

NORFOLK & PORTSMOUTH BAR ASSOCIATION

BAR BULLETIN

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See Flyers Inside for
Event Details and
Registration Information

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

PRESIDENT'S MESSAGE

Seasons Change



James R. Harvey III

Seasons Change

'Cause seasons change, they go as quick as they came, and
It's not their fault, if we choose to stay the same, and
Not grow at all, neither strong, nor tall.

— Marketa Irglova

I think we all harbor some hope that things will stay the same; comfortable and known. We know that hope is never reality, though. Children grow, technology advances, and even the practice of law changes. Now, it is the time for great changes at Norfolk Law Library and the Norfolk & Portsmouth Bar Association.

In 1987, President Reagan implored Mikhail Gorbachev to tear down the Berlin Wall, the Compaq “portable” computer weighed 18 pounds, Run-D.M.C. was atop the charts, and Brian “the Boz” Bosworth was drafted in the NFL. It was also the year that the Norfolk & Portsmouth Bar Association and Norfolk Law Library moved to the newly constructed Dominion Tower. We have enjoyed a great relationship with Dominion Tower, but after 30 years, seasons change and it is time for the Bar Association and Law Library to move.

To better serve the legal community and the general public, the Law Library will eventually be located in the Norfolk Courthouse, Phase II, on the 2nd Floor. Law library staff has been preparing for months for this transition, culling its collection for the available space in the courthouse. Unfortunately, construction delays in Phase II of the courthouse prevent our planned move now, and cause new challenges in this season of change. On Monday, October 16, we began moving the majority of the library collection to unfinished courtroom space in the Courthouse.

Meanwhile, Law Library and Association staff are moving to Suite 1212, Dominion Tower. They will maintain access to a limited collection of practice-oriented, research resources. They will continue to provide online and remote research assistance, but ask that researchers contact them by phone or e-mail since space is very limited. CLE offerings will continue in Dominion Tower. Once the courthouse is complete, we will be able to complete our move to the planned library space and reopen to full operation.

(Continued on page 2)

UPCOMING EVENTS

NOVEMBER LUNCHEON

Thursday, November 16, 2017 • 11:45 AM
Hits at the Park, Harbor Park
Skip Stiles, Executive Director
Wetlands Watch

(immediately following Luncheon)
CONTESTED GUARDIANSHIPS
1 CLE Credit

HOLIDAY PARTY

Thursday, December 14, 2017
5:30 PM to 7:30 PM
Hits at the Park, Harbor Park

Please RSVP for each event.
Contact NPBA at 622-3152 or
npbamail@gmail.com

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(President's Message continued)

With events moving quickly over the last month, I must commend a host of folks who continue to look out for a small, non-profit library so that it can continue to play an important role in our community: Dominion Tower, Harbor Group and CBRE have been extremely accommodating and helpful in this process; The City of Norfolk, including Martha McGann, Chip Beaman (both NPBA Past Presidents), and the Purchasing Department worked with amazing speed and dedication to make this move occur; and Clerk of Court, George Schaefer and Deputy Clerk, Tom Larson made sure we have a place to land. Mostly, however, each of us should thank our tremendous staff: Larry Story, Michelle Herbert, Bill Magee, and of course, our Executive Director, Donna Bausch. They pulled off the seemingly impossible, while maintaining bar activities, CLEs and law library services.

Seasons change in ways we are not always ready, but we will move forward and continue to grow.

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DOCKET DIGEST – RECENT NORFOLK CIRCUIT COURT OPINIONS

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

Brian K. Porter v. Jarri A. Woods and Accurate Marine Environmental, Inc., CL17-971 (August 31, 2017) (Judge Lannetti)

This action arose out of a street-crossing accident whereby Plaintiff claimed significant injuries. Plaintiff presented numerous claims in his Amended Complaint against the driver of the vehicle and his employer (collectively, "Defendants"). At issue in this Opinion is Defendants' demurrer to the claims of negligent supervision/monitoring, negligent training, and negligent investigation.

