

Jefferson in Philadelphia

I read Governor Timothy M. Kaine's address to the Supreme Court of Virginia (page 15, February *Virginia Lawyer*). I was a little confused about his statement that Thomas Jefferson was at the "National Constitutional Convention" in Philadelphia working on the Constitution there. Since the year he was talking about is 1776, it is true that Thomas Jefferson was in Philadelphia at that time, but he was part of the Second Continental Congress that was drafting the Articles of Confederation. What is generally regarded as the Constitutional Convention took place in Philadelphia in 1787. I was not aware until reading the Governor's speech that the events in Philadelphia in 1776 were referred to as the "National Constitutional Convention." Perhaps I am missing some-

thing here. Could you shed any light on his speech in this regard?

John A. Dodds
Arlington

(Editor's note: The reader is correct. Jefferson was attending the Second Continental Congress, and the Constitutional Convention took place in Philadelphia in 1787.)

Letters

Send your letter to the editor* to:
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Proposed Change to Third Year Student Practice Rule

For many years the Supreme Court of Virginia has had a Third Year Student Practice Rule, Part 6, Section IV, Paragraph 15, Rules of the Supreme Court of Virginia. This rule permits eligible third year students working under the supervision of a licensed Virginia lawyer to appear before any court or administrative tribunal in the Commonwealth in a civil, criminal or administrative matter, provided he or she obtains the written consent of either the person on whose behalf he or she is appearing or the written approval of the prosecutor if appearing on behalf of the Commonwealth in a criminal matter.

The present version of the rule also requires written approval from the Court or the administrative tribunal at least ten days before any appearance. The bar has received information that this ten-day prior approval requirement sometimes frustrates appearances, particularly in the case of third year students interning or working in Commonwealth Attorneys' offices where opportunities to appear can arise on relatively short notice.

The proposed change in the rule would eliminate the absolute ten-day requirement and give a judge or administrative tribunal the discretion to grant approval at any time prior to the scheduled appearance. This would enable the Court or administrative tribunal to make the determination on a case-by-case basis whether to permit a third year student to appear with fewer than ten days prior approval.

The proposed rule change will be considered by the Council of the Virginia State Bar at its next meeting on June 14, 2007, and the proposed change is published below for comment. Any member of the bar having comments about the proposed change may direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800 no later than May 25, 2007.

15. THIRD YEAR STUDENT PRACTICE RULE.—

(a) Activities.

- (i) An eligible law student may, in the presence of a supervising lawyer, appear in any court or before any administrative tribunal in this Commonwealth in any civil, criminal or administrative matter on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance. The eligible law student must obtain written approval from the court or administrative tribunal ~~at least ten days before~~ prior to any appearance before the court or administrative tribunal.
- (ii) An eligible law student may also, in the presence of a supervising lawyer, appear in any criminal matter on behalf of the Commonwealth with the written approval of the prosecuting attorney or his authorized representative, provided the student obtains the written authorization from the court or administrative tribunal prescribed in paragraph (a)(i) of this Rule.
- (iii) The written consent and approval of the person or entity on whose behalf the student appears shall be filed in the record of the case and shall be brought to the attention of the judge of

the court or the presiding officer of the administrative tribunal.

(b) Requirements and Limitations.

In order to qualify pursuant to this Rule, the law student must:

- (i) (a) Be duly enrolled and in good standing in a law school that is approved by the American Bar Association, but if such school is located in another state that permits law student practice, only if such other state permits a student of a law school in this State to engage in such practice; or
(b) Be duly enrolled in a program of study in the office of an attorney as authorized in subdivision 2. of § 54.1-3926, Code of Virginia, and in accordance with the Rules of the Virginia Board of Bar Examiners.
- (ii) (a) Have completed satisfactorily legal studies amounting to at least four semesters, or the equivalent if the school is on a basis other than a semester basis; or
(b) Be certified by the Virginia Board of Bar Examiners as being in the final year of a program of study in the office of an attorney as authorized in subdivision 2. of § 54.1-3926, Code of Virginia, and in accordance with the Rules

of the Virginia Board of Bar Examiners.

- (iii) Be certified by the dean of his law school, or by the attorney under whom he is studying in the case of a law reader, as being of good character and competent ability, and as having completed satisfactorily a course or program of study in each of the following: criminal law, professional ethics, evidence and procedure.
- (iv) Be introduced to the court or agency in which he is appearing by an attorney admitted to practice in that court or agency.
- (v) Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services but this shall not prevent a lawyer or law firm, legal aid bureau, public defender agency, or the Commonwealth from paying compensation to the eligible law student, nor shall it prevent charges by a lawyer or law firm for such services as may otherwise be proper.

(c) Certification.

The certification of a student by Virginia Board of Bar Examiners, the law school dean or the attorney under whom the student is studying in compliance with Paragraph 15 (b)(ii) and (iii) above:

- (i) Shall be filed with the Executive Director of the Virginia State Bar and, unless it is sooner withdrawn, shall remain in effect

until the expiration of eighteen months after it is filed, or until the announcement of the results of the first examination be given by the Virginia Board of Bar Examiners following the student's graduation or completion of the program of study, whichever date is earlier. Thereafter, the certification shall lapse and be of no further force and effect.

- (ii) May be withdrawn by the Board, dean or attorney under whom the student is studying at any time by mailing a notice to that effect to the Executive Director of the Virginia State Bar. It is not necessary that the notice state the cause for withdrawal.

(d) Supervision.

The supervising attorney under whose supervision an eligible law student performs any of the activities permitted by this Rule (Paragraph) 15 shall:

- (i) Be an active member of the Virginia State Bar who prac-

tices before, and whose service as a supervising lawyer for this program is approved by, each court or administrative body in which the eligible law student engages in limited practice.

- (ii) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
- (iii) Assist the student in his preparation to the extent the supervising lawyer considers it necessary.
- (iv) The approval of the court designated in (a)(i) or (d)(i) may be withdrawn at any time without stating the cause for withdrawal.

(e) Miscellaneous.

Nothing contained in this Rule (Paragraph) shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do before the adoption of this Rule (Paragraph).

A Privilege and an Honor

by Karen A. Gould, 2006–2007 VSB President



This is my last column as president of the Virginia State Bar. Howard W. Martin Jr. from Norfolk takes over as the next president on June 17, 2007 (and yes, I have started counting down the days). Accordingly, I believe reflection on the experience is in order.

First of all, I have come to realize that the job is much bigger than any one person. You can only hope to give it its due and, if you have the time, it is a full-time job. I have been very lucky to have partners who understood this better than I did and who have been totally supportive of my part-time status at my law firm, McSweeney, Crump, Childress & Gould PC. My husband, an in-house corporate lawyer at NewMarket Corporation, was not thrilled with my decision to undertake this responsibility, but has been incredibly supportive on the home front. He has kept things in order during the many days that I have been gone, including the early morning start with our three dogs. Thankfully, our daughter is happily ensconced in college and is fairly oblivious to my schedule.

Being located in Richmond was obviously a huge factor for me to be able to appear at many committee and section meetings, as well as interact with legislators during the General Assembly's "short" session.

I was fortunate to see firsthand the efforts of the hundreds of volunteer lawyers who do the good work of the many committees, sections and task forces that make up the Virginia State Bar. While they were delighted to have me attend their meetings, I was awed

by their dedication to furthering the VSB's goals of improving the public's access to legal services, the quality of those services and the rule of law. Hands down, the best part of bar service is getting to know lawyers from other parts of the state. As a result of the national meetings I've attended, I have also had the privilege and pleasure of getting to know lawyers from Alaska to Florida, Hawaii to Maine.

I started out the year knowing that we had a great bar staff, but I really had no idea what went into organizing the different programs, meetings and publications. From my years of service in the disciplinary system, I knew that the Office of Bar Counsel was well-staffed with professionals and support people. George W. Chabalewski, the new bar counsel, is doing an excellent job of integrating himself with the existing staff and overseeing the operation of the single most important part of the bar's function—investigation of bar complaints and prosecution when needed of lawyers who come into our disciplinary system.

We hope to make the disciplinary rules more user-friendly, with a reorganization under way by a subcommittee chaired by Julia S. Savage from the Standing Committee on Lawyer Discipline (COLD). I have also asked the COLD to look at a program used by other states to divert lawyers who face minor complaints for the first time in the disciplinary system to attend an "Ethics School" to help them better understand what is required of them and avoid further problems.

The VSB Membership Department will benefit from improvements to the bar's Web site as the programmers put into place the ability to change membership information over the Internet. I hope that many VSB members will opt in to be listed in the online membership directory, which will make it easier for our members and the public to locate Virginia attorneys.

I have especially benefited from the many staff members—in the Bar Services Department and elsewhere—who organize VSB events, including Executive Committee and Council meetings. The VSB staff also organizes Supreme Court of Virginia-sponsored meetings, such as the Solo & Small-Firm Practitioner Forum and the Indigent Defense Training Program.

The Bar Services staff also does a miraculous job of orchestrating the mandatory Professionalism Course taken by Virginia's new lawyers. Dana D. McDaniel, chair of the Professionalism Committee, has dedicated himself to attending each of the eight Professionalism Courses, the faculty orientation dinner that precedes each course and the Professionalism Faculty Training Course. You cannot imagine how much time Dana has devoted to this job. In addition, it was Dana who suggested renaming the Professionalism Course in honor of former Chief Justice Harry L. Carrico, an idea that was long overdue.

The Publications Department works with the many sections to get newslet-

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ters published, maintains the bar's Web site and produces *Virginia Lawyer* and *Virginia Lawyer Register* magazines. William R. Allcott Jr. chairs the Publications and Public Information Committee—an often thankless task as we have tried to move into the twenty-first century with the use of technology to better communicate with our members. The new Information Technology Committee, chaired by John L. Deal, has worked with the bar's IT staff to prioritize the technology needs of the bar.

The Legal Ethics Committee, chaired by James O. Broccoletti, interprets the Rules of Professional Conduct in issuing guidance to lawyers. The committee and VSB Ethics staff perform an invaluable service to the bar. I was fascinated and impressed by their admonition that they wanted to make certain their opinions help lawyers find their way through the ethical rules.

Likewise, the Standing Committee on Lawyer Advertising and Solicitation (SCOLAS), cochaired by Alison P. Landry and Daniel L. Rosenthal, reviews lawyer advertising to ensure that it does not mislead the public. The SCOLAS advises the lawyer of any concerns and asks them to modify the advertisement or explain why the ad is not misleading. The SCOLAS also has focused this year on evaluating the different types and styles of Internet and Web-based advertising and how the Rules of Professional Conduct apply to those types of advertising. Advertisers and nonadvertisers serve on the SCOLAS.

The Clients' Protection Fund (CPF) assists clients who have lost money due to lawyer dishonesty. The board debates the merits of each claim and evaluates whether the fund's requirements have been met. Subject to approval by the Supreme Court, an additional fee of twenty-five dollars will be assessed against Virginia's active

lawyers on dues statements this year to increase funding for the CPF.

The Mandatory Continuing Legal Education Department does an incredible job of processing the many forms that come into their offices to make certain that lawyers have complied with the MCLE requirement. The MCLE Board looks at individual courses to determine whether they should receive MCLE credit and adopts rules and regulations to administer the program. We had a healthy debate in *Virginia Lawyer* this year over the MCLE requirement.

I would be remiss if I did not highlight efforts that so many people made to increase funding for indigent defense and waive fee caps in appropriate circumstances. There was an unprecedented collaborative effort by Governor Timothy M. Kaine; Attorney General Robert F. McDonnell; the Virginia Fair Trial Project, headed by Betsy W. Edwards; the VSB Criminal Law Section, chaired by John E. Lichtenstein; and many others. Progress was made in the 2007 General Assembly with the passage of a fee waiver bill and an increase in funding. It is an understatement, however, to say there is still room for improvement.

Retired J&DR Judge Dale H. Harris took on the task of chairing the Special Committee on Access to Legal Services. The Access Committee retooled regulations on the function and operations of legal aid societies, recommended revisions to the Supreme Court emeritus rules to expand where members can provide pro bono services, and prepared to host the annual Pro Bono Conference at the University of Richmond on May 17 and 18, 2007.

The Special Committee on Resolution of Fee Disputes started off the year by undertaking a series of training seminars across the commonwealth to train mediators on the new Program Rules

and Participation Guidelines. Many thanks are owed to Chair Frank W. Rogers III, the committee members and Barbara O. Allen, the VSB staff liaison, for their efforts in this regard. It is hoped that the Fee Dispute Resolution Program will be more actively used by our members in resolving fee disputes with their clients.

The Seniors Lawyers Conference (SLC), the Young Lawyers Conference (YLC) and the Conference of Local Bar Associations (CLBA) do so much good work it is hard to summarize their activities in this small space. For example, the SLC has put together a Senior Law Day program to make it easy for voluntary bars to educate seniors on hot topics affecting their lives. The YLC's Minority Prelaw Conference, held twice this year, is designed to help diversify our profession and was attended by many enthusiastic and grateful college students. The CLBA put on the Bar Leaders Institute and the Solo & Small-Firm Practitioner Forum to improve bar leadership and practice management skills.

The VSB Judicial Nominations Committee, chaired by Joseph A. Condo, revamped the process for evaluating candidates for statewide and federal judicial positions, to make it more helpful to legislators. We heard the message loud and clear that the legislators do not want to know who the bar would like to see appointed to these positions, but they would like to receive our unbiased evaluations of candidates' qualifications, temperament and ethics. The committee used the new policy to good effect this winter as it evaluated candidates for two federal judgeships, which resulted in a remarkable written analysis of the candidates, which we hope will be put to good use by Senators John W. Warner Jr. and James H. Webb.

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Clients' Protection Fund Board

Petitions Paid

On January 26, 2007, the Clients' Protection Fund Board approved payments to nine claimants. The matters involved nine attorneys.

Attorney/Location	Amount Paid	Type of Case
O. Stuart Chalifoux, Richmond	\$1,500.00	Unearned retainer/Child custody/Support
Serguei Danilov, McLean	\$1,935.00	Unearned retainer/Immigration matter
Lydell Lucius Fortune, Richmond	\$125.00	Unearned retainer/Bankruptcy
Jeffrey D. Krause, Deceased	\$1,549.45	Unearned retainer/Domestic relations matter
Khalil Wali Latif, Midlothian	\$314.75	Embezzlement/Personal injury settlement
Jimmie Ray Lawson II, Collinsville	\$311.58	Embezzlement/Real estate funds
Charles Everett Malone, Norfolk	\$20,322.27	Embezzlement/Misappropriation of escrowed real estate funds
Denise Ann Maniscalco, Washington	\$3,800.00	Unearned retainer/Misappropriated funds for costs in immigration case
John H. Partridge, Herndon	\$1,200.00	Unearned fee/Bankruptcy

Total	\$31,058.05	

Against Proposed LEO 1829

by Philip V. Anderson

For almost thirty years, the Virginia State Bar has followed a “bright-line rule”¹ that it is improper for a lawyer to lobby or represent a client before a local or state governing body or agency on which another lawyer from the same firm serves in an official capacity. This “bright-line rule” is obviously not necessary to avoid actual conflicts in every instance, but it does serve the dual purpose of reducing improper influence in government and effectively promoting consistency, certainty and, most importantly, the public’s confidence in the integrity of government and, hopefully, the legal profession.

