

JOURNAL

Newsletter of the Fairfax Bar Association

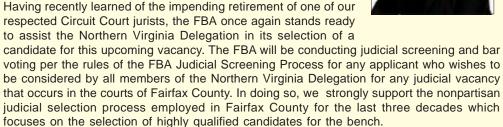
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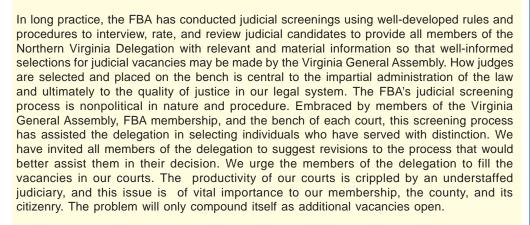
October/November/December 2018

PRESIDENT'S COLUMN

By Christie A. Leary, Esq.







The FBA has welcomed the opportunity to implement, participate in, and refine the judicial screening and selection process in partnership with the Northern Virginia Delegation. This process has been so successful that other counties throughout the Commonwealth of Virginia have sought to revise and model their own efforts on that employed in Fairfax County. In 2015, the FBA participated in the Commission on Integrity and Public Confidence convened by Governor Terry McAuliffe. The Commission provided a report regarding recommendations to promote good governance in Virginia. The Integrity Commission reviewed in depth Virginia's judicial selection process. The stated goal of the Integrity Commission was "to ensure the selection of highly qualified candidates while increasing transparency and minimizing political considerations." The Commission lauded our process as the "Fairfax Model," a shining example of merit-based evaluation, screening, and selection of well-qualified candidates to fill judicial vacancies.









President's Column

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Despite the authorization and funding for additional positions on our bench by the Supreme Court and the General Assembly, the 19th Judicial Circuit is understaffed and vacancies remain unfilled. A sound screening process and a sensible delegation that values quality more than politics explains why our bench is the one of the finest in the Commonwealth. We urge all members of the Northern Virginia Delegation to participate in the judicial selection process to help our jurisdiction fill existing and forthcoming judicial vacancies.

We also ask our membership to become active in supporting the filling of these vacancies. Become a member of the FBA's Judicial Screening Committee to support the evaluation and selection of qualified candidates. Participate in the bar voting process to rate the candidates. Write to your delegate and senator to request that the legislature fill the vacancies in our courts. We need judges, and we need the vacancies in our courts filled.

FBA NASHVILLE CONVENTION

Nashville, we thank you, for hosting our 2018 Annual Convention. For those of you who have not yet visited Nashville, I would encourage you to do so. The city provided a scenic backdrop for our attendees to learn, network, and enjoy some time away from the office. The Omni Nashville Hotel, located in the heart of downtown Nashville, provided an excellent convention space. Attached to the Country Music Hall of Fame, the hotel had rooms with views of the city, multiple restaurants, and a beautiful event space. Everywhere you go in Nashville, you are surrounded by the sounds of live music. From the moment you get off the plane, there is a band playing in the airport. In our hotel, a live band was there to entertain us as we grabbed a bite to eat before heading out to explore the city. As you walked down any street or alley, live music emanated from the stores, the restaurants, and the bars, clubs, and honky-tonks.

The Convention would not have been possible without the assistance and planning of many dedicated people. Beginning last spring, our convention committee began roundtabling ideas for CLEs, activities, and events. Recognizing the multitude of choices available for our attendees, we opted to provide CLE programming in a way which allowed people to obtain their credit hours in the morning and be free for the afternoon and evening to enjoy the sights and sounds of the city. Each evening, we scheduled a networking reception to give folks an opportunity to come together and share their daily adventures before heading out on a new one.

Our CLE planning subcommittee, consisting of Kim Huguley, Julie Gerock, Kathy Taylor, Hon. Manuel Capsalis, and Donna Dougherty, put together a terrific panel of speakers. Kim Huguley, a native of Nashville, had a wealth of connections and ideas to provide a Nashville flavor to our programming. Julie Gerock was also instrumental in connecting us with speakers to provide updates on legal topics of interest to our group. Judge Capsalis not only served as a speaker but also helped with bringing us a touch of wellness.

On Thursday, Donna Dougherty served as moderator for our Effective Trial Advocacy CLE anchored by Hon. Lorraine Nordlund, Hon. Daniel E. Ortiz, Hon. Mark C. Simmons, and Hon. Robert J. Smith. Lauren M. Spahn, a Nashville-based attorney, provided us an overview of entertainment law contracts. Finally, the morning was rounded out with a look into meditation and mindfulness practices for attorney well-being brought to us by Judge Capsalis and Joanna L. McCracken, Esq.

Many Nashville visitors would recommend that you cannot leave without enjoying bar-b-que and hot chicken. As a result, we all attended a luncheon at Martin's Bar-B-Que Joint and were treated to some delicious Southern food.

A special thanks to Protorae Law for sponsoring and hosting a reception at the Famous Saloon. We had the opportunity to enjoy some live music, good food, and great drink right in the heart of the downtown area.

