

## PRESIDENT'S MESSAGE

by Jeffery Marks



President William Howard Taft was famous for saying “Don’t write so that you can be understood, write so that you can’t be misunderstood.” With such an admonishment in mind, one can appreciate my level of dread and trepidation in writing my first President’s Message (which I am fairly certain has been shared by all of my esteemed predecessors). Given

the fact that the subject of my first President’s Message is how our application of Due Process separates and distinguishes lawyers from other professions, in the words of the Animals, “Oh Lord, please don’t let me be misunderstood.”

It is not that I go through my entire day thinking about the Fifth and Fourteenth Amendments to the United States Constitution, but it is just that certain local, statewide, and national current events have led me to write about a subject that I was supposed to have learned in my first-year Constitution Law Class, but really never understood at the time.

Due process is both procedural and substantive. Procedural due process is simply a requirement that proceedings are not arbitrary, but rather conducted in accordance with established procedures and rules. In its most simple form, substantive due process is a requirement that laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual. The premise of Due Process was stated by Justice White when he said simply that “due process ensures that a citizen will not be deprived of life, liberty, or property without due process of the law.” Several jurists on the U.S. Supreme Court also have written that “the touchstone of due process is protection of the individual against arbitrary actions.”

With this as a backdrop, we are all aware of the stories about the prevarications by highly rated news anchor Brian Williams, the alleged transgressions at the fraternity at UVA, and the alleged self-dealing by the Honorable Will Sessoms, Mayor of Virginia Beach. I am not taking and will not take sides because I do not know all the facts, and even if my opinion was warranted, I would

offend someone.

I will, however, stake a position as it relates to Due Process because each of these stories somehow resulted in the deprivation of life, liberty, and property (a high profile member of the media profited from other’s alleged misfortune, a fraternity was kicked off

campus, and a popular mayor gave up a career in order to maintain his passion for public service). In my mind, the stories all have one thing in common: there was a misrepresentation, omission, or embellishment of certain facts by a journalist without the proper application of rules, procedures, and mechanisms to ensure that the person who is the nexus of the story is being treated fairly.

The mistakes, errors, omissions, and vicissitudes in the UVA rape story are well known and not worth repeating. The misrepresentations by Brian Williams bring into question other reporting and diminishes the plight and efforts of those who were actually affected by Hurricane Katrina or those who took real enemy fire in combat. What may not be so well known is that while the *Virginian-Pilot* was quick to place any and all articles about the mayor’s alleged voting conduct on the front page every chance it had, it was not so celebratory in announcing its mistakes. How many of you know that the *Virginian-Pilot* published a correction on January 31, 2015 which stated that Mayor Sessoms did not, in fact, attend a City Council meeting which the *Virginian-Pilot* had previously reported that he had attended and had voted in favor of a certain developer? My guess is that not many of you knew about this “correction” because it was buried as a single paragraph, on the second page next to the Lottery numbers.

In any event, it is apparent that journalists are not required to exercise Due Process as required of lawyers on a daily basis. And, to the extent that Due Process is and was not exercised, one must ask whether arbitrary actions have been taken that resulted in the deprivation of life, liberty and property.

We all know that lawyers are ubiquitously listed as one of the least trusted professions (we are more favorably rated than car salesmen, but generally viewed as being worse than bankers on

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Wall Street). Journalists are neither listed as being in the least or most trusted category, so they are ostensibly viewed more favorably than lawyers. As an aside, I find it interesting and ironic (given certain recent events) that police officers are frequently listed in the top 5 of the most trusted professions (and deservedly so).

So here is my point. The public trusts journalists over lawyers. Yet, we are the ones that live in the daily world of Due Process and, as such, we are a fair-minded and principled lot. We are the ones who ensure the right to cross-examination and to face your accused. Our profession understands the limits of hearsay and character witnesses. Given this, I wonder how history and the national debate would have been different if Due Process had been applied when our journalistic colleagues reported on the aforementioned stories.

Pivoting to a more relevant and safer topic, I trust that I will not be misunderstood in thanking Past-President Jon Thornton for

his leadership and vision in 2014. Jon led us through a remarkable and productive year for the VBBA.

I am very excited about 2015 and working with your current board of Peggy Kellam, Brandon Ziegler, Kevin Duffan, Chris Boynton, and Jonathon Stone and our always resourceful Executive Director, Jean Keary. 2015 will be a great year, and I will be shamelessly promoting the VBBA's calendar every opportunity that I get.

