

NORFOLK & PORTSMOUTH BAR ASSOCIATION

BAR BULLETIN

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August 2018

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See Flyers Inside for
Event Details and
Registration Information

Preregistration required
for all NPBA Events.
Call 622-3152.

PRESIDENT'S MESSAGE



Caryn R. West

I am honored and excited to be the President of the Norfolk & Portsmouth Bar Association for the next year. I look forward to leading the association and continuing its many successful programs, including our monthly luncheon series, our abundant CLE offerings (featuring our popular Season Ticket and free CLEs after each luncheon), and our increasingly well-attended Bench Bar Conference.

First, thank you to Jim Harvey for his service as President. In addition to a year of remarkable programming and social events, he successfully traversed our move to the Norfolk Courthouse. Our move from Dominion Tower took up a large amount of his time and effort, but the results are in and the new space is wonderful and fully functional. Anyone who has not visited our new space, stop by and say hello to Donna Bausch and our staff when you have time. To visit the Law Library and NPBA Office, go past the main elevators to the end of the first-floor hallway. On the first floor is a seminar room which will house a large portion of our CLE programming. In the corner, there is an elevator that will take you to the law library, which offers free public legal research materials (including free Westlaw) and computers, as well as a conference room for NPBA meetings.

At the recent Virginia State Bar meeting, I attended the Council of Local Bar Leaders Breakfast where Leonard Heath spoke of his vision for his year as Virginia State Bar President. He cited the statistics published in the Path to Lawyer Well-Being, Practical Recommendations for Positive Change. The Report is available at lawyerwellbeing.net, and I encourage anyone unfamiliar with the report, its findings and its recommendations, to take some time to read it. (We recently highlighted this report and its findings at our April 2018 Bench Bar Conference.) From the introduction, we learn, "between 21 and 36 percent [of the 13,000 practicing attorneys that participated in the study] qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively." Leonard Heath stated that he will be challenging us as Virginia lawyers to look for the root of our well-being issues and fix the underlying problems. He also noted that he will be continuing Doris Causey's agenda to increase Access to Justice, as helping others promotes attorney well-being by feeding the soul.

As most bar presidents do, I also have personal goals for this year. For one, I would like to focus on an increase in Pro Bono activities. Recently, the Virginia State Bar sent out its annual dues statement with a letter from Chief Justice Donald W. Lemons encouraging attorneys to voluntarily report pro bono hours and contributions. Voluntary reporting will begin one year from now to cover the period from July 1, 2018 to June 30, 2019. I realize that not everyone will choose to vol-

(Continued on page 2)

UPCOMING EVENTS

GAL IN CUSTODY CASES/MILITARY FAMILY LAW

3 CLE Credits

Thursday, September 13, 2018, 1 - 4 PM
Norfolk Courthouse, Training Room 1304

CYBERSECURITY & DATA BREACHES

2 CLE Credits

Tuesday, September 18, 2018, 1 - 3 PM
Norfolk Courthouse, Training Room 1304

NPBA LUNCHEON

Thursday, September 20, 2018, 11:45 AM
Hits at the Park, Harbor Park
Tom Quaintance, Virginia Stage Company
and

TOOLS, TOYS AND TORTS:
AERIAL DRONES IN VIRGINIA
after luncheon (1 PM) - 1 CLE Credit

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(President's Message continued)

untarily report, and I certainly am not intending to start a NPBA debate of the issue. I would, however, like to increase the pro bono opportunities for those members who are interested. I hope that others will join me as we strive as attorneys to increase our services to those who cannot afford basic legal services. Again, I am looking forward to the year ahead and welcome any suggestions for additional programs or ideas for improving our existing events.

Thank You to the NPBA Foundation's 2017 Donors

A few donors were inadvertently excluded from the listing in the May/June Bulletin. We apologize to donors whose names were excluded and are reprinting the entire list below.

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ANNOUNCEMENTS

Jim Hurley and **John Cooper** of **Cooper Hurley Injury Lawyers** have been selected as 2018 Virginia Super Lawyers. **Bill O'Mara** and **John Baker** have been chosen as 2018 Virginia Super Lawyer Rising Stars.

