

BAR BULLETIN

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INSIDE

PAGE 2 LUNCHEON PHOTOS

PAGE 3 LIBRARY LINES
LIBRARY FRIENDS

PAGE 4 FIRM ANNOUNCEMENTS

PAGE 5 MARCH LUNCHEON
YOUNG LAWYERS' SECTION
WELCOME NEW MEMBERS

PAGE 6 NPBA FOUNDATION

PAGE 7 EVENT PHOTOS

PRESIDENT'S MESSAGE

A few months ago *The Wall Street Journal* reported on a study that had just been issued by the Manhattan Institute's Center for Legal Policy advocating for a "loser pays" system of justice here in the U.S. The report found that in 2006, direct costs of tort litigation reached \$247 billion. Those costs as a percentage of GDP in the U.S. are nearly double what Germany pays and nearly three times what France and the United Kingdom spend. Unlike those countries and most of the developed world, our system usually requires all parties to a lawsuit to pay their own legal costs, regardless of who wins. The Center contends that a loser pays system might help stem the tide of expensive and sometimes frivolous lawsuits. But trial attorneys contend that is not the case. Since most plaintiffs' attorneys operate on a contingency fee basis, why would they want to promote frivolous lawsuits? Also, our system is available to all citizens whereas a loser pays system is said to favor the rich who can take the gamble of losing. Nevertheless, the loser pays system seems to be working in such places as Canada, England, France, Germany and Spain, sometimes coupled with legal insurance. By the way, the State of Alaska also has a modified loser pays system where tort lawsuits comprise only 5% of the litigation docket. In the rest of the U.S. the average is nearly 10%. The *Journal's* article on the report drew lots of online comments on both sides of the argument. The full Center for Legal policy report can be found here: http://www.manhattan-institute.org/html/cjr_11.htm.

This issue does deserve discussion but there are no easy answers. Everyone has probably seen examples of litigation that should never have been filed. The news media picks up on extraordinary cases from time to time: the hot cup of coffee at McDonald's a few years back and the more recent \$54 Million claim filed by a former DC Administrative Law Judge for a lost pair of pants. While these cases are amusing in one sense, embarrassing in another, there is also a serious side. McDonald's can afford to defend itself but the Korean family had to spend nearly \$100,000 defending themselves in the pants litigation. A loser pays system of justice might make people think twice about filing suit, or at least think twice about how much they are seeking. Too many people feel a sense of entitlement if something goes wrong in their lives so someone has to pay. That attitude usually results in expensive litigation costs. John Stossel had this to say: "When you win, you lose under our system. I win, I defeat your claim. But it has cost me tens, hundreds of thousands, sometimes millions of dollars. I have a victory that has brought me to the poorhouse." As noted in *The Economist* last month, "[b]ecause the process is so expensive and juries are so unpredictable, blameless people often settle baseless claims to make them go away. The law is supposed to protect individuals from the state, but it often allows selfish individuals to harness the state's power to settle private scores."



John L. Deal

(continued on page 2)

See Flyers Inside for
Event Details and
Registration Information

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

March Luncheon
Thursday, March 19, 2009, 11:45 AM
Hits at the Park, Harbor Park
Speaker: Judge Rebecca Beach Smith
Legal Food Frenzy Kickoff Luncheon
Friday, March 27, 2009, Noon
Foodbank of Southeastern Virginia
Honorary Chair: Sheriff Bob McCabe
Guest Speaker: Bill Mims
Virginia Attorney General Designate

Legal Food Frenzy
March 30 - April 10, 2009
Bench Bar Conference
3 CLE Credits (1.0 Ethics pending)
Wednesday, April 8, 2009 • 8:30 AM - 2:00 PM
Norfolk Waterside Marriott
Annual Dinner
Thursday, May 21, 2009
Norfolk Yacht & Country Club

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(PRESIDENT'S MESSAGE CONTINUED)

Making the rounds to promote his new book, *Life Without Lawyers*, Philip Howard has had a lot to say about why our legal system needs to be reformed. You may recall he wrote the *Death of Common Sense* in 1994, citing example after example of how bureaucracy has defeated the best of intentions. In his opening pages, he tells of the nuns of a missionary who wanted to open a shelter for the homeless in New York City. The city agreed to sell two vacant buildings for \$1 each but the plan failed when the city also required the installation of a \$100,000 elevator that was not going to be used. The nuns moved on. There are lots of examples cited which should get everyone who reads it sufficiently exercised, but there seem to be no concrete solutions.

