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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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RBA HOLIDAY WISHES

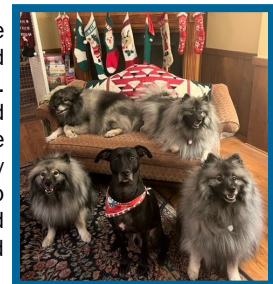
FROM THE *ROANOKE BAR REVIEW* EDITORS AND THE RBA BOARD.

RBA members share what they were grateful for in 2022 and their hopes for 2023.



In 2022 and every year, I am grateful for my three adult children and my daughter-in-law who have all made it home for the holiday. Some traditions remain the same and others have changed as they have become adults. We still do jigsaw puzzles and play games but now there are wine tastings and cheese boards. I am grateful that they are friends, not just siblings, and they are willing to spend time with their parents. I look forward to 2023 and the planned weekend get togethers in January and March and the family beach vacation in August.

Happy Holidays!



Here is hoping 2023 brings happiness to our family and yours whatever that may be.

Diane Higgs

The Clerk's Office of the United States District Court for the Western District of Virginia wishes you all happy holidays and a great year ahead. We hope we have met your required needs over the last year and provided you the resources essential to performing your job to the best of your ability. Thank you for your continued support. We look forward to working with you in the new year.

Laura Austin

I hope all of my friends and colleagues in the Roanoke Bar had a great holiday season. Going back to work is easier when you get to do it in a community like ours based on civility and mutual respect. I am thankful for the Roanoke Bar Association, the quality of the lawyers and the character of the people in our professional community. Happy Holidays to all.

Ray Escobar

I am grateful for practicing law with a great group of attorneys and staff at Woods Rogers Vandeventer Black. I am also grateful for the community projects the RBA undertakes each year. For 2023, I am excited to continue practicing with competent and congenial attorneys on both sides of the cases in which I am involved.

Martha "Mollie" Elder



(Continued on page 6)

PRESIDENT'S CORNER

BY LORI J. BENTLEY, ESQ.



As I write this year-end message, I am so proud of our organization and all of the good things that our members have accomplished so far this year. The Roanoke Law Foundation, in conjunction with the RBA, just concluded the wildly successful return of Santa at the Station in our first post-pandemic visit to the Transportation Museum. We hosted families currently at the Rescue Mission as well as CHIP families and were able to serve over 425 people a pizza dinner, provide photos with Santa, help the children pick presents for their parents and make holiday crafts, and provide face-painting as well! We were pleased to have invaluable volunteer support from many RBA members and CHIP volunteers without whom we could not have handled the large crowd. Many thanks to all of you who offered your time and talents to help with this special event, including Lori Thompson, who once again coordinated a wonderful holiday event for members of our community. Be sure to check out the photographs of the event in this newsletter – those smiles make all the hard work worth it.

The Young Lawyers Committee hosted its second annual Welcome to the Courthouse event in November with a robust turnout of new lawyers learning how to navigate the courthouse and various clerks' offices. Special thanks go to our Young Lawyers Chair, Caley DeGroote, and Judge David Carson for coordinating another fantastic program. Many of these young lawyers have signed up to participate in the RBA's mentorship program. I encourage the more senior members of the RBA to sign up to mentor these eager new attorneys so we can help them navigate practice in our community. In addition, many of our members have been volunteering for the Barrister Books Buddies 2.0 program partnering with Turn the Page to provide books and breakfast to Roanoke City students at Hurt Park and Westside on a monthly basis. I encourage you to consider giving your time to this worthy program as well. To see the joy on a child's face when picking a book to read and take home is both rewarding and heartwarming.

In addition to the RBA's volunteer work in the community, we have had very educational and informative speakers at our monthly meetings including Roanoke City Schools Superintendent Verletta White, Virginia State Bar President Stephanie Grana, Executive Director of the Fralin Biomedical Research Institute Dr. Michael Friedlander, and Washington and Lee School of Law Dean, Melanie Wilson. Our Program Chair, Christen Church, has many other excellent speakers scheduled to speak in the coming months. These speakers are all leaders in our community and are dedicated to serving the community in a positive way, so I hope you will join us at the lunch meeting to hear from them.

As we head into the New Year, please consider to continue the holiday spirit of giving by supporting the RBA's Operation Family Time. This project seeks to improve visitation time for kids in foster care with their biological families at the DSS offices. The visitation rooms are in serious need of upgrades including a video monitoring system, paint, furniture, rugs, storage, toys, books, fans, etc. Our hope is to make these visitation rooms more family-friendly and inviting for the children in need of them.

