



VIRGINIA BEACH BAR ASSOCIATION

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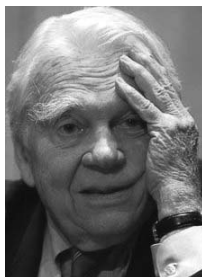
ISSUE NUMBER 5



THE PRESIDENT'S MESSAGE

by Timothy J. Quick

Tis' the season. Now that it is dark early and the boys' baseball is winding down... except for the twice a week indoor agility training at the field house, the catchers' clinic all the way out at ODU on Wednesday nights, interspersed with a basketball practice here and there, in my down time I find myself drawn to the 600 numbered channels on the old flat screen as I sit down to eat my dinner each night at 9:00 p.m. I can't call it the "old boob tube" anymore because while you probably do see a lot more bare breasts on TV nowadays, it's really not very PC to say such things in 2011, and as a practical matter, TV's no longer have tubes in them anymore. Just a lot of capacitors that go pop before the LED emits a funny smell and the screen begins to flicker. Believe me, I know. Forgive me, I'm rambling.



Have you looked at the 600 numbered channels lately? Has cable television really been around for so long that the programs are no longer permitted to have any association with the name of the television network? Have you ever thought about this? Do you remember when the History Channel actually ran documentaries concerning... historical events? You might actually have caught a black and white piece on the Vietnam War or the bombing of Pearl Harbor. You may actually have learned something. Let's take a look at tonight's lineup. At 8:00 p.m., Mike and Frank meet a Smokey mountain man who is reluctant to sell anything despite the fact that his collection of junk fills four barns... next on **American Pickers!** Not to be outdone by **Ice Road Truckers Deadliest Roads** at 10:00 p.m., where a veteran trucker may have to use dynamite to expand an old donkey trail going up the Andes! Channeling down, oh dear, another commercial featuring a burly lawyer who is going to physically beat the living crud out of an insurance adjuster.

And down to 621, the National Geographic Channel. I'm sure I can find a good documentary having to do with, say... something involving geography. Yep, here it is. At 10:30 p.m. agents of the Department of Homeland Security rescue *undocumented immigrants* who *got lost* in the brush and nab a van loaded with marijuana, next on **Border Wars!** It was filmed on location in Texas and the illegals were running on dirt, so I guess it has something to do with national geography. Over to the Animal Planet where I am sure I will find something educational concerning wildlife. Yes indeed. Two best friends travel from Boston to gain a new perspective on how rednecks in Oklahoma "noodle" for catfish, next on **Hillbilly Handfishin'.** Have you seen this show? These fools actually drive hundreds of miles to get in creeks with their clothes on and shove their entire arms into muddy holes until a very mean fish bites them, all so a hillbilly with one front tooth can try to get a rope around the fish's neck, if fish even have necks. I'm not a big fisherman.

You know, the fact that I now have the option of over 600 channels kind of makes me long for Tuesday nights with the Fonz, Laverne and Shirley, and if I wasn't in the mood for 70's shows set in the 50's, I could always switch to one of the other two networks. Andy Rooney, rest in peace.

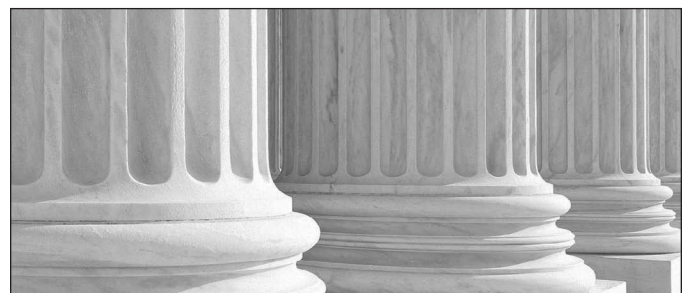


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RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

COMMONWEALTH OF VIRGINIA v.
JUSTIN THOMAS SMITH,
CR10-3732 & CR10-3988 (JUDGE LILLEY, 5/23/11)
Defendant, charged with burglary and larceny, sought discovery regarding a third party juvenile who might be involved in the charges against the defendant. He requested the address of the juvenile, and provision of the Commonwealth's criminal file on the juvenile for the defense to review. As for the juvenile's address, the court found that the address was discoverable based upon the defendant's assertion that the juvenile's testimony would help establish a lawful explanation for the defendant's possession of stolen items. However, the criminal file on the juvenile was found not to be discoverable, as the defendant did not articulate any particular information in that file that would be material to his case. The court also held that the defendant was not entitled to an *in camera* review of the file by the court, as he did not make a plausible showing that the evidence he was seeking was favorable and material.

