

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org April 2008

The Fairfax Bar Association Celebrates the Career of Robert F. Horan, Jr.



On January 29, a crowd of familiar faces gathered at the Fairfax Marriott to honor a man who has been a major force in the county. The night gave praise and tribute to Robert F. Horan, Jr., Fairfax County Commonwealth's Attorney as he retired after 40 years of service. "We are honored to host this tribute for someone who has impacted not only the legal profession but the entire region," said Yvonne McGhee, Executive Director for the FBA.

Horan started his career as an assistant prosecutor in Fairfax from 1963 to 1965, then served as a defense lawyer for two years, and was appointed as the Commonwealth's Attorney in March of 1967. He won his first election in November 1967, making him the longest-serving prosecutor in Virginia.

During the ceremony, several speakers gave their praise about Horan. Hon. Raymond F. Morrogh, who overtook Horan's duties as the Commonwealth's Attorney of Fairfax County, said, "I learned from [Mr. Horan] that being a good prosecutor means having integrity—that is what he has—he never waived this." Morrogh also added, "Mr. Horan stands for what's right in the law; that being a lawyer is a privilege—be fair, tough, and never give up."

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THE FBA HAS OFFICIALLY MOVED!

In 1998 and 2002, voters approved two bond referenda that would be used to update the Fairfax County Courthouse, mainly the expansion and renovation of the Jennings Building. The goal of the expansion was to have the Circuit, General District, and Juvenile and Domestic Relations District Court in one building. Fast forward to February 25, 2008, after planning and construction for nearly four years, the doors to the new courthouse swung open—Phase I of the Fairfax Courthouse Expansion is complete.

According to Fairfax County, there is still plenty shifting even while the dust settles. Already moved, the Fairfax Bar Association (FBA) is now located on the second floor in the new Courthouse, Suite 215, and the Fairfax Law Library, which will soon have new extended hours, occupies a modern, up-to-date space on the first floor. Still confused on where to go? Use the chart below to see what floor an office is now located.

FIRST FLOOR	SECOND FLOOR
Public entrance to the courthouse (there is no longer public access through the Jennings Judicial Center)	Fairfax Bar Association
Office of the Commonwealth Attorney	General District Court—Criminal
Public Law Library	Towns (Vienna & Herndon; public access terminals)
Office of Public Affairs Information Desk	Court Services and Interpreter Services
Police Liaison Office	Circuit Court—Clerk of the Circuit Court (as of 03-17-2008)
Circuit Court Public Services	
Sheriff's Office—Civil Enforcement (administration on the second floor)	
THIRD FLOOR	FOURTH FLOOR
General District Court—Civil	Probate Offices
Human Resources	Circuit Court—Criminal (as of 03-17-2008)
Circuit Court—Civil	
Circuit Court—Civil File Review	
Circuit Court—Land Records	
Circuit Court—Historical Records including archives	
	FIFTH FLOOR
	Judges Chambers Entrance (as of 03-17-2008)
	Jury Assembly Area

New Addresses

Fairfax Bar Association
4110 Chain Bridge Road, Suite 215
Fairfax, VA 22030

Fairfax Public Law Library
4110 Chain Bridge Road, Suite 115
Fairfax, VA 22030

Lawyer Referral & Information Service
4080 Chain Bridge Road, First Floor
Fairfax, VA 22030

As people get acquainted with the new setup, the puzzled faces will vanish, and questions like, "I'm trying to get to..." will erode. The final phase of the renovation project will occur in January 2009 when the Juvenile & Domestic Relations District Court moves from its current location into the new building. ■

PRESIDENT'S COLUMN by Daniel H. Ruttenberg

If you have not yet figured this out, I am trying to go my entire presidency without actually writing a president's column. Last issue's poem took me over a year to write (maybe I should have just written a column), so this issue I'm taking it a bit easier. In honor of the child inside of each of us, many of whom I saw running around at the incredibly successful Bench Bar Dinner Dance, I present the FBA children's menu (sans food items).



Word Find: Can you find the hidden words among the "random" letters?

