

BAR BULLETIN

Volume XLVI
Number 6

November-
December 2021

INSIDE

Page 2Announcements &
New Members

Page 3YLS

Page 4Library Lines

Page 5..... NPBA Foundation

Page 6.....Interview with the
Bench

Page 7-8....Special Feature

NORFOLK & PORTSMOUTH BAR ASSOCIATION

PRESIDENT'S MESSAGE



John Sawyer

We are in the NPBA's busy season with lunches, CLE's, and parties. It's been great to see so many members at these events taking advantage of all the NPBA has to offer. We are also grateful for the support of our judiciary who present at CLE's, attend our lunches and even host parties. So, come take advantage of all the bar association has to offer. The feedback on the NPBA's Annual Meeting has been overwhelmingly positive. The relaxed cocktail hour set up allowed members to mix and mingle freely. The new venue worked well and the food and drink were good and plentiful. We recognized our award recipients and congratulated them on their accomplishments. It was a fantastic evening.

The NPBA presented The Honorable William Williams of the Norfolk Juvenile and Domestic Relations Court with his judicial portrait. We congratulate Judge Williams on his retirement and thank him for his years of service on the bench. It was particularly special to have Judge Jerrauld Jones unveil the portrait as he was Judge Williams' legislative sponsor for his appointment to the bench. The NPBA also presented The Honorable Tameeka M. Williams with a gavel as part of her investiture to the Norfolk General District Court. This was a particular honor for me as I've had the opportunity to work with Judge Williams on the NPBA Executive Committee for the last few years. Congratulations, Judge Williams! These retirement and investiture events were limited due to Covid restrictions.

This past Sunday, Judge Hall hosted the Young Lawyers Section at her beautiful home. The weather was perfect and several judges enjoyed mingling with the lawyers on a lovely fall afternoon. This is a fantastic event that is open to all members and I encourage you to attend in the future. Thanks to Judge Hall and the Young Lawyers Section for putting on a great event.

Finally, please bear with us as the NPBA goes through a period of transition. Isaac Needell had the unenviable task of following in the footsteps of Donna Bausch as our Executive Director. Isaac came up to speed rapidly and worked tirelessly on behalf of the NPBA. He navigated us through the pandemic and implemented electronic systems that made us more efficient and allowed us to serve the members even during the Covid lockdown. Join me in thanking Isaac for all he did and wishing him well in his new role at Norfolk Public Libraries. We appreciate your patience and support as we search for a new Executive Director. Thank you for your membership in the NPBA.

UPCOMING EVENTS

[NPBA Luncheon with Speaker: Jay B. Myerson, VSB President](#)

Thursday, November 18, 2021 12:00 p.m.—1:00 p.m.

[Post-Luncheon CLE: "Cyber Risks and Exposures, Cyber Liability, and Cyber Liability Insurance"; Presenters: Stephen Brewer - 1 CLE Credit](#)

Thursday, November 18, 2021 1:00 p.m.—2:00 p.m.

City of Norfolk Courthouse
150 St. Paul's Blvd., 2d Fl.
Norfolk, Virginia 23510
(757) 622-3152

contact@norfolkandportsmouthbar.org
www.norfolkandportsmouthbar.org

OFFICERS

John F. Sawyer

President
497-6633
sawyer@wolriv.com

Lamont Maddox

Past President
454-2045
lmaddox@guidancelaw.com

Kristan B. Burch

President-Elect
624-3000
kbburch@kaufcan.com

Kellam T. Parks

Treasurer
453-7744
kparks@pzlzlaw.com

Anne G. Bibeau

Secretary
446-8600
abibeau@vanblacklaw.com

Cartwright R. Reilly

499-8800
creilly@williamsmullen.com

Jason Ohana

628-5519
johana@wilsav.com

Jamilah LeCruise

627-5215
jdlecruise@lecruiselaw.com

Griffin O'Hanlon

333-3333
gohanlon@cooperhurley.com

Rachel VanHorn

President, Library Board
533-5555 ext. 549
rvanhorn@glasserlaw.com

Margaret Kelly

Chair, Young Lawyers Section
664-4529
margaret.kelly@norfolk.org

STAFF

Michelle Herbert

Administrative Assistant
622-3152
contact@norfolkandportsmouthbar.org

ANNOUNCEMENTS

Williams Mullen is pleased to announce that the firm's Litigation Practice has been recognized in the 2022 edition of *Benchmark Litigation*. The practice received the "Highly Recommended" distinction in Virginia and "Recommended" in North Carolina. In addition to the firm's distinction, ten attorneys were named "Local Litigation Stars" including NPBA member **William F. Devine** (General Commercial).

