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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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PRESIDENT'S CORNER

BY DANIEL P. FRANKL, ESQ.

It is my great honor to have the opportunity to serve this year as President of the Roanoke Bar Association. That said, this is not the message I expected to write. The current pandemic has not only taken a toll on the health and well-being of so many, it has also dealt a blow to the Roanoke Bar Association's members. As a result, in an effort to keep all of us safe and healthy, the bar's in-person monthly luncheon meetings and some of its associated programs will not move forward in the same format as in previous years. The RBA Board of Directors has decided that in-person bar meetings will not be conducted until at least January of 2021. In the interim, starting in October, we will hold virtual bar lunches with outside speakers along with short updates from the judges of the 23rd Judicial Circuit. The judges will speak regarding the potential normalization of in-person hearings and, ultimately, the return of civil jury trials. In addition, it is our intention to continue to provide to our members, via video conferencing, both free and paid CLE programs on a variety of topics throughout the year.



Unfortunately, due to COVID-19 restrictions and the current restrictions surrounding attendance in the Roanoke City Schools, we will be unable to proceed with our longstanding Barrister Book Buddies program and the Rule of Law program. Due to the cancellation and/or postponement of the foregoing programs, we are currently working with the Roanoke City Schools to see how the RBA can assist City students in other ways. I look forward to providing you more specifics about our efforts in that regard in a future issue of the *Roanoke Bar Review*.

As this year moves forward, I am thrilled to be supported by my fellow officers, Macel Janoschka, President-Elect; Lori Bentley, Secretary/Treasurer; Patrick Kenney, Immediate Past President. I also look forward to working with the remainder of the RBA Board of Directors: Christen Church, Christopher Dadak, John Fishwick, Amy Geddes, Sarah Jessee, Talfourd Kemper, Jr., D. Adam McKelvey, Jonathan Puvak, Nancy Reynolds, Devon Slovensky, and Seth Weston. It will also be a pleasure to work closely with Diane Higgs, RBA's executive director, as her dedicated service to the Association and her out-of-the-box thinking is helping the Association move forward in these difficult times.

Finally, I want to recognize and thank all of the RBA members who participated in the Roanoke Law Foundation "Meals for Heroes" fundraiser to help provide meals for the Carilion frontline healthcare workers directly involved in treating COVID-19 patients at Roanoke Memorial Hospital. Specifically, Lori Thompson and Bill Hopkins were instrumental in working with the RBA in raising approximately \$15,000 that allowed the Shenandoah Club to provide meals during this pandemic to these frontline workers from April through most of August.

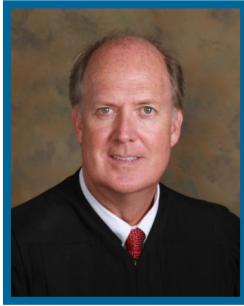
During the year ahead, please do not hesitate to contact me or any of the other RBA board members with your thoughts and/or ideas as we move forward in these unprecedented times.

Daniel P. Frankl is a partner of Frankl Miller Webb and Moyer, LLP.

OUR LOCAL CIRCUIT'S RESPONSE TO THE PANDEMIC

BY CHRISTOPHER S. DADAK, ESQ.

The Honorable David B. Carson, Chief Judge of the 23rd Circuit, was kind enough to spend some time and provide a behind-the-scenes perspective with how our local courts have had to deal with the COVID-19 pandemic. As all of us have had to make adjustments to our professional and personal lives, our courts have also had to adjust to a new reality and circumstances under the pandemic.



Judge Carson pointed out that what would otherwise be a very stressful time has been made substantially easier by the help and support of his colleagues. He specifically noted that "it helps a great deal that we very much like and respect each other."

The courts' initial response was entirely local. But in the middle of March, the Supreme Court of Virginia entered its first order declaring a statewide judicial emergency, which essentially shut down all in-person judicial proceedings, except for true emergencies. Even then, courts were strongly encouraged to conduct emergency hearings by electronic means to limit in-person contact. Though all the circuit courts had the capability to conduct at least some proceedings electronically, those electronic measures had not been used on any kind of widespread basis, but that needed to change "almost overnight", and it did.