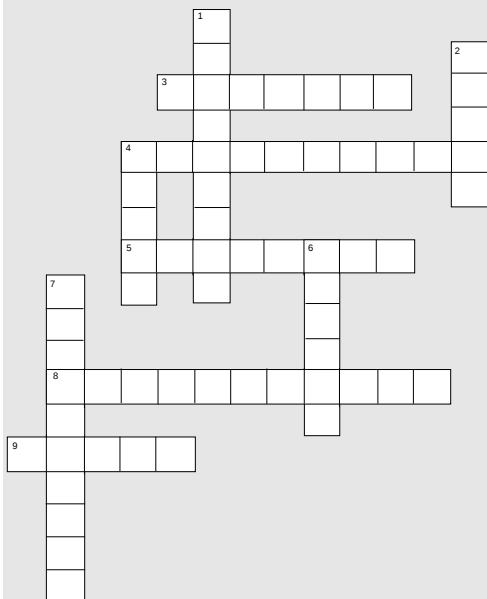
H	C	C	A	G	N	V	A	T	O	K	W	F	X	N	I	E	L	H	Q	Y	S	T	☺
I	R	O	O	L	L	Y	B	M	O	T	I	O	N	I	A	T	S	A	D	G	W	T	M
C	I	U	J	K	C	H	H	P	B	I	N	D	P	X	Z	S	D	Y	Q	W	A	E	R
T	M	R	L	Y	U	I	O	P	J	A	S	D	F	G	R	J	K	L	Z	E	L	X	C
V	I	T	B	E	N	M	L	S	E	J	W	F	O	U	F	A	R	N	R	H	N	M	K
S	N	P	M	T	A	R	E	I	C	E	E	B	D	N	U	O	P	G	E	D	O	F	J
C	A	H	N	L	S	G	R	S	T	A	R	E	D	E	C	I	S	I	S	D	M	S	R
Y	L	E	B	U	A	I	A	O	I	F	F	G	T	B	D	I	G	N	I	T	M	A	E
N	P	H	V	M	T	B	G	I	O	E	R	V	F	E	G	L	I	J	P	L	O	L	L
S	R	D	A	N	F	G	H	W	N	E	R	T	G	R	A	S	G	K	S	C	C	L	R
K	O	D	C	H	V	X	D	N	D	K	S	F	E	E	V	C	D	E	H	A	B	A	U
O	C	A	H	B	N	R	A	S	S	E	T	B	O	I	R	H	G	N	L	R	S	D	A
W	E	S	A	S	T	N	P	N	F	M	N	P	L	T	D	A	N	F	O	G	D	A	D
O	D	S	R	K	T	R	I	D	D	E	J	P	E	A	A	I	E	S	Q	J	F	N	J
T	U	H	A	L	Q	U	O	F	T	Y	K	D	N	R	R	O	I	D	U	S	G	F	A
N	R	C	S	O	B	K	L	T	D	F	A	H	J	G	P	C	S	A	I	W	K	K	V
W	E	J	E	D	M	U	U	R	M	N	B	V	C	X	Z	E	L	K	T	J	P	O	I
U	F	D	V	S	A	R	W	E	R	T	Y	D	E	N	I	A	T	S	U	S	L	K	G
I	C	D	O	P	L	N	A	Y	R	E	Q	A	Z	W	S	X	E	U	R	C	R	F	V
T	G	B	L	E	Y	H	N	U	J	M	I	K	O	L	P	M	L	P	I	B	N	K	O
N	J	I	I	B	H	U	C	V	G	Y	C	F	T	X	D	R	Z	S	E	T	E	A	E
Q	F	N	S	H	V	H	S	M	O	L	E	N	P	L	E	V	Y	R	D	H	I	H	V
F	A	I	R	F	A	X	B	A	R	A	S	S	O	C	I	A	T	I	O	N	P	E	Y
D	F	E	A	U	K	D	M	W	S	K	I	O	H	R	V	S	J	A	C	T	W	H	S

Fairfax Bar Association
Court
Rule Against Perpetuities
Common Law

Code
Criminal Procedure
Damages
Motion
Stare decisis

Tort
Res Ipsa Loquitur
Defendant
Sustained
Objection

Crossword Puzzle:



Across:

- "CLE at Sea" Cruise to _____
- By roots or stocks (think Wills & Trusts)
- Rule in _____ Case
- Retroactive effect
- Duces _____

Down:

- Lost objection
- _____ Negligence
- Challenging opponent
- Old side of court
- An attorney

Word Scramble:

Try to unscramble each word

EATBOP
PESTPOLE
CATTRONC
NUTPIEVI
TUTOYRATS
APUBONES

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FAIRFAX BAR JOURNAL

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A SPECIAL THANKS TO THOSE WHO DO SO MUCH

by Kristin Derlunas, Communications Coordinator

Calvin Coolidge, the 30th President of the United States, once said, "No person was ever honored for what he received. Honor has been the reward for what he gave." It is with this in mind that the FBA gave gratitude to those who gave their time, talents, and resources to help those who cannot help themselves through the FBA's *pro bono* program on February 21, 2008 at the Country Club of Fairfax. Arlene Beckerman, Director of *Pro Bono* Services stated, "This is my favorite event because we truly get to honor our members who went above and beyond to help make the community better."

The winners for outstanding *pro bono* work are:

Cooley Godward Kronish LLP for *Pro Bono* Law Firm of the Year:

When the Fairfax Bar *Pro Bono* Program was trying to start a new, cutting-edge community economic development program in Fairfax, it approached the firm of Cooley Godward Kronish. The invitation to participate



L-R: Timothy Lyden, Esq. (Pro Bono Lawyer of the Year); Robert Vieth and Eric Milch of Cooley Godward Kronish LLP (Pro Bono Law Firm of the Year); and Michael Dingman (James Keith Public Service Award Winner).

was enthusiastically accepted and a wonderful partnership between the firm and a small business development center was born. It is the first and only, to date, in Virginia. The idea behind the program is to link small, emerging businesses with limited financial means with the free legal resources of transactional

and corporate lawyers. In this way, the entire community benefits. New services in lower-income communities are provided, new jobs are created, and the business owners are able to find a way out of poverty through their own efforts.

continued on next page

On February 8, 2008, the world of legal technology support spun on its axis and pointed in a wonderful new direction.

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SPECIAL THANKS...

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Cooley's Reston office has engaged in many other types of *pro bono* work over the past few years. It has represented immigrants in asylum cases and indigent individuals with various litigation issues. It has helped establish many nonprofits, and then gone on to provide corporate tax assistance on an ongoing basis. It has represented nonprofits in zoning, leasing, and other real estate issues. In 2007, the attorneys in the Reston office donated approximately 4,000 hours to *pro bono* matters, representing just over 3% of attorney time.

Timothy Lyden for the Pro Bono Lawyer of the Year:

Timothy Lyden, a partner in the Northern Virginia office of Hogan & Hartson, began his *pro bono* work with the Neighborhood Outreach Program in February 2000. While other lawyers in the firm have volunteered in this program, Tim Lyden has been consistent in his efforts to assist the residents of the Eleanor Kennedy Homeless Shelter on Route 1 since his initial involvement. Despite the time and distance from his office, Tim regularly visits the shelter to provide legal advice, referral, and extended representation to those who are among the most needy in our community.

In addition to giving advice on a wide variety of topics, Tim and others have worked on social security appeals involving representation in an administrative hearing, some immigration follow-up, Section 8 housing issues, lost retirement income, and follow-up for information related to work that the firm doesn't handle, such as criminal, birth, and driver records. Since January 1, 2005 alone, Time has volunteered about 135 hours to helping the homeless with their legal issues.