The Virginia State Bar’s Standing Committee on Legal Ethics now proposes, in a new seventeen-page opinion, to eliminate the bright-line rule in favor of a case-by-case, fact-specific application of the ethics rules to each individual situation, or what might be called a “maybe rule.” By way of example, under the current opinions a lawyer or law firm could not represent a client before the State Water Control Board if another lawyer in the firm served on the board. Under the proposed opinion, the answer to whether this would be permissible would be “maybe,” provided the lawyer serving on the board did not participate in deliberations of the firm’s client’s matter.

What this proposed change does to consistency and certainty is obvious. What it does to the public’s confidence in our profession and our institutions of governance is harder to measure. If the editorial pages of our state’s major papers are any indication², there is reason for concern. This concern is only heightened by the comments of numerous public officials who have publicly voiced their concern, even though they stand to benefit financially if the proposed opinion were adopted. This proposal will serve as yet another arrow in the quiver of those who believe that all

public officials are on the take and all lawyers facilitate those transactions. The naysayers will always be with us, but we certainly should reflect long and hard before softening an ethical stance that has worked well for the past twenty-six years.

Why change the bright-line rule? Lawyers who want to engage in public service and who are committed to doing so with integrity will automatically eliminate their firms from being able to represent clients before the bodies on which they serve. Yes, continued adherence to the bright-line rule will result in either continued restriction of firms from an attractive area of practice, or their lawyers will be restricted from public service. While perhaps neither option is desirable, this is a price well worth paying for trust and integrity in government.

Who has asked for this change? Where is the groundswell of support for the ability of law firms to lobby before a public body on which one of its own lawyers serves? The Ethics Committee is recommending this change not at the request of the public, a state or local governing body or a member of the bar. Rather, the committee proposes this change on its own initiative.

The Ethics Committee opines that the bright-line rule discourages lawyers from engaging in public service. While ample evidence exists of the decline in public service by lawyers, no empirical data establishes that this bright-line rule is either the reason for that decline or that the more flexible “maybe rule” will result in an increase of lawyers engaging in public service. The more likely explanation for the decline almost certainly has to do with the increasing demands of public service and the commensurate reduction in time available for maintaining a law practice in a fiercely competitive market.

Legal Ethics Opinion 1829

Proposed Legal Ethics Opinion 1829 can be read in the March 2007 edition of *Virginia Lawyer Register* (p. 30–37), or online at www.vsb.org/site/regulation/leo-1829. The Virginia State Bar will accept public comment on LEO 1829 through June 8, 2007.

Philip V. Anderson and Thomas E. Spahn here offer their opinions of the proposal. Anderson, a former president of the Virginia State Bar, practices general litigation with Frith, Anderson & Peake PC in Roanoke. Spahn serves on the Virginia State Bar’s Legal Ethics Committee; he is a litigator with McGuireWoods.

The automatic disqualification of firms and the decline in public service are certainly valid concerns and provide substance for a healthy discussion of the existing rule. However, in the final analysis, what will be the costs of adopting the proposed opinion? The answer, I believe, is obvious: The public’s confidence in the integrity of government, our profession, and, yes, even in the agency charged with the responsibility for protecting the public and enforcing our profession’s ethics rules will only erode at an even more feverish pace.

We should all offer a heartfelt thanks to those lawyers who have chosen public service. We can only hope that they will work with firms that see value in their abilities and talents, separate and apart from the clients potentially drawn to the firms because they have matters before the bodies on which lawyers in the firm serve.

While firms that wish to further expand their practices before public bodies may find the bright-line rule overly restrictive—when appropriate safeguards are in place to prevent actual influence—the cost to the entire profession of perceived undue

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In Favor of Proposed LEO 1829

by Thomas E. Spahn

Proposed Legal Ethics Opinion 1829 would restore Virginia's ethics rules-based approach, properly allow the General Assembly and other public bodies to regulate their own members, and eliminate an irrational restriction that flies in the face of one of Virginia's proudest traditions—public service by lawyers.

Several legal ethics opinions created a per se rule prohibiting lawyers from lobbying or appearing before any public body (including the Virginia General Assembly) on which any of the lawyer's partners sit—even if that partner recuses herself from the body's deliberations and vote on the matter. Proposed LEO 1829 eliminates the per se prohibition, and instead requires a case-by-case determination based on the pertinent ethics rules. It does not prohibit the General Assembly or any other public body from enacting whatever statute, rule or practice it wants to adopt for its own members.

The per se prohibition on a lawyer lobbying or appearing before a body on which a partner serves is relatively new, is not based on any ethics rule and is instead rooted in a vague "appearance of impropriety" test that has been mostly abandoned.

The per se prohibition at issue does not represent some ancient Virginia tradition. The prohibition apparently dates to a 1981 Legal Ethics Opinion consisting of five sentences but no analysis—which overruled an earlier opinion "expressing the view that such conduct is not per se unethical" (which is precisely the approach adopted by proposed LEO 1829). In 1988, the bar explicitly held that a lawyer could represent clients before a county Board of Zoning Appeals on which his law partner (also his wife) served, as long as the partner/wife dis-

qualified herself from that matter. The bar reaffirmed that opinion in 1989. This is the approach of proposed LEO 1829.

The per se prohibition at issue actually dates only from a 1998 Legal Ethics Opinion (LEO 1718). In that opinion, the Ethics Committee held that a lawyer could not "represent a client in a matter before the local governing body on which his partner served, even if the partner recused himself." The Ethics Committee recognized in that opinion that "no Disciplinary Rule explicitly answers the question presented." Instead, it repeatedly cited "the appearance of impropriety test" in adopting a per se prohibition. Inexplicably, the Ethics Committee reaffirmed this conclusion in 2001 (LEO 1763), although the Supreme Court of Virginia adopted new ethics rules in 2000 that explicitly dropped the "appearance of impropriety test" from the Virginia ethics rules (joining the American Bar Association and all or nearly all other states in abandoning that undefined and sloppy standard).

Proposed LEO 1829 restores the power of the General Assembly and other governmental entities to decide for themselves how to deal with their members' possible conflicts of interest. Unless the lawyer serving in the General Assembly or on some board has an attorney-client relationship with the board, the ethics rules dealing with her conflicts of interest are fairly limited—and do not contain the per se approach adopted by the two cited opinions. LEO 1718 indicated without support that a lawyer-legislator who abstains from a vote because the matter involves her law firm's client has improperly "deprived" both the governing body and her constituents of the benefit of her "voice" in the decision-making process. Similarly, LEO 1763 found that recusal did not cure the conflict because the

lawyer-member has engaged in activities in which her personal or professional interests are "in conflict with official duties or obligations to the public" (quoting Rule 1.11 Comment [1]).

The Virginia Legal Ethics Committee has no business making these kinds of decisions. The decisions should be made by the elected or appointed bodies on which the lawyers serve. This is precisely what the ABA held in its 1962 legal ethics opinion in which it abandoned the per se prohibition. The ABA held that if the legislature had dealt with conflicts of interest in a constitutional or statutory provision, "consent has been given resolving the conflict of interest questions, either by the people through the constitution or by the Legislature speaking for the state."

This is exactly what the Virginia General Assembly has done. Virginia Code § 2.2-3100 et seq. provides precise conflicts-of-interest guidance to legislators and other government officials. That law has as its stated purpose "establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests." The law requires disclosure and recusal in certain situations, but does not adopt a per se approach. Virginia's Attorney General reads the law this way as well. (1989 Va. AG 10)

It is difficult to imagine a clearer expression of the state's and the public's will. And it is presumptuous at best for the Ethics Committee to ignore this legislative statement. Indeed, another Virginia law indicates that "the Supreme Court shall not promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys which are

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inconsistent with any statute.” Virginia Code § 54.1-3915. Thus, LEOs 1718 and 1763 are squarely at odds with the Virginia statute designed to establish a “single body of law” on the issue of government officials’ conflicts.

The General Assembly has the right and obligation to decide whether to apply the current Conflict of Interests Act, or whether to add the per se prohibition that the Ethics Committee created. If the General Assembly or some other governmental body wants to prohibit one of its member’s partners from lobbying or appearing before the body, it may do so at any time.

Least important, the per se prohibition discourages lawyers from serving on governmental bodies. Proposed LEO 1829, by returning to a rules-based analysis, should encourage increased participation by lawyers on public bodies. Virginians should welcome this. If they have concerns about any improper conduct by those lawyers or their partners, the public can demand that the public body adopt appropriate restrictions.

Proposed LEO 1829 properly abandons the one-size-fits-all per se rule that the Ethics Committee created. The proposed opinion applies the ethics rules as the Virginia Supreme Court has adopted them—without the sort of policy overlay that the Ethics Committee is not equipped or empowered to make.

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The Special Committee on Lawyer Malpractice Insurance looked at the issue of mandatory malpractice insurance. Under the leadership of Chair Darrel Tillar Mason, the committee, in response to queries by the General Assembly, analyzed data available on verdicts against lawyers and different options for malpractice coverage. Ultimately, the committee decided against recommending mandatory malpractice insurance, but recommended that further disclosure be made by our members of what coverage they have. These were not easy issues to address, but were necessary because of concerns about whether we, as the mandatory bar, are doing enough to protect our clients.

The concern about whether we are doing enough to protect our clients also prompted the formation of the Public Protection Task Force (PPTF), chaired by Christopher J. Habenicht. Lawyer defalcations continue to be a problem, not only for individual clients, but also for the profession as a whole, because such actions cast a negative perception on all of us. The PPTF's work is ongoing at this point.

I also want to thank VSB Executive Director Thomas A. Edmonds for his unflagging assistance and helpful direction. He made more

trips than I did to the General Assembly to ensure that the Clients' Protection Fund bill got through the system. He met with legislators and reminded them of our goal to protect the public from losses at the hands of dishonest lawyers. Tom is retiring this year after ably serving the Virginia State Bar for eighteen years. He is an institution to the lawyers of Virginia, many of whom recognize him and respect him. Tom had a ready smile and a firm handshake for all. We will be lucky to find a person of Tom's caliber to replace him this year when he retires.

Finally, I want to thank Chief Justice Leroy R. Hassell Sr. and the other Justices of the Supreme Court of Virginia for their support and assistance during the year, to me personally and to the bar. As an arm of the Supreme Court, the VSB works to fulfill the mission set for it by the Court. The Justices are truly dedicated to improving the profession.

I also want to thank the bar for giving me this opportunity to be of service. It has been a remarkable year of growth for me. I have been privileged and honored to serve as president of the Virginia State Bar. ☺

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influence is simply too high a price to be paid by all for the furtherance of business objectives of the few.

Finally, it is worth pointing out that the “bright-line” approach that has been in effect for twenty-six years has been an easy and straightforward standard up to this point. In contrast, the new “maybe” standard in proposed LEO 1829 will make it extremely difficult for the bar and its disciplinary officials to enforce the applicable ethics rules. Developing and presenting “clear and convincing” proof of an actual conflict or improper influence would be difficult if not impossible, despite the assumptions of many observers that a conflict of interest may have been involved. This would be an unhealthy position in which to put our lawyer regulatory agency.

Accordingly, I sincerely hope that the Virginia State Bar will not propose the adoption of this opinion by the Supreme Court of Virginia.

Endnotes:

- 1 The reference to a “rule” throughout this article is in fact a group of advisory ethics opinions on the subject of lawyers appearing before a public body on which another lawyer in the firm serves and the conflict of interest that may be created. In a technical sense, these advisory opinions are not a “rule,” but the lawyers typically abide by these ethics advisory opinions as if they were a “rule.”
- 2 See “Va. Bar Could Reverse Limits on Firms Hiring Legislators,” *The Washington Post*, Feb. 16, 2007, at A01; “Senate Debates Legal Ethics Change,” *Richmond Times-Dispatch*, Feb. 21, 2007; “Invitation to Mischief,” *Richmond Times-Dispatch*, Feb. 20, 2007, at A9; “In God We Trust, Not Lawmakers” *The Roanoke Times*, Feb. 20, 2007

Highlights of Virginia State Bar Council Meeting

March 2, 2007

At its regular meeting on March 2, 2007, in Richmond, the Virginia State Bar Council heard the following significant reports and took the following actions:

Professionalism Course Renamed for Former Chief Justice

The Virginia State Bar Professionalism Course was renamed the Virginia State Bar Harry L. Carrico Course on Professionalism to honor the former Chief Justice, who initiated, helped develop and spoke at more than one hundred sessions of the course. Now-Senior Justice Carrico was honored by the bar during a March ceremony at the Virginia Museum of Fine Arts (see photos, page 22).

Special Assessment Proposed to Support Clients' Protection Fund

The General Assembly approved statutory changes to authorize the Supreme Court of Virginia to assess each lawyer up to twenty-five dollars annually, with the funds earmarked for the Clients' Protection Fund. This would be in addition to annual dues paid by each lawyer. The council approved implementing rule changes that will be sent to the Court for its consideration. If the Court authorizes the full assessment over the eight-year life of the

legislation, the Clients' Protection Fund will stand at about nine million dollars—the amount recommended by a 2005 actuarial study.

Other General Assembly Proposals

Two bills that the VSB opposed died in committee. One would have authorized third-year law students to represent the petitioner in involuntary commitment proceedings without the presence of a supervising licensing attorney. The other would have required every lawyer and judge in Virginia to contribute to a fund to compensate wrongfully incarcerated persons.

Council Switches to Desktop Publishing

The blue loose-leaf notebooks that contain the reports and working papers of the VSB Council cost about four thousand dollars to produce and mail annually. The council agreed, on a pilot basis, to have meeting documents distributed by e-mail so that council members can print them out before each meeting. This will begin with the June Annual Meeting. VSB Executive Director Thomas A. Edmonds said that is the way materials are now distributed for most national meetings.

Senior Citizens Handbook

The Senior Lawyers Conference is updating the *Senior Citizens Handbook*, under the direction of William Oast.

Judicial Nominations

The Virginia State Bar used its new judicial evaluation process for the first time recently for two openings on the federal bench. Candidates who do not receive an affirmative vote from a simple majority of the Judicial Nominations Committee are not reported out. The others are deemed “qualified” or “highly qualified.” The committee now provides an executive summary that assesses each candidate.

Fees for Noncompliance

The VSB has proposed increasing fees for noncompliance with the certification and reporting deadlines for mandatory continuing legal education and delinquencies in meeting other annual membership obligations, as well as reinstatement fees for lawyers who are administratively suspended. The council without opposition approved the increased fees and recommended them to the Supreme Court.

