

NORFOLK & PORTSMOUTH BAR ASSOCIATION

BAR BULLETIN

Volume XLI
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January –
February 2016

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See Flyers Inside for
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Preregistration required
for all NPBA Events.
Call 622-3152.

PRESIDENT'S MESSAGE



Mary T. Morgan

By the time this Bar Bulletin is circulated, the holidays will be a distant memory and the new year will be upon us. I'm not one to make formal resolutions, but I believe the beginning of a new year is a good time to reflect on what we accomplished and the lessons we learned in the previous year and to focus on how we can improve, both professionally and personally, in the new year. As the deadline for my *President's Message* quickly approached, I took stock of my own shortcomings (which include procrastination), and considered what I could offer the membership in terms of a message for the new year, and I decided to offer suggestions from lessons learned. In my primary practice area – legal malpractice and bar complaint defense, I've seen missteps of all types, from young attorneys, seasoned attorneys, attorneys practicing solo or with a small firm, and attorneys employed by mid-size or large firms. No one is immune.

Let me start with a reminder that malpractice and a bar complaint are not synonymous. A bar complaint involves an alleged violation of the Virginia Rules of Professional Conduct. A malpractice claim is an alleged violation of the standard of care. An attorney may frequently face both a malpractice claim and a bar complaint. However, an attorney who faces a bar complaint has not automatically committed malpractice. The reverse is also true. An attorney who has violated the standard of care may not have violated a Rule of Professional Conduct – and may not face a bar complaint if full disclosure was made and the client was treated with dignity and respect.

Although a bar complaint may have no basis whatsoever and a legal malpractice claim may be completely defensible, the process of having to defend either (or both) is time consuming, frustrating, and expensive (think deductible). Keep in mind these tips for avoiding malpractice and bar complaints:

Communicate with your client. A significant percentage of bar complaints result from an attorney's failure to communicate with the client. Keep your client up to date, and communicate even when nothing is happening. Return all phone calls and email messages in a timely manner. Handle issues, questions and concerns immediately. Don't be afraid to transmit bad news – the news won't get any better and delaying the inevitable will only cause additional problems. Properly document all communications.

Know and understand trust account rules so that you can properly maintain your trust account. Mismanaging a trust account can have terrible consequences for an attorney or a firm and can lead to disciplinary action, sometimes to the point of disbarment.

Use a good calendar system. The best calendaring systems have redundancy and daily backup. All attorneys and staff must use the same calendaring system. There should be a procedure for

(continued on page 2)

UPCOMING EVENTS

JANUARY LUNCHEON

Thursday, January 21, 2016 • 11:45 AM

Hits at the Park, Harbor Park

Deborah DiCroce

Hampton Roads Community Foundation

(immediately following Luncheon)

GETTING THE MOST OUT OF
TECHNOLOGY IN YOUR LAW PRACTICE
1 CLE Credit

FEBRUARY LUNCHEON

Thursday, February 18, 2016 • 11:45 AM

Hits at the Park, Harbor Park

Hon. S. Bernard Goodwyn, Justice

Supreme Court of Virginia

(immediately following Luncheon)

RULE 1:1 - WHAT REALLY MAKES
THE CLOCK START AND STOP
1 CLE Credit

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(PRESIDENT'S MESSAGE CONTINUED)

input of dates onto the calendar: who is responsible and who cross-checks the files against the dates.

Perform a thorough intake process. Make sure you understand the client's expectations, especially in terms of cost. Make sure you evaluate the client's relationship and experience with other attorneys. Trust your intuition when it comes to determining whether to represent a particular client.

