

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org September 2010

FAIRFAX LAW FOUNDATION ENDS ITS CAPITAL CAMPAIGN

June 30, 2010 marked the end of the Fairfax Law Foundation's Capital Campaign. The Campaign began in late 2006 with the goal of raising \$1 million to create, seed, fund, and sustain the many programs and services that support the local justice needs of the community. These programs include the Fairfax Public Law Library, *Pro Bono* Services, the Juvenile & Domestic Relations District Court pamphlets, the Conciliation Program, and all of the Law Related Education Programs, including the Court Tour Program, the Children's Play, and the Speakers Bureau.

The program got off to a strong start with a \$75,000 donation from Odin, Feldman & Pittleman, followed by \$25,000 donations from Peter and Katherine Greenspun, Lieblich & Grimes, Shoun Bach Walinsky & Curran, P.C., and Cooley Godward Kronish LLP.

As the Foundation continued on its quest to raise funds for its programs, the economy failed to work in its favor. As a result, the Foundation set its sight on raising \$500,000. Thanks to the recent \$10,000 donation by the law firm of Bean, Kinney and Korman, P.C., the Foundation reached its goal.

Since this Campaign began, we now have a beautiful new public law library that serves more than 61,000 patrons each year. The Court Tour Program was saved and court tours were provided to 2,400 students from 26 middle schools, 4 high schools, 1 center school, and 3 private schools this past year. The Conciliation Program continued its success, resolving more than 400 cases a year and helping more *pro se* parties resolve their issues.

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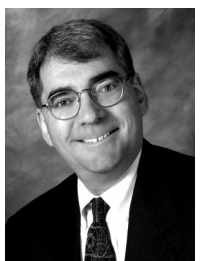
FBA

LEADERSHIP 2010-2011



David J. Gogal, President — Blankingship & Keith, P.C.

David graduated with a B.A. and a J.D. from the University of Virginia. He has served as Co-Editor of the *Fairfax Circuit Court Practice Manual* and has been on the FBA's Board of Directors since 2003 and served as President-Elect (2009-2010); Vice President (2008-2009); Treasurer (2007-2008); and Secretary (2006-2007). He has also been a member of the Fairfax Law Foundation Board of Directors and served as its President; Chairman of the FBA's Fairfax Circuit Court Committee and Legislative Committee.



William P. Daly, Jr., President-Elect — Rees Broome, P.C.

After graduating from John Hopkins University in Baltimore, William received his J.D. from the State University of New York at Buffalo. He has served as Chair of the FBA Investment Committee, Budget Committee, Circuit Court Committee, and Circuit Court Practice Manual Committee; he also served as Co-Editor for the *Fairfax Circuit Court Practice Manual*. He has been on the FBA Board of Directors since 2004 and previously served as Treasurer and General Counsel.



Jay B. Myerson, Vice President— Law Offices of Jay B. Myerson

Jay graduated from Georgetown University with a B.A. and J.D. He has been an FBA member since 1986 and has served as Co-Chair of the Conciliation Program, and has served on the General District and Lawyer Referral Service Committees. He has been a member of the FBA Board of Directors since 2004.



Edward L. Weiner, Treasurer— Weiner, Rohrstaff & Spivey, PLC

A graduate of the State University of New York at Binghamton, Ed received his J.D. from the University of Richmond and his LL.M. in International Law from Georgetown University Law Center. He has been an active member of the Fairfax Bar Association since 1980. He has been a member of the Board of Directors of the Fairfax Law Foundation since January 2002 and has served as its President.

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President's Column

by David J. Gogal, Esq.



Memories

I still very much recall my first involvement in the Fairfax Bar Association. It was 1988 and I was a newly-minted associate at Blankingship & Keith, P.C. My mentor, John Keith, explained the importance of becoming an active member of the FBA and encouraged me to join an FBA committee. I applied for and was appointed to the Law Day Committee, whose task at the time was to plan the annual Law Day festivities. I quickly learned that serving on an FBA committee not only allowed me an opportunity to contribute to the legal community and to the community at large, but also to meet other lawyers as well as judges and form lasting friendships.

Over the years, I have served on several FBA committees including Law Related Education, Law Library, Convention, Legislative, and Circuit Court, chairing many of them. Each time I had the pleasure to make new friends and work on worthy projects. Indeed, most of the substantive work of our FBA is accomplished at the committee level. Our FBA committees are instrumental in fostering our Fairfax legal community's commitment to professionalism and collegiality. In my meetings this fall with the Chief Judges of the Fairfax Courts, I stressed the importance of our FBA committees and sought a commitment from our Chief Judges to nominate more judges to our FBA committees so that each FBA committee will have at least two active judges as members. I ask that our FBA members make a similar commitment to join at least one FBA committee or section. There are many options available. Our current committees include: Circuit Court, Continuing Legal Education, General District Court, Juvenile & Domestic Relations District Court, Law Library, Law Related Education, Lawyer Referral and Information Service, Legislative, *Pro Bono* Advisory, and Technology. Our sections include: Alternative Dispute Resolution, Business Law/Corporate Counsel, Criminal Law, Elder Law, Employment Law, Family Law, Law Practice Management, Legal Administrators, Paralegal, Real Estate Law, Tax Laws, Wills, Trusts and Estates, and Young Lawyers. It is not too late to sign up as most of our Committees still have space!

