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.

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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.