

BAR BULLETIN

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NORFOLK & PORTSMOUTH BAR ASSOCIATION

PRESIDENT'S MESSAGE



John Sawyer

Summer is a great time of year in Hampton Roads! It's made even better with the roll out of the COVID-19 vaccines, the lifting of social restrictions, and the return to something like pre-pandemic normalcy. For most, the pandemic has been a challenging inconvenience. For others, it has brought personal tragedy and loss. While many would like to simply close the book on the pandemic and not look back, the reality is that our world has changed and the pandemic will have lasting impacts on our lives, on the practice of law, and on your bar association. But, from challenging times, new opportunities arise. So, we must embrace change and adapt. As we emerge from the pandemic, we will not be the same bar association we were before it. I am confident we will be more vibrant and engaging than ever.

While the NPBA has been far from idle during the pandemic, in fact I would argue it has been the most effective local bar association in the Commonwealth, it is undeniable that the pandemic forced the cancellation of many of our traditional events. However, we successfully held many others with limited capacity and/or in a virtual environment. Prior to the pandemic, how many of us knew what Zoom was let alone participated in a Zoom session? Fifteen months later, we are accustomed to Zoom meetings and WebEx hearings in court. We have adapted. The virtual meeting or hearing has both positive and negative aspects. Foremost on the positive side, convenience. Our time is valuable; it is often our currency. Hampton Roads traffic is terrible. So, the ability to click "Join Meeting" from our offices has significant value. On the negative side, the lack of personal connection. A side "Chat" on Zoom is a poor substitute to a one on one personal interaction. Email, texts, and Chats have their place, but relationships are built over a lunch or happy hour adult beverage. Zoom and WebEx are here to stay. Time is valuable. But, the time spent attending a NPBA lunch or happy hour and making a new contact or having personal interaction with a member of the judiciary, is a value of the NPBA that is also here to stay.

As we emerge from the pandemic, we have an opportunity to evaluate how the NPBA best serves its members and creates value. How can we make events more engaging for you? As always, we want to hear from you. Your comments and suggestions are vital to our continued growth. However, the best way to get full value from the NPBA is to join a committee. Get involved. Be at the table. You and the NPBA will be better for it. Enjoy the summer. Be safe and thank you for your membership in the NPBA.

UPCOMING EVENTS

STAY TUNED FOR NEW EVENTS UPDATES COMING SOON!

INCLUDING: The NPBA Annual Dinner, Fall CLEs, NPBA Luncheons

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ANNOUNCEMENTS

The Judicial Council of Virginia has named the Honorable Everett A. Martin, Jr., of the Fourth Judicial Circuit as the Harry L. Carrico Outstanding Career Service Award recipient for 2020.

The full announcement can be found here:

[http://www.vacourts.gov/news/
items/2021_0514_carrico_award_2019_2020.pdf](http://www.vacourts.gov/news/items/2021_0514_carrico_award_2019_2020.pdf)

David A. Buzard has earned a Master of Laws (LL.M.) in Human Rights from Regent University School of Law, whose faculty designated him its Outstanding LL.M. Graduate for 2021. His LL.M. thesis is entitled The Banyamulenge and Ethnocentric Nationality in the Congo: A Litigation Strategy for Peace (ProQuest Pub. No. 28493945).

YOUNG LAWYERS SECTION

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



Margaret Kelly

I must start this series by recognizing Kerry Stolz for her fearless leadership during this last year. YLS is a great resource for new lawyers to find support and advice (and sometimes just the camaraderie of being in tacit understanding of a joint experience) while they navigate the beginnings of their legal careers.

When the world fell into an alternate reality thanks to COVID, that support

network was especially important. Kerry determinedly kept up YLS's energy and activity so our sense of connection never flagged. We even managed to end our 2020-21 year and kick off our 2021-22 year with an in-person meet up at Elation Brewing, which was a literal and figurative breath of fresh air. To the current members of YLS, I promise to do my best to uphold Kerry's legacy as we move forward. To all the future members of YLS, I look forward to meeting you and welcoming you into our network!

Welcome New Members

Nikolaus Barta

Harbor Group International

Gaela Normile

Vandeventer Black, LLP

Kathleen Panagis

Vandeventer Black, LLP

Ebone' Dryver

Harbor Group International

Jackson Scott Morgan

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Dear Members of the NPBA,

I am excited to let you know that the Norfolk Law Library now provides direct access to LexisNexis Patron Access on library computers. Patrons can now directly browse both Westlaw and LexisNexis databases in the library.

