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The views expressed in the *Roanoke Bar Review* do not represent the policy or carry the endorsement of the Association unless specifically noted.

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## LAW PRACTICE CORNER: STARTING A SOLO LAW PRACTICE

BY ROBERT E. DEAN, ESQ.

There are a hundred small choices to make when opening a firm. Choosing a trade name. Selecting a professional entity. Finding office space. Signing a lease. Designing a logo, a website, and business cards. Hiring staff. Obtaining insurance. And, of course, determining how to get clients, get paid, and productively practice law.

The following non-comprehensive list outlines some of the nitty-gritty, practical issues to consider before launching your firm—and how much it all costs.

- **Firm Names** – Most attorneys practice under their own name, e.g. “Law Office of John Doe,” or “John Doe, Attorney at Law.” Others utilize trade names, which the Virginia State Bar allows. Rule 7.5, comment 1 (allowing trade names, e.g. “ABC Legal Clinic”). The bar permits trade names to refer to a specific geographic location, e.g. “Roanoke Law Group,” but the name may require a disclaimer clarifying that it is a private law firm, not a public legal aid agency. *Id.* If you decide to practice under a trade name, be sure to file a fictitious name certificate with the circuit court clerk’s office (\$10).
- **Professional Entity** – A lawyer may practice as a sole proprietor, subject to the usual self-employment taxes. Or, the lawyer may form a limited liability entity and register with the Virginia State Bar and the Virginia State Corporation Commission. The bar allows practicing as a professional corporation (P.C.), a professional limited liability company (P.L.L.C.), or a limited liability partnership (L.L.P.). The registration cost is \$250–\$500.
- **Office Space** – In Roanoke, you have a number of good options for office space. Many established firms offer shared office space, which is ideal for new attorneys or solo attorneys. You can share staff, common areas (lobby, kitchen, copier room, etc.), and of course benefit from the wisdom and experience of your office mates. Other options include offices near the courthouse, downtown, Old Southwest, or elsewhere in the city, all of which you can find on Craigslist or Loopnet. The average lease for a solo law office seems to have length of 24–48 months and cost approximately \$500–\$1,000/month, depending on the office location.
- **Bank Accounts** – Now that you have a name, an entity, and an address, you need a place to put your money. At a minimum, it is recommended to establish three accounts with a bank: an IOLTA, for your client’s funds, i.e. prepayment of legal fees, etc.; an operating account, for your firm’s expenses, including your earned fees; and a tax account, for your estimated tax payments. Most local banks can help you establish these accounts at minimal cost. Additionally, you may want to consider establishing a merchant account to accept credit card transactions, e.g. LawPay.
- **Logo** – You will need a logo for your firm, which will adorn your letterhead, business cards, website, social media accounts, and office sign. You have a couple options. You could hire a local graphic designer (approx. \$600–\$800). Or, you could outsource your logo design to a graphic design on the Web via an online marketplace such as Fiverr.com (\$5) or 99Designs.com (\$99).
- **Website** – Clients look for lawyers on the Web, so you need a website. First, you need to purchase a website domain through GoDaddy or Network Solutions (\$15/year). Second, you need to design the site. You can build it yourself via Squarespace.com (\$18/month) or Weebly (\$12/month). Or, you can hire a professional local designer (approx. \$1,500).



## PRESIDENT'S CORNER

BY JOSEPH W. H. MOTT, ESQ.



### CLE Programs and the Bench-Bar Conference

Under the able and diligent leadership of Jay O'Keeffe, the CLE season is coming to a close. Macel Janoschka put together a great program for the Bench-Bar Conference, where Rob Dean gave an eye-opening one-hour session on Online Sleuthing for Lawyers, exploring the recesses and resources of the Web to benefit your

case and make your job easier. The following Tuesday, March 1, Skip Fox presented a one-hour session on the Basics of Asset Protection Planning, exploring the advantages and disadvantages of different techniques. The CLE season comes to a close on March 17 with a moderated two-hour video by Tom Spahn on exceptions to the duty of confidentiality. Shed no tears for the end of the CLE season, though. Spring arrives four days later!

### Judicial Endorsements

This past November, the RBA endorsed General District Court Judge J. Christopher Clemens to fill the circuit court vacancy created by the retirement of long-serving Judge Weckstein. On February 9, the RBA endorsed two candidates for the General District Court vacancy created by Judge Clemens' appointment to the circuit court bench. In a nomination process that included eight initial candidates, a close election resulted in the Association's endorsing Grimes Creasy and Dan Frankl for the General District Court judgeship. In such close balloting (five percent or less on a ballot with two nominees), the RBA bylaws provide that both nominees shall be endorsed. Following the endorsement meeting, I wrote to the local legislators and chairs of the House and Senate Courts of Justice Committees informing them of the Association's endorsement. Hopefully for the public and practitioners in this Circuit, the General District position will be filled during this session of the General Assembly.

