



# VIRGINIA BEACH BAR ASSOCIATION

VOLUME NUMBER 23

JUNE 2014

ISSUE NUMBER 2



## THE PRESIDENT'S MESSAGE

by Jonathan L. Thornton

### *The Only Thing that is Constant is Change—*

Heraclitus of Ephesus (circa 500 BC)

As the son of a printer, it is with some degree of angst that I announce that this edition of our VBBA Newsletter will be the last of the printed and snail-mailed variety. In the future, you will receive your Newsletter by email with a PDF attachment and a link to our website (vbbarassoc.com) that you simply click and read from your computer, smart phone or other electronic device. There is no doubt that this leap into the digital age will be met with some trepidation by members who are not accustomed to receiving and reading the news electronically. As a dinosaur who still receives and reads newspapers instead of subscribing online, I understand well the desire to read hard paper copy. But time and technology marches on, and an E-Newsletter makes too much fiscal and practical sense not to implement.

E-discovery, Electronic medical records (EMR), E-filing and Electronic research are but a few examples of the “E-ing” of our profession that has occurred over the past two decades. Paper calendars have been replaced or supplemented by Outlook or Google calendars. Many state and nearly all federal courts now require electronic instead of paper filing. The days of facsimiles sent and received on the eve of 5 p.m. (you have to have at least 15 years of practice to relate to this) have given way to emails and e-filings before midnight and on weekends. Whether all of this technology improves our profession or simply speeds it up and makes it more difficult to truly disconnect from the practice and have a life outside of the law is a questions worth pondering. Although technology has brought dramatic change to our profession, there are, thankfully, “constants” that remain as true today as they did in the days of Lincoln. Lawyers still do an extraordinarily fine job of self-policing the profession. When a lawyer does



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not live up to the ethical standards we have set for ourselves, they are disciplined, and the public is made aware of it. Although we are often in adversarial positions advocating for our clients, we are (usually) able to suspend the hostilities once the hearing, trial or negotiation is completed. Some of our clients struggle with the notion that as professionals we engage in battle, yet are able to shake hands, share a laugh and remain civil to one another in the aftermath. Most importantly, our profession remains one of the most charitable, collegial and community-minded of all, particularly with the VBBA. These are qualities of our chosen profession that hopefully will remain a constant long after Emails, E-discovery and E-filings have gone the way of the typewriter.

### **Important Reminders--**

**May 31:** VBBA Beach Bash at the Princess Anne Country Club (6 p.m.-until?) Sign up now!

**June 12-15** – Virginia State Bar (VSB) 76<sup>th</sup> Annual Meeting at the Oceanfront. Let’s have a strong showing of attendees from the VBBA and come out to support the new VSB President, VBBA’s own Kevin Martingayle.

**September 18-20**—Vegas CLE

**October 1**—VBBA Charity Golf Classic

**January 28-TBD, 2015**—VBBA Caribbean CLE trip led by John Hooker (kickoff party date TBA)

**MARK AND SAVE THESE DATES!!!**



# ANNOUNCEMENTS

## VANDEVENTER BLACK, LLP

Vandeventer Black is pleased to announce that William E. Franczek, P.E., a partner in the Construction and Public Contracts Department, was recently selected by the American Bar Association Forum on the Construction Industry to chair its newly formed division on Government Construction.

Bill is also a civil engineer, and his practice focuses on construction law, public contract law and alternative dispute resolution.

For more information, visit [www.vablk.com](http://www.vablk.com) or call (757) 446-8600.

## INMAN & STRICKLER P.L.C.

Steven P Letourneau, partner at Inman & Strickler, P.L.C., was recently named to the Board of Management for the Armed Services, YMCA. Mr. Letourneau, a native of Virginia Beach, has been assisting people, families and businesses with a variety of legal needs in the greater Hampton Roads area for more than 27 years and grew up in a Navy family. The ASYMCA is dedicated to making military life easier for the families of enlisted military members in Hampton Roads. The ASYMCA provides support to the military families by providing child development programs, community centers and fleet readiness programs. It also boosts morale by sponsoring annual special events such as Operation Holiday Joy, Father-Daughter Ball, Hearts for Heroes Fishing Trip and the ASYMCA Mud Run. Mr. Letourneau hopes to use his personal and professional experiences to support and make positive contributions to the mission of ASYMCA.

