

ROANOKE BAR REVIEW

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SUMMER 2003

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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.

NINTH CIRCUIT JUDGE VISITS ROANOKE

BY KAREN M. COON

On August 22, 2003, a luncheon was held at the Hotel Roanoke featuring the Honorable Judge Dorothy W. Nelson of the United States Court of Appeals for the Ninth Circuit. The luncheon was sponsored by the Virginia Women's Attorneys Association, the Roanoke Conflict Resolution Center, the National Conference for Community and Justice, the Bahá'í Justice Society, and the Bahá'ís of the Roanoke and New River Valleys.

Judge Nelson (or Judge Dorothy as she is often called) was appointed to serve on the Ninth Circuit Court of Appeals in 1979, and is a former dean and professor of law at the University of Southern California Law Center. She has received

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From left to right: Heather Polzin, Judge Nelson, Kai Memmer, Elizabeth Dillon and Karen Coon

THE DUTIES OF A U.S. MAGISTRATE JUDGE

BY BRYCE HUNTER

As Roanoke Bar members are aware, the President of the United States has nominated Magistrate Judge Glen E. Conrad to the U.S. District Court for the Western District of Virginia to fill the position created by Judge James C. Turk's retirement. Congress is expected to vote on Judge Conrad's nomination in the near future.

Many litigators have appeared before magistrate judges and many non-litigators recall from law school that the roles of district judges and magistrate judges differ in some ways. For those litigators reading this article, this information is basic and repetitive, but please give the transactional types the benefit of the doubt. Someday we'll explain to you the differences between the SEC's Reg. M and the old Rule 10b-6.

According to the Federal Magistrate Judges Association's website, the current Magistrate Judge system was begun by Congress in 1968 expanding on the 175 year old United States commissioner system. In 2002, in addition to the 486 full-time magistrate judge positions authorized there were 51 part-time judges and 3 combination Clerk of Court/Magistrate Judges who serve four year terms in the United States. Three magistrate judges have been appointed

(Continued on page 4)

Editors

Bryson J. Hunter - 983-9325
bryson_hunter@gentrylocke.com

Melissa Wolf Riley - 983-9328
melissa_riley@gentrylocke.com

Samuel F. Vance, IV - 224-8013
svance@gfdg.com

Kathleen L. Wright - 983-9360
kathy_wright@gentrylocke.com

Layout and Design

Sharlene Sherman

PRESIDENT'S COLUMN

BY EUGENE M. ELLIOTT, JR.



As usual, we begin this new year with a strong Board of Directors. It is the first year that we will rely primarily on electronic communication to contact members. This should allow us to save approximately 70% of communication expenses incurred in previous years. We are happy to accommodate those members desiring contact by regular mail and willing to pay the \$15.00 additional fee. The response has been 4-1 for electronic

communications.

Our programming for the coming year is essentially the same with one important exception. This year, we will offer at least one CLE Seminar. John Eure is chairing this project. The hoped-for result is that our Association will offer several CLE Seminars per year. They will be on topics having widespread interest among our members. Other bar associations have been very successful doing this. It should generate a new source of income to fund scholarships which we traditionally offer. As this program develops, we ask you to support it through your attendance and in preference to similar seminars offered by others.

We will continue to offer programming at our luncheon meetings which offers CLE credit. While not every program will have CLE credit, your response to receiving free CLE credit for such programs has been

very positive and it will be offered as often as possible.

This is also the time of year to sign up to participate in the Barrister Book Buddies Program. Literally every member with whom I have spoken about this project has said how much they enjoy it and look forward to it. Reading to elementary school children has special rewards. Please contact Elizabeth Dillon in the City Attorney's Office, who is chairing this project, to be a Barrister Book Buddy. Even with busy schedules, participants look forward to the interaction with these children. The first tug on your sleeve will do more than just touch you.

Our goal is to make membership in the Roanoke Bar Association valuable to you. Please contact me with your suggestions as to how we may continue to strive to achieve this goal.

NINTH CIRCUIT JUDGE VISITS ROANOKE

(Continued from page 1)

various awards for her work regarding dispute resolution and her commitment to social justice and human rights. Additionally, Judge Nelson was named the Los Angeles Times Woman of the Year in 1986.

