

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org May/June 2009

FBA ELECTIONS 2009-2010

Pursuant to FBA Bylaw Amendments approved by the FBA membership, when the election for at large Directors under Article VI(1) and Vice President under Article II(2) are uncontested, such elections will not be held, and instead, such candidates shall assume office beginning July 1 of the FBA's next fiscal year.

VICE PRESIDENT AND BOARD OF DIRECTORS [UNCONTESTED]

VICE PRESIDENT



Brett A. Kassabian
Kassabian & Kassabian P.L.C.

Graduated from Wake Forest University School of Law in 1985; member, Wake Forest University Law Review. Admitted to the Virginia State Bar 1985. Served as a Senior Assistant Commonwealth's Attorney for the Fairfax County Commonwealth's Attorneys' Office; since 1994, a principal in the law firm of Kassabian & Kassabian, P.L.C., engaged in the general practice of law, with emphasis on criminal law. Since 1985 served as the Fairfax City Prosecutor, and a Legal Instructor at the Northern Virginia Criminal Justice Academy from 1996-1998. Member of the Fairfax Bar Association Judicial Selection Committee, as Chairman and as a member, and the Criminal Justice Advisory Board. Has also participated in the Fairfax County Public Schools Mentoring Program, and served in the General District Court Judicial Feedback Program as a facilitator. In 1998, was appointed as Substitute Judge for the General District Court and the Juvenile & Domestic Relations District Court of the 19th Judicial District, and was reappointed for a second term. Has an AV rating by Martindale Hubbell. Since 2004, has served on the Board of Directors of the Fairfax Bar Association, and has served in the capacity of General Counsel and Secretary to the Board of Directors. ■

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President's Column

by Julie H. Heiden

A TIME TO REFLECT...

As I reflect back on the year I am amazed at how much our talented volunteers and dedicated Bar staff have been able to accomplish.

Over the past year the Fairfax Bar actively continued to promote diversity in the law. Last September multiracial teams, including members of our Bench and Bar, participated in the **Just the Beginning Foundation Eighth Biennial Conference "Reaching Back, Lifting Up."** The conference reached out to hundreds of students from Maryland, Washington, D.C., and Virginia to nurture interest in the law among young persons from various ethnic backgrounds underrepresented in the legal profession. We furthered our commitment to promoting diversity in February with the **Young Lawyers Colors of Justice Program**, and in April 2009, when we partnered with local and specialty bars to host the **Celebrating Diversity in the Law** reception at the George Mason University School of Law.



The Fairfax Bar is committed to facilitating interaction between the Bench and Bar. During the past 12 months, the Fairfax Bar was pleased to participate in the **investitures** of four judges—**Judge Jan Brodie**, **Judge David Schell**, **Judge Robert Smith**, and **Judge Thomas Soletto** (set for May 24). Each of these individuals brings wisdom, understanding, and compassion to the bench and the Fairfax Bar is delighted to welcome them to this prestigious role.



An important aspect of bar membership remains the opportunity to network and socialize with our peers and the judges. Over the past 12 months, the Fairfax Bar has worked to foster this opportunity through our **happy hours**, **luncheons**, the **Annual Spring and Fall Golf Tournament** coordinated by Bob Letnick, and the **Bench Bar Dinner Dance and Silent Auction**. We will also be hosting our first **Membership Breakfast** at the courthouse on May 21st.



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FAIRFAX BAR JOURNAL

Official Newsletter of the
Fairfax Bar Association

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All articles or advertising submitted to the **Fairfax Bar Journal** are subject to the editor's approval. The editor reserves the right to reject any submissions that, in the opinion of the editor, are inappropriate for the **Journal**.

Richard A. Gray - Odin, Feldman & Pittleman, P.C.

Owned and operated a law office for 12 years before joining Odin, Feldman & Pittleman, P.C., in 1999. Knowledgeable in juggling the conflicting and overlapping demands of managing an office, personnel and finances, and meeting clients' (in this case, membership) demands for service on issues of importance. Passionate about the legal industry and feels extremely fortunate to have been part of it for over 20 years. Efforts will be focused on continuing to increase FBA membership numbers, and as a result, expand the networking pool and resources for FBA members. Will be accessible and actively listen to the strong network of peers among our legal industry, and will focus FBA resources on providing our members with appropriate tools to enable them to grow professionally within the legal industry.

Currently serving two-year term on the Board of Directors of the FBA Family Law Section, which is a liaison to the Fairfax County Juvenile & Domestic Relations District Court. Current term will end June 30, 2010. ■

Douglas R. Kay - Briglia Hundley Nuttall & Kay, P.C.

I consider myself pragmatic, congenial, and diligent. Have worked for the U.S. Navy, the Fairfax Commonwealth's Attorney, a large firm, and now a small firm. I have heard and perceived needs of each institution and observed how each solves its problems. I believe my varied background will continue to provide the Board with a well-rounded perspective.

2008-Present: Member, FBA Board of Directors. Assisted in organizing well-attended Candidate Forum in November 2008; assisted with FBA oral history program; attended meetings and events. 1998-2008: Legislative Affairs Committee (Chair, 2006-2008). Committee serves as liaison between FBA and the Northern Virginia Delegation to the Virginia General Assembly. 2003-2008: Judicial Screening Committee, served on three separate panels. 2004-2007: Court tour volunteer. 2002: Coached Fairfax High School mock trial team. ■

Michael A. Minter - Miles & Stockbridge P.C.

I bring to the Board a relatively unique perspective, based in part on my extensive experience in technology-based industries. This experience includes success at building, directing, coordinating, and motivating teams, as well as being a resourceful leader and results-oriented team member. I have an established professional and social network as well as the ability to foster positive working relationships at all levels, and would gladly leverage these for the benefit of the FBA.

Actively involved for several years with the *Pro Bono* Program, representing clients in uncontested divorce matters. Active member of the FBA Technology Committee, where I served as a faculty member for the Annual Law and Technology MCLE held October 2008, and am currently involved with developing a curriculum for the FBA Courtroom Technology Training Program. Recently elected to the Fairfax Law Foundation Board of Directors, serving on the Long Range Planning and PR/Marketing Committees. ■

Thomas W. Repczynski - Bean, Kinney & Korman, P.C.

Through my numerous years of service to the FBA community on both the Library and the Budget Committees, in particular, I have come to appreciate among the colleagues with whom I have served an incomparable sense of commitment to the Bar, its programs, and ideals. I hope through continuing my involvement as a Director that I might get to know better many of our members whose paths I might not otherwise cross, whose paths I cross but whose names and life stories are as yet unknown to me, or before whom I regularly appear but know only as "Your Honor." I hope to assure that such accessibility and camaraderie are never lacking in our FBA - my FBA.

