

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org May/June 2011

Q&A INTERVIEW WITH THE HONORABLE BRETT A. KASSABIAN FAIRFAX COUNTY CIRCUIT COURT

Q. Let's start at the beginning. Where were you born, and where did you grow up?

A. I was born in Washington, D.C., and I grew up in Oakton, VA.

Q. What were your interests/activities growing up in high school?

A. I liked sports, anything competitive. I had an inflated view of my athletic ability.

Q. Did you play on any team?

A. I played baseball through high school and into my late 20's, until I grew weary of embarrassing myself.

Q. Where did you go to college and why did you choose to go there?

A. I went to Virginia Tech for undergrad because I felt it would be a good fit and it was a state school, being from a family of five children; then for law school I went to Wake Forest.

Q. What made you decide to go to law school?

A. My father had a big influence on me, followed by my late uncle, and my late grandmother. I have vivid recollections of Dad bouncing some of his cases off us growing up. I admired his quiet courage and tenacity to handle a particular desegregation case when Fairfax County continued to defy the Supreme Court mandate of Brown vs. Board of Education. I wanted to practice law as a means of helping people.

Q. You grew up in Oakton, and went to school in Virginia. What made you come back to Northern Virginia? It seems like this is a very transient area, what made you stay?

A. I always knew this area was going to be home. It's familiar to me, my roots are here, my family is here, and there was never a question that I would end up in this area.

continued on page 6

2011- 2012 FBA

Elections

*Following are responses by each of the candidates to the question,
"Why should I join the FBA?"*



Candidate for FBA Vice President (Uncontested)

Edward L. Weiner, Weiner & Spivey, PLC

I believe that the FBA should be a meaningful resource to its members by serving as a clearinghouse of information. The FBA should be a central point for lawyers to serve the Fairfax public community. If elected, my goal would be to be part of, and play a role in, improving the legal profession and the practice of law here in Fairfax by co-coordinating our efforts/programs with those of the Virginia State Bar, as well as other local and specialty Bar Associations. I have served on the Board of Directors for the FBA and for the Fairfax Law Foundation, of which I am a Past President.

Candidates for FBA Board of Directors



Teresa S. Cole
Cole Miller PLLC



Valerie E. Hughes
The Bowen Law Firm



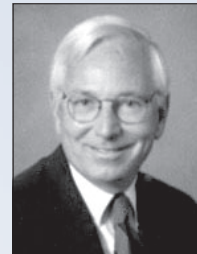
Thomas W. Repczynski
Offit Kurman, P.C.



Christie A. Leary
Greenspun, Shapiro,
Davis & Leary, P.C.



Joyce M. Henry-Schargorodski
Schargorodski & Associates, PLC



Robert B. Walker
Law Office of
Robert B. Walker

Board of Director responses on page 4

President's Column

by David J. Gogal, Esq.

Reflections

In this, my last President's column, I decided to take a moment to reflect on the past year and thank the many FBA members who help make our FBA so successful. We started with the Legislative Reception, which this year featured speeches by two candidates in a hotly contested Congressional race—Gerald Connolly and Keith Fimian. Given the busy schedules of these two politicians, we were fortunate to find a date available to both before the election.

We then traveled out of town for perhaps our signature event of the year, the Tides Inn Convention in Irvington, VA. Over 100 FBA members took over the Tides Inn for a beautiful Fall weekend in October. We had a host of Fairfax judges participate, including Circuit Court Judges David S. Schell, Leslie M. Alden, Randy I. Bellows, and Bruce D. White; General District Court Judges Mitchell I. Mutnick and William J. Minor, Jr.; and Juvenile & Domestic Relations District Court Judges Kimberly J. Daniel, Teena D. Grodner, and Thomas P. Sotelo. We had CLEs to cover most every practice area led by attorneys and speakers Douglas R. Kay, Peter D. Greenspun, Raymond F. Morrogh, Daniel L. Gray, Steven W. Ray, Elaine C. Bredehoff, Jill Wells Nunnally, Kelly S. Hite, William B. Porter, William P. Daly, Jr., Steven D. Briglia, Carol L. Ehlenberger, and Anne Milem. Former Fairfax Circuit Court Judges Robert W. Wooldridge, Jr., Stanley P. Klein, Michael P. McWeeny, and F. Bruce Bach, now with the McCammon Group, also provided timely CLEs on mediation techniques, trial strategies, and mediation ethics.

We had yet another successful Bench Bar Dinner Dance in March with almost 500 in attendance at the Fairview Park Marriott. A new addition for the event was a wine tasting that showcased several award-winning Virginia wineries.

Our Young Lawyers section remains vibrant, active, and growing in membership. They not only have continued the success of the Stitt Cup, but they have also continued their leadership of the Second Annual Run for Justice 5k, increasing both the number of sponsors and the amount of sponsorships.

Our Legislative Committee, under the leadership of Chris Costa, was kept very busy this year not only because of the need to fund our judges and end the "judicial freeze," but also because of other unexpected threatening measures. The FBA Board passed resolutions in support of filling judicial vacancies, against the attempted raid on the VSB reserve fund, and also to encourage further study before redistricting our judicial districts.

This Spring, we reinstated a "State of the General Assembly" event to allow our FBA lawyer legislators an opportunity to report back to FBA members on the legislative session. Our older FBA members will recall many years ago that Senator Joseph Gartlan, then the Legislative Dean of Northern Virginia, would lead this bipartisan annual event. We decided to try it as a breakfast CLE instead of as a luncheon in an effort to make the event more convenient to attend. FBA members State Senator Chap Petersen and Delegate Dave Albo graciously agreed to lead this event, which we hope will be an annual tradition once again.

It has been a busy year, but one that I have truly enjoyed largely because of the tremendous support and volunteer contributions of numerous FBA members, as well as our wonderful staff that make it all possible. ■



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>

Officers 2010-2011

President	David J. Gogal	703-691-1235
President-Elect ..	William P. Daly	703-790-1911
Vice President ...	Jay B. Myerson	703-715-9600
Past President ...	Corinne N. Lockett	703-324-2421
Treasurer	Edward L. Weiner	703-273-9500
Secretary	David L. Marks	703-352-6400
Gen. Counsel ...	Michael A. Minter	703-903-9000

Board of Directors 2010-2011

Richard A. Gray	703-218-2100
Kelly S. Hite	703-766-0732
Michelle T. Hess	703-720-8600
Douglas R. Kay	703-883-0880
Michael J. Shevlin	703-591-0067
Thomas W. Repczynski	240-507-1700
John W. Tran	703-684-4333
Robert B. Walker	703-437-5128

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

Larissa L. Williams
703-246-2734 • llwilliams@fairfaxbar.org

*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.*

Judicial Feedback Program

The Fairfax Bar Association/Juvenile & Domestic Relations District Court Judicial Feedback Program (hereinafter FBA/J&DR Judicial Feedback Program, or the Program) is with the Fairfax Bar Association and the judges of the Fairfax County Juvenile & Domestic Relations District Court. The purpose of the program is to provide an opportunity for attorneys to anonymously communicate positive or negative comments to a particular judge about their on-the-bench demeanor. This mechanism is intended to provide judges with proactive feedback, in a non-confrontational manner, from attorneys who appear in their courts.

