

NORFOLK & PORTSMOUTH BAR ASSOCIATION

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See Flyers Inside for
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Preregistration required
for all NPBA Events.
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PRESIDENT'S MESSAGE

LAWYERS AS ROLE MODELS



James R. Harvey III

Like most lawyers reading this, I don't think of myself as a role model. I am not leading troops in battle, in an ER saving lives, fighting fires, and do not spend my days in remote places providing food and medicine. Instead, I spend most days talking with people about how to resolve their problems, in quiet contemplation of drafting pleadings or agreements, advancing arguments before varied tribunals, but just as often dealing with mundane office administrative tasks. However, I am reminded of the impact on our community we have as lawyers by the recent loss of giants in our profession. Our legal community lost luminaries such as Toy Savage and John Ryan in 2017, and this led me to think of what it means to be a role model. We may never fill their shoes, but we can each do our part everyday in simple acts. Here is my non-scientific, partial listing of qualities I found inspiring in my role models:

1. *Integrity.* The people I admire the most (lawyer or not) are straightforward, reliable and trustworthy. They do not require a set of rules to define their conduct, instead they always take the high road, never shade the truth and take responsibility for the acts of their organization.
2. *Lead by example.* We are in a profession of service. Service requiring unselfish devotion to the best interest of our clients and as officers of our judicial system. This means the best lawyers do not shrink from the less glamorous aspects of the practice. As one bar leader said, "The best lawyers I know have the shortest lists of the tasks they consider beneath them." My best mentors did not provide lectures, yell at staff or patronize the efforts of those around them. Instead, they set high expectations for everyone by being part of the process, valuing the contribution of every person, and empowering subordinates to think independently yet act for the benefit of the team.
3. *Desire for knowledge.* It is our job to know the law, the rules and the facts better than our clients, our staff, opposing counsel and the judge. These are near impossible tasks that mean we are in a profession that requires continuing learning. A good lawyer is never so complacent or arrogant to believe he or she knows everything about the practice. My role models exude confidence because of they are smart, hard working and humble in their pursuit of knowledge.
4. *Service to community.* Lawyers have a special role as leaders in our community. People always look to the lawyer in the room to provide skills of reasoning, analysis, expression and

(Continued on page 2)

UPCOMING EVENTS

JANUARY LUNCHEON

Thursday, January 18, 2018 • 11:45 AM
Hits at the Park, Harbor Park
Doris Causey, President
Virginia State Bar

(immediately following Luncheon)
Common Interest Doctrine and
the Pitfalls of Joint Defense Agreements
1 CLE Credit

FEBRUARY LUNCHEON

Friday, February 23, 2018 • 11:45 AM
Hits at the Park, Harbor Park
Cathy Lewis, Host of HearSay, WHRV

BENCH BAR CONFERENCE

Tuesday, April 10, 2018 • Noon
Norfolk Waterside Marriott
Hon. Roger L. Gregory, Chief Judge
U. S. Court of Appeals for the Fourth Circuit

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(President's Message continued)

persuasion. Role models enthusiastically give to others. They serve on boards. They seek out pro bono service to assist society's less fortunate without desire for recognition. They volunteer with gratitude for the opportunity.

5. *Love what you do.* My role models are happy people. Maybe they are happy because of the above qualities. Maybe it is because they have found balance between home and work. Maybe it is because the work does not seem like work. As Rusty Friddell of Landmark Media said of Toy Savage, "all of his friends were clients and all of his clients were friends."

As we start a new year, I will be thinking more of these traits in my everyday actions. I do not need to be remembered with the giants who have gone before me to do my little part to try to be a better role model. I wish each of you a happy and prosperous New Year.

The Virginian-Pilot, Obituary for Toy Savage, Jr., Dec. 11, 2017, updated Dec. 12, 2017.

James J. Sandman, Washington Lawyer, Sept. 2006, "What Makes Some Lawyers Role Models."