In closing, please feel free to call me (491-4045) or e-mail me with any questions, comments, or concerns that you may have regarding the VBBA. And, thanks Mom for reading my article, and you can also call me or e-mail me anytime.

Jeffery Marks  
President, Virginia Beach Bar Association



**SAVE *the* DATE**  
**Saturday, May 30th**  
**6:00 - 10:00 PM**

**SKY BAR**

Virginia Beach Hilton  
 3001 Atlantic Ave  
 VB 23451

**VIRGINIA BEACH  
BAR ASSOCIATION**

**ANNUAL AWARDS RECEPTION**

Watch for invitations coming soon.  
 Event capacity is limited to the first 200, so be sure to register early.  
 For more information contact Jeffrey Marks at [jlmmarks@kaufcan.com](mailto:jlmmarks@kaufcan.com).

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# ANNOUNCEMENTS

Commonwealth's Attorney Colin D. Stolle announces the following additions to the Virginia Beach Commonwealth's Attorney's Office effective January 22, 2015:

Mr. Brandon Emery was hired as an Assistant Commonwealth's Attorney. Mr. Emery received his Bachelor of Science degree from University of Virginia and Juris Doctor from University of Miami School of Law. Mr. Emery has prior experience at the Norfolk Commonwealth's Attorney's Office. He is currently assigned to the Fourth Precinct Prosecution Team.

Ms. Jessica Fulton was hired as an Assistant Commonwealth's Attorney. Ms. Fulton received her Bachelor of Arts degree from University of California, Berkeley and Juris Doctor from Georgetown University Law Center. Ms. Fulton has prior experience at the San Diego City Attorney's Office- Criminal Division and the San Diego District Attorney's Office. She is currently assigned to the Third Precinct Prosecution Team.

Cheshire l'Anson Eveleigh of Wolcott Rivers Gates was recently selected by her peers for inclusion in The Best Lawyers in America© 2015 in the field of Family Law. In addition, Ms. Eveleigh was featured by Fortune Magazine in their Women Leaders in the Law 2014 edition. Ms. Eveleigh's practice includes complex divorce, custody, visitation, child and spousal support cases among other areas of family law.



Shannon Hadeed and Rita Ros-Planas are pleased and proud to announce that, commencing 3/2/15, they will join their law practices to create Fuller, Hadeed & Ros-Planas, PLLC, Attorneys at Law, at Reflections IV, 2901 South Lynnhaven Road, Suite 180, Virginia Beach, Virginia 23452; (757) 631-0631.

Our practice areas include: All aspects of family law, criminal law, traffic law, personal injury, federal practice (both civil and criminal), immigration, business law, tax law, and Qualified Domestic Relations Orders. We will be serving the Hispanic community in all of the above with two fully bilingual attorneys.

Wolcott Rivers Gates is pleased to introduce Adam M. Carroll as the newest partner in our firm. Mr. Carroll received his J.D. from Campbell University, Norman Adrian Wiggins School of Law and was admitted into practice in Virginia in 2004. He is an experienced litigator who represents individuals and Companies in various areas. For more information on Adam, or our firm, please visit our website at [www.wolcottriversgates.com](http://www.wolcottriversgates.com).



**Wolcott Rivers Gates**  
ATTORNEYS AT LAW



The members of the Virginia Beach Bar Association attending the Annual Meeting/Holiday Party at Five01 City Grill on December 5, 2014 donated all these toys and over \$500.00 in support of the Toys for Tots campaign sponsored by the U. S. Marine Corp. This has become a part of the VBBA Annual meeting and is greeted with great enthusiasm by all VBBA members attending. The Executive Board of the Virginia Beach Bar Association wishes to thank EVERYONE for their generous contribution to this effort.



