

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org May/June 2015

2015-2016 FBA ELECTION CANDIDATES

*The following are responses by each candidate to the questions:
“What do you see as the FBA’s priorities?” and
“What resources and talents will you share if elected to the FBA Board and how?”*

Vice President (Uncontested)



Thomas W. Repczynski
Offit Kurman P.C.

The FBA has a continuing obligation to its members to ensure strong legal education programs as well as opportunities to develop collegiality and cross-practice diversity. Through its members, the FBA must continue to provide legal expertise and resources to those for whom legal counsel might not otherwise be affordable and/or accessible. Through its leadership, the FBA should strive to deliver a fair and impartial evaluation process for both sitting and prospective members of the judiciary.

As a principle with Offit Kurman, I am fortunate to have the firm’s resources including more than 120 attorneys in offices in Northern Virginia, Maryland, Pennsylvania, and Delaware. As a litigator, I have proved my abilities to take-lead and delegate concurrently and effectively. After my many years of committee and Board service, I bring institutional knowledge to the table that has aided repeatedly, for instance, in the annual budget process. I am not a “yes man” and am generally not shy about expressing my opinions.

Board of Directors



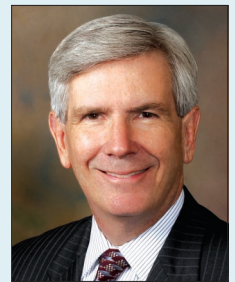
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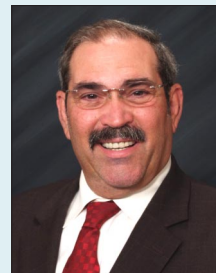
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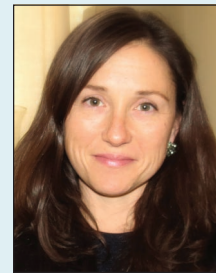
Richard F. Gibbons, Jr.
Richard F. Gibbons, Jr., P.L.C.



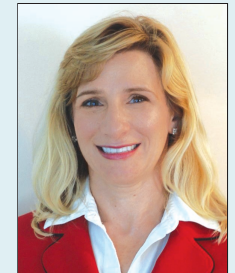
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Luis A. Perez
Luis A. Perez, Esq.



Jenna K. Sands
Hamilton, Petrocelli, Sprissler & Sands



Lauren Waller Smith
Office of Lauren Waller Smith, PLLC

*See Board of Directors’ responses to the above questions on
Page 3 of this Journal, as well as
Notice of Election Rules and Internet Voting Process for
Vice President and Board of Directors*

President's Column

By David L. Marks, Esq.

"Success of the Organization"

The legendary football coach Vince Lombardi once said "The achievements of an organization are the results of the combined effort of each individual." The combined efforts of the Fairfax Bar Association members have made this organization a beacon within the Commonwealth's legal community. We are blessed to have so many attorneys take time from their busy practices and family life to give back to their profession. This is evidenced by the tremendous participation in our committees and sections and, as you can see in this issue, the many applications that we have received for the FBA Board of Directors, as well as the Judicial Screening Committee. However, within our distinguished membership, there are those that go even more above and beyond and need to be recognized and appreciated. Allow me to mention just a few in this column.



LAW DAY

On Friday, May 1, 2015, my family and I attended the Annual Law Day Weiner Roast. For those who may not know about Law Day, according to the American Bar Association it is held annually on May 1 to celebrate the rule of law. Established in 1958 by President Dwight D. Eisenhower, Law Day underscores how law and the legal process contribute to the freedoms that all Americans share. Law Day also provides an opportunity to recognize the role of courts in this democracy and the importance of jury service to maintaining the integrity of the Courts. This year we also celebrate the 800th anniversary of the Magna Carta, an international symbol of the rule of law and an inspiration for many basic rights Americans hold dear today, including due process, *habeas corpus*, trial by jury, and the right to travel.