Virginia Lawyers Weekly has named **Vandeventer Black** attorney **Anita O. Poston** and **Willcox Savage** attorney **Conrad M. Shumadine** to the "Virginia Lawyers Hall of Fame." This honor recognizes attorneys age 60 and older who have a history of dedication to law in Virginia. Criteria for inclusion include career accomplishments, contributions to the development of the law of Virginia and to the Virginia Bar.

Willcox Savage is pleased to announce the attorneys who have been recognized in the 2018 edition of *Virginia Super Lawyers and Rising Stars*. The following are recognized as *Virginia*

Super Lawyers. Business/Corporate: **Allan G. Donn**, **Hugh L. Patterson**; Business Litigation: **Gary A. Bryant**, **Conrad M. Shumadine**, **Brett A. Spain**; Civil Litigation Defense: **David C. Bowen**, **Kevin L. Keller**; Class Action/Mass Torts: **Bruce T. Bishop**; Employee Benefits: **Cher E. Wynkoop**; Employment Litigation: Defense: **William M. Furr**; Estate Planning & Probate: **Peter M. Huber**, **Neil L. Rose**; Intellectual Property: **Timothy J. Lockhart**; Mergers & Acquisitions: **Thomas C. Inglima**; Personal Injury General: Defense: **Joseph P. Moriarty**; Personal Injury Products: Defense: **Kevin P. Greene**; Real Estate: **Robert L. Dewey**, **Thomas G. Johnson, Jr.**; Transportation/Maritime: **Christopher A. Abel**, **David H. Sump**. The following are in the *Virginia Rising Stars* category (under age 40). Employment & Labor: **David A. Kushner**; Personal Injury Products: Defense: **L. Lucy Willson**.

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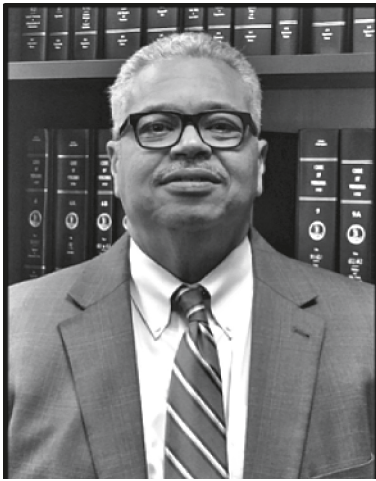
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Harbor Group International, Inc.**Amanda L. Turner**
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Regent University law student

INTERVIEWS WITH THE BENCH: ADVICE AND INSIGHTS FROM LOCAL JUDGES

Presented By: Dustin M. Paul, Esq. and Jennifer L. Eaton, Esq., Vandeventer Black LLP

Featured Judge: The Honorable Jerrauld C. Jones, Chief Judge, Norfolk Circuit Court.



Judge Jones was first sworn in on June 3, 2005, as a judge of the Norfolk Juvenile and Domestic Relations District Court. In 2008, he was appointed to the Norfolk Circuit Court where he currently serves as Chief Judge. Prior to his service on the bench, Judge Jones was, *inter alia*, eight times elected as a Delegate to the Virginia House of Delegates and served as the Director of the Department of Juvenile Justice for the Commonwealth of Virginia. He is one of few persons in the history of the Commonwealth to hold office in each branch of government.

THE INTERVIEW:

Q: How have your experiences as a community servant shaped your time on the bench?

A: Experiences are important. How are we, as judges, going to reflect and understand the values of the people if we are not part of the community itself? My community involvement was as important as my time in law school for preparing me to be a judge. You pick up a lot of knowledge on the road of life and I continue to rely on my community and professional experiences.

Q: What advice do you have for aspiring attorneys?

A: Do what you are passionate about whether that is practicing law or something else. We need attorneys that are invested in the profession and understand that it is a higher calling, not just a job. I have seen a few articles talking about whether law school is “worth it” any more. I do not accept that the return on your law school investment is measured in dollars and cents. If the law is something that you are passionate about and it is something that you are willing to invest your life in defending, then it is worth it.

Q: What makes you hopeful about the future of the practice of law?

A: The current generation of young attorneys makes me hopeful about the future of the profession. It is hard for me to put a finger on it, but this new generation of millennial lawyers has a thirst for bettering the community in which they live, which ultimately improves the profession and the practice.

