



The Virginia Bar Association
YOUNG LAWYERS DIVISION

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Opening Statement

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

INSIDE THIS ISSUE

- VBA Pro Bono Hotline Training2
- You Have a Judgment, Now What? (Part 2)3
- Backpack to Briefcase6
- The Secret to Making Partner – Really!7
- A Year in Review8
- Defending “Victimless Prosecutions” in Virginia Courts9
- Mentoring: The Key to a Successful Career10
- YLD Fall Executive Council Meeting11

INTRODUCTION

Presenting the Winter Issue

Welcome to the Winter issue of *Opening Statement*. In this issue we are pleased to feature recent activities of the VBA Young Lawyers Division, including VBA Pro Bono Hotline Training (page 2), the first annual Backpack to Briefcase program for newly licensed Virginia attorneys (page 6), the William & Mary Law School Council Kick-off (page 10), and the YLD Fall Executive Council Meeting (pages 11-12). In addition, YLD Chair Dan Ortiz reflects (page 8) on the accomplishments of the past year and highlights the YLD programming at the upcoming VBA Annual Meeting in Williamsburg.

In this issue, you will also find the secret to making partner (shared with us by Jim Guy on page 7), learn how to enforce judgments in the second part of Webb King’s article (pages 3-5), learn from James Abrenio how to defend your client against “victimless prosecutions” (page 9), and find advice from Nathan Olson about the value of mentoring (page 10).

We encourage all of our readers to consider submitting articles or event write-ups for future issues of *Opening Statement*. Have you learned valuable lessons from a recent experience, such as arguing a motion, handling your first *voir dire*, or negotiating an asset purchase agreement? Perhaps you have been following new developments in the law, or maybe you can provide an introduction to a particular legal practice for new lawyers. If so, please consider sharing your insights and experience with other members of the YLD.

The mission of the YLD Communications/Publicity Committee is to tell the story of the Young Lawyers Division and to promote a sense of community with the YLD. To that end, please let us know about your career and personal accomplishments so that we can share them with your fellow young lawyers. We look forward to receiving your submissions and we welcome your comments and suggestions. You may contact us at: editors@openingstatement.org.

Thank you for reading. We hope you enjoy this Winter issue of *Opening Statement*.



Andrew B. Stockment
Co-Chair



Virginia Bell Flynn
Co-Chair

VBA Annual Meeting

The Virginia Bar Association will hold its 123rd Annual Meeting in Williamsburg on January 24-26. The Annual Meeting is an excellent opportunity to attend CLEs, to see old friends and make new ones, and to network and socialize with lawyers of all ages. The YLD will have programming specifically geared for young lawyers.

Featured Activities:

- YLD Executive Council Luncheon
- CLE: “Managing the Client by the Zealous Young Lawyer”
- Prints and Pairings—Good For What ‘Ales’ You!
A networking opportunity for young lawyers to meet and socialize with members of the judiciary in a casual setting.
- Banquet and Dance (black tie)
- YLD “After-hours” Social
- CLE: “Scholars to Dollars: Transitioning Law School Grads Into Proficient, Productive and Profitable Lawyers”

Register today at:

vba.org/vbaannual2013.

Upcoming VBA Events

Jan. 24-26: 123rd VBA Annual Meeting

Apr. 1-12: 7th Annual Legal Food Frenzy

May 10-11: 16th Annual VBA Bankruptcy Law Conference

May 17-18: YLD Spring Meeting

July 18-21: 123rd VBA Summer Meeting

View the complete calendar at:
vba.org/calendar.

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YOUNG LAWYERS TRAIN IN NORTHERN VIRGINIA

VBA Pro Bono Hotline Training

By Laura Golden Liff

On September 5, 2012, the VBA Young Lawyers Division, in conjunction with Legal Services of Northern Virginia (“LSNV”), held a family law training



Courtesy: Laura Golden Liff.

Young lawyers receive training in family law.

seminar for young lawyers interested in participating in the VBA Northern Virginia Pro Bono Hotline. The hotline is comprised of attorney volunteers who answer calls of individuals in need and give legal advice in the area of family law. The training, which took place at the Fairfax County Courthouse, was conducted to reactivate the once popular hotline by engaging the YLD community in an evening of service and socialization.

Nora Mahoney, Chair of the LSNV Family Law Practice, presented the training, which was approved for 1.5 hours of CLE credit and focused on areas of family law that hotline participants must master before answering their first call. Other speakers included **Jennifer Haberlin**, Pro Bono Coordinator at LSNV, **Daniel Ortiz**, YLD Chair, and **Laura Golden Liff**, Chair of the Northern Virginia Pro Bono Hotline. All of the speakers emphasized the immense need in Northern Virginia for family law pro bono service and shared personal stories of their past experiences volunteering with the hotline.

The event concluded with a “happy hour” during which participants asked questions about the next hotline event, which will kick off in January of 2013—event details coming soon! For those who were unable to attend the training, but are interested in participating in the Pro Bono Hotline, please contact **Laura Golden Liff** to view a video of the training and receive the requisite training materials. Additional information about the VBA Pro Bono Hotlines is available online at: vba.org/yldactivities. ■



Courtesy: Laura Golden Liff.

