





VIRGINIA STATE BAR

60th

ANNUAL
REPORT

for the period July 1, 1997 - June 30, 1998

VIRGINIA STATE BAR

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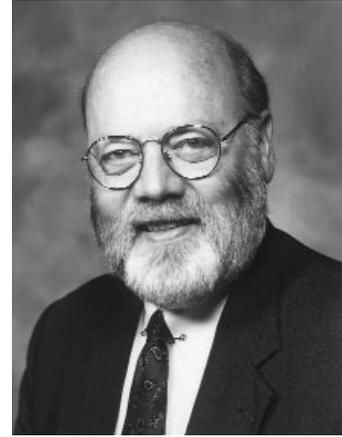
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REPORT OF THE PRESIDENT

The 1997-98 Bar year was an interesting and enjoyable one for me. We were blessed with a quiet year on the legislative front and had the opportunity to concentrate on the needs of our membership and organization. Some of the highlights were as follows:

1. **Disciplinary Matters.** The Report of Bar Counsel will provide a detailed analysis of caseloads and the flow of work through the department. The hard work and constant vigilance of the people who work in this department has enabled us to maintain control of an extremely busy docket. The efforts of our new Bar Counsel, Barbara Williams, to streamline procedures and evaluate needs have crystallized not only the good work that is being done, but the need as well to provide more personnel and resources to move the bar toward a quicker turnover of the docket.
2. **Unauthorized Practice of Law.** This year saw the successful implementation of procedures for the administration of CRESPA. A high level of compliance with registration requirements was achieved and the VSB worked well with interested government and private institutions to achieve a coordinated monitoring program. The coming year, however, will likely face renewed efforts to broaden the practice of lay settlement agents, creating a potential for further eroding the practice of law in this area. This carries with it an increasing danger that real estate law will be placed more and more in the hands of persons who both lack professional training to handle the many legal issues involved and are not subject to any effective monitoring, binding ethical code, or discipline for improper or incompetent behavior. If the trend toward lessening controls over the handling of real estate matters is allowed to continue, the inevitable result will be that people will be hurt by ineffective assistance and advice on these matters and litigation in the area will increase. I fear that there is a real danger of false economy in this trend.



EDWARD B. LOWRY

We are beginning to see the same dynamic emerging in other areas as well. Already there is a national debate over the new practice by some accounting firms of developing law practices within their firms, thereby claiming to offer broader commercial expertise under one roof. Not the least of the issues this raises is that of the potentially differing ethical boundaries and differing business standards which may occur when the practice of law is merged with other disciplines. The VSB is already taking steps to open a dialogue with the accounting profession on these issues. It does not take too much imagination to envision similar forays into the legal landscape in the areas of lay personal injury settlements; wills, trusts and estates drafting and administration; debt collections; and a broad range of commercial transactions. The VSB's concern here is not one of acting as a trade association, but one of acting upon the need to preserve the professional nature of the delivery of legal services. Without the protections provided by a learned, regulated and disciplined profession, the public will find itself more and more victimized by a process that values economic expediency first, is unchecked by strong ethical obligations, and overlooks the need to provide counseling and advice that is undiluted by the simultaneous representation of multiple interests. Working on these problems needs to be a continuing priority effort of the bar.

3. **Professionalism.** This bar year was one in which the ideals of professionalism took center stage. All across the Commonwealth, the VSB, in cooperation with all of the statewide voluntary bar organizations and local bar associations, featured emphases on the higher demands of professionalism. It is everywhere apparent that our profession recognizes the need for renewed emphasis on ethical behavior, civility, integrity, collegiality and dedication to the best interests of the client. Our mandatory professionalism course passed its tenth year and has now counted more than half the practicing bar as graduates of the course. In addition, more than two hundred judges and practitioners have served as faculty members. The course has served as a template for numerous other states that have initiated similar courses. This year a combined project of the Section on Education of Lawyers and the Professionalism Committee has begun a professionalism initiative in the law schools of the state. A pilot program was developed

this year, and it is hoped that these programs will soon be a permanent part of the orientation programs in each of the law schools. The intent is to engage people in the ideals of professionalism from the beginning of their aspirations to practice law.

4. **Model Rules of Professional Conduct.** This year also saw the completion of the bar's massive project to study, develop and adopt our version of the ABA Model Rules of Professional Conduct. Under the able and tireless efforts of our special committee, the new rules were formed, published to the members of the bar and bench for comment, and debated, modified and adopted by Bar Council. They have been sent to the Supreme Court for approval and will hopefully be ready for implementation by January 1, 2000. The interim period will allow for widespread seminars on the new rules for all who desire to attend.
5. **Bar Leadership Events.** Our twice yearly Bar Leadership Institutes were held again this year with a greater level of participation than ever. These institutes provide an invaluable opportunity both for effective leadership training and the development of cooperative efforts among bar leaders to enhance the delivery of services to the bar and the public. In addition, we held a special leadership training session in August of 1997, led by Dadie Perlov, an expert in leadership training and development, in order to learn more effective techniques for leading volunteer organizations.
6. **Computerization.** We began the highly necessary but expensive and arduous project of updating the bar's computer network and software systems. Laboring under an outdated system that did not include e-mail or effective networking, the bar staff has had to operate under a significant hardship for some time now. The new system will be PC based, networked and adaptable. It will allow for the integration of various systems to eliminate much of the need for duplication of efforts in different departments within the bar, and should assist significantly in the efforts of the Disciplinary Department to handle its caseload. The last of the new PCs were installed during this bar year, and the effort to re-write and integrate all the bar's software is now underway.
7. **Financial Matters.** Through the hard work and able leadership of the Budget and Finance Committee, the bar has been able to complete another year toward the effort to hold the line on bar dues until the year 2000. This is the latest continuation of the effort begun in 1995 to roll back bar dues (an unprecedented move) and to hold them at that level for four years. The object was to spend down the bar's reserve to less than 15% of budgeted expenses. We are now nearing that level and the bar will need to look toward an increase in bar dues soon. The eventful increase was, of course, anticipated when revenues were cut below actual expenses in order to spend down the reserve. The result has been that the VSB has remained one of the least expensive and most efficiently run mandatory bars in the country.

I want to thank the membership of the Virginia State Bar for giving me the privilege of serving in this capacity. It is a rare opportunity to try to give something back to a profession that has cared well for me and my family for many years. The VSB is fortunate to have a splendid staff, second to none, and a highly effective and dedicated volunteer leadership. I will always cherish the friendships and memories that have come my way through this process.

REPORT OF THE EXECUTIVE DIRECTOR/ CHIEF OPERATING OFFICER

The membership of the Virginia State Bar continued to grow in the fiscal year ended June 30, 1998. Total "in good standing" membership increased to 31,397, or an increase of 918, or 3 per cent over the previous fiscal year. Comparative figures for 1996-97 and 1997-98 are shown below:

	1997-98	1996-97
Active	21,725	21,235
Associate	7,601	7,237
Judicial	860	845
Retired	1,211	1,162
TOTAL	31,397	30,479

ELECTION OF OFFICERS AND COUNCIL MEMBERS

John A. C. Keith of Fairfax became president of the Virginia State Bar at its Annual Meeting on June 20, 1998, and was sworn in by Chief Justice Carrico of the Virginia Supreme Court. W. Scott Street, III of Richmond became president-elect for the 1998-99 bar year in an uncontested election.

Edward B. Lowry of Charlottesville completed his year as president, having carried out the duties of his office with his usual grace and humor. He particularly enjoyed every opportunity to enhance and promote professionalism, whether in his writing, speaking, or through initiatives such as the joint effort of the Section on Education of Lawyers and the Professionalism Committee to introduce professionalism presentations by practitioners and judges in each Virginia law school annually. An exceptionally good local bar leadership training program and executive committee retreat started the year on a positive course. The theme continued with a cooperative, beneficial relationship with the General Assembly and the Supreme Court of Virginia, and culminated in a renewed sense of accountability to the membership of the state bar for the highest and best use of the bar's resources.

One new member, Michael A. Glasser of Norfolk, was elected to the 1997-98 Executive Committee, replacing Thomas G. Slater, Jr. of Richmond. Joseph A. Condo, William D. Cremins, Jane S. Glenn, James A. Roy, and Larry B. Slipow were reelected to one-year terms.

The following new members were elected to the VSB Council for three-year terms beginning July 1, 1998:

E. Grier Ferguson	.5th Judicial Circuit
Homer C. Eliades	.6th Judicial Circuit
John E. Holleran	.13th Judicial Circuit
James W. Korman	.17th Judicial Circuit
Kevin R. Appel	.17th Judicial Circuit
Robert Hurt	.22nd Judicial Circuit
John T. Cook	.24th Judicial Circuit
Craig D. Johnston	.31st Judicial Circuit

The following incumbents were reelected to Council for three-year terms:

John D. Hooker, Jr.	.2nd Judicial Circuit
Michael J. Blachman	.3rd Judicial Circuit
Charles M. Lollar	.4th Judicial Circuit
Joseph W. Richmond, Jr.	.16th Judicial Circuit
Joseph A. Condo	.19th Judicial Circuit
Arthur L. Moshos	.19th Judicial Circuit
Robert deT. Lawrence, IV	.20th Judicial Circuit
D. Stan Barnhill	.23rd Judicial Circuit
Warren S. Neily, Jr.	.27th Judicial Circuit
Gerald L. Gray	.29th Judicial Circuit

Jon C. Poulson of Accomac and Gail Starling Marshall of Rapidan were appointed by the Supreme Court of Virginia to three-year terms as Council Members at Large, replacing Edward A. Ames, III of Onancock and Sharon E. Pandak of Prince William.

J. Steven Grist of Lexington became president of the Conference of Local Bar Associations and Julie D. McLellan of Midlothian became president of the Young Lawyers Conference. They will both serve as ex officio members of Council in that capacity, and Ms. McLellan will also serve as an ex officio member of the Executive Committee in 1998-99.

BAR OPERATIONS AND STAFF

Southern Conference of Bar Presidents Annual Meeting

In September 1997, the Virginia State Bar and The Virginia Bar Association co-hosted the 29th Annual Meeting of the Southern Conference of Bar Presidents in Williamsburg. Approximately 128 past, current and future bar presidents and executive directors from seventeen southern states, together with their spouses or guests, as well as a number of guests from the ABA and various sponsoring entities, participated in the event. In addition to a myriad of social activities and special events in the Colonial area, the program featured a panel discussion on "Teaching and Learning Professionalism," as well as a visit to the National Center for State Courts; a demonstration of "Courtroom 21" at the College of William and Mary's School of Law; a re-enactment of a colonial trial at the Courthouse of 1770; and a conversation with Mr. Jefferson at the Colonial Capitol. Together with a planning committee of current and former bar presidents from each organization, the state bar and VBA staffs worked closely together for over a year to develop, plan and execute all the arrangements for the meeting. By all accounts, the meeting proved to be a highly successful event.

Renewal of Virginia State Bar Lease

Negotiations leading to renewal of the bar's lease in its present space on very favorable terms were concluded in late 1997. The new lease is for a period of ten years, effective March 1, 1998, and provides the bar with a stable, long-term arrangement in quarters that are well located and meet the bar's needs in a very fine way.

Work with Standing Committee on Budget and Finance

The senior staff began working with the Budget and Finance Committee in October to review the bar's long-range financial projections and begin formulating the bar's biennial appropriation request and the 1998/99 operating budget. In the process of developing the 1998/2000 Biennium Budget request for the General Assembly, it appeared that we would not be able to make it to July 1, 2000 without a dues increase. Several factors contributed to the potential shortfall, including a request by the Attorney General's Office for the bar to pay for legal representation, the Law Office Management Assistance Program scheduled to begin January 1, 1998, and increases in rates charged by the state for retirement contributions and life insurance premiums. The senior staff worked with the Budget and Finance Committee to propose ways to cut expenses in order to make it to July 1, 2000 before a dues increase became necessary. In addition to cutting expenses and delaying LOMAP, we have negotiated a lower fee schedule with the Attorney General's Office and have realized some unexpected savings through personnel changes. We will continue to review and refine the long-range estimates and conserve the bar's resources to insure that a dues increase will not be necessary before July 1, 2000.

Consumer Real Estate Settlement Protection Act

Following enactment of the Virginia Consumer Real Estate Settlement Protection Act in March 1997, the staff worked with representatives from the State Corporation Commission and the Real Estate Board to develop regulations necessary to carry out the mandate of the legislation. By July 1, we had installed computer hardware and software to handle the registration process; established a registration fee schedule based on the projected estimates of the SCC, the Real Estate Board and the state bar's Real Property Section as to the anticipated number of settlement agents likely to register with the state bar; and developed the necessary registration and financial responsibility forms. As of June 30, 1998, there were a total of 3,313 registered settlement agents: 2,890 licensed attorneys; 314 title insurance agents (corporate); 68 title insurance agents (individual); 26 licensed real estate brokers; 12 title insurance companies; and 3 financial institutions. Last fall, we recognized that the number of CRESPA registrations was about half of what was originally anticipated and this, in turn, would cause a shortfall in the revenue collected for FY 1998. This past winter we worked with an ad hoc committee, including members of the Real Property Section and the UPL Committee, to fine tune the regulations and to assess the financial impact of the smaller pool of registered settlement agents. We recommended

implementation of an increased two-year registration and re-registration fee to cover our anticipated operating expenses based on the current database of registered settlement agents. We have established a biennial re-registration timetable to begin July 1, 1998, and the computer system has been refined to accommodate the re-registration initiative.

Virginia Model Rules of Professional Conduct

A number of members of the staff were active in assisting the Special Committee on the Virginia Model Rules of Professional Conduct in bringing that project to a successful conclusion during the past year. The committee has been at work over the past several years in developing, refining, and securing Council approval of various components of the model rules, which are planned as a replacement for the current Code of Professional Responsibility. The VSB Council approved the final few rules at its June 1998 meeting, and a petition will be submitted early in the 1998-99 bar year seeking approval of the Virginia Model Rules by the Supreme Court of Virginia. Assuming the Court's approval, implementation of the new model rules is planned for January 1, 2000.

Upgrade of Computer Resources

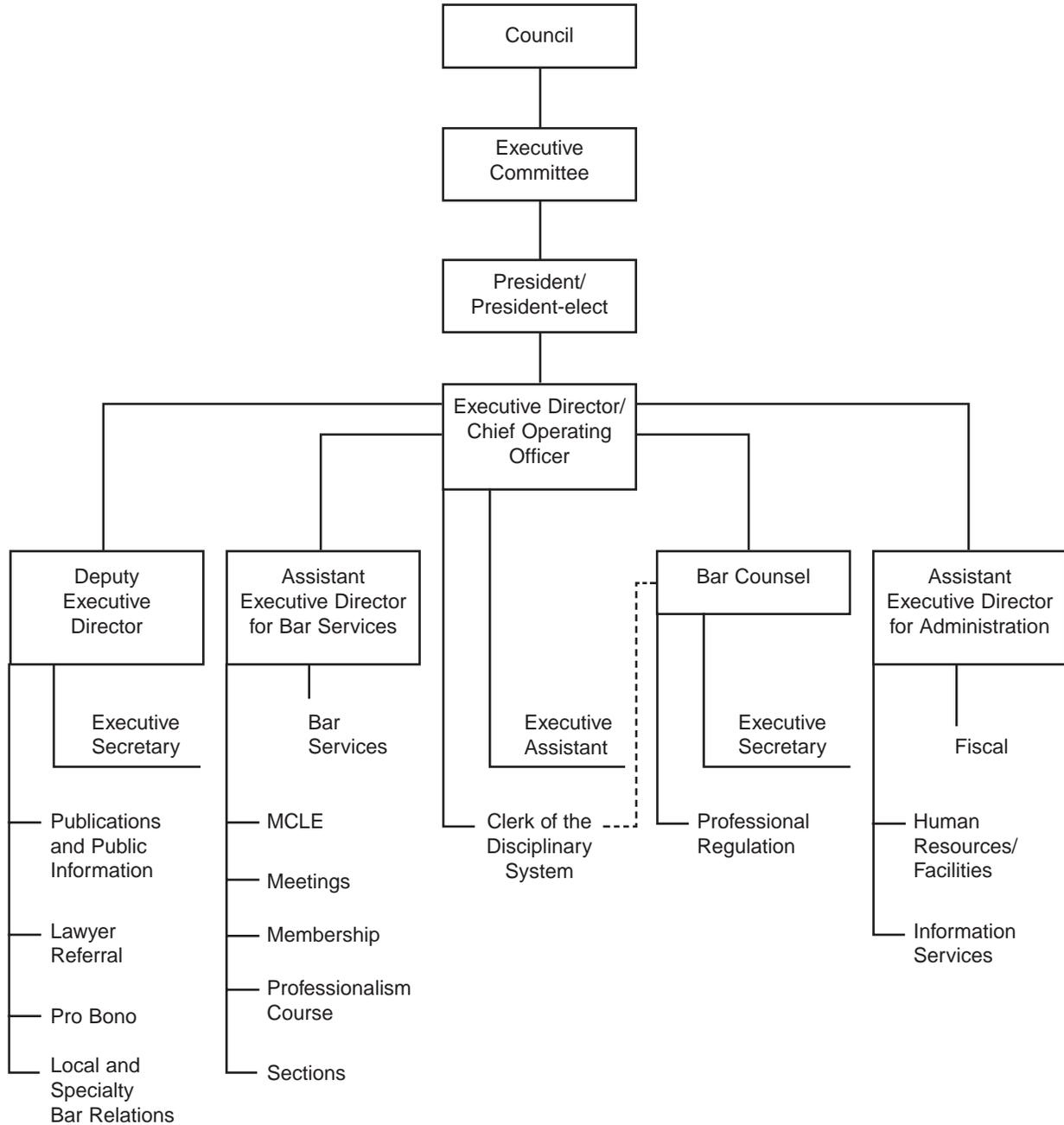
The bar's plans for replacing its Digital VAX computer with a network of personal computers was accelerated during the past bar year, and as of March 1998, all members of the staff were equipped with new PCs. The next phase of the upgrade will involve developing system and functional requirements and completing the programming of new software to replace the programs that now run on the VAX. This work will be completed during the 1998-99 bar year or early in the following year.

Staff Changes

We have hired a new Bar Counsel, Barbara Williams, to join the ranks of our senior staff. She started work at the beginning of January, and she is off to a very strong start and has established a good working relationship with both the rest of the staff and the Standing Committee on Lawyer Discipline. Victoria Lewkow, head of our Publications and Public Information Department, resigned at the end of the bar year and will be replaced in August 1998 by Rodney Coggin. All of the bar's other senior managers and department heads remain in place and continue to do an outstanding job for the organization.

We developed and implemented a new performance management system during the past year that focuses on accomplishments and honest feedback. The entire staff received training in the system, and managers received specialized training in conducting evaluations of their staff and giving and receiving feedback. The senior staff participated in additional performance management training and team-building with a consultant whose services had been utilized in developing the new system. The new system did an excellent job in enabling our performance management committee to identify and recognize staff members whose performance was truly exceptional, while at the same time documenting and communicating with those employees who were in need of some improvement.

ORGANIZATIONAL CHART



REPORT OF THE TREASURER

VIRGINIA STATE BAR
CASH WITH THE TREASURER OF VIRGINIA AS OF JUNE 30, 1998

Cash with the Treasurer of Virginia as of July 1, 1997: **\$ 1,855,030**

Revenue:

Membership Dues	\$ 4,337,199	
Professional Corporations	61,700	
Section Dues	275,750	
Virginia Lawyer and Virginia Lawyer Register	72,167	
Pamphlets	14,706	
Virginia Lawyer Referral Service	198,421	
Mandatory Continuing Legal Education	101,745	
Professionalism Course	131,480	
Cost Taxing	25,155	
Seminars and Miscellaneous	121,752	
CRESPA Registration	96,325	
Administration and Finance	124,827	
Grants	25,680	
Total Revenue		5,586,906

Operating Expenditures:

Salaries and Wages	2,779,885	
Fringe Benefits	830,435	
Receivers	37,230	
Office Rent	271,666	
Furniture and Equipment	35,714	
Repairs and Maintenance	22,204	
Supplies, Stationery and Forms	82,179	
Printing and Copying	272,557	
Postage	171,386	
Telephone	104,458	
Staff Travel	72,317	
Computer	270,102	
Council, Committees and Board	240,518	
Professionalism Course	85,015	
Sections	194,207	
Young Lawyers Conference	81,761	
Other Operating Expenditures	136,904	
Total Operating Expenditures		5,688,538

Other Disbursements and Transfers:

Lawyers Helping Lawyers	50,000	
Clients' Protection Fund	200,000	
Administration and Finance	125,368	
Grants	27,235	
Transfers per Legislature	3,878	
Total Other Disbursements and Transfers		406,481

Cash with the Treasurer of Virginia as of June 30, 1998: **\$ 1,346,917**

REPORT OF THE PROFESSIONAL REGULATION DEPARTMENT

Barbara A. Williams, Bar Counsel

The Professional Regulation Department includes Legal Ethics, Lawyer Advertising and Solicitation, and the Unauthorized Practice of Law; and Attorney Discipline — Intake, Investigation and Trial. Because the work of the Clerk of the Disciplinary System is closely related to work of the Professional Regulation Department, the Clerk's Office is included in this report. In fiscal year 1998, 28 members of the Professional Regulation Department and six members of the Clerk's Office supported 161 lawyers and forty lay volunteers who interpreted the duties of Virginia lawyers under the Code of Professional Responsibility, disciplined attorneys who broke the rules, and referred cases allegedly involving the unauthorized practice of law for civil or criminal prosecution.

