



The Virginia Bar Association  
YOUNG LAWYERS DIVISION

# Opening Statement

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

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## INTRODUCTION

# Summer Opens

We are pleased to present the Summer 2014 issue of *Opening Statement*. This issue marks the end of our second year publishing this newsletter, and we are excited that this issue is being printed for distribution at the 124th Annual VBA Summer Meeting. We begin this issue with an interview of Alex Burnett (page 2), who received the Sandra P. Thompson Award at this year's VBA Annual Meeting, and we feature photos from the Annual Meeting (page 6) and the recent YLD Spring Meeting (page 10). In this issue, Rachel Horvath discusses who pays "When Bed Bugs Bite" (page 8), and Jack Robb offers advice on effective contract drafting and negotiation (page 4).

As summer begins, YLD Chair Elaina Blanks-Green looks forward to a busy and productive year of YLD activities (page 3). This summer is a great time to get involved with one of the YLD's many programs, some of which are featured in the YLD Activities and Projects Guide (page 11). And if you have an idea for a new project, we welcome your inspiration and initiative to make it happen!

The goal of *Opening Statement* is to tell the story of the Young Lawyers Division and to promote community within the YLD. If you are planning a YLD event, please let us know how we can help publicize it and increase participation. After your project or event is over, please send us a write-up and photos so that we can share your successes with the rest of the Young Lawyers Division and the VBA. Let us be your voice!

The *Opening Statement* Editorial Board is always looking for substantive articles to include in this newsletter. Please consider turning a recent experience or research assignment into an article to share with your fellow young lawyers. We look forward to receiving your submissions, and we welcome your comments and suggestions. You may contact us at: [editors@openingstatement.org](mailto:editors@openingstatement.org). Thank you for reading. We hope you enjoy this Summer 2014 issue of *Opening Statement*!

—The Editorial Board



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## YLD Fall Meeting

The Young Lawyers Division will be hosting its annual **Fall Executive Council Meeting on September 26-27 (Fri. - Sat.)** at the Sunset Beach Inn and Grille in Cape Charles, Virginia. The Fall Meeting is a great chance to get to know fellow young lawyers, to re-connect with old friends, and to network and socialize in a relaxed atmosphere. The Fall Meeting is also family-friendly, and young lawyers are encouraged to bring significant others and children.

### Featured Activities:

- YLD Executive Council Meeting with full breakfast
- CLE: "Ethics in The Electronic Age—Professional Responsibility for Today's Young Lawyer"
- Breakfast, lunch, and dinner on Saturday
- Fun social activities

Register today at:

[vba.org/yldfallmeeting14](http://vba.org/yldfallmeeting14)

## Upcoming VBA Events

**July 24-27: 124th VBA Summer Meeting**

**Sept. 11-13:** Annual Conference on Labor Relations and Employment Law

**Sept. 26-27: YLD Fall Meeting**

**Oct. 31:** Annual VBA Tax Practitioners' Roundtable

**Nov. 20-21:** Annual VBA Capital Defense Workshop

View the complete calendar at:  
[vba.org/calendar](http://vba.org/calendar).

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SANDRA P. THOMPSON AWARD RECIPIENT

# Interview with Alex Burnett

*On January 24, 2014, at the 124th Annual Meeting of The Virginia Bar Association, W. Alexander ("Alex") Burnett was presented with the 2013 Sandra P. Thompson Award in recognition of his outstanding work and long-term service. Alex is a Shareholder in the Richmond office of Williams Mullen where he practices construction law, bankruptcy & creditors' rights, and real estate litigation.*

**Alex, congratulations on receiving the Sandra P. Thompson Award! You received the award at this year's Annual Meeting, which was your last VBA event as a member of the Young Lawyers Division. How many years were you a member of the YLD?**

I graduated from the University of Richmond School of Law in May of 2004 and I moved to Washington, D.C. and clerked for The Honorable Claude M. Hilton in the U.S. District Court for the Eastern District of Virginia (Alexandria Division) for one year. Following my clerkship, in September of 2005, I joined the firm Williams Mullen and I joined the VBA and the YLD thereafter in October 2005. This past January 2014, I officially aged off the YLD. So, I was a member for a little over 8 years.

**What prompted you to get involved in the VBA?**

Williams Mullen encourages all of the

associates to be members of the VBA but as far as getting involved, I give Matt Cheek, a banking and financial services partner at Williams Mullen, credit for that. In 2005 and 2006, I assisted with the National Moot Court Program. Then, in the spring of 2007, I received a call from Matt who was the Chair of the YLD. He asked whether I would serve as one of the co-chairs for the Moot Court Committee. I accepted that position and served as Co-Chair of the National Moot Court Committee for the next 7 years. Construction law has always been one of my primary focuses so Matt also nominated me to be the YLD liaison on the Construction and Public Contracts Law Section Council. So, I have to give credit to Matt Cheek for getting me plugged into the YLD.

**What projects have you worked on during your time in the Young Lawyers Division, and what leadership positions have you held?**

I served as co-chair of the National Moot Court Committee for 7 years. I served as a YLD liaison to the Construction and Public Contracts Law Section for approximately 6 years. I served on the YLD Executive Committee for approximately 4 years. I volunteered for the YLD's Model Judiciary Program serving

*Continued on page 7*



Travis Hill (Immediate Past Chair) presents Alex Burnett with the 2013 Sandra P. Thompson Award at the VBA Annual Meeting.