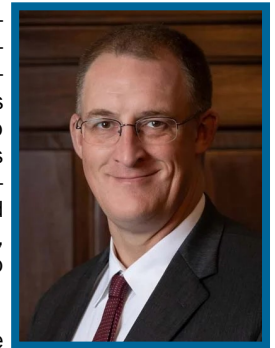
Happy Holidays and Happy New Year!

Lori J. Bentley is a partner at Johnson, Ayers & Matthews, PLC.

GRATIA ET VECTIGALIA

BY ADAM MCKELVEY, ESQ.

Merriam-Webster Dictionary defines "thankful" as "conscious of benefit received". There is also the old saying that "the only sure thing in life is death and taxes" which is attributed to Ben Franklin on the internet, and is thus irrefutably true. As you are considering what you are thankful for, and considering your tax liabilities for 2022, please consider year-end giving to these worthy organizations:



Roanoke Law Foundation: "The Roanoke Law Foundation serves as the public service and philanthropic arm of the Roanoke Bar Association for the purpose of supporting, improving and facilitating the administration of justice; and providing and supporting law-related education. This mission is to be accomplished by raising funds to provide grants and other financial assistance to individuals and other organizations to support law-related educational activities, and to provide scholarships for potential future attorneys, and by providing public service in support of this mission." Email rba@roanokebar.com for more information.

Virginia Law Foundation: "The Virginia Law Foundation has provided more than \$27 million in grants to support projects throughout the Commonwealth that facilitate access to justice, promote an appreciation and understanding of the Rule of Law, and provide law-related education in support of these ideals." Email vlf.info@virginialawfoundation.org for more information.

Legal Aid Society of the Roanoke Valley: "LASRV is a non-profit law firm that provides FREE legal services to more than 1,000 low-income clients a year across the Roanoke and Southern Shenandoah Valleys. Civil legal services include housing, family, employment, consumer debt, and domestic violence." Email info@lasrv.org for more information.

Blue Ridge Legal Services, Inc.: "Blue Ridge Legal Services, Inc. is a nonprofit charitable civil legal aid program providing free legal assistance in civil matters of critical importance to low-income residents of the Shenandoah Valley and Roanoke Valley." Email wpropst@brls.org for more information.

Adam McKelvey practices at Crandall & Katt.

Operation Family Time Project

The Roanoke Bar Association has been asked to assist with a Site Implementation Project headed by the Roanoke City Juvenile and Domestic Relations District Court. This Project is through the National Council of Juvenile and Family Court Judges. The RBA will participate in the area of improving visitation time for kids in foster care with their biological families. Specifically, the upgrading of the three visitation rooms, waiting area, and the observation rooms at DSS. More details on how to donate can be found on the RBA Website at

<http://roanokebar.com/wp-content/uploads/2022/10/Operation-Family-Time-Donation-Form.pdf>

HELLO FROM LAURA AUSTIN, U.S. DISTRICT CLERK OF COURT

BY LAURA AUSTIN, ESQ.



After returning from a recent training conference, Chief United States Probation Officer, Jennifer Williams, brought this quote by Mark Twain to judiciary staff: "The two most important days in your life are the day you're born and the day you find out why." With that quote in mind, Jennifer challenged court and probation staff to ask themselves, "Why do you matter?"

With my move to Roanoke and the Western District of Virginia, I have had an opportunity to meet a lot of new people. People often ask me about myself, my family, and my background. I tell everyone the same thing. I'm originally from Pennsylvania. I grew up in a small rural community and I am still close with the people I grew up with. I'm a daughter, sister, wife, and mother.

I've worked for the federal judiciary for over 21 years. This is my fifth, and hopefully, final court. I'm a lawyer. I graduated from the Dickinson School of Law of the Pennsylvania State University in 1998, the first graduating class since the Dickinson School of Law affiliated with Penn State. I've worked in a small general practice firm, as a pro se law clerk, as a Director of Operations, and a Clerk of Court. I've worked in both district courts and bankruptcy courts.

I love to spend time with my family, and I am preparing myself to be an empty nester next year. I love spending time outdoors, but would be just as happy curled up on the couch reading a good book. I've had the honor and privilege to work with a lot of smart, funny, and generally great people. I've found the people in the Western District of Virginia to be welcoming, kind, and gracious.

But for as many times as I've talked about myself or done an interview since I've been here, I have to wonder, why do I matter? There have been many great clerks in the federal judiciary and there will be many more after me. I understand that as the new person in town, there is a natural curiosity to know more about me. But why do I matter? That's a tough question and one I'm not entirely sure I know the answer to. In fact, I think many of us would struggle to answer that question.