Served for several years on the Walter T. McCarthy Law Library Board in Arlington (President 2001-2004). In June 2008, stepped off of the Board of Directors for the Northern Virginia Bankruptcy Bar Association after having served nearly 10 years, and having rotated through the full slate of officer positions (Secretary, Treasurer, Vice President and President). Currently serving a five-year term as a class officer and member of the Executive Committee for my undergraduate class from Dartmouth College.

Previously served a term as a member of the Bar Liaison Committee to the Alexandria Division of the U.S. Bankruptcy Court for the Eastern District of Virginia. Through the Liaison Committee, participated in 2005-2006 as that committee's representative to the district-wide, Local Bankruptcy Rules Committee for the Eastern District. Currently serving third year as President of the Ocean Sands South Property Owners Association in Corolla, NC, and have previously served as Chairman of the Architectural Review Board for the Crosspointe community in Fairfax Station, VA. ■

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— FEATURED SECTION: PARALEGAL — A Special Project Does Not Go Unnoticed

The FBA Paralegal Section and Fairfax Law Foundation wish to express their joint gratitude to members of the Fairfax Bar, the Paralegal Section, and the Fairfax community who contributed to the Paralegal Section's Annual Valentine project, adopted this year by the Fairfax Law Foundation. The Paralegal Section was extremely pleased this year to expand the project to include the young men at the Fairfax Boys' Probation House, nearly tripling the number of recipients of this outreach than in years past. Monetary and new book donations were collected to fill 34 gift bags, 12 for the residents of the girls' facility and 22 for the residents of the boys' facility. We received a donation of 68 non-fiction books from one of our many long-time contributors, Ms. Kay Olson, Editorial Director, Capstone Press of Mankato, MN. The colorful and sturdy gift bags were donated this year by the Trader Joe's located on Main Street in Fairfax, courtesy of its store manager and "Captain," Mr. Assane Sy. Each young adult received two non-fiction and two fiction and/or classic books, toiletries and personal items, a journal and writing pens, and Valentine candy. Moreover, the directors and teachers at each facility received additional items to use as gifts and/or incentives for the residents during their tenure.

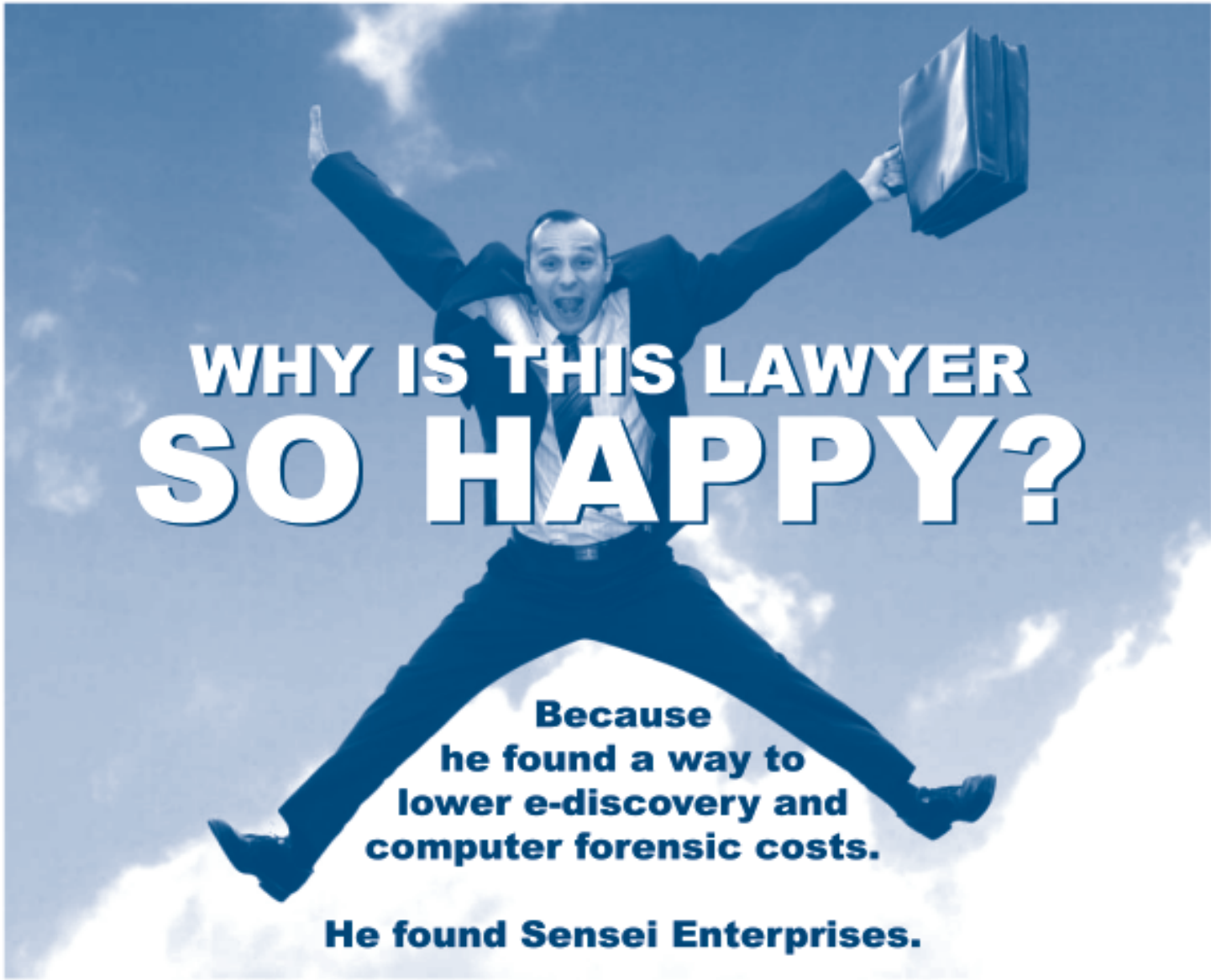
It was a tremendous pleasure to deliver the bags to the young women and men on behalf of the Fairfax Bar Paralegal Section and the Fairfax Law Foundation. Each of the young adults was genuinely excited with their books and other gifts. To view copies of the recipients' individual thank you letters, as well as additional photos, please log on to www.fairfaxbar.org/associations/4650/files/tyvdapproject.pdf.

It was a privilege to personally meet the director and teachers at the boys' facility for the first time while making delivery of the gift bags this year. While making delivery of the girls' gifts, we were treated to a tour of their fine new facility.

