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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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## THE OFFICE OF THE PUBLIC DEFENDER

BY JOHN VARNEY

The General Assembly established the Public Defender Commission in 1971 and authorized the establishment of three "pilot" public defender offices in 1972. The initial office opened in the fall of 1972 and served Augusta County and the Cities of Staunton and Waynesboro. The second office opened in Virginia Beach in 1973. The third opened in Roanoke in 1976.



Public Defender offices now serve 48 jurisdictions in the Commonwealth. The latest jurisdictions added to those served by public defenders are Arlington, Chesapeake, Newport News and Hampton. There are currently 22 Public Defender offices throughout the Commonwealth. Since 1996, there has also been an Appellate Defender unit in Richmond. In 2002, the General Assembly authorized the creation of four regional Capital Defenders. Those are in Richmond, Norfolk, Christiansburg and Manassas.

In 2004, the General Assembly expanded the mandate of the Commission to bring within its purview the oversight of court-appointed counsel for indigent defendants. The Commission was renamed the Virginia Indigent Defense Commission to reflect the additional duties.

The first Public Defender for the City of Roanoke was David Walker. He served from 1976 to 1981. He is now a member of the Commission. Ray Leven began as an Assistant Public Defender in 1978 and became the Public Defender in 1981. Ray served until his retirement in 2004. I have been Public Defender since August of 2004. Ray left the office well staffed and organized so I have found little need to make changes. His cardinal rule of never relying on what a client said but never discounting it served the office and the clients well during his tenure.

Originally, the office had five attorneys, two secretaries and one investigator. We now have ten attorneys, four secretaries and one and one-half investigators.

I have been with the office continuously since 1989, but also was with the Roanoke office from 1984 to 1986 and the Richmond office from 1986 to 1987. Roger Dalton, Senior Assistant Public Defender, has been with the office since 1990. Anna Bagwell, also a Senior Assistant, has been with us since 1997. Tom Love joined us in 1999. Amanda Shaw, who is currently on family leave, has been with us since 2002 but had five years experience with the Lynchburg office. Marshall Harrell has been with us since 2001 and David Steidle since January of 2004.

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## THE OFFICE OF THE PUBLIC DEFENDER

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Our attorneys have come directly from law school, the corporate world, other public defender offices, prosecutor's offices, private practice and Legal Aid.

Our most senior employees are Doug Maynard, our investigator that we share with the Bedford office, and Carol Broadhurst, our Administrative Assistant. Doug has been with the office since 1976. Carol has kept the office running since 1981.

Several of the judges of the 23<sup>rd</sup> Judicial Circuit began their careers in the Roanoke office. These include the Honorable Jonathan M. Apgar, the Honorable William D. Broadhurst, the Honorable Jacqueline F. Ward Talevi and the Honorable Francis W. Burkart, III. Both Commonwealth's Attorneys Don Caldwell and Randy Leach also began their careers here.

Last year our office handled over 4,200 charges. These included every

charge imaginable, from traffic court cases of driving on a suspended license, to Circuit Court murder cases. A typical day for a public defender often includes appearances in General District Court, Juvenile and Domestic Relations District Court and Circuit Court, as well as appointments in the office and jail visits. Less often, but not uncommon, are days spent with our investigators knocking on doors to locate and interview witnesses, photographing crime scenes, or visiting the property room of the Police Department or the local lab to view evidence. Occasionally, we travel to Salem or Richmond for appearances before the Court of Appeals or the Supreme Court.

Shortly after Ray's retirement, two attorneys took positions elsewhere and one went on family leave, reducing the number of attorneys available to handle cases from ten to six. For that reason, I requested that our office be relieved of the Traffic Docket and

the afternoon Juvenile and Domestic docket. With the permission of the judges of those courts and the cooperation of the clerks and the private bar, my request was granted. I and, everyone else at the office would like to take this opportunity to publicly thank the judges, the clerks and the private bar for accommodating my request in our time of need. With the recent addition of Allegra Black, Rachel Jackson and Sarah Timmers, we are once again fully staffed and are prepared to resume handling all dockets.

Working at the Public Defender's Office has been extremely rewarding. I went to law school to try to make a difference, but I had no idea where or how. Little did I know that the where was right here in my home town and the how would be in trying to ensure that the less fortunate could count on a fair deal in court, if nowhere else. I consider myself lucky to be where I am.

