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Cover: Among the many beneficiaries supported by the Virginia Law Foundation during its forty-year history is the Court Appointed Special Advocacy program. (Photo courtesy of National CASA Association)
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THE VIRGINIA STATE BAR salutes the Virginia Law Foundation on its 40th Anniversary. The VLF has certainly lived up to its mission statement, which is, “The Virginia Law Foundation promotes through philanthropy the rule of law, access to justice and law-related education.”

The VLF has been a shining example of adherence to its mission statement, funding nearly $24 million in grants through 2012 to hundreds of projects and initiatives benefitting thousands of Virginians.

Some signature projects of the VLF include:

- $100,000 to support construction of the Nuremberg Courtroom exhibit at the Virginia Holocaust Museum in Richmond (and if you haven’t seen this exhibit, you truly owe it to yourself to go);
- $350,000 over four years to the VLF/VBA Rule of Law Project,
- funding of the Annual Legal Aid Conference of the Virginia Poverty Law Center ($341,046 over the past twenty years);
- VBA Capital Defense Workshop ($288,800 over the past seventeen years); and
- VLF Public Service Internships—honoring Oliver W. Hill Sr. ($1,238,000 since 1989).

We also recognize, with thanks, a grant to the Senior Lawyers Conference for the revision and printing of the ever-popular Senior Citizens Handbook, which has been instrumental in informing many of the commonwealth’s older population about laws that pertain especially to them.

The VLF has provided more than $15 million to support projects that provide civil legal assistance and/or pro bono legal services to low-income Virginians. The foundation has also funded studies related to pro bono services and the unmet need for legal services. Seed money provided by VLF has provided the critical initial funding for many innovative projects such as the Legal Information Network for Cancer (LINC). It has also funded a host of videos, pamphlets, presentations, and workshops.

Under the able leadership of new VLF president James V. Meath, the VLF is moving to Charlottesville, cutting costs by consolidating its offices in the building now used by Virginia CLE. This will allow for lower overhead and make more money available for grants. Virginia CLE Director Raymond M. White will now also serve as the VLF executive director, which is a tremendous bonus for the VLF.

As Meath has said, the VLF is “the philanthropic arm of the bar nobody really knows about.” Well, I hope this column will change that just a bit and that lawyers reading this will consider a donation (I make one annually). All

President’s Message
by Sharon D. Nelson

Saluting the 40th Anniversary of the Virginia Law Foundation:
Bravo for Funding Good Works
donations should be made payable to the Virginia Law Foundation, and mailed to 600 East Main Street, Suite 2040, Richmond, VA 23219.

Save the Date: May 19, 2014
As a longtime member of the ABA TECHSHOW faculty, I am delighted to tell you that the Virginia State Bar will be offering a VSB TECHSHOW on May 19, 2014, at the Richmond Convention Center. The stellar faculty members are all nationally-known veteran ABA TECHSHOW speakers who will offer a full day of legal technology CLE. Not only is the conference free, every lawyer’s favorite price, but lunch is included in the bargain. So mark your calendars now and watch for registration information to appear shortly.

Want to check on your MCLE credits or certify your latest course?
Go to the iTunes store to download the Virginia State Bar app for mobile devices. The app allows you to check your contact information of record, certify courses, and access Fastcase from anywhere, using the same login and password you now use on your computer.

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Executive Director’s Message
by Karen A. Gould

New VSB Offices; New and Amended Rules

VSB New Headquarters
By the time this column is published in the December Virginia Lawyer, the Virginia State Bar should have executed a ten-year lease with the owner of the Bank of America building in downtown Richmond, at 1111 E. Main St. The bar’s offices will be on the seventh floor of the building, with additional office space on the sixth floor. The lease also includes two five-year options to extend the lease term. The bar has been located in its present office space, 707 E. Main St., since 1992.

New Admission Without Examination Rule (Reciprocity)
By order entered November 1, 2013, the Supreme Court of Virginia has adopted, effective February 1, 2014, a new Rule 1A:1, addressing admission to the Virginia bar without examination (often called “admission on motion”). Although the old and new rules are similar in many respects, there are several significant differences.

To continue encouraging other states to grant the same privilege to Virginia lawyers, the Court has retained the requirement that only lawyers who are admitted in jurisdictions that also admit Virginia lawyers without examination (i.e., “reciprocal” jurisdictions) are eligible for admission on motion. The bar has been located in its present office space, 707 E. Main St., since 1992.

New VSB Offices; New and Amended Rules

Also on November 1, 2013, the Court entered an order effective immediately amending Rules of Professional Conduct 1.11, 1.15 and 5.4.

Rule of Professional Conduct 1.11
One change to RPC 1.11 is cosmetic: it moved the definition of “confidential government information” from section (g) to section (c), which is the only place in the rule that the term is used. The second change to Rule 1.11 added a provision to section (d), allowing the conflict for a lawyer who is currently in government service to be waived with consent from the private client and the appropriate government agency. This provision parallels section (b), which allows for informed consent to conflicts created by a lawyer’s move from government service to private practice.

The third change to RPC 1.11 was the adoption of American Bar Association Model Rule Comment 3, which explains why paragraphs (b) and (d) are not limited to situations in which a lawyer would be adverse to her former client, but rather apply to any matter in which the lawyer participated personally and substantially prior to her move from government to private employment or vice versa.

Rule 1.11 now reads as follows:

RULE 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees
(a) A lawyer who holds public office shall not:
(1) use the public position to obtain, or attempt to obtain, a
special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest;

(2) use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client; or

(3) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer’s action as a public official.

(b) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the private client and the appropriate government agency consent after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and that the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and that is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer’s stead in the matter or unless the private client and the appropriate government agency consent after consultation; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer, mediator or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) Paragraph (d) does not disqualify other lawyers in the disqualified lawyer’s agency.

(f) As used in this Rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Comment

[1] This Rule prevents a lawyer from exploiting public office for the advantage of the lawyer or a private client. A lawyer who is a public officer should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with official duties or obligations to the public.

[2] A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

[3] Paragraphs (b) and (d) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (b). Similarly, a lawyer who has pursued
Executive Director’s Message

Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer’s professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client’s adversary obtainable only through the lawyer’s government service. However, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The private client should be informed of the lawyer’s prior relationship with a public agency at the time of engagement of the lawyer’s services.

When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

Verdicts (b)(1) and (c) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the attorney’s compensation to the fee in the matter in which the lawyer is disqualified.

Paragraph (b)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying.

Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Paragraphs (b) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

Virginia Code Comparison
Paragraph (a) is identical to DR 8-101(A).
Paragraph (b) is substantially similar to DR 9-101(B), except that the latter used the terms “in which he had substantial responsibility while he was a public employee.” The Rule also requires consent of both a current client and the former agency.

Paragraphs (c), (d), (e) and (f) have no counterparts in the Virginia Code.

Committee Commentary
The Committee believed that the ABA Model Rule provides more complete guidance regarding lawyers’ movement between the public and private sectors. However, the Committee added the language of DR 8-101(A) as paragraph (a) in order to make this Rule a more complete statement regarding the particular responsibilities of lawyers who are public officials. Additionally, to make paragraph (b) consistent with similar provisions under Rule 1.9(a) and (b), the Committee modified the paragraph to require consent to representation by both the current client and the lawyer’s former government agency.

Rule of Professional Conduct 1.15
The amendment to RPC 1.15 clarifies that money held by a lawyer on behalf of a client must be held in a trust account, while other property may be placed in a safe deposit box or other place of safekeeping. As it was previously written, Rules 1.15(a) appeared to permit a lawyer to place money held on behalf of a client into a safe deposit box rather than a trust account. The Court also replaced the word “monies” with “funds” in Comment 1 to be consistent with the language in the remainder of the Rules and Comments.

The rule now reads as follows, in pertinent part:

Rule 1.15 Safekeeping Property
(a) Depositing Funds.

Rule 5.4 continued on page 14
Nominations Sought for 2014–15 District Committee Vacancies

The Virginia State Bar Standing Committee on Lawyer Discipline calls for nominations for district committee vacancies to be filled by Council in June 2014. Note that there are vacancies which may not become available because some members are eligible for reappointment.

To review qualifications for eligibility, see Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-4 – Establishment of District Committees, specifically 13-4.E (Qualifications of Members) and 13-4.F (Persons Ineligible for Appointment).

First District Committee: 2 attorney vacancies (both current members are eligible for reappointment); 2 non-attorney vacancies (1 current member is eligible for reappointment). The vacancies are to be filled by members from the 1st, 3rd, 5th, 7th or 8th judicial circuits.

Second District Committee, Section I: 1 attorney vacancy; 3 non-attorney vacancies (2 current members are eligible for reappointment). The vacancies are to be filled by members from the 2nd or 4th judicial circuits.

Second District Committee, Section II: 4 attorney vacancies (3 current members are eligible for reappointment); 1 non-attorney vacancy. The vacancies are to be filled by members from the 2nd or 4th judicial circuits.

Third District Committee, Section I: 1 attorney vacancy (current member is eligible for reappointment); 3 non-attorney vacancies (2 current members are eligible for reappointment). The vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

Third District Committee, Section II: 2 attorney vacancies (both current members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). The vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

Third District Committee, Section III: 3 attorney vacancies (2 current members are eligible for reappointment); 2 non-attorney vacancies (1 current member is eligible for reappointment). The vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

Fourth District Committee, Section I: 3 attorney vacancies (all current members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). The vacancies are to be filled by members from the 17th or 18th judicial circuits.

Fourth District Committee, Section II: 3 attorney vacancies (2 current members are eligible for reappointment); 1 non-attorney vacancy. The vacancies are to be filled by members from the 17th or 18th judicial circuits.

Fifth District Committee, Section I: 2 attorney vacancies (1 current member is eligible for reappointment). The vacancies are to be filled by members from the 19th or 31st judicial circuits.

Fifth District Committee, Section II: 3 attorney vacancies (all 3 current members are eligible for reappointment); 2 non-attorney vacancies (1 current member is eligible for reappointment). The vacancies are to be filled by members from the 19th or 31st judicial circuits.

Fifth District Committee, Section III: 2 attorney vacancies (both current members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). The vacancies are to be filled by members from the 19th or 31st judicial circuits.

Sixth District Committee: 3 attorney vacancies (all 3 current members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). The vacancies are to be filled by members from the 9th or 15th judicial circuits.

Seventh District Committee: 2 attorney vacancies (both current members are eligible for reappointment); 2 non-attorney vacancies (both current members are eligible for reappointment). The vacancies are to be filled by members from the 16th, 20th or 26th judicial circuits.

Eighth District Committee: 2 attorney vacancies (1 current member is eligible for reappointment); 2 non-attorney vacancies (1 current member is eligible for reappointment). The vacancies are to be filled by members from the 23rd or 25th judicial circuits.

Ninth District Committee: 3 attorney vacancies (1 current member is eligible for reappointment); 2 non-attorney vacancies (both current members are eligible for reappointment). The vacancy is to be filled by a member from the 10th, 21st, 22nd or 24th judicial circuits.

Tenth District Committee, Section I: 3 attorney vacancies (2 current members are eligible for reappointment). The vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

Tenth District Committee, Section II: 3 attorney vacancies (all 3 current members are eligible for reappointment); 2 non-attorney vacancies (both current members are eligible for reappointment). The vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

Nominations, along with a brief resume, should be sent by February 28, 2014, to Stephanie Blanton, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800 or Blanton@vsb.org.
Rule 5.4 continued from page 12

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be or placed in a safe deposit box or other place of safekeeping as soon as practicable.

**Rule of Professional Conduct 5.4**
The amendments to Rule of Professional Conduct 5.4 bring subpart (d)(2) into alignment with Virginia Code § 54.1-3902(B)(1). The statute permits a nonlawyer to serve as the secretary, treasurer, office manager or business manager of a professional entity that is authority to practice law. The rule change now provides an exception when a nonlawyer corporate officer is authorized by law.

The rule now reads as follows:

**Rule 5.4 Professional Independence of a Lawyer**

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

1. a nonlawyer owns any interest therein, except as provided in (a)(3) above, or except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
2. a nonlawyer is a corporate director or officer thereof, except as permitted by law; or
3. a nonlawyer has the right to direct or control the professional judgment of a lawyer.
Law Libraries and Options Galore

by Gail F. Zwirner

As I listened in October to news coverage of Americans struggling with access to the Affordable Care Act insurance exchanges, I thought about the communications challenges in instructing library users on all the research options we have today. We are in information overload, and more than ever researchers need help to determine the most effective research strategies.

When I discuss with my law school students their best option — perhaps a print source, Internet, or paid online services — I ask them to think about how they will use the information and what sources are available to them.

• Will the client pay for online searches?
• Does the researcher need a treatise that is accessible in one vendor’s service but not in another?
• Does the researcher need an official source to submit for an exhibit?
• Will the researcher need 19th or early 20th century sources that are available only in print?
• Does the researcher need to use the appropriate source for citation to satisfy Bluebook standards?
• Does the researcher need to read a recent law review article to catch up on the latest issues in a certain practice area where an Internet or online option will work?

Let me illustrate my point with a couple of examples. A practitioner called the reference desk saying he was having trouble finding a Virginia decision that ruled a person cannot burglarize his own home. He was using a free database of Virginia case law. I thought a secondary source would be a good starting point and told him I would call him back. I pulled Criminal Offenses and Defenses in Virginia, one of the Virginia Practice Series titles, and found the answer in a few seconds. When I looked at the footnote for the authority, I found the decision was from 1884. The database the attorney was using did not have the depth of coverage to find that decision. I returned the call and suggested he use the print source or its availability in Westlaw. He called me back to say he succeeded.

In another example, a law review draft article included references to hearings. The student needed a source for a proper citation. There are many online options for legislative history, but in this case, the best source was the microfiche that reproduced the official print source of the hearings that included the pinpoint pagination. Of all the recommendations I make, microfiche is not the most popular, but in this rare case, it was the only option.

We librarians deal daily with online vendors competing to add more databases. One online vendor claims that its system contains more than 36,000 databases. The challenge for law librarians is to remember which vendor has added which sources. Most researchers become proficient in one system, despite law librarians’ efforts to cross-train law students on various systems. Seasoned researchers can make obvious links from a Lexis publication in print to the Lexis online version, West to Westlaw, and BNA to Bloomberg. But the logic of going to LexisNexis to find a Matthew Bender treatise escapes recent generations of Researchers unaware of the connections between the publishing houses. Tell a library user that Practising Law Institute materials have moved from Westlaw to Bloomberg and the regular response is, “How do you keep up with all these changes?”

Six Virginia librarians provide a range of articles for this issue on topics including a survey of the Virginia and Federal judiciary on appellate research lessons, sources on e-discovery, researching ethics issues, research apps, a historic piece about the 150th anniversary of the Virginia/West Virginia debt issue stemming from West Virginia independence, and in special honor of the 40th anniversary of the Virginia Law Foundation, a review of its indispensable CLE handbooks, hands down favorites among Virginia’s practitioners.
Know your audience. Appellate advocacy is an exercise in convincing a specific audience — judges — of the strength of your arguments. From using accurate citations, to properly representing case holdings, to successfully explaining how your case fits within a larger jurisprudence, good research can help you convince the judges to agree with you. Who better to explain what the judges would like to see in the briefs they read than the judges themselves?

Last summer, I sent a questionnaire on legal research to the justices and judges of the Supreme Court of Virginia, the Virginia Court of Appeals, and the United States Court of Appeals for the Fourth Circuit. I asked simply, “What one piece of advice would you provide to attorneys who are presenting legal research in a brief or memo to your court?” Seventeen justices and judges responded. Their advice followed several themes: using secondary sources to your advantage, focusing on analysis — not just finding — using persuasive authority as appropriate, being wary of online research traps, preserving credibility through candor, and making your arguments obvious.

Use Secondary Sources
When analyzing case law or statutes, there is no need to reinvent the wheel.
Understanding context is crucial to legal research, as judicial decisions or statutes rarely stand alone. Senior Judge Rudolph Bumgardner III of the Virginia Court of Appeals suggested that treatises are often the best resource to gain that understanding. There is no need to try to reinvent the wheel in legal research, trying to understand an unfamiliar area of law with your own searches for cases or statutes. Instead, use treatises or practice guides written by experts to point you in the right direction and allow you to understand how the major cases or laws or statutes fit together to form a coherent body of law. Equipped with that understanding, your own searches for cases that support your specific arguments will be more effective. There are many Virginia practice guides or treatises you can use. West publishes the Virginia Practice Series on a variety of topics. LexisNexis publishes several lengthy treatises on complex topics, including civil procedure, criminal law and procedure, and evidence. VirginiaCLE publishes a series of Virginia Lawyers Practice Handbooks that can be useful for legal background in an area you are briefing on appeal. If you do not have a relevant book in your office or as an online subscription, ask for it at the local law library.

Should the books not address the specific issue you are briefing, try Virginia Lawyer or law review articles. Each Virginia Lawyer issue contains several articles on aspects of Virginia law. Law review articles often begin with an overview of a particular area of law before delving into arguments about law reform. In addition, remember that cases themselves can serve as good secondary sources. For example, in writing a brief to a Virginia state court, you may not want to cite to a case from the fourth circuit. However, if a fourth circuit judge has written an opinion reviewing an area of Virginia law, that opinion may be useful for your own background understanding.

Analyze the Cases, Do Not Just Find Them
“Analyze cases cited rather than just lifting quotations.” — Senior Court of Appeals of Virginia Judge Rudolph Bumgardner III
Many judges suggested they would like to see more analysis in legal briefs. With the ease of full-text online case research, it is easy to forget that judicial decisions are not just strings of legal statements there to be plucked as needed to support arguments in briefs. Cases are decided in context. Too frequently ignoring that context in your brief while using only selected legal statements or quotations weakens your argument. Several judges emphasized that good legal research means more than just finding cases or quotations — it means also taking the time to synthesize and analogize the cases you have found to your client’s situation. A Virginia Court of Appeals judge attributed the
need for more in-depth analysis in briefs to the fact that it is easy to do online, full-text keyword searches for good quotes. Do not allow the ease with which you can search online databases to dull your ability to think about what you have found. Finding legal materials and helpful legal language may be easier than ever, but the core of legal research and analysis remains the ability to analogize existing cases or statutes to new situations, something even the most sophisticated search engines cannot do.

In your analysis, pay attention to the facts. One Virginia Court of Appeals judge expressed a common sentiment: “I prefer when attorneys set forth case law that is both factually and legally similar to the case at bar.” When discussing the cases most central to your arguments, include the relevant facts from those cases along with the legal conclusions. Make a full analysis of those cases in your brief, showing point-by-point how they compare factually and legally with the case at hand.

Remember as well that cases usually do not stand alone. “If it is not obvious how a line of cases works together to form the parameters of the court’s jurisprudence in a particular area, harmonize them and set them out coherently as opposed to addressing them separately,” explained a fourth circuit judge. In your research, take the time to understand how the most relevant cases fit together to form a body of law so that you can explain that jurisprudence clearly in your brief. Courts do this particularly well, so judicial opinions can serve as a good model.

Find a case or other legal authority to support every argument or legal proposition you raise in your brief, however minor. One judge pointed to the language of Fadness v. Fadness, 52 Va. App. 833, 851, 667 S.E.2d 857, 866 (2008), on the Virginia Supreme Court Rule 5A:20(e) requirement that attorneys provide legal authority for each assignment of error: “Appellate courts are not unlit rooms where attorneys may wander blindly about, hoping to stumble upon a reversible error. If the parties believed that the circuit court erred, it was their duty to present that error to us with legal authority to support their contention.”