Courtesy: VBA Staff.

# Spring(ing) Forward into Summer!

By Elaina Blanks-Green

In my first column in *Opening Statement*, I have to give two thumbs up to the immediate past chair, **Travis Hill**. My fellow Tar Heel was an excellent leader and provided the YLD with the continued steady guidance that has kept this division moving forward. Speaking of moving forward, I am so excited that we have turned the corner on a pretty memorable (and snow-filled) winter and have enjoyed a wonderful spring full of activities and opportunities for members of the YLD.

This was definitely a winter to remember. I'm sure parents will recall their children being excited about their numerous snow and weather-related days that kept them out of school. Likewise, I believe that our YLD members will fondly recall this past winter's annual meeting as being one where the VBA was able to highlight the 50th anniversary of the groundbreaking decision of *Brown v. Board of Education I* (1954) by having a joint meeting with the Old Dominion Bar Association. The increased attendance and energy were amazing. In addition, the recognition of **Governors Holton** and **Wilder**, with captivating historical remarks by Governor Baliles, was truly one of the most memorable events for the VBA. Our immediate past president, **Tom Bagby**, organized a phenomenal meeting in celebration of the VBA's 125 years of existence and served as an excellent president over the past year. For the YLD members who attended the banquet, we were ecstatic to share in the recognitions of **Alex Burnett** and **Christopher Gill** for their countless contributions to the YLD's National Moot Court and the Legal Food Frenzy programs. Alex's longstanding commitment has retained and enhanced the prestige of the National Moot Court program. Chris has been invaluable to the success of the Legal Food Frenzy for more than 7 years and specifically 2013 as we celebrated raising the equivalent of over 10 million pounds of food.

In addition to the annual meeting, this winter was a busy one for the YLD. Our Regional Membership Committees put together and held outstanding membership happy hours in their respective regions which are designed to inform

potential members about the benefits of being a member of the VBA. Some of the membership events were held in conjunction with our Legal Food Frenzy receptions, which highlight the importance of the regional food banks. We are always appreciative of the regional food bank representatives for volunteering their time to attend the receptions and provide invaluable insight to the importance of the organization. In addition, our Mentor Resource Program is growing legs as the different regions have been diligently connecting with the various mentors and making connections with the newly admitted attorneys who have elected to become members of the VBA. Hopefully, the connections will assist with the transition from law school into practicing law in the Commonwealth.

In springing forward, I am positive that we are all enjoying longer and warmer days now that we have put the snow shovels and heating bills behind us for another year. Similarly, I hope that we all participated in celebrating the outstanding success of some of the YLD's most memorable events. For example, this year, the University of Richmond Law School Council organized a Professionalism and Ethics Spring Symposium at the University which occurred in March. The symposium's goal was to provide law school students and practitioners the opportunity to interact with some of the most dynamic ethics speakers in the Commonwealth. The event was well attended by lawyers and law students who commented on their collective enjoyment of the event. In addition, this year's

Legal Food Frenzy concluded on April 11 and, in keeping with past years, was again a wonderful success due to the legal community's commitment and dedication. Both events occurred soon after the official declaration of spring season and I'm pleased that our collective "winter cabin fever" resulted in outstanding attendance and participation in both events.

Finally, spring would not be official without a chance for our YLD members to interact with each other and discuss business in a friendly atmosphere. To that end, I eagerly anticipated our annual YLD Spring Executive Council Meeting which was held on May 16 and 17 in Duck, NC. We continued our tradition of having a substantive and productive business meeting, including a phenomenal presentation on "Technology and the Young Lawyer - Practicing Law in the Information Age" by recent YLD graduate **Monica McCarroll**. In addition, we were thrilled that **David Mercer**, one of the VBA's beloved members of the Board of Governors and his wife Nell graciously opened up their home in Duck, North Carolina (for the second year in a row) and hosted our YLD Executive Committee contingent for an afternoon of wine and cheese. The event was amazing and we thank them for continuing to host us during our meeting.

If this past winter and spring are any indication, then this summer is promising to be a busy and productive one filled with countless YLD events for which our membership can participate and contribute. I look forward to a wonderful year ahead! ■



## Elaina L. Blanks-Green

General Tax Attorney, Norfolk Southern Corporation (Norfolk)

**Practice Areas:** Tax

**Law School:** University of Virginia School of Law (2003)

**College:** University of North Carolina at Chapel Hill (2000)

**VBA Leadership:** YLD Chair (2014 - Present); Taxation Section

Council (Immediate Past Chair)

**Awards:** Legal Elite (Virginia Business), 2006, 2008-2013; Virginia Rising Stars (Super Lawyers), 2007, 2009-2012; Top 40 Under 40 (Inside Business), 2011.

**Bio:** Elaina is a huge sports fan (UNC Tar Heels and UVA Cavaliers) and a VBA devotee.

**Contact Info:** elaina.blanks@nscorp.com or 757.629.2385

# Tips for Contract Drafting and Negotiation

By Jack Robb

The phone rings. You look over and see it's one of your best new clients. He runs a construction company, and he tells you he has submitted subcontractor pay applications on a big job but has not been paid for several months. His subcontractors and vendors are calling daily for their money, and he is in a cash flow crisis. The conflict check clears. He tells you about the claim. No question that the work was done well. There are some small hurdles, but he seems to have a strong case. The general contractor, an out-of-state behemoth, is likely having cash flow problems of its own and is slow paying to stabilize its business. You ask your client to send you documents supporting the claim and the contract.