At the luncheon, Judge Nelson discussed "Consultative Conflict Resolution: A Pathway To Peace." Her comments focused on the importance of using alternative methods for resolving disputes. Although some conflicts are appropriately resolved through the use of litigation in the current adversary system, many disputes would be resolved more effectively through mediation or arbitration, according to Judge Nelson.

The Bahá'í Faith has influenced Judge Nelson's views on conflict resolution. Judge Nelson is a mem-

ber of the Bahá'í Faith, which is an independent world religion that "proclaims the necessity and the inevitability of the unification of mankind. It, moreover,...condemns all manner of prejudice and superstition....It unequivocally maintains the principal of equal rights, opportunities and privileges for men and women, insists on compulsory education, eliminates extremes of poverty and wealth,...prescribes monogamy, discourages divorce, [and] emphasizes the necessity of strict obedience to one's government...." Universal House of Justice, *The Promise of World Peace: To The Peoples of the World* 39 (1985).

Judge Nelson shared some of her experiences regarding conflict resolution and the importance of using alternative methods to resolve disputes. Judge Nelson has been instrumental

in helping California courts increase the use of mediation. She pointed out that over the past few years the California judicial system has steadily increased the number of mediators it uses. Additionally, Judge Nelson is involved in an elementary school program that allows students to try a case and then mediate the same case. The program illustrates the differences between a trial and a mediation, and shows how mediation can be used effectively to resolve disputes.

Finally, Judge Nelson thanked everyone for the warm welcome she received in Roanoke, and encouraged everyone to seek peaceful resolution of conflict.

ROANOKE LAW LIBRARY NEWS AND INFORMATION

BY LORA WILSON

FREE LEXIS AT THE ROANOKE LAW LIBRARY!

For the next two years, Lexis can be accessed at the Roanoke Law Library for free. The on-line service includes federal case law, statutes, and legislative information as well as the Code of Federal Regulations and Federal Register. Patrons may also search the statutes, case law, and legislative information for all fifty states in addition to retrieving Shepard's information for all federal and state cases. The service also provides access to Virginia specific treatises and analytical materials.

Private training sessions are available. Please contact the Roanoke Law Library for more information.

LIBRARY FAX AND ATTORNEY TELEPHONE NUMBERS HAVE CHANGED

The telephone located in the Attorneys' Lounge has been changed to: (540) 853-5475.

The Law Library's fax line has been changed to: (540) 853-5474.

WANTED: LEGAL PRESENTATIONS

Would you like to serve your community by providing a short presentation on your area of law?

The Roanoke Law Library is looking for attorneys to give legal presentations to the public in our conference room. With only one-month advance notice, the Law Library will advertise and promote your presentation to the public.

Please contact the Roanoke Law Library for additional information.

AVAILABLE SERVICES AT THE ROANOKE LAW LIBRARY

As a branch of the City of Roanoke's Public Library System, the Law Library offers a variety of services. Materials from any of the Roanoke Valley Libraries may be returned at the Law Library. In addition, most library materials may be routed to the Law Library for circulation through the Roanoke Valley Libraries website (www.rvl.info).

Materials not available at the Law Library or through the Roanoke Valley Libraries might be obtained through interlibrary loan. This service is free as long as the library is not required to pay anything to receive the requested material.

Our Conference Room is available during library hours and can be re-

served in advance by contacting the Law Library. The room holds up to fifteen people comfortably and has access to a television and VCR.

ALL COMMENTS AND SUGGESTIONS WELCOME!

Please contact the Roanoke Law Library with your comments and suggestions.



Good Luck Melissa!!

We recently received notice from one of our editors, Melissa Wolf Riley, that she will be leaving the Roanoke Valley and will be taking her legal skills to Charlottesville in the fall. Over the past couple of years, Melissa has spent many hours of her personal time and has devoted her writing and organizational talents to our Bar by participating in many activities, especially this publication.

The editors wish her the very best in her future ventures. We will miss the insights, persistence and the "behind-the-scenes" efforts that she provided to ensure the publication of a first-class newsletter.

Best wishes and good luck, Melissa!

THE DUTIES OF A U.S. MAGISTRATE JUDGE

(Continued from page 1)

in the Western District of Virginia, including Judges Conrad, B. Waugh Crigler, and Pamela M. Sargent.