Attendees listen to YLD Chair Dan Ortiz.



Laura Golden Liff

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You Have a Judgment, Now What? (Part 2)

By Webb King

This article is Part 2 of a two-part series on enforcing judgments.

This is the second part of a two-part article covering basic information on how to enforce a judgment from a Virginia state court. The first part of the article, appearing in the Fall 2012 issue, covers exemptions and perfecting and enforcing liens against real property. Please see Part 1 for some disclaimers on the scope of this article.¹

GARNISHMENT

Although typically thought of as a way to obtain a portion of a judgment debtor's wages, a garnishment allows a judgment creditor to step between the judgment debtor and anyone who owes the judgment debtor money.² A garnishment is issued by the court that issued the judgment.³ Wage garnishments are served on the employee (judgment debtor) and the employer (garnishee) and provide for a return date within 180 days or fewer.⁴

Garnishments are the method to obtain payment from bank or credit union accounts and investment accounts. A garnishment can be used to intercept a payment due the judgment debtor on a contract. This is most helpful in commercial situations. Your client is usually the best starting place to determine whether and where the judgment debtor is working or receiving revenue under a contract. Non-wage garnishments are returnable within 90 days or fewer.⁵

The return date serves as the end of the garnishment and the time for the judgment debtor and garnishee to respond. Return dates are determined by the local practice of the court (within the time limits set out above), so discuss possible return dates with the Clerk's Office before filing the garnishment. The return date is also the proper place for the judgment debtor to raise a claim that the property is exempt. If a garnishment does not satisfy the judgment, the creditor can proceed with another garnishment.

On a typical garnishment, the garnishee simply sends a check payable to the judgment debtor to the Court and the judgment debtor picks it up on the return

date. Under Virginia Code § 8.01-515 payment by the garnishee is considered to be a valid response to the garnishment.

If your client is served with a garnishment as the garnishee, you should counsel the client to file a timely response to the garnishment. Virginia Code § 8.01-519 permits the court to enter judgment against a garnishee who fails to appear or answer a garnishment. A form garnishee's answer is available online in the General District Court forms (Form DC-456) on the Virginia Judicial System website.⁶

If a garnishee fails to answer or if "the judgment creditor disputes the verity or accuracy of [the garnishee's response] and so desires, then summons shall issue requiring the appearance of [the garnishee or a representative] for examination on oath, and requiring him to produce such books and papers as may be necessary to determine the fact."⁷ A judgment can be entered against the garnishee as a sanction for failing to respond.⁸

DEBTOR INTERROGATORIES

Debtor interrogatories permit the judgment creditor to ask questions under oath about assets of the judgment debtor from (1) an individual debtor, (2) an officer of a corporate debtor if the debtor is a corporation having an office in Virginia, (3) an employee of a corporate debtor if the debtor is a corporation having an office but no officers in the Commonwealth, or (4) "any debtor to, or bailee of, the execution debtor."⁹ Virginia Code § 8.01-506.1 permits a creditor to issue a subpoena

duces tecum for "a book of accounts or other writing containing material evidence." Subpoenas can be issued against parties to the proceedings. Interrogatories

[A] garnishment allows a judgment creditor to step between the judgment debtor and anyone who owes the judgment debtor money.

can only be done once every six months, although a creditor can show "good cause" and do them more frequently.¹⁰

In General District Courts, interrogatories are usually handled by the court. Typical practice is that the Judge will place the witness under oath and the creditor's attorney and the judgment debtor will leave the courtroom to conduct the interrogatories in a witness room. The Judge remains on the bench and is available to deal with any objections. In Circuit Courts, most judges require that interrogatories be done before a commissioner in chancery. Some Circuit Court judges do their own interrogatories similar to the practice in General District Court. In either court, the creditor is responsible for bringing a court reporter if the creditor so desires.

Continued on page 4



Webb King

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Bio: Webb is a Roanoke Valley native, is married to a criminal defense lawyer, has two sons, and enjoys reading, watching baseball and hiking, but he spends most of his time practicing law (which he

enjoys) and trying to keep his sons from injuring themselves or each other or destroying the house (he enjoy that less).

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...Judgment, continued from page 3

Interrogatories can be held in the locality where the judgment was entered or a contiguous locality or (at the creditor's request) in a locality where the debtor resides or a contiguous locality.¹¹ The court may transfer the proceedings to a more convenient forum for the debtor for "good cause."¹²

Virginia Code § 8.01-508 permits the court or commissioner to issue a *capias* for the arrest of a person that does not appear or appears and gives evasive answers. The typical practice is that the first failure to appear earns the debtor a show cause order, which carries the possibility of fines. If the debtor fails to appear in response to the show cause, the court will issue a *capias*.¹³

Since part of the issuance of an interrogatory summons is the issuance of a writ of *fieri facias* the judgment creditor is entitled to seize personal property of the judgment debtor that the judgment debtor brings to the interrogatories. The court or commissioner will typically permit the debtor to retain some amount of money to permit them to get home.

