

ROANOKE BAR REVIEW

Roanoke Bar Review March 2015

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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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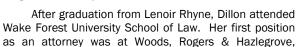
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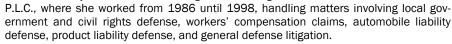
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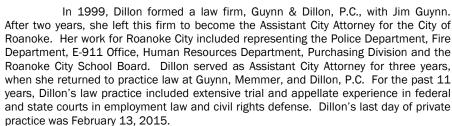
UNITED STATES DISTRICT JUDGE ELIZABETH K. DILLON TAKES THE BENCH

BY DIANE M. CASOLA, ESQ.

On February 16, 2015, Elizabeth Kay Dillon began her work as a United States District Judge in the United States District Court for the Western District of Virginia. However, her road to the bench really began in college when her Lenoir Rhyne College professor, the late Dr. Lowell Ashman, first mentioned the law to her as a possible career. He then helped her find a part-time job with a law firm. That college internship at Tate, Young, Morphis, Bogle & Bach in Hickory, North Carolina, was the beginning of her journey to the bench.







Dillon has held a myriad of positions with various Bar associations. Most notably, she has served on the VSB Clients' Protection Fund Board and the Board of Directors for the Local Government Attorneys of Virginia, Inc., was President of the Roanoke Bar Association, and was President of the Virginia Women Attorneys Association.

Approximately one year ago, Dillon submitted application materials to the Virginia State Bar, which was conducting in-person interviews of candidates for the judicial vacancy in the United States District Court for the Western District of Virginia. On April 22, 2014, Dillon interviewed with senior staff members for Senators Mark Warner and Timothy Kaine. Less than a month later, she interviewed with the two Senators in Washington, D.C. On June 9, 2014, Senator Kaine notified Dillon by phone that her name would be sent to the White House for consideration for the judicial positon. On September 18, 2014, President Barack Obama submitted Dillon's nomination to the U.S. Senate. Dillon appeared before the U.S. Senate Committee on Judiciary on November 13, 2014, and she was confirmed by the Senate on December 16, 2014. Judge Dillon anticipates that she will begin hearing cases in early March, 2015.

Diane Casola serves as English Department Chair and Pre-AP English Instructor at Patrick Henry High School in Roanoke



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PRESIDENT'S CORNER

BY RICHARD C. MAXWELL, ESQ., PRESIDENT



Your Roanoke Bar Association continues to be active. On January 13, the Association endorsed Hilary Griffith to fill the vacancy in the Juvenile and Domestic Relations Court resulting from the announced retirement of Judge Philip Trompeter. By the time you read this, another successful Bench Bar Conference featuring local state and federal judges will have been presented under the leadership of Tommy Strelka. I hope that you

were able to attend. We will have also received nominations for the Bo Rogers Lifetime Achievement Award and the Young Lawyer of the Year Award.

Here is a list of upcoming events:

At our monthly lunch meeting on March 10, Virginia Attorney General, Mark Herring, will speak and a memorial resolution for Judge Clarke will be presented by Judge Ciaffone.

At our April 14 lunch meeting, Judge Trompeter will be our featured speaker and will give his thoughts on "A Life Well Judged." We will also have a memorial resolution for Judge Turk presented by Judge Conrad.

For our Law Day program on May 1, Nick Leitch has arranged for our legislators to appear and talk about this past session of the General Assembly.

Heather Ferguson is working on our CLE presentation for the Spring which will include an ethics program by Tom Spahn, hosted live by Nick Leitch. Be on the lookout for an announcement of the date of the CLE program.

The second session of the Rule of Law Program in the Roanoke County Middle Schools is March 24. If you have not already participated in the Rule of Law Program, give it a try. I think I get as much out of it as the students. There are 24 spots to fill.

Please submit your volunteer hours to Cathy Caddy by March 31 so that you may participate in the RBA Volunteer Service Awards Program. The RBA wants to thank you and to let the community know how you all volunteer your time and talents to make the Roanoke Valley a better place. You make a difference.

