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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.

**Editors**

Justin E. Simmons - 983-7795  
[jsimmons@woodsrogers.com](mailto:jsimmons@woodsrogers.com)

Lori J. Bentley - 767-2041  
[lbentley@jamlaw.net](mailto:lbentley@jamlaw.net)

Linda L. Gustad - 857-5100, Ext. 5323  
[lindag@vawd.uscourts.gov](mailto:lindag@vawd.uscourts.gov)

Richard D. Scott - 400-7997  
[richard@rscottlawoffice.com](mailto:richard@rscottlawoffice.com)

Christopher S. Dadak - 387-2320  
[christopherd@guynnwaddell.com](mailto:christopherd@guynnwaddell.com)

Alica M. Grubb - 983-9361  
[grubb@gentrylocke.com](mailto:grubb@gentrylocke.com)

## BURSTING BUBBLES AND BURDEN SHIFTING: SUPREME COURT OF VIRGINIA REVERSES JURY FINDING OF UNDUE INFLUENCE AND, CONSEQUENTLY, INHERITANCE PASSES TO DECEDENT'S NIECE INSTEAD OF DAUGHTER

BY SUSAN E. B. COOK, ESQ.

Parson v. Miller, 296 Va. 509 (2018), was decided by the Supreme Court of Virginia (the "Supreme Court") last December. The Court recognized that variations of burden-shifting occur within the context of legal presumptions, but in the case of a will contest, existence of the presumption of undue influence shifts only the burden of production; if the will proponent submits evidence to rebut the presumption, then the burden shifts back to the will contestant, who retains the burden of persuasion.



### The Facts

Every legal opinion worth reading is supported by an interesting fact pattern. And so, that is where I begin. Kenneth Coffey owned his home, situated on a single acre in Augusta County, Virginia, for more than forty years. The adjoining property is owned by the family of Coffey's niece, Vickie Parson. Coffey executed a will on July 15, 2013, leaving everything he owned at the time of his death to Vickie, and one week later, on July 22, 2013, Coffey passed away, at the age of eighty.

Enter: daughter Deneen. Deneen Miller and her father, Coffey, lived together until she was eleven years old, when her parents separated, and she and her mother moved to Winchester. She reconnected with her father when she was fourteen and represented to the court that she remained very close with him from that point until his passing. Although Deneen continued to reside in Winchester, she would visit Coffey in Augusta County, which was about two hours from her home.

According to Deneen, after two hospital admissions in May and June of 2013, Coffey returned home on hospice care, with only a few expected months to live. In the last weeks of his life, Deneen visited on several occasions but declined Coffey's offer to move back to Lyndhurst and live with him. The last time Deneen visited Coffey was on July 6, 2013—she called numerous times after that visit but was unable to reach him. At trial, Deneen and three other witnesses testified that they had heard Coffey previously state that everything he had was to pass to Deneen at his death, and Deneen and one of her friends testified that Coffey had made reference to his Last Will in front of them.

Deneen filed suit against Vickie, individually and as the named executor of Coffey's estate, and, pertinent on appeal, sought to impeach the will executed within a week of Coffey's passing on the ground of undue influence. She claimed that Vickie manipulated Coffey, put ideas in his head and gained control over him, though she did not have specific details or examples to provide the court.

Vickie admitted that she had only come to know Coffey well during the final two years of his life, but began checking regularly on Coffey in January of 2013, and assisted him in getting to doctors' appointments. In Coffey's final weeks, Vickie was his pri-

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## PRESIDENT'S CORNER

BY J. LEE E. OSBORNE, ESQ.



As I wind up my year as President, I am struck by how quickly this year has gone by. It has been an honor and a privilege to serve as your President this past year. I am both proud of the work this board and our Association have accomplished and confident in the leadership and direction of the organization moving forward. In this article, I will highlight the work that has been done (in no particular order of importance) and recognize some of those members who have made these accomplishments possible.

This year we implemented the program recommended by Lauren Ellerman, and approved by the Board last year, called affectionately Barrister Book Buddies 2.0. In this program, we have continued with our long-successful Barrister Book Buddies, where attorneys read to students in the classroom, while adding our partnership with Turn the Page to provide volunteer support for its Books and Breakfast program on Saturday mornings at Hurt Park and Westside Elementary Schools in Roanoke City. A number of members of our Association and the RVLSA have volunteered throughout this year benefitting not just the students, but also their extended families and others in the local community while encouraging them all to read. I am pleased to report that this enhanced literacy program has received an Award of Merit from the Conference of Local and Specialty Bar Associations of the Virginia State Bar.

The Bylaws Review Committee, under the leadership of Christen Church for the second year in a row, proposed a number of amendments to our Bylaws that were voted on and approved at the Annual Meeting on June 11. I want to congratulate and thank Christen and her committee for their hard work over the past two years in tackling the difficult, but important, project of revising our Judicial Endorsement Process, and the Credentials Review process in particular. The committee proposed, and the Board approved in May, a qualitative review process for judicial candidates to be administered by a Judicial Endorsement Committee composed of members appointed by both the Roanoke Bar Association and the Salem/Roanoke County Bar Association, pursuant to a Memorandum of Understanding between the two organizations. The Bylaws Review Committee, consisting of Past President Hugh Wellons, Melissa Robinson, Bob Ziegas and Justin Simmons, is grateful for the work of Adam Moseley, who is a member of our bar and the Salem/Roanoke County Bar Association. Through his efforts, the Memorandum of Understanding to be entered into between the two local bar associations in the creation of the joint Judicial Endorsement Committee was approved by the SRCBA last month. Since the Bylaw amendments were adopted by our membership at the Annual Meeting, the Memorandum of Understanding is now effective, and a joint qualitative review process has been implemented for judicial endorsements for the first time in the Roanoke Valley.

This past year we also officially agreed to support the Center for the Rule of Law by establishing a joint RBA/SRCBA Rule of Law Committee to coordinate the training and signing up of volunteers to fill all available eighth grade classes in the Cities of Salem and Roanoke and Roanoke County Middle Schools. Thanks to the work of Macel Janoschka and Brett Marston (and Mike Pace, of course) from our Association, we were able to successfully recruit volunteers to fill all of the middle school classrooms in Salem,

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## COURT HOPPING: EXAMINING VIRGINIA'S NEW AUTOMATIC TRANSFER RULE

BY ALICHA M. GRUBB, ESQ.