Thank you for your generous support of this worthwhile project. We hope that you will continue to contribute in future years as we expand our level of giving back to the community. ■



L-R: Valentine Project Co-Coordinator, Joanne Randa; Activities Coordinator, Janice Day, CP; member, Lori Jones; CPE Coordinator, Brittany Cramer; and Legislative Liaison, Cherie Kyser.



WHY IS THIS LAWYER SO HAPPY?

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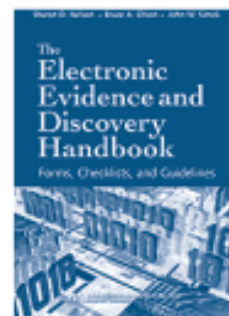
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Sensei's founders, Sharon D. Nelson, Esq. and John Simek, are renowned experts in the field. They are often on the road educating lawyers across the country on computer forensics and e-discovery issues. These are the folks who "wrote the book" on e-discovery: *The Electronic Evidence and Discovery Handbook* (ABA).

It was Sensei that defense counsel turned to when they needed help in the Washington Sniper case and the Duke Lacrosse rape case. Even the FBI, the DOJ and the U.S. Senate have called us in on cases. When you need help with computer forensics and electronic discovery, call Sensei. We'll be with you every step of the way, with pricing you – and your clients – will love.

For more information about how Sensei can help you lower your EDD costs, call us at 703-359-0700, e-mail us at sensei@senseient.com, or visit us at <http://www.senseient.com>.




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FAIRFAX COUNTY CIRCUIT COURT

Pendente Lite Custody and Visitation Procedures



I. *Pendente Lite* Custody and Visitation Procedures

It has been for many years, and remains the philosophy of the judges of the Fairfax Circuit Court, that unnecessary and duplicative custody and visitation trials and hearings exact a high toll on families in distress and are contrary to the best interests of the minor children in those families. Final custody and visitation hearings have always enjoyed priority on the court's docket and can be scheduled within two to four months of a scheduling conference or hearing before a calendar control judge.

As a result, absent extraordinary circumstances, *pendente lite* custody or visitation hearings will not be scheduled. Whether extraordinary circumstances exist will be determined by a judge based upon the specific circumstances of a given case, and generally will be found to exist when a judge concludes (1) that a child may be subject to sexual abuse, unless an order limiting contact with the alleged abuser is promptly entered; (2) a child has been, or is about to be, secreted or removed from the State of Virginia; (3) the parent with primary physical custody of the child is preventing the other parent from having any physical contact with the child; or (4) the unique circumstances of a given case require immediate court intervention because substantial harm to a child or potentially irreparable harm to a parent/child relationship will probably occur absent entry of an order governing the case until a full final custody hearing can be conducted.

In contrast, extraordinary circumstances generally will not be found to exist (1) when a parent is seeking a *pendente lite* order granting each parent a percentage of the custodial access to a child; or (2) the parties cannot agree on the scheduling or logistics for effecting the visitation (e.g., transportation responsibilities).

All requests for a *pendente lite* custody or visitation hearing must be presented to a calendar control judge by way of a concise written motion. No motion for *pendente lite* custody or visitation may, therefore, be noticed for a Friday motions docket without leave of a calendar control judge. Absent imminent emergency circumstances, copies of all such motions must be filed with the Clerk of Court (original), served upon opposing counsel of record, and delivered to Circuit Court chambers no later than 3:30 PM the day before the appearance before the calendar control judge. All such motions must include (1) a representation that counsel of record for the moving party has discussed in good faith possible interim custodial access arrangements with opposing counsel of record, or has made reasonable attempts in writing, or by email, to discuss such an arrangement, without a response from the other side; and (2) the specifics of the moving party's proposed interim arrangement,

including why extraordinary circumstances exist that necessitate the entry of a *pendente lite* order in the case pending the final custody hearing. Absent the filing, service, and timely delivery to chambers of a motion satisfying elements (1) and (2) above, the calendar control judge will not entertain any argument or schedule a hearing.

As the calendar control judges have very limited time for any case, counsel of record must be prepared to concisely proffer the reasons why extraordinary circumstances do or do not exist, and why such a *pendente lite* hearing should or should not be scheduled. After hearing such brief proffers from counsel of record, the calendar control judge shall, in the judge's discretion:

1. deny the request for a *pendente lite* custody/visitation hearing; or
2. schedule the final custody/visitation hearing on an expedited basis in lieu of the parties setting such a hearing at Scheduling Conference; and/or
3. find that extraordinary circumstances exist but that an appropriate *pendente lite* hearing can be held within 30 minutes utilizing the Friday *pendente lite* custody procedures outlined below; or
4. determine that the extraordinary circumstances require nothing less than a hearing on the date certain, and therefore schedule such a hearing.

If the calendar control judge does set a final custody/visitation hearing, the judge shall also then obtain a date for the final equitable distribution/support hearing from the parties (within 15 months of the date of the filing of the complaint) and determine whether the parties desire the assistance of a Neutral Case Evaluator (that information shall also be set out on the Calendar Control Form and, at the bottom of the Calendar control Form, the judge shall note "cc: Domestic Case Tracking"). The case tracking personnel will then prepare all of the appropriate domestic case tracking orders, forward them to the chambers of that judge for entry, and then mail copies of the orders to counsel of record for the parties after entry by the judge. The parties shall then be responsible for assuring that the mediation session and parental education sessions shall be conducted during the time frames established in the Scheduling Conference Orders.

II. Friday Motion's Day Procedures

All *pendente lite* hearings on custody or visitation issues held on a Friday motions docket shall be conducted as follows:

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— FEATURED SECTION: TECHNOLOGY —
Stop the Bleeding: Cost Containment for Electronic Discovery

by Sharon D. Nelson, Esq., and John W. Simek © 2009 Sensei Enterprises

There is one sound always associated with announcing the estimated costs of electronic discovery. It is a gasp. Sometimes accompanied by a wheeze of pain, sometimes by a grunt of reluctant acceptance, and sometimes by a curse of protest. No matter how you slice and dice it, electronic discovery is not cheap.

Still...inquiring minds have wondered whether it really needs to be quite as expensive as it is. Technology is a marvel—can't we employ technology as a friend and ally in cutting discovery costs? Cost-cutting in electronic data discovery (EDD) is about both people and technology. We will speak of both, but focus primarily on technology.