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FAIRFAX BAR JOURNAL

Official Newsletter of the

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The Honorable Craig Johnston has joined The McCammon Group after serving as a Circuit Court Judge, and prior to that as a General District Court Judge, in Prince William County. A veteran who served as an infantry officer in Vietnam, Judge Johnston is a recognized leader in his community. Prior to his tenure on the bench, he enjoyed a successful practice in Manassas, where he served as a President and Board member of the Prince William County Bar Association. He was the Virginia State Bar Council Representative for Prince William County, as well as President and Board member of a number of civic, charitable, and community organizations. He is the author of the reference book "Trial Handbook for Virginia Lawyers." Judge Johnston now brings his knowledge and skill to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth and beyond.

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President's Column

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Friday's programming started with a Legislative Update CLE moderated by Julie Gerock. Kelly Juhl led us off with an entertaining look at updates in family law, Jonathan Phillips offered an overview of updates affecting criminal law practitioners, Michael Thorsen provided an update to our civil practitioners, while Judge Ortiz, Judge Simmons, and Hon. Penney S. Azcarate provided a perspective from the bench on these important updates. Expert witness and business valuator, Z. Christopher Mercer provided our attendees a primer on business valuations, while Judge Nordlund, Judge Ortiz, and Judge Smith offered insight on that topic from the bench. Finally, our Friday morning rounded out with a CLE on Blockchain provided by attorneys Marc J. Adesso, A.J. Bahou, and Shane Morris of Nashville's Waller Lansden Dortch & Davis, LLP.

Our CLE programming concluded on Saturday with Judge Capsalis providing an interactive and lively review of ethics issues.

Our fun subcommittee, consisting of Josh Isaacs, Wes Allen, Jon Phillips, and Kim Huguley, reviewed activities, events, and points of interests in Nashville to help identify options for our attendees. The Nashville Predators played a few times during our visit, and we got to see the city come alive with Smashville fever. Carrie Underwood was kind enough to perform the last night of our convention at the Grand Ole Opry. Those who could not get tickets for the big event enjoyed the Ryman Auditorium, amazing restaurants, or live music at any number of other venues.

Bringing our convention into the modern age, we tried something new this year. With the help of Jonathan Phillips (attorney by day and graphic designer and computer expert by night), we reviewed and selected the Guidebook App to provide our attendees with an app to follow the convention schedule, download CLE materials, post pictures, and keep in touch with other attendees.

A special thanks should be extended to all our sponsors, Inabnet Court Reporting, The McCammon Group, and Protorae Law, as well as all our speakers and moderators. We are grateful to the Convention Planning Committee of Wes Allen, Judge Capsalis, Jessica DeVaughn, Julie Gerock, Josh Isaacs, Jon Phillips, Kathy Taylor, Donna Banks, Luis Perez, Kim Huguley, and Rob Worster. Special appreciation also goes to Courtnie Norris, Brianna Allen, and Jana Sehrer who helped make the convention possible and caused it to run smoothly for everyone.

Until next time, Nashville! ■













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TEN THINGS EVERYONE SHOULD KNOW ABOUT ESTATE LAW PLANNING

By Brooke C. Tansill, Esq., Co-Chair, Wills, Trusts & Estates Section

Far too often, people tell me that they do not need to worry about estate planning. Among the most common explanations I hear are "I'm not rich," "I'm too young," "I'm not married," "I don't have kids," or my favorite, "My family already knows what I want." I understand that there are far more pleasant topics to discuss than death and taxes, but the reality is that estate planning is an essential component of financial planning and, more broadly, of life planning. In an effort to debunk some of the myths surrounding estate planning and to encourage readers to move forward with this type of planning, I have outlined 10 things everyone should know about estate planning.

