

JOURNAL

Newsletter of the Fairfax Bar Association www.fairfaxbar.org November/December 2021 & January 2022

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Please see more photos on page 10

President's Column

By Richard F. Gibbons, Jr., Esq., President, Fairfax Bar Association

GET BACK



As I am enjoying Peter Jackson's documentary on the Beatles, I am reminded of how a clear moment in time can come and go without you even knowing it. It has been almost 53 years since Paul McCartney picked his bass which he played like a guitar, in a converted warehouse, and in a matter of minutes came up with "Get Back." I love how George looks like he is going to fall asleep as this takes place. They were at the peak of their musical talent as a group. Later that same month, they played their last concert in public. The next year, they broke up. It is rare that such transformation happens so quickly.

But it is happening now. It seems that all of us currently practicing will have no trouble pointing back to 2020-2021 and identifying it as the time when things suddenly transformed in the practice of law. In 1987, when I passed the Bar Exam, the legal world was different. For example, one of the most important tools an attorney needed was access to a law library. Membership in the Fairfax Bar Association got you after-hours access to the Bar's law library. Today, many practitioners never have to leave their desk to research law, especially if they're affiliated with a firm who provides such resources. We communicated with other attorneys by one of four methods: (i) a letter sent through the U.S. Mail; (ii) land-line telephone; (iii) facsimile (although they were still new and not everyone had one yet); and (iv) in-person meetings. Then the Internet and smart phones arrived.

But those changes came gradually over many years. COVID-19 brought its changes overnight. As we enter 2022, many attorneys work from home for at least some if not all of their time. Firms do not seem all that interested in bringing their employees back in-person five days a week. More significantly, the employees are not anxious to return either. While some of this is a concern about variants in the virus, most of it is the revelation that working from home is just as efficient, easier, and less expensive than working out of an office. I suspect that the demand by lawyers for commercial office space in Fairfax County may never get back to where it was pre-pandemic.

Clients also seem to appreciate the ability to meet with their attorney virtually. It saves them the time and travel to a law office, and makes scheduling such meetings a lot easier during their work day. Many of you have probably noticed that fewer clients are demanding an in-person meeting with you. I participated in an all-day mediation for a divorce case this August with retired Judge David Schell. He was at his home, opposing counsel and her client were at counsel's office in Fairfax, my client was in Florida and I was in Maine. We had no hitches and we settled the case. It was great.

Even the courts have changed. While we may not stick with all of the virtual court work we have experienced over the last two years, some things are here to stay. We will never go back to in-person Calendar Control in the Fairfax County Circuit Court. Many courts are far more relaxed about virtual testimony for out-of-state witnesses, especially for expert witnesses in civil cases who would otherwise charge for their travel time. Children in foster care cases can appear virtually and miss less school time.

There are trade-offs in our brave, new world. The law library I mentioned is still there and will always be an important resource for solo and small-to-mid size firms. It is a valuable point of access to justice for citizens and *pro se* litigants. It does provide online access for you to do your work. If you are not physically present in the library, you will not be able to access the many volumes of CLE and other professional books that can be very helpful. You will also not have the input from our library staff who are good about finding information on topics you need and getting you pointed in the right direction.

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FAIRFAX BAR JOURNAL

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4110 Chain Bridge Rd., Suite 216
Fairfax, VA 22030-4009
Telephone: 703-246-2740
Fax: 703-273-1274
fba@fairfaxbar.org
www.fairfaxbar.org

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President-Elect ..	Aaron J. Christoff.	703-872-7287
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Matthew C. Perushek	703-925-0500
Theodora A. Stringham	703-745-1800
YLS Representative Benjamin C. Charlton	703-925-9500

Executive Director/Editor

Courtne L. Norris • 703-246-2732
cnorris@fairfaxbar.org

Communications & Marketing

Genna R. Walnut • 703-246-3721
gwalnut@fairfaxbar.org

Graphic Design/Space Advertising

Ann Hill Thornton • 240-252-9120
rodangraf@aol.com

Classified Advertising

Courtne L. Norris • 703-246-2734
cnorris@fairfaxbar.org

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The McCammon Group

is pleased to announce our newest Neutral



Hon. Robert E. Morin (Ret.)

Retired Chief Judge, Superior Court of the District of Columbia

The Honorable Robert Morin recently retired as Chief Judge of the Superior Court of the District of Columbia after twenty-four years of distinguished service. During his judicial tenure, Judge Morin presided over calendars in all Divisions of the Court and served on numerous committees including the Criminal Justice Act and Family Court Panel Committees. He began his legal career in private practice focusing on commercial litigation but was later drawn to cases involving human rights and death penalty defense. Notably, he helped to establish and served as a trial attorney for the Southern Center for Human Rights in Atlanta, Georgia. Later, he joined the Office of the Public Defender for the State of Maryland. He was also a partner in the firm of Fisher, Morin and Hansen, with a primary focus on complex civil and criminal litigation. A dedicated educator, he has been an Adjunct Professor of Law at Georgetown Law Center for over thirty years. Judge Morin now brings this exemplary record of commitment and leadership to The McCammon Group to serve the mediation and arbitration needs of lawyers and litigants in the District of Columbia and beyond.