To frequent civil practitioners, the jurisdictional limits of the Virginia general district and circuit courts are well-known and often a factor in a plaintiff's decision on where and for how much to bring a claim. General district courts have exclusive jurisdiction over claims for \$4,500 or less; the general district and circuit courts have concurrent jurisdiction over claims of \$4,501 through \$25,000; and circuit courts have exclusive jurisdiction over claims exceeding \$25,000. Va. Code Ann. §§ 8.01-195.4, 16.1-77. A plaintiff may choose a forum for any number of reasons, including filing fees, the speed with which a case may be resolved, discovery rules, and the like. However, until now, if a plaintiff wanted to amend the claim for damages and needed or wanted a transfer, the plaintiff would have to suffer a dismissal or burn a much coveted nonsuit in order to refile the case in the appropriate court.

As of July 1, 2019, Va. Code §§ 8.01-195.4 and 16.1-77 will be amended to allow an automatic right of transfer to the plaintiff upon the plaintiff's amendment of the claim for damages. The exact language being added to the statutes is as follows:

While a matter is pending in a general district court or a circuit court, upon motion of the plaintiff seeking to increase or decrease the amount of the claim, the court shall order transfer of the matter to the general district court or circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer. Where such a matter is pending, if the plaintiff is seeking to increase or decrease the amount of the claim to an amount wherein the general district court and the circuit court would have concurrent jurisdiction, the court shall transfer the matter to either the general district court or the circuit court, as directed by the plaintiff, provided that such court otherwise has jurisdiction over the matter. Except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

This language, while likely meant to aid in the convenience of the parties and the efficiency of the courts, raises a number of questions. Does the defendant have an opportunity to object? The language says "the court shall transfer the matter" upon the plaintiff's amendment, but what if the defendant believes the amendment and transfer are not in good faith, are meant to harass, or

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## JENNIE MONTGOMERY WAERING: 2019 FRANK W. “BO” ROGERS, JR., LIFE- TIME ACHIEVEMENT AWARD WINNER



*This award recognizes an outstanding lawyer who embodies the highest standard of personal and professional excellence in Southwest Virginia and, in doing so, enhances the image and esteem of attorneys in the region. The Honorable Karen Peters offered the following remarks in presenting this award to Ms. Waering at the Law Day luncheon on May 1, 2019.*

Today I am honored to be a small part of this ceremony for Jennie Montgomery Waering, who is the 2019 recipient of the Bo Rogers Lifetime Achievement Award.

My name is Karen Peters and I want to talk a little about climate change. The kind of climate change in which Ruth Bader Ginsberg is a movie star. Where Captain America is a woman. Where this distinguished group is bestowing this Lifetime Achievement Award on the first female, and only the second public servant, in its fourteen-year history. This is climate change we can welcome.

When I attended my first Roanoke Bar Association meeting in about 1982, I saw a roomful of men mostly, the majority of them from larger law firms. Look at us now.

For Jennie and for the first group of women who entered federal and state courtrooms in the early eighties, it was not easy. There were a few wonderful men who helped us, such as our boss, U.S. Attorney John Perry Alderman. Judges Jim Turk and Glen Conrad were Virginia gentlemen who welcomed and mentored everyone in their courtrooms. But they did not look like us, or sound like some of us, and we had to figure out how to find our professional comfort zone.

Which brings me to Jennie. Jennie never had any problem figuring out how to be an outstanding female trial lawyer and federal prosecutor who was entrusted with big cases for thirty-five years: this was easy for her, she just kept on being who she is. She is an intelligent, grounded, honorable, and straightforward woman. Her faith is real. She embraced public service as an extension of herself, her character, and her roots. Jennie graduated from Lynchburg College where her father had gotten his degree, and where a generation of Montgomerys before him had as well. She came to the U.S. Attorney's office in 1983 after being on law review at the University of Richmond and after clerking for circuit court judges in Alexandria and serving in a distinguished law firm in Arlington for a couple of years.

When she joined the U.S. Attorney's Office for the Western District of Virginia on November 16, 1983, Jennie was coming home. She was the eighth Assistant U.S. Attorney at the time. There was only one staffed office in Roanoke. We traveled to all the federal courthouses in the Western District.

Jennie knew the territory. She grew up on a farm in Franklin County with a spectacular view of the mountains. Her parents and older brother and sister always have been the best sort of good people. They were Brethren and farmers whose families go back generations in these mountains. Jennie misses her lovely mother, Lula, every day. Lula was a loving mom, a wonderful

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## DEVON R. SLOVENSKY: 2019 RBA YOUNG LAWYER OF THE YEAR

*L. Leigh Strelka, Esq., offered the following remarks in presenting this award to Ms. Slovensky at the Law Day luncheon on May 1, 2019.*

Ms. Slovensky is a product of Roanoke, Virginia. She grew up in the Valley and graduated from Patrick Henry High School. She attended the University of Virginia as an Echols Scholar and received a B.A. in Economics and American Politics, graduating in 2007. Ms. Slovensky attended George Mason University School of Law, while working as a legal secretary at Steptoe & Johnson LLP in Washington, D.C., and graduated in 2011.



Ms. Slovensky was a staff attorney at Blue Ridge Legal Services (BRLS) from 2013 through 2017. At BRLS, Ms. Slovensky represented clients at 125% of the federal poverty line or below with civil legal matters—family law (divorce and support), bankruptcy, and landlord/tenant issues. Ensuring that financially disadvantaged clients receive zealous advocacy, particularly in the trial setting, is a matter of great professional pride for Ms. Slovensky. She tried her favorite case while working at BRLS—suing a local landlord and obtaining a favorable outcome while on crutches.

In 2017, Ms. Slovensky started the Virginia Nonprofit Law Center, which provided sliding scale legal services to low and modest means clients. She served dozens of low-income clients, but she ran out of funding when approval of the Center as a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code was delayed for a year, forcing her to close its doors. In 2018, Devon began pursuing Slovensky Law PLLC full time and now maintains a practice that is 80% family law.

