

BAR BULLETIN

**Volume XXXI
Number 4**

July/August 2006

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See Flyers Inside for
Event Details and
Registration Information

Preregistration required
for all NPBA Events.
Call 622-3152.

PRESIDENT'S MESSAGE



James A. Metcalfe

We are entering the sultry summer months when Bar events are rarely scheduled and most of us are focused on juggling our practices with the vacation plans of our families, friends, and colleagues. Nonetheless much of the committee planning work that is the foundation that makes the Bar year – essentially September through May – a success is being implemented now. Elsewhere in the Bulletin you will see the list of committee memberships. If you are not already involved, I urge you to find a committee where you can have a positive effect on the Bar and its mission. The following is a summary of some items of note:

Annual meeting: The gathering at the Town Point Club was a great success. We had a splendid turnout from our local

judiciary and from the Bar. We were serenaded by the The Harbor Trio, led by Anastasia Miglioizzi, Joe's wife, on the viola. The highlights of the evening were the recognition by Lynne Barrett of the Norfolk Public Schools for members who participated in the Middle School Mock Trial Program, followed by awards of the Foundation scholarships, the Walter E. Hoffman Community Service Award to Tricia Batson, immediate past chair of the Young Lawyers Section (who could not attend, having just given birth), and the Eggleston/I'Anson Professionalism Award to Monty Knight. We also heard from our President, Butch Barr, who was unable to attend but was brought to us via the marvels of modern electronics and video. If you missed Monty's anecdotes of the past, including his story of his trip very much together with Jerry Weinberg to the Virginia Supreme Court, then you missed a great story indeed. Plan to attend next May – it's the only way to defend yourself if an award recipient tells all!

Justice O'Connor's remarks at W&M: Chancellor Sandra Day O'Connor addressed the graduates at the Law School's May 14 ceremony and stressed the importance of judicial independence. Lawyers and judges hold the keys of justice in their hands and judicial independence must be maintained for the country's system of government to work, the retired Associate Justice told the graduates. Citing examples such as Supreme Court decisions in *Brown v. Board of Education* and *U.S. v. Nixon*, she said judges must be free to make decisions without fear of retaliation from political and partisan circles.

"It is clear that judicial independence is a bedrock value of our system of government," Justice O'Connor said. "Unfortunately, however, the concept is under serious attack at both the state and national level." There have been calls, the Chancellor said, for mass impeachments for judges and for stripping the federal courts of jurisdiction in particular cases. She said there have also been calls to use Congress's budget authority to punish "offending judges." She added, "Judicial independence does not happen all by itself. It's tremendously hard to create and it's easier than most people imagine to destroy. We must be vigilant against those who would retaliate against judges for specific judicial decisions, or who seek to undermine the ability of the courts to play their

(continued on page 2)

Perfecting the Record for Appeal CLE
Thursday, September 7, 2006

Parallel Civil and Criminal Proceedings CLE
Thursday, September 14, 2006

NPBA Luncheon
Thursday, September 21, 2006, 11:45 AM

Eminent Domain CLE
immediately after Luncheon
Hits at the Park, Harbor Park

Discovery Issues CLE
Thursday, September 28, 2006

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(PRESIDENT'S MESSAGE CONTINUED)

constitutionally ordained roles." She added: "There is no natural constituency for judicial independence—it isn't there. So we need you young lawyers to be aware of the problem. We need you to explain the importance of judicial independence to the public."

While her remarks were directed at the graduates, they are applicable to all of us before the bar and food for thought. (Thanks to Brian Whitson and the publications department of W&M for allowing us to quote from their article.)

VSBA Awards of Merit: On June 16th at the VSBA Conference of Local Bar Associations, I had the pleasure of attending the awards program at which our Association received three awards. They were justly deserved and reflect the commitment of the responsible committees and the whole membership who participated. See separate article. John Y. Richardson, Jr., a past president of your association, was also voted Chair Elect of the CLBA.

