

# Opening Statement™

THE OFFICIAL PUBLICATION OF THE VBA YOUNG LAWYERS DIVISION

## FLOURISHING OPPORTUNITIES

# Springing into New Beginnings

This Spring 2023 issue of the *Opening Statement* is full of opportunities for young lawyers. Foremost among them is the upcoming Young Lawyers Division Spring Meeting on April 28-29 in Chincoteague, Virginia. The event will feature an anticipated 3.0 hours of MCLE credit, including programs from David Berry on recent appellate decisions in Virginia and Darius Davenport, Sr. on managing a mid-career transition. Lawyers of all ages and law students are invited to attend the Spring Meeting – details about the event are summarized on the sidebar.

The YLD's new leadership team has already been hard at work making 2023 the YLD's best year yet. This issue features YLD Chair Patrick Bolling's inaugural column in that capacity on page 2. Patrick has been involved with the YLD in numerous capacities and we are excited to see what he accomplishes during his year at the helm.

Our feature articles this issue include key considerations on using earnouts in M&A transactions by Erin Deal Johnson and Brent Ashley on pages 4-5, and Hetal Challa recaps on the continued success of the Lawyer Wellness Challenge on pages 10-12. This issue also includes a discussion on employment actions involving the Ministerial Exception by Pietro Sanitate on pages 6-7.

Spring is a time of new beginnings, so if the blooming flowers inspire you to likewise turn over a new leaf in your professional involvement, the YLD is here with opportunities for you. We are always looking for attorneys interested in participating in the YLD's signature activities. Visit the YLD website for more information on becoming involved.

If you would like to see your work featured here, you can! All members of the YLD are encouraged to submit articles about recent experiences, particular areas of expertise, or any other wisdom you wish to share for publication consideration in the *Opening Statement*. We encourage all YLD members to send any questions or content submissions to our team at: [editors@openingstatement.org](mailto:editors@openingstatement.org). As always, thank you for reading. We hope you enjoy this issue of the *Opening Statement*!



**Steven W. Lippman**  
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## YLD Spring Meeting

The Young Lawyers Division will hold its annual Spring Meeting at the Comfort Suites Chincoteague Island Bayfront Resort in Chincoteague, VA. The Spring Meeting is a family-friendly event and a great opportunity to see old friends and make new ones. In addition to socializing and networking with young lawyers from throughout the Commonwealth, the agenda includes multiple meals and an anticipated 3 hours (1.5 hours of Ethics) of CLE programming. For more information and registration details, visit: [https://www.vba.org/events/event\\_details.asp?legacy=1&id=1666838](https://www.vba.org/events/event_details.asp?legacy=1&id=1666838). Whether you have been active in the YLD in the past or not, all young lawyers are invited to attend YLD programs and meetings. We are delighted to see new faces at every event, and the YLD is designed to welcome newcomers. If you are interested in becoming involved with the YLD but unsure of your first step, come to the Spring Meeting.

## Key Details

**Dates:** Fri., April 28 – Sat., April 29

**Location:** Comfort Suites; 4195 Main Street; Chincoteague, VA 23336-2464

**Accommodations:** Reservations are available at the Comfort Suites (757-336-3700).

**Meals:** The registration fee includes all meals and a boat tour!

**Family-Friendly Event:** Spouses, significant others, and children are welcome.

**Contact:** For questions or registration concerns, contact the VBA at (804) 644-0041 or [thevba@thevba.org](mailto:thevba@thevba.org)

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The Virginia Bar Association  
Young Lawyers Division

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## MESSAGE FROM THE CHAIR

# It's Spring and YLD Is Blooming

By R. Patrick Bolling

Every corner of our 1,500-lawyer strong Division is waking. Our pandemic-era leadership prepared the soil and sowed some new seeds with an eye towards the next growing season. It's finally here. The YLD schedule is full for the first time since 2019, and participation in our first two marquee events of the year—The Fourth Annual Lawyer Wellness Challenge and the Spring Meeting—is robust. This will not be the last time I thank Madelaine, Frank and Kristen for steering us through the long COVID winter. And I would be remiss if I did not thank Steven Lippman and his *Opening Statement* staff for steadily churning out great edition after great edition, rain or shine.

So what's in season from the YLD garden? We had a bumper crop of new faces and veterans at our leadership luncheon at the Annual Meeting in Williamsburg in January. As noted, the Fourth Annual Lawyer Wellness Challenge was the biggest ever, thanks to our Wellness Committee and the green thumb of its Chair, Hetel Challa. Over 100 participants competed for prizes on the WellSpring app, from all walks of the legal profession. Our financial wellness and meal-planning programs were a hit, too. As I write, Alex Cuff and Liz Olcott are busy with the Legal Food Frenzy, which runs from April

17 - April 28, 2023. I have no doubt they'll come up roses. They do every year.