**Bar Activities:** In 2017, Ms. Slovensky was selected by the American Inns of Court as a Pegasus Scholar. Devon spent the fall of 2017 in London, observing trials and Supreme Court arguments, and meeting with British judges and barristers. She attended the 2017 Opening of the Legal Year Ceremony at Westminster Abbey, a legal tradition dating back to the Middle Ages, and met with British legal leaders including the President of the United Kingdom Supreme Court, Lady Hale. She also found time to focus on the British legal aid system. Ms. Slovensky was recognized at the U.S. Supreme Court for her Pegasus Scholarship in 2018. Currently, she is most excited about chairing the Ted Dalton Inn of Court Pegasus Committee in preparation for welcoming two British legal scholars to the Roanoke Community this fall.

Devon also serves on the Pro Bono Committee of the RBA and the Access to Justice Committee of the Virginia State Bar. In 2018, she represented approximately three dozen coming-of-age special needs children in guardianship proceedings. She also takes guardianship referrals on a pro bono basis from BRLS.

**Community Activities:** Not only does Ms. Slovensky serve our community through her professional ventures, but she has also participated in a myriad of extra-curricular activities: Former President, Virginia Women Attorneys Association, Roanoke Chapter (2015-2016); Board Member at Large, Virginia Women Attorneys Association, Roanoke Chapter (2013-2015); Ted Dalton

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## ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



Summer is upon us, the constant rain seems to have subsided at last, and in a perfect world, your gardens are planted and thriving (mine is not planted or thriving). Hopefully, you have exciting vacation plans for the summer. We at the Roanoke Public Libraries are excited, because on July 22, the newly renovated Melrose Library will be reopening (the current branch closed May 31). The new address of the Melrose branch will be

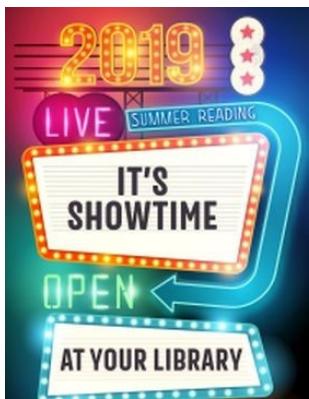
2502 Melrose Avenue NW. If you get a chance, please stop by and see this fabulous new facility.

### Vacation Reading

If you do have fantastic vacation plans for the summer, don't forget to stop by the Roanoke Law Library before you leave and stock up on something to read. If your plans are for rock climbing, you might *not* want to check out the latest best seller from James Patterson. We do have a great rock climbing documentary—"Free Solo"—available for check out, though. If you have a more relaxing vacation planned, the Roanoke Law Library has a wonderful collection of popular fiction that you can read while lounging by a lake or on the beach. Some of the more dedicated attorneys even like to check out Virginia Continuing Legal Education volumes to keep up to date on the latest changes to their practice areas. All of our Virginia Continuing Legal Education materials are available for checkout to members of the Roanoke Bar Association. To find out if we have the perfect book for your vacation, go to our online catalog at [www.rvl.info](http://www.rvl.info). You can limit your search to just the Law Library or e-books, or you can have books from any Roanoke valley library sent to the Law Library for pickup.

### Summer Reading Program

Every summer, the Roanoke Public Libraries has our biggest program of the year—the Summer Reading Program. Grade-level reading achievement is one of the Roanoke Public Libraries' core goals in providing this program. Studies show that children who don't read over the summer when school is not in session regress academically. Another of the Roanoke Public Libraries' core missions is lifelong learning. So we also offer Summer Reading Program activities for adults. Therefore, we have planned lots of programs during the months of June and July to encourage people of all ages to read. The theme of the Summer Reading Program this year is "It's Showtime at Your Library." You can stop by any branch of the Roanoke Public Libraries to get more information, get your kids registered to read, attend one of our fun and educational programs, and enter to win fantastic prizes. See you in the stacks!



## VIEWS FROM THE MEDIATOR: JUDGE DIANE M. STRICKLAND

BY CHRISTOPHER S. DADAK, ESQ.

*This is the second installment of a new series, inspired by the Views from the Bench series and the continued rise of alternative dispute resolution, focusing on the views of local mediators.*

Judge Diane Strickland is currently a private mediator with her own company, Dispute Resolutions, LLC. The friendly, retired judge with a bright smile is well known to the local bar. However, her path to mediation may be less known and is full of useful insights to local practitioners.



Judge Strickland was in private practice for about fourteen years, building experience in both plaintiff's and defense litigation. She then joined the Virginia circuit court bench, where she served for the Twenty-third Judicial Circuit for sixteen years, including serving as the chief judge. During that service, the Supreme Court of Virginia asked her to serve on the committee exploring establishing rules and statutes for arbitrators and mediators. At that time, in the early 1990s, alternative dispute resolution ("ADR") was just beginning to gain traction. The committee drafted ethical requirements for mediators.

Through that committee, Judge Strickland met John McCammon. One day, he came down to Roanoke to meet with her. He outlined his idea for starting the McCammon Group and asked her if she wanted to be one of the first members of the group. Though it "sounded fascinating," Judge Strickland was not ready yet. She had just finished her first term as a judge on the circuit court, but she told him, "Don't forget me, because it is a great idea and I want to be a part of it." He did not forget her. He regularly called her every year to see if she was ready to join. After about four calls, she was ready and joined the McCammon Group.

Judge Strickland got her mediation training through the McCammon Group. It gave her the "nuts and bolts" of presiding over a mediation. As a judge, she never had the opportunity to hold settlement conferences, because that system had not been established yet. She would informally initiate such dialogue at hearings when possible and appropriate. However, no formal structure for ADR existed during her time on the bench, so her hands-on training came later from the group. And she believes the group did a "great job" in preparing her for mediations.

In addition to (hopefully) saving time and expense, Judge Strickland sees most value in mediation as providing a full opportunity for the parties to explore the other side. She begins mediation by "guarantee[ing] that while [a party] may not learn any new facts today, [it] will learn a different perspective on the facts." No matter how insightful a party may feel, the reality is that no party is "as on top of" the other side's position as the other side is. Perhaps surprisingly, Judge Strickland does not compute a reasonable or expected settlement figure after reviewing all the materials and prior to starting the mediation. In her practice, at the end of the day, it is the "well-informed parties" that determine a number on which they can agree.