Be familiar with conflict rules, and perform a thorough conflict check. This topic deserves special attention because bar complaints and malpractice claims frequently occur as a result of the failure to perform a thorough conflict check. Failing to perform a conflict check can result in having to fend off a disqualification motion, or worse, having disciplinary proceedings filed. The Rules of Professional Conduct dictate that we hold certain information in confidence. We hold that confidence to the exclusion of all others, and can even resist a subpoena to protect our clients' information. Attorneys take an oath to advocate for our clients. In an ideal world, these two responsibilities would never run afoul of each other. But they do. And when they do, firms could lose clients, money, and attorneys can lose their license. The purpose of a conflicts check is to ensure that your commitment to your client's matter will not be impacted by your commitment to anyone else. The first step to conducting a conflicts check is having a system in place. The conflicts check should be performed immediately, before any member of the firm receives any confidential information from a prospective client. The check should be part of your intake process, even before a file is formally opened because detecting a conflict after the representation has started may harm the client and the lawyer. The staff can run the name of the new client(s), any adversaries, companies, etc. through your system, but make certain you have all relevant names. If the name doesn't come up, you're likely in the clear. If a name or organization is already in your system, it's time to dig. Is this a current client? A former client? What is the previous matter they were involved with? How were they involved? With all this information in hand, the attorney – not the staff member – should turn to the Rules of Professional Conduct and perform a conflict check analysis. The attorney needs to determine if the firm can represent the new client in this specific matter, and if so, whether any formal waivers are required. Interestingly, some lawyers see conflicts everywhere; others can't see a conflict sitting right in front of them. Keep in mind conflicts can extend beyond ethical requirements. There may be business conflicts or conflicts of interest looming around a corner. Consider your firm's interest and image, and with whom the firm does business with regularly.

Keeping these concepts in mind may help us all develop professionally in 2016. I hope everyone has a safe, healthy and prosperous year. Happy New Year!

YLS FALL RECEPTION



The McCammon Group

is pleased to announce our newest Neutral

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Hon. LeRoy F. Millette, Jr. (Ret.)

Former Justice, Supreme Court of Virginia

The Honorable LeRoy F. Millette, Jr. recently retired after seven years of distinguished service as a Justice on the Supreme Court of Virginia. Prior to his tenure on the high court, Justice Millette served at every level of the Commonwealth's judicial system, including serving two terms as Chief Judge during his fourteen years on the Circuit Court of Prince William County. Justice Millette is a Master of the L'Anson-Hoffman American Inn of Court and a Former Master of the George Mason American Inn of Court. He is a Member of the Boyd-Graves Conference and a Former Member of the Virginia Criminal and Civil Benchbook Committee. Justice Millette now brings this exemplary record of dedication and achievement to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth and beyond.



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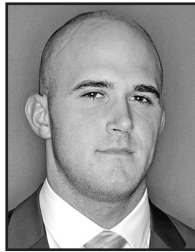
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HON. ARTHUR B. VIERGE (RET.)

HON. ROBERT W. WOOLDRIDGE, JR. (RET.)

YOUNG LAWYERS SECTION

By Zachary Simmons, Chair



On behalf of YLS, I hope everyone had a wonderful holiday season and is having a happy new year. YLS kicked off the holiday season in the spirit of giving on December 4th when we volunteered at the Boys and Girls Club of Southeast Virginia. This was an awesome event. We spent the evening with a great group of young men and women and shared with them our knowledge about the law, fielded some fun questions, and had an overall great time. I'd like to give a special thanks to Jamilah LeCruise who is on the Board of Directors for the Boys and Girls Club and organized the event. I'd also like to thank Jen Fuschetti and Kerry Stoltz for taking the time to come out.

YLS kept the holiday spirit alive when we collected toys for our annual Toy Drive at the Holiday Party. All of the toys were donated to ForKids, a fantastic organization that fights homelessness and poverty among families and children. Thank you so much to everyone who contributed. A little bit of generosity makes a big difference!

YLS has several upcoming events that I highly encourage you to attend. YLS will continue its CLE series with "Demystifying Federal Court for Young Lawyers" on January 7, 2016 from 1:00-3:00 p.m. This CLE will cover the very basics of federal court practice. Speakers include U.S. District Judge Mark S. Davis and Rob McFarland of McGuire Woods. This is a CLE that you do not want to miss, so please sign up while space is available!

On January 19, we will have our next Breakfast with the Bench and will be joined by the Honorable Von L. Piersall, Jr., a Retired Judge for the Third Judicial Circuit who often acts as a Judicial Settlement Con-

ference Judge in Norfolk and Portsmouth. Thank you in advance to Judge Piersall for taking the time to join us.

As always, we have more exciting events in the works, so please stay tuned for announcements. Also, for those of you who haven't joined our committee and are eligible to join (under 37 or less than five years in practice), please consider coming to our meetings and events. As you can see, YLS is involved in a variety of activities, and we always welcome new ideas. Feel free to shoot me an e-mail at

zachary.simmons@norfolk.gov.

