



VIRGINIA BEACH BAR ASSOCIATION

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PRESIDENT'S MESSAGE BEACH PARTY MAY 22

by William C. Bischoff, President

What an auspicious start to my administration! 8 inches of snow made mine the first VBBA Annual Banquet cancelled in 52 years. No swearing in, no cold banquet food, no grooving to the tunes of Strictly Bizzness. Neither did we get the chance to hear the rest of Judge Hudgins' remarks from last year, or hear a great joke from Judge Bimson, or get to unveil the interesting portrait of Judge Canada.

Of course, we were saved the embarrassment of having to apologize to our colleagues the following Monday for some ill-advised and untimely comment. Neither were we subjected to Glenn Huff's favorite Lawrence Welk-type band. We were also spared from having to gaze upon Kevin Martingayle's red dinner jacket. Thank goodness for small miracles.

My biggest disappointment? Not getting to show off what was sure to become the hallmark of my reign, the Liquor Luge. Yes, the Liquor Luge was to be the star attraction in all its frozen glory. Shaped like a wave and lit with blue lights, it was to deliver countless Shark Bites, a mysterious concoction, from its silky iced curves into the waiting glass of many a thirsty barrister. But no, the tangible evidence of the Change We Can Believe In brought about by my administration was thwarted. Alas.

But there was a silver lining. The food was donated to the Judeo-Christian Outreach Center and it fed a lot of very needy folks. The flowers were donated to

the Southeastern Virginia Training Center and The Ronald McDonald House and were apparently much appreciated by those groups.

And we saved the Liquor Luge for future use.

Which brings me to the Beach Party. On **Saturday May 22 from 3-7 P.M.**, we will have an outdoor party at the **Cavalier Beach Club**. Music will be provided by The Good Life Band, a group many will remember from Carlton Bennett's Labor Day parties over the years. We will have a roast pig and other culinary delights, along with the usual beach libations. The Luge will be back, this time delivering mojitos, or something along those lines.

If you bought tickets to the Annual Banquet, you get in free. If not, now is the chance for you to make amends and get with the program, which will involve presenting the cancelled awards, portrait unveilings, and BRIEF remarks. More info is included on page 3.

So plan on coming out to the VBBA Beach Party, and dance your best North Carolina Shag in the gentle summer breezes at the oceanfront. RSVPs ARE A MUST! So respond promptly. See you there!



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EDITH DUGGAN AWARD

The Edith Duggan Award was established in 2008 on the 20th Anniversary of the founding of the Virginia Beach CASA Program to honor founding director, Edith Duggan. The Award is given annually and recognizes an individual who exemplifies the characteristics of Edith: vision, leadership and a passion for the prevention of child abuse and neglect.

Past award recipients:

2008 – Judge Jerome Freidman

2009 – Leah Waitzer

The 2010 Edith Duggan Award recipient is Nianza E. Wallace II, Associate City Attorney, for the City of Virginia Beach.

Mr. Wallace has been practicing law since 1983. He has worked for the City Attorney’s office for the past 24 years – representing Dept. of Human Services in cases involving child abuse and neglect.

He serves on the Court Improvement Committee for the Virginia Beach Juvenile and Domestic Relations Court.

Regular instructor for Guardian Ad Litem training

Member of the Virginia Beach Multidisciplinary Team to Prevent Child Abuse

State of Virginia Child Abuse Fatality Review Team

Virginia Beach Bar Association member – active in their elementary school lunch program

Active with Friends of the Court activities

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Cheerfully answers questions and provides support and guidance to CASA program staff and volunteers regarding legal aspects of CASA cases


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VBBA BEACH PARTY!

Come join us for a beach barbecue buffet, summer libations, gentle breezes and good tunes! Special awards will be announced and judicial portraits unveiled.

Date: May 22, 2010

Time: 3:00 - 7:00 p.m.

Location: Cavalier Beach Club outdoor deck, 42nd and Atlantic

Music By: The Good Life Band

Special Guest: The Liquor Luge

Tickets: Member and guest: \$85 per person, \$150 per couple;
Non-member and guest: \$100 per person.

RSVP: Required. Call 757.385.2155 (leave a message) or email
vbba@verizon.net by 5/14/10.

People who purchased tickets for the 1/30 annual banquet get in free, but please RSVP.



RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

COMMONWEALTH TRANSPORTATION COMMISSIONER OF VIRGINIA V. MARY E. HARRIS

CL08-3169 (JUDGE O'BRIEN)

In this eminent domain case, the court denied the respondent's Motion for Reconsideration of Exceptions to the Report of the Jury and Motion for a New Trial. Both of the motions were premised on the denial of respondent's Motion in Limine seeking to exclude evidence of foreknowledge of the project before the date of the take. Respondent relied upon another recent opinion issued by this court, *Commonwealth Transp. Comm'r of Va. v. Linkhorn Bay* (CL04-695), which granted a similar motion in limine. The court found that *Linkhorn Bay* was distinguishable, because the foreknowledge at issue there was speculative and remote since it arose prior to the filing of the certificate of take. In addition, in the instant case, there were two takes involved, one for the overall road project and a later one for a sound wall barrier. Only the sound wall barrier take was at issue in this trial, and the need for that taking was not contemplated when the project began. Under Virginia Supreme Court precedent, fluctuations in value are properly considered if a subsequent taking is not within an area of probable construction as planned at the beginning of the project. Therefore, the evidence of generic foreknowledge of the overall project (as opposed to knowledge of the specific sound wall barrier taking) as it affected just compensation was properly considered.

HELEN BLASSINGHAM, TRUSTEE OF THE ROBERT H. AND DOROTHY DENTON TRUST V. ALZHEIMER'S DISEASE AND RELATED DISORDERS

ASSOCIATION, INC., ET AL.

CL09-5231 (JUDGE LILLEY)

In this case, the court granted a plea in bar to a bill for aid and direction regarding a trust. The bill was filed by the trustee, and it sought acceptance of a document that would result in transferring title to a condominium from the trust to the trustee individually. One of the

trust beneficiaries contended that the plaintiff was barred from proceeding due to a conflict between her duty to act impartially and her personal interest in the outcome. The beneficiary also asserted that the plaintiff lacked standing to bring the claim based upon her personal interest. The court agreed, finding that the trustee suffered from a conflict of interest and cannot bring this action in her capacity as trustee.

MICHAEL FIELD V. GMAC LLC CL09-5593 (JUDGE HANSON)

Plaintiff, trustee in dissolution for a dealership, sought to have this court set aside judgments entered against the dealership by the Alexandria Circuit Court, based upon claims of extrinsic fraud. The court sustained a motion to dismiss, finding that it lacked jurisdiction as such claims must be brought in "the trial court" that entered the judgments. In addition, plaintiff's allegations concern only evidentiary issues before the trial court and do not set forth a case of extrinsic fraud, but rather of intrinsic fraud, which needed to have been raised before the judgments became final.

BOARD OF DIRECTORS, GREAT NECK VILLAS CONDOMINIUM ASSOCIATION, INC. V. EAST COAST CEDAR CO., INC. AND SEASIDE DESIGN & DEVELOPMENT, LLC CL09-5649 (JUDGE LILLEY)

In this construction defect case, East Coast Cedar asserted a plea in bar based upon a claim that arbitration was required. The construction contract contained an arbitration clause providing that "[a]ny controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration." Plaintiff's claims in part relied upon a Workmanship Guarantee provided by East Coast, which it contended was outside the scope of the arbitration clause. The court found that portions of the construction contract referring to written and special warranties indicate that the Workmanship Guarantee was intended to be part of the construction contract. Apart from that, the court





found that the Workmanship Guarantee relates to and emanates from the initial contract between Plaintiff and Defendant East Coast Cedar, thus making it subject to the arbitration clause. The guarantee exists only as a result of the performance of the construction contract, so that it is clearly in relation to and has arisen from that contract and is subject to its arbitration clause. The court also rejected arguments by the plaintiff that the contract between it and Seaside Design took precedence over the plaintiff-East Coast contract, so that either Seaside waived arbitration on behalf of East Coast, or the arbitration provisions are unenforceable as they are in irreconcilable conflict.

**ESSLEAR OTT v. ROBERT HUFFMAN
AND RENATE HUFFMAN**
CL08-1259 (JUDGE O'BRIEN)

In this matter, the court found that plaintiff failed to prove at trial her claim for unjust enrichment against defendant Renate Huffman. The defendants were husband and wife, and the evidence showed that Robert Huffman, unbeknownst to Renate at the time, borrowed a sum of money from the plaintiff that was supposedly for investment in his business. Renate found out about the loan about ten days after it was made. Several months later, the borrowed funds were used to contribute to the purchase of a house from

plaintiff that both defendants live in. At issue was whether Renate should have reasonably expected to repay to the plaintiff the money that her husband borrowed. The court decided that issue in the negative, because there was no evidence that Renate knew when she found out about the loan that the money would be used to purchase the house, rather than invested in her husband's business.