The most notable achievement in the professional regulation area during the last fiscal year was the Virginia State Bar Council's approval of the proposed Virginia Rules of Professional Conduct at the bar's annual meeting in June 1998. The existing Virginia Code of Professional Responsibility was adopted in 1983 and has been amended only in minor respects since then. In 1993, a Special Committee to Study the Virginia Code of Professional Responsibility was appointed to undertake a comprehensive review of the rules. The proposed Virginia Rules of Professional Responsibility are the product of the Special Committee's dedicated research and deliberations, valuable input from many interested members of the bar and others, and spirited Council debate. All who participated in the five-year laborious process that produced the proposed rules are to be commended for their efforts. The target date for implementing the proposed rules, should the Virginia Supreme Court adopt them, is January 1, 2000.

While final adjustments were being made to the proposed rules, the routine work of the Professional Regulation Department continued at a hectic pace. For example, the Legal Ethics staff dealt with a record number of legal ethics telephone inquiries — 3,143. Intake counsel dismissed 1,982 complaints that did not properly fall within the purview of the disciplinary process, including 402 minor disputes that Intake persuaded complainants and would-be respondents to settle outside the disciplinary process. Despite these diligent attempts to prevent or resolve situations giving rise to bar complaints, and despite a two percent drop in the total number of complaints received, the bar opened 66 more formal complaint files in fiscal year 1998 than in fiscal year 1997. The increased number of open complaint files, coupled with the carry-over of 995 complaint files from fiscal year 1997, strained the capacity of the investigative and trial staff. As a result, every effort was made to allocate available resources in a fair and efficient manner.

LEGAL ETHICS, ADVERTISING AND THE UNAUTHORIZED PRACTICE OF LAW

In fiscal year 1998, the Legal Ethics staff consisted of Ethics Counsel, two part-time Assistant Ethics Counsel and one research assistant. Leslie Haley joined the Legal Ethics staff on a part-time basis in April 1998, replacing Frost Telegadas, who also worked part-time. Ms. Haley, a former marketing and sales coordinator at Philip Morris, attended law school at West Virginia University, where she graduated in 1993. She practiced with a small firm in Richmond before coming to the bar. Ms. Haley is an extremely capable and friendly addition to the Legal Ethics staff.

Legal Ethics

Ethics Counsel and his staff serve as counsel for the Standing Committee on Legal Ethics. In addition to the Ethics Committee work, the attorneys on the Legal Ethics staff respond on a daily basis to telephone calls from attorneys seeking legal ethics advice, provide research support for bar counsel, assist with preparation of Virginia State Bar publications dealing with professional responsibility issues and develop course materials for the bar's mandatory professionalism course.

The ethics telephone line consumed most of the two part-time Assistant Ethics Counsels' time and much of Ethics Counsel's time during the last fiscal year. Legal Ethics logged 3,143 telephone inquiries, an average of more than twenty calls per work day. It is anticipated that the volume of telephone calls will further increase if and when the Virginia Supreme Court approves the proposed Virginia Rules of Professional Conduct.

Legal Ethics Opinions (“LEOs”) interpret and apply the disciplinary rules in the context of hypothetical situations. During fiscal year 1998, the Legal Ethics Committee received 17 requests for LEOs, not including 35 requests for written advisory opinions that were resolved by letters to the inquiring parties directing them to dispositive LEOs. With the aid of the Legal Ethics staff, the committee issued eight formal opinions, ranging from the propriety of an engagement agreement providing for mandatory arbitration of legal malpractice claims (LEO 1707), to the question of whether a former planning commission member should represent clients before the commission (LEO 1698), to the issue of whether counsel’s duty of zealous representation requires him to read and use information that opposing counsel erroneously faxed to him (LEO 1702).

Advertising

Ethics Counsel and his staff serve as counsel to the Standing Committee on Lawyer Advertising and Solicitation. Last fiscal year the committee undertook a review of Virginia lawyer advertising in the Yellow Pages. The committee also reviewed 51 videotapes, 12 audio tapes and five Internet sites. As a result of these reviews, approximately 20 noncompliance letters were sent to members of the Virginia bar. No cases were referred to Attorney Discipline.

The Advertising Committee also issued two Lawyer Advertising Opinions. Opinion A-0106 concludes that because the results obtained in specific cases depend on a variety of factors, any advertisement of the results obtained in a specific case or cases that does not include all factors is inherently misleading. Opinion A-0110 holds that because a lawyer’s communications over the Internet are “disseminated to the public by use of electronic media” for which the lawyer has given value, they are subject to the requirements of DR 2-101(B).

Unauthorized Practice of Law

Ethics Counsel and his staff serve as counsel to the Standing Committee on the Unauthorized Practice of Law. This service includes responding to inquiries from attorneys, real estate brokers and title agents about real estate transactions regulated under CRESPA.

Although the number of requests for formal unauthorized practice of law (“UPL”) opinions dwindled from 22 in fiscal year 1989 to one in fiscal year 1998, the bar received an above-average number of UPL complaints. Over the last decade, an average of 68 UPL complaints have been docketed each year, but the bar received 108 UPL complaints in fiscal year 1996, 97 in 1997, and 83 in 1998. Moreover, UPL complaints are increasingly challenging and complex, ranging from immigration services provided by non-lawyers to accounting firms allegedly giving legal advice.

Ethics Counsel and his assistant oversee UPL investigations, which are conducted by bar investigators. In fiscal year 1998, bar investigations initiated at the UPL Committee’s request resulted in 16 UPL matters being referred to the Attorney General for prosecution. Another UPL matter was referred to a Commonwealth Attorney.

In fiscal year 1998, the UPL Committee issued one revised opinion. UPL Opinion 191, originally issued on October 28, 1996, was revised and reissued on January 8, 1998, to clarify that a non-lawyer employee working under a Virginia attorney’s direct supervision may participate in gathering information from a client during an initial interview but cannot offer any legal advice. Such an employee can also answer factual questions regarding a proposed fee agreement and play a limited role in explaining a proposed settlement, but a paralegal should not evaluate a settlement offer or counsel a client on whether to accept a settlement offer.

The committee also proposed amendments to one rule and a set of regulations related to the unauthorized practice of law in fiscal year 1998, all of which were approved. The Virginia Supreme Court amended Part Six, Section I(C) of the Rules of Court to exempt foreign attorneys who provide legal advice or services in Virginia to clients on an occasional basis from the term “non-lawyer,” as used in the rule, if the client is informed that the attorney is not admitted in Virginia. The rules governing foreign attorneys admitted to practice in Virginia courts, including the association of counsel admitted to practice in Virginia, were not changed and still apply. And in February 1998, Council unanimously approved minor revisions to the CRESPA regulations. Among other things the amendments set the individual two-year re-registration fee at \$35, and the corporate re-registration fee at \$100.

ATTORNEY DISCIPLINE: INTAKE, INVESTIGATION AND TRIAL

As of June 30, 1998, there were 21,725 members of the Virginia State Bar, who were active and in good standing. In 1997-98, the bar received approximately one complaint for every seven attorneys admitted to practice law in Virginia. Bar complaints are referred to Attorney Discipline, which in fiscal year 1998 was staffed by Bar Counsel, Deputy Bar Counsel, Senior Assistant Bar Counsel, five Assistant Bar Counsel, Intake Counsel, Assistant Intake Counsel, two assistants, four secretaries and eight investigators. Senior Assistant Bar Counsel, one Assistant Bar Counsel, an assistant and secretary work in the bar's Alexandria office. The Standing Committee on Lawyer Discipline oversees the discipline staff's work.

Barbara Ann Williams undertook the duties of Bar Counsel on January 5, 1998. Ms. Williams is a graduate of the University of Virginia School of Law. She practiced law in Richmond for over 17 years before joining the bar. Ms. Williams's civil practice focused upon insurance defense, products liability, commercial and professional liability matters. As Bar Counsel, Ms. Williams manages the Professional Regulation Department in addition to carrying a caseload. Harry M. Hirsch, who ably served as acting Bar Counsel from July through December 1998, resumed his duties as Deputy Bar Counsel in January 1998.

Michael L. Rigsby, former Bar Counsel, left his position as Senior Trial Counsel in March 1998 to enter private practice. Richard E. Slaney joined the ranks of trial counsel in May 1998 as Assistant Bar Counsel. Mr. Slaney graduated from the William & Mary School of Law and clerked for U.S. Magistrate Tommy Miller. Before assuming the duties of Assistant Bar Counsel in May 1998, Mr. Slaney was associated with Wolcott, Rivers, Wheary, Basknight & Kelly in Virginia Beach. Mr. Slaney has proven to be an excellent addition to the trial staff, particularly due to his interest in computer matters and knowledge of bankruptcy law.

Intake welcomed Shannon Falyar as a permanent employee on June 1, 1998. Ms. Falyar replaced Lisa Glass, who left the bar for other employment. Before moving to Richmond, Ms. Falyar was a commissioner in Maryland, setting bonds and performing other magisterial tasks. Her duties at the bar include assisting the Intake attorneys with the complaint line, which takes calls from persons who either wish to file or have filed bar complaints, and processing written complaints. Ms. Falyar is the voice of the Virginia State Bar for many members of the public who contact the bar to inquire about filing a bar complaint.

Intake

Since fiscal year 1989, the number of complaints that the bar receives each year has grown by an average of seven percent each year. (See Chart 1.) In fiscal year 1998, 2,989 complaints were received, a slight decrease from the 3,033 complaints received the preceding fiscal year. The bar also received 73 notices of attorney trust account overdrafts, each of which was investigated and either closed, incorporated in a pending disciplinary matter or referred to Intake as a new matter.

Intake reviews each and every complaint received by the bar to determine whether the complaint falls within the jurisdiction of attorney disciplinary process, if it is a new complaint (as opposed to a rehash of a previous complaint), and whether it is susceptible to resolution outside the formal disciplinary process. As a result of Intake's review, in fiscal year 1997-98, Intake disposed of 1,928 of the 2,989 complaints received. However, despite Intake's work, 1,007 formal complaint files were opened in fiscal year 1998, almost ten percent more than the previous year.

Investigations

In fiscal year 1998, the bar had a staff of eight investigators, all but one of whom worked out of their homes. The production goal for each investigator is seven completed investigations per month. The term "investigations" is not synonymous with the term "cases" since investigators may receive additional investigation credits for difficult or complex cases. Last fiscal year, the investigators completed a total of 574 cases, an average of 71.75 cases per investigator per year or 5.98 cases per investigator per month.

Under the Aspirational Timelines adopted by the Standing Committee on Lawyer Discipline, an open file over 180 days old from receipt by the bar is deemed to be an "old" case. As of June 30, 1998, the percentage of "old" cases was

23.4%. (See Chart 2.) Anecdotal reports indicate that the complexity of the cases under investigation is increasing, requiring more investigative time per case. At the direction of the Standing Committee on Lawyer Discipline, bar counsel assigned lower priority cases to district committee members for investigation. Because ten or fewer lower priority cases were docketed in any given month in fiscal year 1998, district committee investigations did not significantly reduce the investigative backlog.

Trial

Three significant rule and statutory changes were adopted in fiscal year 1998 that affect discipline trials.

- Paragraph 13.K.(4) was amended to require bar counsel to furnish the respondent a copy of the investigative report prepared by the VSB investigator or the district committee member who conducted the investigation, after a subcommittee decides to set a complaint for hearing before a district committee or to certify the complaint to the Disciplinary Board.
- The Virginia Supreme Court rejected without comment a proposed amendment, predicated upon a recommendation by the Joint Legislative and Audit Review Commission, that would have permitted bar counsel to petition the Disciplinary Board to review a district committee decision.
- Virginia Code Section 54.1-3935 was amended to require panels of three circuit court judges, appointed by the Virginia Supreme Court to hear disciplinary matters, to adopt Virginia State Bar disciplinary rules and procedures. Previously, the statute was silent as to which rules and procedures govern such proceedings. The amendment also permits a three judge panel to impose the full panoply of sanctions permitted by the disciplinary rules. Formerly, the statute only set forth revocation and suspension as available sanctions.

As previously stated, 1,007 formal complaint files were opened in fiscal year 1998. Nine hundred ninety-five cases were carried over from the previous year. These numbers yielded an average caseload of 250 cases per trial attorney. The areas of practice giving rise to the most complaints were criminal, family law and personal injury. (See Chart 3.) The most common type of complaint was general neglect, followed by failure to communicate. (See Chart 4.) A bar graph tracking the bar's receipt and conclusion of formal complaint files from fiscal year 1988 through fiscal year 1998 is attached as Chart 5.

Disciplinary statistics for fiscal year 1998 include the following. Agreed dispositions were accepted in 123 cases. Nineteen attorneys surrendered with charges pending. 59 cases were tried, and another 125 were docketed for trial. Nine hundred seventy-six complaint files were closed. Sanctions were imposed in 314 cases, involving 194 attorneys. Three attorneys were disbarred, 13 suspended, 1 admonished, 17 given public reprimands, 60 private reprimands, 65 dismissals with terms, and 15 dismissals creating a disciplinary record. The Disciplinary Board considered one reinstatement petition. No attorneys were reinstated to practice. See Chart 6.

The Clerk's Office

The Clerk's Office staff consists of the Clerk of the Disciplinary System, one Senior Assistant Clerk and three Assistant Clerks. In addition to providing administrative support to the Disciplinary Board, the Clerk's Office keeps the discipline dockets, compiles attorney disciplinary records, and provides accurate information about cases and disciplinary records to attorneys inquiring about their own cases or record, bar counsel, other disciplinary and law enforcement authorities, and, if the information is public, to members of the public and the press.

In fiscal year 1998, the Clerk's Office performed 937 attorney disciplinary record checks and responded to thousands of inquiries from the media and other parties about the status of pending and closed disciplinary proceedings. Given the number of cases currently in the disciplinary process, and the myriad cases that have already been through the process, keeping track of the cases, their outcomes and attorneys' disciplinary records is a daunting task. The time and effort required to keep dockets and records current, and to produce accurate information upon request, is at least doubled by the limitations of the bar's existing computer software. Information demands have outstripped the data that the computer can supply; consequently, in many instances useful information must be manually tracked, retrieved and compiled. For example, no comprehensive data base of attorney disciplinary information exists; therefore, in many cases, record checks entail manual searches through various sources to retrieve pertinent information. Creation of a compre-

hensive attorney disciplinary record data base is an ongoing effort, but completion of that project will not cure programming limitations in the existing computer software that foreclose retrieval of certain types of information.

The Clerk's Office prepared all the charts attached to this report, plus detailed monthly dockets for the trial attorneys, the district committees, the Standing Committee on Lawyer Discipline and the Disciplinary Board. The staff of the Clerk's Office has also worked closely with the consultant conducting the ongoing Consistency Study, which is designed to analyze whether any inconsistencies result from the diversity of district committee membership and the geographic differences from district committee to district committee.

In addition to her docket duties and other record keeping responsibilities, the Clerk coordinates the work of the Disciplinary Board, including setting hearings, issuing notices, orders and summonses, and assessing costs in appropriate matters. In fiscal year 1998, the Disciplinary Board heard 32 cases and approved 33 agreed dispositions. The Clerk's Office assessed \$84,151.72 in costs and collected \$23,154.59. (See Chart 2.) The time that the Clerk's Office spent assessing costs increased 221% between fiscal year 1994 and fiscal year 1998. This dramatic increase is largely attributable to the growing number of sanctions imposed. In fiscal year 1998, a concerted effort was made to reduce the cost assessment backlog. Progress has been made; now the challenge is to collect the costs assessed.

A Look Forward

The common goal of the Professional Regulation Department and the Clerk's Office is to regulate the legal profession of Virginia in order to advance the availability and quality of legal services provided to the people of Virginia, and to assist in improving the legal profession, as mandated by the bar's mission as an administrative agency of the Virginia Supreme Court. During the past year, much has been done to achieve this goal in a fair and efficient manner, but more remains to be done. Accordingly, the Professional Regulation Department and the Clerk's Office will continue to pursue new ways of improving the effectiveness and efficiency of the disciplinary process, while preserving the fairness that is fundamental to the perpetuation of self-regulation.

Bar Counsel and the Clerk of the Disciplinary System will continue to review workload distribution among the staff, targeting areas that need relief and reallocating, where possible, available resources to provide needed relief. However, in order to satisfy the growing expectations of members of the bar and the public, more resources need to be dedicated to the professional regulation effort. If more resources are not available, the expectations of the bar and the public will have to be adjusted to comport with reality. In the meantime, the Professional Regulation Department and the Clerk's Office will focus upon addressing the challenges that continue to surface, whether they require changes in internal procedures, existing rules and regulations, or taking steps to improve the image of the attorney disciplinary process through better communications with the bar and the public.



Historical Perspective Chart available by calling the bar at (804) 775-0528.



End of Year Statistical Comparisons Chart available by calling the bar at (804) 775-0528.



Area of Law by Percentage Chart available by calling the bar at (804) 775-0528.



Type of Complaint by Percentage Chart available by calling the bar at (804) 775-0528.



Receipt and Conclusion of Formal Complaint Files 1987-1998 Chart available by calling the bar at (804) 775-0528.



Number of Sanctions Imposed Chart available by calling the bar at (804) 775-0528.

MINUTES OF THE 60TH ANNUAL MEETING

President Edward B. Lowry called the General Session of the 60th Annual Meeting of the Virginia State Bar to order at 9:00 a.m., June 20, 1998. He introduced John A. C. Keith, incoming president, who had been sworn in by Chief Justice Carrico at the banquet the evening before.

Report of Council Actions

Mr. Keith reported that Council had taken the following actions at its meeting on June 18:

- 1) Approved the final set of proposed rules of the Virginia Model Rules of Professional Conduct. The rules will be presented to the Virginia Supreme Court with the bar's recommendation that they be approved, effective January 1, 2000.
- 2) Approved and recommended to the Virginia Supreme Court an amendment to Part 6, Section IV, Paragraph 13C.(5)(a) of the Rules of Court to allow the Clerk of the Disciplinary System to serve a charge of misconduct on a respondent once the matter has been certified to the Disciplinary Board from a district committee or sub-committee.
- 3) Approved and recommended to the Virginia Supreme Court UPL Opinion #191 on the permissible role of paralegals.
- 4) Adopted the 1998-99 budget. The Standing Committee on Budget and Finance anticipated that the bar's reserve would be reduced by June 30, 2000 to the point at which a dues increase would have to be considered. The committee plans to develop a document showing the cost in dues dollars of bar programs, and to seek member input on the importance of the programs.
- 5) Adopted an amendment to the by-laws of Council to include at least three current or former Professionalism Course faculty members on the Standing Committee on Professionalism, as well as two members of Council.
- 5) Approved guidelines developed by the Special Committee on Bench-Bar Relations to enable local bars to respond effectively to unfair criticism of judges and the judicial system in a timely way.

Election of President-elect Street

Mr. Keith presented W. Scott Street III, who was unopposed in the contest for president-elect. Mr. Street was duly elected and said he believed it was a high honor to serve the profession and the public. He looked forward to working with John Keith in the challenging year ahead.

Gardner O'Malley Award

Dexter C. Rumsey, III, Chair of the Virginia Committee on Continuing Legal Education, presented the first annual Gardner O'Malley Award, which honors those who contribute significantly to CLE. The recipient was Peter C. Manson, Professor Emeritus of the University of Virginia School of Law and the original Director Of Virginia CLE.

Tradition of Excellence Award

Mr. Lowry introduced Linda S. Westenburger, Chair of the General Practice Section, who announced that George M. Warren, Jr. of Bristol was the recipient of the section's Tradition of Excellence Award given each year to a lawyer who exemplifies public service.

Fifty Year Awards

Mr. Lowry presented Fifty-Year Certificates to those honorees who were present for this occasion. They were photographed as they received this special recognition for their service.

He then encouraged everyone to attend the excellent program on "Sports, Money and Sex (Equality)," sponsored by the Young Lawyers Conference, that would follow.

The meeting was adjourned at 9:40 a.m.