### John P. Fishwick, Jr. Installation

The RBA's own John Fishwick was sworn in as U.S. Attorney for the Western District of Virginia on December 21, and an installation ceremony was held in the Ceremonial Courtroom of the District Court on February 26. All living former U.S. Attorneys who were presidentially appointed attended the event, as well as a wide cross-section of judicial officials, law enforcement officers, and community members. The District covers two-thirds of Virginia, ranging from the D.C. suburbs (at the Loudoun County line) to farther west than Detroit in the far southwest tip at the border with Kentucky and Tennessee. The U.S. Attorney's office serves as the federal government's trial team for all federal civil and criminal cases. It is an honor to have an RBA member appointed by the President and confirmed by the Senate to this important and visible position.

### March Luncheon

David Beidler spoke at the March 8 luncheon meeting on Legal Aid in the Roanoke Valley in this 50th anniversary year of the legal aid program.

### Upcoming Events

Speaking of *pro bono* work, don't forget to submit your volunteer hours to Cathy Caddy by March 31 in order to participate in the RBA Volunteer Service Awards, recognizing those who give their time and talent to the community.

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## VIEWS FROM THE BENCH: JUDGE FRANK ROGERS

BY CHRISTOPHER S. DADAK, ESQ.

With a southern drawl, broad swoop of straight hair, and thick mustache, Juvenile and Domestic Relations District Court Judge Frank Rogers is the epitome of a southern gentleman and judge. He is as warm and welcoming as that portrait implies.



Judge Rogers was born in Baltimore, Maryland. However, as most readers may already know, his "father was from here, so he was coming back." At an early age, his family moved back to Roanoke. They "landed on Stanley Avenue over in South Roanoke and that's where [he] grew up." Judge Rogers went to Crystal Springs Elementary School. He "walked to and from school every day." He remembers it fondly and as a simpler moment. "It was just a great time." His "best friend lived across the street." They would make the daily walk to school together. He attended local Roanoke City schools through junior high. He then went to Episcopal High School in Alexandria. His "father, grandfather, and uncle had all been and it had been something [he] had grown up around and really wanted to do." Episcopal was a "great experience" on all levels and allowed him to have "the best of both worlds." He played tennis, soccer, and football. He "met great new friends at school but had great friends here [in Roanoke]." He continues to have lifelong friends from both areas.

Judge Rogers then attended Washington and Lee University for his undergraduate degree. At that time, both Episcopal and W&L were all-male institutions. He and eight others from his senior class at Episcopal all picked W&L. Judge Rogers admittedly enjoyed his undergraduate days. His "father kind of tongue-in-cheek would say that [he] majored in Sigma Alpha Epsilon." Judge Rogers, also tongue-in-cheek, smiled and stated that his father "was right to some degree."

"Coming out of undergraduate, [he] just did not have the right study frame of mind to go to law school." He took two years off and worked a variety of jobs in the restaurant and construction industries. One of the restaurants included Happy Clam Seafood, which no longer exists. He "met great people and learned how to cook." In addition to life experiences and new friendships, the two years off allowed him to go "back to law school with a whole different frame of mind." Judge Rogers chose W&L for law school as well. He "treated it like a job. [He] went to the law school every day, same time, whether [he] had a class or not." With true modesty, Judge Rogers claims that he was "not the smart person—[he had] to work hard."

Before law school, Judge Rogers thought he "would end up the type of lawyer [his] father was," doing mostly wills, trusts, and estate matters. But during law school, Judge Rogers developed a strong interest in litigation, particularly on the criminal side. "That was mostly the product of a professor [he] had in law school by the name of Roger Groot, who was just magnificent." In line with those interests, he split the summer between his second and third year working for Marshall Mundy, doing criminal defense, and for the Commonwealth Attorney's office. He knew that after law school, he wanted to return to his roots in Roanoke. However, he "was not quite sure, what [he] wanted to do." His father, uncle, and a litany of friends were at the Woods Rogers law firm. But at that time, "Woods Rogers was not doing a lot of criminal work, and Marshall was." "There were pulls from the heart" to go to Woods Rogers, but Judge Rogers decided to work for Marshall Mundy. Judge Rogers' "parents were fully supportive" of his decision.

In hindsight, Judge Rogers admits that it was a difficult decision, but one that he got absolutely right. He "liked the small firm atmosphere." He and Marshall Mundy ended up becoming partners and prac-

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## BENCH-BAR CONFERENCE

The Roanoke Bar Association hosted its annual Bench-Bar Conference on Friday, February 28, 2016, at the Jefferson Center's Fitzpatrick Hall. Fourteen judges and 73 attorneys attended took part in the event.

The Conference followed a similar format to the past several years' meetings. Rob Dean of Rob Dean Law presented an hour-long CLE seminar during lunch on the topic of web-based research in attorneys' practices, including ethical issues involved in using Facebook and other electronic research on parties, witnesses, and potential jurors. Rob also offered tips and links for interesting online research of a number of other matters.

Following a break, judges from the various federal and state courts in Roanoke presented their "State of the Judiciary" talks. Chief Judge Glen Conrad of the U.S. District Court for the Western District of Virginia offered statistics on case filings in the Western District of Virginia, as well as updates on several federal court issues, including further proposals for construction at the Poff Federal Building. Judge Paul Black of the U.S. Bankruptcy Court for the Western District of Virginia also offered statistics on the number of bankruptcy filings in the region, observing that, like federal court criminal and civil case filings, bankruptcy court filings have dropped considerably over the past several years.