Library staff continue to be available to assist with research and citation retrieval both in-person and remotely.

Please contact us with any questions at (757) 622-2910, by email staff@norfolklawlibrary.org, or via the Contact Us page at <https://norfolklawlibrary.org/contact-us/>.

Best regards,
Isaac Needell
Law Librarian

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This list includes donors May 1, 2020, through June 30, 2021.

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NPBA Foundation

Caryn R. West, President, NPBA Foundation

One of the primary missions of the NPBA Foundation is to enhance the image of and build trust in the legal system. One of the ways we do that is through our scholarship competition every Spring where high school seniors are invited to write an essay about a particular legal question that we present. I am excited to share with you some information about our two 2021 Scholarship winners.

Our first-place winner is Great Bridge High School senior Caleb Fulford. Caleb plans to study Political Science at the College of William & Mary. He is a member of the National Honor Society and has served as co-captain of the Great Bridge High School Debate Team. He is a talented debater, excellent writer, as evidenced by his scholarship winning essay, and has earned many awards for debate and theater accomplishments, as well as the Principal's Award for Academic Excellence. He is an impressive student with goals toward maintaining the country's infrastructure, protecting the environment, strengthening the economy and ensuring access to education. He is passionate about participation in politics, and his career goal is to join the Chesapeake Commonwealth's Attorney Office, where he'd work to institute change from within the prosecutorial system.

Our second-place winner is Grassfield High School senior Joshua Wagner. He will be studying biomedical engineering at the Duke Kunshan University in Kunshan, Jiangsu Province, China. His extracurricular activities include Student Government, Varsity Lacrosse, Key Club, National Honor Society, as well as the Spanish, Math and Social Studies Honor Societies. He is an Eagle Scout, a Hampton Roads Excel Leadership Academy Selectee, Virginian Pilot Scholastic Bowl Selectee, and has received both the College Board AP Scholars Award and the Governor's STEM Academy Silver Medallion. He currently intends to focus his career on gene therapy and developing genetic-based pharmaceuticals.

We look forward to presenting both of our scholarship winners to the Bar Association at our annual dinner.



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Hon. Randall D. Smith (Ret.)

Retired Chief Judge, 1st Judicial Circuit Court of Virginia, City of Chesapeake

The Honorable Randall Smith recently retired after fifteen years of distinguished service on the 1st Judicial Circuit Court of Virginia. Judge Smith began his career as a Deputy Sheriff for the City of Chesapeake. After attending law school, he had a successful career in private practice and was the Commonwealth's Attorney for the City of Chesapeake. He also served as local counsel for the Department of Transportation and as a former Chairman of the Chesapeake Board of Zoning Appeals. Judge Smith now brings this exemplary record of service and commitment to 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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SPECIAL FEATURE:

Statutory Changes that Affect Affidavit & *Ore Tenus* Divorces and an Update to Suggestions Regarding Uncontested Affidavit Divorces

The Honorable David W. Lannetti, Judge, Norfolk Circuit Court

Casey A. Coleman, Esquire, Law Clerk, Norfolk Circuit Court

Uncontested affidavit and *ore tenus* divorces continue to be a large part of the Norfolk Circuit Court's docket. The General Assembly has recently passed legislation that affects these proceedings, so we thought it prudent to provide an overview of these legislative changes and update a previously published list of common mistakes (see Sep.–Oct. 2017 *NPBA Bar Bulletin*), in no particular order.

Legislative Updates:

- 1) The General Assembly amended *Code of Virginia* § 20-106(B) effective July 1, 2021. What was formally *Code of Virginia* §§ 20-106(B)(8)(a)–(f) has been stricken. The amendment removes the corroboration requirement for uncontested divorces in both affidavit and *ore tenus* proceedings. Hence, there is no longer a requirement for a corroborating witness to file an affidavit in support of the divorce or to appear in court to provide testimony.
- 2) In 2020, the General Assembly amended *Code of Virginia* § 20-106(B)(7) to direct the plaintiff to “state whether there were children born or adopted of the marriage and affirm that ~~the wife~~ neither party is ~~not~~ known to be pregnant from the marriage.” Thus, an affidavit filed in support of a divorce needs to state that “***neither party*** is known to be pregnant from the marriage.” An affidavit that states only that the *wife* is not known to be pregnant no longer complies with the statute. Some judges may be willing to enter a Final Decree of Divorce when the record is clear that one party is a biological female and the other is a biological male—incapable of becoming pregnant. Some judges, however, may decline to enter a Final Decree that is based upon an affidavit that does not satisfy a strict construction of Section 20-106. Consider updating your affidavit template if you have not done so already.