IN MEMORIAM

- John P. Abshire**, Alexandria
R.J. Alfriend, Norfolk
Joseph Michael Alukonis, Arlington
A. Marion Andrus, Austin, TX
Thomas Winfield Athey, Yorktown
Hon. L. A. Belcher, Richmond
William F. Binford, Prince George
Samuel Thomas Binns, Richmond
Peyton G. Bowman, Irvington
George R. Britton, Roanoke
Merrick I. Campbell, Norfolk
George Joseph Cannon, Swansboro, NC
Franklin J. Carter, Kilmarnock
Alfredo Serra Castellanos, Glade Spring
Jack R. Clanton, Glen Allen
C. Lacey Compton, Prince William County
Martha Bell Conway, Richmond
Winfield L. Corron, Front Royal
John Bertram Cowles, Jr., Toano
William S. Cudlipp, Richmond
Jerome J. Curtis, Sacramento, CA
Joseph Charles Daley, Rumson, NJ
Leonard H. Davis, Virginia Beach
Richard W. Davis, Lebanon, PA
Leslie Davis Dawson, Plainfield, NJ
Glen H. Deem, Arlington
Kenneth I. Devore, Christiansburg
James William Fletcher, Sperryville
Gilbert Woodrow Francis, Boykins
Harry Frazier, Richmond
Joan Waggoner Gibson, Nellysford
Philip M. Grabill, Woodstock
John D. Grad, Alexandria
John Thomas Halliday, Arlington
Alexander Hamilton, Petersburg
Richard S. Harrell, Washington, D.C.
Fredrick Henry Goldbecker, Fairfax
Melissa Kirsten Heydenrich, Alexandria
Ronald D. Hodges, Harrisonburg
Paul A. Holstein, Lexington
Henry E. Howell, Norfolk
L. Eldon James, Hampton
Newton B. Jaslow, Coconut Creek, FL
William A. Julias, Harrisonburg
Brent Raymond Kamien, Arlington
Daniel Kaufman, Washington, D.C.
Clement S. Kester, Richmond
George Csaba Kurtossy, Fairfax
Harry L. Lantz, New Martinsville, WV
David Raymond Levin, Portsmouth
Benjamin Jack Levy, Chesapeake
Richard Edwin Lewis, Dinwiddie
Robert Lee McCarty, Alexandria
Donn McGiehan, Vienna
Everette MacIntyre, Boca Raton, FL
Elliott Marshall, Winchester
Harry T. Moreland, Roanoke
James M. Morris, Arlington
John B. Olverson, Sun City Center, FL
Wallace Allan Overton, Fredericksburg
Hon. H. Dudley Payne, Jr., Warrenton
Ronald Marvin Pearce, Richmond
Jack V. Place, Roanoke
William C. Plott, Lexington
Teresa Kane Rawoot, Timberville
Robert Wesley Reynolds, Valparaiso, FL
Robert Haner Romm, Chesapeake
Dianne Claire Sala, Hobart, IN
Boyd Maxwell Sears, West Point
Winston G. Sewell, Lake Junaluska, NC
Edward P. Simpkins, Lynchburg
Paul M. Shuford, Richmond
John R. Snoddy, Dillwyn
William B. Spong, Portsmouth
Franklin Randolph Stewart, Marion
Paul C. Stokley, Portsmouth
Robert Edward Taylor, Charlottesville
Noel H. Thompson, Arlington
Joseph Richard Tiano, Bridgeport
David L. Tomchin, Blacksburg
Philip R. Trapani, Norfolk
Nancy Blair Viccellio, Chatham
Barbara Gail Webb, Alexandria
Charles Albert Webb, Arlington
Michael R. Wellford, Warsaw
E. E. Wells, Charlottesville
David Meade White, Naples, FL
J. K. Young, Mississauga, Ontario

REPORT OF THE SECTIONS

ADMINISTRATIVE LAW SECTION

Eric M. Page, Chair

The Administrative Law Section had a tremendously successful 1997-98 bar year. This year's Board of Governors coordinated a full slate of activities, as we continued with our traditional programs and moved toward the practice of administrative law in the next century.

The most challenging section project was the presentation of the Sixteenth National Regulatory Conference, which was held in Williamsburg on May 12 and 13, 1998. The annual conference is jointly sponsored by the section, the Virginia State Corporation Commission, and the College of William & Mary's Marshall-Wythe School of Law. The conference traditionally focuses on an important and timely aspect of regulation. At this year's conference Chair Tony Gambardella and his committee assembled a group of nationally-recognized speakers to discuss *Regulating Change and Changing Regulation: Restructuring the Energy and Telecommunications Industry*. Over 150 lawyers, regulators and industry representatives attended the successful conference, which is the highlight of the section's activities.

The University of Richmond's *Journal of Law and Technology*, the first law journal published exclusively on-line, has transcribed the proceedings of the last two National Regulatory Conferences, including the Sixteenth Conference held during this year. The section has worked with the *Journal* to provide a link to the transcriptions through the section's portion of the VSB home page.

The section also sponsored a workshop at the 1998 Annual Meeting of the Virginia State Bar on Friday, June 19, 1998 in Virginia Beach. Kodwo Ghartey-Tagoe coordinated our section's presentation of a program entitled *Condemnation After Deregulation: Power of Eminent Domain for Public Utilities in a Competitive World*. The program included a lively discussion of a very timely and important topic, and it was very well attended and received. Board of Governors member Kodwo Ghartey-Tagoe chaired this event, which will hopefully be an annual undertaking.

The section also continued to develop its program to make available in an electronic form the reports issued by the hearing examiners of the Virginia State Corporation Commission. The project is a joint effort of the Commission's Division of Information Resources and Office of Hearing Examiners, as well as the section. These reports can be found through a link on the section's portion of the VSB's home page.

Co-editors Jim Guy and John Sharer published a highly informative newsletter that provided section members with timely and invaluable articles. Jim and John will continue to produce the high quality publication through the next bar year.

We welcomed Vishwa Link, Kodwo Ghartey-Tagoe and Mark LaFratta as new board members this year. At the annual meeting, the section elected Judy Jagdmann and Jim Guy to fill two vacancies for the upcoming bar year. In addition, the following members were elected officers for the next year:

Tony Gambardella, *Chair*

Ed Petrini, *Vice Chair*

Mark LaFratta, *Secretary*

It has been an honor and a privilege to serve as the section's Board of Governors Chair during this past year. Our achievements and accomplishments could not have been possible without the time and dedication of the members of the Board of Governors. I thank each of them for their invaluable support.



ANTITRUST, FRANCHISE AND TRADE REGULATION SECTION

Anita K. Blair, Chair

The Antitrust, Franchise and Trade Regulation Section experienced a substantial increase in membership this year. No doubt at least part of the increase was due to heightened interest in recent high-profile cases involving antitrust and franchise law.

In May the U.S. Justice Department (together with 19 states and the District of Columbia) sued Microsoft Corporation, claiming that Microsoft had abused its market power and illegally tied its Internet Explorer program to its Windows operating system. The Section's June 1998 annual meeting program offered a vigorous debate titled, *Antitrust and the Internet – The Microsoft Case*, moderated by section secretary Hew Pate.

Defending Microsoft's position was Robert Levy, a Senior Fellow at the Cato Institute in Washington, D.C. Levy himself founded, operated and sold a software company before changing careers to become a lawyer and public policy analyst. Opposing Microsoft's practices was Kenneth Wasch, founder and president of the Software Publishers Association, which represents over 1,200 software publishers, developers, distributors and related organizations. A straw poll of the audience taken at the beginning and end of the debate showed that a number switched their support from Microsoft to the Justice Department. Nonetheless, the final vote was split 50-50. This case will continue to stimulate debate and strong feelings for a long time to come.

Another recent headline case, involving franchise law, was *Meineke Discount Muffler Shops, Inc. v. Broussard*. In that case a group of franchisees claimed that the franchisor had misspent the fees that had been contributed for group advertising. The Fourth Circuit Appeals Court in Richmond heard oral arguments in May; in August the appeals court overturned a \$601 million judgment rendered by the trial court in favor of the franchisees.

While that appeal was pending, the Section cosponsored a day-long CLE program *Understanding and Negotiating a Franchise Agreement* on June 30. Immediate past chairman Michael Lockerby (Richmond) organized the program together with Grover Outland, chairman of the Maryland State Bar's Committee on Franchise and Distribution Law and general counsel of ATL International, Inc.

The June 30 program featured a mock negotiation of a franchise agreement, preceded by scenes of franchisee and franchisor lawyers counseling their clients. Highlighting those discussions were comments by a "Greek chorus" of state regulators: Steve Maxey from the Virginia State Corporation Commission Division of Securities and Retail Franchising and Dale Cantone from the Maryland Attorney General's Office. They not only pointed out the do's and don'ts of buying and selling franchises, but also offered many helpful tips and insights about representing clients who need assistance from their agencies.

This year the section has carried on its traditional activities, including publishing a twice-yearly newsletter, edited by James Creekmore (Roanoke) and collecting cases for inclusion in a future edition of its *Antitrust Digest* (2d ed. 1997). Members of the section are encouraged to organize local brown-bag lunches to discuss topics of current interest.

The new section officers elected at the June 1998 Annual Meeting were Anita Blair (Arlington) as Chair; Francis "Chip" Casola (Roanoke) as Vice Chair, and Hew Pate (Richmond) as Secretary. In addition Scott Caulkins (Arlington), Eliot Norman (Richmond) and Stephen Story (Norfolk) were elected to the Board of Governors. They replace Robert Brame (Richmond) and previous Section Chairman Craig Merritt (Richmond), whose term expired.



BANKRUPTCY LAW SECTION

Jeffrey L. Tarkenton, Chair

The Bankruptcy Law Section concentrated its efforts this year on a variety of educational programs and publications. First and foremost, the section continues to publish the *Bankruptcy Law News* on a quarterly basis. Michael A. Condyles serves as the *Bankruptcy Law News* editor, and there are currently eleven members of the editorial board. The *Bankruptcy Law News* includes articles addressing various bankruptcy issues, recent developments and news regarding the section and the courts.

As in past years, the section assisted the Virginia CLE with its annual basic bankruptcy law seminar that was held in January. The seminar, entitled "Chapters 7 and 13 – The Basics and Beyond" was given to over 200 hundred participants at locations in Roanoke, Richmond, Tysons Corner and Norfolk. The program was also presented by videotape at select locations throughout the state.

In conjunction with the Virginia State Bar's 60th annual meeting in Virginia Beach, Virginia, the section conducted its annual workshop program on June 19, 1998. This year's bankruptcy program was titled "Till Debt So Us Part: Equitable Distribution in Bankruptcy." The panelists for the program included Professor Mechele Dickerson of the Marshall-Wythe School of Law at the College of William and Mary, Susan Hicks of Fairfax, and Jerry Weinberg of Norfolk. The program was moderated by the Honorable David Adams, Bankruptcy Judge for the United States Bankruptcy Court, Eastern District of Virginia (Norfolk Division).

The section also presented a seminar on preparing proofs of claim in Richmond and Charlottesville. The purpose of the seminar is to provide persons who routinely file proofs of claim with information on the proper manner of preparing the claims, thereby increasing the potential of recovery for a greater number of creditors, while at the same time reducing the time and expense wasted on improperly filed claims.

The section also began to implement the recommendations made in 1997 by its long-range planning committee. In particular, the section has begun preliminary work on the production of a video for presentation to Chapter 7 debtors on their rights and responsibilities.

The section's officers for the 1998-1999 are Jeffrey L. Tarkenton, Chair, Helen P. Parrish, Vice Chair and Benjamin C. Ackerly, Secretary. Mechele Dickerson and Brad Evans were elected as new members to the Board of Governors, and Jeffrey L. Tarkenton and Helen Parrish were elected to serve second terms on the board. Stanley J. Samorajczyk and Deborah L. Fletcher completed their second terms on the board and were not eligible for reelection. On behalf of the section, I thank these individuals for their long years of active and faithful service. We hope that each will continue to contribute to the section's efforts.



BUSINESS LAW

Thomas Hicks III, Chair

The Business Law Section is in the process of becoming more responsive to the impact of the Internet and electronic communication in service to its members. It has begun construction of the section's Web site, with the assistance of the Virginia Department of Information Technology. It is expected that the section's home page will be completed in mid-1999. In addition to providing information about the mission of the section and providing a membership application, the web site provides a calendar and resource center for listing events and resources of interest to members. In addition, it is expected that there will be interactive components of the web site to enable members to dialogue with each other on substantive legal issues and other matters of professional interest.

The Section's CLE programs have also been oriented toward the particular needs of practitioners who represent the plethora of technology businesses cropping up around the Commonwealth. The section's program at the Annual Meeting in June, 1997, *Advising Corporate and Commercial Clients in the Internet Age: Avoiding Obsolescence and Seizing Opportunities*, drew an overflow crowd, evidencing the interest of members in catching up with the substantive developments in a technology-oriented business practice. A very well qualified faculty of Connie Ring of Alexandria, Michael Horwatt of Tysons Corner and Karen Casser of Washington, D.C. shared their unique insights to advising clients regarding electronic commerce, the use of e-mail in practice and developments in the UCC to address the dramatic changes in the nature of doing business.

The 28th Annual Advanced Business Law Seminar at the Tides Inn in Irvington, drew nearly twice as large a crowd as the preceding year to hear an all-star panel consisting of Marc Benson of Reston, Barry Goodman of Rockville, Maryland, John Love of Leesburg, Bob Stroud of Charlottesville and Mark Wishner of Washington, D.C. discuss *Aspects of Critical Virginia Capital Formation and Merger Issues*, moderated by Section Chair Tom Hicks, which also included Ben DiMuro of Alexandria leading a discussion of ethical issues such as how to determine and defend the value of a business, how to find investment capital for clients, and how to protect directors and officers from liability, including a presentation on D&O insurance. The panel included insightful presentations not only by business lawyers, but by other professionals to address such matters as business valuation, D&O insurance, and a venture capitalist's perspective on such investments. The program was capped with Gene Brown's inimitable *Recent Developments in Commercial Law*. The comments from those who attended the program were uniformly complimentary of the speakers and the quality and timeliness of the program content.

The 16th Annual Business Law Seminar, which was for the first time held in Richmond, Tysons Corner and Charlottesville in April, with video replays around the Commonwealth in May, was entitled *Answers to the Questions Most Frequently Asked by Small Business Owners*. The program was targeted at young and small firm business lawyers, as well as non-business lawyers. The program featured "Need to Know" presentations on choice of entity, capital formation issues, ethical issues facing lawyers who represent small businesses, fundamental intellectual property matters, and a survey of labor and employment issues that affect small businesses, presented by an expert panel consisting of Ben English of Richmond, Steve Noona of Norfolk, Burt Whitt and Bob Barry of Norfolk, Tom Spahn of Richmond, and Tom Hicks of Tysons Corner. The program led off with Gene Brown's stimulating and insightful *Commercial Law Update*.

The program sponsored at the 1998 Annual Meeting in June, *Preparing for Show Time: Enhancing Value in Intellectual Property*, again drew on members' hunger for insights to representing technology-oriented clients, and drew an audience of more than 50 business and intellectual property lawyers who heard from the panel of Gary LeClair, Chris Mugel and Tom Hicks on how to deal with the predominance of intellectual property assets in sale, merger and lending transactions. The program was jointly sponsored with the Intellectual Property Law Section. The insights of the panel of intellectual property and business transactional lawyers who deal with technology companies as the mainstay of their practice matched well the mix of specialists in the audience.

With the selfless leadership of Peter Broadbent of Richmond, the Summer 1998 edition of *Virginia Business Law* featured articles authored by David Lionberger and Jonathan Pond, Connie Bertram, Christopher Whytock, Stephen Gannon and Stephen Perkins, and William Bridge. Recent editions of *Virginia Business Law* can be found on the section's web site, as will future editions.

At the 1998 Annual Meeting in Virginia Beach, the Nominating Committee, chaired by past chair Bud Roeder, presented the following slate of officers and board members of the 1998-1999 fiscal year of the section: C. Thomas (Tom) Hicks, III, chair; Frank Eugene (Gene) Brown, Jr., vice-chair; Elizabeth Hester, secretary; and as board members: Peter Broadbent, Jr., Kurt Krueger, James Steiger, James Weaton, Charles Williams, Jr., and Barbara Seers-Lanai, as liaison.



CONSTRUCTION LAW AND PUBLIC CONTRACTS SECTION

Robert K. Richardson, Chair

The section continued its focus on service to section members and presentation of timely and useful continuing legal education in the form of seminars and publications. Membership showed a small increase to 530 members.

The 18th Annual Construction Law and Public Contracts Seminar was held on November 7 and 8, 1997, at the Boar's Head Inn in Charlottesville. Rather than devoting the entire seminar to one theme, speakers presented informative analyses of the impact of significant recent developments, Virginia cases and statutes on Virginia practitioners, and provided updates and thorough summaries of topics frequently encountered in the construction and public contracts practice. The focus again was on issues of interest to Virginia practitioners, presented by Virginia practitioners. The opportunity to receive all necessary CLE and ethics credits in one seminar remains a popular feature of this annual event. The 19th Annual Construction Law and Public Contracts Seminar already has been planned for presentation on November 6 and 7, again at the Boar's Head Inn in Charlottesville, with topics and speakers established.

The seminar aspect of the section's activities continued with the presentation of a joint program with the Real Estate Section at the Annual Meeting of the Virginia State Bar on June 19, 1998. The topic was warranties in the construction project. This is the second consecutive year the two sections have combined for the annual meeting seminar, and the joint sessions continue to be well attended.

A note of thanks is extended to Chuck Williams for his many years of service as the editor of the Section newsletter, the *Construction Law and Public Contracts News*. The newsletter contains case reports of published opinions and of some otherwise unpublished opinions and trial reports, along with articles of interest. Chuck has done an excellent job compiling this information for the twice a year publication, but is "retiring" from that post. His successor has a tough act to follow.

Coordinated by the efforts of Christine McAnney and Tim Hughes, the *Construction Law and Public Contracts Handbook and Reference Manual* available to all members of the section has undergone considerable updating and revision. A new and improved version will be ready for distribution to members in the coming year.

A full slate of board members has been elected for the 1998-1999 year. The new officers are D. Stan Barnhill, Roanoke, chair; Robert K. Cox, McLean, vice-chair; and William Thurston, Richmond, secretary. Robert K. Richardson, Fairfax, will continue to serve as immediate past chair. Other board members are Steven M. Blatt, Harrisonburg; Dennis M. Dayton, Alexandria; Thomas R. Folk, Falls Church; Timothy R. Hughes, District of Columbia; James K. Lowe, Jr., Roanoke; Christine McAnney, McLean; William R. Mauck, Jr., Richmond; John S. Norris, Virginia Beach; William L. Thurston, Richmond; Joseph D. West, District of Columbia; James L. Windsor, Newport News; and Hon. Thomas Fortkort, Judicial Member.

I enjoyed the opportunity to serve as section chair. The privilege of becoming more closely acquainted with the Bar Office and with attorneys throughout the Commonwealth is an experience I recommend for everyone.



CORPORATE COUNSEL SECTION

R. Bruce Rider, Chair

In the past the Corporate Counsel Section has experienced steady and substantial growth in membership, bringing the section into the top half of VSB sections in size. That pattern of growth in membership continued in the year 1997-1998 with expected membership to exceed over 800 by late 1998.

Barbara Spencer continued her fine work on the section newsletter, *Corporate Counsel News*, which was published in two editions.

The role of the section is to protect and further the interests of members of VSB who are corporate counsel. While this year there were no case or ethical developments which directly affected the ability of corporate counsel to function as attorneys, the board did consider at length the special ramifications on corporate counsel which would occur if a mandatory pro bono obligation was imposed upon VSB members. This consideration was prompted by a series of articles both on the national and Virginia scenes which, if not advocating such a requirement, predicted that legal or ethical obligations to perform pro bono work could be down the road. Such a mandatory requirement would cause particular difficulties for corporate counsel with regard to support staffing, case tracking, insurance and similar mechanisms and systems found in law firms but normally lacking in corporate law departments.

Once again in May the section conducted regional luncheons in Northern Virginia, Norfolk and Richmond in order to give members of the section the opportunity to meet on an informal basis. The luncheons were organized by Barbara Spencer and Cathy Mayes for Northern Virginia, Bruce Rider for Norfolk and Ellen Wilkinson for Richmond. Attendance at these luncheons reached all-time highs. Hopefully, next year in addition to the three current luncheons, the section will add a fourth luncheon in Roanoke for our Southwestern members.

Rob Weissman, our outgoing vice chair, arranged an outstanding CLE program at the summer meeting of the bar at Virginia Beach in June. The program was held in conjunction with the Environmental Section, and was well-attended.

The title of the program was "*Internal Audits and the Virginia Audit Privilege.*" The moderator was Rob Weissman. Panel members included Shannon Varner, Staff Attorney, Virginia Legislative Services; Brian Ridell, United States Environmental Protection Agency; Kevin J. Finto, Hunton & Williams; and James F. Simon, United States Department of Justice.

I wish to thank the officers and board members with whom I served as chair this past year. Special thanks to Rob Weissman, our outgoing chair, and Don Fickenscher, our outgoing secretary. My thanks also to outgoing board member Elizabeth Schnell. During the course of the year Paula Goldberg and Dolores Carrington left the board prior the expiration of their terms for business or personal reasons; and I also thank them for their service. This year was also the final year for our immediate past chair, Andrea Bridgeman, whose presence will be missed next year.

The new slate of officers for 1998-1999 are as follows: Barbara Spencer, chair; Phil Beeson, vice chair; and Gail Waddell, secretary.

Don Fickenscher, May Ellen Wilkinson, Winston Burks, Peter Seitz, Cathy Mayes, and Paul Johnson continue as board members. Kathleen Kronau, Daniel Maller, Greg Summy, Virginia Andrews and Lorri Kleine join the board as newly elected members.

As in past years, the board and I were once again heavily dependent upon the invaluable services of Brad Sheppard, the Section's VSB liaison.

Next year will present two major challenges for the board. First, the board will continue its efforts to bring the Section's Law School Writing Contest to full operation. And secondly, the board will be preparing for and looking forward to the section's feature role for the first time in an issue of *Virginia Lawyer* which will occur early in 1999.

CRIMINAL LAW SECTION

Anthony F. Anderson, Chair

I am happy to report that the Criminal Law Section enjoyed an outstanding year in 1997-98.

One of the section's primary concerns of last year took even greater priority this year. The adequacy of compensation of court-appointed counsel and the need to establish a reasonable fee schedule became one of our primary goals. Last year, the section enlisted the able assistance of Dennis Dohnal, Esquire, to articulate the section's views regarding the proposed legislation dealing with these issues. He has donated many hours of his time in an effort to increase the compensation to court-appointed counsel in the state. The issue has certainly received great attention, not only in Virginia, but nationally as well. Mr. Dohnal will continue to work on this issue with members of the General Assembly in the coming year.

Under the leadership of Judge Richard D. Taylor, the section once again produced the WCVE Public TV program series, *Justice on Trial* with the theme of the program being, *Domestic Violence: Mandatory Arrest*. The show aired in May and received outstanding reviews. In fact, there apparently were requests for copies of the show for use in law enforcement training. This production is fast becoming one of the section's major projects, and it will continue to be a major initiative.