## OFFICERS ANNOUNCED

The Hampton Roads Association of Legal Administrators' Chapter which was chartered in September 1979 and today has about 40 active members representing law firms, corporate legal departments and government agencies throughout the Tidewater region of Virginia announces the new officers for the year. President, Valerie Williams of Pender & Coward; President-Elect, Amy Glenn of Wolcott Rivers Gaters; Vice President, Lisa Daniel of Zoby, Broccoletti & Normile, P.C.; Treasurer, Sabrina Daly of Boleman Law Firm, P.C.; Secretary, Erin Hulme of Rack & Olansen, P.C. and Past President, Shirley Beacham of Crenshaw,

Ware & Martin, P.L.C.

## HUNTON & WILLIAMS, LLP

Hunton & Williams is pleased to announce Robert M. Tata has been appointed Managing Partner of the firm's Norfolk office. He has assumed responsibilities from Gregory N. Stillman, who managed the office since its opening in 1979. In his new role, Bob will exert his vision in leading the office and maintaining Hunton's established reputation as a leading firm in the area. The Norfolk native has been with the firm since September 1989.

## COOPER HURLEY

Cooper Hurley Injury Lawyers Welcomes Attorney Bill O'Mara. Bill is now a member of the litigation team here at the Hampton Roads law firm of Cooper Hurley, which exclusively practices personal injury law. Since 2008, Bill has practiced personal injury and other litigation throughout Hampton Roads. He was raised in Chesapeake, VA before attending Dartmouth College and later receiving his law degree from Washington & Lee University.

## VIRGINIA BEACH BAR ASSOCIATION WELCOMES NEW MEMBERS

### MATTHEW R. RUDOLPHI

*Duncan, Weinberg, Genzer & Pembroke, P.C.*  
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### LUCINDA B. HUSTON

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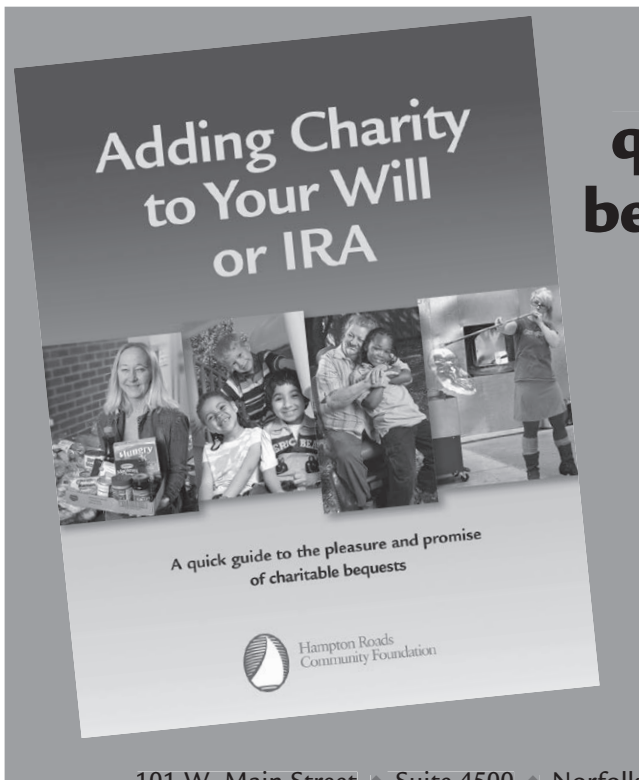
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703-879-1998

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# WHAT'S NEW AT WAHAB

## NEW RESOURCES AT WAHAB LIBRARY

- *Virginia Practice Series: Products Liability, 2014*
- *Consumer Bankruptcy Handbook with Forms, 2014*

## VIRGINIA CLEs

- *18<sup>th</sup> Annual Advanced Real Estate Seminar, 2014*
- *44<sup>th</sup> Annual Criminal Law Seminar, 2014*
- *Criminal Law Seminar, 2014*
- *Employment Law in VA, 2014*
- *Hot Topics for In-House Counsel, 2014*
- *Hot Topics in Business Bankruptcy Law, 2014*

## We offer the following for your use:



*A private conference room ...*



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Visit us on the web at  
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## Tech Corner

**Microsoft Office is now available for your iPad!** Download Word, Excel, and Powerpoint apps from iTunes --- these free apps allow you to view documents, spreadsheets, presentations; a subscription to Office 365 (as low as \$6.99/month) is needed for full editing and creation capabilities.