Q: What are three pieces of advice you would give to local attorneys?

A: 1. Do *pro bono* work. Every attorney should be doing *pro bono* work in some way.

2. Don’t underestimate the importance of proofreading for typographical errors.

3. Don’t come to court for oral argument without first having communicated with the other side to try to resolve the matter.

Q: What is your six-word memoir?

A: I gave it my best shot; I tried to treat everyone right. Technically twelve words, but I am so honored to serve as a judge and that honor comes with a lot of responsibility. I strive to be fair, respectful, and give everyone the dignity of his or her personhood.

The views advanced in this Interview 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 the Norfolk Circuit Court or the opinion of a circuit court judge in the context of any specific case.

YOUNG LAWYERS SECTION

By Griffin M. O'Hanlon, Chair • gohanlon@cooperhurley.com • 757-455-0077

To start my first NPBA newsletter article as Chair of the Young Lawyers Section, I want to express my deepest gratitude to my predecessor, Nick Raffaele. Nick was slated to be 2018-2019 Chair, and in fact served as Chair for the month of May, but learned early in his tenure that he and his wife had been presented with a terrific, professional opportunity in Washington D.C. Nick has provided tremendous service to the YLS over the past few years and our current successes are due in no small part to his efforts. The YLS and its members wish Nick the best of luck in Washington.

To kick-off the 2018-2019 YLS year, we hosted the Annual NPBA Golf Tournament at Bide-A-Wee Golf Course on June 21st. Thanks to our generous sponsors and participants, the proceeds raised will allow the YLS to continue its support of the Norfolk Law Library and service projects in our community. I want to specifically thank Justin Guthrie of Willcox Savage for spearheading the planning and logistics of the tournament. Without his assistance, the tournament would have been far less successful.

As established in our bylaws, one of the primary purposes of the YLS is to provide



service opportunities to our members and the bar at large. We are currently planning another service event at the Foodbank of Southeastern Virginia and welcome all those who are interested in volunteering. In the coming months, we will have several additional service opportunities. If you would like to get involved with the service

work of the YLS, please do not hesitate to contact me.

Lastly, I would like to congratulate Jamilah LeCruise on her election to YLS Treasurer/Chair-Elect for 2018-2019. I do not know where Jamilah finds the time for all the work she does in advancing the interests of our membership and providing charitable support to the community. What I do know is that the YLS is beyond excited as she joins our Executive Committee.



PLAYERS																		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	IN
Norfolk Portsmouth Bar Association Tournament																																				
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David Hart	74	7	Wayne Williams	66																																
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Jon Hawkes	71	8	Austen Lake	65																																
Jeffrey Breese	71	8	Mary Morgan	65																																
Ethan Heben	71	8	DD Holton	65																																
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David Crain	71	8	Josh Baker	65																																
Paul Rowley	71	8	Dr. Brian Hunz	65																																
Joe Moriarty	71	8	Matt Carr	65																																
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Bischoff Martingayle P.C. is proud to announce that Christy L. Murphy has joined the firm as a partner. She is a graduate of Regent University School of Law and received her undergraduate degree from Old Dominion University.

Murphy has been named one of Virginia's Rising Stars by Law and Politics Magazine, in Virginia's Legal Elite by Virginia Business Magazine and a Top Lawyer by CoVaBIZ (2017-18). Based at the firm's Norfolk office, she will represent clients in civil and commercial litigation, divorce and custody matters, estate litigation, creditor's rights and landlord-tenant issues.

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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 44 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

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Incorporating Technology into Your Courtroom Presentation

The Honorable David W. Lannetti, Judge, Norfolk Circuit Court
Katherine M. Lennon, Law Clerk, Norfolk Circuit Court
Micaylee A. Noreen, Law Clerk, Norfolk Circuit Court

Effective advocacy involves the art of persuasion. In the courtroom, attorneys are tasked with convincing the factfinder—whether a judge or a jury—that their version of the facts is the most believable and their interpretation of the law supports their desired outcome. It therefore is surprising how often lawyers underestimate the role technological aids play in educating the finder of fact and the importance of taking advantage of available resources. Great strides have been made in recent years to incorporate technology into courtrooms. Modern courtrooms, including those in the City of Norfolk Courthouse, are equipped with audiovisual technology that can enhance the chances of courtroom success. Whether to facilitate the introduction of substantive evidence or to display demonstrative aids, today's litigators should understand both the available audiovisual resources and the rules governing their use.