September meeting: The first fall luncheon on September 21st promises to start the year with a blast. One of Moussaoui's defense counsel, Gerry Zerk, will talk about the trial and the historic proceedings. Mark your calendars and plan to attend. See separate article

Mock trials at Green Run HS: On May 2d the Bar office received a request from Green Run HS for attorneys to assist in mock trials that were inspired by "To Kill a Mockingbird". A number of members responded immediately to the request. Taking part in the mock trials were Todd Gaynor, Cynthia King, Steve Miyares, and Lindsey Kelly (an associate of Dan Warman who took Dan's place at the last minute). Others who volunteered but were not needed included Joe Migliozi and Wes Simon. The classroom teacher, Misty Ball, reported: "Everyone has been great. They used the Socratic method with my students and made the students work... My kids really appreciated it and I can see the positive influence it had on my students." My thanks for all who pitched in on short notice and so splendidly represented our Association.

New Norfolk courthouse planning: Our Courts of Justice Committee, chaired by Marjorie Arrington, with Kelly St. Clair as liaison from the Executive Committee, is charged with presenting the views of your Association during the planning process. Many of you have well informed views regarding the shortcomings of the present outdated court facilities. Please share your views and ideas for a better facility with Marjorie and Kelly and the committee. We need your input.

Past Presidents Council: We are going to have a Past Presidents Council to harness the energy and experience of our past presidents. The Virginia Beach Bar Association has been very successful in establishing such a council. Keep tuned.

NPBA Foundation: Joe Migliozi has an article on the Foundation. This is an important year for the fund drive to raise substantial capital so that the Foundation can fund programs and scholarships that will further the public's awareness and knowledge of the law, their rights, and the legal system. Even if you cannot make a major commitment, please give at least the \$100 suggested by the dues check-off.

Membership: We are almost at 1000. Dues provide the bulk of the funds that permit us to operate (the Bench Bar conference, the CLE programs, and the YLS also make significant contributions to our funds). Encourage others to join. If you have any suggestions on how to expand membership, do not hesitate to contact Delphine Carnes, Chair, or Chip Beaman, EC liaison.

Writing for the Bulletin: Each of you has ideas and the ability to express them or you would not be lawyers or judges. We welcome thoughtful articles of general interest to the membership for publication, reserving the right to edit for length. Feel free to submit such articles for consideration for publication.

Have a great summer. Jim

WELCOME NEW NPBA MEMBERS

Kelly M. Barnhart
Marcus, Santoro & Kozak, P.C.

Paula M. Bruns
Norfolk Commonwealth Attorney's Office

Devon Paige
Norfolk Commonwealth Attorney's Office

Timothy J. Bentley, III
Norfolk Southern Corporation

Andrew T. Drewer
Shaheen & Shaheen, P.C.

Meredith B. Travers
Norfolk Commonwealth Attorney's Office

Christina L. Brady
Norfolk Commonwealth Attorney's Office

Waverly W. Jones, Jr.
Norfolk Commonwealth Attorney's Office

Scott A. Lehman
Regent University law student

John M. Bredehoff
Kaufman & Canoles, P.C.

Patrick J. McKenna
Glasser & Glasser, P.L.C.

Nathaniel Lyle Story
Regent University law student

G. Jeffrey Mason
Norfolk Commonwealth Attorney's Office

Top 10 Things Law Librarians Want New/Summer Associates to Know

We are concerned with the growing trend of solid legal research basics that new associates often lack upon graduation from law school. This is not a print versus electronic argument. Today, both are essential in the legal research environment.

1. **Know Civics 101.** How a bill becomes law and where regulations come from. Know the difference between statutes and regulations and how they relate. Know how they go from public law and promulgated rule to codification. Introduction to U.S. Code and C.F.R. should happen before arrival at a law firm. Keeping in mind the likely source of origin of the information sought assists mightily in locating it and updating it effectively.
2. **Know that you should never, ever start research with Lexis and Westlaw if you are clueless about the topic at hand.** Before signing on, get acquainted with the subject by starting with a resource that contains background on the issue, such as a hornbook or treatise. Use finding aids such as digests and legal encyclopedias. Secondary sources can provide background, context, definitions and case annotations and assist in viewing the big picture.
3. **Know that cite checkers such as Shepard's or Key Cite are much more than case validators.** Shepardizing or Key Citing a relevant headnote may lead to other cases on point as well as secondary sources and law reviews.
4. **Know that efficiency in searching Lexis and Westlaw is essential.** The cost is significant in the real world of the law firm. Vendors and law schools do a disservice to law students by not providing students with the actual cost of their research sessions. Learning to search these systems without knowing associated costs can lead to poor searching habits.
5. **Know that Natural Language searching has not really arrived, despite marketing claims to the contrary.** A Boolean search, if constructed well, is usually more precise. Remember Venn diagrams? They are crystal-clear graphical representations of Boolean logic.