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Group 2: January 29 ~ February 5, 2015

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## PRACTICE TIPS FROM THE CIRCUIT COURT

*Requirement of filing a notice and motion for the Duty Judge Docket and related issues*

*by Amy H. Jones,  
Staff Attorney*

### **PREREQUISITES FOR MOTIONS' PRACTICE; UPDATES TO COURT REPORTER REQUIREMENT; AND DIVORCE TROUBLE SPOTS**

#### ***Reminder of the notice and certification requirements for motions practice***

The judges want to remind all attorneys that the court will require compliance with Va. Sup. Ct. R. 4:15 before motions will be heard. In particular, this includes the requirement that the moving party has conferred (or attempted to confer) with opposing counsel in an attempt to resolve the matter without court action. Rule 4:12 also specifically imposes this requirement on motions to compel discovery. Pursuant to these rules, counsel must have made a good faith attempt to resolve the issue being brought before the court. By way of example, mentioning the issue in passing to opposing counsel six months prior to the hearing is not going to satisfy the good faith requirement. Further, as required by Rule 4:15 (and Rule 4:12 for discovery motions), counsel must provide a certification of compliance with this requirement with the motion.

In addition, if the attempt to resolve the matter out-of-court fails, counsel are to confer to find a mutually agreeable date and time for hearing. See Rule 4:15(b). Reasonable notice of the date and time of the hearing must be provided in writing and served at least seven days before the hearing. Finally, if briefs or memoranda are filed, filing and service of such briefs must comply with the timelines set forth in Rule 4:15(c).

The take away point is this: if you do not make an actual and good faith attempt to resolve the subject of your motion before coming to court, and do not certify that you have made that attempt, and/or do

not give proper notice of your motion to opposing counsel, then your motion likely will not be heard.

#### **Changes to requirements for court reporters**

The court no longer requires a court reporter to record the trial in civil appeals from the general district court and the juvenile and domestic relations district court. However, the trial judge may provide for the recording verbatim of the evidence and incidents of trial by a digital court recording device. If the trial is so recorded, the cost to prepare a transcript of the record shall be paid for by the party ordering the transcript. Counsel always has the option to arrange for a court reporter if desired, independent of any requirement by the court. In certain civil cases filed directly in the circuit court, the judge trying the case may require the recording verbatim of the evidence and incidents of trial by a court reporter. The services of a court reporter to appear and record the trial proceedings shall be arranged for by the plaintiff unless otherwise arranged by agreement of all counsel or directed by the court.

#### **The “Great Eight” of problems with divorce files**

I've been asked to provide guidance on how to get divorces through, particularly divorces by affidavit. It's difficult for me to give specific advice, because the main reason for a lot of rejections is typographical errors and inconsistencies that appear to result from a failure to proofread. That said, here is a list of the current “great eight” most common mistakes:

##### *1. Rewriting 20-60.3 notices or leaving out parts*

You may not think the General Assembly did a great job writing these notices and may want to try to improve them, but try to resist as you need to be using them as-is. While it's not a problem to “personalize” the notices and remove references to





payments through DSS when they will be made directly to the obligee, other alterations are best left out. The easiest approach is to block copy the notices and provide information where called for. If information is unknown or does not apply, then state it is “unknown” or “N/A” instead of leaving it blank. Otherwise, we have no way of knowing if you do not know the information or if you simply forgot to provide it.

### 2. *Rewriting or re-arranging affidavit questions*

The court developed the required questions to expedite

processing and eliminate debates about sufficiency of content. Also, your file can be reviewed faster with less chance of an erroneous return when the questions are in the same order as in the court’s manual, instead of being re-arranged so that time has to be spent going back and forth hunting for each question. Block copying of the questions should be easy, quick, and simple as compared to making up your own, or re-writing them. The only items that should be changed are things such

as affirming the counterclaim (when relevant), stating the affidavit is by the defendant (when appropriate), and the like that serve to match the affidavit to your case.

### 3. *Careless (but significant) errors and typos in complaints, decrees, and affidavits*

Examples include dates not matching up, decree has different terms than separation agreement, decree is internally inconsistent, leaving names of other clients/children in pleadings, orders, waivers etc.

### 4. *Improper notarizations*

If you do not feel like working through all the statutes to find out what is required, the Secretary of the Commonwealth has a handy manual summarizing the requirements. You can access it at <https://commonwealth.virginia.gov/media/2089/NotaryHandbook.pdf>.