The contract is 34 pages of onerous terms. The dispute resolution provision requires any litigation to be filed in the state where the general contractor is located (not Virginia). You read further. The general contractor can reject a pay application if it determines in its sole discretion that the subcontractor failed to provide a long list of specific information. You read further. If your client litigates and wins he cannot recover attorney's fees, but if he loses he must pay the general contractor's attorney's fees. Surely these terms cannot apply to your client's claim. Who would sign such a one-sided contract? You flip to the back page. Your client did.

Sometimes the best advice comes before the dispute arises. Being a trusted business advisor means helping clients secure rights and balance risks when taking on new obligations. Consider these points to help your clients negotiate and draft

better contracts:

## COURTS ENFORCE CONTRACTS.

"When contract terms are clear and unambiguous, a court must accord those terms their plain meaning." *Quadros & Assoc. v. City of Hampton*, 268 Va. 50, 54 (2004). "The extent of the duty and the limit of the right of a court is to construe and enforce all the provisions of valid contracts, as made by the parties." *Potts v. Mathieson Alkali Works*, 165 VA. 196, 224 (1935). Virginia courts will enforce valid contracts, even if the enforcement works a hardship on one party. Virginia law provides wide latitude for parties to agree on a variety of terms, even whether a Court has jurisdiction to decide a contract dispute. *See, e.g., Tattoo Art, Inc. v. Tat Int'l, LLC*, 711 F. Supp. 2d 645, 651 (E.D. Va. 2010) (failure to mediate a dispute pursuant to a contract that makes mediation a condition precedent to filing a lawsuit warrants dismissal). Do not let your clients overlook the contract terms. Before signing any significant contract, your clients should invest in your review and analysis.

## BUSINESS PEOPLE WANT TO DO BUSINESS DEALS.

We cannot be "deal killers" or our clients will not reach out to us. Every business deal involves risk, and sometimes the client must accept the risk to do business. A good lawyer identifies the risks and analyzes the costs and benefits to help the client make informed decisions.

## BUILD A CONTRACT BANK.

Whenever you see a contract, highlight the interesting or key terms and put it in

your contract bank. Whether a series of folders or an electronic database, you can refer to your contract bank when drafting a new contract or revising a particular term.

## KNOW FORM CONTRACTS IN YOUR AREA OF FOCUS.

In the construction industry, several trade groups and industry associations publish form contracts. The American Institute of Architects (AIA), ConsensusDocs, and the Association of General Contractors, to name a few, bring together professionals from different parts of the construction industry to develop a series of contracts for various kinds of construction projects. These contracts address terms common in the construction industry, including insurance requirements, indemnification and pay-when-paid clauses. Consulting form contracts in your area of focus will help ensure the contract addresses all of the important issues.

## MAKE SURE THE BUSINESS TERMS ARE SETTLED.

In most circumstances, it seems clients negotiate the business terms and leave the phrasing of those terms and the legal terms to the lawyers. Making sure the business terms are clear and settled before you draft the contract will help smooth the process and make it cost-effective.

## LEARN THE LAW'S INTRICACIES.

The law is filled with exceptions, twists and intricacies. Learn them whenever you can and keep learning them throughout your career. For example, many lawyers may not know that a contract in writing,

### Support the VBA Foundation

The VBA Foundation funds numerous programs, including the *Ask A Lawyer Project*, the *Pro Bono Hotlines*, the *Model Judiciary Project*, the *Veterans Issues Task Force*, and *Regional Mentoring Programs*.

To donate or to learn more, visit: [vba.org/foundation](http://vba.org/foundation).



### Jack Robb

Partner, LeClairRyan (Richmond)

**Practice Area:** Construction Law

**Law School:** University of Richmond (2006)

**Awards:** Super Lawyers Rising Stars (2010 - 2014); Legal Elite, Young Lawyer (2012)

**Bio:** Jack is a partner on LeClairRyan's Construction industry Team and reviews contracts, litigates disputes, and collected payments for general contractors and subcontractors.

**Contact Info:** [jack.robbs@leclairryan.com](mailto:jack.robbs@leclairryan.com) or 804.915.4138

## Register Today: VBA Summer Meeting



The Greenbrier in White Sulphur Springs, West Virginia.

The 124th Summer Meeting of The Virginia Bar Association will be held at The Greenbrier in White Sulphur Springs, West Virginia on **July 24-27, 2014**. The Summer Meeting will have many CLE opportunities to sharpen your legal acumen and learn from leading lawyers, as well as opportunities to network, attend a debate, play golf, compete in a tennis tournament, hike in the scenic mountains, and enjoy the many resort amenities.

For more information, go to: [vba.org/vbasummer14](http://vba.org/vbasummer14).

but not required to be so by the Statute of Frauds, may be amended by oral agreement even if the original written contract provided that it could be amended only in writing. *Zurich Gen. Accident & Liab. Ins. Co. v. Baum*, 159 Va. 404, 409 (1932) (citations omitted) (explaining “[t]his stipulation itself may be rescinded by parol and any oral variation of the writing which may be agreed upon and which is supported by a sufficient consideration is by necessary implication a rescission to that extent.”). If it were easy, anybody could do it.