Professional Guidelines

The 2006–2007 Professional Guidelines were mailed to active members of the VSB in mid-October 2006, accompanying the October issue of *Virginia Lawyer*.

They are available online at www.vsb.org.

For amendments approved after September 1, 2006, see the supplement to the Professional Guidelines online at www.vsb.org/site/regulation/amendments.

Former Chief Justice Harry L. Carrico Honored



A ceremony to celebrate the naming of the Virginia State Bar's Professionalism Course for former Chief Justice Harry L. Carrico drew 150 VSB Council members, Professionalism Committee members and invited guests to the Virginia Museum of Fine Arts on March 2.

A: Harry L. Carrico (left), who now is a senior-status justice, joined his daughter, Judge Lucretia A. Carrico (left) and Virginia House Speaker William J. Howell and his wife, Cessie Howell.

B: (Left–right) Dana D. McDaniel, chair of the Standing Committee on Professionalism; VSB President Karen A. Gould; Senior Justice Carrico; and William D. Dolan III, a former VSB president and chair of the Professionalism Committee.

C: (Left–right, back row) Judge Stanley P. Klein, William E. Glover, David E. Roop Jr., Judge David T. Stitt, William D. Dolan III, Charles E. Wall and Dana D. McDaniel; (front row) Joseph A. Condo, Senior Justice Carrico, Judge Jeri K. Somers, Judge Teena D. Grodner and Ann Adams Webster.

Virginia State Bar Makes Changes in Alexandria Office

Seth M. Guggenheim has been promoted to senior assistant bar counsel and manager of the Virginia State Bar's Alexandria office, and Kathleen M. Uston has been hired as an assistant bar counsel in the office.

Guggenheim, who has been with the VSB since February 2000, succeeds Noel Davidson Sengel, who has retired after fourteen years with the bar.

Guggenheim holds a bachelor's degree in English from Boston University and a law degree from American University in Washington, D.C. Before joining the VSB staff, he worked in the Washington, D.C.,

Office of the Attorney General and in private practice in Alexandria.

Uston recently was a solo practitioner in Alexandria. She served as a guardian *ad litem* for adults and children and as a commissioner in chancery for Alexandria Circuit Court. In the past, she performed law-office audits for the VSB disciplinary system. She also worked with attorney David Ross Rosenfeld representing attorneys who were charged with ethical misconduct. She has served in numerous volunteer roles with the Virginia State Bar, including president of the Young Lawyers Conference.



Uston



Guggenheim

Uston received a bachelor of arts degree in 1987 from Miami University in Ohio and a law degree from George Mason University in 1991.

Paintings Given to Presidents Collection

Two works of art have been contributed to the Virginia State Bar's Presidents Art Collection in honor of past VSB Presidents Joseph E. Spruill Jr. and David P. Bobzien.

An oil painting, "Wheatland—by Moonlight," was given in honor of Spruill, now a retired judge, by his family and the Northern Neck Bar Association. The painting is by Edward P. von Walter of

Essex County. Spruill is a resident of Tappahannock. He served as president for 1976–1977.

David P. Bobzien, president for 2004–2005, contributed "Summer at Jordan Hollow," a print of a watercolor by Nadia Louderback of Luray. The print shows a barn that is part of the Jordan Hollow Farm Inn, where the VSB

Executive Committee met in September 2004. Bobzien chose the print because it is about two miles from his country retreat in Stanley. "We try to spend as much time there as we possibly can," he said.

The Presidents Art Collection was founded in 1992, and VSB presidents, their families and law firms occasionally give works for display at the bar's offices in Richmond.

In Memoriam

Barbara Andrick

Manassas
November 1944–November 2006

George Wendal Campbell Jr.

Springfield
April 1947–November 2006

Lawrence Martin Cohn

Glen Allen
July 1939–January 2007

Walter J. Cory Jr.

Richmond
September 1924–January 2005

John M. Court

Harwood, Maryland
October 1915–March 2006

John L. Doyle

Richmond
September 1937–February 2007

Frank W. Dunham Jr.

Alexandria
September 1942–November 2006

Barry Vance Gibbens

Yorktown
February 1959–December 2006

Robert L. Gilliam III

Tappahannock
December 1937–August 2006

Joseph G. Hitselberger

Alexandria
January 1929–August 2006

Earl L. Johnson Jr.

Arlington
August 1924–July 2006

Richard Wigley Perrott Johnson

Hampton
December 1954–January 2007

M. Ray Johnston

Kilmarnock
April 1928–August 2006

John Wayne Jones

Washington, D.C.
February 1968–December 2006

Gabor J. Kelemen

Conches, Switzerland
February 1930–November 2006

Herbert V. Kelly

Newport News
February 1920–February 2007

Trevilian A. Kerns Jr.

Irvington
June 1920–October 2006

F. Sheild McCandlish

Clifton
October 1918–January 2007

Frank John Nivert

Sarasota, Florida
May 1942–September 2006

Jacob Nathan Perkins

Poolesville, Maryland
August 1969–February 2007

James Milton Rinaca

Richmond
December 1950–December 2006

The Honorable Perry W. Sarver

Strasburg
March 1931–December 2006

Richard Earle Smith

Mechanicsville
August 1926–January 2007

Joseph Patrick Spellman

Sarasota, Florida
October 1930–October 2006

Lee Stephen Strickland

Clifton
January 1950–January 2007

Henry A. Thomas

Alexandria
April 1934–February 2007

Joseph Frederick West

Arlington
October 1946–December 2006

Frederick Charles Williams

Washington, D.C.
October 1938–July 2006

Thomas Aquilla Williams

Callao
August 1925–December 2006

BLI, Forum Offer Day of Free Education, Information

More than 250 attorneys attended the Twenty-Second Annual Bar Leaders Institute and Solo & Small-Firm Practitioner Forum in Fredericksburg on March 15.

The free, daylong program, which included panel discussions on successful bar projects and media relations, was sponsored by the Virginia State Bar Conference of Local Bar Associations. Attendees also heard presentations on the VSB's Fee Dispute Resolution Program, the

Fastcase legal research program and Lawyers Helping Lawyers, a substance-abuse and mental-health program.

Jay G. Foonberg, a California business lawyer who lectures internationally on legal ethics and practice development, was the luncheon speaker. The author of many books on topics such as starting a law practice and finding the right lawyer, Foonberg offered advice on running a successful practice and maintaining good relationships with clients.

The day concluded with a Town Hall Meeting led by Virginia Chief Justice Leroy R. Hassell Sr. during which attorneys asked questions about Virginia's courts and the VSB.

The next Bar Leaders Institute and Solo & Small-Firm Practitioner Forum will be held on Wednesday, May 23, at the Jefferson Center in Roanoke. For details or a registration form, visit www.vsb.org and click on Meetings and Events.



A: Lunch speaker Jay G. Foonberg offered tips for solo practitioners.

B: Danville attorney Sandra Chinn-Gilstrap (right) and teammates (left—right) VSB President Karen A. Gould and Alda L. White, a Fredericksburg attorney, participated in a spirited game of "Ethics Jeopardy." Along with M. Janet Palmer (not pictured), they proved their mastery of ethics rules and beat the men's team.

C: Manuel A. Capsalis, VSB president-elect, moderated the morning panel discussion about successful bar projects and how to duplicate them.

D: The program concluded with a reception hosted by the Fredericksburg Area Bar Association. Pictured are (left—right) George W. Shanks, chair of the Conference of Local Bar Associations; Alda L. White; Robert J. Barlow; Chief Justice Leroy R. Hassell Sr.; Teri R. Reese; retired Judge William H. Ledbetter Jr.; Judge Gordon F. Willis; and Judge John W. Scott Jr.



Leffler Given Carrico Professionalism Award

Rodney G. Leffler of Fairfax, whose career in criminal law has spanned serving as a police officer, a prosecutor and a defense attorney, received the 2007 Harry L. Carrico Professionalism Award from the Virginia State Bar's Criminal Law Section.

The award was presented during the Criminal Law Seminar, which took place February 2 in Charlottesville and February 9 in Williamsburg. The Charlottesville seminar drew 187 lawyers and judges, and 456 attended the Williamsburg session.

Jo-Ann Wallace, president and chief executive officer of the National Legal Aid and Defender Association in Alexandria, was the luncheon speaker in Charlottesville. She talked about the ideals behind the goals of the Virginia Indigent Defense Commission, which she chairs. The commission worked with many other groups to support an increase in court-appointed pay for Virginia criminal lawyers—an increase which finally started to materialize this year after several years of effort.

In the Williamsburg luncheon address, Attorney General Robert F. McDonnell praised lawyers who defend the poor.

Federal Magistrate Judge Dennis W. Dohnal presented Leffler with the award in Williamsburg. Dohnal substituted for Carrico, the former Virginia Chief Justice whose commitment to professional ethics inspired the award.



Jo-Ann Wallace



Federal Magistrate Judge Dennis W. Dohnal (left) presents award to Rodney G. Leffler.

“Rod has done it all,” said Dohnal, a member of the Criminal Law Section’s Board of Governors. He said Leffler epitomizes what the award embodies—contribution to the field of criminal law in Virginia and commitment to the highest ideals of professionalism.

Each role Leffler has performed—Fairfax police officer, assistant commonwealth’s attorney, defense lawyer, substitute judge and adjunct law professor—“he does . . . with ability, intellect and grace,” said Dohnal, who nominated Leffler for the award.

Leffler graduated from Pennsylvania State University in 1973. He put himself through George Mason University School of Law while working as a police officer.

He served as an assistant commonwealth’s attorney in Fairfax, then in 1981 joined Oden, Feldman & Pittleman PC, where he practiced until he formed what is now Leffler & Hyland PC in 1993. A member of the American College of Trial Lawyers, he has tried hundreds of civil and criminal cases—more than 250 to juries.

Leffler was a substitute judge in the Fairfax Circuit from 1984 until 2002.

Log On to the VSB Web Site for:

- MCLE Record • Membership Information • Fastcase • Disciplinary Actions • VSB Sections • Pro Bono Opportunities
- Magazine Back Issues • Publications • Meetings and Events • Updates to the Professional Guidelines

www.vsb.org

Programs Presented to Bar Associations



The Richmond Chapter Old Dominion Bar Association and the Virginia Association of Black Women Attorneys recently cosponsored a two-hour continuing legal education seminar. Association member Melanie M. Lee presented “The Answers to Estate-Planning Questions That We Are Asked by

Our Family and Friends,” and Frank O. Brown Jr. of the Virginia State Bar Senior Lawyers Conference presented “Protecting Your and Your Clients’ Interests in the Event of Your Disability, Death or Other Disaster.” Brown presents his program at no charge to local and specialty bar asso-

ciations, and it may be presented as a one-hour or two-hour program, both of which qualify for full mandatory continuing legal education ethics credit. To request the program, call Patricia A. Sliger at (804) 775-0576.

Photo courtesy Susan V. Brown

Legal Services Corporation Notice of Availability of Competitive Grant Funds for Calendar Year 2008

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2008. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition will be available from www.ain.lsc.gov during the week of April 16, 2007. In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. The listing of service areas for each state and the estimated grant amounts for each service area will be included in Appendix A of the RFP. Applicants must file a Notice of Intent to Compete (NIC) in order to participate in the competitive grants process. The NIC will be available from the RFP. Please refer to www.ain.lsc.gov for filing dates and submission requirements. Please e-mail inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Local and Specialty Bar Association Elections

Danville Bar Association

Ronald Lee Lackey, President
David Wayne Pugh, President-elect
Wells Huntington Byrnes Sr., Secretary
Michael James Newman, Treasurer

Fauquier County Bar Association

Tiffany Louise Dino, President
Nikki Linn Marshall, President-elect
Nono Musolino Fisher, Secretary
Hanna Lee Ethel Rodriguez, Treasurer

Franklin County Bar Association

Sara Anne Jamison, President
George Irving Vogel III, Vice President
Melissa Pagans Keen, Secretary
John Thomas Boitnott, Treasurer

Fredericksburg Area Bar Association

Robert John Barlow, President
Robert Brandt Goodall, President-elect
Chad Matthew Rinard, Secretary
Marcel Dabriel Jones, Treasurer

Hampton Bar Association, Inc.

Robert Alan Boester, President
Patrick B. McDermott, Vice President
Nicole Michele Johnston, Secretary
James Robert Harris III, Treasurer
Thomas Aulden Burcher, Director
Lawrence Gordon Cumming, Director
Matthew Edward Ballard, Director
Tyrone Carey Johnson, Director

Prince William County Bar Association

Casey Rian Stevens, President
William Elmer Jarvis, President-elect
Jeanice Bowden Wiethop, Secretary
Jonathan Stuart Rochkind, Treasurer
Richard Hamilton Boatwright, Director
Barbara Murphy Stough, Director
Megan Eileen Kelly, Director
Kimberly Anne Summers, Director

Scott County Bar Association

Kimberly Michelle Jenkins, President
Daniel Eric Fellhauer, Secretary-Treasurer

The Virginia Bar Association

Glenn Charles Lewis, President
Gerald Michael Pace Jr., President-elect

Virginia Association of Criminal Defense Lawyers

Peter David Greenspun, President
Kristie Lee Kane, President-elect
Carolyn Virginia Grady, Vice President
Margaret Angela Nelson, Secretary
David Leonard Heilberg, Treasurer



VIRGINIA STATE BAR

69th Annual Meeting Register Early!

June 14–17, 2007 • Virginia Beach, Virginia

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for Schedule of Events,
CLE Programs
& Special Events!

WATCH YOUR MAIL!

A registration brochure will be mailed in April.
Also, visit the VSB Web site at www.vsb.org.

Virginia State Bar Pro Bono Award Goes to Richmond Lawyer and U.Va. Program



John M. Oakey Jr., a lawyer who has dedicated himself to pro bono work in retirement, and volunteer lawyers with the University of Virginia Law School's Mortimer Caplin Public

Service Center have been named 2007 recipients of the Lewis F. Powell Pro Bono Award by the Virginia State Bar's Committee on Access to Legal Services.

Since Oakey's retirement from McGuireWoods LLP, he has taken up many legal projects as a volunteer. His pro bono work has included representation of clients through the Richmond Legal Aid Housing Program; prosecution of child support cases in Richmond; representation of domestic-violence victims in the

Richmond area; and management of court appointments in cases involving family law, insurance coverage, excess judgments and personal injury, where needy clients did not qualify for pro bono help from legal aid.

Oakey serves in the leadership of the Central Virginia Legal Aid Society, the Legal Aid Justice Center and the Greater Richmond Bar Foundation. He participates in the Greater Richmond Bar Foundation's Pro Bono Clearinghouse, which helps nonprofit corporations and he mentors other McGuireWoods lawyers involved in pro bono work.

Oakey was nominated for the Powell Award by W. Reilly Marchant of the Richmond Bar Association and Scott C. Oostdyk of McGuireWoods.

