19.2-8 would be amended to allow prosecution within two years of the complainant's discovery of the offense. In addition, restitution could be ordered in a criminal conviction under proposed amendments to § 54.1-3904, and, in a civil proceeding to enjoin unauthorized practice, a complainant could recover attorney fees, costs, damages, and civil penalties, including treble or punitive damages. The proposed statutory changes have been sent to the Supreme Court of Virginia for its consideration.

MCLE Rules Proposal Approved

The council approved proposed amendments to Rules of Virginia Supreme Court, Part 6, § IV, ¶ 17, that would increase the Mandatory Continuing Legal Education Board quorum needed to change MCLE regulations. The proposal also would give the council the authority to suspend a new or amended MCLE regulation until the Supreme Court has considered it. Under the proposal, approval by seven members of the twelve-member MCLE Board would be required for a regulation change to pass. A two-thirds vote would be required for the council to reject implementation of a regulation pending review by the Court. Proponents of the council-override measure said it would give the council input while maintaining the MCLE Board's independence. The proposal was passed by a vote of 58 to 6. It has been sent to the Court for its consideration.

Paragraph 13 Proposals Approved

The council approved proposed changes to Rules of Virginia Supreme Court,

Part 6, § IV, ¶ 13, that would establish procedural authority for regulating multijurisdictional practice by lawyers who are not members of the Virginia State Bar, but who are authorized to conduct a limited practice here. The proposed changes also would incorporate in Paragraph 13 requirements for persons serving as members of a district committee, the Disciplinary Board, and the Committee on Lawyer Discipline. These requirements are also found in the Bylaws of the Virginia State Bar. The proposals have been sent to the Court for its consideration.

Resolutions

The council approved without dissent resolutions honoring Leroy Rountree Hassell Sr. for his accomplishments during eight years as Virginia's Chief Justice, and Cynthia Dinah Fannon Kinser on her election as Chief Justice for 2011-15.

Bar Card Update

Permanent Virginia State Bar cards have been sent to associate members who paid their 2010 dues, and temporary cards with a December 31, 2010, expiration date have been sent to other members.

Members with active, active/Virginia corporate counsel, active/military legal assistance attorney, judicial, and emeritus status were sent the temporary cards, and will receive their permanent cards in December.

Other members — corporate counsel registrant, retired, and disabled — will no longer be sent bar cards, under the policy that began in fiscal 2010-11.

Questions should be addressed to the VSB Membership Department at membership@vsb.org or (804) 775-0530.

Keep Up with the VSB — Read the E-News

Have you been receiving your Virginia State Bar E-News?

The E-News is an important way of keeping informed about your regulatory bar.

It is a brief summary of deadlines, programs, rule changes, and news.

We e-mail it monthly to all VSB members, except for those who opted out of receiving it.

If you didn't get yours, check your spam filter for December 1 and see if it's in there.

If your Virginia State Bar E-News is being blocked by your spam filter, contact your e-mail administrator and ask to have the VSB.org domain added to your permitted list.

“Good Lawyers” Project Wins National Award

The Virginia Is for Good Lawyers campaign by Jon D. Huddleston during his Virginia State Bar presidency last year has received a Thomson Reuters Legal Luminary Award for excellence in marketing.

The award, bestowed by the National Association of Bar Executives, recognized the project to promote the role of the citizen lawyer, public service, and discourse between lawyers and the public. The messages were conveyed through video and essays by Virginia

lawyers and judges. <http://www.vsb.org/site/about/va-good-lawyers/>

“Way to go,” commented one of the Luminary Award judges. “Success achieved through utilizing a broad range of mediums. The national attention is good for the entire profession. The template to help other bars is a nice service to provide all of us.”

The VSB was among sixteen bar associations and their communications professionals to receive Luminary Awards this year.

Local and Specialty Bar Elections

Virginia Association of Defense Attorneys

Dennis John Quinn, President
 Lisa Frisina Clement,
 President-elect
 Elizabeth Guilbert Perrow,
 Secretary
 Glen Alton Huff, Treasurer

VIRGINIA LAW FOUNDATION DONATION FORM

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Phone Number _____

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The enclosed contribution is
 in memory of _____, or
 in honor of _____

If you would like an acknowledgement card sent, please include the name and address of the recipient below.

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Please make checks payable to Virginia Law Foundation, 600 East Main Street, Suite 2040, Richmond, VA 23219.

Donations may also be made online via PayPal, by visiting our website at www.virginialawfoundation.org.



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 - Appalachian School of Law (Grundy)
 - George Mason University School of Law (Arlington)
 - Liberty University School of Law (Lynchburg)
 - Regent University School of Law (Virginia Beach)
 - University of Richmond School of Law (Richmond)
 - University of Virginia School of Law (Charlottesville)
 - Washington & Lee School of Law (Lexington)
 - William and Mary School of Law (Williamsburg)
 - Rule of Law Programming
 - Oliver Hill PSI Fund

The Virginia Law Foundation is a 501(c)3 organization. Donations are tax deductible to the extent allowed by law. The Foundation is registered as a charitable entity with the Commonwealth of Virginia. A financial statement is available upon written request from the Office of Consumer Affairs.