Comments regarding the validity of a specific decision or ruling by a judge are deemed ineligible for consideration in this program. Only comments relating to a judge's demeanor or the general conduct of his or her court will be considered appropriate for inclusion in this program.

The FBA/J&DR Judicial Feedback Program will operate in the following manner:

If a member of the Fairfax Bar Association or any other attorney in good standing (hereinafter attorney) wishes to submit appropriate comments about a particular judge, the following procedures will apply:

1. Each judge will be offered the opportunity to participate in the FBA/J&DR Judicial Feedback Program. If they elect to do so, they will designate an individual to receive program communications on their behalf. The Chief Judge of the Fairfax County J&DR District Court will provide a list to the Ombudsman of those persons so designated by the participating judges. These persons shall be called "facilitators."

2. The President of the Fairfax Bar Association will appoint a FBA member to serve a one-year term as the J&DR Ombudsman. The name of the J&DR Ombudsman will be available in the FBA office, as well as the FBA website.

3. The attorney can go to the FBA office where a FBA/J&DR Judicial Feedback Form will be available with all other FBA brochures and materials. They also may go to the members section of the FBA website at www.fairfaxbar.org where a FBA/J&DR Judicial Feedback Form may be downloaded. This form will give the attorney the option to be anonymous or not. All forms should be typed. The member will complete all sections of the form.

4. The attorney will then have two options. He or she may anonymously mail the completed form addressed to "FBA/J&DR Judicial Feedback Program" c/o the Fairfax Bar Association, 4110 Chain Bridge Road, Suite 216, Fairfax, VA 22030. In the alternative, the attorney may contact the J&DR Ombudsman in person and arrange a meeting to discuss the content of the form.

5. When the judicial feedback form has been received by the J&DR Ombudsman, he or she will review the form and verify that the comments are professional in nature and do not relate to a

specific decision or ruling by a judge. If the comments are deemed inappropriate, the attorney will be advised what changes are necessary to satisfy the "appropriateness" standard. If he or she revises the comments to bring them into compliance with this program, they may then be forwarded to the judge's facilitator. If he or she declines to make any changes, the comments will be deemed inappropriate for inclusion in the FBA/J&DR Judicial Feedback Program. The form will be returned to the attorney with an explanation that no further action will be taken. If the form was anonymous, the comments will be destroyed by the Ombudsman and no further action will be taken.

6. When an attorney requests to meet specifically with the J&DR Ombudsman, this will be arranged as soon as possible. The J&DR Ombudsman will:

- a. meet with the requestor outside of court facilities;
- b. explain the program procedures;
- c. advise whether or not the judge involved is a program participant;
- d. review the comments to ensure appropriateness. If the comments are deemed appropriate, and the judge is a program participant, the Ombudsman will then forward the form to the judge's facilitator.

7. Regardless of whether the comments are actually forwarded, the attorney will be assured that all communications with the J&DR Ombudsman, with the facilitators, and any comments on the judicial feedback form will be held in the strictest confidence. At no time will the identity of the attorney be disclosed to anyone.

8. On receipt of the Judicial Feedback Form, the judge's facilitator will meet personally with the appropriate judge as soon as possible.

9. The judge:

- a. may receive the information and take no further action;
- b. may prepare a written or oral response, which can be communicated to the facilitator, unless the form was marked "No Response Possible";
- c. When the J&DR Ombudsman receives a written or oral response via the judge's facilitator, he or she will contact the originator and advise that a response has been received. The judge's response will be communicated to the attorney at a convenient time and place for both parties. If the Ombudsman does not contact the attorney following submission of the form, it will be deemed to indicate no judicial response was received.

10. Neither originals nor copies of any forms or communications in the FBA/J&DR Judicial Feedback Program will be maintained by the Fairfax Bar Association, the facilitators, or the judges. Those forms reviewed by the judges should be destroyed as soon as possible. Those forms rejected by the Ombudsman as inappropriate should be destroyed as soon as possible if the form was submitted anonymously through the mail. ■

NOTICE OF ELECTION

Fairfax Bar Association Rules of Election

FBA INTERNET VOTING PROCESS FOR VICE PRESIDENT AND BOARD OF DIRECTORS

A. Ballot Design & Instructions

The ballot shall be placed on the Association's website, www.fairfaxbar.org in the Member's Only site. The ballot shall list alphabetically the names of the candidates for each position, by position, and provide instructions for online voting. Instructions appearing on the website shall instruct the voter that he/she MUST vote for as many candidates for each position as there are vacancies to be filled.

B. Polling places

Members may vote from any location providing Internet access. A computer will be made available at the Association office for voting, should any member need to vote at that location.

C. Voting Period

Voting shall begin at Noon at the Association's Annual Meeting on **Monday, June 6, 2011**, and continue until **4:00 PM, Friday, June 10, 2011**.

2011-2012 FBA

Elections

continued from page 1

*Following are responses by each of the candidates to the question,
"Why should I join the FBA?"*

Candidates for Board of Directors

Teresa S. Cole, Cole Miller PLLC

Membership in the FBA is essential to practice in our area. I have been a member for more than 15 years and relied on the FBA throughout to keep me updated about what is going on with the Court, with our judges, and with our profession both locally and statewide. I have enjoyed really nice events and CLEs as a member, including the Annual Bench Bar Dinner Dance, the Tides Inn Convention, and even cruising to Bermuda. I also appreciate the CLEs and events held right at the courthouse late in the day for a few hours, which are a convenient and inexpensive way to get credits, and socialize with and learn from our local judges and practitioners. The online resources for members are getting better and better, and overall, the FBA is a resource you can't do without.

Past FBA Involvement: Circuit Court Committee; Domestic Relations Subcommittee of the Circuit Court Committee

Valerie E. Hughes, The Bowen Law Firm

It is a great opportunity to serve your own legal community, meet other lawyers from varied backgrounds and practices, promote the high quality and standards that make us the largest and most respected volunteer Bar in the state.

Past FBA Involvement: Circuit Court Committee, including Chair; Domestic Relations Subcommittee of the Circuit Court Committee; Judicial Screening Committee; NCE; appointed Commissioner of Sales; Past FBA President's Award Winner.

Christie A. Leary, Greenspun, Shapiro, Davis & Leary, P.C.

Joining the FBA presents a wonderful networking opportunity to meet and form relationships with local practitioners and judges. In addition, the FBA provides ready access to a wealth of diverse programs and events which serve not only to educate practitioners on topics of interest but also to provide access to pro bono and community service opportunities.