## PRESIDENT'S COLUMN

BY ELIZABETH K. DILLON



During this hectic holiday season, I pause, with pleasure, to reflect upon the gifts that those in the Roanoke Bar

Association have, throughout the year, shared with others. Through the Wills for Heroes program, many of you have given of your time and talent to provide estate-planning documents to firefighters and police officers. These firefighters and police officers protect us and sometimes risk their lives for us while we go about our daily lives. Through the Book Buddies program, many of you

have given of your time and reading talent to read to children in the Roanoke City Schools. As all Book Buddies know, the children give far more in return to the Book Buddies. As you read this article, we will have completed our first orientation program. Judges and court staff graciously gave of their time and talents to provide a practical primer on the practice of law in federal and state courts in the area. Additionally, the Young Lawyers Committee has already been planning for our bench/bar conference and Law Day luncheon, and Gene Elliott has been working on three upcoming CLE programs. As author Barbara Sher said, "Being gifted creates obligations, which means you owe the world your best effort at the work you

love." Many thanks to all of you that have shared your best efforts with others.

Best wishes for a Happy New Year!



# WHY LITIGATE WHEN YOU CAN COLLABORATE? A BETTER APPROACH TO FAMILY LAW

BY VICKI L. WIESE



Anyone who has ever practiced family law knows that these cases can be some of the most contentious and time consuming matters handled by lawyers.

Some attorneys have even completely shied away from practicing family law because of the additional strain.

With the advent and proliferation of mediation, there were a few glimpses of hope that family law cases would be handled in a more civil, or even genteel, manner. But, for whatever reason, mediation has not been widely utilized by the Roanoke Bar and the surrounding communities. However, a new alternative dispute resolution tool for family law practitioners is becoming available. If this sounds like an interesting concept, then introduce yourself to collaborative law.

## The History of Collaborative Law

The collaborative law process was first created by an attorney practicing family law in Minnesota in 1990 as an alternative to the adversarial system. Beginning with only four lawyers, the Twin Cities area now has over fifty collaborative law practitioners. In 1994, collaborative law made its first appearance in Northern California.

In 2000, two lawyers in Alberta, Canada became trained in the process. As a result, a mere two years later in July 2002, one magazine proclaimed that Alberta had become the "best place to get divorced" in Canada because a majority of family law attorneys had switched to the collaborative model, making divorce a "more dignified process" and often resolving a case in shorter time and

with fewer costs.

## The Collaborative Law Process

Collaborative law is dramatically changing the family law landscape in American courts because its primary goal is to limit conflict and stress between parties. To participate in the collaborative law process, the attorneys for both clients must first receive collaborative law training to learn how to become a "settlement lawyer." A course was recently offered by the Collaborative Family Law Committee of the Lynchburg Family Law Section, and the Committee hopes to offer another training session next spring for the Roanoke area. Currently, there are only two attorneys in Roanoke who are certified in collaborative law.

Before the process can begin, both parties *and each of their lawyers* must sign a written contract, sometimes called a "participation agreement," agreeing that they will not litigate the case. The agreement provides that all matters will be resolved only by negotiation.

The agreement also provides that both parties and their counsel are prohibited from issuing "threats" of litigation or taking other retaliatory action, that any experts will be jointly retained by the parties to ensure neutrality, and that the collaborative process will be terminated if one party takes serious one-sided action against the other, or withholds or misrepresents any information. Because the collaborative process requires ongoing open and honest communication and the presence of both clients for meetings, cases that involve domestic violence may need to be handled by litigation or mediation.

If either party wishes to withdraw from the collaborative process to litigate the case, *both* attorneys must withdraw as counsel. Any experts used in the collaborative process are

automatically disqualified from being a witness for either party, and all documents, opinions and reports generated in the collaborative process are inadmissible at trial. Additionally, the party wishing to withdraw from the process must also give the attorneys and the opposing party written notice of his or her withdrawal and both parties are prohibited from taking any court action for thirty days after receipt of the notice.

Once both clients and their attorneys execute the participation agreement, each attorney meets individually with his or her respective client to prepare the client for the first four way meeting. Next, the attorneys meet with one another to openly exchange anticipated client concerns, identify any pressing issues, and agree on the agenda and mutual goals for the first four way meeting. Only after the attorneys meet does the first four way meeting take place.