Chief Judge James Swanson provided the update from the Circuit Court, Judge Christopher Clemens spoke about the General District Court, and Judge Onzlee Ware reported on the Juvenile & Domestic Relations Court. After Judge Ware's remarks, all of the judges in attendance took questions from the attendees (and a few questions that had been submitted prior to the Conference).

The Young Lawyers Committee, headed by Macel Janoschka of Frith Anderson & Peake PC, organized the Conference again this year. The Association thanks Macel and the rest of the YLC for their hard work in pulling everything together for this valuable meeting. The Association also thanks Cathy Caddy and Betty Moorman-Sweat, Cindy Krcmaric, and Eva Gray from RVLSA for their help in organizing and running the event; and ALPS, the endorsed malpractice insurance provider of the Virginia State Bar, for its generous support.



More pictures from the Bench-Bar Conference on Page 9

## ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN

Hopefully, we have slung our last shovels full of snow off our sidewalks or driveways, and spring will bring us warmer weather and beautiful flora. As always, I would like to invite you to check out the Roanoke Law Library and to see how we might be able to assist you with your legal research needs. In addition to a comprehensive collection of legal resources, we also provide free, unlimited access to Westlaw Next and a circulating collection of Virginia Continuing Legal Education (CLE) treatises. Please do not hesitate to give me a call at 853-2268 with any questions.



### Spotlight on the Collection: Virginia Resources, Part 1

A majority of the Roanoke Law Library's collection is focused on Virginia resources. We have a comprehensive collection of primary and secondary materials. In this newsletter, I am going to focus on primary Virginia statutory and regulatory resources.

Most importantly, we have a complete set of the current annotated Code of Virginia, including all current supplementation. We also have superseded volumes of the Virginia statutes dating back to the 1800s, and we maintain a collection of all superseded pocket part supplementation, making it possible to research statutes from any specific date. Our Westlaw Next subscription includes keyword-searchable access to the Code of Virginia and provides access to historical annotated statutes dating back to 2001.

For historical statutory and legislative purposes, we also have a complete set of the Acts of the General Assembly of the Commonwealth of Virginia dating back to the 1830s, allowing for the tracking of all passed legislation. We also have the Virginia House Journal, Senate Journal, and House and Senate Documents for tracking down further information, including reports, calendars, and voting for specific legislation in Virginia. From 1994 to the present, it is possible to track and view legislation by using the Virginia General Assembly's Legislative Information System, which can be found online at [leg1.state.va.us](http://leg1.state.va.us). This powerful system allows you to view all proposed bills and to track those bills through every step of the legislative process.

Additionally, we have a complete set of the Virginia Administrative Code, the permanent regulations used by Virginia state agencies. Our Westlaw Next subscription provides access to the current Virginia Administrative Code, as well as historical versions dating back to 2002. It is possible to check proposed and finalized changes to the Virginia Administrative Code by using the Virginia Register of Regulations, which is available back to 1984 online at <http://register.dls.virginia.gov>.

### Raleigh Court Library Reopening

As most of you probably know, the Raleigh Court Branch Library (2112 Grandin Road SW) has been closed for a bit over a year as a comprehensive renovation has been undertaken. The entire structure has been redone, and the library has been enlarged to better serve the Raleigh Court neighborhood and the entire city of Roanoke. The staff of the Roanoke Public Library is thrilled to announce that the Raleigh Court Library will reopen on Tuesday, March 15, at 11:00 a.m. The public is invited to attend the ceremony and to celebrate the reopening of this popular neighborhood branch. Don't miss a chance to see this thrilling new library and to check out all the wonderful new resources that will be available there.



# UPDATE ON FEDERAL DRUG SENTENCE REDUCTIONS

BY JENNIFER WILLIAMS, SUPERVISING U.S. PROBATION OFFICER

News headlines in the fall of 2015 proclaimed that hundreds of federal prisoners would be released on November 1, 2015, when new, retroactive sentencing guidelines for drug crimes went into effect. Here is an update on these changes to the guidelines and how they have been affecting the Western District of Virginia.

In January 2014, the U.S. Sentencing Commission proposed Amendment 782 to reduce federal sentencing guidelines by two levels for all drug-related offenses. This sentencing reform action came in response to growing Congressional and public concern that 20 years of long, federal sentences for drug crimes had proved to be a less effective deterrence and had resulted in serious overcrowding of federal prisons. Also known as “drugs minus 2,” this Amendment took effect on November 1, 2014, for persons to be sentenced from that day forward.

On July 18, 2014, the Commission voted unanimously that the Amendment would also apply retroactively to offenders already sentenced. Pursuant to 18 U.S.C. § 3582(c), when an amendment (a) reduces the guideline range under which an offender was sentenced and (b) is authorized for retroactive application, the sentencing court may, but is not required to, reduce that offender’s sentence to a sentence within the amended range. The Commission recognized that some 46,000 federal inmates across the country might be affected by the retroactive application of the “drugs minus 2” Amendment. Because of the significant impact on the district courts, Federal Bureau of Prisons personnel, probation offices, and other agencies responsible for offenders’ reentry into society, the Commission ruled that no inmate affected by the retroactive Amendment 782 could be released from prison before November 1, 2015. This delay allowed courts time to consider and issue sentence reductions, and provided the Bureau of Prisons time to help prisoners prepare for reentry to society, using halfway houses and home confinement.

