



VIRGINIA BEACH BAR ASSOCIATION

Volume Number 25 :: Issue 4 :: Winter 2016

PRESIDENT'S MESSAGE

When Sandra Sampson was president, she maintained that she held the distinction of being the youngest president in the history of the Virginia Beach Bar Association. As I recall, that assertion was disputed by at least by one former president who declared that at the time of his incumbency, he had been the youngest president and remained so.

I don't know whether Sandra was indeed the youngest president, but it is my belief I lay claim to being the oldest president at the time of her tenure in bar association history. And even if that claim is not accurate, I'll wager no one steps forward to dispute it. Although I am not sure that with age comes wisdom, I have learned, or at least observed, many things with regard to the bar association over the course of the year. Here are some of my observations.

If it takes a village to raise a child, it takes a regiment of committed members to allow a bar association to operate. The Virginia Beach Bar Association could not function without its committee chairs, and many of them have done wonderful work in 2016. Andrew Rice did an amazing job as chair of the annual golf tournament committee. Not only was the day of golf immensely fun for all involved, the tournament raised slightly more than \$5,800 which has been donated to CASA and to the Virginia Beach Bar Foundation. Kudos to Andrew for his hard work.

Christy Wood carefully and consistently administers to the CLASS Program and chairs the Las Vegas CLE. Those projects are time consuming, and Christy does a superb job with regard to both. She deserves thanks from all of us for her attention to ensuring the CLASS program and the Las Vegas CLE remain successful. Rich Cromwell has done a fabulous job with the Seatack Mentoring Program and Learn to Swim Program. Many thanks to Rich for his hard work with regard to these valuable community programs.

The chairs of our court committees have each done a wonderful job at facilitating communication between the bench and the bar, and the Juvenile and Domestic Relations Court committee, chaired by Paul Powers, once again drew a large attendance for its full day seminar at Tidewater Community College. The seminar was free to members and provided 6.5 hours of the 20.5 hours of CLE credit produced by the VBBA this year. The Juvenile and Domestic Relations Court committee is truly a highlight of the bar association. The committee is large, and the energy level and work ethic of its members continues to amaze.

Few people outside of executive board members likely know the

vital role Ed Booth has played in the workings of the bar association in 2016. As chair and sole member of this year's newly formed Website committee,

Ed has unfailingly and uncomplainingly worked to remove the bumps in the road we have faced with regard to the website. Ed has been responsible for the weekly emails the bar association sends to its members and which have received positive feedback. While all of the potholes with regard to the website have not yet been patched, Ed has made enormous strides in smoothing the path for us. Although it is impossible to know what he is actually thinking underneath his calm and quiet exterior, Ed has been unfailingly good natured in responding to the board's multitude of requests over the last year.

To these people and to all of our committee chairs, we are most grateful.

Another observation I have made over the course of the year is that no matter what is done, it is not going to be to the liking of someone. And that someone is going to let you know about it loudly and clearly.

A third observation is about something I have been aware of for years but know it more acutely now that I have served as president of the Virginia Beach Bar Association. That observation is to listen to Jean Keary. She is always right.

A final observation is that as a member of the Virginia Beach Bar Association and serving on its board, it has truly been a pleasure to work with and get to know people who I might otherwise not have met or have known only as passing acquaintances. Young or old, litigator or office dweller, that is one of the things the bar association is about: forming friendships.

I hope to see everybody at the Holiday Party and Annual Meeting on December 2 from 5:00 p.m. to 7:00 p.m. at Hot Tuna which is located at 2817 Shore Drive. Please bring an unwrapped toy to donate to "Toys for Tots."

Happy Holidays.

Peggy Kellam
President, Virginia Beach Bar Association

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MENTORSHIP WITH SEATACK ELEMENTARY KICKS OFF AGAIN

The Seatack Mentoring Program has kicked-off for the 2016-17 school year! 48 excited Seatack third graders met their mentors for the first time at the Matching Day ceremony on September 29. Principal Vince Darby thanked the mentors for their involvement, and announced that out of 55 elementary schools in Virginia Beach, last year's Seatack third graders improved the most in both reading and math testing scores. Judge Shadrick underscored the goals of the program, and provided inspirational and helpful tips for the mentors and mentees. The VBBA will also sponsor swimming lessons for all second graders next Spring. If you would like to participate in the Seatack program, please call Rich Cromwell at 640-3775.



*** VOLUNTEERS NEEDED ***
for Seatack Mentoring Program.

IF INTERESTED, THEN CALL RICH CROMWELL AT (757) 640-3775.