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40th Birthday

By Natalia C. Wilson, President, Fairfax Law Foundation



The Fairfax Law Foundation is celebrating its 40th birthday! Since its birth in 1982, it has grown tremendously and has the legal community in Fairfax County to thank for that.

As President of the Fairfax Law Foundation, my goal is to increase the number of supporters of the Foundation and take advantage of every opportunity to honor the past accomplishments of the Foundation's Board, staff, volunteers, partners, and program participants.

The mission of the Fairfax Law Foundation is to promote equal justice for all in Fairfax County. As the charitable arm of the Fairfax Bar Association, the Fairfax Law Foundation pursues its commitment to creating a more just society by working towards equal access to the justice system through its Northern Virginia Pro Bono Law Center and providing law-related education opportunities throughout the Fairfax County community.

The Foundation has a rich history. We help the most vulnerable members of our community navigate some of the most challenging legal issues. Our Board is hard at work exploring new ways to address the overwhelming need the community is facing during these uncertain times.

One of our most recent accomplishments was in partnership with the Virginia State Bar's Senior Lawyer Conference. The Foundation distributed over 400 copies of the *Senior Virginians Handbook* in Northern Virginia. The handbook provides helpful legal information and resources to senior citizens in our community, as well as their families, caregivers, and attorneys. We are pleased to have been part of the distribution of this important resource. We value our partnerships, and as we celebrate this milestone of service, we intend to show our gratitude to those who help us further the Foundation's mission.

We will commemorate the Foundation's birth year by reimagining the law-related education initiatives for students, safely resuming the Heroes vs. Villains 5k in-person race on April 24, 2022, and exceeding the 3,000-plus *pro bono* hours we deliver in any given year.

To make sure this is the biggest birthday celebration ever, I challenge members of the community to share their positive and rewarding Foundation stories. Here are a few things you can share on social media platforms:

- Name the first Foundation event you supported/attended.
- Name three past presidents.
- Share a photo of you at a Foundation event.
- Why did you become a Fellow and share the year you joined the multi-year giving society?

You can help us make this 40th remarkable by sharing your stories. We would love for you to get involved. Please consider the Foundation as your charity of choice when thinking about your year-end giving. We have opportunities for you to give your time and financial resources. Please do not hesitate to reach out to me at nwilson@ainbanklaw.com or visit the Foundation website at www.fairfaxlawfoundation.org, if you have questions, ideas, or suggestions.

Happy 40th Birthday, Foundation!

Please use our social media platforms: [@FairfaxLawFoundation](https://www.facebook.com/FairfaxLawFoundation) on Facebook and [@FairfaxLawFndn](https://twitter.com/FairfaxLawFndn) on Twitter to stay connected and to share your 40th birthday celebration stories. ■

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Michael J. Khader
Karen A. Leiser
Sarah Storch

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Richard J. Batzler
Ann F. Gillooly
Behzad Gohari
Benjamin R. Inman
Ida Rezvani
Paul R. Smollar

NOVEMBER

Michael B. Armstead
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WINDOWS 11 is Here! Are You Ready?



Are you thinking about upgrading your computers to Microsoft Windows 11?

Sensei can help.

Microsoft has released Windows 11 and the rollout has started. Users may now be prompted on their computers to install Windows 11. Take note: Some computers are not compatible with the new operating system because of the new hardware requirements.

The process has created a lot of confusion. Sensei can help you through the process of checking to see if your business computers are compatible and making sure the upgrade process goes smoothly. If systems need to be upgraded or new ones purchased, Sensei can also assist.

Give us a call to discuss the Windows 11 upgrade process and how Sensei can help your firm.

Call Mike Maschke, CEO at 703.359.0700 or email mmaschke@senseient.com to get started!

Paralegal Section Recap & Upcoming Events

By Tina M. Fewell

Summer 2021

Thank you to all who donated for another successful School Supply Drive! We had a small gathering in August to assemble backpacks for our Annual Back to School Supply Drive, a project adopted through the Fairfax Law Foundation. Backpacks and individual school supplies were purchased for 43 children whose families receive much needed transitional services through FACETS.

Despite our best intentions, we were unsuccessful in executing plans for an outdoor winery gathering this summer. However, we are hopeful that such a trip will be possible next year!

Career Advancement Presentation

On October 25, we enjoyed an informative (and inspirational!) "Goals for Life Workshop" presented by Eric Byrd, communication coach and founder of Pitch for Success. The workshop was engaging, interactive and enjoyed by all those in attendance. Refreshments and Halloween goodies were provided courtesy of Inabnet Court Reporting.

Food Drive

We conducted our annual Food Drive this year with an outdoor "parking lot meeting" held on November 16, hosted by Blankenship & Keith, PC. We enjoyed picture perfect weather in the safety of an outdoor setting and a wonderful lunch sponsored by the firm. The drive was a smashing success and hundreds of pounds of food, as well as monetary donations and grocery gift cards, were donated by our faithful FBA family. Blankenship & Keith donated many family-style gift baskets and even held an in-house basket decorating competition to award the fruits of their labor (pun intended!).

Winter Events—Dates and Specifics to be Announced

Due to ongoing COVID concerns, we are foregoing an in-person holiday party again this year. However, we will hold a second remote Bingo night, complete with prizes, and will press on with our Annual Valentine's Day Project for benefit of at-risk youth in February.