The downside of interrogatories is that they do not provide any return for the judgment creditor (unless the debtor happens to bring some cash to the interrogatories). If the judgment is a Circuit Court judgment, the interrogatories can be expensive since the creditor has to pay

the commissioner in chancery and will probably want to hire a court reporter. However, debtor interrogatories can drive a settlement with the judgment debtor and can provide the judgment creditor with information on bank accounts or income to be garnished.

‘[T]he judgment creditor is entitled to seize personal property of the judgment debtor that the judgment debtor brings to the [debtor] interrogatories.’

LEVY

A writ of *fieri facias* (also called a writ of execution) is used to create a lien on tangible personal property, which attaches at the time the officer (sheriff) actually levies on the property.¹⁴ Under Virginia Code § 8.01-466 it is the duty of the Clerk where the judgment was rendered to issue a writ of *fieri facias* after 21 days from the entry of the judgment. "For good cause" the court may order execution to issue on judgments earlier.¹⁵ This should be set forth in the judgment order. Although the writ of execution can issue 21 days after judgment, it is typically best to wait for 30 days before undertaking collection action as that will take the creditor past the appeal period in Circuit Court and

the deadline for re-hearing in General District Court.

Many sheriff's offices will require a list of property that you want them to levy on. Most sheriff's offices will require a bond to protect themselves from improper levy.¹⁶ Virginia Code § 8.01-479 permits sale of the goods seized by the sheriff. After the expenses of sale are paid, the money is paid over to the judgment creditor. A judgment creditor will need to balance the value of the property and secured debt and exemptions before deciding to levy and sell property.

NOTICES OF LIEN

A writ of *fieri facias* also creates a lien on all intangible property from the time that it is placed in the hands of the officer or any person able to serve process.¹⁷ This lien on intangibles extends throughout Virginia.¹⁸ The writ only creates a lien; a garnishment is necessary to actually have the assets paid over to the creditor.¹⁹

A person making payment to the debtor is not affected by this lien unless they and the judgment debtor are served with a notice containing particular information set forth in Virginia Code § 8.01-502.

Virginia Code § 8.01-502.1(A) requires that the judgment creditor or attorney cannot serve a notice of lien on a financial institution unless there is a "reasonable basis for believing that the judgment debtor is entitled to a payment from such institution." The mere fact that the



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- **Legislative Advocacy:** VBA lobbying team Reed Smith, working alongside VBA leadership and other dedicated members, is busy securing patrons for bills, discussing bills of interest with legislators and plotting strategy for a successful session.
- **Women in the Law:** Women have gained a greater presence in the legal profession, but a gender imbalance still exists.
- **The Allure of the Muse:** Justice John Charles Thomas will recite poetry at Carnegie Hall in February.
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Look for the upcoming *VBA Journal* at year's end in the mail and online at: <http://vba.org/mag>.

financial institution does business in the area is not a “reasonable basis.” In other words, a judgment creditor cannot just blanket all the banks in town with notices of lien in hopes of getting lucky and hitting one of the judgment debtor’s accounts.²⁰

Virginia Code § 8.01-502.1(C) requires a financial institution served with a valid notice of lien to provide a written response within 21 days indicating the amount of money held by the financial institution.

The lien generally lasts for a year from the return date of the execution, but the details can vary, so check the Code.²¹ If the right to enforce the judgment ends, the lien ends. The best practice would be to calculate the date the lien expires at the time it is served and calendar that date for follow up.

ENFORCEMENT OUT OF STATE

If you obtain a judgment against a party that has assets in another state, it is typically very easy to transfer the Virginia judgment to the other state under the Uniform Enforcement of Foreign Judgments Act (UEFJA).²² The overwhelming majority of states have adopted this law.²³

The procedure for docketing foreign judgments is simple, although your client will need to obtain an attorney in the other state to advise regarding state law and handle the procedure. Under the UEFJA,

a creditor simply files an authenticated copy of the judgment and an affidavit in the appropriate clerk’s office (or equivalent) and pays a fee.²⁴ The judgment creditor or the clerk provides notice of the filing to the judgment debtor.²⁵ The judgment will be subject to attack in the foreign state only on grounds that would invalidate the judgment itself, such as lack of personal jurisdiction or improper service, but the underlying case cannot be re-litigated.²⁶ After docketing in the foreign state, the judgment will be treated as a judgment of that state and will be subject to the other state’s law regarding enforcement.

CONCLUSION

Remember that this is just an overview of collection procedures. As always, there is no replacement for careful review of the Code. However, this article should give you a good idea of the options available to your clients to collect a judgment (or ways to protect assets if your clients have judgments against them) and contains a few tips to avoid embarrassing mistakes. ■

Endnotes

1. As mentioned in part one, the Virginia CLE publication, *Enforcement of Liens and Judgments in Virginia*, is an excellent resource with additional discussion, authority, and forms.
2. Virginia Code §§ 8.01-511 to -525.
3. Virginia Code § 8.01-511(A).
4. Virginia Code § 8.01-514.
5. *Id.*
6. <http://courts.state.va.us/forms/district/>

civil.html.