A common theme throughout the Opinion was the Plaintiff's failure to support the claims at issue with the necessary authority to establish their viability. In sustaining the demurrer as to the negligent supervision count, Judge Lannetti affirmed the Court's prior ruling in *Cleaves-McClellan v. Shah*, 93 Va. Cir. 459 (2016), which articulated that Virginia does not recognize the tort of negligent supervision. The Court then examined the claim for negligent training and noted that "the Court is not aware of any Virginia appellate cases that have addressed whether Virginia recognizes negligent training as a viable cause of action," yet "[n]umerous Virginia circuit courts have declined to recognize such a claim." Judge Lannetti went on to dismiss the negligent training count without prejudice, however, as the Court cited to *Garcia v. B & J Trucking, Inc.*, 80 Va. Cir. 633 (2007), which suggests that such a claim "might" exist as "the employer's duty to train the employee runs only so far as the employee can be deemed reasonably unable to understand the risk that is involved with employment." (quoting *Garcia*, 80 Va. Cir. at 634). The negligent investigation claim was also dismissed without prejudice as "[t]he Amended Complaint is devoid of any authority establishing that [the employer] had a duty to investigate or any facts alleging that [the employer's] alleged failure to investigate proximately caused [Plaintiff's] injuries," but the Court granted leave to amend should facts exist that would justify the claim.

Of particular importance to litigators, the Court highlighted a plaintiff's duty to "plead the existence of a legal duty, violation of a legal duty, and proximate causation which results in an injury" in order to establish actionable negligence. The Court's enforcement of this standard at the pleading stage sends a message to plaintiffs that bare bones allegations will not survive demurrer.

- - -

WELCOME NEW MEMBERS

Benjamin Bowers
Law Office of Benjamin D. Bowers

Brandon Bybee
Willcox & Savage, P.C.

Amy Chudzinski
Norfolk Public Defender's Office

Deborah Collins
Law Office of Ann Sullivan

Erin Vincent
Willcox & Savage, P.C.

James Weaver
Law Office of Daniel J. Miller

Benjamin Willis
Stackhouse, Nexsen & Turrietta

Cole Roberts
Regent University law student

PRO BONO CELEBRATION

On October 5, 2017, **Legal Aid Society of Eastern Virginia (LASEV)** held a Pro Bono Celebration & Recognition Program at the Norfolk Courthouse. LASEV honored individuals and firms participating in the Pro Bono & Private Attorney Involvement Program.

The Honorable S. Bernard Goodwyn delivered remarks on the importance of access to justice, and the significant role of pro bono attorneys in creating access to justice.

Special Award Presentations were made by the **Honorable Stephen C. St. John**, Chief Judge of the U.S. Bankruptcy Court, Norfolk Division; the **Honorable David W. Lannetti** of the Norfolk Circuit Court; and LASEV Attorneys **Phillip B. Boone** and **Tameeka M. Williams**.

Congratulations to the Special Award Recipients:

Law Firm of the Year - Large Practice
Vandeventer Black, LLP

Law Firm of the Year - Small Practice
Anderson & Associates, P.C.

Pro Bono In-house Attorney of the Year
Alfred Jonathan G. Acha, Esq.

Volunteer of the Year
Carmond D. Robbins



NPBA and Norfolk Law Library: New Temporary Location

NPBA and Norfolk Law Library will be moving to the Norfolk Courthouse, Phase Two, when it opens in 2018.

In the meantime, however, they have relocated to temporary space, pending the permanent move.

A limited collection of practice-oriented research resources is available in Dominion Tower, Suite 1212, pending permanent relocation to the Courthouse.

Researchers should contact Law Library via email or phone

(622-2910) with research requests before planning a visit, as most requests can be filled remotely and space for researchers is limited in the temporary location. We encourage you to email your research requests to:

Larry Story: lstory@norfolkawlibrary.org and/or
Donna Bausch: dbausch@norfolkawlibrary.org

Remember that Regent University Law Library is also open to the public, and available to assist you. They can be reached at 352-4450.

A United Approach Toward Juror Education

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

Kate Lennon, Law Clerk, Norfolk Circuit Court

A fundamental tenet of the American justice system is a defendant's right to a trial by jury prior to taking his or her life, liberty, or property. Although the public overwhelmingly recognizes the value of the jury system, many citizens nevertheless fail to respond to the call to serve. The high percentage of no-show jurors has a direct negative impact on the administration of justice, and an insufficient response can result in the postponement of trial with a host of concomitant problems. The adverse effects on the justice system—and on the lives of those interacting with it—make it increasingly important for lawyers to embrace this challenge and unite to educate the public regarding the vital role citizens play in our judicial system.

Public polls support that Americans overwhelmingly rate the jury system as the fairest method of determining guilt or innocence and that jurors are the key component. A foundational principle of the jury system is that a defendant has the right to a trial by his or her peers—fellow citizens within the local community. Juror participation therefore is vital. Simply stated, under our system of justice, the only way we can honor the *right* of an accused to a jury trial is to impose a *duty* on citizens to serve as jurors in that trial. Virginia law consequently requires citizens to serve on juries when summoned to do so.