In Memoriam

Sidney Jackson Baker
Williamsburg
August 1930–September 2010

Paul Joseph Burke
McLean
October 1918–January 2010

Hugh P. Cline
Norton
March 1919–June 2010

Edward Jude De Lozier
Parker, Colorado
April 1951–April 2010

Robert E. Eicher
Richmond
May 1936–October 2010

Amanda R. Ellis
Arlington
October 1932–May 2009

David Gay Gartner
Arlington
September 1935–September 2009

John Conway Gould
Hopewell
May 1953–September 2010

Karen Estelle Holt
Knoxville, Tennessee
September 1955–October 2009

Kenneth C. King Jr.
Roanoke
February 1942–September 2010

Joseph Richard Loschi
Norfolk
January 1935–June 2010

Steven Lynn Lovell
Big Stone Gap
February 1959–April 2010

Joseph Vincent McGrail
Alexandria
December 1933–August 2010

Hon. Montie S. Meeks
Virginia Beach
March 1921–February 2010

Thomas McCarty Moncure
Stafford
July 1920–June 2009

Edward Stephen O'Keefe Jr.
North Redington Beach, Florida
August 1939–January 2010

Thomas Louis Patten
Washington, D.C.
October 1945–June 2010

Ralph Richard Russo
Alexandria
June 1953–December 2009

Thomas Duncan Scanlin
Stafford
October 1944–May 2010

Hon. John G. Sowder
Providence Forge
November 1918–August 2010

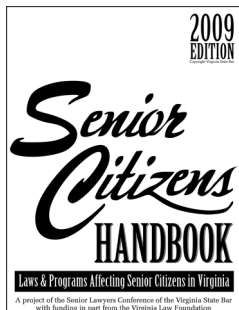
Joseph Miller Wood II
Charlottesville
August 1927–August 2010

Got an Ethics Question?

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Nonlawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue "E-mail Your Ethics Question" box on the Ethics Questions and Opinions web page (<http://www.vsb.org/site/regulation/ethics/>).

Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB website for free and low-cost pro bono trainings and volunteer opportunities:
http://www.vsb.org/site/pro_bono/resources-for-attorneys



The Senior Citizens Handbook: a resource for seniors, their families, and their caregivers. 2009 edition now available.

We're as busy as ever at age fifty-five and over, and we face new challenges and opportunities, with little time to search them all out. How can anyone find out about them all and, with such an array of choices, how does anyone begin to make a selection?

The *Senior Citizens Handbook*. Available online at <http://www.vsb.org/docs/conferences/senior-lawyers/SCHandbook09.pdf>.

Former Chief Justice Honored with John Marshall Medal

by Dawn Chase

Harry L. Carrico, Chief Justice of the Supreme Court of Virginia from 1981 until he took senior status in 2003, has been presented with the John Marshall Medal in Law by the John Marshall Foundation.

The award recognizes persons of national or international prominence who exhibited professional excellence in a field related to John Marshall's career, and who are willing to personally support the foundation's efforts.

Past recipients include U.S. Associate Justice Anthony M. Kennedy and the late Griffin B. Bell, U.S. attorney general under President Jimmy Carter.

Carrico received the award October 29. It was presented by attorney and bestselling novelist David Baldacci. U.S. Associate Justice Samuel Alito Jr. had been scheduled to attend, but was unable to because of illness.

Earlier in the day, the University of Richmond hosted a symposium about Marshall's life and legacy. One panel featured Virginia Justice Donald W. Lemons, Judge Roger L. Gregory of the U.S. Court of Appeals for the Fourth Circuit, Justice Randy Holland of the Supreme Court of Delaware, and attorney Charles J. Cooper of Cooper & Kirk PLLC in Washington, D.C., as moderator.

That panel described how Marshall, as Chief Justice of the United States from 1801 until 1835, led the U.S. Supreme Court to assume its role as an independent and equal third branch of government by articulating its responsibility for judicial review, Lemons said.

Gregory said that Marshall advocated for what would become a national government because of what he had seen as a soldier in the American Continental Army, wintering at Valley Forge. Men starved and died of exposure there, and Marshall came to believe that a strong centralized defense was essential to providing adequate resources to soldiers who would be tasked with defending the United States.

Marshall's vision of the Constitution as a living document kicked off the states'



Carrico (left, wearing medal) and Baldacci. Photo by Taylor Dabney.



Lemons
Photo by Clement Britt.

rights tug-of-war that continues to play out today. His view was that "the rule of law is a process, not a 'correctness,'" Gregory said.

"We the people' is what Marshall knew," he said. As a youth, Marshall had absorbed Alexander Pope's *Essay on Man*, and in the framework of the Constitution he saw an approach to guiding the country through the uncertainties described by the poet, speaking to Man:

All Nature is but Art unknown
to thee;
All chance direction, which thou
canst not see;
All discord, harmony not
understood;
All partial evil, universal good:
And spite of Pride, in erring
Reason's spite,
One truth is clear, *Whatever is,
is right.*
(*Epistle I, Part 10*)

Lemons observed that, in the seminal case *Marbury v. Madison*, Marshall had conflicts of interest but did not recuse himself. Why not? "Was it just too tempting? Were his personal and political views so strong that he could not overlook the obvious conflicts?"

Last summer, under questioning by South Carolina Senator Lindsay Graham,

soon-to-be Supreme Court Associate Justice Elena Kagan offered her definition of judicial activism. An activist judge, she said is one who fails to follow three principles: Deference to the political branches in policy making, respect for precedent, and deciding cases narrowly and avoiding constitutional questions, if possible.

Under Kagan's definition, "Was John Marshall an activist judge?" Lemons asked. "I report. You decide."

In a 2007 speech to a Richmond audience, award recipient Carrico offered his opinion of Marshall's place in American history:

"From whence comes the Constitution's longevity? How did it achieve the preeminence it occupies?" Carrico asked.

"I know that no one person can be responsible. But in my opinion, John Marshall in his role as Chief Justice of the United States is due much of the credit.

"James Madison, with his authorship, may have given the Constitution the body. And George Mason and Patrick Henry, with their insistence upon a Bill of Rights, may have given it a heart.

"But John Marshall, with his amazing, creative mind, gave it a soul, and helped make it the most powerful political document the world has ever known."