In February, the section conducted its annual criminal law seminars in Williamsburg and Alexandria. As always, the seminars were highly successful, both in the number of participants and in the informative and interesting nature of the topics and lectures. In Williamsburg, the section was fortunate to have as its luncheon speaker Arlington Circuit Judge Benjamin Kendrick, who suffered through quite a lot more than "fifteen minutes of fame" as the presiding judge over the infamous Marv Albert case. In Alexandria, the seminar featured an address by Rikki Klieman of COURT-TV. Both speakers were entertaining and informative. Ron Bacigal presented his annual update, *Recent Developments in Criminal Law and Procedure*, which is a "must attend" lecture for any lawyer who wants to be armed in the courtroom with the most recent pronouncements of criminal law by our courts and General Assembly.

At the Williamsburg session of the seminar, Justice Carrico presented, on behalf of the Board of Governors, the section's Harry L. Carrico Professionalism Award to Senior Justice Richard H. Poff. The award was established in 1991 in honor of Chief Justice Harry L. Carrico of the Virginia Supreme Court. It recognizes individuals who have made singular contributions to the improvement of Virginia's criminal justice system. Certainly, Justice Poff is a fitting and proper honoree.

In June, at the State Bar Annual Meeting, the section presented a lecture by Richard G. Brydges, one of the preeminent criminal trial lawyers in the Commonwealth. His presentation focused on "Improving the Lawyer's Image with the Public, with the Courts, and with One Another." As always, Dick's program was enjoyed by all the attendees.

At the business meeting, the members elected Rodney G. Leffler to chair the section for 1998-99. Also elected were Melinda Douglas, vice chair and James A. Willett, secretary. The new members of the board are: Raphael E. Ferris, of Rider, Thomas, Cleavland, Ferris & Eakin in Roanoke, Howard C. Vick, Jr., Commonwealth's Attorney for Henrico County, and James O. Broccoletti, of Zoby & Broccoletti in Norfolk. James A. Willett was reelected to a four year term.

The section remains indebted to Professor Robert E. Shepherd, Jr., of the T.C. Williams School of Law who produces the section's newsletter and provides enormously useful recent case summaries as well as seminar activity highlights. Professor Shepherd also has worked to garner articles for a criminal law theme issue of the *Virginia Lawyer*.

I was honored to serve as chairman of the Criminal Law Section this past year. I would like to thank Bet Keller and her staff for all of their invaluable assistance. Without their help, I am sure the section's goals would never be met as efficiently or as well.



EDUCATION OF LAWYERS SECTION

Hon. Elizabeth B. Lacy, Chair

The Section on the Education of Lawyers continued its mission of providing a forum for integrating the bench, bar and academia in improving the legal system in Virginia. The second weekend seminar exploring the operation of the law in other disciplines was held at Washington and Lee School of Law in September, 1997. Thirty-five attorneys and many spouses attended "Law as Literature or What Does a Shakespeare Play Have in Common with the U.S. Constitution." The Section along with the Standing Committee on Professionalism also co-sponsored a Presidential Showcase CLE program at the VSB Annual Meeting in June, 1998. That program presented a panel discussion of the practical implications of the proposed changes in the Code of Professional Responsibility.

The Section and the Professionalism Committee strengthened avenues of communication by appointing liaison-representatives to the respective bodies. The two bodies are also engaged in a long-range project to design, pilot, and present a program to all second year law students on professionalism as it is needed in practice, including matters relating to bar admissions. The planning committee is chaired by Judge Waugh Crigler and includes Professor Michael Krauss of George Mason Law School, Ted Atkinson, Chair of the Young Lawyers Conference Professionalism Committee, and Steve Isaacs, member of the Board of Bar Examiners Character and Fitness Committee. The Committee plans to pilot the program in the spring of 1999.

Finally, after review by a task force chaired by Dean Barry Sullivan, the Section resolved that it should maintain its status as a section within the State Bar. Recognizing that its unique composition and mission requires a different funding base, the Section requested, and the VSB Executive Committee was generally receptive to, consideration of special funding from the general fund for specific programs on a case by case basis in the future.

Additionally, the six law schools were asked, and agreed, to contribute a set amount on an annual basis for the operation of the Section. Finally, the Section will continue the law firm solicitation effort.

Under the capable direction of Margaret Bacigal, of the University of Richmond Law School, the Section continued the outstanding production of its newsletter *Education and Practice* throughout the year.



ENVIRONMENTAL LAW SECTION

Michael D. Beverly, Chair

The Environmental Law Section had a very active year in 1997-98. The section's board of governors kicked off the bar year with a membership drive, resulting in 47 new section members. With a new grand total of 483 members, the Environmental Law Section increased its membership by nearly 10%.

With an increasing membership, the section's board of governors felt it more necessary than ever to meet the professional needs of its members. Under the guidance of Mary-Ellen Kendall (board secretary and newsletter editor), and with the help of board member Dan Jordanger and Hunton & Williams, the board continued to publish and distribute to all Section members (free of charge) the quarterly *Environmental Law News*. The *News*, which is written and prepared by law students on Washington & Lee's *Environmental Law Digest*, provides Section members with articles, updates, and summaries of regulatory, legislative, and judicial developments in Virginia environmental law. Congratulations to Robbie Westermann, editor-in-chief of the *Digest*, and his staff for another fine year.

In addition to the *Environmental Law News*, the board and the *Digest* this year began to consider ways to expand on the *Digest's* work to provide further information services to section members. The result is the first edition of the Section's *Virginia Environmental Caselaw Compendium*, which is nearing completion. The *Compendium*, which will be the first of its kind in the Commonwealth, will provide section members with a summary description of all reported (and, where available, unreported) environmental cases from Virginia state and federal courts. The *Compendium* and subsequent updates will be sent to section members at no cost.

In appreciation of the hard work and significant achievements of this year's *Digest* staff, the board held a dinner for the staff at the Wilson-Walker House in Lexington on April 2, 1998

On March 4, 1998, the section's board of governors sponsored a well-attended 1998 *Virginia Environmental Update* at the Downtown Club in Richmond, free of charge to section members. The *1998 Update* featured nine expert speakers and a keynote address by Hon. John Paul Woodley, Virginia's Secretary of Natural Resources. Because several other updates on state legislative matters are available to the section's members, the *1998 Update* focused primarily on *regulatory* developments at both the federal and state level. The board has also made available (again, free of charge) a videotape of the *1998 Update* to Section members through Dolly Shaffner at the State Bar (804-775-0514). The *1998 Update* is approved for four CLE hours.

The Environmental Law Section completed its 1997-98 Bar year at the VSB Annual Meeting in Virginia Beach, where the section co-sponsored a CLE Workshop with the Corporate Counsel Section entitled *Ethical Considerations of Internal Audits*. Immediately following the workshop, the section held its annual business meeting during which the section elected the following three new members to four-year terms on the section's board of governors: Nicole Roberts, John Stoodly, and R. Leonard Vance. Theodore J. Markow, Chief Judge of the Richmond Circuit Court, was also elected as the board's judicial representative for the next four years. The board elected Joanne Jones Allen as its new ABA SON-REEL Liaison and the following new slate of officers for 1998-99: Clara Poffenberger, Chair; Mary-Ellen Kendall, Vice-Chair; Edward Boling, Secretary; and Dan Jordanger, Newsletter Editor. These officers are sure to do a fine job in continuing the excellent services provided by the board to the section, and the section to the Virginia State Bar.

Many thanks to outgoing board members Roger Chaffe, Rebecca Garrou Ellis, and the Honorable Melvin R. Hughes, Jr. (judicial representative) for their time and services over the last four years.



FAMILY LAW SECTION

Richard D. Balnave, Chair

Generous contributions of time and efforts by members of the Family Law Section and its board of governors allowed the section to accomplish a good deal during 1997-98. New members of the board of governors this year included the Honorable Rosemarie Annunziata, the Honorable Bonnie Davis, Tim Szabo and Torrence Harman. Professor Lynne Marie Kohm was elected to serve as the section's Law School Liaison. Each of these new members brought new ideas and energy to the work of the section to help ensure the success of its projects.

The videotape, "Spare the Child," was completed under the leadership of the Honorable Dale H. Harris and the Honorable E. Preston Grissom. The half-hour videotape is designed to educate parents and litigants about the potentially adverse affects that litigation can have on children. With the support of the Virginia Law Foundation and the Supreme Court of Virginia, "Spare the Child" will be available in all of our Juvenile and Domestic Relations District Courts, as well as generally available to lawyers and members of the public. Work toward creation of this videotape began almost nine years ago and involved the efforts of family law practitioners, judges and mental health practitioners throughout the state. Thanks are due to the members of the Section's Child Custody Education Committee, who donated an enormous amount of time and effort throughout the years that it took to complete this videotape project.

The Family Law Section Continuing Legal Education Committee, chaired by Julia Savage, organized and presented three different continuing legal education programs, in conjunction with the Virginia CLE office. The fall program focused on the challenges of representing the "under funded client," as well as a review of recent developments in the law. In April, the Fourteenth Annual Advanced Family Law Seminar was offered in conjunction with the Virginia CLE office. The seminar dealt with issues "Beyond Title 20," including tax, bankruptcy, estates, real estate, school law and military law issues. During the Mid Year meeting, the Section presented a program focusing on the changing relationship between fault conduct and the property and financial aspects of divorce litigation. In addition, the section also provided speakers for the Guardian ad litem training program sponsored by the Supreme Court of Virginia, and the annual Ethics for Virginia Practitioners program sponsored by Virginia CLE.

The section remains indebted to Richard E. Crouch, who produced the Family Law Section's newsletter and provided enormously useful recent case summaries as well as highlights of legal developments in the field and contributions by other members of the section. Richard Crouch also coordinated the section's contributions to the April issue of the *Virginia Lawyer*, which focused on current issues in family law. The timely and provocative articles dealt with child support and private school tuition, relocation issues, reimbursement for post-separation mortgage payments, mediation, and legal issues surrounding developments in reproductive technologies.

The Family Law Section has continued to build relationships with Virginia law schools. Our Law School Liaison, Professor Lynne Marie Kohm, organized a group of volunteer law students to assist the board of governors with legal research concerning emerging issues in family law. In May, the section honored the achievements of law students from each Virginia law school who have shown unusual aptitude and commitment to the field of family law. This award was presented to each of the law students in conjunction with the Virginia Chapter of the American Academy of Matrimonial Lawyers.

At the annual meeting in Virginia Beach, the Honorable Charles S. McNulty was presented with the Section's Lifetime Achievement Award, in recognition of his dedication and accomplishments in the field of family law throughout his career. Following the presentation of the award, Torrence Harman moderated a continuing legal education program focusing on three recent and significant Virginia appellate decisions. The lawyers who represented the litigants provided the audience with their analyses of the issues as well as their "behind the scenes" stories.

Special thanks are due to Betsy Phillips of Rustburg and George Christie of Virginia Beach, who have completed their terms on the board of governors. On behalf of the section, I thank these individuals for their contributions to the work of the section and their years of active service. Newly elected officers of the Family Law Section are Winship C. Tower, Virginia Beach, Chair; David D. Masterman, Vienna, Vice-Chair; and Terry Batzli, Richmond, Secretary. The newly elected members to the Board of Governors are Mona Flax, Virginia Beach; Susan Hicks, Fairfax; and Ellen Weinman, Roanoke. Ellen Weinman completed the unexpired term of Holly Peters and was elected to fill a new term of four years. Professor Lynne Marie Kohm of Regent University Law School was reelected to serve as the Law School Liaison.



GENERAL PRACTICE SECTION

Linda S. Westenburger, Chair

During the 1998 fiscal year, the General Practice Section continued its efforts to be of service to attorneys that practice in several areas of law. We want to continue to be a source of information for solo and small firm attorneys, particularly those attorneys that practice in the rural areas of our state.

In our newsletter, we continue to present articles reflecting many areas of interest. This year we added a regular column on technology to give information to those who are investing or interested in investing in various office and computer equipment and programs. We hope that this information will be helpful to attorneys in the management of their offices and practices. As in the past, the newsletter contains articles on a wide variety of cases, useful practice tips and information on upcoming events.

We are currently working with the Young Lawyers Section for this year's "First Day in Practice Seminar." We hope to update the written materials used in the seminar and look for additional areas of law that might need to be covered. More than ever, recent graduates of law school are beginning to practice law alone. We want to bring the best speakers and provide the most recent written material in order to make this transition viable.

This year's "First Day in Practice Seminar" was attended by 181 newly admitted lawyers. In addition to distributing the written materials to the attendees, we sent 55 copies to people that requested only the written materials. Although the seminar's expenses exceeded the revenues, after the written materials were sent, the final profit from the seminar was \$470.18.

The 1998 Tradition of Excellence Award was presented to Mr. George Warren of Bristol, Virginia. Mr. Warren has practiced in almost every area of law and is an example of an attorney that has enriched the practice of law and his community.

The program at the annual meeting was held with the Trust and Estate Section and the Taxation Section. The topic was "Representing Clients Through the Years: Ethical Concerns that Arise". The program was structured to allow audience participation in examining various types of ethical dilemmas that can occur when a lawyer represents a client on several different matters. The program was well attended and we hope that everyone learned something that will help avoid future ethical problems.

The new slate of officers were elected. Prescott Prince of Richmond is Chair, Jeff Galston of Richmond is vice-chair; John Markov of Fairfax is secretary.



HEALTH LAW SECTION

Rebecca W. West, Chair

Fiscal year 1997/98 was an active one for the Health Law section. The section continued its efforts to provide service to the health law practitioners. Education of health care lawyers remains one of our primary objectives.

The board of governors met four times during the year, in addition to its annual section meeting in Virginia Beach in June. New Board members elected at the annual meeting were: Beth Berman, Thomas C. Brown, Jr., K. Marshall Cook, John T. Jessee, Richard E. Ladd, Jr., and Rebecca L. Woody. Nominated for a second term were James M. Daniel, Jr. and Bruce C. Stockburger. Ex-officio members named to the board were: Mary L. Bailey, Alfred W. Gross, Paul A. Lombardo, Deborah D. Oswalt, Jean F. Reed, Karen N. Swisher, Susan C. Ward, Evelyn R. Fleming, William H. Hurd, Carol S. Nance, Karen D. Perrine, Gregory T. St. Ours and Norma E. Szakal. Finally, officers elected for the coming year were: C. J. Steuart Thomas, III, chair; Mary C. Malone, vice-chair; and Bruce C. Stockburger, secretary.

Mary Malone continued to be the editor of our semi-annual newsletter. We appreciate her continued leadership in this and other areas. The section began evaluating a request from the Virginia Bar Association's Health Law Section to jointly publish a newsletter. A decision will be made on this proposal at the next Board of Governors meeting.

The Section also hosted its annual legislative symposium at the Virginia Hospital and Healthcare Association in Richmond. The program was again coordinated by Susan Ward. One hour in CLE credit was given for those who attended. The program was well received and continues to be an important part of the section's educational objectives.

This year's CLE program at the annual meeting of the Virginia State Bar in Virginia Beach was also a big success. The program examined the evolving law of *respondeat superior* in the health care setting. Participants in the panel discussion were: Thomas W. Williamson, Jr. Mary M. H. Priddy, Stephen D. Rosenthal and myself. Steuart Thomas was the moderator. There was a full house in attendance for the session which was extremely well received.

Work continues on several of the Section's projects. Pat Devine has resumed responsibility for the State Agency and Trade Association Handbook. Jack Young moved forward with creating a Web page for the section. It was also agreed that a directory of section members by area of specialty would also be developed.

Steuart Thomas' leadership of the section in the 1998/99 year will bring many more activities. We continue to recruit additional individuals who are interested in contributing to the section. A survey of the membership was done this spring to determine particular needs and interest. The section will seek to serve its members.

A special thanks to all who contributed to the success of our section this year.



INTELLECTUAL PROPERTY LAW SECTION

Stanislaus Aksman, Esq, Chair

The past year was a very successful year for our Section. Building on the foundation established by Rob Furr and Jim LaBarre, we continued to increase our membership. By the end of the year, we had almost 1000 members— one of the larger Section memberships in the Virginia State Bar.

It was also a very busy and productive year. The year started with a well-attended, jointly-sponsored with the Taxation Section, CLE program at the 1997 Annual Meeting in Virginia Beach. The title of the program was “What the Intellectual Property (IP) Lawyer Should Know About Tax Issues Involving IP”. Many of the program attendees were from the Taxation Section and from other sections of the bar. Brought to the attention of the audience were various tax-related issues involved in any intellectual property law transaction.

This was followed by an extremely successful Fall Weekend CLE Seminar at the Wintergreen Resort in October of 1997. A record-setting audience of over 45 attendees enjoyed the lectures by nationally-known speakers in the beautiful setting of the Blue Ridge Mountains.

The Spring Seminar, held in Crystal City, focused on the art of writing infringement and validity patent opinions in view of the recent judicial holdings. More than 100 practitioners enjoyed this perennially popular program and returned to their offices with excellent written materials and finely tuned opinion writing skills. During the year, we also co-sponsored several lunch-time seminars with the Patent, Trademark and Copyright Section of the DC Bar Association, and published a revised and updated booklet for Virginia State Bar, providing the basic facts on patent, trademark and copyright protection.

Ian Titley edited and published two issues of our newsletter, the *IPLS Newslines*.

At its May 15th meeting, the Nominating Committee submitted the following nominees for the 1998-98 term:

Officers: Rick Kurtz, <i>Chair</i>	Board of Governors: Ian Titley	Ex Officio: Chris Mugel
Eleanor Meltzer, <i>Chair-Elect</i>	Chad Wieland	Jim Laughlin
Mary Dalton Baril, <i>Vice Chair</i>	Lee Kump	Al Branigan
Steve Noona, <i>Secretary</i>	Alan Rosenberg	
	John Farmer	

This slate of nominees was unanimously elected at the 1998 Annual Meeting.



INTERNATIONAL PRACTICE SECTION

Patrick O. Gottschalk

During this year, our Section undertook a number of projects towards our goal of supporting lawyers in Virginia who practice in the international area.

Membership Committee

The Section organized a Membership Committee to formulate plans to increase the membership of the Section to 500 in the next year. The current membership is approximately 400. The Committee has developed a number of strategies which will be implemented in the next bar year.

Secretary of Commerce and Trade - International Business Luncheon

The Section served as the sponsor of a major international business program on March 17, 1998 featuring the Honorable Barry S. DuVal, Virginia's Secretary of Commerce and Trade. Secretary DuVal spoke on the Gilmore Administration's plans in supporting the development of international trade and investment in Virginia. The event was held at the Jefferson Hotel in Richmond and was attended by over 65 attorneys and business persons.

Tenth Annual International Law Seminar

On Friday, May 8, 1998, the Section held its Tenth Annual Institute on International Business Law, co-sponsored by Virginia CLE. The Section annually recruits speakers of the highest quality for this major conference, which was held at the Cascades Conference Center in Williamsburg, Virginia. The seminar was entitled "Strategic Issues in Cross-Border Transactions" and covered topics ranging from agency and distributorship agreements in Latin America to the Foreign Corrupt Practices Act. This year, two new features were added. First, the Section provided two "break-out" sessions so that attendees could choose from various topics. For example, one break-out session covered ISO 14000, international environmental management standards, while a simultaneous presentation was being given on customs issues. Also, for the first time, the CLE offered up to two hours of ethics credit. Both of these new features made the CLE very attractive and there were approximately 75 persons in attendance. As is customary, the program received high marks from the attendees.

Section Newsletter

Under the editorial direction of Elliot Park, the Section published three editions of its newsletter this year. The newsletter continues to be of high quality, containing substantive articles on international law topics.

Annual Meeting

At the VSB Annual Meeting held on Friday, June 19, 1998, the Section sponsored a CLE program on "Emerging Legal Issues of the Global Information Infrastructure." This presentation was made by the former General Counsel of the CIA, Elizabeth Rindskopf, who is currently with the Washington, D.C. office of Bryan Cave, LLP. The seminar was attended by over 40 persons and was well received.

The Section also carried on routine business and made tentative plans for the next bar year. In summary, the Section enjoyed a very active and successful year.



LITIGATION SECTION

John J. Sabourin, Jr., Chair

The Litigation Section had an interesting and productive year. It continues to be the largest section of the Virginia State Bar with 2,378 members and is growing at the rate of an additional 100 members each year.

The Litigation Section has been very involved in supporting continuing legal education. The Litigation Section co-sponsored three excellent seminars with the Virginia CLE. The first was "Evidence for the Trial Advocate" in May 1998, taught by Judge William Young, a sitting federal district judge from Boston. The second program was "Movie Magic: How the Masters Try Cases," presented by Steve Rosen in June 1998. This unique program spliced together scenes from classic courtroom movies, including *To Kill a Mockingbird*, *My Cousin Vinnie*, *Class Action*, *The Verdict* and *Presumed Innocent*, to demonstrate various aspects of trial practice. The third program was "Win Your Trial, Plus Win on Appeal," presented by Judge Ralph Adam Fine of the Wisconsin Court of Appeals, also in June 1998. In addition to being very informative, Judge Fine is very entertaining and has appeared on *Sixty Minutes*, *Night Line* and *Larry King Live*.

The Litigation Section also co-sponsored a program with the Virginia Society of Certified Public Accountants in May 1998. The program was entitled, "Valuation of Closely-Held Companies and Professional Practices in Litigation." The seminar included a lecture portion and break-out sessions which discussed valuation issues in both commercial litigation and divorce.

The Litigation Section communicates with its members on a regular basis through the *Litigation News*. The purpose of the newsletter is to provide a direct and unstuffy collection of practical ideas about winning advocacy. Lee Livingston took over as editor of the newsletter and did an outstanding job. Several articles received comment from members of both the bench and the bar.