Past FBA Involvement: FBA Board of Directors; President, FBA Young Lawyers Section—Stitt Cup, Dinner and Breakfast With the Judges; Colors of Justice, New Lawyer Orientation, First Year in Practice CLE, Support the Troops Holiday Donation Drive, Run for Justice 5k Race Director; FBA Criminal Law Section; FBA Lawyers Referral Service.

Thomas W. Repczynski, Offit Kurman, P.C.

The FBA offers a breadth of activities and opportunities to showcase one's talents, to meet and build relationships with colleagues, to serve and give back to one's community, and to bridge the isolationism which plagues the judiciary in general. Active membership makes the practice of law more meaningful and more enjoyable as you get to know better those with whom you practice and, if in a leadership role, for whom you serve.

Past FBA Involvement: FBA Board of Directors; Chairperson, Library Committee; Budget Committee; General District Court Committee.

Board of Director responses continued next page

Joyce M. Henry-Schargorodski, *Schargorodski & Associates, PLC*

I would respond that the FBA provides a kind of support system, and that when you join the FBA, you become a part of a large group of attorneys, creating the opportunity for networking. I would also say that there are so many benefits available through the FBA that it would be difficult to take advantage of them all. I would also tell future members that the FBA provides the opportunity, through their various events, for colleagues to become friends.

Past FBA Involvement: Member of the Circuit Court Committee, Chairperson for the Domestic Relations Subcommittee, and Prior Co-Chair of the Conciliation Program. Responsible for monitoring the NCE program and maintaining the list of participating NCEs, acts as a liaison to the Court for the NCE program. Responsible for reviewing and editing the Domestic Relations portion of the 2010 Fairfax County Circuit Court Practice Manual.

Robert B. Walker, *Law Office of Robert B. Walker*

Membership in the FBA is not only an obligation of professionalism but also provides the member with opportunities to have input on issues of interest. Membership in the FBA promotes involvement in the legal community and helps further the goal of achieving justice in our society. It provides opportunities for pro bono services to those who cannot afford to pay for legal representation. Membership also provides great opportunities for getting to know other members of the Bar in a setting other than as adversaries, and thus, helps us move toward more civil, collegial, and professional practice.

Past FBA Involvement: FBA Board of Directors; Public Relations Committee Chair; Law Practice Management Co-Chair; Member of the Family Law and Wills, Trusts, and Estates Sections and the Law Related Education and Pro Bono Committees; Conciliation Task Force Co-Chair; Judicial Screening Committee. ■

Advising LLC Clients on Employee Status

by Tiffany L. Burton, Esq., Chair, FBA Tax Section; Rees Broome, P.C.

With more and more businesses operating as LLCs, it is important to understand how the owners of an LLC (i.e., members) are treated for employment tax purposes. "Limited liability companies" are not defined or addressed directly in the Internal Revenue Code ("Code"). Early LLCs had to operate under a regime that analyzed individual LLCs to determine if they had more "corporate" or "partnership" characteristics to decide whether the LLC should be taxed as a corporation or a partnership. However, final Treasury Regulations effective in 1997 provided certainty, under which an LLC will be treated as a partnership for federal tax purposes if it has two or more members and has not affirmatively elected to be taxed as a corporation.

What are the consequences from an employment standpoint? When an LLC is taxed as a partnership, it is treated as a partnership for all purposes under the Code and its members are treated as partners. As partners, the members of an LLC are treated as self-employed owners, rather than employees. The exact opposite is the case for corporations (C corporations and S corporations), where shareholders performing services for the corporation are treated as employees (or in rare instances, independent contractors).

Being "self-employed" rather than being an employee is significant in a variety of circumstances. The LLC is not required to withhold income taxes with respect to distributions (or guaranteed payments, including salary-like payments) made to its members, and the LLC is not responsible for the employer's share of employment taxes for these individuals.

A member's income is reported on a Schedule K-1, and members are not provided with a Form W-2. Members, in turn, must make estimated tax payments and are responsible for the employment taxes on their "net earnings from self-employment."

Employee versus self-employed status is also significant in the context of certain fringe and employee benefits. For example, employees may exclude from gross income the value of life insurance provided by their employer (up to \$50,000 of

coverage), the value of meals and lodging provided for the convenience of the employer, and certain reimbursed medical expenses. These gross income exclusions are only available to "employees," and thus, the benefits are not shared by "self-employed" LLC members.¹

A member's classification as self-employed often surprises clients in a number of instances. Virginia provides for easy conversion from a corporation to an LLC by filing Articles of Entity Conversion with the State Corporation Commission; from Virginia's perspective, the new LLC is simply considered a continuation of the former corporation. However, from a federal tax standpoint, the corporation has liquidated and a new LLC created, in which the former shareholder-employees are now considered self-employed owners. This result is not always anticipated by clients who are converting from a corporation to an LLC and who may be surprised by the tax effect they face.

As larger businesses operate as LLCs they look for ways to motivate their employees. Like corporations, LLCs may reward employees with equity-based compensation, which compensates employees based on company performance and value. One method for doing this is to grant membership interests (either capital or profits interests) to employees. For a variety of federal tax reasons, recipients of such grants are often considered members of the LLC at the time of the grant, even if the interest granted is subject to forfeiture upon the occurrence of certain events (such as termination of employment), or are otherwise considered "unvested" for state law purposes. As LLC members, these former employees are no longer considered employees for tax purposes and the entire structure pursuant to which they were compensated will need to be changed.

continued on page 14

¹ It should be noted that although shareholders of corporations (C corporations and S corporations) who perform services are treated as employees, solely in the area of fringe benefits, shareholders owning more than two percent of the stock of an S corporation are treated as "partners," and thus, non-employees following the same rules applicable to LLC members in an LLC taxed as a partnership.

**Q&A INTERVIEW WITH
THE HONORABLE BRETT A. KASSABIAN
FAIRFAX COUNTY CIRCUIT COURT**

continued from page 1



Judge Kassabian with his wife and daughters at his Investiture

Q. The next series of questions has to do with your career. Everyone grows up with a “dream job.” What was yours?

A. I’m not sure I can say that I had a dream job besides wanting to play shortstop for the Washington Senators. However, other than working as a laborer on hot summer days, having to move 2x4s around a construction site, I never had a job that I didn’t enjoy.

Q. You began your career as a Fairfax County Assistant Commonwealth’s Attorney. What did you learn from that first job, and was there one thing that you took away?

A. What I learned from that first job was how to try a case, and how to evaluate people. You can’t do that job if you cannot try a case or interact well with people at their best and at their worst. I’m very indebted to former Commonwealth’s Attorney Robert F. Horan, Jr., for seeing something in me and giving me the opportunity to work in his office. Looking back on it, I should have been paying him for that experience.

Q. Obviously, there is a lot of respect for Mr. Horan. Do you think you learned one key thing from him, or was there one major influence from him?

A. It’s really more about what I admire about him—his fairness, his tenacity, and his commitment to do the right thing over a sustained period of time. For over 40 years, he tirelessly served the public with consistent excellence. I felt fortunate to be a small part of his tenure. I did not want to disappoint him.