What I can tell you is that I have loved every year I've worked for the federal judiciary. It is truly a wonderful place to work. I've been through a lot of changes with technology and the overall operation of the court. When I started in 2001, there were still paper files and typewriters – none of the CM/ECF, cell phones, and iPads we use now. I've been with the federal judiciary through terrorist attacks, sequestration, government shut-downs, and a global pandemic. Nevertheless, there are many challenges still facing the federal judiciary, including continuing budget cuts, lack of trust in the government, and concerns over judicial and cyber security.

So, why do I matter? Well, I'm determined. I'm determined to keep the federal judiciary running efficiently and effectively. I'm determined to maintain the good reputation and collegiality of the Western District of Virginia. I'm determined to keep the

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ROANOKE LAW LIBRARY: NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN

The Holiday season is here and I for one am extremely excited. I am looking forward to spending time with family and celebrating all of the many blessings in my life. I count my job here at the Roanoke Law Library as one of my chief blessings. To be able to help the public and members of the Roanoke Legal Community access legal information is something that I truly enjoy. I don't get to see as many of you all as I once did when the library was in the Courthouse, but I just want you to know



that I truly appreciate all of you. In the past, my involvement with the legal system was mostly helping people find materials. But as a foster parent for the last several years, I have gotten to see more of the inner workings of the legal system. It has been an eye opener, and I have gotten more of an appreciation for all of the hard work and thoughtful care that you all put into the practice of law. I hope each of you has a very happy holiday!

Lexis and Westlaw

I know that I mention it often, but I wanted to take another opportunity to remind you all that we offer free access to both Westlaw and Lexis here at the Roanoke Law Library. I have several regulars who come in often to use the databases. But I would love to have more of you use them. Both Westlaw and Lexis provide access to statutes and case law for all 50 states as well as federal materials. Additionally, we subscribe to specific Virginia-related databases like West's Virginia Practice series, Lexis' Virginia Forms, and Michie's Jurisprudence. In the last several years, I've become a bit of a virtual reference expert. So I would be glad to help you access information even if you can't make it into the Law Library in person. Please contact me at 540-853-2268 or email me at joseph.klein@roanokeva.gov to discuss using Lexis and/or Westlaw or any other legal information matter.

Virginia Room

The Roanoke Law Library is located in the Virginia Room on the second floor of the Main Library. I hated when we were asked to move out of the Courthouse. That location was fantastic for public access to legal information. But I selfishly love working here in the



Virginia Room, because as a history buff, there is lots of cool stuff to look at. If you are unfamiliar with the Virginia Room collection and are interested in genealogy and especially local history, you should come and check it out. I am a bit of a trail runner. Often when I am out in the woods, I will see something of interest and 9 times out of 10, I am able to get information on these things with a quick search in the Virginia Room. Want to know why the terrain on some parts of the Chestnut Ridge Loop trail is so unusual? You can read about the once active mine that was there in the early 20th century. Want to know if it is McAfee Knob or McAfee's Knob? I found lots of information, but no definitive answer on this question. It appears James McAfee, one of

(Continued on page 8)

SPOTLIGHT ON SERVICE

BY JOHN P. FISHWICK, JR., ESQ.



Attorneys are inherently busy, and I am no different from any other. My calendar is usually booked solid, I have hearings coming up, and pleadings due to be filed. This may be part of the reason why I find the time I spend volunteering to be so fulfilling. It's not that I *have* to volunteer - it's something that I *do* because I *want* to, and I think it makes me a better attorney and a better person.

There are so many ways that an attorney can contribute, both within and outside of the legal world. For example, as a volunteer men's tennis coach at Roanoke College for the 2020-2021 and the 2021-2022 seasons, I not only coached at home and away matches, I had the added bonus, in the Spring of 2021, of watching my son, Jack, play in the Roanoke College number 1 position. Your own children, and/or the children of your neighbor, may be involved in a sport that could use some help. The time I spent coaching certainly was a win-win situation for me.



Covid hit the legal field hard, and my law office was no exception. The number of Covid positive residents in the Roanoke Valley led me volunteer with the Virginia Reserve Medical Corps. On multiple days, I masked up and helped at local vaccination sites. A few people recognized me, but most did not, yet I believe all were happy for my assistance in making their way from the sign-in table to the medical provider holding the vaccine. The Virginia Reserve Medical Corps is always looking for volunteers, and as I learned, you don't need to be a doctor or have a medical background.