So who organizes the fabulous Fairfax Law Day celebration? Our own Edward Weiner has been holding his Law Day Weiner Roast for the past 15 years outside his offices on Judicial Drive. Hundreds of attorneys and their families come for the hot dogs, bratwursts, kielbasas, root beer floats, popcorn, cotton candy, and shoe shines. This year the rain ended earlier in the day, giving us great weather to view the American Legion Honor Guard present colors, performances by the George Mason University Jazz Ensemble, and the Boyle School of Irish Dance. There was also a giant, inflatable policeman that some kids, allegedly with the last name of Marks, were jumping on. All of this was free to the public through funding by Ed Weiner. The many sponsorships (special thanks to Ray and Susan Benzinger and ITI Audio, Inc., for being Chief Justice Sponsors) benefit the Fairfax Law Foundation. See page 9 for photos.

It was daunting for me to follow Ed as President of the Fairfax Bar Association given how much he volunteers of his time and money. He is one of the most generous, thoughtful, and kind people I have known and I am honored to call him a friend. Besides hosting Law Day, Ed has also organized Jazz 4 Justice for the past 13 years. This event is a wonderful concert starring the George Mason University Jazz Ensemble. The tickets and sponsorships have raised over \$150,000 for the benefit of the Fairfax Law Foundation. Ed also has lent his vision to other bar associations to sponsor their own Jazz 4 Justices.

Ed has served as President of the Fairfax Law Foundation, is immediate past President of the Fairfax Bar Association, and is on the Board of Directors for both the George Mason University Center for the Performing Arts, and the University of Richmond Law School Association. Ed begins his term as President of the Virginia State Bar this July 1st. Given all that he has done for our profession here in Fairfax and throughout Virginia, I hope that you will take a moment to thank him personally, to follow his lead to volunteer, and to lend him your support as he begins his term as VSB President.

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FAIRFAX BAR JOURNAL

Official Newsletter of the
Fairfax Bar Association

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

2015-2016 FBA ELECTION CANDIDATES

Board of Directors

Aaron Joseph Christoff

Law Office of Aaron Christoff, PLLC

[Priorities for the FBA are the] continued efforts to ensure full funding and preservation of authorized seats for our Bench at every level of the Court. We need to ensure budget constraints do not impact our Court's ability to function efficiently. Our priorities should include making sure the Fairfax Court system is accessible and usable by the public, whether or not they can afford legal counsel, through support of *pro bono* programs and initiatives. I also believe the FBA's role in continuing to educate and train its Bar members is a priority.

I am committed to dedicating time to do whatever I can to improve the FBA. I've spent considerable time on committees, task forces, and volunteer programs. I'm confident those who have worked with me on these FBA activities and programs would confirm that I am not satisfied simply saying I'm a member or participant. I routinely volunteer to take on added responsibilities to ensure progress is made on behalf of the FBA.

Lacey Ullman Conn

Michael L. Davis & Associates

[The FBA's priorities are] (1) promoting the highest level of ethics and professionalism within the Bar; (2) helping to keep an open dialogue between members of the Bar and members of the Bench; (3) providing opportunities for, and encouraging member involvement in the community.

I have cultivated relationships with members of the Bar and Bench since beginning my practice in Virginia. This, along with my tenure in the Young Lawyers Section, allows me to be a segue between newly admitted attorneys and the rest of the Bar. Encouraging new member involvement in the Bar is critical to the continued success of the FBA.

Joseph B. Dailey

Law Office of Joseph B. Dailey, PLLC

The priorities of the FBA are to (1) provide information to the FBA members about what is going on in the Northern Virginia legal community; (2) be an advocate for FBA members for local and state policy and funding questions that involve the local legal community; (3) be an educational resource to FBA members for CLEs and knowledge about local practice and procedures; and (4) be an educational resource to the community at large for the role of the law and lawyers in the community.

I have developed a network of friends in and outside the courthouse to help plan and execute events for the FBA. I am also able to donate the proper time and financial commitments to make sure FBA programs and priorities are successful.

Richard F. Gibbons, Jr.

Richard F. Gibbons, Jr., P.L.C.

The goal of the FBA should be to facilitate excellence within the legal profession. This goal clearly directs the FBA's priorities: (1) to advocate for resources for Fairfax County Courts, including the full staffing of the judiciary, and to provide input on selection of judges; (2) to educate our members about recent developments in the law across a wide spectrum of practice areas; (3) to foster opportunities for networking and collegial relationships among members of the Bar; and (4) to support programs and efforts that provide legal services for those who face financial or other obstacles to the legal system.