Let us set the stage:

You just received a letter from a competitor threatening a lawsuit, claiming that a recent hire has stolen proprietary information and brought it to your business. Perhaps you didn't actually receive a letter, but you have reason to believe that there will be litigation involving your company. Either way, you are now in a litigation hold and must quickly preserve any evidence of the alleged wrong doing.

Larger corporations probably have records management systems in place to deal with the rapid identification and preservation of information. But not everyone is a Fortune 10 company with huge budgets to implement data preservation systems just for the purpose of preserving evidence for a case.

The more common scenario is for companies to have a rudimentary system of information categorization and retention that doesn't lend itself very well to reacting to the litigation at hand. The initial reaction is to "save" everything just in case it may be relevant. After all, storage space is cheap and getting cheaper. This initial premise will significantly raise your costs for the litigation. The single most costly component of electronic discovery is the attorney review. Therefore, the goal must be to keep the data volume to a minimum.

Where's the data?

Hopefully, you have some sort of records management system that can aid in identifying what data should be preserved. If not, then you need to develop a data map that identifies the potential location of electronic information. Don't forget data that may be held with third parties. As an example, if

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Stop the Bleeding...

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you outsource your payroll and the lawsuit involves employee compensation, then you need to notify the payroll company not to destroy any information and to preserve data pertaining to compensation.

What if you don't know where the information is and you haven't restricted where employees can place data? As a minimum, your computer usage policy should identify the acceptable uses of computers and what equipment is acceptable. USB flash drives are a dangerous source of data theft if not properly controlled. All too often disgruntled employees will copy corporate data to a USB flash drive as they depart their employment. You could lock down the USB ports on the computer, but that may hinder real business usage such as digital cameras or USB printers. Your first technology tip is to install USB monitoring software that can centrally log all USB activity on every computer.

What if you don't know where their data is and you never mapped out all the potential locations? There still may be hope for you. With the increased interest in EDD, there are now technical solutions to aid in finding the data. You should purchase a hardware device that connects to your network. These devices work in a fashion similar to a web crawler such as Google. The device "crawls" the network and identifies files, owners, contents, etc. Make sure that the device will work in your environment. As an example, it may require that file and print sharing be enabled on all computers or that the crawling agent be given administrator privileges. Some manufacturers price their devices based upon the amount of data "discovered" and others price the device based upon the volume it can store.

One step many organizations take to be more proactive is to implement content archiving software. These tools archive and manage the high-volume, user-generated content like email, files on network shared drives, and SharePoint sites that tend to be not otherwise centrally managed. IT departments like archiving because it reduces storage costs and makes it easier to backup their systems. Archiving also benefits organizations by providing a central repository for information to de-duplicate, manage retention, and conduct eDiscovery searches and legal holds. "Given that emails and network file share documents are the two most requested types of content in eDiscovery, we've seen a huge demand for our unified content archive that supports email and file system archiving," says Barry Murphy, Director of Product Marketing at Mimosa Systems. The fact that they can set very granular retention policies and item-level legal holds on this extremely difficult-to-manage content really helps them to sleep better at night."

Active Data Only?

Another cost consideration is whether only active data is at issue. Active data is the data that the user can see when operating the computer or device. It does not include any deleted (and normally irretrievable) files. Forensic processes are needed if you must include deleted data or data that may reside in unallocated space on a hard drive. Forensic acquisitions are expensive and typically not needed. Many times we see the attorneys jumping up and

down wanting to forensically image computers to preserve ALL of the data. In a typical company environment, this can be overly expensive even if done by internal IT personnel, which is generally not a good idea for the reasons stated below.

If forensic images are required, only do the key players, if you can secure that agreement from the adverse party. We would recommend that the forensic imaging be done by a third party and not your IT staff. This is not only because of the vested interest, but creating forensic images is not just copying data or plugging a disk into a piece of hardware. There are set procedures and verifications that are performed as part of the imaging process, which most IT personnel are not familiar with.

So how do you minimize the business disruption and keep costs down if you really do need forensic images? A good practice tip is to have your IT folks clone the appropriate drives, allowing users to run off the cloned drives while you secure the originals. This will save you a lot of money since you are not initially creating the forensic images. IT personnel are familiar with using the Ghost (Symantec) product to create drive clones. Ghost is not a forensic tool, but can be used to create a logical copy of the user's hard disk so that they can get back to business. Securing the original drives means that they are available for any future forensic analysis if needed—and often, it is not.

When would you need forensics? Forensic analysis would be used if web-based mail (e.g., Gmail, Hotmail, etc.) is at issue or if locally sorted files from the user's computer are at issue. Typically, employees using web-based mail aren't aware that the Internet "trail" is stored on their local hard disk. They may even purge their Internet history in an attempt to remove any trace of web-based mail activity. Computer forensics can still recover this data and present the Internet activity of the user. Computer forensics is also used where data theft is suspected. Normally, we see insertion of USB devices and copying of data to those devices. These are just two examples where computer forensics may be utilized. The good news for your pocketbook is that most cases do not need forensics and dealing with the logical data is sufficient to locate and preserve the relevant information.

Metadata Preservation

Sometimes you will need to preserve the system metadata related to the electronic files. This is different than the metadata that is imbedded within the file itself. The system metadata would be such things as the file creation date or the file accessed date. Merely copying files to another location will modify both of these values, thereby not providing a true representation of the original data. There are tools that can be used to preserve these values if needed. Arguably the two most commonly used tools are ROBOCOPY (command line Windows tool) and SafeCopy 2 by Pinpoint Labs. As with all tools and handling of electronic evidence, make sure that you test the software prior to actually dealing with real evidence for the case.

De-duplication

Why would you need multiple copies of the same information? You wouldn't, but how do you know if it is the same or not? Reducing data volume means reducing reviewing and production costs, so de-duplicating is key to your data

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INTERVIEW WITH THE HONORABLE JAN L. BRODIE

Circuit Court Judge for the 19th Judicial Circuit, Commonwealth of Virginia

by Edward J. Walinsky, Esq.

Q. Where were you born?

A. I was born at Camp Lejeune, North Carolina, and then moved around all over. My dad was a Navy Chaplain. He was a Captain in the Navy, but he spent most of his time with the Marines.

Q. Were you living in the United States or overseas for high school?

A. I was in elementary school in Virginia and California, Seattle, Washington, and Cannes, France, and back to Virginia for college. I have crossed the United States several times for moves, and had quite a variety of education.

Q. So then where for high school?

A. I attended the first two years in France, and then I came back to the United States to attend Cox High School in Virginia Beach. My dad was transferred to Seattle, Washington, in the middle of my senior year so I graduated there. It worked out well.

