

VIRGINIA BEACH BAR ASSOCIATION

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PRESIDENT'S MESSAGE

WE NEED A FULL-TIME CLERK

by William C. Bischoff, President

As you know, because of recent state budget cuts, the Virginia Beach Clerk of the Circuit Court has had to reduce her staff by 11 positions (and I am told that another layoff is in the offing). In response, the Clerk has reduced her office hours for access by the public and has been forced to pile more workload on her historically overworked staff. Anecdotal evidence indicates that as a result of this loss of manpower, the normal flow of work from the clerk's office has dramatically slowed. While everyone can probably agree that in these trying economic times all government agencies must do more with less, the cuts suffered by the Virginia Beach Clerk's Office go beyond "cutting fat from the government." Instead, they are now cutting the bone. We, as officers of the court, should not complacently accept this situation.

The clerk's office spins off positive cash flow to the city of Virginia Beach and the state in the millions of dollars each year. The fees and costs collected by the court far exceed the cost for operating the office and it is, in effect, a "cash cow" for state and local coffers. Nevertheless, the clerk's office is consistently treated as a stepchild by the General Assembly when it comes to providing the staffing needed to efficiently run the office. This trend must stop.

The public deserves better. Having 40 hours per week access to the clerk's office is a must. Average citizens need to be able to pay fines, file petitions, review files, and ask questions of the clerk's office during normal business hours. Working folks take time off from their jobs to attend to such matters. How frustrating it is for these people to take off early from work off a Thursday

or Friday afternoon, only to discover that the clerk's office is closed? They have now lost half a day's wages and still must come back to the clerk's office at another time. No wonder the public hates government!

Lawyers and their clients deserve better too. Divorce decrees must be promptly processed. Lawyers shouldn't have to track down clerk personnel to file and be heard on temporary injunctions. Clients demand and have a right to expect a speedy handling of garnishments, and the myriad of statutorily mandated clerk duties. Our system of justice depends on easy access to the courts and the expeditious handling of litigation. The clerk's office is the gateway to that system for lawyers, clients and the general public. Continuing budget cuts are compromising this system.

I encourage the members of the Virginia Beach Bar Association to personally contact one or more of the Virginia Beach legislative delegation to the General Assembly to insist that the funding to the clerk's office be restored. Senators and delegates listen to their constituents and lawyers need to be heard on this issue. They need to know the damage that their votes are doing to the judicial system here and elsewhere. Tina Sinnen doesn't have a lobbyist working for her. We should help be her voice in Richmond to demand that our legislators and our new Governor from Virginia Beach realize the important job she and her staff do for not just lawyers but all citizens of Virginia Beach.



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SHORT CIRCUITS – PRACTICE TIPS FROM THE CIRCUIT COURT

AVOIDING PHONE TAG AND OUTDATED FORM ORDERS

JUDICIAL SETTLEMENT CONFERENCE CALENDAR NOW AVAILABLE ONLINE

by Amy H. Jones, Staff Attorney

NOW AVAILABLE: CAPABILITY TO CONTACT DUTY JUDGE DOCKET CLERK BY E-MAIL

If you've called the duty judge docket clerk, Ruth Massey (and/or others who answer 385-4502), left a message, then missed her return call – now there's a better way. If you are trying to reach her to (i) set a hearing date on an uncontested divorce, (ii) set a hearing date on the duty judge docket, or (iii) set or determine the availability of a trial date, you may now submit your inquiry via email to dutyjudg@vbgov.com instead of calling by phone.

CHECKING UPDATES TO THE COURT'S FORMS THAT ARE ONLINE

The court has a variety of forms available at its website (www.vbgov.com/courts), many of which are PDF-fillable. However, these forms are subject to occasional revisions. Be sure that you just don't copy

or download a form and continue to use it from that point forward – check the website regularly for revisions. For example, the court recently revised the Judicial Settlement Conference Order of Referral. Please check the new version under the "Court Forms" directory on the website.

CALENDAR FOR JUDICIAL SETTLEMENT CONFERENCES HELD AT THE COURTHOUSE NOW ONLINE

If the settlement conference judge wants to hold the conference at the courthouse, a calendar is now available online to check for available dates. The calendar lists all cases scheduled for a settlement conference at the courthouse. You can use this calendar to fill in the date for your conference in the order of referral. The calendar can be accessed under the "Related Pages" heading on the home page for the Virginia Beach Circuit Court.