I have a broad background in the law, having worked for a large firm, a small firm, and my own practice for the last 13 years. I have practiced in commercial litigation, criminal law, and domestic relations. These are three broad areas of the law practiced by many of our members. As a director, I will continue to bring to the Board my experience from all of these fields.

John A. Kassabian

Kassabian & Kassabian, P.L.C.

The following are the FBA's priorities:

To bring members of the Bar together.

To meet, interact, and build relationships with members of the Bar.

To collectively work with members of the Bar, judges, clerks, and court personnel in an open process and to offer thoughtful insight and solutions to important issues that arise concerning the administration of justice in our courts.

To ensure the highest level of ethics, professionalism, and public perception of our legal profession is met and maintained.

To ensure open access to legal services.

To increase and enhance the legal skills of Bar members.

To offer continuing legal education programs.

[The resources and talents I will share if elected are my] energy, integrity, commitment, high level of professionalism, humility, legal experience, active Fairfax Bar Association involvement, the ability to respectfully and efficiently work with others, and the relationship with other Bar members.

continued on next page

2015-2016 FBA ELECTION CANDIDATES

Board of Directors

Luis A. Perez

Luis A. Perez, Esq.

The Fairfax Bar has many priorities. One of them is serving as a link between the Bench and the practitioners, and between the community and the legal profession. Another important priority is to serve as an information center for the community as to our court system and available legal resources. In addition, the Fairfax Bar plays an important role in educating its members by putting together meaningful and productive CLEs and keeping members informed of the Court's rules and procedures, new technology, and important announcements.

Part of my resources and talents are demonstrated by my extensive community involvement and leadership qualities developed through my involvement in different boards and nonprofit organizations. During the last ten years, I have been involved organizing fundraising events, continuing education courses, manual preparations, and civic and community events, which I believe should be helpful in advancing the goals and mission of the Fairfax Bar.

Jenna K. Sands

Hamilton, Petrocelli, Sprissler & Sands

[The FBA's priorities are] to promote and provide a means for connection between each member for our legal community and to provide access to information and understanding of our resources and community values to the general public.

As a substitute judge, defense practitioner, prosecutor, and member of the Fairfax legal community since 2002, I have had the unique opportunity to get to know the inhabitants of our courthouse and legal community well. Additionally, I have lived in Fairfax City since 2005 and have come to know many of our city's leaders and organizers. I would be pleased to share my network of friends and colleagues to advance the goals of the FBA.

Lauren Waller Smith

Law Office of Lauren Waller Smith, PLLC

The priorities of the FBA are to ensure the involvement of the private Bar in the functioning of the judicial system, offer programs and activities that provide *pro bono* legal services, educate the general public about the judicial system, and ensure that lawyers who practice in Fairfax County are educated about Virginia law. Fairfax lawyers are deservedly admired and admirable, and the FBA provides the tools to make sure that remains the case.

Primarily, I would share the experience and knowledge that my years of providing service to the community through the myriad of programs the FBA has given me. I believe that the experience of actually taking the time to do significant work through all of the FBA programs to which I have devoted effort, would qualify me more to serve as a director than any other experience could. I also believe I bring creativity, intelligence, common sense and, where appropriate, levity to most situations. Finally, I would continue to make the financial contribution of attending the Bench Bar Dinner Dance and donating time and/or money to FBA programs. ■

NOTICE OF ELECTION

RULES OF ELECTION

FBA INTERNET VOTING PROCESS FOR VICE PRESIDENT AND BOARD OF DIRECTORS

The Fairfax Bar Association Online Board of Directors election will begin on **Tuesday, June 2, 2015 at Noon** and will end on **Friday, June 5, 2015 at 4:00 PM**. Pursuant to our Bylaws, only Regular and Honorary Members of the FBA are eligible to vote. In order to vote, Regular and Honorary Members must have a valid email address on file with the Fairfax Bar. Each eligible voter will receive an email prior to the opening of the online election with login, username, and password information needed to vote. This email will also contain detailed information on the election process and the candidates. The candidate information also will be placed on the Association's website, www.fairfaxbar.org. Members may vote from any location providing Internet access. A computer will be made available at the FBA office for voting, should any members need to vote at that location.