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DOCKET DIGEST – RECENT NORFOLK CIRCUIT COURT OPINIONS

Compiled and Summarized by Dustin M. Paul and Jennifer L. Eaton, Vandeventer Black LLP

Terry R. Hurst v. City of Norfolk, CL17-11119 (November 20, 2017) (Judge Lannetti)

In this matter, the Court interpreted the unwieldy language of the Virginia Freedom of Information Act, *Virginia Code 2.2-3700 et seq.* Plaintiff made two FOIA requests to the City of Norfolk (the "City") and when responses were not provided within five days—as provided by statute—and were instead provided "six working days after the due date," Plaintiff sought declaratory relief. The City then filed a Motion to Strike arguing, *inter alia*, that the delayed responses were mere *de minimis* violations.

In sustaining the City's Motion to Strike, the Court determined that although technical violations of the FOIA statute were evident by the City's failure to timely respond to the requests, such violations did not warrant relief under the statute. The Court also noted that the declaratory relief sought by Plaintiff—a declaration by the Court that the City violated FOIA—was not an available remedy under the Virginia Freedom of Information Act nor was Plaintiff entitled to recover his costs because he did not "substantially prevail" on his claim. By way of footnote, the Court made clear that the award of costs is not always precluded in the absence of judicial relief and noted that displays of bad faith or intentional delays may warrant an award of costs. No such facts were present in this case.

The Court's in-depth analysis of the Virginia Freedom of Information Act is a worthwhile read for practitioners that serve clients subject to FOIA requests.

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Norfolk Law Library this year!**ANNOUNCEMENTS**

Amy G. Pesesky recently received the 11th annual Barron F. Black Community Builder award from the Hampton Roads Community Foundation. The award honors a Hampton Roads professional advisor for outstanding community service, support of philanthropy and dedication to improving life in Hampton Roads. Pesesky specializes in estate planning at **Amy G. Pesesky, PLC** and serves on the board of ForKids Inc. She is an advocate for philanthropy in Hampton Roads and is a member of both the Professional Advisors Committee and Community Leadership Partners giving group at the Hampton Roads Community Foundation. As part of Pesesky's award, the Hampton Roads Community Foundation presented a \$5,000 grant in her honor to the nonprofit she selected – ForKids Inc. The award is named for the late Barron F. Black, a Norfolk attorney who was the

community foundation's first board chair from 1950 until his death in 1974, founder of Vandeventer Black LLP and a philanthropist and volunteer with several Hampton Roads nonprofit organizations.

Michael L. Sterling, managing partner of **Vandeventer Black**, was recently invited to serve on the Virginia Chamber's Legal and Regulatory Reform Institute advisory board. The institute focuses on civil justice reform. Sterling has served on many other professional and community organization boards and committees, including the Eggleston Services Foundation Board where he serves as the treasurer of this charity focusing on finding employment opportunities and providing services to disabled adults.

Willcox Savage is pleased to welcome **Brandon Bybee** and **Erin Vincent** to the

firm. Brandon is in the Asbestos Defense, Products Liability and Transportation practice group. He is a 2017 graduate of the University of Richmond School of Law. Brandon earned his B.A. degree in Political Science from Christopher Newport University in 2011. Erin is in the Commercial Real Estate practice group. She is a 2017 graduate of the University of Richmond School of Law. Erin earned her B.S. degree in Information Systems from Virginia Commonwealth University in 2014.

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Position Available

AV Virginia Beach firm seeks attorney with 2-4 years of experience in civil litigation. Send resumes to John Norris at Norris & St. Clair, P.C.: jnorris@norrisatclair.com

Presenting a Professional Appearance in Court

The Judges of the NPBA Bench-Bar Relations Committee¹

Given today's variable and often conflicting messages regarding appropriate courtroom attire, judges are frequently asked to describe what constitutes an acceptable appearance. Although sartorial appositeness is ultimately in the eye of the beholder, each judge has a minimum threshold of acceptability, and those who fail to meet that standard may be denied entry to—or escorted from—the courtroom. Attorneys have an obvious interest in understanding judicial expectations regarding physical presentation in court, for both their clients and themselves. Although restrictions concerning courtroom appearance continue to evolve, the wise attorney will avoid pushing the envelope of acceptability.