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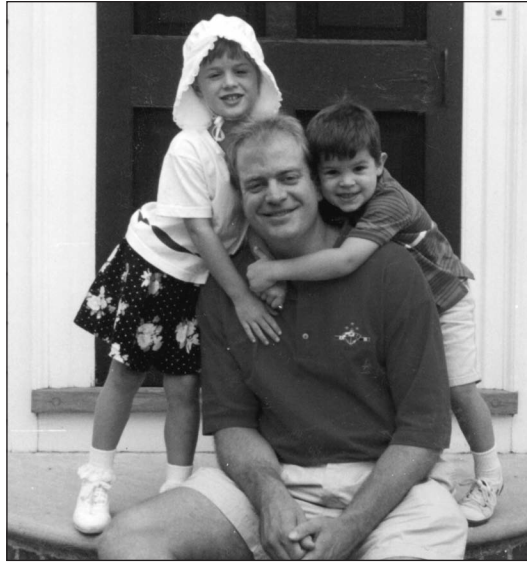
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BART DANIEL

Warning: They look harmless, even sweet, but beware! All three people in this photo hold a 4th degree black belt in Tai Kwon Do.

Bart Daniel grew up in Culpepper, VA. He played football in high school then attended Radford University and George Mason Law. After admission to the VA Bar, Bart practiced with Charles Zauzig in Northern VA. Before long, his ties with fellow Mason Law students Bobby Howlette and Pete Decker, III brought him to Hampton Roads where he's made his home ever since.

Today, his beautiful daughter, Whitney, attends Rutgers University is nationally ranked in Tai Kwon Do. She is a serious contender for the summer Olympics. His son, Bart Daniel, III (Buddy), is a senior at Fork Union Military Academy and also a black belt. Founder of Beach Tai Kwon Do, Bart has turned his attention to yoga. With typical zeal, he is

now a certified master yoga instructor and teaches in Norfolk and Virginia at Hot Yoga.

Bart has served in the Seatack Mentoring program and for years offered to provide the year-end entertainment. He brings young and older fighters for exhibitions and board breaking. Judge Shadrick recalls what a great impression it made on the kids to see what other kids can do when they discipline themselves. At the end of the exhibition, Bart hands out boards to all present and challenges them to break them.

Bart is currently a solo-practitioner with an office in the building he owns on Shore Drive. We wish him health and prosperity for many years to come.

If you would like to suggest someone with an interesting story outside the practice of law, call Kathryn Byler at 490-6292.



RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

SANDRA DOWNEY v. FRANK GUIE, JR. CL07-2800 (JUDGE CANADA)

In this case, the parties were romantically involved and allegedly bought real estate together that was placed solely in defendant's name. After the parties broke up, plaintiff sued to claim a constructive trust on some of the properties, or in the alternative damages for unjust enrichment based upon services provided. Defendant counterclaimed for breach of contract and fraud based upon an assertion that the parties entered into an agreement settling these issues. The court found that neither party presented sufficient evidence to prevail on any of their claims. The plaintiff only provided some evidence that both would participate in owning the properties, and clear and convincing evidence is required. The agreement relied upon by the defendant did not address the properties at issue. No fraud was shown since defendant was able to retrieve some of his belongings.

WILBURN M. BLOUNT v. ALLEGIANCE REALTY PARTNERS, LLC CL09-0757 (JUDGE O'BRIEN)

Defendant demurred to a Complaint asserting claims of breach of employment contract, breach of an operating agreement, wrongful termination for requesting to inspect the LLC's records and wrongful termination as a "whistleblower." The demurrer to the claim for breach of employment contract was overruled because it was based upon facts outside the allegations of the Complaint, and irrelevant alleged inconsistencies in the Complaint. The demurrers to the breach of the operating agreement and records request claims were sustained, because plaintiff was not a member of the LLC and lacked standing to request records and bring these claims. Relying on *Bowman v. State Bank of Keysville*, 229 Va. 534 (1985), and the failure of the defendant to address the applicability of *Bowman*, the court overruled the demurrer to the "whistleblower" claim.