Over the weekend of April 29, we will gather at the Bayfront Comfort Suites on quaint Chincoteague Island, overlooking the Chincoteague Bay on Virginia's Eastern Shore. Many thanks to our Platinum Sponsors, Woods Rogers Vandeventer Black, McGuire Woods, and Gentry Locke. As I write, still weeks away, we have more than 50 registrants and guests. We'll dine at "The Ropewalk" on Friday, where we will present awards for the Lawyer Wellness Challenge. On Saturday morning, all are invited for a sunrise walk on the boardwalk to get the blood flowing. Then, after our Leadership Council meeting, we will hear David Berry, partner with Gentry Locke in Roanoke, present "You Need to Know: Recent High-Impact Appellate Decisions in Virginia," and Darius Davenport, Sr., Managing Partner of Crenshaw Ware & Martin in Norfolk, present "Managing the Mid-Career Leap: From Great Young Lawyer to Great Leader of Young Lawyers." On Saturday afternoon, from the hotel boardwalk, we'll board the 100-foot *Martha Lou*. J. Arthur Leonard, Mayor of the Town of Chincoteague and also boat captain (!), will ferry us to Assateague Island to (hopefully) see



### R. Patrick Bolling

Principal, Woods Rogers Vandeventer Black  
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YLD Chair, 2023-24

**Bio:** Patrick is part of Woods Rogers Vandeventer Black's Labor & Employment Group. He sits on the Executive Board for the Young Lawyer's Division. In the VBA, he has worked primarily with the YLD's Law School Councils, first at his alma mater Washington & Lee University School of Law, then as the Co-Chair of the Statewide Law School Councils. He lives in Lynchburg with Anna, two boys, Onex and George, and Delta the Dog.

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the famous wild ponies and (certainly) enjoy a beverage or two. The *Martha Lou* will drop us back on Chincoteague for dinner at Bill's Prime Seafood & Steaks.

The menu from our summer and fall gardens is just as enticing. We are racing ahead and rolling back the clock. At the Summer Meeting at the Homestead in July, you can't miss our annual Porch Social. We'll bring back some old fan favorites, too. In October, for example, we'll hold our first joint meeting with the Board of Governors since 2017, at

the newly-renovated Virginian Hotel in downtown Lynchburg, surrounded by beautiful Blue Ridge mountain fall foliage. And, finally, at next year's Annual Meeting in Williamsburg in January, I will proudly hand the reins to Ann Petros, our first in-house Chair since Elaina Blanks-Green in 2014. It's in with the old and in with the new.

As I wrote these words, I found myself wondering: why do we do all of this? I know, I know, business, professional network, development, referrals, blah blah blah. I don't think that's it, exactly.

In a time when voluntary associations of every variety are searching for a foothold, YLD isn't. We know who we are. I've watched YLD in action for nearly 10 years now, and I say this with confidence: **we do all of this for each other.** The YLD is simultaneously old school and cutting edge in that way. And we have room for you, however much time you can devote. Please reach out to me to find out about the huge variety of opportunities YLD can offer you. You won't regret it. ■

## Legal Food Frenzy

The annual Virginia Legal Food Frenzy returns in 2023 for its 17<sup>th</sup> year in which the Virginia legal community engages in friendly competition to raise donations for Virginia's food banks. The Legal Food Frenzy, created in partnership with the Virginia Attorney General, the Young Lawyers Division (YLD) of the Virginia Bar Association, and the Federation of Virginia Food Banks, has donated over 20 million pounds of food since its inception. The two-week competition will run from April 17, 2023 through April 28, 2023. The competition is open to everyone in Virginia's legal community, with multiple categories depending on your organization's size. For more information and to register for the competition, please visit the Legal Food Frenzy's website at <https://www.legalfoodfrenzy.com/>.

### Competition Categories:

- Private Firms (1-99 employees): 1 winner for each food bank service area based on total amount raised per employee.
- Large-sized Firms (100+ employees), Government/Public Service firms, Corporate Legal Departments, and Law Schools: Statewide competition for each category with two winners -- one winner based on the total amount raised per employee/student and one winner based on the total amount raised overall.



# Beyond the Buyout: Recent Earnout Trends in M&A

By Brent A. Ashley and Erin Deal Johnson

Given the current market, we expect the use of earnouts in the mergers and acquisitions (M&A) space to increase in the coming months, following a decrease in popularity during the M&A frenzy that started in late 2020.<sup>1</sup>

An earnout is a common tool used in M&A to bridge the gap between a buyer's and seller's valuations of a target company. In addition to the initial consideration paid at the closing of an acquisition, an earnout is a deferred portion of the purchase price, which is payable to a seller upon the achievement of certain specified targets within identified periods after the acquisition closes. In most cases, a buyer is relieved from making these contingent payments if the agreed upon milestones are not met. In some cases, however, buyers may agree to pay a lesser earnout amount if the target is partially met.