If you take a look around Roanoke, you are sure to see numerous organizations headed by volunteer boards. And as a member of the bar, if you haven't yet been asked to serve, you likely will be. Presently, I serve as a Trustee on the Taubman Art Museum Board and as a Board Member of the Roanoke Higher Education Center Foundation (RHEC Foundation). Both groups provide much to the residents of the Roanoke Valley and beyond. On any given day, a person can visit the Taubman without paying an admission fee, while the RHEC Foundation, with a \$50,000.00 grant from AEP, is helping minority students enter into a career or pursue a college degree. I am proud to work with both organizations, and when you are asked to serve, I hope you experience the same sense of fulfillment that I have experienced.

In sum, volunteer work comes in all shapes and sizes, and what works for one of us, may not be right for another. Regardless though, I urge you to find a volunteering opportunity that suits you. It's a great way to balance out the demands and stresses we, as attorneys, experience in our working lives. And if you are lucky, as I have been, you will get to watch one of your children excel at a college sport.

John P. Fishwick, Jr. Esq. is the founder of Fishwick & Associates, PLC.

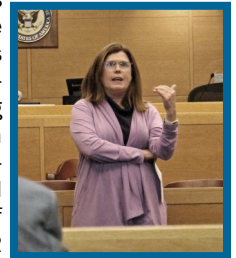
INTRODUCTION TO THE COURT HOUSE WITH JUDGE DAVID CARSON



Judge David Carson

On November 16, 2022, the Roanoke Bar Association and the Roanoke City Courthouse held the second *Introduction to the Courthouse Program* for new attorneys in Roanoke. Judge Carson initiated this program last year with the RBA Young Lawyers Committee in order to provide an opportunity for young lawyers to meet the Chief Judges, Clerks of the Court, and the Sheriff and to educate them about proper court practices. This year the Roanoke City Courthouse welcomed new attorneys, who either passed the Virginia Bar between 2018 to 2022 or are waiting on results, to attend the program.

The goal of this program was to help new attorneys become more knowledgeable about and comfortable with practicing in Roanoke. The program began with Judge Carson inviting all new attorneys to introduce themselves to the Judges. The Sheriff discussed information that the attorneys should be aware of when visiting Roanoke City Jail as well as security precautions when entering the Roanoke City Courthouse. The Chief Judge of each court, along with a Clerk, discussed courtroom decorum and expectations and advice for filing pleadings in each Court. For the Juvenile and Domestic Relations District Court, Chief Judge Friedman explained the unique J&DR docket schedule. Chief Judge Talevi discussed the form pleadings that are typically used and expected in the General District



Judge M. Friedman

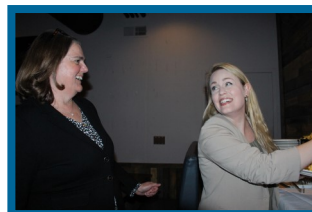


Judge J. Talevi

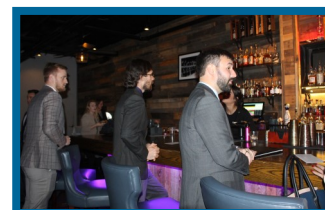
Court. She also discussed the restart of the RBA Mentor - Mentee program starting in January 2023.

Following the program, the young lawyers and Judges were invited to 202 Social House. The social was sponsored by Planet Depo.

The Roanoke Bar Association would like to thank Judge Carson for assisting with organizing this program and the speakers.



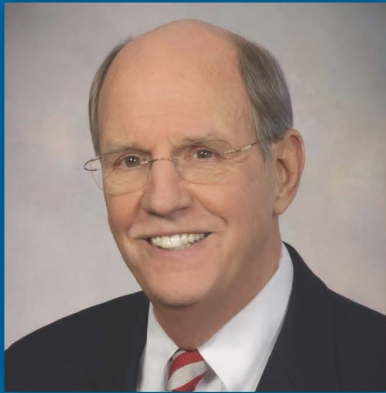
L. Bentley & C. DeGrootte



New attorneys enjoying the social.

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RBA HOLIDAY WISHES

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Wishing you a happy new year and success in all of your endeavors

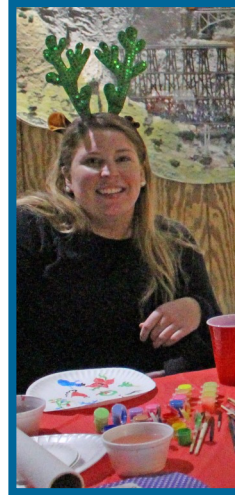
Adam McKelvey

As I reflect on 2022 and look forward to 2023, I am overwhelmed with gratitude for the opportunities that have come and those that lie ahead. 2020 was a difficult year, and the farther we get away, the better, in my opinion. I am so thankful that despite the challenges we've faced, the Roanoke bar continues to be an incredible place to practice law. I have enjoyed every trial, hearing, debate, conference, and after-hours social with so many of you, and I look forward to the ones we have scheduled. If you have any new young lawyers at your firm that you would like to get connected, please feel free to reach out to me – or send them to Olde Salem on any given evening.