RYAN S. MCADOO v.
AMBER SMITH (F/K/A AMBER HOWREN),
CL10-5510 (CHILD SUPPORT APPEAL), CL10-5511
(VISITATION APPEAL) (JUDGE LILLEY, 4/22/11)
Appellee moved to remand these J&D appeals on the basis that the merits were never considered by J&D, but the matters were dismissed because appellant left the courtroom and failed to proceed. As a result, she asserted that circuit court lacked jurisdiction. The court denied the motion, finding that the J&D order left nothing to be done by that court, and therefore constituted a final order that was appealable.

DONTE D. THATCH v.
LATOYA THATCH,
CL11-1213 (JUDGE LILLEY, 4/20/11)
At issue was the start date for *pendente lite* child support, as the parties had agreed to all other issues. Defendant filed for child support in J&D on Sept. 21, 2010, and the petition was ultimately dismissed because plaintiff filed for divorce on Feb. 24, 2011 and noticed a *pendente lite* hearing. Defendant argued that support should be retroactive to Sept. 21, 2010. The court

granted the motion, finding that the combination of the language of the statute, the case law, and the legislative intent behind the statutory language indicated that the award of child support should date back to the filing date of the defendant's petition in the Juvenile and Domestic Relations Court.

COMMONWEALTH v.
GERARD EDWARD HAYWARD,
CR10-3930 (JUDGE LILLEY, 6/22/11)
Defendant moved to suppress the victim's identification of him. The victim stated someone by the name of "Booda" shot him during a drug transaction, and that he had known "Booda" for about a year, and saw him about once or twice a week. Police asked him if he would recognize a picture of "Booda" and showed him a picture of only the defendant, who he identified as the man who shot him. The Commonwealth conceded that the pretrial identification was impermissibly suggestive. However, the court found the in-court identification of the defendant reliable under the totality of the circumstances, because it was bolstered by his independent knowledge of the defendant apart from the impermissibly suggestive photo identification.

JODI LYNN FILION v.
PAUL ANDRE FILION,
CL09-3909 (JUDGE O'BRIEN, 3/24/11)
This divorce came forward for trial on the issues of child support, child custody and visitation, equitable distribution, and attorney's fees. As to custody, the children were seven and five years old, and the evidence was in relative equipoise except for the anger existing between the parties, especially on the part of the husband. After considering all statutory factors, the court ordered joint legal custody with physical custody to the wife, although the court had reservations about the ability of the parties to cooperate and make joint decisions regarding the children. Child support was agreed to except for the allocation of childcare costs paid by the wife for June-Aug. 2009. The court refused to order the husband to pay any of these costs because at the time the parties had joint physical custody of the children and no child support was ordered. The court



RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS



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made extensive and detailed equitable distribution rulings concerning real and personal property and retirement accounts. Finally, husband was ordered to reimburse wife's attorney's fees in the amount of \$5,834.60, to compensate for discovery lapses as well as wife having to seek court action to enforce court orders against the husband.

THOMAS J. HUBBARD, M.D., INC. v.
WITCHDUCK INVESTMENT CO.,
CL09-6315 (JUDGE O'BRIEN, 3/22/11)

This matter involved claims between a lessor and lessee regarding real property that had been condemned for a road project. Before the court was Witchduck's

demurrer to Hubbard's answer to its counterclaim, and the City's demurrer and special plea to the third-party complaint asserted against it by Hubbard. The court granted the motion to strike portions of Hubbard's answer that requested affirmative relief, as such is not properly requested in an answer, and the claims asserted had previously been dismissed by the court in ruling on demurrers to Hubbard's Complaint and Amended Complaint. The demurrer to the third party complaint, in which the third-party plaintiffs sought indemnity or contribution from the City, was sustained as it failed to allege that third-party plaintiffs and the City were joint tortfeasors.

