

# NORFOLK & PORTSMOUTH B A R A S S O C I A T I O N

## BAR BULLETIN

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November –  
December 2015

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See Flyers Inside for  
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Registration Information

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

## PRESIDENT'S MESSAGE



Mary T. Morgan

The issue of pro bono service may be one that you don't think about too often, but it has been a part of a lawyer's professional duty for centuries. Pro bono service can be traced to practices in early Roman tribunals, medieval ecclesiastical courts, and to Scottish and English legal proceedings. Under the Roman system, heads of patrician families represented dependents free of charge. In medieval ecclesiastical courts, clerical advocates could be appointed to serve the poor. During the thirteenth and fourteenth century in England and Scotland, serjeants, the highest order of legal counsel, could be ordered to represent indigent litigants and could be denied the right of practice if the request was refused. The power of the court to appoint counsel was most commonly exercised in the context of criminal proceedings through a ritual known as dock briefs. Under this custom, an indigent defendant who paid a token fee could have the court appoint legal counsel. In the fifteenth century, English and Scottish law required lawyers to represent the poor.

Rule 6.1 of the Virginia Rules of Professional Conduct, entitled "Voluntary Pro Bono Publico Service," provides:

(a) A lawyer should render at least two percent per year of the lawyer's professional time to pro bono publico legal services. Pro bono publico services include poverty law, civil rights law, public interest law and volunteer activities designed to increase the availability of pro bono legal services.

(b) A law firm or other group of lawyers may satisfy their responsibility collectively under this Rule.

(c) Direct financial support of programs that provide direct delivery of legal services to meet the needs described in (a) above is an alternative method for fulfilling a lawyer's responsibility under this Rule.

Pro bono publico is a phrase derived from Latin meaning "for the public good and for the welfare of the whole."<sup>1</sup> One of the most valuable contributions a lawyer can make to the legal system is devoting some of his or her time to handling cases pro bono. In fact, pro bono representation can be personally rewarding and professionally valuable for attorneys that are seeking to gain experience and visibility in the legal community.

Central to this issue is that the number of people who cannot afford legal services is growing at a rapid pace. "[A]n estimated four-fifths of the individual legal needs of low-income Americans, and two-thirds of moderate-income Americans remain unmet."<sup>2</sup> Virginia's legal aid societies are continuing to face significant federal and state funding cuts while the need for pro bono services is rapidly increasing. In the last five years, the Legal Aid Society of Eastern Virginia ("LASEVA") has

(continued on page 2)

## UPCOMING EVENTS

**AN INTRODUCTION TO CIVIL PRACTICE  
IN THE GENERAL DISTRICT COURTS**  
Tuesday, November 17, 2015 • 1:00 - 4:00 PM  
Dominion Tower, Suite 400 • 3 CLE Credits

**NOVEMBER LUNCHEON**  
Thursday, November 19, 2015 • 11:45 AM  
Hits at the Park, Harbor Park  
Featuring: Kim Warp  
Cartoonist for *The New Yorker*

**GOVERNMENT CONTRACTING  
SMALL BUSINESS PROGRAMS**  
1 CLE Credit

Thursday, November 19, 2015  
(immediately following NPBA Luncheon)

**NPBA Holiday Party**  
Thursday, December 17, 2015, 5 PM  
Hits at the Park, Harbor Park

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### (PRESIDENT'S MESSAGE CONTINUED)

experienced approximately a 30% reduction in funding. As a result, the number of attorneys has decreased from 28 to 16, while the number of requests for legal services increased. In 2014, LASEVA processed over 13,000 applications, but was only able to take and close about 5,700.