In recent years, law firms have increasingly adopted relaxed dress codes in the office setting, especially on Fridays and during summer months. While this may be advantageous to attorneys seeking to provide a welcoming atmosphere and prevent clients from feeling intimidated or inferior to their hired counsel, casual dress has not been embraced as readily by other Virginia legal institutions. For example, the Virginia Board of Bar Examiners requires all candidates who sit for the bar exam to arrive in “proper attire”—“coat and tie” for men and “traditional business attire” for women; “[r]ecognizing the high caliber of professionalism that has traditionally characterized the bar, the Board is confident that no further discussion of this topic will be necessary.”² But perhaps further discussion actually is required.

Client Appearance

Of those who find themselves in a courtroom, non-lawyers are most likely to present a satisfactory appearance, as expectations are lowest for laypersons. Most courthouses have a minimum dress code with which all who enter must comply. The standards are nominal, and as long as individuals adhere to them, they are unlikely to encounter superficial problems when confronted by a judge.

Courthouse dress requirements for

non-lawyers can generally be reduced to a single phrase: common sense. It would be unwise for a defendant to show up at an arraignment on drug possession charges sporting a cannabis t-shirt (yes, it has happened!), just as the court likely would frown upon an individual wearing pants that ride well below the hips or donning apparel that exposes undergarments or intimate body parts. Clothing expectations should be a topic of pre-hearing discussions between attorneys and clients. Because most clients are not courthouse “frequent fliers,” attorneys should also address basic hygiene and grooming expectations. For incarcerated clients, attorneys must ensure clients have access to court-appropriate clothing before trial. As a general rule of thumb for all, the more formal the better. Appearances can create a positive—or a negative—impression on judges and jurors, and a more conservative and professional look enhances clients' opportunity to be perceived as mature and taking their time in court seriously.

Attorney Appearance

Attorneys undoubtedly are held to a higher presentational standard, which is reflective of the esteemed position they hold in the community. Lawyers play an essential role in preserving our democratic system of governance and ensuring that justice is achieved in an orderly, forthright, and conscientious manner. The way in which a lawyer presents himself or herself—in both behavior and dress—reflects that attorney's professionalism and respect for the rule of law, the court, and the legal vocation. As one judge asserted, “[p]rofessional attire is appropriately decorous and dignified—that is, what the lawyer is wearing must not detract from the decorum or dignity of the courtroom.”³

The difficulty arises with increasingly fluid expectations, as courts strive to maintain professional standards while recognizing life's realities—suits can be incommodious and pantyhose insufferable. Attorneys, like other professionals, desire clothing that is functional, affordable, and

comfortable. Judges are not completely unsympathetic to this plight, but in balancing the professional and the practical, lawyers may inadvertently commit fashion *faux pas*; such blunders may distract or detract from an attorney's perceived authority and legal arguments. A former Chief Judge of the New York Supreme Court perhaps put it best when she stated that “dress should not be noticed. We should stand out for the quality of our presentation.”⁴

Attorneys must ultimately rely on in-context common sense to anticipate whether their presentation will be deemed suitable, as most judges do not promulgate detailed dress requirements and are not inclined to remove attorneys for minor fashion infractions. However, in exercising aesthetic insight when preparing for a day in court, members of the bar would do well to focus on a few appearance-based details. At a minimum, most judges expect male attorneys to appear in a coat and tie and female attorneys to wear a coordinated skirt or pant suit (or a professional dress, preferably with a jacket). All lawyers also are expected to wear dress shoes. Apparel should be clean and relatively wrinkle-free, be “neither too short, nor too tight, nor too sheer,”⁵ and otherwise fit properly. Erring on the side of caution, a more conservative wardrobe will likely serve its wearer best in court. It should also go without saying that all attorneys ought to demonstrate good hygiene.