FOR RENT

Law firm sub-letting a newly renovated, second floor office suite in the historic Ghent district of Norfolk. The office is approximately 2,800 square feet above a Wells Fargo bank at the intersection of Granby and 21st Streets, including great signage and ample free parking. Available from Feb. 2016. Contact John Cooper for further details at 757.455.0077

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CELEBRATING 120 YEARS OF LEGAL EXCELLENCE

Historians have traced the Wolcott family lineage back to 1382, but our firm's story starts with the branch of the family that immigrated to America in 1630. Since the Wolcott family's arrival, its members have fought in nearly every American war, including the Colonial War, the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War and World Wars I & II. Oliver Wolcott even served as Governor of Connecticut and signed the Declaration of Independence.

Two Wolcott descendants, brothers Edward W. Wolcott and Harry K. Wolcott, founded the family legal practice of Wolcott & Wolcott in Norfolk in 1895. The Wolcott family has continuously practiced law in Hampton Roads for four generations, and through mergers, partnerships and associations with other fine practitioners, established Wolcott Rivers Gates as it exists today.

When it matters most, the people and businesses of Hampton Roads call upon the attorneys at Wolcott Rivers Gates for efficient and innovative legal solutions and assistance in reaching their goals. Our commitment to excellence extends beyond the practice of law and deep into our Hampton Roads community. Our attorneys and staff currently serve on more than fifty non-profit boards donating our time and energy for a wide array of charitable causes.

At Wolcott Rivers Gates, we are proud of our 120-year tradition of excellence in representing the legal interests of businesses and individuals throughout Hampton Roads. We look forward to continuing our commitment to our clients for many years to come. From the board room to the court room, your success is our mission.

Are you in need of legal assistance with your business or personal matters? Please contact us via phone at (757) 497-6633 or visit our website www.wolcottriversgates.com.

Contact Norfolk Law Library at 622-2910 • www.norfolklawlibrary.org

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Be a Friend!

Make a Tax Deductible Contribution to
Norfolk Law Library this year!

Personnel Changes

We recently welcomed back **Larry W. Story** as Assistant Law Librarian, after eight years at the National Center for State Courts and Virginia Beach Public Library. We are pleased to have Larry rejoin the staff at Norfolk Law Library. His legal research and technology skills are second to none.

We were sorry to bid farewell to **David Knight**, who left a parting message, as follows:

For eight years, I've had the great fortune to work at Norfolk Law Library as Assistant Law Librarian. On October 26, I began work at the State Law Library at the Supreme Court of Virginia. While this is a great opportunity, I was at the same time be sad to leave Norfolk Law Library. I've enjoyed getting to know members of the Norfolk & Portsmouth Bar Association who attend the many great NPBA events. I'll miss the luncheons and wonderful speakers. Members who don't make it a point to routinely attend luncheons miss out on the best benefit of the Association. I'll also miss CLEs and always great Bench Bar Conference, as I've enjoyed the presenters sharing their expertise and insights. Thanks to the members of the Association and best wishes to all.

WELCOME NEW MEMBERS

Rachel Anderson

Chesapeake Legal Group, PLLC

Edwin S. Booth

Shapiro Appleton & Duffan, P.C.

Brian A. Boys

Atlantic Law PLC

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Andrew Butler

Regent University law student

Kathleen Knudsen

Regent University law student

Michael Simmons

Regent University law student

Paris H. Thompson, III

Regent University law student

JANUARY LUNCHEON

Thursday, January 21, 2016

Hits at The Park, Harbor Park

11:45 AM



Deborah DiCroce

Hampton Roads Community Foundation

Deborah M. DiCroce, Ed.D., is president and CEO of the Hampton Roads Community Foundation. Before joining the Foundation in 2012, she was president of Tidewater Community College for 14 years.

She serves on the board of visitors of Norfolk State University and is secretary of the Hampton Roads Community Foundation board of directors. She serves on the boards of the Virginia Early Childhood Foundation, Future of Hampton Roads, Greater Norfolk Corporation, Virginia Beach Vision and the Town Point Club. She serves on the United Way Children's Zone Steering Committee and Norfolk State University's Business and Economic

Development Advisory Council. In 2012, the Chesapeake Rotary Club named her First Citizen of Chesapeake.

She previously chaired the Hampton Roads Partnership board, Urban League of Hampton Roads board and the regional board of the Hampton Roads Chamber of Commerce. She is a former member of the Christopher Newport University board of visitors, Sentara Healthcare, Portsmouth Partnership and the Smart Beginnings South Hampton Roads boards of directors. She earned bachelor's and master's degrees from Old Dominion University and a doctorate in education from The College of William & Mary.

