VIRGINIA BEACH BAR ASSOCIATION

VOLUME NUMBER 22 | FEBRUARY 2012 | ISSUE NUMBER 6

THE PRESIDENT'S MESSAGE

by Sandra L. Sampson

The other day I was presented with a disturbing comment. A colleague of mine had learned that I was the new President of the Virginia Beach Bar Association and said, "Ah, they finally found someone young enough and naive enough to *actually* do that job." It was then that I realized perhaps our members don't fully understand how our Board operates. First of all, you aren't just chosen to be President. You begin your first year as a Director. Directors are responsible for coordinating all of the continuing legal education and the bench/bar conferences. After two years as a Director you become the Treasurer, then Secretary who is responsible for creating and publishing the newsletter. The following year, you move up to the position of President-Elect which brings with it the task of planning the annual banquet. After six years of attending meetings and hundreds of hours of volunteer commitment, you serve as President. This term is followed by an additional year serving as immediate past president and serving on the past presidents' council. Therefore, the commitment to the Virginia Beach Bar Association is bigger and far more than just being young and naive for me. While I am the youngest President to serve and only the fourth female, it is an opportunity to serve an organization with 55 years of heritage, camaraderie and purpose. When you look over the list of previous presidents, I can only hope that someday I will be held in the same high regard as the presidents before me.

1957	Paul W. Ackiss
1958	Roy Smith
1959	Earl Woodhouse
1960	Robert L. Simpson
1961	Robert L. Simpson
1962	Peter O. Miller
1963	W. Shepherd Drewry, Jr.
1964	Richard G. Brydges
1965	J. Peter Holland, III
1966	Henry L. Lam
1967	Austin E. Owen
1968	J. Frank Gallagher
1969	Thomas C. Broyles
1970	Andre Evans
1971	Phillip G. Denman
1972	Owen B. Pickett
1973	James R. McKenry
1974	Richard D. Guy
1975	Grover C. Wright, Jr.
1976	John K. Moore
1977	W. Edward Hudgins, Jr.
1978	John B. Preston
1979	William B. Smith
1980	James A. Gorry, III
1981	Henry C. Morgan, Jr.
1982	Donald H. Clark
1983	William A. Cox, III
1984	Joseph L. Lyle, Jr.
1985	James E. Brydges, Jr.
1986	J. Dale Bimson
1987	Thomas F. Betz, Jr.
1988	James A. Thurman
1989	Thomas S. Shadrick
1989	Stephen C. Swain
1990	John W. Drescher
1991	John D. Hooker, Jr.
1992	Larry B. Slipow
1993	John W. Richardson
1994	Gregory A. Giordano
1995	Robert L. Samuel, Jr.
1996	Judith L. Rosenblatt
1997	John A. Tilhou
1998	Richard C. Beale
1999	Leslie L. Lilley
2000	Judith M. Cofield
2001	Thomas B. Kelly
2002	Bobby W. Davis
2003	Robert M. Reed
2004	Mark E. Slaughter
2005	Jeffrey H. Gray
2006	Robert M. Tata
2007	Lisa S. Hodges
2008	Glen A. Huff
2009	Timothy S. Brunick
2010	William C. Bischoff
2011	Timothy J. Quick

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THE PRESIDENT'S MESSAGE
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With that being said, each of those listed have held a vision for this association as do I. Throughout the next year you will hear a recurring theme - camaraderie. It is my opinion that having personal relationships with your colleagues is irreplaceable in representing your clients and enjoying your job. Whether handling a heated domestic dispute or complex civil litigation, knowing your adversary and having a true relationship or ultimately a genuine friendship is vital in preserving professionalism and maintaining a practice that you enjoy. Over the next year I will be working to create true friendships within our organization. It goes without saying that the banquet will still take place; however, I commit to making sure it is held consistently on the last Saturday of February so all of us can plan for and around it each and every year. The annual holiday party will continue to be the best of any bar association. I will continue my predecessor's quarterly lunches. I have also created a new committee specifically tasked with the Caribbean CLE to ensure that it never conflicts with any other bar events, and is accessible to all of our members. I will also host periodic happy hours where we can meet and greet one another.