EDWARD J. JOYCE, TRUSTEE, IN HIS CAPACITY AS CO-TRUSTEE OF THE MARY ELLEN APPA LIVING TRUST, ET AL. v. ROBERT ALLEN APPA CL09-5238 (JUDGE LILLEY)

At issue was defendant's demurrer to a Complaint to Quiet Title. The court sustained the demurrer to a claim for declaratory judgment, because other remedies were available and currently being pursued by the plaintiff. The demurrer to portions of the quiet title count was overruled, as the count as a whole states a cause of action. As for a rescission count, the demurrer was sustained for failure to plead fraud with particularity. Finally, the defendant demurred to a request for an injunction on the basis that there must be a valid underlying claim. Since a claim for quiet title is properly alleged, this demurrer was also overruled.

SANDRA BRYANT DELAPP v. VIRGINIA REAL ESTATE BOARD CL09-4297 (JUDGE LOWE)

DeLapp appealed a decision of the Virginia Real Estate Board revoking her real estate license after a conviction for DUI 3rd Offense Within a Ten Year Period. The court rejected challenges based upon a limited time to speak before the Board, since DeLapp had two fact finding conferences and two Board hearings. It also rejected a challenge based on the failure of the Board to consider evidence of sobriety, since the presumption that the agency acted correctly and considered such evidence was not rebutted. The decision was not arbitrary and capricious simply because it imposed harsher punishment than a case involving a licensee convicted of DUI 4th, as the appellant failed to prove that the other case was indistinguishable. Nor was the decision subject to attack because the Board consisted of less than nine members, as that statutory provision is directory and not mandatory. However, the court finds that the Board's decision appeared to be based upon the entirety of the appellant's criminal history, while the appellant was only on notice that her most recent conviction was at issue. Therefore, the decision is suspended and the case remanded to permit the appellant to establish that she is not unfit for licensure despite her overall criminal record.



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Shuttleworth, Ruloff, Swain, Haddad & Morecock, P.C.
announces that Paul D. Merullo has become a
shareholder in the firm.



Paul focuses his practice areas on injury cases ranging from accidents to product liability law. He also has an active civil litigation, criminal and traffic law practice. Paul is a Virginia Beach native, and a graduate of the William and Mary School of Law. He welcomes and appreciates your referrals and the opportunity to work as co-counsel with members of the Virginia Beach Bar.

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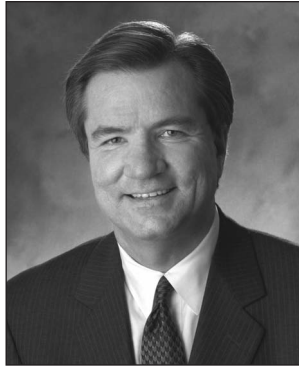
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ANNOUNCEMENTS



REEVES MAHONEY, a shareholder in the law firm of HUFF, POOLE & MAHONEY, P.C., has been selected as 2010 Family Lawyer of the Year by *Best Lawyers in America*, a peer-review publication which features top legal professionals.



GLASSER AND GLASSER, P.L.C. is pleased to announce that the following attorneys have joined the Firm as associates in the Creditor's Rights Division:

DANIEL BENGSTON will focus on Collections. He is a graduate of Regent University. He was formerly with the Law Office of John P. Frye, P.C.

MELISSA WATSON-GOODE will focus on Bankruptcy. She is a graduate of Regent University. She was formerly with Merna Law Group, P.C.

ERIN QUINN will focus on Foreclosure. She is a graduate of Washington and Lee School of Law. She was formerly with Troutman Sanders LLP.

G. SCOTT DARNELL, Senior Assistant Attorney General and MITCHELL D. BROUDY, Assistant Attorney General represents the VIRGINIA BEACH DIVISION OF CHILD SUPPORT ENFORCEMENT. Recently, local law firms found it difficult to contact our office by phone and facsimile. Please provide the following contact information to anyone who wishes to contact our office:

287 Independence Blvd., Suite 340
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Office: 757-552-1191
Fax: 757-552-1260
Administrative Assistant: Linda T. Letourneau

THE VIRGINIA BEACH BAR ASSOCIATION and the VIRGINIA BEACH GENERAL ASSEMBLY DELEGATION extend their gratitude to TROUTMAN SANDERS LLP and its partners for the use of their conference room for the Judicial Nominee Interviews which took place on January 19 and January 23, 2010.