The nomination of the Caplin Center's volunteer attorneys for the Powell Award was endorsed by George H. Hettrick of Hunton Williams. Hettrick works with a program that gives U.Va. students an early introduction to public-interest law by helping domestic-violence victims and immigrants seeking asylum.

In his letter, Hettrick wrote: "The high level of institutional resources and support from the U.Va. Law School for pro bono and public service programs is unmatched in Virginia's legal education."

The Powell Award, named for a former associate justice of the U.S. Supreme Court, recognizes dedication to pro bono legal work in Virginia. It will be presented during the VSB's Pro Bono Conference May 17-18 at the University of Richmond.

Free and Low-Cost Pro Bono Training

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

For confidential toll-free consultation

available to all Virginia attorneys on questions related to legal malpractice avoidance, claims repair, professional liability insurance issues and law office management, call the

VSB's risk manager, McLean lawyer John J. Brandt, at

1-800-215-7854.

Virginia State Bar Publications

The Virginia State Bar publishes pamphlets and handbooks on law-related issues for Virginia's lawyers and Virginia's citizens. Please note that some are available in bulk quantities, and others only in single copies. All publications can be found on the VSB Web site at <http://www.vsb.org/site/publications>.

William & Mary Student Named Pro Bono Award Winner

Maryann P. Nolan, a third-year law student at the College of William & Mary, has been named the 2007 recipient of the Oliver White Hill Law Student Pro Bono Award by the Virginia State Bar Committee on Access to Legal Services.

Nolan performed more than one thousand hours of uncompensated or minimally compensated public service and supervised legal work while in law school. Her projects included:

- The Capital Area Immigrants' Rights Coalition—She visited Virginia detention centers to educate residents about legal rights and to provide legal support services.
- The Fairfax Public Defender office—She interviewed clients, visited jails and wrote legal memoranda for the clients' attorneys.
- An internship in Cordoba, Argentina, with the Center for Human Rights and the Environment.
- America Reads—She tutored Williamsburg elementary-school pupils who struggle with reading and learning English.
- The William & Mary Public Service Fund, which raises and allocates money to help repay tuition loans for students who work in public service.
- The W&M Chapter of the Innocence Project, which works to exonerate convicted persons through DNA testing.
- The Children's Advocacy Law Society—She organized panels and speakers to talk about legal issues that affect children and families.
- The W&M Honor Council—She was a justice.

Nolan, who grew up in Clifton, received bachelor's degrees from the University of Virginia.



The Hill Award, named for the Richmond attorney who led challenges to school segregation as part of *Brown v. Board of Education*, recognizes a student's voluntary and minimally compensated public-service work. Nolan was nominated by Associate Dean Robert E. Kaplan of the W&M School of Law. The award will be presented during the VSB Pro Bono Conference May 17–18 at the University of Richmond.

The Professional Benefits of Pro Bono: Two Portraits

by A. Michael Signer, Samantha Ahuja and Stephen J. Klos

In the December 2006 issue of *Virginia Lawyer*, members of the Pro Bono Commission of the Young Lawyers Conference of the Virginia State Bar published an article that described the results of a survey of select Virginia law firms' pro bono efforts. The article discussed both the pros and cons of Virginia firms' pro bono performance. The next step in the Pro Bono Commission's plan for this year was to interview two Virginia firms to gain more information on the benefits and challenges of pro bono representation for firms. The Pro Bono Commission advocates a larger pro bono role in the for-profit Virginia legal community.

The Pro Bono Commission recently interviewed partners and associates at two law firms: Buchanan Ingersoll & Rooney PC and Sands Anderson Marks & Miller PC. Interview results emphasized the crucial role pro bono has in the professional development of young lawyers across the commonwealth.

Buchanan Ingersoll & Rooney

Buchanan Ingersoll & Rooney PC is an intellectual property practice located in Alexandria with twenty-one partners and eighteen associates. The office has a minimum yearly billable requirement of 1,950 hours, toward which one hundred hours of pro bono representation may be counted. Pro bono also is considered in bonuses. On average, 5 percent of attorneys' total hours are pro bono.

The Alexandria office does primarily intellectual property work. The Pro Bono Commission focused on the firm because of its emphasis on pro bono.

Lloyd S. Smith is a partner in the firm and a member of the firm's intellectual property litigation section. Smith told us, because of the difficulty of finding IP pro bono work, the Alexandria office recently

invited Legal Services of Northern Virginia to brief its attorneys on domestic and consumer issues. Attorneys in the office are currently determining the areas in which they would like to provide pro bono services. LSNV will provide training and support. The firm is also considering joining a "Lawyers on Loan" program, which would allow for a first-, second- or third-year associate to work with a legal aid association. Peter J. Ennis, another partner, said that the firm has infrastructure in its Pittsburgh headquarters that makes it easier for associates to start pro bono work. Ennis said the firm hopes to implement this model in the Alexandria office and provide set times, training and infrastructure with local clinics. These clinics are available to all lawyers at the firm.

Ennis described the firm's approach to the professional benefits of pro bono:

The pro bono efforts within the firm allow for the attorneys to work on something different. It broadens their knowledge of the law, allows junior lawyers to gain more experience, allows better networking within the bar—and all of those lead to the consequence of recognition of the firm.

Ennis said challenges include "demonstrating that many people are involved, not just a few—achieving critical mass."

Jaime S. Tuite, an associate, said Buchanan Ingersoll's approach to pro bono succeeds because "it is not just lip service."

She explained:

The firm makes it a priority. The firm connects real credit to the pro bono services provided by its lawyers. There is an infrastructure in place for the associates to immediately tap into

so that the associates are not hindered by their billable requirements.

Partners and associates find value in pro bono—especially in a firm whose profit base (IP) may not seem connected to pro bono representation. The firm makes pro bono easy for associates to perform, and it builds pro bono into the company's infrastructure.

Sands Anderson Marks & Miller

Sands Anderson Marks & Miller PC is based in Richmond with thirty-one shareholders and forty-three associates. The firm does not have a minimum annual billable requirement. The firm gives 100 percent credit for hours spent on pro bono representation and takes pro bono representation into consideration for bonuses. About half of associates and about 70 percent of shareholders work on pro bono. However, only 1 percent of the firm's billables go to pro bono each year, and the firm's attorneys average twenty-five hours a year.

The Pro Bono Commission interviewed N. Reid Broughton, a counsel in the firm's New River Valley office. He practices in the firm's business, finance and real estate, business and professional litigation, and health-care practices.

Broughton explained his own emphasis on pro bono: "[A] number of friends I have ... are involved in pro bono, which creates a good environment for volunteering." His pro bono practice focuses on family law, which "has provided me the opportunity to be introduced to a completely different area of practice for me."

And his pro bono work has conferred special advantages on his relationships with jurists:

It has given me the opportunity to appear before judges in a family law setting. The judges also understand that you are working on a pro bono case and really appreciate the work that you do.

Sands Anderson has a culture of encouraging pro bono. Broughton said that the firm “provides a great deal of encouragement to get involved in pro bono work.” He explained: “[Pro bono] is an institution at the firm, and the firm provides billing credit for the pro bono work the attorneys do in the community.”

Jayne Ann Pemberton is an associate in the firm’s Richmond office. She explained how she got involved in pro bono work:

It was always an emphasis in my family growing up. My father was a judge in Texas, and public service and volunteering were strongly encouraged. I got involved with Big Brothers/Big Sisters because my brother was involved in the local Texas chapter.

While her volunteer work has not always been strictly legal in nature, Pemberton says that it has provided her with oppor-

tunities to bring balance to her career and her life outside of work:

I have been involved in meetings at school for my little sister from the Big Brothers/Big Sisters program. I have reviewed her education plan and have worked with her parents to make decisions concerning her education. This is a departure from my traditional practice.

Pemberton says that she was drawn to Sands Anderson because of its reputation for being involved in pro bono. Part of the mission for Pemberton is personal. “I also think that I need to do my part to help people see the good work that lawyers do in their communities. Lawyers are often portrayed in a negative light, and this is an opportunity to show that we care about more than the bottom line.”

Sands Anderson Marks & Miller, like any small or midsize Virginia firm, faces challenges in balancing the imperatives of for-profit and pro bono representation. The firm is to be congratulated for building a culture of support for pro bono and for crediting hours, and for recruiting and encouraging attorneys who already

have a leaning toward pro bono. It would be even more admirable if its commitment could be increased to 3 percent from 1 percent. It is hoped the benefits described in this article, as well as enthusiastically described by Sands Anderson’s own attorneys, will convince small and midsize firms across the commonwealth to increase their average pro bono hours to at least the 3 percent goal set by American Bar Association Model Rule 6.1, and to credit all of these hours in both yearly minimums and bonus considerations.

A. Michael Signer is chair of the Young Lawyers Conference’s Pro Bono Commission. He practices with Wilmer Cutler Pickering Hale & Dorr LLP in Washington, D.C.

Samantha Ahuja is vice chair of the Pro Bono Commission. She practices with Womble Carlyle Sandridge & Rice LLP in Washington, D.C.

Stephen J. Klos is on the Pro Bono Commission’s steering committee.

We ARE THE Stewards OF OUR PROFESSION:

THE IMPORTANCE OF LAWYER PROFESSIONALISM

by Frank Overton Brown Jr.

The Senior Lawyers Conference (SLC) of the Virginia State Bar comprises of all members of the VSB fifty-five years of age or older and in good standing. There are more than twelve thousand members of the SLC. The conference's purpose is "to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, to encourage cordial discourse and interaction among the members of the VSB and to pursue its mission and goals as set out in the bylaws."

The Senior Lawyers Conference has a special interest and responsibility regarding professionalism and civility, which is a fundamental component of professionalism.

We previously addressed civility and professionalism in *Virginia Lawyer*; available on the VSB Web site.*

This issue of *Virginia Lawyer* features an article, "Civility—Its Urgent Necessity for a Civilized Future," by Edward R. Slaughter Jr., in which he explores societal and cultural underpinnings that impinge on civility. As part of our duty toward the profession, we will continue to emphasize civility.

I noted the ways I heard or read the word "professional" in a variety of contexts. References included: "professional golfer," "professional bull rider," "professional football player," "professional cartoonist," "professional engineer," "professional photographer," "professional wedding planner," "professional journalist," "professional musician," "professional geriatric care manager," "professional attitudes" and "professional appearance." I never heard or read "professional lawyer." Why is that?

Being professional is implicit in being a lawyer; there is an expectation, in and out of the profession, that a lawyer is a pro-

fessional. To say "professional lawyer" is redundant. We are the stewards of the legal profession. We are the guardians of professionalism.

What is "professionalism?" "Professionalism is not just about appearance, ethics, and a code of conduct. Professionalism is about having a lifetime dedication and commitment to higher standards and ideals, honorable values, and continuous self-improvement. Professionalism is a built-in guidance system for always doing the best that you can do, always doing the right thing, and always standing tall for what you believe." (*Standing Tall*, by James R. Ball, The Goals Institute, www.goalsinstitute.com.)

What are the sources of this lifetime dedication and commitment? How is the foundation laid, and how is the structure built? The building blocks are many: family upbringing, education, religious studies, societal influences, military training and discipline, encouragement by the bar, professional programs, help of peers and mentors, leadership and example of professional associates and members of the judiciary, and a fundamental system of values.

In the past three decades, lawyers, judges, bar associations and courts throughout the nation have promoted professionalism. The American Bar Association's Center for

Professional Responsibility's Web site—<http://www.abanet.org/cpr/professionalism/profcodes.html>—lists more than 150 professionalism creeds, codes, standards, pledges, statements, guidelines, goals, principles, rules, tenets, oaths and mandates that have been promulgated by courts and state and local bar associations in the District of Columbia and forty-six states, including Virginia. The Supreme Court of Virginia and Virginia State Bar were early leaders in this area.

In 1987, the Supreme Court of Virginia established the Virginia State Bar's Harry L. Carrico Professionalism Course, which must be attended by any active member who is licensed after June 30, 1988, or who changes his or her membership to active status. The curriculum focuses on the *Virginia Rules of Professional Conduct* and lawyers' ethical obligations. The course is approved for six ethics hours of mandatory continuing legal education credit. A topic included in the Professionalism Course is principles of professional courtesy, developed by the Board of Governors of the VSB Litigation Section.

The preamble of the principles states: "Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmark of an enlightened and effective system of justice. Courtesy, then, emanating from all quarters, extending in all directions, becomes an indispensable ingredient in the orderly administration of the courts."

The preface to the 2006–2007 Professionalism Course states, in part:

In general, lawyers operate in three spheres that overlap at many points. First, lawyers represent clients. Second, lawyers are obliged to implement and improve our legal system. Third, lawyers of necessity must concern themselves with the mundane minutiae of making a living. The Rules permeate all three aspects of practicing law.... *Mere adherence to the Rules, however, is not always enough to ensure that we will continue to uphold the exacting stan-*

dards of Professionalism that have characterized the practice of law in Virginia. Thus, this course will emphasize not only what the Rules require, but also what is additionally necessary if we are to preserve the right to call ourselves professionals. [emphasis added] The practice of law has never been a business in the traditional sense. Lawyers must undergo rigorous formal training and then be qualified by a state licensing authority. By common consent and tradition, but only with the

IT IS THROUGH LEADERSHIP AND PARTICIPATION AT THE BAR THAT OPPORTUNITIES EXIST TO IMPROVE AND ENHANCE THE PROFESSION AND TO DEVELOP COLLEGIALLY.

Commonwealth's continued sufferance, we regulate ourselves. Our Rules of Professional Conduct balance many important interests, but exclude self-interest. As professionals, we must subordinate financial reward to social responsibility, and we should aspire to conduct ourselves with honor and civility.

The Professionalism Course's faculty comprises of Virginia judges, lawyers and law professors—more than eighty in all. They are a diverse group, and they are united by their deep commitment to the principles that underlie the *Rules of Professional Conduct* and the ideals that inspire professionalism in the practice of law. The Professionalism Course is not required for

active members who were licensed before July 1, 1988, and is required only once for those licensed since that time; however, even if not required, it may be voluntarily attended by any lawyer at any time as a periodic refresher course on professionalism. In any event, a periodic review of the course's content will assist in maintaining our sense of professional direction.

In professionalism efforts throughout the country, some of the expectations of a lawyer that have been cited are: integrity; trustworthiness; courteousness; respectfulness; honesty; fairness; efficiency in resolving matters for clients; "my word is my bond"; commitment to the public good; competence; civility; service to clients, community and profession; candor; good judgment; undivided loyalty to clients; confidentiality; thoroughness; communication; good faith; avoiding even the appearance of impropriety; providing education to the public; support of and service to the profession; pro bono service; upholding the honor of the profession; respect for our judicial system; punctuality; exercise of independent judgment; and providing leadership to community and at the bar.

It is through leadership and participation at the bar that opportunities exist to improve and enhance the profession and to develop collegiality. Collegiality engenders a positive peer influence, which improves performance and strengthens the profession.