If it is not obvious how a case supports the proposition you raise, explain it to the court so that the judges do not have to figure it out on their own. One Virginia Court of Appeals judge appreciated parentheticals following a case cite for exactly that purpose. Parenthetical explanations make reading your brief easier for judges who do not have to look up each case separately to understand its relevance, and they force you to make sure that the cases you cite do indeed say what you claim. A case citation with no explanation can be a red flag to appellate judges that you did not spend time thinking about the case and that your research never progressed beyond finding to actually analyzing.

Look for Cases from Other Jurisdictions and Unpublished Opinions When Appropriate

Persuasive authority is best for issues of first impression.

Several judges agreed that appellate attorneys should use cases from other jurisdictions for issues of first impression. There is no need to turn to other jurisdictions when Virginia courts or the fourth circuit have already squarely addressed an issue, but for an issue of first impression, analyze cases from other jurisdictions as persuasive authority in a similar manner to binding cases: Those with similar facts are the most useful. Remember that cases do not stand alone, so explain the full jurisprudence of an area of law in another jurisdiction and how it might apply similarly in Virginia instead of just picking a single case that supports your argument. Finally, be candid by acknowledging negative cases from other jurisdictions or jurisdictional splits, while persuading the court that one approach is preferable.

The same is true of unpublished opinions. A Virginia Court of Appeals judge said that, “It is my practice to read all unpublished opinions dealing with the issue about which I am to write.” Each court has rules on citing unpublished opinions. Within those rules you might use unpublished opinions to demonstrate to the court a particular approach you think it should adopt.

Watch Out for Online Research Traps

Online databases make legal research easier than ever. Don’t let that ease make you careless. Watch out for mistakes common to electronic research. A fourth circuit judge has seen instances in which attorneys who have found good quotes from full-text keyword searching have used that
wording incorrectly out of context or have even cited a dissent as if it were the opinion of the court. These are easy mistakes to make when reading cases on a computer screen, particularly when working quickly. Virginia Court of Appeals Judge Teresa M. Chafin noted frequent “cut and paste” errors, where an attorney copied sections of a brief from other sources without correcting formatting inconsistencies or even the party names. These types of electronic mistakes signal to judges that the attorney has not spent enough time preparing the brief.

Judges at all three courts pointed to the importance of focusing on your strongest arguments in your brief.

Preserve Credibility with Candor
Enable appellate judges to trust you as an advocate by being honest with your legal research.
The judges want to trust you as an advocate. They may not always agree with your arguments, but your goal should be for them to grow to trust your legal and factual analysis. Fourth Circuit Judge Paul V. Niemeyer said, “Above all else, preserve credibility. Credibility is lost by misstatement and exaggeration, among other things, of both law and fact.”

“It is not helpful to simply ignore difficult cases,” said a Virginia Court of Appeals judge. In fact, Virginia Rule of Professional Conduct 3.3(a)(3) requires you to disclose adverse controlling legal authority. In your legal research, spend time thinking about the unfavorable cases so that you can distinguish them in your brief. Judges will discover those cases whether or not you cite them, and your strongest position is to acknowledge them first and explain to the court how they differ from your client’s situation.

Similarly, “Do not spin the facts. Absolute candor and fairness is essential in the factual presentation of the case,” pointed out Virginia Court of Appeals Judge Glen A. Huff. Candor with your factual analysis is also important and may be more difficult. An appellate record is often built at trial in a disjointed and duplicative manner, so it can take time to construct your brief’s factual recitation coherently and accurately. If judges sense that you have left out important facts or portrayed the facts inaccurately, it can affect how they perceive your legal arguments. Just as with the cases you find, give yourself time to understand the facts of your case so that you can present them in a way that reads well and is accurate.

A couple of judges noted the importance of maintaining credibility by updating your research up through oral arguments. A fourth circuit judge explained that filing supplemental authority is not appropriate when you simply missed an existing case in preparing your brief, but is essential if a new case comes out between when you filed your brief and oral argument. Judges will know of any new case law, so preserve your credibility by acknowledging new developments, favorable or unfavorable, in advance, rather than waiting for a judge to bring it up during your argument.

Focus and Make Your Arguments Apparent
Judges read a lot of briefs. Make your arguments easy to follow and eliminate unnecessary references. “Come to the point. No long windups,” said Fourth Circuit Judge J. Harvie Wilkinson III. Another fourth circuit judge said, “Spend whatever time is necessary to boil your argument down to its essentials.” Judges at all three courts pointed to the importance of focusing on your strongest arguments in your brief. Lead with those arguments without unnecessary introduction, and spend most of your brief on them. Your job as an appellate advocate is to help the judges focus on those central arguments without being distracted by side issues that are unlikely to determine the outcome. The importance of brevity extends to your recitation of the facts as well. Virginia Court of Appeals Senior Judge James W. Haley Jr. explained, “Only relate the facts necessary to crystallize the issues raised.” Distilling your arguments and facts down to the essentials means stepping away from online databases to spend time thinking about your research findings and the factual record.

Once you have taken the time for research analysis, construct your brief in a way that makes it easy for the judges to follow your argument. Virginia Supreme Court Senior Justice Charles S. Russell advocated a simple technique suggested to him by one of the permanent law clerks at the Court: Use headings and subheadings to your advantage. Use a simple heading for each of the arguments in your brief, followed by subheadings that provide a very brief summary of the logic of your argument. That way the judges will know the logical flow of your arguments by simply scanning through your brief and will have that logic in mind as they focus on your analysis.
Finally, retired Virginia Court of Appeals Judge Larry G. Elder suggests having “someone unfamiliar with the case read your writing in order to make sure your arguments are clear.” You could even have a non-lawyer read your brief. Your analysis may be nuanced, but your main arguments should be clear enough that even someone without legal training can discern their basic logic.

I am grateful to all of the justices and judges who took time from their busy schedules to provide the terrific legal research advice discussed in this article. I also thank my colleagues Kristin Glover and Kent Olson for their helpful comments on an earlier draft.

Endnotes:

2 For example, see Surles v. Mayer, 48 Va. App. 146, 173-75, 628 S.E.2d 563, 576-77 (2006), in which Judge Robert J. Humphreys draws on a variety of cases from the Virginia Supreme Court and Court of Appeals to explain Virginia’s jurisprudence on the relocation of a custodial parent. Note that after setting forth the legal background, Judge Humphreys engages in a specific factual analysis, comparing the facts of the case at hand to the facts of the most relevant Court of Appeals decisions. See id. at 175-76, 628 S.E.2d at 577-78.

3 See Va. Sup. Ct. R. 5:1(f) & 5A:1(f); Fed. R. App. P. 32.1; 4th Cir. R. 32.1. Note that the Fourth Circuit rule is dependent on the date of the decision.


5 As with legal propositions, which must be supported by citation, remember that factual statements must be supported by reference to the record or appendix. See Va. Sup. Ct. R. 5:17, 5:27, 5:28, 5A:20 & 5A:21; and Fed. R. App. P. 28.

6 See Fed. R. App. P. 28(j); 4th Cir. R. 28(e).
Discovering E-Discovery: a Resources Guide

by Timothy L. Coggins

“Finding a suitable sanction for the destruction of evidence in civil cases has never been easy. Electronic evidence only complicates matters. As documents are increasingly maintained electronically, it has become easier to delete or tamper with evidence (both intentionally and inadvertently) and more difficult for litigants to craft policies that ensure all relevant documents are preserved. This opinion addresses both the scope of a litigant’s duty to preserve electronic documents and the consequences of a failure to preserve documents that fall within the scope of that duty,” wrote U.S. District Judge Shira Scheindlin in her influential Zubulake v. UBS Warburg LLC decision in 2003.1 And thus began the legal community’s increasing attention to electronically created information and e-discovery.

E-discovery refers to discovery in civil litigation that focuses on the exchange of information in electronic form. Lainie Crouch Kaiser, a litigation attorney with McDermott Will & Emery, writes that “e-Discovery can be used as an umbrella term for both the legal and operational considerations related to how electronically stored information (ESI) is used in the modern day practice of law.”2 There are many types of ESI, including e-mail and office documents, voicemail, photos, video, and databases. Attorneys and others who write about e-discovery also include “raw data” as discoverable information. Ronald J. Hedges of Nixon Peabody writes that “[t]echnically, documents and data are ‘electronic’ if they exist in a medium that can only be read through the use of computers. Such media include cache memory, magnetic disks (such as DVDs or CDs), and magnetic tapes.”3

This article does not present any legal analysis of e-discovery and what is and is not discoverable, but rather it provides a listing of resources that attorneys and those who work with them can use to gain a better understanding of e-discovery and its application in both federal and state courts.

Research Guide and Comprehensive Collections

As in other legal research, starting with a source that identifies the relevant resources is useful and time-efficient. The law library at the University of Missouri School of Law produced and updates a research guide titled Electronic Discovery. The guide, designed for attorneys, judges, and law students who need to research electronic discovery issues, is thorough. It includes an overview and sections addressing sanctions and privileges, relevant blogs, law firm e-discovery practice groups, and more. The guide references important materials produced by the Sedona Conference, the leading voice in addressing concerns about electronic discovery, and links to the Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production. The guide is available at http://libraryguides.missouri.edu/electronicdiscovery.

The Touro College Jacob O. Fuchsberg Law Center’s library produced another useful guide titled Social Media Use For Attorneys. The guide includes a list of print and electronic resources that deal specifically with e-discovery and a list of e-discovery blogs that address current and cutting-edge issues. The guide is available at http://guides.tourolaw.edu/socialmedia.

Westlaw, LexisNexis, Bloomberg BNA, and the Practising Law Institute all have databases that provide varied e-discovery resources. Westlaw’s e-discovery collection includes law reviews, texts and bar journals, a national e-discovery law briefs collection, e-discovery trial court orders, state and
federal e-discovery law cases, national e-discovery law civil trial court filings, and an *Electronic Discovery and Records and Information Management Guide*. This guide addresses issues such as proper planning of possible discovery in order to reduce costs and burdens of complying with discovery requests. It also addresses issues relating to records management.

The Lexis e-discovery database is extensive and includes treatises, forms, litigation reports, and other materials. Its collection of e-discovery forms includes demand letters, discovery plans, interrogatories, motions, preservation orders, requests for production, stipulations, and others. Most forms are from Matthew Bender publications that are included in the Lexis databases. *Mealey’s Litigation Report: Discovery* covers the latest news pertaining to discovery issues, such as how federal discovery rules are interpreted by different districts and judges, work product, attorney-client and common interest privileges, and discovery abuse. An important resource located in Lexis is *E-Discovery: the Newly Amended Federal Rules of Civil Procedure*, authored by the Honorable Shira A. Scheindlin. This guide includes sections that deal with the changes to the Rule 26(f) meet-and-confer requirement, new requirements in Rule 26(b) about production of inaccessible electronically stored information, new “safe harbors” provision in Rule 37 for loss of information due to routine, good faith operation of an electronic information system, and new procedures under Rule 26(b)(5) for requesting return of privileged or work product-protected information that was inadvertently produced.

Bloomberg BNA’s e-Discovery Resource Center includes many types of materials, including:

- Federal and state statutes and rules dealing with e-discovery,
- Practice tools, including pleadings and forms, calendars, etc.,
- Latest e-discovery cases,
- BNA Insight articles (such as the one cited earlier by Lainie Crouch Kaiser),
- Top headlines in the news about e-discovery, digital discovery, and e-evidence, and
- A comprehensive and searchable database of e-discovery cases.

Attorneys using this collection can focus the research on narrower topics, including digital discovery and e-evidence, preservation, production, costs, privilege, and sanctions.

Practising Law Institute’s Discover Plus is the online version of familiar PLI materials, including treatises, course handbooks, CLE materials, and session transcripts. Searching the collection is easy, and an attorney can restrict results to particular types of publications. To locate information about e-discovery, an attorney selects Litigation practice area, a simple search for e-discovery results in valuable and important documents.

Representative results include course handbook chapters about sanctions for e-discovery violations, efficient e-discovery for the smaller case, and ethical issues in e-discovery. Results also include an important course handbook chapter written in 2012, titled *The Courts Intervene with Model Rules to Curb the Costs of E-Discovery: Will It Work and Should Litigants Use these Model Rules in the Rule 26(f) Conference*.

Included in the PLI Discover Plus database is a full-text and searchable copy of *The Electronic Discovery Handbook*, authored by Thomas Y. Allman, Anthony J. Diana, Ashish S. Prasad, and Matthew A. Rooney, very important authors and practitioners in e-discovery. Representative chapters in the handbook deal with information management policies and procedures, preservation obligations, review and production of electronically stored information, managing spoliation claims and defenses, international issues, and the next generation of ESI (social media, web-based collaboration applications, cloud computing, and mobile technologies). Chapter 11 of the *Electronic Discovery Handbook* covers e-discovery in specific areas of practice, such as antitrust, construction, contracts, intellectual property, product liability, and securities. For each specific area of practice, the authors cover the nature of discovery, relevant data courses, and issues regarding preservation and production.

The print treatise most frequently cited and commonly considered the authority in the field is *Electronic Discovery: Law and Practice*, authored by Adam I. Cohen and David J. Lender (two volumes; Wolters Kluwer Law and Business, 2013). Cohen, a principal with Ernst & Young LLP’s Forensics Technologies and Dispute Services practice, has more than seventeen years of experience
in law and technology. Lender, a partner in the litigation department of the New York office of Weil, Gotshal & Manges LLP, specializes in complex commercial litigation with a particular emphasis in patent and intellectual property law. This treatise began as a primer on electronic discovery for the Weil Gotshal litigation attorneys to teach them about the role that electronic discovery would play in shaping the litigation process. The authors delve deeply into the analysis of e-discovery case law and then present suggestions and strategies about the current state of e-discovery law and where it is likely heading. In chapter 1 of this book, the authors present an overview of the e-discovery issues facing litigators and write the following: “Perhaps the best advice lawyers should heed regarding the scope of electronic discovery is this: if it’s relevant, you need to worry about how to handle it, regardless of the system or storage media in which it is contained.”

Incorporated into this treatise now is the ESI Handbook, which offers valuable practice aids to help attorneys with corporate retention policy drafting, electronic discovery depositions, and many other issues.

**Other Useful Books and Resources**

Attorneys who need the basics about electronic discovery and digital evidence should look first at Electronic Discovery and Digital Evidence in a Nutshell by Judge Shira A. Scheindlin and Daniel Capra (West 2009). The following treatises and other resources are useful for more in-depth coverage.


Brent Kidwell, Matthew Neumeier & Brian Hansen, Electronic Discovery (2005).

David J. Lender, Privilege Issues in the Age of Electronic Discovery (Bloomberg BNA e-Discovery Portfolio Series 2013 ed.).

Amy Jane Longo, Electronic Discovery Practice Under the Federal Rules (Bloomberg BNA e-Discovery Portfolio Series 2013 ed.).


Managing E-Discovery and ESI: From Pre-Litigation Through Trial (ABA Section on Litigation 2011).


*Predictive Coding for Dummies* (Wiley 2013).


Seventh Annual National Institute on E-Discovery ABA Section of Science and Technology Law and the Center for Professional Development (2013).


**E-Discovery – Virginia Resources**

Like attorneys in other states, Virginia attorneys closely monitor e-discovery developments. On Nov. 22, 2013, the National Business Institute presented *Everything You Don’t Know About E-Discovery (But Wish You Did)* in Virginia Beach. The program, featuring John C. Lynch (Troutman Sanders), Craig L. Mytelka (Williams Mullen), and Dustin M. Paul (VanDeventer Black), covered latest state rules and regulations; e-discovery precautions, risks, and advice; ethical pitfalls; handling social media, e-mail, video, and other ESI, new discovery sources; and other topics.

E-discovery resources listed below might be useful to Virginia attorneys.


Joan E. Feldman, “Mechanics of Electronic Discovery,” in *The Nuts and Bolts of Electronic Discovery* (Virginia CLE 2003) (advice about gathering computer-based information, filling in the details with computer-based evidence, and the expert’s role in computer-based discovery) (chapter is dated, but useful).


Correy E. Stephenson, “Computer Assisted Review Becomes Popular,” *Virginia Lawyers Weekly* (available at http://valawyersweekly.com/2013/02/01/computer-assisted-review-becomes-more-popular/) (increasing use of computers to review large numbers of documents and how courts have handled determining whether computer assisted document review is acceptable).
When I introduce the topic of ethical rules to my first-year legal research students, someone will always question the need to research them. My students think the rules are a self-explanatory set of guidelines for their behavior, much like the Ten Commandments. They are surprised when I point out the need to research the rules to clarify what is meant by a specific rule, to deepen their understanding of the issues involved, and to gain insight into trends in this area of law. In short, you research ethical rules and issues for the same reasons you undertake any statutory research: in order to ensure that your (or your client’s) behavior complies with the law.

The current Model Rules of Professional Conduct (Model Rules), as promulgated by the American Bar Association (ABA), were adopted on August 2, 1983. On January 25, 1999, the Supreme Court of Virginia revised the Virginia Code of Professional Responsibility, replacing it with the Virginia Rules of Professional Conduct (Rules), adapting the Model Rules issued by the ABA. They became effective on January 1, 2000. Since that time, forty-nine states have adopted the Model Rules either in whole or with revisions. Thus, an attorney in Virginia who wishes to research a particular rule or an ethical issue has a wide array of sources available.

Old School Research: Finding Resources in Print

In researching the rules or ethical issues in general, the first question is: print or online? If print is your preference and you merely need the rules, the obvious starting place is the Code of Virginia. The Virginia bar is under the jurisdiction of the Supreme Court of Virginia, so the rules are found in the Court Rules volume. This volume also includes the rules dealing with the unauthorized practice of law.

There are three ways to access the rules in this volume. The first is to use the title index to Part Six. This index lays out the contents of the part in detail. The heading of each rule is listed allowing the user to quickly scan and identify the needed provision. The second way is to use the volume’s index. This index provides a more controlled, subject oriented access to the rules. Finally, the general index of the code contains entries to the material found in the rules volume.

The rules in the code are published in the Code of Virginia, and there is some advisory material available to the researcher within the code volumes. While not actually part of the code, the Legal Ethical Opinions (LEOs) and the Unauthorized Practice of Law Opinions (UPLs) issued by the Virginia State Bar (VSB) are provided as unnumbered volumes of the code. These opinions, while they have no precedential value, do give guidance as to how a disciplinary committee might interpret a rule. Access to these opinions is through the subject index which is located at the end of each section.

Since the Virginia Rules are based on the ABA Model Rules, the ABA/BNA Lawyer’s Manual of Professional Conduct can be a rich source of information if you are seeking a broader interpretation of a particular rule. This loose-leaf service is easy to use as it is arranged in rule number order. Under each rule you will find ethics opinions from the ABA and a variety of bar associations, both state and local. In addition to the ethics opinions, the set contains a current awareness newsletter which summarizes recent opinions issued by courts or bar associations, and articles on ethical issues facing attorneys written by members of the practicing bar. An index provides subject access to the material, both the opinions and the newsletters.

Lawyers in Virginia have the right to appeal the decision of the disciplinary board to the Supreme Court of Virginia, so a print search for case law takes you to the Virginia/West Virginia
Digest. A quick perusal of the title index for the topic “Attorney and Client” identifies key numbers for a variety of ethical issues such as the unauthorized practice of law (12), advertising and solicitation (32(9)), malpractice (105.5), and even disbarment (59.14). The digest provides information about decisions issued by any court (federal or state) sitting within the geographic confines of Virginia and West Virginia.