RANSOMWARE



2014 Saw a 4000% Increase In Ransomware That Encrypts Your Data!

(Source: Volume 20 of Symantec's 2015 Internet Security Threat Report)

As you may have seen recently in the news, many computer networks across the world are under attack by a serious threat called “ransomware.” Two of the most notorious forms of ransomware are CryptoLocker and Cryptowall. These pieces of malware, and many variants, target computers running Microsoft Windows.

The most common way that businesses get ransomware? Employees click on an attachment or a malicious link in an e-mail. This brings us to another important point: One of the most often-overlooked aspects of an organization's security readiness is end-user training. We offer this training with Sensei's principals, John Simek and Sharon Nelson, who are nationally recognized speakers on this topic.

Please call Jennifer Kubal at 703.359.0700 to set up security awareness training or to schedule a free cybersecurity assessment for your business.



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Summary of ABA House of Delegates Midyear Meeting in Houston

By William P. Daly, Jr., FBA Delegate to the American Bar Association

At its 2015 Midyear Meeting in Houston, the American Bar Association House of Delegates—made up of 560 members representing state and local bar associations, ABA entities, and ABA-affiliated organizations—adopted a broad range of criminal justice policies and a host of others, including a measure seeking more help with student debt for young lawyers. The following provides a summary of some of the actions taken.

The House approved a policy, for the first time, on the “stand-your-ground” laws that have grown in popularity during the past ten years. The approved resolution urges legislatures and governmental agencies to significantly modify or refrain from enacting laws that eliminate the duty to retreat before using force in self-defense in public places, an issue brought to the national forefront in 2012 with the fatal shooting of Trayvon Martin by George Zimmerman. Mr. Zimmerman was acquitted after claiming his actions were in self-defense. That defense was based on an expansive Florida law. An ABA task force concluded that rather than reduce the likelihood of homicides, the rate in “stand-your-ground” states actually increased. Additionally, the task force found that when whites used this defense in homicides involving black victims they were acquitted 38 percent of the time, while black defendants were acquitted in only three percent of the cases involving white victims.

The ABA House also approved a resolution that asks states that impose capital punishment through lethal injections to publicly disclose the protocols—or ingredients in the solution—that are used. In the aftermath of a botched legal injection in Oklahoma in April 2014, which prompted the case heard by the U.S. Supreme Court on April 29, 2015, several ABA entities asked the House to approve more disclosure about the drugs and other aspects of the execution process.

The policy-making ABA body also weighed in on the national immigration issue, as the House voted to support government-appointed counsel for unaccompanied children in immigration proceedings. The resolution specifically urged immigration courts not to conduct hearings unless an unaccompanied minor has an opportunity to consult with counsel. In 2014, ProBar, an ABA program in South Texas, assisted thousands of these young undocumented immigrants in immigration hearings during the wave of foreign-born children arriving in the U.S. unaccompanied by their parents or other legal guardians.

At the request of the Young Lawyers Division, the House adopted a measure that asks law schools to provide law students and young lawyers comprehensive debt counseling and debt management education. The new policy also asks bar associations to offer similar debt counseling and debt management services to young lawyers and newly admitted lawyers.

The ABA House adopted a resolution that urges governments to refrain from using shackles on juveniles in court, unless a judge orders it. It had been argued that, among peer nations, the United States is the only one in which some jurisdictions or courts allow shackling of juveniles as an automatic or routine procedure.

The ABA Commission on Domestic and Sexual Violence sponsored two successful resolutions. First, the ABA House urged governments to enact civil protection order statutes that extend protection to minor and adult victims of sexual assault, rape, and stalking outside of the context of an intimate partner relationship and without the requirement of any existing relationship between the parties. Second, the Commission won House approval for a measure that urged governments and other regulators to amend or enact laws and regulations to expand housing protections for victims of domestic and sexual violence.