Adding an earnout to a purchase agreement can help move a deal forward. An earnout provides a solution when a buyer and seller cannot agree on a purchase price. Earnouts provide sellers with an opportunity to realize value from a target's significant growth prospects. Earnouts also give sellers an opportunity to enjoy value generated from synergies as part of the buyer's integration of a target company with the buyer's investment or existing business operations. In the event a buyer desires to give a seller such an opportunity, an earnout can provide the buyer with security and protection against downside risk. In other words, an earnout helps protect the buyer from overpaying for the target company. Furthermore, in the event a buyer requires financing for an acquisition, deferring a portion of the purchase price reduces the amount that needs to be financed at closing and perhaps

at all. Often, an earnout can be paid from the target's post-closing revenue. In platform and add-on acquisitions of private equity buyers, sellers frequently remain actively involved in a target business post-closing. An earnout can incentivize the seller to operate a profitable business and remain with the business to realize such milestones.

Though there are many advantages to incorporating an earnout in a transaction, M&A practitioners are well aware of its potential downsides. Whether or not a seller wants a clean break from the target (for example, an older seller may desire retirement), an earnout requires a seller to continue to be invested in the target following closing. Circumstances out of both the buyer's and seller's control, such as an economic downturn, could jeopardize the seller's ability to achieve a maximum earnout payment. Uncertain prospects for a target company could mean low likelihood thresholds are met, resulting in no payment of the earnout. Post-closing, a seller may have little to no control over business's operation, so the achievement of certain milestones may prove difficult or impossible. It is uncommon for earnout provisions to be escrowed or secured, so a seller also runs the risk that an over-leveraged buyer may not have sufficient funds to pay an earnout. Additionally, earnout provisions are ripe for litigation between the parties. Complex thresholds and poor drafting will likely result in disagreement between the parties about whether an earnout is payable.

In times of uncertain economic outlook, present in today's market, leveraging earnouts can stimulate deal activity. In fact, increased frequency of earnouts has coincided with volatility in capital markets. Following the 2007–2008 financial crisis, there was a significant increase in the use of earnouts.<sup>2</sup> In 2017 and 2018, in an effort to return to normalcy from quantitative easing, the Federal Reserve increased interest rates multiple times each year for the first time in a decade. Coincidentally, the use of earnouts began



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**Bio:** Brent's practice primarily focuses on mergers and acquisitions (M&A) and other corporate transactions, including acquisition financing, capital markets transactions, alternative entity and fund formation, business negotiations and strategic partnering transactions. Before joining Hirschler, Brent clerked in the Delaware Court of Chancery and the Delaware Superior Court. In addition to being a member of the Virginia State Bar, Brent is licensed to practice in Delaware.

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**Erin Deal Johnson**

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**Bio:** Erin is a corporate and transactional attorney at Hirschler in Richmond. Her broad-based corporate practice focuses primarily on mergers and acquisitions (M&A) and general corporate and commercial law matters. In M&A transactions, she works with privately held middle-market companies and their owners, ranging from individual founders to private equity firms. She regularly represents businesses across industries, in both buy-side and sell-side transactions. Her general corporate practice involves advising companies on day-to-day legal issues including key commercial contracts and other general business matters.

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to increase.<sup>3</sup> An uncertain future spawned by the COVID-19 pandemic significantly increased the rate with which earnouts were found in private acquisition agreements in early 2020. This rate dropped amid the M&A frenzy that followed in late 2020 and throughout 2021,<sup>4</sup> only to increase by more than 14% in the second half of 2022,<sup>5</sup> as the Fed began its battle against inflation. Accordingly, sellers, buyers, and M&A practitioners alike can expect a higher percentage of private deals to include earnouts between now and the time a recession or recovery takes place. Therefore, prudent sell-side M&A practitioners should be well-versed in typical earnout bargain.

## **DRAFTING CONSIDERATIONS.**

There are a number of items parties need to consider and determine when drafting a purchase agreement that contains an earnout provision. As with all future-looking covenants in a purchase agreement, earnouts have a high potential for dispute. Though precise drafting is important in all transactional work, precision is critical when documenting earnout provisions, given the many complex nuances that could be involved.

*Targets and Timeframe.* Earnouts are typically tied to performance targets, which the business parties generally determine. Financial targets include specified revenue, net income, and EBITDA tied to a certain timeframe or a financial formula whereby a seller receives a percentage of a specific benchmark. Lawyers should ensure that these metrics are clearly defined and easily measurable. This requires an understanding of the applicable metric(s) and close collaboration with the client and accounting professionals to ensure that the parties have determined and agreed upon how the targets will be measured (e.g., applicable accounting standards).

*Structure of Payment.* Things to consider with respect to the structure of the payment include: whether a seller is entitled to catch-up payments if one or more thresholds are not met, but the business subsequently achieves a cumulative result; whether a seller is entitled to a percentage of a payment based on a range of targets; the form of payment (e.g., cash or buyer equity); timing of the payment as it relates to the measurement period; and acceleration rights (i.e., if the buyer sells the

company or experiences a specified event before the end of the earnout period, the earnout is deemed earned and payable). Though not something we typically see in transactions, a seller may require security for the earnout obligation or a separate escrow account established for the earnout amount.