Licensed attorneys have demonstrated the ability to make smart and strategic decisions that should logically extend to sound apparel and hygiene choices befitting the legal profession. An assured understanding of self and of circumstance will best assist attorneys in making sensible presentational choices that reflect well on both themselves and the important position they hold in society. Attorneys should make every effort to put their best foot forward when preparing to appear in court so that legal arguments, professional demeanor, and passionate advocacy are not overshadowed by a distracting appearance.

(Continued on page 5)

JANUARY LUNCHEON

Thursday, January 18, 2018

Hits at The Park, Harbor Park

11:45 AM



Doris Causey, President
Virginia State Bar

Doris H. Causey is President of the Virginia State Bar, a state agency that regulates and supports 50,000 Virginia lawyers.

She is managing attorney of the Central Virginia Legal Aid Society Inc.'s Richmond office. She served as the VSB Council's 13th District representative from 2009-15. She is a member of the Client Protection Fund Board and of the bar's Budget and Finance Committee.

Causey also serves on the Old Dominion Bar's Executive Committee and served as secretary of the Old Dominion Bar and the Hill Tucker Bar Richmond Chapter. She is a Virginia Bar Association Fellow, a member of the Richmond Bar Association, and a past

member of the Bench Bar Conference.

She is a graduate of the University of Mississippi, where she received a B.A. in mathematics and political science. She has a master of education degree from Tennessee State University. Her law degree is from the Thurgood Marshall School of Law at Texas Southern University.

Causey's practice focuses on civil litigation, family law, landlord tenant, foreclosure defense, and poverty law. She is married to Tracy L. Causey and they have three children.

Please join us for the January NPBA luncheon. Email us at: npbamail@gmail.com or call 622-3152 to register today.

FEBRUARY LUNCHEON

Friday, February 23, 2018

Hits at The Park, Harbor Park

11:45 AM



Cathy Lewis
Host of HearSay, WHRV

Cathy Lewis is one of Hampton Roads' veteran media professionals, having worked in commercial and public broadcasting for more than 30 years. She is the founding host of "HearSay with Cathy Lewis" on 89.5

WHRV-FM which debuted in 1996. Ten Virginia governors, numerous members of Virginia's congressional delegation and President Obama have appeared on the broadcast.

Cathy also serves as President and CEO of CIVIC Leadership Institute, leveraging the leadership of more than 600 executives in service to our region.

With expertise in civil discourse, community engagement and communications, Cathy is a popular speaker, trainer and facilitator of corporate and community conversations. She is a member of the National Speakers Association and has served as President of the Virginia chapter.

Frequently ranked among the region's top radio personalities, Cathy has been named consistently to the Inside Business Power List, an annual roster of the 75 most

powerful people in the region. In 2014, she was inducted into the Silver Circle Society of the National Academy of Television Arts and Sciences, Chesapeake Bay Chapter, for more than 25 years of significant contributions to the industry.

Cathy's community service includes service as a trustee for The Williams School, where she served two terms as president. Her husband is rector of Christ & St. Luke's Episcopal Church in Norfolk. Cathy is a cum laude graduate of the School of Journalism at Marshall University and holds an honorary doctorate from Virginia Wesleyan College.

Please join us at the February luncheon. Email us at: npbamail@gmail.com or call 622-3152 to register.

We will meet on a Friday in February to accommodate Cathy's broadcast schedule.

(Presenting a Professional Appearance in Court continued)

Special thanks to Micaylee Noreen, Esquire (Law Clerk, Norfolk Circuit Court), for her assistance in preparing this article. The views advanced in this Article represent commentary "concerning the law, the legal system, [and] the administration of justice" as authorized by Virginia Canon of Judicial Conduct 4(B) (permitting judges to speak, write, lecture, teach, and otherwise participate in extrajudicial efforts to

improve the legal system). These views, therefore, should not be mistaken for the official views of any of the Norfolk courts or the opinion of any judge in the context of any specific case.

