

BAR BULLETIN

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NORFOLK & PORTSMOUTH BAR ASSOCIATION

PRESIDENT'S MESSAGE



John Sawyer

We live in interesting and trying times. As I write this message, the young, democratic nation of Ukraine is under siege by the vastly superior military forces of Russia. While the outgunned and outnumbered Ukrainian forces fight heroically for their country, a mass exodus of innocent civilians is underway. Before this war is over, we will most likely witness the displacement of millions of people who seek safety and security outside the war zone. An unprovoked invasion of this magnitude should give us all pause. Peace and democracy are fragile, and we are incredibly fortunate to be citizens of this great nation. As lawyers and citizens, our duty is to promote and protect the rule of law. Let us all pray for a swift resolution to the war in Ukraine and a cessation to the bloodshed. Let us also recognize and support the right of a sovereign nation to defend itself.

Here at home, we all welcome the end to the omicron variant wave and its high infection rate. While the pandemic continues to take its toll, positive cases are down significantly. Everyone is ready to move past the Covid protocols and head back to work, restaurants and concerts. While Covid may not be gone, it appears we are moving from pandemic to endemic. We adjust and move forward.

To that end, in February NPBA members gathered for lunch to enjoy an inspirational presentation from Thomas Wilkins, Principal Guest Conductor of the Virginia Symphony Orchestra. Professor Wilkins grew up here in Norfolk where his mother instilled in him a strong work ethic and sense of independence. At a young age, he walked to the downtown library where he listened to the classical music collection. He worked tirelessly to become a conductor and rose to prominence in the arts. Indeed, he has conducted every major orchestra in the United States. Prior to our lunch meeting, Professor Wilkins had just returned from Los Angeles where he conducted part of the Super Bowl festivities. I encourage you to attend the symphony and see him at work. If you have an opportunity to speak with him, take it. You will be glad you did.

Finally, please mark your calendar and submit your registration for the upcoming Bench Bar Conference to be held April 12, 2022 at the Norfolk Waterside Marriott. I look forward to seeing you there. As always, thank you for your membership in the NPBA.

UPCOMING EVENTS

[NPBA Luncheon Speaker: Sarah Linden-Brooks, Manager, Sail Nauticus](#)

Thursday, March 17, 2021 12:00 p.m.—1:00 p.m.

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ANNOUNCEMENTS

Sullivan Law Group, Babcock & Moore Announce Merger

The Norfolk boutique employment law firm Sullivan Law Group has merged its talent with Virginia Beach personal injury and insurance defense firm Babcock & Moore. Women-owned and women-led firms are rare in the legal industry, and the merger of these two allows each to keep with this unique tradition while providing the personal touch and superior service their clients have come to expect. The merger was finalized in late 2021 and was the culmination of careful planning and strategic thinking. The combined firms are practicing under the name Babcock & Moore, with Sullivan Law Group moving its entire employment law team to B&M's Virginia Beach office. Ann Sullivan, founder and managing partner of Sullivan Law Group, has assumed Of Counsel status, allowing her to devote her efforts entirely to the practice of law and mentoring, while being relieved of the daily administrative tasks of running a firm. Associates Melissa Picco and Sybil Spurgeon have remained on the employment law team, also assuming Of Counsel status, and Pennsylvania-licensed attorney Allison Strupczewski remains in her role as paralegal. Babcock & Moore co-founder and managing partner Tina Babcock has assumed the lead litigator position for the employment law group. With the addition of Ann Sullivan to their team, the leaders of the newly combined firm offer more than seventy-five years of combined litigation experience. Ms. Sullivan has been recognized as one of the best lawyers in America for Employment Law, Management and Employee, and has been recognized as a Super Lawyer since 2006. Sullivan Law Group has represented employers across the full spectrum of labor and personnel issues, including ERISA claims, Fair Labor Standards Act grievances, discrimination actions, sexual harassment, and wrongful discharge litigation. The team now brings its considerable talent and experience to B&M.

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February Luncheon

Welcome New Members

Brendan Ahern

Hampton Injury Law, PLC

Will Kirkpatrick

Law Student, Regent University

Michael Moro

Best Law Offices, P.C.

YOUNG LAWYERS SECTION

By Margaret Kelly, Chair • margaret.kelly@norfolk.gov • 664-4529



Margaret Kelly

Spring is (hopefully) in the air, and the Young Lawyers Section is excited for the opportunities the next couple months will bring. The Breakfast with the Bench series is still continuing, and we are in the process of finalizing details for the next Breakfast. Young Lawyers, please keep an eye on your emails and the YLS section of the NPBA's website for more information as it becomes available.

We had our first joint meeting-trivia night in February, and I am impressed by the facts and information that everyone has retained over the years. Although I am deliberately not thinking about all the brain space taken up by cereal slogans that could be used for other types of knowledge, it was a lot of fun and a well-needed reprieve from any cabin fever. A great time was had by all, and we are excited to see everyone back again next month for our next meeting.

The Young Lawyers Section meets monthly and there are plenty of opportunities to get involved and meet your colleagues. If you are under 36 or have been practicing for five years or less, please join us at one of our meetings and or email me to discuss becoming involved. There is no additional fee to be a YLS member. We are looking forward to getting to know you! Our next meeting will be Thursday, March 24, 2022, at 6:00 PM. Mark your calendars and please RSVP either to the registration link that will be emailed out or to

contact@norfolkandportsmouthbar.org.