Additionally, the ABA House of Delegates adopted resolutions that urge:

- Legislative bodies to approve comprehensive laws that bar the private possession, sale, breeding, import or transfer of dangerous wild animals.
- Congress, state and tribal governments to adopt recommendations in the Indian Law and Order Commission report of November 2013, “A Roadmap for Making Native America Separate,” that enhances standards for the legal and justice systems in what is known as Indian country.
- Governments to continue to enforce and to enact rules or legislation that strengthen consumer protections regarding deceptive or fraudulent loan foreclosure rescue practices.
- Imposition of death-penalty sentences only by unanimous decisions by juries. Of the states, only Florida, Alabama, and Delaware do not require unanimous verdicts in capital punishment cases. The resolution also covers military courts.

For information on all ABA policies considered at the House of Delegates meeting, please feel free to contact Bill Daly at wdaly@reesbroome.com. ■

Bar Honors Suzy Swain for Exceptional Years of Service



On April 6, 2015 the FBA honored Suzy Swain with a special Resolution on the occasion of her retirement as Chief Deputy Clerk of the Fairfax General District Court (GDC). Suzy devoted 36 years of service to the GDC, including clerking for Hon. Thomas A. Fortkort in 1988. In 1990, Suzy was appointed Chief Deputy Clerk of the GDC. Her responsibilities included writing legislative and policy updates in the Fairfax County General District Court Administrative Procedures; producing daily schedules of the Fairfax GDC judges to ensure optimal courtroom coverage; and conducting new attorney and support staff orientations and court tours for students and civic groups.

Suzy also served the Association of District Court Clerks of Virginia and would routinely contribute articles to its newsletter.

Suzy served the Fairfax Bar Association willingly and enthusiastically whenever she was called upon to do so, generously contributing her time and talents to enhance and improve the Fairfax legal community. She has made invaluable positive contributions to the legal profession and the community-at-large. ■



Sagebrush

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The Zimmerman Law Firm



Do you need to catch up on some CLE hours? Did you miss a Fairfax Bar Association CLE but wish you could still view it? We've got you covered! FBA Online CLEs are 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 anywhere it fits into your schedule.

FBA Online CLEs cover a range of topics including: Speech in Social Media; Appellate Practice; Criminal Law; Deposition Techniques & Strategies; Domestic Relations; Personal Injury and much more!

To learn more about the Online CLEs, please visit <http://fairfax.inreachce.com/>.

THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT COMMITTEE

*By Joseph B. Dailey, Esq. and Elizabeth "Libba" McKenzie, Esq.,
Chairs of the Juvenile and Domestic Relations District Court Committee*

The Juvenile and Domestic Relations District Court (JDRDC) Committee functions as a liaison between practicing attorneys and the judges of the Juvenile and Domestic Relations District Court. Meetings are generally held the second Thursday of each month at 12:30 PM in the Court Administrative Training Room #201.1. The stated purpose of the Committee is to provide assistance to the J&DR District Court bench and practicing attorneys. This year the Committee has undertaken a variety of issues ranging from completion of the *JDR Manual* to clarification of the requirements to be certified as a Guardian *ad litem* to *ex parte* hearings on Protective Orders, and as always, nominating a worthy individual for the coveted Kassabian Award.

The *JDR Manual* subcommittee has completed its first edits for the judges' review. Beset with losing members, illness, and other unforeseen obstacles, the committee soldiered on to complete its task, and is looking forward to planning a CLE in the fall.

During the course of drafting/editing the *JDR Manual*, a question arose as to the requirements with regard to certification by the Fairfax County J&DR District Court of Guardians *ad litem*. A circulating old list left one with the impression that you must be certified for adults, children, and possibly court appointed criminal work in order to accept GAL work. The issue has been clarified and the old list taken out of circulation. Certification in all three areas is not required to be a Guardian *ad litem*.

In addition, the J&DR Court commenced *ex parte* hearings regarding domestic abuse Protective Orders in the fall of 2014. A complainant is given the option of completing /filing an Affidavit or proceeding with an *ex parte* hearing in judges' chambers. These hearings are held each day at 3:00 PM and are placed on the Chambers' Docket. Legal Services of Northern Virginia helps provide volunteer attorneys to help petitioners receive protective orders in the permanent protective order hearings, and is often looking for new volunteers to help represent victims of domestic abuse.

