



The Virginia Bar Association
YOUNG LAWYERS DIVISION

Opening Statement

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

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INTRODUCTION

Presenting the Winter Issue

We are pleased to present the Winter 2013-2014 issue of *Opening Statement*. As we look forward to the upcoming 124th Annual Meeting of The Virginia Bar Association, YLD Chair Travis Hill reflects (page 3) on the achievements of YLD members and encourages us to continue getting things done as we engage the profession and serve our communities.

In this issue, you will also learn about Life Insurance 101 (page 4) in the second installment of our insurance series by Virginia Barristers Alliance. You will be challenged by Whitney Pinna to serve people in need by participating in the Pro Bono Hotline (page 2), and you will learn from Sheri Hiter how to request records under the Virginia Freedom of Information Act (page 9). In addition, Jennifer Ligon shares her perceptions relating to career change by young lawyers (page 11).

The *Opening Statement* Editorial Board is pleased to welcome **Matthew Baker** as a Production Editor to assist with the formatting, layout, and publication process and **William Reisinger** as a Development Editor to assist with reviewing and editing submissions and developing content for this newsletter. If you are interested in joining the Editorial Board or would like to learn more about getting involved, please contact us at: editors@openingstatement.org.

Our mission is to tell the story of the Young Lawyers Division and to promote community within the YLD. Please consider turning a recent experience or research assignment into an article for *Opening Statement*. And if you are planning or hosting a VBA event, please send us a write-up and photos so we can share your success with all of the YLD. Let us be your voice!

We look forward to receiving your submissions, and we welcome your comments and suggestions. You may contact us at: editors@openingstatement.org. Thank you for reading. We hope you enjoy this Winter 2013-2014 issue of *Opening Statement*.

—The Editorial Board



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VBA Annual Meeting

The Virginia Bar Association will hold its 124th Annual Meeting in **Williamsburg** on **January 23-25** in collaboration with The Old Dominion Bar Association. The Annual Meeting is an excellent opportunity to attend CLEs, to see old friends and make new ones, and to network and socialize with lawyers of all ages. The YLD will have programming specifically geared for young lawyers.

Featured Activities:

- YLD Executive Council Luncheon
- CLE: "Advocacy for the YLD: Learning How to Become a Zealous Advocate as a Young Lawyer"
- Prints and Pairings—Good For What 'Ales' You!
A networking opportunity for young lawyers to meet and socialize with members of the judiciary in a casual setting.
- Banquet and Dance (black tie)
- YLD "After-hours" Social
- And much more...

Register today at:
vba.org/annualmeeting2014

Upcoming VBA Events

Jan. 23-25: 124th VBA Annual Meeting

Mar. 31-Apr. 11: Eighth Annual Legal Food Frenzy

May 16-17: YLD Spring Meeting

Jul. 24-27: 124th VBA Summer Meeting

View the complete calendar at:
vba.org/calendar.

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THE VIRGINIA BAR ASSOCIATION YOUNG LAWYERS DIVISION

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LAWYERS TRAIN TO SERVE

Pro Bono Hotline

By Whitney W. Pinna

The YLD Pro Bono Hotline Committee of Richmond is actively recruiting lawyers to be volunteers in staffing its telephone hotline at Central Virginia Legal Aid. Volunteers, on a rotating basis, provide telephone advice to low income clients to help ease the caseload of Legal Aid attorneys. Hotline volunteers answer telephone calls at Legal Aid during several two hour time slots each week (typically on Monday, Wednesday, and Thursday evenings). Volunteers field calls in several areas: family law, consumer law, housing law, and employment law. The Pro Bono Hotline Committee, in conjunction with Legal Aid, provides training to its volunteers so lawyers from varying backgrounds can participate in the Hotline. Legal Aid staff members are always on site to answer any questions a volunteer may have. In the past twelve months, the Richmond Hotline alone provided services in over 700 cases, delivering much needed assistance to over 1,500 financially disadvantaged individuals.

Rule 6.1(a) of the Virginia Rules of Professional Conduct states that “A lawyer should render at least two percent per year of the lawyer’s professional time to pro bono public legal services.” As expressed in Comment 1 to Rule 6.1(a), “Every lawyer, regardless of professional prominence or professional work load, has a personal responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.” Recipients of Hotline services are deeply touched by the support and guidance Hotline volunteers provide. Volunteers provide a listening ear when others have turned away and often, in a very limited timeframe, are able to provide life changing advice to those in great need throughout central Virginia. Two hours a month is a minimal commitment for Hotline volunteers, but it provides immeasurable benefit to those who rely on the Pro Bono Hotline volunteers for advice on fundamental issues such as: where to sleep, how to keep custody of a child, or how to get paid for an honest day’s work performed. Each month when I go to Legal Aid to take Hotline calls, I am in awe of the Legal Aid attorneys who, despite limited resources, fight the good fight every day. As I finish on Wednesday evenings and leave Legal Aid after my Hotline calls, I am proud to be a lawyer and I am reminded of why I went to law school. While we may never fill the shoes of Thurgood Marshall or Atticus Finch, taking a Hotline call or two is certainly a good start in fulfilling our duty as citizen lawyers. To learn more about the Richmond Pro Bono Hotline or to become a volunteer, contact **Wyatt Deal** at wdeal@hunton.com or visit the VBA website at: vba.org/yldactivities. ■



Pro Bono Hotline volunteers attend a training session on September 17, 2013.