She has seen a wide variety of opening statements, some of which were over an hour in length. In some cases, sides brought in expert witnesses to provide testimony or a preview of trial testimony during the opening statement. However, the

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# The McCammon Group

is pleased to announce our newest Neutral



**Hon. Cynthia D. Kinser (Ret.)**

Retired Chief Justice, Supreme Court of Virginia

The Honorable Cynthia D. Kinser retired as Chief Justice of the Supreme Court of Virginia in 2014. Justice Kinser was initially appointed to the Supreme Court in 1997 and was elevated to Chief Justice in 2011. She was the first and remains the only woman to have held that position. Previously, she presided as a U.S. Magistrate Judge for the Western District of Virginia from 1990 to 1997. As a lawyer, Justice Kinser enjoyed a successful private practice for many years and also served as Commonwealth's Attorney for Lee County, Virginia from 1980 to 1984. Justice Kinser now brings this exemplary record of dedication and leadership to The McCammon Group to serve the mediation, arbitration, judge pro tempore, and special master needs of lawyers and litigants throughout the Commonwealth.

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## BURSTING BUBBLES AND BURDEN SHIFTING

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mary caregiver. According to Vickie, to oblige Coffey's request, in June of 2013, Vickie purchased a will kit. She testified that she did not assist in preparing his will; witnesses to Coffey's signing were Vickie's daughter and son-in-law. Vickie testified that when Coffey showed her the executed will on the day before he passed away, she was shocked and asked why he had done that. Coffey responded that it was his desire that the property remain in his family and that he knew Deneen was not moving back to Lyndhurst, but instead would sell the property if he left it to her.

A social worker and nurse care manager testified that they had no concern for Coffey's cognitive abilities during the final weeks of his life. The hospice chaplain testified that on July 19, 2013, three days before his passing, Coffey openly discussed his concern of who to leave his house and land to, and that he worried Deneen would sell the property if left to her. Coffey's best friend testified that Coffey had expressed this same concern to him.

After a two-day trial, the jury returned a verdict for Deneen. But the Supreme Court reversed the jury verdict, ruling in favor of Vickie.

### The Law

The function of a legal presumption is to compel the factfinder to draw an inference from a given set of facts. In other words, if the facts at hand warrant the presumption, the party against whom the presumption operates then holds a burden to offer evidence sufficient to rebut the presumption. However, there are two competing theories on the effect legal presumptions have on the evidentiary burden of persuasion. The Thayer theory, initially developed by Professor James B. Thayer, is known as the "bursting bubble theory." It states that so long as the party against whom the presumption operates presents evidence to rebut the presumption, the burden of persuasion shifts back to the contesting party to prove the factual issue in question. The presumption disappears like a bursting bubble, with reference thereto no longer included in jury instructions. In contrast, the Morgan theory, credited to Professor Edward Morgan, holds the position that a legal presumption not only creates a burden on the party against whom the presumption operates to rebut such presumption, but also shifts the burden of production so that the non-contesting party must carry the burden of proof and submit sufficient evidence to the trier of fact to prove his position by a clear-and-convincing evidentiary standard.

The legal presumption of undue influence arises in a will contest when:

- (i) the testator was old when his will was established;
- (ii) he named a beneficiary who stood in a relationship of confidence or dependence; and
- (iii) he previously had expressed an intention to make a contrary disposition of his property.

In *Parson v. Miller*, the Supreme Court clarified that in Virginia, when undue influence is alleged in the context of will creation, the Thayer theory applies. Therefore, if the contesting party pleads sufficient facts to show that the above three circumstances exist, the proponent of the will, to avoid a verdict in the contestant's favor, must present evidence to rebut the presumption of undue influence. The presumption functions to shift the burden of production to the will proponent; however, if the proponent puts forward

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## COURT HOPPING: EXAMINING VIRGINIA'S NEW AUTOMATIC TRANSFER RULE

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constitute forum shopping? While the statute does require the plaintiff to pay a new filing fee, does the plaintiff have to file a complaint in circuit court? What if the plaintiff filed a bill of particulars in general district court, but the defendant does not believe it meets the pleading standards for circuit court? Going the other direction, what effects will the amendment have on a plaintiff's use of circuit court discovery procedures? For example, can a plaintiff file a basic complaint in circuit court and serve requests for admissions and then amend the *ad damnum* and transfer to general district court, using any admissions against the defendant, when normally that kind of discovery is not permitted in general district court?

Certainly, the amended statute will make the transfer of cases easier. However, these unanswered questions will need to be resolved as attorneys begin operating under the transfer rule this summer. Attorneys should be aware of the statute, both to use it, and to understand that using it may require additional litigation to hash out the statute's scope and limitations.

*Alicia M. Grubb is an associate at Gentry Locke.*

### IN MEMORIAM

The following are the Association's losses since March 25, 2018:

Walter H. Peake, III., Esq.

In grateful recognition of the contributions of Mr. Peake to our profession, and his contributions to our Association, the Association laments his passing.

**Save the Date  
Summer Social  
Monday, July 15, 2019  
Three Notch'd Brewing  
Company  
Registration is open.**

**MEDIATION****ARBITRATION****JONATHAN M. APGAR**

Having previously served twenty-one years as both a full time and a retired, recalled circuit court judge, Jonathan M. Apgar has successfully mediated scores of cases. He is also certified in civil mediation by the National Judicial College. He offers skilled mediation and arbitration at a modest cost.

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## BURSTING BUBBLES AND BURDEN SHIFTING

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countervailing evidence to prove that the testator was not unduly influenced, the burden of production shifts back to the party contesting the will. The burden of persuasion always remains with the will contestant, and policy dictates the Supreme Court's reasoning—the burden of showing undue influence should rest upon the party who alleges it. Evidence must be submitted to prove that the testator was deprived of his own disposition and free will, acting not of his own accord but at the direction of another.

### Application

Deneen pleaded facts sufficient to raise the presumption of undue influence: Coffey was eighty years old at the time he executed his will; Vickie was his primary caregiver; and multiple individuals would testify that Coffey had previously stated everything he had would pass to Deneen at his death. The burden of production then shifted to Vickie. However, Vickie presented evidence to rebut the presumption: Coffey's social worker and nurse care manager corroborated her position that Coffey was of sound mind in his final days; Coffey had reasons for wanting to leave his property to Vickie, namely because: (i) Vickie cared for Coffey in his final years, whereas his daughter periodically visited but refused to move in with him after numerous requests had been made; and (ii) Coffey was strong-willed and wanted his property to remain in the family. Further, the chaplain who visited Coffey in his final days testified how he was conflicted by this decision. The bubble burst, and with it, the presumption and Deneen's expected inheritance disappeared. Deneen failed to present evidence sufficient to establish by a clear-and-convincing evidentiary standard that Vickie overcame Coffey's will and that it was her intent, but not his, to leave his property to Vickie at his passing.