Pick up the Phone: Why Telephonic Communication Is Still Important to the Practice of Law

By Jennifer L. Eaton, Esq., VANDEVENTER BLACK LLP

Emailing is an essential part of the practice of law, but when did we become so dependent on email that the telephones in our offices became glorified paperweights? Can you remember the last time you picked up your phone and called a client out of the blue?

If the phone is not something you regularly use to communicate with clients, then you may have "call reluctance." Call reluctance is the notion that phone calls are somehow an imposition and that people find them to be a nuisance. Phone calls, of course, can be these things, but their novelty highlights the fact that they can actually add value to client relationships.

A top complaint of clients is that their attorneys do not respond quickly enough to their inquiries. Telephonic communication is a way to help bridge the divide between client expectations and the demanding realities of legal practice. By incorporating more phone calls into our practice, we can better connect with and serve our clients.

Why Opt for a Phone Call?

1. There are no typos in a phone call.

Emails need to be drafted and—in the ideal world—thoroughly proofread to avoid embarrassing typos. The reality is that many of us (okay, all of us) are rushed when we draft or respond to emails. We intend to send the perfect email, but—whether due to sloppiness or the sheer number

of emails involved—we make mistakes. People tend to be more tolerant of errors over the phone and, although one could always mispronounce a word, typos are not a problem with the spoken word.

2. Tone is much easier to interpret over the phone.

Emails lack inflection. Unless you have a mutual understanding and a familiar repertoire of written conversations with the party with whom you are communicating, tone is hard to discern from an email. Misunderstandings, as well as the need for additional emails to clarify the message, often result. Although some grammarians advocate use of the "sarcasm mark" and the "irony mark" to help cue the recipient, the odds of implementation and prolific use of such "tones" currently are slim. To a client, a friendly, inviting voice is more comforting than a long, complicated email.

3. Phone calls can actually save you time.

Drafting emails frequently takes more time than the drafter realizes. A phone call to discuss a substantive issue saves time and, more often than not, you can quickly resolve any confusion and ensure that your client understands your position. You can always memorialize your phone call with a short, informal email if you feel it necessary. The follow-up email may seem like it will take up unnecessary time, but it is

much easier to say, "this is what we talked about" than to explain your position and complex legal theories in an email with little context.

4. Your clients will thank you.

Like receiving a handwritten letter in the mail, there is no substitute for a personalized approach. Emails are a quick and effective way to communicate, but for the same reasons that emails are beneficial, they can also be undesirable—at least with respect to forging meaningful client relationships. Emails lack the personal touch of a written note or a phone call. As attorneys, we should never lose sight of the important reality that at the end of the day our clients are not just clients, they are people, and—as people—they value real, human interaction.

There is a time and place for email. Sometimes you want or need a paper trail. Sometimes the time of day dictates sending an email versus making a phone call. But oftentimes it is simply our reluctance to interact that is in the way. If this is the case, consider whether you are overdue for a phone call with any of your clients. And the next time you get the chance, pick up the phone.

The views advanced in this Article are those of the author alone and should not be mistaken for the official views of Vandeventer Black LLP.

Thank You to NPBA CLE Fall 2015 Faculty!

NPBA is proud of its CLE seminar series. Between Labor Day and the end of 2015, NPBA's CLE Committee planned and presented 17 seminars offering a total of 41 credits, 7 of which were Ethics credits. None of this would have been possible without the instructors for these seminars, who are listed below:

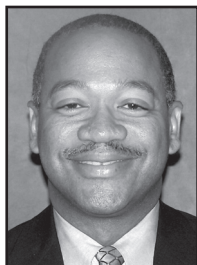
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Wendy Inge
Heather Kelley
Hon. David Lannetti
Dennis Lewandowski
John Lynch
Erikka Massie
Jim McCauley

FEBRUARY LUNCHEON

Thursday, February 20, 2016

Hits at The Park, Harbor Park

11:45 AM



Hon. S. Bernard Goodwyn, Justice
Supreme Court of Virginia

A Southampton County native, Justice Goodwyn received his undergraduate de-

gree in economics from Harvard University and his J.D. from the University of Virginia School of Law in 1986, where he was editor of the Virginia Tax Review and received the Ritter Award for honor, character and integrity. Before he was appointed to the bench, Justice Goodwyn was in private practice for eight years.