# OPINIONS

## RECENT VIRGINIA BEACH CIRCUIT COURT OPINIONS

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

### **TONY BRILL V. KIMBERLY BRILL, DOCKET NO.: CL13-1284 (JUDGE O'BRIEN, 1/29/15)**

– Plaintiff ex-husband sued for damages, to vacate a final decree of divorce, and to invalidate a separation agreement, on the basis of learning twelve years after the divorce that his son was not his child. He alleged that he discovered this in May 2012, signing the parties' separation agreement wife did tell him a daughter was not his. Plaintiff alleged that the revelation his son was not his child led him to suffer from shingles and depression, and sued for fraudulent inducement to contract and intentional infliction of emotional distress. Defendant filed a plea in bar and demurred. First, the court had to address Plaintiff's motion to vacate a Sept. 2014 order, which involved procedural issues following a June, 2014 order granting Plaintiff leave to file an amended complaint. In that order the court wrote in "of the hearing date" in the typed portion that gave Plaintiff twenty-one days to file an amended complaint. There was no indication that the parties received a copy of the order. Plaintiff filed twenty-one days after entry of the order and thus missed this deadline, which was reflected in a Sept., 2014 order that also granted the Defendant a continuance to file an answer. Plaintiff moved to vacate the Sept., 2014 order because his copy of the order did not have "of the hearing date" written in. The court held that it only speaks through its orders, and since the entered order timed the twenty-one days from the date of the hearing, that was what controlled. Therefore, it refused to vacate the Sept., 2014 order. Next, the court addressed Defendant's plea in bar asserting the statute of limitations or laches to fraudulent inducement and infliction of emotional distress claims, denying the plea. Plaintiff had no reason to know his son was not his until finding out in May 2012. Therefore, the June 2013 filing of his complaint was timely. However, Defendant also demurred to Plaintiff's claims, and prevailed on that motion. On the fraudulent inducement claim, the court found that the parties were operating at arm's length in negotiating their agreement, and neither had a duty to disclose marital infidelity. The court also sustained the demurrer to the infliction of emotional distress claim, as Plaintiff did not allege sufficient facts to support a claim of intent to cause emotional distress based on how and when his non-paternity was revealed. Finally, the court granted a motion for sanctions for bringing the fraudulent inducement claim.

### **ALTON EVANS, JR. V. HEIDI EVANS, DOCKET NO.: CL13-1558 (JUDGE LILLEY, 2/4/15)**

– this involved an action for divorce, which proceeded on no-fault one-year separation grounds. The parties were married roughly seventeen years before separating, and had no children. At issue were spousal support and equitable distribution of the marital home. Wife had worked only sporadically during the marriage, and although she is a trained beautician, she was currently working only as a live-in caretaker. Given her caretaker job, she said she could work up to 25 hours a week as a beautician. Her income consisted of spousal support and food stamps; husband earns roughly \$40,000 a year. The court imputed income of \$785.42 a month to wife, based upon her working 25 hours a week at minimum wage, and awarded her \$631 a month in spousal support payable until husband retired. As for the marital home, the court found it to be hybrid property because the mortgage was paid with salary husband earned during the marriage. Accordingly \$11,912 of the equity in the house belonged to husband based upon his down payment and the mortgage payments made before the marriage, so that the remaining \$157,718 of the equity in the house was marital property subject to equitable distribution. After considering unequal contributions to the marital home (essentially none by wife), separation of the parties in the home after five years of marriage, the age difference of the parties (husband is 60 and wife is 48), wife's ability to work and current living arrangement, the court awarded 12.5% of the equity to wife and the rest to husband.

### **MICHAEL S. SUTER, EX REL: KENNETTE K. SUTER V SCOTT A. FREEMAN AND INTERNATIONAL PREPAREDNESS ASSOCIATES, INC., DOCKET NO.: CL14-3065 (JUDGE PADRICK, 1/18/15)**

– this matter involved the issue of whether a plaintiff petitioning for dissolution of a corporation under Virginia Code § 13.1-747(A) (1) could nonsuit his claim after an election has been made by the corporation or one or more shareholders to purchase all of the plaintiff's shares pursuant to Virginia Code § 13.1-749.1. The court held the matter could not be nonsuited. This was because § 13.1-749.1 states that once an election is made, the matter cannot be "discontinued" unless the court finds it equitable. "Discontinue" includes "nonsuit." For this matter, § 8.01-380 and § 13.1-749.1 cannot be harmonized because allowing a plaintiff to nonsuit a § 13.1-747(A)(1) claim after an election is made would frustrate the intent of the language prohibiting such a nonsuit in § 13.1-749.1(B). Thus, the court applied the rule of interpretation that the specific dissolution statute prevailed over the general nonsuit statute, and denied the motion to nonsuit.



# PENDER & COWARD

ATTORNEYS AND COUNSELLORS AT LAW

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IS PLEASED TO ANNOUNCE THE ADDITION OF  
**ROBERT L. SAMUEL**

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**Mr. Samuel** has joined Pender & Coward as a shareholder, bringing more than 35 years of litigation experience to the firm. He represents individuals and corporations in the areas of Personal Injury Law and Workers' Compensation. He is a Virginia Super Lawyer and has also been recognized as one of the Best Lawyers in America for personal injury litigation.