A foundational principle of Trusts and Estates Law is to draft and construe governing documents to effectuate the testator's or settlor's intent. By maintaining the burden of persuasion with the party contesting a will, assurance is made to not construe the testator's action as something other than his own free will without necessary evidentiary precautions in place. In my initial reflection on this case, I admit that the jury verdict resonated with me—it seems fundamentally unjust for a father's inheritance to pass pursuant to a will drafted a few days before death to his newly acquainted niece instead of his daughter. A niece who played a significant role in the will's execution. However, it was Coffey who signed the document, and Deneen was unable to offer substantial evidence to prove that he was not acting of his own accord. The Supreme Court got it right. Further, let this opinion serve as a reminder for us all to care for our aging parents, visit often, and keep an eye on the next door neighbor.

Susan E. B. Cook is an associate with Woods Rogers PLC.



Judge Clemens  
teaching Rule of  
Law.

## JENNIE MONTGOMERY WAERING: 2019 FRANK W. "BO" ROGERS, JR., LIFETIME ACHIEVEMENT AWARD WINNER

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seamstress who actually sewed Jennie's suits and dresses for years, and she was a talented cook, a skill Jennie learned from her. Jennie loves to feed people.

Jennie began learning how to deal with challenges as a child. I've seen a picture of Jennie and her prize-winning 4H calf named Rosemary—the prize was awarded to Rosemary even though she stomped on Jennie's foot. Jennie also succeeded at all the girly girl stuff at Franklin County High School: cheerleader and Homecoming princess and the owner of some really long hair.

Jennie will always be the girly girl whenever she gets a chance. Being with Jennie on Girls Night Out is quite a memorable experience. Jennie is a cancer survivor, twelve years out now. I will never forget being invited to the wine drinking party at the beauty shop when she had her head shaved before chemo. She not only beat cancer, but she raised funds for the Susan B. Komen group to boot.

Her warmth and exuberance enriches every part of her life, including her practice of law. The U.S. Attorney's office has been a big family for Jennie: she organized and attended all the important occasions. She taught most of the in-house continuing legal education courses. She mentored the law student interns as well as the Special Assistant U.S. Attorneys. Jennie was always close to the federal agents and investigators who worked long hours as a team on the complex cases. And in a truly fitting tribute to her, at the end of the day, Jennie was also friends with most opposing counsel, many of whom are in this room. When we went to Jennie's retirement party last fall, the room was filled with so many who had worked in the federal courts for decades. There was enough good will in the room to launch world peace. Jennie has succeeded as a woman—not despite being a woman—because she is a wonderful, inspiring, fantastic woman.

Jennie saw a lot of changes in Justice department policies and changes in social norms over her thirty-five years in the U.S. Attorney's Office. She saw a lot more women get hired, and more women appear in federal courtrooms on the other side of the aisle. She witnessed the proud moments in Virginia when more and more people of color joined the U.S. Attorney's Office. During all these changes, Jennie did what she had always done—she worked hard, built great skills as a white collar prosecutor, and strived tirelessly to make this world we occupy in the Western District of Virginia a safer, kinder place.

Jennie is one of the few people around here who can claim to be an expert in federal criminal health care law. She trained in it, mentored others in it, and has tried the cases. She has handled and tried cases involving doctors and other health care providers who not only threatened Uncle Sam's pockets, but have also endangered the health of their patients. Jennie is also one of the few people in this part of the world who is an expert in federal environmental criminal cases: Jennie has prosecuted corporations, individuals, and even governmental entities for hazardous wastes and for polluting water and streams. The Environmental Protection Agency recognized Jennie with a Bronze Award in 2003 for her significant contributions.

Jennie's cases sometimes involved hundreds of thousands of documents and millions of dollars. There are real vic-

(Continued on page 11)



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## YOU AND THE LAW – LEGAL AND SOCIAL TOOLS FOR ASSISTING SURVIVORS OF VIOLENCE

BY LORI D. THOMPSON, ESQ.



On May 9, 2019, the Roanoke Law Foundation hosted the 9th annual *You and the Law* program at the Roanoke Higher Education Center. The Legal Aid Society of the Roanoke Valley (LASRV) collaborated with the Honorable Michael F. Urbanski, Chief Judge of the United States District Court for the Western District of Virginia, to develop the program on legal tools and community resources to assist victims of domestic violence.

The impetus for this year's program was Congressional passage of the *Pro Bono Work to Empower and Represent Act of 2018* (Power Act) to help victims of domestic violence obtain access to legal services. The legislation requires the chief judge in each federal judicial district to host at least one public event annually to promote free legal services to empower survivors of domestic violence, dating violence, sexual assault, and stalking. Chief Judge Urbanski first introduced the RBA to the Power Act during a bar meeting in the fall of 2018, and the idea for this year's *You and the Law* program was born.

The statistics are staggering—over 60,000 calls are made annually to Virginia's domestic and sexual violence hotlines, and over 55,000 emergency protective orders are entered in the Commonwealth each year. One in three women and one in seven men will endure domestic violence at some point in their lives. Domestic violence affects our community at all socio-economic levels on a daily basis, and attorneys have a unique and significant role to play in supporting and protecting families impacted by domestic violence.

Elizabeth Barbour, a Domestic Violence Staff Attorney at LASRV, moderated an engaging panel that addressed how to tap into legal protections and community resources to aid domestic violence victims. The Honorable Frank W. Rogers, III, a judge on the Juvenile & Domestic Relations District Court of the Twenty-third Judicial District of Virginia, shared the procedural steps and evidentiary threshold to obtain and maintain a protective order against an abuser, while Tonia Drewery, Staff Attorney at LASRV, educated the attendees on practical steps to prepare for and present the case in court.