**SHORE DRIVE LAND CORPORATION
v. WILSON SNOWDEN AND
STEVEN MEADE**

CL09-5724 (JUDGE HANSON)

At issue was a plea in bar filed by the tenant defendants asserting that plaintiff landlord had improperly split its causes of action. First, plaintiff obtained a default judgment against the defendants in an unlawful detainer action seeking possession, and recovery of unpaid rent for the months of February and March. Then, plaintiff filed suit seeking rent for the remaining lease period, along with real estate taxes that the defendants were responsible for paying. The court found that plaintiff could split its claims under § 8.01-128 and cases interpreting that section. As well, there was no proof of express waiver by plaintiff of its rights under § 8.01-128, and amendments to § 8.01-128 did not affect these rights.

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PETER V. CHIUSANO, ESQUIRE, joins the firm of CHRISTIE, KANTOR, GRIFFIN, SMITH & SHEPHERD, P.C.



Christie, Kantor, Griffin, Smith & Shepherd, P.C. is pleased to announce that Peter V. Chiusano has joined the firm as a partner. Peter, who was a partner with Willcox & Savage, P.C., will continue his family law, commercial litigation and creditor's rights practices. The firm will now be named Christie, Kantor, Griffin, Smith, Shepherd & Chiusano, P.C. and its office is located at 477 Viking Drive, Suite 150, Virginia Beach, Virginia 23452, 757-499-9222.

Contact:

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RAYMOND S. DIETRICH is the author of a new practice guide entitled *Qualified Domestic Relations Orders: Strategy and Liability for the Family Law Attorney* (2009 © LexisNexis). Lexis released the 2009 Edition in September. The firm's phone is 202.540.9107 and the web page is www.qdrotrack.net.

The law firm of THOMAS & ASSOCIATES, P.C. is pleased to announce that BRIAN A. THOMASSON has joined the firm. Mr. Thomasson was formerly with the City Attorney's Office for the City of Norfolk. His practice will include family law, social services law, personal injury, civil litigation, traffic and criminal law.

THE VIRGINIA BEACH LEGAL STAFF ASSOCIATION announces that RAY HARTZ, Executive Director of the Legal Aid Society, will be speaking about the economic downturn and mortgage crisis at its monthly dinner meeting on April 19, 2010 at the Crowne Plaza Hotel in Virginia Beach. VBLSA also will hold its Buck-A-Book fundraiser. (Buy a book for \$1.) For details and to RSVP, please call Jane Shelton at 217-4540.

The Judges of the Virginia Beach Juvenile and Domestic Relations District Court advise the COURT APPOINTED COUNSEL/GUARDIAN AD LITEM that the state mileage reimbursement rate is .50 per mile, effective January 1, 2010, for the DC 40 List of Allowance form.

ANNUAL CASA (Court Appointed Special Advocate) FUNDRAISER – Friday, May 14, 2010 from 7:30p.m. to midnight at the Cavalier Golf & Yacht Club. The theme is "Slide into Summer." The event features live music by the band: "Ten Spot," heavy hors d'oeuvres, adult beverages, a live auction and raffle items. Tickets are \$60.00 if purchased prior to May 7th (\$75.00 after the 7th) and are available from the CASA office. Phone: 385-5616.

GENERAL DISTRICT COURT JUDICIAL LIAISON COMMITTEE – *Complete this thought: "If I were general district court chief judge, I'd . . ."*
As you were sitting in GDC waiting for your case to be called, you've probably had thoughts of how things could be changed for judicial efficiency. Or, perhaps, something particular happened that bothered you. Here's your chance to share those thoughts. Your suggestions and comments will be passed on, anonymously, by the Judicial Liaison Committee to the GDC judges. Comments should be given to Cal Bain (cbain@idc.virginia.gov) or Kathryn Byler (kbyler@pendercoward.com), co-chairs of the committee.





LAW DAY

We will be celebrating Law Day on May 14, 2010 from 11:00 a.m. to 3:00 p.m. A representative from LexisNexis will present basic training classes on how to search our new Lexis database. Seating is limited so register early! Please call 385-4419. Refreshments will be served.