Q. What did you enjoy the most about that position?

A. What I loved about it was the ability to try cases and to only be as good as your last case. The opportunity to try a lot of cases and ability to dust yourself off after losing a case, and being able to try another the next day was a great experience. I enjoyed the camaraderie of my colleagues. Most importantly, I had the opportunity to observe, interact with, and learn from a true legend. That’s what I loved about it most.

Q. Time to switch gears. You were very involved with the FBA. Why did you join?

A. I thought it was important to participate in, and give back to the legal community. Not in some vague way, but in a way that could

directly assist the practice of law in a more effective and more meaningful manner.

My first involvement with the FBA was when I was asked to participate in a judicial screening and I could not think of a more important role than to assist in the evaluation of possible judicial candidates. There was nothing simple about it. It can take you away from your own work for days, but it makes the practice of law better for all of us.

Q. What made you get further involved in the FBA?

A. I looked around the table at the screening and I saw the commitment from my peers, and I thought that I wasn’t pulling my weight to make the practice of law at the local level more effective.

Q. Going back to your career, you left the Commonwealth Attorney’s Office and joined your father in private practice. What led you to that decision?

A. I prosecuted for eight and a half years. I thoroughly enjoyed it and had the opportunity to try a lot of different kinds of cases. My father, Albert I. Kassabian, and I had always talked about practicing law together. I can recall my late grandmother telling me that when I grew up, I was going to be a lawyer and practice law with Dad. There was never a question that I would eventually join the firm. It was always a dream of mine, but it was a question of when. I felt like I had been at the Commonwealth Attorney’s Office long enough and it was time. Thankfully, my Mother made him hire me. I am most fortunate to have practiced with Dad and later with my younger brother, John Kassabian. They haven’t missed a beat since I left.

Q. What was the dynamic aspect of working with your father? What did you learn the most during those days?

A. My father and I have a very close relationship. He is a hero to me, and in my mind, what every lawyer should be. He is someone who is polite and civil, is not arrogant, seeks the middle ground, and is not afraid to go to the mat when he has to. What I learned from practicing law with him was the ability to involve myself in a wider variety of cases because he had a general practice. I thoroughly enjoyed those 16 years, and I very much struggled with the decision to leave.

Q. Moving forward, in 1998 you were appointed a Substitute Judge. Did you take anything from that position to your current one, and what ultimately led you to seek a position as Judge of the Circuit Court?

A. I think anyone who thinks about wanting to be a judge on a full-time basis ought to explore being a substitute judge. In 1998, I did not have a goal to be a judge. I wanted to be the best lawyer I could be. I can honestly say that I had a curiosity and wanted to see if I would enjoy it. What I got out of it was learning how difficult the job is, but how rewarding the job can be. I also learned how to be a better lawyer from sitting as a substitute judge and watching good lawyers try cases. I learned that a lawyer cannot hide a lack of preparation. There’s nothing worse than having the reputation for being someone who is unprepared.

continued on page 14

Domestic Violence Pro Bono Initiative in Fairfax

J&DR District Court

by Steve Shannon, Esq.,
Odin, Feldman & Pittleman, P.C.

In the last half of 2010, almost 500 people in Fairfax alone sought to obtain protective orders against a family member based on allegations of family abuse. For many victims of domestic violence lacking the financial means for retaining counsel, the procedural and evidentiary obstacles appear significant, particularly when the other side retains counsel. During this same time period the Fairfax County Juvenile & Domestic Relations District Court granted permanent protective orders in 46 percent of those cases.

The Domestic Violence *Pro Bono* Attorney for the Day Program, coordinated by Legal Services of Northern Virginia, asks local attorneys to volunteer on a set day each month to represent petitioners seeking permanent protective orders in the Fairfax County Juvenile & Domestic Relations District Court. The Court, through the Court Services Unit, has embraced this program through logistical assistance, with the goal of having at least one attorney on call each day of the monthly docket. Currently, the level of *pro bono* commitment amounts to 75 percent of the monthly calendar in the Court.

Typically, an attorney will have between one to three cases assigned to them each month, although usually not all three cases will go to trial. The current group of volunteers consists of attorneys from large, mid-sized, and small law firms, as well as in-house counsel. To ensure that practitioners who want to volunteer have the necessary understanding of the protective order process, Legal Services of Northern Virginia offers a continuing legal education program on domestic violence and protective order hearings, and it has personnel available to address case-specific issues.

There are many benefits associated with attorneys participating in this program. For some attorneys, it presents an opportunity to gain trial experience and become familiar with the Juvenile & Domestic Relations District Court. For others, it provides an opportunity to keep trial skills fresh. Most importantly, the program reflects a collective commitment to the public good by assisting people of limited financial means who believe that their personal safety is at risk.

If you are interested in participating in the Domestic Violence *Pro Bono* Attorney for the Day Program, please contact Daniel B. Schy, Esq., of Legal Services of Northern Virginia at 703-778-4803. ■

REVISITING THE STATUTORY POWER TO “SUSPEND THE IMPOSITION OF SENTENCE”

by David Bernhard, Esq., Co-Chair, FBA Criminal Law Practice
Section, and Ryan Campbell, Esq., King & Campbell, PLLC

The statutory authority to suspend the imposition of sentence (“SIS”) and defer final conviction of defendants leading to dismissal of charges has fallen into disuse in many jurisdictions. The SIS has existed since at least the enactment of §1922b of the 1936 *Code of Virginia*. In 1949 the Supreme Court of Virginia explained as to a felony, an SIS avoids final adjudication of a defendant’s status as a felon and is an appealable order *Fuller v. Commonwealth* 189 Va. 327, 332-333 (1949). The Supreme Court, in other opportunities to speak disapprovingly of the use of the SIS, has declined to do so. See *Bowles v. Nance* 236 Va. 310 (1988) (use of the SIS in a grand larceny case wherein the trial court “imposed no sentence at all but merely suspended imposition of sentence during good behavior”); *Grant v. Commonwealth*, 223 Va. 680, 685 (1982) (court permitted by the “inherent power granted under §19.2-303” in entering a suspended imposition of sentence in a case of feloniously receiving stolen property, “to place conditions on such suspension”); *J.E. Smith, Jr. v. Commonwealth*, 222 Va. 700, 701 (1981) (referencing SIS granted in a felony unauthorized use of a motor vehicle case); *Howie v. Commonwealth*, 222 Va. 625 (1981) (referencing SIS for possession of LSD); *Bryant v. Commonwealth*, 198 Va. 148, 149 (1956) (referencing SIS in a felony case of “housebreaking”).