Q. Did you get to speak any French in France?

A. Yes, I became fluent. I went to a French girls school and my parents basically said "sink or swim." I had the task of learning Latin in French. I think children pick up languages quicker; so it came very easily.

Q. Were there seminal events in your childhood which shaped your personality?

A. I think that being a Navy Junior and a preacher's kid, you see a lot in life and in moving around you see different cultures. You see so many parts of society that you interact with, from all different areas, and it really was a good experience. If anything, I think that it probably gave me some independence and the ability to adjust to a new situation quickly. Moving around helped me make friends and assess situations quickly.

Q. What extra-curricular activities and sports did you participate in while growing up? What were your interests?

A. I took ballet, horseback riding, and tennis. My parents always kept me very busy. I was always very active in student government and was involved in my church. Our Lutheran Church has a youth group and I was always involved in that.

Q. Where did you go to college?

A. When I was in high school at Cox, I had a chance to visit William and Mary and fell in love with the school. I liked the idea of a liberal arts education because I really had not decided what I was going to do at that point. I knew I was interested in languages and math, and just liked the size of the school and what it offered. So, much to my parents' chagrin, (they would have liked me to stay on the West Coast), I applied and was accepted as an out-of-state student at William and Mary. I never regretted it. I loved it.



Q. So what kind of extra-curricular activities did you do there?

A. I was active in my sorority, and was also the president of the student education association, because I thought at one time I would teach.

Q. What was your major?

A. I was a French Major. I also took extra courses in Latin and Spanish.

Q. Did you take teaching also?

A. I did, but in those days at William and Mary you could not get a degree in teaching. You could get a collegiate professional teaching certificate, which I did do. It was a last-minute decision because my future husband was already in flight school; I was planning on going to law school but for the world events at that time. We married in '69, but it was with the understanding that I would go to law school eventually once he left the Navy and we settled down.

Q. You mentioned that you thought about being a lawyer, but you also had your teaching and the languages involvement. Why did you want to be a lawyer, and how did you keep that goal for so long?

A. I came by it honestly, as my grandfather was Clerk of Court in Hastings, Nebraska. At William and Mary, I used to sneak in the back of the law school classes. I knew some of the faculty and that introduction made me think that law would be something I would really like to do.

Q. When did you end up at law school?

A. Prior to law school, we did a lot of traveling. We traveled all over the Middle East, were stationed in Hawaii, Italy, England, Florida, Texas, and California. And that made it a little difficult,

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INTERVIEW WITH HON. JAN L. BRODIE

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to say the least. During that period I went to graduate school at San José State in California and earned a Master's Degree in Counseling. So I was able to use that later when I was teaching.

In 1981, after returning from England, I thought that we would be in California for three years and decided, "Okay, now it is time to go to law school." My husband was away at the time on deployment overseas, my son was in elementary school, and I was teaching, so I went at night. I got through about a year and a half of night school, when my husband was transferred to the Pentagon, which brought me back to Virginia, and I was accepted to George Mason Law School, which worked out great.

Q. You seem to have two different experiences, in undergrad and in law school.

A. *I did, especially at the age I went to law school. I was in my late 30s and at that point, very focused. I thoroughly enjoyed law school. I loved every single minute of sitting and listening to lectures, learning something new, and being challenged. I just thoroughly enjoyed it. I think that is a little different when you are focused on a subject area versus when you are an undergraduate and you are taking prerequisite classes.*

Q. What got you into land use to begin with after law school?

A. *It was not planned. With my background of teaching and counseling, I thought I would go into domestic practice. That was where I was headed, and I had written my law review article on "Safeguarding the Best Interests of the Child in Mediation." So clearly that was where I was headed. And then it came to be that I was looking for a clerkship. One was open in the County Attorney David Stitt's office, and I thought that "well, this is interesting." There is such a variety of issues, including constitutional issues; land use really is interesting to me. So I got into it as a law clerk, and found it so interesting that I stayed with it all those years. I also had excellent mentors and was given challenging cases.*

Q. In the County Attorney's Office, was it all a litigation practice?

A. *It changes through your career, and it changes depending on your position. The majority of it was litigation until I became a deputy. That made it very difficult to handle a full litigation load, which is one of the reasons I wanted to become a judge, to be back in the litigation world.*

Q. So, as well as working and being a parent, what could you do in terms of extra-curricular activities during your legal career?

A. *I was the soccer team mother, PTA president, president of the Navy Wives Association, worked with the Red Cross, and was active with the Church Board of Directors. When I started as a lawyer, David Stitt insisted that we become involved in the Fairfax Bar Association. It was not a question of whether you would or wouldn't; it was a matter of what committee are you going to serve on. I started out with the CLE Committee and my involve-*

ment grew after that. I finally became President of the Fairfax Bar Association, which was such an honor. I worked with the Law Foundation, was on the State Bar Council, and on the Executive Committee of the State Bar Council. I was appointed to the MCLE Board, and am a faculty member on the Harry L. Carrico Professionalism Course.

Q. I am assuming you do not need much sleep then?

A. *I don't need much sleep.*

Q. So what led you to think about being a judge?

A. *In 1997, after I had been with the County almost ten years, I started thinking about this. I not only enjoyed litigating, but I enjoyed listening to everybody else's arguments. I talked with friends who are on the bench to find out what it was really like. The more I thought about it, I thought this would be a good use of my skills and abilities. So I started that year, recognizing that I was new, but wanting to let people know I was interested. Over the next ten years, when to apply depended on other factors. In particular, the last two and a half years I did not have as much litigation and I missed it. There came another opening and I applied.*

Q. What do you do for relaxation on the weekends?

A. *I love to be out in the yard. Planting and working out there is therapeutic. We have a boat that we enjoy going out on occasionally, and we enjoy cooking. Most of all, I love traveling and we try to do that on a regular basis. We go back to France and Italy often because we were stationed there and loved it.*

Q. What surprised you the most about being a judge?

A. *The volume of work. I was amazed by the number of cases that come through the courthouse. Not surprising is the fact that I have found my colleagues to be very supportive.*

Q. I assume that on Friday mornings you need an energy drink to get through the caseload.

A. *Actually, those are my favorite days. I get to read all the briefs and read all the cases. I enjoy getting into those motions and I enjoy the arguments from counsel.*

Q. Do you have any particular advice to give to attorneys on Motions Day?

A. *Only the usual: attorneys should be prepared and professional.*

Q. What else should we know about you? What should practicing attorneys hear from your lips?

A. *My intent is to listen carefully, try to understand the arguments presented, and take the necessary time to deliberate. That is what I will strive to do for all who come before me. That is what I looked for in a judge when I had motions on Friday. ■*

PRESIDENT'S COLUMN

continued from page 2

The Young Lawyers, under the leadership of Christie Leary, have likewise provided networking and socializing opportunities for our members by hosting numerous events, including **breakfasts and dinners with the judges**, the **Stitt Cup**, a **wine tasting tour**, a **running team**, and a **softball league**.