If you are interested in broader trends in legal ethics, you would do well to consult the Restatement of the Law Third, The Law Governing Lawyers. This publication of the American Law Institute was issued in 2000. According to the introduction, it covers much of the law governing lawyers but not all of it. At present, the restatement addresses primarily the lawyer-client relationship, confidentiality, and conflicts of interest. Like all restatements, it includes comments on the principles stated, illustrations of the principles in action, and a table of cases which construe the principles addressed.

Along with the restatement, many books have been published in this area in recent years. A search in your library’s catalog using the subject heading “legal ethics - United States” should produce many relevant entries. Books under this subject heading will deal not only with ethics in the abstract, but also with the ethical concerns of specific practice areas. One of my favorite recent titles is Ethics and Integrity in Law and Business: Avoiding “Club Fed.”

Web-Based Resources: Free and Subscription
Even though the print resources are easy to use, these days most lawyers prefer to do their research online. The good news is that many of the online sources are free. The most obvious free resource is the website of the VSB. Clicking on the link for “Professional Regulation” brings up a wealth of resources. As you would expect, the rules are presented here since the VSB no longer provides printed copies. Amendments to the rules, proposed, adopted, and even rejected, are also available on this page allowing you to trace the evolution of the rules in Virginia.

LEOs are searchable in a variety of ways. When you click on the link to the LEOs you are taken to a page maintained by the law firm of McGuire Woods. Here you can pull up LEOs by number or you can search by subject. When you choose the subject search you are given the option to run an advanced Google search which permits Boolean searching and the ability to limit the search by date.

The other link to the LEOs directs you to a page maintained by the law firm of McGuire Woods. Here you find the LEO summaries prepared by attorney Thomas E. Spahn. Spahn, a partner at McGuireWoods, is a nationally recognized expert in the field of legal ethics. The database contains his summaries of not only the Virginia LEOs recognized by the VSB after its reorganization of the LEOs in 1983, but also the formal opinions issues by the ABA Standing Committee on Professional Responsibility. You can find opinions in this database in several ways. There is a topical table of contents that links to LEOs on an assortment of subjects. Then there is a link that will retrieve a list of all of the LEO summaries written in the past year. The database also supports keyword searching. When searching by keyword, you have the option of filtering the search by date or limiting the search to ABA or Virginia LEOs.

Finally, if you can’t find a LEO dealing with your specific concern, you can request one from the VSB. There is a link on both the “Professional Regulation” page and the “Members Resources” page which allows any member of the Virginia bar to request a LEO via e-mail. This service is confidential; ethics counsel for the VSB cannot disclose the contents of any discussion about the e-mail without the express consent of the person posing the question.

A free, to VSB members, source is Fastcase. While LEOs and the rules are not part of the Fastcase database, Supreme Court of Virginia decisions are. As mentioned above, disciplinary matters are appealable to the Supreme Court of Virginia so you will find valuable content in this source.

Even though the print resources are easy to use, these days most lawyers prefer to do their research online.

No mention of free Internet sources would be complete without talking about Google. You could just throw some words into the search bar and come up with a few million hits. Simply searching “ethics opinions” results in some very good results, the ethics opinions of many state and local bar associations. A savvy Google user, however, would scroll to the bottom of the Google results page and click on the advanced
Even with the wide assortment of resources, both in print and electronic available to you, sometimes you just want the human touch.

placing ethics opinions in quotes, Google will look for those terms as a phrase. Finally, since most bar associations, as well as the ABA, have a .org domain you know the results retrieved will be from reliable sites.

Google Scholar shouldn’t be overlooked either. Running the above search using the Legal Document option in Google Scholar results in 762 hits. The results include court cases and articles from scholarly journals. Results can be further sorted by relevance or limited by date. You can select one of the dates provided or create a custom date range.

A mixture of free and paid resources are accessible at the webpage for the ABA Center for Professional Responsibility. On the home page of the center, any visitor can view or download the latest LEOS issued by the ABA. There is also a news section on this page which highlights recent articles on ethical issues. Under the “Resources” tab, the Model Rules of Professional Conduct along with the comments are available.

Non-members of the ABA can see a list of all of the formal LEOS issued by the ABA and individual opinions may be purchased for $20. Members of the section are able to search the entire ethics database and download opinions free of charge. If a member doesn’t want to search the database, he or she can take advantage of the center’s EthicSearch Research System. The center’s lawyers will research ABA, state, and local bar association opinions to assist a lawyer to understand or resolve any ethical issues.

In the ethics area, it doesn’t matter if you subscribe to the legacy versions of Westlaw or Lexis or the newer WestlawNext or Lexis Advance. All of the content in this area is available on both versions. To determine what is available in classic Westlaw, you click on “Directory” and open the tree for “Topic of Law by Topic” on the home screen. A full listing of all available titles is then displayed allowing you to choose to search in one or all of the databases. In Lexis Advance you first click on the “Browse Sources” tab. In the left hand frame, above the facets, is a search box. If you type in the word ethics, Lexis Advance will pull up all of the databases in which the word appears in either the heading or the database descriptor. The list of databases that appear can then be sorted by material type or jurisdiction.

Both Lexis and Westlaw have the full complement of ABA ethics materials, the model rules and the formal and informal LEOS. When it comes to Virginia research, Lexis has the edge. Both systems have the rules but only Lexis has the Virginia LEOS. Interestingly, Westlaw does have a file of the public disciplinary orders issued by the VSB.

There is an extensive collection of secondary sources available from each service. Both contain the Restatement of the Law Third: The Law Governing Lawyers. Westlaw has more general treatises dealing with the topic while Lexis has an “Emerging Issues” database dealing with hot topics in the area. Lexis also has the ABA/BNA Lawyer’s Manual on Professional Conduct available.

Bloomberg Law is similar to Fastcase in its ethic content. The cases of the Virginia Supreme Court are present, but the rules and the LEOS are not part of the Bloomberg platform. Currently, there are not any treatises dealing with ethical issues on Bloomberg.

Even with the wide assortment of resources, both in print and electronic available to you, sometimes you just want the human touch. In Virginia, that’s still possible. If you desire, you can call the Legal Ethics Hotline maintained by the VSB. When you call, you will be prompted to leave a detailed message and your call will be returned the same business day, if possible. The service is confidential and the lawyers employed by the VSB will provide you with an informal ethics opinion.
Conclusion
Being a lawyer is a difficult proposition. People tell you their darkest secrets or ask you to perform certain tasks for them. This may cause you to have information you feel compelled to share or to feel as if you’re being pushed in a direction in which you hesitate to go. By using the resources outlined in this article you can assure yourself that your behavior is conforming to the ethical standards of the Virginia bar.

Endnotes:
1 As of this publication date, California has not adopted the Model Rules. The California State Bar is currently revising their Rules of Professional Conduct, taking into account the final report and recommendations of the ABA’s Ethics 20/20 Commission, with the intent of eliminating conflicts between the rules in California and other states.
2 Part Six, Integration of the State Bar, Section Two, Rules of Professional Conduct
3 Part Six, Integration of the State Bar, Section One, Unauthorized Practice Rules and Considerations
4 www.vsb.org
5 http://www.valawyersweekly.com/2013/05/10/rule-changes-would-deal-with-discovery/ (recent proposed changes to the Federal Rules of Civil Procedure and how the changes impact discovery, particularly e-discovery).
6 Part Six, Integration of the State Bar, Section Three, Unauthorized Practice Rules and Considerations
7 http://www.americanbar.org/groups/professional_responsibility.html
8 (804) 775-0564
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Wytheville Meeting Center, Wytheville
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Look for details at http://www.vsb.org.
Registration information will be available on our website in early January.
The Virginia Law Foundation ... promotes through philanthropy the rule of law, access to justice, and law-related education.
The VLF Celebrates Forty Years of Philanthropy

by James V. Meath, president of the Virginia Law Foundation, and Manuel A. Capsalis, immediate past-president of the Virginia Law Foundation

It is with great pride that we welcome you to this issue of Virginia Lawyer magazine. The Virginia State Bar has graciously dedicated the issue to the Virginia Law Foundation. We are thankful for this great honor.

The Virginia Law Foundation is the philanthropic arm of Virginia’s legal profession. It uses its endowment to fund worthy projects in three crucial areas: the rule of law, access to justice, and legal education. Next year the foundation celebrates forty years of philanthropic work. The organization has provided more than $23 million in grants during its history.

One of the components of the foundation is its Fellows Committee. There are more than 400 fellows of the Virginia Law Foundation, representing the top 1 percent of lawyers and retired judges in the commonwealth. These are men and women who have achieved excellence in the profession while demonstrating leadership and a selfless commitment to the betterment of their communities. The fellows of the Virginia Law Foundation are celebrating thirty years of leadership and commitment in 2014.
In the pages that follow, you will read about the philanthropic efforts of the foundation. We hope you will be struck by the good work that has been done by the funds that the foundation has provided to grantees. Lives have been changed, futures have been formed, and the commitment that our Founding Fathers made to justice for all has been furthered. That said, there is more need now than ever for the Virginia Law Foundation to raise funds and continue its philanthropic mission.

We hope that you enjoy this special issue of Virginia Lawyer and find the articles instructive and compelling. We also hope you agree that there is something very special about being a Virginia lawyer — a sense of history and of civic duty to the commonwealth and its people. Supporting the foundation’s philanthropic pursuits enables us to touch the lives of thousands of Virginians our individual good work could not possibly reach.

Members of the Virginia Law Foundation board gathered at the Virginia State Bar annual meeting in June. Pictured on page 29 are, standing (left to right): John D. Epps, president-elect; Raymond M. White, executive director; James V. Meath, president; G. Michael Pace Jr.; Irving M. Blank, vice president; Manuel A. Capsalis, immediate past president; William L. Schmidt; The Honorable Paul F. Sheridan; Yvonne C. McGhee, secretary; George Warren Shanks, Fellows Committee chair; Stanley G. Barr Jr.; J. Page Williams; David P. Bobzien, CLE chair; and F. Anderson Morse. Seated (left to right): John M. Oakey Jr.; Karen A. Gould, treasurer; Lucia Anna “Pia” Trigiani; Cynthia E. Hudson; and Angelica D. Light.
I cannot help but believe the reason most of us chose the law as our life’s work is to help make a difference in the administration of justice in our communities while bettering the lives of our clients, our neighbors, and our loved ones.

Practicing law provides us with a unique opportunity to be good people and a special platform for doing great things. Accordingly, among the many reasons I am especially proud to join the Virginia Law Foundation (VLF) as its executive director is it gives me a chance *be good and do great* in important ways.

In fact, the VLF gives us all a wonderful opportunity to share our collective passion for the multitude of causes the foundation supports, while also sharing ourselves in ways that mean so much to so many and that can also be uncommonly fulfilling.

For example, throughout our first forty years as the philanthropic arm of Virginia’s legal profession and the parent organization of Virginia CLE, the VLF has provided sizable grants to a number of critical law-related projects across the commonwealth, including:

**One Barn at a Time**  
*(Being Good and Doing Great)*

by Raymond M. White
The VLF gives our legal community a chance to be good and do great as we try to make a difference in the lives of those without meaningful access to justice, and in the lives of those who may somehow feel that they have been left behind by the rule of law.

What personally grounds me in this concept comes from a simple story about my late father-in-law, John Bartel. A dairy farmer from the time he was in his teens, Mr. Bartel loved his work more than life itself. Still, the ups and downs of family farming brought him to a point where he eventually had to sell several acres at a time simply to pay the bills. And if that wasn’t enough, one summer night as the bills continued to mount, up the hill and out of nowhere a flame shot through the sky as the barn he helped build years ago burned to the ground. There was nothing left; this was the only time my wife had ever seen her father cry.

That next morning, as word of the fire spread across the county, a small army of farmers got off their tractors, left their milking parlors, and stopped bailing hay. They grabbed hammers and saws, and started carting lumber in dusty pickup trucks as they gathered together to do whatever it was going to take to rebuild that barn.

They worked day and night to rebuild that barn, and when they were done, with hardly a word spoken, as none were needed, they patted my father-in-law on the back and made their way home. They didn’t need thanks; they didn’t need praise; they didn’t need a front page story telling the world how special they were. To them, what they did wasn’t special. They were simply good people doing something great — because that’s who they were.

This story matters so much to me because it shows the goodness of who we really are as a people, and how that goodness shines through when given a chance. It represents how we rise to the occasion for all the right reasons, and this is precisely what the VLF represents to me.

Our system of justice is second to none. But is it perfect? Let’s just say I think we all might agree there are still a few more barns that need to be rebuilt along the way to that perfection. That is why I am here, why I am writing this piece, and why I hope you find a way to join with us as the VLF crosses the commonwealth to help rebuild the occasional barn that needs fixing.

Yes, the VLF will always be there to support our own, and it is comforting to know that in the past we have been able to count on so many of you to be in there with us, hammering away until the job is done.

We are particularly proud that over the course of our forty-year history we have provided more than $23 million in grants to promote the rule of law, access to justice, and law-related education. We are prouder still that beginning last year we embarked upon an ambitious plan to expand our outreach to better assist even more Virginians with critical legal needs.

To that end we believe that through passion, people, and partnerships we can continue to make a difference, and along the way we are looking to old and new friends who share our passion and who would like to join with us — to stand together like those dairy farmers did — whether through financial donations, donations of time, or donations of expertise, so together we can fix what needs fixing as we strive to perfect our legal system, and help our communities and neighbors one barn at a time.
Center Spreads the Rule of Law Project

by G. Michael Pace Jr.

With its beginnings in the Virginia Bar Association, and with the generous financial support of the Virginia Law Foundation, the Rule of Law Project is starting its fifth year, and now involves all state-wide bar associations and a growing number of local ones, some for the fourth and fifth time. We continue to expand our website offerings (www.ruleoflaw-vba.org), which provide on-line teacher resources, training materials, reading lists, and lesson plans for teaching the origin, meaning, and importance of the rule of law in society, together with training materials for volunteer bar members.

We created a Lawyer Advisory Committee to establish relationships with more local bar associations for the purpose of organizing Rule of Law Day in every community in Virginia on an annual and sustainable basis. We have also created a Teacher Advisory Committee comprising educators and administrators in Virginia and other states. The purpose of this committee is to advise us about educational content and to create additional online materials for classroom use.

Working together, we will assure that Virginia is recognized as the leader in rule of law education nationwide.

The Rule of Law Project in the United States and the World

Created at Roanoke College in 2012, the Center for Teaching the Rule of Law (www.thecenterforruleoflaw.org) is a think-tank, research, scholarship, and training institute for rule of law education. It also serves as a forum for discussion about the relationship between the rule of law and society, nationally and internationally. The center is the vehicle by which the Rule of Law Project will be introduced to other states and countries. It is an independent Section 501(c)(3) educational charitable organization supported by private donations. The center received its first grant, of $50,000, this spring from the Foundation for the Roanoke Valley. These funds help support scholarship, programming, and operations. Other grant requests are outstanding. The center has an audacious goal of raising $10 million within three to five years to fully endow its program.

We held the initial meeting of the center’s board of directors on August 27 at Roanoke College. The members of the board of directors include: Kathy Mays Coleman, Senior Justice Lawrence L. Koontz Jr., Justice Cleo E. Powell, Diane M. Strickland, Guy K. Tower, and Anthony F. Troy.

None of the board members are required to raise money for the center. Their willingness to serve and the guidance they provide is greatly needed and appreciated.

Roanoke College has graciously donated office space and technical and operational support for the center. The college’s reputation as an excellent liberal arts institution provides the perfect platform to engage students, faculty, staff, and the community in the center’s activities, and for teaching our
Law and Society class. The center will have two student interns to assist in research and writing projects on rule of law-related subjects. We are working with several college organizations on a series of co-sponsored programs for this academic year.

In addition, we have expanded our curriculum to include “The Rule of Law and the Environment,” a topic of increasing national and international importance. Our environmental education curriculum will be led by Maggi Pace, our new director of Environmental Education and Social Media. Maggi is a Wake Forest University graduate with a major in biology, and a master’s degree in environmental education from Slippery Rock University. She began her new position on September 1. The other members of our staff are: H. Timothy Isaacs, vice president of education; John S. Koehler, director of communications; and Nancy H. Pace, administrative assistant.

We are bigger than we look. As a result of our relationship with the National Council of the Social Studies, the largest association of civics, social studies, and history teachers in the U.S., we are working on rule of law projects in Brookfield, WI, and Howard County, MD). Through our involvement in the National Council of Bar Presidents, we also helped start a rule of law initiative in Florida spearheaded by the Jacksonville Bar Association in its public schools. We expect schools in more states to adopt the Rule of Law Project this year.

At the invitation of the World Justice Project (www.worldjusticeproject.org), we participated in World Justice Forum IV at The Hague in July. We also participated in World Justice Forum II in Vienna in 2009 and Forum III in Barcelona in 2011. This year’s participants included more than 600 people from 100 countries. We presented each of the four days of the forum and led group discussions on the topic “Youth and the Rule of Law.” Our involvement led to requests to provide rule of law education in Jamaica, the Philippines, and Burundi and closer to home in Texas. In addition, we expect to be included as the rule of law education component in a new U.S. Department of State program that hosts delegations from other countries.

Our existing relationships also continue to expand:

**Virginia Department of Education** — Patricia Wright, Superintendent for Public Instruction, will again endorse the Rule of Law Project for inclusion in all public schools. We have received this endorsement each year since our beginning.

**The Virginia Consortium of Social Studies Specialists and College Educators (VCSSE)** — We have been invited to present at the last three VCSSE annual conferences in Williamsburg. This year, the annual meeting will be held in Roanoke in October, where we have been invited to speak and will sponsor a teacher reception.

**American Bar Association Commission on Civics Education** — The Rule of Law Project continues to be designated as a “best practices” program for all state bar associations.

**Legacy International** — This spring, Legacy asked us to present the Rule of Law Project to a group of twenty-two Indonesian secondary school exchange students and their teachers. These students were very engaged and extremely well versed in the relationship between the rule law and democracy, exceeding the understanding of most American students.

**The Virginia Holocaust Museum** — We are pleased the Rule of Law Project and rule of law education will continue to be part of the offerings of the Virginia Holocaust Museum in its program again this year.

**Big Brothers and Big Sisters/Oliver Hill House/Roanoke City Public Schools/Roanoke Bar Association/Rule of Law Project** — This fall, these organizations will collaborate to provide after-school educational programs at the Oliver Hill House for students ages 7 to 12 in four inner-city elementary schools. Center staff and Roanoke Bar Association members will teach students about the rule of law and citizenship. This is a perfect example of relationships that develop to address a need and improve communities. We are proud to be part of this effort. The center will be meeting with national representatives of Big Brothers and Big Sisters about using the Oliver Hill House experience as a pilot project for similar ones across the country.

I will end with my favorite story from this past semester. The Moton Museum is the former public school in Farmville that closed its doors to students during the “massive resistance” era in Virginia in the 1950s and ’60s. A new school, Prince Edward Academy (now called the JB Fuqua School) was created for white students while a generation of black students was denied a public education. Later, Prince Edward County recreated and integrated its public school system. The former Moton School became the Moton Museum, under the strong leadership of Lacy Ward Jr. Moton is a sobering yet hopeful reminder of a part of our history during which the rule of law was suspended and the concept of equality did not include everyone.