Whether you have 40 years of experience or 4 months, this Association has benefits for you and I am *privileged* to be a part of it.

RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

NOTE: Copies of these opinions may be obtained from the Clerk's Office.

COMMONWEALTH v. DAWIT A. HABTEMARIAM,

CR09-3474 (Judge Lilley, 11/28/11)

Defendant was found guilty of sodomy after a jury trial, and moved to set aside the verdict based upon insufficient evidence. The court found the evidence sufficient and denied the motion, finding testimony that the defendant licked the victim's vagina sufficient to establish penetration pursuant to *Horton v. Commonwealth*, 255 Va. 606 (1998).

VICKERY v. COMMONWEALTH, CL11-6251

(Judge Croshaw, 12/14/11)

This matter involved a petition by a convicted felon for permission to possess or carry a firearm. The court granted the petition based upon the restoration of the petitioner's political rights by the Governor.

MICHAEL B. PREVITIRE v. DAVID M. COOKE,

CL10-5781 (Judge Lilley, 12/19/11)

In this automobile accident case, defendant moved to set aside a verdict against him for $50,000.00. The court denied the motion, finding that the jury's verdict in this case is not plainly wrong, and the verdict had credible evidence to support it.

SHAYESTE S. BRITTINGHAM v. SAMUEL L. BRITTINGHAM,

CL10-2580 (Judge Lilley, 9/27/11)

In this contested divorce, the court primarily addressed spousal support and equitable distribution issues. The court held that each party would receive 50% of the husband's Thrift Savings Plan, 50% of the equity in the marital home, and a marital share of the husband's retirement plan. Husband is to buy out wife's interest in the marital home within 90 days of the date of entry of the final decree, or the house would be put on the market. Wife has 45 days from the date of the final decree to move out of the house. The court found that wife was voluntarily underemployed, and could work more hours in her current job. In addition, although wife suffered from back problems, the court found that she had not fully explored employment in an accounting or business office capacity, previously her highest paid employment. Income was imputed to wife in the amount of $900 per month gross, bringing her income to $1,800 per month gross. To that amount, the court considered spousal support and ordered husband to pay $1,271 per month in spousal support.

NOTE: Copies of these opinions may be obtained from the Clerk's Office.

THE DAVISHAR GROUP, INC. v. GERBER PLUMBING FIXTURES, LLC, ET AL.,

CL11-3784 (Judge Lilley, 11/23/11)

This matter came before the court on a demurrer and motion craving oyer. Defendants allegedly sold toilets to the plaintiff that were supposed to comply with the Buy America Act, but did not. Plaintiff alleged that RMI and Rao were acting as agents of Gerber. The complaint did not allege that RMI or Rao were acting outside the scope of their authority, and the court found that it failed to state a cause of action against RMI and Rao for breach of express warranty. The Professional Companies' demurrer to breach of an express warranty was sustained as well. While Professional was listed in the paragraphs alleging the affirmative statements or promises made about the Gerber products, they were not named in the paragraphs alleging breach and damages. Therefore, the complaint did not state a cause of action against Professional for breach of express warranty. The complaint sufficiently alleged the elements for a breach of express warranty as to Gerber, and Gerber's demurrer to the breach of express warranty count was overruled. The actual fraud count was not pleaded with specificity, and demurrers to this count were sustained. Demurrers to the constructive fraud claim were sustained with leave to amend because the pleadings must allege distinct facts giving rise to the claim. Defendant Professional's Motion Craving Oyer requesting that DaviShar furnish the written document upon which it makes its claim was sustained.