The main argument against the current viability of the SIS is that the deferred finding statutes, are alleged to repeal it by implication. It is averred the General Assembly could not have enacted such statutes, affecting only some offenses and intend the general SIS remain intact. The SIS and the deferred finding statutes however, appear to encompass entirely different remedial concepts. In the case of deferred finding statutes, these are applicable to first offenders and direct courts in practice to defer finding of guilt and dismiss the case. The SIS is a wholly different creature of the law, to be used *after conviction*, and is entrusted by the General Assembly to the sound discretion of each judge. Little noticed has been precedent from the Court of Appeals of Virginia, which in *Hernandez v. Commonwealth*, 55 Va. App 190 (2009)¹ opposed the concept of deferred findings in the context of inherent Constitutional power, but earlier agreed “[d]eferment of judgment or imposition of sentence may impose practical difficulties. However, this practice is authorized. See Code §§ 19.2-298, 19.2-303.” *Holden v. Commonwealth*, 26 Va. App. 403, 407 (1998). Whether the appellate courts will affirm the historical precedent and allow the statutory SIS to remain a viable sentencing option is now pending decision on the merits this year in the Court of Appeals in the case of *Epps v. Commonwealth*. ■

¹ The case was reversed in *Hernandez v. Commonwealth*, 281 Va. 222 (2011).

LLP Liability in Virginia:

Making Sure You're Protected

By Shari Kleven, Randy Evans, and Alanna Clair, Esqs., McKenna Long & Aldridge LLP

Virginia law is not kind to general partnerships. Indeed, general partners can be personally liable for any partnership obligation, and worse yet, for any obligation of an individual partner for actions while acting as a general partner. On the other hand, Virginia law offers broad protection to partnerships that have followed the statutory requirements for and registered as a limited liability partnership (an "LLP"). Few law firms, however, take full advantage of the protections available to them and many fail to organize their partnerships to best protect the partnership's and their individual partner's assets and management. Unfortunately, by the time a problem arises, it may be too late to take corrective action.

By taking a few simple steps in advance, law firms in Virginia can maximize the benefits of a limited liability partnership, many of which are often overlooked in drafting limited liability partnership agreements and implementing partnership guidelines. Here are five steps that every law firm should take in order to protect its partnership and more importantly, its partners, in advance of any challenges that may arise.

1. Define Your Partnership as a Limited Liability Partnership and Make Sure Your LLP Election is Clear and Unambiguous

Limited liability partnerships offer much more protection to partners than other partnership structures, and are increasingly a more common partnership than the general partnership often seen in years past. The most frequent mistake made by law firms seeking the greater protection of the LLP, however, is to simply change their name without changing the actual partnership structure itself.

In recent years many law firm partnerships that were general partnerships have attempted to convert to limited liability partnerships. The partnerships often merely file the appropriate paperwork with the State Corporation Commission of Virginia but do not draft and execute a new agreement. The result is the worst of both worlds. Failing to execute a new agreement that unambiguously elects a limited liability partnership is risky. Such failure leaves the partners unprotected because the ineffective language from their original general partnership agreement does not protect them in the event of a future claim and further undermines the rights and protections afforded by the Virginia limited liability statutes. Therefore, it is important that the partners execute a new agreement specific to a limited liability partnership when they intend to make such a change.

This approach, as opposed to merely amending the existing partnership agreement, ensures that the agreement is more

aligned with protections afforded under the limited liability statutes.

2. Execute a Written Partnership Agreement that Complies with Virginia Statutes

Some partnerships intend to have a written limited liability partnership agreement, but never actually draft and execute one. In the absence of a written limited liability partnership agreement, Virginia law may presume either a general partnership agreement or may apply the stricter limitations on partnerships found in Virginia statutes. Obviously, the risks of this approach are high.

Although a partnership agreement cannot eliminate the partnership's obligation of good faith and fair dealing, Virginia courts will first look to the partnership agreement for guidance in analyzing issues that impact the liability of partnerships and the individual partners.

Virginia statutes give limited liability partnerships protection by specifically defining the obligations and debts of partners. While the advantages are great, so is the need to strictly comply with the statutes creating these advantages. To that end, it is important that a limited liability partnership identify the goals important to its own self-management and ensure that the partnership agreement does not contradict any aspect of Virginia's limited liability statutes.

If a limited liability partnership agreement contradicts any aspect of Virginia statute, the partnership will be bound by its agreement, even where the statutes offer greater protection or are more favorable to the partnership's position than its own agreement. Indeed, although a partnership agreement cannot, for example, eliminate the partnership's obligation of good faith and fair dealing, Virginia courts will first look to the partnership agreement for guidance in analyzing issues that impact the liability of partnerships and the individual partners.

3. Make Sure that the Individual Assets Belonging to Each Partner are Protected

Pursuant to Va. Code § 50-73.96(C), "A person is not, solely by reason of being a partner, liable, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for debts, obligations or liabilities of, or chargeable to, the partnership, whether sounding in tort, contract or otherwise, that are incurred, created or assumed by the partnership while the partnership is a registered limited liability partnership." As such, Virginia law protects the assets of individual partners to an LLP, but does not protect the assets of individual partners to a general partnership. It is important, therefore, that there is no contrary language in the partnership's organizing documents and partnership agreement that would expose the assets of individual partners. The best approach for a law partnership to adopt is actually to include this statutory language in its limited liability partnership agreement.

continued on page 14

CLOUD COMPUTING

by Chris Shiplett, Esq., Vice Chair, Technology Committee, and Mark Bertram, Esq., Chair, Technology Committee

"Get your head out of the 'Cloud' and watch where you are driving! You're going to kill us all."

Or, "You might just get sued for malpractice."

Cloud based computing and document storage is here to stay. It sounds so...ephemeral and futuristic. In practice, it's an energy saver and an economic tool to enhance productivity. Like all law office technology, it is a tool a lawyer *should not employ* without first considering the legal implications, performing due diligence, and ensuring compliance with the lawyer's ethical obligations.

Cloud based computing and document storage is shorthand for a set of computer software and business processes that allow a lawyer to use programs and store documents and other information on a third party computer system, rather than on a server in the lawyer's own office or in paper form. This system could be down the street, across the nation, overseas, or in multiple locations. The lawyer can easily access the information through an Internet connection, typically in the exact same way a lawyer would access the information from a file server in the computer closet down the hall.

Storing electronic client documents with a third party provider outside the lawyer's office presents a number of ethical and security issues the lawyer must consider. First, using the third party provider is "outsourcing" of non-legal support services. Legal Ethics Opinion 1850 addresses using outsourced support services. To remain in compliance with that opinion, a lawyer wanting to use cloud based document storage should govern the relationship with the third party company by complying with the opinion.¹ Lawyers should consider their duty to receive client consent prior to storing data on the cloud, be able to adequately supervise the data storage vendor, and ensure the continued confidentiality of client information.

There are a number of specific confidentiality concerns that arise when using an outsourced third party to store electronic documents. The ABA Commission on Ethics 20/20 working group recently published a paper addressing confidentiality issues on cloud document storage.² According to the working group, a lawyer should investigate and be comfortable with the cloud service provider's ability to prevent unauthorized access to confidential client information by its employees or hackers. The lawyer should also verify and ensure that the vendor has appropriate data destruction plans, and that the vendor backs up data adequately. Ask yourself this question: would you want to tell your client that their new widget patent they were about to complete was just compromised and you, the attorney, have no idea how it happened? Or, that you failed to do your due diligence and you had no idea of the cloud company's security and backup procedures? Also consider what will happen if the cloud company's systems are down and you cannot get your data.