Statistics compiled by the U.S. Sentencing Commission reflect that, historically, drug trafficking cases are the number one type of offense prosecuted in the district courts of the Fourth Circuit. Thus, the retroactive application of the Amendment to those individuals who had previously been sentenced for drug trafficking offenses became the primary focus for the probation offices across the Circuit.

In January and February 2015, the Probation Office for the Western District of Virginia reviewed close to 900 past drug cases to determine each offender’s possible eligibility for a sentence reduction under Amendment 782. The Western District was the first district in the nation to complete this review process, despite having one of the highest numbers of past drug-related cases.

Phil Williams, Chief U.S. Probation Officer, organized and oversaw a team of four, specially appointed managers for this task, known as the “Strike Team.” The Sentencing Commission issued a list of inmates possibly affected in each district, and hundreds of optimistic inmates also filed motions for reduction. The Strike Team studied each such case, combing through the record, including the original Presentence Investigation Report (“PSR”), the original judgment, and any later sentence adjustments. Then, for each inmate, the team prepared a PSR Addendum, setting out a finding of ineligibility or eligibility, along with the new guideline range under Amendment 782.

An offender sentenced prior to Amendment 782 was ineligible for a reduction if his sentencing range was not based on the drug amount associated with his offense. Such offenders include those whose guideline custody ranges were based on prior convictions rather than drug amounts; those sentenced for drug amounts within the highest possible total offense level under the amended guidelines; and those sentenced according to a binding plea deal. Inmates originally sentenced below the new guideline range could be considered for a proportional departure.

As the Strike Team completed its review process, it provided a copy of each PSR Addendum to the District Court, the U.S. Attorney’s Office, and the Office of the Federal Public Defender, for further review of each case. Each District Judge then reviewed the cases of those offenders he had sentenced, or in other cases to which he was assigned, to determine what reduction under the Amendment, if any, was appropriate on the circumstances of the case. Each judge could appoint counsel for an offender eligible for reduction. The court reviewed a number of factors, including public safety issues. Judges issued notices to counsel and inmates, regarding eligibility for reduction, the amended guideline range, and in some cases, the specific reduction the judge contemplated imposing. Counsel for the United States and the defendant then had an opportunity to submit any objections, arguments, or additional evidence, for the court’s consideration.

The judges of the Western District ordered sentencing reductions under Amendment 782 for close to 550 offenders. According to the Sentencing Commission, the average decrease in custody for an offender sentenced in the Western District of Virginia was 21 months.

On November 1, 2015, the Federal Bureau of Prisons assigned 134 newly-released inmates for supervision by the probation office for the Western District of Virginia. As a direct result of the “drugs minus 2” Amendment, over the next twelve months, it is anticipated that an additional 100-125 inmates will be released for supervision in the Western District.

In total, the Sentencing Commission estimated that approximately 6,000 inmates were released across the United States on November 1, 2015. Texas, Florida, Illinois, North Carolina, and California had the highest number of projected releases, followed by Georgia, Virginia, Tennessee, Iowa, New York, Missouri, and South Carolina.

## SWVM

### Southwest Virginia Mediations

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## LAW PRACTICE CORNER: STARTING A SOLO LAW PRACTICE

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- **Business Cards** – You can design and order business cards online at 123print.com (\$18 for 250 cards) or VistaPrint (\$23 for 500 cards).
- **Insurance** – As a new, solo attorney with three years or less private practice experience, you can buy ALPS First Flight malpractice insurance for \$500 (Year One), \$1,000 (Year Two), and \$1,500 (Year Three). Exceptions apply depending on practice area. The bar lists other carriers, including CNA, Minnesota Lawyers Mutual, and Virginia Barristers Alliance. You will also need commercial liability insurance (approx. \$1,000/year), in addition to other coverage that may be necessary for yourself and your staff.
- **Furniture** – Some offices come furnished, especially in an office share arrangement. Others require furnishing. Harris Office Supply and other area furniture stores can provide desks, filing cabinets, client chairs, conference tables, and other items. Furniture for a solo office may cost \$1,500 to \$5,000.
- **Office Equipment** – You do not need a copy machine. A recommended approach is purchasing a standard, small office printer (\$350 at Staples) and a high capacity scanner (\$400 for a Fujitsu ScanSnap). When you need copies, you can simply print multiple copies of whatever document you have already scanned into your computer. Similarly, you do not need a fax machine. You can get a fax number and send and receive faxes via e-mail through an e-fax service, e.g. MyFax or Ring Central (\$7/month). You also do not need a landline phone system. Many attorneys pair their cell phone with a standalone business number through Google Voice (free) or a web-based phone system, e.g. Grasshopper (\$20–\$50/month).
- **Case Management** – One of the biggest challenges of running a solo law office is staying organized. A dedicated case management system can be incredibly helpful for docket control, time capture, and billing. Options include MyCase, Clio, or Rocket Matter (approx. \$50/month per user).
- **Legal Research** – As a solo attorney, you can purchase an introductory, two-year subscription to Lexis or Westlaw (approx. \$150/month with access to Virginia cases). You can also make use of the bar's free access to Fast Case, free online resources like Google Scholar, and the local Roanoke law library.
- **Advertising** – Word of mouth referrals are the best way to attract new clients, so a practice announcement is recommended for friends, family, and other attorneys (approx. \$750 via Sir Speedy or other mailing services). You may want to consider paid advertising on Avvo.com, FindLaw.com, Yellow Pages, and Google Ads (approx. \$200–\$500/month). Other options include print advertising, social media ads, organic search engine marketing, legal blogs, microsites, and e-mail newsletters.