6. **Know that everything does not have to come from the Internet.** Use the telephone — yes, that dinosaur. Sometimes a simple phone call can get your question answered or provide guidance. Proposed regulations, government Web sites, book chapters and underlying court documents provide the names of authors, editors, contributors and other contact information. Pursue those leads.
7. **Know when to stop when performing Web-based research, free or fee.** Give it 15 minutes, tops, and then ask for help. Clients should not have to pay for aimless Web wanderings. Firms pay a lot of money for research systems, so take advantage of customer support.
8. **Know the limitations of both Web-based research services and print resources.** Both have pros and cons. Use them appropriately in conjunction with one another. The serendipity factor of

stumbling upon the truly relevant information while flipping through a book is unlikely to happen online. When you're spinning your wheels, try a print resource.

9. **Know that asking the partner or senior associate for clarification is OK if you are confused or unsure of the assignment.** That is far better than going off tangentially in hopes it will satisfy what you think they were talking about. Be sure you understand the assignment. If you don't know what the question is, it's impossible to obtain the correct answer.
10. **Know that asking law librarians for help is encouraged.** We are here to make your life easier and take off some of the burden, without anyone back at the office being any the wiser. Call, email or drop by. We are all in this together.

(with thanks to Bobbi Cross, Law Librarian, *Schnader Harrison Segal & Lewis, Philadelphia*)

2006 LEGAL FOOD FRENZY AWARDS

Food Frenzy Chair Jessica Mellington presents awards to the winning firms - McGuire Woods (overall winner); Kaufman & Canoles, P.C.; Vandeventer Black LLP; Crenshaw, Ware & Martin, P.L.C.; Harbour Law Group and American Center for Law & Justice. Congratulations to all participants!



ANNOUNCEMENTS

Lisa A. Bertini, Lisa P. O'Donnell and Amberley G. Jochens are pleased to announce the establishment of **Bertini O'Donnell & Jochens, PC**. Ms. Bertini will practice in the areas of employment law and personal injury. Ms. O'Donnell will practice in the areas of personal injury, medical malpractice and criminal defense. Ms. Jochens will practice in the areas of personal injury and medical malpractice. Their office is located at 999 Waterside Drive, Suite 1010, Norfolk, Virginia 23510-3320.

Philip R. Farthing is pleased to announce the formation of his new firm, **Philip R. Farthing P.C.** Mr. Farthing will continue to concentrate his law practice in estate planning, estate and trust administration, probate, wills and trusts, business law, non-profit organizations and commercial real estate.

The Transportation Lawyers Association

(TLA), an international organization of attorneys serving the transportation industry, recently elected **Greg E. Summy** of **Norfolk Southern Corporation** its President. Summy is the first TLA president whose practice focuses on railroad transportation. He began his legal career in 1977, engaging in private practice for six years. Following that, he served as corporate counsel with Lee Way Motor Freight and North American Van Lines. In 1994, he joined NS, where his practice focuses on transactions and regulations related to railroad and trucking affiliate operations.

The law firm of **Waldo & Lyle, P.C.** is pleased to announce that **Charles M. Lollar** has joined the firm, located at 301 W. Freemason Street., Norfolk, VA 23510.

Cheshire I'Anson Eveleigh has been recognized by Virginia Business magazine as one of Virginia's 2006 Super Lawyers in the area

of Family Law. Eveleigh is a partner and officer of the law firm of **Wolcott Rivers Gates** where she concentrates her practice in the areas of Family Law and Mediation.

Kellam T. Parks has joined the law firm of **Wolcott Rivers Gates**. Mr. Parks represents both plaintiffs and defendants in a wide variety of legal areas including family law, landlord/tenant law, consumer protection, including credit scoring disputes, and civil litigation. He is a graduate of William and Mary Marshall-Wythe School of Law and St. Andrews Presbyterian College.

Neil L. Rose, of **Wolcott Rivers Gates**, has been elected President of the Congregation at Beth El in Norfolk, the area's oldest conservative synagogue with over 600 families. Mr. Rose continues his practice in the areas of Business/Corporate Law, Commercial Real Estate, Elder Law, Taxation, as well as Wills, Trusts and Estates.

