

NORFOLK & PORTSMOUTH BAR ASSOCIATION

BAR BULLETIN

Volume XLIII
Number 2

March –
April 2018

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See Flyers Inside for
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Preregistration required
for all NPBA Events.
Call 622-3152.

PRESIDENT'S MESSAGE

FINDING BALANCE



James R. Harvey III

I am not one for self-help books. I do not scour the internet for tips on zen living. My yoga poses are not a pretty sight. Still, the busy practice of law has me thinking about the importance of balance in all things. Practicing law requires a certain level of dedication and expectations. We each want to be the best advocate for our client. We take our clients' concerns home with us. We leave no stone unturned, and continually fear that we missed something. But maybe, just maybe, finding balance makes us better lawyers, too.

Are you the perfectionist? Must you handle every aspect of a matter because you are convinced that the client only trusts our work product? Or are you content to delegate everything and swoop in at the last second, either unclear on the facts or frustrated the matter is not perfectly prepared? Balance. Somewhere in between I try to remind myself to have confidence in our ability to guide our client appropriately, while trusting those around me to follow the course I chart.

Do you limit your involvement in other activities because your work is too demanding? It is sure is easy to let someone else volunteer for that committee at the bar, church or youth organization. On the other hand, are you the one on every committee so that your day is so full you cannot even prioritize what has to get done today? Balance. I find that by committing to serve others, through pro bono service or community activities, I have a better perspective in my ability to provide valuable advice to my clients. If I focus deeply on a few meaningful activities, I always get back more than I give.

Are you too busy with client and family demands to have time for yourself? Balance. Those of you who know me, know that I would love to be cycling most days. It gives me the solitude and purposeful thought that clears my head and recharges my brain. Whether it's a regular trip to the gym or walk in the neighborhood, I find that I am a better lawyer when I take a little time to recharge again.

Are you highly specialized, or a jack of all trades? Balance. I like what I do, and know that I have no business attempting to practice in certain areas of the law. Still, I find that I am a better lawyer for taking a pro bono case or working with other lawyers on a novel case or on a bar committee. The practice of law would be pretty dull (and dangerous) if I thought I had mastered all there was to know about an area.

I think we each want to be a better lawyer and a better person. Since none of us are perfect,

(Continued on page 2)

UPCOMING EVENTS

NPBA LUNCHEON
Thursday, March 15, 2018 • 11:45 AM
Hits at the Park, Harbor Park
Douglas L. Smith, City Manager, City of Norfolk
(immediately following Luncheon)
LEGISLATIVE UPDATE
1 CLE Credit
Hon. Jerrauld C.C. Jones, Bischoff Martingayle
Member, House of Delegates

BREAKFAST WITH THE BENCH
Tuesday, March 20, 2018 • 7:30 AM
Brick House Diner, 580 East Main St., Norfolk
Hon. S. Clark Daugherty, Norfolk GDC

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)

"better" happens when we acknowledge the need for balance. Hard work is important, but so is finding time for ourselves, trusting others and expanding our horizons. I do not know if I am succeeding in finding balance, but I am certainly happier when I try. Now, I'm off to work on my lotus pose – don't watch.

- - -

DOCKET DIGEST – RECENT NORFOLK CIRCUIT COURT OPINIONS

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

IN RE: Public Nuisance Complaint of Allen R. Gregory, et al., CL16-7234 (Jan. 30, 2018) (Judge Martin)

Many are familiar with the "love locks" case recently heard by the Honorable Everett A. Martin, Jr. in which the Court determined—upon the receipt of a public nuisance complaint made pursuant to Section 48-1 of the *Code of Virginia*—that it must empanel a grand jury to investigate whether the locks on the Botetourt Street Bridge constitute a public or common nuisance. But the opinion contains a discussion that is more widely applicable: the Court's statutory interpretation of the word "shall." In interpreting the statute at issue, the Court pointedly distinguished between mandatory and directory commands in statutes noting that the word "shall" is only mandatory when there is a "specific and exclusive remedy for its violation." Here, the Court noted that there is no remedy provided in Section 48-1 of the *Code of Virginia* yet the Court was unaware of any basis to ignore the statute's command such that it held that a grand jury shall be summoned "promptly."