7. Virginia Code § 8.01-515.

8. In my experience a court will typically enter a show cause against a garnishee for failing to respond first. If there is no appearance at the show cause hearing, the court will then enter a judgment against the garnishee.

9. Virginia Code § 8.01-506(A). The debtor interrogatory statutes are found at Virginia Code § 8.01-506 to -510.

10. Virginia Code § 8.01-506(C).

11. Virginia Code § 8.01-506(B).

12. Virginia Code § 8.01-506(E).

13. In my experience in General District Court about half of the people show up in response to the initial summons, but almost everyone shows up in response to the show cause.

14. Virginia Code § 8.01-478.

15. Virginia Code § 8.01-466.

16. Virginia Code § 8.01-367(A).

17. Virginia Code § 8.01-501.

18. Virginia Code § 8.01-481.

19. A bank served with a notice of lien would almost certainly freeze the account. However, a garnishment should be the first line of attack against a bank account. Notices of Lien are best used against intangible assets where the payment to the judgment debtor may not come for some time (a lawsuit by or cause of action in favor of the judgment debtor, for example).

20. There is no restriction similar to Virginia Code § 8.01-502.1 for garnishments, so there would seem to be no reason a judgment creditor could not blanket all the banks in town with garnishments if they were so inclined.

21. Virginia Code § 8.01-505.

22. Virginia Code §§ 8.01-465.1 to -465.5. A creditor cannot transfer a Virginia federal court judgment to another state or use these procedures to transfer a judgment from a federal court outside Virginia to the Virginia state court system under the UEFJA.

23. A list of states that have adopted the UEFJA are listed in the Virginia Code (Annotated) adjacent to § 8.01-465.1 and online at <http://uniformlaws.org/LegislativeFactSheet.aspx?title=Enforcement%20of%20Foreign%20Judgments%20Act>.

24. See Virginia Code § 8.01-465.2.

25. See Virginia Code § 8.01-465.3. My practice is to provide the notice every time to be sure that the notice is provided.

26. See Virginia Code § 8.01-465.2. ■

Register Now: VBA Annual Meeting

The 123rd Annual Meeting of The Virginia Bar Association will be held at The Williamsburg Lodge and Conference Center on **January 24–26, 2013**. The Annual Meeting will have many CLE opportunities to enhance your skills and learn from leading lawyers, as well as networking opportunities & social events. **For more information or to register online, go to: vba.org/vbaannual2013.**



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Support the VBA Foundation

The VBA Foundation funds numerous programs, including the *Ask A Lawyer Project*, the *Pro Bono Hotlines*, the *Model Judiciary Project*, the *Veterans Task Force*, and *Regional Mentoring Programs*.

To donate or to learn more, visit: vba.org/foundation.

Backpack to Briefcase

By **Amanda L. (Oberholtzer) Glickman**

On November 14, 2012, the VBA Young Lawyers Division and Virginia CLE co-sponsored the first annual Backpack to Briefcase seminar, a day-long CLE program for attorneys newly admitted to the Virginia Bar. The seminar was held at the Hospitality House and Conference Center in Fredericksburg, Virginia and drew more than sixty newly licensed lawyers.

Backpack to Briefcase was formerly known as Bridge the Gap, a program that focused on the fundamentals of a variety of substantive legal practice areas. The new and improved Backpack to Briefcase seminar, by contrast, centers on practical, skills-oriented learning while providing interaction with experienced attorneys and judges. This year's seminar topics included the following:

- *Working With Lawyers: How to Avoid Common Mistakes Made by New Associates* (presented by **J.B. Burtch** and **Ryan A. Glasgow**);
- *Client Interviewing and Communication* (presented by **Kimberly P. Fauss**, **Frank W. Morrison**, and **Paul R. Smollar**);
- *Persuasive Legal Writing and Correspondence* (presented by **Thomas E. Spahn**);
- *Effective Use of Technology and Social Media in Your Law Practice* (presented by **James M. McCauley**, **James J. O'Keeffe**, and **Jonathan M. Wilan**);
- *Time Management and Accounting* (presented by **Beth A. Bittel** and **Michael J. Holleran**);
- *Networking and Client Development* (presented by **Hugh M. Fain III**, **Edward Lee Isler**, and **Lucia Anna "Pia" Trigiani**);
- *Resources for Virginia Lawyers* (presented by **Stephen P. Gangemi** and **David S. Mercer**);
- *Negotiation Techniques* (presented by **Kimberly P. Fauss**, **Frank W. Morrison**, and **Paul R. Smollar**); and



Panelists Hon. Barbara J. Gaden, Hon. J. Martin Bass, Hon. Jane M. Roush, and moderator Paul Terpak presenting *Tips from the Bench for New Virginia Lawyers*.

Courtesy: Amanda Glickman.



Panelists Hugh M. Fain III, Lucia Anna "Pia" Trigiani, and Edward Lee Isler presenting *Networking and Client Development*.

Courtesy: Amanda Glickman.