Plans are in the works to offer a remote Proofreading and Cite Checking Seminar, to be presented by Joyce McMillan, J.D., Professor of Law and Program Head of NOVA's Paralegal Studies Program. We will likewise offer our Annual Technology Seminar, to be presented and hosted courtesy of Sensei Enterprises. ■



UPCOMING EVENTS/CLEs

Due to the uncertainty surrounding COVID-19, FBA and Fairfax Law Foundation events may be cancelled, postponed, or transitioned to virtual programs.

Plea Negotiations in Criminal Cases CLE Webinar

Presented by the Criminal Law Section

Thursday, January 6, 2022

4:00 PM - 5:30 PM

1.5 (0.5 ethics) Credits *(Pending)*

FREE for FBA Criminal Law Section Members;

\$52.50 for Non-Section Members

Our Distinguished Panelists Include:

The Hon. Melinda L. VanLowe, Fairfax County, J&DR District Court;

Michael Cash, Esq., Fairfax County Public Defender's Office;

Mayo J. Wilson, Esq., Fairfax County Commonwealth's Attorney's Office

What Every Trusts and Estates Lawyer Should Know About International Estate Planning and Administration

Presented by the Wills, Trusts & Estates Law Section

Wednesday, January 19, 2022

12:00 Noon - 1:00 PM

2.0 MCLE Credit *(Pending)*

FREE for Wills & Estates Law Section Members;

\$35 Non-Section Members

Speaker: Brooke Tansill, Esq., Frederick J. Tansill & Associates, LLC

Fourth Annual Personal Injury Primer CLE: Admission of Social Media Evidence (Webinar)

Thursday, January 27, 2022

5:00 PM - 7:00 PM

2.0 MCLE Credits *(Approved)*

Presented via Cisco WebEx

\$70 FBA Attorneys; \$100 Non-Members

\$50 YLS Members; \$80 Non-YLS Members

Our Distinguished Guests Include:

Dawn E. Boyce, Esq., Bancroft, McGavin, Horvath & Judkins, P.C.;

Thomas J. Curcio, Esq., Curcio Law;

The Hon. Tina L. Snee, Fairfax County General District Court;

Michael C. Maschke, CEO, Sensei Enterprises, Inc.

Investiture of Hon. Melissa Sanchez Cardoce

Friday, February 11, 2022

4:30 PM - 7:00 PM

Fairfax County Courthouse, Courtroom 3K

Reception Immediately following

A Night of Axe Throwing

Presented by the Young Lawyers Section

Tuesday, February 15, 2022

6:30 PM - 8:30 PM

Bad Axe Throwing, 2985 District Ave, Suite 195, Fairfax, VA 22031

\$40 Per Person

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Why CLE?

By Jeffrey L. Rhodes, Esq., Chair, Continuing Legal Education Committee

Every day I get multiple emails from random CLE sponsors advertising their programs to me. They ply me with a range of topics, many of which have nothing to do with my areas of practice (like “mastering blockchain” and “reviewing recent IP caselaw”). Many providers seem to exist only online and beckon with easy access to courses to fulfill the CLE credit requirements. They have only multiplied with the pandemic, as have their online course offerings.

All of these options beg the question, why go out of my way to take CLEs, and not just grab the nearest ones available when the deadline rolls around? After two decades of practice, though, I have discovered many good answers to that question, confirming for me the need for high-quality practice-oriented CLEs—the kind offered by the Fairfax Bar Association.

A good CLE focused on the courts where I most often practice sharpens my legal skills and teaches me the law from the perspective of judges and practitioners with whom I actually litigate. I have experienced many times the benefit of learning from FBA courses specific skills I need (selecting and preparing expert witnesses or litigating your case to protect it on appeal) directly from Fairfax judges to apply those skills to actual Fairfax court cases for my clients.

We at the Fairfax Bar CLE committee are eager to make our programs as beneficial as possible to our members. Thus, FBA members can actually help shape the curriculum we provide and tailor the courses they see to best accomplish their practice goals. As a committee member for over 10 years, I have seen numerous times the process of members or judges picking out an area of law that has changed recently or that presents particular challenges in practice, developing it into a CLE program, and then presenting that program to satisfy the need in the legal community.

FBA CLE programs have a history of providing targeted training to members on fascinating and complicated areas of law, and providing these lessons hands-on from Fairfax court judges. It always amazes me that practitioners in the most active court system in Virginia can sit down face-to-face with the judges that run that court system and ask questions about the law. It provides immediate tangible benefits to lawyers who will shortly thereafter advocate for their clients in front of these same judges.

I strongly encourage all FBA members to send us ideas for CLE programs they would like to see. At almost every committee meeting we review topic proposals from members and judges, and time and again they become the basis for new CLE programs we offer. If you would like to assist the CLE committee, consider attending one of our meetings or joining the committee. The experience I have received in facilitating programs has been invaluable to me in helping me to learn new areas of law and develop relationships with the best practitioners in these areas. These relationships have greatly strengthened my referral network. Our meetings are at 12:30 PM on the second Tuesday of each month. For more information or to submit ideas for CLE programs, please e-mail Courtnie Norris at cnorris@fairfaxbar.org. Thanks, and we look forward to hearing from you and seeing you at our programs! ■



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2021 FAIRFAX BAR ASSOCIATION FALL GOLF TOURNAMENT

By Robert S. Letnick, Esq.