The Court's thorough interpretation and historical reading of the word "shall" may prove beneficial to practitioners in other cases.

Parrish v. American Airlines, Inc. et al., CL16-8909 (Dec. 12, 2017) (Judge Atkins)

In a personal injury case alleging that the plaintiff was struck by luggage thrown by a baggage handler at the airport, the Court granted a plea in bar in favor of American Airlines. The Court concluded that Virginia does not recognize a claim under "apparent agency law to hold an employer liable for the tort action of its contractors," and thus the airline was not liable because the baggage handler was employed by another entity regardless of whether it "appeared" that the baggage handler was under the control of American Airlines at the time of the injury.

Further, the Court reinforced the law in the Commonwealth regarding claims for negligent supervision and negligent training. The Court restated that negligent supervision and negligent training claims are not actionable in Virginia. Although multiple cases in the Commonwealth emphasize the bar on such claims, they continue to be pled on a regular basis.

- - -

CONTINUANCE PROCEDURE IN NORFOLK JUVENILE AND DOMESTIC RELATIONS COURT

Continuances governed by Rule 8:14. Continuances granted by Judge on motion for good cause.

In both civil and criminal matters when both parties are represented by counsel and there is an agreed upon continuance, the attorneys may submit a request and order to the Court which shall include the specific case file number of all matters which are the subject of the continuance. The request must include available continuance dates and may be faxed to the Clerk's office at least three business days prior to the court hearing. The request will be submitted to the Judge and the attorneys will be notified of the Court's response.

In civil matters, if the continuance is granted, it will be the responsibility of the attorneys to notify all parties that they are excused. The attorneys will be responsible for issuing process for all parties previously summonsed.

In criminal cases, if the continuance is granted the defendant, counsel and the Commonwealth Attorney must appear on the original court date. All victims/witnesses may be excused from appearing. The Commonwealth Attorney will be responsible for issuing new subpoenas for the continuance date.

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Norfolk Law Library this year!**NPBA FOUNDATION**By **Greg E. Summy, President, NPBA Foundation**
greg.summy@nscorp.com • 533-4890

A belated Happy 2018 to all! I want to take this opportunity to thank those who contributed to the NPBA Foundation during 2017. Know that your gifts have helped deserving high school seniors in the pursuit of a college education through the Foundation's high school scholarship program. In addition, the Fitzwater Scholarship assists a second year law student that is interested in public interest law in South Hampton Roads by providing a scholarship to help defray the costs of the final year of law school. While most of our scholarship applicants receive information about the scholarship competition through their schools, the applications are available on the NPBA website as well. Simply go to the Bar Association website and look for a link for the applications on the home page.

But don't forget that the Foundation is about more than providing tuition assistance. Education about and promotion of the Rule of Law remains a core component of our mission. Almost daily, lawyers are reminded about the importance of the Rule of Law and probably have observed that what we always have taken as a given isn't a cactus in the desert that will always be there for us to enjoy and admire, but rather like a rare garden flower that needs to be protected and nurtured in order to flourish. It's easy for lawyers to believe that the Rule of Law is such a basic, fundamental part of the United States that it



will always be there. We spent three years in law school learning about it and a lifetime practicing it. However, history tells us that the Rule of Law isn't necessarily the norm for many, many people. Not many countries have the robust Rule of Law tradition that we have. Some countries have never had it; Other countries have had it and lost it. If we take it for granted, it can be diminished or eliminated. Your Foundation is always interested in supporting initiatives to further education about or promotion of the Rule of Law. If you have ideas about how that could be done and what role the Foundation might play, please contact any Foundation Board member (the NPBA website has a link to the Foundation Board) or me at greg.summy@nscorp.com.