With the wonderful help of members of the Prince Edward County Bar Association, we held Rule of Law Day in...
The Nuremberg Courtroom Exhibit in the Virginia Holocaust Museum at 2000 E. Cary St. in Richmond is an exact replica of the Palace of Justice where the Nuremberg Trials were held following World War II into the spring of 1949. The exhibit contains memorabilia, videos, and photos of the trials. The enormity of the crimes committed by the Nazis were put before the court and witnessed by the entire world as the first trials of a vanquished army and the greatest example of the rule of law in history.

In 2006, Jay Ipson, the founder of the Virginia Holocaust Museum, thought that a permanent exhibit depicting the Nuremberg Courtroom would be a unique addition to the museum and an impressive testament to justice and the rule of law. The original courtroom in Nuremberg, Germany, had been substantially changed, was only open to visitors on weekends, and was rumored to be scheduled for demolition by the city. Ipson secured the original plans for the courtroom and began fundraising to build a replica of the Nuremberg Palace of Justice. I volunteered to raise funds for the project.
At the Virginia State Bar Council meeting in April 2007, I met Jon D. Huddleston, who was then on the board of the Virginia Law Foundation (VLF) and the Virginia State Bar Council. We happened to sit next to each other on the bus taking council members to dinner. During the ride, I told Huddleston about the Nuremberg Courtroom project and its need for funds. He told me that he was trying to get the VLF to change the grant-giving process so that fewer but larger grants would be made to get a greater impact from the grants. That chance meeting led to a great friendship between our families and a wonderful marriage between the Law Foundation and the Holocaust Museum. Huddleston was successful in his efforts to change the grant giving process at the VLF and the museum was approved for a $100,000 grant. A memorandum of agreement between the two entities was executed in August 2007. That marriage has endured and grown over the years. The Nuremberg Courtroom Exhibit is permanently displayed at the Virginia Holocaust Museum and is managed by the Nuremberg Courtroom Committee that is made up of eight members, four of whom are selected by the museum and four of whom are selected by the foundation. The committee also selects the annual recipient of the Rule of Law Award.

While the courtroom exhibit has only existed for a few years, it has been the scene of many memorable events and is an impressive tool to teach the rule of law. Past recipients of the Rule of Law Award have included Henry King, a prosecutor at the Nuremberg trials; Senator John W. Warner; Justice Gabriel Balch, who was the prosecutor of Adolph Eichman and later a member of the Israeli Supreme Court; and in 2013, Roderick B. Mathews and Murray J. Janus, who were great Virginia lawyers and the living essence of the rule of law, as well as devoted members of the Nuremberg Courtroom Committee.

The dedication of the exhibit on Law Day, May 1, 2008, was the culmination of an extraordinary day in the history of the museum, the VLF, the Richmond bar, and the State Bar. Through the efforts of Mathews, the museum was selected as one of the sites for the World Justice Project. On May 1, 2008, the day-long international program focused on the rule of law and culminated in the dedication of the courtroom exhibit. Madam Justice Rosalie Abella of the Supreme Court of Canada delivered the keynote address and there was not a dry eye in the audience. The courtroom exhibit has been used by the general and legal communities as a means to see that democratic values, rights, and institutions designed to ensure that justice is not only seen to be done, but is done. It has also allowed us to trumpet justice and promote tolerance by reminding people of the injustice and intolerance of the Holocaust.

Thousands of visitors, including many students and teachers, have visited the exhibit and taught the lessons of the Nuremberg Trials. The visual reminders of the world’s response to the Nazi atrocities are invaluable in the understanding, appreciation, and application of the rule of law.

The mission of the Virginia Law Foundation is to promote, through philanthropy, the rule of law, access to justice, and law-related education. The mission of the Virginia Holocaust Museum is to promote tolerance through education. Rarely have two institutions and their missions so perfectly coincided.

Irving M. Blank, a personal injury attorney with Paris Blank LLP in Richmond, is a former president of the Virginia State Bar. He is a fellow of the Virginia Law Foundation and the American College of Trial Lawyers. He is a member of the John Marshall Inn of Court, the Virginia Association of Defense Attorneys, and the Virginia Trial Lawyers Association.

He was a member of the Virginia Bar Association commission that developed the Virginia Principles of Professionalism, an aspirational set of standards for attorney conduct.

Rule of Law continued from page 35

Farmville on April 27. For the first time, students, teachers, and administrators of the two schools came together to talk about their history. The day included remarks by Justice Cleo Powell, Lacy Ward Jr., and local officials, followed by breakout sessions to discuss the presence and absence of the rule of law in our history, and its enduring nature as the basis for hope, justice, fairness, stability, and equality for all people.

Everyone involved left with a greater appreciation for the need to be constantly reminded about how democracy is supposed to work. It was a magnificent day, one we hope to recreate from year to year. This experience, as much as any other so far, makes clear the importance of what we do.

With the encouragement, participation, and support of members of the bar, we are making a difference to teachers, their students, and to the communities in which they live. Together, we will help create new generations of citizens who understand that without enlightened and active citizen participation, democracy is not sustainable.

As we plan for another busy and exciting school year, let’s always remember what Abraham Lincoln told us: “Teach the children so it will not be necessary to teach the adults.”

www.vsb.org
The death penalty is probably the single most controversial and divisive feature of our criminal justice system. The disagreements between those who support the death penalty and those who would curtail or abolish it roil many narrower differences over how the criminal justice system should operate.

But death penalty supporters and opponents all agree on at least one thing: no one should be convicted of a capital crime or sentenced to death because of inadequate legal representation. Capital defense attorneys have long contended (with a lot of evidence to prove the point) that the quality of the defense provided by court-appointed attorneys often explains more about who lives and dies in the American system of capital punishment than do the facts of the crimes charged. From the other side of the issue, the importance of adequate defense representation is equally clear. George W. Bush oversaw more executions as governor of Texas than any state’s chief executive in American history up until that time, but in 2005, as president, he devoted part of a State of the Union Address to announcing that his administration intended “to fund special training for defense counsel in capital cases” because, as he put it, “people on trial for their lives must have competent lawyers by their side.”

It was in this spirit, seventeen years ago, that the Virginia Law Foundation began providing funding to support the Virginia Bar Association’s (VBA) fledgling Capital Defense Workshop (CDW). The impetus for the CDW was Virginia’s adoption, in 1992, of minimum experience and training requirements for lawyers who wished to be considered for appointment in capital cases. Since that first VBA Capital Defense Workshop in November 1993 the CDW has developed into Virginia’s best-attended criminal defense training program, and has provided up-to-date information and creative new ideas from Virginia and national leaders in the capital defense field. This annual day-and-a-half program always includes sessions on forensic science, ethics, and legal and legislative developments, and frequently explores such topics as how to negotiate life-saving plea agreements, how to recognize mental impairments in clients, and how to respond with sensitivity and compassion to murder victims’ families.

At the time of that first Capital Defense Workshop, the U.S. Supreme Court had only recently held, in two cases arising from Virginia, that seemingly minor procedural errors by court-appointed or volunteer lawyers could forfeit forever their condemned clients’ ability to have their constitutional claims heard by any court. Those rather draconian procedural rules are, if anything, even less forgiving today than they were in 1993, so the need to equip court-appointed lawyers with the knowledge and skill to navigate the complexities of capital trial litigation is as great as it ever was.

To be sure, in recent years national capital defense training programs have emphasized more intensive, “bring-your-own-case” training methods that engage existing defense teams with their own pending cases in small workshops. In fact, the modest federal funding that the Bush and Obama administrations have provided for capital defense training since 2005 have gone mainly to support such targeted, “bring-your-own-case” programs around the country (including two in Virginia so far). But as long as Virginia retains the death penalty, there will be a need for at least one large capital defense CLE each year to introduce new lawyers, and re-introduce experienced ones, to recent legal and scientific developments and to current best practices in death penalty trial defense. The Virginia Law Foundation’s steady, generous support for such a program, and the faithful work of the Virginia Bar Association in administering it, have met this pressing need for more than twenty years, and continue to do so now.
Times are challenging, and changing. Recent studies indicate that 80 percent of civil legal needs go unmet in Virginia. Given that one million Virginians live in poverty, and 48 percent of those will encounter a legal problem each year on average, legal aid organizations have 480,000 potential clients in the commonwealth, just in 2013. With budget cuts, legal aid staff is dwindling, and so is its ability to serve underprivileged Virginians. In the current conditions, legal aid can only handle about 35,000 cases a year, for the benefit of nearly 87,000 people. That means almost 400,000 Virginians each year do not have access to the services of a lawyer on civil matters.

The good news is pro bono lawyer volunteerism is on the rise. More attorneys than ever appreciate the need and obligation to give back, and they are looking for paths of service.

The Solution: JusticeServer

The best ways to attack the legal aid crisis are to provide more volunteer pro bono lawyers, improve efficiency to stretch legal aid lawyers’ capability, and develop a centralized organization for the delivery of services around Virginia. JusticeServer provides all of these and more.

At the Supreme Court of Virginia’s 2010 Pro Bono Summit, leaders at Capital One pledged to build for legal aid a state-of-the-art information management and case referral system. Capital One began leading a collaborative project team composed of members of the Greater Richmond Bar Foundation (GRBF), the Central Virginia Legal Aid Society (CVLAS), the Legal Aid Justice Center (LAJC) and the Virginia Bar Association Pro Bono Task Force. This core team deconstructed the current processes of civil case intake, case management, and case placement with private bar volunteers. The result was the creation of JusticeServer, an online case management and pro bono opportunity matching system.

With an internet connection, legal aid staff can now screen client eligibility, provide legal service, and collect required case information on the JusticeServer system — tripling functionality for less cost. From JusticeServer, staff can track case activity, attach documents or pleadings, or even e-mail the client. Supervisors can track individual and team productivity, and monitor the status of cases. Any data entered into JusticeServer can be tracked, tallied, and analyzed through a robust reporting feature.

Besides being a legal aid nerve center, JusticeServer is also a lawyer recruitment tool, a case referral system, a website, and a virtual law library. Through its Pro Bono Portal, www.justiceserver.org, JusticeServer provides a centralized location for any interested attorney, law student, or paralegal to register and create a profile of pro bono interest (practice area and location). The profile is used to filter the available cases of interest and to trigger e-mail notifications about case availability.

JusticeServer allows participating legal aid and nonprofit organizations to send cases to the Pro Bono Portal in one easy step. The portal provides levels of secure information for the volunteers to browse opportunities, perform the conflicts check, evaluate the case, and accept the pro bono engagement. The Pro Bono Portal allows legal aid to exchange all client information and relevant documents with the volunteer online, and vice versa.

Current status:

Only Virginia has this technology. A JusticeServer pilot is underway in central Virginia. Thanks to the generosity of the Virginia Law Foundation with a $100,000 grant to the Greater Richmond Bar Foundation, the core team collaborative partnership can continue to enhance the pilot version and expand to other pilot regions, with full deployment throughout Virginia by 2015.

With technology advances, the commonwealth can operate as one region. As
the world shrinks, organizations such as the Virginia Bar Association and the Greater Richmond Bar Foundation can rally and deploy lawyers statewide. With the expansion of JusticeServer, we can make initiatives like distance lawyering, virtual pro bono law firms (Firms In Service), and centralized deployment of specialized law projects realities in the commonwealth.

We thank the Virginia Law Foundation for being justice servers, and partnering in this groundbreaking solution to improve access to justice for hundreds of thousands of Virginians.

Endnote:
1 The active members of the Core Team are: Alexandra S. Fannon (executive director, GRBF), Alex R. Gulotta (executive director, LAJC), Kathleen D. Caldwell (senior attorney, LAJC), Phillip T. Storey (attorney, LAJC), Dan Epstein (finance, LAJC), Stephen E. Dickinson (executive director, CVLAS), Martin D. Wegbreit (senior attorney, CVLAS), Bill Burnet (senior business analyst, Capital One), and Michele Deane (senior project manager).

Alexandra S. Fannon is executive director of the Greater Richmond Bar Foundation. She previously was an assistant city attorney for City of Richmond, representing various city departments in all levels of courts and administrative hearings and providing legal counsel on issues ranging from constitutional to public relations. She has been on the board of directors of the Metropolitan Richmond Women’s Bar Association, the board of directors of local nonprofit CARITAS, and the Local Government Attorneys’ Standing Pro Bono Committee.

1. Pete Johnson of Hunton & Williams and Scott Ositdyk of McGuireWoods were co-chairs of the Virginia Bar Association’s Pro Bono Committee when the JusticeServer project began.
2. John G. Finneran Jr., general counsel and corporate secretary of Capital One Financial Corporation, brought a team of experts to the project.
3. The Capital One team (l–r): IT Director Andy Schwarz, Michelle Deane for supply chain management, Brent Timberlake from the legal department, Elizabeth Wood in communications, and Bill Burnet from operations.
4. Virginia Attorney General Ken Cuccinelli presents JusticeServer T-shirts to Alex Gulotta (left) and Steve Dickinson, at a luncheon following an April 2012 Pro Bono Summit. The shirt portrays Gulotta’s comparison of the old Legal Aid case management system to a plastic picnic knife — not effective for getting the work done.
Public Service Internship Program: An Investment in the Community and Future Lawyers

by Dana M. Fallon

Each year since 1990 the Virginia Law Foundation has provided public service internship stipends to selected students at Virginia law schools. In 2013, Virginia’s eight American Bar Association-accredited law schools received $5,000 each to fund public service internships during the summer. This important program supports universal access to legal representation and enables law students to work at law-related public service jobs. It also encourages young lawyers to consider careers in public service and to be mindful of the importance of pro bono work. Interns work under the direct supervision of an attorney at an organization in Virginia. These organizations serve a variety of legal needs of the citizens of the commonwealth and provide access to legal services that might otherwise not be available. Some examples of the groups that Virginia law students serve include the Community Tax Law Project, Community Mediation Center, Refugee and Immigration Services, the Office of the Virginia Attorney General, as well as numerous commonwealth attorneys’, legal services, and public defenders’ offices.

The statistics are impressive, with more than $1.2 million provided to more than 400 law students since 1990. But, the numbers alone do not speak to the real impact of the program. These stipends increase the awareness of public service legal opportunities available in the community. Additionally, the stipends allow some students to take on this type of service work who could not otherwise consider an unpaid summer position.

Dan Monahan, a student at George Mason University School of Law, spent last summer at the Fairfax County Public Defender Office. It was a challenge that helped him build professional skills while providing him the chance to make a greater impact on the community. “Without the financial support from the Virginia Law Foundation, I would not have had this opportunity. The grant helped ease the uncertainty about providing for additional support to care for my daughter while I worked,” he said. Monahan’s biggest fear was that if his daughter got sick or when her preschool was closed he would have to take off work, not only reducing the amount of time he had to give back, but also affecting his ability to be a contributing member of the team. “Being an adult law student with a family, I work hard to balance and prioritize the things in my life. The VLF grant went a long way in eliminating a potential conflict in my developing legal career. As a result of my summer grant, I never had to worry about choosing between family and career because the financial support I received meant I would be able to provide both with quality care.”

Malvina Hryniewicz graduated from George Mason in 2010 and currently works at the Office of Special Counsel. Her VLF internship gave her a better perspective on law school and the practice of law. “I first found law school extremely difficult due to the stress of classes and the pressure of grades,” she said. “At the time, I associated the law with competition and academic success. But my time at the Immigration and Refugee Appellate Center showed me that the law could be used to help individuals who were suffering and needed protection. I learned to use the law as a tool to assist real people facing tremendous and unthinkable problems.” With the VLF scholarship opportunity, Hryniewicz realized how lucky she was that her biggest stress in life was law school grades rather than trying to seek a safe place to live. “My experience made me remember that attorneys can make big differences.”

All the participating law schools and students are grateful for the support of the VLF, and especially all members of the bar who support the Public Service Internship stipend program. The efforts of all involved make an immediate and real difference in the lives of Virginia citizens. To find out more about the VLF’s law related education grant programs go online at http://virginialawfoundation.org/grantprogram.htm.

Since 1990, the Virginia Law Foundation Public Service Internship Program has provided more than $1.2 million to give more than 400 students at Virginia law schools the opportunity to learn more about public service while serving low-income clients. Interns from 2012 include Washington & Lee students William Beecher, Jan Fox, and Patrick Sweeney, all class of 2014.
The 2013 Oliver Hill/Samuel Tucker Pre-Law Institute (HTI) continued to affect the lives of young people by nurturing their interest in the legal profession. About thirty students participated in the institute this year — twenty new and ten returning — aged 13 to 21. The 2013 HTI class included students from all over Virginia, one from Maryland, and one from Ohio. These students were also from diverse racial, ethnic, and socio-economic backgrounds.

Held on July 7–12, 2013, at the University of Richmond, the institute drew distinguished individuals from the legal profession, dedicated and committed to increasing diversity in the legal profession. Judges Roger L. Gregory of the U.S. Court of Appeals for the Fourth Circuit, James R. Spencer of the U.S. District Court for the Eastern District of Virginia, and Justice Cleo E. Powell of the Supreme Court of Virginia spoke with the students who toured their courthouses. Delegate Jennifer L. McClellan of the Virginia General Assembly visited the students and led a mock session on how bills become laws, after which the students toured the Virginia Capital. Richmond City Sheriff C. T. Woody and Tony Pham, general counsel of the Richmond City Sheriff’s Office, gave the students an unforgettable tour of the city jail and spent time answering the students’ questions.

On the first evening of the institute, the students participated in an invaluable networking event. Several legal and non-legal professionals volunteered to interact with the students and exchange contact information. The students learned firsthand the art of networking. For personal and professional development, the students also participated in an etiquette dinner facilitated by a professional. This program allowed the students to understand fully the importance of dining etiquette and protocol, and how they will continue to play an important role in their lives as they pursue further education and their careers.

Throughout the week, the students prepared for a mock trial held on the last day of the institute. Session topics included opening statements, closing arguments, direct and cross examination, and evidence. We thank Raymond M. White, executive director of Virginia Continuing Legal Education, for the extensive and comprehensive training he provided. The students also had the opportunity to hear from and ask questions of a panel of admissions officers from Virginia Commonwealth University and the University of Richmond, and from professionals representing traditional and alternative legal careers.

The 2013 HTI class graduated in style at the end of the week. Families and friends attended the graduation. The banquet’s keynote speaker, Douglas B. Smith, director/assistant general counsel at Capital One, addressed the realities of the legal profession, inspiring the students on how they can each play their role in standing out and succeeding.

We have no doubt that in less than ten years the 2013 HTI class will represent our profession well.

Latoya C. Asia is an associate at McGuireWoods LLP in Richmond. She counsels and represents employers in various aspects of employment-related litigation and labor law. She has served as co-director of the Oliver Hill/Samuel Tucker Pre-Law Institute since 2011. She recently returned from a one-year missionary trip to Niamey, Niger, West Africa, where she taught high school sociology, Spanish, and U.S. History.

Providence E. Napoleon is an associate at McGuireWoods LLP in Richmond. She represents clients in antitrust and trade regulation, class actions, and complex commercial litigation. She also conducts internal investigations and represents clients who are being investigated by federal and/or state agencies. She has served as co-director of the Oliver Hill/Samuel Tucker Pre-Law Institute since 2011.
Virginia CLE Helps Attorneys to Help Others

by Raymond M. White

On my first day at Virginia CLE I was asked an excellent question by one of our staff members: “What makes you want to take a job like this?”

While it was something I’d never asked myself, I knew the answer right away. Having practiced law for fifteen years, I knew the awesome responsibility of having a client on the other side of the desk — it was something I took very seriously. I knew the look — the look that said I was the most important person in a client’s life, or in the life of a loved one. And my look hopefully told them I’d do all I could to get them the best outcome possible, and that I felt confident in my ability to do so.