### GET DOWN TO BASICS.

Lawyers often spend so much time negotiating and drafting the fine print and general terms that they can easily overlook the key terms. Most contracts are fairly straightforward. One party pays X amount of money for Y service or property. Go into detail with your client to make sure he or she knows exactly what service or property she is selling or what service she must perform. For example, if the contract is for the “purchase of real property, improvements and personal property located on the property,” make sure the property description is attached to the contract and the improvements and personal property are specifically listed in the contract or an exhibit.

### BE A GOOD WRITER.

Good contract drafting is good writing. Be clear and precise. Proofread the terms aloud. Draft the contract, put it down for a day, and pick it up again. Ask another attorney in your office to read through the terms. If you focus on litigation, give the contract to a transactional attorney and vice versa. Eliminate unnecessary words. Use active voice.

The next time your client puts up the Bat Signal, make sure you have set the battlefield through good contacting. It will help avoid disputes, and, when a dispute is unavoidable, the parties' rights will be clear. ■



### VBA Career Center

The VBA Career Center is an excellent resource for young lawyers seeking new job opportunities. Login now to upload your résumé or browse current openings: [vba.org/jobs](http://vba.org/jobs).

### VBA Online CLE



Nothing beats the total, immersive experience of attending VBA programs in person, but if you have to miss a VBA event, VBA Online CLE provides an opportunity for you to view the programs you missed. Recent additions from the Summer Meeting include: *Stepping in It: Avoiding the Accidental Franchise in Your Business Plan*, and *15th Annual Review of Civil Decisions of the Supreme Court of Virginia*, and *Drones: A Discussion of the Criminal and Civil Law Impact of Unmanned Aerial Surveillance*. View the full catalog of available VBA Online CLE programs at: [vba.org/cle](http://vba.org/cle).

# VBA Annual Meeting Photos



Courtesy: VBA Staff.

Travis Hill hands the YLD gavel to Elaina Blanks-Green as he steps down to become the YLD Immediate Past Chair and Elaina takes the helm as YLD Chair.



Courtesy: VBA Staff.

VBA President-Elect Pete Johnson and his wife, Beth, join YLD leaders and law students for lunch during the VBA Annual Meeting.

...Alex Burnett, continued from page 2

as Benedictine's model judiciary coach and I have been a regular volunteer for the Virginia Hispanic Chamber of Commerce Program.

**How has your participation in the VBA impacted your development as a lawyer?**

My participation with the VBA has impacted my development in a number of ways. First, in my role on the Construction and Public Contracts Law Section Council, I've had an opportunity to work with some of the top construction lawyers in the state, assisted in organizing construction CLE programs, and monitored construction and public contracts related legislation to stay tuned with developments in my practice area. This experience on the Council has really elevated my construction law practice. Through the National Moot Court Committee, I've gotten to know a number of Virginia and North Carolina judges, as well as members of the American College of Trial Lawyers. All of these connections, as well as the friends I've made over the years through the YLD, have helped me develop a deep referral network and have impacted my professional development tremendously.

**What was the most rewarding aspect of your time in the VBA Young Lawyers Division?**

The most personally rewarding aspect was attending the YLD Spring and Fall meetings. Over the years, I met a lot of good people and forged long lasting personal and professional friendships. Those meetings allowed everyone to reconnect and were a lot of fun. Additionally, the many hours I spent working on various community service projects like National Moot Court and Model Judiciary gave me a worthy and personally rewarding way to give back to my local community. Professionally, my service on the Construction and Public Contracts Law Section Council really helped me develop my expertise and referral network in my construction practice.

**What changes have you witness in the YLD (if any)?**

A number of new YLD committees have been added during my involvement in the YLD, like the Legal Food Frenzy and Virginia Hispanic Chamber of Commerce Legal Aid Clinic. These programs have been tremendously successful because of the hard work of the YLD leaders who chair them.

**What do you see as the YLD's greatest challenges and opportunities in the years ahead?**

I think membership and meeting attendance are two of the biggest challenges. The challenging economy may cause some people to cut their YLD membership or choose not to attend the meetings, and that would be a real shame because YLD membership and attendance of the meetings are rewarding and good for young lawyers over the long term. The YLD leadership needs to stay vigilant about following up and keeping everyone involved. YLD leaders also need to look for ways get the young lawyers in their firms involved in YLD committees. Law firms also need to do their part to encourage and support leadership in the VBA.

**What advice would you give to young lawyers beginning their careers and thinking about getting involved in the VBA? Do you have any thoughts on the best way to get plugged in?**

**Recent Event:  
"Career Conversations" at the University of Richmond**

By Fiona Clancy

On March 4, 2014, the VBA University of Richmond Law School Council co-hosted an event at the University of Richmond Jepson Alumni Center with the law school's career development office and Phi Delta Phi. The purpose of the event was to give students the opportunity to network with attorneys in various practice areas. Before the event, students indicated the practice areas in which they were interested from among the following choices: (1) civil litigation, (2) family/estates, (3) criminal, (4) labor & employment, (5) transactional, and (6) non-transactional.