* *

YOUNG LAWYERS SECTION

By Andrea Ruege, Chair

It's hard to believe that I am already writing my final column for the NPBA newsletter. This year has been an excellent one for the Young Lawyers' Section and I know next year will be even better. Since last spring, the YLS has hosted a successful golf tournament and fall reception, held several Breakfasts with the Bench, and participated in service projects. In addition, we have launched a fantastic mentoring program. We are hopeful that our mentoring program will become one of the flagship programs for the Young Lawyers' Section. Please continue to check in here for updates as to the mentoring program and other events hosted by YLS. While technically our first year will close in May, we are always looking for both new mentors and mentees to participate in the mentoring program. I would also like to take this opportunity to thank the local bench for their support of the mentoring program. Judicial involvement has added great value to our program; I know that participants



are very excited to have your support. Thank you to each of you for what you have given to this program - judges, mentors, and mentees alike. If not for you, this excellent mentoring program would not exist.

While I'm sad to see my tenure as Chair end, I am so excited for the future of YLS. Nick Raffaele will be succeeding me and I know he will do an excellent job. Nick is incredibly smart, dedicated, and motivated to ensure that the Young Lawyers' Section continues to prosper. I cannot wait to see what will happen to our section under his leadership. Nick will be updating you on events for the 2018-19 year including the golf tournament, fall reception, and other programming. I would also like to specially thank individuals who have been dedicated volunteers over the past year - Jennifer

Fuschetti (mentoring program), Dan McNamara (Breakfast with the Bench), Darden Barrett (community service), Griffin O'Hanlon (communications), and Margaret Kelly (social). The success of this past year would not have been possible without all of your efforts. Thank you.

The Young Lawyers' Section meets monthly and we have plenty of opportunities for you to become involved. If you are under the age of 36 or if you have been in practice for five years or less, I strongly encourage you to become active in our section. Becoming involved with the NPBA, and subsequently YLS, were two of the best decisions that I have made in my career. We also welcome friends and colleagues to join us for a meeting to get to know more about these tremendous organizations. I look forward to working with you all in the future and am so thankful to have had the opportunity to serve as your YLS Chair this year.



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MARCH LUNCHEON

Thursday, March 15, 2018
Hits at The Park, Harbor Park
11:45 AM



Douglas L. Smith, City Manager
City of Norfolk

Douglas L. Smith brings a breadth of knowledge and experience from the public and private sectors to the role of City Manager.

Mr. Smith's public sector experience includes serving as Deputy City Manager in the cities of Virginia Beach and Portsmouth. Additional leadership roles in Portsmouth included Chief Plans and Policy Officer and Economic Development Director. Smith was elected to the Portsmouth City Council in 2006, where he gained regional experience as commissioner for the Hampton Roads Transportation Planning Organization and the Hampton

Roads Planning District.

Previous private sector work included serving as president & CEO of Kaufman & Canoles Consulting, where he counseled national and local developers, municipalities, higher education institutions and corporations. Smith began his career in 1985 as a banker at First Union Corporation where he was promoted to Vice President.

Smith is a graduate of Norfolk Academy and earned a BA in History from the University of Virginia. He and his wife Linda reside in Norfolk with their two children.

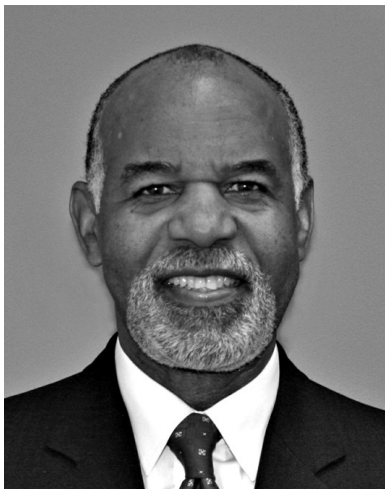
20TH ANNUAL BENCH BAR CONFERENCE

This year marks the twentieth year of the Norfolk & Portsmouth Bar Association's Bench Bar Conference, which will be held at the Waterside Marriott on Tuesday, April 10, 2018. The Conference is a yearly

opportunity to come together to share our experiences, expand our knowledge, and reinforce the strength of our legal community. With thirteen judges presenting and a keynote by the Chief Judge Gregory

of the Fourth Circuit Court of Appeals, the Conference has a depth of judicial experience and perspective not to be missed. Cost of attendance is \$100 for NPBA members. Reserve your spot today.