On October 18, 2021, the Fairfax Bar Association held its Fall Golf Tournament at the Country Club of Fairfax. Initially those who participated had to deal with strong winds and with temperatures in the 60s, however, during the event the winds subsided and it became a very pleasant afternoon.

The Country Club of Fairfax provided our participants with the opportunity to enjoy playing golf at a private country club in very close proximity to the Fairfax County Courthouse. The staff at the Country Club of Fairfax was of great assistance in providing the flexibility in this event for all participants to enjoy socializing while taking into consideration limitations due to the pandemic.

The tournament format was a scramble (Captain's Choice). This format requires each member to hit a tee shot and the team then selects which is the best ball to play for the next shot. From there, each player hits the next shot and this process continues until the golf hole has been completed. The benefit is that good shots are rewarded while poor shots are not penalized and quite often add a good amount of humor during the event.

The first place team of Bob Letnick, Jeremy Letnick, Justin Daniel, and Raj Dua shot a 15 under par 56. The team of Steve Cochran, Scott Heon, Carl VanPelt, and Cary McMichael came in second place with a 13 under par 58. The team of Dave Marks, Chris Williams, Erik Jurgensen, and Ron Decesare came in third place shooting a 10 under par 61. As in most years recently, there was an intense competition for the coveted last place position in this event with the last place team scoring an 8 over par 79, while edging out the next team that recorded a 7 over par 78. The identity of the members of the each of these teams shall remain anonymous.

We were once again able to hold some special events that were previously suspended in a number of our golf tournaments since March, 2020 due to the pandemic. There was a women's closest-to-the pin competition on the par three 13th hole which was won by Jinny Doherty. The men's closest-to-the pin competition on the 6th hole was won by Steve Cochran. The women's longest drive competition on hole #9 was won by Paula Gardner and the men's longest drive competition on hole #14 was won by Doug Kay.

There were a number of sponsors who helped to make this golf tournament a great success. Special recognition goes out to **Michael H. Doherty, PLLC** as the exclusive lunch sponsor and as the sponsor for the open bar after the event. Par sponsors to this tournament included **Letnick Law Firm, PLC**; **Law Office of David L. Marks**; **Offit Kurman, P.C.**; and **Roeder, Cochran, Phillips, PLLC**. All of these sponsors assisted in making this tournament possible through their generous donations. This event marked the return of in-person raffles at the end of the tournament wherein 17 raffle items were distributed after the tournament. The golf clubs were once again provided by **The Fitting Studio at Westfields Golf Club**.

The Fairfax Bar Association's 22nd Annual Spring Golf Tournament has already been scheduled on Friday, May 13, 2022 at the Westfields Golf Club with a shotgun start commencing at 1:00 PM. Please note the date on your calendar so that you have the opportunity to join us for a great day on the golf course away from all of the work-related stress. This yearly tournament is enjoyed by participants of all skill levels including golfers who play only once or twice a year in the Fairfax Bar Association golf tournaments. All are encouraged to participate in our future golf tournaments. We look forward to seeing you next Spring on the golf course. ■



photos continued on next page



UPCOMING EVENTS/CLEs

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"An Evening in Napa" Bench Bar Dinner Dance

Saturday, March 5, 2022

6:30 PM - Open Bar Reception

8:00 PM - Dinner Followed by Dancing Provided by "Rhythm6"

Fairview Park Marriott

3111 Fairview Park Drive, Falls Church, VA 22042

\$125 Per Person; \$100 YLS Members

Sponsorships Available!

Investiture of Hon. Melinda L. VanLowe

Friday, April 1, 2022

4:30 PM - 7:00 PM

Fairfax County Courthouse, Courtroom 3K

Reception Immediately Following

What's Budding in Virginia: A Primer on Marijuana Law CLE

Wednesday, April 20, 2022

4:00 PM - 7:00 PM

3.0 MCLE Credits (*Approved*)

Fairfax County Courthouse (TBD)

\$105 FBA Attorney Members; \$150 Non-Members

\$75 FBA YLS Members; \$120 Non-YLS Members

Our Distinguished Panelists Include:

Hon. Michael H. Cantrell, Fairfax County General District Court

David B. Albo, Esq., Williams Mullen

Peter D. Greenspun, Esq., Greenspun Shapiro PC

Douglas R. Kay, Esq., Offit Kurman PC

Pia J. Miller, Esq., Deputy Commonwealth's Attorney, Office of the Commonwealth's Attorney for Fairfax County

Heroes v. Villains 5k

Sunday, April 24, 2022 (rescheduled from October 3, 2021)

8:30 AM - 11:00 AM

Fairfax Corner Shopping Center, 4100 Monument Dr, Fairfax, VA 22030

Sponsorships Available!

Annual Law Day Weiner Roast

Sunday, May 1, 2022

1:00 PM - 5:00 PM

Weiner, Spivey & Miller, PLC

10605 Judicial Drive, Fairfax, VA 22030

Sponsorships Available!