Michael Dingman for the James Keith Public Service Award:

Michael Dingman, a partner in the Falls Church office of Reed Smith, has volunteered his time to help others less fortunate for many years. Much of his work has been in helping to serve individual poverty clients with personal matters and has been done in a way that has not been publicly highlighted. He has assisted low-income tenants with legal issues related to their housing almost since the inception of the Fairfax Bar *Pro Bono* Program's landlord/tenant panel in the 1990s.

Mike has also been involved in representing individuals in uncontested divorce matters. Mike has assisted at least 56 poverty clients on a *pro bono* basis since

1992. Since January 1, 2004, he has logged about 168 hours of *pro bono* time assisting Legal Services of Northern Virginia clients, more than any other Fairfax attorney.

Nrupa Jani for the Pro Bono Paralegal of the Year Award:

Since 2006, Nrupa has volunteered at the Herndon Neighborhood Resource Center, working in the Fairfax Bar *Pro Bono* Program's Neighborhood Outreach Program. The attorneys who work with her have come to greatly value and appreciate the services she offers. Not only does Nrupa help with the interpretations, but she assists with interviewing the clients and analyzing their legal issues. Nrupa puts the clients at ease, communicating with them in their own language, and eases the flow of necessary information. Nrupa also assists the attorneys with the necessary backup, making the sessions run more smoothly.

"We congratulate all of our volunteers who assist those in the community who do not have access to, or cannot afford, legal help. We hope that the honorees will continue to inspire those in the legal community to continue their *pro bono* work," said Yvonne McGhee, Executive Director of the FBA. ■

For more information on how to join the FBA's Pro Bono program, call 703.246.3779.

PRESIDENT'S COLUMN

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Word Hunt:

How many words can you make from the letters in: **CONCILIATION**

Where do you rank:

10 or less	First Year Associate
11 - 30	Senior Associate
31 - 50	Junior Partner
51 - 70	Managing Partner
71 or more	President of the FBA

(there are over 200 possible answers)

Please see answers to puzzles on page 12

***The Fairfax Bar Association
and Fairfax Law Foundation
express their sincere thanks
to all the generous
sponsors of the
2008 Bench Bar Dinner Dance
and Silent Auction donors***

*(complete lists will be published
in the next edition of the Journal)*

When Clients Need Interpreters in Criminal Cases

*by Emilia Castillo
Hispanic Bar Association of Virginia*

(THIS IS THE FIRST OF A TWO-PART SERIES. THE
SECOND PART WILL FOCUS ON THE USE OF
INTERPRETERS IN CIVIL CASES)

The right of a client to have an interpreter in a criminal case is fundamental. A defendant should be able to understand the nature of the charges against him, the ramifications of those criminal charges, and be able to assist his counsel in the presentation of his defense. In recognition of this fundamental principle, both the Federal Government and the Commonwealth of Virginia have codified the need for language interpreters in their respective codes.¹

The Virginia Code provides that, in criminal cases where the non-English-speaking person is the accused, the victim or a witness, an interpreter shall be appointed by the judge of the court in which the case is to be heard unless the court determines that the person does not require the services of a court-appointed interpreter. Unlike its federal counterpart, the Virginia statute only requires that an "English-speaking person fluent in the language of the country of the accused, a victim or a witness" be appointed. The accused, victim or witness is also free to obtain the services of an interpreter of their own choosing; however, that interpreter must be approved by the court.² Compensation for the interpreter appointed by the court must be paid in accordance with guidelines set by the Judicial Counsel and

Shall not be assessed part of the costs unless (i) an interpreter has been appointed for the defendant, (ii) the defendant fails to appear, (iii) the interpreter appears in the case and no other case on that date, and (iv) the defendant is convicted of a failure to appear on that date the interpreter appeared in the case.

In the event that all four of the above conditions are met, the court, pursuant to the statute, may, in its discretion, assess as costs the fee paid to the interpreter for their appearance. This discretion to assess costs was added to the statute as an amendment in 2007.

In addition to having the right to interpreter services available at trial, criminal defendants and their counsel have a right to have interpreter services available at any interviews (or meetings) between them. Moreover, the presence of the interpreter at these meetings does not destroy the attorney-client privilege. Interpreters cannot be

subpoenaed or compelled to testify as to any communication between an attorney and his or her client which might otherwise be confidential and privileged.³

Fairfax County has a clerk designated to find and hire interpreters for qualified defendants, victims, and witnesses—whether in the Juvenile, General District, or Circuit Court. This clerk coordinates for all types of interpreters—whether the language is Spanish, Portuguese, French, Mandarin Chinese, Farsi, or whatever language is required. Additionally, normally at least one Spanish-speaking interpreter is available on a daily basis to all criminal courts in Fairfax County. Nonetheless, the defendant's attorney is ultimately responsible for ensuring that the Court is aware of his client's or witness' need for an interpreter and the Commonwealth Attorney (or victim advocate) is responsible for ensuring that the Court is aware that the victim needs an interpreter.

Finally, interpreters should be available at all phases of the criminal procedure, i.e., preliminary hearing, trial, any hearing on a motion. Usually, a praecipe to the file and a follow-up phone call several days before the court appearance to the clerk in charge of interpreter services for criminal cases should be sufficient. Failure to take this extra step before the hearing can result in spending time unnecessarily while waiting for the court to find an interpreter who is available for the hearing.

Counsel's responsibility to their clients should never end when the judge makes a decision. It is important that the attorney makes sure that the client understands what has happened and what is expected of him. Interpreters should remain available after the hearing to assist in communicating with the client.