In addition to considering processes the vendor uses to ensure data confidentiality and integrity, the lawyer should ensure that the vendor's security plan is adequate in the event of a security breach. The lawyer must know the vendor's encryption process, and the manner in which the client's data is actually stored on the vendor's servers. Any form of electronic transfer of your information, including disaster recovery methods, must be properly encrypted. The lawyer should confirm with the vendor that data shipped to it remains solely the property of the lawyer—whether as the lawyer's property or that of the client, but not the vendor. Furthermore, the lawyer needs to fully understand the vendor's policies for responding to government requests for client information.

Important and often overlooked, many cloud providers ship data to countries with different data protection laws than those in the United States. The lawyer must understand the vendor's processes in that regard, and should be absolutely sure the data is stored in a location that adequately protects the client's rights. If proper controls are not adequate, the venter should not send data outside of the United States.

The lawyer should conduct this due diligence prior to agreeing to storing data with a cloud storage service. After this due diligence, the lawyer should understand the vendor's business practices and how those provide effective protection to client information. The vendor should understand the lawyer's requirements, and expectations, and should understand and support the lawyer's obligation to his or her clients regarding the information the vendor stores. A written agreement between the lawyer and the third party vendor should thoroughly memorialize the vendor's duties and the vendor's understanding of the lawyer's duties to his or her client.

continued on page 14

Executive Director Position Description

Fairfax Bar Association, Fairfax, VA

Summary

The Executive Director ("Director") is the chief executive officer of the Fairfax Bar Association (FBA or "Association") and its charitable arm, the Fairfax Law Foundation (FLF or "Foundation"). The Director is responsible for the management of the operations and resources of the FBA and the FLF.

The Association is seeking an individual who is:

- A strategic thinker/innovator
- A politically astute leader with proven ability to build strategic partnerships
- An effective communicator and listener
- Flexible, with demonstrated ability to multi-task
- Skilled in management—including operations, administration, finance, and personnel
- Able to promote volunteer participation and grow leaders
- Able to understand what it means to be an attorney and work in the legal profession

Responsibilities

The Director manages a staff of 11 FTE employees, and annual operating budgets of approximately \$1 mil and the assets of the FBA and FLF, serving a membership of over 2,000 lawyers.

The Director plans, formulates, and recommends strategic direction, policies, and programs, including financial and budgeting programs, consistent with sound fiscal management and the Association's strategic plan.

As the CEO, the Director is responsible for the day-to-day operations of the Association and Foundation under the policies determined by the respective boards. The Director works with committees and sections, and serves as staff liaison to several committees. The Director is responsible for ensuring that the officers and the boards of the Association and the Foundation are kept fully informed of the conditions and operations of both entities.

The Director is responsible for the assurance of the fiscal integrity and sound financial management of the FBA and FLF. The Director oversees the development and management of appropriate budgetary and financial controls and procedures, including the annual audit, as well as the executive committees and boards of both entities. The Director ensures proper administration of all authorized procedures regarding funds management and keeps the boards apprised of financial and operational issues.

The Director is ultimately responsible for generating revenue for the Association and fundraising for the Foundation. The Association derives its funding from dues paid by its members, and numerous other revenue-generating programs, including Continuing Legal Education and a Lawyer Referral and Information Service. The Foundation derives its funding from contributions made in conjunction with FBA dues payments and fundraising events, including a 5k race and a Fellows Program.

The Director maintains positive relations with other legal-related entities, bar associations, government agencies, public service organizations, and vendors to promote the best interest of the FBA and FLF. The Director also directs public policy development, and works with the courts and legislature.

The FBA and FLF are committed to promoting diversity in their leadership, committees, and in the legal profession as a whole. The Director is responsible for implementing diversity initiatives in the strategic plan, and for ensuring that the Association and Foundation promote diversity in the course of their operations.

The Director is responsible for using best practices to hire, supervise, discipline, and manage all staff within the adopted budget, guidelines, and policies of the FBA and FLF. In doing so, the Director should foster a workplace environment that promotes positive employee relations, a culture of cooperation and mutual respect, and focuses on outstanding performance.

Reporting Relationships

The Director reports and is responsible to the President, Executive Committee, and Board of Directors of the FBA and the FLF.

Qualifications

- Established record of administrative, management, entrepreneurial, and financial supervisory experience
- Past experience with a professional or nonprofit organization, or comparable experience
- Proven, practical knowledge of program management, marketing, public relations, appropriate technology and publications
- Excellent leadership, communication, organization, entrepreneurial and management skills
- Demonstrated history of effective relationship management and interpersonal skills
- Demonstrated experience and ability in volunteer management
- Demonstrated ability to multi-task
- Law or other advanced degree (e.g., MBA, public administration) preferred, but not required

continued next page

Executive Director Position Description

continued from previous page

Application Deadline

The FBA will offer salary commensurate with qualifications and experience. The FBA is an equal-opportunity employer. The deadline for applications is **June 6, 2011**. Materials submitted should include a letter of interest, resumé, and must include salary requirements. Mail or email to Search Committee Chair David J. Gogal, 4020 University Drive, Suite 300, Fairfax, VA 22030; dgogal@bklawva.com.

If you are selected as a finalist, you will be asked to sign release forms so that your background and credit history may be checked. You will also be asked to provide the contact information for three references and evidence of eligibility to work in this country.

No telephone calls, please. ■

UPCOMING EVENTS/CLEs

May 17, 2011

**TECHNOLOGY IN FAIRFAX COURTROOMS:
COME KICK OUR TIRES! CLE**

5:00-7:00 PM

Fairfax County Courthouse, Courtroom 5J

2.0 MCLE Credits *Approved*

\$100 FBA Members

\$130 Non-Members

May 20, 2011

**HANGING OUT A SHINGLE CLE
12:00 NOON - 5:00 PM,
FOLLOWED BY RECEPTION**

*Co-sponsored by the Prince William County and
Fairfax Bar Associations*

3.5 MCLE (1.0 Ethics) Credits *Pending*

Columbus Grill, 8349 Centreville Road,
Manassas, VA 20110

\$120.00 Members of either Bar Association

\$150.00 Non-Members

To register, contact Alissa Hudson at the PWCBA
703-331-5683

May 23, 2011

**THORNY CHILD SUPPORT ISSUES CLE
4:30-7:30 PM**

3.0 MCLE Credits *Pending*

Fairfax County Courthouse,

5th Floor Jury Assembly Room

\$105 FBA Members

\$150 Non-Members

May 25, 2011

**YOUR FIRST TIME IN COURT:
WHAT TO EXPECT &
WHAT THE BENCH EXPECTS OF YOU CLE**

Hosted by the FBA Young Lawyers Section

5:00-7:00 PM

2.0 MCLE Credits *Pending*

\$60 FBA Members

\$75 Non-Members

June 6, 2011

ANNUAL MEETING LUNCHEON

12:00 PM - Registration & Social Reception

12:30 PM - Luncheon Program

Maggiano's Little Italy, McLean, VA

\$35 - FBA Members

\$40 - Non-Members

Add \$5 for registrations after May 20

June 23, 2011

**A JUDGMENT, IF YOU CAN ENFORCE IT:
A PRIMER ON POST-JUDGMENT
COLLECTIONS CLE**

5:00-7:00 PM

2.0 MCLE Credits *Pending*

Fairfax County Courthouse,

4th Floor Jury Assembly Room

\$70 FBA Members

\$100 Non-Members

SAVE THE DATE!