Approximately thirty attorneys and seventy students participated in Career Conversations. Food and drinks were served at assigned tables, and students rotated between two practice area tables based on their chosen preferences. Career Conversations was a wonderful event that was well-received by everyone who attended. One attorney who participated commented that, "It is invigorating for me to share my career experiences and to see the optimism and enthusiasm for the profession of these soon-to-be lawyers." Another lawyer said, "It was a terrific opportunity to underscore how important networking is and demonstrate how to do it."

Several law students appreciated the structure of the event. One law student who attended remarked, "I liked being in a more intimate environment. I also felt more comfortable being placed at a table instead of having to approach the attorney by myself." The students also appreciated the diversity of lawyers who participated, with one stating, "I enjoyed having conversations with attorneys in my field of interest, having attorneys in different generations at the table was especially enlightening." Another law student said, "It's nice to hear about attorneys' work schedules, goals, backgrounds, and to have the chance to ask them questions in a casual atmosphere."

To learn more about the University of Richmond Law School Council, contact **Madelaine Kramer** (mkramer@mrcplaw.com) or **Nancy S. Lester** (nancy.lester@ogletreedeakins.com).

*Fiona Clancy is a law student at the University of Richmond School of Law.*

The best way to get plugged into the VBA is to reach out to the YLD Chair and ask to get involved. You can also attend the Spring or Fall meetings. There are opportunities every year for those who ask. My advice to the current committee chairs is to step up their involvement by attending the meetings and to put their name into consideration for positions on the Executive Committee. Too many people run their committees but never attend the meetings—and the meetings in my opinion are one of the most rewarding aspects of VBA involvement. Don't put in the work on your committee but fail to take advantage of the networking and other benefits available through the meetings.

**Thank you, Alex, for your outstanding work and long-term service to the VBA Young Lawyers Division. Now that you have aged out of the YLD, how do you plan to remain involved in the VBA?**

I am currently serving on the Construction and Public Contracts Law Section Council and I plan to continue to play an active role with the Section Council and with the VBA as opportunities arise. ■

# When Bed Bugs Bite: Who Pays for Bedbug Extermination—Landlord or Tenant?

By Rachel D.G. Horvath

Although previously associated with travel to foreign countries, bedbugs have made an unwanted recent appearance in the United States and in Virginia. Bedbugs are an issue that both landlords and tenants often struggle with, particularly in large apartment communities where bedbug infestations may quickly become widespread. Bedbugs are small and fairly hard to detect at a glance. They can survive in a wide range of temperatures and their small, flat bodies allow them to stay hidden in small areas for a long period of time, making travel and, thus, widespread infestation, easy.<sup>1</sup>

While the interests of landlords and tenants typically align with respect to physically removing the bedbugs from the apartment, neither party wants to pay for the expensive treatment (or, as happens in many infestations, multiple treatments) to get rid of the bedbugs. The issue of who is responsible to pay for bedbug exterminations leads to tension between landlords and tenants and, sometimes, litigation over which party has to pay. When advising clients on this issue, it is important to understand the language of the lease and its intersection with applicable statutory authority. If possible, it is best to advise clients to consider these issues on the front end, when drafting or entering in to the lease agreement, so that the parties understand their responsibilities before a problem arises.

## THE VRLTA

Like any case involving a contract, attorneys litigating landlord/tenant disputes must look to the specific language in the lease agreement between the parties. What distinguishes landlord/tenant cases from run-of-the-mill breach of contract cases is the Virginia Residential Landlord and Tenant Act (“VRLTA”), which applies to many landlord/tenant relationships.<sup>2</sup>

The purpose of the VRLTA is to “simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; to encourage landlords and tenants to maintain and improve the quality

of housing; and to establish a single body of law relating to landlord and tenant relations throughout the Commonwealth...”<sup>3</sup> Accordingly, the lease agreement must be viewed in the context of the VRLTA, with the VRLTA prevailing over any inconsistent lease provision.

The VRLTA sets forth specific ways in which landlords and tenants are responsible for maintaining the dwelling unit. Relevant here, the VRLTA provides that the “tenant shall...[k]eep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests...and to promptly notify the landlord of the existence of any insects or pests.”<sup>4</sup>

The terms “insects” and “pests” are defined broadly. “Insect” means “any small invertebrate animal generally having a segmented form and belonging to the class Insecta including beetles, bugs, and bees.”<sup>5</sup> “Pest” is defined to include vertebrate animals other than man, invertebrate animals, unwanted plants, and bacterium, viruses, or other microorganisms.<sup>6</sup> Accordingly, the requirement that a tenant keep the dwelling unit “free from insects and pests,” applies to bedbugs.

Although it does not state as much on its face, this statutory language appears to place on the tenant all responsibility, including financial responsibility, for keeping the dwelling unit free from bedbugs. This arguably applies to the extermination of bedbugs. But to get a full picture of the tenant’s responsibilities with respect to bedbug extermination, it

is necessary to look to the specific language of the lease agreement between the parties. If the lease is silent about the financial responsibility for exterminations, the VRLTA may be the only source of the duty and, thus, the landlord may argue that it is the tenant’s responsibility. But the lease agreement may contain language which expressly places the burden of paying for extermination on either the landlord or tenant.