Annual Spring Golf Tournament

Friday, May 13, 2022

Westfields Golf Club

13940 Balmoral Greens Avenue, Clifton, VA 20124

\$175 Per Person, Includes Greens Fee, Cart, Lunch, Dinner, and Prizes!

Sponsorships Available!



Chocolate Lovers Festival Returns & New Opportunities to Reach Students

By Joanna L. Faust, Chair, Law Related Education Committee

The Fairfax Bar Association has always worked closely with the Fairfax County Public Schools to reach FCPS's diverse student population of more than 178,000 students in almost 200 education centers and elementary, middle, and high schools.

Traditionally, the FBA's Law Related Education Committee has always worked to connect FBA members directly with the County's children.

Sometimes that means FBA members go to the schools. In years past, attorney volunteers routinely visited Fairfax schools to speak at civics, government, and business law classes; conduct mock trials for elementary students; and participate in Career Day.

And sometimes, the students come directly to us. In connection with the Fairfax Law Foundation's generous sponsorship, the FBA runs the extremely successful Court Tour Program, in which local eighth graders take a field trip to spend the morning at the Fairfax County Courthouse. Accompanied by attorney guides, the students tour the courthouse and perform a mock trial in front of a Juvenile and Domestic Relations Court judge.

With the Court Tour Program still on hold and restrictions still in place in many schools prohibiting in-person speaker events, the Law Related Education Committee has been stymied in how we can continue to connect FBA members with the County's children.

In addition, the global pandemic has necessitated countless cancellations of public events this year. One of those was the City of Fairfax's annual Chocolate Lovers Festival in February 2021.

Held since 1993, the Festival is an annual three-day event traditionally scheduled on the first full weekend of February, featuring activities for all to enjoy, but especially for children.

Every year, the Committee has been proud to help organize the FBA's participation in the Festival. A highlight of the Festival each year has been the opening of the Historic Courthouse to host mock trials, a lawyer-themed game show, and an up-close look at historical documents from the County's Archives.

For the mock trials, FBA members act as the witnesses and attorneys in conflicts from popular fairy tales adapted to a courtroom setting, such as 2020's Beauty and the Beast-themed Gaston v. the Prince (formerly known as the Beast). The trials are always presided over by Fairfax judges, while the children in the audience get to act as the "jury" and render their verdict at the conclusion of the trial.

For the game show, children from the audience are selected to test their knowledge of obscure laws against local lawyers and judges in So You Think You're Smarter Than A Lawyer? (based on the hit TV game show Are You Smarter Than a 5th Grader?) with the chance to win prizes—chocolate, of course!—for correct answers.

The cancellation of the 2021 Chocolate Lovers Festival, while necessary, was a great disappointment because these popular events have played an important role in advancing the Law Related Education Committee's mission to educate children about the legal system and the role of the judicial branch in government.

However, in 2022, the Festival is scheduled to return! It will be held **Friday, February 4 through Sunday, February 6**. The Festival organizers are working diligently to ensure that all appropriate safeguards will be taken to protect attendees.

This is a golden opportunity to reach the County's children directly again. Any FBA member who is interested in participating as a volunteer for the Festival is welcome. In addition, the Committee would like to invite all FBA members (either with school-aged children or not!) to reach out with ideas or suggestions on how we can continue to connect with Fairfax's children in this unusual time.

Please contact Courtnie Norris at cnorris@fairfaxbar.org or Joanna Faust at joanna.faust@fairfaxcounty.gov for more information or to volunteer. ■

Digital Afterlife: Going Beyond the Uniform Fiduciary Access to Digital Assets Act

By John W. Heck, Esq., Chair, Wills, Trusts, and Estates Section

Woven into the fabric of our society is our “digital footprint:” the sum total of our online profiles, activities, accounts, and avatars. The average person has over 200 digital accounts,¹ and by one estimate the average American family owns \$55,000 in digital assets.² With the boom in cryptocurrency and non-fungible tokens, the value of online-only wealth will undoubtedly continue to grow. Perhaps just as important are non-financial assets: photographs, recordings, blogging, and online chats are ubiquitous, and preserving those profiles could prove important to a family's legacy.

Unfortunately, access to online assets is often difficult or impossible once the owner dies. Many memories are lost forever, and dormant accounts are eventually transferred to the Virginia Department of Unclaimed Property or targeted by online hackers and lost forever. Many estate planners wisely incorporate access to digital assets in their client's trusts and powers of attorney, and in 2017 the Commonwealth adopted the Uniform Fiduciary Access to Digital Assets Act (UFADAA) to provide a legislative solution.³

Both the UFADAA and a good estate plan permit a fiduciary to manage digital property such as computer files, web domains, and virtual currency, and provide a path for access to email, text messages, and social media accounts. The language in a trust or will generally has priority over the statute.

Unfortunately, legal authorization does not always facilitate actual access by a grieving spouse or administrator of an intestate estate. Because an individual may have hundreds of accounts, it is likely unrealistic to expect an executor to contact each company to provide a copy of a death certificate, order of appointment, and a copy of the statute to ensure the tech support line changes the password to provide access in accordance with their company's policies.