COPIER CHANGES

Some of you may have noticed we've moved our photocopiers into the computer room. This frees up our old copy room to be converted to a conference room which will be available to you on a first-come, first served basis for short meetings with clients and colleagues. The new conference room will be equipped with cable and a flat screen TV, and the entire library is now equipped with wireless access, so laptops are welcome!

The old copiers are being replaced with newer models and our photocopy fee will be raised to 20¢ per page effective March 18, 2010. Remember that you can always save your work to a flash drive to save on printing costs. If you don't have your flash drive with you, we sell 1G flash drives for \$7 each.

NEW BOOKS

Acts of the General Assembly of the Commonwealth of Virginia
Commonwealth of Virginia, 2009

Bankruptcy Code, Rules and Forms
West, 2010 Edition

The Best Lawyers in America
Woodward/White, 2010

Consumer Bankruptcy Law and Practice
NCLC, 9th Edition

Consumer Law Pleadings
NCLC, 2009 Edition

Federal Sentencing Guidelines Manual
West, 2009 Edition

Hampton Roads Legal Directory
Professional Consulting Group, 2010 Edition

Handbook of Virginia Local Government Law (CD)
Local Government Attorneys of Virginia, Inc., 2009

Martindale Hubbell International Law Directory
LexisNexis, 2010 Edition

PDR Guide to Drug Interactions, Side Effects, and Indications
PDR Network, LLC, 64th Edition

South Hampton Roads Virginia Street Atlas
ADC, 2007

Uniformed Services Almanac
Uniformed Services Almanac, Inc., 2010 Edition

Virginia Forms: Transactions in Turbulent Times
LexisNexis, 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: Real Estate Closings
West, 2009 – 2010 Edition

UPDATED MATERIALS

Blue's Guide to Jury Selection
West, 2009 – 2010 Appendices

Consumer Arbitration Agreements
NCLC, 2009 Supplement

Education Law
LexisNexis, December 2009 Update

Fair Credit Reporting
NCLC, 2009 Supplement

Federal Civil Rights Act
West, 2010 Supplement

Repossessions
NCLC, 2009 Supplement

Student Loan Law
NCLC, 2009 Supplement

Truth in Lending
NCLC, 2009 Supplement

Unfair and Deceptive Acts and Practices
NCLC, 2009 Supplement

Virginia Model Jury Instructions – Civil
LexisNexis, 2009 Update



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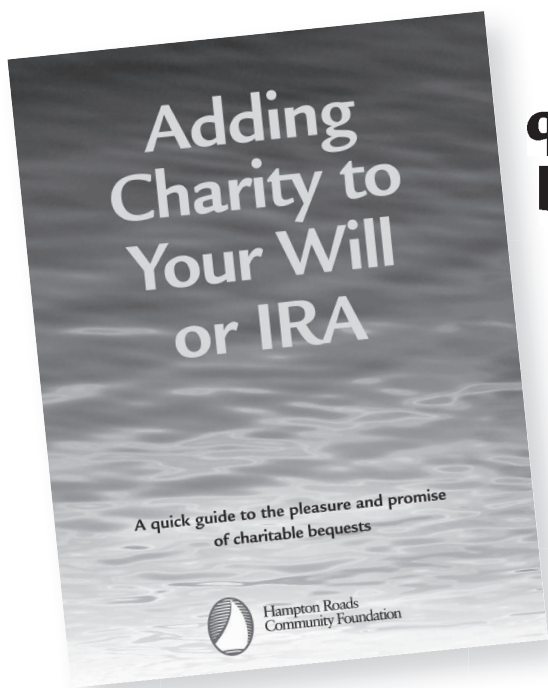
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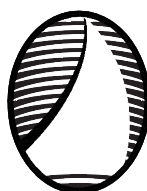
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Annual Meeting/Holiday Party

F E B R U A R Y 3 - 9 , 2 0 1 1
Caribbean CLE

F E B R U A R Y 5 , 2 0 1 1
Annual Banquet

SAVE THESE DATES!

The 2011 VIRGINIA BEACH BAR ASSOCIATION CARIBBEAN CLE SEMINAR will be held February 3-9, 2011. Obtain 7-9 hours of CLE credits including 2 hours of Ethics and also enjoy the Superbowl in an exotic tropical location. Destination to be announced.

VIRGINIA BEACH BAR ANNUAL BANQUET
Saturday, February 5, 2011 – Hilton at the Virginia Beach Oceanfront