NPBA PRESENTED VSB AWARDS OF MERIT

THANKS TO THE GENEROSITY AND DEDICATION OF NPBA MEMBERS

The Norfolk & Portsmouth Bar Association received 3 Awards of Merit this year from the Virginia State Bar's Conference of Local Bar Associations at the VSB Annual Meeting in June.

This marks the 21st year of the VSB Awards of Merit competition which is held annually to recognize outstanding projects conducted by local and specialty bar associations of all sizes, to encourage greater service to the public and the profession, and to give local and specialty bar leaders the opportunity to learn from the programs of other bar associations.

Out of 14 total Awards this year, NPBA received 3. Our winning projects were the Wills for Heroes project, the record-setting 15th Annual Legal Food Frenzy and the Norfolk Public Schools Middle School Mock Trial Project. Literally hundreds of our members and their staffs participated in the award-winning projects, so congratulations to everyone who participated in any or all of these community service programs!

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COURT NEWS

Supreme Court of Virginia and Court of Appeals of Virginia Filing Fee Increases

As this year's session, the General Assembly enacted Code §17.1-132, which created the Courts Technology Fund (CTF), and amended Code §17.1-328 and §17.1-418 by raising filing fees to fund the CTF. Effective July 1, 2006, the fee for filing a petition in the Supreme Court will increase from \$25 to \$50. At the same time, the fee for filing a notice of appeal or an original jurisdiction petition in the Court of Appeals will increase from \$25 to \$50.

Norfolk Juvenile and Domestic Relations District Court

The Judicial Conference is scheduled for August 14-16, 2006. The JDR Court will have one Court in session for overnight arrest cases and for emergency cases only. Please mark your calendar accordingly.

Virginia Beach Juvenile and Domestic Relations District Court

The Honorable Ramona D. Taylor has been elected Chief Judge. She replaces The Honorable Deborah M. Paxson on July 1, 2006.

NEED CLE CREDIT THIS FALL?

LOOK NO FURTHER THAN THE NPBA!

The NPBA CLE Committee is hard at work planning seminars for the Fall. If you need credits by the October 31 MCLE deadline, NPBA makes it easy on your schedule and your budget. You will be able to get all the credits you need and more - regular and ethics - in September and October - from the NPBA. See the list below, check out the flyers in this issue, and, for the latest, up to the minute updates, visit the Association website:

www.norfolkandportsmouthbar.org

FALL CLE SEMINARS

**Perfecting the Record for Appeal:
Preserving and Arguing Issues
Effectively at Trial and on Appeal**
3 CLE Credits (1.0 Ethics)
Thursday, September 7, 2006

**How to Handle Parallel Civil and
Criminal Proceedings: Avoiding
Litigation Pitfalls**
3 CLE Credits
Thursday, September 14, 2006

Eminent Domain: Post-Kelo Limits
1 CLE Credit
Thursday, September 21, 2006
(immediately after NPBA Luncheon)

Discovery Issues
3 CLE Credits
Thursday, September 28, 2006

**The 3 AM Phone Call: Criminal and
Traffic Law Basics for Non-Specialists**
2 CLE Credits (.5 Ethics)
Tuesday, October 3, 2006

Workers Compensation
3 CLE Credits (1.0 Ethics)
Thursday, October 12, 2006

**The Proposed New Virginia
Rules of Evidence**
1 CLE Credit
Thursday, October 19, 2006
(immediately after NPBA Luncheon)

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NPBA FOUNDATION REPORT

Joe Migliozi, President • Virginia Capital Defender's Office • jmigliozi@msn.com

For the third consecutive year, the Norfolk and Portsmouth Bar Association Foundation has awarded scholarships to two high school seniors. This year, the competition received a record number of applicants, with 24 essays submitted from students throughout Hampton Roads. The scholarships were presented to the winning students and their families at the Norfolk and Portsmouth Bar Association's annual dinner meeting on May 18, 2006.



Joe Migliozi

The competition accepts applications from graduating high school seniors. This year, applicants were asked to discuss the President's authority to nominate Supreme Court justices who share the President's views on controversial issues. Students representing a broad array of schools accepted the challenge and submitted exceptionally well-written essays. Judging this year's competition was no easy task, but two essays stood out among the others.