Also, remember that § 47.1-15 generally requires that the signer be physically in the presence of the notary

at the time of notarization.

### 5. *Affidavit witness lacks personal knowledge of separation date*

This occurs when the witness did not know the party prior to the date of separation.

### 6. *Improper pleading of a mensa grounds*

Examples include pleading a mensa for adultery, or a mensa to be merged into 20-91(9) (no fault), or merge into a divorce a vinculo at the expiration of one year’s separation

### 7. *Failure to transfer to J&D*

All topics eligible for transfer, and all aspects (modification and not just enforcement), need to be included.

### 8. *Original signatures are required but photocopies are provided*

This includes, for example, affidavits and waivers. We are very careful to verify that something is a copy before returning it, usually triple-checking it.

## **Changes coming July 1 to uncontested divorce/affidavit questions**

Section 20-106, which governs the use of affidavits in divorces, was amended this year so that changes are required to the court’s divorce questions. Be sure to check the [Uncontested Divorce Manual](#) at [www.vb.gov/courts](http://www.vb.gov/courts) for the revised questions for divorces submitted on and after July 1.





## RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

**Breeden Company, Inc. v. BRR Refrigeration, LLC, et al., Docket No.: CL08-6955** (Judge O'Brien, 2/14/14) - this matter involved demurrers (by the manufacturer and installer) to claims by a landlord based on damage to his property by his tenant's allegedly defective refrigerator. The court sustained a demurrer to a negligent design claim against the manufacturer, finding that the manufacturer did not owe any duty to the landlord. However, the court found that the installer of the refrigerator did owe a duty to the landlord, and overruled the installer's demurrer. The demurrers of both defendants based on the economic loss doctrine were overruled, because damage to the landlord's building went beyond "disappointed economic expectations."

**Adam Clevenger v. Barbara Clevenger, Docket No.: CL11-5283** (Judge Croshaw, 4/17/14) - this divorce involved issues of allocation of the marital residence and its associated debt, along with spousal support, for a long-term marriage of a now retired member of the Navy and a primarily stay-at-home wife. After reviewing the factors for equitable distribution, most of which were equal or favored husband, the court awarded the husband the marital residence and all the mortgages encumbering it. As for spousal support, the husband had both a bachelor's and a master's and earned \$104,000 a year, while wife had a high school diploma and had worked part time for a total of five years in retail. Considering all the factors, the court awarded wife \$1,200 a month in spousal support.

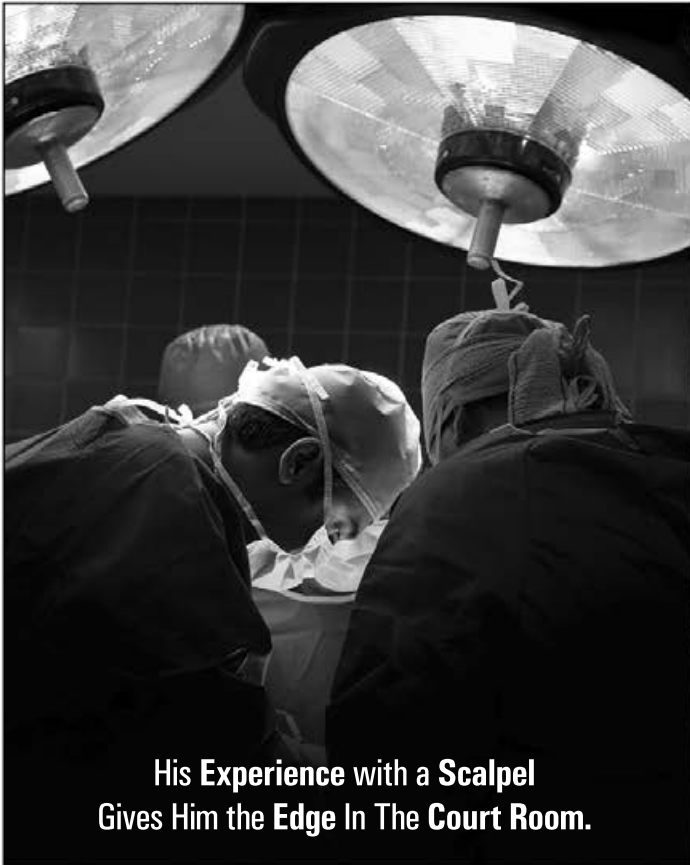
**Branson Barry v. Noel Barry, Docket No.: CL11-6987** (Judge Croshaw, 4/14/14) - in this divorce, the parties asked the court to allocate various credit card and IRS debt. The parties agreed that much of the debt was marital, but at the same time disputed the balances due. Each item was evaluated by the court and a value was determined. After working through the statutory factors, the court found that most did not favor either party, although the amount of debt each was already