Members of the private bar can help fill this gap. You may have recently seen emails offering training opportunities with CLE credits on various topics, in exchange for taking a referral case from LASEVA. Firms in Service, a project of the Virginia Bar Association, has partnered with LASEVA to offer one hour trainings on uncontested divorce, uncontested guardianship and landlord-tenant matters. Training qualifies for CLE credit and is provided free of charge, but each lawyer who attends is expected to take a pro bono case from LASEVA. Cases are screened by LASEVA to ensure they meet the qualifying standards and limited scope. In addition, LASEVA has a monthly bankruptcy bypass project where attorneys also receive one hour of training with CLE credit, followed by a one hour hotline shift where participants call LASEVA clients and provide counseling on how to respond to creditors and avoid filing bankruptcy.

As lawyers, we belong to a highly esteemed, self-regulating profession. With the privilege of membership comes an enormous responsibility to the public interest. Our specialized skills allow us the unique opportunity to make profound and tangible differences in the lives of the disadvantaged. Beyond ethical obligations to do pro bono, another motivation for the profession to embrace and support pro bono is its positive impact on the public's perception of the profession. By doing pro bono work, lawyers, law firms and law associations can demonstrate that they are giving back to the community and that they are not driven solely by the bottom line. Working on behalf of individuals can go a long way to improving perceptions about the profession and the legal system. Undertaking pro bono can improve the profiles of large firm and sole practitioner alike (and all the categories in between), and I encourage you to take advantage of these opportunities to assist LASEVA and its clients in need of legal services.

<sup>1</sup> Black's Law Dictionary, 4th ed., s.v. "pro bono publico".

<sup>2</sup> Deborah L. Rhode, *Lawyers as Citizens*, 50 Wm and Mary L. Rev., 1323, 1330-1331 (2009).

## SEPTEMBER LUNCHEON



# The McCammon Group

is pleased to announce our newest Neutral

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**Hon. LeRoy F. Millette, Jr. (Ret.)**

Former Justice, Supreme Court of Virginia

The Honorable LeRoy F. Millette, Jr. recently retired after seven years of distinguished service as a Justice on the Supreme Court of Virginia. Prior to his tenure on the high court, Justice Millette served at every level of the Commonwealth's judicial system, including serving two terms as Chief Judge during his fourteen years on the Circuit Court of Prince William County. Justice Millette is a Master of the I'Anson-Hoffman American Inn of Court and a Former Master of the George Mason American Inn of Court. He is a Member of the Boyd-Graves Conference and a Former Member of the Virginia Criminal and Civil Benchbook Committee. Justice Millette now brings this exemplary record of dedication and achievement to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth and beyond.



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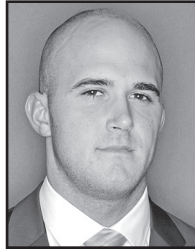
## YOUNG LAWYERS SECTION

By Zachary Simmons, Chair

After a fantastic summer, YLS has been having a wonderful fall. On September 1, we had our annual Tides Game night, which was a blast. We had a great turnout, the weather was beautiful, and the Tides actually won. Thanks to everyone who came out.

On September 22, we had another installment of Breakfast with the Bench and were joined by Judge Ottinger of Portsmouth General District Court. Judge Ottinger had an open discussion where he fielded questions and offered meaningful advice and insight. I would like to thank Judge Ottinger for taking the time to be with us as well as everyone who came out. I'd also like to thank Jessica Dixon and Meredith Jacobi for working so hard to make this event such a success. Another Breakfast with the Bench is in the works, so please be on the lookout for more details.

On October 25, we had the annual YLS Fall Reception at the home of Judge Mary Jane Hall and John W. Hall, Esq. This is a wonderful event where members of the bar interact with judges in a laid back



Zach Simmons

and informal environment. Thank you to the Halls for once again opening up their beautiful home for this event. I would also like to extend a special thank you to our sponsors: **TowneBank; Christie, Kantor, Griffin & Smith, P.C.; Wall, Einhorn, & Chernitzer, P.C.; Foley and Foley, P.C.; and Phillips and Peters, PLLC.** Their generosity is very much appreciated. Finally, I'd like to thank Jennifer Fuschetti for working so hard to help put this event together.