In addition to complying with the mandates of the Supreme Court Judicial Emergency Orders, the circuit judges on their own eliminated virtually "all traffic in their chambers" and established by words and action their expectation that all who utilize the courthouse comply with basic safety mandates. The judge was grateful for the "immediate buy-in" and the "remarkably few issues" they encountered.

From the outset, the focus from everyone was "what can we be doing to help each other" and allow the courts to function and offer their vital services. As an example, the Sheriff communicated that it would be helpful to lower the numbers in the jail and suggested releasing non-violent offenders who were close to their release dates. That plan was quickly approved and implemented, allowing the jail to lower its population and lessen the overall risks to all in the jail.

The Supreme Court of Virginia has gradually lifted the restrictions it has placed on all courts, but it still has prohibited the resumption of jury trials in state courts. To be able to resume jury trials, each circuit is required to submit a plan to the Supreme Court for its review and approval. The circuit submitted its jury trial plan on July 17, 2020, a full month before it was due. While the Supreme Court did not respond to specific plans, it did provide a general response to all submissions with areas of concern. In response, our circuit submitted a revised circuit-wide plan for jury trials. There is no formal indication of an approval timeline, and our circuit is still waiting for a response.

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LEGAL AID: DOMESTIC VIOLENCE IN THE TIME OF COVID-19

BY ELIZABETH BARBOUR, ESQ. AND TONIA DREWERY, ESQ.

The world ground to a halt in March 2020. But domestic violence kept grinding on. Like the courts, Legal Aid had to find a way to keep the porch light on, even if the door was hard to open. During this time, Roanoke Legal Aid Society domestic violence attorneys Tonia Drewery and Elizabeth Barbour have met our clients by telephone and when necessary, face to face. For example, very early in the pandemic, one of us met a client at a long table under a public picnic shelter to obtain a representation agreement and listen to her narrative of the fracas taking us into court.



By now, courts have resumed in-person hearings, but they conducted emergency hearings all along, albeit with different protocols. Representing a victim of domestic abuse during late April in a telephonic hearing had it challenges, but we won our case.



Shuttered courts meant languishing contested cases. On one hand, this situation gave rise to negotiated agreements and water finding its level and showed the proof of the pudding in some circumstances. On the other hand, delayed proceedings have prolonged the uncertainty of uncertain situations, such as pushed-out custody hearings. Parties were left to agonize for weeks, where a timely court order could have, at least, set boundaries. Time passing longer than usual from one court date to the next can have advantages. For example, an abuser's actions during the pandemic actively courted the attention of the Commonwealth's Attorney in one case, and Child Protective Services in another. The proof of the pudding in each case—which took longer to resolve than in pre-pandemic docket scheduling—yielded criminal convictions and level one findings of abuse, respectively, meaning iron clad reasons for our clients to have permanent protective orders.

The nature of the cases is always domestic violence, but during the pandemic, our clients' situations have changed in that some report being more isolated from access to a variety of resources. For this reason, we have worked even more diligently than usual with our clients and in concert with our community partners to refer our clients to resources offering support, counseling and shelter. These partners include Total Action against Poverty Domestic Violence Services, Sabrina's Place, Sexual Assault Response & Awareness, Inc. (known by its acronym, SARA), and Turning Point (a secure shelter for domestic violence victims, operated by the Salvation Army). We thank these organizations for all that they do to aid our clients and others in need.

Elizabeth Barbour and Tonia Drewery are attorneys at Legal Aid Society.

EARLY RELEASE OF ROANOKE CITY JAIL INMATES DURING PANDEMIC

BY GARY BOWMAN, ESQ.



The Roanoke City Sheriff, the Commonwealth's Attorney, and the Public Defender's Office have cooperated to reduce the jail population in response to the COVID-19 pandemic. Sixty-one non-violent inmates who were sentenced to jail terms of less than one year have been released early from the Roanoke City Jail because of COVID-19, according to Kristen Borak of the Sheriff's Office. But the state's efforts to reduce the population of state-responsible inmates in local jails during COVID-19 has been much slower.

Offenders convicted and sentenced to incarceration for more than one year are normally transferred from the local jail to a Virginia Department of Corrections ("DOC") facility. During COVID-19, no inmates have been transferred from the Roanoke City Jail to DOC because DOC has suspended the acceptance of new inmates.