Like many English-speaking clients, non-English-speakers may not grasp fully the importance of the legal jargon used in courts—especially at bail hearings and/or plea hearings. Often, non-English speakers do not know what rules govern any probationary time or time while out on bail. Interpreters cannot give clients legal advice, nor should they ever be placed in the situation of having to explain a court's ruling while the attorney moves on to another case. Interpreters generally are more than willing to lend assistance to counsel in explaining what has occurred to their client, answering their client's questions, and informing the client of what is expected of him. It is the attorney's responsibility to ensure that their client is clear on what has occurred and what they need to do, if anything, after the hearing.

Recently the Commonwealth has approved the hiring of four (4) Spanish-speaking interpreters in Fairfax County and one (1) coordinator in Richmond. Two of these interpreters are assigned to the Fairfax General District Court and two to the Juvenile Court. Their first responsibility should be to assist in criminal cases.

Since these interpreter positions are relatively new, it is too soon to assess their effectiveness, whether contracted interpreters will still be needed and, if so, to what extent, and to gauge the impact of having these full-time employees at the courthouse will have on litigation, on both the civil and criminal sides. It does appear, however, that at the very least, in criminal cases, these interpreters should be the first to provide assistance when meeting with court-appointed defendants and/or witnesses. For the immediate time, however, it is still best to let the courts know, as soon as possible, whether you will need a Spanish-speaking interpreter and the dates and times the attorney (or his or her case) needs the interpreters. ■

This article is prepared on behalf of the Hispanic Bar Association of Virginia (HBAVA) in an effort to provide continuing education to the Bar on issues particularly relevant to the Hispanic Community of Virginia.

¹ See: 28 USC § 1827 and § 19.2-164, Virginia Code, as amended.

² §19.2-164 *op cit*.

³ §19.2-164 *op.cit*. Additionally, certified interpreters (at either the federal or state level) are required by their own Code of Professional Responsibilities, which require them to protect the confidentiality of all privileged and/or otherwise confidential information.

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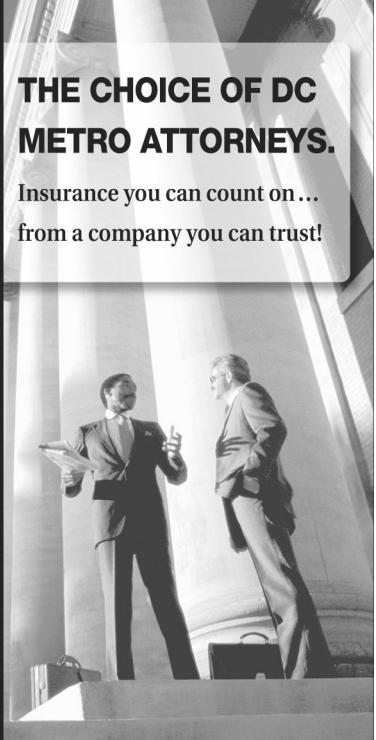


Photo Gallery—2008 Bench Bar Dinner Dance



BBDD 2008

by Edward J. Walinsky, Esq.

The annual Bench-Bar Dinner Dance on March 8, was a mix of the familiar and the unexpected. The familiar was the tried and true format of auctions, food, and music. There was plenty to bid on, ranging from Redskins tickets to jewelry and purses, to sports memorabilia. The food was plentiful (though, surprisingly, not a buffet, nor were there cheeseburgers) and the music was lively.

It was the unexpected, however, that made this a night to remember. First, this was the largest turnout ever, well over 550 revelers. Since the theme was "License to Chill in Margaritaville," the complimentary margaritas were a wonderful touch (and there was no carnage in the parking lot afterwards, no one even stepped on a pop top). The decor was festive; the attendees wore a mix of the customary formal attire with some parrot-themed accessories. Another innovation was the complimentary photo op, in which one (or several) could be photographed in all their finery—unlike many pictures, all agreed that these turned out well!!

Most interestingly, though, was the opportunity to realize that judges were human (and some still are). Portraits of Judges MacKay and Viereggs were unveiled and a mini-roast ensued. Judge Alden revealed that Judge MacKay actually came to the bench from a nunnery, and Judge Wooldridge provided some doggerel about Judge Viereggs first case on the bench (the actual story was a cross between a particularly graphic Buffet song and Michael Vick). The two retirees spoke graciously about their years on the bench and appeared happy in their new careers (although Judge MacKay curiously expressed nostalgia for Motions Day). For those who don't know, Judge MacKay returned to her roots in Chicago, while Judge Viereggs remains local as a mediator with the McCammon Group.

Two other items of note: the potatoes were purple in honor of (one of) Judge MacKay's hair colors, and the portrait of Judge Viereggs needed a new caption so that all can realize that it was actually of him, and not of Judge Stitt. Evidently, newer members of the bar keep confusing the two (hint—listen to them talk). In keeping with the changes in attitudes, many of the judges enthusiastically took to the dance floor while others enjoyed reconnecting with former colleagues in this informal setting.

As always, the bar staff worked tirelessly to ensure a festive evening. Bar President Dan Ruttenberg emceed the event and kept the focus on the judges. A wonderful time was had by all; this will be an especially tough act to follow. As long as there's booze in the blender and the judges continue to let down their hair, this event will be a must on the spring social calendar. ■ *(see photos on facing page)*

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Court Appointed Attorneys Warned on Fee Waivers: Use Them or Lose Them!

by Charles E. Collins, Esq.

Over the last few months Judge Mitchell Mutnick has spearheaded an effort to familiarize court appointed attorneys with Fairfax County General District Court's policies and procedures for approval of fee waivers in indigent representation cases. On February 22, Judges Mutnick and Thomas Gallahue met in Courtroom 1A with attorneys who regularly represent these clients. This followed a January 25 session when Judge Stewart Davis joined Judge Mutnick in a similar discussion with another group of lawyers who regularly handle these cases.