YLS will continue its CLE series with "Demystifying Federal Court for Young Lawyers," which will be held in Dominion Tower, Suite 400 on January 7, 2016 from 1:00-3:00 p.m. This event will be free to

young lawyers (only) and will cover the very basics of federal court practice. Speakers will include U.S. District Judge Mark S. Davis, Rob McFarland of McGuire Woods, and Andrea Ruege of Bertini Law. Please stay tuned for more details.

YLS has many other exciting events planned, including a holiday toy drive, Breakfasts with the Bench, as well as volunteer opportunities.

Finally, on behalf of the YLS, I'd like to congratulate everyone who passed the July 2015 bar exam. I'm proud to officially call you my colleague. And, as an added bonus, you're now eligible to become a member of NPBA and its Young Lawyers Section, which is something I highly encourage you to do. If you're interested, contact me at [zachary.simmons@norfolk.gov](mailto:zachary.simmons@norfolk.gov).



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## JANUARY LUNCHEON

**Thursday, January 21, 2016**

**Hits at The Park, Harbor Park**

**11:45 AM**



**Deborah DiCroce**

*Hampton Roads Community Foundation*

Deborah M. DiCroce, Ed.D., is president and CEO of the Hampton Roads Community Foundation. Before joining the Foundation in 2012, she was president of Tidewater Community College for 14 years. Previously she was president of Piedmont Community College in Charlottesville for nine years.

She serves on the board of visitors of Norfolk State University and is secretary of the Hampton Roads Community Founda-

tion board of directors. She serves on the boards of the Virginia Early Childhood Foundation, Future of Hampton Roads, Greater Norfolk Corporation, Virginia Beach Vision and the Town Point Club. She serves on the United Way Children's Zone Steering Committee and Norfolk State University's Business and Economic Development Advisory Council. In 2012, the Chesapeake Rotary Club named her First Citizen of Chesapeake.

She previously chaired the Hampton Roads Partnership board, Urban League of Hampton Roads board and the regional board of the Hampton Roads Chamber of Commerce. She is a former member of the Christopher Newport University board of visitors, Sentara Healthcare, Portsmouth Partnership and the Smart Beginnings South Hampton Roads boards of directors. She also served on Governor McDonnell's Commission on Economic Development & Job Creation. She earned bachelor's and master's degrees from Old Dominion University and a doctorate in education from The College of William & Mary.

## NOVEMBER LUNCHEON

**Thursday, November 19, 2015**

**Hits at The Park, Harbor Park**

**11:45 AM**



**Kim Warp**  
*New Yorker*



**Kim Warp**  
*self portrait*

Kim Warp is an award-winning *New Yorker* cartoonist. A Seattle native, she has lived in Virginia Beach for the last decade with her husband and two daughters. In addition to the *New Yorker*, her work has appeared in many publications including *Reader's Digest*, *Barron's*, *TIME* and *Harvard Business Review*.

For luncheon reservations, call the NPBA office at 622-3152 or email [npbamail@gmail.com](mailto:npbamail@gmail.com)

## OCTOBER LUNCHEON



## WELCOME NEW MEMBERS

**Regina F. Amick**  
Wolcott Rivers Gates

**Michael V. Hernandez**  
Dean, Regent University School of Law

**Alex H. Pincus**  
Norfolk City Attorney's Office

**Suzanne Richmond**  
Law Office of Suzanne Richmond

**Christopher P. Saady**  
Law Office of Jonathan Jester

**Michael O. Snellings**  
Cooper Hurley Injury Lawyers

**Laura C. Hoey**  
William & Mary law student

## ANNOUNCEMENTS

**Christie, Kantor, Griffin & Smith, P.C.** is pleased to announce that **Barry Kantor** has been included in the 22nd edition of The Best Lawyers in America for Family Law. Mr. Kantor has been included since its inception and in 2009 was named Best Lawyer of the Year in the Norfolk area. Mr. Kantor has also been listed consistently among Virginia Super Lawyers since 2006. Mr. Kantor is a Fellow of the American Academy of Matrimonial Lawyers and is a past president of the Virginia Chapter.