ASSESSMENT AND TRAINING SOLUTIONS CONSULTING CORPORATION v. COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TAXATION,

CL10-5765 (Judge Lilley, 12/6/11)

This was an appeal of a finding by the Department of Taxation that Assessment and Training Solutions Consulting Corporation (ATSCC) is not entitled to an exemption under § 58.1-609.3(5) for personal property used in research because it is not engaged in research. ATSCC conducts three-day seminars for training military personnel for emergency medical treatment during combat. The last day includes the use of live tissue models and medical kits, and the attendees provide observations that are collected and used to modify and improve procedures and/or develop new products. The exemption at issue requires that the property be used exclusively in research and development, and ATSCC fails to meet this standard. The use of the property that is the subject of the assessment is not dedicated exclusively to a research component, as it also includes use in the training of military personnel. As a result, the appeal was denied.

PATRICK v. GUNDERSON AND A&A Acquisition, Inc.,

CL11-782 (Judge Hanson, 12/6/11)

Defendant filed a motion in limine seeking to exclude plaintiff's experts based upon an insufficient designation, which only stated "'expert witnesses have not been determined yet (if different from treating physicians).'" The motion in limine was sustained in part, and plaintiff was prohibited from calling any treating physicians as expert witnesses and such witnesses were prohibited from testifying as to any medical diagnoses.

M. E. VAN NOSTRAND v. JMF INC. T/A J. M. FROEHLER CONSTRUCTION,

CL11-3322;

JMF, INC. T/A J. M. FROEHLER CONSTRUCTION v. M. E. VAN NOSTRAND,

CL11-3323 (Judge Lilley, 12/9/11)

These matters came before the court on appeal from the General District Court, and arise from a contract between the parties for construction services on the Van Nostrand home. The court finds that the homeowner committed the first material breach by unreasonably interfering with the contractor's work, and thus was barred from recovering any damages arising after the termination of the contract. Even if the homeowner did not breach first, the court found that her evidence would have been insufficient to award damages, as the contract to complete the job was based upon specifications that differed from those used by the original contractor. However, the homeowner may recover for work improperly performed prior to the termination of the contract, and was awarded $1,500.00

for same. The original contractor recovered nothing, despite the homeowner's breach, due to a failure to prove damages. No evidence was presented that outstanding costs for materials or supplies were due, that labor costs were due, or what profits would have been realized. Thus, it was not possible for the court to render a fair calculation of damages or an intelligent and probable estimate thereof.

IN RE: NATASHA HARRELL, CL11-1586, CL11-1587, CL11-1588, and CL11-1589 (Judge O'Brien, 12/12/11)

This matter was before the court on an appeal of a custody determination and a permanency planning petition involving the same child. Custody of the child was granted to a family friend. Va. Code §16.1-281.1 and §16.1-282 provide a list of permissible permanent placement options, which do not include transferring custody to a non-family member. The order entered herein states that the permanent goal of the foster care plan is "relative placement," and that "custody of the child is transferred to a relative other than the child's prior family, namely Eartha Washington." This ruling, however, is in error, as Ms. Washington is not a "relative other than the child's prior family" but is instead a family friend. The Court remanded the cases to the Juvenile and Domestic Relations Court of the City of Virginia Beach for reconsideration of the permanency planning petition and the corresponding order. Furthermore, the Court remanded the custody petitions as the reconsideration of the permanency planning petition may affect the custody petitions.

Effective January 1, 2012, the law firm of
RABINOWITZ, SWARTZ, TALIAFERRO,
SWARTZ & GOODOVE, P.C.
will be practicing as

SWARTZ, TALIAFERRO,
SWARTZ & GOODOVE, P.C.

and has relocated to
220 West Freemason Street
Norfolk, Virginia 23510

The telephone number has changed to
(757) 275-5000
and the facsimile number remains
(757) 626-1003

RALPH RABINOWITZ, ESQ.
will be practicing as
RALPH RABINOWITZ,
ATTORNEY AT LAW, P.LL.C.