The FBA Tides Inn Convention 2010 is just a few weeks away. While lodging at the Tides Inn is full, there still should be some vacancies at local bed and breakfast establishments. Please contact Jana Gill at 703-246-2735 for information on bed and breakfast rooms. The Convention is an event not to be missed. There will be a variety of CLE opportunities covering topics such as: mediation, arbitration and trial strategies; criminal law, family law and employment law updates; ethics of negotiation and avoiding legal malpractice; as well as practice pointers from judges of each of our Fairfax courts.

Our panels of judges include Circuit Court Judges Honorable Leslie M. Alden, Honorable Randy I. Bellows, Honorable David S. Schell, and Honorable Bruce D. White; General District Court Judges Honorable William J. Minor, Jr. and Honorable Mitchell I. Mutnick; and Juvenile & Domestic Relations District Court Judges Honorable Kimberly J. Daniel, Honorable Teena D. Grodner and Honorable Thomas P. Sotelo. Our CLE instructors and moderators include Honorable Robert W. Wooldridge (Ret.), Honorable Stanley P. Klein (Ret.), Commonwealth's Attorney Raymond F. Morrogh, Peter D. Greenspun, Douglas R. Kay, Steven W. Ray, Elaine C. Bredehoft, Daniel L. Gray, John A.C. Keith, William P. Daly, Steven D. Briglia, Carol L. Ehlenberger, and Anne Milem.

In addition to cocktail receptions, there also will be an oyster roast and night golfing, not to mention the resort facilities on location at The Tides Inn. I hope to see you there! ■

FAIRFAX BAR JOURNAL

*Official Newsletter of the
Fairfax Bar Association*

4110 Chain Bridge Rd., Suite 216

Fairfax, VA 22030-4009

Telephone: 703-246-2740

Fax: 703-273-1274

Email: fba@fairfaxbar.org

<http://www.fairfaxbar.org>

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Executive Director/Editor

Yvonne C. McGhee • 703-246-2740

ymcghee@fairfaxbar.org

Communications Coordinator

Kristin Derlunas Fisher • 703-246-3721

kfisher@fairfaxbar.org

Graphic Design/Space Advertising

Ann Hill Thornton

703-743-9375 • rodangraf@aol.com

Classified Advertising

Christine S. Lee

703-246-2734 • cleee@fairfaxbar.org

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are inappropriate for the Journal.*

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David L. Marks, Secretary — Leiva & Marks, P.L.C.

David received his B.A. from Washington College in Fredericksburg, VA, and his J.D. from the T.C. Williams School of Law at the University of Richmond in Richmond, VA. David has been an active member of the FBA, having served on the Board of the Young Lawyers Section of the Fairfax Bar Association since 2002 and as President of the Young Lawyers Section and *ex officio* member of the Fairfax Bar Association Board of Directors 2004 and 2005. He served on the *Pro Bono* Advisory Board and as Co-Chair of the Committee from 2003-2006. David has been on the Board of Directors since 2007.



Michael A. Minter, General Counsel — Miles & Stockbridge, P.C.

Michael graduated with a B.S. in Engineering from Cornell University and completed his J.D. at Georgetown University. He has served as an FBA Board of Director, Chair of the Technology Committee, and Co-Chair of the Law Practice Management Section.

New Board of Director Members



Michelle Hess, Director — Holland & Knight, LLP

Michelle graduated from Wake Forest University in Winston-Salem, NC, and then attended George Mason School of Law. She clerked for the Honorable Dennis J. Smith and is currently an associate at Holland & Knight, LLP. Michelle has served as Law Clerk Liaison, Board Member, and President of the Young Lawyers Section.



Michael J. Shevlin, Director — Shevlin Smith

Michael received his undergraduate degree from the University of Notre Dame and his J.D. from the University of Virginia. He served as a member of the FBA Law Library Committee since 2006 and has also served as its Vice-Chair.



John M. Tran, Director — DiMuroGinsberg PC

John received both his B.A. and J.D. from George Washington University. His involvement with the FBA includes reviewing procedures of the Judicial Nominations Committee and presenting CLE programs. He has also participated in the Court Tour Program.

UPCOMING EVENTS/CLEs

September 11, 2010 (Saturday)

STITT CUP

Catered Barbecue and Volleyball Tournament

1:00-4:00 PM (Rain or Shine!)

Fairfax County Government Center

12000 Government Center Parkway

Fairfax, VA 22035

Sponsorships are available!