The Virginia General Assembly adopted a Budget Amendment during the 2020 veto session that allows a certain category of incarcerated individuals to be considered for discharge from incarceration during the Governor's declared state of emergency. As a result, the DOC adopted a policy entitled *COVID-19 Response: Inmate Early Release Plan*.

Inmate advocates contend that the DOC has not moved expeditiously to implement its written plan. The Commonwealth of Virginia entered into a Settlement Agreement with the plaintiff in *McWhorley v. Northam*, a class action case filed by several inmates in the United States District Court in Richmond. The Settlement Agreement required the Department of Corrections to amend and clarify its *Early Release Plan* to, among other things, "make all reasonable efforts to review eligible individuals" for release "prior to the expiration of the declaration of emergency," clarify what a "viable home plan" means, to prioritize inmates with higher risk of health complications from COVID-19, to notify inmates of the reason why the DOC decided not to release them, to disseminate information about the *Early Release Plan* to inmates including about the right to appeal, to report to the Court and plaintiffs' counsel the number of individuals reviewed for release, the number released, the number denied release, and to continue implementing procedures to mitigate COVID-19 in correctional facilities.

According to Major Mark Sweetenburg of the Roanoke Sheriff's Department, as of August 27, 2020, no DOC-responsible inmates have been released early from the Roanoke City jail since March when the COVID-19 crisis began. So all DOC-responsible non-violent inmates in the Roanoke jail who may be eligible for early release under the DOC *Early Release Plan* have remained incarcerated, while 61 inmates who were the responsibility of the Sheriff have been released during COVID-19.

Gary Bowman is a solo attorney.

MY SUPERLATIVE CASE:

BY D. ADAM MCKELVEY, ESQ.

One of the most memorable cases I ever had wasn't even in my practice area.

I had a woman from the Rescue Mission who had gone with her kids to see family out of state for an extended vacation over the summer, only to come back and find out that her husband/boyfriend had moved in with his new lady friend, terminated their lease, and let the landlord dispose of all their (mother and kids) furniture, clothing, and other property, that he didn't claim and take as his own. He then filed for custody (*pro se*) in order to avoid having to pay child support, while she has the kids, which are his biologically, in the shelter, and later with her family out of state. She remained in the area for the court case, which of course, I found out about last minute.



Facts like that should fire anyone up, so I agreed to represent her, as opposed to just giving her advice, which is what is normally done. After spending a few hours figuring out how to do a custody case, or fooling myself that I had figured it out, and talking to the client, we showed up in Juvenile and Domestic Relations Court for the trial. I had a lot of fun cross examining the "father of the year" about the lease termination and disposal of his kids' furniture, which he had forgotten to mention for some reason on direct. I then had mom explain how she could provide for the kids, and sat down.

It was when the judge wouldn't let me make a closing, after letting the *pro se* father make one, because of the other cases that were scheduled, that I realized the court saw things for what they were. My client not only got full custody (we figured out that the Division of Child Support Enforcement had already entered a support order the mother didn't know about, and there was money waiting for her to get a new start, due to several months of escrowed payments)—she also enjoyed the satisfaction of knowing that she was in the right and having that fact declared in court. I finally got to see what the inside of a JDR courtroom looked like and to even things up for someone who had been wronged.

D. Adam McKelvey, Esq. is an attorney at Crandall and Katt, P.C.

Registration Continues for the
Oct 2, 2020 Virtual CLE Seminar

***How to Make Friends, Influence
People
And Make Money***

CLE Approval pending for 6 hrs. Register on the
RBA Website. Cost is \$60 for RBA members

OUR LOCAL CIRCUIT'S RESPONSE TO THE PANDEMIC.

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The approval process for the resumption of jury trials was “a bit of a challenge.” The Supreme Court did not provide a general framework from which to start. Judge Carson prepared a full draft of the plan and relied on plans across the country, including state and federal plans. He is particularly grateful to Chief U.S. District Court Judge Michael Urbanski and Magistrate Judge Robert Ballou for their “incredible generosity” in sharing their time, resources, and information. He then received input from many other resources, such as the head of the local district for the Virginia Department of Health, Sheriff's deputies, court clerks, and attorneys. Everyone is “anxious to resume [the court's] full functioning,” including jury trials.