...

Williams Mullen is pleased to announce that the firm's Labor, Employment & Immigration (LEI) Practice has been recognized in the 2022 edition of *Benchmark Litigation Labor & Employment*. The practice received the "Recommended" distinction in both Virginia and North Carolina. In addition to the firm's distinction, **David C. Burton** an NPBA attorney was named "Labor & Employment Stars."

...



Hon. William Williams Judicial Portrait



Judge Tameeka M. Williams Investiture

Welcome New Members

Mary Grace Godfrey

Student, Regent University School of Law

Sylvia Katens

McGuire Woods LLP

Daniel Mazzio

Cooper Hurley Injury Lawyers

Rick Batson

U.S. Coast Guard

Jennifer Gebler

The Decker Law Firm

Jameson Goodell

Dan Miller & Associates, P.C.

Joseph Wilson

McGuire Woods LLP

YOUNG LAWYERS SECTION

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



Margaret Kelly

It is strange to think that we are already in November, but while the calendar year may be winding down the Young Lawyers Section is keeping busy. In October, the annual Fall Reception returned with great success. The Honorable Mary Jane Hall and John Hall, Esq., were gracious and wonderful hosts, and even the weather turned up looking its best. The YLS would once more like to thank the sponsors of our Fall Reception:

Cooper Hurley Injury Lawyers
Fraim & Fiorella PC
Guidance Law Firm, P.C.
Kaufman & Canoles
Law Office of J.D. LeCruise
Mahoney & Richmond PLLC
McGuireWoods LLP
Parks Ziegler, PLLC
The McCammon Group
Wolcott Rivers Gates
Zahn Court Reporting

The YLS would not be able to put on this or other events without the support of the larger Bar Association. We are grateful for all the ways that support is given: from sponsorship to attendance and even to advice on event planning from past experience.

In November, the YLS plans to restart our Breakfast with the Bench series. This is special tradition between the Bar Association's honorable members of the Bench and our young lawyers which has been missed while we navigated through the COVID world. Please keep an eye on your emails and the YLS page of the NPBA website for information on dates and who our speakers will be.

Finally, all NPBA Members ages 36 and younger or have been practicing for five years or less are reminded that you are more than welcome to join the YLS. I encourage you to attend our meetings where you have the chance to join in the planning of these great events, develop strong connections with your fellow members, and take on leadership roles within our legal community. Our next meeting will be on Thursday, November 18. Mark your calendars!

Cooper Hurley Injury Lawyers Welcomes New Attorneys

Dan Mazzio & Jeffry Sachs

Cooper Hurley Injury Lawyers is pleased to announce that it has added two talented attorneys to its personal injury team.

Dan Mazzio and Jeffry Sachs have practiced law in Hampton Roads for more than 45 years combined. They have both represented clients in courts all over Virginia and have earned reputations as skilled trial attorneys.

At Cooper Hurley Injury Lawyers, Dan and Jeffry will be helping those injured in car wrecks and other serious accidents.



Dan Mazzio



Jeffry Sachs



cooperhurley.com | 757-333-3333

125 St Pauls Blvd, Ste 510 Norfolk, VA 23510

YOUR REFERRAL, OUR FIGHT!

Helping those injured in car, truck, and motorcycle wrecks and other serious injury and wrongful death cases.

Contact Norfolk Law Library at (757) 622-2910 • www.norfolklawlibrary.org

Dear Members of the NPBA,

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.

Additionally, we are working to revise parts of our library catalog to make it easier to locate library materials including more detailed records for CLEs, links to Westlaw and Lexis resources within records, and a full inventory of our historical collection of 1950 Virginia Code Annotated hardbound and pocket part volumes. Please feel free to browse our online catalog and let us know if you have any questions: Norfolk Law Library Online Catalog

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/>.