During the past year Doug Kay organized a **Legislative Reception** in connection with the other local area bar associations, the Young Lawyers organized the **Newly Admitted Attorneys Orientation** program, and the Paralegal Section organized the **Support Staff Orientation**. These events, combined with more than **18 CLEs** coordinated by David Ginsberg and the members of the CLE Committee, furthered our desire to advance and improve the practice of law.



The Fairfax Bar has always had a strong sense of community. Throughout the past 12 months our **Court Tours** program reached more than 2,750 students in Fairfax County. Also, the Law Related Education Committee and the Juvenile and Domestic Relations Section and Committee reached out to Fairfax County Citizens through their involvement with the **Mock Trial Program** at the **Chocolate Lovers' Festival**.



Serving the public is a critical component of the Fairfax Bar Association. The Paralegal Section, chaired by Kelly Cook, coordinated a **School Supply Drive** benefitting the children served by the Mondloch House II, and a **Valentine's Day Project** benefitting the Fairfax Girls and Boys Probation House. The *Pro Bono* Committee addressed the **housing crisis** by participating in a program designed to train lawyers on how to help those individuals affected by foreclosure. The Young Lawyers Section coordinated and forwarded **care packages** to our troops overseas. The **Lawyer Referral and Information Service**, under the direction of Donna McBride, provided legal reference and legal contact information to more than 15,000 citizens this year.



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Stop the Bleeding...

continued from page 8

processing. It goes without saying that your records management system should be dealing with this up front, but what if you didn't address it or you just don't have a system to manage your records yet?

The obvious first question is: what constitutes a duplicate? You could use a hashing algorithm like MD5 to identify exact duplicates. This will work admirably for your electronic files like spreadsheets, documents, etc.

Be careful when processing email though. Does your tool hash an entire email message including the attachment? De-duplication of email messages is not as easy as it sounds and is better outsourced to those that have specific experience and tools. More often it is appropriate to remove near-duplicates, which have the same attachments, recipients, subject line, etc., but have different MD5 hashes due to the message ID and seconds time difference in the headers.

Finally, you want to remove any known system and program files. Typically, you use a database of hash values to identify these innocuous files. The industry tends to term this deNISTing because the NIST (National Institute of Science and Technology) database is used to identify the known files. The NIST listing contains over 34 million hash values for operating system and application files. Some commentators claim that the filtered files can be in the range of 30-50%, thereby significantly reducing the review files.

The End Game

The de-duplication, subsequent EDD processing and production probably will be accomplished by an EDD processing vendor, although many of the very large corporations are beginning to bring this processing capability in-house. The key to successfully dealing with electronic discovery is taking reasonable steps and documenting your actions. Technology can help to identify and gather the data, but people will be the ones to make decisions as to what types of files to preserve, which custodians should be addressed, what keywords or phrases should be used for searching, etc.

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President's Column

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Ira Saul and the Law Library Committee have worked to enhance the Fairfax Public Law Library, the only facility of its kind in Fairfax County, so that it continues to provide for the needs of the community by offering free legal research, wireless Internet access, and extensive, up-to-date resources through its electronic collections.

As the area around us transforms, the Fairfax Bar has remained committed to the fundamental principals set forth by our founding members. Under the direction of Judge Valentine we were able to capture the history of the Fairfax Bar and the Courthouse through the oral testimony of those members. We are excited to announce the history has been captured on film and will be aired on Fairfax County **Channel 16** and released on DVD.



As the year comes to a close, we are celebrating not only the last 12 months, but more than 50 years of history as an association whose mission is to serve its members by cultivating professional competence, collegiality, and diversity; facilitating interactions between its members and members of the Bench; fostering the public's understanding of the practice of law and the judicial system; operating a public law library; and serving as a leading voice of the legal profession.

As my year nears the end, I want to thank everyone who worked so hard on the multitude of FBA activities and events. As we reflect back on the events of this year, it is clear your efforts ensured our mission was met. ■

Pendente Lite Custody...

continued from page 6

1. The judge will swear in the parties;
2. Counsel for the moving party will have up to ten (10) minutes to explain that party's specific proposal and why it is in the best interests of the child(ren) to have such an interim arrangement in effect until the final hearing;
3. The moving party will then have the opportunity to correct any misstatements inadvertently made by counsel;
4. Counsel for the responding party will then have up to ten (10) minutes to explain that party's position and why that party's position is the best interim arrangement for the children pending the final hearing;
5. The non-moving party will then have the opportunity to correct any misstatement inadvertently made by counsel;

6. The court will conduct whatever additional inquiry the judge may deem necessary and then render a decision;

7. Upon request, the presiding judge may refer the parties to the calendar control judge at an appropriate time to obtain the expedited date for a final custody/visitation hearing;

8. Counsel will draft an order that will be presented to the court for entry that day.

Any *pendente lite* custody or visitation hearing held in the Fairfax Circuit Court will address only the extraordinary circumstances that led to the hearing, and the *interim arrangements* that, in the best interests of the child, should be in effect pending the final custody hearing. As a result, any such *pendente lite* custody or visitation hearings will generally be scheduled for no more than two hours. The judges of the Fairfax County Circuit Court have agreed to implement these procedures on an interim basis at the request of the

OLD DOMINION BAR ASSOCIATION (ODBA) Will Be Celebrating Justice Through Courageous Advocacy

The Old Dominion Bar Association will be hosting its 69th Annual Conference on May 28-31, 2009 at the Gaylord National Resort. CLE topics include Avoiding Foreclosure, Best Practices: A View from the Bench, and Computer Generated Evidence, among others.

More information about the conference can be found on this link:

<http://www.fairfaxbar.org/association/4650/files/odbar.pdf>

Stop the Bleeding...

continued from page 11

This entire process is not for the faint of heart. Few attorneys are competent in this arena. By and large, you are likely to be guided by your EDD expert, so choose that expert in the game before you accidentally go astray. The monies you spend on an expert should be recouped many times over by the efficiencies of a sound process and the reduction of data volume, which will save huge sums of money in reviewing and processing costs. Truly, that's advice you can take to the bank. ■

The authors are the President and Vice President of Sensei Enterprises, Inc., a computer forensics and legal technology firm based in Fairfax, VA.