GROWING RELATIONS BETWEEN THE BENCH AND BAR

The VBBA GDC liaison committee hosted its annual reception with the General District Court Judges on September 29th at the Town Center City Club. Committee Chair Kathryn Byler put together another fantastic program that was well attended by the Bench and Bar alike. It is always nice to reinforce Bench/Bar relationships in a more relaxed environment, and it is part of what makes Virginia Beach the best place to practice law in Hampton Roads! (biased opinion of the VBBA Board)

DICK BRYDGES GOLF TOURNAMENT IS A SUCCESS!

The Virginia Beach Bar Association hosted its annual Dick Brydges Memorial Golf Tournament at Virginia Beach National Golf Club on September 30th. It was a **RESOUNDING** success! The VBBA Golf Committee, chaired by Andrew Rice, was able to raise over \$5800 in profit for our charities, donating \$2900 to CASA and \$2900 to the VBBA Foundation. The weather was great, hospitality from the course was top notch and the golf wasn't half-bad either! The amount donated to charitable causes was the highest the VBBA has generated in a decade, and it was all made possible by all of our generous sponsors, but especially Regent University as a Platinum level sponsor and Wolcott Rivers Gates as a Gold level sponsor.



ANNOUNCEMENTS

NOTICE OF PROPOSED AMENDMENTS TO THE VIRGINIA BEACH BAR ASSOCIATION BYLAWS

The VBBA Board would like to announce to the membership that we will vote on proposed amendments to our bylaws at our annual meeting and holiday party on Friday December 2 from 5-7pm at Hot Tuna. The proposed amendments can be found here: [Click Here To Download](#)

BI-ANNUAL VBBA INTRO TO VIRGINIA BEACH COURTS CLE

Thursday, December 8th in Traffic Courtroom A, Building 10, Virginia Beach Municipal Center, from 2pm-4pm.

Written materials are available online at www.vbbarassoc.com and a reception at the Landing at West Neck will immediately follow the seminar. This is an ideal seminar for newly-licensed Virginia attorneys or experienced attorneys seeking to expand their practice into Virginia Beach.

CANDIDATES ANNOUNCED

Pursuant to the VBBA Bylaws, the Virginia Beach Bar Association Judicial Endorsement Panel met and interviewed the candidates to fill the pending vacancy on the Juvenile & Domestic Relations Court. The following candidates were either recommended or highly recommended by the Panel:

Highly recommended:

- Kevin Duffan
- Cheshire Eveleigh
- Scott Lang
- Jeffrey Marks
- Timothy Quick

Recommended:

- Christopher Boynton
- Paul Powers

Annual Meeting

Holiday Party

**FRIDAY,
DECEMBER 2, 2016**

AT HOT TUNA
2817 SHORE DRIVE, VIRGINIA BEACH

5-7PM

Don't forget to bring your Toys for Tots gift!

SHORT CIRCUITS

Practice tips from the Circuit Court

By: Amy H. Jones
Staff Attorney

NEW PROVISIONS FOR CUSTODY HEARINGS ON THE DUTY JUDGE DOCKET; A FEW COMMON PROBLEMS WITH ORDERS

SETTING CUSTODY HEARINGS ON THE DUTY DOCKET IF APPROVED BY A JUDGE

The judges have adopted procedures so that if approved by a judge, custody hearings that will take no more than 2 hours may be scheduled on the duty judge docket. In addition to judge approval for setting the matter, counsel and the parties will be required to appear a half hour before the commencement of the hearing to confer and discuss settlement. Failure to appear and confer before the hearing may result in the Court continuing the matter.

RECURRENT AND SIGNIFICANT PROBLEMS WITH A VARIETY OF ORDERS

Following is a summary of some recent problems with orders being in the proper procedural posture for entry:

1. Confusion over the requirements for the exercise of personal jurisdiction over a non-resident defendant in a divorce who does not appear. A common misconception seems to be that personal service on the defendant out-of-state alone is sufficient to confer personal jurisdiction. Unfortunately, more is required, as the allegations in the Complaint must support the exercise of personal jurisdiction. This is pursuant to *Price v. Price*, 17 Va. App. 105, 113 (1993), in which the court held “the complaint or other pleadings in the divorce suit must allege, at a minimum, a connection to Virginia that is recognized by Virginia’s long-arm statute.” While later cases such as *Cabaniss v. Cabaniss*, 46 Va. App. 595 (2005), elaborate on what passes as a sufficient pleading, they still impose the requirement that the Complaint allege a basis for long-arm jurisdiction.

Such jurisdiction for divorces is generally available under § 8.01-328.1(9), based upon maintenance of a matrimonial domicile in Virginia. Note that the allegation and proof that the parties “last cohabited in Virginia” alone does not equate to maintaining a matrimonial domicile. This is because domicile requires living in a place with the intent to remain there permanently or indefinitely. See *Rock v. Rock*, 7 Va. App. 198, 202 (1988); see also *Sachs v. Horan*, 252 Va. 247, 250 (1996). In addition, although § 8.01-328.1(8) also

provides methods for obtaining jurisdiction in domestic relations matters, keep in mind that under the long-arm statute, “[w]hen jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him.” § 8.01-328.1(C). As a result, relying on subsection 8 will not support all the forms of relief you may seek in a divorce filing. Without proper jurisdiction, the court cannot award spousal support or equitable distribution, among other limitations.