- *Tips from the Bench for New Virginia Lawyers* (presented by **Hon. J. Martin Bass**, **Hon. Barbara J. Gaden**, and **Hon. Jane M. Roush**, moderated by **Paul Terpak**).

Yvonne McGhee, Executive Director of the Virginia Bar Association, and **Dan Ortiz**, Chair of the YLD, also discussed the benefits of VBA membership with the program attendees and encouraged them to join the VBA. Given the success of the inaugural Backpack to Briefcase seminar, the YLD Backpack to Briefcase Committee and Virginia CLE plan to add seminar locations in other parts of the Commonwealth for next year's program.



Panelists Michael J. Holleran and Beth A. Bittel presenting *Time Management and Accounting*.

Courtesy: Amanda Glickman.

If you are interested in becoming involved with the YLD Backpack to Briefcase Committee or would like additional information about the program, please contact Co-Chairs **Leah Gissy** (leahgissy@cox.net) and **Amanda Glickman** (aglickman@mediageneral.com). ■



Amanda L. (Oberholtzer) Glickman

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The Secret to Making Partner – Really!

By James P. Guy II

We often hear that “there’s no secret” or “no one answer” to the really big questions in life. Sometimes, though, there is. In my years as a law firm partner, I’ve become convinced that there is one key insight that drives everything else about how associates become partners.

As a new partner, I served with keen interest on my firm’s associates committee. We had responsibility for associate evaluations, compensation and promotions. It was fascinating to see the other side of a mysterious process that had obsessed me for so long.

As the committee reviewed and passed judgment on my recent peers, I wasn’t surprised that ability and level of effort were important. I wasn’t surprised that effectiveness, productivity and contributions to profitability were even more important. I was heartened to discover that engagement in the community and in the life of the firm were meaningful factors that could boost (or obstruct) a candidate on the borderline of promotion.

But these were all just table stakes. There was another factor, harder to articulate, and frustrating to figure out. It was as if the more senior partners knew it when they saw it, but couldn’t describe it. The closest they got were phrases like “partner material” or “seems like a partner.”

That reluctance to articulate a critical but squishy component of the analysis makes sense to me now. You want a process to both be and seem fair, and giving a lot of weight to a subjective perception can damage the actual or apparent fairness.

How do you include “seems like a partner” in your criteria, while excluding personal likes, dislikes, prejudices and misperceptions? How do you make sure that “partner material” doesn’t end up meaning, “straight white guys who went to school where I did and play golf at my club?”¹ But a well-meaning de-emphasis of a subjective judgment didn’t mean it wasn’t happening.

Over the years, I’ve worked with, evaluated, “managed” and advised lots of lawyers, both partners and associates, as a group leader, team leader, office leader, supervising partner, mentor and friend. I’ve become convinced that this “seems like a partner” assessment is, despite its difficulty, the most important. The trouble is, I fundamentally misunderstood what happens when law firms decide to promote an associate. And I don’t think I was the only one.

As an associate, I was working, hoping, even praying that the firm would someday make me a partner. As a new partner, I thought that was what had happened, and I wondered why I didn’t feel very different. I’d been made a partner. Hadn’t I?

The truth is, your law firm can’t make you a partner.

The law firm can help or hinder you. It can acknowledge that you’ve become a partner and accord you the benefits (and liabilities) that come with that recognition. Or it can deny what you’ve become, and risk losing you. But the best a firm can do is get really good at two things: nurturing new lawyers to help them on their

way to becoming a partner, and acknowledging and empowering those who have. A law firm can’t make you into a partner. Only you can do that.

Slick, right? You’ve always had the power, Dorothy, just click your ruby heels together and repeat, “I *am* a partner! I *am* a partner! I *am* a partner!”

Yep, it would be really lame if I stopped there. But there is one more piece. There really *is* a single, identifiable distinguishing attribute:

Partners are owners.

Transforming from an associate into a partner means trading an employee mindset for an ownership mindset. That means you act like you are invested in the enterprise.

- You own the responsibility to deliver great service to clients.
- You own the opportunity to develop more work for yourself and your colleagues.
- You own the responsibility to support your team and empower the professionals you work with.
- You engage in the community because it is who you are, rather than what’s expected of you.
- You own your successes, and you own up to your shortcomings.
- You make things happen, rather than ruefully enduring the things that happen to you.

That’s it. That’s the secret. If you get that right, everything else flows from it. No matter what your web bio says you are, if you own your practice, you’re a partner.

If you’re in the right firm, they’ll notice and affirm. The rest is just paperwork and secret handshakes. ■

Endnotes:

1. Answer: Be obsessively self-aware about inclusion and diversity, include and empower diverse partners in the process, and focus the analysis as much as possible on things that you can measure. ■



James P. Guy II

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Other Leadership & Awards: Past President of Energy Bar

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Bio: For 15 years, Jim has played Irish-American Pub Music on Thursday nights at Rare Olde Times Public House with his band, Uisce Beatha.

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A Year in Review

By Daniel E. Ortiz

YLD Chair Dan Ortiz highlights some of the YLD's major accomplishments during the past year and looks ahead to YLD events in 2013.