WHAT'S NEW AT WAHAB



NEW LEGAL RESOURCES AT WAHAB

Now available at Wahab Public Law Library:
WestlawNext and CaseFinder Web.

WestlawNext offers new research tools, improved search capabilities, and efficient research organization. Introductory material explaining the capabilities of this new legal research system is available online at <http://store.westlaw.com/westlawnext/default.aspx>.

CaseFinder Web offers timeliness, powerful searching, and browsable databases of Virginia specific resources. Introductory material explaining the capabilities of this web-based version of the CaseFinder legal research system is available online at http://www.casefinder.com/casefinder_web/.

Also available at the Wahab Law Library are LexisNexis and the original Westlaw legal research systems.

Five public access computer terminals are available for customer use. Search and retrieval are free of charge. The cost of printing and copying is only \$.20 per page.

*Barron Henley on Paper Reduction,
Document Management, Document Automation,
and the Ethics of It All*

Virginia Law Foundation, 2011

Construction CPM Scheduling

Virginia Law Foundation, 2011

Construction Litigation Handbook

Thomson/West, 2011

*Manual of Model Civil Jury Instructions For the District
Courts of the Eighth Circuit*

West Publishing Company, 2011

*The Life of an Estate: Fundamentals of
Probate Practice 2011*

Virginia Law Foundation, 2011

The United States Government Manual 2011

Office of The Federal Register, National Archives and
Record Service, General Services Administration

*What Color is Your Parachute? A Practical Manual for
Job-Hunters And Career-Changers*

Ten Speed Press, 2012

Workers' Compensation Practice in Virginia

Virginia CLE Publications, 2011





NOTICE

Effective November 7, 2011

A new security screening procedures will be implemented.

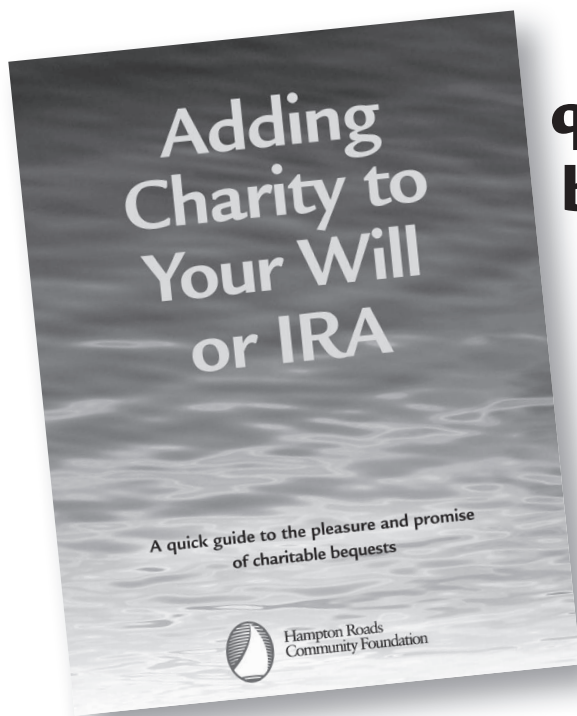
1. Judicial Complex employees will have access to their work area via side doors, or they can elect to enter through one of the three main security stations. If the employee elects to enter through the main entrances, they must display their city I.D. card, and they will be able to bypass the security screening process. 2. Attorneys will be able to bypass the security screening process at A, B, and C security stations. They must show their bar card to bypass the security screening process. 3. Police Officers, Evidence Technicians, Community Corrections, and Probation and Parole Officers will be authorized to bypass the security screening process. If in civilian attire, proper identification must be presented at the security station. The access control database should be updated by November 7, 2011. If any employee's access control card does not work, they should notify their supervisor. The supervisor should E-mail Corporal J. Slee at jslee@vbso.net requesting the employee have access through the required door. If you

have any questions, please feel free to give me a call.