Please RSVP and/or register your team for the volleyball tournament by September 3rd. For further details or to RSVP, contact Courtne Norris at cnorris@fairfaxbar.org; 703-246-2084

September 15, 2010 (Wednesday)

INTELLECTUAL PROPERTY: THE IMPACT OF THE SUPREME COURT'S *BILSKY* DECISION CLE

5:00-7:00 PM

Location: Fairfax County Courthouse

4th Floor Jury Assembly Room 404

2.0 MCLE Credits *Pending*

\$70.00 FBA Members

\$100 Non-Members

September 20, 2010 (Monday)

TECHNOLOGY IN FAIRFAX COURTROOMS:

COME KICK OUR TIRES CLE

5:00 - 7:00 PM

4.0 MCLE Credits Pending

Location: Fairfax County Courthouse, Courtroom 5J

\$100.00 FBA Members

\$130.00 Non-Members

September 21, 2010 (Tuesday)

PERSONAL INJURY CLE

4:00 - 7:00 PM

Location: Fairfax County Courthouse,

4th Floor Jury Assembly Room 404

3.0 MCLE Credits *Pending*

\$105.00 FBA Members;

\$150.00 Non-Members

10TH ANNUAL SPRING GOLF TOURNAMENT

by Robert S. Letnick, Esq.

The Fairfax Bar Association held its 10th Annual Spring Golf Tournament at Westfields Golf Club on Monday, May 11, 2010. This year, the golf tournament was held in memory of Edward J. Walinsky. Present at the reception was Ed's wife, Fran, and one of their children, along with a number of his law firm members.

The golfers who participated in the tournament were treated to a perfect spring day with sunny skies and temperatures in the 70s. As in past years, a silent auction was included along with the golf tournament with the proceeds benefitting the Fairfax Law Foundation. While the economic climate remains tenuous, the silent auction resulted in the highest amount that this event has ever raised for the Fairfax Law Foundation. During the silent auction, the items purchased included a framed autographed photograph of Arnold Palmer; a framed series of photographs, along with an autographed *Golf* magazine cover of Phil Mickelson; a gift certificate for two to the Westfields Marriott Sunday Brunch; and rounds of golf at Westfields Golf Club, Creighton Farms, Heritage Hunt Golf & Country Club, Raspberry Falls Golf & Hunt Club, Old Hickory Golf Club, Virginia National Golf Club, and Blue Ridge Shadows Golf Club. The funds raised for the Fairfax Law Foundation help support valuable programs such as providing *pro bono* legal services to indigent clients, maintaining the public law library, and offering law-related education programs to area students, including the court tours that many of you have observed at the Courthouse.

The format of this golf tournament remains a scramble (Captain's Choice). The first place team with a score of 58, which is 13 under par, was the team of Jeremy Letnick, Bob Letnick, Bob Farrell, and Mike Annessa. Three teams tied with a score of 60, or 11 under par, and after a match of cards, the second place team was the team of Steve Cochran, Dave Talley, Dan Sherrange, and John Martin. The third place team was the team of Brian Drummond, Dickson Young, Ted Sibert, and Justin Daniel. As in past years, there was a team that came in last place whose names have again been redacted from this article. The good news is that their score is improving every year, however, they are under the misconception that the highest score wins.

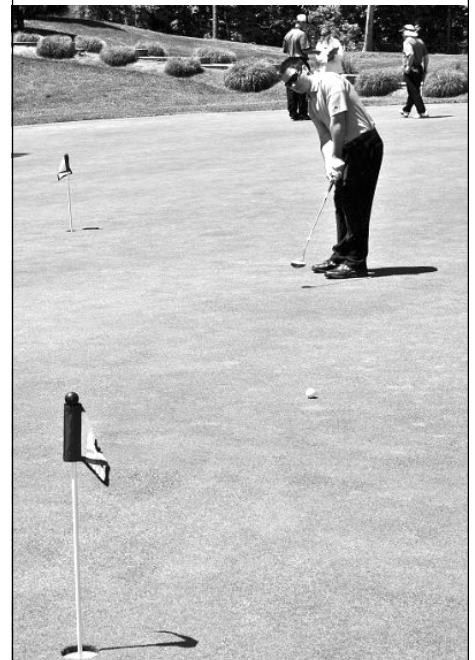
Prior to the commencement of the golf tournament, the annual putting contest was won by Jeremy Letnick. During the golf tournament, the women's longest drive on hole 11 was won by Elaine Bredehoft, and the men's longest drive on hole 15 was won by John Whittington.

There were four closest-to-the-pin competitions with three on par 3 holes and one on the par 4, 14th hole, that measures approximately 250 yards. On the third hole, which is considered by many to be the signature hole at the Westfields Golf Club, the hole-in-one contest included a motor vehicle that was sponsored by **Don Beyer Volvo at Dulles** who has sponsored this event for many years. As is the tradition on this golf hole, the flag was tucked in the back left hand corner of the green, approximately 180 yards from the tee, requiring a very exacting tee shot over a water hazard to a pin only a few paces onto the green. As in the past years, our volunteer observers had to evade numerous errant tee shots because our participants on this hole were hitting the ball all over the place. For example, our third place team consisting of Brian Drummond, Dickson Young, Ted Sibert, and Justin Daniel saw their best tee shot out of the four players come to rest approximately 40 yards from the flag in the right rough. While golf stories from this foursome may be somewhat suspect, corroboration was received from the volunteer observers that Brian Drummond chipped in from 40 yards away for a birdie 2. The closest-to-the-pin competition on this hole, at a distance of 15 feet, was won by Jim Freeman. The women's closest-to-the-pin competition on hole 7 was won in a drawing by Elaine Bredehoft, while the men's closest-to-the-pin competition on hole 17 was won by Steve Cochran. On the par 4, 14th hole, the closest-to-the-pin on this drivable par 4 was won by Mike Connor who hit his tee shot to 9'6".