As our year draws to a close, I wanted to take this opportunity to thank all of the young lawyers in the YLD who make our projects and programs work. With their help the YLD has accomplished the following over the past year: collected over a millions pounds of food; conducted hundreds of pro-bono hotline sessions with indigent clients; mentored dozens of law school students; facilitated dozens of mock trials for high school students; and conducted numerous other community service and pro bono projects. I wanted to spotlight a few items.

FOOD FRENZY

For the sixth straight year, the YLD has led the effort to collect food for local food banks across the commonwealth. This year the YLD coordinated the effort to raise 1.44 million pounds of food. I want to acknowledge the hard work of the young lawyers who co-chaired the Legal Food Frenzy. The dedication of **Chris Gill**, **Virginia Robinson**, and **Derek Swanson** to the Food Frenzy allowed this program to flourish. I am looking forward to next year's competition (April 1-12, 2013) and the challenge to raise even more food.

SPRING AND FALL MEETINGS

Once again we enjoyed a wonderful spring meeting at The Sanderling

in Duck, NC. The excellent turnout of young lawyers enjoyed the cooperation of the weather. The weekend activities energized numerous committee chairs and new members. Additionally, the **Hon. W. Allan Sharrett** of the Greensville Circuit Court provided his wisdom and advice accumulated over his distinguished career in the form of a CLE.

This past October, the YLD held its Fall meeting in Fairfax, Virginia. Not only did we review the past year's projects and plan for next year's activities, we visited a local vineyard at the home of John Marshall and took a nighttime tour of Mount Vernon, George Washington's riverside home.

ASK-A-LAWYER

We continue to expand on our pro bono services with our "Ask-A-Lawyer" program in connection with Verizon. We have leveraged our success with our regional hotlines to develop a "distance lawyer" program. Using the technology and services provided by Verizon, we have developed a program that allows lawyers in more populated areas of the Commonwealth to serve people in need living in less populated areas through a pro bono hotline with a 1-800 number.

THE OPENING STATEMENT NEWSLETTER

Finally, I want to thank **Andrew Stockment**, **Virginia Flynn**, and **Jean Humbrecht** of the Communications/Publicity Committee for putting

together this excellent newsletter. *Opening Statement* allows the YLD to communicate with its members, provide them information about upcoming events, promote the successes and accomplishments of the YLD and its members, and allows YLD members the opportunity to publish articles.

UPCOMING WINTER MEETING

I would be remiss if I did not promote our programming at the VBA Annual Meeting in Williamsburg. The YLD will host a lunch for its members and conduct an election for positions on the Executive Committee and Secretary/Treasurer. Afterwards, we will conduct a CLE titled, "Managing the Client by the Zealous Young Lawyer." Our guests will include **Livy Haskell**, General Counsel of Lumber Liquidators, Inc. and former Chair of the YLD, and **James McCauley**, Assistant Bar Counsel of the Virginia State Bar. After our CLE, our members are invited to participate in a Social and Professional Networking reception with the Judicial Section, titled "Pints and Pairings—Good for what 'Ales' you!" In addition to the YLD programming, the Annual Meeting has excellent opportunities for our members to attend other CLEs and network with other members of the bar.

A WORD OF THANKS

As the Annual Meeting approaches, my time as Chair of the YLD will conclude. It has been a privilege to serve our members and promote our organization. I would like to take the opportunity to thank several people. First, my colleagues at Blankingship & Keith, P.C. have been generous with their time and support during this past year and I am eternally grateful. I have counted on **Jeremy Dillon's** efforts to keep the YLD on track. Over the past year, **Travis Hill** and **Elaina Blanks** have faithfully served as the Chair-Elect and Secretary/Treasurer. Their service over the past year suggests that their upcoming terms will be energetic and successful.

If you are a young lawyer and want to get more involved, I invite you to contact me at dortiz@bklawva.com. ■



Daniel E. Ortiz

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Other Leadership and Awards: VBA Emerson G. Spies Award (2003); Legal Elite (2007-2012); Super Lawyers (2008-2012); Young Lawyer's Section of the Fairfax Bar Association (Past

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Defending “Victimless Prosecutions” in Virginia Courts

By James S. Abrenio

Any new attorney representing a client charged with domestic assault in the Commonwealth of Virginia must be aware of the possibility of a “victimless prosecution.” A victimless prosecution refers to the situation where someone is charged with a domestic assault and the complainant elects not to testify against the accused. Rather than moving to *nolle prosequi* the charge, however, the Commonwealth’s Attorney prosecutes without the complainant’s testimony. Therefore, a new attorney cannot simply rely on a complainant’s lack of desire to testify. Instead, the attorney must understand: (1) when victimless prosecutions can result in convictions, and (2) the Commonwealth’s Attorney’s motivation behind such prosecutions.

WHEN VICTIMLESS PROSECUTIONS CAN RESULT IN CONVICTIONS

Victimless prosecutions can result in convictions when the defendant has confessed and there is “slight corroboration” of the offense.¹ In evaluating the potential for a victimless prosecution, it is imperative to evaluate any statements by your client and to determine how those statements can be used. When the statements constitute a confession, be prepared for the Commonwealth’s Attorney to seek a victimless prosecution.