Regards, Captain Elliot Ortiz Commanding Officer of Court Services Virginia Beach Sheriff's Office 2501 James Madison BLVD Virginia Beach, VA 23456 Office (757)385-4920 Fax (757)385-8839 E-mail eortiz@vbso.net

We are reminding constituencies that the Virginia State Bar is again encouraging nominations for the Lewis F. Powell, Jr. Pro Bono Award and the Oliver White Hill Law Student Pro Bono Award. The Powell Award was established by the bar two decades ago to recognize *lifetime* or other extraordinary achievements in the fields of pro bono and public service. Traditionally, recipients of the Powell Award have been nominated by their peers (i.e. fellow attorneys).

Nominations for the Hill Law Student Award may come from attorneys, law school faculty, and/or from the broader (lay) community. Presentation of the Hill Award allows the bar to honor extraordinary contributions as they are made *in preparation* for a legal career. Named in honor of the famed civil rights



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advocate and Virginia native, the late Oliver W. Hill, the inaugural Hill Award was presented in 2002.

The Virginia State Bar Special Committee on Access to Legal Services anticipates that the awards will be conferred at an appropriate formal occasion in the second quarter of 2012. The calls for the 2012 Powell and Hill awards are, respectively, posted at: http://www.vsb.org/site/pro_bono/powell-pro-bono-award and http://www.vsb.org/site/pro_bono/hill-student-pro-bono-award.

The Committee on Access to Legal Services has received impressive nominations over the years for both awards. Consistent with this, we draw your attention to the Powell Award Call showing the roster of prior recipients. Included are not only individuals engaged in the delivery of civil and defender legal services, but also lawyer "groups" including law firms, law school public service program partners, voluntary bar associations, and volunteers affiliated with stand-alone nonprofit legal services providers.

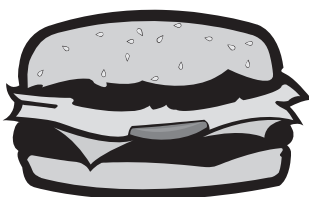
In closing, as stated in the two announcements, the deadline for receipt of nominations by the bar for the Hill and Powell awards is the same, Friday, January 20, 2012. Please note that all supporting materials, such as optional resumes or letters of endorsement are also due that day.

Thank you for your consideration. The committee looks forward to hearing from you and encourages you to share this message. Each member joins me in wishing you a delightful holiday season.

With appreciation,
Andrea L. Bridgeman, Chair
Virginia State Bar Access to Legal Services Committee

LAWYERLY LUNCH

Join us at the Black Angus Grill, January 20, 2012 at 12:00 for lunch.



HOLE IN ONE!



JIM WHITUS

We can always expect a great turnout to the Annual Dick Brydges Golf Classic and this year was no different. We had BEAUTIFUL weather, great food, better company and for some... great scores! The VBBA would like to congratulate our very own, Jim Whitus, for his hole-in-one on #8!



To our Valued members,

Many of you have inquired about the Caribbean CLE. For many years the trip was planned at beautiful but rather expensive locations. In an effort to make the trip more accessible to more of our members, the VBBA decided to appoint a committee to find trips that are all-inclusive, less-expensive, and will in no way interfere with any other VBBA events. We truly apologize for all the confusion surrounding this trip over the last few years and even more disappointed there is no VBBA sponsored Caribbean CLE this year, but rest assured, our committee will work diligently to put together a fabulous 2013 package!



CLASSIFIEDS



THE HALLAUER LAW FIRM IS LOOKING FOR A NEW ATTORNEY TO JOIN THEIR TEAM

The firm has an opening for a Virginia Licensed attorney with 2 - 3 years of experience. Experience handling criminal defense, divorce, child custody and child support and or personal injury preferred but not required. If interested please fax Resumes to (757) 474-0692. All resumes will be kept strictly confidential.

CLASS A OFFICE SPACE

Share space with several established lawyers in Corporate Landing. Single office approx. 13'x13' available immediately with adjacent 13'x6' paralegal office. Phones, receptionist, signage, internet, copier, fax, postage meter, large conference room, kitchen, and impressive reception area all available. Negotiate reasonable rent depending on your needs. Call Tim Quick at (757) 275-5000 or e-mail at timjquick@gmail.com

OFFICE BUILDING FOR LEASE

Princess Anne Plaza – Near Sam's Club, Pet Smart, and I-264. Great Location. Ideal for Legal Office, Medical Office or Veterinary Office. You must see to appreciate. 1600 square feet \$2,000.00 per month. Call 757-619-5757 or 757-456-5757.