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Corrine N. Lockett, 2009-2010 FBA President, presenting a Resolution honoring Edward J. Walinsky to his family on behalf of the Fairfax Bar Association





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FBA 10th Annual Spring Golf Tournament

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As in prior years, the fiercest competition of all was for the closest-to-the-keg prize which, again was on the first hole at a distance of approximately 125 yards off the tee. In order to be successful at this competition, either the golfer must hit an extraordinarily weak tee shot with a wood or in the alternative, hit a very short iron to the flag placement. The winner of this competition was John Tran at the distance of 8 3/4", who took home a special trophy and a certificate in the pro shop. You will have to ask him what he used on his tee shot to the keg.

This golf tournament had a substantial list of sponsors and donors who helped to make the tournament a success as it has been for many past years. Special recognition goes out to our premier sponsor, **Don Beyer Volvo at Dulles**, who sponsored the hole-in-one competition with a car on the third hole. The generous sponsors and donors for this year's tournament include: **Kirby-Hunter Investigations, Inc.**, **Grimes Insurance Agency**, **Rudiger, Green & Kerns Reporting Service**, **United Bank**, **BB&T**, the Firm of **Weiner, Rohrstaff & Spivey, LLC**, **William L. Schmidt & Associates, P.C.**, **Westfields Golf Club**, **Raspberry Falls Golf & Hunt Club**, **Old Hickory Golf Club**, **Virginia National Golf Club**, **Blue Ridge Shadows Golf Club**, **Heritage Hunt Golf & Country Club**, **Creighton Farms**, and **Westfields Marriott**.

Once again, special recognition also goes out to **Herb Hunter of Kirby-Hunter Investigations, Inc.**, who, as in past years, has photographed the players before and during the tournament. Prior to the presentation of the awards and raffle drawings, **Corinne N. Locket, Immediate Past-President of the Fairfax Bar Association**, presented a Resolution honoring Edward J. Walinsky to his family on behalf of the Fairfax Bar Association.

While the golfers were participating in the pre-tournament putting contest and practicing prior to the golf tournament, lunch was served to all participants and volunteers at the grill adjacent to the putting green. After the golf tournament, Westfields served the annual steak and chicken buffet dinner along with some extraordinarily fattening desserts. This was once again a memorable golf outing, and the staff at the Westfields Golf Club did a fabulous job in assisting us with this event.

The Fairfax Bar Association has scheduled a fall tournament on **Saturday, October 9, 2010**, at the Golden Eagle Golf Club at The Tides Inn during the 2010 Convention. The Golden Eagle Golf Club at The Tides Inn is a highly rated golf facility and those who participated in the golf tournament in 2003 had a great afternoon at this excellent golf facility. All who are signing up for the 2010 Convention at The Tides Inn are encouraged to participate in this golf outing of the Fairfax Bar Association. ■

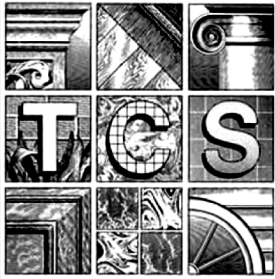


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WATCH CLEs ON YOUR TIME!

by Jana Gill, CLE Coordinator

Do you need to catch up on some CLE hours? Did you miss one of our CLEs but wish you could still view it? We've got you covered! The 2009-2010 CLEs are now available to view online. This is a convenient way to view the program of your choice, and earn important CLE credit hours. Watch them in your living room, on the deck, or just about wherever it fits into your schedule.

The following programs are available to view online:

Spousal Support Trial Strategies CLE (original program date—September 15, 2009)

Duration: 2 hours, 3 minutes

Price: FBA Members \$70; Non-Members \$100

2.0 MCLE Credits

In this unique CLE, two lawyers identify opposing arguments, exhibits, and issues that could be pursued in two different spousal support cases. As a part of the presentation, a mock direct and cross-examination of a vocational expert take place, followed by insight from the bench regarding which arguments were the most effective.

The Devil Wore Green CLE (original program date—September 30, 2009)

Duration: 1 hour, 47 minutes

Price: FBA Members \$70; Non-Members \$100

2.0 MCLE (2.0 Ethics) Credits

Topics include maintenance of interest-bearing escrow accounts, "Insufficient Funds" reporting requirements, lawyer's options regarding IOLTA, retention of unclaimed client funds and property, and a lawyer's duty to plan for death/disability.

Family Law & Mediation CLE (original program date—October 5, 2009)

Duration: 1 hour, 32 minutes

Price: FBA Members \$52.50; Non-Members \$75

1.5 MCLE (0.5 Ethics) Credits

Topics include when & how to discuss ADR with clients, what form of ADR is appropriate, working with mediators and arbitrators who aren't attorneys, McCammon style vs. traditional mediation, and other mediation strategies.