- ADVANCE MEDICAL DIRECTIVE: In this document you authorize a first choice and a second choice to make all medical
 decisions for you in the event a time ever comes when you cannot make these decisions for yourself. You even authorize
 (but do not direct) your agent to withhold or withdraw life support.
- 2. GENERAL DURABLE POWER OF ATTORNEY: You authorize a first choice and a second choice to manage your financial affairs in the event of incapacity. Specifically, you authorize your agent to pay your bills, manage your financial accounts, sell or refinance listed real estate on which your name appears on title, possibly make gifts to family members or others, and in the event you become long-term incapacitated, to pour assets over to your revocable trust if you have one, or if you do not have one, to establish a trust for you.
- 3. WHY YOU NEED A WILL OR A REVOCABLE TRUST: If you die intestate (without a Will or Revocable Trust), the state will determine who receives your assets. A Will or Revocable Trust allows you to control who receives your assets. In your Will you should name preferred guardians of your minor children and you should establish trusts to hold your children's and grandchildren's shares beyond their 18th or 21st birthdays. You can also establish a trust for your spouse to provide management, to preserve the assets, and/or to direct where the residue passes upon the spouse's death. This is a particularly helpful strategy in the case of blended families. Finally, you can implement estate tax minimization planning and protect assets from potential creditors of the beneficiaries.
- 4. CONSIDER WHETHER YOUR BASIC ESTATE PLANNING DOCUMENT SHOULD BE A REVOCABLE TRUST RATHER THAN A WILL: In the event of long-term incapacity, a Revocable Trust is a much better mechanism than a general power of attorney for management of assets. It avoids the need to have a court proceeding to determine incapacity and to appoint a guardian of person and conservator of property. At death, a Revocable Trust avoids court-supervised probate and probate legal fees; avoids the public disclosure of your estate plan, i.e., who gets what and how (may be important if controversial); avoids the public disclosure of the nature and extent of assets (which is particularly important if you are wealthy), and in Virginia, avoids probate tax. In general, the rule of thumb is that the older you are, the wealthier you are, the singular you are, the more desirable it is for you to use a Revocable Trust.
- 5. SELECT GUARDIANS AND TRUSTEES FOR MINOR CHILDREN: Parents should select Guardians based on parenting skills and perhaps considering what would be the least disruptive to children's lives, e.g., location. Parents should select Trustees to manage assets for young children based on financial prudence/probity. You might consider naming a family Trustee to serve with an independent Trustee such as a bank or trust company, attorney, accountant, financial advisor, or trusted friend. You might permit the family Trustee to discharge the independent Trustee but require the family Trustee to replace the discharged Trustee with another independent Trustee.
- 6. ADVANTAGES OF A CORPORATE TRUSTEE VS. A FAMILY TRUSTEE: Individuals serving as Trustees tend to behave badly, self-deal, borrow money from the trust, forget to file tax returns, and make stupid investments. They do not have the "deep-pockets" to correct misbehavior or bad judgment. Banks and trust companies do not make foolish mistakes (or steal), and they have deep pockets to correct any mistakes they make. Interestingly, it should not cost significantly more to use a Corporate Trustee. Corporate Trustees typically do not charge a significant sum for trustee services; they charge their standard investment management fee, which globally is almost always about 1 percent of assets under management annually, regardless of what sort of entity is doing the investment management, plus some nominal fee for Trustee services. So if you name your sister as Trustee of a \$3 million trust, you hope she will hire and pay an investment manager; plus she will probably charge trustee fees herself. If you name your sister and a bank or trust company as co-trustees, the fees will be nearly identical but the bank or trust company will do most of the work and keep your sister out of trouble and mischief.

- 7. RETAIN INHERITED ASSETS IN YOUR OWN NAME: Anyone inheriting assets or receiving substantial assets by gift from a family member or otherwise should keep such assets in his or her own name. If the recipient puts such assets in joint name with a spouse and then gets divorced, the ex-spouse will walk away with 50 percent. The parent or grandparent leaving the assets or making the gift would roll over in her grave, as the money was intended to stay in the blood line. Generally you do not need a prenuptial agreement to protect such assets. Divorce courts typically do not divide inherited or gifted assets; these are not part of the "marital estate."
- 8. GIFTS: In 2018, anyone may give away up to \$15,000 a year with no tax consequences to as many people as they like, related or not. A married couple may give \$30,000. This is called the annual gift tax exclusion amount. The gift may be outright to adult children, to custodial UTMA Accounts at a financial institution to be held until age 18 or 21 for minor children, or to the Trustee of an Irrevocable Trust for children if you are going to accumulate larger sums. As of 2018, on top of that, anyone may give away \$11.18 million tax-free during life (albeit using up estate tax exemption). Gifts into Section 529 Plans may be used to save for college or post-graduate or professional education. There are many advantages: funds in 529 Plans grow and accumulate tax-free, like an IRA; funds may be distributed for higher education tax-free (unlike IRAs, which are taxable at distribution), you may front-load five years of gifts in one year; funds in 529 Plans are creditor-protected; and funds in 529 Plans may be shifted from child-to-child, grandchild-to-grandchild. In addition, payments of tuition and health care expenses made directly to the service providers—the school, hospital, doctor—are not considered gifts.
- 9. LIFE INSURANCE: Life insurance provides a safety net of financial security for the family in the event that one or both spouses die prematurely and if, considering the family's financial obligations and liabilities, there would be insufficient assets to provide comfortably for the surviving family members. In particular, parents with young children need sufficient insurance to cover the costs associated with raising and educating their children. Consider maintaining insurance until your youngest child is 21 or out of college, after which the need for life insurance is generally diminished. The premium is guaranteed to be level for a fixed number of years (5, 10, 20, etc.). Such insurance lasting much past age 70 will get prohibitively expensive. Life insurance can be structured in an Irrevocable Insurance Trust so it will all pass at the surviving spouse's death TAX-FREE to the children without using up any of the parent's estate tax exemptions, i.e., in addition to the exempt amounts.