LAW OFFICE SUITES FOR LEASE

Available immediately. Much desired location near oceanfront. Approximately 2000 square feet. Three offices, reception area, conference room, and kitchenette. Location 1064 Laskin Road, Virginia Beach. For additional information or to see property, please respond by e-mail davidpearline@msn.com or phone 428-2276.

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226-9414





**His Experience
with a Scalpel
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In The Court Room.**

**Your Co-Counsel
Should Be As Specialized
and Qualified As
Your Expert Witnesses.**

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



Stephen M. Smith, Esq.

ANNOUNCEMENTS



The law firm of CLARKE, DOLPH, RAPAPORT, HULL, BRUNICK & GARRIOTT is pleased to announce that RICHARD E. GARRIOTT, JR. has been selected as a Fellow in the American Academy of Matrimonial Lawyers. Previously this year he was named to *Virginia Super Lawyers* in the family law practice area and by *Virginia's Legal Elite* in the family/domestic relations category.

The HALLAUER LAW FIRM is pleased to announce that RYAN M. RAMSTAD has joined the law firm as a new member. Mr. Ramstad will focus his practice on Criminal and Family Law. Mr. Ramstad is a native of Virginia Beach and earned his Bachelor's Degree from Virginia Tech and his *Juris Doctorate* from the St. Thomas University of Law in Miami, Florida. He was previously employed with the Cohen Law Group. Also, the HALLAUER LAW FIRM is pleased to announce the opening of a satellite office at 1035 Champions Way, Suite 700, Suffolk, VA 23435. The office located in Kempsville will continue to be their main office.

POOLE MAHONEY PC is pleased to announce eight lawyers of the firm have been selected by their peers as 2011 Legal Elite by *Virginia Business* magazine in the following categories: ALBERT H. POOLE (Business Law), REEVES W. MAHONEY (Family/Domestic Relations), JEFFREY F. BROOKE (Alternative Dispute Resolution), TARA L. CHADBOURN (Construction Law), M. TODD GERBER (Health Law), J. BRYAN PLUMLEE (Litigation), TIMOTHY M. RICHARDSON (Labor/Employment), and STEPHANIE C. SMITH (Taxes/Estates/Trusts/Elder Law).

KAUFMAN & CANOLES, P.C. is pleased to announce that STEPHEN E. NOONA was named Norfolk Litigation - Intellectual Property 2012 Lawyer of the Year by Best Lawyers in America. Also, that the following VBBA attorneys were selected for inclusion in *The Best Lawyers in America* 2012: ANN K. CRENSHAW, ROBERT C. GOODMAN JR., SCOTT W. KEZMAN, STEPHEN E. NOONA, ALFRED M. RANDOLPH JR., and HUNTER W. SIMS JR. Further, that the following VBBA attorneys were selected for inclusion in *Virginia Business Magazine's "Legal Elite"*: ANN K. CRENSHAW, ROBERT C. GOODMAN JR., SCOTT W. KEZMAN, STEPHEN E. NOONA, ALFRED M. RANDOLPH JR., HUNTER W. SIMS JR. DEBRA C. ALBISTON, Family/Domestic Relations ANN K. CRENSHAW, Real Estate/Land Use RYAN G. FERGUSON, Young Lawyer (Under 40) JILL ROSELAND HARRIS, Family Law SCOTT W. KEZMAN, Labor/Employment STEPHEN E. NOONA, Intellectual

Property HUNTER W. SIMS JR., Civil Litigation JAMES L. WINDSOR, Construction.