Domestic Relations Subsection of the Fairfax Bar Association's Circuit Court Committee and the practicing Domestic Relations Bar. The Bar is strongly urged to comply with the letter and spirit underlying these procedures.

Should the judges determine, after a reasonable period of time, that these procedures are negatively impacting the court's (1) daily docket, (2) Friday Motions Days, or (3) Calendar Control System, the judges may decide to terminate these procedures. ■

FBA LISTSERV ANNOUNCED—GET EVEN MORE CONNECTED

The FBA has created yet another way for its members to receive the most up-to-date information and to interact with other members. The FBA recently created a listserv using Yahoo Groups. To get started, visit <http://groups.yahoo.com/group/fbalistserv/> or simply email fbalistserv-subscribe@yahoogroups.com to start receiving the listserv e-mails in your inbox. The purpose of a listserv is to share resources, seek support, discuss important issues, keep informed about upcoming events, and access other useful information. Topics of discussion are posed from listserv members and the answers generated are from the group. The listserv can also help members stay connected to the legal community. This is especially true for those who may not easily attend meetings or events due to a demanding schedule.

The listserv is able to post polls, links, a database, and a calendar. The listserv will also be closely monitored to ensure that rules are followed, and that the listserv remains congenial and professional. ■

NEW FBA MEMBERS—2009

March

Richard Jason Carey
Suzanne Gubin
Ruba El-Hage
Eric John Harter
Katharine Leigh Fuegi
Ashley Booth Kyle
Charity McKenzie

Michael Christopher Mull
Katrina W. Nixon
Roberta Quirk
Michael Andrew Robinson
Melissa Lee Taylormoore
Matthew G. Williams

April

Emily L. Aldrich
Kristin C. Assaad
Brian Barnes
Blake Donald Bitter
Aaron Brotman
Camille Brou
Mitchell Calhoun
Carroll Chancellor
Kasey Clemans
Stephanie Cook
Brian Corrigan
Kristine Ellison
Mary El-Shammaa
Jessica Farace
Kimberly Ferrari
Adele Garmirian
Jonathan Greenblatt
Jennifer A. Harper
Scott Hartin
Adina Horvath

Eric Hutchins
Kanna Johnson
Ana Isabel Kaldenbach-Montemayor
William Hubert Kennedy
Shabnam Keyvan
James Steward Kurz
Janet E. Lawson
Ashlie Lawton
Bran Mahoney
Matt Marro
Harry S. Max
James P. Mayner
Brad McGann
Billie Medoff
Alex Miller
Eugene C. Miller
Nathan Mitchell
Gregory Muha
Eric Myers
Sarah Nash

Laura O'Brien
Rick Pehrson
Richard Peterson
Kevin Pettrey
Natan Press
Robert G. Rothstein
Hyunkweon Ryu
Laura Sanchez
Scott L. Scher
Dania Shami
Keith T. Shiner
Sara Grossman Silverman
Jacob Shorter
Frances Simmons
Craig Steckley
Matthew Thomas Sutter
Jamie Wang
Maura Burke Weiner
Brian Weir

UPCOMING EVENTS/CLEs

AN EVENING WITH THE JUDGES & CLERKS: INSIGHTS INTO THE NEW ADMINISTRATIVE PROCEDURES MANUAL

May 14, 2009

4:30-8:00 PM

3.5 MCLE (0.5 Ethics) Credits *Pending*

Location: Fairfax County Courthouse Cafeteria

WINE TOUR

May 16, 2009

10:00 AM - 4:00 PM

Sponsored by the FBA Young Lawyers Section

Location: Pearmund Cellars and The Winery at La Grange

\$35.00 Per Person

Please add \$10.00 if registering after May 1. Must be at least 21 to register! You may pack your own picnic lunch or purchase food from the winery. Roundtrip bus transportation will be provided from Vienna Metro.

TECHNOLOGY IN FAIRFAX COURTHOUSES: COME KICK OUR TIRES! CLE

May 26, 2009 & June 10, 2009

5:00-7:00 PM

2.0 MCLE Credits *Approved*

Location: Fairfax County Courthouse, Courtroom 5J

INVESTITURE FOR HON. THOMAS P. SOTELO

May 29, 2009

4:00 PM

Location: Fairfax County J&DR District Court

Reception immediately following

YOUR FIRST TIME IN COURT CLE

June 3, 2009

Location: TBD

ANNUAL SUPPORT STAFF ORIENTATION

June 12, 2009

Location: TBD

CRIMINAL LAW HOT TOPICS CLE

June 23, 2009

4:30-7:30 PM

Location: TBD

FBA MEMBERSHIP HAS ITS BENEFITS:



Whether in an established career, just starting out, in a solo practice, or in a large firm, one thing that is certain is that people are more apt to find you via the Internet. In fact, according to a recent study at Georgia Tech University, nearly 85% of all U.S. households have Internet access and more than 90% of users say they find businesses and services through Internet search engines. For this reason, the FBA has added EsqSites123.com to its comprehensive benefit package that no attorney should be without.

EqSites 123.com is a leading provider of affordable legal web site design and hosting solutions for lawyers. Using EsqSites123.com web-based software, busy legal professionals can register their domain name and create a website in under ten minutes!

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Watch for more member benefit highlights in the next issue of the *Journal*. ■

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LEGAL ASSISTANT—Immediate opening for detail-oriented legal assistant in fast-paced Lake Ridge family law practice. Excellent organization skills required. Minimum of two years family law experience a must, bankruptcy experience a plus. Salary + benefits. Fax resumes to Julie 703-492-4201.

ANNOUNCEMENTS

BOOKS FOR SALE: U.S. Code Annotated by Lexis Nexis. Entire current set of United States Code Annotated by Lexis Nexis. Best Offer. 703-821-3740.

COLTEN CUMMINS WATSON & VINCENT P.C. is pleased to announce that **JENNIFER S. JOFFE** has become a shareholder of the firm. 3959 Pender Drive, Suite 200, Fairfax, VA 22030; 703-277-9700; Fax: 703-592-1579; www.coltenlaw.com.

MASTERMAN & GRAHAM, P.C., is pleased to announce the relocation of their Tysons Corner law office to: 1945 Old Gallows Road, Suite 305, Vienna, VA 22182. They have also opened a new office in historic Leesburg: 23 North King Street, Leesburg, VA 20176. Contact information remains the same: 703-827-5500; Fax: 703-827-5545; www.mastermangraham.com.

