



VIRGINIA BEACH BAR ASSOCIATION

VOLUME NUMBER 19

FEBRUARY 2011

ISSUE NUMBER 6



THE PRESIDENT'S MESSAGE

by Timothy J. Quick

43. For those of you who don't know me, that's the answer to the question that popped into your head when you saw my picture to the left. When I prosecuted my first felony jury trial, I stood up for my opening statement and said, "26... that's the answer to the burning question that's in each of your heads, and yes, I have graduated high school." It must have resonated with the jury because by the time Bob Humphreys came upstairs to check in on me (probably to decide whether to keep me around - I think he had some concerns), the jury had already handed me a 20 year sentence, all in time for lunch. And we all know a Virginia Beach jury would never let their stomachs interfere with something as important as one's liberty. That provided job security for the next five years.

Why am I telling you about myself? Not out of vanity, but because it dawned on me that our Association has grown so large - over 600 members - that most of us probably never encounter one another aside from at the great events the VBBA sponsors. You may not even be able to put your Board members' names with a face, which is why we decided to put our photos in this issue. And you may have seen a lot of your fellow members' names on pleadings or on the docket, but couldn't pick them out in a crowd. Because my practice is limited to criminal defense and personal injury law, I don't run into any of the lawyers on the Friday divorce docket, I don't know what transactional lawyers do exactly, and I couldn't find my way to the Bankruptcy court. Many of you probably don't know me, and I probably don't know a lot of you. That's why the events this Bar Association sponsors are so important to our professional development. Not only do all of our events usually provide you with a free cocktail and a shrimp or two, they provide the camaraderie and networking opportunities that you can't put a price tag on, and the opportunity to rub elbows with those lawyers and judges you would otherwise probably never meet.

That's why we as a Board are making a concerted effort this year to change things up a bit and to make our events more attractive

to you. We hope you enjoyed the Mardi Gras banquet. There is talk that future banquets might alternate between a warm-weather outdoor event, and the traditional winter ball. You'll be getting an opinion poll on that one soon.

A few years ago, Larry Slipow stopped me in the hallway and told me how he missed the old days when VBBA members would get together once a month at a local restaurant and just have lunch together after getting out of court. I didn't even know about this long-lost tradition. Well it's coming back! Mark your calendars for lunch with your colleagues and special guest Mayor Sessoms, on April 15th at the Black Angus Grille at VB National Golf Course. If it's successful, we hope to do this quarterly.

There's also talk of bringing back that infamous ethics CLE on Broad Bay, you know the one with the descriptive moniker that I can't mention here. I'm almost certain that a large boat is a setting physically suitable for a CLE, but does Ben Hamlet's forehead count as a suitable writing surface? And, of course, there are always three more CLE's every year with a complimentary happy hour afterwards. Come to the Arts Center and not only can you witness Jim Thurman in the back row getting two credit hours of nap time, stay for a drink afterwards and Bill Webb can be overheard whining about how title companies are stealing all the business from real estate attorneys. Bill never passes up a free meatball.

Camaraderie, drinks, and professional development. All for \$175 a year. Is this a great bar association or what?



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EXECUTIVE BOARD BIOS



Timothy J. Quick, *President*

Tim received a B.A. from George Mason University in 1989. He attended the University of Baltimore School of Law. Mr. Quick is an active trial lawyer with Rabinowitz, Swartz, Taliaferro, Swartz & Goodove, P.C.



Glenn R. Crowshaw, *President-Elect*

Glenn received a B.A., B.S. from East Carolina University and a J.D. from the University of Virginia School of Law. Mr. Crowshaw currently serves on the Virginia State Crime Commission and is a trial lawyer with Willcox & Savage.



Sandra L. Sampson, *Secretary*

Sandra is a native of Virginia Beach graduating from Green Run High School, then Old Dominion University. Ms. Sampson attended Regent University Law School and is an associate at the Law Office of Gary C. Byler, P.C.



Jon Thornton, *Director*

Jon earned his Bachelor of Arts degree from Washington & Lee University. He graduated from the University of Virginia Law School. Following a judicial clerkship, Jon began a private practice. In 1997, he co-founded Pierce & Thornton, PLC.