Many larger corporations recognize this dilemma and have begun to act. Facebook has added a “legacy contact” to its user options.⁴ and Apple recently announced their “Digital Legacy” program, which allows users to designate up to five people as “Legacy Contacts” who can access data, photos, and purchases of a decedent.⁵

These programs have limitations: Facebook will not allow access to private messages, and Apple requires users provide their legacy contacts to provide an access code from the decedent, for example. They do, however, represent a vast improvement over a system where users likely needed a court order, and even then might never gain access to their loved one's information.

A prudent estate planning attorney has several options to preserve a “digital estate.” First, a client's power of attorney and will or trust should include language allowing an executor or trustee access to digital assets. Second, a spreadsheet or other listing of accounts and passwords might be included in the planning binder or stored in a secure area to be used as a reference by the fiduciary. Third, a handout could be provided listing various corporations and their policies towards preserving digital legacies stored in their system, with a good starting point for such corporations as Apple, Amazon, Google, Facebook, Twitter, and the like, along with concerns about using these systems. Finally, several digital preservation services already exist that store current passwords and allow an updated list to be provided as part of an estate plan.⁶

No matter the path a practitioner chooses, it is clear that digital legacies are here to stay. Wealth transfer from one generation to the next must include consideration of online accounts, or a critical aspect of a client's life's work may be lost forever. ■

¹Dashlane 2014.

²Michelle Cortes-Hawkins, “Virtual Reality: Handling Digital Assets in a Divorce,” *Divorce Financial Analysts Journal*, April-June 2019.

³Va. Code Ann. §§ 64.2-116 through 64.2-132.

⁴www.facebook.com/help/1568013990080948/?helpref=uf_share.

⁵<https://digital-legacy.apple.com>.

⁶One platform, Directive Communication Systems, is designed for practitioners who wish to preserve a client's digital legacy. <https://www.directivecommunications.com>.

The Virginia Rent Relief Program Lives On

By Heather R. Steele, Esq., Co-Chair, Real Estate Law Section

The Virginia Rent and Mortgage Relief Program (RMRP) initially began under the American Rescue Plan Act of 2021 to mitigate financial hardships associated with the COVID-19 pandemic. Around December of 2020, the program was re-branded as the Virginia Rent Relief Program (RRP) and revised to now only provide relief to residential tenants. Mortgage relief applications are no longer being accepted.

The federal CDC eviction moratorium ended on August 26, 2021, although Governor Northam signed HB 7001 extending eviction protections in Virginia through June 30, 2022. These eviction protections are only available to residential tenants. House Bill 7001 provides that “through June 30, 2022, no landlord shall terminate a residential tenancy, or take any action to obtain possession of a dwelling unit, for nonpayment of rent, if the eligible tenant has qualified for unemployment benefits or experienced a reduction in household income, incurred significant costs, or experienced other financial hardship during or due, directly or indirectly, to the coronavirus pandemic,” without the landlord first complying with the requirements of HB 7001.

Prior to November 30, 2021, applications to the RRP were processed through the Virginia Department of Housing & Community Development (Virginia Housing) and a third-party company named DEVAL. As of December 1, 2021, the RRP application process has transitioned to a one-application system for both landlords and tenants to initiate and apply for rent relief through an online portal called Gov2Go. Applications that are already in process will remain active, and applications still pending as of December 30 will be transitioned automatically to the Gov2Go portal.

The requirements of HB 7001 for residential landlords are as follows:

- Pay or Quit notices are now 14-day notices (the 5-day notice requirement was changed by the amendment of Virginia Code §55.1-1245, which is in effect until July 1, 2022)
- Must serve a written notice on the tenant that informs the tenant of the RRP
- Must include the website address and statewide telephone number for the RRP
 - The statewide telephone number is 1-833-RENT-RELIEF or 833-736-8735
 - The website address is: <https://www.dhcd.virginia.gov/rmrp> (but this may change as the Gov2Go portal becomes accessible)
 - Eligibility can be checked at this address: <https://dmz1.dhcd.virginia.gov/RMRPEligibility/>
 - * Keep in mind that Fairfax County and Chesterfield County have their own localized systems for rent relief.
 - * Fairfax County's rent relief program is accessible at: <https://www.fairfaxcounty.gov/health-humanservices/eviction-prevention>
 - * Eligibility for Fairfax's rent relief program can be checked at: <https://www.fairfaxcounty.gov/health-humanservices/eviction-prevention/emergency-rent-assistance-program-eligibility>
 - The Gov2Go portal is accessible here: <https://web.getgov2go.com/signin?returnUrl=%2Fdashboard>
- Must include information on how to reach 2-1-1 Virginia for information on other federal, state, and local rent relief programs.
- Within 14 days of serving the notice on the tenant, landlord must apply for rental assistance, unless the tenant pays in full, enters into a payment plan, or informs the landlord that the tenant has already applied for rental assistance.
 - If tenant applies for RRP, landlord must cooperate with tenant's application by providing any necessary documentation (which could include landlord's W9 and banking information, and supporting affidavits)

The RRP allows for up to 45 days from completion of an initial application for processing and providing written approval. After the 45-day mark, if landlord or tenant does not receive approval from RRP (or any other rent relief program), landlord can proceed with a Summons for Unlawful Detainer. If tenant or landlord has already previously applied for rent relief, the waiting period for any subsequent RRP application is only 14 days, not the 45 days required for the initial application.