The Norfolk Law Library would like to thank the following Friends for their generous support:

Platinum (\$750+)

Cooper Hurley Injury Lawyers

Gold (\$500-\$749)

Paul R. Hernandez
Willcox & Savage, P.C.
William C. Bischoff

Silver (\$250-\$499)

ADS, Inc.
Lollar Law, PLLC
Hon. Everett A. Martin Jr.
David J. Pierce
James R. Theuer
Jonathan L. Thornton

Bronze (\$100-\$249)

Woody and Katie Anderson
Anonymous
Anonymous
Bangel, Bangel & Bangel, L.L.P.
Harold E. Bell
Carlton F. Bennett
Bruce T. Bishop
Patrick & Ann Brogan
Kristan B. Burch
David A. Buzard
Paul K. Campsen
James L. Chapman IV
John A. Coggeshall
Davis Law, PLC
Hon. Mark S. Davis
Terry H. Davis Jr.
John Deal
Marie A. Finch
John R. Fletcher
Hon. Robert & Dorothy Doumar
Foundation

B. Cullen Gibson
Edward F. Halloran
Aaron F. Kass

R. Larry Lambert
Bonnie P. Lane

Hon. David Lannetti and Kamala Lannetti

Stephen A. Leon
Lamont Maddox

Howard W. Martin Jr.
Vincent J. Mastracco, Jr.
Hon. James S. Matthews
Joseph T. McFadden, Jr.

John D. McIntyre
John C. McLemore
James A. Metcalfe
Daniel J. Miller
Hon. Douglas E. Miller
William H. Monroe Jr.

John E. Pappas
Anita O. Poston
Ralph Rabinowitz
Harriet T. Reynolds
Martha G. Rollins
C. Edward Russell Jr.
Joseph V. Sherman
Greg E. Summy
Seymour M. Teach
Tiffany & Brown
Charles E. Vogan
Peter G. Zemanian

Other contributors

Thomas A. Connor
Lauren A. Martin
William H. Swan, III
Mark F. Williams

This list includes donors September 1, 2020, through November 1, 2021.

NPBA JOB BOARD

Find a Job: [Click Here](#)

Post a Job: Contact NPBA Staff at
contact@norfolkandportsmouthbar.org or
(757) 622-3152

NPBA Foundation

By Caryn R. West, President, NPBA Foundation



Caryn R. West

As 2021 draws to a close, I ask the Members of the Norfolk & Portsmouth Bar Association to consider making a donation to the Foundation as part of your year end giving. The Foundation is the charitable arm of the Bar Association, designed to promote the administration of justice, educate the public about the importance of law in their daily lives, and enhance the image of the legal profession in the local community. One of our projects is an annual scholarship competition in which we ask high school seniors to write an essay about an important issue of law, often built on a story in recent headlines. Although we only have two winners, each student that enters is benefitted from the experience of relating the law to a prominent issue in the news. In addition, we look for ways to support projects that fulfil our mission. In the past, we have provided support for public programs, such as the celebration of the end of Massive Resistance and the Norfolk Middle School Mock Trial Program, and sponsored appropriate events for the Hampton Roads Community Foundation and Legal Aid, among others. We are always looking for other ways to achieve our mission, so please reach out if you are interested in having the Foundation fund a project or event that aligns with our Mission.

We cannot do the annual scholarships or these programs without the generous support of our Members, the Norfolk & Portsmouth Bar Association. So, as you are deciding this year what charities you would like to support with your hard-earned money, please consider the Foundation in your charitable giving.

...



2021 Annual Meeting



Available for In-Person Mediations and Arbitrations*

Zoom sessions are also
available upon request



757.403.8150



judgepadrick@theretiredjudge.com

*fully vaccinated and Covid safe

RETIRED JUDGE
DISPUTE RESOLUTION
SERVICES LLC

JUDGE H. THOMAS PADRICK, JR. (RET)

jpadrick.com

**INTERVIEWS WITH THE BENCH:
ADVICE AND INSIGHTS FROM LOCAL JUDGES**

Interviewed By: Jennifer L. Eaton, Esq., Judicial Law Clerk, Court of Appeals of Virginia

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



Judge Martin was appointed to the Norfolk Juvenile and Domestic Relations District Court bench in 1990 and then to the Norfolk Circuit Court bench in 1995. Before joining the bench, he was a prosecutor at the Commonwealth Attorney's Office and also worked in private practice. He received his J.D. and undergraduate degrees from Washington & Lee University.