OCTOBER 9-12, 2011

FAIRFAX BARDI GRAS

NEW ORLEANS CONVENTION

Ritz Carlton, 921 Canal Street,
New Orleans, LA 70112

Join your fellow legal professionals in

New Orleans, LA, at the FBA 2011 Convention

where we'll let the good times roll! From interactive

CLE seminars to exciting and lively social events, the

FBA offers unparalleled networking opportunities.

FBA NEW MEMBERS

Timing is Everything:

Reducing Your Firm's Office Rental Costs

by David L. Harrell, Esq..



The last several years have not been easy ones for the legal profession. Given the challenging economic environment, most law firms have had to focus on controlling costs while still delivering a high level of legal services to clients. As every law firm partner knows, office rent is typically the second largest expense (after payroll) for most law firms. As a young law firm associate, I remember being dumbfounded when I found out how much my regional firm spent each year on office rent.

The Market for Commercial Office Space in NoVa

The Washington, D.C. region has weathered the economic crisis better than many other parts of the country. However, when it comes to commercial office space, the D.C. market still suffers from historic vacancy rates and sagging rental rates as compared to several years ago. Vacancy rates for Class A office space in Northern Virginia currently stand at 16.1%, a 52% increase from 4Q 2007. Class A vacancy rates in Fairfax County are now at 27.2%, up 87% from 2007.

With today's tighter credit markets, higher vacancy rates in an office building make it much more difficult for a landlord/owner to refinance the building's debt. In addition, buildings with expiring leases are often just as problematic. As a result, these conditions can often be used to an office tenant's advantage if they have three years or less remaining on their lease term.

A lease renegotiation can be an excellent way for a law firm to lower costs and take advantage of today's market conditions. The key to a lease renegotiation (as with any negotiation) is to create leverage. Understanding the market and the pressures a particular building owner may be under are essential to creating the leverage necessary to obtain favorable lease terms. Another important factor is having several credible relocation options. The lease renegotiation process can take many months to complete, and most leases require renewal notice anywhere from six to twelve months before lease expiration; as a result, the key is to begin negotiating any potential lease renewal at least 18-24 months before the lease expires.

Lower Your Firm's Real Estate Costs Immediately

So how can a lease renegotiation help lower your real estate costs right away? Many law firms have leases that were signed five to eight years ago and have rental rates that are significantly higher than the current market. A lease renegotiation often enables tenants to take advantage of the differential in past and current rental rates to lower their current rental rate. This typically occurs when a tenant (with several years remaining on their current office lease) executes an early lease renewal that extends their current lease term.

For example, let's say that XYZ Law Firm has two years remaining on their 10,000 square foot lease at \$25 per square foot (\$250,000 per year total rent). Let's assume that the submarket where XYZ Law Firm is located has experienced falling rental rates over the last couple years as a result of the recession, and is able to negotiate a two-year lease extension at the current market rate of \$20 per square foot. The resulting average rental rate over the resulting four-year lease (the averaged rate) would be \$22.50 per square foot, saving \$25,000 per year in rent.

A lease renegotiation isn't for every law firm; it requires legwork, timing, market knowledge, and expertise. Your landlord is an expert in negotiating leases and following the intricacies of each real estate submarket; most lawyers don't have the time (or inclination) to develop the same market knowledge and expertise. As a result, most law firms end up consulting a commercial real estate broker to help them understand the market and the particular pressures that their landlord may be under. In selecting a broker, it is important to consider a firm that specializes in representing tenants (and preferably law firms). In the current economic environment for law firms, it's worthwhile to consider all options to control costs while still delivering quality work product to your clients. A knowledgeable broker can help determine if a lease renegotiation strategy makes sense for your firm. ■

David L. Harrell, Esq., is a commercial real estate broker in Studley, Inc.'s Northern Virginia office. Member of the Fairfax Bar Association, he practiced law for over six years before transitioning to representing law firms in their lease transactions. David works with Studley's National Accounts Team and the Law Firm Practice Group and can be reached at 703-827-7274 or dharrell@studley.com.

Studley, Inc. is the only global real estate advisory firm with a conflict-of-interest free, per tenant-representation platform. Studley has represented over 70% of the AmLaw Top 100 law firms in their real estate transactions.

CLASSIFIED ADVERTISING

Services

ECONOMIST

- Personal Injury
- Wrongful Termination
- Wrongful Death
- Discrimination

Valuation of Business, Securities and Pension
Funds for Divorce and Business Cases

University Professor with Extensive Experience

Dr. Richard B. Edelman

8515 Whittier Boulevard • Bethesda, MD 20817

1-800-257-8626 301-469-9575



Referrals and Visa on Your Request - Visit at:



www.economist-analysis.com

PITORRI AND ASSOCIATES, LLC

SKIPTRACING-ASSET LOCATING

Gainesville, VA 703.468.4978

<http://skipassets.com>

Debtor and asset searches by retired intelligence analyst and paralegal.

Member, Paralegal Association of Northern Virginia.

Call us when credentials count.sm

Space for Rent

McLEAN, VA—Three rooms on first-floor commercial townhouse now available for rent. Conveniently located across the street from the McLean Post Office and FEDEX on Elm Street in the heart of downtown McLean. Rooms are 16x16, 12x13, and 12x13 feet, approximately 750 SF total. Space is very bright with many windows. Free parking, utilities, and reception area included. Rent all three rooms \$1,800 per month, or rent separately. Minutes from Tysons Corner and the Beltway with easy access to major roads including 495 and 66; approximately 30 minutes from Fairfax, Arlington, and Alexandria Courthouses. The complex has several other attorneys and we've occupied the top floor since 1982. 1311 Vincent Place, McLean, VA 22101. If interested, please call Michael D. Kaydough, owner at 703-790-5080.

QDRO DRAFTING & LITIGATION

Reduce your *Malpractice Liability*
by referring your clients to a
Virginia Attorney

Raymond S. Dietrich, Esquire
202.540.9107

www.qdrotrack.net

Announcements

THE LAW OFFICES OF KELLY S. HITE, PLLC is pleased to announce that **MICHELLE KAMINSKY** has joined our office. Ms. Kaminsky is a 2009 graduate of Catholic University Columbus School of Law and most recently was a Law Clerk for the Honorable David S. Schell, Fairfax County Circuit Court. 10555 Main Street, Suite 600, Fairfax, VA 22030; 703-766-0732; Fax: 703-766-0734; www.khitelaw.com.