On April 21 at the Sheraton Roanoke Hotel and Conference Center, the You and The Law – Senior Symposium will be presented. My thanks go to Tom Miller for coordinating this program, which will focus on estate planning, the basics of Medicare, and scam prevention. Presenting at this Symposium are Suzanne Bednar of SunTrust Bank; attorneys Carter Brothers, Anne Edenfield, Jennie Waering, and Tom Miller; and Chris Perkins, Roanoke City Chief of Police.

I look forward to seeing you at one of our monthly lunches or at one of the other RBA presentations.

Rich Maxwell is a Partner at Woods Rogers

RULE OF LAW

March 24, 2015

Sign up at <u>www.roanokebar.com</u>

VIEWS FROM THE BENCH: JUDGE J. CHRISTOPHER CLEMENS

BY JUSTIN E. SIMMONS, ESQ

Few lawyers can say that they're scratch golfers. Fewer still can say that they've won a jury trial on the back nine. Judge Clemens may be the only one who can (honestly) say both.

Some years ago, while still in private practice, Judge Clemens was representing "John Doe" in a skid-mark case in Franklin County Circuit Court. On the morning of the third and last day of trial, counsel made their closing arguments, and the case was submitted to the jury at around 9:30. Judge Clemens hoped that deliberations wouldn't take too long because he had the annual Roanoke



College Alumni Golf Tournament starting at 1 o'clock that afternoon.

Recently retired Judge W. N. Alexander II, who was presiding over the trial, and opposing counsel all knew about the tournament and were giving Judge Clemens a hard time about it as they waited for the jury to return. Finally, as the clock ticked ever closer to 1 o'clock, Judge Alexander asked Judge Clemens whether he planned to leave early. When Judge Clemens replied that he'd never hear the end of it if he did, Judge Alexander told him to go. So after clearing it with his client, Judge Clemens left for the tournament, making it just before tee-off. After the jury returned a verdict against the named defendant but not John Doe, Judge Alexander called Judge Clemens, who was still on the course, to tell him that he was "the only lawyer [Judge Alexander had] ever had win a jury trial who wasn't here when the jury got back."

Athletics have always been a big part of Judge Clemens's life. Growing up in Salem, he played almost every major sport, going from one to another as the seasons changed. At Salem High School, he was on the baseball, basketball, tennis, and golf teams. After graduating, he went to Virginia Tech to pitch. Unfortunately, he suffered a shoulder injury his freshman year and so was never able to play. During his sophomore year, he was asked to play basketball at Roanoke College. By the time he transferred, though, the team had found a better point guard and thus no longer needed him. But all was not lost: Judge Clemens got a spot on the golf team.

He did not set out to follow his dad, now-retired Judge G. O. Clemens, into the law. But during his junior year, Judge Clemens decided that it would be a good fit. So after graduating, he enrolled at the University of Richmond School of Law. As a result of taking an extra course here and there, he was able to finish in just two and a half years and sit for the February bar. He then went to work for Gentry, Locke, Rakes & Moore, LLP, in Roanoke, starting a month or so before most of his classmates even graduated.

After about five years, Judge Clemens left Gentry Locke to start a firm with Jim Guynn. A couple of years later, Judge Clemens and his dad, who had recently retired from the bench, decided to form their own firm in Salem. They practiced together for the next 11 years until Judge Clemens went on the bench. Judge Clemens's dad focused on trusts and estates, while Judge Clemens did a little bit of everything else. "It was great," he says.

Judge Clemens has always taken a lot of pride in Salem. And in 2004, he decided to get involved in local politics, running for and winning a seat on the Salem City Council. At 42, he was the youngest person ever to be elected. "It was a nice experience," he says. "I felt like I was involved in trying to help the city get into the 21st century and get my age group to get involved." When he became a judge, he had to resign his seat, and he has missed it.

During his years in private practice, Judge Clemens did not have any big aspirations of one day becoming a judge like his dad. But when Judge Roanoke Bar Review Page 3

RBA ENDORSES GRIFFITH FOR J&D COURT VACANCY

On January 13, 2015, the Roanoke Bar Association endorsed Salem attorney Hilary Davis Griffith as a candidate to fill a vacancy on the Juvenile & Domestic Relations Court bench in the 23rd Judicial Circuit. The endorsement took place following a secret-ballot vote at the Shenandoah Club prior to the Association's January meeting.

