

NORFOLK & PORTSMOUTH BAR ASSOCIATION

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

PRESIDENT'S MESSAGE

Voluntary Bar Associations



Caryn R. West

In his October President's message in the Virginia Lawyer Magazine, Leonard C. Heath Jr. gave a "Shout Out to Virginia's Voluntary Bar Associations." His entire article deserves a read, but I like best his message, "Support [voluntary bar associations] with your time and talents. Do this because you will get more out of the associations that you put into them." I have found this to be especially true with my experiences in the Norfolk & Portsmouth Bar Association. As a new associate, I joined the Young Lawyer Section Executive Committee and forged lasting friendships with other young lawyers who often looked as overwhelmed by it all as I did. I spent a couple years planning the Young Lawyer Section Fall Reception and met judges. When I appeared before those judges in court, my heartbeat was a tiny bit less rapid as a result. I learned

some leadership skills when I became Chair of the Young Lawyer Section and got a seat on the Executive Committee for a year so I was prepared when I received the invitation to join the Executive Committee as a full time member.

Recently, I was asked by a young lawyer what committee I recommended she join, and I urged her to start with the Young Lawyers Section and begin building those relationships that will last throughout her practice.

After years as an active Young Lawyer Section member, I felt it was time to widen my focus. At Donna Bausch's suggestion, I joined the Bench Bar Committee. I learned how many hours of work and preparation go into a Bench Bar Conference, and I felt pride the day of the Conference knowing that I had a part in shaping that day. Eventually, I got a chance to chair the committee, and it was stressful, nerve racking but rewarding. When I joined the Executive Committee, I was fortunate to be assigned to the Bench Bar Committee as its liaison so I could continue involvement with the Conference. This will be the first year in a long time I won't serve some capacity on that committee, and I already miss it. I know, however, what great hands it is in and I look forward to this year's conference.

I have also spent time on the Programs Committee which is responsible for your lunch time key note speakers, the CLE Committee which tirelessly produces quality education for you each year, and the Pro Bono Committee which is searching for new and effective projects to narrow the Justice Gap in our area. I ask that if you have ever thought of being more involved, now is the time. Although our CLE season is winding down, planning for next year starts the first of the year.

(Continued on page 2)

UPCOMING EVENTS

NOVEMBER LUNCHEON

Thursday, November 15, 2018, 11:45 AM

Hits at the Park, Harbor Park

Leonard C. Heath Jr., President, Virginia State Bar

immediately following Luncheon

ETHICS OF DEBT COLLECTION

1 CLE (Ethics) Credit

See enclosed flyer for details

NPBA HOLIDAY PARTY

Wednesday, December 12, 2018, 5:30 PM

Hits at the Park, Harbor Park

JANUARY LUNCHEON

Thursday, January 17, 2019, 11:45 AM

Hits at the Park, Harbor Park

Kellye L. Walker, EVP Law

Huntington Ingalls Industries, Inc.

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(President's Message continued)

Our Bench Bar Committee is just getting started, and the Pro Bono Committee is growing and needs you. Contact me or Donna Bausch if you would like to join a committee and we will help you find the right committee for you. Don't have time for a committee? Attend our lunches, holiday party, events, mingle with your fellow attorneys, and exchange ideas and thoughts. And invite a colleague or a friend to join our association.

YOUNG LAWYERS SECTION

By Griffin M. O'Hanlon, Chair • gohanlon@cooperhurley.com • 455-0077

As of my writing of this article, we are less than one week from the 2018 Fall Reception hosted by the Young Lawyers Section. The Fall Reception is always a great opportunity for the members of our bar to enjoy each other's company on what I hope will be a pleasant (and rain free) fall afternoon. I want to express our sincerest thanks to Judge Mary Jane Hall and John Hall for opening their beautiful home to us. Additionally, the planning for this year's Fall Reception was immensely aided by the hard-work of YLS executive committee members Jamilah LeCruise and Kerry Whayland.

After the new year, the Young Lawyers Section plans to host an event promoting our mentorship program. For those who are unaware, our mentorship program pairs young/new lawyers with their more experienced colleagues in the interest of helping newly licensed attorneys, and current law students, develop an understanding of how to be a successful and healthy lawyer. Professionalism, civility and service are cornerstones of the mentorship program and I encourage all bar members to attend the upcoming event.