**John Cooper**, a founding partner of **Cooper Hurley Injury Lawyers**, has been appointed as a Governor At Large to the Board of Governors of the Virginia Trial Lawyers Association. The appointment reflects recognition of Mr. Cooper's work as a District Governor from the Virginia Beach/Norfolk area and his contribution on committees dealing with litigation support, public affairs and the legislative agenda. He also chairs the Fundraising Committee.

**Phillips & Peters, PLLC** is pleased to announce that **Lisa C. Jackson** and **Nicholas R. Raffaele** have joined the firm as associates. Ms. Jackson received her undergraduate degree in 2004 from University of North Carolina, Wilmington and her J.D. in 2014 from Regent University School of Law. Lisa was formerly a Norfolk police officer serving the city for ten years in patrol, Vice and Narcotics and as a Task Force Officer assigned to the Bureau of Alcohol, Tobacco and Firearms. Mr. Raffaele received his undergraduate degree in 2012 from the University of Miami and his J.D. in 2015 from William & Mary Law School. Mr. Raffaele has a third year practice license and is awaiting the results from the July 2015 bar exam. The firm is also pleased to announce our newest paralegals, Kathie Ward and Liene Hawkins.

**Poole Mahoney P.C.** is pleased to announce the following attorneys were selected for The Best Lawyers in America 2016: **Reeves W. Mahoney**, Family Law and **Jeffrey F. Brooke**, Personal Injury Litigation – Plaintiffs.

**Shapiro, Appleton and Duffan** is proud to announce the addition of **Edwin S. Booth** to the firm as an associate. Ed is a

litigator with experience practicing both criminal and civil litigation and will now devote his practice exclusively to personal injury litigation.

**Stephen C. Swain** of **Shuttleworth, Ruloff, Swain, Haddad & Morecock, P.C.** has been included for the last 20 years in The Best Lawyers in America in automobile collision and medical malpractice. He is also recognized in Martindale-Hubbell with an "AV" 5.0 out of 5 rating in Personal Injury, Products Liability and Medical Malpractice Litigation.

**Dawn L. Merkle** has joined **Willcox & Savage, P.C.** as a partner in the Government Contracts practice, where she will represent clients in all aspects of state, local, and federal government contracting. Dawn previously worked with Skanska USA as assistant general counsel and then as corporate counsel on strategic projects. Prior to that position, she was in private law practice including eight years in the government contracts practice group with Troutman Sanders. Dawn received her J.D. from the College of William and Mary and a B.A. from Old Dominion University. She also has a Certificate in Organizational Consulting and Change Leadership from Georgetown University.

**Williams Mullen** is pleased to announce that corporate partner **Ben Crumpler** has rejoined the firm's Business & Corporate practice in Norfolk and Virginia Beach. He previously worked at the firm from 1998 to 2012. Mr. Crumpler has more than 15 years experience in corporate and business transactions, including mergers and acquisitions, entity formation, financings, commercial transactions and contracts and general corporate planning and governance. He has extensive experience with the organization and use of partnerships, Sub S corporations and Virginia limited liability companies. Mr. Crumpler is a member of the Norfolk & Portsmouth Bar Association and the Virginia Bar Association, where he is a member of the Business Section. He also serves on the board of directors of the Norfolk Chamber of Commerce. In 2014, Mr. Crumpler was named to Virginia's Legal Elite by Virginia Business. He is a 1993 graduate of the University of Virginia and received

his J.D. from Washington & Lee University School of Law in 1997.