Courtesy: Whitney W. Pinna

YLD: Getting Things Done

By Travis G. Hill

Let me start off by wishing everyone a safe and happy holiday. Typically a late starter on the traditional holiday activities, especially the shopping part, I find myself in even worse shape than usual, Thanksgiving having been so late in November. I have the double whammy now of my kids no longer being young enough that empty boxes are just as entertaining as the presents that came in them. It'll get done, typically because my family gets me there and takes care of it.

Approaching the end of my year as chair of the YLD, an organization that has a reputation for getting things done, I have an incredible sense of gratitude to the VBA and the members of the YLD. It's been

'The only thing the YLD suffers from is leaders and volunteers who are so engaged in what they do that they sometimes neglect to let [others] know just what a tremendous project they've created.'

a tremendous honor to see how young attorneys commit themselves to a project or committee, taking time from their professional and personal lives to assist those in need of legal assistance, provide needed non-legal volunteer hours, or lead efforts to improve the practice of law in the Commonwealth. The chair is truly the least necessary position in the YLD; it is all the YLD committee chairs and volunteers who make the division as successful as it has been over its nearly 60 year existence.

During my time as chair, I've had the opportunity to speak and meet with attorneys who are passionate about their programs. Aging off isn't just a blow to them because of reaching 37 years of age, it is disappointing in the sense of stepping away from leading a program to which they've dedicated a great deal of time and energy. Yet, it is also exciting to see new leadership take on these programs and consider new opportunities and directions in which to send them. Speaking with newly licensed attorneys, or attorneys

just joining the VBA, has been a great part of my position—I get to see firsthand the enthusiasm and interest in working on a project that has them using the legal skills they've just begun to hone. Programs like Pro Bono Hotlines, Legal Food Frenzy, and Backpack to Briefcase are examples of either longtime programs benefiting from a steady stream of ready leaders or newly instituted programs finding opportunities for our members.

The only thing the YLD suffers from is leaders and volunteers who are so engaged in what they do that they sometimes neglect to let the outside world, or even other VBA members, know just what a tremendous project they've created. My request as outgoing chair is to simply be sure you communicate with your Executive Committee liaisons about your needs and successes. Attend YLD meetings to share the activities of your committees and meet those who are just as engaged in community oriented projects as you are. It will be rewarding in terms of the individuals you will meet as well as the renewed support you will get for your programs.

For those of you aging-off of the YLD or simply looking for a new challenge within the organization, please stay engaged with the VBA and its programs. As an active member of the YLD, you provide vibrancy to the entire organization that we need to keep around, whether it is within the larger VBA or the YLD. Talk to me or any

other individual in the VBA leadership about how to continue to provide your talents to this organization.

'As an active member of the YLD, you provide vibrancy to the entire organization that we need to keep around, whether it is within the larger VBA or the YLD.'

I will close with a heartfelt thank you to my Executive Committee who provided tremendous support and insight at our meetings and during offline phone calls. I am also grateful to Jeremy Dillon and all of the VBA staff who provided assistance and support with our YLD activities. Dan Ortiz, immediate past chair, was always available for a quip or advice, but most often an insightful and reassuring, if somewhat humbling, quip. Elaina Blanks-Green, Chair-Elect, will be a bolt of energy to this organization that I can't wait to see, and Nupur Bal, Secretary/Treasurer, will provide that one-two punch that will send the YLD to even greater heights.

I've enjoyed my time as chair, will miss it tremendously, but I know the work will get done because my YLD colleagues will take care of it. ■



Travis G. Hill

Deputy Secretary of Agriculture and Forestry, Office of the Governor (Richmond)

Law School: University of North Carolina at Chapel Hill (2003)

VBA Leadership: YLD Chair (2013 - Present); VBA Board of Governors (2012 - Present); YLD Executive Committee (2006 - Present); Richmond Town Hall Meeting, Co-Chair (2004 - 2010)

Awards: Super Lawyers Rising Stars (2007, 2010 - 2011), VBA YLD Emerson G. Spies Award (2008)

Other Leadership: Virginia CLE Committee (2008 - 2012)

Bio: Travis was appointed to his current position by Governor Bob McDonnell in July 2011. Prior to his appointment, Travis practiced at the Richmond office of Williams Mullen in its Government Affairs group. Travis is married to Katie Vatalaro Hill and father to Elise and Claire.