The system of having citizens resolve disputes is not new, but rather dates back to the early Egyptian, Greek, and Roman governments. The English jury system, from which the modern American jury system originated, dates back to at least King Henry II and was instituted for criminal cases in Virginia even before the Virginia Colony was settled. Our founding fathers fought to preserve the right to trial by jury during the American Revolution after Great Britain had curtailed it. Most of the Declaration of Independence is actually a series of complaints against King George III, including that he had deprived the Colonists, in many cases, of their right to a jury trial. Our forefathers thought so highly of this right that it also appears in the United States Constitution, the Virginia Declaration of Rights, and the Virginia Constitution.

The proper administration of justice still relies on citizens reporting for jury duty. Over the past few months, Norfolk

Circuit Court has had to postpone trials on several occasions due to recalcitrant jurors. In some cases, over 200 citizens were summoned and fewer than twenty appeared. The most obvious impact of a postponed trial is that the victim and the accused do not get their scheduled day in court, and justice is delayed. The victim is denied both closure and any restitution until the new trial date. An innocent defendant not granted bail will remain incarcerated unfairly, and—arguably more problematic—a guilty defendant could be set free if his or her Constitutional speedy trial right cannot be satisfied.

Others also are affected. Attorneys, witnesses, the judge, and the court staff have all prepared for a trial that will not go forward that day. A courtroom reserved for the jury trial—and therefore unavailable for other matters—will go unused. Witnesses may have traveled from a great distance for no reason. All of this is incredibly inefficient and, more importantly, inconsistent with the proper administration of justice.

For jury trials that *do* go forward, a less obvious impact of absent jurors is that many important perspectives are eliminated from the jury pool. Each citizen has the ability to bring his or her own background, experiences, opinions, and values to a jury trial. In fact, differing perspectives are what make our jury system work successfully. So even with a sufficient number of jurors in the pool, the viewpoints of those who fail to appear are lost, which means that the system operates at less than its full potential and the administration of justice is hindered.

The issue of citizens shirking jury duty is not new. Judicial periodicals from the mid-1990s discussed efforts by courts to increase prospective juror responsiveness. They concluded that addressing the reason for juror noncompliance was more effective than simply increasing the number of citizens summoned. Although resorting to “tales” juries—juries composed of court bystanders or random citizens corralled by sheriffs to marshal a sufficient number of jurors—might help alleviate the problem temporarily, it does not address the root of the problem.

A 2013 National Center for State Courts study, titled *Targeting Noncompliant Jurors: Findings from a Comprehensive Enforcement Program*, identified two

principal reasons why summoned jurors fail to respond. The first is financial hardship: Virginia's \$30 per day for juror service does little to offset unearned wages from companies that do not pay employees during jury service. The second is media-based fears, including concerns about the length of trial, the stress associated with service, the potential for sequestration, and possible reprisals from dissatisfied parties. Many courts have responded to this second reason by providing resources to allay such fears; these include knowledgeable court clerks, and websites that outline jurors' expectations and provide common questions and answers.

The 2013 study concluded that educating the citizenry provides the best hope of addressing the problem of nonresponsive jurors. Citizens must understand that jury service is an important aspect of our democracy that depends on them accepting this civic obligation regardless of hardships; that the judicial branch is the only branch of government that allows direct citizen participation; that jury service provides an opportunity to interact with the judiciary and better understand the important function citizens play in administering justice; and that increased juror response results in a jury pool that is more reflective of the accused's peers.

Attorneys have a role in overcoming this predicament. The bench needs the assistance of the bar to educate the public regarding the importance of jury duty. Much like lawyer jokes, attorneys need to respond to voiced complaints about the “burdens” of jury service by challenging stereotypes and correcting misinformation. With the legal community united in encouraging citizens to fulfill their juror obligations, we can successfully address this decades-old problem. Your efforts ultimately can contribute to the proper administration of justice.

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.