On July 1, 2007, Virginia Code §19.2-163 was amended to authorize fee cap waivers in indigent defense cases when legal representation efforts, necessary and reasonable time expended, novelty or complexity of the issues, or other circumstances justify such a waiver. The Virginia general assembly established an \$8.2 million dollar state-wide fund to cover expenditures when these waivers of fee limits are granted. Waivers may only be granted up to the approved rates set by the Supreme Court of Virginia.

Despite the availability of these funds, attorneys across the state seem reluctant to apply for the new waivers. Since the statute went into effect through the end of 2007, a total of 1,104 requests have been submitted statewide for the waivers. Of that total, 1,036 were approved for a total of \$254,573, a scant fraction of the amount authorized. Judge Mutnick expressed that the judges are concerned if these funds remain untapped by the end of the fiscal year, "The assumption will be that court appointed attorneys are getting paid enough. We know that is not true."

While Judge Mutnick hopes to demystify the waiver application process, all of the judges continue to stress the requirement that any such waiver request be "reasonable." Attorneys who expend five hours or less in handling a court appointed case should not normally expect the court to look favorably upon a waiver request.

Requests for waivers, including a detailed accounting of the time expended, should be filed in the court wherein the case was concluded within 30 days. However, the judges made it very clear that the best chance for approval is when the waiver is handed up to the judge in the Courtroom **at the time the case is concluded**. Only the judge **who presided over the case** can approve the waiver. This can cause additional problems when the waiver is requested after the case was finalized, or if the presiding judge is either a substitute or is otherwise unavailable.

Application for a waiver requires submission to the Court of an **attorney time sheet**, accompanied by a **Form DC-40** (List of Allowances—revised 7/07), **AND** a new **Form DC-40-A** (Application of Authorization for Waiver of Fee Cap). Judge Mutnick stressed that the DC-40 can be completed

online at www.courts.state.va.us and then printed out for submission in court. He encouraged the attorneys to photocopy the instructions on the back of the DC-40 and attach them whenever a downloaded DC-40 is submitted in court. He also stressed the need to complete every one of the blocks not reserved for court use only. Those most frequently left blank by attorneys include "Original Code § Charged," "Chart of Allowances Code" and "...was case certified?" Remember that waivers may only be requested in cases when the original charge is a state charge, thus, county, city, and town offenses do not qualify.

A separate Form DC-40 is required for each charge and must include the reasons justifying such a waiver, as well as the attorney's time sheet. A sample attorney time sheet is available for reference online at www.courts.state.va.us. Judge Mutnick stressed the need for attorneys to include a justification on the DC-40-A that documents efforts expended over and above what might reasonably be expected an average representation. It is important that the actual time spent in case preparation of each charge is separately calculated on these forms.

Examples of factors judges will consider in deciding whether to grant fee cap waivers include:

- Single charge representation (especially misdemeanor and juvenile cases);
- Juveniles charged with offenses that would be a felony if committed by an adult;
- Jury trials, including misdemeanors;
- Extensive travel required during representation;
- Juvenile certification/transfer hearings - J&DR court jurisdiction retained;
- Issues requiring extensive legal research;
- Matters involving DNA and other specific evidence;
- Multiple defendant, victim, or "spree" cases;
- Complex fraud cases;
- Representation of a client requiring interpreter services;
- Cases involving serious mental health issues or accessibility challenges;
- Insanity defenses;
- Complex investigation, considering number and accessibility of witnesses interviewed, record collection, document organization and use of investigative, expert, or other services;
- Cases involving unusually long or complex pretrial hearings, trial, or sentencing hearings;
- Service as advisory counsel to *pro-se* defendant during felony trial; and,
- Change of venue cases.

These factors are not all inclusive and attorneys are encouraged to submit waiver applications whenever the attorney believes in good faith there is a reasonable justification for doing so. ■

Tomorrow in Legal Tech

by Sharon D. Nelson, Esq. and John W. Simek

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"Beam me up Scotty."—
Captain Kirk in *Star Trek*, 1966

Star Trek is coming. We can feel it in our bones. In the not-too-distant future, lawyers will stride through their office door and command: "Lights. Music. Computer on." And it will happen. We already have voice recognition software and we have "smart home" devices in abundance. All this will one day converge so that we can do much of what we do physically by voice command.

Likewise, tabletop computing is likely to take off. How much simpler to arrange our photos or graphics by manipulating them by hand on a tabletop than to do it the current tedious keyboard fashion. By the end of 2008, you can expect to see tabletop computers in high tech companies, in bars, and on cruise ships—they will be used at first as devices for the technologically advanced (with deep wallets) for entertainment purposes—but rest assured, their use will spread. Cameras will be made for tabletop computers such that they can interact with the table and upload photos without any physical connection—it will all be wireless.

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Look at the surfaces around you—not just the tables, but walls, ceilings, etc. they can all be turned into computer monitors by the simple use of projection devices. Virtual keyboards can go where ever you go for those things that still require typing.

We may be a tad short of the "beam me up" era, but we are getting mighty close. Perhaps most interesting is all the things we CAN do with one device or another and our frenetic attempt to cram all those functions into one device. One thing Apple's Steve Jobs has always keenly understood is that it is important to cast your net upon the waters and reel in the functions that consumers want. Not all functions belong on a device simply because you can put them there. The device will be too cluttered and complicated. It is critical to find those selected functions that consumers are hungry for and make them available in a simple, user-friendly fashion. Hence, the frenzied purchasing of the iPhone. ▶



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Technology moves so fast that no one can truly keep up with it, even the technologists. Pretty soon, if the federal government has its way, we will not be carrying national ID cards, but have some form of Radio Frequency Identification (RFID) on our persons at all times telling everyone with a reader all about us. Worst case, we'll be required to have RFID implants. Soon you'll be able to walk into your drugstore and have the druggist look at the screen reading your RFID chip and call out helpfully "Hemorrhoid cream is on aisle 9 Ms. Baker!"