Jeff Marks, *Director*

Jeff received his undergraduate degree from Washington & Lee. He attended the College of William & Mary School of Law and is currently a partner with Kaufman & Canoles in the Virginia Beach office.



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Hon. Westbrook J. Parker (Ret.)

Retired Chief Judge,
City of Suffolk Circuit Court

After a broad civil litigation career and twenty-four exemplary years on the bench, Judge Parker has recently retired. He will continue his lifetime of service to the citizens of Southeast Virginia as the Executive Director of the Camp Foundation, but now also joins The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth.

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RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

MEDICAL TRANSPORT, LLC v. DEPARTMENT OF MEDICAL ASSISTANCE SERVICES,

CL09-7526 (JUDGE LILLEY, 12/8/10)

In this case the Department of Medical Assistance Services ["DMAS"] sought to recover roughly \$1.5 million in alleged overpayments made to Medical Transport. The payments were for the provision of non-emergency medical transportation to "dual eligible" Medicare/Medicaid beneficiaries. DMAS alleged that payment was limited to Medicaid rates, but was made at higher Medicare rates. While the court found that DMAS had the authority to limit the payment of Medicare coinsurance deductible amounts for these claims to Medicaid rates, it found that no Medicaid rate was established under the state plan as required by the applicable regulation. Absent the establishment of a Medicaid rate under the state plan, DMAS was required to pay the Medicare rate. The court further found that DMAS's construction and application of the regulation to create an after-the-fact limitation to Medicaid rates was arbitrary and capricious. As a result, it set aside the agency decision finding otherwise.

LUDWIG v. COMMONWEALTH ASSISTED LIVING IV, LLC (FORMERLY COMMONWEALTH ASSISTED LIVING, LLC)

D/B/A KINGS GRANT HOUSE,
CL10-1312 (JUDGE LILLEY, 1/3/11)

Plaintiff sued for injuries suffered by her decedent while resident at King's Grant House. Named as defendants were Commonwealth Assisted Living, IV, LLC ["CAL IV"] as successor in interest to Commonwealth Assisted Living, LLC ["CAL"]. CAL IV moved to dismiss on the basis that it was not the successor in interest to CAL. The court found that CAL IV was not the successor in interest, and plaintiff sought to correct the pleading under the theory of misnomer, so that the amendment would relate back. The court found that the testimony of the representatives of CAL and CAL IV showed they intended to take advantage of the confusion arising from a corporate structure that relied upon panoply of related entities of similar name conducting similar business ventures. In addition, between the time of the incident at issue and the filing of the Complaint, CAL surrendered its authorization to do business in Virginia and re-formed as a Delaware corporation. However, CAL continued its management of Kings Grant House in Virginia Beach, though it did not properly register as a foreign limited liability company doing business in Virginia, and plaintiff asserted this caused confusion leading to naming CAL IV in the Complaint. The court felt this was a hybrid situation where the wrong party was named as a successor entity in a complaint that clearly named the correct party allegedly responsible for the events leading to the claim. As a result, it found that the right party was before the court although under a wrong name, and permitted correction of the misnomer. The court further found that the complaint, read as a whole, clearly indicated CAL was the party accused of the misconduct, and that CAL received timely service of the action.





NEW AND UPDATED RESOURCES AT THE WAHAB PUBLIC LAW LIBRARY

NEW TITLES

Being a Great Divorced Father
Nolo, 2010

Family Advocate: Children & the Law
ABA Section of Family Law, Winter 2009

*Family Advocate: Same-Sex Marriage & Cohabitation –
The Legal Issues*
ABA Section of Family Law, Winter 2010

Stopping Identity Theft: 10 Easy Steps to Security
Nolo, 2009

NEW EDITIONS

*ABA Compendium of Professional Responsibility Rules and
Standards*
American Bar Assn., 2010 Edition

The Bluebook: A Uniform System of Citation
Harvard Law Review Assn., 19th Edition