Photo credit: The Virginia Bar Association)

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

A.: Every year the City allows us to hire four law clerks. They are bright and energetic young men and women of integrity. I like to think they are representative of their peers.

Q.: In your opinion, what has been the most significant change to the practice of law since becoming a judge?

A.: From what I read, it is the creation of international mega-law firms with a thousand or more partners. The practice of law has become more commercial and less professional. It is with dismay that I read articles about the “legal industry.” Lawyers represent clients; we don’t manufacture widgets.

From what I see, it is the decline of the civil jury trial. Years ago I might have two a week. Now it is perhaps one a month.

Q.: What are your biggest courtroom pet peeves?

A.: Lack of preparation. Lawyers bickering with each other. Lawyers not having talked to one another before coming to court on discovery motions.

Q.: What advice would you give to young lawyers looking to be better advocates for their clients?

A.: Be prepared. Be polite to opposing counsel, parties, and witnesses—judges notice this and appreciate it. Acknowledge a weakness in your position before opposing counsel has the opportunity to tell the judge about it—this gives you credibility not only in the case you are arguing, but in future cases. If at all possible, simplify the issues. No judge likes to be presented with a bowl of spaghetti and asked to untangle it.

Q.: Do you have a favorite legal rule?

A.: The words “favorite” and “rule” are not often used in the same sentence, but since you asked: Rule 1:1(a). I am a big fan of finality.

Q.: Which local or procedural rule do you think is least followed by practitioners and should be given more attention?

A.: Attorneys have improved on these issues since the adoption of Rule 4:15 in 2000, but, first, there needs to be more talking between attorneys before coming to the court on a dispute. *See* Rule 4:15(b). Some attorneys will not make phone calls; others, it seems, will not return them. Second, would be the motion and brief dump shortly before a hearing. You do not like to be on the receiving end of one of these. I can assure you the judge does not like it either. Rule 4:15(c) was enacted to prevent it.

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.

SPECIAL FEATURE:

Modification of Virginia Sentencing Guidelines Based on Substantial Assistance, Acceptance of Responsibility, or Expression of Remorse

The Honorable David W. Lannetti, Judge, Norfolk Circuit Court
Alli M. Mentch, Esquire, Law Clerk, Norfolk Circuit Court

Among the recent changes to Virginia's Sentencing Guidelines, judges now have the ability to modify criminal sentence guideline recommendations if they find that the defendant has (1) provided substantial assistance in the apprehension or prosecution of others, (2) accepted responsibility for his or her criminal actions, *or* (3) expressed remorse for the crimes. Under such modified guidelines, the midpoint and high end of the sentencing range remain the same, but the low end is adjusted downward. If the defendant's guideline low end is three years or less, it is adjusted to zero. And if the low end is more than three years, the adjusted low-end recommendation is reduced by fifty percent.

The purpose of Virginia's discretionary sentencing guidelines is to achieve "certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate." *Va. Code* § 17.1-801. In developing the guidelines, the Virginia Criminal Sentencing Commission is tasked with, among other things, considering historical sentencing practices. *Id.* § 17.1-803. Stated differently, revisions to the guidelines often arise from analyzing previous sentencing data, including judicial explanations for departures from the recommended sentencing range.

The new modification provision results in many sentences that previously were outside the guideline range—on the low end—remaining within the recommended range. In such cases, the judge also does not have to provide an explanation justifying what would have previously been a departure. At the sentencing hearing, one or both attorneys can argue to the judge that the defendant has satisfied one or more of the three factors. If the judge agrees, he or she simply checks the "Modification of Recommendation" box, and the low end of the guidelines is automatically adjusted downward. The judge may then sentence guided by the new recommended guideline range. Of note, if a defendant was convicted of a crime that carries a mandatory minimum sentence, a deviation for substantial assistance, acceptance of responsibility, or expression of remorse does not override the statutorily required minimum sentence.