Alicha Grubb

I hope everyone found peace and joy throughout the holiday season. As the year winds down, I am grateful professionally and personally for our local community and the Bar. I hope 2023 brings happiness, relaxation, stability, and comfort to all. I look forward to reconnecting with everyone in person. All the best in the New Year!

Chris Dadak



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CIVIL PRACTICE AND PROCEDURE

CHRISTOPHER S. DADAK, ESQ.*



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II. New Legislation

The General Assembly has enacted a fair number of legislative changes with an impact on civil procedure in the Commonwealth. Some, like the expanded Court of Appeals, should continue to generate

legislation in the upcoming years.

A. Supreme Court of Virginia Jurisdiction over Injunctions and Immunity

The General Assembly significantly expanded the jurisdiction of the Court of Appeals of Virginia.¹ Now it is working through some of those changes. In addition, the General Assembly restored original jurisdiction of the Supreme Court of Virginia in a couple of areas.

The General Assembly revised Code of Virginia section 8.01-626 to, once again, provide that the Supreme Court of Virginia reviews appeals of trial court decisions regarding temporary and permanent injunctions.² It removed all references to the court of appeals in that section,³ but kept the same applicable timelines.⁴ "An aggrieved party [needs to] file [the] petition for review with the clerk of the Supreme Court [of Virginia] within 15 days of the circuit court's order."⁵ A three-justice panel still serves for the initial review.⁶ However, the supreme court does have the authority to appoint more than three justices for the review.⁷

The General Assembly also amended section 8.01-675.5 regarding interlocutory appeals of sovereign immunity issues.⁸ It removed the references to the court of appeals and re-inserted references to the supreme court.⁹ A party has fifteen days to file a petition for interlocutory review of a circuit court order granting (or denying) immunity that "would immunize the movant from compulsory participation in the proceeding."¹⁰ However, the interlocutory appeal still does not "stay proceedings in the circuit court unless the circuit court or appellate court orders such a stay."¹¹ A party's failure to file an interlocutory appeal does not preclude appellate review of a later final order.¹²

The courts and parties will adjust to and navigate the practical effects of the changes to the court of appeals. As these changes show, some tinkering will take place to adjust the judicial workload and efficiency.

B. Medical Bills and Statements

The General Assembly has also attempted to streamline the introduction of medical bill and record evidence in general district cases and cases appealed to circuit court. These changes clarify and should make it simpler to introduce such evidence.

The legislature amended Code of Virginia section 8.01-413.01 by adding a definition of "bill" as "any statement of charges, an invoice, or any other form prepared by a health care provider or its agent, or third-party agent, identifying the costs of health care services provided."¹³ It also removed the requirement that the plaintiff must provide testimony "explaining the circumstances surrounding his receipt of the bill."¹⁴

The General Assembly also expanded the language in section 16.1-88.2. It added "statement" to the section and now al-

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ROANOKE LAW LIBRARY: NEWS AND INFORMATION

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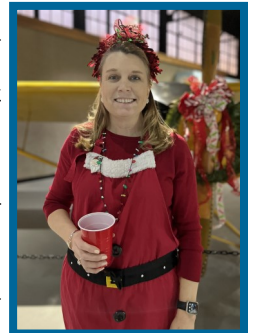
the first settlers here in the 1700s, did own the land that the Knob is located on. So I guess when he was alive it was McAfee's and now it is McAfee. We also have lots of historical maps of the area, City Directories, and the Roanoke Times dating back into the 1800's, and thousands of vertical files on local people, places, and things. If any of these topics interests you, give us a call, or better yet, come in. We would love to show you around.

SANTA AT THE STATION 2022

Santa at the Station, the Roanoke Law Foundation's annual holiday event for local families, finally returned in full effect to the Virginia Transportation Museum for 2022 on Monday night, December 12. This lovely event finally returned to its pre-pandemic glory. More than 400 children and family members participated in the festivities. The guests visited Santa Claus and received a family photograph, chose small gifts from Santa's Sack that they could wrap and give to a parent or guardian, engaged in crafts at Santa's Workshop, and enjoyed snacks distributed at the buffet table staffed by a collection of volunteers, including attorneys and judges. Volunteers painted faces, handed out gifts, applied temporary tattoos, and sang Christmas carols.