In his newest book, Howard gives more examples of a system that cries out for reform. We take down playground equipment because of the threat of litigation. Rip tide warning signs were removed in Long Beach, New Jersey for fear that someone might contend the signs were inadequate. Running at recess was banned in schools in Broward County, Florida for fear of litigation. A teacher was sued for positioning a child's fingers on a flute. Another was sued for \$20 Million for putting a hand on the back of an unruly 7th grader to direct him out of the classroom. The parents had him criminally indicted but the charge was later dropped two years later. In New York City there are more than 60 bureaucratic steps that must be taken to suspend a child for more than 5 days. Teachers, doctors and others are working in a defensive mode to protect themselves against litigation.

George Will has said that "today's entitlement culture inculcates the idea that everyone is entitled to a life without danger, disappointment or aggravation." But that has to be tempered with a degree of personal responsibility and a realization that sometimes bad things happen. Until meaningful solutions are found, we should each strive to do our part to improve the system by doing what we think is right. There is something to be said for a good dose of common sense finding its rightful place in our system of justice.

JANUARY LUNCHEON

SPEAKER: PATRICIA TURNER OF THE NORFOLK 17



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LOCAL FACTS AND FIGURES AT YOUR FINGERTIPS

Virginian-Pilot Media Companies has released a website called DataPilot, at <http://hamptonroads.com/datapilot>. DataPilot is a gateway to information about Hampton Roads. DataPilot has statistics on crime, real estate transactions, school accreditation, and much more. Since its recent debut, DataPilot has added two new links, one to crime statistics throughout the U.S. as reported by the F.B.I. Uniform Crime

Reports, and one to home foreclosures in South Hampton Roads. Much of this data is already available on the websites of the localities of Hampton Roads, but finding it can take time since the names of departments collecting and reporting the data differ from one locality to another. DataPilot can save time, clicks, and keystrokes in accessing local factual information.

The Council On Virginia's Future and Hampton Roads Partnership have collaborated on a new website called Hampton Roads

Performs (<http://hamptonroadsperforms.com>), based on the signature initiative of the Council, Virginia Performs. The seven areas of data gathered for Hampton Roads Performs measure progress toward the quality of life and correlate to Virginia Performs so direct comparisons can be made to other parts of the state.

Both of these websites are worth bookmarking for easy access to statistics and trends concerning our community.

— David Knight

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FIRM ANNOUNCEMENTS

The **Capital Defender's Office** for the Southeastern Region of Virginia is pleased to welcome **Timothy J. Quick** to its staff in Norfolk. Mr. Quick will serve as Deputy Capital Defender in an office which litigates exclusively death penalty cases. Mr. Quick will be leaving Quick & Quick in Virginia Beach where he has practiced since 2002.

Clarke, Dolph, Rapaport, Hull, Brunick & Garriott, PLC is pleased to announce that **Caryn R. West** became a Member of the Firm on January 1, 2009.

Clarke, Dolph, Rapaport, Hull, Brunick & Garriott, PLC is pleased to announce that **Timothy S. Brunick** was installed as the President of the Virginia Beach Bar Association at its Annual Meeting on January 31, 2009.

Crenshaw, Ware & Martin, P.L.C. is pleased to announce that **Delphine G. Carnes** has become a partner in the firm. Ms. Carnes received her Juris Doctor degree, Magna Cum Laude, from the T.C. Williams School of Law at the University of Richmond. She also holds a degree in English and American Law from Nanterre University, a law graduate degree in English and American Corporate Law from Sorbonne University, with honors from both universities. A law graduate degree in European Union Law, Valedictorian with high honors, and a degree in French Law, with honors, from Nanterre University. She was admitted to the French Bar (CRFPA) in 1999 and the Virginia Bar in 2002. Ms. Carnes focuses her practice on public sector, affordable housing, taxation and project finance.

Richard S. Glasser, of Glasser and Glasser, P.L.C., has been selected by his peers to be included in the 2009 edition of the Best Lawyers in America. He has been listed in the field of plaintiff's personal injury since 1987.