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Life Insurance 101

By Michael R. Thompson and Scott A. Paciocco (Virginia Barristers Alliance)

This article on life insurance is the second in a series of articles by Virginia Barristers Alliance, Inc., a wholly-owned subsidiary of The Virginia Bar Association. The previous installment covered long-term disability insurance. Future articles in the series will address topics including how to evaluate different benefits packages, health insurance basics, estate planning/business succession, long-term care insurance, and life audits.

Many people see the act of researching life insurance options and identifying a strategy as an overwhelming task. The more one reads about it, the more questions one has. Term? Whole Life? How does underwriting work? What's the best choice for me? There are seemingly as many different ways to design a life insurance strategy as there are companies that provide life insurance. Don't allow the decisions and the process to become too complicated. There are some simple concepts to consider that will help you identify the type of life insurance that is right for you, and which will help you develop a strategy that works. We'll separate the approach into a few basic categories:

- types of life insurance policies and their common uses,
- advantages and disadvantages of each, and
- the process of obtaining life insurance

Individually-underwritten life insurance policies are contracts that are issued by the insurance company. Each policy has three basic parties: the owner, the insured, and the beneficiary. In some cases, there may be multiple owners, multiple beneficiaries, or even more than one person insured. When one applies for life insurance, they grant the insurance company permission to research the amount of

risk that the applicant brings to the table. This may include a basic medical exam, reviewing the applicant's driving record, or reviewing medical records. Based on this total risk, the insurance company will either approve or decline the application. Assuming the application is approved, the insurance company will issue a policy for a specific death benefit amount. The policy owner's ongoing obligation is to pay premiums at scheduled intervals.

When considering life insurance, the type of policy is very important. There are two basic types of life insurance—term life insurance and permanent life insurance.

TERM LIFE INSURANCE

While there are many different types of term life insurance designs, term life insurance is typically the least expensive type of life insurance. An insurance company will commonly issue a term policy with premiums that are guaranteed not to increase for 10, 20 or even 30 years. Once you reach the end of the guaranteed time frame, the policy ceases to exist, or the premiums are increased at such a dramatic rate that it makes little sense to keep the policy going forward. If you reach the end of the guarantee period and decide that you still want to have life insurance, your best bet is to re-apply for another policy and secure a policy that will meet your needs going forward – as long as you are able to medically qualify for the policy. If you are in your 50's, 60's or 70's at that point, the insurance companies may not approve you for term insurance, as most term policies have age limits set for their issuance.

Term life insurance is the least expensive type of insurance as most of us will never actually use this life insurance policy. The vast majority of us live to normal life expectancy, or somewhere close to it. The insurance companies certainly know this. Since term insurance ends at some point in the future, and because most of us do live long lives, the

odds are slim that the insurance company will need to pay a death benefit. This is why term insurance can be so inexpensive.

Many equate term insurance to renting their coverage. It does not accumulate cash value, and will eventually end. Term insurance usually carries a couple of interesting features, though. First, most term policies will offer the contractual right to

'Term life insurance is the least expensive type of insurance as most of us will never actually use this life insurance policy.'

“convert” the policy. This means that, at any point within the first 10 or 20 years of the policy, the policy owner may essentially exchange their term insurance for “permanent life insurance” without the need to go through medical underwriting again. Permanent insurance will be discussed later, but as the name implies, it is insurance that one has the option of keeping for the rest of their life, regardless of how long they may live. This can be a very valuable feature if one's health is not as good as it was when they obtained the term insurance. It ensures that the policy owner can continue coverage, albeit with a different design and at a different price, for a much longer period of time even though their health may be worse than it once was. Additionally, most term policies carry a feature called “Accelerated Death Benefit.” This feature is utilized when one has been diagnosed with a terminal illness, and is within six months of passing away. It allows the policy owner to access and obtain some of the death benefit prior to actually passing away.