10. ASSETS THAT PASS OUTSIDE OF ESTATE PLANNING DOCUMENTS/ASSETS THAT DO NOT GO THROUGH PROBATE:

Generally, estate planning documents control assets that are titled solely in the name of the testator. Anything that is held as joint tenants with right of survivorship or tenants by the entirety passes automatically to the survivor on the first

death, "outside" of the estate planning documents. Anything that has a beneficiary designation on it, i.e., life insurance, 401(k) plans, IRAs, other sorts of pensions, and annuities, passes to the person named as the beneficiary of such asset, "outside" of the estate planning documents. Bank accounts which have a pay-on-death (P.O.D.) or transfer-on-death (T.O.D.) designation on them pass to the beneficiary designated on such asset, "outside" of the estate planning documents. Assets that pass by joint ownership or beneficiary designation are not part of the probate estate, are not subject to probate tax, and are not controlled by estate planning documents. So for many married couples these assets are most, if not all, of what they own. It is therefore extremely important to coordinate how those assets pass with the overall estate plan and with the estate planning documents. The designation of appropriate secondary beneficiaries—not minor children but maybe trusts for them—is often overlooked. The appropriate titling of assets is vital to the successful implementation of an estate plan. Estate planning is therefore a two-step process: step one is the creation and execution of estate planning documents. Step two is the retitling of assets and the designation of appropriate beneficiaries to coordinate with the estate planning documents.

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REAL ESTATE LAW SECTION UPDATE

By Theodora Stringham, Esq., Chair, Real Estate Law Section

In 2018, the Real Estate Law Section worked to expand Real Estate knowledge to the greater FBA membership. Chair Theodora Stringham of Offit Kurman, P.C., and Vice Chair John Hawthorne of Protorae Law have focused on making Real Estate an accessible and informative section. To meet the goal of spreading more information on Real Estate to all members and the bench, Section members executed the following informative events during the last year:

- Real Estate in Your Practice Area: Guest speakers John Altmiller, John Hawthorne, Kevin McCormick, and Stringham shared helpful practice pointers applicable to all practice areas. This event was well attended by members from different practice sections and across the FBA. Sponsored by Protorae Law, the event included a happy hour and opportunity for members to connect and network. Stay tuned for a similar event in 2019!
- 2018 Legislative Update: Real Estate: Legislative panelists Senator Chap Petersen, Delegate Jennifer Boysko, and Delegate Marcus Simon provided feedback and answered questions on the latest Real Estate bills passed in Richmond. Legislators and attendees engaged in an interactive discussion on the year's legislation and tackled difficult questions, such as the future of development in the region. Sponsored by Offit Kurman, the event included a happy hour and networking event with the legislators and FBA members.
- Luncheon Seminar on Easements: Vice Chair John Hawthorne shared his expertise on Easements with a full house of Section members. Attendees tackled nuanced areas of Easement law in Virginia as well as general practice pointers.

To join the Real Estate Law Section or learn more about its events, email Theodora Stringham at tstringham@offitkurman.com. ■



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Earnings Capacity/Earnings Loss

- Spousal Support Personal Injury Medical Malpractice
 - Liability Employment Discrimination
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LEGAL ADMINISTRATORS SECTION NEWS

Please join us this holiday season in collecting toys for the Fairfax Salvation Army.

Donations can be dropped off at Sensei Enterprises, 3975 University Drive, Suite 225, Fairfax, VA 22030 to Jennifer Kubal's attention.

We'd love to have you join our group.

This section promotes the exchange of non-confidential information regarding the administration and management problems distinctive to legal organizations, including private law offices, Corporate legal departments, government legal and judicial organizations, and public service legal groups; enhances the professionalism of the administrative function by providing to its members avenues for profes-



sional growth including educational activities, interaction with other administrators, and opportunities for career development; educates such legal organizations regarding the value and availability of professional administrators. Membership is only \$25.00 for FBA members.

For more information on how to join the Legal Administrators Section, send an email to fba@fairfaxbar.org. ■

THE SIX ESSENTIAL ELEMENTS OF EFFECTIVE TERMS OF USE

By Jonathan D. Frieden, Esq., Chair, Technology and E-Commerce Section

Terms of Use or Terms of Service (TOS) describe the terms and conditions that govern the relationship between the user of a website and its operator. From a legal standpoint, the Terms of Use may be a website's most important page. Properly drafted Terms of Use assist the website operator in managing user expectations, avoiding disputes, and limiting otherwise crippling legal exposure.

Most effective Terms of Use address at least the following six legal issues: (1) permitted use—that is, the specific uses to which the website may be put and any restrictions on use imposed by the website operator; (2) the treatment of user-created content; (3) a disclaimer of warranties; (4) the limitation, in whole or in part, of the website operator's liability; (5) privacy; and (6) governing law and choice of forum.

Permitted Use—A website's Terms of Use should clearly communicate to its users what is permitted and what is prohibited with respect to website content and services, and the actions that may be taken by the website operator if the website is used in a way that is prohibited or unintended. Permitted use provisions vary in length and complexity.

At the very least, an effective permitted use provision will require users to use the website in accordance with all applicable laws and regulations and prohibit users from accessing or using, or attempting to access or use, the website in any manner that may interfere with the availability of the website and its services to others.

Treatment of User-Created Content—Many modern websites exist primarily or solely to handle content created by their users. Even websites that do not serve primarily or solely as a handler of their users' content often permit users to upload or submit content that can then be viewed by other website users.

A website's Terms of Use should clearly describe how the website treats content uploaded or otherwise submitted by users. This provision should address: (1) as between the website operator and user, who owns the user-created content; (2) if the website operator does not own the user-created content, what rights are being granted by the user by virtue of submitting the content; (3) how the website operator intends to use the user-created content; and (4) how the website operator will handle claims that user-created content infringes the intellectual property rights of a third party.