1 The Honorable David W. Lannetti, Judge, Norfolk Circuit Court; The Honorable Joan E. Mahoney, Chief Judge, Norfolk General District Court; The Honorable Lyn M. Simmons, Chief Judge, Norfolk Juvenile & Domestic Relations District Court.

2 Mandatory Dress Code, VA. BD. OF BAR EXAM'RS, <http://barexam.virginia.gov/bar/barmdc.html> (last visited Dec. 12, 2017).

3 Jacqueline F. Ward Talevi, Ad-dress-ing Counsel: Roanoke City Circuit Judge Describes Sartorial Standard, Virginia Lawyer, Dec. 2009.

4 Ann Farmer, Order in the Closet: Why Attire for Women Lawyers Is Still an Issue, 19 ABA J. 2 (2010).

5 Ward, *supra* note 2.

When Are Two Heads Better Than One? (Co-Counseling With Our Firm)

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*2.3M Verdict	2010	David Kopstein	Medical Mal.	Norfolk Cir. Court
*8.6M Verdict	2010	Sid Gilreath (TN)	Railroad	Knoxville, TN
1.5M Verdict	2011	Ben Saunders (LA)	Railroad	New Orleans USDC
1 M Settled	2014	Randall Phillips (NC)	Muni. Negl.	Asheville NC
2.5M Verdict	2015	Rob Sullivan (MO)	Prod. Defect	E.D. VA USDC

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YOUNG LAWYERS SECTION

By Andrea Ruege, Chair

Happy New Year! It's hard to believe that 2017 is already over. This past year was a great one for YLS. In addition to a very successful golf tournament and fall reception, the YLS participated in numerous social and service projects.

Currently, we are very excited to relaunch our Breakfast with the Bench Program. In November, we had the opportunity to meet with Judge Atkins who gave a wonderful presentation about how young lawyers should prepare for a day in her courtroom. In December, Judge Fulton, Leondras Webster (from the Commonwealth's Attorney's office), and Sandy Martin (Assistant Public Defender for the City of Norfolk) gave a very illuminating presentation about the City of Norfolk's Drug Court. Both Judge



Atkins's and Judge Fulton's presentations were well attended by members of the bar. Please check back here for more details about our next Breakfast with the Bench installation. Thank you to Dan McNamara for his dedicated work to restart this wonderful project.

Additionally, I would like to thank everyone who made a donation to our an-

nual toy drive at the NPBA holiday party. We received many toy donations and a significant amount of in kind donations. ForKids is a fantastic organization and they are very appreciative of our donation. Thank you to all who donated!

We are looking forward to a wonderful year in 2018. In the upcoming months, we will be hosting several service projects, social events, and will hold an event to conclude the first year of our wildly successful mentoring program.

I am very excited for what 2018 has in store for YLS and hope you are as well! If you have any questions or are interested in joining any YLS effort, please do not hesitate to contact me at aruege@bertinilawfirm.com. I look forward to working with you!




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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 42 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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Volunteers Needed

12th Annual Mock Trial Program

The NPBA is looking for volunteer attorneys to assist in the 12th Annual Mock Trial Program for Norfolk Public Schools.

The program has been a great success due to the enthusiasm and hard work of the students and participating attorneys and has grown to include all Norfolk middle schools. The program has garnered attention from local and national media. It will be an 8 to 10 week program starting in early February 2018.

Students will receive instruction and coaching one day a week (typically Thursdays) after school between 3:00 and 4:30 PM. Trials matching one school's team

against another's will be scheduled for Norfolk Circuit Court for April 20, 2018 at 11:00. Last year the program expanded to include a final round of competition between the two highest scoring teams. The final round will be at the Norfolk Circuit Court on a day to be determined during the week of April 23 - 27, 2018 and will likely occur at 3:00 p.m.