Common Uses of Term Life Insurance

Term insurance allows one to purchase a large death benefit for a relatively small premium. Term is commonly considered for:

- Younger families with children who have a need for a large death benefit, but have less money to spend on

VBA YLD Member Directory

Are you looking for other young lawyers in your area? The member's section of the VBA website has a searchable directory of YLD members. To locate your fellow young lawyers or to update your profile, visit: vba.org/ylddirectory.

premiums

- Funding a buy/sell agreement between business partners
- Collateralizing a loan or some other obligation
- Any need where insurance is required for only a specific length of time

Advantages

- Priced inexpensively allowing for a large death benefit in exchange for a relatively small premium
- Pays a full, tax-free death benefit upon the death of the insured
- Carries with it the right to convert the policy at some point in the future

Disadvantages

- Lasts only for a specified length of time, or is priced to become prohibitively expensive after the premium guarantee period
- One must medically qualify each time they apply for a new term policy
- Accumulates no value
- May represent a lost opportunity cost

for those who are comparing it to the value of permanent insurance

PERMANENT LIFE INSURANCE

Permanent life insurance can describe several different types of policies which all carry a common trait—they can be designed to last for one's entire life. While other permanent insurance designs may exist, we will examine the three most commonly-considered and most popular forms of permanent life insurance:

- Whole Life Insurance
- Universal Life Insurance
- Variable Universal Life Insurance

Whole Life Insurance

The oldest and original type of life insurance, whole life insurance carries a few guarantees with it—a guaranteed death benefit, a guaranteed premium, and guaranteed cash value accumulation. The whole life with which most of us are familiar is commonly referred to as a "Participating Policy." Simply put, this means that the policy owner is eligible to receive dividends from the insurance company. Dividends are essentially a return of

excess premiums, and are based on the overall success and performance of the insurance company issuing the contract. While dividends are usually taxable, cash value accumulation within a whole life contract can grow tax-deferred.

Depending on the company selected, dividends may be used in a number of ways. They may be used to purchase more "paid up" additional life insurance, increasing the overall death benefit and entitling the contract owner to even more dividends in future years. One might also choose to take their dividends in cash (*speak with your tax advisor about any potential tax consequences of receiving dividends from your whole life policy*). Or, one may choose to allow their dividends to apply towards any premiums due, resulting in reduced out-of-pocket premiums. While there are usually a number of additional dividend options that could be considered, the key point to remember is that dividends are never guaranteed. When comparing companies, consider a "mutual company" whose policy-holders own the company rather than being owned by stockholders. Additionally, consider a company with a

Continued on page 6

Virginia Barristers Alliance, Inc.

(a wholly-owned subsidiary of The Virginia Bar Association)



In 2001, The Virginia Bar Association determined that an opportunity existed to enhance member benefits by providing insurance services to VBA members. This idea resulted in the creation of Virginia Barristers Alliance, Inc. ("Alliance"), an insurance subsidiary that is wholly-owned by the VBA. A team of seasoned insurance professionals was identified that would administer the program, and which would work with law firms, individual attorneys, their staff and their clients across the Commonwealth of Virginia.



By design Alliance not only provides insurance services, but also increases non-dues revenue for the VBA. To date, Alliance has produced nearly \$500,000.00 of non-dues revenue for the VBA. This non-dues revenue helps the VBA fulfill its mission of being "the independent voice of the Virginia lawyer, advancing the highest ideals of the profession..."



Alliance offers the following products and services: (1) Group and Individual Health Insurance, (2) Group and Individual Dental Insurance, (3) Group and Individual Life Insurance, (4) Group and Individual Disability Income Insurance, (5) Group and Individual Long-Term Care Insurance, (6) Fixed Annuities, and (7) Fiduciary Audits of Trust-Owned Life Insurance.



Each time Alliance earns a new client, it represents an opportunity for the member to support the VBA. By design, Alliance will seek out and identify the best insurance products for VBA members from approximately 60 different "A-rated" insurance companies. Alliance, its mission, goals, marketing and processes are governed by a Board of Directors which is composed of member attorneys and members of the VBA Board of Governors.



Your agency representatives are **Howard DiSavino, Jr., Dean Hardy, Michael Thompson, Scott Paciocco, Cheryl Pellegrino, Connie Maxey, and Jeff Graves**. Whether you need information or help for you or your firm, or if you would like to consult with your representatives regarding insurance issues that affect your client, feel free to contact Alliance by phone at 804.290.8751 (or toll free at 800.358.7987) or online via: www.virginiabarristersalliance.com.



...Life Insurance, continued from page 5

rich history of paying dividends.

Common Uses of Whole Life Insurance

- Family insurance planning
- Corporate insurance strategies
- Estate planning
- Deferred compensation strategies
- Specialized employee benefit and retention designs
- Any instance for which a permanent death benefit or guaranteed cash value accumulation is desired

Advantages

- Guaranteed death benefit
- Guaranteed cash value growth
- Guaranteed premium
- Flexibility in later years
- Tax deferred cash value accumulation (depending on the specific policy)
- Lasts for one's entire life

Disadvantages

- Higher premiums
- Less flexibility in early years
- Dividends are not guaranteed
- Internal rate of return may not be as attractive in early years when compared to other accumulation strategies

Universal Life Insurance

Universal Life Insurance is sometimes referred to as "term for life." This type of policy can be designed to last for 10, 20, 30 years or even guaranteed for the duration of one's life. The insurance company actuarially determines the cost of insurance for the specified length of the contract. Based on this "cost of insurance," premiums may be paid as level, increasing, or decreasing premiums. Since the contract is usually a "flexible premium" contract, a premium structure convenient for the policy owner can be designed.