The benefits of using audiovisual equipment are not merely a matter of presentation method and trial technique. A 2015 Washington University study concluded that individuals “given illustrative diagrams likely engage[] in deeper levels of processing while listening.”¹ Research studies confirm that understanding and memory are substantially improved when information is presented via multiple channels of communication, including written, aural, and visual.² Effective use of technology can successfully orient factfinders to a particular position, allow for simultaneous viewing of evidence, and highlight and reinforce the most important factual and legal concepts. For instance, concise and cogent PowerPoint slides can strengthen arguments, deliver a crisp legal framework, emphasize noteworthy details, and ensure juror attentiveness. As a result of these benefits, lawyers who fully utilize available technology likely have an edge over opponents who do not. They not only have a greater opportunity to present persuasively; they are actually able to assist the factfinder in better understanding the case.

Courtroom technology is widely under-utilized given its potential. Audiovisual benefits are no longer reserved for cases with a budget sufficient to hire courtroom technology specialists, as many jurisdictions now have courtrooms equipped with convenient and inexpensive technology available to any litigator. All courtrooms in the City of Norfolk Courthouse have large display monitors to present evidence and demonstrative aids, as well as to facilitate remote video appearances. The judge and courtroom clerk each have a control panel to direct when and how images appear on the various screens, adjust courtroom lighting and volume, and place calls for telephonic and video appearances. An image, video, or PowerPoint can be displayed to a witness on the witness stand monitor or to the jury on the courtroom display monitors by simply asking the judge.

The control panels also integrate other courtroom technology. Counsel tables and the courtroom podium have electrical outlets and are equipped with HDMI and VGA connectors that link to all courtroom monitors and the audio system. Attorneys therefore can present electronic media directly from a laptop, tablet, or other portable electronic device. Alternatively, upon request attorneys can connect to an HDMI port utilizing the courtroom's evidence cart, which is equipped with a DVD player and an ELMO document camera. The ELMO is particularly useful because it can display hard copy images or smaller pieces of evidence for collective viewing, while still allowing the physical items to be marked as exhibits and provided to the jury for deliberations. The ELMO also provides attorneys the ability to magnify a displayed object and adjust lighting to observe finer details.

The judge's bench and the witness stand have touch-screen monitors that display evidence being presented via the HDMI or VGA hookups, which allows witnesses and judges to view a proposed exhibit while the attorney lays the necessary evidentiary foundation before the admitted exhibit is published to the jury. In addition to allowing a witness to see, up close, what is being displayed, the touch-screen feature allows witnesses to draw on the witness monitor over a displayed image or on a neutral background and have those annotations displayed on all monitors. These markings can be made in different colors and are erasable. An attorney need only ask the judge to “turn annotation on” in order to use the feature. The judge's bench also has a DVD player available to attorneys who do not have a computer or when the evidence cart is unavailable. Of note, the jury deliberation rooms are equipped with a large monitor and an associated control panel to allow jurors to view digital evidence that is provided on a DVD, USB drive, or laptop hard drive, although lawyers should be mindful that only admitted evidence can go back to the jury room.

For attorneys wondering how to get started, the Norfolk Circuit Court law clerks are a great resource to learn about available technology and to assist with technological issues that arise in preparing for or during court appearances. Attorneys less comfortable with technology should contact the Judicial Court Manager, Sandy Claxton, to arrange a meeting time with one of the law clerks for a general training session or to conduct a pre-appearance technology rehearsal. Ideally, requests should be made at least one week before any scheduled hearing or trial. Learning about and testing courtroom technology in advance is essential to an effective, trouble-free appearance in court.