Judge Conrad helped answer some basic questions about magistrate judges:

1. *What's the difference between district and magistrate judges?*

District judges are life-tenured judges nominated by the President and confirmed by the Senate. Magistrate judges are fixed-term judges appointed by district judges for eight-year renewable terms via a merit selection process.

2. *How do civil litigants request trials before magistrate judges?*

All parties must consent in writing and the case must be officially transferred by the district judge.

3. *Are a party's rights affected when litigants consent to have a magistrate judge hear a case?*

Consenting to the jurisdiction of a magistrate judge does not eliminate substantive or procedural rights litigants would otherwise have before a district judge. For example, parties retain their right to a jury trial.

4. *Do magistrate judges handle many civil jury cases?*

Yes. As recently as 1999, magistrate judges conducted over 20 percent of the civil jury trials in United States district courts. When all parties consent, magistrate judges may conduct trials and enter judgments in civil cases of any type or size.

5. *Do magistrate judges handle many criminal cases?*

Yes. With the consent of all defendants, magistrate judges may preside in Class A misdemeanor cases, including conducting jury trials. In 2002, magistrate judges terminated 8,816 Class A misdemeanor cases. Although magistrate judges do not preside at felony trials, they may conduct preliminary and post-conviction proceedings in felony cases. Magistrate judges may conduct trials and dispose of all petit offense cases.

Duties Further Defined

Magistrate judges are generalist judges with a broad range of responsibilities. According to Judge Conrad, the rules governing magistrate judges permit them to retain as much flexibility as possible in order serve the needs of their respective districts. Magistrate judges generally derive their authority and perform their duties pursuant to 28 U.S.C. § 636(a) and 636 (b) which include among other duties:

- exercise of all powers and duties conferred or imposed upon the U. S. Commissioners by law or the Federal Rules of Criminal Procedure;
- administer oaths and affirmations, and take acknowledgements, affidavits, and depositions;
- try persons accused of minor offenses committed within the district;
- conduct preliminary proceedings in all criminal cases;
- issue arrest and search warrants;
- hear and recommend disposition of summary judgment and other case-dispositive motions;
- exercise general supervision of the civil and criminal calendars of the court;
- conduct pretrial and settlement conferences, voir dire, and select petit juries for the court;
- conduct necessary proceedings leading to the potential revocation of probation;
- issue subpoenas and writs of habeas corpus;
- review prisoner suits collaterally attacking convictions or complaining of conditions of confinement; and
- perform any additional duty not inconsistent with the Constitution and laws of the United States.

Finally, Judge Conrad indicated that the Magistrate Judges in our District spend a considerable amount of

time mediating cases.

How to address a United States Magistrate Judge

- The official title of these judges is "United States Magistrate Judge."
- A United States Magistrate should be addressed orally and in writing, as "Judge _____," to be consistent with the position's judicial role and official title as prescribed by law.
- Although some state courts have a judicial officer called a "magistrate," that title as applied to a United States Magistrate Judge is obsolete. To address these judges simply as "Magistrate" is akin to improperly addressing a Lieutenant Colonel as "Lieutenant," or a Bankruptcy Judge as "Bankruptcy."

The magistrate judge position in Roanoke is expected to be filled later this year.

The author wishes to thank Judge Conrad for his comments and insight provided in connection with this article.



ANNOUNCEMENTS



New Members

The Roanoke Bar Association welcomes the following new active members: **Sarah Jane Andrews, Esq.**, Sarah Jane Andrews, Attorney

at Law, 2129 Rosalind Avenue, SW, Roanoke, VA 24014, 342-7630; **Kevin O. Barnard, Esq.**, Frith, Anderson & Peake, PC, P. O. Box 1240, Roanoke, VA 24006-1240, 725-3371; **Kimberly M. Boyer, Esq.**, Office of the Commonwealth Attorney, 315 Church Avenue, SW, Roanoke, VA 24016, 853-2626; **Matthew M. Ingraham, Esq.**, Johnson, Ayers & Matthews, P. O. Box 2200, Roanoke, VA 24009, 767-2076; **Dean L. Robinson, Esq.**, Daniel L. Crandall & Associates, PC, 306 Elm Avenue, SW, Roanoke, VA 24016-4028, 342-2000; and **Seth C. Weston, Esq.**, Office of the Commonwealth Attorney, 315 Church Avenue, SW, Roanoke, VA 24016, 853-2626.