responsible for weighed in favor of distribution to wife. Ultimately, the court allocated roughly \$76,000 of the debt to husband and \$23,000 to wife. As for spousal support, based upon the statutory factors, the court awarded wife \$8,000 a month for a duration equal to half the length of the marriage. Review of the statutory factors showed that husband had high earning capacity from his business, while wife's capacity was lower and she was currently unemployed since she was the primary caretaker for the parties' children. Husband owned his own business along with various parcels of real estate; wife had none of these items. Child support was awarded pursuant to guidelines. In addition, the court found that there was a demonstrated need for the children to attend private school and that the parties had the ability to pay for it, and ordered that the parties share the cost in accordance with the percentages from the Virginia Child Support Guidelines. Finally, the court dealt with requests for attorney's fees, finding that the combined total amount of fees incurred by both parties equaled roughly \$475,000, that both parties contributed to the difficulties in the litigation and both had the ability to pay. Ultimately wife was awarded \$20,000.00 in fees.

**Federal Home Loan Mortgage Corporation v. Diana Simon, et al., Docket No.: CL13-5083** (Judge Croshaw, 2/18/14) - this case involved an appeal of an unlawful detainer action from General District Court, where the defendants continue to occupy property after it had been foreclosed on. Defendants challenged the unlawful detainer by asserting that the underlying foreclosure was invalid. Plaintiff moved for summary judgment, contending that the court did not have jurisdiction to rule on the validity of the foreclosure because that required trying title. The court granted the motion, finding that attacking the foreclosure constituted an attack on title, and that since general district courts do not have jurisdiction to try title to real property, neither did the circuit court on appeal.







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Specialized  
and Qualified As  
Your Expert  
Witnesses.**

Stephen M. Smith is one of the select few attorneys invited to have been 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 40 years of national and international complex medical litigation experience, provides his clients and co-counsel with an advantage in the court room.

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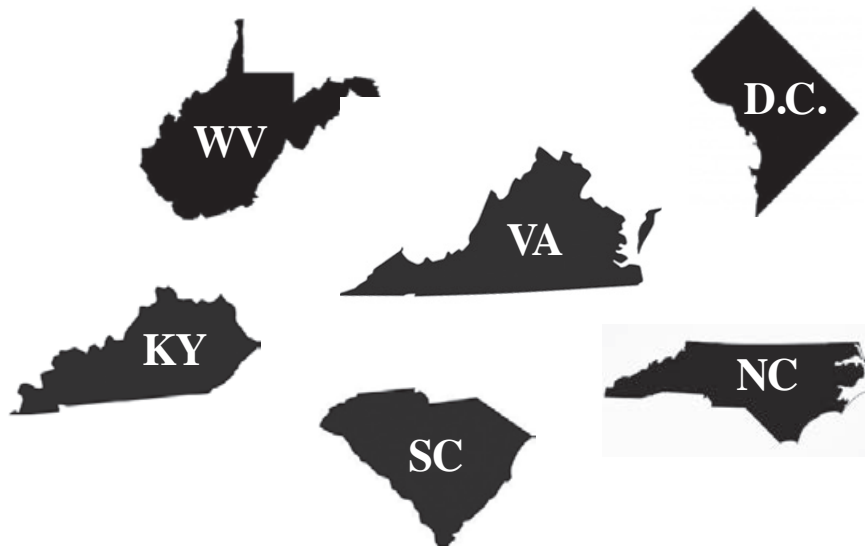
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*Stephen M. Smith, Esq.*



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Colin D. Stolle

Chief Deputies  
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# COMMONWEALTH OF VIRGINIA



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March 31, 2014

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Thomas M. Murphy

Virginia Beach Bar Association  
2425 Nimmo Parkway #10  
Virginia Beach, VA 23456

RE: Private Attorneys Acting as Special Prosecutors

Dear Fellow Members of the Bar:

Today I sent a letter to the Chief Judges of the Circuit, General District and Juvenile and Domestic Relations Courts advising them of my views regarding appointing privately retained counsel as special prosecutors in misdemeanor cases. Based on Adkins v. Commonwealth, 26 Va. App. 14, 492 SE 2<sup>nd</sup> 833 (1997), I will not appoint privately retained counsel as special prosecutors in misdemeanors cases.