The law firm of **McCANDLISH & LILLARD, P.C.** is pleased to announce that **BENJAMIN J. TRICHILO** has joined the firm as Counsel in its Litigation and Health Care Groups, and is resident in the Fairfax office. Mr. Trichilo's main practice areas include civil litigation, insurance defense, personal injury, professional malpractice, workers compensation, and sports injury claims. He holds the coveted "AV" rating for the peer review service of Martindale Hubbell. 11350 Random Hills Road, Suite 500, Fairfax, VA 22030; 703-273-2288.

OFFICES FOR SALE

10623 JONES STREET, SUITE 301A:

- Own your own office at a great price!
- Across from Courthouse in Red Maple Ct corner of Judicial Dr & Jones St
- 1,000 SF end unit on 2nd floor, good windowline
- Nice floor plan w/large waiting/reception area, 3 private offices, conference room, restroom & storage/utility room
- Exterior signage allowed & plenty free parking

SALES PRICE—\$250 psf (\$250,000)

10603 JUDICIAL DRIVE:

- Lawyers Row at corner of Judicial Dr & Leonard Dr
- 3,300 SF end unit faces Fairfax Courthouse
- Great windowline on 3-sides, offices w/hardwood flooring
- Professional layout w/6 private offices, reception/admin area, conference room, 2BA, 2 kitchenettes, plenty storage space, break room
- Exterior signage allowed & unassigned free parking

SALES PRICE—\$285 psf (\$940,000)

OFFICES FOR LEASE

- **10627 Jones Street, 301A** (Red Maple Ct on Judicial Dr) 1,000 SF end unit 2nd floor w/reception/admin area, 2 private offices, huge conference room, BA, utility & storage closets, plenty parking, exterior signage, some furniture avail — \$18.50 psf + elec & cleaning.

Q. Now finally, a question about your current position—has anything surprised you with your new position so far?

A. The collegiality and the willingness of my colleagues to assist me has surprised me. There's always someone available to answer what they must think is the most foolish question. It doesn't matter how busy they are, they make themselves available, not just to me, but to one another. That surprised me because I didn't see that from the other side of the bench.

Q. Let's reflect for a minute. If you could go back at any point during your career and tell yourself something that you now know, what would that be?

A. Never underestimate anyone and never overestimate yourself.

Q. Keeping with the theme of reflection, what is the best piece of advice someone gave you?

A. My Dad would tell me to always treat others with respect, but don't let anyone buffalo you.

Q. Would you like to give any advice to our attorneys who will be reading this, especially to the young attorneys?

A. To start with, I'm not sure if I am in any position to give advice. That being said, always be prepared and take advantage of the network that exists through the Fairfax Bar and through other networks so that you can be more effective in your representation.

Q. The next question usually gets a lot of different responses, but first a story. It was reported a couple of years ago by the *Wall Street Journal* that a successful Manhattan attorney left his practice to open up his own balloon shop. If you were to decide to leave the legal field all together—tomorrow—what would you do?

A. I'd want to be a butcher in my own shop.

Q. Is there anything else you would like to add?

A. I'm humbled by, and most fortunate to be in, this position of public service. I hope to be able to live up to the high standards set by my colleagues and those who served before me. Thank you for taking the time to interview me. ■

CLOUD COMPUTING

continued from page 9

The "Cloud" is touted as the wave of the future, but remember that danger lurks for those who do not properly prepare. Seek professional IT advice as well as analyze the risks involved before you have to put your carrier on notice. ■

¹ LEO 1850 is available at <http://www.vacle.org/opinions/1850.htm>.

² Issues Paper Concerning Client Confidentiality and Lawyers' Use of Technology on September 20, 2010, available at: http://www.americanbar.org/content/dam/aba/migrated/ethics2020/pdfs/clientconfidentiality_issuespaper.authcheckdam.pdf.

4. Identify What Happens When a Partner Leaves the Firm

Partnerships often overlook the issue of what happens when a partner leaves and terminates her or his interest in the partnership. Every partnership should identify what relationship a former partner will have with the remainder of the partnership, specifically relating to debts and obligations. Limited liability partnership agreements should address whether a partner who terminates her or his involvement will continue to be liable to the remaining partners (or retired partners or the estates of deceased partners) for partnership liabilities.

Silence is not golden when it comes to these issues, as Virginia law allows the introduction of parol evidence in order to clarify ambiguous terms. Regardless of what the agreement is, always reduce it to a written provision in a limited liability partnership agreement. If the agreement does not address what happens when a partner leaves the firm, courts will turn to evidence outside the agreement, including testimony from individual partners. In addition, depending on the goals of the partnership, the agreement may specify whether a departing partner must indemnify and hold harmless all other partners in connection with their intentional conduct. The best agreements precisely line up the partnership agreement with their insurance so that no partner is ever liable for the uninsured conduct of another partner.

5. Periodically Re-Review the Limited Liability Partnership Agreement

Far too often, partnerships draft and execute a partnership agreement and allow it to gather dust over the years. It is important for any meaningful review of the limited liability partnership agreement to include a review in its entirety to make sure that the partnership's goals and desired protections are covered by the agreement. In addition to the limited liability partnership statute, the courts recognize partners' rights to be bound by their contract with each other. More importantly, courts recognize the collective right of third parties, basically everyone else, to be bound as well.

Review of the limited liability partnership agreement should contemplate a holistic approach with an eye toward complete partner protection. The combination of the limited liability partnership agreement and the partnership's insurance program should permit individual partners to sleep better at night. ■

Please Note:

Be sure to inform the Bar if any of your personal information changes so you will continue to receive information pertaining to Bar activities.

Thanks!

Don't let a data loss

DESTROY

your business

Sensei's disaster recovery and backup service can protect your data and therefore your business. Call 703.359.0700 for a free quote.



SENSEI ENTERPRISES, INC.

COMPUTER FORENSICS | INFORMATION TECHNOLOGY | INFORMATION SECURITY

3975 university drive, suite 225, fairfax virginia, 22030

phone: 703.359.0700 | fax: 703.359.8434

www.senseient.com

4110 Chain Bridge Road, Suite 216
Fairfax, VA 22030-4009

PRSR STD
U.S. POSTAGE
PAID
FAIRFAX, VA
PERMIT NO 6565

Address Service Requested



*Printed on Recycled Paper
Design/Production by RODANGraphics
703.743.9375 • rodan@roan.com
Printed by Fairfax Printing & Copying
printers@cox.net*

Save-the-Date!
Laissez Les Bons Temps Rouler!

 **FAIRFAX BAR**
ASSOCIATION
Serving the Northern Virginia Legal Community

fairfax
BARdi Gras
Convention
October 9-12, 2011

Ritz-Carlton
921 Canal Street
New Orleans, LA 70112