## THE LEASE AGREEMENT

Unless the lease clearly addresses the issue, the tenant may not learn, until faced with a large bill, that the landlord is taking the position that the tenant is financial responsible for the bedbug extermination. This could lead to some tension, confusion, and possibly, legal action, particularly when the tenant feels that he should not have to pay for the extermination. To avoid tension between landlords and tenants and unnecessary legal action, the lease agreement should clearly set forth whether the landlord or tenant is financially responsible for bedbug extermination.

Because the landlord likely will draft the lease agreement, the landlord should consider all implications of expressly placing the financial responsibility for extermination on the tenant. A tenant who knows he is financially responsible for bedbug extermination may not report the issue to the landlord or may try ineffective home remedies instead of paying for the expensive treatment. Meanwhile, the infestation may continue to spread



### Rachel D.G. Horvath

Associate, Morin & Barkley LLP (Charlottesville)

**Practice Areas:** Civil litigation including, medical malpractice defense, insurance defense, significant plaintiff’s personal injury claims, and landlord/tenant cases

**Law School:** University of Virginia School of Law (2010)

**Other Leadership Positions or Awards:** Charlottesville Albemarle Bar Association Young Lawyers Section Co-Chair; Thomas Jefferson Inn of Court CLE Chair; Leadership Charlottesville Class of 2014; Phi Beta Kappa

**Contact Info:** rhorvath@morinandbarkley.com or 434.293.1200



throughout the apartment community, creating unhappy tenants and bad publicity. Although placing the financial burden for extermination on the tenant may save the landlord money upfront, the landlord ultimately may decide it is in its best interest to shoulder that burden.

Many lease agreements which appear to place the financial burden on the tenant actually limit the landlord's ability to successfully argue that bedbug extermination is the tenant's financial responsibility. For example, a lease may provide that the tenant is responsible for bedbug treatment only when the tenant *causes* the bedbug infestation. In that situation, to prevail in an action seeking reimbursement for bedbug extermination, the landlord not only has to prove that there was a bedbug infestation for which extermination was necessary, but also that the tenant caused the bedbug infestation.

Proving causation in the bedbug context is difficult. To prove causation, the landlord likely will need a pest management professional (exterminator) to testify as an expert witness. But even with an expert

witness, given the size of bedbugs, their ability to hide in small places and survive in most environments, and the speed with which bedbug infestations spread, causation may be hard to prove. The landlord may introduce circumstantial evidence, *e.g.*, that no other apartments surrounding the tenant's apartment have bedbug infestations. But without evidence of *how* the tenant caused the infestation, the landlord may not survive a motion to strike. Even if the landlord does survive a motion to strike, the tenant may have evidence that casts doubt on the landlord's claim that the tenant caused the infestation. For example, the tenant may have evidence that other persons, including the landlord's maintenance personnel, were in the apartment recently and could be the source of the bedbugs.

Dealing with bedbug infestations is unpleasant enough. But adding

litigation about the financial responsibility for exterminating the bedbugs makes a bad situation even worse. To avoid conflict following a bedbug infestation, landlords and tenants should determine in advance and have a full understanding about which party is financially responsible. ■

#### Endnotes

1. Centers for Disease Control and Prevention, Bedbug FAQs (Jan. 10, 2013), <http://www.cdc.gov/parasites/bedbugs/faqs.html>
2. Not all landlord and tenant relationships fall within the purview of the VRLTA. For exemptions to the VRLTA, see Va. Code § 55-248.5.
3. Va. Code § 55-248.3.
4. Va. Code § 55-248.16(A)(3).
5. Va. Code § 3.2-3900.
6. *Id.* ■

### New VBA Website

The VBA has launched a new website, featuring updated content, a clean and responsive design, and new interactive features. Read more about the new website at: [vba.org/?welcome](http://vba.org/?welcome).

## Submit Your Article or Event Write-up to *Opening Statement*

The *Opening Statement* Editorial Board welcomes the submission of articles by young lawyers. Generally, articles should be about 1,300 words and should be on a topic of interest to young lawyers. (Longer articles may be divided into two installments and published in successive issues.)

**Articles.** Substantive article topics may include, for example:

- New developments in the law
- Day in the Life of... (e.g., "Day in the life of a Circuit Court law clerk" or "Day in the life of an assistant city attorney")
- Recent experience with... (or Lessons learned from...) (e.g., "Lessons learned from taking a legal aid pro bono case", "Recent experience with arbitration", or "Lessons learned from participating in the VBA Veterans Issues Task Force")
- Tips/Advice (e.g., "Arguing your first jury trial", "Tips for effective negotiations", or "How to handle your first client meeting")
- General Overview of a legal practice area (e.g., "Understanding partition suits" or "What every lawyer should know about property settlement agreements," etc.)

We welcome articles that are written specifically for *Opening Statement*, as well as articles that are adaptations of previously published material, such as blog posts, articles from firm newsletters, excerpts or summaries of law review articles, etc. The complete Author Guidelines and the VBA Publication Agreement are available online at: [www.openingstatement.org](http://www.openingstatement.org).

**Photos and Event Write-ups.** In addition to substantive articles, we are also interested in receiving photos and/or write-ups from YLD events. If you took photos at a YLD social or other event, please pass them along to us for possible use on the YLD website or in the *Opening Statement* newsletter.

Please send your submissions or questions to the *Opening Statement* Editorial Board at: [editors@openingstatement.org](mailto:editors@openingstatement.org).

# YLD Spring Meeting Photos



Courtesy: VBA Staff.