Disclaimer of Warranties—A disclaimer of warranties acts to disclaim or reject warranties that would otherwise apply to a product or service. Such a provision is included in a website's Terms of Use to eliminate warranties that would otherwise attach to the transaction or to limit the applicable warranties to only those expressly provided by the website operator. Many states permit implied warranties to be disclaimed by simply indicating that the product or service in question is provided "AS IS."

State law varies with respect to which warranties may be disclaimed and the language, typeface, and presentation necessary to effectively disclaim those warranties. Accordingly, when preparing a disclaimer of warranties for a website's Terms of Use, it is particularly important to ensure compliance with the state law chosen to govern the contract.

Limitation of Liability—In Terms of Use, limitation of liability provisions permit the website operator to limit the amount and types of damages for which it can be held legally responsible, as long as the limitation complies with applicable state law. Generally, state law requires that a limitation of liability provision in Terms of Use, or any other contract, be reasonable, clear, and conspicuous.

Obviously, a website operator imposing a contractual limitation of its liability to its customer is able to avoid costly and potentially enterprise-ending litigation and offer services to its users at a much lower cost (since its risk of each transaction is much reduced). In that way, properly drafted limitation of liability provisions in Terms of Use benefit both website operators and users.

Privacy Policy—A privacy policy is a statement that discloses the ways in which a website operator gathers, uses, discloses, and maintains a user's data. A website operator is legally required to provide such a statement if it publishes a website or online service directed to children under the age of 13, knowingly collects personal information from children under the age of 13, or if the website interacts with users living in one of the states that has passed a law requiring website operators to publish privacy policies.

Although described here as an element of website Terms of Use, a website's Privacy Policy should be a separate document. In most cases, the privacy policy should be drafted and published so as to comply with the strictest requirements that could apply to the website, usually those of California and the European Union.

Governing Law/Choice of Forum—A website's Terms of Use should indicate which state's laws govern the interpretation and enforcement of the agreement and where disputes between the website operator and user will be adjudicated. Often, the Terms of Use will require that disputes between the parties be adjudicated in a forum convenient to the website operator so as to minimize the risk that a distant court may exercise jurisdiction over the website operator. Provided that the website operator can demonstrate mutual assent to the website Terms of Use, courts have found governing law and choice of forum provisions in Internet contracts to be enforceable.

Properly addressing each of these six concepts will provide a website operator with Terms of Use that are enforceable and provide the proper framework for the relationship between the website operator and user. However, this framework must be fully fleshed out with the specific business terms of the relationship.

YOUR IRS TAX AUDIT OR WHAT TO DO

By William B. Lowrance, Esq., Chair, Tax Law Section

You pick up your mail on a Friday afternoon. There is a letter from the Internal Revenue Service—the IRS! Your heart skips a beat. Blood drains from your face. You think your whole weekend is ruined—anxiety every day!

The Letter: Dear John & Jane Smith

"Your federal tax return for the period shown above was selected for examination." Heart drops to your stomach!

The letter from the IRS revenue agent continues: "Please call me before the response date listed at the top of this letter. During our telephone conversation, we will discuss:

- · Items on your return I will be examining;
- Types of documents I will ask you to provide;
- The examination process;
- Any concerns or questions you may have;
- The date, time, and agenda for our first meeting.

You do not feel like you won the lottery; or, maybe you did—unfortunately, the bad kind. The letter explains the issues and preliminary items identified for examination. The letter includes IRS Publication 1, Your Rights as a Taxpayer. The letter even gives you an Internet link to watch a video presentation, "Your Guide to an IRS Audit." The video will help you understand the examination process and will assist you in preparing for your audit.

The letter ends thanking you for your cooperation (you have a choice?) and a friendly "I look forward to hearing from you."

After sleepless nights on Saturday and Sunday, you call the IRS revenue agent on Monday morning to talk. When you speak with the agent, the date and time for an official appointment is scheduled. The agent will explain the audit and what items on your return are being examined. Later, the agent will send you another letter confirming the appointment, and will include an "Information Document Request" advising what records the agent wants you to provide.

There are different examinations—the mail audit, the office audit, and the field audit. This initial-letter process, however, is similar for each different type of audit. The mail audit will request that you send documents to substantiate a deduction or explain why certain income reported to IRS is not on your return. Simple. You just send the information, and you sit back and hope the IRS is satisfied with your explanation. For the office audit, you meet with the IRS agent in the local IRS office. You bring the records requested to support the items IRS is auditing. For the Field Audit, the IRS comes to you. If you have a business and file a Schedule C detailing your business's income and expenses along with your Form 1040, you can expect, in addition to the audit of your individual income and deductions, an audit of the business income, expenses, assets, depreciation, employees, contractors, and W-2s and Forms 1099.

You have the right for a tax professional to represent you during the audit. The best representatives are CPAs, Enrolled Agents and Attorneys experienced in tax controversy matters. Always ensure your representative is qualified in tax controversy matters. Meet and talk with your representative so you may judge the person's qualifications. I suggest that you do not call the 800-telephone number you see advertised on late night television or the company with zippy ads playing over the radio.