The World After Melendez-Diaz CLE (original program date—October 5, 2009)

Duration: 1 hour, 3 minutes

Price: FBA Members \$35; Non-Members \$50

1.0 MCLE Credits

Topics include Melendez-Diaz vs. Massachusetts, *Melendez-Diaz* applied in Virginia, the response of the General Assembly, and ethical considerations.

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**LEGAL ADMINISTRATOR—
DO YOU NEED ONE?
THINK ABOUT IT**

Legal Administrator, as defined by Wikipedia, is "a non-attorney law office employee or office manager responsible for a law firm's day-to-day operations. Legal Administrators are responsible for ensuring the delivery of legal services by supervising staff and identifying and developing business opportunities. Legal Administrators also work within law departments (legal departments) and handle many responsibilities other than substantive legal work or assignments of it."

As a firm's legal and business needs change and grow, the managing attorney and other partners should consider how much time they spend on administrative tasks that take time away from client matters. Employing a Legal Administrator allows certain tasks to be delegated thereby allowing the attorney to focus on billable hours and on more substantial client matters.

Over the last 20 years, there has been an increased trend in the importance in the role of Legal Administrator as a law firm leader assuming increasing stature and responsibility. The typical Legal Administrator will have functional responsibilities and oversight in the following areas:

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WATCH CLEs ON YOUR TIME!

*continued from page 7***Hot Topics in Employment Law in This Economy CLE** (original program date—October 6, 2009)**Duration:** 1 hour, 22 minutes**Price:** FBA Members \$52.50; Non-Members \$75**1.5 MCLE (0.5 Ethics) Credits**

Topics include liability and negligent retention, negligent hiring or retention, basis of liability, the status on the "physical injury requirement, intentional infliction of emotional distress, breach of fiduciary duty, recent and relevant defamation "opinion" cases, and an overview of mediation as a smart and early alternative to litigation consistent with ethical and professional obligations.

FBA 2009 Annual Criminal Law CLE (original program date—October 15, 2009)**Duration:** 3 hours, 54 minutes**Price:** FBA Members \$140; Non-Members \$200**4.0 MCLE Credits**

Topics include an overview of major 2009 legislative developments affecting criminal jurisprudence, the aftermath of Melendez-Diaz, inspection of breath machines and a case study on how to challenge flawed scientific evidence, an operational primer on Virginia's new intoximeters and issues to consider in examining the reliability of breath test results, preservation of issues for appeal, and traffic code tips & tricks of the trade for defending speeding cases.

FBA 2009 Annual Law & Technology CLE (original program date—October 20, 2009)**Duration:** 3 hours, 44 minutes**Price:** FBA Members \$140; Non-Members \$200**4.0 MCLE (1.0 Ethics) Credits**

Topics include saving money and time with legal technology, taking your firm paperless, the legal implications of social networking, and an overview of technology and ethics.

Personal Injury CLE (original program date—November 17, 2009)**Duration:** 2 hours, 47 minutes**Price:** FBA Members \$105; Non-Members \$150**3.0 MCLE Credits**

Topics include motions in limine from plaintiff & defendant perspective, an overview of product liability, an overview of recent Supreme Court decisions, and common evidentiary issues in personal injury cases.

Ethics: Protecting You & Your Clients' Interests in the Event of Your Disability, Death, or Other Disaster CLE

(original program date—December 1, 2009)

Duration: 1 hour, 40 minutes**Price:** FBA Members \$70; Non-Members \$100**2.0 MCLE (2.0 Ethics) Credits**

Topics include practical advice and forms for your use in planning to protect you and your client's interest of your disability, death, or other disaster.

FBA 2010 Annual DUI CLE (original program date—January 20, 2010)**Duration:** 3 hours, 26 minutes**Price:** FBA Members \$122.50; Non-Members \$175**3.5 MCLE Credits**

Topics include an update on Virginia law regarding Melendez-Diaz, Grant, and other recent issues, updates on the legislature's cures for recent issues and how to use the statutes to your advantage, the Commonwealth Attorney's perspective, views from the General District Court bench, a multi-jurisdictional perspective, and more.

Employment & Ethics: What Every Virginia Lawyer Should Know CLE (original program date—February 24, 2010)**Duration:** 2 hours**Price:** FBA Members \$105; Non-Members \$150**3.0 MCLE (1.0 Ethics) Credits**

Topics include the hiring process in Virginia, rules that govern the workplace, Virginia wage and hour law, terminating employees in Virginia, and ethical considerations in employment law.

Hot Topics in Juvenile & Domestic Relations Law CLE (original program date—March 24, 2010)**Duration:** 2 hours, 52 minutes]**Price:** FBA Members \$105; Non-Members \$150**3.0 MCLE Credits**

Topics include technology in the courtrooms, courtroom etiquette, and submitting & processing attorney and guardian ad litem vouchers & timesheets.

Avoiding Legal Malpractice by Using a Special Needs Trust CLE (original program date—April 21, 2010)**Duration:** 1 hour, 39 minutes**Price:** FBA Members \$52.50; Non-Members \$75**1.5 MCLE Credits**

Topics include the essentials of special needs planning, the essentials of structured settlements, and a panel discussion on a case study.