POSITIONS AVAILABLE

Inman & Strickler, PLC is seeking an attorney with 3 years experience in the areas of commercial law, real property law and/or civil litigation. Please email your resume to kimp@inmanstrickler.com

Associate position available in a mid-size Virginia Beach, VA law firm overseeing a foreclosure / bankruptcy department. Must have excellent computer, communication and writing skills, as all client communication is through client on-line platforms. The associate will be responsible for responding to legal queries by both clients and department paralegals; overseeing paralegal performance to ensure work product accuracy and efficiency; liaising with mortgage servicing clients and responsible for review of title, notices and legal documents and filing responsive pleadings in civil actions associated with the foreclosure process. Admission to practice in the state of Virginia, state civil and bankruptcy courts required. 0-3 years experience with training provided. Submit resume to easummers@sykesbourdon.com

Seeking a collections attorney who can cover court dockets from southeastern Virginia to the Richmond area. Experience with landlord-tenant law is especially helpful but not necessary. Position can be either full or part time. Submit resume to easummers@sykesbourdon.com

NOVEMBER LUNCHEON

Thursday, November 16, 2017
Hits at The Park, Harbor Park
11:45 AM





Skip Stiles
Wetlands Watch


William A. (Skip) Stiles, Jr. is executive director of Wetlands Watch, a statewide nonprofit environmental group based in Norfolk. In this position, he has been involved in sea level rise adaptation work at the community level for nearly 10 years. Prior to his current position, Stiles was an independent consultant, providing editorial and public policy services to a number

of clients on issues related to science, the environment, and public policy. A partial list of his clients includes: the White House Office of Science Policy, the Rockefeller Foundation, the Pew Charitable Trusts, the Pew Center on Agricultural Biotechnology, RAND Corporation and the National Academy of Sciences.

Before that, Stiles served 22 years in a variety of senior Congressional staff positions – as chief of staff for Congressman George E. Brown, Jr. of California, House Agriculture subcommittee staff director, and Legislative Director for the House Science Committee.

He served on the Virginia Climate Change Commission and is a board member of the Virginia Conservation Network (a statewide coalition of more than 120 environmental groups). Together with his oceanographer wife, Dr. Margaret Mulholland, he teaches a graduate class in public policy at Old Dominion University. He lives in Norfolk, and is a graduate of the College of William and Mary.



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Millennials on the Move



CoVaBIZ Magazine recently announced its 2017 class of Millennials on the Move, which featured local attorneys Jenny Eaton and Jamilah LeCruise.

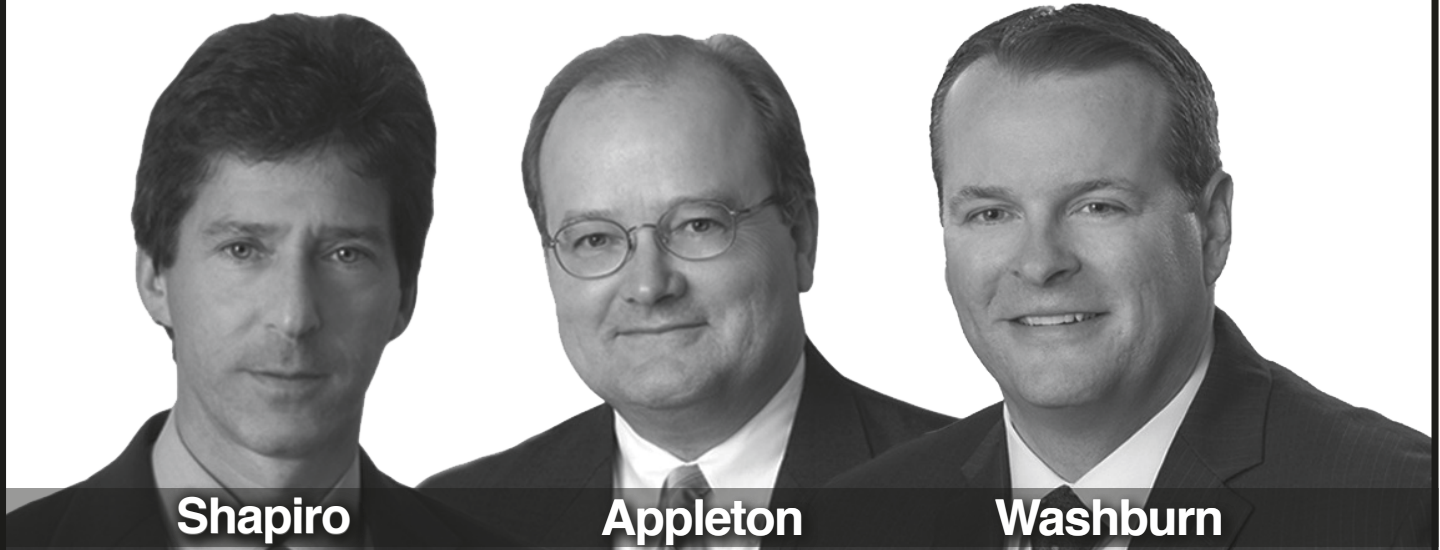
When Are Two Heads Better Than One? (Co-Counseling With Our Firm)