Any problems with personal jurisdiction will be resolved if the defendant enters a general appearance or submits to the jurisdiction of the court. This can be accomplished by a *properly drafted* waiver; a waiver in and of itself is not a magic wand that will give jurisdiction. Thus, for example, the form waiver available on the Virginia Supreme Court web site will not provide personal jurisdiction over a defendant. It does not contain the necessary language, and it was not intended to provide personal jurisdiction.

2. Orders must have all original signatures from counsel. In today’s electronic age, many documents are exchanged using electronic signatures. That approach does not apply to orders submitted for entry to the Virginia Beach Circuit Court. Instead, all orders must have original signatures of all counsel and/or parties, not electronic, stamped, photocopied, or signed by the same party for everyone with a notation of “with permission.”

3. Failure to include the amended version to § 20-60.3(5) that was effective 7/1/15. Probably the majority of orders currently submitted containing the § 20-60.3 notices still do not have § 20-60.3(5) correct – even though the amendment is well over a year old. The main error is that changes in that subsection that are before “(a)” are omitted. As taken from the Virginia Legislative Information site, the relevant portion of 20-60.3(5) follows, with all changes in strike-out and italics, and the one commonly omitted in bold: “. . . until such child reaches the age of 19 or graduates from high school, whichever occurs first, and that the court may also order ~~the continuation of that support be paid or continue to be paid~~ for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, *and such disability existed prior to the child*

reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii) . . .” Please try to catch your form orders and decrees up with this change in language.

4. *Asking for a divorce a mensa or bed and board on the grounds of adultery.* It seems that many divorce complaints contain a standard a mensa or bed and board divorce request, but that counsel sometimes throws adultery into the mix. Pursuant to § 20-95, a mensa can only be requested for cruelty, reasonable apprehension of bodily hurt, willful desertion or abandonment. If a divorce is sought on the grounds of adultery, it must be a *vinculo*.

5. *Submitting multiple divorce affidavits with conflicting sworn-to facts.* It’s very easy to consider an affidavit for a divorce as just another form to fill out, without putting a lot of thought into the accuracy of its contents. However, affidavits should be taken seriously – as they are in other civil cases – since they constitute sworn testimony. If you make a mistake and simply submit another affidavit to correct it, the court is left to wonder which affidavit of testimony given under oath by your client (or the witness) is true. As a result, in that situation the judges require that the party and/or witness appear in person to explain why they swore under oath to two different sets of facts. Please take the time to review your affidavits for accuracy before sending them in, so that you can avoid this problem.

6. *Giving a blanket grant of the powers of § 64.2-2023 in a guardian/conservator order.* Section 64.2-2023 enables a conservator to take certain actions, such as gifting, as part of estate planning for the incapacitated person. However, if you review that section, it has different requirements for who must be given notice of a proceeding requesting those powers. It also has very specific findings that the court must make, such as who receives what amounts of any gifts, and the like. Given the terms of the statute, it is impossible to simply grant a conservator “the powers of § 64.2-2023” without more. Keep this in mind if you are handling a conservator appointment and want to have estate planning powers available.

Active Philanthropy Options



Donor-advised funds let your clients stay involved with their philanthropy.

We offer endowed, current use, quasi-endowed and customized fund options.

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Contact Kay Stine, vice president for development, at (757) 622-7951 or kstine@hamptonroadscf.org.



Hampton Roads Community Foundation

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WHAT'S NEW AT WAHAB

NOTICE OF UPCOMING LAW LIBRARY CLOSINGS

- Tuesday, December 20, closed from 8:30 am-1:00 pm for a staff training
- Thursday, December 22, closed from noon-4:30 pm*
- Friday, December 23, closed all day*
- Monday, December 26, closed all day**
- Monday, January 2, closed all day**
- Friday, January 13, closed all day*
- Monday, January 16, closed all day**

* *courthouse closed*

** *all VBPL branches closed*

LEXIS ADVANCE IN ALL BRANCHES

Virginia Beach Public Library now offers Lexis Advance access in all branches. This is a great advantage to attorneys conducting legal research outside of Wahab's hours—check out the VBPL location/hours page to find out which branches are open on evenings or weekends: www.vbgov.com/libraries.

Please note: you must have a VBPL library card to access computers at branches other than the law library. You may sign up for a library card at the law library or any branch in the system.

For those who prefer Westlaw, we offer Westlaw Next at the law library.