A confession is a, “statement admitting or acknowledging all facts necessary for conviction of the crime.”² A confession is different than an admission, which “admits facts tending to prove guilt but falling short of admissions to all elements of the crime.”³ *Claxton v. Lynchburg* provides a good analysis of confessions versus admissions

in the context of a DWI prosecution.⁴ In *Claxton*, law enforcement responded to the scene of an automobile accident and

‘Victimless prosecutions can result in convictions when the defendant has confessed and there is “slight corroboration” of the offense.’

heard a confession when the defendant stated, “I had way too much to drink to be driving, go ahead and take me to jail... I am sorry, I will take my punishment.”⁵

Where a confession is made, the Commonwealth’s Attorney’s ability to obtain a conviction is greatly increased. The Commonwealth’s Attorney need only prove “slight corroboration” of the confession.⁶ Slight corroboration can be evidence of cuts and bruises on the complainant or damage to property in the location where the alleged assault occurred. But one must be aware that slight corroboration, like most other terms of art in law, is fact specific and can differ from case to case and judge to judge.

Phillips v. Commonwealth provides a good example of a lack of slight corroboration.⁷ In *Phillips*, the defendant confessed to the crime of sodomy and stated that a co-defendant/complainant used the commission of the crime to force the defendant into loaning him a car. The Virginia Supreme Court held that the co-defendant/complainant’s possession of the car did not, “indicate commission of the crime nor [could] it be said to substantiate the truth of the confession...”⁸

When it appears that the accused has confessed and slight corroboration is present, the defense attorney must develop alternate theories to explain those pieces of evidence. To accomplish this, the attorney should understand the facts of the case, speak with the witnesses, and view the case from both the defensive and prosecutorial posture.

THE MOTIVATION BEHIND VICTIMLESS PROSECUTIONS

The reality is that domestic violence is a tragic occurrence. It devastates families, and domestic violence cases flood the Virginia court system. Ultimately, the Commonwealth’s intention of combating domestic violence is a noble one. However, prosecuting the case presents difficulties for both the Commonwealth’s Attorney and the defense attorney. On the one hand, the Commonwealth is presented with a witness who states she does not seek prosecution of your client because of his innocence. On the other hand, the Commonwealth is aware of the real possibility that a particular complainant does not seek prosecution out of fear of the abuser.

Attorneys must maintain an objective point of view when evaluating their potential cases. Such an analysis will not only aid in determining the best theory of defense for the case, but will also assist in setting realistic goals, preparing for possible sentencing, and more appropriately evaluating the potential for incarceration. ■

Endnotes:

1. This article is not intended to be relied upon as a primary means of defense. Rather, it is intended to help new attorneys consider victimless prosecutions in preparing for their cases. Additionally, when going to trial, there is always an inherent risk of conviction. This section simply highlights the most common means of prosecution that I have personally encountered.
2. *Claxton v. Lynchburg*, 15 Va. App. 152 (1992).
3. *Claxton*, 15 Va. at 155.
4. 15 Va. App. 152 (1992).
5. *Claxton*, 15 Va. at 155.
6. *Watkins v. Commonwealth*, 238 Va. 341 (Va. 1989).
7. 202 Va. 207 (1960).
8. *Phillips*, 202 Va. at 212. ■



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Mentoring: The Key to a Successful Career

By Nathan J. Olson

You have your law degree, have passed the bar exam, have been sworn in as a Virginia attorney, and have landed that perfect job. You have all the ingredients you need for a successful legal career, right? Not quite yet.

Law school teaches us how to think like lawyers, and the bar exam tests our minimum competency of Virginia laws. But who teaches you what it is like to actually *be* a lawyer?

Chances are, your law school did not offer classes on networking, client interaction, time and stress management, or firm politics. Many new lawyers begin their careers without thinking about these key ingredients to a successful career. When they have difficulties in one or more of these areas, they do not have guidance on how to deal with them. Worse yet, they do not even know who to ask. Young lawyers, especially those in larger, more competitive firms, refrain from asking their partner or senior associate for fear of being seen as weak or less prepared than their peers. So where can young lawyers go for this critical advice? The answer is to find a Mentor.

Mentors are vital to a professional career, especially in the cut-throat and competitive legal field. Mentors can provide career advice, practice tips, and coping mechanisms critical to a young lawyer's success. Even those students in the top of their classes can benefit from the years of practical experience that a mentor can provide.

So where do you find a mentor? Prime candidates are former adjunct professors, bosses, and even classmates. Above all,

what makes for a good mentor is someone with experience and someone with whom you are comfortable speaking. Depending on the atmosphere of your firm or office,

‘Law school teaches us how to think like lawyers . . . [b]ut who teaches you what it is like to actually *be* a lawyer?’

current bosses and partners can be good mentors. Be mindful though that a current boss cannot remain totally neutral on everything you discuss.

Ideally, your quest to find a mentor should begin before you start your first job, perhaps even in law school. But do not worry if you do not yet have a mentor. The key is to search out someone who you respect and whose advice you value. If you have someone in mind, do not be shy in approaching them for guidance.