and his office will remain in the
Town Point Center Building
150 Boush Street, Suite 204
Norfolk, Virginia 23510

Ralph Rabinowitz's telephone number remains
(757) 622-3931
his facsimile number is
(757) 622-2194

and his email is RRAB@RRABLAW.COM

NEW LEGAL RESOURCES AT WAHAB

12th Annual Virginia Information Technology Legal Institute – 2011
Virginia Law Foundation, 2011

20th Annual Advanced Elder Law
Virginia Law Foundation, 2011

26th Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice
Virginia Law Foundation, 2011

30th Annual Family Law Seminar: The Death of Marriage
Virginia Law Foundation, 2011

30th Annual Trusts and Estates Seminar
Virginia CLE Publications, 2011

32nd Annual Construction and Public Contracts Law Seminar
Virginia Law Foundation, 2011

Business Succession Planning
Virginia Law Foundation, 2011

Access to Utility Service - Regulated, De-Regulated and Unregulated Utilities, Deliverable Fuels, and Telecommunications
National Consumer Law Center, 2011

Automobile Fraud – Odometer, Salvage, and Lemon Laundering Fraud, Title Abuses and Yo-Yo Sales
National Consumer Law Center, 2011

Bankruptcy Code, Rules and Forms 2012 Edition
Thomson West, 2011

Consumer Arbitration Agreements – Enforceability and Other Topics
National Consumer Law Center, 2011

Consumer Law Pleadings
National Consumer Law Center, 2011

Defending Serious Traffic Cases 2011: Strategies and Tactics in Representing Clients
Virginia Law Foundation, 2011

Federal Sentencing Guidelines Manual
Thomson West, 2011

Firearms Law in Virginia
Virginia Law Foundation, 2011

Fourth Annual – Advanced Business Litigation Institute
Virginia CLE, 2011

J.K. Lasser's Your Income Tax 2012
Simon and Schuster, 2011

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit
Thomson West, 2011

Model Civil Jury Instructions for the District Courts of the Third Circuit
Thomson West, 2011

The Virginia Lawyer: A Deskbook for Practitioners
Virginia CLE Publications, Virginia Law Foundation, 2011

Third National Family Law Symposium State of the Family 2011
University of Richmond School of Law, Virginia CLE, 2011

Virginia Civil Benchbook for Judges and Lawyers
Lexis Law Publications, 2011

Virginia Construction Law Deskbook Second Edition, Volumes 1 and 2
Virginia CLE, 2011

Virginia Criminal Benchbook for Judges and Lawyers
Lexis Law Publications, 2011

Virginia Practice Series – Criminal Procedure
Thomson West, 2011

Virginia Practice Series Probate Handbook
Thomson West, 2011

Virginia Practice Series Construction Law
Thomson West, 2011

Virginia Practice Series Virginia DUI Law: Understanding the Scientific, Medical, Technological, and Legal Aspects of a DUI Case
Thomson West, 2011

Virginia Practice Series Volume 3 - Civil Discovery
Thomson West, 2011

Virginia Practice Series Volume 4 – Jury Instructions
Thomson West, 2011

Virginia Practice Series Volume 8 – Landlord-Tenant Handbook
Thomson West, 2011

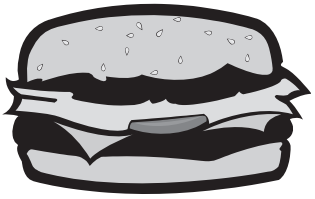
Virginia Practice Series Volume 11 – Real Estate Closings
Thomson West, 2011

Virginia Practice Series Workers' Compensation
Thomson West, 2011

- Just a friendly cost saving tip-when researching using LexisNexis you can send your search results directly to your email or you can save the information to flash drives