The balance of the program provided insights into how to support victims by examining real-life scenarios through the lens of experts with decades of experience confronting domestic violence in the Roanoke Valley: Stacey Shepperd, Teresa C. Berry, and Ashley Frankie. Stacey Shepperd was the first female Sergeant of the City of Salem Police Department and has instructed cadets at the police academy on sex crimes investigations for over seventeen years. Ms. Sheppard currently oversees TAP's Domestic Violence Service Programs, including Sabrina's Place Safe Exchange/Supervised Visitation Program, and sits on the Roanoke Valley Domestic Violence Fatality Review Team, which she co-founded. Teresa C. Berry is a Licensed Professional Counselor and Licensed Marriage and Family Therapist with over 30 years of experience helping victims of domestic violence. Ms. Berry serves as Executive Director of SARA, which provides a 24-hour crisis hotline, counseling, and support services. Ashley Frankie has served as the Chil-

## PRESIDENT'S CORNER

(Continued from page 2)

Roanoke County, and Roanoke City this past fall and spring. I encourage any of you who have not done this important and stimulating work to get engaged in this important project. The importance of the Rule of Law in our Society has never been more evident than it is today.

This past Law Day, our Association recognized two members for their outstanding contributions to the legal profession and our community. Devon Slovensky was recognized as the Young Lawyer of the Year, and Jennie Waering was the first female attorney to be recognized with the Bo Rogers Lifetime Achievement Award. After that, we were treated to our annual review of relevant legislative developments in the Commonwealth by a panel of distinguished legislators from our area that included Senator John Edwards and Delegates Sam Rasoul, Chris Head, and Joe McNamara (thanks to Bob Ziegas for coordinating this effort). That same day, we were asked to participate in the dedication ceremony of the Roanoke City Courthouse as the Oliver W. Hill Justice Center.

Throughout the year, we have continued our efforts to support the Legal Aid Society through our Pro Bono Conflict Referral program under the leadership of Devon Slovensky; to provide numerous hours of quality CLE, including programs on ethics and programs that support those who want to provide pro bono legal services, all under the leadership of Nancy Reynolds; and to provide both fellowship and the Bench Bar Conference, under the leadership of Andrew Gerrish as the Young Lawyers Committee Chair.

On the administrative side, Amy Geddes has done an outstanding job bringing in new members this year. Lori Bentley has worked tirelessly to provide memorials to fellow attorneys who have passed their final bar this year. Those include Joe Logan, Brian Jones, Jack Altizer, Bob Glenn, Chip Magee, and Walt Peake. We honor their memories. This year, the RBA also made memorial contributions to the Roanoke Law Foundation in memory of three past presidents, Charles Cornelison, Joe Logan, and Bob Glenn. And perhaps our greatest unsung hero is Justin Simmons, who has painstakingly labored over each quarterly issue of this publication for four years (since he came on the board) and always turns out a fantastic and interesting product.

The Roanoke Law Foundation has continued its outstanding work under the leadership of Kevin Holt, including the induction of five new Fellows in October, hosting Santa in the Square in December (once again in Center in the Square to the delight of all), funding a grant for The Legal Aid Society, and providing academic scholarships for worthy high school students with an interest in the law and for a student attending law school in Virginia. In addition, the Roanoke Law Foundation provided support for a



Lee Osborne accepting the president's plaque.

new You and the Law program that provided legal and social tools for assisting survivors of violence under The Power Act. In addition to serving as Chair of the Roanoke Law Foundation, Kevin also chaired the

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**JENNIE MONTGOMERY WAERING:  
2019 FRANK W. "BO" ROGERS, JR.,  
LIFETIME ACHIEVEMENT AWARD  
WINNER**

(Continued from page 8)

tims in these crimes. For example, Jennie is one of a few attorneys who has prosecuted criminal cases involving thefts from large pension plans.

Jennie was known affectionately as the "Queen of Pleas." She has a knack for knowing what a case is worth and what a reasonable settlement was for both sides. Her humility was so heartwarming in the negotiations—ego was never involved in an outcome.

And mind you, the taxpayers got a fantastic bargain with Jennie, who collected less than \$100 an hour for a lawyer with a deep well of expertise. And this does not count the countless hours of overtime she put in year after year to do the job right. But she was appreciated in other ways. In 2005, writer Jen McCaffrey, a reporter for the *Roanoke Times*, did an inspiring profile of some of Jennie's bigger cases. That honor was deeply appreciated because AUSAs rarely get the thanks or accolades. Jennie was a terrific role model who represents the best character of federal prosecutors. For me personally, that character was never more evident than when she stood up for hundreds of little children in the prosecution of Tony Leyva, an evil traveling tent preacher. I watched the line of victims go in and out of her office, sharing their pain with twenty-eight year old Jennie. And she listened and empathized and cared and got Justice. Jennie received some national news coverage for that notorious case, and made the front page of the *New York Times* on November 15, 1988.

Jennie has cared deeply about a lot of things in addition to big cases over these years. First and foremost, her husband Tom Waering and her son, Michael Waering. Tom is a retired ATF agent. They will be married twenty-eight years this November. Son Michael is twenty-four and is a proud graduate from UVA. Jennie seldom missed a school function, sports event, or Governor's School project throughout his childhood. Michael will tell you that Jennie could give flying lessons to helicopter moms. I understand that she objects to that term, but will answer to "Pushy Mama." Mountain View Elementary nominated Pushy Mama Jennie for the "President's Volunteer Service Award" in 2004, and when she won it, she received a certificate signed by President Bush, Bob Dole, John Glenn and a Redskins football player named Darryl Green. Jennie also loves her dogs and cats. If you come back in another life, give serious consideration to coming back as Jennie's dog.

Jennie is a deacon in her church, the Central Church of the Brethren. She sings in the choir. Jennie is in the kitchen and on the team for every event. Jennie and her friends created the "Reading With Santa" program at the church, and every Christmas the kids and parents who are in the nonprofit Child Health Investment Program get treated with joy and dignity. Jennie and her church are also very active with Highland Park Elementary School, where they act as the PTA officers and volunteers. Jennie is presently helping homeless families with young children as part of her "Faith in Action" commitment. Jennie is faith in action: she is generous and kind to friends and family and strangers alike. When the *Roanoke Times* commemorated her retirement, the paper rightfully celebrated her dogged pursuit of social justice.