Forming a mentor/mentee relationship can be a formal process, but it does not need to be. My mentor is a partner at my firm. I did not set out to have him as my mentor. He is just the lawyer at my firm with whom I found it easiest to converse. I did not formally asked him to be my mentor; the relationship just progressed that way. On the other hand, a few months ago a former student of mine contacted me for career advice. When we met, she asked if I would mind helping her in the future once she passed the bar and started her first job.

Once you have established the mentor/

mentee relationship, stay in good contact with your mentor. Even if everything in your career life is going well, ask your mentor out to lunch or for coffee, just to chat. After all, you do not want your mentor to think that you only value his or her advice in difficult times. Finally, internalize the advice you receive from your mentor and remember to pay it forward. You won't be a young lawyer forever. Someday young lawyers may approach you to be their mentor. ■

Recent Event: W&M Law School Council New Member Kickoff

On Thursday, October 18th the William & Mary Law School Council of The Virginia Bar Association Young Lawyers Division provided three meals to law students in an effort to welcome new members and encourage additional law students to participate in their legal community. The VBA provided the day's three meals to demonstrate the ongoing commitment and continuing benefits that bar membership provides.

The day started early with a continental breakfast, continued with chicken sandwiches and sweet tea for lunch, and concluded with an evening barbeque that boasted beef, chicken, and fish. The meals were all served with healthy sides of VBA membership conversations and highlighted the benefits of networking within our own school.

The William & Mary Law School Council is proud to welcome 85 new members and we look forward to the 123rd Annual Meeting of the The Virginia Bar Association on January 24-26 for excellent educational programs and networking opportunities.

The Law School Councils are student groups affiliated with the VBA. The LSCs support the mission of the VBA and provide leadership opportunities to law students. For more information about the W&M Law School Council, contact Co-Chairs William L. Holt (wlholt@kaufcan.com) and Sarah E. Messersmith (semessersmith@kaufcan.com).



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YLD Fall Executive Council Meeting



Courtesy: VBA Staff.

Elaina Blanks, Travis Hill, Dan Ortiz, and other guests tour a Northern Virginia vineyard with a vineyard employee.



Courtesy: VBA Staff.

YLD Chair Dan Ortiz and the Hon. Robert W. Wooldridge Jr. lead the meeting's CLE and discussion.



Courtesy: VBA Staff.

Britton Williston shares information on the ABA Award of Achievement.



Courtesy: VBA Staff.

Jean Humbrecht, Britton Williston, Webb King, Elaina Blanks, Karen Robinson, Travis Hill, Jeremy Williams, and Dan Ortiz share the generous buffet lunch provided by the hotel.



VBA Career Center

The VBA Career Center is an excellent resource for young lawyers seeking new job opportunities. Login now to upload your résumé or browse current openings: vba.org/jobs.



Courtesy: VBA Staff.

Travis Hill, Dan Ortiz, and Elaina Blanks discussing the remainder of the meeting during a coffee break.



Courtesy: VBA Staff.

Elaina Blanks at the meeting on Saturday, which began with a large spread for breakfast and presentations by YLD committee chairs and liaisons.



Courtesy: VBA Staff.

YLD members from across the Commonwealth (Laurie Proctor, Jeremy Williams, Bob Falconi, and Webb King) catch up with one another at the Saturday meeting.



Courtesy: VBA Staff.

Sam Towell and Jeremy Williams kick off the weekend at YLD Chair Dan Ortiz's residence for a welcome barbeque on Friday.

Submit Your Article or Event Write-up to *Opening Statement*

The *Opening Statement* Editorial Board welcomes the submission of articles by young lawyers. Generally, articles should be 650–1,300 words and should be on a topic of interest to young lawyers.

Articles. Substantive article topics may include:

- New developments in the law
- Day in the Life of... (e.g., "Day in the life of a Circuit Court law clerk" or "Day in the life of an assistant city attorney")
- Recent experience with... (or Lessons learned from...) (e.g., "Lessons learned from taking a legal aid pro bono case", "Recent experience with arbitration", or "Lessons learned from the VBA Veterans Initiative")
- Tips/Advice (e.g., "Arguing your first jury trial", "Tips for drafting a compelling brief", or "How to handle your first client meeting")
- General Overview of a legal practice area (e.g., "Understanding partition suits" or "What every lawyer should know about property settlement agreements," etc.)

We welcome articles that are written specifically for *Opening Statement*, as well as articles that are adaptations of previously published material, such as blog posts, articles from firm newsletters, excerpts or summaries of law review articles, etc. The complete Author Guidelines and the VBA Publication Agreement are available online at: www.openingstatement.org.

Photos and Event Write-ups. In addition to substantive articles, we are also interested in receiving photos and/or write-ups from YLD events. If you took photos at a YLD social or other event, please pass them along to us for possible use on the YLD website or in the *Opening Statement* newsletter.

Please send your submissions or questions to the *Opening Statement* Editorial Board at: editors@openingstatement.org.