Thank You

Thanks from your Conflicts Committee. The Association thanks the following members who accepted referrals, some involving lengthy and difficult matters, during the past year. The Conflicts Committee Chair, John D. Eure, especially thanks those who returned his phone calls or e-mails, who helped on

Carol M. Agee
N. A. Ammar, Jr.
E. Albion Armfield
John T. Arnold
Lori E. Jones
Mark A. Black
David B. Carson
William C. Maxwell
D. Stan Barnhill
Lance M. Hale
Neal S. Johnson
Charles O. Cornelison
Phillip C. Coulter
Eugene M. Elliott, Jr.
Bryan Grimes Creasy
Thomas N. Key
Anne Edenfield
Cheryl K. Brunner

Donna D. Knox
William H. Cleaveland
John Emmette Pilgreen, IV
Frank W. Rogers, III
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Onzlee Ware
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Jack V. Altizer
Phillip V. Anderson
I. Ray Byrd, Jr.
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Randy V. Cargill
David Bowers
Agnis C. Chakravorty
Sharon R. Chickering

R. David Barbe
Stephen A. Bell
Matthew S. T. Clark
Robert S. Ballou
Leon P. Ferrance
Dennis A. Barbour
William C. Maxwell
Harry F. Hambrick, Jr.
Neil E. McNally
Jonathan S. Kurtin
G. Marshall Mundy
Leisa Ciaffone
Vicki Wiese
Alton B. Prillaman
John T. Boitnott
David D. Walker
William B. Hopkins, Jr.
G. David Nixon

Note: Many other Association members provided pro bono services through the Legal Aid Hotline and the Private Attorney Involvement Program sponsored by Blue Ridge Legal Services.

Law is a profession which abounds with honorable men, and in which there are fewer scamps than in any other.

— *George Borrow, 19th Century English writer*

Common sense often makes good law.

— *William O. Douglas, Supreme Court Justice*

The law: It has honored us; may we honor it.

— *Daniel Webster*

The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

— *Oliver Wendell Holmes*

STAFF NEWS

ALA

By Lisa K. Ratliff, President

The Western Virginia Chapter of the Association of Legal Administrators (ALA) elected officers in March 2003. The following officers were installed: President, Lisa K. Ratliff, Glenn, Feldmann, Darby & Goodlatte; President-Elect, Layne R. Lee, PHR, Woods, Rogers & Hazlegrove; Vice President, Diane T. Smith, WootenHart; Treasurer, Frank Pittard, Gentry Locke Rakes & Moore; Secretary, S. Jane Judah, Osterhoudt, Prillaman, Natt, Helscher, Yost, Maxwell & Ferguson.

At the June meeting, we had two speakers. Mary Spencer, CPS, President of the RVLSA, presented information about opportunities for ALA to partner with RVLSA in their various programs and projects for the upcoming year. Also, Lee Hovermale with Data Trends Technology Corporation presented information regarding information technology in law firms. After a summer hiatus, monthly meetings will resume in September and will be held in Abingdon, Virginia. The October meeting will be a planning session for the ALA Community Challenge project which is held in October of each year. For this year's project, we will sponsor a Halloween party and donate school supplies to the West End Center.

ALA's monthly meetings are held at noon on the third Tuesday of each month. For membership information and meeting location information, please contact Lisa Ratliff at 224-8036, or Diane Smith at 343-2451.

RVLSA

By Mary Spencer, CPS, President

The members of RVLSA...the association for legal professionals have had a busy spring and summer. In April, members attended the VALS annual meeting at which time one of

our members, Karen Switzer, PLS, of the law firm of WootenHart PLC was named "Member of the Year" for the State of Virginia and another of our members, Melinda Childress, PLS, was installed as Vice President of VALS. Judge Jacqueline Talevi talked at our June membership meeting on Judicial Review and Reappointments.

Our annual Bosses' Night was held on September 11th at the Roanoke Country Club. Our monthly meeting in September will be held on September 18th. We will enjoy a program on Environmental Law presented by Charles L. Williams, Jr., Esq. and Michael S. Whitlow, Esq. of Gentry Locke Rakes & Moore. We will be presenting a mock trial on October 9th at the Roanoke City Courthouse.