Altogether, an average budget for launching a new practice is \$10,000, to cover the costs of rent, registration, insurance, furnishing, advertising, and software.

Finally, it is good idea to prepare a detailed, written business plan before launching your firm. You may write it all out and then never look at it again—as, so far, appears to be the case for me. But at least it will help you think through the various issues that can arise before you embark on opening your doors. Resources that can help develop a strong business plan include the ABA SoloSez list-serv, *How to Start and Build a Law Practice* by Jay Foonberg, *Solo by Choice* by Carolyn Elefant, and Ms. Elefant's wonderful law practice blog, "My Shingle."

*Rob Dean a solo attorney practicing with Rob Dean Law*

## UNITED STATES ATTORNEY JOHN FISHWICK, JR.

BY MONICA MROZ, ESQ.

When John Fishwick, Jr. was first nominated to be the United States District Attorney for the Western District of Virginia, many lawyers expressed surprise to me. They were shocked that a civil rights and criminal defense attorney would consider such a change. I was not. In the 9 years that I worked with John, I had an up close and personal view of his pursuit for justice and commitment to service.



One of the first cases I worked on with John literally walked in the door two days before the statute of limitations ran. It was a thorny and unusual civil rights case that involved issues of first impression in the Fourth Circuit. In typical John fashion, he cut through the years of facts leading up to the violation and quickly evaluated the odds on the legal issues. We took the case. I worked a couple of very late nights drafting the Complaint and was surprised and gratified to find John hanging right in there with me. As I continued working with John, I learned that quick analysis, decisive action, and unflagging support were John's hallmarks.

John's commitment to serving members of the public through private practice was a part of every day at Lichtenstein Fishwick PLC. When people came in off the street to air a grievance, or prisoners called collect to speak with us, our paralegals and legal assistants put aside their work to meet and speak with them. John maintained a robust *pro bono* practice that all lawyers and staff members participated in. He did this without complaint, because he viewed this as an ethical and human obligation.

Loyalty is paramount to John—he is loyal to the profession, to the ideal of justice, and to the American justice system. He is also highly compassionate. These two traits drove him to champion, along with other supporters, the Oliver Hill House. Taking Oliver Hill's childhood home and turning it into an after school haven for students was not an easy task—but John, with the help of other lawyers and the Big Brothers Big Sisters Program, made it a reality. The first time he went to visit with the kids at the House, he ended up buying them all ice cream from the ice cream truck. He talked of their joy for days.

The last insight I will offer is something not all would expect. Those who have been across the table or courtroom from John, know him to be a fierce litigator and advocate. He is also, however, an excellent consensus builder. In a negotiation, he can easily put aside the emotion and strategically work to build agreement.

All of these described qualities will serve John well as he embarks on his career as the United States Attorney for the Western District of Virginia. As he outlined at the installation ceremony on February 26, 2016, his goals of strengthening and building relationships with law enforcement, addressing the drug overdose epidemic, and aggressively investigating and prosecuting human trafficking crimes, are well within his wheelhouse. I am clearly not the only one who believes this—the installation cere-

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## A TIMELY HISTORY LESSON

BY NICOLE A. POLTASH, ESQ.

At the RBA dinner meeting on January 6, 2016, Richard Maxwell and Hugh Wellons delivered a particularly interesting (not to mention timely) presentation entitled *Cocktail Party Crib-Notes on Election Law*. In comparison to the RBA's lunch meetings, some things remained constant for the dinner meeting: the location, the delicious food, the excellent company. But the evening time offered some additional benefits: a guilt-free glass of wine and the ability to talk and ask questions long after the presentation ended without feeling the need to rush back to the office. It was a great success.

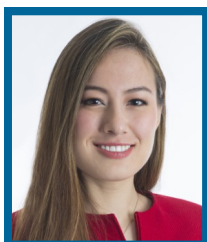
I also learned a number of new facts about election law. Among the most memorable were:

- **The First Amendment protects fabrications in a political debate, and not printing ads, even if they are false or offensive, may actually be illegal.** In 1972, for example, television stations in Georgia were forced to accept an ad from a racist political candidate. The ad stated, in part, that the "main reason why [N-word] want integration is because [N-word] want our white women." Yet the Federal Communications Act says "such licensee shall have no power of censorship over the material broadcast under the provision of this section. A station can refuse ads from all candidates, but if a station accepts ads from one candidate, it must accept them from all the candidates, without 'censoring' them."
- **We vote on Tuesdays in November because it is tradition.** In our early history, states chose when to vote, and national elections could take several months. Tuesdays, however, offered the perfect solution. They allowed constituents to worship on Sunday, ride their horses to the polling location on Monday, vote Tuesday morning, and still have time to ride back home before Wednesday. November was chosen because it was after harvest and before bad winter weather in most areas of the country. Although voting on a workday can be inconvenient, this tradition has continued for no apparent modern reason.
- **In one presidential election, a deceased person received votes.** In 1872, Ulysses S. Grant ran against Horace Greely, who died before the Electoral College met. Despite Greely's death, some Electors were still obligated to vote for him, and he won 66 Electoral votes. Of course,

Grant won the election by a landslide, so no harm was done.