Attendees of the YLD Spring Meeting on May 17, 2014 at The Sanderling Resort in Duck, NC.



Courtesy: VBA Staff.

John Walker (VBA President), Nupur Bal (YLD Chair-elect), Bikram Bal, Elaina Blanks-Green (YLD Chair), and Trevor Green at the Spring Meeting.



Courtesy: VBA Staff.

Members of the YLD Executive Council review the agenda for the Saturday morning meeting.



Courtesy: VBA Staff.

Shawn O'Brien, Rand Robins, Jennifer Wuebker, Madelaine Kramer, Jeremy S. Williams, and Lauren Wheeling during a break out session at the Spring Meeting.



Courtesy: VBA Staff.

Young lawyers and their families socializing before dinner at the Spring Meeting.

# YLD Activities and Projects Guide

Are you looking for opportunities to become more involved in the Young Lawyers Division? The YLD has numerous activities and projects that are seeking additional participants. This issue of *Opening Statement* highlights just a few of YLD's many projects. For a complete listing of YLD activities and projects or for more information about any of these programs, visit: [vba.org/yldactivities](http://vba.org/yldactivities).

## BACKPACK TO BRIEFCASE

Each year, two-day seminars are held across the state to assist newly admitted members of the Virginia bar in their transition into practice. Focusing on fundamentals of a wide range of topics, the seminars also attract experienced lawyers who want to learn the nuts and bolts of unfamiliar areas of the law. The Committee also sponsors the Fundamentals course each year—a one-day seminar focusing on “how-to-do-it” information for a particular local practice procedure topic.

## COMMUNICATIONS/PUBLICITY

This committee oversees communications and publicity (both within the VBA and to the public at large) of the YLD's programs and accomplishments. The mission of the YLD Communications/Publicity Committee is to tell the story of the Young Lawyers Division and to promote a sense of community with the YLD. The Communications/Publicity Committee publishes *Opening Statement*, the VBA Young Lawyers Division newsletter. Article ideas and submissions are always welcome. To learn more, e-mail the editors at: [editors@openingstatement.org](mailto:editors@openingstatement.org).

## DISASTER LEGAL ASSISTANCE

Together with the Virginia State Bar Young Lawyers Conference Emergency Legal Services Committee, the Disaster Legal Assistance Committee trains and coordinates attorneys who are willing to volunteer their time in order to assist individuals rendered needy by emergency situations such as natural disasters. To that end, the Committee works very closely with representatives of the Virginia Department of Emergency Management, the American Bar Association Young Lawyers Division Emergency Legal Services Committee and the Federal Emergency Management Agency. Most importantly, when an emergency situation arises, members of the Committee and the volunteer attorneys they have trained provide pro bono legal services to individuals rendered needy by the emergency.

## IMMIGRATION ASSISTANCE

As the Commonwealth of Virginia continues to attract an increasing number of foreign-born citizens in search of work and opportunity, the need for low-cost, effective legal services for these communities has increased. Accordingly, The Virginia Bar Association Young Lawyers Division has established the Committee for Immigrant Assistance to identify the most effective ways in which the YLD can participate in assisting the immigrant community. The Committee is currently working on a pamphlet containing information on access to basic legal procedures and social services for distribution by the local and federal courthouses.

## LAW SCHOOL COUNCILS

The Law School Councils are student groups affiliated with the VBA. The LSCs support the mission of the VBA and provide leadership opportunities to law students.

## LAWYERS FOR THE ARTS

The Lawyers for the Arts Committee is dedicated to providing legal information to artists, arts organizations and nonprofit organizations throughout various regions of the state. Working in partnership with local art communities and nonprofits, we hold clinics and seminars in the Richmond, Tidewater, Northern Virginia and Charlottesville areas for artists and art organizations focusing on areas of the law in which they have a particular interest.

## LEGAL FOOD FRENZY

This project, undertaken in partnership with the Attorney General's Office and the Federation of Virginia Food Banks, challenges all Virginia attorneys to participate in a friendly competition to collect the most food and cash donations for the Commonwealth's seven regional food banks. More information can be found by visiting the Legal Food Frenzy website at: [www.legalfoodfrenzy.com](http://www.legalfoodfrenzy.com).

## MEMBERSHIP COMMITTEE

The Membership Committee is responsible for assisting the general membership committee of the VBA with its efforts to attract and retain members. Recognizing the importance of the participation of new members in the activities of the YLD and the Association, the Membership Committee also undertakes various activities, such as regional luncheon programs and presenting information at the First Day in Practice Seminar, to educate new members and encourage active participation in one or more committees of the YLD and the Association.

## MENTORING RESOURCE PROGRAM

As the YLD's newest initiative, the Mentor Resource Program pairs experienced young lawyers with newly licensed attorneys to help facilitate the transition into the practice of law. The Program provides an opportunity for new lawyers to receive guidance and advice from their more experienced counterparts on a quarterly basis, if not more often. The Program seeks to help mentors and advisees develop their relationships in a comfortable, small group setting and to allow for discussion of a variety of issues, including those—such as managing workloads and career advancement—that new lawyers may not be comfortable raising with their employers. The Program is available to mentors and new attorneys in all regions of the Commonwealth.