This new change to the sentencing process was inspired by the Sentencing Commission's findings. The Commission analyzed cases from 2016 to 2020, during which Virginia circuit court judges sentenced defendants outside the guideline range. The Commission found that thirteen percent of *all* departures below the guidelines cited one or more of the three aforementioned factors. According to the Sentencing Commission, the modification allows the sentencing judge to consider the factors "and still be in concurrence with the Guidelines." Importantly, the change was to better conform sentencing practices to the guidelines and does not represent a change in sentencing philosophy. As the Commission noted, "If, absent the Guidelines modification, the judge would depart below the recommended range and cite one of these reasons to explain the departure, the Commission suggests that the judge make use of the modified Guideline range."

Although the calculation of the adjusted low end is straightforward, extremely limited guidance exists on what constitutes substantial assistance, acceptance of responsibility, or an expression of remorse. Regarding a defendant's acceptance of responsibility, the Commission has stated that it did not intend for a defendant to satisfy this factor based solely on the fact that he or she pleaded guilty. This is unlike the federal sentencing system, where the vast majority of defendants who simply plead guilty receive a sentence reduction for accepting responsibility. In fact, the federal adjustment applies to nearly all defendants and therefore does not effectively distinguish between offenders. According to the Commission, this does *not* reflect how it analyzed the Virginia data.

Although the Commission pointed out that a sentence modification based solely on a defendant's guilty plea is inconsistent with its sentencing data, it did provide some examples from its study where judges previously recognized a defendant's acceptance of responsibility or expression of remorse. For instance, if the defendant paid restitution in full or returned property, made amends with the victim, voluntarily entered mental health treatment, prevented the crime from escalating, turned himself or herself into the authorities, or showed significant remorse for his or her actions, a modification may be justified.

(continued on page 8)

SPECIAL FEATURE:

Modification of Virginia Sentencing Guidelines Based on Substantial Assistance, Acceptance of Responsibility, or Expression of Remorse

The Honorable David W. Lannetti, Judge, Norfolk Circuit Court
Alli M. Mentch, Esquire, Law Clerk, Norfolk Circuit Court

(continued from page 7)

Of note, section 19.2-303.01 of the *Code of Virginia* provides some guidance regarding what judges might consider to be substantial assistance. Although the statute pertains to post-sentencing Commonwealth motions to reduce a defendant's sentence based on the defendant providing "substantial assistance in investigating or prosecuting another person," the listed statutory factors arguably apply to pre-sentencing assistance as well. These factors are (1) the significance and usefulness of the assistance; (2) the truthfulness, completeness, and reliability of information or testimony provided; (3) the nature and extent of the assistance; (4) the injury suffered or danger/risk of injury to the defendant or his family resulting from the assistance; and (5) the timeliness of the defendant's assistance.

Of course, each case is unique, and judges are given wide latitude in sentencing decisions. But, in short, the modification to the sentencing guideline range for substantial assistance, acceptance of responsibility, or expression of remorse is not intended to change the preexisting sentencing procedures or arguments. Judges retain their significant discretion in sentencing, including determining whether a defendant has satisfied one of the three factors permitting the new guideline modification.

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 not be mistaken for the official views of the Norfolk Circuit Court or the opinion of the authors in the context of any specific case.

The McCammon Group

is pleased to announce our newest Neutral



Hon. Beverly W. Snukals (Ret.)

Retired Judge, 13th Judicial Circuit Court of Virginia, Richmond

The Honorable Beverly Snukals recently retired after twenty-three years of distinguished judicial service in the Richmond Courts, most recently serving twenty years as a Judge on the Circuit Court including two years as Chief Judge. Prior to her judicial career, Judge Snukals enjoyed a successful private practice in Richmond. She is a Past President of the Metropolitan Richmond Women's Bar Association and a recipient of their Women of Achievement Award. Judge Snukals is a Former Chair of the Judicial Education Committee for the General District and Circuit Courts of Richmond, a Former Chair of the Judicial Section of the Virginia Bar Association, and a Member of the Lewis Powell Inn of Court. She has served as an Adjunct Law Professor at the University of Richmond School of Law for twenty years. Judge Snukals now brings this record of devotion and accomplishment to The McCammon Group to serve the mediation, arbitration, judge pro tempore and special master needs of lawyers and litigants throughout the Commonwealth.

THE
MCCAMMON
GROUP

For a complete list of our services and Neutrals throughout VA, DC, and MD,
call 888.343.0922 or visit www.McCammonGroup.com