The Association endorsed Ms. Griffith to fill the vacancy created by the retirement of Judge Phillip Trompeter in January 2015.

Following Ms. Griffith's endorsement, the General Assembly has acted to fill not only the vacancy created by Judge Trompeter's retirement, but also by funding a second J&DR Court judgeship. On February 25, 2015, the General Assembly announced the appointment of Ms. Griffith to fill one vacancy, and also the appointment of Roanoke County attorney John Weber III to fill the second vacancy. The two appointments bring the total J&DR Court judgeships in the 23rd Circuit to five, matching the allotment suggested by the General Assembly's judicial case load survey. The terms for Ms. Griffith and Mr. Weber will both begin on July 1, 2015.



Hilary Griffith



John Weber

MYOUANDTHE LAW

The Roanoke Law Foundation will present its annual **You and the Law** program at the Sheraton Roanoke Hotel & Conference Center on April 21, 2015, from 1:00 p.m. to 4:30 p.m. This year's theme, Senior Symposium, will address the following topics:

- Ten Things You Need to Know About Estate Planning
- The A's, B's, C's & D's of Medicare
- Scams: Be Alert, Be Aware, Be Proactive

The seminar is FREE to the public and we encourage you to pass this information along to your clients, friends and family. More information, a program agenda, and videos from previous **You and the Law** seminars are available on the RBA web site at www.roanokebar.com under Public Resources.

FRANK W. ROGERS, III, SWORN IN AS NEW JUVENILE & DOMESTIC RELATIONS COURT JUDGE

On Friday, December 29, 2014, Roanoke attorney Frank W. Rogers, III was sworn in as a judge in the Twenty-Third Judicial Circuit's Juvenile & Domestic Relations Court.

Judge Rogers attended Washington & Lee University for both his undergraduate degree and his law degree. He received his undergraduate degree in 1979, and graduated from the law school in 1984. Prior to becoming a judge, Judge Rogers was a partner at Mundy Rogers & Associates, LLP in Roanoke.



Judge Rogers' oath was administered by the Honorable Leisa K. Ciaffone, Chief Judge of the J&DR Court, and his Commission was read by G. Michael Pace. The investiture ceremony also featured remarks from the Honorable James Swanson, Chief Judge of the Twenty-Third Circuit's Circuit Court.

Judge Rogers began hearing cases on January 1, 2015, and will serve a six-year term expiring on December 31, 2020.



Judge Rogers is sworn in by The Hon. Leisa Ciaffone

IN MEMORIAM

The following are the Association's losses since December 1, 2014:

The Honorable George W. Harris, Jr. December 20, 1936 - January 23, 2015)

In grateful recognition of Judge Harris' contributions to our profession, and his contribution to our Association, the Association laments his passing.

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BENCH BAR CONFERENCE 2015

On February 27, 2015, the Roanoke Bar Association hosted the Bench Bar Conference at the Center for Higher Education in Roanoke. Due to a high turnout, registration had to be capped at the maximum capacity of ninety-six lawyers and judges attending the event.

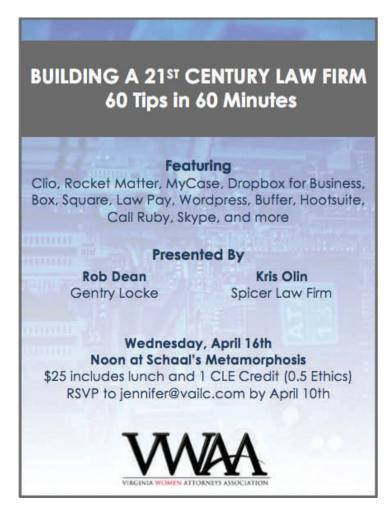
During lunch, Judge David Carson and attorneys Jay O'Keeffe, Carrie Harris, Patrick Kenney, Patice Holland, and Scott Webber performed Something Unethical Happened on the Way to the Jury Verdict, a farce of a jury trial. Tommy Strelka moderated this production, spotting and addressing the ethical issues that arose as the trial participants worked through the various stages of the case.