## What potentially makes this process better?

Because judges and mediators are not involved in the process, clients often feel empowered in that they have more control over the way cases are handled and ultimately resolved. Also, the process may save clients money because there are no court costs and fees which are inherent to court appearances. Additionally, a client is not subject to the court's docket, so a client may be able to begin to resolve issues within a matter of weeks, instead of a matter of months. Most collaborative law cases are fully resolved within six months of their initiation and require less than seven four-way meetings (each meeting typically lasts no more than two hours).

The benefits appear to be even greater for attorneys who practice

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## WHY LITIGATE WHEN YOU CAN COLLABORATE? A BETTER APPROACH TO FAMILY LAW

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law using this methodology. Many attorneys who have received collaborative law training now practice collaborative law exclusively. This means they never, ever go to court. Additionally, collaborative law attorneys find that a higher percentage of clients not only pay their attorney fees, but pay the fees in a timely fashion. Also, bars with active collaborative law practitioners report significant increases in the level of collegiality and trust among bar members. And, statistically, cases that are resolved through the collaborative process have a less than five percent likelihood that the will parties will ever go to court after the settlement is reached.

### The proliferation of Collaborative Law in Virginia

The Collaborative Family Law Society is beginning to establish a network of professionals in Virginia, which includes not only attorneys but also psychologists, accountants, financial planners, clergy, and real estate professionals. Because the jurisdictions in North America that utilize the collaborative process boast a 98% success rate, the Virginia State Bar and the Virginia Bar Association have recently formed subcommittees to study the process and aid in its implementation throughout the Commonwealth. Several attorneys have already been trained in Charlottesville and Lynchburg with reports that the process is meeting with great success in

both areas.

Locally, the Roanoke Chapter of the Virginia Women Attorneys Association will be hosting a one hour CLE program on collaborative law to begin at noon on Thursday, April 28, 2005. All area judges, attorneys and legal assistants are invited to attend.

*If you are interested in learning more about collaborative law, go to [www.co-divorce.com](http://www.co-divorce.com), [www.collabcan.com](http://www.collabcan.com), or [www.collaborativedivorce.com](http://www.collaborativedivorce.com). For local information, you may also contact Cheryl Watson Smith at 265-9022 or Vicki Wiese at 985-0098.*

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## BARRISTER BOOK BUDDIES

BY V. ANNE EDENFIELD

It's not too late to become a "Barrister" – a "Book Buddy Barrister" that is. For five years members of the Roanoke Bar Association and some of their staff, in partnership with the Roanoke City Schools, have continued to make differences in children's lives simply by reading to them in their classrooms several times a month. What began as a pilot project during the 1999 summer school session is now an established program for children from Kindergarten to 4<sup>th</sup> grade.

Five schools are currently participating: Oakland, Preston Park, Lincoln Terrace, Morningside, and Garden City. These schools are chosen by the City of Roanoke School system as needing special assistance for their students. Pamela S. White, the school system coordinator, works with the Book Buddies chair, who is always a member of the Roanoke Bar Association Board of Directors. This year it

is V. Anne Edenfield.

As recipient of the Award of Merit from the Virginia State Bar Conference of Local Bar Associations, our Book Buddies Program has received state recognition. However, seeing the smiles of the children to whom our buddies read is the greatest reward of the program. These children really look forward to the visits from their buddies.

What a wonderful way to contribute to our community, help children learn to love to read, and maybe even be a stress reliever during a hectic day of practicing law. Although already under way for this school year, we need more "Barristers" for this year. Currently we have more teachers than "Barristers." These teachers and their children really want a buddy for their classes. We don't want to let them down. So anyone who hasn't been involved before please consider becoming a "Barrister Book Buddy."

No advance preparation is required, and the only skills required are knowing how to read, smile, and have fun with the children. Your assigned teacher will choose or, if you prefer, help you choose age appropriate books. The two of you will also decide on a mutually agreeable schedule for you to read so you can accommodate your busy schedules.

A newer aspect of the program is reading for students at the Art Museum in downtown Roanoke. The Museum has a book nook, mostly for pre-schoolers, and buddies can serve as readers there. "Book Buddies" may choose to read only at the Museum, only at the schools or at both.

If you are already a Buddy and are having any problems, or for more information to become a "Barrister Buddy" and start reading, please contact Anne Edenfield at 342-1527 or [AnneEdenfiel@aol.com](mailto:AnneEdenfiel@aol.com).