Judge Carson also gave “kudos” to the work done by the local Commonwealth's Attorneys, public defenders, and criminal defense attorneys. All of them have managed their caseloads well, such that the judge does not expect a “mound” or “massive backlog” of criminal cases when trials are resumed. Other jurisdictions have struggled with such backlogs, and our local attorneys have managed to avoid that issue, for which the judges are grateful.

Judge Carson appreciates “how much the local bar has bought in” to dealing with the pandemic. Setting an example—such as wearing masks, not shaking hands, and just generally looking out for others—“fails if others do not buy into that, [and it is] reassuring that the [Roanoke] bar has so willingly adapted to all these new conditions and requirements.”

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



In Memoriam

The following are the recent Association losses:

The Honorable Clifford Weckstein

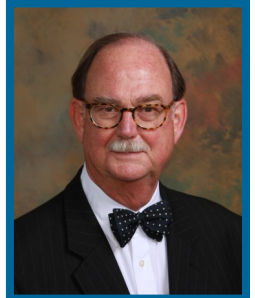
Anne Grove

In grateful recognition of the contributions of Judge Weckstein and Ms. Grove to our profession, and their contributions to our Association, the Association laments their passing.

UPDATE ON VIRGINIA STATE BAR: ACTIONS AND PROGRAMMING

BY EUGENE M. ELLIOTT, JR., ESQ. AND K. BRETT MARSTON, ESQ.

As it has in most organizations, COVID-19 has had an unexpected and real impact on the Virginia State Bar. As a result, many of this year's regular VSB events, such as the Annual Meeting and the Professionalism programs, had to be cancelled. In addition, the VSB experienced a flood inside its offices in Richmond in August. Fortunately, the VSB has been able to maintain regular operations through these situations.



As the 23rd Circuit representatives to Bar Council, and with Gene serving on the Executive Committee, we have been able to stay connected to the VSB, but there have not been in-person meetings since our last update in March. Nonetheless, there are some (but less overall) updates on the VSB that we hope will be helpful to you.



- The VSB's Conference of Local and Specialty Bar Associations awarded the Roanoke Bar Association an Award of Merit for this past year's programming for *You and the Law*.
- Despite not having an Annual Meeting in Virginia Beach, Brian L. Buniva was sworn in as the new President of the VSB for 2020-21. Jay Myerson is now the President-Elect. President Buniva's recent letter to VSB members on various, pending issues is at: https://www.vsb.org/site/news/item/Buniva_ltr
- If you have comments on the use of the word “shall” in the Rules of the Supreme Court of Virginia, please provide those using the following information: https://www.vsb.org/site/news/item/comments_sought_shall
- The VSB is also seeking comments on the potential addition of the “elimination of bias” as a part of the Professional curriculum. If you have comments, please provide by October 4th: https://www.vsb.org/site/news/item/elimination_of_bias_mcle_proposal.
- The VSB Criminal Law Section is seeking nominations for the Carrico Professional Award before December 4, 2020. Information is available at: <https://www.vsb.org/site/sections/criminal/harry-l-carrico-professionalism-award>
- The Bar Council will be having a socially-distant, in-person meeting in October at the Homestead. If there are issues you would like to have raised with the VSB, or if you have input on any pending topics, let us know.
- Lastly, it was great to see some of our local attorneys on the cover of the VSB *Lawyer* recently. It is good to have our 23rd Circuit attorneys involved in and engaged with

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The McCammon Group

is pleased to announce our newest Neutral



James W. Barkley, Esq.

Mediator and Arbitrator

James W. Barkley has recently joined The McCammon Group to serve as a mediator and arbitrator on a full-time basis. He brings more than thirty years of experience as a litigator and many years as a mediator and arbitrator involved in a wide range of commercial disputes including construction, insurance coverage, real estate, and business matters of every description, as well as complex personal injury and property damage matters. Licensed in Virginia, North Carolina, and DC, he has handled matters throughout the country. James now brings his years of experience and achievement to The McCammon Group to continue serving the mediation and arbitration needs of lawyers and litigants in Virginia, DC, Maryland, and beyond.