Your representative will meet with the IRS agent, review and provide records requested, and answer questions. The IRS cannot interview the taxpayer if the taxpayer has an authorized representative unless the representative agrees or is non-responsive to the agent's information requests. It is best if the IRS does not interview the taxpayer.

The IRS cannot require a taxpayer to appear for an interview without the representative's agreement. The IRS often attempts to get the taxpayer to voluntarily agree to an interview. The taxpayer should not agree to an interview. IRS agents are well trained in establishing a rapport with the interviewee, setting up an environment in which the taxpayer often says exactly the wrong thing.

The IRS's Internal Revenue Manual states:

"The following suggestions will help the examiner obtain answers that are complete and accurate:

- Use short questions confined to one topic that can be clearly and easily understood.
- Ask questions that require narrative answers, avoiding "yes" and "no" answers, whenever possible.
- Whenever possible, avoid questions that suggest part of the answer, i.e., leading questions.
- Ask how the taxpayer learned what they state to be fact. The taxpayer should also be required to provide a factual basis for any conclusions stated.

FIVE PREDICTIONS FOR THE FUTURE SMALL AND SOLO PRACTICE

By Lance G. Johnson, Esq., Member, Law Practice Management Section

Technology is a magnifier. The right software systems, subscriptions, and training can level the playing field for small and solo practices in the legal arena without regard to the nature of the practice. Book-based legal research and a team of associates and paralegals to comb through them are now replaced by online libraries. The potential of artificial intelligence may one day lead to a system that can synthesize holdings and identify trends.

The inevitable progress of more robust and useful systems portends new opportunities for small and solo practices in the 5, 10, and 15 year horizons. These are some of my predictions.

- 1. Small and solo firms will need to embrace advanced website features. Client portals will enable secure communications and document exchange such as those in the medical profession. Automated document generation tools on the public and private sides of the portal will attract and retain clients with access to routine forms that are personalized on-the-fly (like <RocketLawyer.com>). Embedded links to an operational AI system could offer clients informal and nonbinding analysis for minor matters of interest. Small and solo practices will structure access to these features based on a pay-per-use model with heavy discounts for larger clients.
- 2. Small and solo practices will embrace internet-based advertising and referral networks or counsel in complementary practices. Many of these are now formed with national and international networks. Small and solo practices with such access to friendly colleagues in other countries or practice areas will begin to build a depth of practice that starts to meet client needs like a larger firm. Such networks will also form communities of counsel with parallel interests and promote information sharing, client leads, tips, and informal collaboration.
- 3. Specialized training and certification courses will give rise to a specialized practice in the use of technology to achieve certain legal goals. Examples that come to mind include (a) discovering electronically stored information, (b) managing and sorting the relevant information from documents produced from either side during litigation, and (c) analyzing stored client documents to identify strengths and weaknesses of the client's position before proceeding with a project, whether it is a lawsuit or an acquisition.
- 4. Expanding use of remote and virtual law firms based on geographically diverse agglomerations of attorneys. The availability now of widespread broadband internet access and cloud-based firm management systems present opportunities for firms to add billing bodies without adding overhead. In the traditional model, law firms grew in discrete "sweet spot" lawyer numbers of 15-20, 45-55, 75-85, 125-150, etc. It should be no surprise that these sizes correlate to the typical sizes of rented building space. The firm adds bodies until its space is full and then faces a decision: add one more attorney but take a space that could provide space for 10-15 (making the marginal cost for that one attorney very high) or add a group of 10 (thereby maintaining an average marginal cost for office space)? A collection of attorneys working remotely from their own space (at their own cost) with a central place for conference rooms and shared offices for visiting professionals presents a much lower overhead cost profile. Those practices that require frequent collaboration may need a central office but far less space than the conventional one attorney-one office model.
- 5. Fixed fee pricing will become the norm for most matters. This pressure on the hourly rate is already here. Bar associations and those who cling to the hourly rate for all projects will be faced with pressure from clients who want greater certainty in the delivery of legal services and from member lawyers who are willing to meet those client needs. The risks of inefficiency and incomplete preliminary investigation will be shifted to counsel. This demand for certainty will be the force that drives firms to adopt leveraging technologies that make lawyers of all experience levels more effective and efficient.

Lance G. Johnson is the founder of Johnson Legal PLLC where he is happily solo in the practice of matters involving patents, trademarks, copyrights, and trade secrets. He can be reached through www.lgjlegal.com. ■

2018 FAIRFAX BAR ASSOCIATION FALL GOLF TOURNAMENT

By Robert S. Letnick, Esq.

The Fairfax Bar Association held its Fall Golf Tournament on Friday, October 12, 2018 at the Heritage Hunt Golf & Country Club. This was the fourth time that this venue had been selected for the fall tournament. However, it has been 12 years since we last held our Fall Golf Tournament at this location. The Heritage Hunt Golf & Country Club is a private facility designed by the renowned golf architect Arthur Hill. While many golf courses suffered during this past summer due to the intense rains followed by scorching sun, the Heritage Hunt Golf & Country Club was in excellent condition for our golf tournament.