The court's budget with regard to funding judicial positions lingers as a concern and is an issue begging for a good resolution. Fairfax County is in danger of losing one of our eight Juvenile and Domestic Relations judge positions upon the retirement, resignation, or death of one of our current judges. Next year will be a critical year for the Fairfax Bar to make sure the General Assembly understands how much our county needs all eight J&DR positions. ■

UPCOMING EVENTS/CLEs

MAY 27, 2015

UIFSA, CHILD AND SPOUSAL SUPPORT CLE

5:00-7:00 PM

Fairfax County Courthouse
2.0 MCLE Credits *Pending*
\$70 FBA Attorney Members
\$100 Attorney Non-Members
\$50 FBA Young Lawyers Section Members
\$80 Young Lawyers Non-Members

JUNE 2, 2015

ANNUAL MEETING LUNCHEON

12:00 PM - Social Reception

12:30 PM - Luncheon & Program

Maggiano's Little Italy
2001 International Drive, McLean, VA 22102
\$35 FBA Members/\$40 Non-FBA Members
Add \$5 if registering after May 26, 2015

JUNE 5, 2015

SUPPORT STAFF ORIENTATION PROGRAM

1:30-5:30 PM

Fairfax County Courthouse
\$30 Per Registrant

JUNE 6, 2015

LAWYERPALOOZA

12:00-3:30 PM

Hunter House, 9537 Courthouse Rd,
Vienna, VA 22181

Sponsorship opportunities are available!
Contact the FBA office at 703-246-2740.
Questions? Contact Ryan Witkowski at
rwitkowski@condolawgroup.net

JULY 16, 2015

INVESTITURE OF MANUEL A. CAPSALIS

AUGUST 6, 2015

INVESTITURE OF MICHAEL J. LINDNER

AUGUST 14, 2015

INVESTITURE OF HON. PENNEY S. AZCARATE

SEPTEMBER 17, 2015

INVESTITURE OF TINA L. SNEE

SAVE THE DATE!

SEPTEMBER 21, 2015

FALL GOLF TOURNAMENT

Potomac Shores Golf Club
11:30 AM-12:30 PM - Registration
1:00 PM - Shotgun Start
\$125 Per Person On or Before August 21
\$150 Per Person After August 21
Includes: Greens Fee, Cart, Box Lunch, Buffet
Dinner, and Prizes.
Questions regarding the tournament?
Contact Bob Letnick at 703-273-4100.

SAVE THE DATE!

SEPTEMBER 26-27, 2015

FBA ANNUAL CONVENTION

Gaylord National Resort & Convention Center
201 Waterfront Street
National Harbor, MD 20745

OCTOBER 2, 2015

INVESTITURE OF STEPHEN C. SHANNON

HEROES v. VILLAINS—6TH ANNUAL RUN FOR JUSTICE 5K PHOTOS



The Relationship Value of Mediation

By Ronald C. Zabel, Esq., *Founding Director of Conflict to Peace*

In our roles as “Attorneys and Counselors at Law,” how often do we focus on the counselor aspect as we learn about the circumstance a client has brought to us? Do we ask questions like: “What is the history of your relationship with the other party?”; “How has what transpired affected that relationship?”; “How do you see relational factors contributing to the circumstances that have you wanting legal help now?”; “What might you want to accomplish or preserve concerning that relationship?”; “What is—or could be—the value of a relationship with the other party?”; or “Even if the legal problem is resolved, might the relationship continue to be a source of difficulty?”

Certainly in family disputes, neighborhood disputes, and the vast majority of business, service, contract, and other commercial disputes, relational factors are involved. In many cases the relational impacts of a dispute may be of greater lasting consequence than the substantive or legal issues. Relational factors can very often be influenced in a positive way when the dispute is addressed in a mediation setting, in contrast to the almost always negative impact on relational factors when the means chosen for resolution is an adversarial forum.

A client's faith background can also be an important consideration. Virtually all faith and wisdom traditions place high value on people's consideration of each other's interests, gaining understanding of, and giving consideration to, the other party's perspective on the circumstances and its resolution, looking for the praiseworthy rather than the derogatory in others, and above all this, the reconciliation of relationship breaches and resolution of substantive disputes between the parties at the lowest possible level of external involvement. Much of this is the bedrock of classic mediation, which brings parties together for facilitated negotiation and guidance through the process of reaching resolution.¹

Getting to know our clients' objectives, and the needs and interests under those objectives, not only in a substantive, but also in a relational sense, is essential to being able to effectively advise our clients on advantages, disadvantages, and availability of other dispute resolution processes as means of addressing those needs and interests. This point is highlighted in the comments to Rules 1.2 and 2.1 of the Virginia State Bar Rules of Professional Conduct.