I know of nothing in the law, and certainly nothing in Adkins, that would preclude the Court from allowing an individual victim/complainant from having privately retained counsel to assist them in putting on their evidence. Whether victims/complainants would be allowed to have private counsel assist them with putting on their evidence would, of course, in my view, be discretionary with the Court hearing the case. Examples of this use of private counsel would be advising what witnesses should be subpoenaed, what evidence would be admissible and would not be admissible including being present in court to call witnesses including the victim/complainant, asking questions pertinent to the proceeding, and introducing exhibits. I also know of no rule or case that would preclude private counsel from objecting to improper questions asked on cross-examination by opposing counsel. Further, as with any non-attorney complainant witness who happened to be familiar with the rules of evidence, I see nothing wrong with privately retained counsel objecting to improper questions, testimony or exhibits offered on behalf of a defendant. The primary difference between a special prosecutor, and retaining private counsel to assist in putting on the evidence, would be that such privately retained counsel could not argue the case on behalf of the Commonwealth or make motions normally reserved exclusively to the province of the Commonwealth's Attorney.

My hope is to have presented a reasonable and logical alternative that would allow our citizens to retain professional assistance in presenting their evidence. When misdemeanor convictions under the state code are appealed, my office prosecutes those matters in Circuit Court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colin D. Stolle'.

Colin D. Stolle  
Commonwealth's Attorney





# CLASSIFIED

## EXECUTIVE OFFICE SUITES VIRGINIA BEACH

Various size furnished offices on 1st and 2nd floor; month-to-month lease; rent includes receptionist services (will answer phone lines at switchboard if requested), use of copiers and fax machine, use of conference rooms and kitchens on 1st and 2nd floor, hard wire or WIFI internet service provided. Rent negotiable and dependent on needs. Current tenants are attorneys, CPAs, tax practitioners and Investment brokers. Located near interstate 264 across from Main Post Office on Lynnhaven Parkway. Please call Ursula Provo at 757-486-3100 or e-mail [uprovo@pssinc.hrcoxmail.com](mailto:uprovo@pssinc.hrcoxmail.com).

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## SEEKING ATTORNEYS

Inman & Strickler, PLC is seeking two attorneys to enhance the firm's practice in several areas. The firm is interested in lawyers with over 3 years local experience who practice in the areas of business entities, real estate, employment law, litigation and/or estate planning. Interested parties should contact Mike Inman or Bob Timms via phone or email. Contact information can be obtained on the firm's web site: [www.inmanandstrickler.com](http://www.inmanandstrickler.com).

## VIRGINIA BEACH GENERAL DISTRICT 2014 INTERIM CALENDAR

- HOLIDAY, NO COURT, CLERK'S OFFICE CLOSED
- NO COURT CLERK'S OFFICE OPEN
- SMALL CLAIMS COURT DATES- CIVIL ONLY
- CONFLICT CASES
- UPDATED 03/05/2013

JANUARY						
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FEBRUARY						
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AUGUST						
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

MANDATORY JUDICIAL CONFERENCE DATES PENDING FOR 2ND OR 3RD WEEK OF SEPTEMBER

OCTOBER						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

NOVEMBER						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
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30						

DECEMBER						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

☆☆☆ On the following dates: PENDING MANDATORY JUDICIAL CONFERENCE DATES, November 25 and December 12 the arraignments will be held at 11:30 a.m. On all other dates the arraignments will be held at 2:00 p.m. In Traffic D





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Of Mr. Hook's 37 years' experience practicing law, 30 have been in the estate, trust, and elder law field. He is a national leader in this area and an active member of the Elder Law Alliance, Special Needs Alliance, and other related organizations.

The firm's team of accomplished legal professionals includes Attorneys: Shannon Laymon-Pecoraro, Jessica Hayes, and Edward H. Miller. A professional support staff adds another 50 years of combined experience in elder law.

Mr. Hook and his associates are proud to be at the forefront of protecting seniors and the disabled in Southeastern Virginia. The firm focuses on estate planning, planning for long-term care, retirement and investment advice, trust and estate administration, the unique situations associated with special needs, and personal injury consulting.

Learn more about the Hook Law Center at [www.HookLawCenter.com](http://www.HookLawCenter.com).

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