WILLCOX & SAVAGE ATTORNEYS NAMED AS 2009 LEGAL ELITE

The following attorneys, who are also members of the Virginia Beach Bar Association, have been selected as members of *Virginia's 2009 Legal Elite*:

Business: BRIAN C. PURCELL

Family/Domestic Relations: PETER V. CHIUSANO

Labor/Employment: SUSAN R. BLACKMAN

Legislative/Regulatory/Administrative: GLENN R. CROSHAW

Real Estate/Land Use: STEPHEN R. DAVIS

Tax/Estates/Trusts: NEIL L. ROSE

NEW MEMBERS!

The Virginia Beach Bar Association Welcomes:

JULIE M. COLANERI *Virginia Beach Circuit Court*

RICHARD W. HARTMAN, II *The Rack Law Firm*

HEATHER K. LITTLE *Joseph W. Hood, Jr., P.C.*

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Thanks to the work of the Virginia Beach Public Library, Wahab now has wireless access! Bring your laptop, PDA or other wifi-enabled device and connect to the Internet from the Law Library. (Please note that courthouse rules prohibit such devices by members of the general public).

VISIT US ON THE WEB

If you're looking for online legal resources, make one of your first stops the Wahab web page – www.vb.gov/dept/library/law. You'll find links to state and federal primary law, government agency web sites, local law libraries and more.

NEW MATERIALS

Alzheimer's Disease and Other Forms of Dementia: Issues and Answers/Solutions for Attorneys

Virginia CLE, 2009

Animal Law Seminar

Virginia CLE, 2009

Beat Your Ticket: Go to Court and Win

Nolo, 5th Edition

Defending Serious Traffic Cases 2009: New Strategies and Tactics in Representing Clients

Virginia CLE, 2009

Difficult Depositions

Virginia CLE, 2009

Every Tenant's Legal Guide

Nolo, 6th Edition

Federal Sentencing Guidelines Manual

West, 2009 Edition

Introduction to the Virginia Beach Courts

VBBA Young Lawyers Division, 2009

Juvenile Law and Practice in Virginia

Virginia CLE, 3rd Edition

Manual for Commissioners of Accounts

Virginia CLE, 4th Edition

Patent, Copyright & Trademark

Nolo, 10th Edition

Social Security, Medicare & Government Pensions: Get the Most Out of Your Retirement & Medical Benefits

Nolo, 14th Edition

State of the Family 2009

Virginia CLE, 2009

Succession Planning for the Closely Held Business

Virginia CLE, 2009

Qualified Domestic Relations Orders for Family Law Attorneys

Virginia CLE, 2009

Virginia Civil Benchbook for Judges and Lawyers

Lexis, 2009-2010 Edition

Virginia Court Rules and Procedure: State & Federal

West, 2010 Edition

Virginia Criminal Benchbook for Judges and Lawyers

Lexis, 2009-2010 Edition

Virginia Information Technology Legal Institute

Virginia CLE, 2009

Virginia Practice: Criminal Offenses & Defenses

West, 2009-2010 Edition

Virginia Practice: Criminal Procedure

West, 2009-2010 Edition





Virginia Practice: Criminal Procedure Forms
West, 2009-2010 Edition

Virginia Practice: Jury Instructions
West, 2009-2010 Edition

Virginia Practice: Probate Handbook
West, 2009-2010 Edition

Virginia Practice: Real Estate Closings
West, 2009-2010 Edition

Virginia Rules Annotated
Lexis, 2010 Edition

Virginia School Law Deskbook: Annotated Statutes and Regulations
LexisNexis, 2009-2010 School Year Edition

18th Annual Advanced Elder Law
Virginia CLE, 2009

24th Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice
Virginia CLE, 2009

27th Annual Business Law: Critical Business Issues for Advising Clients in Troubled Times
Virginia CLE, 2009

28th Annual Family Law
Virginia CLE, 2009

28th Annual Trusts & Estates
Virginia CLE, 2009

30th Annual Construction and Public Contracts Law
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DEADLINE

The deadline for the April Newsletter is March 15, 2010. Please forward your submission or questions to Glenn Croshaw at gcroshaw@wilsav.com.



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