*Dispute Resolution.* The Delaware Court of Chancery noted that an earnout can “convert[] today’s disagreement over price into tomorrow’s litigation over the outcome.”<sup>6</sup> Accordingly, a dispute resolution mechanism in the purchase agreement is imperative. Similar to provisions typically used with purchase price adjustments, an independent accountant can be designated to resolve any disputes over the earnout.

*Post-closing Operation of Target.* Given that a seller’s right to receive an earnout payment is contingent on the target’s post-closing performance, such right is vulnerable to the buyer’s actions that could prevent the target from achieving the requisite metric. Though an applicable implied covenant of good faith and fair dealing likely precludes a buyer from taking actions aimed at preventing achievement of an earnout without liability, seller counsel should seek to protect the client further. While a buyer will seek to operate and control the target business in its sole discretion, a seller should endeavor to require the buyer to operate the target in the ordinary course consistent with past practice. In response to this disagreement, the seller can propose one of two conditions on the buyer’s right to operate the target in its sole discretion: (i) buyer operates the business in good faith and uses commercially reasonable efforts to achieve the earnout target(s); or (ii) buyer operates the target in good faith and does not take any action that would cause the maximum earnout not to be achieved. Sellers also may want to consider mandating that the buyer keep separate books and records of the target business during the earnout measurement period. Finally, given that a court may be reluctant to apply a dollar amount as damages for a buyer’s breach of this covenant, sellers should consider negotiating liquidated damages for such breach.

*Buyer-Friendly Provisions.* If representing a seller, beware of certain other buyer-friendly provisions. For example, there should be no offset rights against future earnout payments. A buyer may try to

include a clawback provision, which is essentially a reverse earnout, requiring a seller to pay back a portion of the purchase price if a certain benchmark is not obtained post-closing.

In the second half of 2022, we saw an increase not only in the use of earnouts as part of a transaction, but also the portion of a purchase price tied up in an earnout. Given the current economic outlook facing the market today, we expect this trend to continue in the coming months. ■

## **Endnotes**

1. American Bar Association, Business Law Section, *Private Target Mergers & Acquisitions Deal Points Study (Including Transactions from 2020 and Q1 2021)*, [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/deal\\_points/2021-private-study.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/deal_points/2021-private-study.pdf) (last visited March 14, 2023).
2. *Id.*
3. *Practical Guidance Market Standards – M&A*, LEXIS ADVANCE, <http://lexis.advance.com> (last visited March 14, 2023) (comparing the percentage of publicly announced middle market M&A deals (ranging from \$10 million to \$500 million in deal size) that contained earnout provisions in 2018 and 2019).
4. American Bar Association, Business Law Section, *Private Target Mergers & Acquisitions Deal Points Study (Including Transactions from 2020 and Q1 2021)*, [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/deal\\_points/2021-private-study.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/deal_points/2021-private-study.pdf) (last visited March 14, 2023).
5. As compared to transactions announced in the first half of 2022. *Practical Guidance Market Standards – M&A*, LEXIS ADVANCE, <http://lexis.advance.com> (last visited March 14, 2023) (comparing publicly announced middle market M&A deals (ranging from \$10 million to \$500 million in deal size) announced the first half of 2022 and the second half of 2022).
6. *Airborne Health, Inc. v. Squid Soap, L.P.*, 984 A.2d 126, 132 (Del. Ch. 2009).

## **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).

# Understanding the Ministerial Exception and its Jurisdictional Threshold

By Pietro Sanitate

In civil actions involving churches or religiously affiliated institutions, it is critical to understand the full breadth of First Amendment protections that the Constitution affords such entities. In both employment law matters and general tort cases, courts are generally reticent to intervene in disputes involving a church's ministry or internal governance.

For employment actions, courts will generally apply a principle known as the "ministerial exception" which serves to bar the application of anti-discrimination statutes to a church's choice of individuals who are considered "ministers." The U.S. Supreme Court broadly articulated this exception in *Hosanna-Tabor Lutheran Church & School v. EEOC*,<sup>1</sup> and then expanded upon it in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*.<sup>2</sup> As the Supreme Court held in *Hosanna-Tabor*, the ministerial exception arises from the Free Exercise Clause and the Establishment Clause of the First Amendment. The constitutional protections afforded to a church in their hiring decisions stem from the right of a church or religious institution to shape their faith and mission, as well as the general prohibition on the government's involvement in ecclesiastical decisions.

The Court in *Hosanna-Tabor* articulated four considerations in determining whether an individual employee may be considered a minister for the purposes of applying the ministerial exception in matters concerning the employee's anti-discrimination suit. Broadly, these four considerations focused on the employee's

title, religious training, the manner in which the employee held himself or herself out as a minister, and what general job duties the employee performed.

The Supreme Court expanded this scope in *Our Lady of Guadalupe*.<sup>3</sup> In so doing, the Court noted that the fundamental crux of the analysis should be focused broadly on what an employee actually does during the course of his or her employment. For example, whether an employee is referred to as a minister is not dispositive, but, as was the case in *Our Lady of Guadalupe*, if an employee engages in religious instruction and prayer in concert with their job duties, they may be found to be a minister, even in the absence of any formal religious education.