If the tenant refuses to cooperate with rent relief and refuses to enter into a payment plan with landlord, or if the tenant is deemed ineligible for rent relief, or if funds from the Cares Act or the American Rescue Plan Act run out, landlord may proceed with a Summons for Unlawful Detainer after the 14-day Pay or Quit notice period expires.

Due to the current onerous process for eviction based upon monetary default, landlords may be well advised to rely on an alternative grounds for eviction. However, there is a risk to this approach. Should a landlord file a Summons for Unlawful Detainer only for possession, without seeking any rent or other monetary damages, and prevail in General District Court, the Court may not require an

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Mid-Year Labor & Employment Update

By John E. Thomas Jr., Esq., Chair, Employment Law Section



Employment lawyers from across Virginia, including from the Fairfax Bar Association, gathered in Virginia Beach in October for the VBA's annual section conference.

Photo courtesy of the Virginia Bar Association

It is difficult to recall a time in the recent past when employment law has been livelier. Over the past two years, both COVID- and non-COVID-related developments have kept Fairfax L&E attorneys busy.

The Latest COVID Developments. As we go to print, President Biden's three-pronged strategy of mandating vaccines has stalled completely as a result of litigation. Large employers subject to OSHA's Emergency Temporary Standard, federal contractors, and healthcare facilities have all successfully obtained injunctions against the federal mandates. This has thrown a wrench into corporate compliance efforts and left employees and employers alike closely watching the developments play out in court. Meanwhile, states are increasingly passing laws prohibiting mandatory workplace vaccines. Questions about the Virginia Department of Labor and Industry's Final Permanent Standard seem to have subsided in light of the federal OSHA developments, despite the state regulations retaining the force of law.

Workplace Cannabis Issues. In July, Virginia eliminated criminal penalties for simple possession of marijuana and provided a process to expunge convictions for certain marijuana-related crimes. Meanwhile, the law was relatively silent on its effect in the workplace. Fairfax employment lawyers have closely watched for developments involving workplace protections for employee use of medicinal (or even recreational) marijuana. Employers anticipate a rise in cannabis use, and a difficulty implementing a blanket hiring ban for positive pre-hire drug tests, particularly in tight labor markets.

Lasting Effect of New Virginia Laws. In 2020 and 2021, Virginia passed a slew of employee-friendly legislation: the Virginia Values Act, procedural changes to the Virginia Human Rights Act, a ban on non-competes for low-wage employees, a broad whistleblower protection law, a new state overtime law, a worker misclassification law, drastic changes to the state wage payment law, and updated rights for pregnant employees, among others. Despite these sweeping changes, Fairfax attorneys have not yet seen a tidal wave of lawsuits. Anecdotally, the section believes that COVID has affected the normal pace of state litigation and expects more legal enforcement as employees return to work and the courts unclog.

Section Events. In addition to serving our clients, the L&E section has also found plenty of opportunities to network, have fun, and learn from one another. We kicked off the section year in August with a great in-person happy hour at Tysons where we met new members and caught up with old friends. In September, the section found itself again in-person at the Virginia Bar Association's 51st Annual Labor & Employment Conference in Virginia Beach where we joined our fellow practitioners from across the Commonwealth to teach, learn, and enjoy camaraderie outside of the courtroom. In October, the section hosted a virtual meeting with Supreme Court of Virginia Justice McCullough, Court of Appeals of Virginia Judge Malveaux, and former Fairfax Circuit Court Judge Ortiz (newly selected to join the Court of Appeals of Virginia). The jurists were generous with their time in discussing the changes to Virginia appellate law effective January 1, 2022—at which time employment cases will be appealed to the Court of Appeals of Virginia rather than the Supreme Court of Virginia. We will go on hiatus during the busy holiday months, but we look forward to keeping the momentum going in the new year.

If you would like to contribute to the section's program in the coming year, contact either of the section co-chairs, John Thomas jethomas@mcguirewoods.com or Roya Vasseghi roya@vasseghibuddlaw.com. ■

President's Column

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Most of all, we are missing in-person connections. There is something to be said for sitting in a courtroom on a motions day, watching your colleagues argue their cases and hearing a judge's questions and rulings on those cases. You learn a lot. It's just as nice to see everyone in the hallways and find out how they are doing. It is much easier to pickup on something in that environment than it is on a virtual meeting.

To supplement the lack of these interactions, consider the FBA. Of all the things the FBA does, the most important is its ability to provide our members ways of interacting with each other. That includes the meetings of our numerous sections and committees. Even the virtual meetings, which are how some of them are done, still allow you to hear and see folks. The FBA Board of Directors now meets in a combination of virtual and in-person meetings which gives us the benefit of both worlds. For the first time since March 2019, we will have the Bench Bar Dinner Dance on March 5, 2022. If you have never attended in the past, get your booster shot and come on out. It's a great opportunity to chat with other attorneys, their spouses and the judges with a nice drink in your hand. If you were a regular at Bench Bar, you know how it rolls, and welcome back. We will have several judicial investitures in the New Year. These are usually held late on a Friday afternoon in the courthouse followed by a reception. There's another opportunity to meet and mingle. Everyone's in a good mood because it's Friday, the week is over, and they have a nice drink in their hand. You might notice a drink theme here.