We need 25-30 attorney volunteers so that 3-4 attorneys can be assigned to each school. With that many attorneys, the commitment can be minimal, one hour a week every other week. Previous volunteers have commented on how well

the students have done and on their enjoyment of watching the students' growth throughout the process. The experience of working with the children is very rewarding as they are so appreciative of being able to work with real attorneys.

To volunteer please email Leila Mills, lmills@phillipslaw.com or call the Bar office at 622-3152 to inform of your interest in assisting with the program or with any questions about the program. Thanks in advance for your assistance with this worthwhile program.

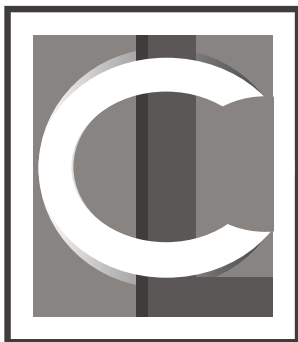
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Save the Date and Mark Your Calendar

20TH ANNUAL BENCH / BAR CONFERENCE

**Keynote Speaker: Hon. Roger L. Gregory, Chief Judge
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**Tuesday, April 10, 2018 • Noon
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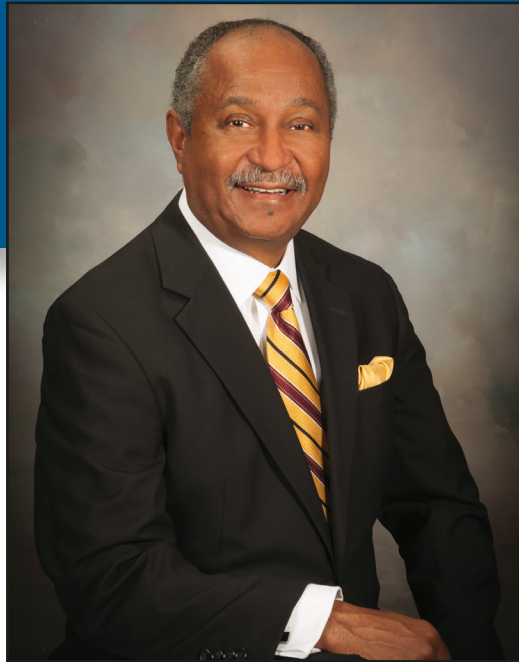
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is pleased to announce our newest Neutral



Hon. Wilford Taylor, Jr. (Ret.)
Retired Judge, Hampton Circuit Court

The Honorable Will Taylor recently retired after over thirty years of distinguished judicial service. He first served on the bench of the General District Court and then was elected as a Judge of the Circuit Court of the City of Hampton, where he served multiple terms as Chief Judge. Before his tenure on the bench, Judge Taylor enjoyed a successful general practice representing both plaintiffs and defendants, and he also served as a Deputy City Attorney. A leader in his community and beyond, he attained the rank of Colonel during his twenty-eight years of active and reserve duty in the U.S. Army. Judge Taylor now brings this exemplary record of dedication and leadership to The McCammon Group to serve the mediation, arbitration, and judge pro tempore needs of lawyers and litigants throughout the Commonwealth.

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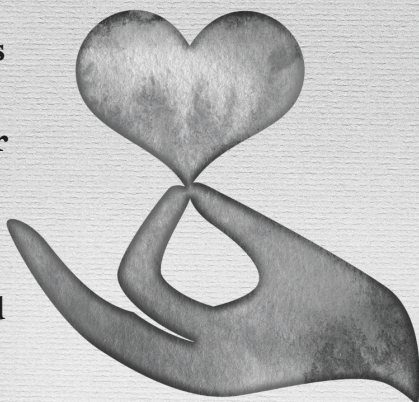
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