The Appellate Practice Subcommittee monitors critical issues in appellate law and reports to section members through a regular column in the *Litigation News*. In addition, it is in the process of updating its handbook, *Appellate Advocacy in the Supreme Court and the Court of Appeals of Virginia*.

The October 1997 issue of *The Virginia Lawyer* was dedicated to litigation and sponsored by the Litigation Section. The feature articles were "Expert Testimony Revisited: Recent Virginia Supreme Court Decisions" by William Phillips, "Trips, Traps & Tumbles; Eight Points to Consider in Settling Cases," by Gregory H. Haley, "An Overview of Voir Dire in Virginia," by E. William Chapman and Carla Blake Hook, "Motions for Sanctions: The First Ten Years," by J. Burke McCormack, and "Ten Differences Between Work Product Doctrine and the Attorney-Client Privilege," by Thomas E. Spahn.

At the annual meeting in June, the Litigation Section sponsored a program entitled, "A Passion for Justice," featuring Morris Dees, Chief Trial Counsel and co-founder of the Southern Poverty Law Center. The center is a non-profit group that maintains a pool of lawyers who specialize in lawsuits involving civil rights violations and racially-motivated crimes. Mr. Dees spoke about the large jury verdicts he has obtained against the Klan in Alabama and against skinheads in Oregon.

The Litigation Section has been sponsoring a Law in Society contest for several years. We again participated in the program this year in which over 150 high school students entered the essay contest. The Young Lawyers Committee of the Litigation Section assisted in judging the essays. Ten prizes were awarded, as follows: first prize, a \$1,000 savings bond; second prize, a \$750 savings bond; third prize, a \$500 savings bond; and seven honorable mentions, \$100 savings bonds.

At the annual meeting in June, officers for 1998-1999 were elected. The new officers are Jeffrey H. Gray, Chair; Susan C. Armstrong, Vice Chair; and Glenn W. Pulley, Secretary. The Litigation Section Board of Governors recognized the excellent work and support provided by the SBA Liaison, Pat Sliger.



LOCAL GOVERNMENT LAW SECTION

Larry W. Davis, Chair

I am pleased to report on another successful year for the Local Government Law Section. Our membership continues to increase. We now have 463 members in our ranks and our section continues to provide its services without a dues increase.

At the 60th Annual Meeting, the Section presented a panel discussion entitled "The Bills for Religious Freedom: Preservation or Expansion? Implications for Local Government?". Joseph P. Rapisarda, Jr., the Henrico County Attorney, served as moderator. Panel members were Professor Ellis M. West, a professor of political service at the University of Richmond, and Professor Michael A. Wolf, a professor of law and history at the University of Richmond School of Law. There was a lively point and counter-point discussion on the need for and constitutionality of the "religious protection" legislation being considered by the Virginia General Assembly. The program was well attended and provided valuable insights for local government practitioners to consider as this issue is debated in the coming months.

After the program was concluded, the section held its annual business meeting for the election of officers and directors. Sarah Hopkins Finley of Williams, Mullen, Christian & Dobbins was elected chair. David P. Bobzien, Fairfax County Attorney, was elected vice-chair. Frank M. Morton, III, James City County Attorney, was elected secretary. W. David Paxton and William F. Devine were elected as new members of the board replacing outgoing board members Joe Rapisarda and Larry Davis. However, Larry Davis will continue to serve on the board one more year in the position of immediate past chair. The section owes significant gratitude to Joe Rapisarda for his many years of service to the section.

With the strong support of volunteer authors and the continued assistance of our editor, Susan Custer, the board again published quarterly the *Journal of Local Government Law*. This year's publications included twelve articles on a wide variety of timely topics and issues.

The section expresses its appreciation to the many authors who shared their expertise by writing scholarly articles for the *Journal*:

Walter C. Erwin

Lynchburg City Attorney

Stylian P. Parthemos

Senior Assistant County Attorney
County of Chesterfield

Rhysa Griffith South

Assistant Henrico County Attorney

Timothy M. Kaine

Mezzullo & McCandlish, P.C.
Richmond, Virginia

Jonathan R. Pawlow, Esq.

Kaufman & Canoles, P.C.
Norfolk, Virginia

Paul Proto

Director of General Services
Henrico County

John H. Foote

Hazel & Thomas, P.C.

Channing J. Martin

Williams, Mullen, Christian & Dobbins
Richmond, Virginia

Benton Burroughs, Jr.

Hazel & Thomas, P.C.

William G. Broaddus

A. Eric Kauders, Jr.

McGuire, Woods, Battle & Booth

Brenda S. Beerman

James A. Thornhill

McGuire, Woods, Battle & Booth

Gregory J. Haley

Lori D. Thompson

Gentry Locke Rakes & Moore
Roanoke, Virginia

I would like to express my deep appreciation to all members of the board for their support and assistance which allowed for the board and the section to have another successful year.



MILITARY LAW SECTION

Craig D. Bell, Chair

The Military Law Section completed its second year as a section. During this past year we undertook a number of projects towards our goal of supporting Virginia lawyers, military and civilian, who practice in various areas of law which involve interaction with members of our armed forces and with the various military installations located throughout Virginia.

Virginia Lawyer Dedicated Issue

Thanks to the contributions of several of our stalwart members, the section contributed to a dedicated issue of the *Virginia Lawyer*. The December 1997 edition of this publication features articles on legal issues involving federal procurement, tort liability involving military claimants, and the division of marital property, including military pensions, in the context of divorce and legal separation. Bob Korroch authored an article which provided an overview of the new simplified acquisition procedures available for small businesses to contract with the military. Bob's article outlined eligibility requirements, and described the Federal Acquisition Computer Network (FACNET). FACNET is part of the government's effort to implement a paperless contracting process through electronic commerce. Richard Gasperini's article provided an overview about tort liability involving military claimants under the Federal Tort Claims Act. Rich's article described the types of claims permitted, applicable law, statute of limitations issues, administrative claim requirements and consideration involving litigation in federal district court. The third article featured in the dedicated issue involved a discussion concerning the division of community property and military pensions, authored by Steve Glassman. Steve is an expert in the area and our section received numerous comments concerning Steve's discussion and views on jurisdictional issues as well as division of the military pension in Virginia.

Section Survey Results

At the conclusion of our inaugural year, our section sent to its members a survey soliciting ideas on how our new section should operate and what type of activities were demanded by the membership. We received a tremendous response to our survey. Almost 80 percent of those who responded wanted a Military Law Section-sponsored seminar which would address issues such as government procurement, overseas deployment issues, national security issues, military criminal law procedures and practice, and the perennial favorite — family and domestic relations issues involving military service members and their families. Our board of governors is currently working on developing a seminar to be held during the 1998-1999 Section year. The survey also provided a number of ideas for topics for our section's newsletter.

Section Newsletter

Under the editorial direction of Lou Michels, the section published one edition of its newsletter this year. The final touches are now being applied to a second issue, to be published in the late summer.

Annual Meeting

At the VSB Annual Meeting, the Section sponsored a CLE program on "Use of Polygraph Information in Military Courts-Martial." The panel was moderated by Professor Fred Lederer from the Marshall-Wythe School of Law, College of William and Mary. Professor Lederer has authored a number of books involving military justice topics. He is also a co-drafter of the proposed Virginia Rules of Evidence, one of the principal authors of the Military Rules of Evidence, and the author of *Fundamental Criminal Procedure and Military Law*. Joining Professor Lederer was David Frederick, Assistant to the United States Solicitor General. Dave wrote the government's brief in *United States v. Scheffer*, 118 S.Ct. 1261 (1998). The United States Supreme Court held that Military Rule of Evidence 707 did not unconstitutionally abridge the right of accused members of the military to present a defense when it concluded that favorable polygraph results were inadmissible evidence during trial. The Court had granted certiorari on the issue of whether the Military Rule of Evidence which precludes an accused from presenting evidence of a favorable polygraph result concerning his denial of the use of drugs while in the air force violated the Sixth Amendment right to present a defense. Our panel was rounded-out by United States Army Captain Drew Swank, a member of the Judge Advocate General's Corps. Captain Swank began his army career with the Intelligence Division, U.S. Army Criminal Investigation Command. In this position, Captain Swank became intimately familiar with the use of polygraph evidence and procedures. Adding excitement to the program was the presence of several experienced polygraph examiners for the Virginia State Police. The polygraph machine was demonstrated for members of the audience and "volunteers" were provided ample opportunity for their veracity to be tested.

Section Election

Immediately prior to the Annual Meeting CLE seminar, we held a section-wide luncheon and business meeting. During the meeting, we received the report of the nominating committee and the following individuals were elected to the board of governors: Robert B. Thomas, Jr., Charles R. Allen, Jr., Gary D. Solis, and Edward A. Robbins, Jr.

The Section also elected Bob Korroch, chair; Robert Thomas, vice-chair; Lou Michels, secretary; and Art Bredemeyer, newsletter editor. At the conclusion of the luncheon meeting, the section recommended to the board of governors that it consider holding its quarterly board of governors meetings at various locations throughout the state to maximize potential attendance by section members. The meeting also concluded that we would include military-related "events" in connection with our activities. For our next fall meeting, the section membership recommended that it complete its planning activities to hold a meeting at the Norfolk Naval Base and include a visit to one of our navy's aircraft carriers and nuclear submarines.

The achievements of the section were made possible through the energy and efforts of the members of the section's board of governors, each of whom committed significant amounts of time for the betterment of our section members and the Virginia State Bar membership as a whole. In summary, our section enjoyed a very active and successful year.



REAL PROPERTY SECTION

Michael K. Smeltzer, Chair

The Real Property Section continues to thrive. We are now the second largest section of the Virginia State Bar—and growing!

Our success is based on the efforts of our dedicated Board of Governors and our system of Area Representatives who give depth in both quantity and quality to the Section and to the Bar.

Since our last report the Section has accomplished the following:

- Organized a WEB page for the Section
- Continued to work on updating the VSB Standard Forms
- Began work on a *Commercial Real Estate Handbook*
- Planned and assisted in the presentation of the following seminars:
 - Second Annual Advanced Real Estate Seminar
 - Third Annual Advanced Real Estate Seminar
 - 16th Annual Real Estate Practice Seminar
 - 17th Annual Real Estate Practice Seminar
 - Land Use Seminar
 - Annual Meeting Seminar jointly with Local Government Section
 - First Day in Practice Program
- Participated in planning and creation of CRESPA UPL Guidelines and UPL 183
- Worked with the Virginia Land Records Management Task Force
- Assisted our editor, Professor Lynda Butler of the Marshall-Wythe Law School, in compiling and publishing issues of the Section's newsletter, *The Fee Simple*.

These accomplishments would not have been possible without the work of our dedicated Board of Governors and Area Representatives. The Section especially thanks the Section Vice Chair, Susan K. Hepner, for her able assistance and Lee Hickok of Virginia CLE, for his excellent help and guidance in the planning and presentation of the real property seminars.



SENIOR LAWYERS SECTION

Richard Cocks

The Senior Lawyers Sections has had an active year in which our Section has enjoyed a measure of rejuvenation. The year has been highlighted by having one of our own members as Chairman of the ABA Senior Lawyers—Leigh Middleditch. Our successful year has been made possible by the outstanding lawyers who have made themselves available to serve on our Board of Governors and have used their talents and resources to further the goals of the section. And just what did we do?

Senior Citizens Handbook

Our section is responsible for conceiving, preparing and producing this outstanding publication which the American Bar Association has recognized and taken on as a national project. Senator Thomas J. Michie of Charlottesville currently chairs our committee and is preparing the handbook for its ninth printing.

Annual Programs

We have traditionally sponsored a CLE program at the VSB Annual Meeting at Virginia Beach, frequently in conjunction with another section. This year in conjunction with the Young Lawyers Conference we presented a panel discussion of the “titanic” question, “How can we navigate the good ship ‘Civility’ through the ice fields of gamemanship?” Our Chair-Elect, Francis N. Crenshaw of Norfolk, and O.P. Pollard of Richmond are coordinating this project with their young lawyer counterparts.

Guardianship Pamphlet

The 1997 General Assembly called upon the VSB to prepare a pamphlet to assist court appointed guardians to meet their responsibilities. The VSB in turn invited our section to take the lead in preparing this document. Frank O. Brown, Jr. of Richmond did a splendid job of preparing the initial draft.

Mediation vs. Jury Trial

Our section co-sponsored with the CLU Society, a CLE seminar in which a fact situation and arguments were presented to a jury, and then the case was submitted to mediation. The results were then compared in an open discussion format. The program, was informative, as well as entertaining.

Mid-Year Meeting

We were invited to present a program at the 1998 Mid-year Meeting of the VSB which was held November 4th through 11th in Spain and sought a program of which we could be proud and one which would have broad appeal to the Bar at large. We were excited to be able to present University of Virginia Professor A.E. Dick Howard who lectured on the highlights and trends of the United States Supreme Court during the last thirty years, from Warren to Rehnquist. We are glad that many of our colleagues were able to join us for this great opportunity to combine fellowship with education in an historic setting.

Quarterly Newsletter

Our Editor, Patricia Ann Barton of Springfield, is responsible for producing our quarterly newsletter which keeps our membership in touch with a variety of interesting articles.

These are but a few of the activities which demonstrate that the Senior Lawyers Section continues to make significant contributions to the legal profession. In the process, we have managed to renew old friendships and have some fun. What more could you want?

There are many good reasons for senior lawyers to join our ranks and we welcome new members over the age of 55.

Let me close this report with a heartfelt word of deep appreciation to each and every member of the Board of Governors of the Section who have unselfishly and unfailingly stepped up to the plate every time called upon and delivered the goods. Thanks to you and the good efforts of our coordinator, Pat Sliger, we have had a Titanic year.



TAXATION SECTION

Craig D. Bell, Chair

During this year, our section undertook a number of projects and activities towards our goal of supporting and educating lawyers in Virginia who practice or are otherwise involved in the area of federal, state and local taxation.

Section-Sponsored Seminars

The Tax Section continued to co-sponsor the William and Mary Tax Conference, which is held annually in Williamsburg on the first weekend in December, as well as the Federal Tax Institute, which is held annually at the University of Virginia during the first weekend in June. The latter event was particularly important this year as it celebrated its 50th presentation. Both CLE programs focused primarily on various areas of federal taxation, included a sprinkling of discussions on state and local taxation, as well as federal and gift taxation. These conferences were attended by approximately 300 participants at each location. Our section gets great exposure, provides a speaking platform for several of its members, and the programs are regarded as one of the best values for your continuing legal education budget.

First Annual State and Local Tax Institute Seminar

Our section planned, moderated, and hosted, with the University of Richmond School of Continuing Studies, Law School, and the Virginia Bar Association Tax Section, the First Annual State and Local Tax (SALT) Institute. The SALT Institute provided a complete review of different types of taxes which businesses tend to encounter in Virginia. The two-day seminar was held April 24-25 at the Moot Courtroom of the University of Richmond's law school. Topics discussed included Virginia's business professional occupational license (BPOL) tax reform legislation, a report on hot issues in sales and use taxes, property taxation for manufacturing concerns, administrative tax controversies, corporate income tax, and a discussion on the constitutional limitations on state taxing powers. An active panel discussion, which included audience participation, during both days of the program, left all participants with the feeling that the seminar should continue in subsequent years. Approximately 40 participants attended both days of the seminar.

Virginia Lawyer Dedicated Issue

Our section contributed to a dedicated issue of the *Virginia Lawyer*. The June/July 1998 edition of this publication features articles on understanding BPOL reform, congressional limitation on state net income taxation of interstate business, the recent judicial decision involving the occasional sales exception from sales tax for business asset sales, taxation of electronic commerce, and advocating for low-income Virginia taxpayers. The BPOL reform article provided 16 "practice pointers" designed to give the Virginia practitioner a basic understanding of some of the more important aspects of the completely revamped and revised gross receipts tax legislation which had been rewritten effective January 1, 1997. The article on congressional limitation on state net income taxation of interstate business involved a thorough discussion of Virginia judicial and administrative decisions which interpret Public Law 86-272, enacted as 15 U.S.C. § 381. Public Law 86-272 applies to almost every company, regardless of size, engaged in selling tangible personal property in interstate commerce. The article focused on the narrow interpretations authored by the Virginia Department of Taxation and the more liberal results which have been obtained when pursuing a correction of tax assessments in Virginia courts. A full discussion of the Steuart Petroleum decision involving an interpretation of the occasional sale exemption from Virginia sales taxes offered practical advice for buyers and sellers of businesses who structure their deals as asset sales. The article included a thorough discussion of the taxpayer victory in Steuart Petroleum v. Virginia Department of Taxation, as well as several recent Virginia Department of Taxation administrative rulings. Our section's dedicated issue also featured an article on taxation of electronic commerce, an area in which both federal and state governments are now focusing their attention. The article details several recent Virginia Department of Taxation rulings which address the various electronic commerce issues facing taxpayers and government entities. The last article in our dedicated issue involved a reflection on Virginia's taxation of the "working poor." The article described the experiences of representing low-income taxpayers and highlights the activities of The Community Tax Law Project, a non-profit organization providing pro bono representation to low-income Virginians in federal, state and local tax disputes.

Annual Meeting

At the VSB Annual Meeting, the section co-sponsored a CLE program with the General Practice and Trusts and Estate sections. The seminar was entitled "Through the Years: Ethical Concerns That Arise Representing Family and Closely Held Entities." The session was extremely well attended, notwithstanding the undesirable Friday 2:00 p.m. time slot.

Other Publications

Our Section published another edition of the *Virginia Tax Reporter* which contained a compilation of administrative rulings, bulletins, cases and other significant developments in Virginia state and local taxation. Under the leadership of Cynthia L. Meyer, Editor-in-Chief, the editorial board published a single edition of the *Reporter*. The other editorial board members include: John W. Flora, Index Coordinator; Craig D. Bell, Sales Tax; Neil L. Rose, Sales Tax; Pamela Catania, Sales Tax; French D. Slaughter, III, Sales Tax; Farhad Aghdami, Corporate Income Tax; Robert E. Lee, Individual Income Tax; and Harold E. Starke, Jr., Miscellaneous Taxes.

The board of governors met with members of the Virginia Department of Taxation's Policy Division to discuss the possible joint undertaking of publishing all Virginia tax releases and rulings electronically via the internet. Our section's board of governors and the Deputy Tax Commissioner are moving forward with plans to establish a joint publication of all state and local tax rulings and related items of interest on a web page with free access to practitioners. We expect that progress will be made during the upcoming year.

At the business meeting of this Section, held immediately after the summer meeting program, Neil V. Birkhoff, Steven Harwood and Penn Rogers were reelected to second terms on the board of governors and John W. Flora was elected chair, A. Kirkland M. Kelley was elected vice-chair, Steven Harwood was elected secretary, and Penn Rogers was reelected newsletter editor.

I want to thank all members of the section for the opportunity to serve you as chair this past year, and a grateful special thanks to the members of the Board of Governors for their outstanding leadership and support. Our section enjoyed a very active and successful year.



TRUSTS & ESTATE SECTION

Jo Ann Blair-Davis, Chair

During the past year, the Trusts and Estates Section published two outstanding newsletters thanks to the efforts of our newsletter editor, Tim Guare. Our section takes great pride in its newsletters, and it is to these newsletters that we attribute much of our continuing growth. As of October 1, 1997, the section reported an 11.5% growth in its membership over the previous year; making it the sixth largest of the sections.

The section cooperated with Virginia CLE in presenting the 16th Annual Trusts and Estates Seminar. The seminar was held in December in four locations across the Commonwealth, and in addition, was shown on videotape replay in 12 locations in January. This year's program again included Howard Zaritsky's comprehensive outline of Recent Tax Developments Affecting Gifts, Estates and Trusts. It also included a "plain English" translation of the generation-skipping transfer tax by Board Member Tim Guare. Tim has developed quite a reputation for himself throughout the Commonwealth for being able to make extremely complex areas of the law understandable. Attendance at this year's program exceeded our goal.

Through the efforts of our Vice Chair, Kirkland Kelley, and Board Member, Kelly Thompson, we assisted the Supreme Court in developing the standards for guardians ad litem as required by the 1997 legislative changes. The members of the board of governors reviewed and updated the pamphlet entitled "Wills in Virginia," which is published by the Virginia State Bar.

Our program at the 60th Annual State Bar Meeting in June was entitled "Through the Years: Ethical Concerns that Arise Representing Families and Closely-Held Entities." We were extremely fortunate to have Robert Eicher, the chair of the Virginia State Bar's Standing Committee on Legal Ethics as one of our panelists, together with Thomas Spahn of McGuire, Woods, Battle & Boothe, the chairman of the Virginia Bar Association's Professionalism Task Force and a Member of the State Bar Special Committee to Study the Code of Professional Responsibility. Other panel members included Linda Westenburger of Huff, Poole & Mahoney, Pat Herman of Vandeventer & Black, and Wendy Inge of the American National Lawyer's Insurance Reciprocal ("ANLIR"). The seminar was co-sponsored with the Taxation and General Practice sections with a great deal of assistance from Wendy Inge and ANLIR. ANLIR graciously allowed us to use their video vignettes to drive home even more effectively the ethical issues that we all confront on a daily basis in our practice and for this we thank them.

The board began exploring the creation of a Web Page for the section members and plan to carry this project into next year. I am sure that the section's activities next year will be even bigger and better under the leadership of the following officers:

A. Kirkland Molloy Kelley, *Chair*
Michele A.W. McKinnon, *Vice Chair*
Timothy H. Guare, *Secretary*
Walter William Gust, *Newsletter Editor*
Mark G. Ferguson, *Assistant Newsletter Editor*

Marie McKenney Tavernini was elected to serve her second term on the Board of Governors. Mark Ferguson, Andrew Hook, Tomas Nolan and Phillip Stone, Jr. are the newly-elected Board members. Mark Shepard and Kelly Thompson will continue their terms on the Board.