The law firm of **Huff, Poole & Mahoney, P.C.** is pleased to announce **Stephanie C. Blythe** has been promoted to the position of Shareholder. Ms. Blythe's practice areas include business and commercial real estate matters, estate planning, and estate and trust administration. Additionally, **Shantell S. Nashatka** has been promoted to the position of Principal. Ms. Nashatka is a member of the Domestic Relations Department and focuses her practice on divorce and family matters.

Michael A. Inman of the Virginia Beach law firm **Inman & Strickler, PLC** has been selected for membership in the College of Community Association Lawyers, having been evaluated by other attorneys who are long time practitioners of community association law and members of the Community Associations Institute (CAI). Attorneys selected for the College are those who have spent considerable time writing articles and giving presentations on community association law topics over a period of years. Inman has been presenting in seminars on Community Association topics for over 20 years and has been a presenter for the Virginia State Bar on the topic of *Creating Condominiums in Virginia*. He has also written a chapter on community association law for a Virginia State Bar Continuing Legal Education publication: *Real Estate Transactions in Virginia*. Inman also serves on the Virginia Legislative Action Committee for the Community Associations Institute.

Inman & Strickler, PLC, a Virginia Beach law firm, is pleased to welcome **Elizabeth M. Dietzmann** as a member of the firm. Ms. Dietzmann will practice in the areas of business entities, real estate and community associations. She has extensive experience in environmental matters relative to storm-water, wastewater, wetlands, and water law. Ms. Dietzmann has most recently been associated with a Richmond firm focusing on environmental law related to real estate development. She is admitted to practice in Virginia, Maryland and Missouri.

Robert V. Timms, Jr., a partner at **Stokes, Timms, Bell & Vaiden, P.C.**, has been selected as a member in the 2008 *Legal Elite* by *Virginia Business Magazine* in Business Law.

Albert J. Taylor, Jr., a partner with **Williams Mullen**, has been selected as the 2008 First Citizen of Portsmouth. The award is given to individuals who have made civic, charitable and religious contributions to the community and to the City of Portsmouth. The First Citizen of Portsmouth award has been given annually since 1932. It was originally an award distributed by the Portsmouth Moose Club. In 2004, The Portsmouth Community Foundation assumed the responsibility of distributing the award. It has been given to numerous influential members of the Portsmouth community.

The award will be given to Mr. Taylor at an event at the Renaissance Portsmouth Hotel on April 27, 2009.

Nathaniel P. Tyler has been elected as a member of **Willcox & Savage, P.C.**

Williams Mullen recently elected two local attorneys as partners: **Adam Casagrande** in the Norfolk office and **Christine N. Piersall** in the Portsmouth office.

Williams Mullen announces that **Monroe "Mike" Kelly, III** has been named the "Norfolk Area Best Lawyers Banking Lawyer of the Year" by Best Lawyers. Best Lawyers compiles its lists of outstanding attorneys by conducting peer-review surveys in which leading lawyers confidentially evaluate their professional peers. The current, 15th edition of *The Best Lawyers in America* (2009), is based on more than 2.5 million detailed evaluations of lawyers by other lawyers. Mike was honored as a "Lawyer of the Year" because he received a particularly high rating by Best Lawyers. That high rating is the result of Mike earning a high level of respect among his peers for their abilities, professionalism, and integrity. Mike Kelly has more than 25 years of experience in the representation of commercial banks and other financial institutions, with extensive involvement in commercial and real estate loan documentation, asset based lending, automotive dealer finance, letters of credit, problem loan workouts, creditors' rights, bankruptcies, reorganizations, lender liability litigation, bank operations and deposit and collection procedures. He also has extensive experience in commercial real estate development, including golf course acquisition, operation and financing.

CLASSIFIED ADS

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MESSAGE FROM THE YOUNG LAWYERS' SECTION

By Caryn West, Chair

It's that time of year again! Please mark your calendars for the Annual Young Lawyer Section Golf Tournament, which will be held on **Thursday, June 25, 2009**, at 12:00 p.m. at Bide-A-Wee Golf Course in Portsmouth.

As in past years, there are free range balls at noon, with a shotgun start at 1:00 p.m. There will be beverages provided during play and a bar-beque at the end of the tournament.



Caryn West

We have several levels of hole sponsorships available.

- \$500 Gold
- \$400 Silver
- \$300 Bronze
- \$250 Law Firm Sponsorship

For the first time, we are offering to Law Firms a Hole Sponsorship plus a team of four golfers for the price of \$500.