Lori Thompson organized the entire event, including coordinating with the Museum and area family support organizations, lining up volunteers, and making all the necessary purchases. We thank Lori for her tireless efforts and significant contribution to our community.



Members of the Association and corporate sponsors who provided generous financial support to the event were

David Bowers

Chic-fil-a

Roy V. Creasy

Mollie Elder

Gene Elliott

Frankl Miller Webb & Moyer

Frith Anderson & Peake

Gentry Locke

Cynthia Graves

Fred Hoffman a/k/a Santa

John Koehler

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CIVIL PRACTICE AND PROCEDURE

(Continued from page 8)

lows for the introduction of a “report or statement” from treating and examining providers.¹⁵ The section allows “either party” to introduce such evidence¹⁶ but, in practical terms, a plaintiff is much more likely to take advantage of this expanded language. It is much harder for a defendant to get a report or statement from a plaintiff’s treating or examining provider.¹⁷ The section still requires that a party give ten days’ notice of its intent to introduce such evidence and the statement must be accompanied by (or contained within) a records custodian affidavit or a sworn declaration confirming that: (1) the provider examined the plaintiff; (2) the “information contained in the report or statement is true and accurate and fully descriptive as to the nature and extent of the injury”; and (3) the identified cost are “true and accurate.”¹⁸

Defense attorneys will have to be prepared to address plaintiffs’ increased use of medical reports and statements in general district cases. These reports or statements are almost certain to mirror expert witness disclosures in circuit court cases and include causation opinions.

C. Cause of Action for Dissemination of Intimate Images

The General Assembly created an entire new cause of action. Individuals now have a civil remedy for the receipt of unwelcome sexually explicit pictures or video.

The legislature defined “[i]ntimate image” as “a photograph, film, video, recording, digital picture, or other visual reproduction of a person 18 years of age or older who is in a state of undress so as to expose the human male or female genitals.”¹⁹ Anyone who digitally receives an intimate image who had not consented to receiving such images or “ha[d] expressly forbidden the receipt of such material” has a trespass claim.²⁰ In addition to injunctive relief, the plaintiff may recover “actual damages or \$500, whichever is greater, in addition to reasonable attorney fees and costs.”²¹ “Venue for an action under this section may lie in the jurisdiction where the intimate image is transmitted from or where the intimate image is received or possessed by the plaintiff.”²²

D. Promises Not to Plead Statute of Limitations

Drafting an enforceable promise not to plead the statute of limitations as a defense is now simpler. The General Assembly pared down the requirements for such an agreement.

The legislature made several amendments to Code of Virginia section 8.01-232. First, it clarified that the promise must be “made to avoid or defer litigation pending settlement of any cause of action that has accrued in favor of the promisee against the promisor.”²³ It also removed the requirement that the written promise “not [be] made contemporaneously with any other contract.”²⁴ It did require that the promise be “signed by the promisor or his agent.”²⁵ The beneficiary of this promise must “commence[] an action asserting such cause of action within the earlier of (a) the applicable limitations period running from the date the written promise is made or (b) any shorter time as may be provided in the written promise.”²⁶

E. Nonsuits Following Appeal from General District Court

The General Assembly clarified that plaintiffs may nonsuit general district appeals pending in circuit court. It amended Code of Virginia section 8.01-380 to state that “a party may suffer a nonsuit as otherwise set forth in this section, and such nonsuit shall annul the judgment of the general district court.”²⁷ Of course, the party must first “timely perfect[] . . . an appeal from a

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SANTA AT THE STATION 2022

(Continued from page 8)

Kevin Hurley Photography

Olivia Langhorn

Stephen Kennedy

Easter Moses

Kathleen & Kevin Oddo

Lee & Susan Osborne

Raleigh Court Presbyterian Church Choir & friends

Brandy Rapp

Roanoke Bar Association

Roanoke Law Foundation

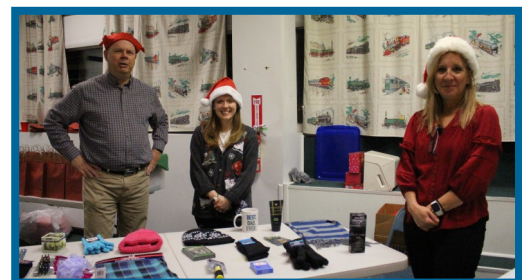
Spilman Thomas & Battle

The Virginia Transportation Museum

Mark & Lori Thompson

Woods Rogers Vandeventer Black

Thank you to all of the sponsors and volunteers who provided so much enjoyment for the guests, and helped put the community in the holiday spirit!