It has been said that unprofessional conduct occurs because lawyers are the product of the society from which they are drawn, and that the trend has been for the practice of law to become more of a business and less of a profession.

Others have a different view: "Where unprofessional behavior exists, it is rarely because of demographic or economic drivers. More commonly, unprofessional behavior exists when those in a leadership role inadvertently allow it to exist by failing to proactively establish, communicate, and enforce a code of conduct and standards of excellence." (*How to Nurture Professionalism in Your Organization*

in *Three Steps*, The Goals Institute, www.goalsinstitute.com.)

This belief regarding professionalism in general underscores the important role that leadership plays in professionalism in the law in particular. Leadership in the legal profession is by turns very concentrated and very diffuse.

Chief Justice Leroy R. Hassell Sr. has taken an active role in reaching out to lawyers and in improving professionalism, access to courts and the administration of justice. Another form of leadership exists within the profession, and that is leadership by example by members of the bar. It is really a form of servant leadership. It is a more subtle, but important and permeating, aspect of professional leadership. It is displayed in the very heart of the profession itself, it emanates from the law schools, it flows from the courts, it is strengthened by peers, it exists at the bar—from local and specialty bar associations to the Virginia State Bar and The Virginia Bar Association—and it comes from myriad other sources.

The strongest, most productive institution [substitute the word “profession” here] over a long period of time is one in which, other things being equal, there is the largest amount of voluntary action in support of the goals of the institution. The people who staff the institution do the “right” things at the right time—things that optimize total effectiveness—because goals are clear and comprehensive and the people understand what ought to be done. They believe they are the right things to do, and they take the necessary actions without being instructed. (*The Power of Servant Leadership*, Robert K. Greenleaf, Berrett-Koehler Publishers, Inc., 1998, page 51.)

Greenleaf also wrote: “The servant-leader is servant first. It begins with the natural feeling that one wants to serve. Then conscious choice brings one to aspire to lead.” This idea of having a calling to serve is deeply rooted and value based. In addition to following the mandates of the rules, a lawyer is willing to sacrifice

self-interests for the sake of others. Sacrificing self-interests does not mean not earning a living.

THE LEGAL PROFESSION TODAY HAS ITS CRITICS, SOME WITH GOOD REASON, BUT MOST BASED UPON A GENERALIZED, VAGUE, CENTURIES-OLD SOCIAL ATTITUDE TOWARD LAWYERS.

Roscoe Pound, dean of the Harvard Law School from 1916 to 1936, wrote “[t]here is much more in a profession than a traditionally dignified calling. The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood.”

Leadership in the profession demonstrates the positive aspects of the profession. The Loyola University New Orleans School of Law presents its St. Ives Award annually to an alumnus who has volunteered services to the law school or the university and who has maintained the highest standards of the legal profession. St. Ives, who lived from 1253 to 1303, is the patron saint of lawyers and clients, and was a man of unquestioned integrity and devotion to justice. Despite this unquestioned integrity and devotion to justice, it was written and sung about him: “*Advocatus erat sed non latro, res miranda populo*” (“he was a lawyer, but not a thief, a thing of wonder to the people”). More than seven centuries ago, the legal profession had its image problems, and these have persisted through the ages.

In his 1850 “Notes for a Law Lecture,” Abraham Lincoln (who was involved in more than five thousand cases in his twenty-five-year legal career, and who was one of twenty-five lawyers to become president of the United States) wrote: “There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events.”

The legal profession today has its critics, some with good reason, but most based upon a generalized, vague, centuries-old societal attitude toward lawyers. The leaders of the profession today must help to be sure that the rules are followed, that the values of professionalism are inculcated and reinforced, and that we let the public know of the good that lawyers do, not only as practitioners of the profession, but also as leaders in service to our profession and to our communities.

Of Counsel, in its October 2006 issue, published an interview with Virginia State Bar Senior Lawyers Conference member, former commissioner of the Internal Revenue Service, and legendary University of Virginia law professor and practicing lawyer, Mortimer M. Caplin, who founded the Washington, D.C., law firm Caplin & Drysdale forty-two years ago.

Of Counsel asked Caplin, “What do you look for in attorneys when you recruit for the firm? What characteristics do you want your attorneys to have?”

Caplin responded, “We’re looking for well-rounded people. Of course, we want them to be in high academic standing because performing at the highest possible level in their field is crucial to a firm of our size. They have to be good technically. But we want people with a broader viewpoint, who are interested in what happens in

society, about what's going on around them. We encourage them to write and teach. Actually, we encourage our people to go into government. We have a tremendous record of people going into and out of government service."

Of Counsel then said, "So that's the public service devotion that you have," to which Caplin responded, "Yes, we believe in that philosophy. It's more than just earning a living. You have to give back."

The profession has its critics, some of whom state that they consider themselves diagnosticians, but not prescribers, of remedies. Sol M. Linowitz—senior partner of Coudert Brothers, former general counsel and chairman of the board of Xerox, and ambassador to the Organization of American States—had, in addition to negative observations contained in his book, his prescriptions for what law schools, bar associations, judges, lawyers, society and the profession itself can do to improve:

The essence of the claim to professional status and professional privilege is that the members of the profession hold themselves to higher standards than other people. A businessman, after all, may properly make his prime goal the search for profits. Indeed his obligation to his stockholders is arguably that he does whatever the law permits that will be in their pecuniary interest. A lawyer

must pass a stiffer test. He is supposed to be ethical, even when he could make more money by being unethical. Maintaining ethical standards, Justice Sandra Day O'Connor wrote in a dissenting opinion in an advertising case, 'is a task that involves a constant struggle with the relentless natural forces of economic self-interest.' What makes the lawyer professional is his insistence that in the legal realm he sets the parameters of what he will and will not do—and he tells the client what he believes is in the client's interest. (*The Betrayed Profession: Lawyering at the End of the Twentieth Century*, Sol M. Linowitz, with Martin Mayer, Charles Scribner's Sons, 1994, page 229.)

Our profession is an honorable one, especially in Virginia. As the stewards of our profession, we have the responsibility not just to maintain but also to make our profession better through our combined efforts. We must remember that ours is a public profession, that we serve our society in practically every aspect of life, and that we are the profession's guardians for present and future generations. ☪

**Virginia Lawyer*, available on the VSB Web site at www.vsb.org, "Civility in Society and the Law," April 2006, pages 24–25; "Civility and Professionalism: A Modest Proposal," April 2005, pages 46–53; "An Honorable Profession with a Silver Lining," December 2003, pages 14–24; "The Roles of Law Schools and the Judiciary in Promoting Civility, Ethics and Professionalism," December 2003, pages 30–33; "In Furtherance of Civility," October 2002, pages 40–42; and "Civility—The Golden Rule," April 2002, page 43.



Frank Overton Brown Jr. is a past chair of the Board of Governors of the Virginia State Bar Senior Lawyers Conference and has served on the VSB Council. He concentrates his Richmond-area practice in the areas of wills, trusts and estates, and related tax matters. Brown is the author of the *Virginia Probate Handbook* and a fellow of the American College of Trust and Estate Counsel. He served for eight years as an adjunct professor at the University of Richmond and as a Richmond commissioner in chancery. He regularly lectures at First Day In Practice Seminars and the Bar Leaders Institute and the Solo & Small-Firm Practitioner Forum sponsored by the VSB Conference of Local Bar Associations and the Supreme

Court of Virginia. He holds bachelor's, master's and law degrees from UR. Brown received the Tradition of Excellence Award from the VSB General Practice Section in 2006. He is well-known to Virginia lawyers for his ethics program, "Protecting Your and Your Clients' Interests In the Event of Your Disability, Death or Other Disaster," which he has presented throughout Virginia.

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Civility —ITS URGENT NECESSITY

FOR A CIVILIZED FUTURE

by Edward R. Slaughter Jr.

Many articles have been written in recent decades about the decline of civility in the legal profession. There has been far less discussion in legal publications and law-related programs on the decline of civility in society. The legal profession is not unrelated to the society in which it exists. Attitudes and customs affect how lawyers interact.

Sociology Professor James Davison Hunter of the University of Virginia's Institute for Advanced Studies in Culture taught me much about this fascinating topic.

Hunter suggested I read his book, his landmark study, *Culture Wars: The Struggle to Define America* (Basic Books, 1991).

The book offers examples of people on opposite sides of our cultural divide and provides the reader a chronology from the time of the first settlers. Hunter says that there has always been cultural conflict in America.

To describe the combatants in shorthand, Hunter chose the titles "orthodox" and "progressive" to describe the "*formal properties* of a belief system or world view." He distinguishes the combatants as follows:

What is common to all three approaches to *orthodoxy*, for example

(and what makes orthodoxy more of a formal property), is *the commitment on the part of adherents to an external, definable, and transcendent authority*. Such objective and transcendent authority defines, at least in the abstract, a consistent, unchangeable measure of value, purpose, goodness, and identity, both personal and collective. It tells us what is good, what is true, how we should live, and who we are. It is an authority that is sufficient for all time.

Within cultural progressivism, by contrast, moral authority tends to be defined by the spirit of the modern age, a spirit of rationalism and subjectivism. Progressivist moral ideals tend, that is, to derive from and embody (though rarely exhaust) that spirit. From this standpoint, truth tends to be viewed as a process, as a reality that is ever unfolding. (p. 44)

Through twelve absorbing chapters—including chapter 10, entitled "Law"—Hunter discusses the present battle, the means of conducting the battle and the areas in which the battle is waged. In the last section of the book, "Toward Resolution," Hunter attempts to reconcile opposing sides, but he is not optimistic. While he acknowledges that many

Americans find themselves between the two warring factions, he notes that those in the middle do not raise their voices loud enough to be heard. They leave the battle to the extremists on both sides, many of whom have a moral stake in the outcome and a financial interest in continuing the battle.

Hunter also referred me to *The Therapeutic State: Justifying Government at Century's End* (New York University Press, 1998) by James L. Nolan Jr. of Williams College. The book details the evolution of our national life, from operating within a framework of outwardly imposed moral authority to patterns of behavior that are treated as illnesses that require therapy.

First, and perhaps most important, the therapeutic ethos, unlike traditional moral orders, is at its heart self-referential. As I discuss in the next chapter, the conditions of industrialized capitalism effectively undermined old forms of moral authority. Consequently, the individual has been left to himself or herself to establish standards of moral interpretation. Where older moral orders looked to a transcendent being, to a covenantal community, to natural law, or to divine reason to provide

the substantive basis for culture's moral boundaries, the therapeutic ethos establishes the self as the ultimate object of allegiance. The self has become, as Daniel Bell contends, "the touchstone of cultural judgment".

The book describes a therapeutic doctrine that dominates some of society. Included are analyses of how therapy has invaded civil case and criminal justice. Throughout the book there are references to therapeutic justifications for legislation.

Nolan, like Hunter, tries to be objective. However, his last chapter, entitled "The Paradox of Unintended Consequences," points out dangers to individual liberty. He cites the peril of having an individual's future determined by therapists rather than by judges with the power to mete out punishments. Nolan asks if our country has produced students for whom self-esteem is the ultimate goal of education—rather than the achievement necessary to make them productive citizens. He asks if our students can compete with individuals from other societies whose goal is achievement and not self-esteem. (p. 306, et seq.)

On the subject of civility, Hunter singled out the works of Stephen L. Carter, William Nelson Cromwell Professor of Law at Yale Law School. Carter is the author of *Civility: Manners, Morals, and the Etiquette of Democracy* (Basic Books, 1998). For those who do not have the time to read the book, an interesting adaptation may be found in "Just Be Nice," Carter's article from the May 1998 *Yale Alumni Magazine*. Carter contends that our society has, in the assertion of rights with regard to trivial matters, minimized the idea that we have obligations. Citing Pepperdine University Professor James Q. Wilson, Carter notes that we suffer from the "elevation of self expression over self control."

Carter discusses *Cohen v. California*, 403 U.S. 15 (1971), a decision of the U.S. Supreme Court that overturned the conviction of a young man who wore on his jacket the "benign legend" (Carter's term) "[expletive] the draft." While Carter agrees

that, as a matter of free speech, the Supreme Court was correct in overturning Cohen's conviction, he notes that the case arose at a time when public insults were becoming vulgar. He distinguishes these expressions of free speech from the witty insults of an earlier day, which were not obscene or—in his view—offensive. Saying that politicians and other public figures competed to demonstrate their cleverness in repartee, Carter points to one of his favorites, British Prime Minister Benjamin Disraeli's explanation of the difference between a misfortune and a calamity: "If Gladstone fell into the Thames, that would be a misfortune. And if anyone pulled him out, that would be a calamity." Carter writes, "Nowadays the tradition of barbed wit has given way to a witless barbarism." He asserts that "when the framers of the Constitution envisioned

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the rough-and-tumble world of public argument, they almost certainly imagined heated disagreements against a background of broadly shared values." He later notes, "When offensiveness becomes a constitutional right, it is a right without any tradition behind it, and consequently we have no norms to govern its use. The right, even if called self expression, comes from no source other than desire."

Carter states:

If we fail to distinguish desire from right, we will not understand that rights are sensible and wise only within particular contexts that give them meaning. The Constitution protects a variety of rights, but our moral norms provide the discipline in their exercise. Sometimes the moral norm of civility demands that we restrain our self-expression, for the sake of our community.

Returning to the topic of civility:

Yet we should recognize the terrible damage that free speech can do if people are unwilling to adhere to the basic precept of civility, that we must sometimes rein in our own impulses—including our impulses to speak hurtful words—for the sake of those who are making the democratic journey with us.

None of the authors address the existence of a supreme being. Carter, however, refers to our age as "morally bereft."

However, the question of whether it is possible to have civility without reference to a supreme being is certainly one worth discussing. Given the different forms that a supreme being takes throughout the world, not to mention the number of people who do not believe in a supreme being, our ability to realize a civilized world cannot depend on belief in a supreme being.

While many undoubtedly would disagree, science provides some hope for the future of reasoned and civil discourse. Religious beliefs of scientists run the gamut from a firmly held belief that there is no God to deeply held beliefs in one religion or another. But, in addition to their training in objective or empirical inquiry, the ability of scientists to debate civilly about passionately held beliefs can be considered one of the hallmarks of their disciplines.

With monitors in the form of judges to oversee behavior in the courtroom—and

by extension in other arenas of litigation—it should be easier for lawyers than for scientists to adhere to civility. However, it has to be remembered that lawyers are representing warring parties in a nonphysical fight. Thus, as our civilization has become at best more informal and at worst less restrained, civility has been reduced to secondary importance by those who believe that the causes of their clients or a greater cause justifies bullying or incivility. Such behavior must not be tolerated and should not be confused with less formal manners that characterize today’s society over those of earlier times.

Hunter stated to me that he believes the structural factors against an increase in civility are great, but it is essential to “fight the good fight.”