To learn more facts, you can read the outline for *Cocktail Party Crib-Notes on Election Law*, which is posted on the RBA's website. Overall, the January dinner meeting made for a very enjoyable and memorable night. Should the RBA hold such meetings more often? I vote "yes."

Nicole Poltash is an Associate at Gentry Locke



Rich Maxwell and Hugh Wellons

## VWAA EVALUATES CANDIDATES FOR JUDICIAL VACANCIES

On behalf of the Virginia Women Attorneys Association (VWAA), regional committees were impaneled to interview and evaluate candidates for two recent judicial vacancies in the 23rd Judicial Circuit. For the seat on the 23rd Circuit Court bench vacated by the 2015 retirement of Judge Clifford R. Weckstein, the Roanoke VWAA Judiciary Committee issued, and the statewide Executive Committee of the Board of Directors approved, the following evaluations:

### Highly recommended:

Gen. Distr. Judge Christopher J. Clemens  
Chief Juvenile and Domestic Relations District Court Judge  
Leisa K. Ciaffone

### Recommended:

Neil A. Horn

After Judge Clemens was appointed to fill the Circuit Court vacancy, a VWAA Committee convened to interview and evaluate candidates for the resulting vacancy on the General District Court bench. On February 25, 2016, the Committee issued, and the Executive Committee approved, these evaluations:

### Highly recommended:

Thomas E. Bowers  
Bryan Grimes Creasy  
Scott R. Geddes  
C. Kailani Memmer

### Recommended:

Daniel P. Frankl  
Melvin L. Hill  
Neil A. Horn

### Qualified:

Thomas W. Roe, Jr.

For each vacancy, candidates seeking a recommendation from the VWAA were invited to submit a short biography and participate in an oral interview with the Committee. The VWAA ratings are based upon a review of each candidate's merits against published standards and guidelines, including fairness, integrity, experience, intellect, temperament, professionalism, and pro bono service.

The VWAA uses these rating categories:

**Highly Recommended:** Reserved for any candidate who is especially well qualified for the position and merits special recommendation.

**Recommended:** Candidate's qualifications are sufficiently above the minimum requirements to warrant the Committee's affirmative recommendation.

**Qualified:** Candidate meets the minimum requirements for fairness, experience, intellect, temperament, professionalism, integrity, or other basic ABA Guideline criteria.

**Not Qualified:** Candidate fails to meet these minimum requirements.

According to VWAA evaluation procedures, a rating of "**Highly Recommended**" requires a vote in support by at least a two-thirds majority of Committee members voting. A rating of "**Qualified**" or "**Recommended**" requires at least a simple majority vote in support, while a rating of "**Not Qualified**" requires a finding by at least two-thirds of those voting that the candidate fails to meet the minimum qualifications. Ratings are not a function of a general vote by the VWAA membership, nor are they a comparison of candidates within the "pool" presented.

VWAA Roanoke Chapter Judiciary Chair, Susan Waddell, and Committee members Nanda Davis, Amanda Shaw, Lauren Davis, and Johnal White evaluated candidates for the Circuit Court vacancy. Committee members Erin Ashwell, Lauren E. Davis, Patrice L. Holland, Melanie Peters, and L. Leigh Strelka evaluated candidates for the General District Court vacancy, with Susan Waddell acting as chair only in an administrative role, due to conflicts of interest. All Committee members practice regularly in the courts of the 23rd Judicial Circuit. The VWAA's evaluations of judicial candidates were forwarded to Governor Terry McAuliffe and to the Chairs of the Courts of Justice Committees for the State Senate and House of Delegates.

## VIEWS FROM THE BENCH: JUDGE FRANK ROGERS

(Continued from page 2)

ticing together for decades until Judge Rogers joined the bench. In a testament to both of their characters, "for thirty years [they] never exchanged a cross word." They "disagreed on things, but never a cross word." To Judge Rogers, "that was an amazing thing" and "a credit to the type of person [Marshall] was, a true gentlemanly type."

Judge Rogers litigated throughout his entire career in private practice. He started on the criminal side, but slowly transitioned to the civil side, "in the end doing almost exclusively divorce." "What attracted [him] to [criminal work] in the beginning is what in [his] mind prompted [him] to leave it at the end." As he explained, "The stakes are so high. You're talking about time out of someone's life, his or her liberty." Inevitably, these high stakes took their toll. "That responsibility kept [Judge Rogers] up at night" and "worried [him even] on the weekends."

For six years before his appointment, Judge Rogers had the opportunity to be a substitute judge and that confirmed in his mind his desire to become a judge. "What a great way to see [what] it's like—taking a part-time job to see if you would like it on a full-time basis." Because of that experience, he "knew what [he] was getting [himself] into."