At this time I would like to thank Patrick Vaughn, Peter Cotorceanu, Nan Lou Coleman and John Flora for their many years of service to the Board of Governors of the Trusts and Estates Section and wish them the best. They will be missed.



YOUNG LAWYERS CONFERENCE

C. Shireen Kirk, President

The Young Lawyers Conference enjoyed another exceptional year in 1997/98. Our goals this year were to improve our existing projects and programs and initiate a couple of new projects so that we might better serve both the public and the bar. I am pleased to report that we achieved our goals. Following are several of the highlights from the past year.

Annual Meeting

The Conference had another outstanding Annual Meeting presenting a timely and topical panel debate on Title IX and collegiate sports. The panel included Dan Bonner, an analyst and broadcaster for ESPN and an NCAA tournament analyst for CBS; Neena Chaudhry, a litigation attorney with the National Women's Law Center; Gene Corrigan, former Athletic Director at UVA, W&L and Notre Dame and former Commissioner of the ACC and President of the NCAA; Ruth Goehring, Assistant Athletic Director for Compliance at the University of Richmond; Paul Parker, Assistant Athletic Director for Compliance at VMI; and Valorie Bonnette, founder of Good Sports Inc., a private consulting firm. We also honored Barry Logsdon of Newport News with the R. Edwin Burnette, Jr. Young Lawyer of the Year Award for his tremendous service and advocacy on behalf of children. Finally, we sponsored a lively dance on Friday to the music of The Fabulous Hubcaps and a series of successful athletic events including the Run in the Sun and the first beach volleyball tournament. Thanks to John Montgomery, Tim Brunick, Sam Simpson and Bart Chucker for organizing all these great programs.

Professionalism and Model Rules

These two committees under the leadership of Ted Atkinson and Savalle Sims formed a joint task force to assist the Virginia State Bar with the transition to the Model Rules. These committees will be instrumental in the review and revision of legal ethics opinions and the update of the professionalism course handbook to conform to the Model Rules. The work of this committee will be a tremendous service to the entire bar.

Access to Legal Services

This committee, co-chaired by Nelson Teague and Jim Creekmore, deserves much recognition for working with the Virginia Supreme Court in the development of the Virginia Tele-Court Project. This program will provide a public information toll-free number with messages regarding Virginia's court system. The number should be operating sometime in the fall and will be a valuable service to Virginia citizens and the legal community.

National Trial Competition

This committee, chaired by Kathleen McCormick and Vaughn Jones, did a great job hosting the competition in Richmond which included 18 teams from law schools in Virginia and the District of Columbia. Congratulations to Kathleen and Vaughn and their committee on orchestrating a flawless competition.

Membership Involvement

This committee, chaired by Anna Kane and Katrina Randolph, designed and developed a Young Lawyers Conference membership brochure for use in recruiting young lawyers to become active in the many projects of the YLC. This valuable membership service will be a great asset for the Conference for many years to come.

Women and Minorities in the Profession

This committee, chaired by Barbara Marvin and Beth Bruns, continues its history of being one of the Conference's busiest and highest profile committees. The committee started off the year holding a Board Match Plus Workshop in Arlington. This panel discussion informs young lawyers about the responsibilities of serving as a Board member for non-profit organizations and helps connect young lawyers with non-profit organizations who are seeking Board members. The Fourth Annual Celebration of Women and Minorities in the Profession Bench-Bar Dinner was held in Norfolk in September. The speakers included the Honorable S. Bernard Goodwyn, his wife, Sharon S. Goodwyn, the Honorable Margaret Poles Spencer, and her husband, the Honorable James R. Spencer. This annual dinner honors the newly appointed female minority members of the Virginia judiciary and will return to Richmond this September. This committee also updated the Directory of State, Local and Specialty Bar Organizations, a publication designed to increase the participation of minority and women attorneys in such groups. This project was selected for presentation at the national ABA-AOP Conference in May. This committee is also working on a law student mentor program at Virginia colleges and universities.

Emergency Legal Services

Shawn Copeland led this committee which continued to expand its bank of attorneys trained to provide legal services in the event of a disaster and hosted a training seminar at the VSB Annual Meeting at Virginia Beach. This committee also produced and distributed an emergency legal services training videotape to the Conference's 31 Circuit Representatives, updated the written training materials and has initiated a registry system of the trained attorneys.

Children and the Law

This committee continued its strong history of public service by expanding the Student Day in Court programs across the Commonwealth, collecting donations of toys and videos for child witness waiting rooms and installing child witness waiting rooms in courthouses across the Commonwealth. This committee also sponsored an ethics seminar for guardian ad litem.

Community Law Week

This committee under the leadership of Collin Hite implemented and coordinated Community Law Week projects with local bar associations across the Commonwealth promoting the ABA's 1998 nationally recognized theme of "Celebrate Your Freedom." The projects included essay contests, mock trials and "no bills nights."

Admission and Orientation/First Day in Practice

Patrice Alongy and her committee did a superb job with the Admission and Orientation Ceremonies both in the fall and spring. The ceremonies are high profile critical events for the bar. Thanks to Patrice and her committee for their tremendous service.

Bill Musto and Sheri Sheffield in conjunction with the General Practice Section put on another well attended First Day in Practice Seminar in the fall.

Docket Call

Michelle Jones and the Editorial Board continued the tradition of publishing *The Docket Call*, a nationally recognized quarterly newsletter designed for young lawyers.

Circuit Representatives

The Circuit Representatives, the Conference's statewide network of volunteers, put on a stellar array of projects across Virginia. In Tidewater, Richmond, Fredericksburg, northern Virginia, Leesburg, Culpeper, Danville and Roanoke, the Circuit Representatives distributed Senior Citizens handbooks and "So You're 18" handbooks as well as coordinated additional child witness waiting rooms. Circuit Representatives in Richmond, Williamsburg, Danville and Roanoke organized tours of the courts for school children. Mock trials for high school students were held in northern Virginia, Loudon County, Roanoke, Lexington/Covington and Prince William County. In the Roanoke area, Circuit Representatives held seminars to educate seniors about consumer fraud safety and Medicaid/Medicare issues. Legal seminars for high school students were held in Tidewater, Richmond, Danville, Lexington/Covington and Winchester. Emergency legal services training seminars were also offered in Newport News, Danville, Richmond and Tidewater. Once again, our circuit representatives have done tremendous work this year.

ABA-YLC Awards of Achievement

Every year the YLC competes against the country's largest ABA affiliates for recognition in Award Division 1A. The Conference had a tremendous showing this year receiving (i) First Place in the Bar Service Project category for the Admission and Orientation Ceremony and the First Day in Practice Seminar; (ii) Second Place in the Public Service category for the Virginia Tele-Court Project; (iii) Second Place in the Comprehensive category; and (iv) Special Recognition in the Minority category for the Board Match Plus Program. Thanks and congratulations to Pam Grizzle for her hard work in preparing the applications and to all the young lawyers who are responsible for these great projects.

In closing, this has been a successful year for the Conference due to the incredibly hard work and dedication of its volunteers. I am privileged to have had the opportunity to serve as president and look forward to watching the Conference's continued success under the leadership of President Julie McClellan, President-elect Tracy Walker, and Secretary Tracy Giles.



REPORT OF THE STANDING COMMITTEES

STANDING COMMITTEE ON BUDGET AND FINANCE

William D. Cremins, Chair

In accordance with a bylaw amendment, the Budget and Finance Committee became a standing committee of the Virginia State Bar as of July 1, 1997. During this past year, the Committee has dealt primarily with issues of limiting expenses so no dues increase would need to be considered prior to bar year 2000.

The Committee also dealt with the remaining issues from the employee evaluation and compensation study of a year ago. These issues concerned themselves primarily with fringe benefits for employees. Among other things, the health insurance reimbursement benefits were changed effective July 1, 1998 to reflect that the bar would only pay for employee coverage for all new employees hired after that date. This change brings the bar more in line with current practices in both the governmental and private sectors.

At the June 1998 annual State Bar meeting, the Budget and Finance Committee was tasked for the coming year with the responsibility of identifying the cost of each of the bar's programs and disseminating this information to the membership for their consideration and comment. The current "reserve spend down" process will require that a decision be made within the next two years as to whether to increase dues to support existing programs or to curtail or eliminate programs to bring spending in line with revenue. More will be heard about this project as the current bar year progresses.



STANDING COMMITTEE ON LAWYER ADVERTISING AND SOLICITATION

Thomas E. Albro, Chair

The Committee on Lawyer Advertising and Solicitation (COLA) monitors lawyer advertising and solicitation in Virginia and issues informal advisory opinions in these areas. In discharging its duties, COLA is cognizant of the fact that truthful and non-deceptive lawyer advertising and solicitation is protected commercial speech under the First Amendment. However, narrowly drawn regulations directed at lawyer advertising and solicitation that advance substantial state interests will survive legal challenge on First Amendment grounds. During the past year, COLA participated in a number of activities and sponsored initiatives consistent with these principles.

COLA's workload has been steadily increasing. The staff and members of the committee monitor yellow page advertising, as well as broadcast advertising throughout the Commonwealth. This is a time-consuming task requiring meticulous attention to details. As a consequence of this increased work load, the committee decided to meet six times a year, an increase of two meetings per year.

The chair scheduled a retreat with the committee members and staff to address long-range plans and a variety of concerns related to advertising that could not be satisfactorily addressed in the context a regular meeting. The committee met November 14-15, 1997 at the T.C. Williams School of Law. The committee concluded the Virginia State Bar should consider adoption of a statement of aspirational goals for advertising and solicitation, and a subcommittee was assigned the task of drafting this statement. The committee will investigate the possibility of public service advertising by the Virginia State Bar addressing lawyer advertising and how to select an attorney. The committee expressed concern over numerous complaints it received from attorneys and others regarding the solicitation of criminal and traffic cases, particularly in northern Virginia. However, while there was sentiment for adoption of a ban on such solicitation, a recent decision by the Fourth Circuit Court of Appeals striking down such a ban in Maryland led the Committee to conclude it did not have authority to adopt a ban. The committee considered whether to prohibit all in-person solicitation, not just in personal injury and wrongful death cases. The committee deferred action on this issue pending the outcome of an appeal in the Eleventh Circuit Court of Appeals concerning the constitutionality of a similar ban in Georgia. The committee

adopted a policy that clear violations of the disciplinary rules should be referred immediately to the disciplinary system. The committee concluded that the rules governing lawyer advertising should be changed to require that all advertisements and solicitations list the street address of the attorney's office and disclose the name of at least one attorney in the firm so that if the advertisement or solicitation violates disciplinary rules, an attorney can be disciplined for a violation. Advertisements and solicitations which only list the names of law firms cannot result in disciplinary action since the Bar only disciplines attorneys, not law firms.

The committee expanded Legal Advertising Opinion A-0106 to prohibit not only specific case results, but cumulative statements of results (e.g., "we have collected millions for hundreds of clients", etc.).

The committee voted to publish all its Legal Advertising Opinions in the Bar Register and to post them at the Virginia State Bar web site (www.vsb.org).

As part of the process of adopting the Model Rules of Professional Conduct, the committee proposed to State Bar Council that Model Rule 7.1 be changed to require that advertising and solicitation contain the name of a responsible attorney, and the office address of the attorney and firm. The committee recommended modifying Model Rule 7.3 to allow an attorney to advertise that he or she has been certified as a specialist in a field of law so long as the advertising contains a disclaimer that the Virginia State Bar does not certify specialists other than guardians ad litem and mediators.

The committee considered the possibility of pre-screening advertising and solicitation for compliance with the disciplinary rules, but concluded this was logistically impossible and fraught with problems relating to the First Amendment. While there is no requirement that a lawyer submit proposed advertising to COLA for approval, many lawyers do submit them voluntarily, particularly information posted on home pages on the world wide web. Attorneys who request opinions about whether their proposed advertising or solicitation complies with the applicable rules of the Code of Professional Responsibility will receive opinions promptly from the Committee. Lawyers are required to keep a copy of any electronic media advertising for at least one year from the last broadcast date and must produce a copy of such advertising upon request by the Committee. DR 2-101(B). The committee adopted an opinion concerning advertising over the Internet. LAO-A-0110.

The committee noted with sadness the death of John Grad during this past year. Mr. Grad served with dedication and distinction as a member and chair of COLA.



STANDING COMMITTEE ON LAWYER DISCIPLINE

Paul B. Terpak, Chair

The Standing Committee on Lawyer Discipline (COLD) has general oversight responsibility for the operation of the bar's disciplinary system. Specific responsibilities include monitoring the performance of the office of Bar Counsel in the investigation and prosecution of disciplinary matters, monitoring the District Committees and the disposition of complaints, and recommending to Council rules for efficient and effective administration of the system. The committee is comprised of 10 active members of the bar and 2 non-lawyers. In addition, the vice-chair of the Disciplinary Board serves as an ex officio non-voting member. Except during the summer, the committee meets monthly at the bar offices in Richmond. Individual members of COLD serve as liaison with the various District Committees. This function is carried out by personal and telephone contact with the District Committee leadership and attendance at District Committee meetings and/or hearings. Specifically, this year COLD recommended quarterly meetings to review dockets and to discuss the general administration of the committees.

COLD began the year with a reinvigorated disciplinary conference. For the first time in several years, all participants in the disciplinary system were invited to Richmond to review the process in detail and to discuss a number of issues that face the system. Over the past decade, numerous procedural changes were made which may have had unintended consequences. The number of District Committee hearings has dropped dramatically from a high of 124 District Committee hearings in 1990 to 27 District Committee hearings in fiscal 1998. The thoughts and input from those who attended the disciplinary conference confirmed the need for a general review of structural and procedural issues in the disciplinary system.

A new task force was created to study the structure of the disciplinary system. The structure task force, chaired by Steve Test, is reviewing issues regarding the frequency of District Committee hearings, use of District Committee members to conduct preliminary investigations, the addition of one more lay member to the District Committees and whether the process should be open to public scrutiny at an earlier stage. The subcommittee's report is due in the spring of 1999 and COLD hopes to make a recommendation by the end of fiscal 1999. Of course, this broad review of structure will require input from all participants in the disciplinary process including the Disciplinary Board, Bar Counsel's office and the District Committees.

The Rules Subcommittee chaired by Chris Habenicht continues to carry a heavy load. Numerous proposals were addressed by the rules subcommittee. Highlights for the year include an amendment to 13.K(4) regarding production of the Investigative Report when a complaint has been set for hearing before a District Committee or certified to the Disciplinary Board. The amendment codified the previously adopted policy and was approved by COLD and the Supreme Court. The subcommittee also completed work on statutory changes intended to provide procedures when a respondent requests consideration of a complaint by a three-judge court. The changes harmonize the procedure before three-judge courts and District Committees or the board as the case may be. The statutory changes were approved by COLD and Council and are before the General Assembly.

The Oversight Subcommittee chaired by John Johnson increased the frequency of its random review of case files to independently assess the actions taken by the office of Bar Counsel. This review includes not only closed case files, but also those matters in which the Bar Counsel intake office determined that no action should be taken. In addition, the Oversight Subcommittee helped respond to specific complaints against the Bar Counsel's Office.

One overarching goal of COLD is to improve communications in the disciplinary system as a whole. The objections raised by some District Committee members to the request that District Committee members perform investigations underscored the need for two-way communication. COLD will continue to work to improve communications between all participants in the Disciplinary System. Following last year's success, a full Disciplinary Conference is being planned for this summer.



STANDING COMMITTEE ON LEGAL ETHICS

Robert E. Eicher, Chair

The Legal Ethics Committee is charged with responsibility for the issuance of advisory legal ethics opinions to Virginia State Bar members concerning contemplated or actual conduct. Requests for opinions are required to be stated in the hypothetical on committee-approved forms that are available from the State Bar office. The committee is permitted to decline issuing an opinion regarding any matter that is currently the subject of any disciplinary proceeding or litigation.

During the fiscal year ended June 30, 1998, the committee docketed seventeen requests for opinions. Eight LEOs were issued. Three requests were carried over to the new fiscal year. Seven requests were docketed, but no opinion was issued because the request was withdrawn or because it posed legal issues, issues answered in prior LEOs, or issues involved in pending litigation. In addition, 35 requests were answered in Legal Ethics Inquiry letters from staff Ethics Counsel by reference to prior LEOs. The number of LEIs was three times the number in the prior year.

The number of requests for advisory opinions tracked the decline in recent years. The reduction no doubt reflects the value of the VSB Professionalism course and of the publication of LEOs in the additional Code volumes. Despite fewer requests, the issues presented were often complex (e.g., a provision in a client engagement letter requiring binding arbitration of malpractice claims, and the use or return of inadvertent facsimile transmission of privileged information).

The Ethics Hotline is a significant resource that affords ethics guidance to lawyers without the need for an advisory opinion from the committee. More than 3,400 inquiries, an average of 284 per month, were handled on the Ethics Hotline the past year thanks to the tireless work of Jim McCauley with splendid assistance from Ann Michie and Frost Telegadas. The committee is indebted to them and to Laurie Fuller for her organizational skills and able support.

Once again, the committee members were dedicated to service to the bar and unselfish with their time in the committee's deliberations and formulation of advisory opinions. The bar was well-served, and I am grateful for the time and talent of each member, Richard Atlee, Marni Byrum, Ben Gardner, Sandra Havrilak, Bob Hawthorne, Glenn Hodge, Bill Petty and Joe Rapisarda.

Finally, I express my appreciation to Tom Spahn, a member of McGuire, Woods, Battle & Boothe, for his indexed compilation of summaries of the LEOs issued over the years.



STANDING COMMITTEE ON PROFESSIONALISM

Joseph A. Condo

The Standing Committee on Professionalism is responsible for administration and ongoing oversight of the Professionalism Course, which is mandatory for all newly-admitted members of the Virginia State Bar. The course faculty is composed of distinguished lawyers and judges representing a broad cross-section of the legal profession in Virginia, who were nominated by their peers and invited by Chief Justice Harry L. Carrico to accept appointment to the faculty.

During 1997-98 the course will be offered a total of six times in Northern Virginia, Richmond, Roanoke, and Norfolk. Since the institution of the course in 1988, approximately 250 lawyers and judges have served on the faculty, and almost 12,000 new bar admittees have taken the course — more than half of the current practicing bar in Virginia. The first of its kinds in the nation, the course has served as a model for virtually all of the states that have followed Virginia's lead in offering similar programs, usually on a mandatory basis, to their newly-admitted lawyers. By any measure, this course has proven to be one of the most worthwhile and successful initiatives ever undertaken by the Virginia State Bar.

This success could not have been achieved without the steady and strong commitment of Chief Justice Carrico and the leadership of the State Bar. The Chief Justice, who was instrumental in founding the course, has delivered the luncheon address at all but a handful of courses during its nine-year history. In addition, Bar President Ed Lowry and his predecessors have made opening remarks at every course for the past few years. The involvement of our chief judicial officer, as well as the leaders of our bar, has been an unmistakable signal to new lawyers of our seriousness about the issue of professionalism.

Commendation is also due to VSB staff liaison Maureen Dubus, whose dedication and superb administrative efforts have been essential to the smooth and well-organized presentation of the course. It is impossible to adequately describe the challenge of coordinating faculty assignments, sites and other logistics necessary to offer the course half-a-dozen times, all over the state, year in and year out. Maureen has consistently met this challenge with good humor and aplomb.

In addition to administering the course, the committee monitors the course each year, with a view towards improving and refining it, in response to input from the faculty and attendees.

Other projects on the committee's agenda:

- Under the chairmanship of U.S. Magistrate B. Waugh Crigler, a task force is planning a pilot presentation on professionalism to law students by judges and practicing lawyers, in cooperation with the Section on the Education of Lawyers and the deans of Virginia's law schools. It is hoped that this will lead to a permanent place for professionalism on the law schools' curriculums.
- Consideration is being given to offering modified versions of the Professionalism Course to the practicing bar and to the bench, as well as incorporating segments on professionalism into substantive-law CLE seminars.
- At the annual meeting in Virginia Beach in June 1998, we again joined with the Section on the Education of Lawyers to present a program on professionalism and the Model Rules of Professional Conduct, which have been approved by Bar Council and will be submitted to the Supreme Court for Approval in the fall of 1998.
- The committee continued to consider a structure to address the immense task of incorporating the new Model Rules into our course book and other course materials.

During the 1998-1999 bar year the Committee will again be chaired by Joseph A. Condo. Charles E. Wall will serve as Vice-Chair.

REPORT OF THE SPECIAL COMMITTEES

SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

Nina E. Olson

The Access Committee carries out its overall mission in several ways: (1) by helping to maintain and enhance the existing legal services delivery system and by helping to ensure that there are high quality pro bono service opportunities for lawyers; (2) by promoting awareness of Rules 6.1 and 6.2 of the new Virginia Rules of Professional Conduct and their predecessor provisions under Canon 2 and its associated ethical considerations; and (3) by recognizing attorneys for their many and varied contributions in advancing the Commonwealth's goal of making adequate legal representation available to all residents. To address and prioritize these concerns, committee members were assigned to one of five working groups in 1998. Among others, the groups included subcommittees on local or circuit-based initiatives; resource development/grantmaking; and independent providers.