In bringing this issue before a court in a suit concerning an employee of a religious institution, defense counsel will likely need to assert the ministerial exception as a question of law to be decided at the summary judgment stage. The court will then address the two fundamental questions of whether the institution at issue is, in fact, a religious institution and whether the employee serves as a minister.<sup>4</sup>

In cases concerning churches, the question of whether the entity is a religious institution is rather cut and dry. However, the ministerial exception need not apply to only churches but applies to any institution whose mission is "marked by clear or obvious religious characteristics." *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.*<sup>5</sup> This analysis will broadly apply to churches but also to schools and universities which

espouse and engage in the instruction of certain religious beliefs.

As to the question of who qualifies as a minister, as noted above, the fundamental focus will be on what the employee actually does. This may include analyzing the employee's job description, responsibilities, and day-to-day activities vis-à-vis the instruction of religious tenets and faith-based topics. The Supreme Court, in *Gordon Coll. v. DeWeese-Boyd*,<sup>6</sup> has further cautioned against "a troubling and narrow view of religious education."

In *DeWeese-Boyd*, the Court addressed a lower court's finding that a religious educator was not considered a minister based upon the fact that she did not "teach religion, the Bible, or religious doctrine." The Court instead espoused an expansive view of what religious instruction may entail. For example, the Court noted that "[f]aith-infused instruction" touches upon lessons and topics that may not be explicitly religious in nature, but which may be viewed from a religious perspective. The Court notes instances in which a teacher at a secular institution may approach the teaching of *King Lear* as highlighting the more nihilistic aspects of the play, whereas a teacher at a Catholic institution may choose to present the play as an example of a "pilgrimage to redemption." While the Court's ultimate ruling was to issue a denial of certiorari while the trial court issues a final ruling in the matter, it is clear that the Supreme Court has taken a rather expansive view of the application of the ministerial exception and likely will continue to do so in the future.

It is important to note that while the ministerial exception will typically apply to employment actions, there are jurisdictional considerations to remember as well when dealing with a church or religious institution as a party to a civil matter. The Supreme Court has noted, quite eloquently, that "[t]he constitutional guarantees of religious freedom have no deeper roots than in Virginia, where they originated, and nowhere have they been more scrupulously observed."<sup>7</sup>



## Pietro Sanitate

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**Bio:** Pietro is part of Woods Rogers Vandeventer Black's Litigation & Dispute Resolution practice team. Pietro served as a judicial law clerk for Hon. Frederick G. Rockwell III and Hon. Timothy J. Hauler. He represents clients in diverse areas of civil litigation, frequently handling complex commercial litigation matters. Pietro has degrees from the University of Virginia and the University of Richmond School of Law.

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In keeping with this principle, courts will typically lack subject matter jurisdiction to consider “matters of ecclesiastical cognizance and polity.”<sup>8</sup> In Virginia, this has been held to broadly include any interference in faith and doctrine.<sup>9</sup>

In bringing a motion to dismiss, a demurrer, or plea in bar to contend that the court lacks subject matter jurisdiction over a prospective ecclesiastical dispute with a church or religious institution, the court will engage in an analysis to determine whether their ruling on the matter will entangle the court within a “religious thicket.”<sup>10</sup> Practically speaking, this will broadly include civil actions that require a church to issue a decision touching upon questions of faith and doctrine. The Virginia Supreme Court in *Reid* was careful to note that churches engage in civil disputes concerning property, for example, as a matter of course, but said disputes do not typically touch upon questions of faith and doctrine.

In determining this question, a court will be careful to highlight the differences between a hierarchical church and a congregational church. A hierarchical church is one which has established its rules for discipline and internal governance. The

decisions reached by a hierarchical church, pursuant to the operation of their governing bodies or internal tribunals, are immune from judicial review. However, congregational churches, as they are governed solely by the will of the majority of parishioners, are not afforded this extra level of protection as “there is no body of ecclesiastical law to invoke, no internal tribunal to appeal to.”<sup>11</sup>

Thus, a court will lack subject matter jurisdiction to address a decision rendered by a hierarchical church in concert with its governing authorities. These decisions will not only consist of employment-related matters, but general torts as well, including defamation cases between clergy members and parishioners, as in *Cha*. In instances where a civil action will require review of the ecclesiastical concerns underlying the tort, a court will generally find that it lacks subject matter jurisdiction to adjudicate that dispute. This may be broadly interpreted to include any act which “cannot be considered in isolation, separate and apart from [a] church’s decision” in applying their ecclesiastical rules in civil matters.<sup>12</sup>

All told, the constitutional protections afforded churches and religious institutions are fairly broad and continue to be

expanded. A litigator faced with these issues would be well-advised to understand the nature of the religious institution involved in the suit, whether the civil matter complained of is based upon any ecclesiastical considerations by the institution, and whether any of the parties may properly be considered ministers. Getting a proper lay of the land on these issues is pivotal to determining whether your client has a valid cause of action against a religious institution or whether your client may be insulated from a civil action in applying its own internal rules on matters of faith and doctrine. ■