Congratulations to Chuck Collins

Congratulations to FBA member **Chuck Collins**, who recently published *Holding Onto Love: Searching for Hope When a Child Dies*. This grief support book for parents dealing with the death of a child is available online at a reduced cost via www.holdingontolove.com or from traditional distributors: Amazon.com, Barnes and Noble, etc. Author royalties over production costs will be donated to The Compassionate Friends (TCF), an international grief support group. Chuck and his wife, Kathy, became active in TCF after the death of their nineteen-year-old daughter, Tiffanie Amber.

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ANNOUNCEMENTS

ATTORNEY ADMITTED TO AMERICAN COLLEGE OF TRIAL LAWYERS

JOHN D. McGAVIN has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America. The induction ceremony at which McGavin became a Fellow took place recently before an audience of approximately 600 persons during the recent 2009 spring meeting of the college in Fajardo, Puerto Rico.

McGavin is a partner in the firm of Trichilo, Bancroft, McGavin, Horvath & Judkins, P.C., Fairfax, VA, and has been practicing in this city for 27 years. The newly inducted Fellow is an alumnus of Marshall-Wythe School of Law at the College of William and Mary and the University of Virginia.

MICHELE H. WRIGHT & ASSOCIATES, PLC, is pleased to announce that **EILEEN G. SWICKER** has become an associate with the firm. 2010 Corporate Ridge, Suite 700, McLean, VA 22102; 703-917-0804; Fax: 703-917-0901.



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THE "SECRET" BENEFIT OF MEDICAID ASSET PROTECTION

By Evan H. Farr, Certified Elder Law Attorney
Author of *The Virginia Nursing Home Survival Guide*

You've heard of Elder Law, but if you're like most attorneys you probably don't really understand how Elder Law can help your clients, and the parents of your clients, protect their assets while also getting better long-term care. Well, here's the secret . . . through the process of Medicaid Asset Protection, my firm and I can help clients get better long-term care by protecting their assets from forced liquidation so that the protected assets can then be used to pay for an enhanced level of care. For example, protected assets can be used to hire a private caregiver to supplement the basic level of care provided by a nursing home (which provides, on average, only about ninety minutes of care per day), or to purchase services or items for a nursing home resident that are not covered by Medicaid, such as special medical devices, upgraded wheel chairs, transportation services, entertainment, and other amenities that make life easier or more enjoyable. Is Medicaid Asset Protection ethical? Absolutely! It's no different from taking tax deductions to minimize income taxes, or structuring estate planning to minimize estate taxes. Everyone pays federal and state taxes that fund the Medicaid system. Why not also plan your estate to benefit from these taxes?

How much can we protect? Though this varies from client to client, we can typically protect all of the assets of a married couple and at least half of the assets of an unmarried client, even when planning is done at or near the time that the long-term care is needed. We can also help many clients obtain a special Veterans benefit that is available to help defray the cost of home care or assisted-living care for many war-time veterans. Medicaid laws are extremely complex and change frequently. Despite this complexity, and despite the fact that much of the Medicaid law was re-written in early 2006, numerous Medicaid Asset Protection strategies still exist, and we help clients work through these strategies every day. We handle the entire Medicaid Asset Protection process, from planning to implementation to filing the application.

As a Certified Elder Law Attorney, Certified Estate Advisor, and Virginia Super Lawyer, I welcome referrals from all over Virginia, and I'm always delighted to discuss a potential case with another attorney to determine if a referral is appropriate. If you think your clients might need an Elder Law specialist for themselves or their parents, please call me at 703-691-1888, or contact me by email at EvanFarr@FarrLawFirm.com or via our Web site, www.VirginiaElderLaw.com.

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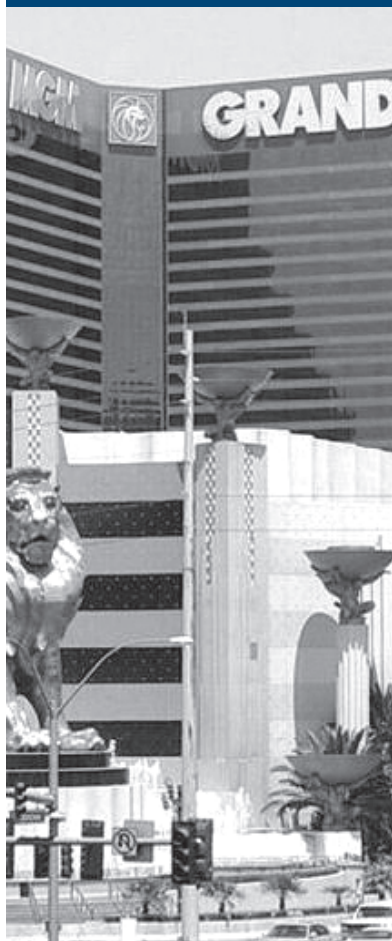
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Viva Las Vegas: The FBA Heads West for Their 2009 Conference

Every other year, the FBA invites the legal community, their families and friends to go outside the area for some fun, socializing, and education. Two years ago, the excursion ventured out onto the high seas on the first CLE at Sea. This year, the FBA plans to take a chance and roll the dice in Las Vegas, Nevada!

"This isn't just a business conference, but a chance for guests to enjoy a fun-filled vacation with family, socialize with colleagues, and get some needed CLEs in one of the most exciting cities in the country," said Corinne Lockett, Vegas Task Force Chair and FBA President Elect.

The conference will be held on October 4 - 7, 2009 at the MGM Grand Hotel and Casino. Attendees at the conference will be able to earn up to six CLE credits, but Vegas isn't all work and no play. Guests will enjoy a three-night stay in a deluxe guest room, at least one cocktail party, discounts to KÀ by Cirque du Soleil, free craps lessons, two line passes to Studio 54, 25% discount to all spa services, and a \$35 activity credit (per stay) towards dining or entertainment. Due to the recent economic downturn, the FBA was able to negotiate a significant rate reduction which was then passed on to you! The package is \$850 per individual attorney, \$950 per couple (one attorney/one non-attorney), and \$675 each for two attorneys sharing a room.

"Las Vegas has so much to offer," added Lockett. "Guests can golf, eat at great restaurants, spend a day at the spa, shop in some of the world's most exclusive boutiques, hike the Grand Canyon, see a museum or Broadway style show, dance the night away at Studio 54, or try your luck by hitting the gaming tables. The FBA will also help guests organize day trips to visit the Grand Canyon, go horse-back riding in Red Rock Canyon, take the Richard Petty Driving Experience Tour, or go hot air ballooning over the Las Vegas strip. This conference has something for everyone," she said.

To find more information on the Vegas Conference or to register, view this link:
<https://m360.fairfaxbar.org/event.aspx?eventID=5811&instance=0>