Universal life is traditionally not designed to accumulate cash value; however, it may hold cash which earns a contractually-guaranteed interest rate. Allowing the policy to hold cash may serve to cushion premiums in future years when the cost of insurance is higher. The result is a level,

predictable, out-of-pocket premium.

Common Uses of Universal Life Insurance

- Family insurance planning
- Business insurance planning
- Pension maximizing strategies
- Estate planning
- Any instance for which a permanent death benefit is desired, but cash value accumulation is not a primary consideration

Advantages

- Lower premium compared to whole life
- Death benefit can usually be guaranteed
- Predictable, fixed premiums
- Premium flexibility
- Fixed or increasing death benefit options
- Internal interest rate earned on cash may be better than current interest rates payable on other financial instruments

Disadvantages

- No guaranteed cash value accumulation

Variable Universal Life Insurance

Popular in the 1990's and early to mid 2000's, the design of variable universal life (VUL) is very similar to Universal Life. The key difference is that any cash that exists in the policy can be invested using "sub accounts." Sub accounts are the insurance company's version of mutual funds. As a matter of fact, the names of the sub accounts are often the same as their mutual fund counterparts. Unlike Universal Life, it is extremely rare to see a VUL policy which can be designed with guarantees. How easy would it be to design a policy that allows for stock market exposure, and apply guarantees to its longevity? Further, the only reason

that would lead someone to consider VUL as an alternative to Universal Life is if they wanted to see increases in cash value within the policy. VUL is grouped within the "permanent insurance" category as it will last as long as enough money is received by the insurance company to keep the policy going.

Common Uses of Variable Universal Life Insurance

- Family Insurance Planning
- Business Insurance Planning
- Any instance for which one is willing to absorb the risk of investing their cash value in stock and bond-based sub accounts

Advantages

- May be less expensive than whole life
- Opportunity for market-based cash value accumulation
- Flexible premiums

Disadvantages

- Most carry no guarantees
- Negative performance results in more out-of-pocket premiums
- Insuring a risk with a risk
- No guaranteed cash value accumulation
- Back end, declining surrender charges which significantly limit access to cash value in the first 6, 8, 10 or even 15 years of the contract

THE PROCESS

When considering any life insurance strategy, the first question that one should ask is "How much life insurance do I need?" There are many methods used to determine the total amount of life insurance



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.

needed. Some take a simple approach which includes covering mortgages, liabilities, funding college education, final expenses, and creating an asset base that can be used to replace income for those left behind. Others might use a strategy that suggests that one obtain 20 or 30 times their annual income, while others

‘Financial ratings and stewardship are critically important when selecting [an insurance] company . . .’

may choose to obtain as much life insurance as an insurance company will issue.

Once the need is identified, one should consider the type of insurance that most closely meets their needs. Regardless of the type of policy, they each have one universal trait—they pay a tax free death benefit to the beneficiaries. Next, careful consideration should be given to the different companies that sell insurance. While many people will gravitate towards the company with the lowest premiums, that doesn’t mean it’s always the best company to use. Financial ratings and stewardship are critically important when selecting a company to which you will entrust your family or business’ financial future.

The actual process begins with an application. This is your formal request to the insurance company for a life insurance policy. The next step is to meet with the exam company selected by the insurance company. Many ask if they can use the recent blood work that they completed with their doctor. Unfortunately, insurance companies will require applicants to meet with an independent exam company. Most examiners are quite accommodating, and will meet with an applicant when and where it’s convenient for the applicant. They will ask a full menu of medical questions, will obtain your physical measurements and vitals, and may be required to collect a small blood sample and urine specimen. In some cases, depending on the age of the applicant, an EKG may be required. This is also done by the visiting examiner.

Once the insurance company has all of the necessary information, they will render their decision. Offers for insurance are

accompanied by an “underwriting level.” Each insurance company refers to their underwriting levels by different names. Some examples include Ultra Preferred, Super Preferred, Select Preferred, Non-Smoker Plus, Standard Plus, or Standard. The insurance company assigns an underwriting level that it feels most accurately represents the amount of risk an applicant brings to the table. These underwriting classifications also refer to the total amount of premium you will have to pay for a policy – the better the underwriting level, the lower the premium. If an applicant uses tobacco, is obese, or has other lifestyle or health issues, a lower underwriting level can be expected. In some rare cases, the insurance company will decline to extend an offer for coverage. This may mean that the applicant is an unacceptable risk, or it may simply mean that the insurance company didn’t have access to enough information that would allow them to make a well-informed decision. Once an offer has been made, the applicant may accept the offer and place the policy “in-force.” This begins the relationship between the policy owner and the insurance company.