Now, for a bit of housekeeping. The Young Lawyers Section's listserv has recently been having some issues. I have learned that several of our members are not receiving our e-mail announcements. We are currently working to ensure that all those who meet the qualifications for the Young Lawyers Section are included on the email list with their correct contact information. In the coming weeks, if you still find yourself not receiving our e-mail updates, please let me know. I can be reached by e-mail at gohanlon@cooperhurley.com or telephone (757) 455-0077.

With the holiday season upon us and 2018 coming to a close, I extend my warmest wishes to all and hope that you and your families have a happy and healthy holidays.



Griff O'Hanlon

NPBA FOUNDATION

By Greg E. Summy, President, NPBA Foundation
greg.summy@nscorp.com • 533-4890

As we all are aware, Law Day is on May 1 each year. This year's theme is *Free Speech, Free Press, Free Society*. No doubt there have been articles that each of us have read that we believed were inappropriately unfavorable to a person or situation, or sometimes even unfair. Nevertheless, what would our western civilization be like without free speech and a free press? Could we have a free society without those two essential building blocks? The Law Day theme asks us to consider and explore the topic. Your Bar Foundation is ready to provide support for Law Day programs.

And while we're talking about support – it's the time of year to begin to think about finalizing your charitable donations. Please remember your Bar Foundation in this year's giving. Our annual high school scholarship competition generates interest from seniors from all across the region, and I think this year's essay topic will be particularly interesting. The Fitzwater second year law student competition provides tuition assistance for students interested in making an impact in public interest law. And remember, we are always interested in funding projects that educate the public about the legal system and the Rule of Law.

Please support your Bar Foundation. As our endowment grows, we can do more to further our mission and impact the community.



Greg Summy

NOVEMBER LUNCHEON

Thursday, November 15, 2018

Hits at The Park, Harbor Park

11:45 AM



Leonard C. Heath, Jr.

President

Virginia State Bar

Leonard C. Heath Jr. of Newport News is Virginia State Bar's President. He heads a state agency that regulates and supports 50,000 Virginia lawyers, and he is the first attorney from the Virginia Peninsula to serve in this capacity in over 50 years.

Heath was sworn in as the 80th presi-

dent of the Virginia State Bar in June 2018, during the VSB's Annual Meeting in Virginia Beach.

Heath is a partner at Heath, Overbey, Verser & Old PLC. He has served in numerous positions at the VSB since 1989. He currently serves on Bar Council, Executive Committee, MCLE Board, and Budget and Finance, Better Annual Meeting, Bench-Bar Relations, and Lawyer Insurance committees, as well as Professionalism Course faculty. He is the former president of the Newport News Bar Association and is a member of the Newport News Bar Association and the Williamsburg Bar Association. Since 2013, Heath has served as the chair of Christopher Newport University's Jazz for Justice program.

Heath received his B.B.A from the College of William and Mary, and his J.D. from the Marshall-Wythe School of Law at the College of William and Mary. Heath focuses his practice in the area of civil litigation, including personal injury, business disputes, real estate litigation, and will/trust/estate

litigation.

He is married to Kimberly C. Heath and they have three children.

WELCOME NEW MEMBERS

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Optimal Law Firm, PLC

Ramsey Alnaif
Optimal Law Firm, PLC

Tiffany Crawford
Morris, Crawford & Currin, PC

Jennifer Damelio
Jennifer E. Damelio, PLC

Fallon F. D'Ippolito
Commander Law

Scott A. Krystiniak
Wolcott Rivers Gates

Alexander R. McDaniel
Bennett & Sharp, PLLC

Jessica Samms
Mahoney Nashatka Richmond PLLC

Ilinka Robinson
Regent University law student



COOPER HURLEY INJURY LAWYERS

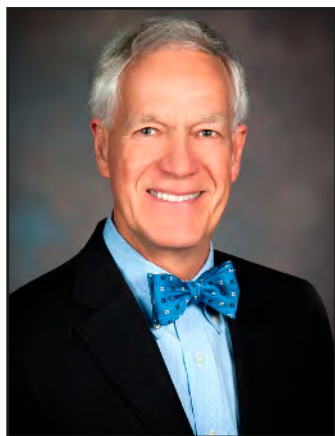
A photograph of three men in business suits standing in front of a sign that reads 'COOPER HURLEY INJURY LAWYERS'. The man on the left is balding with a mustache, the man in the middle has glasses and a mustache, and the man on the right has glasses and short brown hair.