Whether it was defending a loved one accused of a crime; helping a divorcing parent get as much parenting time as possible; or helping a musician, a writer, actor, or a small business person navigate contracts that could change their lives, those moments made me realize that attorneys who cheat themselves out of meaningful continuing legal education actually cheat more than just themselves. For attorneys to do their job properly, and to sleep well at night (I know you know what I mean), it’s incumbent upon us to make sure we really know our stuff.

So as for my answer: I want to be an important part of Virginia CLE as we help attorneys gain the requisite skill, confidence, and professionalism so they never feel they are letting their client down … or letting themselves down.

I also want to help give our legal community what we need to enhance the administration of justice across the commonwealth, and I want to help lawyers sleep well at night.

You may know that Virginia CLE has been in existence since 1960 and continually strives to be the top quality provider of educational materials to help meet the continuing education needs of the Virginia legal community, and to help Virginia attorneys practice proficiently, competently, professionally, and ethically throughout their careers.

You may also know that we are the Virginia State Bar and Virginia Bar Association sponsored CLE provider in Virginia. We are a not-for-profit, receiving no state funds or dues. We strive to be financially self-sufficient by generating revenue to cover both operating expenses and long-term capital needs while offering the fairest prices possible to our customers.

But one thing about Virginia CLE many attorneys may not know is that we are a proud branch of the Virginia Law Foundation (VLF) tree. And that some of our finest faculty members and highly valued CLE committee members are CLE fellows.

In fact, in addition to its philanthropic endeavors, the VLF supports legal education at all levels and in many ways, including within the legal profession, through Virginia CLE, and in the community to consumers, educators, young adults, the elderly, visually handicapped, and others through educational videos, pamphlets, presentations, and workshops.

This broad commitment to education is one of the many things I find so appealing. Now in my current role as executive director of both organizations I hope to forge an even stronger bond between the VLF and VACLE.

As the strength of the VLF in so many ways rests on our collaboration with other organizations such as the VSB and the VBA, so does the strength of Virginia CLE. Now is clearly the time for us to strengthen ourselves from the inside out, to take stock of what we do, why we do it, and what we want to do into the future. It is also the time to use this strength to join in collaborations across all of Virginia’s legal service organizations to be sure we can and will fully support every attorney who sits behind a desk — and the client sitting across from them.

Raymond M. White is the executive director of Virginia CLE and the Virginia Law Foundation. He previously worked as a prosecutor and in private practice in New York, as chief operating officer of the National Institute for Trial Advocacy at The Notre Dame School of Law, for the Michie Co., and as a screenwriter in Los Angeles and songwriter in Nashville.
The Arc of Opportunity

by Manuel A. Capsalis

It is said that the privilege of public service is its own reward. I know of no better example of this than the honor bestowed upon those of us who have served as stewards for the Virginia Law Foundation. As the philanthropic arm of Virginia’s legal profession, over the last thirty-nine years the foundation has granted almost $24 million throughout our commonwealth to promote and protect the rule of law, improve access to justice, and support law-related education.

The VLF’s history of grant-making in addressing the legal needs of our fellow Virginians is simply astounding. As the articles within this issue of Virginia Lawyer wonderfully illustrate, the foundation has supported and sustained countless legal projects large and small, statewide and local. As the foundation prepares to celebrate its 40th anniversary in 2014, and for all that is has achieved, it is clear that there is much more work to do and many challenges ahead. With those challenges, however, comes great opportunity. The foundation will continue to make a critical difference, and its unrealized potential is enormous.

We are members of the only self-regulated profession in the commonwealth. The Preamble to the Rules of Professional Conduct sets forth the duties attendant to the practice of law and that go well beyond the ethical considerations in the representation of our clients. Along with the license to practice, each of us carries the unique responsibility of our learned profession. The preamble reminds us that a lawyer is a “public citizen having special responsibility for the quality of justice. . . As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession.”

It is my respectful opinion that no organization is better poised to meet this glorious responsibility than the Virginia Law Foundation. As a long-time board member and now as a past-president, I have been blessed with the opportunity to see the good works of the foundation firsthand. It has been truly inspiring to work with so many dedicated colleagues.

Thank you for the honor of service.
Increasing Your “App”titude: Legal Research Apps for Virginia Practitioners

by Marie Summerlin Hamm

According to the recently released 2013 ABA Technology Survey, 91 percent of the approximately one million attorneys in the United States regularly use a smartphone in the practice of law. Of those, nearly 62 percent are using an iPhone. Increasingly popular Android OS phones have garnered 22 percent of the market. Somewhat shocking is the fact that only 16 percent of lawyers continue to choose Blackberry.

Tablet usage statistics are equally impressive. The first generation iPad was released April 3, 2010. In 2011, only about 15 percent of attorneys used a tablet. By 2012 that figure had increased to 33 percent. This year, 48 percent of all attorneys report using a tablet. Although Windows Mobile has not yet gained a statistically significant share of the market, that is likely to change with the recent release of the new Surface Pro 2 with Windows 8.

The benefits of mobile research are obvious. Just as the advent of online legal research systems obviated the need for hauling volumes from office to court, so has the mobile device obviated the need for lugging a laptop. Lawyers can research, communicate, collaborate and generally stay connected in real-time, all the time.

There are two major types of apps: those designed for Apple’s iOS (available through the iTunes App Store) and those created for the Android OS (available on the Google Play Store). Downloading an app from either is as easy as the proverbial piece of cake. Indeed, one of the features that make apps so popular is their inherent simplicity. Apps are generally not plagued by the complexities and quirks of their software dwelling counterparts. Instead, screens offer users a limited number of task-driven functions.

As mobile devices have proliferated, so have the number of available apps. There are more than 900,000 apps available for iOS and about 866,000 for Android. Not surprisingly, legal-related apps abound. Though it pains me to ignore the plethora of available practice and productivity tools, this article will focus exclusively on legal research apps of interest to Virginia practitioners.

VIRGINIA APPS

Virginia State Bar Mobile Member Access
The Virginia State Bar app is a must for Virginia practitioners. Not only does the app allow access to membership details and MCLE information, it also provides seamless access to Fastcase. Free. iOS. An Android version is in development.

Fastcase
Although the vast majority of Virginia lawyers are undoubtedly familiar with the web-based version of Fastcase, it bears noting that according to the aforementioned ABA Technology Survey, Fastcase is the most popular legal research app, with downloads surpassing both WestlawNext and Lexis Advance. Searchers can use citations, phrases, or keywords. Boolean operators and proximity connectors are allowed. The basic Fastcase app is free to all with registration, although bar members should take advantage of the more robust version accessible via the Virginia State Bar Mobile Member Access. Free. iOS and Android.

dLaw (better known as Droidlaw)
This native Android app developer essentially allows the end user to cobble together a series of free and paid in-app add-ons to create a customized research platform. The free app includes the Federal Rules of Civil Procedure, Evidence, Appellate Procedure, Criminal Procedure, and Bankruptcy Procedure. The U.S. Constitution, U.S. Tax Court cases, and a legal dictionary are also available as free add-ons. The U.S. Code ($14.99), U.S. Supreme Court opinions ($9.99),
the entire Federal Code of Regulations ($14.99), individual CFR titles ($1.99), a wide variety of state codes, and a variety of other resources are also available for purchase. Virginia specific add-ons include the complete Virginia Code ($9.99), Virginia Crimes and Offenses (Title 18.2) ($2.99), Virginia Motor Vehicle Code (Title 46.2) ($2.99), Virginia Criminal Procedure (Title 19.2) ($2.99), and Virginia Civil Remedies (Title 8.01) ($2.99). The app allows users to search, bookmark, copy, share, and annotate text, which can be saved to an SD card for offline access. Free. Android.

**THE USUAL SUSPECTS**

**WestlawNext**
The mobile version of WestlawNext works well on any device, even without an app. That said, both iPad and Android apps are available and provide full access to the powerful WestSearch algorithm, KeyCite, and folders — though the iPad version does seem to offer additional functionality including offline viewing of documents and highlighting. The app syncs automatically with both the WestlawNext website and across all mobile devices, so research is always up to date. Free. WestlawNext subscription required. iOS and Android.

**Lexis Advance HD**
Like the excellent mobile site, the intuitive Lexis Advance HD app allows users to run a search without having to select a specific source. Results can then be filtered by jurisdiction, date, legal topic, key word, or court. Documents and search history stored in work folders synchronize with your web-based Lexis Advance application. You can even view documents and make notes offline and then synch any changes. And it is Lexis, so Shepard’s evaluation is readily available. Free. Subscription required. iOS. There is also a separate LexisNexis Get Cases & Shepardize app that, as the name implies, allows quick retrieval of a case and codes by citation and features an at-a-glance Shepard’s analysis. Free. Subscription required. iOS.

**Bloomberg Law and Bloomberg BNA**
In 2010, Bloomberg's renowned news, business, company and financial data was coupled with the research and in-depth analysis created by highly respected Bureau of National Affairs (BNA) reporters, correspondents, and practitioners. All of this expert knowledge was loaded onto an intuitive, sophisticated platform also offering primary and secondary legal resources, dockets, filings, treatises, and rules. Bloomberg Law has taken the legal information world by storm. The law school market has been particularly welcoming as a whole new generation of soon-to-be lawyers is introduced to the electronic counterpart of the once ubiquitous but now infrequently encountered black BNA binder set. Both Bloomberg Law and Bloomberg BNA function well on any mobile device, but the Bloomberg Law Reports app offers easy access to reports in practice areas including tax & accounting, labor & employment, intellectual property, banking & securities, employee benefits, health care, privacy & data security, human resources, and environment, health & safety. Reports can be marked as favorites for future reference. Free. Subscription required. iOS only.

**CCH IntelliConnect**
CCH IntelliConnect allows subscribers on-the-go access content such as Tax Tracker News and CCH Mobile alerts. The newest release employs a tiled, widget approach and lets a user customize the homepage. In addition to relevant Aspen treatises, content includes IntelliConnect’s Smart Charts, State Tax Reporters, rate tables, and citation templates. Practice areas include corporate governance, federal banking, financial reform, and secured transactions. Subscription required. iOS and Android.

**LoisLaw Connect**
Another product from publisher Wolters Kluwer, LoisLaw Connect is a comprehensive legal database that includes primary law, forms, and Aspen treatises. Users can search by keyword, case name, or citation. Features include a clean search interface, federated and advanced search options, hyperlinks to related cases and regulatory content, and the ability to save and e-mail search results. A rather unique feature of this app is the ability to purchase primary law access in increments of forty-eight hours, one week, or one month rather than committing to a lengthy subscription. Free. Subscription required. iOS.

**HeinOnline**
HeinOnline boasts the world’s largest image-based legal research database. Best known for its extensive PDF collection of law reviews and journals, HeinOnline’s available libraries also include the Congressional Record, Federal Register, CFR, treaty collections, historic legal treatises, and much more. Content is fully searchable, with a variety of advanced search features available. Additionally, resources can be retrieved by cita-

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**INCREASING YOUR "APP"ITUDE: LEGAL RESEARCH APPS FOR VIRGINIA PRACTITIONERS**

Shepard’s evaluation is readily available. Free. And then synch any changes. And it is Lexis, so can even view documents and make notes offline your web-based Lexis Advance application. You history stored in work folders synchronize with topic, key word, or court. Documents and search.
tion or electronic table of contents. Free. Subscription required. iOS and Android.

**ALTERNATIVE LEGAL RESEARCH APPS**

**Constitution Annotated**
Created jointly by the Library of Congress, the Senate Committee on Rules and Administration and the Government Printing Office, this app is the mobile version of the print *Constitution of the United States of America: Analysis and Interpretation*. It features the full text of both the Constitution and the treatise, including clause by clause legal analysis. It lists all federal, state, and local laws struck down by the Supreme Court and all cases where the Court overturned its prior precedent. There are tables of contents and cases as well as an index. Free. iOS. An Android version is in development.

**LawStack**
This app includes the U.S. Constitution, Federal Rules of Civil Procedure, Appellate Procedure, Evidence, Bankruptcy Procedure, and Criminal Procedure at no cost. Additional titles may be downloaded in the app. Free. iOS.

**Push Legal**
Although Virginia has not yet been added to the growing number of jurisdictions covered by Push Legal, this popular app, designed by lawyers for lawyers, still has much to offer. It attempts to make needed information available on demand, much as it would be found in a deskbook. Content includes the usual selection of federal rules and selected state materials. A distinguishing feature is that it includes annotated case law and smart linking to Google Scholar. Free trial. Subscriptions begin at less than $1 per day. iOS and Android.

**MyCongress**
This app provides detailed information about U.S. Congressional officials, allowing users to track news, video, and Twitter feeds. It also incorporates a direct link to each legislator’s website as well as to official Open Congress profiles. Free. iOS.

**Congress**
This app offers users real-time notifications of votes, laws, floor activity, and other congressional activities. Users can search lawmakers by state, house, or senate, and view how they voted on legislation. Free. iOS and Android.

**Rulebook**
An innovative app that obviates the need for pocket parts with automatic updating, Rulebook is a must have. The basic app includes a number of free titles, including the Federal Rules of Evidence and U.S. Constitution. Users can then personalize their platform with additional low-cost federal and state rules. Those resources are then kept current by automatic updates — no more pocket parts. It is also the only app which offers *The Bluebook: a Uniform System of Citation* as an in-app purchase. ($39.99) The app offers many functional features including the ability to highlight (in a variety of colors), take notes, copy, print, and bookmark selected text. Users can navigate easily from rule to rule by swiping and can toggle between multiple authorities with Rulebook’s multi-task function. Free. Most add-ons are $1.99. iOS.

**OpenRegs**
With this app, the *Federal Register* is always at your fingertips. Users can locate recently issued notices of final and proposed rule-making, and browse regulations by agency or comment periods that were recently opened or are soon closing. Free. iOS

**OyezToday**
Created by the Oyez Project at Chicago-Kent School of Law, this app offers the latest information and media on current cases in the U.S. Supreme Court. The app provides searchable audio of oral arguments and transcripts, up-to-date summaries of the Court’s most recent decisions, and copies of the full decisions. Free. iOS and Android.

**PocketJustice**
Pocket Justice claims to bring the U.S. Supreme Court “down to earth” with its innovative and interactive app. The application includes voting alignments and biographical sketches for all 110 of the Court’s past and present justices and includes audio of hundreds of hours of oral arguments and opinion announcements. A distinguishing feature is synchronized, searchable transcripts which identify all speakers. $0.99. iOS and Android.

**REFERENCE**

*Black’s Law Dictionary*
One of the most well-known and well-respected of all legal reference titles, *Black’s Law Dictionary*,

**iWriteLegal**
This app includes legal writing tips and checklists to assist with editing and revising legal documents. Free. iOS.

**Nolo’s Plain English Law Dictionary**
This popular app offers a no cost alternative to the *Black’s Law Dictionary* mobile application. Free. iOS and Android.

**Osborn’s Concise Law Dictionary**
Offering definitions of more than 4,700 legal terms, the Osborn’s app permits users to search or browse for terms. Other features include cross-references and the ability to bookmark selected terms. $13.99. iOS

**Wolfram Lawyer’s Professional Assistant**
This innovative legal reference tool provides access to a plenitude of helpful information. Features include a legal dictionary, quick access to statutes of limitations for each state, crime rate and demographic data, a variety of calculators, and more. $4.99. iOS.

**Legal Edge**
Developed by and streamed through JD Supra, the Legal Edge app offers news alerts, updates, newsletters, and case filings. Subject areas include real estate, banking and finance, immigration, insurance, consumer protection, taxes, bankruptcy, intellectual property, health law, labor and employment, legal marketing and more. Free. iOS

**LexisNexis Tax Law Community**
Although limited in scope, this app is excellent for practitioners seeking news, analysis, and commentary on emerging tax issues. Free. iOS.

**Learning More About Apps**
If you are interested in more information about the range of legal apps available, Tom Mighell’s *iPad Apps in One Hour for Lawyers*, published in 2012 by the ABA’s Law Practice Management Section, is an excellent starting point. The book introduces basic concepts and covers both productivity and legal research apps.

If you prefer something other than a frontal search assault on the nearly one million apps available for each mobile operating system, check out the *Mobile Apps for Law* database compiled and maintained by Infosources Publishing, provider of basic reference sources for lawyers, law librarians, legal researchers and information professionals since 1981. A $50 annual subscription is required to enable all search features, but even the free components of the site are quite useful. Additionally, the paid site offers an RSS feed providing information on the latest mobile apps that have been released for legal research and legal utilities. The feed is accessible at www.mobilappsforlaw.com and can be subscribed to through any news reader.

Additionally, articles, blog posts, and, of course, law library research guides on the topic also abound. At the end of the day, all that is required is a willingness to expand your technical horizons and increase your “app”itude.
For more than half a century, Virginia’s antebellum debts loomed over the political and economic landscape of the commonwealth. In the years following the Civil War, Virginia’s politicians grappled to formulate an approach that would both reduce the financial burden on the state and satisfy its creditors. A longstanding source of attention and debate centered on the obligations of West Virginia as related to this prewar debt. After years of discussion, political posturing, and various funding schemes, Virginia presented the case to the Supreme Court of the United States in 1906. Over the course of the next twelve years, the Court would hand down a series of decisions in the case that would eventually lead to a resolution — a financial settlement between Virginia and West Virginia of their much debated debt.

**Origins**

The origins of the controversial Virginia debt dated to the mid-1820s, when the Virginia government embarked on an ambitious campaign of funding internal improvements. Funds dedicated to rivers, canals, roads, turnpikes, railroads, and bridges served the dual purpose of stimulating the economy and improving transportation networks. While these efforts also helped mitigate longstanding sectionalism between eastern and western Virginia, issues concerning voting, representation, and taxation continued to be a source of contention between the regions.¹

By 1861, sectional discord within the expansive state had reached a breaking point. Following Virginia’s secession from the United States a series of Unionist conventions were held in the western town of Wheeling. At the Second Wheeling Convention, held in June 1861, the “Restored Government of Virginia” was organized. This government, which declared the government in Richmond did not represent Virginia, elected a governor and received recognition by President Lincoln as the legitimate government of the entire state. Efforts to formally separate the counties of northwestern Virginia and establish a new state soon moved forward. After voters approved the new constitution of West Virginia, Congress passed a statehood bill that President Lincoln signed in December 1862. A revised constitution was adopted the following March, and on June 20, 1863, West Virginia was formerly admitted to the Union.

Throughout the process to statehood, the new state recognized the prewar debts of Virginia. First, a provision from an ordinance of the Wheeling Convention acknowledged the debt and directed the legislature to determine the extent of the obligation “as soon as may be practicable” and to “provide for the liquidation thereof.”²

The new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said State during said period.²

Article 8, Section 8 of the Constitution of the State of West Virginia also acknowledged the debt and directed the legislature to determine the extent of the obligation “as soon as may be practicable” and to “provide for the liquidation thereof.”³

Following the Civil War, efforts to apportion and settle the debt became viable. During the next several years, authorities in Virginia and West Virginia made unsuccessful attempts to determine
Frustrated with the inability to adjust the debt by negotiation, Virginia concluded that a resolution to the matter may only be reached in the Supreme Court of the land.