CONCLUSION

While insurance is seen by many as complex and overwhelming, a good insurance agent can help with this process and make

it much less painful than many anticipate. Just like homeowner’s insurance, auto insurance, health insurance, and disability insurance, life insurance is a necessity for most of us.

If you are exploring life insurance for the first time, or would like to review your existing coverage, please give Virginia Barristers Alliance (“Alliance”) a call at 804.290.8751. Alliance is a wholly-owned insurance subsidiary of The Virginia Bar Association. Each time the Alliance earns a new client, it directly benefits The Virginia Bar Association. If you’re not ready to take the next step towards purchasing life insurance, give us a call anyway. We’ll be glad to talk with you about the process and answer any questions you may have. ■

New Year’s Resolution

As you’re thinking about your New Year’s resolutions for 2014, consider setting a goal of writing an article for *Opening Statement*. It’s a great way to help other young lawyers, and it lets you add a publication to your professional profile or résumé.

To learn more, contact us at: editors@openingstatement.org.

Register Now: VBA Annual Meeting

The 124th Annual Meeting of The Virginia Bar Association will be held in collaboration with The Old Dominion Bar Association at The Williamsburg Lodge and Conference Center on **January 23–25, 2014**. The Annual Meeting will have many CLE opportunities to enhance your skills and learn from leading lawyers, as well as networking opportunities & social events. **For more information or to register online, go to: vba.org/annualmeeting2014.**



Colonial Williamsburg.

Recent YLD Events



Courtesy: VBA Staff.

YLD Fall Executive Council meeting on October 5, 2013 at the Carter Hall Conference Center in Millwood, Virginia.



Courtesy: VBA Staff.

Elizabeth Ebanks, Jeremy Williams, and Chris Gill participate in the YLD Fall Executive Council Meeting.



Courtesy: VBA Staff.

Philip Strother presents CLE on "Wine Law in Virginia" during the YLD Fall Executive Council Meeting.



Courtesy: VBA Staff.

Dan Ortiz (YLD Immediate Past Chair), Alex Burnett, Chris Gill, Travis Hill (YLD Chair), Elaina Blanks-Green (YLD Chair-Elect), Tom Bagby (VBA President), Elizabeth Ebanks, and Nupur Bal (YLD Secretary/Treasurer) at the YLD Fall Meeting.



Courtesy: Katie Herflin.

Young lawyers attend a YLD Membership Luncheon in Richmond on November 7, 2013.

Requesting Records under the Virginia Freedom of Information Act

By Sheri A. Hiter

The Virginia Freedom of Information Act¹ (VFOIA) can be a useful tool for attorneys who represent clients seeking information from public bodies in the Commonwealth. Filing a VFOIA request is a fast and cost-effective way to access many types of public records. This article provides an overview of the statutory records request process and includes some practical tips for a successful request.

WHAT RECORDS ARE AVAILABLE?

VFOIA provides access to “public records,” defined as all documents and recordings prepared for or used in the transaction of public business.² The term “public records” includes records stored in any medium that are prepared or possessed by a public body or its officers, employees, or agents. But if requested information is not contained in an *existing* document or recording, the public body is not required to create a new record containing that information.³

WHO MAY REQUEST RECORDS?

Virginia citizens who provide a legal address in the Commonwealth may request records using VFOIA.⁴ Representatives of media organizations that circulate or broadcast in or into Virginia may also request records using VFOIA.⁵ However, public bodies have the discretion to deny requests from non-citizens of Virginia. In April 2013, the U.S. Supreme Court unanimously upheld the constitutionality of this provision, recognizing that the General Assembly may limit the

benefits of VFOIA to the taxpayers who “foot the bill for the fixed costs underlying recordkeeping.”⁶

WHICH GOVERNMENTAL ENTITIES ARE SUBJECT TO VFOIA?

Generally, “public bodies” in Virginia are subject to VFOIA. Public bodies include governing bodies of the Commonwealth, counties, cities, towns, school boards,

‘No particular format is required for making a records request, and requests may be made orally or in writing . . .’

public authorities, law enforcement bodies, public universities, constitutional officers, and committees created by these public bodies.⁷

HOW MAY REQUESTS BE MADE?

No particular format is required for making a records request, and requests may be made orally or in writing, in person or remotely.⁸ The requested records should be identified with reasonable specificity.⁹ A records request is a collaborative process, and the public body may contact the requester for more

information or to refine the scope of the request.¹⁰

HOW LONG DOES THE PUBLIC BODY HAVE TO RESPOND?