# WILLS FOR HEROES

BY ROBYN S. ELLIS

Once again, attorneys from the Roanoke Bar Association volunteered their time in the "Wills for Heroes" program, preparing free wills, powers of attorney and advanced medical directives for police officers in Roanoke City, Roanoke County and the City of Salem. Attorneys and police officers met with each other at the Roanoke City police headquarters on W. Campbell Avenue on October 28 and 29, 2004. Each attorney generally prepared sets of documents for 2 or 3 police officers. In total, documents were prepared for approximately 45 police officers. During the two days of document preparation, rumors of the program had reached police officers from other localities who showed up hoping to have their documents prepared.

Prior to having documents prepared, however, the police officers were required to attend a one hour training session that introduced basic estate planning, such how to choose an executor, and explained the limited scope of the wills that could be prepared for them. For example, clients that own side businesses with someone else and those with potential estate tax problems are not candidates for the free will, although they can receive powers of attorney and

estate medical directives. This training was conducted over two days by the teams of Rusty Schundler and Chrissy Winder, and Robyn Ellis and Wendy Slempp.

Attorneys that participate in the program must attend a CLE for 2 hours of credit that explains the way the program works, reviews basic estate planning concepts, and introduces the document preparation software used in the program. While the initial training was held in early Summer 2004, several attorneys took advantage of



the free CLE by watching a videotape so that they could participate in the October program.

The attorneys who volunteered their time in October were: David Bowers, Jessica Cook, Robyn Ellis, Greg Hunt, Bryce Hunter, Brian R. Jones, Monica Mroz, Christi Novak, Dianna Perkinson, Elizabeth Perrow, Heather Polzin, Joe Rainsbury, Eliza-

beth Rocovich, Rusty Schundler, Ric Scott, Wendy Slempp, W. Calvin Smith, Dan Summerlin, Lori Thompson, Charla Toller, Sam Vance, and Chrissy Winder. Special recognition goes to Wendy Slempp who volunteered her time to prepare documents and offer assistance to other attorneys both days of the program.



Also volunteering their time were the following legal assistants who helped prepare, witness and notarize documents: Audra Chambers, Cathy Freeman, Kelly Hickey, Heather Hill, Heidi McNeil, Betty Moorman, Dawn Nichols, Angee Shreffler, and Mary Spencer.

Organizers Robyn Ellis and Rusty Schundler, along with Elizabeth Perrow and Ric Scott, are planning another event for this spring to provide documents for any other first responders in the Valley that are interested, including EMS workers and police officers and firefighters that were not able to attend the prior two events.



## RBA WELCOMES LAW LIBRARIAN JOEY KLEIN!



There is a new face at the Law Library - Joey Klein, raised in the Botetourt area, has recently returned to Southwestern Virginia to replace Lora Wilson, who

is now working as a judicial law clerk. Mr. Klein earned his Master of Library Science degree at the University of South Carolina, and has worked in law libraries in Washington, D.C. and Atlanta, for the Hogan & Hartson firm and the McKenna,

Long and Aldridge firm respectively, before coming back to Roanoke.

Please stop by the Roanoke Law Library, inside the courthouse on Church Avenue, and welcome Joey Klein!

# PRACTICE OF LAW IN SOUTHWEST VIRGINIA TOUR

BY KATHLEEN L. WRIGHT



Judge Samuel Wilson & John Corcoran, Clerk of Court, host the first stop on the RBA's "Practice of Law" tour.

On Tuesday, December 14th, the first group of tourists met at the Poff Federal Building for the inaugural "Practice of Law in Southwest Virginia" tour, sponsored by the Roanoke Bar Association. After a breakfast welcome by RBA President Elizabeth Dillon, John Corcoran, Clerk of the U.S. District Court, showed the group the Clerk's office, the courtrooms, law library, judges' chambers, and talking elevators. Tourists also met with Magistrate Judge Michael Urbanski and with District Judge Samuel G. Wilson, who demonstrated the state-of-the-art technology available in the Ted Dalton Ceremonial Courtroom on the first floor. Judge Wilson also discussed the importance of the electronic filing program, which allows attorneys to file cases all over the United States from their own offices (a/k/a the "No Lawyer Left Behind" program). Most of the federal districts are either using electronic filing, or are in the process of upgrading to the electronic filing sys-

tem. The Western District began requiring electronic filing of documents on December 1, 2004. (For more information about electronic case filing, go to [www.vawd.uscourts.gov/cmecf/](http://www.vawd.uscourts.gov/cmecf/)) The tourists also received important tips for practicing in the Western District, including a warning not to be late for any appointment with Senior District Judge Jackson Kaiser, who reportedly fined himself on one occasion for being late.