The format for this tournament was a scramble (Captain's Choice). The first place team of Raj Dua, Mark Nicewicz, Travis Via, and Vinny Duggal shot a 16 under par 56. The second place team of Mike Brown, Jesse Long, and Ed Weiner (yes I said Ed Weiner) shot a 14 under par score of 58. Third place went to the team of Bob Letnick, Jeremy Letnick, George Bigus, and HK Jun who shot a score of 13 under par score of 59. The last place team enjoyed a great day on the golf course, hitting some very memorable shots, and they finished with a 3 over par score of 75. These team members shall remain anonymous.

On hole #3, the men's long drive competition was won by Vinny Duggal who stated that he hit his drive over 320 yards. On hole #12, the women's longest drive was won by Jinny Doherty. On hole #6 the women's closest-to-the-pin competition was won by Dawn Butorac, and on the 18th hole the men's closest-to-the-pin competition was won by George Bigus.

After the round of golf, all of the golfers were treated to an Italian buffet dinner in the Mountain View Room of the Heritage Hunt Golf & Country Club. There were many items raffled off including 10 golf clubs. The Heritage Hunt Golf & Country Club and the Westfields Golf Club donated rounds of golf as auction items that benefited the Fairfax Law Foundation. Special recognition goes out once again to the Fairfax Memorial Park for their sponsorship of this event.

The next scheduled golf event sponsored by the Fairfax Bar Association shall be the 19th Annual Spring Golf Tournament at the Westfields Golf Club on Friday, May 17, 2019 at 1:00 PM. All courts are in session on that day and those who may wish to join us for a beautiful spring day on the golf course should block the date on their calendars. As in all of the Fairfax Bar Association golf tournaments, if you participate you will see that we have a wide variety of skill levels playing in this event with many of our golfers only playing once or twice a year at Fairfax Bar Association golf tournaments. Those who join us regularly for the spring event have a significant opportunity to win raffle items and golf merchandise. Please reserve the date on your calendar for the 19th Annual Fairfax Bar Association Spring Golf Tournament and enjoy the camaraderie on the golf course while avoiding the stress from your office.









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UPCOMING EVENTS/CLEs

Tuesday, December 11, 2018
Paralegal Section Professional Development
Presentation

Thursday, December 13, 2018
Researching Virginia Legislative History CLE
Fairfax County Courthouse

Tuesday, December 18, 2018
Criminal Law Section Meeting CLE
Fairfax County Courthouse

Saturday, March 2, 2019
"Under the Big Top" Bench Bar Dinner Dance
6:30 PM – Open Bar Reception
8:00 PM – Dinner Followed by Dancing
Fairview Park Marriott, Falls Church, VA
\$125 Per Person
\$100 for FBA Young Lawyers Section Members
Sponsorships Available!

Wednesday, March 20, 2019 Lost in Translation CLE 4:30 PM - 6:30 PM 2.0 MCLE Credits (Pending) Fairfax County Courthouse

Wednesday, April 3, 2019
Technology in Fairfax Courtrooms:
Come Kick Our Tires! CLE
5:00 PM - 7:00 PM
2.0 MCLE Credits (Pending)
Fairfax County Courthouse
\$100 FBA Members: \$130 Non-Members

Sunday, April 7, 2019 Heroes vs. Villains Run for Justice 5K

Wednesday, May 1, 2019 Annual Law Day Weiner Roast

Friday, May 17, 2019
Spring Golf Tournament
11:30 AM - Registration
12:00 Noon - Putting Contest
1:00 PM - Shotgun Start
Westfields Golf Club
13940 Balmoral Greens Ave, Clifton, VA 20124
\$175 Per Person.

Includes: Greens Fee, Cart, Lunch at the Grill, Buffet Dinner, and Prizes. Sponsorships are available!

YOUR IRS TAX AUDIT OR WHAT TO DO

continued from page 11

- Be alert to instances where the taxpayer starts wandering or going off topic, and redirect the taxpayer's attention to the current talking point. Where possible, ask questions that require a direct response.
- Concentrate on the answers of the witness, not the next question.
- To ensure the accurate collection of facts, the examiner should clearly understand each reply provided and ensure that any lack of clarity is eliminated before continuing.
- When all important points have been resolved, terminate the interview. If possible, leave the door open for further meetings with the subject.

An IRS examination can be scary, shocking and even a bit painful. Information and documents requested may be difficult to find. Your explanation of the tax return issues may be incomplete or misleading. Your statements and comments during an interview, if you agree to an interview, may be used against you in the final examination report.

Having a tax representative experienced in tax controversy matters may be your best choice in surviving the IRS examination. Just pick the right representative. ■

OFFICES FOR LEASE

LEESBURG—Office spaces available for immediate occupancy at 20 W. Market Street in the historic Laurel Brigade Building one block from courthouse. Ideal for solo/duel practice and/or satellite office. Rentalincludes receptionist, mail sorting and use of conference rooms. Shared kitchen area with refrigerator, microwave, free coffee and water. Utilities included except telephone/Internet to be maintained by tenant. Easy parking for clients with garage directly across the street from building. Rents for smaller offices begin at \$500 per month. Short term leases available. Office share potential. Call 703.777.6161 for additional information. ■



Above: Paralegal Section stuffing backpacks with school supplies for New Hope Housing and Next Steps family program, which are non-profit organizations assisting homeless individuals and families in Fairfax County.