Common Mistakes Regarding Uncontested Affidavit Divorces:

- 3) Notarization is required on both the defendant's waiver of service form (if used) and the plaintiff's affidavit pursuant to *Code of Virginia* §§ 20-99.1:1 & 20-106(B). When either of these documents is notarized by an out-of-state notary, the notarization must comply with *Code of Virginia* § 47.1-13.1(B). Specifically, the out-of-state document must conform to the laws of the state in which the notarization occurred for the Court to recognize it as valid in Virginia. For example, if the defendant's waiver form was notarized in Florida, it must comply with Florida's notary laws for the Court to recognize it as valid.
- 4) When a Final Decree of Divorce orders spousal support, it must contain information prescribed by *Code of Virginia* § 20-107.1(H).
- 5) When child support is ordered, the Final Decree of Divorce must include the name, date of birth, and last four digits of the social security number of *each child* to whom support is owed pursuant to *Code of Virginia* § 20-60.3(3). Additionally, per *Code of Virginia* § 20-60.3(4), the Final Decree of Divorce must include the name, date of birth, and last four digits of the social security number of *each parent* of the child as well as each parent's residence and, if different, mailing address; residential and employer telephone number; driver's license number; and the name and address of his or her employer.

(continued on page 7)

SPECIAL FEATURE:

Statutory Changes that Affect Affidavit & *Ore Tenus* Divorces and an Update to Suggestions Regarding Uncontested Affidavit Divorces

(continued from page 6)

- 6) If neither party currently lives in Norfolk and there is a Separation or Property Settlement Agreement, the Final Decree must contain a transfer provision pursuant to *Code of Virginia* § 20-107.3(L) that transfers all future matters concerning enforcement and modification of the agreement to the Virginia Circuit Court located in the jurisdiction where one of the parties resides. The transfer provision must name the specific court to which the matter is transferred.
- 7) If there are minor children born or adopted of the marriage and/or spousal support is ordered, the Final Decree of Divorce must include a transfer provision pursuant to *Code of Virginia* § 20-79(C) transferring all future matters concerning child custody, visitation, and support, and/or spousal support (as appropriate) to the Juvenile and Domestic Relations District Court in the jurisdiction where one of the parties resides. If there are minor children, it is preferable to transfer future matters to the Juvenile and Domestic Relations District Court where the custodial parent resides. The transfer clause must name the specific court to which the matter is transferred. Further, this transfer provision is ***separate*** from the transfer provision related to a Separation or Property Settlement Agreement; if there are both an agreement and minor children or spousal support, then two separate transfer provisions are required.
- 8) Some submitted affidavits¹ fail to give factual support for the grounds for divorce and merely state that the affiant “verifies the contents of the complaint.” This is insufficient to establish the necessary facts for a divorce. Instead, the affidavit must state the factual grounds to support the divorce requested, *i.e.* the date of marriage, the date of separation, and that the parties have remained separate and apart, without interruption and without cohabitation, since a specified date.
- 9) A *separate* petition for a name change incident to divorce (if desired) must be submitted pursuant to *Code of Virginia* § 20-121.4. A Final Decree of Divorce that includes a name change provision within the decree will not be accepted.
- 10) If the defendant was served the Complaint by order of publication, the Final Decree of Divorce normally will deny equitable distribution and spousal support to the plaintiff and reserve both equitable distribution and spousal support to the defendant (as the Court does not have personal jurisdiction over the defendant). Equitable distribution and spousal support for the plaintiff can be reserved *only if* the plaintiff requests such relief in the Complaint. Norfolk Circuit Court Local Rule 1(E)(2).

¹As discussed *supra*, a corroborating witness affidavit is no longer required for uncontested affidavit and *ore tenus* divorces filed on or after July 1, 2021; only an affidavit from the plaintiff is required.

The views advanced in this Article represents 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 be mistaken for the official views of the Norfolk Circuit Court or the opinion of the authors in the context of any specific case.



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