Civil Discovery: Virginia Practice Series
West, 2010-2011 Edition

Covenants Not to Compete: A State by State Survey
BNA, 7th Edition

Criminal Procedure (Virginia Practice Series)
West, 2010-2011 Edition

Criminal Procedure Forms (Virginia Practice Series)
West, 2010-2011 Edition

Decisions of the United States Supreme Court, 2009-10 Term
LexisNexis, 2010

Jury Instructions: Virginia Practice Series
West, 2010-2011 Edition

Landlord-Tenant Handbook: Virginia Practice Series
West, 2010-2011 Edition

Probate Handbook: Virginia Practice Series
West, 2010-2011 Edition

Real Estate Closing: Virginia Practice Series
West, 2010-2011 Edition

Virginia Civil Benchbook for Judges and Lawyers
LexisNexis, 2010-2011 Edition

Virginia Criminal Benchbook for Judges and Lawyers
LexisNexis, 2010-2011 Edition

Virginia Rules Annotated
LexisNexis, 2011 Edition

Virginia Search & Seizure for Law Enforcement Officers
LexisNexis, 6th Edition

NEW CLE MATERIALS

Civil Litigator's Short Course (2010)

Defense of Serious Traffic Cases in Virginia (2nd Edition)

Employment Law in Virginia (4th Edition)

A Guide to Evidence in Virginia, (2011 Edition)

*Law Office Technology A to Z: Everything You Need to Out-
fit or Overhaul Your Firm* (2010)

*Mastering Complex Issues in Bankruptcy: Five Years after
BAPCPA* (2010)

*Paper Reduction and Electronic File Management for
Lawyers: How it Works and What You Need* (2010)

Probate: Beyond the Basics (2009)

Probate Process from A to Z (2010)

*Representation of Incapacitated Persons as a
Guardian ad Litem* (2010)

*Social Networking for Attorneys: Leverage the
New Media but Avoid Liability* (2010)

19th Annual Advanced Elder Law Seminar (2010)

*25th Annual Mid-Atlantic Institute on Bankruptcy and
Reorganization Practice* (2010)

*28th Annual Business Law Seminar: Back to Basics –
Mastering the Fundamentals of Four Important Areas*
(2010)

29th Annual Family Law Seminar: Spare the Child
(2010)

29th Annual Trusts and Estates Seminar (2010)

*30 Common Abusive Discovery Tactics and How to
Respond Effectively* (2010)

*31st Annual Construction and Public Contracts Law
Seminar* (2010)

2010 Virginia Information Technology Legal Institute
(2010)



RECENTLY SUPPLEMENTED TITLES

American Jurisprudence Proof of Facts 3d

- Civil Pretrial Involving Text Messaging Evidence, 115 Am. Jur. Proof of Facts 3d 1.
- Challenge to Tax Assessment of Residential Property, 115, Am. Jur. Proof of Facts 3d 203.
- Effect of Divorce on Immigration Status of Spouse Who Immigrated to the U.S. Because of Marriage with U.S. Citizen, 115 Am. Jur. Proof of Facts 3d 419.
- Health Care Provider's Wrongful Disclosure of Confidential Medical Information, 116 Am. Jur Proof of Facts 3d 1.
- Criminal Pretrial Involving Text Messaging Evidence, 116 Am. Jur Proof of Facts 3d 345.
- Proof of Claim Involving Use of Hormone Replacement Therapy Medications, 117 Am. Jur. Proof of Facts 3d 189.

American Jurisprudence Trials, 2d

- Litigating Identity Theft Cases, 112 Am. Jur. Trials 1.
- Litigating Hospital Acquired Infection Cases, 113 Am. Jur. Trials 1.
- Negligent Diagnosis and Treatment of Lyme Disease, 113 Am. Jur. Trials 421.
- Particular Public School District Liability Issues Arising from Student or Staff Use of Computers, internet, or Other Electronic Media to Harass or Bully Students, 115 Am. Jur. Trials 355.
- Termination of Parental Rights under Adoption and Safe Families Act (ASFA), 115 Am. Jur. Trials 465.
- Litigating Claims Involving Foodborne Pathogen, 117 Am Jur. Trials 1.
- Orthodontics and Malpractice, 117 Am. Jur. Trials 129.
- Litigation Regarding Antidepressant Medications, 117 Am. Jur. Trials 485.