#### Endnotes

1. 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012).
2. 207 L. Ed. 2d 870, 140 S. Ct. 2049 (2020).
3. See also *Palmer v. Liberty Univ., Inc.*, No. 6:20-CV-31, 2021 WL 6201273, at \*2 (W.D. Va. Dec. 1, 2021).
4. *Id.*
5. 363 F.3d 299, 310 (4th Cir. 2004).
6. 212 L. Ed. 2d 227, 142 S. Ct. 952, 954 (2022).
7. *Reid v. Gholson*, 229 Va. 179, 187 (1985).
8. *Serbian E. Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 710 (1976).
9. *Cha v. Korean Presbyterian Church of Wash.*, 262 Va. 604, 610-11 (2001).
10. *Serbian E. Orthodox Diocese*, 426 U.S. at 719, 96 S.Ct. at 2385.
11. *Reid*, 229 Va. at 189.
12. *Cha*, 533 S.E.2d at 516.

## 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).



# VBA Annual Meeting Highlights



Courtesy: VBA Staff

Kristen Jurjevich delivers remarks to the crowd at the Banquet.



Courtesy: VBA Staff

Jennifer Ligon receives YLD's highest honor, the Sandra P. Thompson Award recognizing her outstanding work and long-term service.



Courtesy: VBA Staff

Attendees of the 133<sup>rd</sup> Annual Meeting pose for a group shot at the Banquet.



Courtesy: VBA Staff

Attendees arrive at Friday night's Banquet ready for cocktails and good conversation.



Courtesy: VBA Staff

YLD members Jennifer Ligon, Hetal Challa, and Kristen Jurjevich participate in the "Mom Esquire: Staying on the Road to Wellness" panel discussion.





courtesy: VBA Staff

YLD Member Brandy Brown and her fiancé, Gaelan, at the Banquet.



courtesy: VBA Staff

Ann Petros accepts the Emerson G. Spies Award for demonstrating enthusiasm, loyalty, and dedication in the VBA's work during 2022.



courtesy: VBA Staff

YLD Chair R. Patrick Bolling offers Immediate Past Chair Kristen Jurjevich a framed copy of the Principles of Professionalism for Virginia Lawyers as a parting gift for her service to the YLD.



courtesy: VBA Staff

R. Patrick Bolling gives his first address as YLD Chair to a packed room at the Division's Business Lunch Meeting.



courtesy: VBA Staff

Attendees enjoy networking and tasty beverages at the Welcome Reception on Thursday evening.



Courtesy: VBA Staff

YLD Executive Board Member Hetal Challa recruits an attorney to join the Lawyer Wellness Challenge.

# The Fourth Annual Wellness Challenge Increases its Stride

By Hetal Challa

This year, the pandemic finally reached a stage which allowed legal professionals to resume back to work and in-person activities. This transition has been beneficial in rebuilding lost social connections and remedying the feelings of social isolation which resulted from three years of social distancing during the pandemic. Despite the challenges the legal profession has endured over the last four years, lawyers have persevered in the face of adversity and proven that they can overcome obstacles and gain resilience in the midst of challenging times. Consequently, one positive outcome has been a dramatic rise in attendance and participation in VBA and Young Lawyers Division (YLD) events, beginning with the Winter Meeting in Williamsburg, as legal professionals began to renew their hope and aspiration for a healthy and prosperous new year in 2023.

The VBA and YLD, in particular, have made wellness a priority in the last several years as the publication of the 2018 Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia, *A Profession at Risk*, revealed troubling statistics of mental health and substance abuse concerns amongst attorneys and law students across the nation. In 2019, the YLD formed the Lawyer Wellness Committee to address these health concerns. This Committee focused on education and outreach to address the concerns documented in the report.

As many of you may recall, beginning in 2019, the YLD began hosting an Annual Lawyer Wellness Challenge (LWC) to

educate, and encourage the legal community to develop healthy habits which might translate into a long-term lifestyle. While each year, the YLD has noted strong participation, this year the YLD reached a record number of registrants and participants as compared to the previous three years.

## THE CHALLENGE

The Fourth Annual Lawyer Wellness Challenge was a step challenge which began on March 6, 2023, with a motivational kickoff video, a humorous skit, created by the YLD's Chair, Patrick Bolling, which captured members of the YLD, the Senior VBA, and Senior Justice Mims of the Supreme Court of Virginia, in reflecting their personal stories which embody wellness.

This 10-day challenge, while mostly focusing on steps, addressed the six dimensions of wellness (emotional, spiritual, occupational, intellectual, physical, and social). The use of an application through Move Spring, made tracking more convenient and fun for participants. This year, members were encouraged to create teams to enhance friendly competition. Registrants could observe a leader board to view the progress of other challengers. In addition, members were provided daily educational content, which included articles and videos related to the various dimensions of wellness. The application recorded each challengers' steps and calculated which individuals logged the most steps at the end of the 10-day period. Points were

calculated based on these criteria and prizes were awarded to the winners.