Rule 1.2 (“Scope of Representation”)—Comment 1 provides in part: “Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. In that context, a lawyer shall advise the client about the advantages, disadvantages, and availability of dispute resolution processes that might be appropriate in pursuing these objectives.” (Emphasis added.)

Rule 2.1 (“Advisor”)—Comment 2 provides: “Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It could also ignore, to the client's disadvantage, the relational or emotional factors driving a dispute. In such a case, advice may include the advantages, disadvantages and availability of other dispute resolution processes that might be appropriate under the circumstances.” (Emphasis added.)

These comments to the Rules highlight the appropriateness of discussing alternative dispute resolution processes, and specifically highlight the potential inadequacy of not venturing beyond legal advice into the relational or emotional factors.

In my twenty years of dispute resolution practice, it has been very rare to see a case where there is no relationship element, and in most cases the relational element has been significant. Types of disputes in which relational elements often play a significant role include:

President's Column

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LEGISLATIVE BREAKFAST

On April 29th, the Fairfax Bar Association hosted the annual Legislative Breakfast at the Country Club of Fairfax. Many thanks to Delegates David Albo, Tim Hugo, Scott Surovel, and Senator Chap Petersen for providing us updates on pertinent legislation passed in the most recent session. We had a good turnout but we are hoping for even more attendees next year to make it worthwhile for our legislators to prepare for and attend this event. To that end, we are discussing holding the program at the courthouse to make it easier for members to attend.

FAIRFAX LAW FOUNDATION HEROES VS. VILLAINS 5K RACE

Our main organizer, Josh Isaacs of Smolen Plevy, fortuitously picked the most beautiful day of the year to have the 5K race. From Batman and Poison Ivy, to the Avengers, superheroes and villains descended upon Fairfax Corner Shopping Center bright and early to run the annual race. The race had 600 participants in their superhero and villain costumes who raised over \$25,000 for the Fairfax Law Foundation.

Runners and volunteers also saw many familiar favorites from years past. Scorpio Entertainment provided the music, entertaining the runners and volunteers, while eMotion Dance and Fitness displayed dance moves to prepare runners of all ages for the run. Additionally, face painting and a balloon artist provided more fun for all.

As always, there was a plentiful buffet of wonderful post-race food, including breakfast burritos from Anita's New Mexico Style Mexican Food, a dessert tray from Amphora Bakery, Krispy Kreme donuts, Peet's coffee, race wheels from Great Harvest Bread Company, and bananas donated by Wegman's.

Many thanks to Josh for all his hard work in making this event such a success!

We are members of an esteemed profession that affects every aspect of society. I am proud to be part of this organization whose members embrace the commitment to community service and to enhancing the legal profession. ■

continued on next page

The Relationship Value of Mediation

continued from previous page

- partners dismantling their shared business
 - supplier/vendor issues, and other business disputes where there is often a high value of maintaining the business relationship
 - employment and workplace disputes
 - construction disputes
 - contractor/consumer disputes
 - community disputes, such as between neighbors or with an HOA
 - parent/school disputes
 - boundary disputes
 - estate distribution disputes
 - elder care issues
 - parenting, support, and separation
- and the list goes on as imagination allows.

In many cases, the remedies available at law are limited in reach, completely inadequate, or simply unavailable to address, let alone meet, the needs and interests of one or more of the parties. In contrast, conciliation and mediation are not constrained by what legal remedies are potentially available. These approaches to conflict resolution are generally limited only by the openness and creativity of the parties and the skill of the mediators in fostering the environment needed for the parties to work together to develop solutions that can maximize satisfaction of all parties' interests. Mediators do this by facilitating effective communication between parties, fostering understanding between them, and thereby helping to soften the barriers to collaboration that many parties initially bring to the table. Mediators help the parties explore the underlying reasons for their dispute and the interests, values, and beliefs underlying their positions. We help them get to the root of what drives their choices, and guide and encourage them to co-create solutions that meet their own, and the other party's, key needs.