## MENTOR PROGRAM – CAPITOL REGION

The Richmond Mentor Program was established in 1990 as part of a community initiative to educate fifth-grade students on the dangers of substance abuse. Recognizing that substance abuse education has become a mainstay in most schools' curriculum, the mentoring program now focuses on providing students with

information and skills they need to access positive and productive paths. Mentors are assigned to elementary schools located throughout Richmond, and are required to visit their assigned schools for at least one hour per month during the academic school year.

### **MENTOR PROGRAM – SOUTHWEST REGION**

The Mentor Program matches an attorney in the Roanoke area with a fourth-grade class in Roanoke City Schools. Once a month, the attorney coordinates a time to visit with his or her class, for approximately an hour, to teach the students about the judicial system, career opportunities, and good decision-making skills. Activities normally include a field trip to the Juvenile & Domestic Relations Court, mock trials, contract drafting, and simulated mediations. Between 30 and 40 attorneys participate each year.

### **MODEL JUDICIARY PROGRAM**

The Program exposes approximately 2,000 high school students across the Commonwealth of Virginia to our judicial system by encouraging their participation in mock trials and mock appellate arguments before the Virginia Court of Appeals and the Virginia Supreme Court. Volunteers are needed to work with students in their area. No more than law school litigation experience is necessary.

### **NATIONAL MOOT COURT**

This is one of the oldest committees of the YLD. Each November, teams of law school students from Virginia, North Carolina, West Virginia and Kentucky compete regionally in brief writing and oral advocacy at the United States Courthouse in Richmond. Regional winners move on to compete nationally. Committee members coordinate the logistics of the event which includes securing judiciary to judge the competition, advertising and organizing a banquet with a speaker for the participants, judges and committee members.

### **PRO BONO HOTLINES**

The Pro Bono Hotline committees in the Capitol, Potomac, Southwest, and Tidewater regions actively recruit lawyers to be volunteers in staffing a “hotline” at the Legal Aid Society offices across the state. Volunteers, on a rotating basis, provide telephone advice to callers meeting financial eligibility requirements to ease the caseload of legal aid attorneys. A top priority of the Division and of the VBA, hotlines now exist in four legal aid service areas with further expansion planned as rapidly as possible. In 1995, the Pro Bono Hotlines received the American Bar Association’s Harrison Tweed Award, the highest national honor given to projects providing legal services for the poor.

### **PROFESSIONALISM AND CIVILITY IN PRACTICE**

This committee promotes professionalism and civility among the young lawyers as well as mentoring of young lawyers by more experienced lawyers of the bar. Young lawyers have been active in developing and coordinating programs that stress the aspirational goals of the practice. The committee also has sponsored the first annual continuing legal education (CLE) seminar geared toward young litigators focusing on the nuts and bolts of trial practice.

### **TOWN HALL MEETINGS – CAPITOL REGION**

The committee sponsors town hall meetings in the Richmond region and beyond on a variety of current issues. Traditionally, the committee has sponsored a debate between the candidates for Lieutenant Governor, and, in 2013, the committee partnered with Old Dominion University to host this event in Norfolk. In conjunction with the University of Richmond School of Law, the committee also recently sponsored a CLE panel discussion regarding restoration of civil rights in Virginia that featured the Governor’s legal counsel, a member of the House of Delegates, and interested stakeholders.

### **TOWN HALL MEETING – POTOMAC REGION**

This committee sponsors meetings on topical issues of interest in a public forum. Many of the programs are broadcast by local public television and radio stations throughout the state to serve the goal of educating the public on important legal issues.

### **WILLS FOR HEROES**

The Wills for Heroes program (WFH) was created in the wake of the September 11, 2001 terrorist attacks, when it was revealed that most of the first responders who perished in the line of duty lacked basic estate planning documents. In recognition of the services and sacrifices made by the first responders, Virginia’s Wills for Heroes program provides free basic legal estate planning services to Virginia first responders. The program is jointly sponsored and run by the Virginia State Bar Young Lawyers Conference and the Virginia Bar Association Young Lawyers Division and works with interested local bar associations and young lawyers’ groups to implement the Wills for Heroes program in cities and counties across the Commonwealth. Since its inception in Virginia in 2003, the program has provided over 2,000 estate planning documents.

### **YOUTH COURT EXPANSION PROJECT**

Youth Court is a school-based intervention program established to hold student offenders accountable for their actions while providing services to promote long-term behavioral change. The program offers an alternative to suspension, expulsion, and criminal proceedings by allowing students involved in certain disciplinary and criminal offenses the opportunity to present their case to a jury of their peers for resolution. Attorneys provide assistance to youth courts by serving as administrative officers. The role of the administrative officer is to ensure that the proceedings run smoothly, and to provide guidance to a jury during its deliberations. The first youth court in Virginia was established in Roanoke in 2004. The YLD has been asked to provide assistance in expanding the youth court program statewide. Planning for a pilot youth court program in the City of Richmond is currently underway. Volunteers are needed.

### **INSERT YOUR IDEA HERE!**

Do you have an idea for a new activity or project? The Young Lawyers Division thrives on the inspiration and enthusiasm of young lawyers. We encourage you to take the initiative to turn your idea into a reality so that, together, we can continue the YLD’s tradition of giving back to the legal profession and our communities. To get started, contact any member of the YLD Executive Committee. See contact info at: [vba.org/yld](http://vba.org/yld). ■