Until June 11, 2009, NPBA golfers are \$75. Non-NPBA golfers and anyone signing up after June 11, 2009 will be \$85.

Proceeds to benefit the Norfolk Public Law Library.

Sponsors and golfers please contact Kevin P. Greene, Esquire, Willcox & Savage, P.C. by mail - One Commercial Place, #1800, Norfolk, VA 23510, by phone - 628-5686, fax - 628-5566 or email: kgreene@wilsav.com.

THE VIRGINIA HOLOCAUST MUSEUM,
THE GREATER RICHMOND BAR
FOUNDATION & THE OLIVER W. HILL-
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invite you to attend

*The Ninth Annual Hill-Tucker Dinner
with guest speaker
Juan Williams, News Analyst for NPR
and Fox News Channel*

**Thursday, April 30, 2009
6:00 PM**

Virginia Holocaust Museum
2000 East Cary Street
Richmond, VA 23223

MARCH LUNCHEON MEETING

**Thursday, March 19, 2009
Hits at The Park, Harbor Park
11:45 AM**



Speaker: Hon. Rebecca Beach Smith

The Honorable Rebecca Beach Smith, Judge, U. S. District Court, Eastern District of Virginia, was born in Hopewell, VA and received a B.A. from the College of William and Mary, an M.A. from the University of

Virginia, and a J.D. from the College of William and Mary School of Law. She served as Law Clerk to the Hon. J. Calvitt Clarke, Jr., U.S. District Court, Eastern District of Virginia, 1979-1980 and was in private practice in Norfolk from 1980-1985. She then served as U.S. Magistrate, U.S. District Court for the Eastern District of Virginia, 1985-1989 and was nominated by President George H.W. Bush on August 4, 1989, to a seat vacated by D. Dortch Wariner, confirmed by the Senate on October 24, 1989, and received commission on October 25, 1989.

It is our honor and privilege to welcome Judge Smith as our speaker for the March NPBA Luncheon. Call 622-3152 to register today.

Judge Leafe to be Honored

The Cosmopolitan Club of Norfolk has selected The Honorable Joseph A. Leafe as its 2008 First Citizen of Norfolk in Civic Affairs and will award him the Distinguished Service Medal at a banquet in his honor on March 7, 2009.

Judge Leafe was selected in recognition of a lifetime of public service to our country as a Navy veteran, to the Commonwealth of Virginia as a Member of the House of Delegates and to his hometown of Norfolk as a Councilman, Mayor and Circuit Court Judge.

As a councilman and mayor, he was an advocate in the redevelopment of downtown Norfolk and Ocean View and was an ardent supporter in the development of Waterside

Marketplace, Harbor Park and Nauticus.

Judge Leafe has also served as Chairman of the Southern Municipal Conference and on the Boards of the National League of Cities, the Virginia Municipal League and the Commonwealth Transportation Board.

He worked tirelessly as a Founding Director and the first Chairman of the Civic Leadership Institute; Director of the Boards of Eastern Virginia Medical School and the Southeastern Tidewater Opportunities Industrialization Center (STOP) Inc.

Recently, Judge Leafe served as Co-Chair of the special commission commemorating the 50th Anniversary of the end of Massive Resistance and desegregation of Norfolk Public Schools.

WELCOME NEW NPBA MEMBERS

Benjamin C. Crumpler
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Erin DeBoer

Najah A. Farley
Judicial Clerk, Supreme Court of Virginia

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Catherine A. Deaver
Appalachian School of Law

Daniel J. Holser
Regent University law student

NPBA FOUNDATION NEWS

By James R. Harvey, III • President, NPBA Foundation

I extend my sincere gratitude to all of the individuals and law firms who supported our very successful, one of a kind event: "The Triumph of the Rule of Law Over Massive Resistance: A Community Forum." The opportunity to have Juan Williams moderate a panel that included the Chief Justice and noted scholars in front of many who lived through the turbulent events of 1959 was a truly gratifying experience. The legal community demonstrated its support for the event, and made it both a cultural and financial success for the Foundation. We hope to look for special opportunities such as this in the future.