Our Keynote Speaker



Hon. Roger L. Gregory

The chief Judge for the United States Court of Appeals for the Fourth Circuit, Roger Gregory is a native of Petersburg, Virginia. Judge Gregory is the first African American to sit on the United States Court of Appeals for the Fourth Circuit.

Judge Gregory received a B.A., summa cum laude, from Virginia State University in 1975 and a J.D. from the University of Michigan Law School in 1978. He began his legal career with the firm of Butzel, Long, Gust, Klein & Van Zile in Detroit, Michigan. He later associated with the firm of Hunton & Williams in Richmond, Virginia. In 1982, he formed the law firm of Wilder & Gregory with L. Douglas Wilder who was later elected Governor of Virginia. He practiced law at the firm until his appointment to the bench.

Judge Gregory has served as Chair for the Committee on the Administrative Office of the United States Courts. He served on the Brown v. Board of Education 50th Anniversary Commission established by the President and Congress to commemorate that landmark decision. He has served on the American Bar Association's Commission on the American Jury, the Standing Committee on Gavel Awards, and the

Standing Committee on Public Education. He served as president of the Old Dominion Bar Association. He is a past rector of the Board of Visitors for Virginia Commonwealth University. He has served on the Board of Visitors of Virginia State University and also, as an adjunct professor of Constitutional Law.

Judge Gregory has received numerous awards which include the National Bar Association's Gertrude E. Rush and Equal Justice Awards, and the National Conference of Christians and Jews' Humanitarian Award. He received the Thurgood Marshall College Fund's Award of Excellence. He received the University of Richmond School of Law's William Green Award for Professional Excellence.

Judge Gregory is a member of the Judicial Conference of the United States, and presently serves on the Board of Trustees of the University of Richmond and the John Marshall Foundation.

SOME EXPECTATIONS WHEN PRACTICING IN NORFOLK CIRCUIT COURT

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

Jim Harvey mentioned in a prior President's Message that one advantage of NPBA membership is interaction with local judges, in part to "better understand their expectations at the next hearing or trial." This article highlights many important Norfolk Circuit Court procedures—some of which are outlined in the court's local rules (the "Local Rules") and others that are "internal" procedures and policies—to assist practitioners in better understanding courthouse practice. This is the first of what is envisioned to be a series of periodic articles on Norfolk Circuit Court practice, and we invite you to recommend possible future topics to Law Clerk Micaylee A. Noreen, Esquire, at mnoreen@circuitcourtva.us.

Threshold Considerations

All attorneys should be familiar and comply with the Local Rules (available at <https://www.norfolkcircuitcourt.us/legal-professionals/local-rules>). They outline expectations of the court, explain certain local procedures, and are divided into four sections—Civil Plan, Criminal Plan and Continuance Policy, Divorce Plan, and Civil Docketing Procedure. Adherence to the Local Rules contributes to courthouse efficiency, facilitates effective navigation of rule-dependent administrative matters, and hopefully results in a more pleasant experience overall.

Attorneys are expected to act with professionalism, which includes civility, competence, and integrity. Being prepared and punctual is also an essential facet of professionalism. Arriving to court early allows time to address unexpected challenges and provides an opportunity for counsel to explore possible resolution options (including recommendations regarding misdemeanor appeals) *before* court starts. Open communication between attorneys prior to arriving at the courthouse is strongly encouraged, as face-to-face discussions foster conciliation and judicial efficiency. By resolving less contentious matters, the court has greater flexibility to schedule and promptly hear more material issues.

Civil Matters

Civil matters are placed on the "open docket" unless pre-assigned to a specific

judge. Open-docket matters are assigned to a judge the afternoon before they are to be heard, and there is no methodology—save judicial efficiency—controlling assignment. Fridays are reserved for unassigned motions that can be heard within thirty minutes. Each judge hears either civil motions or criminal sentencings/revocations on alternating Fridays.