LAWYERLY LUNCH

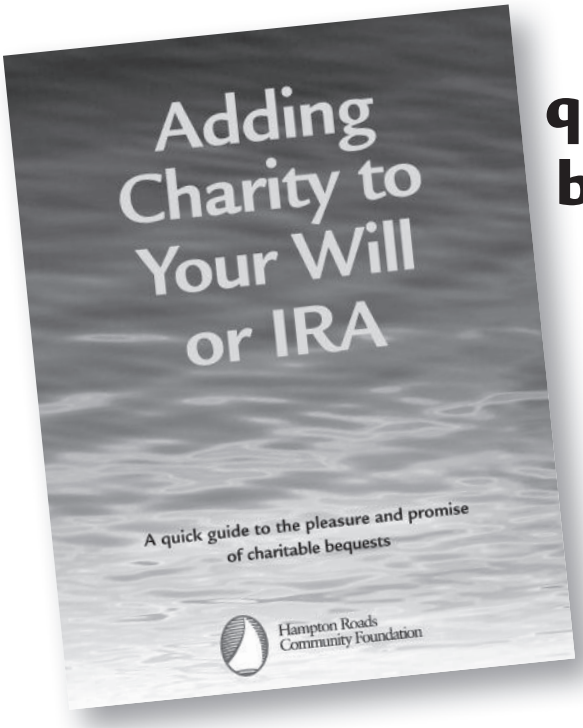
Look for details on our next Lawyerly Lunch, which will be in April. Check the VBBA website and the next Newsletter for details.



Correction: The last issue of our newsletter inadvertently ran an advertisement for Shapiro, Lewis & Appleton, P.C. which pictured John Cooper and omitted Kevin Duffan, Esquire. Our sincere apologies for the misprint.

55th ANNUAL BANQUET

Saturday, March 3, 2012
Make arrangements to attend this year's banquet to be held at the 31st Street Hilton. This year we leave Mardi Gras and enter the world of Las Vegas! Please encourage your colleagues to join us for dinner, dancing (to the music of *10 Spot*) and a plethora of casino games. You won't want to miss this event! A group rate is being offered by the Hilton just mention you are with the VBBA.



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ANNOUNCEMENTS

The firm of PRICE, PERKINS, LARKIN & DONNELLY would like to announce that Brian Donnelly has withdrawn from the firm and Wayne Price, Larry Perkins and Jerry Larkin will continue to practice as PRICE PERKINS LARKIN with new offices at 780 Lynnhaven Parkway, Windwood Centre, Suite 450, Virginia Beach, VA 23452, 757-486-7661.

JOHN COOPER

JOHN COOPER Re-Elected as 2nd District Governor of Virginia Trial Lawyers Association, Norfolk, VA, January 26 2012. - John Cooper, a partner with the Cooper Hurley Law Firm, has been reelected as a 2nd district governor for the Virginia Trial Lawyers Association.

John was listed among VA "Super Lawyers" for personal injury law since 2010 and chosen in 2011 for "Top 100 Trial Lawyers in VA" His term will run from 2012 to 2013.

The 2nd district covers Norfolk and Virginia Beach, the cities where Cooper Hurley, a personal injury law firm, has offices.

The Virginia Trial Lawyers Association is a voluntary bar association that was established in Williamsburg, VA in 1959. VTLA is the largest organization of its kind with about 2,200 members across the Commonwealth, representing clients in a vast number of practice areas.

VBBA NEW MEMBERS

Virginia Beach Bar Association Welcomes New Members

REBECCA COLAW
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Law Office of Patrick C. Dorr, P.C.

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Mara S. Mijal
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Out of thousands of trial lawyers in the United States, Stephen M. Smith's was one of the select few invited to be trained in the Neuro-Anatomical Dissection of the Human Brain and Spinal Cord at Marquette University College of Health Sciences. This advanced medical training, coupled with his 37 years of national and international complex medical litigation experience, provides your clients with an advantage in the courtroom.