For many in our country, the last fifty years removed the yoke of racial segregation and incivility through a series of legal decisions. *Brown v. The Board of Education*, 347 U.S. 483 (1954), is the best known. Virginia had a policy of “massive resistance” to desegregation. Now, just over fifty years later, our country shows greater civility to minorities. Still, many persons believe that prejudice has been replaced by a stifling “political correctness.” Be that as it may, for those among us who were adults in Virginia fifty years ago, it seems truly remarkable that a U.S. senator could have lost his position of leadership in the senate because he seemed to say that the country had erred in not electing an openly segregationist presidential candidate in 1948. It is equally wondrous that the 2007 loss of a reelection bid by another U.S. senator could have had its genesis in a word that was perceived to be a racial slur.

As for the population as a whole, in politics there seems to be ground for hope that the pendulum is swinging from

extreme “take no prisoners” partisanship to a realization that the future of our country depends on the diminution of that venomous relationship and a recognition of

HOW WE TREAT
ONE ANOTHER
IS WHAT CIVILITY
IS ABOUT.

the need that we listen to one another—that we engage in civil debate. In the 9/11 Commission and the Baker-Hamilton Commission, Democrats and Republicans came together under bipartisan leadership. While many do not agree with all or a portion of the conclusions of the commissions, I have seen no one assert that the commissions reached their decisions with

anything less than reasoned, informed, serious and, yes, civil debates. The reports likewise have generated reasoned, informed, serious and civil debates.

The general public approved of how the commissions conducted their deliberations, and this gives grounds for hope that the future of our country and the world will be characterized by more civilized relations.

Carter wrote:

Even the controversial limits on sexual harassment and “hate speech” that have sprouted in our era, limits that often carry the force of law, are really just more rules of civility, more efforts, in a morally bereft age, to encourage us to discipline our desires.

My point is not to tell us how to speak. My point is to argue that how we speak is simply one point on a continuum of right and wrong ways to treat one another. And how we treat one another is what civility is about. ☺



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What the NEW ASSOCIATE Wants to Tell the Senior Partner

by Jack W. Burtch Jr.

Last April, in “Jump-Start Your Career: Tips for New Lawyers,” I suggested a number of points senior partners want new associates to know. The article was a compilation of experience and advice about how to survive in a law firm for those brand-new to our profession. After the article was published, I started hearing from the new lawyers themselves, who asked “When do we get our turn?” It seems there are a few things they want us to know. Since turnabout is fair play, this installment is to let them have their say.

There’s a lot of free information out there. Trust me to use it right.

To the newest generation of lawyers, using computers is natural, if not instinctive. They grew up using computers as the primary resource for everything from doing homework to communicating with friends. It should come as no surprise, then, that they head for the computer rather than the law library when assigned a research project. And when they get to the computer, they tend to pull up Google (the Web’s

most popular search engine) before opening Lexis or Westlaw. They like to research by “triangulation” first, rounding out a general view of the issue at hand from multiple sources, then mentally cross-checking for validity and accuracy.

New lawyers operate on the concept that information is—or should be—free. For them the question is not who owns it, but who can best use it. They hone their skills to make the most of the information they find.

I know a lot about technology. Let me use it to do my job better.

These new lawyers are accustomed to using technology in their personal lives. Just take a look at the personal pages on MySpace or Facebook to see how their generation communicates and keeps up with friends all over the world.

Harnessing this predisposition for technology allows the law firm to reap the value of the high salaries it is paying. Part of

8 TIPS

- There's a lot of free information out there. Trust me to use it right.
 - I know a lot about technology. Let me use it to do my job better.
- I've got everything you want in a partner. I'm just younger.
 - I'm willing to stay at your firm. Turnover doesn't have to be a fact of life.
- I want to know how to do my job better today.
- I'm always thinking about building the practice.
- I know how I work best—let me do it.
 - Work doesn't have to feel like work.

today's youth culture is keeping up with what's cutting edge and exciting. Thus, new lawyers may have great ideas about how to make the firm work smarter by applying the technology they already know. It frustrates them if the firm provides computers and equipment more primitive than what they use at home. Putting their knowledge to use makes good economic sense for law firms.

I've got everything you want in a partner. I'm just younger.

New lawyers don't accept chronological age as a legitimate factor in the partnership decision. They are quick to point out that many of the economy's newest billionaires are twenty-something. Businesses run by these new billionaires succeeded by gathering and organizing information better than others. One by-product of the technology revolution has been the democratization of almost everything technology touches.

It's not surprising that newer lawyers find age-oriented promotional hierarchies stifling and unjust. They are more interested in being judged—and in succeeding—by their merits than by their willingness to

stay in one place. They respect hard-won battle scars, knowledge and expertise, but they want to be rewarded for what they can actually do.

A law firm will make a lawyer a partner when that lawyer becomes indispensable. A lawyer who excels in the technical aspects of practice, brings in good business, and contributes to the overall health of the firm will stand out. The newest generation just doesn't see time at the bar as a significant promotion factor.

I'm willing to stay at your firm. Turnover doesn't have to be a fact of life.

Today's employees expect to change jobs many times in their careers. New lawyers are no exception. But new lawyers don't necessarily want it this way. A firm characterized by high turnover and low morale can be devastating to everyone.

**Many in this generation
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lawyers to stay.**

Continually recruiting, training and assimilating replacement lawyers drains a firm's financial resources and emotional reserves. The new generation does not understand why keeping associates does not appear to be a primary goal for a law firm. Young lawyers believe the ideal firm is one that helps them grow, rewards them for good work, and gives them both an intellectual challenge and emotional satisfaction.

Many in this generation find it ironic that law firms complain about job-hopping yet do little to encourage young lawyers to stay. The unspoken assumption is, if you really wanted to keep me, you would listen to me. Loyalty begets loyalty. When lawyers are seen as fungible billing units, they tend to behave that way.

One side note: Law firms benefit from this phenomenon of job-hopping. They are enriched by the knowledge and experience new lawyers may have gained before law school or before making a lateral move to the firm.

I want to know how to do my job better today.

Young lawyers are expected to give instant, competent advice, whether they're responding on their cell phones to super-

vising lawyers or clients or checking e-mail on their Blackberrys every few minutes. Likewise, they expect the same timeliness in evaluation of their own work. To them, the law firm's annual review process is antediluvian. They want feedback at the speed of work. They also want to know what they are doing well, not just what needs improvement. Great lawyers achieve great distinction by sharpening their best skills. Yet sometimes new lawyers need to be told what their best skills are.

The current generation doesn't want to wait six months to find out what they've been doing wrong—they want to do things right today. Here, impatience is a virtue.

I'm always thinking about building the practice.

Senior lawyers often complain that every weekend young associates board planes or pack up cars to attend friends' weddings far away. Or, late every Friday afternoon, they get together with old college pals at happy hour. The new group resents this grumbling. They think we talk out of both sides of our mouths.

On one hand, they hear us say they are not motivated to build a law practice. On the other, they believe their relentless networking is precisely what law firms call "marketing." It's just the way they market to their peers. It's no secret that young people are marrying later these days. Post-college employment, graduate education and geographical experiments have lengthened the time between college and marriage. During these years, the current generation is making many friends in many cities. Hence, the every-weekend-there's-another-wedding epidemic.

But that wedding three states away is not just an excuse to play. It's a chance for young lawyers to let their peer group know they're working at a great law firm. At these events, they meet their friends and friends of friends. These are all rising business, professional and community leaders. Building these relationships is

marketing. Our young lawyers ask why they are being chided for doing what we say we want.

As for the work back at the office, don't worry. The Blackberry and cell phone are close at hand.

I know how I work best—let me do it.

Gone are the days when one could truly leave work at the office. Clients demand that we be on call nearly 'round the clock. We, in turn, demand this of ourselves. Consequently, we expect our employees to devote a full commitment of mind and time to the cases at hand.

Young lawyers understand this and are, on the whole, willing to do whatever it takes to get the job done correctly and on time. In a way, they actually embrace this idea because it mirrors their personal lives. Every friend is but a phone call or text message away—and a less-than-prompt response quickly elicits frustration. In fact, one of this generation's salient strengths is its ability to multitask. A lawyer whose mind can effectively handle more than one thing at once is well-served in the courtroom. This skill translates naturally from a young lawyer's habit of talking on the phone and writing an e-mail at the same time. It's not meant as disrespect; young lawyers see it as efficiency.

They are more committed to doing the job than being present in the office. If they are expected to be on call most of their waking hours, they see it as only fair that they be allowed to work in whatever manner or place they feel is most effective.

Work doesn't have to feel like work.

Work is an important part of young lawyers' lives, and they take it seriously. Not much can rival the esteem-building gratification of success in your chosen career. But work is only one part of life. Young lawyers today are told that work-life balance is important to both the new associate and the firm. New lawyers see themselves as respon-

sible for allocating office and home hours to achieve that balance.

Yet their real aim is not so much to draw a line between two mutually exclusive lives, but to have them exist in harmony, each enriching and informing the other. For young lawyers today, a healthy work life is fulfilling, not oppressive.

Some lawyers will disagree absolutely with these points. But our profession has always been open to different points of view. The message young lawyers want us to hear is simple: they grew up in a fast-paced world with little unscheduled time. They have a different set of skills, talents and motivations. They made the sacrifice,

usually evidenced by heavy loads of debt, to finish law school and pass the bar. They want to make their mark on our profession. By playing to their strengths, rather

than criticizing their differences, we will all come out ahead. ♪



Jack W. Burtch Jr. was admitted to the Virginia Bar in 1973. He received his undergraduate degree in 1969 from Wesleyan University in Middletown, Connecticut, and his law degree in 1972 from Vanderbilt University, where he served as an editor of the *Vanderbilt Journal of Transnational Law*. After serving as an associate in the labor law section of Hunton & Williams from 1973 to 1980, Burtch became a principal of the firm that became McSweeney, Burtch & Crump. In January 2001, he joined the firm that became Macaulay & Burtch PC, where he represents businesses, executives and professionals in employment law and labor relations. Burtch is an adjunct professor of law at the University of Richmond School of Law, where he teaches negotiations, interviewing and counseling.

The Mark of the Master

by George W. Shanks, 2006–2007 Conference of Local Bar Associations Chair



As I write this column, the Fredericksburg session of the Bar Leaders Institute and the fifth incarnation of the Solo & Small-Firm Practitioner Forum is a “wrap,” and preparation for the Roanoke redux is in high gear. I have written before about these high-energy, high-interest programs. I am enthusiastic about them. I am proud of the Conference of Local Bar Associations and its accomplishments in sponsoring the programs. And I am honored that Chief Justice Leroy R. Hassell Sr. and Justice Cynthia D. Kinser have asked the CLBA to be the permanent home for the Solo and Small-Firm Practitioner initiative.

The Bar Leaders Institute has for almost two decades convened annually to address the specific challenges of local bar leaders, to energize their administrations and programs, and to provide collegiality and connection. Being a bar leader occasionally engenders a fox-hole mentality and reminds us that we all share that foxhole from time to time. More often, the experience, like parenthood, is over before it can be savored and truly appreciated for the rare gift it is.

In 2004, the Chief Justice appointed a Solo and Small-Firm Commission to address the disconnect he perceived between the majority of practicing attorneys in Virginia and the organized bar. He believed that lawyers received more regulation and less support. He tasked Justice Kinser to chair the effort and, over eighteen months under her prescient guidance, the Solo and Small-Firm Practitioner Forum was born. It incorporated programs on ethics, office practice and management, and planning for retirement, disability or death.

It also featured a Town Hall Meeting hosted by the Chief Justice. From the forum's first presentation in Abingdon in April 2005 it was an unqualified success. It provided continuing legal education, including ethics credits; an inspiring luncheon speaker; excellent food; an opportunity to address the Chief Justice about court and state bar matters; and a reception sponsored by a local bar—and all for free to the attendees. This event is unparalleled in the history of bar presentations.

The merger of the BLI with the Solo & Small-Firm Practitioner Forum was as natural as it was inspired. Bar leaders are bar members first. Solos and small firms make up two-thirds of practitioners in the commonwealth—truly a marriage made in heaven.

All of this, of course, is prologue to the real story: To be a presenter at one of these events is a professional ego trip, to be sure. But it would be folly to believe that these road shows are the smashing success they are solely because of the quality of their content or the character of their faculty. They succeed because of hard work, pure and simple. That work is performed primarily by two dedicated VSB employees: Barbara O. Allen and Paulette J. Davidson. Let me share with you their biographies, for these women are tireless in their efforts on behalf of the bar.

Barbara's professional life has led her down fascinating and memorable roads. As a journalism student at Virginia Commonwealth University, she says, she was in the right place at the right time in 1980 when she joined the staff of the clerk of the Virginia House

of Delegates. With a flair for politics and acumen to match, she went on to the Office of the Attorney General where she was involved in public relations and the management of the Attorney General's calendar. She then moved to the Governor's Office, where she was special assistant to the Governor and liaison to cabinet offices and special projects. For the past thirteen years, she has been a miracle worker at the Virginia State Bar.

Paulette joined the VSB in 1987; her career also has included work with the State Corporation Commission and in private industry. An excellent organizer, she wears many hats for the bar. Like Barbara, she carries out her tasks with style and in a cheerful way that belies their difficulty.

With the fusion of the BLI and the Solo & Small-Firm Practitioner Forum, the VSB has assigned another employee, Dolly C. Shaffner, to lend a hand. She has done her job with easy grace. Her smile is a bonus that perpetuates the myth that these programs put on themselves.

And so, as attendees bestow comments and kudos on our Fredericksburg event and we eagerly await the Roanoke program on May 23, 2007, I extend to Barbara, Paulette and Dolly, on behalf of the Conference of Local Bar Associations and on behalf of the fifteen hundred attorneys who have attended these programs, my sincerest thanks for a spectacular job, done over and over—to perfection each time—in a way that makes it look easy. The mark of the master.

Young Lawyers Conference Pro Bono Programs

by Maya M. Eckstein, 2006–2007 Young Lawyers Conference President



We have built a legal framework to protect the poor, and it's a structure we can be proud of. But it has a gate in the front, and lawyers hold the keys. Unless we're willing to unlock the gate for those who can't afford a key of their own, and let them into a shelter we've built for their protection, we might as well not have built it at all.

—Former United States Supreme Court Justice Sandra Day O'Connor

Attorneys are privileged members of society. Well-educated and articulate, attorneys have a monopoly to represent clients and practice law. Therefore, attorneys have a professional obligation to perform pro bono work on behalf of those who do not have access to the courts or other legal services.

Rule 6.1 of the Virginia Rules of Professional Conduct states that “[a] lawyer should render at least two percent per year of the lawyer’s professional time to pro bono *publico* legal services.” These activities include “poverty law, civil rights law, public interest law, and volunteer activities designed to increase the availability of pro bono legal services.”¹ Rule 6.1 also states that “[e]very lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”

The Virginia State Bar Young Lawyers Conference offers ways for lawyers to fulfill their pro bono obligations.