Jennie was on the Board of this bar association for a couple of terms and was involved in the creation of the Barrister Book Buddies program, along with Maryellen Goodlatte and Chief Judge

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**VIEWS FROM THE  
MEDIATOR: JUDGE DIANE M.  
STRICKLAND**

(Continued from page 4)

trend, particularly for the defense, is toward shorter opening statements. Judge Strickland finds that the most powerful opening statements have been those that create a connection with the other side. Particularly in personal-injury cases, she has found that expressions of sympathy or concern toward the injured party have been quite effective. For that reason, it is important to have a client or client representative say at least a few items at the outset to help develop a relationship, even if a representative is not the true decisionmaker. In that vein, Judge Strickland recommends using a softer touch at the opening and leaving the more contentious points or arguments to be raised or introduced by the mediator during individual sessions. She says that keeping a respectful attitude at a mediation is not only the right thing to do—it will help your client as well.

Similarly, Judge Strickland believes that patience is key to successful mediation. When cases do not settle on the first day, frustration is typically the culprit. She has seen such frustration overcome by the incredible level of civility and professionalism of lawyers in Virginia. When Judge Strickland has to follow up after an unsuccessful mediation, she can be "quite persistent" and prefers direct contact with the ultimate decisionmaker. She notes that on one case, she made 47 follow-up calls in order to get the matter resolved.

For those interested in becoming mediators, she points to the abundance of providers of courses and training. The Supreme Court of Virginia offers a list of such providers on its website. Specialty training is available and needed if one wishes to specialize in a particular area, for example construction. Of course, ultimately, the best teacher is experience in mediating cases. Despite finding it "intimidating" at first to start her own business, Judge Strickland has found success and reward in it. Since over half of her cases are outside the local Roanoke area, she recommends that attorneys interested in full-time mediating maintain a broad base of contacts.

Christopher S. Dadak is an Associate at Guynn, Waddell, Carroll & Lockaby, P.C.



**PRESIDENT'S CORNER**

(Continued from page 10)

Long Range Planning Committee, which has prepared a report that will be useful to the Board next year as it looks to the future.

I want to thank again the directors on the Board for their tireless work this year, and in particular, Patrick Kenney, for the great programs that he has arranged for this bar year and for filling in for me on those two occasions where conflicts prevented me from presiding over the meetings. I am looking forward to Patrick's leadership next year and to the programs that will be arranged by our President-Elect Dan Frankl. Congratulations to Macel Janoschka as our incoming Secretary and the newest member of the Executive Committee.

And finally, thank you to our Executive Director Diane Higgs for her diligent and effective support without which much of what we accomplish would not happen.

Lee Osborne is a partner at Woods Rogers PLC.

## DEVON R. SLOVENSKY: 2019 RBA YOUNG LAWYER OF THE YEAR

(Continued from page 3)

American Inn of Court (2015-present); Roanoke Bar Association (2013-present); Rule of Law Day Participant (2014-present); and Bike & Build, which organizes cross-country bicycle rides for young adults to raise funds and awareness of the affordable housing cause. As a former President of the local VWAA Chapter myself, I was particularly impressed with the time, energy, and thoughtfulness with which Ms. Slovensky approached her presidency of the VWAA Roanoke Chapter. She was an integral part in reinstating the VWAA Judicial Screening process in our area, which provides our legislature with an even more complete picture of the qualifications of particular judicial candidates, supplementing the endorsement processes of other local bar associations. Her energetic and excellent leadership has ensured that the chapter will continue to thrive and provide support to its members.

**Comments by Professional Colleagues:** Says one professional colleague:

There is not an attorney more deserving of the RBA Young Lawyer Award than Devon Slovensky. Devon and I have tried countless domestic cases together, the first one being in 2016. I say together because, although we are on opposing sides and she zealously fights for her client at trial, once we walk out of the courtroom, we are colleagues and friends. Devon always shows the utmost respect and professionalism to me, my staff and to our other colleagues. Devon has a delightful knowledge of the law, a matter-of-fact reasonableness, as well as kindness and understanding in dealing with the complex issues that come with domestic matters. I am always excited to work with her or to find out that she is retained on a case that I am working. Congratulations, Devon! Don't ever change your kind demeanor and fighting spirit.

Another colleague offers these words:

Devon is a strong-willed and driven person. She takes on challenges in her field and will look at the subject from every angle and will leave no stone unturned.

She is determined to make a difference and has committed her time to assisting and informing our community through public service work (working for a free legal service organization) to being active in many legal community organizations—VWAA, RBA, and Inns of Court.

Her diligence and ability to find humor make her a great addition to our legal community. I am delighted I can call her a colleague and a friend.

A third professional colleague remembers:

The first time I had a case with Devon, I was retained in a divorce and she was representing the wife as a client of legal aid. We are arguing over whether my client, the husband, should pay spousal support, and if so, how much. It was a short marriage, and the amount and duration of spousal support was going to be relatively minimal. Devon tried the case like it was a murder case. Devon was successful in convincing the judge to grant her client some defined duration of spousal support. My client was glad for it to be over after Devon's grilling. It was

## YOU AND THE LAW – LEGAL AND SOCIAL TOOLS FOR ASSISTING SURVIVORS OF VIOLENCE

(Continued from page 10)

dren's Program Coordinator and now the Program Manager of the Salvation Army's Turning Point Shelter, which is Roanoke's only secure shelter for victims of domestic violence.

The panel shared practical insights on ways the public can help victims of abuse, including what to expect at local hospitals when seeking medical treatment for sexual assault, how to create a safety plan when leaving an abuser, and the network of resource support available in the Roanoke Valley. Critically important to the list of resources available to victims are attorneys who are willing to assist victims in navigating the court system to obtain and maintain protective orders. David Beidler, LASRV Executive Director and General Counsel, encourages any attorney who is interested in providing pro bono representation to contact LASRV or Blue Ridge Legal Services. Training is available to all attorney volunteers.

A video of this year's *You and the Law* program will be available on the Roanoke Bar Association website. A list of community resources is available online at <https://www.roanokeva.gov/1865/Domestic-Violence-Assistance>.

*You and the Law* is an annual program designed to educate the public on a current legal issue or to provide information to facilitate the Roanoke community's access to justice. Originally created by the Roanoke Bar Association in 2010 and coordinated by the Roanoke Law Foundation since 2014, *You and the Law* has been recognized by the Virginia State Bar's Conference of Local and Speciality Bar Associations with multiple Awards of Merit.

Lori D. Thompson is a partner at LeClairRyan.

## III YOUANDTHELAW



Judge Michael Urbanski.



You and the Law Panel.