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WELCOME ALEX H. BELL



## BISCHOFF MARTINGAYLE

A REPUTATION FOR RESULTS

The law firm of Bischoff Martingayle P.C. is proud to welcome attorney **Alex H. Bell** to the team. Bell will practice civil and commercial litigation as well as workers' compensation.

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*The lawyers at Bischoff Martingayle, P.C. welcome referrals, co-counsel relationships, and local counsel affiliations involving litigation in state and federal courts.*

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(757) 233.9991 | [www.bischoffmartingayle.com](http://www.bischoffmartingayle.com)  
3704 Pacific Avenue, Suite 300 | Virginia Beach, VA 23451  
34 Market Street | Onancock, VA 23417

# SHORT CIRCUITS

Practice tips from the Circuit Court

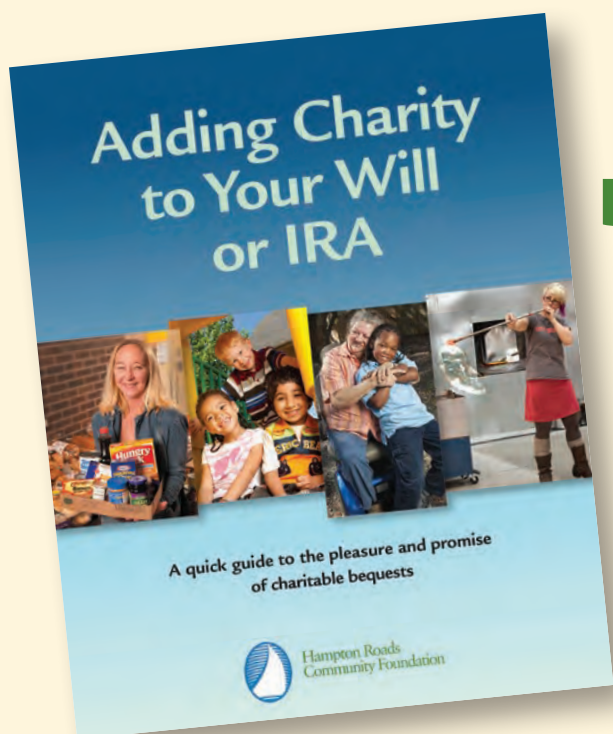
By: Amy H. Jones  
Staff Attorney

## NEW RULE TO ADDRESS “STALE” DIVORCE AFFIDAVITS

Prior to the passage of § 20-106 allowing divorce by affidavits, in uncontested cases the court heard evidence that the parties were separated on the same day that the decree was entered. Thus, there were no concerns about whether the parties were still separated at the time of the entry of the decree. In the period following the passage of § 20-106, the court has seen extreme lag times between when affidavits are taken and when decrees are submitted for entry.

This problem has been handled on a case-by-case basis, but in order to provide more certainty for lawyers the court has now adopted a uniform rule. Effective immediately, affidavits must be executed within sixty days of entry of the final decree or the will not be accepted. Please be aware of these time frames when preparing your divorce by affidavit files.

## SCENES FROM THE RECENT VBBA CURACAO CLE TRIP, JAN 28 – FEB. 3, 2015.



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# WHAT'S NEW AT WAHAB

## BOOKS / TREATISES

- Construction Litigation Handbook, 2014 Ed.
- 2015 U.S. Master Tax Guide
- J.K. Lasser's Your Income Tax 2015
- Consumer's Guide to Long Term Care Choices in Virginia
- Dictionary of Eldercare Terminology 2nd Ed.
- Federal Jury Practice and Instructions: Criminal Companion Handbook, Volume 1, 2014
- Federal Procedure Sentencing Guidelines, 2014
- Opening Statements: Winning in the Beginning by Winning the Beginning
- Seven Deadly Sins of Legal Writing
- West's Federal Sentencing Guidelines Digest, 2014 Ed.

## VIRGINIA CLES

- 15th Annual Virginia Information Technology Legal Institute
- 33rd Annual Trusts and Estates Seminar
- 35th Annual Construction and Public Contracts Law Seminar
- Representation of Incapacitated Persons as a Guardian Ad Litem- 2014 Qualifying Course

## WE VALUE YOUR INPUT!

In order to provide the products and services to serve you most effectively, we would greatly appreciate your input in the following short survey:

<https://www.surveymonkey.com/s/MGCXT8F>

Look for the results in the next issue of the VBBA Newsletter.