Although use of courtroom technology is undoubtedly advantageous, attorneys must still follow proper courtroom procedures and evidentiary practices. Demonstrative exhibits, whether presented audiovisually or in a more traditional form, must be shared with opposing counsel in advance of the proceeding. Attorneys should also attempt to resolve any objections *prior to* the scheduled evidentiary hearing or trial, preferably without judicial assistance. Further, use of audiovisual aids must adhere to the same evidentiary rules applicable to all other evidence. Items that are allowed to be read to the jury, but are not admissible as exhibits, should not be published to the jury via the courtroom technology. This includes treatises, periodicals, or pamphlets used during expert testimony,³ as well as prior inconsistent statements or statements used to refresh a witness's memory. This aligns with the statutes and evidentiary

(continued on page 8)

(Courtroom Presentation continued)

rules allowing certain writings to be *read into evidence* but not introduced as exhibits, ensuring these items receive “no more emphasis than other oral testimony.”⁴ Of course, attorneys should assess whether a demonstrative exhibit is really necessary. The purpose of such an exhibit is to assist the factfinder in understanding and retaining the evidence presented. Consequently, attorneys should balance the risk of confusing or distracting finders of fact with the rewards of a successful audiovisual presentation. As well-respected trial lawyer Thomas Mauet put it, “exhibits should complement testimony, rather than compete with it.”⁵

In this “age of visual media,”⁶ litigators can only enhance their courtroom practice by familiarizing themselves with the efficient and effective use of courtroom technology. By doing so, their presentations will be more persuasive, and they are more likely to succeed in the courtroom.

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 the Norfolk Circuit Court or the opinion of a circuit court judge in the context of any specific case.

¹ Dung C. Bui & Mark A. McDaniel, *Enhancing Learning During Lecture Note-Taking Using Outlines and Illustrative Diagrams*, 4:2 J. OF APPLIED RESEARCH IN MEMORY AND COGNITION 129 (2015).

² THOMAS A. MAUET, TRIAL TECHNIQUES 139 (4th ed. 1996).

³ Va. Code § 8.01-401.1 (2015 Repl. Vol.); *Chapple-Brooks v. Nguyen*, No. 161812, 2017 Va. LEXIS 85, at *1 (June 1, 2017).

⁴ *Scott v. Greater Rich. Transit Co.*, 241 Va. 300, 305, 402 S.E.2d 214, 218 (1991) (quoting *Horne v. Milgrim*, 226 Va. 133, 138, 306 S.E.2d 893, 895 (1983)).

⁵ MAUET, *supra* note 2, at 205.

⁶ *Id.*

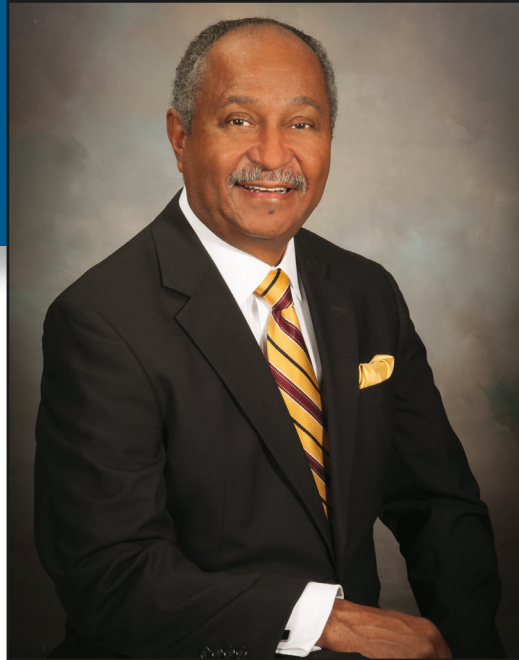
A black and white photograph of six men, presumably the attorneys, standing in an office. They are all wearing suits and ties. In the background, a sign on the wall reads 'COOPER HURLEY INJURY LAWYERS'.

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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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Eggleston-I'Anson Professionalism Award
recipient Chip Beaman
with his wife, Cathy

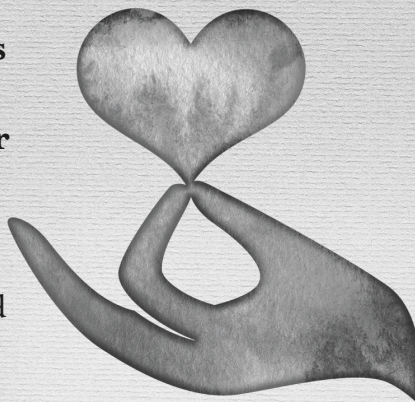


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