Generally, the public body will have five working days to respond.¹¹ The public body is entitled to a seven-day extension if necessary but must notify the requester that it is invoking this extension within the original five-day period.¹²

WHAT RESPONSES ARE POSSIBLE?

After receiving a records request, a public body will generally respond in one of several ways. First, the public body may produce all of the records requested. If records are not produced, the public body must provide a written response explaining why. The public body may respond by stating that the requested records do not exist or could not be found, or that another public body is the custodian of the records.¹³

The public body may also reply that the release of the records is prohibited by law.¹⁴ If such a claim is made, the public body must identify the responsive documents and cite the legal authority that prohibits disclosure. For example, public bodies are prohibited from releasing un-redacted social security numbers, scholastic records, and tax returns.¹⁵

Finally, a public body has discretion to

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McBurney v. Young. Writing for several Virginia local government associations, she urged the Court to uphold the constitutionality of VFOIA’s “citizen-only” provision.

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deny access to records that are protected by a VFOIA exemption.¹⁶ The public body must identify the responsive documents and cite the legal authority for the exemption asserted. Some of the most commonly invoked exemptions protect personnel files, attorney-client privileged or attorney work-product materials, and ongoing contract negotiations.¹⁷

IN WHAT FORMAT ARE RECORDS PROVIDED?

The requester may ask for a copy of the records or may elect to inspect them at the office of the public body.¹⁸ For electronic materials, the requester may choose to receive records in any format used by the public body in the regular course of

business.¹⁹

IS THERE A CHARGE?

A public body may make a reasonable charge for its actual costs incurred in searching for, accessing, copying, and supplying records,²⁰ including the hourly rate of the employee working on the response. No charges are permitted for general overhead costs of the public body,²¹ such as legal review for applicable exemptions. When the cost is estimated to exceed \$200, the public body may require prepayment.²² Regardless of the amount, a requester may ask the public body to estimate charges in advance.²³ A narrow, targeted request will generally be less costly than a broad and general one.

The requester should consider limiting the scope by subject, time period, and/or source department or official.

Attorneys should not overlook the Virginia Freedom of Information Act, which can be a powerful tool for obtaining records from public bodies in the Commonwealth. ■

Endnotes

1. VA. CODE ANN. §§ 2.2-3700 to 2.2-3714 (2013).
2. *Id.* § 2.2-3701.
3. *Id.* § 2.2-3704(D); *but see id.* § 2.2-3705.8(A) (mandating disclosure of certain salary data).
4. *Id.* § 2.2-3704(A).
5. *Id.*
6. *McBurney v. Young*, 133 S. Ct. 1709, 1716 (2013).
7. VA. CODE ANN. § 2.2-3701.
8. *Id.* § 2.2-3704(B).
9. *Id.*
10. *Id.* § 2.2-3700.
11. *Id.* § 2.2-3704(B).
12. *Id.* § 2.2-3704(B)(4).
13. *Id.* § 2.2-3704(B)(3).
14. *Id.* § 2.2-3704(B)(1), (2).
15. *Id.* §§ 2.2-3815(A), 22.1-287, 58.1-3.
16. *Id.* § 2.2-3704(B)(1), (2); *see also id.* §§ 2.2-3705.1 to 2.2-3705.8 (listing categories of exempt records).
17. *Id.* § 2.2-3705.1(1), (2), (3), (12).
18. *Id.* § 2.2-3704(A).
19. *Id.* § 2.2-3704(G).
20. *Id.* § 2.2-3704(F).
21. *Id.*
22. *Id.* § 2.2-3704(H).
23. *Id.* § 2.2-3704(F). ■



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From the Big Apple to the River City: Embracing Change as a Young Lawyer

By Jennifer Long Ligon

Better the devil you know? Maybe. But, I chose the devil I did not know. Let me be clear that I am not calling either my former employer or my current employer the devil (it is review season after all). But I am recalling the maxim that came to mind when I first considered leaving Big Law and the Big Apple for a medium-sized firm in Richmond, Virginia. Do I stay in the city that I love, at the firm to which I am accustomed, and in the practice area that is familiar? Or do I move to a city that sleeps at night, to a firm where acclimation will take time, and to a practice area that is wholly unfamiliar?

I chose the latter, the devil I did not know, because comfort and familiarity do not always justify the status quo. This observation may be apparent for many of you who have already transitioned between jobs or otherwise redefined your career path. But for many other young attorneys, including me, it is a realization that is often impeded by complacency and fear of the unknown.

I write this article to share with you a few perceptions that motivated me to redirect my career path despite the unknown. I also write to offer a few post-transition perceptions that have informed, and continue to inform, my professional conduct. I invite you to consider these perceptions should you find yourself asking “*better the devil I know?*”—or simply pondering how to position yourself for a rewarding and sustainable career.