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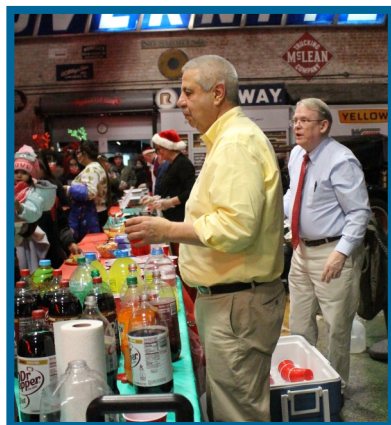
HELLO FROM LAURA AUSTIN, U.S. DISTRICT CLERK OF COURT

(Continued from page 3)

federal judiciary a great place to work. I'm determined to do the best I possibly can with the resources we have. I'm determined to meet the needs of the public, while being a good steward of the government's money. With so much uncertainty in the world, maybe that's why I matter. I'm determined to make my small piece of the world a better place, and I hope we can do that together.

SANTA AT THE STATION 2022

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CIVIL PRACTICE AND PROCEDURE

(Continued from page 9)

judgment of a general district court.”²⁸

III. RULES OF THE SUPREME COURT OF VIRGINIA

There have been several changes to the Rules of the Supreme Court of Virginia over the past year.

A. Final Pre-Trial Conference

Trial attorneys may be familiar with formal pretrial conferences in federal court. However, they are not always as consistent in state court. The Rules have been amended to address that, at least in more complex cases. Rule 1:19 now requires that in cases “set for trial for five days or more, upon request of any counsel of record, made at least 45 days before trial, the court *must schedule* a final pretrial conference within an appropriate time before commencement of trial.”²⁹ The Rule does give the court discretion to choose whether the conference is in person, via video, or by conference call.³⁰

B. Rule 4:5(b)(6) Depositions

The Supreme Court of Virginia clarified the Rule known as the corporate representative deposition. With the addition of the language of “or other entity”, Rule 4:5(b)(6) applies to any organization, not including individual people.³¹ The Rule now requires a meet and confer.³² “Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.”³³ If serving a nonparty, one must notify the “organization of its duty to make this designation and to confer with the serving party.”³⁴ Finally, one must not only “designate with reasonable particularity the matters on which examination is requested” but also “describe” it.³⁵

C. Limited Scope Appearances

The Supreme Court of Virginia had previously authorized a pilot program regarding limited scope appearances by attorneys, generally from legal aid organizations or acting pro bono.³⁶ At minimum, the attorney had to file a notice “stating that the attorney and the party have a written agreement that the attorney will make a limited scope appearance in such action” and “specifying the matters, hearings, or issues on which the attorney will appear for the party.”³⁷ The supreme court has not changed the substance of this program. It has extended it through December 31, 2023, and allows any limited scope appearance that starts prior to that date to “be completed in accordance with” the Rule.³⁸

D. Extensions for Good Cause

The Supreme Court of Virginia revised appellate deadlines to be consistent with one another. In order to receive extensions of time, parties must file motions for good cause. The court amended Rules 5:5, 5:17, and 5A:3 by replacing language referencing the “ends of justice” and inserting “on motion for good cause shown.”³⁹ This phrase was also added to Rules 5:24 and 5A:17.⁴⁰ These amendments cover deadlines for filing notice of appeal, a petition for review, a petition for hearing, filing the appeal bond or letter of credit, and a petition for rehearing en banc.⁴¹

E. Recovery of Appellate Attorney Fees

A prevailing appellee who had obtained a judgment for fees or costs in circuit court now has a clear path to recover their appellate attorney fees. Within thirty days of the final appellate judgment, the prevailing appellee must “make application in the circuit court in which judgment was entered for attorney fees, costs or both incurred on appeal.”⁴² It “may be made in the

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CIVIL PRACTICE AND PROCEDURE

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same case from which the appeal was taken, which case will be reinstated on the circuit court docket upon the filing of the application.”⁴³ For the purposes of this rule, a “‘final appellate judgment’ . . . means the issuance of the mandate by the appellate court or, in cases in which no mandate issues, the final judgment or order of the appellate court disposing of the matter.”⁴⁴ This rule does not preclude “the exercise of any other right or remedy for the recovery of attorney fees or costs, by separate suit or action, or otherwise.”⁴⁵

* Principal, Guynn, Waddell, Carroll, & Lockaby, P.C., Salem, Virginia. J.D., 2012, University of Richmond School of Law; B.A., 2008, Washington and Lee University.

1. 2021 Va. Acts, Spec. Sess. I, ch. 489 (codified at VA CODE ANN. §§ 8.01-675.5, -675.6 (Cum. Supp. 2021)).