Also on September 13th, RVLSA will host VALS Fall Institute in Charlottesville with a full day of seminars on "Cleaning Up Your Credit", Identity Theft, Elder Law, and Employment Law. If you or someone in your office needs information, please have them call Mary Spencer, CPS, at 343-2451.

Our organization assisted the Young Lawyers Committee with the hospitality rooms during the bar exam. The members thank the Roanoke Bar Association and its members for their continued support and look forward to assisting the organization in the future.

Our members have been busy volunteering at the Easter Seals Concerts held at Elmwood Park on Thursday nights which continue through August. Other community projects in which we are involved include baby items for the St. Francis House, Relay for Life, Christmas in July (head start on Toys for Tots), and Meals on Wheels.

If you should need information regarding our organization, please feel free to call me at WootenHart

PLC, 343-2451.

RVPA

By Stacy S. Devlin, President

The Roanoke Valley Paralegal Association had the pleasure of welcoming Allen R. Barrow, Public Affairs Specialist for the Social Security Administration to our August meeting. Mr. Barrow brought along with him Assistant Director Manager Jackie Press. The two spoke about Social Security Disability claims, procedures for obtaining records from the Social Security Administration, and touched on Workers' Compensation offsets. Investigator Rodney Thompson from the Bedford County Sheriff's office discussed Operation Blue Ridge Thunder and Internet Safety at our meeting on September 4.

On October 2, RVPA will welcome Britt Knuttgen, Legal Technology Consultant with Automated Horizons. Britt will discuss changes in the legal technology world as well as electronic filing in the Federal Courts. On November 6, Jeff Krasnow, Esq. is our planned speaker. His topic to be announced.

If you or someone on your staff would like more information regarding RVPA or are interested in attending any of the RVPA's meetings, please contact Stacy Devlin at 767-2045.



GOLF OUTING AND PICNIC A WEATHER SUCCESS!

BY BRYCE HUNTER



Forty-three golfers (including many self-proclaimed duffers) ventured onto the golf course at Hunting Hills Country Club on August 21, 2003 for 18 holes of glory and blood pressure increasing fun. The weather cooperated and produced a hot, but "Any day on the golf course is better than a day at the office" beautiful day. The outing was not without controversy, however, after inside sources leaked that the two golf committee members that set up the teams were on the winning team. Nevertheless, the team of Jim Guynn, Dinny Skaff, and Neal Keesee finished the day at 9 under par and took home the 2003 title. A Blue Ribbon panel will be created to investigate any alleged impropriety!

The picnic was attended by more than 80 members, including Justices Koontz and Agee. For the first time, members' spouses and guest were invited to the post-golf festivities which helped make a very pleasant evening.



Your Name Here???

The Roanoke Bar Review is now publishing a limited number of advertisements in each issue.

Rates are as follows:

- * Full page: \$500.00
- * 1/2 page: \$250.00
- * 1/4 page: \$125.00
- * 1/8 page ("business card"): \$75.00
- * \$300.00 upcharge for color in any sized advertisement



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RBA MONTHLY MEETING RECAPS

June – The RBA spent its June meeting taking care of business. At its Annual Meeting, President Ray Leven and Past President Doug Densmore presented six James N. Kincanon Merit Scholarships to local students from the Roanoke Valley. The scholarship winners included:

Erin Christine Bryant
Joshua Forbes Colwers
Matthew Patrick McDowell
Kathleen Rebeka Miller
Sandra Marie Wierzbic

July – no meeting.

August – no regular meeting, but RBA members spent August 21 playing golf and socializing at the Annual Golf Outing and Picnic event.

September – The first meeting of the new RBA year began with a presentation by John J. Brandt, Esq., who operates a confidential telephone hotline attorney consultation service for all members of the Virginia State Bar.

Mr. Brandt is senior principal in Brandt, Jennings, Roberts, Davis & Snee, PLLC of Falls Church, Virginia. Mr. Brandt, a civil litigator representing physicians, lawyers and government officials, has been in law practice in Virginia since 1963 and holds both a J.D. (1961) and an LL.M. (1962) from the Georgetown University Law School.

Mr. Brandt indicated that his objective is to provide answers to questions that attorneys may have about the practice of law that will minimize the risk of being subject to malpractice or bar disciplinary complaints. He has provided advice in a variety of aspects, including: starting a law practice; obtaining legal malpractice insurance; fee arrangements; types of ownership entities; and substantive/procedural legal questions dealing with transactional, trial and appellate issues.