The State of the Judiciary addresses then proceeded. Judge Glen Conrad appeared on behalf of the U.S. District Court, Western District of Virginia. Judge James Swanson spoke on behalf of the Circuit Court. Judge Christopher Clemens described the state of the General District Court and its needs, and Judge Leisa Ciaffone appeared on behalf of the Juvenile and Domestic Relations Court. Judge Conrad provided details regarding the construction of the Poff building, the decreased number of civil filings in the Western District, and the high number of trials completed, compared with other jurisdictions. Judge Swanson provided information regarding the new electronic filing requirements. Judge Christopher Clemens once again attempted to steal the show with a series of humorous observances regarding the General District Court, including the top ten names for the new shower in the Roanoke City Court House and the need for a judge with a moustache in the General District Court. Judge Ciaffone remarked how excited she and other newly appointed judges were to serve on the Juvenile and Domestic Relations Court. Her colleague, Judge Onzlee Ware, ruminated on his experiences as a new judge and as a practicing trial attorney.

The Conference enjoyed a light mood, and multiple judges commented upon the congeniality and collegiality of our local bar and judiciary. Judge Clifford Weckstein remarked that it was rare in other jurisdictions for a local bar and state judiciary to interact so frequently with the federal judiciary, a common occurrence in the 23rd Circuit. Tommy Strelka, Chair of the Young Lawyers Committee ("YLC") of the RBA, served as emcee for the event, which the YLC organized and executed with the assistance of Cathy Caddy of the RBA and Melinda Childress-Dearing, Monica Guilliams and Cindy Krcmaric from the RVLSA. Attendees of the Conference can apply for two hours of live CLE credit, including one hour of ethics credit.



Something Unethical Happened on the Way to the Jury Verdict, starring Patice Holland, Scott Webber, Hon. David Carson, Patrick Kenney, Jay O'Keeffe and Carrie Harris.



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ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY JOSEPH KLEIN, LAW LIBRARIAN



It seems impossible but 2015 is here, even though I still seem to sign 2014 on every document. It also seems impossible that I have been with the Roanoke Law Library for 10 years. It has been an event-filled 10 years, and I have enjoyed working here very much. One of the biggest reasons for that is that the members of the Roanoke legal community, especially the Roanoke Bar Association, have been wonderful to work with. I look forward to many more

years serving the legal research needs of the Roanoke valley. Please do not hesitate to contact me with any questions or comments about how I can do a better job of helping you.

Spotlight on the Collection—Federal Resources

A bulk of resources and money that we spend here at the Roanoke Law Library is to keep the Virginia legal collection as up to date and as comprehensive as possible, since a majority of the people who use our facility are researching Virginia legal issues. I would also like to remind you, however, that we have some powerful resources for federal legal research as well. Most importantly, we have an up-to-date version of the United States Code Service, which provides current federal statutes, along with commentary and annotations from the editors at Lexis. We also receive the United States Code Congressional and Administrative News, a publication that includes every piece of federal legislation that is signed into law. USSCAN is an invaluable resource for basic tracking of federal legislative history.

In addition, our Westlaw subscription includes many resources for federal legal research. It provides access to the United States Code Annotated, West's version of the annotated United States Code, as well as access to historic versions of the Code back to 1990. Our Westlaw subscription also provides access to Wright and Miller's Federal Practice and Procedures, which is essential for comprehensively researching most federal issues. Using our Westlaw, you can also access Federal Jury Practice and Instruction and West's Federal Forms, as well as subject specific resources, like Norton Bankruptcy Law and Practice. Westlaw also provides access to most federal case law decisions, and its Keycite feature can help you determine if those cases are still legally valid. Last, but not least, Westlaw gives you access to powerful, general legal research tools, like American Jurisprudence and the American Law Reports.

If you would like assistance with any of these federal resources or any of the many research materials available at the Roanoke Law Library, please give me a call at 853-2268.

Zinio Service

I know I have written about it in the past, but I wanted to quickly remind everyone about a wonderful resource to which we recently subscribed: Zinio. Using Zinio on your computer, tablet, or phone, you can download and read over 100 popular magazine titles, using your Roanoke Valley Library card. Go to URL https://www.rbdigital.com/roanokecityva/ to see a list of all titles that are available. Click "create a new account" in the upper right corner, and then enter your library card bar code number to set up an account. When you download the Zinio app on your phone or tablet, you will also have to set up and account for the app, but you can use the same password for both accounts to make things easy. I enthusiastically recommend Zinio. I regularly use this wonderful service and am happy to share it with you.