PERCEPTION #1 – KNOW THYSELF

Forget the devil. Knowing yourself is imperative if you want to be confident in the propriety of your chosen career path. Admittedly, many young attorneys do not “choose” their career path (or at least their first post-law school job); they simply choose employment. In so choosing, we understandably may prioritize financial needs and geographic preferences higher than personality fit and longevity.

Indeed, I chose my first post-law school job because it paid the bills and was, quite simply, in New York City. I did not choose my first post-law school job because it necessarily complemented my personality or because it promised work-life balance.¹ Nonetheless, I chose to take advantage of an opportunity to begin my legal career in such an ambitious and cultured environment. To that end, for nearly two years, I ventured into the challenging world of executive compensation and employee benefits.

Not a day went by that I did not relish being in New York City at the advent of my career. Yet not a day went by that I did not question the sustainability and the suitability of my chosen career path. For some attorneys, the professional and financial rewards of working in Big Law, which are many, overshadow the unpredictable and demanding nature of their jobs. For me, such rewards proved to be insufficient to justify a career path that

fundamentally conflicted with my personality, my behavior, and my motivations. So, I changed paths.

‘Knowing yourself is imperative if you want to be confident in the propriety of your chosen career path.’

My observation here is that self awareness is a valuable asset. For young lawyers, external considerations often dictate professional choices. Although that is understandable, it is also prudent to try to redefine those choices as the product of introspection. As we advance in our careers, we will encounter many more choices, both professional and personal. The choices we make as young lawyers will impact the choices that we are able to make in the future. We are all equipped with the ability to perceive aspects of our personality. The challenging part is resolving to make choices based on those perceptions and allowing those perceptions to be the catalyst for change.

PERCEPTION #2 – IGNORANCE IS NOT BLISS

Professional changes come in many forms. For me, they were comprehensive and stark: from New York City to Richmond; from executive compensation and employee benefits to health care; and from an office of 600(ish) to one of 35(ish). But change can also be specific, directed at a single aspect of our professional behavior. In fact, at least annually, self-evaluations mandate that we identify those aspects of our professional behavior that *should* change—i.e., our professional weaknesses.

Many of us probably describe our professional weaknesses using broad rhetoric, hesitant to admit our weaknesses to ourselves, much less to our supervisors. So, let me take the liberty to call all of

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us out by identifying a probable weakness (or “area for improvement”) among many young attorneys: reluctance to take on assignments that demand pushing our analytical and reasoning skills beyond our comfort zone. Stated simply, we prefer conversance over ignorance.

This preference, however, can stymie professional development if it causes us to shy away from matters that, at first glance, seem beyond our professional acumen (which could seem like any assignment for young attorneys). To this I offer the following advice: think of the attorneys whom you hold in high regard, who seemingly have an enviable comprehension of the law, and whose value to the profession is evident. Now, take a minute to reach out to those attorneys and to ask them to regale you with a few war stories of their professional upbringing. Without a doubt, those stories will include memories of self-doubt, apprehension, and quite possibly uncertainty relating to the attorneys’ permanence in the legal profession. But, those stories will also include memories

of progression, comprehension, and, importantly, readiness to take on difficult matters.

To turn their stories of success into our own, it would behoove us to step out of our comfort zone and to embrace opportunities to turn inexperience into proficiency. It would also benefit us to remember that success is not about knowing the answer, but rather about knowing how to find the answer. It is hard to find something if you never look for it. It is also hard to find something if you never ask the right questions, which leads me to my final perception.

PERCEPTION #3 – ASK, AND YE SHALL RECEIVE

We have heard it countless times: “*Do not be afraid to ask questions.*” Yet, for various reasons, we often remain silent when we would be well served to do otherwise. When it comes to choosing a career path, figuring out the *how* is just as important as understanding the *why*. To that end, our supervisors as well as our peers can be

valuable sources of information, as their professional and personal experiences can inform our own.

So, take note of the respective backgrounds of your colleagues. If someone has experience in an area of interest to you, approach that person and ask how he or she amassed that experience. If you are not partial to any particular background, then inquire broadly as to how your colleagues chose their career paths. In particular, what do they think is the most important consideration in choosing a career path, both professionally and personally? What do they wish they had known at the onset of their career? And what, if anything, would they do differently? By understanding the choices of our colleagues, as well as the means employed to effect those choices, we will be better positioned to make informed decisions about our own career paths and to intelligently navigate the legal profession. ■

Endnotes

1. My comments are not a criticism of any specific experience or general profession, but rather a mere subjective perception of compatibility. ■

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The *Opening Statement* Editorial Board welcomes the submission of articles by young lawyers. Generally, articles should be 650–1,300 words and should be on a topic of interest to young lawyers.

Articles. Substantive article topics may include:

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- 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”)
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