Right now, most of those who cater to the legal market are guessing at what lawyers want, but this guessing is likely to become more astute over time. Even the non-legal market will impact us. Are we not all shackled to Microsoft? There's our prediction—for the foreseeable future, we will remain shackled to Microsoft. Until and unless the third party software lawyer's need becomes available for other operating systems, Redmond will continue to rule. But no sooner had we written those words than we read an article about three of the Fortune 100 companies exploring the possibility of replacing the Office Suite with Google's rendition of it. Microsoft may have short term dominance, but will its high prices and notorious inefficiencies play into the hands of competitors?

We are less certain about Google, which is no longer poised to become the second 800 pound gorilla in the land (as it was last year), but has solidly achieved that position. Google's privacy policies are under intense scrutiny in the European Union and growing scrutiny here in the U.S., but thus far, virtually every new Google venture has been received warmly by the public. Another prediction is the fierce battle of the gorillas as Google begins to infringe on the Office productivity space of Microsoft. Google is already the leader in the Web 2.0 applications as desktop replacements. Microsoft is increasing the stakes and going after Google's market with their Live applications. This clash of the titans should be interesting to observe—from a safe distance, of course.

At the end of the day, lawyers want to practice law. There are lawyer/geeks to be sure, but they represent a small slice overall. So let us also predict that lawyers will be looking for hardware and software that performs legal core functions at a budget price. They may not be able to escape the clutches of Microsoft, but they are keenly looking at low or no cost utilities that make their lives easier. The utility JOTT, which is creating a lot of buzz as we go to press, is just one example of a simple need being fulfilled. Now that we all live and die by the Inbox, how much sense it makes to call a number and leave a voicemail that will be converted to an email in our Inbox. How many scraps of paper have YOU lost? We lost count a long time ago.

One area in which we expect to see great progress is in collaboration. Right now, lawyers are struggling to collaborate easily, whether in collaboratively working on documents or attempting to hold a meeting. It probably isn't fair to call collaborative technologies nascent—they've been with us for a while. But technologies which are cheap and easy—oh boy, is there a demand for those technologies! About the same time as this article is published, the ABA will be publishing a guide to lawyer collaboration by noted legal technologists Tom Mighell and Dennis Kennedy—that's a book you'll want to buy if collaboration is something you want to do better—or to begin doing!

Another arena of change will be in the courtroom. We believe that judges will become more receptive to courtroom technology and some local court rules will change to make it clear that lawyers can indeed bring laptops and perhaps even phones into courtrooms as a matter of course because that is where their cases and calendars

are. Mind you, it is likely that if cell phones go off, as they were wont to do in the old days when rules allowed them, irritated judges will do what one of our judicial friends did—throw the phone out the courthouse window. In all likelihood a lawyer's courthouse ID (and those IDs are sweeping the nation as a way to avoid security lines) will also allow the entry of his/her technology.

Technophobic judges still abound, but they are lessening in number—and the legal world is pushing hard for change. All of the U.S. District courts now have mandatory electronic filing—and the appellate courts will follow in the not-too-distant future. The states are clearly moving in the same direction, some faster than others. But adoption of e-filing as standard is a major domino which will topple other dominos and accustom the legal world—in the cities—and in the boonies—to working electronically.

We are currently up to about 2,000 legal bloggers and a relative handful of legal podcasters. Those numbers are sure to rise. Blogging is easier and cheaper, but we'd be surprised if both areas didn't continue to grow.

Thinking of getting a BlackBerry? Our advice is not to do it. Our prediction is smartphones like the Treo 700 WX, which integrate with an Exchange server, will be too alluring to resist. BlackBerry usage may well have peaked, especially since it requires additional software and hardware that the Windows Mobile devices do not.

The new iPhone? Currently not a business device. If you're feeling like Father Christmas, get one for your kids. It's new, it's slick and it wasn't made for anyone who wants to conduct business. However, we'll go out on a limb and predict that the iPhone will "begin" to infiltrate the business market as third party applications become available and Apple opens the connectivity options. At the end of the day, we don't think it will cut the mustard and will fall short of meeting the REAL needs of the business community.

Lawyer advertising has already shifted in part from the print world to the electronic world and that trend is expected to continue. We buy pizza online, we buy movie tickets online, we cruise online, and yes, we find lawyers online. Time to ditch, or at least diminish, the Yellow Pages advertising and move into the whizbang of electronic marketing.

Vista? Don't rush in. Microsoft still hasn't finished mucking the kernel and current word is that Service Pack 1 won't be released until sometime in the spring of 2008. The next year will see growth in Vista usage, but most of it will come through normal upgrade replacements, not a rush to Vista itself. And at that, most consultants are telling folks to order replacement machines with XP where possible, at least until Vista stabilizes. Recent studies have shown that no matter what you run Vista and XP on, XP runs significantly faster. Tell us again why you would trade a race horse for a nag?

A lawyer shift to Macs? Nope, we don't predict that. They are easier to switch to now, given the interoperability of the new Mac operating systems with Windows, but the Windows applications will continue to dominate the market. Granted, some attorneys will purchase the Mac and dual boot to a Windows environment, but most will just stick to a straight Windows machine. Still, there's more interest in this area than ever before. Watch for Brett Burney's new book on *Mac for Lawyers* to surface in 2009. If anyone can give lawyers a credible reason to move to a Mac environment, it will be Brett.

Electronic discovery? Look for a steady shift to native format production, and a consequent saving in ED costs. Those who are

married to TIFF production will limp along for a while with gullible clients, but the smart ED vendors are making the move to native now and using TIFF only in situations where native format doesn't work, primarily where redaction is involved.