## THE RESULTS

The Fourth Annual Wellness Challenge was a success with over 137 registrants. This was a large improvement as there were 85 who had registered the previous year. Many participants shared that the application chat feature allowed challengers to post pictures and communicate frequently, which motivated steppers to keep moving throughout the challenge. While the LWC was predominantly a step challenge focusing on the physical aspects of wellness, having each day devoted to a specific area of wellness, allowed the individual to become more mindful of decreasing their stress levels by increasing the time spent devoted to self-care. Over time, the intention is to gradually improve both physical and behavioral health outcomes and create habits to last far beyond the 10-day challenge.

In support of the wellness theme, the YLD implemented new programming this year to coincide with the dimensions of wellness. There was a financial wellness panel, which provided a fresh and timely perspective regarding the economic impact on well-being. An ethics panel was presented by the Virginia State Bar, The Supreme Court of Virginia, Office of the Executive Secretary, and the Virginia Judges and Lawyers Assistance Program. Lastly, NovaSports Nutrition presented a webinar regarding nutrition, which offered busy professional's helpful strategies for planning and



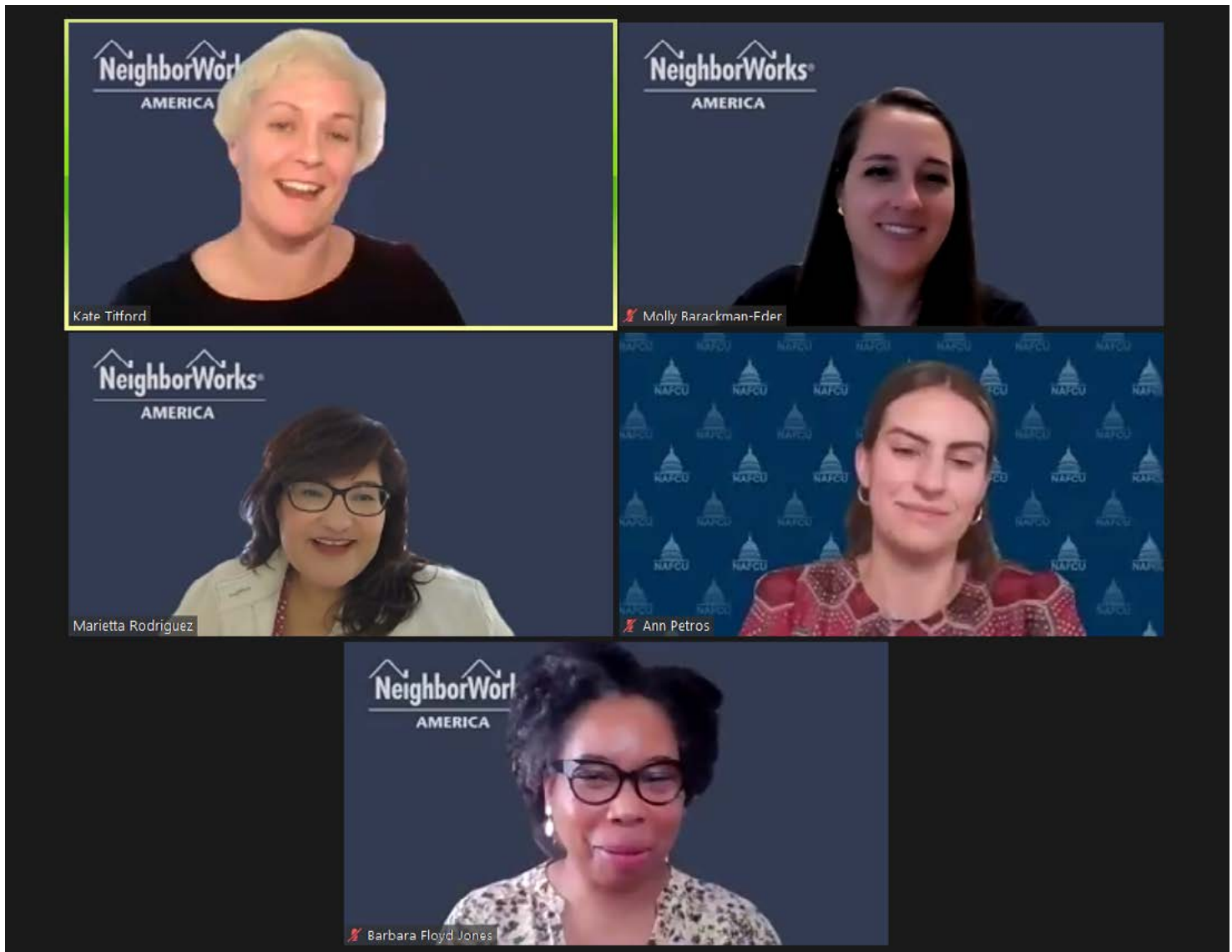
**Hetal Challa**

Office of the Executive Secretary, Supreme Court of Virginia

**Bio:** Hetal is the Wellness Coordinator for the Supreme Court of Virginia, Office of the Executive Secretary. Prior to working for the Court, Hetal was a solo practitioner and a licensed mediator practicing in the Hampton Roads area. In addition to her background in law and mediation, she has a degree in psychology and has five years of clinical experience, counseling adults, adolescents, and children in an outpatient treatment center, suffering from mental health and substance abuse issues. Hetal uses her diverse background to focus on education and outreach for attorneys, law students, the judiciary, and the legal community. She currently sits on the Executive Board of the Virginia Bar Association, Young Lawyer's Division, and is Chair of the Lawyer Wellness Committee.