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Eastern District of Virginia



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INTERVIEWS WITH THE BENCH: ADVICE AND INSIGHTS FROM LOCAL JUDGES

Presented By: Jennifer L. Eaton, Esq., with editorial assistance of Dustin M. Paul, Esq., Vandeventer Black LLP

Featured Judge: The Honorable Lyn M. Simmons, Judge Norfolk Juvenile and Domestic Relations District Court



Judge Simmons ascended to the Juvenile and Domestic Relations District Court bench in July of 2015. She received her undergraduate degree from Hampton University and her J.D. from North Carolina Central School of Law. Immediately before her appointment to the Court, Judge Simmons served as a Senior Assistant Commonwealth's Attorney for the City of Norfolk, Virginia. She returned to the Commonwealth Attorney's Office after having her own private practice for over a decade.

THE INTERVIEW:

Q: What motivates and inspires you about your role as a judge on the juvenile and domestic relations district court bench?

A: Like any court, there are a lot of both good and bad things that happen in juvenile and domestic relations court. For me, the good things—like foster parents adopting their foster children—are what I look forward to each day. And I welcome the opportunities I have on a daily basis to hopefully facilitate more good outcomes especially when those outcomes stem from bad situations.

Q: Why is public service so important to you?

A: Service is something that is part of who I am—it is in the fiber of my being. I knew from a young age that I wanted to do something that helped people. I have always been proud of my time as a prosecutor because of

the responsibility to work to keep the community safe and the rights of the accused protected. I think public service is something that we all should do.

Q: What do you believe is the most important quality a person can have to succeed in the practice of law?

A: Integrity—you have only your name. When someone says your name, you want them to say she is an honest, trustworthy, and hardworking lawyer.

Q: Do you have a pet peeve regarding attorney conduct in your courtroom?

A: Yes, attorneys that are late or missing from court and do not inform any of the court staff of their location. The best advice I can give to attorneys practicing in the Norfolk Juvenile and Domestic Relations Dis-

trict Court is to be on time and, if you need to go to another courtroom, let someone in the courtroom know your location.

Q: How would you describe the Norfolk Juvenile and Domestic Relations District Court to a new attorney that has never practiced there before?

A: It is a welcoming court. I know it can seem intimidating, but the judges are not out to embarrass and I would hope that new attorneys would feel welcome when they enter into our Court.

Q: How do you want to be remembered?

A: As someone rooted in family and as someone that did the best she could with the gifts she was given.

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 Juvenile and Domestic Relations District Court or the opinion of a judge in the context of any specific case.

Preparing, Briefing, and Arguing Your Case with a Judicial Opinion in Mind

By Judge David W. Lannetti and Jennifer L. Eaton, Esquire

Have you ever received a judicial opinion and thought, “The judge didn’t understand my position” or “Wow, the judge completely missed an issue”? If so, you probably blamed the judge. Maybe you were justified in your position, but it is also possible that there were shortcomings in your advocacy, including, quite possibly, a failure to appreciate the judge’s perspective.

Thomas Jefferson believed in life-long learning, and his mentality—that there is always more to learn—applies to the practice of law. Reviewing your trial practice may identify gaps that you can fill to be more prepared the next time you argue before the court. Although you can never guarantee a favorable result for your client, there are some things you can do to make it easier for the judge to rule in your favor.

Preparing: Understand Your Role in Educating the Court

Preparedness starts with understanding your audience. As the practice of law has become more specialized, it should come as no surprise that most judges—who are drawn from a pool of specialized attorneys—are not the generalists they once were. Consequently, with virtually unlimited subject matter jurisdiction, trial court judges frequently have to tackle legal issues with which they have little or no prior experience. Although legal research and judicial reflection certainly help overcome this deficiency, judges oftentimes must rely on the attorneys who appear before them to bridge precedential divides. Also, keep in mind that, like most attorneys, judges and their law clerks—in jurisdictions in which judges are fortunate enough to have law clerks—are busy people. They have limited time to review the contents of the file and read briefs before a hearing. You should appreciate the role you can play by offering your expertise and insight to the court.

It goes without saying that you need to understand the case—both the underlying facts and the applicable law—better than the judge. You should view your role as educating the judge and making it easy for her to rule in your favor. Taking the time early in the case to understand the factual background and legal terrain will benefit you throughout the life of the case.