Topics in Business Representation: Successor Liability in Business Transactions CLE

(original program date—April 26, 2010)

Duration: 1 hour, 40 minutes**Price:** FBA Members \$70; Non-Members \$100**2.0 MCLE Credits**

Topics include successor liability in business transactions, including planning, litigation, and bankruptcy considerations.

LEGAL ADMINISTRATOR—
DO YOU NEED ONE?

THINK ABOUT IT

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• **General office business administration:** daily management including policies and procedures;

• **Financial management:** budgeting, financial planning, invoicing, payments and cash flow, trust accounts;

• **Human resources management:** recruitment, personnel management, compensation and benefits;

• **Systems management:** tasks relating to the firm's information technology;

Facilities management:

office space planning, maintenance, and security; and

Special projects:

firm marketing plans, attorney retreats.

Given the list of responsibilities, a Legal Administrator must possess a number of important competencies including: strong human relations skills; communication skills, both written and oral; knowledge of the legal industry; leadership skills; technical and management skills; and accounting and financial skills.

With that in mind, the Fairfax Bar Association created a section for Legal Administrators in the Northern Virginia area as a resource for cultivating professional competence, collegiality, and diversity. For more information please contact Jennifer Kubal at Kubal@hottell.com. ■

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**ESTATE PLANNING IN 2010:
PRACTICAL ADVICE**

from Howard M. Zaritsky, Esq.

For the first time since 1915, we have no federal estate tax, and for the first time since 1976, we have no federal generation-skipping transfer (GST) tax. The federal gift tax is lower than it has been during the lifetimes of many of us. In addition, the traditional "step-up" in basis rules have been replaced with new carry over basis rules. This situation, however, is almost certainly temporary, but we have no idea what the future holds.

It is against this backdrop that the Wills, Trusts and Estate section of the Fairfax Bar Association held its annual "Ask Howard" question-and-answer session, featuring renowned estate planning attorney, Howard M. Zaritsky, on June 16, 2010. Topics included: the current legislative situation and possible legislation in 2010; impact of the repeal of the estate tax; how to handle the repeal of the GST tax; and gifting strategies in 2010. For those unable to attend, please find certain excerpts of the discussion below.

Q. What actions, if any, do you think Congress will take this year with estate/gift tax laws?

A. It's hard to predict accurately what Congress will do in 2010 regarding estate and GST taxes, and my predictions have almost always been wrong. It might reinstate the estate and GST taxes retroactively. It might reinstate the estate and GST taxes prospectively from the date of enactment or some earlier date, such as the date on which the bill to reinstate the taxes is introduced. It might remain deadlocked and allow the estate, gift, and GST taxes to return to their pre-2002 rates and exemptions—with a top estate and gift tax rate (and only GST tax rate) of 55% and a \$1 million exemption.

The House, last December, passed a bill that would make permanent the 2009 estate tax levels, with a maximum tax rate of 45% and a \$3.5 million exemption, and provide some small business relief.¹ The Senate is close to passing a compromise bill that would establish the estate tax at a 35% maximum rate with a \$5 million exemption. I, personally, think that we'll end up with a \$3.5 million exemption and a 45% tax rate cap.

continued page 12

30%

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FAIRFAX LAW FOUNDATION

continued from page 1

The *Pro Bono* program completed another successful year, helping clients with a variety of civil legal issues. In addition to its ongoing programs, the *Pro Bono* program expanded Wills on Wheels to serve clients speaking foreign languages, and is currently working on developing new sites for its Community Economic Development Program.

We thank all of our contributors for helping the Fairfax Law Foundation to continue programs that accomplish the Foundation's mission of providing access to the law and law-related education for victims of domestic violence, the homeless, military veterans, children, the elderly, the poor, *pro se* litigants, and many others in the community.

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The House of Delegates of the American Bar Association held its annual meeting in San Francisco, CA, on August 9 and 10, 2010. The FBA is one of 80 local bar associations in the United States to be represented in the House of Delegates.

Much was accomplished during the two days of meetings. The highlights included:

• The installation of Stephen Zack as the new president of the ABA. Stephen Zack came to the United States from Cuba in the early 1960s and is particularly sensitive to the rule of law. In his address to the House of Delegates, Zack stated that it is the responsibility of the ABA "to always speak truth to power" and specifically identified "four responsibilities: preservation of the justice system, civic education, protecting human rights, and preparing for disaster."

a. Preservation of the justice system. Zack expressed concern that the rule of law is endangered here in the United States, noting that 80% of our nation's poor cannot afford counsel, and the underfunding of the judicial system. Zack pointed out that the judicial system is hardly a co-equal branch of government when it receives less than 1% of government expenditures and lacks funds for judges, public defenders, prosecutors, access to courts, and where now user fees are being charged in some jurisdictions. To address this problem, Zack has created the Task Force on the Preservation of the Justice System. David Boies and Ted Olson have agreed to co-chair this effort.

b. Civic education. Zack also noted the lack of knowledge of fundamental civics as a cause for distress that needs to be addressed. For example, in a recent study, two out of three high school students identified the three branches of government as Democratic, Republican, and Independents. Many responding to another survey did not know that the Bill of Rights protects religious freedom. Fifty percent of those who had the Bill of Rights read to them believed that it was a communist document. The House of Delegates adopted a proposal to encourage "all lawyers to consider it part of their fundamental responsibility to ensure that all students experience high quality civic learning, including the study of law, government and history."