Scholarship chair Bob Timms and NPBAF President Joe Migliozi present first place award to Laura Albero

Laura Albero of Princess Anne High School received this year's first place scholarship award of \$2,500.00 to attend the University of Virginia. The second place scholarship of \$1,000.00 was awarded to Christopher Beacham of Nansemond-Suffolk Academy who will attend the Wharton School, University of Pennsylvania.

The Foundation extends a special acknowledgement to the three Judges who devoted a significant amount of time and effort reviewing each application and essay submitted in this year's competition.

Returning to participate for a third year, the Honorable Richard S. Bray, Virginia Court of Appeals, retired, chaired the panel of judges. The Honorable D. Arthur Kelsey, Virginia Court of Appeals and the Honorable Mark S. Davis, Portsmouth Circuit Court, also served on the panel. Each of the judges expressed appreciation for the "insightful" analysis presented by the students in all 24 essays. The panel of judges was formally recognized at the annual meeting of the bar association.



Second Place Winner Christopher Beacham

The winners of this year's competition join a growing list of NPBAF scholarship recipients who have gone on to some of the finest colleges and universities in the country. During the inaugural year, Christine Wright from Princess Anne High School was awarded a \$2,500 scholarship to attend Georgetown University and Sarah Brittman of Norfolk Academy was awarded a \$1,000 scholarship to attend Harvard University. In 2005, Elizabeth Sutherland of Western Branch High School was awarded the first place scholarship to attend the College of William and Mary. The second place award was presented to Charlotte Howell of Princess Anne High School, to attend the University of Virginia.

The Foundation, its board and supporters are excited about the continued success of the annual essay competition and scholarship awards. The accomplishments of each student advance the Foundation's mission to "promote the administration of justice and to educate the public about the importance of law in their daily lives."

To ensure the continued success of the scholarship program, I encourage all members of the bar to contribute to the Foundation. I especially encourage you to

consider becoming a Fellow of the Foundation, an honor that will be as professionally enduring as your contribution.

If you wish to contribute –

Please make check payable to:

NPBA Foundation

Mail to: 999 Waterside Drive #1330
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NPBA MEMBER SERVICES

Conference Room Rental

NPBA members may rent the Bar Association conference room for \$100 per day. The conference room seats up to eleven comfortably, has a magnificent river view and is an ideal venue for depositions and conferences which need to be held on "neutral ground."

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SEPTEMBER LUNCHEON MEETING

Thursday, September 21, 2006
Hits at The Park, 11:45 AM



Speaker: Gerald T. Zerkin
Assistant Federal Public Defender,
Richmond

Zerkin's infamous client, Zacarias Moussaoui, was recently convicted of conspiring in the September 11th attacks. Multiple counts brought against Moussaoui had carried a possible death penalty. Moussaoui confronted a team of civilian prosecutors from the Justice Department — two from the local United States attorney's office, one a terrorism specialist. Rather than depend on defense lawyers with a specialty in military law, Moussaoui was represented by court-appointed civilian lawyers selected by The Honorable Claude M. Hilton, E.D.Va.

Zerkin, considered one of the nation's top specialists in death penalty cases, at the

time of his appointment said that members of his family "probably swallowed hard when they heard I had been appointed to this, just because of the notoriety." But the 52-year-old Queens-born lawyer said he felt ethically obliged to accept the appointment, and excitement at the chance to take part in "what is obviously a terribly challenging case, a terribly interesting case." Moussaoui, he said, "is absolutely entitled to a vigorous defense, and it's our job and duty to give it to him."

Zerkin focused on keeping Moussaoui from being executed. "I am morally opposed to the death penalty," Mr. Zerkin said. "The death penalty is wrong. Period. End of discussion. And so this case is not a challenge for me on that issue."

Zerkin captured national attention when he helped free Earl Washington Jr., a retarded man who came within days of execution for a 1982 rape and murder that he did not commit. DNA tests cleared him of the crime.

Zerkin has been called "one of the bright lights of the defense bar in terms of creative thinking on the death penalty." A graduate of Boston College Law School, Zerkin worked for Richmond Legal Aid before going into private practice. Zerkin has represented four clients in federal murder

cases, and none received death sentences. Several leading defense lawyers said Zerkin was well suited to the hurdles he faced.