You must thoroughly research the factual issues you will present to the court to fully appreciate their significance. Becoming an expert in the applicable case law will help you craft your brief, contribute to a compelling oral argument, and ultimately persuade the court. You should be familiar with the cases in favor of your position and, even more importantly, with those cases that undermine your position.

An example of a failure to properly educate the court occurred in *eBay v. MercExchange*, 547 U.S. 388 (2006). There, the U.S. Supreme Court proclaimed that “[a]ccording to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test.” The problem, according to remedies scholar Douglas Rendleman, was that “there was no ‘traditional’ four-point test.” As remedies expert Douglas Laycock pointed out, because eBay and many of its *amici curiae* focused on, among other issues, preliminary injunctive relief (which does have a four-part test), the Supreme Court established new—and arguably faulty—precedent presumably in strong reliance on the incomplete information provided. According to Laycock, “The case was litigated by an all-star cast of Supreme Court lawyers, but none of them consulted a remedies specialist.”

Briefing: Connect the Legal Dots to Build Your Case

At the trial court level, filing a brief is typically at the discretion of the attorneys because most courts rarely require them, especially prior to a hearing. Although briefing may not be mandatory, there are several reasons why a brief is valuable to the court and you therefore should seriously consider filing one. A brief provides a landscape for you to identify a problem and offer a solution. As a brief writer, you have the opportunity to tell a story; although the story must, of course, be founded on legal authority, the way the story is told is almost as important as the content itself. The ultimate compliment to a well-written brief is to have the judge incorporate parts of it into her judicial opinion.

As U.S. Supreme Court Justice Antonin Scalia and attorney Bryan A. Garner opine in *Making Your Case: The Art of Persuad-*

ing Judges, “The overarching objective of a brief is to make the court’s job easier. Every other consideration is subordinate.” With that in mind, provide the court a clear roadmap of your argument. You may think building suspense in your brief is a good idea, but it usually just frustrates the reader. Be upfront and forthright; unanswered questions are the enemy. Identify your position in the first page of your brief. Then, use each argument to persuade the reader why your position is the proper way to resolve the case and, if appropriate, to resolve future similar cases. Make sure that you recognize and distinguish counterarguments. By ignoring arguments raised by opposing counsel, you impliedly suggest to the judge that they have merit.

Clarity is key. Be concise and deliberate with your word choice. Do not feel that you need to approach the applicable page limit. Avoid using “big” words when simple words will do, but be precise. Legalese is often unnecessary and usually undesirable, but using terms with inherent legal significance is appropriate and sometimes essential to make your point.

Recognize that the case is not over until all appellate avenues are exhausted. Tailor your arguments such that they make it easy for the court to rule in your favor and, at the same time, establish a clear record for appeal in case the court rules against you. You need to be direct and clear when you present your arguments. Keep separate arguments separate, lest the court inadvertently conflate your points.

Take the time to review and edit your brief to make it more readable for the judge. Such editing invariably will lead to elimination of words. As Dr. Seuss noted, “[T]he writer who breeds more words than he needs, is making a chore for the reader who reads.” Trim the content so that all that remains is the meat of your argument. For example, the background section should include only those facts necessary to frame your position, and the number of legal arguments normally should be limited. Excessive information can be confusing, and it may distract the reader from your point.

Proofread your brief before submitting it to the court. You may find it useful to set the brief aside for a day or two and look at

(Continued on page 9)

it again with fresh eyes. Consider asking a colleague to read it and provide comments. Having someone who is completely unfamiliar with the case review your brief may elicit constructive feedback that you completely overlooked—feedback regarding whether the arguments in the brief flow logically and whether the court is likely to have any unanswered questions.

Don't underestimate the importance of your brief to a judge. Most judges review available briefs and then use the associated hearing to focus on questions they have as a result of reading them. For cases assigned to a particular judge, seriously consider sending a courtesy copy of your brief to the judge's chambers, in addition to filing it with the clerk of court. A courtesy copy serves as a friendly reminder to the judge about the upcoming hearing, notifies her that a brief has been filed, and provides her a nudge to read the brief in advance.

Arguing: Persuade the Judge to Rule in Your Favor

The first step to any successful hearing is arriving prepared. Bring extra copies of your brief and any cited cases so that you can offer them to the judge if necessary. Note, however, that it is usually not a good idea to rely on cases you did not cite in your brief. Many judges will view this as a shortcoming of your brief and as a form of sabotage on your opposing counsel and the judge's law clerk, as opposing counsel and the judge understandably may be ill-prepared to respond to such new cases. Once in a while, you will come across a particularly persuasive case after your brief is filed and prior to the hearing; when this occurs, provide a copy to opposing counsel and the court as soon as possible.