**Cheshire I'Anson Eveleigh** of **Wolcott Rivers Gates** was recently awarded the Virginia Bar Association's Legislative Advocacy Award. This award recognizes attorneys for outstanding service in promoting the legislative agenda of the VBA. Eveleigh is only the second recipient of this notable honor with the first award being presented in 2011. Cheshire "is a staunch advocate for improving our family law to make it more clear and more fair to everyone, not just her clients," said VBA President Harry M. "Pete" Johnson III. "She has been instrumental in developing the VBA's position on virtually every piece of important family law legislation for years." Eveleigh has been an active VBA member for the past 19 years. Since 2008, she has chaired the Virginia Family Law Coalition, a volunteer group that develops and advances a nonpartisan legislative program to address matters faced by Virginia citizens in court on domestic issues. It also supports legislative inquiries related to family law. The coalition was created by the VBA Domestic Relations Section and now is a collaboration of VBA and VTLA. Johnson applauded Eveleigh's expertise and skill in leading the coalition, and her tireless efforts during General Assembly sessions, "whether testifying, tracking and managing key bills and last-minute amendments, or working with our lobbyists on strategy." In addition to her Legislative Advocacy Award, Cheshire was also named the Best Lawyers 2016 Family Law "Lawyer of the Year" for Norfolk. This annual award is only bestowed upon one attorney per region for their respective practice area.

### PLEASE BE ADVISED:

Due to the granting of an open space easement to the Virginia Outdoors Foundation by The Hermitage Museum and Gardens, effective immediately a \$1.00 fee will be imposed on every deed admitted to record in the Norfolk Circuit Court Clerk's Office as per Code of Virginia 58.1-817.



# A Call for Civility

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

Certain concepts integral to our profession escape easy definition; these include ethics, character, civility, and professionalism. It therefore is not surprising that many lawyers—who are required to pass legal ethics tests, must comply with rules of professional conduct, and are encouraged to act with civility—are confused. This confusion increases when lawyers mistakenly believe that winning at all costs and zealous advocacy are the ultimate goals. Understanding the enigmatic characteristics of these concepts, and their interaction within the practice of law, is vital to proper service within our noble and honored profession.

Within the legal world, “legal ethics” refers to formal rules of conduct that lawyers must follow. Most law schools require that students take a Professional Responsibility course, and prospective Virginia lawyers must pass the Multistate Professional Responsibility Examination. All Virginia lawyers must comply with the Virginia Rules of Professional Conduct in order to practice law. Contrary to the title’s implication, these rules do not establish an ideal behavioral model for lawyers. Rather, they define the *minimum* level of acceptable conduct before a lawyer may be subject to formal discipline by the Virginia State Bar, the legal profession’s regulatory body.

Syndicated columnist David Brooks notes that we lack an adequate vocabulary to fully discuss and understand the concept of character, which he argues contributes to the dwindling number of individuals who possess strong character. Character—in terms of integrity, respect, and courtesy—is not a frequent topic of conversation among lawyers. Although the reason is not clear, it may be because we assume that lawyers are men and women of character or because we do not recognize or praise strong character—at least in the context of practicing law. Lawyer stereotypes, newspaper headlines, and polls make it clear, however, that lawyers are viewed as among the least-trusted individuals in society. In his latest book, *The Road to Character*, Brooks encourages a rejection of the cultural entreaty to view oneself as the center of the universe, inviting us to instead strive “not only to do good, but to be good.” He argues that we, as a society, need to place less emphasis on the “resume virtues” and more emphasis on the “eulogy virtues.”