Above: The William L. Schmidt family "American Eagle" statue presentation at a reception held on November 1, 2018.

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LOOKING FOR A PRIVATE OFFICE FOR YOURSELF OR YOUR 10521 Judicial Drive, Unit 100 - Beautiful 1st flr. comer suite w/lovely layout <u>SMALL BUSINESS?</u> Several sizes of private offices & small suites close to FFX Courthouse. Parking is included plus some shared amenities, full service leases, 1 - 5 yr terms:

- 4015 Chain Bridge Rd. Windowed individual offices & small suites avail Some furnished & w/shared use of waiting area & conf. rm. LEASE - \$575/mo - \$1,650/mo, Full Service. 1 - 5 yr. term. 1st month rent-free w/2 year min
- 4023 Chain Bridge Road, Suite B or Suite 11 Elegant prvt. offices w/lovely décor and shared use of the common area. Excellent visibility in a lovely, renovated historic house zoned for office/ltd. retail use. LEASE - Suite B on 1st flr. - \$995/mo or Suite 11 on 3rd flr. - \$750/mo, full service, 1 - 5
- 4101 Chain Bridge Road Individual windowed private office w/shared
- 4103 Chain Bridge Road Location! Flexible office suite sizes! Elevatored office building w/pienty parking across from Fairfax Courthouse! Office suites from 800 SF - 4,500 SF avail., 3-10 yr. term. LL provides new paint, carpet, and turnkey building standard build-out w/4 year min lease. LEASÉ - \$23 PSF, full service.
- 4101 Chain Bridge Road 1,250 2,500 SF custom space ready to be builtout, currently in warm, lit shell condition. LL will provide building standard office build-out w/ Tenant's choice of paint & carpet, 4-yr min. term. LEASE - \$25 psf, full service.
- 10621 Jones Street, Unit 201- A 950 SF main flr. unit w/efficient layout! Lrg. recep/admin area, prvt. office, lrg. conf. rm. w/built-in bookcases, stor. clst, eat-in kit/break room, BA & util. clst. Plenty free surface parking and uniform exterior signage available. Paint will be touched-up and suite professionally cleaned prior to occupancy w/2 weeks prior notice. 2 - 5 yr. term. LEASE - \$1,345/mo per unit + elec, cln, phone & internet paid by tenant.

- includes 5 prvt, offices, Irg. conf. rm. w/hardwood flr, recep/wait. area w/built-in recep. desk, two admin. areas, kitchen, BA, util. and storage room w/shelves, and supply closet. Great windowline directly across the street from FFX Courthouse! Plenty surface parking is free and unassigned. LEASE - \$4,500/mo (\$19 psf) includes utilities; cleaning, phone & internet paid by tenant
- 10615 Judicial Drive, Units 101/201/301 Beautiful 1st flr. end unit and adjoining units totaling 3,000 SF (can be leased separately as 1,000SF/2,000SF). Lovely layout and finishes: several prvt. offices, 2 conf. rooms, built-in recep. desk, kitchenette, resource or work counter, built-in bookcases, 3 prvt. entrances from Judicial Drive, 3 restrooms, and exterior signage. Surface parking is free and unassigned. Walk to the courthouse Lease - Units 101/201/301 - \$4,650/mo (\$18.60 psf), Units 101/201 - \$3,200/mo (\$19.20 psf), Unit 301 - \$1,600/mo (\$19.20 psf) + elec, cln, phone & inter-
- use of the common area conf. rm. and kitchen. Avail. Nov. 1st. LEASE \$750/mo, full service, 1 5 yr. term.

 Chain Bridge Road Location Flexible office suite sizes Flexatored

 10335-A Democracy Lane Conveniently located just off of Old Lee Hwy close to Courthouse Shopping Center. Great 1st flr end unit, walk-in level w/ plenty parking right outside! Efficiently configured unit w/3 large offices, huge conf. m. w/decorative fireplace, eat-in kit/breakroom, full BA, and util. m. End unit has a great windowline for lots of natural light. Uniform ext. signage permitted. 3 - 5 yr. lease term. LEASE - \$1,904.50/mo (\$19.50 psf) + elec, cln, phone & internet paid by tenant.
 - 10373-B Democracy Lane Great location in the heart of FFX City just behind Courthouse Shopping Plaza. Upper level unit w/efficient layout: lrg. recep/admin area, 2 lrg. windowed prvt. offices, kit, BA, util. & closet. Plenty parking & ext. signage allowed. Just renovated: new paint, carpet & kitchenette. Move-in ready! SALE - \$226,575 (\$225 psf)
 - 3929 Old Lee Highway, Unit 92-C 1,150 SF unit w/lovely floor plan features: recep. area w/wood flooring, 4 prvt. offices, conf. rm. w/French doors, kitchenette, BA, copy/file rm. w/storage closet, and util. clst. Avail. immed. 2 - 5 yr. lease term. Just painted & move-in ready! LEASE - \$1,750/mo + elec. & cln, phone & internet paid by tenant OR SALE - \$265,000

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