Often times, it is the relationship aspect that must be constructively addressed in order to have any productive dialogue on substantive issues. A man I knew well in his service as Chaplain to the Institute for Christian Conciliation, Rev. Don Bubna, applied this "equation" to disputes: "R before I, except after T." This stands for the need to address Relationship matters before substantive Issues unless there is Trust between the parties. Sometimes the relationship aspect might not be obvious, and it can be present even when the parties do not know each other, as the following example illustrates.

In a dispute between a home buyer and seller, the buyer claimed fraud, asserting a knowing false declaration by the seller of "no known defects." The defect caused major expense and livability issues to the buyer. By the time the buyer went to his lawyer to threaten a lawsuit (nearly two years after the purchase), the buyer was angry to the point of bitterness towards the seller in his presumption of the seller's ill motives, gleaned from his learning that many other homes in the neighborhood had experienced the same defect. Trust was totally absent. The buyer had a terrible relationship with a man he had never even met. The seller's counsel suggested mediation, despite a likely successful defense being apparent to him. The buyer came in wanting the seller's head, but on meeting and speaking with him, discovered that the seller's head did not have horns. Through the opportunity for dialogue with each other, they gained an understanding of, and appreciation for, each other's perspectives, needs, and interests. The buyer came to accept the likely honesty of the seller and took responsibility for his rush to judgment and inflated demands. The remainder of the mediation was about whether or not the buyer would accept the seller's offer to contribute to remedying a defect that likely was genuinely unknown to him and, therefore, not likely his legal responsibility. Although first refusing any assistance from the seller, the buyer and seller ultimately agreed to share the cost of needed repairs.²

Face-to-face mediation provides the opportunity to address both the relational and substantive interests in ways that can fully take them into consideration in crafting solutions. It also provides a forum to understand and address relational contributions to the dispute, allowing a safe place to accept responsibility where appropriate. Acceptance of responsibility, which rarely happens in litigation, can go a long way

towards achieving effective substantive resolutions, rebuilding damaged or broken relationships, and clearing residual venom from relationships that are ending. If you want to understand more about Alternative Dispute Resolution or become involved in developing greater awareness and use of such means, please consider joining the Fairfax Bar Association's Alternative Dispute Resolution Section, or just come to a meeting, typically held the third Wednesday of the month at 8:30 AM in the FBA offices at the Courthouse (check the calendar at the FBA website). ■

¹ *Those of you who know me or of my practice, Conflict to Peace, understand that I put high value on applying biblical wisdom in guiding parties through conflict to peace with the outcome and with each other. Without the "each other," resolution can only be partial. Mutual agreement upon, rather than imposition of, a resolution is more likely to yield for each party a sense of peace with the outcome, and it adds the potential for peace with each other that simply cannot be addressed by a third-party decision. Without the "each other," lingering negative residue from the conflict can potentially contribute to reduced well-being of one or more of the parties and leave the stage set for future damaging conflict between them or with others. Hebrews 12:14-15.*

² *Key aspects of our opening comments in mediations include encouraging the parties to set aside presumptions, to address the interests of others, not just their own, and to enter into the process with a forgiving spirit towards the other. In this case, the buyer quickly realized the inappropriateness of his judgmental and self-centered focus when faced with the seller's genuine consideration of the buyer's needs and interests.*



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3927 Old Lee Hwy, Unit 102-C—Fairfax Commons near intersection at Main St and across from Courthouse Shopping Plz. 1,150 SF upper lvl office suite has high ceilings, open flr plan, 2 pvt offices, kit, BA, util, extra lighting & 5-ton HVAC. Suitable for many uses! Plenty parking!
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10623 Jones Street (at Judicial Dr) Suite 101-A—Red Maple Ct - 950 SF 1st flr partially furnished suite w/recep/waiting area, 2 offices, conf rm, kit, BA & util. Avail immed 2-5 yr term.
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10627 Jones Street (at Judicial Dr) Suite 301-A—Red Maple Ct - Bright 2nd flr corner unit 1,000 SF w/recep/waiting area, 2 offices, conf rm, BA, util/storage & file rm. Avail immed 2-5 yr lease. Owner will replace carpet w/3 yr lease min. Existing furniture conveys.
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