Over the upcoming months, you should be able to get out and see people at the Heroes vs. Villains 5K race, the Law Day Weiner Roast, our Spring Golf Tournament, Lawyerpalooza and other events. Go to the FBA Convention next year, attend the luncheons, get CLE credit at an in-person course, and invite your fellow committee members to happy hour after your meeting. See and talk with people. If nothing else, your FBA membership should make it easy for you to reconnect with colleagues whom you have not seen much of over the last two years, and to find new individuals who you could not have met over the last two years.

The world has changed, and it's time to get back. ■

ANNOUNCEMENT

New & Lowinger is pleased to announce that **Melissa Schefkind** has become a partner. Melissa has been with the firm since 2014, following a judicial clerkship. Her practice includes all aspects of family law, including divorce, equitable distribution, spousal and child support, and custody matters. Melissa successfully litigates complex matters and is adept at negotiating and fashioning creative resolutions. She has been recognized by *SuperLawyers* as a Rising Star and *Best Lawyers* as a top attorney in the region. Melissa is admitted to practice law in Virginia, Maryland, and the District of Columbia.



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The Virginia Rent Relief Program Lives On

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appeal bond from the tenant. This could incentivize the tenant to appeal the judgment, allowing the tenant to remain in the property for an extended period of time (without paying rent) while the appeal is processed through Circuit Court.

In addition to making the eviction process particularly cumbersome to landlords, there is another, unanticipated result of the RRP. Our practice has noticed a trend where landlords are opting to not renew their leases with tenants who wish to remain in their properties at the end of the lease term. These landlords have deemed it too risky and onerous to continue owning rental properties given the highly tenant-favorable and ever changing landlord-tenant laws and, as a result, are deciding to sell their rental properties for a hefty profit in today's hot real estate market. As a result, the supply of available residential properties is shrinking, leading to increasing rent costs for tenants and contributing to the housing shortage issues now proliferating in Virginia. ■

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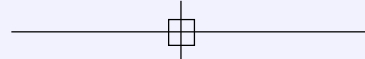
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 - Suite 212 - \$800/mo, full service, Main Floor
 - Suite 214/215 - \$1,425/mo, full service, Main Floor corner

4021 University Drive, 2nd Floor - 3-room office suite located one block from FFX Crths! Lrg. corner executive office w/built-in book shelves overlooking University Dr. w/two adjacent windowed offices, plus shared use of kitchenette, 2 BAs, storage, and excellent windowline. Some existing furniture avail. to convey at tenant's option. Plenty unassigned surface parking. LEASE - \$1,750/mo, full service net of office cleaning only + phone & internet paid by tenant, 2 - 5 yr. lease term.

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10513 Judicial Drive - Directly across from FFX Courthouse! Suite 102 - 4,000 SF divisible on 1st floor OR Suite 301 - 1,526 SF on 3rd. flr. corner suite of elevated building directly across from Fairfax Courthouse. 1st floor space can be divided into two suites between approx. 1,700 rsf & 2,500 rsf. Great space in a convenient location! Covered parking for tenants! Building-standard turnkey build-out w/5-yr. min. lease. LEASE - \$25 psf, Full Service, 3 - 10 yr. lease, avail. immed. OR Lease entire 4,000 sf in Suite 102 - \$24 psf, full service

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4248-B Chain Bridge Road - Move-in ready sunny end unit office on the 2nd flr. has a great windowline - all offices, conf. rm, and recep. area have windows. Floor plan includes recep/admin area, 3 prvt. offices, conf. rm, 2 BAs, kitchenette, storage closet, util. & storage rm. Existing furniture conveys. SALE - \$225,000 (\$225 psf)

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3905 Railroad Avenue, Suites 200 & 201 - Beautiful and well-kept building right off Main St. and Railroad Ave. with elevator access for ADA requirements. 2,718 SF double unit on left side of building w/beautiful windowline includes recep. area, 3 admin. areas, conf. rm., 5 prvt. offices, 2 BAs, and kit. Plenty unassigned surface parking. SALE - \$605,000 (\$222.59 psf)

4085 Chain Bridge Road - Great location & visibility! - Suite 402 - Efficient 738 rsf suite w/good-sized waiting/admin area, 2 corner offices & storage closet. Windows on 3 sides of suite. Lobby Level Suite 101 - 3,150 rsf avail. for office/medical/limited retail use, signage facing Rt.123, and direct entrances from Chain Bridge Road and from rear parking deck. LEASE - \$23 psf, full service, 2 - 5 yr. lease term.

10521 Judicial Drive, Unit 305 - 1,540 SF across Judicial Drive from Fairfax Courthouse! Lovely corner suite w/4 offices, large conference room, reception/admin area, eat-in kitchen, and storage/communication closet. SALE - \$345,000 (\$224 psf) OR LEASE - \$2,182/mo (\$17 psf includes utilities) + ctn, phone & internet, 2 - 5 yr. lease term. Already painted and owner will provide new flooring in tenant's choice of color w/3-yr. lease min. Avail. immed.

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