ROANOKE LAW FOUNDATION 2014 CLASS OF FELLOWS INDUCTED

BY STEPHEN W. LEMON, ESQ.

The Roanoke Law Foundation inducted 11 members as Fellows of the Foundation at a reception on January 21, 2015. The new follows are the third class inducted since the program started in 2012, bringing the total number of Fellows to 44.

The Fellows program is governed by the Foundation's Trust agreement and is limited to a maximum of ten percent of the active and associate members of the Roanoke Bar Association.



The Roanoke Law Foundation was founded in 1997 as the philanthropic arm of the Roanoke Bar Association. Since its founding, the Foundation has funded over \$150,000 in scholarships and grants.

The Fellows Program has received over \$67,000 in funds to date, with additional funds pledged in future years. These funds provide invaluable assistance in support of the Foundation's Scholarships, Grants, the Santa at the Station program for disadvantaged youth, and the *You and the Law* programs.

Stephen Lemon is the past president of the Roanoke Bar Association



Roanoke Law Foundation 2014 Fellows Class: Lee Osborne, Stephen Lemon, Linda Frith, Bill Hopkins, George Vogel, and Hon. Joe Bounds. Not pictured: Frank Friedman, Talfourd Kemper, Heman Marshall, Melissa Robinson and Bruce Stockburger.

CHECK YOUR EMAIL ADDRESS!

Our new email system has returned several emails as undeliverable; however, these are emails that members have provided. Please check your email address on the RBA website (www.roanokebar.com) under Member Resources. If you do not know the password or if you need to change your email address, please send an email to roanokebar@earthlink.net.

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The McCammon Group

is pleased to announce our newest Neutral

THOMAS E. ALBRO, ESQ. HON. WILLIAM N. ALEXANDER, II (RET.) HON. MICHAEL C. ALLEN (RET.) HON. JOANNE F. ALPER (RET.) HON. PAMELA S. BASKERVILL (RET.) HON. J. MARTIN BASS (RET.) HON. B. WAUGH CRIGLER (RET.) HON. JEAN W. CUNNINGHAM HON. DENNIS W. DOHNAL (RET.) JOHN G. DOUGLASS, ESQ. CHESHIRE I'ANSON EVELEIGH, ESQ. HON. JOHANNA L. FITZPATRICK (RET.) HON. JEROME B. FRIEDMAN (RET.) RICHARD S. GLASSER, ESQ. ROBERT J. GREY, JR., ESQ. HON. E. PRESTON GRISSOM (RET.) **ROBERT T. HALL, ESQ. GRAYSON P. HANES, ESQ.** MICHAEL E. HARMAN, ESQ. SUSAN MASSIE HICKS, ESQ. HON. THOMAS B. HOOVER (RET.) HON. THOMAS D. HORNE (RET.) BARBARA L. HULBURT, ESQ. JOHN A.C. KEITH, ESQ.

HON. DONALD H. KENT (RET.)



Hon. William N. Alexander, II (Ret.)
Retired Judge, Franklin County Circuit Court

The Honorable William N. Alexander, II, retired recently after thirty years of distinguished judicial service. Judge Alexander served for ten years on the 22nd Judicial District Court before moving to the Circuit Court, where he served for twenty years, including two terms as Chief Judge. Prior to his appointment to the bench, he was elected as Commonwealth's Attorney for Franklin County for three terms. He also served as Town Attorney for Rocky Mount and enjoyed a successful private law practice. A leader on the bench and in the community, Judge Alexander has served on various boards and committees, including the Judicial Council of Virginia, the Executive Committee of the Judicial Conference of Virginia, and the Editorial Board of the Virginia Benchbook for Judges and Lawyers. Judge Alexander 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 and beyond.



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HON. ARTHUR B. VIEREGG (RET.)

HON. ROBERT W. WOOLDRIDGE, JR. (RET.)