Over the last several years, to account for cutbacks in funding of civil legal services at the federal level and the transfer of IOLTA receipts from the Virginia Law Foundation to the Legal Services Corporation of Virginia, the Access Committee devoted substantial time to examining ways the State Bar could help further stabilize Virginia's licensed legal aid societies and independent providers of specialty legal services. Even though these programs and their private attorney pro bono panels annually deliver legal services, often of an emergency nature, to more than 40,000 low-income clients, national and state estimates suggest that 80 percent of the need for civil legal services goes unmet. Through sponsorship of the first annual Meet the Grantmakers session at the 1998 VSB Pro Bono Conference, the committee was able to offer an interactive forum between potential grantors and legal charities as a practical first-step to help address the immediate and future funding needs of a wide variety of Virginia's legal advocacy programs. The committee appreciates a generous grant from the board of directors of the VSB Section on Litigation that allowed video-taping of the proceedings and expects to make a transcript of them available soon on the bar's web site.

The committee also supported efforts to draft more inclusive language under the new Virginia Rules of Professional Conduct. Aside from maintaining language that encourages lawyers to render two percent of their professional time directly to pro bono activities, Rules 6.1 and 6.2 also recognize the value of collective contributions of time, financial donations to legal charities in proportion to a lawyer's professional income, and reduced fee work by court-appointed and other attorneys on behalf of indigent and other needy clients.

To complement the provisions for expanded attorney involvement in pro bono activities under 6.1 and 6.2 of the new rules, the committee promoted widespread discussion about a proposed stand-alone rule of court to establish circuit-based pro bono committees. The proposed rule was designed to enhance pro bono opportunities by promoting collaboration between bar associations, service providers and the courts. This proposed rule was raised at the 1998 Bar Leaders Institute, published in the Virginia Lawyer magazine, and brought before Bar Council at the June annual meeting, where the committee was told to resubmit another draft after engaging in some fine-tuning.

In 1998, the committee also finalized preparations for its survey of legal services providers. We anticipate that the data gained from these efforts will help identify pockets of need for specific legal services at the local and regional levels. Submissions should also help identify parties interested in participating in collaborative efforts at the local level as well as provide a base for new general and special purpose directories of legal services providers that are available on-line and in print format.

Each spring the Access Committee sponsors a Pro Bono Conference which offers, at nominal cost, a variety of continuing legal education sessions on poverty law. In conjunction with the conference, the State Bar President presents the Lewis F. Powell, Jr. Pro Bono Award to an individual or group who has made outstanding contributions in providing pro bono legal representation. During the annual meeting of the Virginia State Bar at Virginia Beach, the committee also holds a special luncheon to present the Virginia Legal Aid Award for outstanding service by an attorney employed by a licensed legal aid society.

SPECIAL JOINT COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

Barbara Hulburt, Chair

This has been a productive year for the Joint Committee. The existence of the Executive Committee and the subcommittee structure put into place by Immediate Past Chair Frank West Morrison has allowed for a smooth transition and the accomplishment of a number of tasks.

Importantly, the Joint Committee has continued its focus on getting the word out to the Bar about Alternative Dispute Resolution. Having decided several years ago that the Joint Committee structure was more appropriate for this work than separate sections in the two bars, the Joint Committee continues to work on including non-Committee members in subcommittee work and CLE activity.

Members have responded favorably to a request from the State Bar to participate in the Speakers Bureau program, and a number of members are now a part of the Speakers Bureau roster. In addition, a mailing to all Chambers of Commerce around the State indicating the availability of local Joint Committee Members to speak on ADR topics of interest has resulted in several requests for speakers.

Substantive discussions of the Committee this year included an in-depth look at a child-custody case which was first mediated, then arbitrated, then adjudicated. The ramifications of several judicial decisions made throughout the life of the case were considered at length by the Committee. The Chair wrote a brief summary of the issues raised by the Committee, to be printed in the *Resolutions* newsletter, published by the Office of the Executive Secretary. The Committee also discussed the ethical issues raised by the notion of including a mandatory arbitration of fee disputes clause in an engagement letter.

A number of members of the Joint Committee have been asked to participate in writing a *CLE Handbook on ADR in Virginia*. The date of publication has been planned to coincide with the Joint Committee's first ADR "Superconference," a one-day exploration of the role of attorneys in ADR and a skills-development workshop on advocacy in mediation, which is planned for November 1999.

The Joint Committee has worked with the VBA's Domestic Relations Counsel and Business Law Section to put on CLE presentations at the Summer and Winter Bar Association meetings. A joint presentation with the VSB's Family Law Section is planned for the Annual Meeting in June.



SPECIAL COMMITTEE ON BENCH-BAR RELATIONS

Warren David Harless, Chair

This annual report of the Special Committee on Bench-Bar Relations will summarize the activities of the Committee during the 1997-98 fiscal year for inclusion in the 60th Annual Report of the Virginia State Bar. The major goals of the committee were the completion or continuation of certain activities and programs initiated in earlier years, and the pursuit of additional activities consistent with the committee's desire to foster continuing interaction between the Bench and the Bar, locally, regionally, and state-wide. The committee principally addressed the following four projects during the 1997-98 Bar year.

1. **Responding to the Unjust Criticism of Judges and the Judicial System.** In 1996, our committee began receiving inquiries across the state from local bar associations regarding public responses to unjust criticism of judges and the judicial system. Our committee investigated how other bar associations, both statewide and nationally, have addressed this issue. In the 1996-97 Bar year, our committee developed suggested guidelines for local bar associations to use in considering whether to respond to unjust criticism, and fashioning an appropriate response to such criticism. These guidelines were based in large part on model procedures suggested in the past by the American Bar Association. In addition, these guidelines received the constructive criticism and input of circuit and appellate judges on our committee, and representatives of the print and broadcast media and judges and lawyers then serving on the VSB Bar and Bench-Media Relations Committee.

In the 1997-98 Bar year, the American Bar Association reexamined the model procedures that our committee had used as the basis for its suggested guidelines. The committee awaited the ABA's action at its Mid-Year Meeting, evaluated the few changes that were made by the ABA, and thereafter submitted to Virginia State Bar Council for its consideration and approval a suggested model program for responding to unjust criticism of judges and the judicial system. At its June meeting, Council approved the guidelines with minor revision.

The *Guidelines* are to be distributed to bar leaders and executive staff across the state, and a copy is available from the Virginia State Bar.

2. **Regional Judicial Conferences.** Our committee is seeking to broaden its contact with judges statewide, attending the Regional Judicial Conferences that are held in the six Judicial Regions across the Commonwealth twice each year. Representatives from our committee have been invited to participate in five of the six Regional Judicial Conferences to be held in the Fall of 1998. The centerpiece of our presentation will be the aforementioned guidelines, anecdotal references to unjustified attacks on judges and the judicial system, and suggested approaches to such unjust criticism, including the fostering of improved and increased communication between judges and local bar associations.
3. **Orientation Video for Jurors.** In the Fall of 1997, at the invitation of the Richmond Bar Association, our committee investigated the need for a uniform juror orientation video which would be used by Circuit Courts statewide. We concluded that there is a need for such a video. Our committee thereafter began identifying funding sources potentially available to underwrite the cost of the project, which is estimated to be approximately \$40,000. The Virginia Supreme Court and the Virginia Law Foundation have expressed interest in underwriting a portion of the cost of this endeavor, and thus our committee is proceeding with the project. In the fall of 1998, production planning and preparation of a script will be underway. The committee anticipates having all funding commitments in place by the Spring of 1999, with final production and completion of the project in the Fall of 1999 or early in the year 2000.
4. **Annual Seminar at the VSB Annual Meeting.** The committee jointly sponsored with the VSB Special Committee on Bar and Bench-Media Relations a CLE seminar at the Annual Meeting of the Virginia State Bar in June of 1998. The seminar received 1.5 hours of CLE Ethics credit. The topic was "High Profile Litigation in Virginia: Lessons From the Bench, Bar and Media." The panelists included Paul Bradley, a journalist with the *Richmond Times-Dispatch*, David C. Kohler, Esquire, Senior Vice President and General Counsel for CNN, The Honorable J. Samuel Johnston, Jr., Judge of the Campbell County Circuit Court, The Honorable Richard E. Trodden, Commonwealth's Attorney for Arlington County, Glen A. Huff, Esquire, of Virginia Beach, Virginia, and Lisa Palmer O'Donnell, Esquire of Virginia Beach, Virginia. The moderator for the session was The Honorable Robert E. Payne, United States District Judge for the Eastern District of Virginia. The panelists and members of the audience exchanged anecdotal and critical comments regarding the conduct of members of the Bar, the Bench, and press during high profile litigation, and the ethical implications for lawyers arising in that context.



SPECIAL COMMITTEE ON THE CODE OF PROFESSIONAL RESPONSIBILITY

By *Dennis W. Dohnal, Chair*

The Special Committee to Study the Virginia Code of Professional Responsibility is beginning its sixth and, hopefully, its last year. Its continued viability depends on whether or not the Supreme Court and/or Bar Council will ask the committee to review any of the some 48 proposed Rules that have been approved by Council and which are going to be presented to the Court for its necessary review and hopeful approval during its fall 1998 term.

The committee was occupied this past year with continuous reviews of the specific proposals which were presented and considered by Council in three parts over the course of four Council meetings. The revisions were based on the debate before Council as well as the numerous comments that were received from the Bar membership at large as a result of several publications and personal presentations. Committee members made more than three dozen appearances before various Bar associations and groups to discuss specific substantive proposals, the purpose of which was to not only publicize the ongoing effort, but also to solicit input for possible reconsideration and review. As a result, several proposals were revised into what everyone considers to be a much better product.

Committee members will remain available throughout the next several months to respond to any additional inquiries and to be available for any presentation(s) to the Court or other interested parties. In the meantime, the committee is engaged in "fine tuning" the final version of all Rules, including a topical index and numbering system so as to have the proposals coincide in numbering with the ABA Model Rules of Professional Conduct for easier reference/research purposes. In addition, efforts are underway to cross-reference existing LEOs and to otherwise smooth the anticipated transition process with an effective date, if approved by the Court, which will allow for a phasing-in process, including additional presentations through voluntary CLE courses, local Bar association presentations, etc. At present, it is the recommendation of the committee that any resultant set of Rules not be deemed effective until January 1, 2000, so as to allow for such a "phasing in". A transition team, comprised of the Vice Chairman of the Committee, Professor John Levy, and representatives from Bar Counsel's office, the Standing Committee on Legal Ethics, the Professionalism Committee, and the Disciplinary Board has been formed to arrange the logistics of the proposed transition.

Once a final product is approved by the Court, the committee's task will be completed and responsibility for ongoing implementation and interpretation will be transferred to the Standing Committee on Legal Ethics. Our objective this year is to make it our last.



SPECIAL COMMITTEE TO STUDY COMPUTER NEEDS OF THE VSB

William T. Wilson, Chairman

The Computer Study Committee made two major recommendations to the Executive Committee last year both of which were accepted by the Executive Committee and the Council. The first was to accelerate the phase-in of the personal computer network replacing the bar's 12 year old VAX, and the second was to provide funding for developing computer programs to run the bar's operations on the new computer network. The procedural history and the rationale for the actions taken by Executive Committee and Council are set forth as follows:

Accelerated Computer Acquisition (December 1997)

The Committee to Study Computer Needs met on October 15, 1997 to consider accelerating the planned phase-in of networked PC's and additional staffing resources in the Information Systems Department. The idea to accelerate the phase-in originated at the Executive Committee/Senior Staff Retreat in August 1997 and was promoted by both the president and president-elect. It was argued that the bar staff would not be able to keep in touch with the membership and meet their needs as effectively as it should if the staff had to wait two more years before receiving what is considered fairly standard computer technology. The committee recognized that additional technical support staff at the Bar would ensure the efficient and advantageous use of computer technology.

The Computer Committee had originally recommended a four year phase-in so that the impact on the bar's reserve and appropriation would be less substantial in any one year.

Due to the implementation of the CRESPA program, the Membership Department was outfitted with PC's in June using funds generated by CRESPA registration fees. As a result, only 22 computers remained to be purchased in the final two years of the schedule. Since the money for the purchase of these computers had already been allocated from the reserve, it was pointed out that accelerating the purchase would be revenue neutral. After discussing the merits of accelerating the purchase, including cost, effect on budget, available technology and the decline of computer prices, the committee recommended accelerating the purchase of the additional 22 computers from FY 1998-99 and 1999-2000 to the first half of calendar year 1998.

The committee agreed that moving the purchase of the computers up from the 1999 and 2000 fiscal years would not cost any additional money. Price decreases were already figured into the planned purchases so there would likewise be no cost savings by accelerating the purchase. The Executive Committee agreed that the acceleration would be revenue neutral and would allow the Bar to move ahead in the technology area and meet the needs of the bar membership and, accordingly, adopted this recommendation on December 11, 1997. This action was reported to Council at its next meeting. All computers were installed as of February, 1998. All staff members now have access to Windows programs, Internet and e-mail.

Additional Technical Support for VSB Staff (January/February 1998)

The Computer Committee realized that as we installed new computers we needed to adequately utilize their capabilities in order to achieve the greatest return on our investment. This would include databases and programs for accessing member information and regulatory material that are more complete and easier to use than our current computer system allows. In addition, the committee agreed that we should be looking at computer based faxing, Internet access, both within and externally to the bar, forms processing and electronic filing of documents to name just a few.

The Committee also saw the need for increased training and problem solving as the staff begins to use the new equipment, software and procedures. Accordingly, the committee recommended to the Executive Committee that \$80,000 be allocated for the hiring of a contract programmer to help develop software for the bar with the understanding that the bar's present information systems staff would do a needs assessment and prepare the system requirements and technical specifications for use in doing the programming. The Executive Committee approved this recommendation but allocated \$120,000 to be used for programming the new software. On February 28, 1998, Council unanimously agreed. Since that time the bar staff has conducted a review of its existing systems and requirements for a new system. They have also reviewed outside vendors and canned software packages in order to try to find existing software that would meet their needs. Having found no software packages that adequately meet the bar's needs for the amount allocated, the bar staff is now preparing system requirements and specifications for writing the software using in-house and contract programmers. The project is expected to be complete by approximately January 1, 2000.

**SPECIAL COMMITTEE TO STUDY CONSISTENCY OF DECISION MAKING WITHIN THE DISCIPLINARY SYSTEM**

W. Scott Street, III, Chair

The Special Committee to Study Consistency of Decision Making Within the Disciplinary System (the "Committee") was established in June, 1996 following a recommendation by JLARC, which suggested that the Bar study decisions of our district committees from across the state to make sure there were not geographical disparities in the way cases were handled. Bar Council approved this recommendation, expanding the study to include a review of any apparent disparity on the basis of race, gender or ethnic background.

As described in last year's Committee Report, Dr. Michael Pratt of the Center for Public Policy at Virginia Commonwealth University (the "Center") was retained to develop the criteria for a process to gather information for the consistency study. The information gathering process began on May 1, 1997.

When a complaint file is opened by the Bar, the Bar staff sends to the respondent attorney a confidential questionnaire developed by the Center and approved by this Committee. Information on the questionnaire is maintained exclusively by the Center, which is in the process of compiling the responses in a database expected to form the basis for the Center's analysis of the Bar's decision making consistency. All individual responses will be retained by the Center, thereby preserving anonymity to each respondent.

Because the information was gathered only on complaints opened after May 1, 1997, the Committee soon recognized that we would have to wait until these cases were concluded before there would be relevant information concerning the actions taken by the district committees. The Center's interim report, furnished in March, 1998, included only matters which had been concluded by either the resignation of the respondent attorney or the dismissal of the charge. As the other cases proceed to conclusion, we expect that there will be sufficient information to permit the Center to submit its initial analysis sometime around the end of 1998.

The interim report did confirm that the practice areas of criminal law and family law together generate more complaints than all the other areas of law combined. Likewise, litigation practice apparently generates about four times as many complaints as are generated by non-litigation practice. Many of the complaints are against the same attorneys.

The Committee is pleased with the level of response to the confidential questionnaires and hopes to have sufficient information within the next six months to begin a meaningful analysis of the consistency with which decisions are made within our disciplinary system.

SPECIAL COMMITTEE ON JUDICIAL NOMINATIONS*Peter C. Burnett, Chair*

The following individuals served as members of the Judicial Nominations Committee:

- Peter C. Burnett (Leesburg)
- Milton K. Brown, Jr. (Richmond)
- Edward L. Chambers, Jr. (Yorktown)
- Richard J. Colten (Fairfax)
- Barry Kantor (Virginia Beach)
- Gail S. Marshall (Rapidan)
- William G. Murray (Arlington)
- Joseph R. Newell, III (Staunton)
- Sharon E. Pandak (Prince William)
- Nancy G. Parr (Suffolk)
- Russell O. Slayton, Jr. (Lawrenceville)
- John R. Snoddy, III (Dillwyn)
- Ronald R. Tweel (Charlottesville)

During its 1997-1998 term, the committee has evaluated candidates for two judicial vacancies. The election of senior status by Chief Judge James Cacheris of the United States District Court for the Eastern District of Virginia, Alexandria Division, created a vacancy for which nine candidates were evaluated. The process requires the submission of a resume, completed legislative questionnaire, and a writing sample. After circulation of written materials to committee members and an informal investigation by an assigned committee member, a meeting is held at the Richmond VSB offices to which all candidates are invited for interviews. On February 9, 1998, The Honorable Helen F. Fahey, John H. Foote, Esquire, Michael S. Horwatt, Esquire, The Honorable Thomas R. Jones, Jr., The Honorable Gerald B. Lee, The Honorable Barry R. Poretz, The Honorable Jane M. Roush, Barbara S. Wahl, Esquire, and The Honorable Marcus D. Williams were interviewed. At the conclusion of the interviews, the Committee recommended John H. Foote, Esquire, The Honorable Gerald B. Lee, The Honorable Barry R. Poretz, and The Honorable Jane M. Roush (in alphabetical order) as the four best qualified candidates for the position. The VSB Executive Committee adopted our recommendation and thereafter provided it to Senator Robb.

Ten days prior to the legislature's deadline for receiving Bar endorsements, the VSB learned of the retirement of Virginia Court of Appeals Justice Joseph Baker. With such a limited time frame, it was impossible to convene a meeting of the committee and difficult to advertise the vacancy. Accordingly the committee solicited the usual written materials, dispensed with interviews, conducted its investigation, and convened by telephone on March 5 to consider the five candidates known to the committee at that time. The committee reported out The Honorable Donald W. Lemons, The Honorable Charles E. Poston, and The Honorable Lydia C. Taylor (in alphabetical order) as the three best qualified candidates for the position. Immediately following the meeting, the VSB became aware of the candidacy of The Honorable Eugene Lohman. By that time, however, the committee had adjourned and was unable to consider his credentials. In fairness to Judge Lohman and any other candidates similarly situated, the Executive Committee, at the request of the Judicial Nominations Committee, advised the House and Senate Committees of the constraints short notice had placed on the consideration of all candidates.



SPECIAL COMMITTEE TO STUDY LAW OFFICE MANAGEMENT ASSISTANCE PROGRAM (LOMAP)

R. Edwin Burnette, Jr., Chair

The Committee's activities were put on hold during this Bar year due to the decision of Bar Council to delay funding LOMAP until July 1, 1999. At the end of the current Bar year, the Committee met to draft a job description for the Executive Director of LOMAP. A subcommittee, chaired by Bruce Clark, has undertaken this task. The Committee will continue to lay the foundation to implement the program as presently scheduled.

The following Committee members are gratefully thanked by the chair for their continued support and assistance: C. Butler Barrett, J. Edward Betts, Michael Glasser, Kimberly Pinchbeck, Carolyn Smith Motes and Bruce T. Clark.



SPECIAL COMMITTEE ON LAWYER MALPRACTICE INSURANCE

Thomas L. Appler, Chair

The Lawyer Malpractice Insurance Committee continued its heavy schedule of activity during this Bar year. Its dual role included that of the Bar's special committee, as well as functioning as the advisory committee to the VSB's endorsed professional liability carrier, American National Lawyers Insurance Reciprocal, Risk Retention Group (ANLIR), regarding its Virginia operations in the areas of risk management, underwriting/policy coverages and claims administration/handling.

In the previous Bar year, Council had approved the committee's recommendation to continue the endorsement relationship between the VSB and ANLIR, and directed the committee to return to Council in this Bar year with an appropriate Endorsement Agreement. Accordingly, efforts began to pursue and negotiate the appropriate Endorsement Agreement to carry forward the benefits of the existing relationship into the future. A subcommittee met with ANLIR officials and reviewed potential changes to the Endorsement Agreement that were thought desirable by the VSB's consultant or the committee, and those which were suggested by ANLIR management. Following that review a draft agreement was negotiated, drafted and subjected to further review and assessment by the committee. In September, 1997, the committee approved the new Endorsement Agreement and that Agreement was also approved by ANLIR.

At its meeting on October 23 and 24, 1997, Council approved the Committee's unanimous recommendation to execute the new Endorsement Agreement and it has since been executed. The Endorsement Agreement makes no major substantive changes in the nature and attributes of the endorsement relationship between VSB and ANLIR, nor in the manner in which the program will function. Minor substantive adjustments in the Agreement provide an appropriate and workable framework for a continuation of VSB's endorsement relationship with ANLIR and continued good cooperation in management and oversight of the program by the Committee and the VSB.

In addition to the approval and assessment of the new Endorsement Agreement, the committee's normal operations in risk management, underwriting and claims handling continued with the usual vigor during this year. The Committee's Risk Management Subcommittee, chaired by David F. Peters, continued to monitor and coordinate the cooperative risk management program between the VSB and ANLIR, working closely with the Bar's risk managers, Paul Sinclair and Paul Georgiadias, along with ANLIR's Wendy Inge, who completed her transition from claims and risk management to full-time risk management for ANLIR during this Bar year. A workable and valuable relationship between the risk managers, the subcommittee and ANLIR has been forged with the addition of substantive risk management responsibility and expertise from Wendy. The committee's recommendation for furnishing certain risk management publications semi-annually to all VSB members (in addition to ANLIR insureds) continued during the year.