- In the **Wills for Heroes** program, lawyers provide simple wills, powers of attorney and advanced medical directives on a pro bono basis to Virginia’s firefighters, police officers and other first responders. The program includes free continuing legal education training. Wills for Heroes has been offered in several areas of the state. The YLC soon will host a conference call on how to set up the program in other jurisdictions. For information, contact Erin S. Whaley at Erin.Whaley@troutmansanders.com.
- In the **Domestic Violence Safety Program**, lawyers represent domestic-violence victims pro bono in protective-order, custody and support cases. The programs offer free continuing legal education training to attorneys in exchange for their commitment to handle cases. As part of the program, attorneys also distribute brochures and legal information regarding the protective-order process. For information, contact Kenneth L. Alger at Kennethalger@shentel.net.
- The **Emergency Legal Services Program** offers lawyers the opportunity to provide pro bono assistance to Virginians affected by mass emergencies and disasters. In a joint effort with The Virginia Bar Association Young Lawyers Division, the

Emergency Legal Services Program was modeled after the American Bar Association’s Disaster Legal Services Program. The program creates and maintains a network of volunteers trained in disaster-related legal needs. The volunteers deliver emergency legal services when a disaster is declared. For information, contact Jeffrey H. Geiger at jgeiger@sandsanderson.com.

- In the **No Bills Night** program, lawyers answer Virginians’ legal questions for free. The program began in Richmond in 1984 and has grown statewide. Several programs are broadcast on local television stations. For information, contact Darren W. Bentley at bentleyd@clementwheatley.com.

Not only does pro bono work fulfill attorneys’ professional obligations, but pro bono work offers young lawyers a way to assume greater responsibility, gain confidence, and grow professionally.

¹ Rule 6.1 states that “[d]irect financial support of programs that provide direct delivery of legal services to meet the needs described . . . is an alternative method for fulfilling a lawyer’s responsibility under this Rule.”

“An Ounce of Prevention ...” Continued!

by Janean S. Johnston

Documenting communication with clients and recording your general instructions regarding law office procedures—such as “always fill out a client intake form with new clients”—will be among the most important habits you can develop in your practice. This fifth installment in the Firm Fitness Check-up series emphasizes how careful documentation procedures can serve not only to protect lawyers in the malpractice or disciplinary/ethical context but also to give practitioners peace of mind.

Fee agreements, engagement and nonengagement letters, and closing letters are essential to malpractice prevention and ethics complaint avoidance. Written confirmation also is required when

- A conflict of interest arises.
- A third party might perceive an attorney-client relationship that doesn't exist.
- A client chooses to disregard your advice.

Any situation that potentially could cause problems in your practice should be documented. Establish your guidelines, discuss them at firm meetings, distribute samples and include this information in procedural manuals. Guidelines should be provided on file documentation regarding what should or should not be included in the case files. Phone calls, faxes received and sent, e-mail transmissions, date-stamping of mail received and a log of mail sent—as well as meetings and important events—should all be documented. This information is invaluable when defending against malpractice claims and ethics complaints. When you can't remember what you said to a client—or the reverse—instead of los-

ing sleep, go to your client file and read what you recorded.

OK, now it's time to find out how you are doing with your documentation procedures. Remember, to practice safely, the following questions should be answered “yes.” A “no” answer should prompt you to examine your practices and to refine or change procedures in order to lessen your exposure to malpractice lawsuits or ethics complaints.

Documentation Procedures

- Does the firm always use written engagement/fee agreement letters?
- Do you always send nonengagement letters when you decline representation?
- If representation must be ended due to a conflict or another issue such as nonpayment of the fee, do you send a disengagement letter?
- At the conclusion of a matter, do you send a closing letter?
- Does the firm send copies of all significant documents and correspondence to clients?
- When advising clients and recommending courses of action, do you confirm client decisions and reasons in writing, especially if the client decides not to follow your advice?
- Are all incoming and outgoing phone calls and conversations documented?
- Do you maintain copies of all e-mail communications with clients?
- Are clients given periodic progress reports, and are these reports kept in written form?

- Does your firm have back-up procedures to protect the data on the firm's computers, including all of the pertinent financial data, with tapes, disks, compact discs, flash drives, an online storage vendor and the like?
- Are these backups stored off-site in a secure location?
- Is mail date-stamped when received and a log of outgoing mail maintained?



These questions do not foresee every documentation issue. Hopefully, they will stimulate your thinking and alert you to problems that could jeopardize your firm's health and reputation. Don't forget your obligation to preserve all electronic data that may be relevant in a litigation context. The new rules and amendments regarding this requirement are listed in the Federal Rules of Civil Procedure effective December 1, 2006.

If you have any questions after answering the preceding questions, please contact me at (703) 567-0088. I will be happy to discuss your results and make appropriate suggestions on a confidential basis. Also, remember the Virginia State Bar's Confidential Law Practice Management Review program. There are a limited number of these reviews available during the current year, and I would be happy to send an application to interested firms.

We will continue to review other risk management areas in this ongoing series.



69th Annual Meeting

VIRGINIA BEACH, VIRGINIA

June 14–17, 2007

The following pages contain a preliminary schedule of events and feature many of the major events to be held during the 69th Annual Meeting in Virginia Beach.

Annual Meeting brochures, which contain complete registration and hotel information, will be mailed to all Virginia State Bar members in mid-April.

Complete Annual Meeting information, including registration forms, also is available on the Virginia State Bar's Web site at www.vsb.org. If you do not receive a brochure and/or need more specific information, call the Virginia State Bar, Bar Services Department, at (804) 775-9400. All information on the following pages is tentative and subject to change. Please refer to the brochure and the Web site for updates. You will be able to submit registration forms online at www.vsb.org.

Don't forget to visit the 52nd Annual Boardwalk Art Show and Festival!

Thursday, June 14–Sunday, June 17 • Oceanfront Boardwalk, Virginia Beach

Nearly 400 fine artists and craftsmen will convene on the Virginia Beach Boardwalk for one of the best and most popular outdoor fine-art shows in the country. The show will open on Thursday and continue through Sunday. Daily hours are 10 AM–6 PM. For more information, contact Contemporary Arts Center of Virginia at (757) 425-0000 or visit the Web site at www.cacv.org.

Schedule of Events

WEDNESDAY, JUNE 13

NOON	Executive Committee Meeting	Cavalier Oceanfront
6:30 PM	Council Reception & Dinner Sponsor: Cavalier Hotels	Cavalier Oceanfront

THURSDAY, JUNE 14

8:30 AM	VSB Registration	Cavalier Oceanfront
9:00 AM	Council Meeting	Holiday Inn
9:00 AM to 5:00 PM	33rd Recent Developments Seminar (separate registration with Virginia CLE)	Cavalier Beach Club
11:30 AM	Golf Outing	Heron's Ridge Golf Course
12:00 PM	VLF CLE Committee	Cavalier Oceanfront
3:00 PM	VADA Executive Committee	Cavalier Oceanfront
4:00 PM to 6:00 PM	Lawyers Expo Opening & Reception Sponsors: Pearl Insurance; Cavalier Hotels	Cavalier Beach Club
5:30 PM	Bill W. Meeting	Original Cavalier
6:30 PM	Reception on the Hill Sponsor: Virginia State Bar Members' Insurance Center	Original Cavalier

June 14–17, 2007 • Virginia Beach, Virginia

Schedule of Events

FRIDAY, JUNE 15

7:30 AM	Conference of Local Bar Associations Annual Meeting & Breakfast	Cavalier Oceanfront
7:45 AM	Registration	Cavalier Oceanfront
8:00 AM	“Run in the Sun” Sponsor: Virginia Lawyers Weekly	Boardwalk
8:30 AM	VADA Board of Directors Meeting	Princess Anne
8:30 to 10:30 AM	VSF Section CLE Workshops & Business Meetings <i>Intellectual Property Section</i>	Holiday Inn
8:45 to 10:45 AM	SHOWCASE CLE —“Answering the Call: Striving for Professionalism and Happiness in our Lives as Lawyers” Sponsors: Litigation & Criminal Law Sections; Bench-Bar Relations Committee	Cavalier Beach Club
9:30 AM to 5:30 PM	Lawyers Expo	Cavalier Beach Club
10:00 AM	Virginia Legal Aid Project Directors	Cavalier Oceanfront
11:00 AM	Lawyers Helping Lawyers <i>Board of Directors Meeting</i>	Original Cavalier
11:00 AM to 1:00 PM	VSF Section CLE Workshops & Business Meetings <i>Administrative/Antitrust/Corporate Counsel Sections Bankruptcy/Real Property Sections Construction Law/Local Gov’t/Environmental Law Sections Family Law Section Senior Lawyers Conference Trusts & Estates Section Young Lawyers Conference</i>	All Hotels
11:00 AM	Virginia Law Foundation <i>Finance Committee</i>	Cavalier Oceanfront
NOON	Virginia Law Foundation <i>Board Meeting & Lunch</i>	Cavalier Oceanfront
12:30 PM	Beach Break Reception Sponsor: The McCammon Group	Cavalier Beach Club
12:30 PM	Young Lawyers Conference <i>Reception & Meeting</i>	Cavalier Beach Club
12:30 PM	Virginia Legal Aid Award Luncheon (<i>ticketed event</i>) Sponsor: ALPS	Cavalier Oceanfront
12:45 PM	American Academy of Matrimonial Lawyers <i>Luncheon Meeting</i>	Princess Anne
1:00 PM	Military Law Section <i>Business Meeting</i>	Holiday Inn
2:00 to 3:30 PM	VSF Section CLE Workshops & Business Meetings <i>General Practice Section International Practice Section Virginia ADR Joint Committee Lawyers Helping Lawyers</i>	All Hotels
2:30 PM	Virginia Women Attorneys Association <i>Annual Meeting & Program</i>	Cavalier Beach Club
3:30 PM	Virginia ADR Joint Committee	Holiday Inn
4:00 to 5:00 PM	Reception Sponsor: VWAA	Cavalier Beach Club
5:30 PM	Bill W. Meeting	Original Cavalier
6:00 PM	President’s Reception	Cavalier Beach Club
6:00 PM	Childrens’ Dinner (<i>ticketed event</i>)	Cavalier Oceanfront
7:00 PM	Banquet & Installation of President (<i>ticketed event</i>) Sponsor: Cavalier Hotels	Cavalier Beach Club
9:00 PM to 12:30 AM	Dance: The TFC Band Sponsor: Young Lawyers Conference	Cavalier Beach Club

Schedule of Events

SATURDAY, JUNE 16

7:45 AM	Registration	Cavalier Oceanfront
8:00 AM	Law School Alumni Breakfasts (<i>ticketed event</i>)	All Hotels
8:30 AM	Lawyers Expo	Cavalier Beach Club
9:00 AM	General Session & Awards <i>Continental Breakfast Buffet</i>	Cavalier Beach Club
9:30 AM	Sand Castle Contest Sponsor: Minnesota Mutual Lawyers Insurance Company	Cavalier Beachfront
9:45 to 11:00 AM	Special Program Featuring Bob Battle <i>One of America's Funniest Trial Lawyers</i> Sponsor: David P. Bobzien	Cavalier Beach Club
10:00 AM	2007–2008 VWAA Board Meeting	Cavalier Beach Club
12:15 PM	Expo Reception/Raffle Drawing Cash Bar Reception	Cavalier Beach Club
12:45 PM	Senior Lawyers Conference Luncheon for 50-Year Award Recipients	Cavalier Oceanfront
2:00 PM	Tennis Tournament Sponsor: Michie, Hamlett, Lowry, Rasmussen & Tweel	Original Cavalier
2:00 PM	Volleyball Tournament Sponsors: Chicago Title Insurance Company, Curran & Whittington PLLC	Cavalier Beachfront

Continuing Legal Education

VaCLE Recent Developments Seminar

Thursday, June 14, 9:00 AM–5:00 PM
6.0 CLE Credits, 1.0 Ethics (*pending*)

In conjunction with the Annual Meeting, the CLE Committee of the Virginia Law Foundation will sponsor its 33rd Annual Recent Developments in the Law Seminar. This all-day program is scheduled on Thursday, June 14, at the Cavalier Beach Club, adjacent to the Cavalier Oceanfront Hotel.

A separate announcement regarding this seminar will be mailed by Virginia CLE in Charlottesville. Please note that the registration fee for this seminar is **not** included in the VSB Annual Meeting registration fee.

Separate registration through Virginia CLE is required. Registration Materials may be accessed at www.vacle.org or (800) 979-8253.

VSF Section CLE Programs

Friday, June 15, 8:30 AM–3:30 PM
6.0 CLE Credits, 3.5 Ethics (*pending*)

The sections will conduct their Professional Development Workshops at the Cavalier Oceanfront Hotel and the Holiday Inn/39th Street on Friday. Auxiliary registration desks will be open at these facilities to accommodate registration for the CLE workshops. Your Annual Meeting registration fee includes admission to these workshops, and your badge will serve as your ticket. You must be registered for the Annual Meeting to receive CLE credit for attendance at any seminar on Friday.

The workshops listed on the following pages will qualify for MCLE credit and ethics credit as indicated. Attorneys may receive a maximum of 6.0 CLE credits, including 3.5 ethics credits on Friday.

Each attorney is responsible for completing the Certificate of Attendance (Form #2) which will be included in the registration packets.

According to their bylaws, sections also are required to conduct annual business meetings which will be scheduled either immediately preceding or following the corresponding section workshop. The annual business meetings are open to all members of the section.

Please see Section CLE Programs on the following page.