Certain civil matters are pre-assigned to a judge. These include cases that allege professional malpractice, products liability, or defamation; are filed under the Federal Employee's Liability Act or Jones Act; require more than two days of trial; or are requested by counsel to be assigned based on expected pre-trial matters. For these cases, attorneys will be notified of the assigned judge and corresponding law clerk, and counsel are directed to contact the court's Judicial Docket Administrator, Wendy Spivey, for all post-assignment scheduling. The assignment letter also directs counsel to schedule an initial pre-trial conference with Ms. Spivey, at which time attorneys are normally required to appear in person to complete a scheduling order. For unassigned cases other than divorces and child support enforcement cases, counsel are required to submit a fully endorsed scheduling order within 30 days after a responsive pleading to the Complaint is filed.

Motions in assigned cases are heard Monday through Thursday at 9:00 a.m. if no more than thirty minutes are required or at 2:00 p.m. for longer motions hearings. Hearings on motions in unassigned cases that have an accompanying brief should be scheduled in advance with Ms. Spivey so they can be assigned to a judge. This provides the assigned judge time to become familiar with the issues and applicable law. Such assignments normally extend only until resolution of the motion, with the case thereafter returning to the open docket.

Filing a civil motion does not automatically result in a scheduled hearing. A separate Notice of Hearing must be filed after conferring with opposing counsel (or a *pro se* party) and the Clerk's Office (or, if assigned, with Ms. Spivey). For assigned cases it is good practice to provide—either by mail or email—a courtesy copy of the

pleading associated with the motion to the assigned judge or his/her law clerk, but this does *not* preclude the requirement to also file the pleading with the Clerk's Office. Motions should be filed at least seven days prior to the noticed hearing, and the filing of any briefs must comply with Virginia Supreme Court Rule 4:15(C).

One judge is assigned as the "duty judge" Monday through Thursday on a weekly basis. There is no assigned duty judge on Fridays. Among other things, the duty judge may hear certain unnoticed matters, such as guardian *ad litem* appointments, default judgments, and temporary detention orders. Attorneys also may request the duty judge hear other matters requiring immediate attention. The duty judge is normally available to provide rulings during depositions, although this is not encouraged. Attorneys should call either the Clerk's Office or the Judges' Office to identify the duty judge and then contact the judge's assistant.

Civil continuances are granted only if good cause is shown. For unassigned cases, requests for continuances are usually heard via a telephone conference with one of the two civil continuance judges—currently Judges Martin and Lannetti—without the need for a written motion; attorneys can schedule the conference call by contacting the judge's assistant. For assigned cases, requests for continuances must be heard by the assigned judge. Granting a continuance is within the sound discretion of the judge, and continuances normally will not be granted for any reason within the control of counsel or that was reasonably foreseeable. The Local Rules identify twelve reasons that are *not* considered good cause for a civil continuance.

Criminal Matters

Upon retention, counsel should file a Notice of Representation with the Clerk's Office. All criminal cases default to the "open docket" unless trial is expected to take more than two days. Jury trials, bench trials, guilty pleas, probation violations, bond hearings, and motions are docketed Mondays through Thursdays, and pleas and motions can be heard within a few days if desired (considering logistical issues such as

(Continued on page 7)

(Practicing in Norfolk Circuit Court, continued)

service of witness subpoenas). As noted above, each judge hears criminal sentencing/revocations on alternating Fridays. When a jury trial is demanded, attorneys must schedule the trial date with the Clerk's Office or the in-court clerk, as there is a limit regarding how many jury trials can be docketed on a given day. If a criminal trial is expected to take more than two days, the attorneys should also contact Ms. Spivey to verify availability of a judge.

Immediately following arrest and appointment of counsel, the Clerk's Office notifies counsel of the appointment. For probation violations, a copy of the associated Major Violation Report is forwarded to the attorney. A bond hearing may be requested by calling the docket clerk in the Clerk's Office, who usually is able to docket a hearing as soon as 9:30 a.m. the following weekday (except Friday) if the

request is made before 3:00 p.m., subject to the availability of a Commonwealth's Attorney. Motions to suppress must be filed at least seven days and heard at least three days before the scheduled trial date. See Va. Code § 19.2-266.2(B).