While Mr. Brandt provided many anecdotal stories about calls he has taken over the years, you can find the following list of his "Helpful Hints" in law practice on the VSB website:

1. Be pleasant and courteous to office staff, clients, and adversaries. It's contagious.

2. Obtain free from the VSB "Checklist For Opening Your First Law Office."

3. Use engagement letters in your representations, understanding that this creates a written contract with a five-year statute of limitations.

4. Carefully evaluate a potential client on the first visit just as you would have the client evaluate you. Remember, you do not have to accept the representation of every potential client you meet.

5. Never accept a representation which is beyond your own expertise; do not be afraid to refer the potential client to another lawyer or consider associating yourself with an attorney who does have the necessary expertise.

6. "Generally speaking, domestic relations clients and personal-injury plaintiffs are not happy people. They have already taken the first initial giant step into the legal system by actually suing someone or something and if they do not get what they want or what they feel they deserve, it is an easy step to blame their attorney." Robert A. Martin, Assistant Risk Manager, Attorneys Liability Protection Society (ALPS) "Practicing Law in the 21st Century: Fundamentals for Avoiding Malpractice Liability" in Volume XXXIII, Number 1, The Land and Water Law Review, University of Wyoming College of Law (1998).

7. Communication, Communication. For the fifth year in a row, the most common bar complaint in Virginia was failure to communicate. Return telephone calls as soon as possible; give a potential client information about yourself, on the first visit, in the form of a brochure or simply a *curriculum vitae*. The first visit with a potential client is a great marketing opportunity so take advantage of it.

8. Since trust accounting is so

important in your law practice, and unfortunately trust account rule violations serve as the basis for many disciplinary complaints, consider purchasing the \$35 publication entitled, "Lawyers and Other People's Money" from "Virginia CLE," 1-800-979-8253.

9. When referring clients or potential clients to other lawyers or third-party service providers, attempt to present a selection of two or three, if possible, and document your referral advice in writing.

10. Beware of conflicts of interest and create a "conflicts database" or a manual "conflicts check system" of some kind.

11. Join your local bar association; it is a marvelous way to meet wonderful lawyers like you, form mentoring relationships, and begin to market yourself.

12. If you are a sole proprietor or in a small law firm, consider purchasing the \$75 publication entitled, "Marketing for the Small Law Firm: Inexpensive Ways to Keep Up with the Big Guys," available from the Virginia Trial Lawyers Association at 1-800-267-8852.

If you have a legal ethics question, please use the free Virginia Bar "Ethics Hotline" at (804) 775-0500, press "4."

Upcoming meetings scheduled for 12:30 p.m. at the Shenandoah Club:

October 14, 2003
November 11, 2003
December 9, 2003



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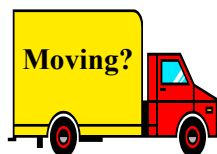
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<i>Harry S. Rhodes</i>	345-7400
<i>Michael F. Urbanski</i>	983-7678
<i>Samuel Franklin Vance</i>	224-8013

Please

take time to fill out this survey of your volunteer activities. In speaking to civic groups and professional associations, it will be very helpful to recite the contributions of time, talent and responsibility that our members contribute to our various communities. You may or may not give your name. If you provide your name, it will not be used in connection with the information you supply without your permission. Please estimate the information for the period of time from January 1, 2002 to December 31, 2002. The Roanoke Bar Association believes that the aggregate of volunteer time contributed to civic, charitable, religious and professional groups by its members is significant. It is important for you to provide this information. Please fax the completed survey to Gene Elliott (540) 982-5660 or email to emejr@emelliottlaw.com.

1. Name of civic organizations in which you attended meetings.

2. Civic projects in which you participated and number of hours of participation? Please briefly describe the project.

3. Religious projects providing a benefit to other persons and the number of hours of your involvement. Please briefly describe the projects.

4. Other charitable projects in which you have been involved and the number of hours of your participation. Please briefly describe the projects.

5. Name all professional organizations of which you are a member. Briefly describe projects of these organizations in which you have participated and the hours of your involvement.

Thank you for completing the survey.

Member Name - optional