Amount	Year	Co-Counsel	Type Case	Court
1.5M Settled	2008	Chris Hill (FL)	Elec. Shock	E.D. VA USDC
*2.3M Verdict	2010	David Kopstein	Medical Mal.	Norfolk Cir. Court
*8.6M Verdict	2010	Sid Gilreath (TN)	Railroad	Knoxville, TN
1.5M Verdict	2011	Ben Saunders (LA)	Railroad	New Orleans USDC
1 M Settled	2014	Randall Phillips (NC)	Muni. Negl.	Asheville NC
2.5M Verdict	2015	Rob Sullivan (MO)	Prod. Defect	E.D. VA USDC

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YOUNG LAWYERS SECTION

By Andrea Ruege, Chair

After an eventful summer, YLS has been enjoying a busy fall. On October 22, we had the annual YLS Fall Reception at the home of **Judge John R. Doyle** and Courtney Doyle. Each year the Fall Reception is one of our most popular and well attended events and this year was no exception. Members of the bench and bar enjoyed a wonderful afternoon of fellowship in a relaxed social setting. Thank you to the Doyles for opening up their beautiful home for the event. I would also like to extend a special thank you to the sponsors of this year's Fall Reception: **Phillips & Peters, Cooper Hurley, The McCammon Group, TowneBank, Foley & Foley, Mahoney Nashatka Richmond, and Williams Mullen.** Your generosity and support is greatly appreciated. Finally, I would like to thank **Nick Raffaele** for all of his help in putting this event together.



I am also excited to announce the return of our Breakfast with the Bench program! **Judge Michelle Atkins** of the Norfolk Circuit Court will be joining us on November 15 at 7:30 am at the Brick House Diner. We are looking forward to hearing Judge Atkins speak and thank her for her time. All members of the NPBA are welcome to join us to hear Judge Atkins speak. I would like to extend special thanks to **Dan McNamara** and **Jennifer Fuschetti**

for coordinating this next installment of Breakfast with the Bench.

YLS has many other exciting events planned for the remainder of the fall and winter, including our annual holiday toy drive, additional Breakfasts with the Bench, and volunteer opportunities. So, please be on the lookout for announcements.


Finally, on behalf of YLS, I would like to congratulate everyone who passed the July bar exam! I look forward to working with you. As a recently barred attorney and member of the Norfolk & Portsmouth Bar Association, you are now eligible to join the Young Lawyers' Section, which is something I strongly encourage you to do.

If you are interested in joining YLS or have any questions about our organization, please feel free to email me at aruege@bertinilawfirm.com.




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

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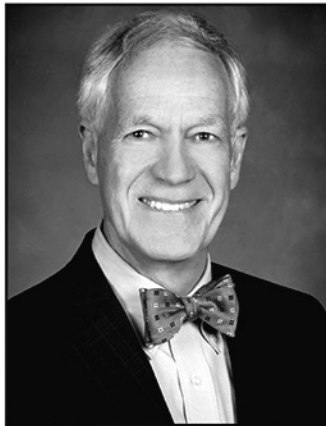
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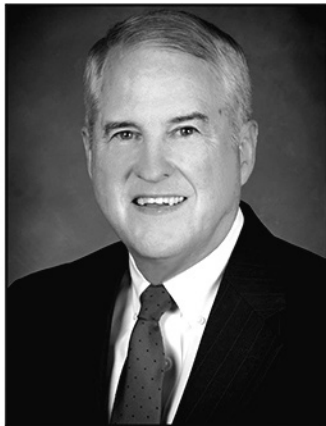
is pleased to welcome our newest Neutrals



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Retired Judge,
5th Judicial District of Virginia



Hon. James C. Hawks (Ret.)
Retired Judge,
3rd Judicial Circuit of Virginia



Hon. Burke F. McCahill (Ret.)
Retired Judge,
20th Judicial Circuit of Virginia



Hon. Winship C. Tower (Ret.)
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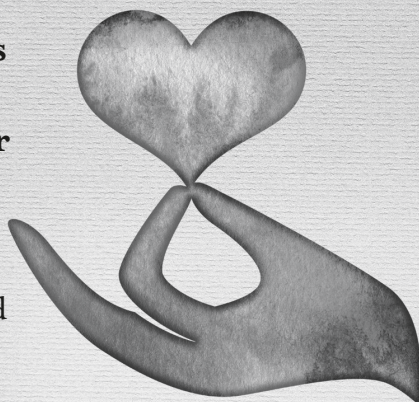
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