**Contact Info:** hchalla@vacourts.gov or 804.317.7861





courtesy: VBA Staff

Session 1: Financial Wellness and You

# Defining Well-Being

A process by which lawyers strive for thriving across all six dimensions

EMOTIONAL	INTELLECTUAL	OCCUPATIONAL	PHYSICAL	SPIRITUAL	SOCIAL
<p>Value emotions. Develop ability to identify and manage our emotions to support mental health, achieve goals, &amp; inform decisions. Seek help for mental health when needed.</p>	<p>Engage in continuous learning. Pursue creative or intellectually challenging activities that foster ongoing development. Monitor cognitive wellness.</p>	<p>Cultivate personal satisfaction, growth, and enrichment in work. Strive to maintain financial stability.</p>	<p>Strive for regular activity, good diet &amp; nutrition, enough sleep, &amp; recovery. Limit addictive substances. Seek help for physical health when needed.</p>	<p>Develop a sense of meaningfulness and purpose in all aspects of life.</p>	<p>Develop connections, a sense of belonging, and a reliable support network. Contribute to our groups and communities.</p>

courtesy: VBA Staff

Session 2: How Wellness Protects Us and Elevates the Regulation of the Profession



preparing meals. These events were widely attended, with more than 200 registrants.

The First-place winner was Laura Bryant, from the Mathews/Middlesex General District Court, who earned 285,449 steps - an average of 13.69 miles daily. Her prize was a walking pad. The Second-place winner was Erin Pope of the law firm Woods Rogers Vandeventer Black PLC, who earned 274,783 steps and received a fitness tracker to help maintain her 13-mile-per day average. Finishing a strong third, at 229,098 steps, was Charlene Reilly of the Virginia

Judges and Lawyers Assistance Program, who won a ClassPass gift card for fitness workouts.

While special recognition is deserved for the top challengers, all the participants were winners, as it is often the most difficult part of making any lifestyle change is just taking that first "step." Many VBA members reported positive improvements from even minimal efforts in the area of wellness just by virtue of wearing the fitness device and being mindful of the focus on overall movement throughout the day. Steps can

gradually be increased by taking frequent breaks, walking during lunch time, or even pacing during work calls. What challengers began to realize was that every step counts!

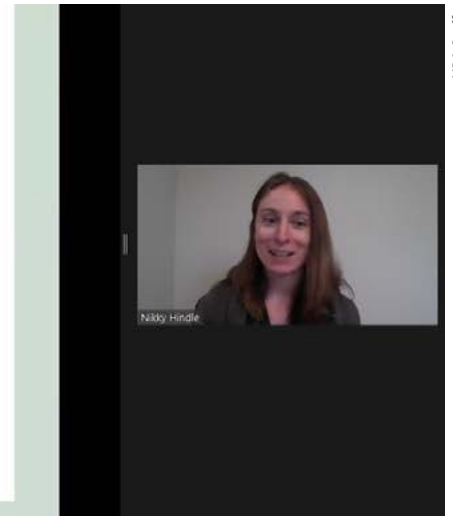
The Lawyer Wellness Committee continues to strive to improve this annual challenge each year with the commitment towards increasing participation and the quality of programming. If you missed the step challenge this year, please be assured that the YLD plans to continue this annual competition. Please stay tuned for the Fifth Annual Wellness Challenge next year! ■

## Outline

- I. Steps for meal planning
- II. Meal delivery and pre-made meal options
- III. Question break (5 minutes)
- IV. Healthy snacks
- V. Additional questions



Session 3: Busy Lawyer's Lunchbox: Sustainable Tips for Meal Planning



## Opportunities to Get Involved

Are you looking for an opportunity to get involved with the VBA Young Lawyers Division? You can read about the YLD's multiple projects and committees at: [vba.org/yldactivities](http://vba.org/yldactivities). Just reach out to the project or committee chair to learn more. In addition, the YLD always welcomes ideas for new projects. Just reach out to anyone on the YLD Executive Board to share your proposal: [vba.org/yld](http://vba.org/yld).

## Advertise in the Opening Statement

The VBA YLD is pleased to announce that we are accepting advertisements for publication in the *Opening Statement*. The *Opening Statement* is highly visible within the VBA. It is published and distributed to all members of the YLD four times per year. With such high visibility, what better way to reach your peers? Funds from advertisement purchases will be used to help support the operations of the VBA YLD and its numerous programs, including the *Opening Statement*. If you are interested in purchasing advertising space in the *Opening Statement*, please contact us at [editors@openingstatement.org](mailto:editors@openingstatement.org).



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