KNOW YOUR RESOURCE: *VIRGINIA PRACTICE SERIES BY WEST*

Virginia Practice Series is a 15-volume series of treatises covering important areas of the law in Virginia. The Virginia Practice Series is essential for practitioners researching a new area of law or needing a refresher in a particular area. Additionally, these treatises often contain templates and forms to aid in drafting legal documents.

The Law Library keeps the most current volumes shelved with our Virginia treatises in the front room. We also retain the second most recent copy as a superseded volume. Attorneys in good standing at the law library may borrow these superseded volumes for an agreed-upon period of time. This privilege is extended to attorneys who can present a Virginia State Bar card and/or a Virginia Beach Public Library card.

Further, the law library has access to an electronic version of these materials through our subscription to Westlaw. Our staff is happy to e-mail excerpts from the treatises or particular forms to attorneys in aid of their research.

New Materials

BOOKS / TREATISES

- Guidebook to FOIA
- Hate Crimes Law
- Immigration Procedures Handbook 2015-16
- NCLC Consumer Class Actions 2016
- Restatements of the Law, major updates for 2016
- Virginia Practice Series, major updates for 2016-2017

VIRGINIA CLE MATERIALS

- Annual Recent Developments in the Law Seminar (2016)
- Attorney Fees & Sanctions (2016)
- Corporations & Partnerships in Virginia (2016)

HOW TO FIND US:

The Wahab Public Law Library is located within the Virginia Beach Judicial Center in Building 10B. Take the elevator down to the ground floor; the library entrance will be on the left.

Our hours of operation are Monday through Friday from 8:30am-4:30pm.

Wahab Public Law Library
2425 Nimmo Parkway, Bldg. 10B (Ground Floor)
Virginia Beach, VA 23456-9062
757-385-4419

E-mail: llstaff@vbgov.com

Visit us on the web at

www.vbgov.com/law-library

VBBA NEWS

NEW MEMBERS

*Virginia Beach Bar Association Welcomes
New Members*

CRYSTAL CLARKE

1321 Heathcliff Court
Virginia Beach, VA 23464

TOBIAS L. EISENLOHR

Office of the City Attorney
Municipal Center, Bldg. #1
2401 Courthouse Drive, Room 260
Virginia Beach, VA 23456-9004

KEVA McDONALD

The Law Office of Keva J McDonald
440 Monticello Ave, Suite 1800
Norfolk, Virginia 23510

MEMBERSHIP EXTENSION

If you are ready to extend your membership to the Virginia Beach Bar Association you can do it online by logging in to your account at wbbarassoc.com. While you are there please check and update your profile.

NEWSLETTER ADVERTISING RATES*

SIZE..... COST PER ISSUE

Full Page	\$265.00
½ Page	\$135.00
1/3 Page (horizontal or vertical) ..	\$100.00
1/6 Page	\$60.00
Classified Ad (6 lines)	\$35.00

* The VBBA offers a 10% discount on half-year advertisements (2 issues) and a 20% discount on annual advertisements (4 issues). Classified ads and notices are free to members. Contact Kevin Duffan, kduffan@hsinjurylaw.com.

VIRGINIA BEACH BAR ASSOCIATION'S COMMITTEES, CHAIRS AND LIAISONS

COMMITTEE	CHAIR	LIAISON
Mentoring	Anthony Gantous	Jonathan Stone
Legal Studies	Regis Rice	Brandon Zeigler
Website	Ed Booth	Kevin Duffan
Young Lawyers	Kathleen Keffer	Jonathan Stone
Golf Tournament	Andrew Rice	Kevin Duffan
General District Court	Kathryn Byler	Chris Boynton
Circuit Court	Stephen Pfeiffer	Chris Boynton
Juvenile & Domestic Relations Court	Paul Powers	Kevin Duffan
CLASS	Christy Wood	Jeff Marks
Membership	Kevin Sharp	Chris Jacobs
Pro-Bono (Seatack)	Richard Cromwell	Brandon Zeigler

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**NEXT NEWSLETTER SUBMISSION
DEADLINE: FEBRUARY 17, 2017**

VIRGINIA BEACH GENERAL DISTRICT COURT 2016 FINAL CALENDAR

UPDATED 10/15/15

■ HOLIDAY, NO COURT, CLERK'S OFFICE CLOSED

★ NO COURT CLERK'S OFFICE OPEN

■ CONFLICT DOCKET - Civil A *and* SMALL CLAIMS COURT - CIVIL B

■ MENTAL HEALTH CASES

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Arraignments at 10:00 a.m. on: September 19, 20, 21, 22, 23, November 8, 23, & December 9th
On all other dates arraignments will be at 2:00 p.m. in Traffic D
ONLY BOND HEARINGS & ARRAIGNMENTS ON NOVEMBER 8TH, 23RD & DECEMBER 9th