In the next year, and every year for years to come, look for a shakeout among ED vendors. Everybody decided all at once that they could do ED—it was the California Gold Rush all over again. Many can't do it all, many don't do it well, and many charge highway robbery prices because that's what the market has borne in the past. Lawyers and law firms are getting shrewder and the days of charging astronomical prices that bear no relation to time and effort are numbered.

Backup? The biggest change is that more and more lawyers are moving to the relative simplicity of an external hard drive for backup. Cost-effective, reliable, and easy. More adopters are likely.

Outsourced backup? The prices are (relatively) high, there are security concerns and more than a few have outright failed to deliver on their promises. We guess that lawyers will continue to do it, but there seems to be a growing do-it-yourself trend now that backing up reliably has gotten easier and cheaper.

The list of predictions could go on and on but our crystal ball is murky and undoubtedly, we have already written words we'll have to eat. That's just how it goes in the legal tech world.

One thing we can say for sure: no one REALLY KNOWS. Technology evaluation has been a constant source of surprise and no one has a perfect record of predictions. The only thing we can say for sure is that the computer you just bought is already well on its way to obsolescence—for sure, those in development are faster, smaller and contain more robust resources. We are moving at warp speed, with no sign of slowing down.

Even the guru of gurus has been known to be wrong. Witness a one time prognostication from Bill Gates: "640K ought to be enough for anybody".

Predictions are a dicey business. ■

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology and computer forensics firm based in Fairfax, VA.; 703.359.0700; www.senseient.com.

Green Building Requirements

by Kenneth W. Wire, Esq.

A "green building" is commonly defined as a building in which various sustainable development principles and environmentally-conscious decisions are incorporated into the building's design, construction, and operation. For the past several years, nearly all jurisdictions in Northern Virginia have expressed the desire and need to incorporate green building concepts into the development approval process. There are, however, two significant obstacles to incorporating green building requirements as a comprehensive building requirement. First, both local governments and the development industry itself initially had difficulty quantifying and qualifying how well a specific project achieved the various green building objectives. To address this issue, many localities have adopted the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) rating system as their preferred green building rating system. The USGBC is a 501(c)(3) non-profit organization that provides its own certification and rating for different types of real estate developments.

The second obstacle facing localities is that the Virginia planning and zoning enabling statutes do not currently authorize localities to impose such a comprehensive requirement upon all developments. As such, localities have adopted and are considering alternative means of increasing the number of developments that incorporate green building standards. The result of limitation of the enabling statutes and the various policies is that clients are likely to encounter green building requirements in a limited number of circumstances.

LEED

The LEED rating system is gaining in popularity because it provides local governments and developers with a known set of guidelines and standards that are applied to various types of developments. The Metropolitan Washington Council of Governments (COG) recently adopted the COG Intergovernmental Green Building Group's (IGBC) report on "Greening the Metropolitan Washington Region's Environment." The report acknowledges that while there are several different green building objectives and standards, the LEED rating system is quickly becoming the system preferred by local governments and state and federal agencies.

The LEED rating system is preferred by local governments for several reasons. First, the LEED rating system is administered by the USGBC and does not require any involvement by the local jurisdiction and thus does not impose any significant administrative costs upon the locality. Second, the system provides third party verification ensuring various green objectives are met. Finally, the rating system also provides multiple points for various green building concepts that are available for any particular project thereby giving the developer some discretion as to which points it will attempt to attain during the development of the project.

There are separate LEED rating systems for various types of developments: New Construction, Existing Buildings, Commercial Interiors, Core and Shell, Schools, Retail, Healthcare, and Homes and Neighborhood Developments. Within each of these separate rating systems, points are awarded for the incorporation of various green building principles in six different assessment areas: sustainable site development, water efficiency, energy efficiency, materials and resources selection, indoor environmental quality, and innovation. Each of these assessment areas includes a different number of LEED points assigned to various green building proximity to public transportation, the recycling of construction materials, the installation of low flow water devices, energy efficient mechanical systems, and the use of paints and adhesives that use a low amount of volatile organic compounds. Upon completion of a project, the USGBC reviews the documentation submitted by the developer to determine if a project satisfied the requirement for various LEED points. The USGBC then awards a final number of points and a project can receive a certified Silver, Gold, or Platinum LEED designation.

While the LEED rating system is clearly establishing itself as the preferred rating system, there are only a few circumstances in which a locality can request that a developer agree to attain a specific LEED rating; during a discretionary development approval process such as a rezoning or special use permit review; as a requirement of a government-funded development; or as a leasing requirement by a government tenant.

continued on page 13

Robert F. Horan, Jr.

continued from page 1

As Horan spoke at the end of the ceremony, he looked back on his career during which he oversaw two high-profile cases—Lee Boyd Malvo, who was one of the men responsible for the Beltway sniper attacks in 2002, and Mir Aimal Kasi, who killed two people outside the CIA headquarters in 1993. He said, “It’s been a great trip. I never had any regrets.” He also gave some heartfelt advice to the crowd when he added, “Your responsibility is to the truth...your duty is to the truth. We have an allegiance to it—a band of brothers and sisters.” ■

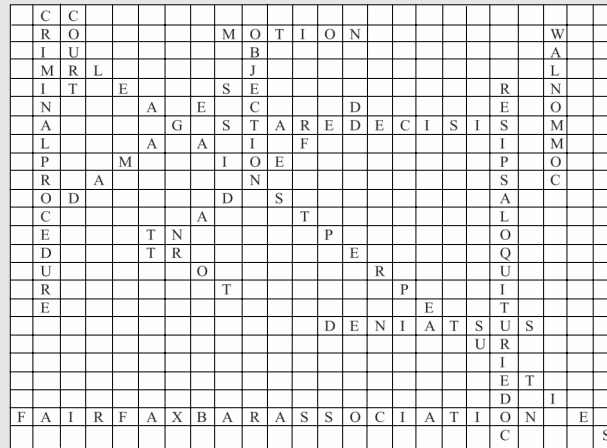
*Photo courtesy of
Mattox Photography.*

*To view all photos go to
www.mattoxphotography.com.*

*Under the red bar
“View Your Photos”
enter the password: HORAN*

Answers

Word Find:



Crossword Puzzle:

Across

3. Bermuda
4. Per Stirpes
5. Shelley's
8. *Nunc Pro Tunc*
9. TecuT

Down

1. Overruled
2. Gross
4. *Pro Se*
6. Equity
7. Counsellor (yes, it is spelled with 2 "l"s. Look it up in Black's).

Word Scramble:

- Probate
Estoppel
Contract
Punitive
Statutory
Subpoena

Robert F. Horan, Jr. and Family Members



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June 3, 2008

More information coming soon

Green Building Requirements

continued from page 11

DEVELOPMENT APPROVAL

Even though localities cannot impose a comprehensive jurisdiction-wide LEED requirement, the Virginia code enables localities to accept "voluntary proffers" by a developer as a part of a rezoning of a property. Several developers have agreed to achieve a specific LEED rating as part of the rezoning process. Similarly, such conditions have also been imposed as conditions of a discretionary development approval such as a special exception or special use permit. Many developments in the region have agreed to specific LEED proffers as a means of building goodwill with the community and the approving governing body.

Such environmental advocacy groups and development industry associations have argued that localities should enact an incentive program for developments that commit to attaining a specific LEED rating. Such incentives could provide additional density or expedite the development approval process. These incentives could be made available to all property owners and, therefore, increase the number of LEED certified properties in the region. To date, however, Arlington County is the only jurisdiction in Northern Virginia to implement a density bonus incentive program.

GOVERNMENT FUNDED AND LEASED PROJECTS

The United States General Services Administration (GSA) requires all new GSA projects and substantial renovations to achieve LEED certification. The GSA strongly encourages all projects to achieve the Silver certification level. While this is a significant step by GSA, only eight GSA buildings in the United States are LEED certified or higher, and only nine buildings which are leased by GSA have achieved similar certifications. This number represents a fraction of the 8,300 owned and leased GSA facilities in the United States.

Similarly, several localities have agreed to attain a specified LEED certification for publicly funded projects. On February 11, 2008, the Fairfax County Board of Supervisors adopted a green building policy which requires that all new county buildings over 10,000 square feet are required to achieve at least a Silver LEED certification. The County notes that the policy will add 2-4 percent in construction costs per building.

STATEWIDE BUILDING CODE

It is unlikely that the land use enabling statutes will be amended to permit localities to implement a green building rating system for all developments. Therefore, certain advocacy groups and governmental associations argue that the statewide building codes should be amended to incorporate various aspects of green building technology. They argue that amending the building codes would remove the green building requirements from the discretionary review process and apply the same standard to all buildings in the Commonwealth. Even though amending the statewide building code undoubtedly presents its own set of obstacles, such an amendment is not an all or nothing proposition. Certain green building requirements could be added as part of the upcoming update to the code, while leaving the more controversial amendments to a later revision.

CONCLUSION

Regardless of the current limited application of green building requirements in the region, governments, landowners, and developers alike are beginning to acknowledge the need to provide a comprehensive mechanism for requiring and evaluating environmentally-conscious building and land use decisions. As such, the development industry and their attorneys should expect a continuing effort to revise and update green building requirements in Northern Virginia. ■

Kenneth W. Wire is an associate with McGuireWoods, LLP. His practice focuses primarily on land use related matters in Northern Virginia and Suburban Maryland. He is a member of the National Association of Industrial & Office Properties, Northern Virginia Chapter and is the Chair of the City of Alexandria Government Relations Subcommittee.

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WHEN SHOULD YOU REFER TO AN ELDER LAW SPECIALIST?

By Evan H. Farr, Certified Elder Law Attorney

Author of *The Virginia Nursing Home Survival Guide*

When your clients are concerned about nursing home expenses and/or Medicaid eligibility, your first thought should be to consider a referral to an elder law specialist. Medicaid laws are extremely complex, and they change frequently. The U.S. Supreme Court has called Medicaid law "an aggravated assault on the English language, resistant to attempts to understand it." *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981). Our own Fourth Circuit has called the Medicaid

Act one of the "most completely impenetrable texts within human experience" and "dense reading of the most tortuous kind." *Rehab. Association of Virginia v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994). Yet despite this complexity and despite the fact that much of the Medicaid law was re-written in early 2006, numerous Medicaid planning options still exist. No one ever wants to end up in a nursing home; however, if a nursing home becomes the only option, my firm and I help clients get the best possible care by protecting assets from the forced liquidation often required by Medicaid. By obtaining Medicaid benefits for clients and then helping the clients use the protected assets to pay for better care, we help our clients preserve dignity and quality of life when it matters most. For example, protected assets can be used to hire a private caregiver to supplement the basic level of care provided by the nursing home, or to purchase services or items for a nursing home resident that are not covered by Medicaid, such as special medical devices, upgraded wheel chairs, transportation services, travel and entertainment, and other amenities that make life better and more enjoyable.

With 3 attorneys, 4 paralegals, and a geriatric care coordinator, my practice focuses on Life Care Planning & Medicaid Asset Protection. In addition to being the only attorney in Virginia who has earned the dual designations of Certified Elder Law Attorney* and Certified Estate Advisor,* I was also recently named as a **Virginia Super Lawyer**, an honor bestowed upon Virginia's top 5% of lawyers as chosen by other Virginia attorneys and through the independent research of *Law and Politics Magazine*.

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

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