The proportion of the debt obligations of each state. Reconstruction in Virginia combined with a suit before the Supreme Court seeking a determination of the status of two border counties proved significant obstacles. In 1871, with Reconstruction complete and the border issue nearly resolved, Virginia's legislature proposed to have a group of commissioners arbitrate the debt. West Virginia rejected the proposal and instead created a debt commission to visit Richmond and conduct research in the records of the state. However, this method of ascertaining the debt was frowned upon by Virginia's governor and a reciprocal commission was not appointed.

To manage state debts that had ballooned to more than $45 million, Virginia's legislature passed the first in a series of funding acts. The first act, passed by the legislature in 1871, called for Virginia to pay two-thirds of the debt, with West Virginia assuming the remainder. This calculation and apportionment of the debt was based on the assumption that at the time of its separation West Virginia contained "about one-third of the territory and population of Virginia." This independent determination of West Virginia's share of the debt, which lacked any definitive basis, would prove to be a primary source of contention in the years to come.

In the decades that followed, Virginia's legislature passed additional funding acts. By the early 1890s, Virginia had settled and adjusted the two-third liabilities it had accepted two decades earlier. In 1894, the Virginia legislature provided by joint resolution for the adjustment of the proportion of debt owed by West Virginia. Back and forth communications for more than a decade resulted in little progress, as West Virginia's governor and legislature refused to accept Virginia's steadfast assertion that they were responsible for one-third of the prewar debts. Frustrated with the inability to adjust the debt by negotiation, Virginia concluded that a resolution to the matter may only be reached in the Supreme Court of the land.

The Suit Commenced
On February 26, 1906, the Commonwealth of Virginia filed its bill of complaint in the U.S. Supreme Court, seeking "an adjudication of the amount due the former state by the latter as the equitable proportion of the public debts of the original state of Virginia" that West Virginia had assumed upon statehood. Virginia asserted that West Virginia had repeatedly recognized its liability for a just portion of the debt, and that the one-third division allocated by the commonwealth represented a just and equitable proportion. West Virginia filed a demurrer contending the Court lacked jurisdiction to resolve the dispute, but the Court disagreed in its first ruling in the matter.

After the overruling of the demurrer in May 1907 and the filing of West Virginia's answer to the complaint, counsel for both states proposed that the case be referred to a special master for the purpose of ascertaining West Virginia's liability. The Court handed down its second decision in May 1908 and referred the case to a master who was instructed to examine evidence, consult with the authorities of both parties, and present to the Court a report of his findings. Charles E. Littlefield of Maine, recommended by West Virginia, was selected by the Court as the special master.

Over the course of the next fifteen months, accountants and attorneys for both states conducted extensive research in Virginia's records. Several hearings were held in which schedules were reviewed and argued. Following his review of testimony and evidence, Littlefield prepared an extensive report of more than 200 pages.

Littlefield determined that on January 1, 1861, the public debt of Virginia amounted to $33,897,073.82. He agreed with the conclusions reached by both states concerning the assessed valuation of the territory constituting each state and their respective population. Of the remaining questions the master was charged with determining, the most significant and controversial concerned whether interest on the public debt was an ordinary expense of government. Littlefield held that the interest paid on public debt was indeed an ordinary expense and calculated that Virginia had paid more than $18 million in interest prior to January 1, 1861. This determination, and the report overall, was viewed by many as favoring the assertions of Virginia in the dispute.

In January 1911, the matter again returned to the Court where both sides presented their arguments by way of briefs and oral argument. In
its most noteworthy ruling to date in the proceeding, the Court calculated that the debt was $30,563,861.53 as of January 1, 1861. Regarding the debt as general and assumed for the benefit of the entire state and not a particular region, the Court declined to attempt a determination based on the location of improvements and their cost. Instead, the Court adopted the master’s view that an apportionment of the debt was best determined by utilizing the estimated valuation of real and personal property in the states (excluding slaves) at the date of separation, June 20, 1863. Using this method, the Court calculated that West Virginia was responsible for 23.5 percent of the debt, a sum of $7,182,507.46.7

While the March 1911 ruling of the Court signified noteworthy progress in the dispute, the issue of West Virginia’s liability to pay interest on the debt remained open. In an expression of optimism, the Court directed the two states conference in the hope of resolving the matter.

...this case is one that calls for forbearance upon both sides. Great states have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.8

Unfortunately, such confidence was misplaced. Progress toward an eventual resolution had only just begun.

Per the Court’s direction, members of the Virginia commission appointed many years earlier began to plan for negotiations with their counterparts from West Virginia. When West Virginia failed to promptly organize a committee to conference, Virginia filed a motion requesting the Court to “determine all questions left open by the decision of March 6, 1911.” While holding that the questions should be disposed of without excessive delay, the Court ruled that West Virginia had not attempted to shirk its responsibility and obligation.9

By 1913 the committees from both states had begun to conference. West Virginia argued that the Court’s 1911 order to conference was for the purpose of evaluating West Virginia’s share of both principal and interest, while Virginia believed the matter of interest was the only issue of note remaining unresolved. Frustrated with the lack of progress, Virginia petitioned the Court for a final decree in October 1913. However, a patient Court remained unmoved and instead granted West Virginia additional time to attempt a resolution.10

When the matter again came before the Court in June 1914, it granted West Virginia’s request to file a supplemental answer to Virginia’s original 1906 complaint and explain how certain credits should be applied in calculating its portion of the debt principal. While noting that such action by the Court was highly irregular, the opinion explained the unique nature of the case. The matter was once again directed to Master Littlefield.11

In his report dated January 1915, Littlefield notified the Court that additional assets and investments, not previously disclosed, resulted in a net credit to West Virginia in the amount of principal owed. He also determined that West Virginia was indeed liable for interest on the debt for more than a fifty year period from 1861 to 1915. Largely following Littlefield’s recommendations, the Court ruled that West Virginia’s total obligation was $12,393,929.50, with additional interest of 5 percent per annum until the entire debt was discharged.12

The Debt Resolved
In 1916, Virginia petitioned the Court for a writ of execution against West Virginia for a money judgment in connection with the Court’s prior ruling. Determining that the West Virginia legislature had not met during the intervening period, the Court denied the petition.13

Two years later, following a long period of inactivity by the West Virginia legislature, the Court issued its ninth and final decision in this protracted dispute. In its opinion, the Court asserted the finality of its June 1915 ruling, that the Court had the authority to enforce the judgment, and that Congress had the power to secure the enforcement of a contract between states.14 After continued discussions with the Virginia commissioners, the West Virginia legislature passed legislation on April 1, 1919, providing for the payment of West Virginia’s share of the debt. Under the legislation, the amount would be settled by a combination of bonds spread out over the course of the following twenty years and an initial cash payment. On April 18,
1919, a check for $1,062,869.16, representing the largest single payment ever made by the state, was presented to the attorney general of Virginia at a ceremony between the two commissions. By 1939, West Virginia’s proportion of Virginia’s debt had been liquidated. Finally, after nearly eight decades, countless meetings and years of litigation, this unique and unparalleled controversy finally drew to a close.\(^{15}\)

**Endnotes:**


3 Id. at 26.


6 CHARLES LITTLEFIELD, REPORT OF SPECIAL MASTER (1910).


8 Id. at 36.


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**E-Discovery continued from page 27**


5 The Richmond Journal of Law and Technology (University of Richmond School of Law) presents an annual Spring symposium about e-discovery and presents the papers at http://iolt.richmond.edu/. See, e.g., *E-Discovery In a World of Cloud Computing, Social Networking, and Data Hording* (Spring 2011, issue 3).


7 Id.


9 Id.

10 Id.
In honor of the Virginia Law Foundation’s 40th anniversary, we celebrate some of Virginia’s most important research tools, the continuing legal education sources published by Virginia CLE, the foundation’s nonprofit educational division. Virginia CLE offers seminars and publications in many formats, including live, on-site seminars, and popular online and USB flash drive seminars. Each year Virginia CLE presents approximately eighty-five new seminars in all practice areas, offered as live on-site programs, video on-site replays, webcasts, or telephone seminars. In addition, the publisher offers more than 300 previously presented programs for online viewing or on USB flash drive.

This article focuses primarily on the deskbook sources that are the go-to materials in many subject areas for Virginia practitioners. The publisher offers all these sources on CD, USB, or downloads. The titles include the forms that practitioners savor as good starting points for their clients’ needs. These forms account for many reference desk success stories for practitioners who rely on Gouldman’s Virginia Forms and are disappointed when that group does not provide the specificity they want. When I refer the patron to a CLE, the response consistently is, “I found exactly the language I need.”

Virginia CLE also bundles at significant discounts related publications into “libraries.” The following descriptions outline the libraries and their contents:


**Business and Commercial Law:** *Choosing a Virginia Business Entity* (3d ed. 2009) includes a helpful chart comparing the attributes of C and S corporations, general, limited and limited liability partnerships, limited liability companies, and business trusts and allows the practitioner to choose among the different business forms to determine the best client match. *Limited Liability Companies in Virginia* (4th ed. 2012) covers topics including formation, dispute resolution, taxation, use in estate planning and real estate, and termination. It also addresses state and federal legislative changes. *Corporations and Partnerships in Virginia* (2009) covers many topics, including formation planning, general corporate governance and management, sales of assets, mergers and acquisitions, redemptions, and liquidations.

**Civil Litigation:** *Civil Discovery in Virginia* (3d ed. 2009) moves through the preparation of a comprehensive discovery plan, possible ethical problems, and court expectations when the attorney faces a discovery obstacle. The forms disc included with the handbook works with a document assembly system called Pathagoras. *The Law of Damages in Virginia* (2d ed. 2008) outlines the factors that determine the amount of recovery in a particular case. Topics include evaluating a case...
for damages, a judge’s decision to increase/decrease jury-awarded damages, punitive damages, damages without proof of loss, and future financial losses. *Objections: Interrogatories, Depositions, and Trial* (2013) covers objections at each stage of litigation from discovery and voir dire to closing argument. Additionally, it addresses written objections to discovery, motions in limine, and pleas in bar. *Appellate Practice – Virginia and Federal Courts* (5th ed. 2012) addresses the needs of an appellate practitioner including preservation of issues for appeal, brief writing, oral argument, and federal and state court procedure. It also addresses recent Supreme Court of Virginia rules changes.

**Criminal Law: Defending Criminal Cases in Virginia** (9th ed. 2012) is a collaboration with the Virginia Association of Criminal Defense Lawyers. It is designed to provide relevant statutory and case material, and also significant portions devoted to tactics and techniques. A Guide to the Rules of Evidence in Virginia contains the full text of the new rules that became effective on July 1, 2012. The Boyd-Graves Conference Evidence Committee collaborated with Virginia CLE on the guide and contributed updated citations and descriptions of recent case law. The Guide is Virginia CLE’s best-selling title. *Trial of Capital Murder Cases in Virginia* (5th ed. 2013) addresses many unique issues related to this type of litigation. The publication provides tables of relevant cases grouped by defendant’s surname and citation, by degree of aggravation and mitigation, by aggravator, and by Virginia Code section. A new section addresses issues related to the ineffective assistance by counsel. *Defense of Serious Traffic Cases in Virginia* (3d ed. 2012) includes analysis of the different aspects of scientific evidence relied on to support the methods of proof. *Mental Health Experts: Roles & Qualifications in Court* guides a practitioner through evaluating experts and understanding who is qualified to do what and when. It also includes trial preparation sources including voir dire questions for many key types of mental health professionals, direct and cross-examination samples, an acronym glossary, and professional association contact information.

**Employment:** *Employment Law in Virginia* (4th ed. 2010) is a comprehensive overview of statutory, regulatory, and common law issues and is offered with the companion *Virginia Employment Practices and Forms* (2007 & Supp. 2011). The latter is intended to provide practical advice on the use of more than thirty forms related to employer policies that become the subject of a dispute. It includes summaries of the revisions to the Fair Labor Standards Act. *Workers’ Compensation Practice in Virginia* (8th ed. 2011) addresses not only the issues for the workers’ compensation practitioner, but also employment attorneys, personal injury attorneys, and corporate counsel.

**Estate Planning and Administration:** Two titles in this series were released with new editions this year. *Estate Planning in Virginia* (4th ed. 2013) is a core tool for new and experienced attorneys and walks practitioners through the entire estate planning process from client intake to completion of representation. It includes ready-to-use forms and addresses recent developments in Federal and Virginia legislation and case law. *Estate and Trust Administration in Virginia* (4th ed. 2013) traces step-by-step the probate process, including initial decisions in the administration process, qualification of the personal representative, probate of the will, and distribution of assets. Practitioners will also benefit from the topics covering tax filing requirements, federal and Virginia estate tax returns, and the fiduciary income tax return. The *Manual for Commissioners of Accounts* (4th ed. 2009) is the product of the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia and includes a list of Virginia Commissioners of Accounts and contact information. *Elder Law in Virginia* (2011) tackles the many challenges unique to this practice area with a special focus on Medicare and Medicaid statutes. The last title in this series is a management tool published by the American Bar Association entitled *How to Build and Manage an Estates Practice* (2d ed. 2008). It covers many topics, including client development, fee agreements, and how technology and ethics have changed the practice area.

**Family:** *Virginia Family Law: A Systematic Approach* (3d ed. 2008 & Supp. 2013) is authored by Professor Richard Balnave of the University of Virginia School of Law. This two-volume title tackles all aspects of family law from the attorney-client relationship through divorce, discovery and trial, custody, property, domestic violence, and interstate divorce and support issues. It includes
more than 200 forms to support each stage of the proceedings. The supplement covers legislative updates including required content to custody and visitation orders, enforcement of equitable distribution awards, and garnishment of federal pensions. *Juvenile Law and Practice in Virginia* (3d ed. 2009) covers the unique proceedings associated with children and adolescents. It includes analysis of factors such as child psychology and development, physical and medical aspects of child abuse and neglect, and substance abuse. *Adoption Procedures and Forms: A Guide for Virginia Lawyers* (5th ed. 2010) provides guidance to the novice and experienced family law attorney with a practical guide to the successful completion of each type of adoption procedure. *Negotiating and Drafting Marital Agreements* (5th ed. 2008) is one of the most heavily circulating items in our collection. The source has added value with nearly 100 available on disc. In another collaborative effort with the ABA, Virginia CLE makes *How to Build and Manage a Family Law Practice* (2006) available to Virginia practitioners. The author shares practical tips, techniques, forms, and checklists from an established specialized legal practice.

**Practice Management and Technology:** *A Guide to Legal Research in Virginia* (7th ed. 2012) assists practitioners with finding Virginia research sources to comply with their ethical obligation for well-prepared representation. The guide covers the primary materials generated from all branches of government, secondary sources and Fastcase, and includes coverage of internet and major vendor sources as well. *The Virginia Lawyer: A Deskbook for Practitioners* (4th ed. 2011 & Supp. 2013) is an excellent source for new attorneys to understand the basics in many practice areas or for the attorney whose regular client presents an unexpected topic to research. For example, it includes general information on managing your law office and professional responsibility, and also tackles specific topics from “administrative law” to “representing debtors and creditors.” *How to Start and Build a Law Practice* by Jay Foonberg (5th ed. 2004) is published by the ABA and made available to Virginia practitioners through Virginia CLE®. It is a comprehensive guide to planning, launching, and growing a successful practice.

Additionally, there are new chapters covering mergers and dissolutions, opportunities created by an aging population, non-lawyer consultants, and globalization of legal practice. *Fee Agreements for Virginia Lawyers* (2004) is designed to assist the practitioner in creating fee agreements that are consistent with professional ethics requirements. Forms are easily modifiable for a particular situation and commentary clarifies the subject areas.

**The Boyd-Graves Conference**

Evidence Committee collaborated with Virginia CLE on the guide and contributed updated citations and descriptions of recent case law.

**Real Estate:** *Real Estate Transactions in Virginia* (3d ed. 2012) is a comprehensive two-volume source addressing issues ranging from the simplest purchase transactions to complex zoning issues. It includes checklists, forms and practical advice for many situations. *Virginia Construction Law Deskbook* (2d ed. 2011) offers expert advice on dealing with builders, owners, insurers, financial institutions, subcontractors, and suppliers at all government levels – federal, state and local authorities. The new edition includes a chapter on subcontractors and suppliers and covers changes to the Virginia Public Procurement Act, use of the federal E-Verify system to verify eligibility of employees on projects involving federal funds, and revision of Public Contracts title of the U.S. Code. *Eminent Domain Law in Virginia* (2012) covers proceedings at both the federal and state level, including expert advice on aspects such as valuation and relocation assistance.

Virginia CLE sources are favorites among many practitioners because of the expert analysis and the specificity of supporting appendices and forms. It is well worth your time to familiarize yourself with these titles and we look forward to forty more years of effective publications from Virginia CLE.

Endnote:

1 For a complete list of Virginia CLE® sources, consult the Virginia CLE publications page at http://www.vacle.org/Publications-c131.aspx.
Access to Legal Services

Harrisonburg Attorneys Honored for Pro Bono Work

Blue Ridge Legal Services, the Shenandoah and Roanoke Valleys’ non-profit legal aid society, recognized four Harrisonburg attorneys for their extraordinary pro bono work during the Harrisonburg-Rockingham Bar Association’s annual Professionalism Seminar held October 9.

Honored were Timothy E. Cupp, Thomas D. Domonoske, Laura A. Evans, and Robert C. Lunger. Mr. Cupp practices law with Cupp and Cupp PC; Mr. Lunger practices law with Wharton, Aldhizer, and Weaver PLC; Mr. Domonoske and Ms. Evans are solo practitioners.

Blue Ridge Legal Services’ president, Dana J. Cornett, and its executive director, John E. Whitfield, presented awards and recognized the volunteers for the quality of pro bono services they provided to their clients and their dedication to promoting equal access to justice for local low-income residents who otherwise could not afford to obtain legal assistance. The pro bono awards presentation is a longstanding tradition recognizing particularly noteworthy pro bono contributions of members of the Harrisonburg-Rockingham Bar Association.

Since 1982, Blue Ridge Legal Services and the Harrisonburg-Rockingham Bar Association have collaborated in this pro bono referral program to provide free civil legal services to financially disadvantaged members of the community. Last year, the bar completed 138 pro bono cases for low-income local residents, logging over 937 hours of donated legal services conservatively valued at over $227,000. Over the last eighteen months, nearly three-quarters of the bar’s firms and solo practitioners were involved in pro bono representation through the pro bono referral program.

Over the last three decades, this program has garnered statewide and national acclaim, including the national Legal Services Corporation’s Rural Pro Bono Attorneys of the Year Award in 1993, the Virginia State Bar’s Lewis Powell Pro Bono award in 1998, the American Bar Association’s prestigious Harrison Tweed Award in 1995, and a Pro Bono Service Award from the Legal Services Corporation in 2011.

As a partner-agency of the United Way, Blue Ridge Legal Services provides free civil legal assistance to low-income residents of the Shenandoah and Roanoke Valleys through its staff and volunteer attorneys across its service area.

The Greater Richmond Bar Foundation hosted its 2013 Pro Bono Clearinghouse Reception on October 24. Attending were (left to right) Scott C. Oostdyk, foundation vice president; Andy Nea, volunteer of the year; Justice S. Bernard Goodwyn of the Supreme Court of Virginia; and Leslie A. Haley, foundation president.
Highlights of the October 4, 2013, Virginia State Bar Council Meeting

At its meeting on October 4, 2013, in Norfolk, the Virginia State Bar Council heard the following significant reports and took the following actions:

**Amendments to VSB Bylaws Regarding Executive Committee Size**

The motion to amend the Bylaws of Council, Part II, Article VI, “Executive Committee,” Sec. 1, changing the total number of members from thirteen to sixteen failed by a vote of 28 to 28.