Justice Goodwyn was appointed as judge of General District Court for Chesapeake in 1995. In 1997, he was appointed as Judge for the First Judicial Circuit where he remained until appointed to the Supreme Court of Virginia by Governor Timothy M. Kaine in October 2007.

Justice Goodwyn is married to Sharon Smith Goodwyn. They have two children.

Braxton McKee
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Hon. Douglas Ottinger
Kellam Parks
Robyn Pepin
Corrynn Peters
John Peterson
Kim Phillips
Brad Reaves

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Hon. Michael Rosenblum
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Stephen M. Smith, Esq.

Out of thousands of trial lawyers in the United States, Stephen M. Smith was one of the select few invited to be trained in the Neuro-Anatomical Dissection of the Human Brain and Spinal Cord at Marquette University College of Health Sciences. This advanced medical training, coupled with his 41 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

If you or a loved one has suffered an injury and are experiencing difficulties, please contact us for a complimentary evaluation so you can learn about your legal options.



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ANNOUNCEMENTS

Mary G. Commander, Attorney & Mediator, has been selected the 2016 Virginia Legal Elite in Domestic Relations/Family Law; Best Lawyers in America in Family Law and Family Mediation, Super Lawyers in Family Law and Coastal Virginia Magazine Best Lawyers in Hampton Roads.

Cooper Hurley Injury Lawyers is delighted to welcome **Griffin O'Hanlon** to the firm. Griff attended Great Bridge High School for his freshman and sophomore years, before relocating to Illinois. He returned to Virginia to attend Virginia Tech, where he majored in history. Griff obtained his law degree from Saint Louis University School of Law with a concentration in civil litigation. After law school, Griff practiced at the Norfolk Public Defender's Office and a local private firm before joining Cooper Hurley and has extensive in-court litigation experience.

Crenshaw, Ware & Martin, P.L.C. is pleased to announce that **Steven L. Brinker** has joined the firm as chair of its Business Law Group. Steve focuses on formation, financing and development of business entities, including complex mergers and acquisitions. He also advises clients on the tax consequences of business transactions and strategies to address or mitigate negative impacts. He counsels tax-exempt entities in all aspects of federal and corporate tax law, including obtaining and retaining tax-exempt status. Steve holds an LL.M. in tax from Georgetown University, a J.D. from Washington & Lee University, and a B.A. from the University of Virginia.

Parks Zeigler, PLLC announced the addition of our new partner **Allison W. Anders**. Allison specializes in divorce, custody, visitation, protective orders and/or child and spousal support matters. She received her J.D. from Loyola University, New Orleans College of Law, after receiving her B.S. in criminal justice from Old Dominion University. During her twelve years of practicing law, she has received the Virginia Rising Star award five times and has been recognized as Virginia Legal Elite for the past two years. Allison was previously a partner with Kaufman & Canoles. Allison also volunteers her time as President of REACH, INC., Reading Enriches

All Children. This organization promotes literacy by providing books to at risk and homeless children in our community.

Roussos, Glanzer & Barnhart, P.L.C. is pleased to announce the inclusion of **Robert V. Roussos** and **Kelly M. Barnhart** in Virginia's Legal Elite for 2015 in Bankruptcy/Creditors' Rights.

The National Board of Trial Advocacy (NBTA) is pleased to announce that **Richard N. Shapiro** of **Shapiro, Appleton & Duffan** has achieved recertification as a civil trial advocate. NBTA was formed out of a conviction that both the law profession and its clients would benefit from an organization designed specifically to create an objective set of standards illustrating an attorney's experience and expertise in the practice of trial law. Mr. Shapiro earned his undergraduate degree from the University of Maryland. He graduated with distinction from the George Mason University School of Law, where he served as an editor on the Law Review. Mr. Shapiro is licensed to practice in Virginia, West Virginia, North Carolina, and Washington, D.C. He is recognized as a Virginia "Super Lawyer" in Law & Politics Magazine and is listed as a "Best Lawyer" for personal injury and railroad litigation in Norfolk by U.S. News & World Report. Mr. Shapiro holds 18 U.S. patents and various international patents. In addition, Mr. Shapiro is an accomplished author, having won the Gold Award in the 2015 Readers' Favorite Int'l. Book Award Contest for his fiction thriller *Taming the Telomeres*.