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For a complete list of our services and Neutrals throughout VA, DC, and MD,
call 888.343.0922 or visit www.McCammonGroup.com

ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



Since returning to Virginia in 2004, fall has been my favorite season. Cooler weather leads to beautiful vistas full of vibrant colors, and the smell of pumpkin spice wafts through the air. Fall of 2020 is going to be especially interesting with the beautiful scenery and weather, combined with COVID-19, home schooling, and a presidential election. All the same, I am so thankful to live in the breathtaking Roanoke valley and to work with so many wonderful people, particularly all the members of the Roanoke legal community whom I get to serve every day. I miss seeing you face-to-face on a regular basis. But I am so thankful for all the interaction I have been having by phone and email.

Current Legal Reference Services

Even though the Roanoke Law Library is not open to the public, I am still working here five days a week, assisting people with legal research and providing other assistance. I have been receiving lots of reference requests from attorneys and legal staff and have been able to provide information by phone and email in almost every instance. I am able to send items from Lexis Advance or to scan materials using our Xerox machine to send as an email attachment. Recently, I set up a workstation for Lexis Advance, which consists of a laptop and a washable keyboard and mouse which I clean after every use. I can wheel the workstation out of the Law Library. So even though I am not able to welcome people into the library space, it is still possible to provide free access to Lexis Advance for anyone who needs it.

Roanoke Public Libraries—Curbside Service

All of the Roanoke Public Libraries are currently providing curbside service. It is possible to search for items in our catalog (www.rvl.info) and request to pick the items up at any Roanoke City library branch, including the Law Library. In addition to having materials from other libraries sent here, I am able to check out legal materials (including Virginia CLE treatises and West's Virginia Practice materials) and bring them out to you in the Courthouse lobby or to your car.

I long for the day when the Roanoke Law Library reopens, and you all are able to return. The City of Roanoke and the Roanoke Public Libraries staff and administration are constantly monitoring the COVID-19 situation and are diligently working on a plan to reopen the Roanoke Public Libraries, while keeping you safe. In the meantime, if you need legal research assistance, please don't hesitate to reach out to me, either by phone or email, and I will do my best to provide you with the information you require. Call the Roanoke Law Library at 540-852-2268 or email me at joseph.klein@roanokeva.gov.

UPDATE ON VIRGINIA STATE BAR: ACTIONS AND PROGRAMMING

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the VSB. If you want to get plugged in to a position with the VSB, let us know and we can point you in the right direction.

As always, if we can be of assistance with any issues with the VSB, or if you have ideas or want to get involved, please let us know.

Gene Elliott is a solo attorney, and Brett Marston is a partner at Gentry Locke.

The McCammon Group presents

Ethical and Effective Advocacy in Mediation

Presenters will be
Hon. Bill Broadhurst (Ret.)
And
James W. Barkley, Esq.

The 2-hour Ethics CLE will be
virtual on October 22, 2020,
between 3:00-5:00 pm.
Register on the RBA Website
No Charge for RBA Members

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.

SOUTHWEST VIRGINIA MEDIATIONS

P.O. Box 576, Salem, Virginia 24153

www.swvmediations.com 540 556 4296 jmitcalfe99@aol.com



ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new members:

Effective July 1, 2020

Active Members

Christopher R. Anderson, Anderson & Friedman

Christina Hubbard, Gentry Locke

Natasha Lewis, Medical Facilities of America, Inc.

Gordon H. Shapiro, Shapiro Law Firm

UPCOMING EVENTS

Roanoke Bar Association Meetings 2020 - 2021

October 13, 2020, virtual

November 10, 2020, virtual

December 8, 2020, virtual

January 12, 2021

February 9, 2021

March 9, 2021

April 13, 2021

May 3, 2021 (Law Day)

June 8, 2021

Go to www.roanokebar.com for more information on all upcoming events.

OFFICERS

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Lori Jones Bentley 767-2041
Secretary-Treasurer

Patrick J. Kenney 982-7721
Past President

Diane Higgs 342-4905
Executive Director

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D. Adam McKelvey 342-2000

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Nancy F. Reynolds 983-7605

Devon R. Slovensky 492-5297

Seth C. Weston 342-5608



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

Email: rba@roanokebar.com