**Rule Change**

Council unanimously approved amendments to Rules of Professional Conduct 5.5 and Comments 5 and 13 regarding the temporary practice of foreign lawyers.

**Paragraph 13-13 Amendments**

Council approved by unanimous vote the proposed amendments to Paragraph 13-13 regarding participation and disqualification of counsel.

**Clients’ Protection Fund Limits and Assessment**

Council approved 48 to 5 seeking an amendment Va. Code § 54.1-3913.1 to authorize the Supreme Court to continue the $25 CPF assessment beyond June 30, 2015.

Council voted 44 to 12 to refer the proposed per-claim limit increase to $100,000 to the CPF Board for consideration of a gradual phase-in.

**Virginia Code § 2.2-1839 Amendment**

Council approved by unanimous vote pursuing the amendment of Va. Code § 2.2-1839 to include a risk management plan for VSB pro bono volunteers.

**YLC Website and Social Media Policy**

Council approved by unanimous vote the proposed YLC website and social media policy.

Weiner Is President-elect Designee of the Virginia State Bar

Edward L. Weiner, founder and senior partner at Weiner Spivey & Miller PLC in Fairfax, is the new president-elect designee of the Virginia State Bar.

Weiner will take over as president for the 2015–16 year. He will follow Kevin E. Martingayle, who will be president for 2014–15 after the term of Sharon D. Nelson ends.

Weiner is president of the Fairfax Bar Association. He also is a past president of the VSB Conference of Local Bar Associations. In 2012 he was appointed to serve on the Virginia Supreme Court professionalism faculty.

Weiner founded Jazz 4 Justice, a fund-raising model to be used by local bar associations and university music departments to benefit their programs, in 2000. Numerous Virginia universities have joined this partnership between education, music, and law. This event has received an award from the American Bar Association, as well as an award from the VSB for being an innovative fundraising program.

He is a graduate of the State University of New York at Binghamton, and received his J.D. from the University of Richmond and his LL.M in International Law from Georgetown University Law Center.

Weiner is a member of the board of directors of the George Mason University Center for the Performing Arts, serves on the board of directors of the University of Richmond Law School Alumni Association, and is the host of an annual Law Day celebration that benefits the Fairfax Law Foundation’s pro bono programs.

His practice areas are personal injury and medical malpractice.

He will become president at the VSB annual meeting in June 2015.
In Memoriam

Robert Abady Ades  
Springfield  
March 1948 – September 2013

Joseph Hugh Eros  
Fort Richardson, Arkansas  
April 1971 – June 2013

F. Keith Adkinson  
Hartsville, Tennessee  
May 1944 – June 2013

Frank Morris Feibelman  
Richmond  
July 1948 – August 2013

John Taro Akiyama  
Reston  
October 1969 – December 2012

Carter Bruce Foulds  
Winchester  
September 1956 – June 2013

Robert Lee Aston  
Elberton, Georgia  
August 1924 – September 2013

Douglas K. Frith  
Martinsville  
September 1931 – October 2013

Warren McElroy Ballard  
Catonsville, Maryland  
December 1910 – July 2013

Richard A. Graham  
Chevy Chase, Maryland  
November 1945 – June 2013

Robert Lee Aston  
Elberton, Georgia  
August 1924 – September 2013

Valerie Nichole Hale  
Roanoke  
April 1975 – August 2013

John M. Braswell  
Alexandria  
January 1955 – July 2013

Thomas J. Harrigan  
Sun City West, Arizona  
May 1933 – September 2013

Kenneth Paul Bucci  
Charlottesville  
July 1968 – August 2013

G. Duane Holloway  
Williamsburg  
January 1931 – December 2012

Gary Lee Cardwell  
Collinsville  
September 1943 – August 2012

Robert Alan Jones  
Las Vegas, Nevada  
November 1940—September 2013

Rexford R. Cherryman  
Hartfield  
October 1925 – July 2013

John L. Krajsa Jr.  
Allentown, Pennsylvania  
December 1946 – November 2012

Thomas W. diZerega  
Upper ville  
September 1926 – July 2013

Alexander Nicholas Lamme  
McLean  
September 1974 – April 2013

Robert C. Elliott II  
Colonial Heights  
August 1943 – October 2013

Lee M. Modjeska  
Raleigh, North Carolina  
September 1932 – January 1996

Robert John Patch  
Alexandria  
November 1926 – September 2013

John E. O’Brien  
Gainesville  
January 1932 – October 2013

Ronald George Precup  
Alexandria  
June 1942 – May 2013

Mark Bridger Warlick  
Norfolk  
April 1955 – July 2013

Stacy Suzanne Riordan  
Arlington  
February 1966 – August 2013

Local and Specialty Bar Elections

Asian Pacific American Bar Association of Virginia, Inc.  
Quynh-Trang Duc-Thuy Mary Nguyen, President  
Shani Rosanne Else, Vice President  
Lynette Teresa Kleiza, Secretary  
Matthew William Lee, Treasurer

Hill Tucker Bar Association  
Stacy Elizabeth Lee, President  
Myron Demarcus McClees, Vice President  
Crystal Garrett Foster, Secretary  
Devika Edele Davis, Treasurer

Virginia Creditors Bar Association  
Lt. David Benjamin Ashe, President  
Philip Matthew Roberts, Vice President  
William Douglas Moore III, Secretary  
George Ryder Parrish, Treasurer
Task Force Offers Recommendations to Improve Legal Writing

In January, Professor A. Benjamin Spencer, chair of the Virginia State Bar Section on the Education of Lawyers, established a Task Force on Legal Writing chaired by Senior Justice Elizabeth B. Lacy. The need to address the problem of inadequate legal writing became apparent during the 20th Anniversary Conclave on the Education of Lawyers held in Charlottesville in April 2012.

The task force was appointed and began its work in January 2013. In September the task force produced its report recommending that the section support efforts to assess and improve legal writing skills during law school and later in practice, support efforts to include evaluation of legal writing as a component of the bar exam, and encourage CLE providers to offer legal writing seminars. The task force made the following observations and recommendations for section consideration:

Support Efforts of Law Schools
Most legal writing faculty agree that student writing skills in general have declined in recent years. The Virginia law schools are increasing resources devoted to improving writing skills. A number of approaches have emerged to deal with the problem, including an earlier and continuing focus on writing and communication skills by including writing skills in grading standards. Some law school faculty members have suggested a writing component be including in the bar exam to reinforce the importance of clear writing. The task force recommended the section provide an ongoing environment for legal writing groups from all law schools to exchange ideas on best practices and other aspects of legal writing education. The task force also concluded that it should support efforts to identify measurements to assess writing skills during law school and later in practice.

Expanding the Bar Exam
The task force recommended that the section should support efforts to include evaluation of legal writing as a component of the bar exam. As stated in the report, Virginia Board of Bar Examiners Secretary Treasurer W. Scott Street III indicated he was interested in working with the section to find an exam format, other than the Multistate Performance Test, to address legal writing issues. Bar examiners do not now grade based on the quality of writing and they believe time constraints and grading parameters would make such a standard impossible. Thirty-seven states, Washington, DC, and three U.S. territories—though not Virginia—use the Multistate Performance Exam, which has a writing component.

Law Firms
Although the quality of legal writing was a concern expressed by both lawyers and judges at the 2012 Conclave, few law firms responded to a survey sent to them by the task force. The few that did respond said there was little concern with legal writing skills.

Judges
Some judges said they marked up deficient pleadings and sent them back to the drafting attorney. Most said that if the poor writing was not in compliance with the applicable rule in a pleading, an order rejecting the pleading would be entered.

CLE Providers and Programs
The task force recommended that the section should encourage CLE providers to offer legal writing seminars. A survey of CLE providers found that very few offer a CLE for legal writing. The task force supported the proposition that the cachet for teaching in the Professionalism Course might carry over to teaching an intensive writing program, and that the section could assist with identifying lawyers, judges, and professors to serve as faculty members for such a program.

VSB TECHSHOW
Save the Date: May 19, 2014

The Virginia State Bar is sponsoring a VSB TECHSHOW on May 19, 2014, at the Richmond Convention Center. The stellar faculty members are all nationally-known veteran ABA TECHSHOW speakers who will offer a full day of legal technology CLE. Not only is the conference FREE, every lawyer’s favorite price, but lunch is included in the bargain. So mark your calendars now and watch for registration information to appear shortly.
Supreme Court Exhibit Highlights the History of the VSB and VBA

The Supreme Court of Virginia has opened an exhibit titled “The Bar at Work: 125 Years of Building the Legal Profession in Virginia, 1888–2013” on the third floor of the Supreme Court building at 100 N. 9th St., across from the State Capitol.

This exhibit highlights the history of the Virginia Bar Association from its organization in 1888 and also commemorates the 75th anniversary of the Virginia State Bar.

The VSB was formed after the Virginia General Assembly authorized a mandatory, regulatory bar in 1938. The main issue before the bar then was the task of defining the practice of law.

Today, Virginia is one of only three states with a mandatory and a separate state-wide voluntary bar.

For 125 years, Virginia lawyers have exerted a profound influence on the development of the legal system in Virginia through their participation in bar associations. From 1890 to 1910, the bar led the way in raising the requirements for entry to the profession; however, it also created barriers for women, minorities, and foreign born attorneys that were not removed until the twentieth century.

Many of the items and documents displayed were culled from the Supreme Court of Virginia Archives, housed in the law library on the second floor.

The exhibit, which will run through at least August 2014, is open to the public, but people are asked to call the law library at (804) 786-2075 to make an appointment. Exhibit hours are 8:15–4:45 on weekdays.

To read a profile of Chief Justice Cynthia D. Kinsel, and for an article on the Virginia State Bar and Virginia Bar Association, see the December issue of Virginia Living magazine.

Trees for Virginia

One of the premier projects of the VSB’s Senior Lawyers Conference is to continue the late John Tate’s plan to plant more trees in Virginia. In the last two years, the conference has planted more than 7,500 trees plus an Honor Tree in Capitol Square in Richmond for the late Chief Justice Leroy Hassell Sr.

Make your contribution to John M. Oakey, Treasurer, c/o McGuireWoods LLP, 901 E. Cary St., Richmond, VA 23219.

If you are aware of any person or organization that would like trees (they’re free), contact Bruce E. Robinson, bruce.robinsontr@gmail.com. Orders should be placed by January 3, 2014, and the trees will be delivered to be planted in late February or early March.

Save the Date

Virginia State Bar Young Lawyers Conference
12th Annual Celebration of Women and Minorities in the Legal Profession
Bench Bar Dinner

Honoring the newly elected and elevated women and minority member of the Virginia judiciary.

Keynote Speaker
Justice Elizabeth A. McClanahan

Monday, February 10, 2014
The Bull and Bear Club, Richmond

For more information visit www.vayounglawyers.com

Have You Moved?

To check or change your address of record with the Virginia State Bar, go to the VSB Member Login at https://member.vsb.org/vsbportal/. Go to “Membership Information,” where your current address of record is listed. To change, go to “Edit Official Address of Record,” click the appropriate box, then click “next.” You can type your new address, phone numbers, and email address on the form.

Contact the VSB Membership Department (membership@vsb.org or (804) 775-0530) with questions.
The CFAA and Aaron’s Law

by James Juo

The Computer Fraud and Abuse Act (CFAA) is a computer trespass statute that has been called “one of the broadest federal criminal laws currently on the books.” Congress enacted the CFAA in 1984 to criminalize the hacking of computers in connection with national security, financial records, and government property. But the CFAA has been expanded a number of times since then. For example, in 1994 the statute was expanded to allow private entities to assert a civil cause of action and obtain compensatory damages. In 1996, the CFAA was further amended to expand the class of protected computers to include any computer “used in interstate or foreign commerce or communication.”

In the space of a dozen years, the scope of this criminal statute has gone from a limited set of protected computers to possibly every computer in the United States connected to the Internet. The CFAA prohibits “access without authorization” and “exceed[ing] authorized access” to a protected computer. But the CFAA has been called “remarkably vague” on this point.

The Story of Aaron Swartz

Calls to reform the CFAA have increased significantly after the tragic death of Aaron Swartz. At age 14, Aaron was working with leading technologists to craft open standards such as the Really Simple Syndication specification for sharing information on the Internet. He then helped Lawrence Lessig with Creative Commons, a company that promotes the use of simple, standardized copyright licenses that give the public permission to share and use creative works. At age 19, Swartz was a founding developer of Reddit, a widely-used social news website where users can post news links and vote on them. Swartz later became a political activist for Internet freedom and social justice issues, and formed the advocacy group Demand Progress.

In late 2010, Swartz allegedly attempted to access and rapidly download a large number of academic articles from JSTOR (or Journal Storage), a nonprofit organization that provides a searchable database of digitized articles archived from academic journals. Libraries and universities pay a subscription fee for access to JSTOR, where its Terms of Service prohibit downloading or exporting documents from JSTOR using automated computer programs. JSTOR also uses technical measures to prevent such automated downloading.

JSTOR declined to pursue legal action against Swartz after he turned over his hard drives which contained 4.8 million JSTOR documents. But the federal government charged Swartz with violations of the CFAA.

A computer expert for the defense asserts that Swartz did not “hack” the JSTOR website under any reasonable definition — Swartz did not use parameter tampering, break a CAPTCHA gate, or do anything more complicated than automate a process that downloads a file in the same manner as clicking “Save As” from a browser. Whether this defense would have been successful is questionable because the CFAA prohibits more than just traditional hacking.

With criminal charges hanging over him for a year-and-a-half, Swartz was offered a plea bargain requiring a felony term (although his defense counsel could argue to the judge for probation instead). The government would not back off its demand for jail time. Faced with this dilemma, at age 26, Swartz took his own life in January 2013.

Aaron’s Law

In the wake of Swartz’s death, there have been several proposals to amend the CFAA. In June 2013, Rep. Zoe Lofgren, D-CA, introduced a bill titled “Aarón’s Law Act of 2013” to reform the CFAA. The bill would eliminate the “exceeds authorized access” language from the statute and define “access without authorization” to mean obtaining information on a protected computer that the accessor lacks authorization to obtain by circumventing one or more technological measures that exclude or prevent unauthorized individuals from obtaining or altering that information.

“The proposed changes make clear that the CFAA does not outlaw mere violations of terms of service,” but would prohibit “bypassing technological or physical measures via deception (as in the case with phishing or social engineering), and scenarios in which an authorized individual provides a means to circumvent an unauthorized individual (i.e., sharing login credentials).”

Notwithstanding the bipartisan support of Rep. Darrell Issa, R-CA, and Sen. Ron Wyden, D-OR, it may be a lengthy political journey for these legislative proposals. Congress rarely scales back criminal laws,” according to Tim Wu, a professor at Columbia Law School. Proposals to narrow the scope of a criminal statute often also include provisions for increased penalties to avoid a soft-on-crime label.

“To be successful, (the effort to pass Aaron’s Law) will likely take substantial time and require sustained and intense support from all of you,” according to Lofgren. Time will
tell whether momentum will be sustained for Aaron’s Law to become law.

Endnotes:
2 Technically speaking, the CFAA was a 1986 amendment to 18 U.S.C. § 1030, but the common convention is to refer to Section 1030 as a whole as the CFAA. Orin S. Kerr, “Vagueness Challenges to the Computer Fraud and Abuse Act,” 94 MINN. L. REV. 1561, 1561 n.2 (2012). The original 1984 statute was called the Comprehensive Computer Control Act (CCCA).
3 Id. at 1563-64.
4 Id. at 1566.
5 Id. (citing 18 U.S.C. § 1030(g)).
6 Id. at 1567–68 (citing 18 U.S.C. § 1030(e)(2)).
7 Id. at 1571 (“Perhaps the only identifiable exclusion from the scope of protected computers is a ‘portable hand held calculator.’”)
8 See 18 U.S.C. § 1030(a)(2); see also Jennifer Granick, “Thoughts on Orin Kerr’s CFAA Reform Proposals: A Great Second Step,” The Center for Internet and Society (Jan. 23, 2013, 9:43 PM), https://cyberlaw.stanford.edu/blog/2013/01/thoughts-orin-kerrs-cfaa-reform-proposals-great-second-step (“Historically, the CFAA partitioned the world of computer criminals into two camps, outsiders who ‘access without authorization’ and wayward insiders who abuse their position of trust to ‘exceed authorized access’ and obtain information they were not entitled to.”)
13 See also Justin Peters, “The Idealist: Aaron Swartz Wanted To Save the World. Why Couldn’t He Save Himself?” SLATE (Feb. 7, 2013, 9:47 PM), http://slate.me/YevwGC.
15 Id. at 2. The subscription fees are shared with the publishers who hold the original copyrights. Id.
16 See Lessig, supra note 10 (“[JSTOR] figured ‘appropriate’ out: They declined to pursue their own action against Aaron, and they asked the government to drop its.”)
20 Peters, supra note 12; see also Lessig, supra note 2 (“[T]he question this government needs to answer is why it was so necessary that Aaron Swartz be labeled a ‘felon.’ For in the 18 months of negotiations, that was what he was not willing to accept.”)
23 Id.
28 Romm, supra note 25.
Trayvon Martin

Your writer, Clarence Dunnaville (Virginia Lawyer, October 2013), believes that the Trayvon Martin case had important implications for our bar. And, he is correct.

If any homicide case can be called routine, the killing of Trayvon Martin was routine; an open and shut case of self-defense. But, the Florida justice system succumbed to pressure generated by the likes of Al Sharpton and his cohorts who always stand ready to exploit the misfortunes of others to advance their socio/political agenda. I hope that we never witness a perversion of justice such as that in Virginia.

Mr. Dunnaville’s criticism of the defense strategy is ill-founded as well. Surely, it is within the duty of a criminal defense team to question the conduct and character of a shooting victim without being charged with racism. Surely, too, it was their responsibility to challenge the incoherent, contradictory and unpersuasive testimony of Rachel Jeantel, Martin’s friend, without being accused of “disrespecting” her on account of her race.

And, yes, there were press statements which “fueled the flames of racial animosity.” But they were made by the busloads of agitators who came to Florida from all over the country.

Of course, we must take Mr. Dunnaville at his word that he and his family have suffered because they are African American. All I know is, as a member of our bar for forty-seven years, that racial discrimination has long since disappeared from our profession and from the largest part of civil society as a whole.

Thomas P. Dugan
Columbus, OH

A Note from the Editors: We Want Your Ideas

The December 2013 issue of Virginia Lawyer is an example of what our magazine has been and hopes to be. Like every issue, it includes a number of articles with a pre-arranged focus — in this case, law libraries and librarians — and several other features, including a special section celebrating the 40th anniversary of the Virginia Law Foundation. It also includes an unsolicited article by Judge Joseph A. Migliozzi Jr. discussing the value of mental health courts in Virginia, and another by James Juo about the Computer Fraud and Abuse Act and Aaron’s Law. While we didn’t ask for those articles, they were too good to pass up.

It’s that too-good-to-pass-up quality that got those stories published in Virginia Lawyer. We know there are many other articles out there by and about the members of the Virginia State Bar that are just looking for a place to appear. We would like to open up our magazine to those articles.

However, we also know that the solicited articles are equally valuable. With that in mind, we intend to continue our practice of publishing theme issues, but because of space and money considerations, we may ask for fewer theme articles in future issues.

Upcoming theme issues are planned on family law, the Senior Lawyers Conference, trusts and estates, and construction law.

Look for those in 2014.