Several years ago the Virginia Supreme Court endorsed aspirational Principles of Professionalism, which call the bar to perform at a higher level than required by the Rules of Professional Conduct. Then-Chief Justice Leroy Hassell noted that “the Principles articulate standards of civility to which all Virginia lawyers should aspire.” The Principles point out that “[i]n their first professional act, all Virginia lawyers pledge to demean themselves ‘professionally and courteously,’” and the Principles then enumerate recommended civil conduct toward clients, the court, and opposing counsel. They emphasize, among other virtues, integrity, respect, and courtesy. Every new Virginia lawyer must also attend the Harry L. Carrico Professionalism course, where lawyers and judges emphasize the importance of civility. A course video highlights an excerpt from U.S. Supreme Court Justice Anthony Kennedy’s address to the American Bar Association: “Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual. We are civil to each other because we respect one another’s human aspirations and equal standing in a democratic society. We must restore civility to every part of our legal system and public discourse. Civility defines our common cause in advancing the rule of law. Freedom may be born in protest, but it survives in civility.” A cogent argument can be made that this desired civility is the natural outcome of men and women of strong character.

So how should lawyers parse the confusing language and reconcile this panoply of vocational direction? First and foremost, Virginia lawyers are *required* to be ethical practitioners by complying with the Rules of Professional Conduct. Beyond that, they are *called* to conduct themselves with civility, emphasizing integrity, respect, and courtesy. Virginia lawyers, as professionals, therefore exist at the confluence of required ethical behavior and desired civility. The challenge is determining how best to instill strong character—or at least model behaviors consistent with strong character—in lawyers who practice in today’s “selfie” culture, where civility too often is deemphasized or overlooked altogether.


Law schools can play an important pedagogical role in disseminating expectations regarding civility to aspiring lawyers. Courts can confront non-compliant lawyers, especially when uncivil conduct occurs in the courtroom. But the vast majority of the practice of law—where lawyers interact with clients and with opposing counsel—occurs outside the courthouse. Although law is a self-regulating profession with a disciplinary system to address ethical deficiencies, there is no analogous mechanism to address lapses of civility. Lawyers therefore should demand civil conduct from opposing counsel and, more importantly, from themselves. They should avoid discovery abuse and “Rambo tactics” and, in the words of the Principles of Professionalism, “explain to clients that [a lawyer’s] courteous conduct toward others does not reflect a lack of zeal in advancing their interests, but rather is more likely to successfully advance their interests.” Lawyers should fight negative stereotypes and not tolerate lawyer jokes. They should be encouraged to inform others that lawyers serve their communities at a rate far higher than most other professions. And lawyers should get to know one another better through active civic engagement, as familiarity breeds civility.

Most Virginia lawyers are individuals of high moral character who value, and practice law with, civility while embracing the Principles of Professionalism. They also are the ones best positioned to recognize a lack of civility among their peers and take the necessary steps to bring those individuals into the fold. The call for civility is aspirational, not regulatory. Should we all accept this calling, we will better serve our clients, the courts, and opposing counsel. As Chief Justice Lemons noted during his investiture: “The practice of law is a noble profession. All of us must work together to keep it that way.”

*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 my opinion as a circuit court judge in the context of any specific case.*



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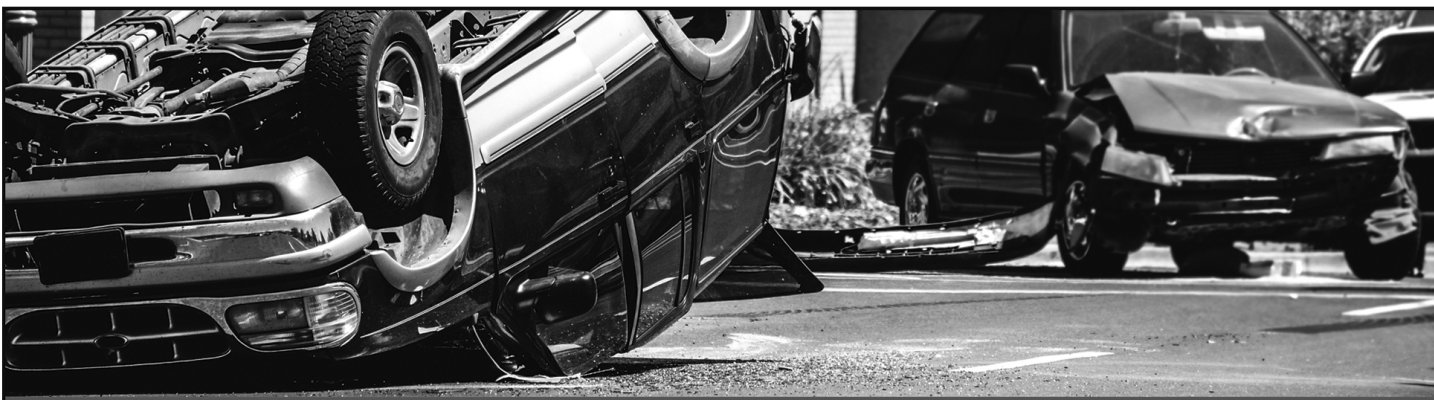
*Stephen M. Smith, Esq.*