Continuing Legal Education

VSB SECTION CLE PROGRAMS • FRIDAY, JUNE 15

ADMINISTRATIVE LAW/ANTITRUST/ CORPORATE COUNSEL

“A Variety of Issues to Keep General Counsel Up at Night”

Workshop: 11:00 AM Business: 1:00 PM
Credit: 2.0 Hours Ethics: —

BANKRUPTCY/REAL PROPERTY

“Fight the Trustee: Strategy and Tactics to Defeat a Bankruptcy Trustee’s Attempt to Take Your Client’s Property”

Workshop: 11:00 AM Business: 12:30 PM
Credit: 1.5 Hours Ethics: —

CONSTRUCTION/LOCAL GOVERNMENT/ ENVIRONMENTAL LAW

“Monday Morning Quarterbacking the PPEA & PPTA: Lessons Learned From State and Local Public/Private Construction Projects in the Commonwealth”

Workshop: 11:00 AM Business: 12:30 PM
Credit: 1.5 Hours Ethics: —

FAMILY LAW

“Attorney’s Fees: Getting Them for Your Client and Yourself”

Workshop: 11:00 AM Business: 12:30 PM
Credit: 1.5 Hours Ethics: —

GENERAL PRACTICE

“Representing Landlords, Defending Tenants and Judging the Facts and the Law in Low Income Housing Causes of Action—Perspectives from the Bench and the Bar”

Workshop: 2:00 PM Business: 3:30 PM
Credit: 1.5 Hours Ethics: —

INTELLECTUAL PROPERTY

“Federal E-Discovery Rules: Tips, Techniques and Pitfalls from the Front Line”

Workshop: 9:00 AM Business: 8:30 AM
Credit: 1.5 Hours Ethics: —

INTERNATIONAL PRACTICE

“New Trade Realities—After the Mid-Term Elections”

Workshop: 2:00 PM Business: 4:00 PM
Credit: 2.0 Hours Ethics: —

SHOWCASE CLE—LITIGATION/ CRIMINAL LAW /BENCH BAR RELATIONS COMMITTEE

“Answering the Call—Striving for Professionalism and Happiness in our Lives as Lawyers”

Workshop: 8:45 AM Business: 10:45 AM
Credit: 2.0 Hours Ethics: 2.0 Hours (pending)

MILITARY LAW SECTION

Business Meeting/Luncheon only 1:00 PM

SENIOR LAWYERS CONFERENCE

“Mentoring New Lawyers in a New World”

Workshop: 11:00 AM Business: 12:30 PM
Credit: .5 Hour Ethics: .5 Hour (pending)

TRUSTS & ESTATES

“New Charitable Legislation Under the Pension Protection Act of 2006 and Fiduciary Litigation under the Uniform Trust Code and New Rules of Court”

Workshop: 11:00 AM Business: 12:30 PM
Credit: 1.5 Hours Ethics: —

YOUNG LAWYERS CONFERENCE

“The Effects of *Kelo v. City of New London* in the Commonwealth of Virginia and the Necessity of Legislative Reform”

Workshop: 11:00 AM Business: 12:30 PM
Credit: 1.5 Hours Ethics: —

VIRGINIA ADR JOINT COMMITTEE

“Restorative Justice: An Alternative Approach in Criminal Justice”

Workshop: 2:00 PM Business: 3:30 PM
Credit: 1.5 Hours Ethics: —

LAWYERS HELPING LAWYERS PROGRAM

“The Law Firm’s Responsibility to the Impaired Attorney”

Workshop: 2:00 PM
Credit: 1.5 Hours Ethics: 1.5 Hours (pending)

Maximum Available MCLE CREDIT:
6.0 Hours
Maximum Available ETHICS CREDIT:
3.5 Hours (pending)

Special Events

SHOWCASE CLE PROGRAM

“Answering the Call: Striving for Professionalism and Happiness in our Lives as Lawyers”

Sponsored by the Litigation and Criminal Law Sections and the Bench-Bar Relations Committee

Friday, June 15 • 8:45–10:45 AM • 2.0 MCLE Credits • 2.0 Hours Ethics (pending)

The Litigation Section, Criminal Law Section and Bench-Bar Committee of the Virginia State Bar are jointly sponsoring this entertaining and educational presentation by legal humorist **William “Wild Bill” Haltom**, a Tennessee trial lawyer.

Having missed his calling as an evangelical preacher, Bill Haltom had developed quite a reputation for bringing down the house with his humorous and emotional appeal. Mr. Haltom has not only published three books entertaining lawyers everywhere with his humor, but he also serves as a humor columnist for the *Memphis Commercial Appeal*, and his columns appear in the *Tennessee Bar Journal* and online at www.tba.org.

Following the presentation by Mr. Haltom, there will be a panel discussion to address issues raised in his remarks, and to answer questions from the audience on issues relating to professionalism and the lawyer’s search for happiness. The panel will include:

Joseph A. Condo—Condo, Roop, Kelly & Byrnes P.C. McLean

Karen A. Gould—President, Virginia State Bar; McSweeney, Crump, Childress & Gould PC, Richmond

Hon. Ann Hunter Simpson—Judge, 15th Judicial Circuit, Spotsylvania

Moderator: David P. Baugh—Richmond; Secretary, Board of Governors, Criminal Law Section; 2006 Recipient of the Lewis F. Powell Jr. Pro Bono Award

This ethics program promises to be lively and entertaining!

Special Events

Annual Banquet

Friday, June 15 • 7:00 PM • Cavalier Beach Club

Friday’s activities will be highlighted by the Annual Banquet that will be held in Rooms A&B of the Cavalier Beach Club.

Howard W. Martin Jr. of Norfolk, will be sworn in by Chief Justice Leroy R. Hassell, Sr. as the 69th President of the Virginia State Bar. Reservations will be taken on a first-come, first-served basis. **Fee: \$60 per ticket.** *Space Limited.*

Dance with The TFC Band

Friday, June 15 • 9:00 PM • Cavalier Beach Club

Immediately following the Banquet, join **The TFC Band** on the deck of the Cavalier Beach Club, from 9:00 PM–12:30 AM. TFC is a polished show band in the Las Vegas tradition.

Sponsor: Young Lawyers Conference

Virginia Women Attorneys Association Annual Meeting

Friday, June 15 • 2:30 PM • Cavalier Beach Club

On Friday afternoon, the Virginia Women Attorneys Association will hold its Annual Meeting, beginning at 2:30 PM. In conjunction with this meeting, the VWAA will sponsor a CLE program from 3:00 to 4:00 PM entitled **VOTES FOR WOMEN: Perspectives and Participation In Politics**. The program will include a panel discussion on ways in which women attorneys can encourage and support women in their quests for leadership positions in the political arena.

Following the program, the VWAA will host a reception from 4:00 to 5:00 PM.

Special Events

SPECIAL PROGRAM

Bob Battle: America's Funniest Lawyer

Saturday, June 16, 9:45 AM • Cavalier Beach Club

The Verdict is Unanimous: Bob Battle is Hilarious!

Following the General Session on Saturday morning, Richmond trial lawyer, Bob Battle, will present a comedy routine that is guaranteed to be lively and highly entertaining for all in attendance.

Bob Battle has earned national and international acclaim for his clever, clean comedy. His day job as a top-rated trial lawyer who has won many high profile cases for professional athletes combined with his hilarious comedy act have made Bob an extremely popular choice for events. A professional stand-up comedian for the last 18 years, he has shared the stage with seven different **Saturday Night Live** cast members, Martin Lawrence, Chris Rock and Donny Osmond.

Don't miss what promises to be a highly energetic and fun filled presentation. Spouses and Guests Welcome!

This event is kindly sponsored by David P. Bobzien

Athletic Events

Golf Outing

Thursday, June 14, 11:30 AM • Heron Ridge Golf Club

The format will be a 4-person scramble, post-flighted, starting at 11:30 AM. Please register as soon as possible. Pay the fees at the course, prior to tee-off.

Fifth Annual Tennis Tournament

Saturday, June 16, 2:00 PM • Original Cavalier

On the courts of the Original Cavalier Hotel. Competitors do not need team members, as this is a mixed-doubles, round-robin tournament. Tennis balls will be provided.

Sponsor: Michie, Hamlett, Lowry, Rasmussen & Tweel

26th Annual Run in the Sun

Friday, June 15, 8:00 AM • The Boardwalk

The race will be a 3.1-mile (5 k) run which will begin at the start of the Boardwalk (38th and Atlantic Avenue) to 16th Street and will return to the start/finish line. Enter by May 4 and receive a "Run in the Sun" T-shirt.

Sponsor: Virginia Lawyers Weekly

23rd Annual Beach Volley Follies

Saturday, June 16 • 2:00 PM

The volleyball games will be played Beachfront at the Cavalier Oceanfront Hotel. Competitors may enter the tournament individually or as part of a team. Enter by May 4 and receive a "Beach Volley" T-shirt.

*Sponsors: Chicago Title Insurance Company;
Curran & Whittington PLLC*

Special Attraction

Magna Carta to Visit Virginia Beach

March 30–June 18, 2007 • Contemporary Art Center of Virginia

In partnership with the City of Virginia Beach and VB2007, the Contemporary Art Center of Virginia is proud to host a rare exhibit entitled **"Magna Carta & Four Foundations of Freedom."** The exhibit will explore the relevance of key historical documents to contemporary civil liberties. Other featured documents will include the first draft of the U.S. Constitution, a 1776 Dunlap broadside of the Declaration of Independence, and a Lincoln-signed copy of the Emancipation Proclamation.

Virginia Beach is the only venue selected in the United States to display the Magna Carta document. Don't miss the opportunity to visit this fascinating exhibit which coincides with our Annual Meeting. For more information visit the Contemporary Art Center Web site at www.cacv.org.

Just For Kids!

Children's Dinner

Friday, June 15, 6:00 PM • Cavalier Oceanfront Hotel

During the Banquet, your children (ages 4–10) can enjoy hamburgers and hot dogs and be entertained by videos. The Cavalier Activities Director and hotel baby-sitters will supervise the evening. Please complete the form and return it with your Annual Meeting registration form. **Fee: \$15 per child. Space Limited.**

10th Annual Sand Castle Contest

Saturday, June 16, 9:30 AM • Cavalier Beachfront

Minnesota Lawyers Mutual Insurance Company will sponsor the annual sand castle building contest on Saturday morning. Children of all ages should be sure to register on-site to participate in the fun. Prizes will be awarded!

Conference of Local Bar Associations

Annual Meeting & Breakfast For Local Bar Leaders and Conference Representatives

Friday, June 15, 7:30 AM

Cavalier Oceanfront Hotel

The VSB Conference of Local Bar Associations invites local bar leaders and Conference Representatives to the Conference Annual Meeting and Breakfast on Friday morning from 7:30 to 9:30 AM.

The breakfast will feature the presentation of the 22nd Annual Awards of Merit and the 12th Annual Local Bar Leader of the Year Award.

During the meeting, the new executive committee of the conference will be elected and new conference representatives will be recognized.

Special announcements regarding the Conference's Annual Meeting and Breakfast, and information on the Awards of Merit and Local Bar Leader of the Year competitions will be mailed under separate cover to all local bar associations in the state.

Awards of Merit and Local Bar Leader of the Year Award

The 22nd Annual Awards of Merit will be given to honor outstanding projects sponsored by local bars which compete in six divisions. Conducted by the VSB Conference of Local Bar Associations, the competition is designed to recognize outstanding projects of local and specialty bars; share successful programming ideas and resources; encourage greater service to the bar, bench and public; and inform the public about some of the excellent work being done by local and specialty bars and the legal profession.

The 12th Annual Local Bar Leader of the Year Award will recognize an active leader in a local bar association who has offered important services to the bar, bench and public. Nominations are requested in the form of typewritten letters of recommendation.

More information may be obtained by contacting Barbara Allen at the Virginia State Bar, (804) 775-0590, or visiting the CLBA Web site at www.vsb.org/site/members/clba. **Entries must be received no later than Tuesday, May 1.**

Senior Lawyers Conference

"Mentoring New Lawyers in a New World"

Friday, June 15 • 11:00 AM • Cavalier Oceanfront Hotel

.5 Credit, .5 Ethics Credit (pending)

The Senior Lawyers Conference will sponsor a CLE workshop on Friday morning entitled, "Mentoring New Lawyers in a New World." The panel program will include the following speakers: **Robert Begland PhD**, of Smithfield; **Drew Lichtenberger**, of Blacksburg; and **Jack W. Burtch Jr.** of Macaulay & Burtch P.C. in Richmond. The panelists will discuss the challenges and opportunities of incorporating the new generation of lawyers into the practice of law focusing on retention, training for competence and ethical responsibilities.

The program will be followed by the Senior Lawyers Conference Annual Meeting, including the election of officers and Board of Governors members.

Fifty-Year Awards Luncheon

Saturday, June 16 • 12:45 PM

Cavalier Oceanfront Hotel • Orion's Roof

The Senior Lawyers Conference is pleased to host a special luncheon in honor of all those members who have completed fifty years of service as a member of the Virginia State Bar. The luncheon will take place on Saturday afternoon, following the General Session of the Annual Meeting where these members will receive a special certificate to commemorate this milestone in their professional lives. **By invitation only.**

Young Lawyers Conference

YLC Meeting and Reception

Friday, June 15, 12:30 PM

Cavalier Beach Club

Are you one of the 9,000 members of the Young Lawyers Conference? If so, you are invited to attend the YLC General Membership Meeting and Reception on Friday afternoon. Stop by for a quick bite to eat, meet old friends, make new friends, help celebrate the accomplishments of the YLC and elect their new Board of Governors. Register now on the Annual Meeting Registration form.

Young Lawyer of the Year & Service Awards

During its Membership Meeting on Friday, June 15, the Young Lawyers Conference will present the following award.

The R. Edwin Burnette Jr. Young Lawyer of the Year Award honors an outstanding young Virginia lawyer who has demonstrated dedicated service to the Young Lawyers Conference, the profession and the community. It is named for General District Court Judge R. Edwin Burnette Jr. who served as president of the YLC and the Virginia State Bar.

The Conference also will recognize those members who have provided outstanding service to the YLC during the bar year with special awards.

Nominations may be sent to: Jimmy F. Robinson Jr., LeClair Ryan, 951 E. Byrd Street, Richmond, VA 23219 or jrobinson@leclairryan.com. **Nomination deadline is May 1.**

20th Annual Lawyers Expo

A special highlight of this year's Annual Meeting will be the 20th Annual Lawyers Expo, sponsored by the State Bar's General Practice Section. The Expo will feature the latest in law office technology, legal publications and various related services. Located in Room C of the Cavalier Beach Club (adjacent to the Cavalier Oceanfront Hotel), the Expo will be open during the following hours:

- Thursday, June 14 4:00 PM–6:00 PM
- Friday, June 15 9:30 AM–5:30 PM
- Saturday, June 16 8:30 AM–12:00 PM

An Opening Wine & Cheese Reception will be sponsored by **Pearl Insurance and the Cavalier Hotels** in the Expo Hall on Thursday afternoon, June 14. In addition, refreshments will be provided daily for all registrants.

Grand Prize Raffle

ONE PACKAGE TRIP*

VIRGINIA STATE BAR

34th Midyear Legal Seminar

FLORENCE, ITALY

November 7–14, 2007

(*Based on Double occupancy; does not include cost of spouse or guest)

DRAWING:

Saturday, June 16 • 12:30 PM

Cavalier Beach Club

You must be present at the Raffle drawing to win the trip

Preregistered Exhibitors

- American Realty Capitol Markets LLC
- ALPS
- FastCase, Inc.
- Lawyers Helping Lawyers
- Lawyers' Staffing Inc.
- Mohr Information Services LLC
- Mohr Investigative Services Inc.
- Needles Case Management Software
- Patrick and Associates
- Pearl Insurance
- Regent Law School
- Sensei Enterprises, Inc.
- Southern Title Insurance Corp.
- TRT Inc.
- Thomson-West
- Virginia CLE
- Virginia Law Foundation
- Virginia Lawyers Weekly
- Virginia State Bar
- Virginia State Bar Members' Insurance Center
- Virginia.gov

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69th Annual Meeting

Register Early!