As to his current position, he admits that he is "still in transition from lawyer to judge." "There are times [he has] to remind [himself that he is] not a lawyer anymore and to resist the temptation to ask questions" that a lawyer would ask. His perspective and priorities have changed as well. As a lawyer, he was focused on "presenting [his] client's interests," but as a judge he now focuses his concern on "the result and how it can affect everybody." "There are a lot of pieces" to his decisions as a judge. Before making a final decision, he has to "stop and think about the other people" that will be affected by it, including the agencies involved in the case.

His judicial approach is "always developing, especially the philosophy of whether or not to ask questions." He "almost never ask[s] questions in a criminal case," but will "tend to ask more questions in a civil case," particularly if the parties are not represented. In terms of questions, he will at times ask ones "that are designed by what [he] thinks the answer will be to make a point to a party, most often with kids." By way of an example, he may ask questions to see: "Does this kid really know that if I do what you're asking me to do, he could be committed to the department of juvenile justice?" This approach helps Judge Rogers gauge a party's understanding and also emphasize to that party the potential consequences of his decision.

Judge Rogers appreciates the opportunity his position provides for serving the community. Since joining the bench, he has presided over many cases involving "kids who are truant, delinquent, or have a need for foster care," an area of the law with which he did not have much prior experience. "Usually, there's some explanation for [the kid's behavior], rather than just being a mean or bad kid." "When you can find that problem and address it, and the family moves on in a productive and happy way—in terms of the work I do, that [outcome] is probably the most gratifying."

Of course, there are also the difficult cases that he has to handle. For him, personally, "the hardest cases . . . are the parental rights termination cases." "To hear a case and to have to make a decision to terminate a parent's right in respects to a child"—that is the most troubling and emotional type of case for Judge Rogers so far. "But [as a judge,] you have to do what the law requires you to do."

Judge Rogers is greatly appreciative of the people he works with on a daily basis—"the sheriff's deputies, the clerks, and the representatives of the various agencies that [they] see every day." They are all "great, hardworking people." Coming from a small firm with a small number of employees, he enjoys the increased interaction in the courthouse. The office doors are "constantly open." "In the morning before court starts, everyone is in the hall talking—about basketball or dinner the night before."

## PRESIDENT'S CORNER

(Continued from page 2)

On April 5, the Roanoke Law Foundation will present **You and the Law**: Trial by Jury, at the Roanoke City Courthouse. Tom Miller has stepped up his Foundation game to a two-a-year program. This iteration will familiarize the public with the workings of the Circuit Court, a follow-on bookend to last fall's General District Court program.

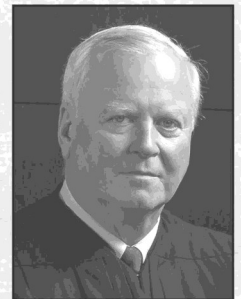
The Frank W. "Bo" Rogers, Jr., Lifetime Achievement Award and Young Lawyer of the Year Award nominations are now in, and will be awarded at our Law Day celebration in May. The sap is rising, the flowers will be blooming, and the active pace of the RBA bar year continues.

*Joseph W. H. Mott is an Assistant U. S. Attorney for the Western District of Virginia*



After 12 years on the Bench,  
**Hon. Michael S. Irvine**  
has joined the Panel of Neutrals at  
**Juridical Solutions, PLC**

**Judge Michael S. Irvine** retired from the 25th Judicial Circuit Court. He primarily sat in Rockbridge County (Lexington) and the city of Buena Vista. **Judge Irvine, Ret.** presided over many complex business, medical malpractice, personal injury, construction and domestic relations cases.



*Juridical Solutions, PLC Panel of Neutrals consists exclusively of Retired Judges*

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Hon. Daniel T. Balfour, Ret.	Hon. John J. McGrath, Jr., Ret.
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[info@juridicalsolutions.com](mailto:info@juridicalsolutions.com)



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## VIEWS FROM THE BENCH: JUDGE FRANK ROGERS

(Continued from page 7)

Judge Rogers is also grateful to the local bar and state agencies involved in cases before the court. As those who practice in his court may know, there have been “a lot of changes.” Court personnel have “spent a lot of time trying to [improve case management,] not just for the judges, but also for the people that are our agency partners, like the Commonwealth’s office, the Public Defender’s, the Division of Child Support Enforcement [DSCE], and Department of Social Services [DSS].” Today, on average, a child custody or visitation petition is heard within 30 days of filing, a very efficient turnaround time. Judge Rogers specifically thanks the members of the local bar who were “flexible” in working with the court; John Varney and the public defenders in his office; Don Caldwell and the assistant Commonwealth’s attorneys in his office; Heather Ferguson who represents DSS; and Alice Burleson, who represents DSCE, as well as all those who serve as court-appointed counsel or guardians ad litem.

In terms of personal time, Judge Rogers’ great passion is fishing, and upon entry into his office, you will notice a large mounted billfish, which is the first billfish he ever caught. He has “been blessed to know some great people through fishing.” For six years, he and a friend would travel to the Bahamas and boat and fish for two weeks. “Those trips were among the most fun, and the fishing was great.” He also does a couple of long weekend trips every year, usually to North Carolina, with good friends that he looks forward to all year. Judge Rogers has traveled to Costa Rica, Guatemala, and Mexico for fishing, but fishing the Australian Great Barrier Reef (and its black marlins) remains on his bucket list. He would also like to visit Hawaii for its blue marlins. “The sport for [him] is rigging the bait that the fish wants to eat and then hooking it.”