SAVE THE DATE

For the 16th Annual Legal Food Frenzy

April 18 - 29, 2022

The Attorney General of Virginia, The Young Lawyers Division of the Virginia Bar Association, and the Federation of Virginia Food Banks invites you to participate in the Legal Food Frenzy fundraising competition.

Open to all law firms, legal departments, law schools/programs, and individual practices.

Close the case on hunger!

<http://www.legalfoodfrenzy.com>



Proceeds will benefit Virginia's Food Banks

Blue Ridge Area Food Bank
Capital Area Food Bank
Feeding Southwest Virginia
FeedMore

Foodbank of Southeastern Virginia and the Eastern Shore
Fredericksburg Regional Food Bank
Virginia Peninsula Foodbank
Federation of Virginia Food Banks

Congratulations, Partners!

We are proud to announce that **ALL FIVE** of our partners were named *Top Lawyers of Coastal Virginia 2022* by Coastal Virginia Magazine.

They were recognized by their peers for their hard work and dedication in personal injury law.

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SPECIAL FEATURE:

Two Pratfalls to Avoid in Uncontested Divorce Practice

The Honorable Everett A. Martin, Jr., Judge, Norfolk Circuit Court

In 2021, about one-ninth of all divorces filed in Virginia (excluding Fairfax County and Alexandria, which have their own data reporting systems) were filed in the Circuit Court of Norfolk. Whether you bring your client to court for an *ore tenus* hearing or submit the testimony by affidavit, we want to save you from embarrassment or unnecessary errata sheets.

Necessity of Service of Notice of Entry of the Final Decree

This is a fairly common and understandable error. When the defendant was served with the complaint by posting (or service on a family member in Virginia) and has made no appearance, he must be *served* with notice of entry of the final decree; *mailing the notice will not suffice*. You will not find this explicitly stated anywhere. It is discerned by process of elimination.

The general rule is stated in *Code* § 20-99(3), which provides: “Process or *notice* in [divorce suits] *shall be served* [by various methods in Virginia and out of state].” (emphasis added).

The exceptions almost swallow the rule.

A defendant may, of course, waive further notice by a signed writing. *Code* § 20-99.1:1(A). If the defendant has been served in person or by order of publication (or for the indigent, order of posting), and has made no appearance, no further notice to him or her is necessary. *Code* §§ 20-99(5), 20-104, 8.01-318, 8.01-320(A). It appears no further notice is necessary if service was made on a family member at the defendant’s usual place of abode outside Virginia and the defendant has made no appearance. *Code* § 8.01-320(A). Notice may be mailed when a defendant has made an appearance. *Code* § 20-99(4).

There is no exception, however, for a defendant served by posting, or by leaving process with a family member at the defendant’s usual place of abode within Virginia, who has made no appearance.

Rule 1:12 allows papers served after the initial process “and not required to be served otherwise” to be mailed. However, *Code* § 20-99(3) requires otherwise.

The 2012 amendments to *Code* § 20-106 do not change this. They only change the method of receiving evidence. If you are submitting your client’s testimony by affidavit and the defendant was served by posting (or service on a family member in Virginia), and has made no appearance, you will need to serve the defendant with notice of the entry of the final decree and appear in court on the return date with your proposed final decree. Your client need not appear.

Due Diligence to Obtain Service by Order of Publication

The Supreme Court’s recent decision in *Evans v. Evans*, 300 Va. 134, 860 S.E.2d 381 (2021), reminds us that service by order of publication is a last, not a first, resort.

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Circuit Court Form CC-1435, the “Affidavit for Order of Publication,” which many attorneys use, is not helpful. It gives you five options. One alternative in the first option and the second option could apply to a divorce. The applicable first option provides: “That the party to be served is a non-resident individual....” The second option simply states: “That the party to be served cannot be found, and that diligence has been used without effect to ascertain the location of the party to be served.” The form affidavit does not require you to state what efforts you or your client made to ascertain the defendant’s location, and the first option suggests you need not make any. For understandable reasons, many divorce plaintiffs make little, if any, effort to find the defendant.

After *Evans*, you should expect judges (or law clerks on errata sheets) to ask you what efforts you or your client made to find and serve the defendant. The Clerk is authorized to enter the order of publication, *Code* § 8.01-316 (A), but a judge may nonetheless find that diligence has not been used or the order is improper.

All divorce attorneys should read *Evans*. It says little that is new, but it reminds us of what we should have been doing all the time. To oversimplify, it has three principal holdings.

First, the plaintiff must attempt to serve the defendant if that can be done, even if he is an out of state resident. If the defendant’s last known address was the marital residence, where the plaintiff continues to reside, and the defendant is no longer there, an attempt to serve the defendant at that address would be futile.

Second, if service cannot be made at the last known address, diligence must be used to ascertain the defendant’s present location and serve him there. The judges have prepared a “Statement of Due Diligence used to request an Order of Publication” for *pro se* parties to complete if they request an order of publication. It is available in the Clerk’s Office and we suggest attorneys should submit something like it when they request an order of publication.

Third, if service by publication is authorized, it must be in a newspaper likely to reach the defendant. Publication in *Inside Business* is improper if it is known the defendant has moved to, *e.g.*, Augusta County.

The views advanced in this Article represent commentary “concerning the law, the legal system, [and] the administration of justice” as authorized by the Canons of Judicial Conduct for the Commonwealth of Virginia, Canon 1.L (permitting judges to “write, lecture, speak, teach, and participate in other extrajudicial activities”). These views therefore should not be mistaken for the official views of the Norfolk Circuit Court or this author’s opinion as a circuit court judge in the context of any specific case