Causes of Action 2d

- Cause of Action Under Age Discrimination in Employment Act on Theory of Disparate Treatment, Based on discharge in Reduction-in-Force or Reorganization, 46 CoA 2d 1.
- Cause of Action Against Drug manufacturer for Failure to Warn of Side Effects Associated with Prescription Drug, 46 CoA 2d 111.
- Cause of Action Against Financial Institution for Breach of Fiduciary Duty, 46 CoA 2d 377.

Defense of Speeding, Reckless Driving and Vehicular Homicide

- Discussion of three U.S. Supreme Court cases dealing with Miranda warnings:
 - *Florida v. Powell*, 130 S. Ct. 1195, 175, L. Ed. 2d 1009 (2010), which held that *Miranda* warnings did not have to state that suspect was entitled to have an attorney present during all questioning.
 - *Berghuis v. Thompkins*, 130 S. Ct. 2250, 176 L. Ed. 1098 (2010), which held that the police did not have to re-warn a suspect of his *Miranda* rights periodically after suspect had remained silent for a long period of time.
 - *Maryland v. Shatzer*, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010), which held that once the right to counsel has been invoked, a later waiver of *Miranda* rights is precluded in absence of counsel.

Harrison on Wills and Administration for Virginia/West Virginia

- Validity of No-Contest Provision in Virginia Trust – *Keener v. Keener*, 278 Va. 435 (2009).
- First significant case involving the Uniform Trust Code (Virginia) – *Ladysmith Rescue Squad Inc. v. Newlin*, 280 Va. 195 (2010).
- Funeral Arrangements – Virginia General Assembly amended § 54.1-2825 providing for designation of individual to make funeral arrangements and § 54.1-2807.01 establishes a procedure when next-of-kin disagree on arrangements.

Virginia Model Jury Instructions – Civil

- New Instructions for:
 - Foreseeable Consequences 4.018.
 - Medical Emergency 7.005.
 - Burden of Proving Landlord's Failure to Exercise Reasonable Care in Making Repairs 24.025.
 - Implied Warranty – Construction Contract 35.300.
 - Accord and Satisfaction – UCC 44.010.



**RABINOWITZ, SWARTZ, TALIAFERRO,
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**Congratulates
Tim Quick
on his election as
2011 President
of the
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THE HALLAUER LAW FIRM is pleased to announce that BROOK THIBAUT has accepted an Associate position with the Firm. Mr. Thibault will focus his practice on Criminal and Family law.



KEVIN M. DUFFAN

The law firm of SHAPIRO, COOPER, LEWIS & APPLETON, P. C. is pleased to announce that KEVIN M. DUFFAN has joined the law firm as a new member. Mr. Duffan will focus his practice in Plaintiff's personal injury law, the exclusive practice area of the firm.

Mr. Duffan is a native of Virginia Beach who earned his bachelor's degree from James Madison University and his *juris doctorate* from the Marshall-Wythe School of Law at the College of William and Mary. He was previously employed as a Senior Assistant Commonwealth's Attorney in Virginia Beach, and as Associate Counsel for Litigation at Portfolio Recovery Associates, LLC in Norfolk. The firm practices injury law from Virginia offices in Virginia Beach, Hampton, and from a North Carolina office in Elizabeth City.



MICHAEL L. GOODOVE

MICHAEL L. GOODOVE, a partner in the Norfolk law firm of RABINOWITZ, SWARTZ, TALIAFERRO, SWARTZ & GOODOVE, P.C., was recently selected to the "Top 100 Trial Lawyers" by the American Trial Lawyers Association. Membership is obtained through special invitation

and is extended only to those attorneys who exemplify superior qualifications of leadership, reputation, influence, stature, and profile as civil plaintiff or criminal defense trial lawyers. Mr. Goodove specializes in plaintiff's personal injury law.



CHERISH HADLEY

The law firm of DANIEL J. MILLER, a Virginia Beach – Newport News litigation firm, is pleased to announce the addition of CHERISH HADLEY, as an associate. She will concentrate her practice in family law matters.



ANN CRENSHAW

ANN K. CRENSHAW NAMED TO BOARD OF DIRECTORS OF HRACRE

Virginia Beach, VA – January 2011 – KAUFMAN & CANOLES, P.C. is pleased to announce that ANN K. CRENSHAW was recently appointed to the Board of Directors of the Hampton Roads Association for Commercial Real Estate (HRACRE).