Out of thousands of trial lawyers in the United States, Stephen M. Smith was one of the select few invited to be trained in the Neuro-Anatomical Dissection of the Human Brain and Spinal Cord at Marquette University College of Health Sciences. This advanced medical training, coupled with his 41 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

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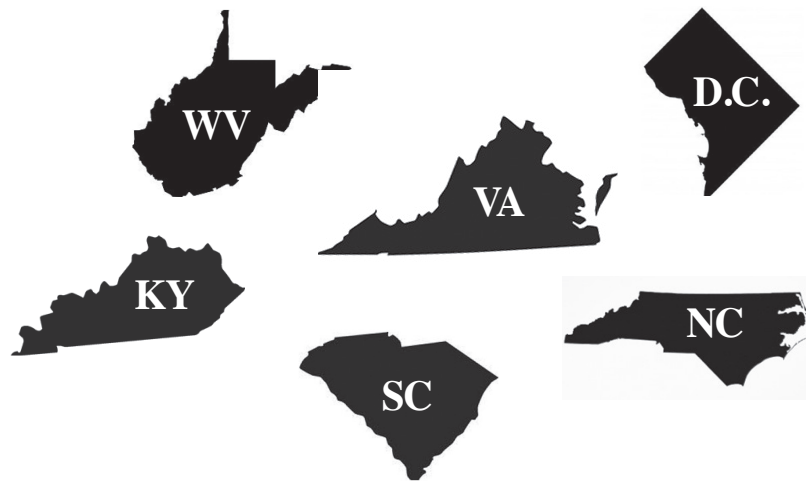
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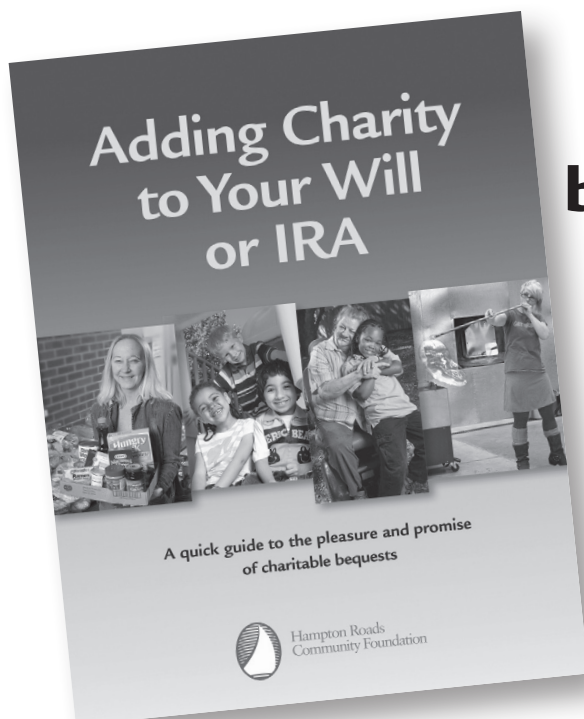
*\*At least one lawyer holds a bar license in each state*

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