Stephen M. Smith is a nationally recognized expert in traumatic brain and spinal cord injury and has unparalleled trial experience and record of success. He accepts national and international referrals and is licensed to practice in Virginia, New York and the District of Columbia with permission to handle cases throughout the country.

braininjurylawcenter.com | 877.840.3431 | 757.650.9818

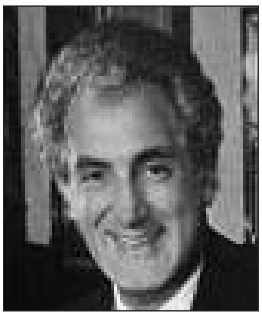
ssmith@BrainInjuryLawCenter.com

CHARLES "CHARLIE" BASHARA

The Virginia Beach Bar Association would like to extend our sincere condolences to the family of a lifelong member of our community, ***Charles "Charlie" Bashara****. Charlie practiced law for over 50 years and is survived by his wife, Catherine Virginia Nunn Bashara and their six children as well as 21 grandchildren.*

HAL J. BONNEY, JR.

The Virginia Beach Bar Association would like to extend our sincere condolences to the family of ***Honorable Hal J. Bonney, Jr.****, Father, Teacher and Federal Judge, who died on January 22, 2012 in his home in Norfolk surrounded by his family. He was 82.*



PETER GEORGE DECKER, JR.

The Virginia Beach Bar Association would like to extend our sincere condolences to the family of ***Peter George Decker, Jr.*** *of Norfolk, beloved husband, father and friend to so many in the Tidewater area, who passed away on February 3, 2012 after a valiant struggle against cancer, at the age of 76.*

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Full Page Insert	$550.00
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1/6 Page	$60.00
Mailing Labels of the Membership	$100.00
Classified Ad (6 lines)	$35.00

* The VBBA offers a 10% discount on half-year Advertisements (3 issues) and a 20% discount on Annual advertisements (6 issues). Classified ads and Notices are free to members. Contact Glenn Croshaw at gcroshaw@wilsav.com

DEADLINE

Deadline for information and ads for the next newsletter:

March 16th, 2012

Please submit all information and ads for the next newsletter to: **jon@pierceandthornton.com**

The McCammon Group

is pleased to announce our newest Neutral

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HON. ELIZABETH B. LACY (RET.)

HON. JOSEPH A. LEAFE (RET.)

Hon. Jerome B. Friedman (Ret.)
Retired District Judge
United States District Court
Eastern District of Virginia

Judge Friedman recently retired after more than thirteen years of distinguished service to the United States District Court. Before that appointment, he served on the Circuit Court of Virginia Beach for six years (1991-1997) and was Chief of that Court from 1994 to 1997. Prior to that, he was appointed to the Juvenile & Domestic Relations Court in Virginia Beach in 1985, and was the Chief Judge from 1988 to 1991. Before his lustrous judicial career, he enjoyed a successful broad civil litigation career as a Partner at Pender & Coward in Virginia Beach. Judge Friedman now brings his diverse judicial experience to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth and beyond.

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HON. PAUL F. SHERIDAN (RET.)

SENATOR WALTER A. STOSCH

HON. DIANE M. STRICKLAND (RET.)

HON. ALFRED D. SWERSKY (RET.)

HON. JAY T. SWETT (RET.)

BRUCE E. TITUS, ESQ.

GUY K. TOWER, ESQ.

HON. KENNETH E. TRABUE (RET.)

HON. GLEN A. TYLER (RET.)

HON. ARTHUR B. VIEREGG (RET.)

HON. ROBERT W. WOOLDRIDGE, JR. (RET.)

HON. WILEY R. WRIGHT, JR. (RET.)

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Happy Hour
501 City Grill 4:30-5:30

MARCH 3rd, 2012
55th ANNUAL BANQUET
31st Street Hilton

MARCH 16th, 2012
Newsletter Deadline

MARCH 30th, 2012
Lawyerly Lunch

APRIL 2012
Look for details on our next Lawyerly Lunch, which will be in April. Check the VBBA website and the next Newsletter for details.