Willcox Savage is pleased to welcome **Bill Burke**, **Jay Jones** and **Jon Tan** to the firm. Bill is in the Maritime practice group. His practice will focus on government contract and maritime matters. Bill is a 2015 graduate of the College of William and Mary School of Law. He earned his M.A. degree from Old Dominion University in 2010, and his B.S. degree from the United States Naval Academy in 2001. Prior to law school, Bill served as an officer and helicopter pilot in the U.S. Navy. Jay is in the Employment practice group. Jay is a 2015 graduate of the University of Virginia School of Law. He earned his B.A. from the College of William and Mary in 2010. Prior

to law school, Jay worked as an Analyst with Goldman Sachs in New York City. Jon is in the Catastrophic Loss and Tort Defense practice group. Jon is a 2014 graduate of the University of Richmond School of Law. He earned his B.A. from the University of Virginia in 2011. Prior to joining the firm, Jon served as a judicial law clerk for the U.S. District Court of the Eastern District of Virginia.

Willcox Savage is pleased to announce the following attorneys were selected by their peers for inclusion in The Best Lawyers in America 2016 in their respective areas of law: **Christopher A. Abel**, **Bruce T. Bishop**, **Susan R. Blackman**, **Gary A. Bryant**, **Stephen R. Davis**, **Robert L. Dewey**, **Allan G. Donn**, **William M. Furr**, **Gregory A. Giordano**, **Peter M. Huber**, **Thomas C. Inglima**, **Thomas G. Johnson, Jr.**, **Wiley F. Mitchell, Jr.**, **Hugh L. Patterson**, **Brian C. Purcell**, **William E. Rachels, Jr.**, **Neil L. Rose**, **Toy D. Savage, Jr.**, **Conrad M. Shumadine**, **Mark E. Slaughter**, **David H. Sump**, **Anthony M. Thiel**, **Warren L. Tisdale**, **Samuel J. Webster** and **Cher E. Wynkoop**.

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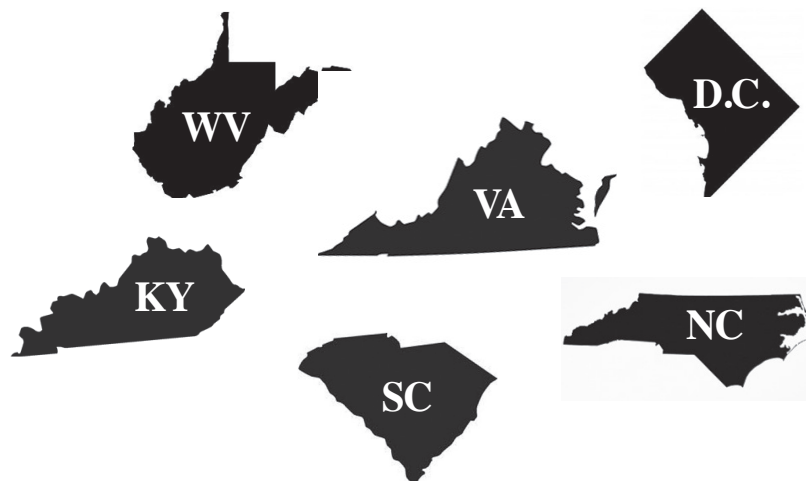
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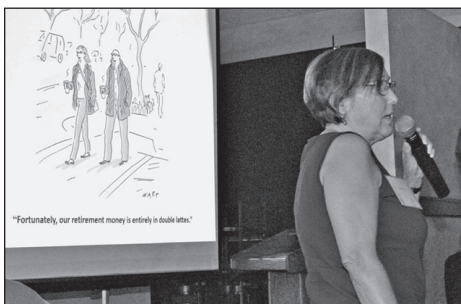
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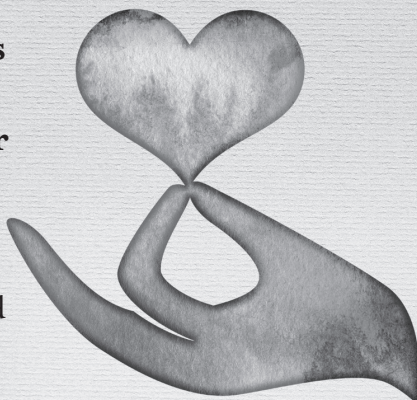


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