Criminal continuances are granted only upon good cause shown and should be requested as soon as the attorneys become aware of circumstances that necessitate a continuance. Short-notice requests for continuances normally must be presented to one of the two criminal continuance judges—currently Judges Hall and Migliozi—and can be requested by contacting the judge's assistant. If neither criminal continuance judge is available, the duty judge may be available to consider a continuance request. A list of acceptable and unacceptable reasons for criminal continuances is provided in the Local Rules.

It is often difficult to navigate the ins and outs of any courthouse. Communication with court staff and opposing counsel—and familiarity with the Local Rules—will contribute to a positive and successful litigation experience. We hope these tips are helpful and provide clarity regarding some of the more nuanced issues that attorneys may face trying cases in Norfolk Circuit Court.

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.

WELCOME NEW MEMBERS

Jennifer Shupert
Shupert Chaing

Joshua Barbosa
Regent University law student

Elisabeth Moore
Regent University law student

Kaytren Saunders
Regent University law student

Emily Strak
Regent University law student

ANNOUNCEMENTS

Congratulations to **Willcox Savage** partner, **Tom Inglima**, who has been named 2018 Best Lawyers in America, Corporate Law "Lawyer of the Year" in Norfolk. Tom chairs the firm's Corporate, Securities and Finance group. He acts as outside general counsel to a variety of national businesses with a practice focused on mergers and acquisitions, venture capital, securities

and intellectual property transactions. He also advises with respect to matters of corporate governance.

Congratulations to **Willcox Savage** partner, **Dave Sump**, who has been named 2018 Best Lawyers in America, Admiralty and Maritime Law "Lawyer of the Year" in Norfolk.



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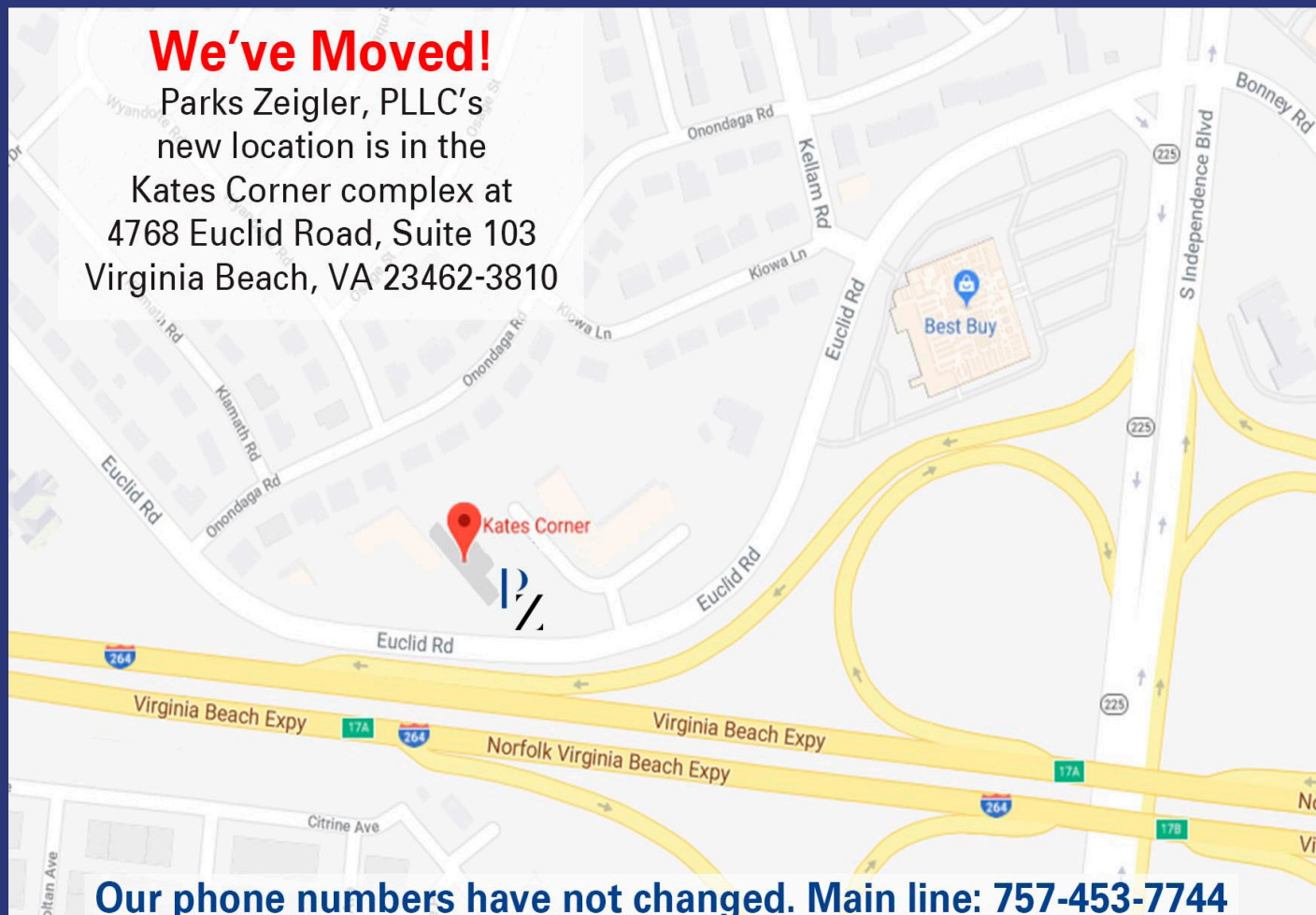
Meghan M. Casey, Esq.