James R. Harvey

The Foundation continues with its annual agenda of giving back to the community, and has just published its annual scholarship application with essay. Thanks to the hard work of Bob Powell, this year's topic is sure to garner interest as it deals with privacy rights and postings on internet social forums such as MySpace. We encourage any high school senior to review and submit an application for consideration. Information can be found at the NPBA website: <http://www.norfolkandportsmouthbar.org/Scholarship.html>.

We look forward to introducing our scholarship winners at the NPBA annual meeting in May. Finally, we encourage every member of the bar to become more involved in the Foundation. If you have an interest in the Foundation, please contact me at 446-8518 or Donna Bausch for more information.

TRIUMPH OF THE RULE OF LAW OVER MASSIVE RESISTANCE



Norfolk 17 Member Andrew Heidelberg shares memories with those assembled

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The NPBAF wishes to thank Dr. Charles Ford and the authors of the forthcoming essay book, Hampton Roads: Remembering Our Schools, for allowing the use of photographs and caption content contained therein.

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Hon. John C. Morrison, Jr. (Ret.)

Retired Judge, Norfolk Circuit Court

John Morrison's distinguished judicial experience includes years of service to both the Norfolk Circuit Court and the Juvenile and Domestic Relations Court. Preceding his service on the bench, he served in the City Attorney's Office as well as the Commonwealth's Attorney's Office in Norfolk. He also had a broad general practice including both civil and criminal matters. He now joins The McCammon Group to serve the mediation and arbitration needs of lawyers and litigants throughout Hampton Roads and the Commonwealth.

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3-DAY INTERDISCIPLINARY TEAM TRAINING

An Introductory Interdisciplinary Team Training for Collaborative Divorce

Hosted by:



Collaborative Divorce
Solutions of Tidewater

Presented by:
Collaborative Practice
Training Institute
(CPTI)

Endorsed by:
Virginia Collaborative
Professionals (VaCP)

May 7th, 8th, and 9th 2009

Location: Community Mediation Center, 586 Virginian Drive, Norfolk, VA 23505

Cost is \$650 per person for all 3 days. (\$675 if received after April 28th.)

Collaborative practice is a process of resolving legal conflicts through principled negotiations outside of the adversarial process by engaging collaboratively trained practitioners (**attorneys, mental health specialists, and financial specialists**) to work as a team in a manner that maintains dignity, privacy, cooperation, and longer lasting agreements by collaboratively negotiating settlement as well as co-parenting plans without interference from court room drama and without the damage of the adversarial system.

At this unique training you will learn:

- The fundamentals of the Interdisciplinary Collaborative Practice
- The actual skills and procedures to manage a Collaborative case
- How the Collaborative Divorce Process integrates the roles and functions of all team members
- The legal, financial, and psychological basis of Collaborative Practice along with
- Results-oriented techniques for practicing in the team model
- How to engage your clients in the Collaborative Process and keep them engaged
- How to build a collaborative Divorce Team
- Working effectively with other disciplines in the **collaborative team process**.

Space is limited to 24 registrants!

Continental breakfast, snacks, & beverages are provided each day, lunch on your own. Convenient facility parking. Course Schedule 8:30 to 5:00 each day. (Registration 8:00 a.m. Thursday) Certificates of completion will be provided. CLE credits are pending.

This course complies with IACP (International Academy of Collaborative Professionals) standards for trainers and training. Collaborative Professionals Training Institute (CPTI) maintains responsibility for the program and its content.

Scheduled trainers are: Dr. Lisa Herrick, PhD, Dillina Stickly, JD, Lonnie Broussard, CFP, Jan D. Hembree, PhD. Each meet IACP minimum standards for Collaborative Trainers. (CPTI does reserve the right to substitute or add trainers.)

Name _____ Profession _____
Address _____ Degree & License # _____
City _____ State _____ Zip Code _____
Phone # _____ Fax # _____
Email* _____ Cell Phone _____

*All registration confirmations are sent by email only.

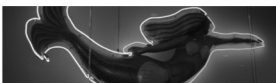
Need information about hotel accommodations? Yes _____ No _____ Would you like us to help with housing by finding another collaborative professional to stay with? YES _____ NO Thanks _____

Mail complete registration & payment (checks only) to Mark O. Flaherty, CFP®, CLTC, 150 Boush Street, Suite 202, Norfolk, Virginia 23510. Office: 757-455-6070, Fax: 757-455-6535, Toll-Free: 888-217-6039, email: mark.flaherty@vamllc.com.

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