Ms. Crenshaw is a partner in the firm's Virginia Beach office. She earned her A.B. from Sweet Briar College and her law degree from the College of William & Mary Marshall Wythe School of Law.

Ms. Crenshaw's practice focuses on commercial real estate services in the areas of zoning, land use, development and transactions, including purchasing and leasing. Her practice also includes creditors' rights, bankruptcy, business restructuring and loan modifications.



WILLIAM R. VAN BUREN, III

KAUFMAN & CANOLES RE-ELECTS WILLIAM R. VAN BUREN, III CHAIRMAN

Norfolk, VA – January 2011 – KAUFMAN & CANOLES, P.C. is pleased to announce that WILLIAM R. VAN BUREN, III was recently re-elected Chairman of its Executive Committee and President of the law firm.

"I'm honored to lead K&C and proud of our talented team of attorneys and staff," said Van Buren. "Our collective success is built on the promise that excellent client service is and will remain our top priority."

"The re-election of Bill is a direct result of strong leadership on his part," said Vincent J. Mastracco, Jr. "He has the support of the entire firm to make the decisions that best benefit our clients and our firm."

Bill Van Buren, together with the other members of the Executive Committee, is charged with the management of the firm, including overseeing firm standards for client management, the quality of legal services, professional development, and civic responsibility. Increasingly important is managing change in a rapidly moving business environment—something which Kaufman & Canoles has done very successfully since its founding in 1919.

Kaufman & Canoles is a full-service business law firm with 120 attorneys and 200 support staff. The firm maintains offices in Chesapeake, Hampton, Newport News, Norfolk, Richmond, Virginia Beach and Williamsburg.



ANNOUNCEMENTS CONTINUED

INMAN AND STRICKLER, PLC, a Virginia Beach law firm, is pleased to welcome LEE A. HANDFORD as a member of the firm. Mr. Handford was brought to Hampton Roads by his service as a Coast Guard Legal Officer and has since focused his civilian practice on business and commercial law and trusts and estates. In particular, he brings to the firm extensive experience in business entity formation, international trade, admiralty/maritime, and trademarks. Since 1999 has been the co-author of an annual lawyer's treatise on Virginia business entities distributed by West Publishing, a leading legal publisher.

KAUFMAN & CANOLES ATTORNEYS NAMED VIRGINIA BUSINESS MAGAZINE'S "LEGAL ELITE" 2010



Hampton Roads, VA—December 2010—KAUFMAN & CANOLES, P.C. is pleased to announce that the following attorneys were selected for inclusion in *Virginia Business Magazine's* 2010 Legal Elite:

DEBRA C. ALBISTON, *Family/Domestic Relations*
ANN K. CRENSHAW, *Real Estate/Land Use*
SCOTT W. KEZMAN, *Labor/Employment*
STEPHEN E. NOONA, *Intellectual Property*
ALFRED M. RANDOLPH JR., *Business Law*
HUNTER W. SIMS JR., *Civil Litigation*
JAMES L. WINDSOR, *Construction*



VBBA NEWS

SAVE THE DATE



Mark your calendar and get your golf shoes polished, the 13th Annual Virginia Beach Bar Association/Dick Brydges Memorial Classic Golf Tournament is scheduled to take place September 30, 2011 at Redwing Golf Course. Last year's event was a *huge* success with beautiful weather and a full crowd. Start practicing and get your foursome together.

huge success with beautiful weather and a full crowd. Start practicing and get your foursome together.

LAW SUITS DRIVE



Need to clean out your closet? Put on a few extra pounds and now your suits don't fit? Bring your gently used ties and suits to the Bar Office located on the ground floor of the courthouse anytime in the month of February. The suits will be donated to the

Diamond Experience Respite Care Program for those in need. There will be a donation box located in the Bar Office March 1st-30th.





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DEADLINE

Deadline for information and ads for the next newsletter:

April 1, 2011

Please submit all information and ads for the next newsletter to: ssampson@garybyler.com





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APRIL 15, 2011
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Speaker: Will Sessoms

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APRIL 1, 2011
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next newsletter. Please forward to:
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