"Jerry Zerkin is a great lawyer," said David Baugh, who worked on two death penalty cases with Zerkin and represented one of the defendants in the 1998 bombings of the American embassies in Kenya and Tanzania. Prior to the Moussaoui trial, Baugh said, "That case was rough, but this case will be 20 times more intense." He said the task Zerkin faced was "analogous to John Adams representing the British soldiers" accused of perpetrating the Boston massacre, but before 24-hour news cycles repeatedly showed film of the terrorist attacks and the war that ensued from them. With the challenge comes a great opportunity, said Baugh, an African-American who once represented a Klansman in a cross-burning case. "It is always exciting and gratifying to represent someone despised by everyone else," Baugh said. "This is our national morality and Jerry is now the guardian of it. That is a wonderful responsibility."

Join us to learn what it was like to represent a recalcitrant defendant in the bright glare of the media on Thursday, September 21st. Call the Bar Office at 622-3152 to register today.

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RECENT COURT EVENTS

– PORTRAIT PRESENTATION – THE HONORABLE MARC JACOBSON



Judge Jacobson with his portrait



Judges Jacobson and Doumar



Past President Stanley Barr
and Judge Jacobson

– INVESTITURE – THE HONORABLE ALFRED M. TRIPP



Judge and Mrs. Tripp

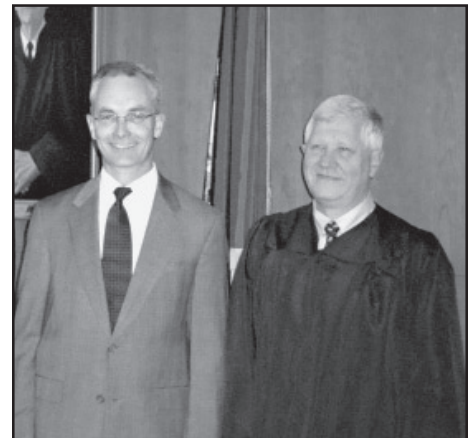


Judge Fulton welcomes Judge Tripp
to the Circuit Court bench

– INVESTITURE – THE HONORABLE SILAS CLARK DAUGHERTY



Judge Daugherty and family



Judge Dezern welcomes Judge Daugherty
to the General District Court bench

– Photographs courtesy of Janice Clarence, Norfolk General District Court –

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MESSAGE FROM THE YOUNG LAWYERS' SECTION

By Derek F. Myers, Chair • Williams Mullen, P.C. • dmyers@williamsmullen.com

Greetings from the Young Lawyers' Section (YLS)! The focus of this article is mentoring. The following comments are not scientific in nature and are not based on extensive polling and/or data interpretation. Rather, they are simply based on my personal observations while on active-duty and, now, as an associate attorney in a large law firm.

An effective mentoring relationship has benefits for both the mentee and mentor. The mentee obtains insight into an organization's culture, as well as a confidential source of career advice. The mentor obtains the opportunity to assist in the development of a young/new member, as well as a fresh perspective.

Many larger law firms have formal mentoring programs. A mentoring director will solicit mentors, evaluate mentees' backgrounds and career goals and match candidates. Mentors and mentees then meet regularly to discuss a wide variety of career and professional development is-



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sues. What if an organization does not have a formal mentoring program? The answer is to seek out an *informal* mentor. This could be any experienced colleague that the potential mentee is comfortable with. However, the rules of the informal mentoring relationship, especially confidentiality, must be clearly understood by both parties.

Both sides should also understand their responsibilities. First and foremost, the mentoring relationship should not be passive. Participants should take time from their busy schedules to actively engage with the other regularly. Mentees should

actively participate in the process by mapping out career goals, carefully considering and researching issues before approaching the mentor, and continually seeking out professional development opportunities on their own. Mentors should take a genuine interest in their mentees, provide candid advice, and maintain confidentiality.

By approaching the mentoring relationship in a positive, respectful manner, both sides can reap big dividends from a relatively small investment in time and effort. Ultimately, the mentee's firm/organization will end up with a happier, better-rounded young/new attorney who will contribute for years to come.

If you are interested in becoming active in the YLS, contact Caryn West, Membership Coordinator, at 466-0464 or cwest@clarkedolph.com, or me at 473-5318 or dmyers@williamsmullen.com.

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