2. 2022 Va. Acts ch. 307 (codified as amended at VA. CODE ANN. § 8.01-626 (Cum. Supp. 2022)).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. 2022 Va. Acts ch 307 (codified as amended at VA. CODE ANN. § 8.01-675.5 (Cum. Supp. 2022)).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. 2022 Va. Acts ch. 470 (codified as amended at VA. CODE ANN. § 8.01-413.01 (Cum. Supp. 2022)).

14. *Id.*

15. 2022 Va. Acts ch. 470 (codified as amended at VA. CODE ANN. § 16.1-88.2 (Cum. Supp. 2022)).

16. VA. CODE ANN. § 16.1-882 (Cum. Supp. 2022).

17. Joseph Regalia & V. Andrew Cass, *Navigating the Law of Defense Counsel Ex Parte Interviews of Treating Physicians*, 31 J. CONTEMP. HEALTH L. & POL’Y 35, 38 (2015).

18. 2022 Va. Acts ch. 470.

19. 2022 Va. Acts ch. 523, (codified at VA. CODE ANN. § 8.01-46.2. (Cum. Supp. 2022)).

20. VA. CODE ANN. § 8.01-46.2(B) (Cum. Supp. 2022).

21. *Id.*

22. *Id.* § 8.01-46.2(D) (Cum. Supp. 2022).

23. 2022 Va. Acts ch. 477 (codified as amended at VA. CODE ANN. § 8.01-232 (Cum. Supp. 2022)).

24. *Id.*

25. *Id.*

26. *Id.*

27. 2022 Va. Acts ch. 206 (codified as amended at VA. CODE ANN. § 8.01-380 (Cum. Supp. 2022)).

28. *Id.*

29. VA. SUP. CT. R. 1:19 (2022) (emphasis added).

30. *Id.*

31. VA. SUP. CT. R. 4:5(b)(6) (2022).

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. VA. SUP. CT. R.1:5(f) (2022).

37. *Id.*

38. *Id.*

39. Order Amending Rules 5:5, 5:17, 5:24, 5A:3, and 5A:17, Rules of Supreme Court of Virginia (May 2, 2022) (effective May 2, 2022),

(Continued from below)

https://www.vacourts.gov/courts/scv/amendments/rules_5_5_5_17_5_24_5a_3_and_5a_17.pdf [https://perma.cc/4KSL-CPX6]; VA. SUP. CT. R. 5:5, 5:17, 5A:3 (2021) (amended 2022) (including references to “ends of justice”), <https://web.archive.org/web/20211209135539/https://www.vacourts.gov/courts/scv/rulesofcourt.pdf> [https://perma.cc/EJ77-6MYP].

40. Order Amending Rules 5:5, 5:17, 5:24, 5A:3, and 5A:17, *supra* note 173.

41. VA. SUP. CT. R. 5:5, 5:17, 5:24, 5A:3, 5A:17 (2022).

42. VA. SUP. CT. R. 1:1A(a) (2022).

43. *Id.*

44. *Id.*

45. VA. SUP. CT. R. 1:1A(b) (2022).

Save the Date

CLE Seminar, February 3, 2023

9:00 am, virtually

“Let’s Talk Tech”

Presented by Brandon S. Osterbind, Chair, Virginia State Bar Special Committee on Technology and the Future Practice of Law. This will be a 1 hour CLE on “BRINGING LAWYERS AND THE INTERNET TOGETHER IN AN ETHICAL AND PRACTICAL WAY”. Free for RBA members

Bench Bar Conference

Friday, February 24, 2023

Roanoke Higher Education Center

Noon until 3:00 pm.

Presenter will be Prescott L. Prince, retired Assistant Bar Counsel with the Virginia State Bar. Additional details will be available soon.

(Continued above)

ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new members:

Active Members

Effective December 13, 2022

W. Hunter Hartley,
Legal Aid Society
Creg Ryan Hupp,
Commonwealth's Attorney
Kimberly Beamer,
Joyce & Bary Law PLC

UPCOMING EVENTS

Roanoke Bar Association Meetings 2022 - 2023

September 13, 2022
October 11, 2022
November 8, 2022
December 13, 2022
January 10, 2023
February 14, 2023
March 14, 2023
April 11, 2023
May 1, 2023 (Law Day)
June 13, 2023

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

OFFICERS

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Christen C. Church President-Elect	983-9390
Amy H. Geddes Secretary-Treasurer	989-0000
Macel H. Janoschka Past President	242-1210
Diane Higgs Executive Director	342-4905

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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