c. Protecting human rights. Zack noted that "[e]very day, our nation becomes more divided with respect to civil rights. We are a nation of immigrants. Our basic freedoms are based on the principle that the minority is protected from the tyranny of the majority." Observing that the Hispanic community is the fastest growing immigrant community, Zack announced the creation of a Committee on Hispanic Legal Rights and Responsibilities.

d. Preparing for disaster. Zack noted that in the wake of Hurricane Katrina, many attorneys sought to provide legal assistance, but could not do so because of unauthorized practice of law restrictions. Recognizing the likelihood of future disasters, and the possibility of a suspension of *habeas corpus*, Zack noted the need for disaster readiness.

• The ABA Medal to Supreme Court Ruth Bader Ginsburg. Outgoing ABA President Carolyn Lamm awarded the ABA's highest honor, the ABA Medal, to Justice Ginsburg in recognition that for more than half a century, Justice Ginsburg has made vast and lasting contributions to the law and to the profession.

continued on page 14

Your First Time in Court: What to Expect & What the Bench Expects of You CLE
(original program date—May 26, 2010)

Duration: 1 hour, 54 minutes

Price: FBA members \$70; Non-Members \$100

2.0 MCLE Credits

Program includes pointers from a Circuit Court Judge, a J&DR Judge, a General District Court Judge, as well as tips from a practicing attorney and a questions & answer session.

The Art of Presenting & Opposing Expert Testimony CLE

(original program date—June 6, 2010)

Duration: 2 hours, 54 minutes

Price: FBA Members \$105; Non-Members \$150

3.0 MCLE Credits

Topics include tips of general application in handling experts, motions in limine, expert *voir dire*, considerations for cross and direct examination, insanity defense experts, DNA experts, medical experts, and tips on how to use technology to counter trial by ambush.

2010 7th Edition Circuit Court Practice Manual CLE

(original program date—June 25, 2010)

Duration: 2.5 hours

Price: FBA members \$87.50; Non-Members \$120*

2.5 MCLE Credits

Topics include an introduction to Fairfax practice, the role of the manual, a highlight of changes for 2010, technology in the courtroom, an overview of the manual's CD-Rom, Circuit Court Procedures in Northern Virginia, and effective court practice. *The written material for this program is the 2010 7th Edition Fairfax *Circuit Court Practice Manual*, which is not included with the purchase of this online CLE. The Manual may be purchased either in the FBA office or online by going to www.fairfaxbar.org → Legal Resources → Publications.

To view these programs, or to choose a past program go to www.fairfaxbar.org → For Lawyers → Online CLEs. Programs include a course description, faculty listing, and materials. As an added benefit, we're currently offering one free online CLE from our 2009-2010 lineup. The free CLE is found under the "Free Demos" category. For questions about the online or live CLEs, please contact Jana Gill at jgill@fairfaxbar.org or 703-246-2735. ■

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Q. A man dies testate in Virginia in 2010, with real estate as his only probate asset. The real estate is valued at less than \$1 million at the date of his death. Normally, you can file the will with qualification, and the real estate transfers. The real estate usually would be entitled to a step-up in basis since it is less than \$1.3 million. But Section 1022 of the Internal Revenue Code (IRC) says that the "executor" makes the election of which property gets the step-up basis.

Must someone now qualify as an executor solely for the purpose of making the election to allocate the step-up in basis to the real estate, even though it is the only probate asset? If not, how do you ensure that the real estate receives the step-up in basis?

A. Prior to 2010, a person who received property from a decedent took an adjusted income tax basis in that property equal to the fair market value of the property on the date of the decedent's death or, if elected by the decedent's executor, the alternate valuation date, according to current law. A person who receives property from a decedent who dies in 2010, however, takes an adjusted basis in the property equal to the lesser of the fair market value of such property on the date of the decedent's death or the adjusted basis of the property in the hands of the decedent. However, the executor of a decedent's estate is permitted to allocate a \$1.3 million aggregate basis increase among the decedent's assets, increasing the basis of each asset to its fair market value.

The IRC states that the aggregate basis adjustment is available only to the extent that the decedent's "executor" allocates them pursuant to Section 1022.² Section 7701(a)(4) provides that the term "executor" means "the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent." If an estate has no appointed executor or administrator, the allocation can be made by the decedent's heirs.

The IRC further states that the allocation must be made on a tax return filed pursuant to Section 6018,³ containing bias information if the fair market value of all property (other than cash) acquired from the decedent exceeds \$1.3 million.⁴ The IRC, therefore, does not actually provide a mechanism for an "executor" of an estate with a total fair market value under \$1.3 million to allocate the basis adjustment.

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Presumably, the IRS will automatically allocate the basis adjustment to all of the decedent's assets.