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VIEWS FROM THE BENCH

(Continued from page 2)

Julian Raney's retirement opened up a spot on the 23rd Judicial Circuit's General District Court at the end of 2007, Judge Clemens decided to pursue it. After he won the endorsements of both the Roanoke City and Salem/Roanoke County bar associations—quite a rare feat—the circuit-court judges appointed him to the bench in 2008. (The General Assembly elected him during the next session in 2009.) He sits primarily in Roanoke City.

After work, Judge Clemens often trades the courtroom for the basketball court. He not only plays on his church's team, but also coaches his three sons' city teams with the help of his wife, Meg. Judge Clemens still plays golf as well, and he is excited to play with his oldest son, who is on the Salem High School golf team, this summer.

Judge Clemens "love[s] being a judge," and his seven years on the bench have taught him a lot. But the two things that stick out most in his mind are patience and gratitude. "No one will ever master patience," he says, but "I'm learning." He is also learning that "all of us who are working for the system are very lucky not to be in the system. . . . There are a lot of people who are not necessarily bad people, but they're never going to be in a situation that allows them to succeed. And if you're not succeeding, then you're going to make bad decisions."

When Judge Clemens hears cases, whether criminal or civil, he attempts "to give people a chance . . . to say their piece" or "to put their position[s] out there." He also tries to explain the reasons for his decision: "I'm hoping that, for 99% of the people, if you let them say what they want to say, and you speak to them the way you'd want to be spoken to, hopefully they're going to leave saying, 'You know, I disagree with that guy, but he explained why he did what he did, and I understand the logic of it.'" Whether they win or lose, Judge Clemens wants the parties to "understand why he did what he did."

He thinks that the lawyers who appear before him are on the whole doing a great job. But he would like to see more communication, especially in criminal cases, before trial. He believes that if the lawyers were able to talk more before coming to court, then they would be able to "narrow the issues and reduce the amount unknown for everybody." He would also like to see more attorneys have the confidence to "call two witnesses instead of five" and "ask five good questions instead of 20 that may not help their case." "Efficiency and preparedness are really important," he says, because the district-court judges "are limited in how much time they can really give people. So it's up to the lawyers to be the sort of gatekeepers . . . on what is really pertinent and what's not."

As for newer lawyers, Judge Clemens wishes "that partners would allow associates to come to court more often to watch other lawyers in action." He thinks that "that would be much more valuable than reading cases," because they would see not only what to do, but also what not to do. "[W]hen you see a lawyer do something that

makes you say, 'He looks like an idiot,' that's invaluable because you know I'm not going to do that anymore," says Judge Clemens. He also believes that "it is a good idea to go see the judges so you know what they do like and what they don't like."

Judge Clemens encourages new lawyers to introduce themselves before their cases and invites them to stop by his chambers afterward. And who knows, he may even be up for a friendly round of golf or game of basketball.



Justin Simmons is an Associate with Johnson, Ayers & Matthews, PLC





Would like to welcome New Partner **Seth C. Weston**

& New Associate

David A. Robinson



With offices located in:

Roanoke (new location) 310 South Jefferson Street (540) 721-5110

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ANNOUNCEMENTS

NEW MEMBERS

The Roanoke Bar Association welcomes the following new Active members:

Andrew M. Bowman

Gentry Locke

Jennifer L. Crook

OPN Law

Nicole A. Poltash

Gentry Locke

Scott A. Stephenson

Gentry Locke

Ryan M. Walsh

OPN Law

Jason R. Whiting

Johnson, Ayers & Matthews

The Roanoke Bar Association welcomes the following new Associate member:

Sharon K. Burnham

UPCOMING EVENTS

Roanoke Bar Association Meetings 2014 - 2015

September 9, 2014

October 14, 2014

November 11, 2014

December 9, 2014

January 13, 2015

(evening meeting)

February 10, 2015

March 10, 2015

April 14, 2015

May 1, 2015 (Law Day)

June 9, 2015

(Annual Meeting)



Linda L. Gustad 857-5100 Kevin W. Holt 983-9377 Macel H. Janoschka 725-3372 Patrick J. Kenney 982-7721 Powell M. Leitch, III 510-3013 James J. O'Keeffe 983-9459 J. Lee E. Osborne 983-7516 Richard D. Scott 400-7997 Thomas E. Strelka 982-7787

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



DON'T FORGET TO CHANGE YOUR ADDRESS!

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