## DID YOU KNOW?

The law library retains previous editions of:

- VBBA newsletters back to November 1996
- VBA Journal from January 2003
- NADA Official Older Used Car Guides from January 1999
- NADA Official Used Car Guide from January 2000

## 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  
Court Support Bldg. 10B (Ground Floor)  
757-385-4419  
Visit us on the web at  
[www.vbgov.com/dept/library/law](http://www.vbgov.com/dept/library/law)



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# VBBA NEWS

## NEW MEMBERS

*Virginia Beach Bar Association Welcomes  
New Members*

### TERRI ABEL

Terri Abel, P.C.  
5241 Quarry Lane  
Virginia Beach, VA 23464

### ANNE BIBEAU

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101 W. Main St., Ste. 510  
Norfolk, VA 23510

### JON BABINEAU

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### SARAH CHANG

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### ZACHARY HOSKINS

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### ANNAMARIE PAGEL

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Virginia Beach, VA 23454

### CAMERON ROUNTREE

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Attorney's Office

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Virginia Beach, VA 23452

### HEATHER SILKSTONE

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524 Johnstown Road  
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Sentara Healthcare  
6015 Poplar Hall Drive  
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### J. ALEX CHAMPION

Student – Regent University School of Law



## VIRGINIA BEACH BAR ASSOCIATION'S COMMITTEES, CHAIRS AND LIAISONS

COMMITTEE	CHAIR	LIAISON
Awards	Jon Thornton	Jonathan Thornton
Circuit Court	Steven Pfeiffer	Jeff Marks
Golf Tournament	Pat Connolly	Kevin Duffan
General District Court	Kathryn Byler	Peggy Kellam
Legal Studies	Edwin Booth	Kevin Duffan
Mentoring	Anthony Gantous	Brandon Zeigler
Young Lawyers	Graham Stolle	Brandon Zeigler
Pro-Bono Seatack	Richard Cromwell	Brandon Zeigler
Pro-Bono CLASS	Christy Wood	Jeff Marks
J&DR Court	Paul Powers	Peggy Kellam
Membership	Chris Jacobs	Chris Boynton
PPC	Jon Thornton	Jeff Marks

### VBBA CALENDAR DATES TO REMEMBER

- The JDRC Committee is hosting its first brown bag lunch on Friday April 24 from 1-2 pm in the jury assembly room. The topic will be an introduction to the juvenile courts.

### CLASSIFIED ADS

**OFFICE SPACE** to share or lease at Ocean Plaza Corporate Centre located at 34th and Pacific. We can provide a full service office share with telephone system and copier or a small private suite which may be leased separately. To inquire call Mona Schapiro Flax, (757) 425-9191 or email at [Msflax@flaxlaw.com](mailto:Msflax@flaxlaw.com).

### NEWSLETTER ADVERTISING RATES\*

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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 Brandon Zeigler, [zeigler@wolriv.com](mailto:zeigler@wolriv.com).

### OFFICERS

#### JEFFREY L. MARKS, PRESIDENT

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#### PEGGY KELLAM, PRESIDENT-ELECT

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#### KEVIN DUFFAN, TREASURER

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#### JONATHAN L. THORNTON, IMMEDIATE PAST PRESIDENT

625-7777, [jon@piercelandthornton.com](mailto:jon@piercelandthornton.com)

### EXECUTIVE DIRECTOR

#### JEAN KEARY

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Fax: 757-385-2156  
Email: [vbba@verizon.net](mailto:vbba@verizon.net)

**NEXT DEADLINE: MAY 14, 2015**

# VIRGINIA BEACH GENERAL DISTRICT COURT 2015 FINAL CALENDAR

■ HOLIDAY, NO COURT, CLERK'S OFFICE CLOSED

★ NO COURT CLERK'S OFFICE OPEN

SMALL CLAIMS COURT DATES- CIVIL ONLY

CONFLICT CASES

UPDATED 11/03/2014

JANUARY						
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NOVEMBER						
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DECEMBER						
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27	28	29	30	★		

★ ★ ★ On August 24, 25, 26, 27, 28, November 25, and December 11 the arraignments will be held at 10:00 a.m.  
 ★ On all other dates the arraignments will be held at 2:00 p.m. in Traffic D





**His Experience  
with a Scalpel  
Gives Him the Edge  
In The Court Room.**



*Stephen M. Smith, Esq.*

Out of thousands of trial lawyers in the United States, Stephen M. Smith 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 40 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

If you or a loved one has suffered an injury and are experiencing difficulties, please contact us for a complimentary evaluation so you can learn about your legal options.



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