The tour continued through the United States Bankruptcy Court, which began its electronic filing program this October. The Bankruptcy Court has posted new local rules, effective September, 2004, on its website. The group visited Judge Ross Krumm's courtroom and the Clerk's office.

At the Circuit Court of Roanoke City, the group received a helpful tour of the Clerk's office with Brenda Hamilton and her assistants in the estates, criminal, and bookkeeping departments. The tour also included

a meeting with the new librarian at the Law Library, Joey Klein.

The group then moved to the Shenandoah Club to listen to a panel discussion on professionalism and civility in law practice, led by Judge Clifford Weckstein and including Judge Charles Dorsey, Judge Jackie Talevi, lawyers Bill Poff and Eunice Austin, and Circuit Court Clerk Brenda Hamilton. The group discussed the influence of market practices on the legal profession and reminded the group that incivility usually disserves the client, rather than providing any benefit. The discussion was followed by the monthly Roanoke Bar Association meeting at the Shenandoah Club.

Thank you to Lori Thompson for her coordination of this new program which we hope will continue in the future!

# STAFF NEWS



RVLSA

By Mary Spencer, CPS,  
President

RVLSA...the association for legal professionals has had a busy and productive fall. September saw some of our members attending a seminar in Richmond. We held our Annual Bosses' Night event in October at Valhalla Winery, which was a rousing success. Thanks to all the support we received, RVLSA was able to fully fund its scholarship program through this event. In addition, we received an anonymous donation made by someone who said, "he would have just wasted it on beer." Peter Vieth, Esq., was Boss of the Year, and Mary Spencer, CPS, was

Member of the Year.

Some of our members also assisted with the Pink Ribbon Challenge held at Hollins College, a new program focusing on Breast Cancer Awareness Month.

In recognition of Court Observance Week, we sponsored a mock trial dealing with charges arising out of a fight between minors. It was well attended by high school students who also donated a teddy bear to the organization. These teddy bears were then divided between the Roanoke City and Roanoke County police departments for their use when dealing with small children.

November saw John Cocoran, Clerk of the United States District

Court, speak on electronic filing in his Court. Our community projects for November and December included Adopt-a-Highway, Salvation Army stockings and adoption of a family in need of Christmas. In fact, we made donations to two families in need this Christmas. We continue to assist the Bar Association at their monthly luncheon meetings.

We wish to thank all members of the Bar who continue to support our programs, especially Bosses' Night and Court Observance Week. Without your support and the support of the Court staff, we would not be able to produce these programs. We are here to assist the Bar in any way we can.

Best New Year wishes to all.

# ANNOUNCEMENTS



New Members

The Roanoke Bar Association welcomes the following new active members:

**Ryan Christopher Berry, Esq.**, Gentry Locke Rakes & Moore, P.O. Box 40013, Roanoke, VA 24022-0013; **Leah S. Gissy, Esq.**, Johnson, Ayers & Matthews, PLC, P.O. Box 2200, Roanoke, VA 24009-2200; and **Daniel L. Payne, Esq.**, Johnson, Ayers & Matthews, PLC, P.O. Box 2200, Roanoke, VA 24009-2200.

Judicial Endorsement Meeting – Open to the Active Members of the Roanoke Bar Association

Pursuant to Article XXVII of the By-Laws of the Roanoke Bar Association, you are hereby notified that on Tuesday, January 11, 2005, at 2:30 p.m. at Fitzpatrick Hall at the Jefferson Center, a special meeting of the active membership of the Association will be held for the purpose of endorsing a candidate for the vacancy in the 23rd Judicial Circuit. Only active members in good standing of the Association shall be permitted to participate in the

balloting, and any member of the Association who has participated or intends to participate in a meeting of another bar association within the judicial circuit for endorsement for the same vacancy shall not be permitted to participate in the balloting. Attendance of thirty-five percent (35%) of the active members of the Association is required to constitute a quorum (149 members).

K. Brett Marston  
Secretary Treasurer

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