The risk management program's most significant, broad-based effort continues to be the free malpractice prevention seminars jointly sponsored by the VSB and ANLIR in the spring. Multiple locations throughout the state drew a record number of attendees for these worthwhile malpractice avoidance programs. Coordination by the ANLIR staff, with the

involvement of risk managers and expert technical assistance for the video vignettes that are integral to these seminars was successfully handled with outstanding attendance. Feedback from the programs held throughout the state continued to be very positive and the Committee appreciates the efforts of many volunteer speakers as well as the expert assistance of all staff and risk management personnel. Continued emphasis on risk management improvements and programs, with overall expenditures that are within budget, remain a significant priority for the Committee.

The committee, through its Claims Subcommittee, chaired by Deborah Wyatt, continued to routinely review claims handling and significant claim exposures with ANLIR claims officials. Regular interchange between the Committee and claims representatives of ANLIR on significant claims continues to be an important part of the Committee's function. In addition, the underwriting and policy coverages subcommittee, chaired by Henry Kueling-Stout, has provided consultation, review, and direction regarding underwriting and policy coverages decisions, and potential additional programs.

The increasingly competitive market for legal malpractice insurance has fostered creativity among ANLIR staff and consequent review by the subcommittee and the committee. Such creative teamwork has resulted in a superior professional liability product for VSB members.

The committee looks forward to its future and continuing efforts to strengthen the lawyer's malpractice insurance program in Virginia. Its activities and efforts have been aided immeasurably by the diligent efforts of committee members and the welcome and responsive assistance of ANLIR's staff and management personnel throughout the year. In particular, the committee has benefited from the enthusiastic efforts of the subcommittee chairs, Ms. Wyatt and Messrs. Peters and Kueling-Stout. Their leadership has been instrumental in focusing the efforts of the Committee and its members. The efforts of the committee have been further enhanced by the regular and valuable perspective of Tom Edmonds as well as the staff of ANLIR, many of whom are VSB members. The committee encourages and welcomes comments and questions from members of the Bar regarding issues relating to its activities and other malpractice insurance-related issues.



SPECIAL COMMITTEE ON LAWYER REFERRAL

Zaida C. Thompson, Chair

In the fiscal year ending June 30, 1998, the Virginia Lawyer Referral Service (VLRS) received over 40,000 calls. These impressive numbers demonstrate the valuable service provided by the Virginia State Bar (VSB). The calls are handled by a staff of three individuals under the supervision of Barbara Allen, Director. The staff process each call and refers the individual to the attorney/panel members. Currently, VLRS has 1,100 attorney/panel members.

As many of you know, the *JLARC Report of 1996* determined that the Lawyer Referral Service was an appropriate and valuable program, integral to the bar's core mission. VLRS is a public service program. Of all the services provided by the Virginia State Bar, VLRS is the only direct service extended to the general public. As such, not only is VLRS a valuable service, it also plays an important role in the bar's public image. Thus, all of the attorney/panel members are required to be in good standing with the VSB. To that effect, VLRS and the committee have strictly enforced compliance with the established VSB/VLRS rules and regulations. VLRS is the only attorney referral service in Virginia that can make said representation to the general public.

In addition to assisting the public in locating competent counsel for varied legal issues, VLRS, in cooperation with the Committee on Access to Legal Services, has discussed the possibility of facilitating a pro-bono check-off on the VLRS application. The goal is to identify attorneys interested in accepting pro-bono matters and forwarding said information to a body that will match the needs with the providers. In order to not disrupt the current level of service to the attorney/panel members and the public, the nuts and bolts process is under consideration by the committee.

Besides being a public service, VLRS has a simultaneous goal of fiscal responsibility. In three of the past four fiscal years, VLRS has ended its fiscal year in a break-even or surplus fashion in spite of increased competition from for-profit lawyer referrals.

To address and remedy any revenue deficit and to undertake a long-term view at maintaining fiscal viability the committee is working on the following items:

- (i) The committee is investigating any technical problems in an attempt to resolve the problem of periods of decreased calls. In spite of this, it should be noted the overall number of calls has remained predominantly consistent with the prior fiscal year performances. To date, no clear technical problem has been identified; and
- (ii) The committee is investigating appropriate, effective and alternate marketing of its service. In the past, the VLRS has employed the yellow pages in reaching out to the general public to inform bar members of the benefits of the VLRS. Recently, the VLRS has expanded its marketing effort and has advertised in *The Register* and *The Lawyer*.

The committee is exploring expanding its exposure. VLRS continues to recruit and share information at local bar events, annual meetings of VSB and the pro-bono and Bar Leaders Institute (BLI). For the first time, VLRS was included on the program at the BLI in both Lexington and Richmond. In addition, VLRS is represented at the admissions and orientation ceremony for new admittees; and

- (iv) The committee will be reviewing collection statistics and pursuing outstanding referral fees to minimize any losses of revenue. Notices will be sent to members who have not submitted outstanding referral fees; and
- (v) On the customer service front, the VLRS Committee will be looking into simplifying the referral and referral fee collection process. The VLRS conducted a customer service survey and the overall comments and suggestions were positive. Despite the positive feedback, the VLRS will continue to work on improving and surpassing the expectation of its users.

Currently, the yearly registration fee is \$60.00 which reflects a \$10.00 increase in dues. This is the first hike since 1994. Applications are available through the VSB. The toll free telephone number to request an application is 800-552-7977.

All of this work would not be possible without Barbara Allen at the helm of the Lawyer Referral Service and her staff, which consists of Victoria Meadows, Linda Albrecht and Toni Dunson. In addition, I would be remiss if I failed to mention and extend my sincere appreciation and gratitude for the service and the strong commitment demonstrated by the members of the VLRS committee: Eric Roland Spencer, Co-Chair; Milton Brown, Jr.; Bradley Cavedo; Thomas Dugan; Ronald Geiersbach; Nan Joseph; Joshua Pretlow, Jr.; David Pugh; Kay Tibbits; Christie Wilson; and Robert Zaniel.



COMMITTEE ON MEDIA-BENCH-BAR RELATIONS

The structure of this committee and the method of appointing its members were changed in 1997 and, as a result, the committee was not completely constituted until December and held its first meeting in January, 1998. The committee recognizes that one approach to improving news coverage of trials and avoiding unnecessary friction between bench, bar, and media is to clear up simple misunderstandings that might arise about the objectives of the different disciplines and the constraints under which they operate. Informal, off-the-record gatherings present the opportunity to discuss subjects of mutual interests, such as the receptiveness of judges in a circuit to request from green reporters that they be given a brief orientation in preferred courtroom procedures to help them get it right. One such meeting was held this spring in Charlottesville under the auspices of committee member Larry Richardson, and reportedly was well received by the participants. Additional meetings are proposed.

As a part of the mutual education process the committee participated with the Bench-Bar Relations Committee in presenting a program at the Annual Meeting on High Profile Litigation. Lawyers, judges, and representatives from the broadcast and print media with a wealth of experience had the opportunity to exchange views and demonstrate how a little planning and cooperation can be helpful to all concerned and avoid the so-called "media circus."



SPECIAL COMMITTEE ON PERSONAL INSURANCE FOR MEMBERS

R. Paul Childress, Jr., Chair

The Personal Insurance for Members Committee meets quarterly throughout the Bar's fiscal year. The committee's primary focus is providing the opportunity for members of the Virginia State Bar to participate in a group health insurance policy. Members of the Bar are able to use the size of the Bar membership to contract for health insurance coverage at affordable rates. It has long been the goal of the committee to use the Virginia State Bar's size to enable the health insurance provider to create and structure multiple options for the attorney member and the employees of his or her firm.

As part of its primary focus, the committee this year evaluated the renewal option from its health insurance provider, Trigon Blue Cross/Blue Shield. The committee allocated a net rate increase to its members of 1.7%, voting to spread the increase over three geographic areas of the state based upon documented claims history for the prior year by region.

The committee was also delighted to be able to make arrangements with Trigon Blue Cross/Blue Shield to implement the use of a prescription drug card with both the traditional and PPO options. This option had not been available to members of these plans prior to this year. The committee was hopeful that members would appreciate this new benefit which has been common with most other plans.

The majority of the committee's time this year was spent analyzing the impact of the Trigon demutualization plan. Initially the committee believed it would be responsible for recommending to a trust administrator the use of the funds generated from the sale of the stock resulting from the Trigon demutualization. The committee addressed the impact of the demutualization in consultation with Nina Olsen, counsel appointed by the Attorney General to review the effect of the demutualization and to draft any necessary trust documents. As a result of Nina Olsen's work, it was determined that the appropriate solution was to distribute the stock to members of the Bar insurance plan as of December 31, 1995. As a result, this committee lost "jurisdiction" over the shares of stock and their proceeds.

Myself as chair, Gary W. Lonergan, vice chair, Mary Dalton Barril, William D. Cremins, John R. Fletcher, James H. Ford, Stephen C. Minz, J. Edgar Pointer, Jr. and John C. Youngs wish to express our appreciation for the extraordinary assistance provided to this committee by Tom Edmonds, Executive Director of the Virginia State Bar and Mary Yancy Spencer, Deputy Executive Director. This committee simply would not have been able to function this year without their much needed assistance.

SPECIAL COMMITTEE ON PUBLICATIONS AND PUBLIC INFORMATION

Our committee's most important project this year was the creation of Virginia's first statewide speakers' bureau. After a year of planning, we started soliciting lawyers (to participate as speakers) and potential audiences (mostly schools, other institutions and community groups). So far, there has been a great response from both the lawyers and the audiences. Nearly 200 lawyers have volunteered to be speakers and we now have over 100 requests for speakers pending. Most of the school groups have been interested in topics like "What Lawyers Do/Law As A Career", "The Bill of Rights", and "Our Constitution." The adult audiences have been most interested in topics such as "Writing Your Will/Estate Planning."

Laura Dalpino of the Virginia State Bar maintains the database with this information, and matches lawyers with audiences. She has already arranged for over forty presentations. We are carefully monitoring the evaluation forms returned by the audiences, and so far the response to the speakers' bureau has been excellent. We intend to continue soliciting lawyers and institutions or groups interested in lawyer speakers. We think that this grass-roots effort will educate the public about the law and the important role that Virginia lawyers play in protecting their rights.

This year we instituted a special "Practical Tips" column in *Virginia Lawyer*. This was inspired by President Altizer's emphasis on practical law office management issues. Our goal is to provide simple and common sense advice to Virginia practitioners. This year's columns covered: avoiding sexual harassment claims in the workplace; effective legal writing; ways to avoid the state bar disciplinary system; tips for a law office move.

This year's "Law in Society" contest was also very successful. High school students were invited to read a hypothetical written by committee member Jay Brown about a criminal trial involving a juvenile defendant, and prepare an essay debating the "pros and cons" of cameras in the courtroom. We posted the "hypothetical" on the bar Web site, and invited the high school students to e-mail their essays to us. Committee member Ellen Coates played a special role in judging the essays. Thanks to the Litigation Section's generosity, the winning essayist received a \$1,000 savings bond, and nine other Virginia high school students also received prizes. We arranged for a number of distinguished Virginians to present the awards to the winning essayists — including Chief Justice Carrico, Attorney General Earley, and judges and local bar presidents.

Our committee assisted the Family Law Section in completing a videotape that will be used to educate parents and litigants about domestic litigation's ill effects on children. Committee members Mark Cummings and Jay Brown have extensive experience in videotape projects of this sort, and were especially helpful.

Our committee began to discuss the production of a videotape that could highlight the good work of Virginia lawyers. Using the Mississippi Bar's videotape as a model, we explored the costs of production and began to raise money for the project ourselves. To date, we have raised \$4,750 from bar groups and law firms. Thanks to Ed Lowry's encouragement, we have also been examining the possibility of print, radio and television public service announcements that could educate the public about Virginia lawyers' role in protecting every citizen's rights. Tom Papa used his contacts to approach the Virginia Commonwealth University AdCenter (Richmond), which graciously offered to make us their "class project" for the spring semester. Guided by Professors Jerry Torchia and Roger Lavery, the AdCenter students did a superb job of preparing visual public service announcements that focus on hypothetical Virginian individual's problems and how a lawyer could provide assistance. We are now investigating production expenses, the cost of publication and broadcast if we are unsuccessful in arranging for free media, and the possibility that other state bars might help us defray production costs. At some point, we will decide whether to produce the videotape describing the Bar's activity, focus on the public service announcements, or develop some other means of highlighting Virginia lawyers' good works.

We stand ready this year to assist the Special Committee on Bench-Bar Relations in preparing its planned jury videotape, and can help any other VSB group which is interested in producing a videotape.

The committee expresses its deepest appreciation to Victoria Lewkow, who retired this June after several years of serving as the Bar liaison to our committee. Victoria deserves all of the credit for our successful programs over the past few years, and we will miss her hard work, imagination and good humor.

SPECIAL COMMITTEE ON THE RESOLUTION OF FEE DISPUTES

Richard C. Sullivan, Jr., Chair

The Special Committee on the Resolution of Fee Disputes oversees the Bar's Fee Dispute Resolution Program (FDRP). The FDRP was launched in 1995, and provides the Bar and the public with an informal, private, quick and inexpensive alternative to litigation or the disciplinary system for resolving fee disputes through voluntary binding arbitration.

There are 11 Circuit Committees on the Resolution of Fee Disputes (CCRFD) around the Commonwealth. Each CCRFD is comprised of a panel of lawyers and non-lawyers nominated by their local bar associations and appointed by the State Bar president. Each CCRFD panel member attends a training session sponsored by the Special Committee. CCRFDs exist in the 10th, 11th, 13th, 16th, 18th, 19th, 20th, 23rd, 24th, 27th and 28th Circuits. The Tidewater area, while not having an official CCRFD, is served by the Norfolk and Portsmouth Bar Association and the Virginia Beach Bar Association, and referrals go from the Virginia State Bar (VSB) to the Norfolk and Portsmouth Bar Association Fee Dispute Resolution Committee. The Special Committee continues to emphasize the creation of new CCRFDs in new Circuits that express an interest.

Last year the VSB received 297 inquiries from attorneys and clients seeking help resolving a fee dispute. One hundred thirty referrals were made by the VSB to a CCRFD. Each CCRFD has a chairman charged with overseeing the local CCRFD, and with making initial efforts to conciliate or mediate a fee dispute before the hearing stage. CCRFD Chairs reported a total of 170 inquiries received during the year. Eight fee disputes were resolved without hearing, and five arbitrations were held. Seven arbitrations were pending by year's end.

During the year the Special Committee undertook efforts to improve its gathering of statistics for the program, to better be able to evaluate who is using the program and to measure participants' satisfaction level. Our statistics this year indicate that more than twice as many clients (38) signed an agreement to arbitrate during the year than did attorneys (18).

The committee focused last year on encouraging more attorneys to agree to arbitrate fee disputes. During the last year, the Special Committee undertook a variety of activities to raise the program's profile. Several newsletters and newspapers ran articles about the program, and committee members appeared at numerous bar association meetings throughout the Commonwealth. The FDRP has been added to the VSB web site, and a brochure about the FDRP is now available both through the VSB and local bar associations with CCRFDs.

Next year the Special Committee intends to continue its efforts to raise awareness and use of the program, particularly among lawyers. In addition, a new training program for CCRFD members will be given, directed especially at new members of the CCRFDs.



SPECIAL COMMITTEE ON SEMINARS

The principal function of this committee is to plan upcoming Midyear Seminars. The committee concentrated its efforts on finalizing plans for the 1998 Midyear Seminar held in Madrid, Spain, and narrowing choices for the location of the following Midyear Seminar. The Virginia State Bar's substantive sections were invited to submit program proposals for the 1998 Seminar, and the committee selected programs sponsored by the Litigation Section, the Young Lawyers Conference and the Senior Lawyers Section.



REPORTS OF SPECIAL BOARDS

CLIENTS' PROTECTION FUND

Henry P. Custis, Jr.

The Clients' Protection Fund was established in 1976 to make monetary awards to persons who have suffered financial losses due to the dishonest conduct of Virginia lawyers. The fund is operated by a 14-member board appointed by the Virginia State Bar Council. The board has lay and lawyer members. Board members investigate all petitions by clients for payments from the fund, and the fund board discusses and acts on each petition.

The fund began the fiscal year on July 1, 1997, with a cash balance of \$2,452,841.82. Interest income for fiscal year 97-98 totaled \$160,298.89. The fund received restitutions from Attorney General's collections, debt set-off and individual restitutions in the amount of \$36,269.51. The Virginia State Bar transferred \$200,000.00 to the fund during the fiscal year. As of June 30, 1998, cash balance in the fund was \$2,714,156.02. Pursuant to the rules governing the Clients' Protection Fund, all funds are invested in certificates of deposit and U. S. Government securities.

As of July 1, 1997, there were ten claims pending. This was down from 13 claims pending on July 1, 1996. Fifty-six new claims were received, and 41 claims were approved for payment. The total amount paid during fiscal 97-98 was \$135,121.78. The total paid in fiscal 96-97 was \$102,538.60. Fourteen claims were denied or withdrawn. There were 11 claims pending as of June 30, 1998.

The board began the 1997/98 fiscal year with two new members, Darragh J. Davis and Richard Y. AtLee. These new members replaced the following members, Jan Orfe who is no longer eligible for reappointment since she served two consecutive terms, and Morton V. Whitlow who was appointed to the bench.

As the outgoing chair of this board, I want to recognize the members of this board for their service. Special recognition goes to Susan C. Busch, Assistant Executive Director, for her competence, energy and cheerful service to the fund.

As members of the bar, we should all be proud of the benefits this fund provides to the public.



CONFERENCE OF LOCAL BAR ASSOCIATIONS

William L. Dudley, Jr., Chair

The major goals of the Conference of Local Bar Associations (CLBA) for this year were to capitalize on the success of the "So You're 18" handbook by seeking a grant from the Virginia Law Foundation to make the handbook available to all high school seniors in the Commonwealth and to again conduct two quality Bar Leaders Institutes.

The "So You're 18" handbook was republished last year in limited quantities. The publication was so well received that available copies were rapidly distributed. As a result of the success of the republication, the CLBA prepared and submitted a grant request to the Law Foundation requesting sufficient funds to print enough copies for distribution to all high school seniors in Virginia. The grant request was approved. As soon as this grant approval was communicated to the CLBA, the executive committee developed a plan to involve all local bar associations in the distribution and presentation of the handbooks to high school students. Considering the number of students involved, the distribution and presentation of these approximately 67,000 handbooks will be a huge job. Thus, the plan for distribution and involvement of local bar associations is of paramount importance. The potential goodwill that the local bar associations will receive from this program to benefit students will be great, as will the public service to the various school systems.

The Bar Leaders Institute was presented for the second consecutive year at two locations, Richmond and Lexington. Both programs were tremendous successes. Attendance at both locations continued to grow. In fact, in Lexington, it

exceeded the most optimistic expectations. Justice Kinser and Justice Lacy of the Virginia Supreme Court both participated in the Lexington Institute, along with other members of the judiciary who participated in the Institute both in Richmond and Lexington. Also, bar leaders from all over Virginia participated in panel discussions, breakout sessions, and lectures which were enthusiastically received by attendees at both locations.

At the State Bar's Annual Meeting in Virginia Beach, the CLBA recognized various bar associations for outstanding programs by presenting Awards of Merit and Certificates of Achievement. Peter Burnette was honored as the recipient of the Local Bar Leader of the Year Award. In addition to his many other bar association activities, Peter chaired the committee of his local bar association facilitating the construction of a new courthouse. The committee's report was so thorough and professional that it promises to be a guide for projects involving other courthouses in the future.

The success of the CLBA this year is directly related to the hard work and dedication of the members of the executive committee. More significantly, the various local bar associations consistently enhance the profession and contribute to their communities through the many programs presented by them throughout the year. Without the active participation by local bar associations, the CLBA would cease to exist.



MANDATORY CONTINUING LEGAL EDUCATION

Edmund L. Walton, Jr., Chair

Leonard C. Heath, Jr., Vice-Chair

The Mandatory Continuing Legal Education Board was established to administer the Mandatory Continuing Legal Education program in the Commonwealth of Virginia. The board consists of twelve members, each of whom is appointed by the Supreme Court of Virginia.

In addition to the course reviews and other regular business, the board completed work on MCLE Opinion #16 that addresses CLE courses presented over the Internet. This Opinion is important in that the Board anticipates that on-line seminars will become more widely used in the future. With the passage of time, and the compilation of both experience and information, the Board may redraft some of its regulations to accommodate and encourage on-line programs.

The Board also commenced a study regarding better defining the ethics and professionalism requirements contained in the Board's regulations.

Over the last MCLE reporting cycle, the MCLE staff and board have worked on the following:

Course Applications	3,349
Accredited Sponsor Courses	12,568
Waiver Requests	17
Extension Requests	22
Telephone Inquiries	15,000
Letters sent out	23,000
Certifications of Attendance	86,000
Interim MCLE Reports in April 1998	21,000
Form 1 Reports on July 1, 1998	21,000

As vice-chairman of the MCLE Board, I would like to express the board's gratitude for the diligent efforts of the board's retiring Chairman, Ed Walton. Mr. Walton has served on the MCLE Board for six years, the last two of which he served as chairman. The board also expresses its gratitude for the hard work and insight provided by two of its retiring members, David Rosenfeld and Oliver Norrell, who served on the board for six years and four years, respectively.

Finally, the board would like to thank Barbara Sayers Lanier and her professional staff for their hard work and assistance throughout the year.