Once at the hearing, start by introducing yourself to the judge and identifying whom you represent. Note that judges in many jurisdictions are not assigned specific cases and therefore may not see briefs until the day before the associated hearing. Recognize this limitation and look for clues during the hearing to determine whether the judge is familiar with your brief. If you determine that the judge reviewed your brief, avoid parroting the brief's language when arguing. Oral argument is a time to fortify your position, not bore the judge with information she already has before her.

Use the hearing to ensure the judge understands your position and why you

are entitled to the relief sought. When you argue, be methodical. Recap your points, and provide clarification and additional explanation as needed. Spend most of your time on your strongest issues, and avoid, to the extent possible, arguing more than three points. Make sure you stay on track; don't waste valuable time during oral argument on tangential issues. The only thing worse than an unnecessarily long brief is an unnecessarily long oral argument.

If a judge asks you a question, answer it. Judges don't take time during a hearing to ask a question unless they are seeking clarification on a specific issue. By using evasive measures and not responding to the judge or arguing that "those are not the facts present here," you lose an opportunity to bolster your position by addressing her concern. The judge may be concerned about the effect of a ruling beyond the case at bar and therefore purposefully is probing beyond the facts of the present case. The reality is that you should welcome questions. As Justice Scalia and Bryan Garner point out, "Only when you are responding to a question from the bench can you be sure that you are not wasting your time—pounding home a point on which the court is already entirely convinced or clarifying an issue on which the court is in no confusion." If it becomes clear—as a result of questioning or other clues during the hearing—that the judge does not intend to rule from the bench, and if you believe that it would be helpful to answer unanticipated questions that arose during the hearing, offer to submit a post-hearing brief.

When ruling, trial court judges have a great deal of discretion, which they apply to the facts and law as they understand them. Your job, to the extent possible, is to convince the judge that your version of the material facts and substantive law deserves the benefit of her discretion. In doing so, try to determine in advance how your particular judge thinks. Talk to other attorneys who have appeared before her and, if available, read the judge's prior opinions to gain an appreciation for how she approaches legal issues. Although some judges look to limit their holdings to the particular facts, others focus on precedent and the concomitant future societal ramifications. The insights you glean about the judge may reveal what she found persuasive in the past and help you tailor your arguments.

It is always difficult to anticipate how a

judge will rule, but approaching all aspects of the case with the judge's perspective in mind will help ensure that the judge understands your position. Such a clear understanding should increase the likelihood that if there is a resultant judicial opinion, it will be favorable to you and your client.

This Article was previously published in March/April 2016 edition of The Benchers, the magazine of the American Inns of Court. The views advanced in this Article are those of the authors alone and should not be mistaken for the official views of the Norfolk Circuit Court or Vandeventer Black LLP.

ANNOUNCEMENTS

Carlton Bennett and Kevin Sharp of Bennett and Sharp, P.L.L.C. are pleased to announce the association of **Alexander R. McDaniel** as of September 10, 2018. Alex will concentrate his practice in serious personal injury, complex litigation, nursing home malpractice and general medical malpractice. Alex is a 2017 graduate of the University of Richmond School of Law and is a member of the Virginia Trial Lawyers Association. Prior to joining the firm, Alex clerked at the Norfolk Circuit Court.

CommanderLaw, Attorneys & Mediators is pleased to announce that **Fallon D'Ippolito** has joined the firm as an associate. Her area of concentration is family law.

Willcox Savage partner **Gary A. Bryant** has been named 2019 *Best Lawyers in America*, Environmental Litigation "Lawyer of the Year" in Norfolk. Gary is the head of the firm's litigation practice. He focuses on complex litigation matters, with an emphasis on commercial, environmental, and appellate work.

Willcox Savage partner **William M. Furr** has been named 2019 *Best Lawyers in America*, Employment Law "Lawyer of the Year" in Norfolk. Billy chairs the firm's Labor and Employment Law group. He represents management in all aspects of the employer-employee relationship, including wage and hour litigation, equal employment opportunity, wrongful discharge litigation, enforcement of non-competition agreements, FMLA compliance and ADA litigation.

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