Judge Rogers was kind enough to share some words of wisdom, particularly to younger attorneys. “They ought to be mentoring with somebody who does this kind of work and also [should be] on our list for court-appointed work and guardians ad litem.” The courts “always need good young lawyers to help [them] handle these important and sometimes difficult cases.” There is a great demand for attorneys in

this field. He also urges everyone to “join the local bar association and actively participate.” As his father would “preach” to him and other attorneys, “that’s where you get to know and develop relationships with other lawyers that can be critically important to you down the road, if not right now.” Lastly, he welcomes visitors to his office. He stressed that “all three [judges] sitting here do have open doors—we’re always willing to sit and meet with attorneys.”



Christopher S. Dadak is an Associate at Johnson, Ayers & Matthews, PLC

## UNITED STATES ATTORNEY JOHN FISHWICK, JR.

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mony was packed with community members and guests who had come from all over Virginia and neighboring states to celebrate with and recognize John in his new role. Friends and colleagues shared insightful comments and funny stories, which allowed all attendees to get to know John just a little bit better. When a good friend roasted him, John’s laughter was the loudest. While we at the Lichtenstein Law Group are happy for John and look forward to all the good he will do as United States Attorney for the Western District of Virginia, we will miss his high energy, high spirits, and sense of humor along with his quick intellect and legal acumen. One thing is certain, though he may be in a different building and doing it in a different way, he is still pursuing justice and serving the public—which is a great thing for the United States of America.



Monica Mroz is an attorney with Lichtenstein Law Group

## Volunteer Service Awards

**Deadline to Submit Hours:  
March 31**

**Information and forms available at  
[www.roanokebar.com/awards](http://www.roanokebar.com/awards)**



**American  
Red Cross**

## Mark Your Calendar!

**Blood Drive  
May 17, 2016**

**Information/registration  
Coming soon**



## 2016 BENCH-BAR CONFERENCE



**Macel Janoschka, Chairman,  
Young Lawyers Committee**



**Rob Dean  
Guest Speaker**



**Judges Broadhurst, Burkart and Swanson**



**Judge Conrad  
U. S. District Court**



**Judge Black  
U. S. Bankruptcy Court**



**Judges Lilley, Ware, Ciaffone and Conrad**



**Judge Swanson  
Circuit Court**



**Judge Clemens  
General District Court**



**Judges Rogers, Black, Dorsey and Clemens**



**Judge Ware  
Juvenile & Domestic Relations Court**

# ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS
<p>The Roanoke Bar Association welcomes the following new Active members:</p> <p><b>Douglas P. Barber, Jr.</b> Gentry Locke</p> <p><b>Andrew O. Gay</b> Gentry Locke</p> <p><b>Elizabeth Barry Heddleston</b> Woods Rogers</p> <p><b>Douglas Paul Holdsworth</b> Circuit Court</p> <p><b>Risa Sarah Katz</b> Circuit Court</p> <p><b>Hilary S. Mariano</b> Lumsden &amp; Potter</p> <p><b>Jason Dwayne Morgan</b> Circuit Court</p> <p><b>Jane Ostdiek</b> Leon P. Ferrance, PC</p> <p><b>C. Shawn Potter</b> Lumsden &amp; Potter</p> <p><b>Andrew Evan Stephens</b> Commonwealth’s Attorney</p>	<p><b>Roanoke Bar Association Meetings 2015 - 2016</b></p> <p>September 8, 2015</p> <p>October 13 2015</p> <p>November 10, 2015</p> <p>December 8 2015</p> <p>January 12, 2016 (Evening Meeting)</p> <p>February 9, 2016</p> <p>March 8, 2016</p> <p>April 12, 2016</p> <p>May 2, 2016 (Law Day)</p> <p>June 14, 2016 (Annual Meeting)</p> <p>Go to <a href="http://www.roanokebar.com">www.roanokebar.com</a> for more information on all upcoming events.</p>	<p>Joseph W. H. Mott President 857-2250</p> <p>Hugh B. Wellons President-Elect 512-1809</p> <p>Kevin W. Holt Secretary-Treasurer 983-9377</p> <p>Richard C. Maxwell Past President 983-7628</p> <p>Catherine L. Caddy Executive Director 342-4905</p> <p><b>BOARD OF DIRECTORS</b></p> <p>Lori J. Bentley 767-2041</p> <p>Robert E. Dean 585-1776</p> <p>Daniel P. Frankl 527-3515</p> <p>Macel H. Janoschka 725-3372</p> <p>Patrick J. Kenney 982-7721</p> <p>Powell M. Leitch, III 510-3013</p> <p>James J. O’Keeffe 983-9459</p> <p>J. Lee E. Osborne 983-7516</p> <p>Diana M. Perkinson 343-2436</p> <p>Melissa W. Robinson 767-2203</p> <p>Justin E. Simmons 857-5120</p>



**DON'T FORGET TO CHANGE YOUR ADDRESS!**

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Complete and Forward to:** Roanoke Bar Association, P.O. Box 18183, Roanoke, VA 24014  
 Fax: (540) 342-1252 Email: [roanokebar@earthlink.net](mailto:roanokebar@earthlink.net)