has joined our firm.

With a goal to expand her family law practice and fully utilize modern technologies in the practice of law, Meghan joined Parks Zeigler in December of 2017. She is an active member of the Norfolk/ Portsmouth Bar Association, focusing on the Young Lawyer's Division and an active member of the Virginia Beach Bar Association, serving on the Membership Committee. She is also a volunteer in the Virginia Beach C.L.A.S.S. program, assisting domestic violence victims in the Juvenile Court. We are excited to add such a motivated attorney to Parks Zeigler and look forward to her contributions assisting our clients.

We've Moved!

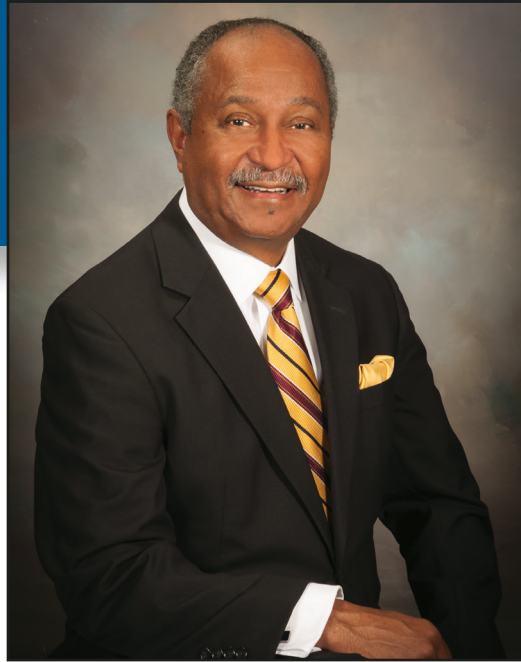
Parks Zeigler, PLLC's new location is in the Kates Corner complex at 4768 Euclid Road, Suite 103 Virginia Beach, VA 23462-3810



Our phone numbers have not changed. Main line: 757-453-7744

The McCammon Group

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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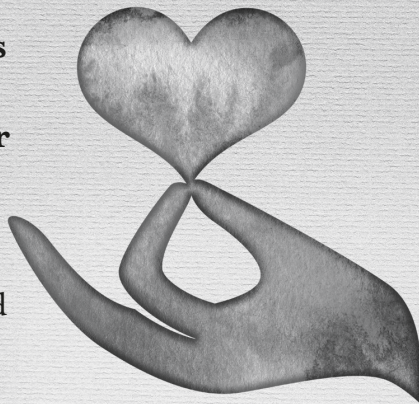
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