Q. How should we deal with generation-skipping trusts this year when there is a distribution requirement?

A. If a distribution is required, do it and make it outright. There is no GST tax and no gift tax return required.

If distributions are discretionary, you should probably wait until later in the year to make the transfer. This will give you more time to ascertain whether Congress will retroactively reinstate the GST tax. If a discretionary gift is made, consider setting aside a reserve for taxes in case the GST tax is retroactively reinstated. In appropriate situations, a refunding agreement with the beneficiary may be used instead of a reserve. You may also consider making distributions by formula, such that the "skip" person would receive that portion of the distribution that can pass free of GST taxes and designated "non-skip" person (a child or charity) receives that portion of the distribution that would be subject to GST tax.

With a generation-skipping gift made in 2010, you will have to wait to allocate the gift to the GST exemption. I would suggest waiting until April 16, 2011, to file your gift tax return.

Q. In view of the uncertainty of these estate tax laws, what should we be doing now?

A. Estate planners must now re-evaluate all estate plans they prepared that did not fully address both the absence of estate and GST taxes in 2010 and the full imposition of the carry over basis rules in 2010. They must also alter their practices regarding lifetime transfers with respect to transactions occurring in 2010.

For clients with an estate in the \$3.5 - \$7 million range, I would still recommend

providing for a marital share and a nonmarital share of the assets. The marital share would pass to a QTIP trust. Any disclaimed portion of the QTIP trust should pass to the nonmarital trust. This arrangement is good because it removes assets from a spouse's estate when the federal estate tax is restored after 2010, and permits the surviving spouse to fund or add to a nonmarital trust by disclaimer if the estate tax is restored retroactively.

If a marital share is left to a power of appointment trust if the decedent dies in 2010, I would recommend that the spouse disclaim the powers granted therein.

In order to fix carry over basis problems, I would tell your clients to start compiling basis information, and add language to the clients' wills stating what factors to be considered in allocating the carry over basis increases and exonerating a family member who serves as an "executor" from liability for allocations of basis increases made in good faith.

Ascertain what gifts your clients will make in 2010. If any of these gifts are subject to gift tax and securing the low 2010 35% rate is important, make the gifts outright. Otherwise, consider using an allocation formula gift as noted above. If any of these gifts are to grandchildren or other "skip" persons, and they cannot be made outright, consider making them to a family limited partnership or family limited liability company. It looks like the IRS will be eliminating discounts for such entities, but you can beat this if you create such an entity now and make gifts. ■

¹ Permanent Estate Tax Relief for Families, Farmers, and Small Business Act of 2009, H.R. 4154, 111th Cong.

² I.R.C. § 1022(b)(1)(A).

³ *id.* § 6018(b)(1).

⁴ *id.*

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ABA ANNUAL MEETING

continued from page 11

• The House of Delegates, the policy-making branch of the ABA, adopted policies on a number of issues including:

a. Adoption of ABA Model Access Act, intended to establish a civil Gideon right to counsel.

b. Urged state and local governments to provide local governments to provide legal counsel to children and/or youth at all stages of juvenile status offense proceedings as a matter of right.

c. Adoption of a policy on preemption of state tort law.

d. Urged state and local governments to eliminate all legal barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry.

A full list of new policy can be found online at ABANow.org.

It has been an honor to represent the FBA in the House of Delegates for the past two years. ■

UPCOMING EVENTS/CLEs

continued from page 3

October 7 - 9, 2010

FBA TIDES INN CONVENTION

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jgill@fairfaxbar.org for more information.

October 12, 2010 (Tuesday)

TECHNOLOGY IN FAIRFAX COURTROOMS:

COME KICK OUR TIRES! CLE

5:00-7:00 PM

2.0 CLE Credits *Approved*

Location: Fairfax County Courthouse, Courtroom 5J

\$100.00 FBA Members

\$130.00 Non-Members

October 25, 2010 (Monday)

ANNUAL LAW & TECHNOLOGY CLE

2:30 - 7:00 PM

4.0 MCLE Credits *Pending*

Location: Fairfax County Courthouse, Courtroom 5J

\$140.00 FBA Attorney Members

\$200.00 Attorney Non-Members

October 28, 2010 (Thursday)

FBA ANNUAL CRIMINAL LAW CLE

3:00 - 7:00 PM

Location: Fairfax County Courthouse

4.0 MCLE Credits *Pending*

\$140 FBA Attorney Members

\$200 Attorney Non-Members

October 29, 2010 (Friday)

9th ANNUAL JAZZ 4 JUSTICE

8:00 PM

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Hon. Stanley P. Klein (Ret.)

Retired Judge,
Fairfax County Circuit Court

Stan Klein was a trial lawyer's Judge. After seventeen exemplary years, he has recently retired from the bench. Previously, he enjoyed a broad civil litigation practice in Northern Virginia. During that time, he also served as a Substitute Judge and Commissioner in Chancery. A dedicated educator for more than a decade, he currently serves as an Adjunct Professor at George Mason University and American University. He has been a frequent lecturer at seminars for both the Virginia Trial Lawyers Association and the Virginia Defense Attorneys Association. He has been active in the Judicial Conference of Virginia and the George Mason Inn of Court. He served with distinction as the Chair of the Virginia State Bar Standing Committee on Professionalism. Stan is now available to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout Virginia and beyond.

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