LISA A. BERTINI

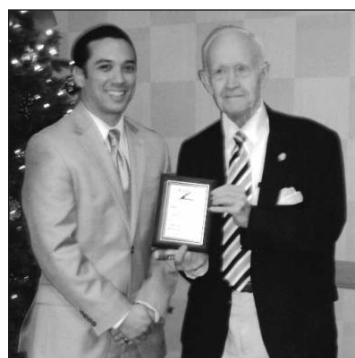
LISA A. BERTINI from BERTINI O'DONNELL & HAMMER, PC has been inducted into the Litigation Counsel of America which includes induction into the Trial Law Institute and Diversity Law Institute. Fellowship is highly selective and by invitation only based on effectiveness, accomplishment, and superior ethical reputation. It is an honorary society that is aggressively diverse in its composition and consists of less than one percent of elite trial and appellate lawyers in North America.



HON. JEROME B. FRIEDMAN

THE MCCAMMON GROUP is proud to announce the addition of our newest Neutral. 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.



CHRISTOPHER M. BAKER & HARVEY L. BRYANT

HARVEY L. BRYANT, Commonwealth's Attorney for the City of Virginia Beach, announced that Senior Assistant Commonwealth's Attorney CHRISTOPHER M. BAKER formally received the 2011 John T. Hanna Legal Initiatives Award for Excellence in Traffic Safety from Drive Safe Hampton Roads.





ANNOUNCEMENTS CONTINUED

Baker was one of ten local individuals and organizations to be recognized for promoting community traffic safety. The award was presented by Mr. John T. Hanna himself, along with Vice President of Drive Safe Hampton Roads, Sue Canny. According to a news release issued by Drive Safe Hampton Roads, Baker routinely goes "above and beyond to successfully prosecute all cases assigned to him, specifically DUI and traffic related cases." Baker thoroughly reviews each case being challenged, researches case law extensively, and educates Virginia Beach police officers regularly. He attends regular traffic safety training, completes ride-a-longs with the Traffic Safety Unit and Fatal Crash Team, and attends Virginia Beach Police Department DUI training.

GLASSER AND GLASSER, P.L.C. Announces that JENNIFER L. ANTHONY has Joined the Firm as an Associate Attorney. Jennifer received her B.A. from the University of Maryland in 1994. She earned her J.D. from Howard University School of Law in 2001. Jennifer will continue to focus her practice on Creditors' Rights and Collections. Also at GLASSER AND GLASSER, P.L.C., Firm Attorney MICHELE S. CUMBERLAND Elected President of The Virginia Creditors' Bar Association. Michele was elected President on September 21, 2011. Michele received her B.A. from the College Of William and Mary in 1990 and her J.D. from Dickinson School of Law (now part of Pennsylvania State University) in 1996.



SHORT CIRCUITS

Practice tips from the Circuit Court

By: Amy H. Jones
Staff Attorney

NEW HEARING TIMES FOR UNCONTESTED DIVORCES

Effective October 1, the court will begin hearing Hearing Requests/Uncontested Divorces on the following days and times: Mondays at 10 a.m., Wednesdays at 2 p.m., and Fridays at 10 a.m. These matters will no longer be heard on Tuesdays at all. Please note that the Friday hearings are not part of the regular Friday motions docket, and that no final divorce hearings are held on that docket. Instead, the Friday hearings will be handled by the duty judge, just as they are on Mondays and Wednesdays. Also, please do not confuse the new Friday uncontested times with the Friday Contested Divorce docket. They are two separate dockets, so if you want your Hearing Request/Uncontested Divorce heard on a Friday, simply submit the standard Hearing Request form that you would for the other days – do not submit a Friday Contested Divorce form.

JIM LEWIS

and his firm welcome forming a co-counsel relationship with you
for serious injury, wrongful death and malpractice cases.

460-7776

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* 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:

January 30th, 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. F. BRUCE BACH (RET.)

HON. JOHN E. CLARKSON (RET.)

HON. SAM W. COLEMAN, III (RET.)

HON. JEAN W. CUNNINGHAM

JOHN G. DOUGLASS, ESQ.

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HON. JEROME B. FRIEDMAN (RET.)

RICHARD S. GLASSER, ESQ.

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BARBARA L. HULBURT, ESQ.

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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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JANUARY 20TH, 2012

Luncheon
Black Angus Grille

JANUARY 30TH, 2012

Newsletter deadline

MARCH 3RD, 2012

Annual VBBA Banquet
31st Street Hilton