We want Virginia Lawyer to serve our members. We will continue to educate, inform, and even entertain our readers. We might publish debates among two or more of our members on an issue. We might print interesting profiles by and about our members. A lawyer might want to explore a controversial or evolving point of law. We might get an article from a lawyer just returned from doing pro bono work in another country. We might feature some of the services we offer at the VSB or some of the work done by our committees.

We want your ideas. If you have an idea for an interesting article on a law-related issue that is not tied too closely to the daily news — we are, after all, a periodical, not a daily — please let us know about it. Send a note to Editor Rodney A. Coggin at coggin@vsb.org or Assistant Editor Gordon Hickey at hickey@vsb.org.

Letters

Send your letter to the editor to:
coggin@vsb.org; fax: (804) 775-0582;
or mail to:
Virginia State Bar, Virginia Lawyer Magazine
707 E. Main Street, Suite 1500, Richmond, VA 23219-2800

Letters published in Virginia Lawyer may be edited for length and clarity and are subject to guidelines available at http://www.vsb.org/site/publications/valawyer/.
An Effective Model for Misdemeanor Courts and the Mentally Ill Defendant

by The Honorable Joseph A. Migliozzi Jr.

In 2012, approximately 770,000 felony criminal offenses were committed by people diagnosed with a mental illness.1 This figure does not account for the thousands of minor criminal infractions or misdemeanors committed each day by people afflicted with similar, if not more severe, mental illnesses. Consider the hypothetical story of Jerry.

Jerry is a 45-year-old, Axis I2, paranoid schizophrenic who lives alone in an apartment, almost entirely funded by his monthly social security disability income. He has, in the past, worked with a local community services caseworker to assist with the administration of his medication and his adjustment into community-based housing.

Jerry has lived in a residential, multi-unit apartment building for three years. He has deliberately rigged his apartment with devices to make him feel safe, but each apparatus constitutes a separate fire code violation that his landlord has noticed. Jerry panics, but refuses to make any changes. When approached by law-enforcement officers who attempt to execute service of the notice of violations, Jerry causes a public disturbance in the building and temporarily barricades himself in his apartment. He is subsequently apprehended with minor force, taken directly to a magistrate where he is charged with an additional offense of obstructing justice and held without bond. At his arraignment, Jerry is appointed an attorney who immediately recognizes a potential competency issue and requests a court-ordered evaluation.

There are many cases like Jerry’s that appear before misdemeanor courts in this country each day. In 2011, the General District Court in Norfolk became one of only three misdemeanor courts in Virginia3 to redirect all defendants with mental illnesses to a mental health docket (MHD). This article identifies a model for misdemeanor courts to organize dockets exclusively for people with mental health disorders in an efficient, cost-effective manner that utilizes services that typically already exist in every urban jurisdiction.

Summary of Mental Health Courts and Their Development in Virginia

As a result of de-institutionalizing the mentally ill across the nation in the 1960s, many of those individuals now aimlessly wander city streets, sleep in parks, and often end up in local jails.4 In 1999, the National Institute of Justice estimated that “of the 10 million people arrested and admitted to jail each year, 13% suffer from severe mental disabilities,”5 contrasted with only “2% in the general population”6 who suffer mental illness. In 2006, a Special Report by the Bureau of Justice Statistics estimated that more than 17 percent of the national prison population was mentally ill.7 Of this population, 10 percent were incarcerated in state prisons, 1 percent in federal prisons and approximately 6 percent in local jails.8 In 2012, New York City reported that 24 percent of its prison population had mental health needs, with the largest segment of that population under the age of 25.9

The younger age of inmates coupled with recidivism suggests that local jails will house more mentally ill inmates over longer periods. Our jails have, effectively, become the new state institutions for the mentally ill. Because jail cells were never designed to care for the mentally ill and because jail personnel are not trained mental health caretakers, the result is often no different than what was once considered cruel and inhumane.

Fortunately, some progress has been made to change this bleak situation. The first nationally recognized Mental Health Court began in Broward County Florida in 1997. Subsequently, President Clinton signed into law the Mental Health Courts Bill10 in 2000 to establish a national mental health court system, offering nonviolent, felony offenders with severe mental illnesses an opportunity to participate in a voluntary, supportive, and structured program designed to transition the inmate back into society.

The advent of these “problem-solving” courts helped to alleviate some of the burdens placed on the criminal justice system, but most of the mentally-ill were still falling through the cracks for one reason: Most people in need were committing misdemeanors, not felonies. Consequently, some states started specialty misdemeanor dockets to identify and assist the mentally ill in local jails. Unlike in mental health courts, a misdemeanor inmate does not volunteer to participate in the program. During his intake process or during his stay in jail, an inmate who suffers a mental illness may be diverted to the MHD by the court or upon motion of a lawyer. Once on the docket, the case is treated like any other with respect to ensuring a timely and appropriate adjudication of the offenses charged — with the exception that particular attention is given to the mental-
The court may order an evaluation for competency, assure that previously prescribed medications are available, and order access to a community-based support service to assist the transition of the mentally ill inmate through the criminal justice system.

The Mental Health Docket
Beginning in September 2011, the Norfolk MHD has been called to order at 2:00 p.m. on the first and third Wednesday of each month. Defendants who meet the unique criteria to be placed on this docket no longer languish in jail awaiting medications, psychiatric treatment, or sentencing for their misdemeanor violations. Similarly, the community is assured that the revolving door of recidivism among mentally ill defendants is deliberately monitored by the court and by the various agencies that serve the judicial system.

Making such a docket work requires the cooperation of several large entities. The relationship between the sheriff’s department, which operates the local jail, and the court is most critical. For years, jail officials recognized that their cells were becoming long-term holding facilities for the mentally ill, draining valuable resources needed for other inmates. Similarly, the court noticed that with a random rotation of judges, no time limits for the return of competency evaluations, and little order to the array of mental health services available within the community, this specific segment of the jail population may have been held in custody for longer periods. Thus, a few short organizational meetings between jail representatives and the Norfolk General District Court resulted with the identification of a clear solution—to exercise the statutory authority already provided to the chief judge to organize the docket in such a manner that “allows the court to operate efficiently.”

At each MHD, at least one representative is present from the adult community supervision office (probation), the local community services board, the PACT team (Program of Assertive Community Treatment), the jail’s mental health service provider, the Veterans Administration, the public defender’s office, the commonwealth attorney’s office, and various other agencies that provide independent services throughout the city. A written docket is prepared two weeks in advance, listing all defendants who are pending dispositions and will be in need of services. Each entity represented at the MHD recognizes that simply allotting four hours each month to attend this docket not only serves the needs of the mentally ill and the community, but also furthers their own fundamental mission of service.

Most importantly, the MHD provides an isolated and dignified opportunity for defendants’ family members to be present and to offer background information and suggestions to the court in an effort to determine an appropriate sentencing disposition. In fact, it can be said that family members in attendance provide the greatest service to the MHD and can do so without the embarrassment of seeing their children or siblings paraded before a packed courtroom of less sensitive citizens.

In the end, each representative is present to provide recommendations or options to the court. The court is then tasked, as in any other case, to resolve charges consistent with the law and to discourage similar future behavior through its sentencing dispositions. However, in these unique cases, the court recognizes the additional burden of providing an incentive for defendants to continue their prescribed medication regimen, maintain a stable residence, and find the necessary outpatient services before returning to their communities.

By the time Jerry first appeared before the MHD, two weeks after his initial arrest and arraignment, a competency evaluation was already prepared and provided to defense counsel and the court for review. Jerry was diagnosed as suffering from severe paranoid schizophrenia and bi-polar disorders, yet was capable of understanding the nature and consequences of his behavior and the role of the court. Jerry had a life-long history of mental illness, but as long as he maintained his anti-psychotic medications he was able to function independently in society. Thus, the evaluating psychologist determined that Jerry was competent to stand trial for the ten misdemeanor fire-code violations.

After reviewing the report with Jerry and discussing with him the facts of the case, Jerry’s court-appointed attorney proposed to the prosecutor and the court that a finding under advisement was appropriate, allowing Jerry to be released on bail and giving him an opportunity to remedy the violations and obtain the necessary medical attention to deal with his diagnosis. Jerry would be required to maintain regular meetings with the community services board, where his medication and psychiatric treatment could be monitored. Any violations of this proposal would result in an immediate violation hearing on the MHD, a potential revocation of Jerry’s bond status and a conviction of most, if not all the charges pending against him.

Considering the nature of the charges in this hypothetical, the court accepted Jerry’s plea of guilty to all charges and deferred a final disposition for six months. Twice he returned to court during his six-month probationary period. Each time, he was reported as taking too long to address the fire code violations. Yet, with the encouragement of his case-worker, the city attorney and the court, Jerry finally brought his home into conformance with city code, was able to maintain his residence, obtained supervision for his medication intake, and his case was successfully closed. Jerry served a total of fourteen days in jail.

Conclusion
In 1968, Virginia closed state institutions for the mentally ill and by 1976 there remained only 5,967 in-patient beds for
mentally ill patients who required restoration or civil commitments. As of 2011, that number was reduced to only 1,252 beds. With an overall state population of 7.8 million that same year, 262,000 of whom suffered from serious mental health issues and often committing minor criminal offenses, it’s not difficult to understand why local jails have involuntarily assumed the role of healthcare provider. Yet, as demonstrated in Norfolk and increasingly in misdemeanor courts nationwide, specialty mental health dockets can provide a meaningful and substantial intervention to this unfortunate trend.

(The author recognizes the contributions of Regent University law students Diana Galinis and Wesley Pilon, who served as judicial interns for the Norfolk General District Court in 2013.)

Endnotes:


2 Diagnostic and Statistical Manual of Mental Disorders, Code 310.0, 4th Edition (DSM-IV), 1994 (defining Axis I as the top-level of the DSM multi-axial system of diagnosis, representing acute symptoms that need treatment. Such symptoms include major depressive episodes, schizophrenic episodes, and panic attacks.)

3 Petersburg, VA in April 2011 and Richmond, VA in May 2011 started mental health dockets.


8 Id.

9 Justice Center, the Council of State Governments, Improving Outcomes for people with Mental Illnesses Involved with New York City’s Criminal Court and Correction Systems, December 2012.


11 A defendant may be placed on the MHD by order of any judge who determines there to be sufficient history of mental illness to warrant the community-based services made available by this docket. Additionally, any defendant who is evaluated for competency or sanity is automatically referred to the docket until such time as it is determined that these issues no longer exist or until the defendant is restored to competency.

12 At an average cost of $49 per day to house any inmate in the Hampton Roads area of Virginia, the MHD saves the state an estimated $3,700 per individual. With over 300 inmates processed through the MHD, taxpayers have saved over $1.1 million in initial processing alone. Extrapolating these numbers using the National Institute of Justice and the Bureau of Justice Statistics, if 17 percent of the 10 million people arrested are mentally ill, and housing them in jail costs $49 per day (small towns would be lower and big cities higher), this is a savings of $83.3 million in one year.

13 Prior to the implementation of the MHD in Norfolk General District Court, the average wait for a competency evaluation was ninety days, regardless of the nature of the offense. This was often the result of a system overwhelmed by the needs of this inmate population. With the advent of the MHD, the maximum wait for a written competency evaluation is now fourteen days.

14 “Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish special divisions of any general district court when the work of the court may be more efficiently handled thereby…” Va. Code § 16.1-69.35(4)

15 Had Jerry been deemed not-competent to stand trial, then the court would have to consider restoring him to competency. This could be accomplished at a state hospital, which would require that Jerry be taken into custody until a bed was made available for him. Or, if appropriate, his restoration could be accomplished out of custody through a case worker at the community services board. Prior to the introduction of the MHD in Norfolk, people held in custody awaiting restoration at a state hospital spent on average 150 days in jail before being transported to the hospital. Since the MHD, that time has been reduced to less than 80 days.


17 Id.

Joseph A. Migliozzi Jr. was appointed to the Norfolk General District Court bench in 2009. Beginning in 2002, he served as the southeastern district’s capital defender, representing people charged in death-penalty-eligible cases.
Virginia CLE Calendar
Virginia CLE will sponsor the following continuing legal education courses. For details, see http://www.vacle.org/seminars.htm.

December 13
Ethics Update for Virginia Lawyers 2013
Webcast/Telephone
NOON–2 PM

December 17
Drafting and Negotiating
Indemnification Clauses in Virginia
Telephone
10 AM–11:30 PM

January 7
Representation of Children as a
Guardian ad Litem 2011
Video — Abingdon, Alexandria, Charlottesville, Norfolk, Richmond, Roanoke
8:30 AM–5:15 PM (RICHMOND VIDEO BEGINS AT 9 AM)

January 8
Representation of Children as a
Guardian ad Litem 2011
Video — Tysons Corner
8:30 AM–5:15 PM

January 15
Representation of Incapacitated
Persons as a Guardian ad Litem — 2012
Qualifying Course
Video — Abingdon, Alexandria, Norfolk, Richmond, Roanoke
9 AM–4:05 PM

January 16
Representation of Incapacitated
Persons as a Guardian ad Litem — 2012
Qualifying Course
Video — Charlottesville, Tysons Corner
9 AM–4:05 PM

January 15
The Basics of Bankruptcy Law in Virginia
Live — Charlottesville/Webcast/
Telephone
NOON–2 PM

January 28
Trying Cases in the Western District of Virginia
Video — Abingdon, Charlottesville, Danville
8:55 AM–1:25 PM

January 29
Trying Cases in the Western District of Virginia
Video — Harrisonburg, Roanoke
8:55 AM–1:25 PM

January 30
Trying Cases in the Western District of Virginia
Video — Lynchburg, Winchester
8:55 AM–1:25 PM

January 30
The Basics of Bankruptcy Law in Virginia
Webcast/Telephone
10 AM–NOON

January 31
Hot Topics for In-House Counsel 2014
Live — Richmond
9 AM–1:15 PM

February 5
Elder Law Basics
Live — Richmond
9 AM–4:10 PM

February 5
Advanced Legal Writing: The Tips That You Need to Take Your Practice to the Next Level
Live — Charlottesville/Webcast/
Telephone
NOON–1:30 PM

February 7
Forty-Fourth Annual Criminal Law Seminar 2014
Live — Charlottesville
8:15 AM–5:15 PM

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February 12
Capacity Issues
Telephone
NOON–1 PM

February 14
Forty-Fourth Annual Criminal Law Seminar 2014
Live — Williamsburg
8:15 AM – 5:15 PM

February 20
Capacity Issues
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NOON–1 PM

Virginia Lawyer publishes at no charge notices of continuing legal education programs sponsored by nonprofit bar associations and government agencies. The next issue will cover February 22 through April 13. Send information by January 8 to hickey@vsb.org. For other CLE opportunities, see Virginia CLE calendar and “Current Virginia Approved Courses” athttp://www.vsb.org/site/members/mcle-courses/or the websites of commercial providers.

“Not in Good Standing” Search Available at VSB.org

The Virginia State Bar offers the ability to search active Virginia lawyers’ names to see if they are not eligible to practice because their licenses are suspended or revoked using the online Attorney Records Search at http://www.vsb.org/attorney/attSearch.asp.

The “Attorneys Not in Good Standing” search function was designed in conjunction with the VSB’s permanent bar cards.

Lawyers are put on not-in-good-standing (NGS) status for administrative reasons — such as not paying dues or fulfilling continuing legal education requirements — and when their licenses are suspended or revoked for violating professional rules.

The NGS search can be used by the public with other attorney records searches — “Disciplined Attorneys” and “Attorneys without Malpractice Insurance” — to check on the status and disciplinary history of a lawyer.

Got an Ethics Question?

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

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Marion S. Cooper has joined the Alexandria office of MercerTrigiani as counsel. Most recently she worked as risk management attorney for Dow Lohnes PLLC in Washington, DC, where she managed the firm’s conflict of interests and ethics issues. Previously, she was a conflicts attorney with Hunton & Williams.

Anne W. Coventry, partner at Pasternak & Fidis, has been selected as the new author of Maryland Estate Planning and Probate Laws Annotated, a Thomson-West publication. She will provide editorial oversight and commentaries for the book assisted by Pasternak & Fidis Associate Stephanie T. Perry who will be responsible for research and annotations.

Douglas M. Diffie has joined the Alexandria office of MercerTrigiani as an associate. His practice focuses on general legal matters for common interest community associations, including advising community associations with respect to daily business operations, contract matters, voting and proxy issues, and quorum and meeting requirements.

Mark K. Flynn, general counsel of the Virginia Municipal League, has been awarded the Edward J. Finnegan Award for Distinguished Services by the Local Government Attorneys of Virginia Inc.

John C. Frazer has opened the Law Office of John Frazer PLLC in Fairfax, focusing on firearm-related law including criminal, administrative, and regulatory matters.

James W. Van Horn Jr. is a new partner at Hirschler Fleischer in Richmond. His background is in advising middle-market businesses and private investment funds.

William B. Hubbard has become a partner at Hubbard, Terry and Britt. His practice includes civil and criminal litigation, domestic relations, debt collection, and the general practice of law.

Edward Augustus Mullen of Reed Smith LLP has been appointed to the Virginia Foundation for the Humanities and Public Policy by Governor Bob McDonnell.

Charles D. “Chip” Nottingham is a new partner in Husch Blackwell’s Washington, DC, office, joining the firm’s Transportation and Public Policy, Regulatory & Government Affairs teams.

Jeffrey S. Palmore, former director of policy development and deputy counsel in the Office of Virginia Governor Bob McDonnell, joined Reed Smith LLP’s Global Regulatory Enforcement Practice in Richmond on September 30. Palmore will focus his practice on Virginia administrative, regulatory, and legislative law as well as commercial litigation.

Edward F. Parsons has moved his office from downtown Richmond to the Glen Forest Office Park located south of I-64 near Glenside Drive and Forest Avenue in Henrico County.

Catherine M. Reese, family law attorney and owner of Reese Law Office, has been appointed by the Fairfax Bar Association board to serve as a member of the Judicial Nominations Committee for the FBA to assist the bar in making recommendations to the legislators for judicial appointments.

George H. “Skip” Roberts Jr., of Lexington, has been named interim president of the George C. Marshall Foundation. He will serve in that capacity during the search for a permanent replacement for the current president, Brian D. Shaw, who resigned to become the assistant to the president at Virginia Commonwealth University.

Michael W. Smith, a partner at Christian & Barton LLP in Richmond, has been elected treasurer of the American College of Trial Lawyers and will serve on its Executive Committee. He is chair of the Executive Committee at Christian & Barton, and he is head of the litigation practice group. He is a former president of the Virginia State Bar and the Bar Association of the City of Richmond.

Emily B. Talbott has joined Armstrong Bristow Farley & Schwarzchild PLC in Richmond as an associate. Her practice will focus on estate and trust planning and administration.

James J. Wheaton, general counsel of Liberty Tax Service, has been appointed to serve on the ABA Commission on Disability Rights, and to chair the Finance Committee of the ABA Section of Business Law.

Julie M. Whitlock has joined the Virginia Department of General Services as its first procurement, policy, and legislative analyst. Whitlock most recently served ten years in the Procurement and Technology Law section of the Office of the Attorney General.

Gregory D. Winfree was confirmed by the U.S. Senate on October 16 and sworn in as the fourth administrator of the U.S. Department of Transportation’s Research & Innovative Technology Administration by Secretary Anthony Foxx on October 28.

Charles A. Zdebski, a partner in Eckert Seamans Cherin & Mellott LLC’s Washington, DC, and Richmond offices, has joined the board of directors of the Unified Prevention Coalition of Fairfax County LLC.

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