(Continued on page 13)

## DEVON R. SLOVENSKY: 2019 RBA YOUNG LAWYER OF THE YEAR

(Continued from page 12)

only after the trial on this issue that I learned her legal aid funding grant that she took this case under was for the purpose of obtaining spousal support for impoverished spouses. I'm glad she is in private practice and has the same motivations as the rest of us in private practice. Of course, she still aggressively presents the cases of her clients.

I had a recent divorce case with Devon in which neither of our clients were being realistic and we both had to aggressively represent our respective cases. It was heated between the parties, but Devon maintained total professionalism throughout despite the colorful evidence and accusations between the parties. I did my best to be similarly professional while representing my client. The trial judge commented at the conclusion that we had succeeded in presenting a difficult case in a highly professional manner.

I enjoy the cases more when I have a professional lawyer like Devon on the other side of the courtroom.

Ms. Slovensky's commitment to our community, particularly to those who are financially disadvantaged, is an inspiration. Congratulations to her for this well-deserved award as this year's Roanoke Bar Association 2019 Young Lawyer of the Year.

*L. Leigh Strelka is a partner at Strelka Law Office, PC.*



Devon Slovensky accepting her award from Lee Osborne.



## JENNIE MONTGOMERY WAERING: 2019 FRANK W. "BO" ROGERS, JR., LIFETIME ACHIEVEMENT AWARD WINNER

(Continued from page 11)

Michael F. Urbanski. Jennie and I have been reading to kids at Lincoln Terrace since the beginning. I confess that I sometimes find the experience difficult, but every time I think about letting someone else deal with second grade attention spans, I watch Jennie persevere: she tells them to make fish faces to stop the chatter, she pulls the worst offenders onto her lap, and she sits herself on the floor to break up the most mischievous ones. They begin to sense, I think, that they are in the presence of Grace.

Jennie is just 64, and she has a lot of things yet on her to do list: Social justice issues, volunteering, country music concerts, especially with Keith Urban, travelling, a little kayaking and golf, and hanging out with her family and friends. Jennie loves to read. She describes herself as currently into Book Three of an adventure series, with more volumes to come. I think that is a great way to sum up the life and times of my dear friend. I cannot wait for the volumes to come.

Congratulations to Jennie Montgomery Waering, the 2019 recipient of the Frank W. "Bo" Rogers, Jr. Lifetime Achievement Award.

*Karen Peters is a retired Administrative Law Judge for the Social Security Administration and a former Assistant United States Attorney.*



Jennie Waering with Lee Osborne.



Jennie Waering with family and friends.

## 2019 ROANOKE LAW FOUNDATION GRANTS AND SCHOLARSHIPS



Tyler Ambrose will attend Harvard Law.



Reagan Owens will attend Converse College.

The James N. Kincanon Scholarship was established in recognition of Mr. Kincanon's 50 years of service as Secretary/ Treasurer of the Association. The 2019 recipients of the James N. Kincanon Scholarships are: Tyler Ambrose, Ruxandra Dancea, Tyler McNeil, Reagan Owens, Emma Smith and Matthew West. Matthew West also received the Jane Glenn Scholarship.



Tyler McNeil will attend Roanoke College.



Emma Smith will attend Washington and Lee.



David Beidler accepts a grant on behalf of the Legal Aid Society from RLF chairman, Kevin Holt.



Joey Klein accepts RBA donation to the RBA Law Library from Patrick Kenney.



### 2019 DONATIONS



Betty Moorman-Sweat accepts donation to the RVLSA from Patrick Kenney.

## THE 94TH ANNUAL MEETING OF THE ROANOKE BAR ASSOCIATION



On June 11, 2019, the Roanoke Bar Association conducted its 94th Annual Meeting to celebrate a great bar year, present volunteer service awards (below), and seat a new board of directors. Kevin W. Holt, past RBA president, passed the gavel to president elect, Patrick J. Kenney.

Patrick J. Kenney, 2019-2020 RBA President

### 2018 VOLUNTEER SERVICE AWARDS

#### President's Volunteer Service Awards

##### Lifetime Achievement Award 4000+ Hours

Roy V. Creasy

##### Gold Level 500+ Hours

Hugh B. Wellons

##### Silver Level - 250 - 499 Hours

Roy V. Creasy	Martha W. Elder
Eugene M. Elliott, Jr.	John D. Eure
Patrick J. Kenney	J. Lee E. Osborne
Nancy F. Reynolds	

##### Bronze Level - 100 - 249 Hours

David N. Cohan	Daniel P. Frankl
Lauren E. Davis	Lauren M. Ellerman
John P. Fishwick, Jr.	Kevin W. Holt
Lori Thompson	Henry L. Woodward

#### RBA Certificates of Commendation

##### 50 - 99 Hours

Lori J. Bentley	Christen C. Church
Eleanor A. Lasky	Stephen W. Lemon
Cerid E. Lugar	Victor S. Skaff, III.*

##### 25 - 49 Hours

William E. Callahan, Jr.	Joshua D. Goad
Kenneth J. Ries	Kathleen L. Wright*

\*Includes 25 or more hours of pro bono legal services provided through Blue Ridge Legal Services

## ANNOUNCEMENTS

NEW MEMBERS	UPCOMING EVENTS	OFFICERS
The Roanoke Bar Association	Roanoke Bar Association Meetings	J. Lee E. Osborne
welcomes the following new	2018 - 2019	President
members:	September 11, 2018	983-7516
Effective June 11, 2019	October 9, 2018	982-7721
<b>Active Members</b>	November 13, 2018	527-3515
None	December 11, 2018	Daniel P. Frankl
	January 8, 2019	Secretary-Treasurer
	February 12, 2019	Kevin W. Holt
	March 12, 2019	Past President
	April 9, 2019	983-9377
	May 1, 2019	Diane Higgs
	(Law Day)	Executive Director
	June 11, 2019	342-4905
	(Annual Meeting)	
		<b>BOARD OF DIRECTORS</b>
		Lori Jones Bentley
		767-2041
		Christen C. Church
		983-9390
		Lauren M. Ellerman
		985-0098
		Amy H. Geddes
		989-0000
		Andrew S. Gerrish
		725-3770
		Macel H. Janoschka
		725-3372
		Nancy F. Reynolds
		510-3037
		Melissa W. Robinson
		767-2203
		Devon R. Slovensky
		492-5297
		Justin E. Simmons
		983-7795
		Robert Ziogas
		224-8005

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