



YOU AND THE LAW

A public awareness program designed to educate the public about the legal system in order to make citizens' interaction with the system more efficient and less frustrating

March 9, 2011

Ten Things You Need to Know About the Court System

The Honorable William D. Broadhurst - Roanoke Circuit Court
The Honorable Jacqueline W. Talevi - Roanoke General District Court

March 16, 2011

Ten Things You Need to Know About Divorce and Collaborative Law

Cheryl Watson Smith - Cheryl Watson Smith, PC
Vicki L. Wiese - Wiese Law Firm, PLC

March 23, 2011

Ten Things You Need to Know About the Legislative Process

William H. Fralin, Jr. - Medical Facilities of America, Inc.

Ten Things You Need to Know About the Police and Law Enforcement

Christopher C. Perkins - Chief of Police, Roanoke City

March 30, 2011

Ten Things You Need to Know About Consumer Law

Henry L. Woodward - Legal Aid Society of Roanoke Valley

Ten Things You Need to Know About Will and Estate Litigation

Michael S. Whitlow - Whitlow & Youell, PLC

Roanoke Higher Education Center, Room 212

7:00 p.m. - 8:30 p.m.

Registration is required and reservations for each seminar are accepted beginning the Thursday prior to the seminar - Call 265-8111 for reservations

Sponsored by the Roanoke Bar Association • www.roanokebar.com

Ten Things You Need to Know About the Court System
The Honorable William D. Broadhurst - Roanoke Circuit Court

Preface: Limitation on Comments by Judges

Structure of the Virginia Court System (Handout)

Supreme Court of Virginia, Court of Appeals, Circuit Court, District Court

Functions of A Trial Court

Functions of the Appeals Court

“Warm” Appeals vs. “Cold” Appeals

Issues in Circuit Court

Jurisdiction/Juries

Civil Issues

1. Pace of litigation

Discovery

Motions

Opinions

2. Nature of Pleadings

Procedural Due Process Issues

Nature of Pleadings

Legal Wrongs Considered

Forms

3. Rules of Evidence

4. Value of Attorney’s Assistance

Limitations on Attorney’s Assistance

Legal Advice

Impermissible sources of legal advice

Risky Sources of Legal Advice (internet)

5. Pro se Problem Areas

Wills

Divorces

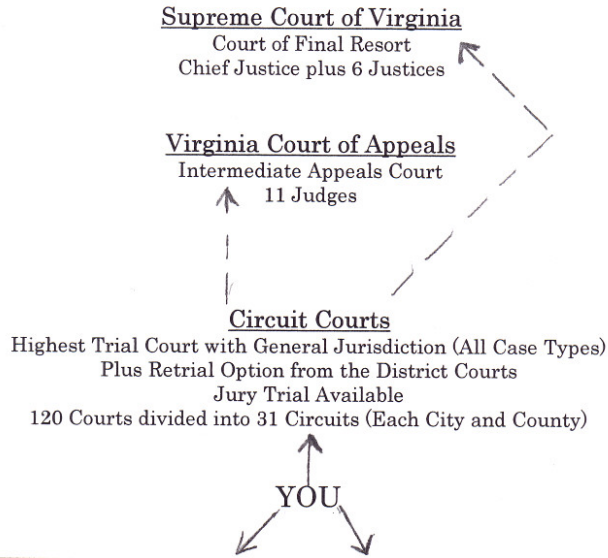
Circuit/J&D court jurisdiction

Criminal Issues

Jury Service

Notes: _____

VIRGINIA STATE COURTS IN BRIEF
 See Supreme Court of Virginia Website
<http://www.courts.state.va.us>



<u>General District Courts</u>	<u>Juvenile & Domestic Relations District Courts</u>
Jurisdiction over Adults only	Jurisdiction over Minors, Family Members, & Domestically Related Adults
<u>Criminal and Traffic Matters</u>	<u>Criminal & Traffic Matters</u>
Full Trials on Misdemeanors/Traffic	Full Trials on Misdemeanors/Traffic
Probable Cause Review of Felonies	Probable Cause Review of Felonies by Adults
	Full Trials of Felonies by Minors
<u>Civil:</u>	
Trials of all sorts, maximum \$15000 damages	<u>Civil:</u>
	Custody/Care/Support of Children & Parents
Retrial Option in Circuit Court	Retrial Option in Circuit Court

Ten Things You Need to Know About Family Law

Vicki L. Wiese, Esq.

1. I have a custody or visitation case. What is a guardian *ad litem* and should I ask for one?
 - a. A guardian *ad litem* is an attorney licensed to practice law in Virginia who has additional legal training to represent children.
 - b. A guardian *ad litem* legally has access to your child's school records and health records. This includes any mental health treatment received by the child.
 - c. A guardian *ad litem* should meet with the parents and the child separately before the court date. The guardian *ad litem* may also want to see where you live and also where the other parent lives.
 - d. You may have to pay for some or all of the costs for the guardian *ad litem*.
2. Child support, child custody and child visitation are always modifiable and always reviewable by a court. The court tries to determine what is in the "child's best interests" and if there has been a "material change in circumstances."
3. It is preferred that property settlement agreements or separation agreements be in writing. Once they are signed, they can be very hard to change or modify.
4. Child support is calculated by using the Virginia child support guidelines (a math worksheet) -- which the court usually follows.
 - a. The court needs the current incomes of both parents;
 - b. The court needs the daycare costs paid by each parent; and
 - c. The court needs the health insurance costs paid by each parent;
 - d. The court needs to know how many days each parent has the child.
(more than 90 days = a different math worksheet)
5. Spousal support may be calculated different ways and has less certain outcomes than child support.
 - a. Submit an income and expense sheet to the court;
 - b. Submit the 20-107.1(E) factors in writing to the court; and
 - c. Fault (being found guilty of cruelty, adultery and/or abandonment) can make a difference in the amount of spousal support or even prevent you from receiving it if you ask for it.

6. In a divorce, the court will attempt to “equitably distribute” assets – this does not mean an equal division. But, this is not the rule used by courts to apportion marital debts.
7. If you have to go to court, always ask to be awarded your attorney’s fees and costs. But, be prepared to pay them on your own.
8. If there is any chance to may go to court for a divorce case or custody and visitation matters, delete your Facebook, MySpace, eHarmony, etc., accounts. Social networking sites and dating sites provide a wealth of information that can, and will be, used against you.
9. I went to court and I don’t like the outcome. Can I appeal? Yes . . .
 - a. If your case was heard in Juvenile and Domestic Relations Court, you (or your attorney) must note an appeal, in writing, within ten days of the trial date. The case will then be heard by the Circuit Court.
 - b. If your case was heard in Circuit Court, you (or your attorney) must note an appeal, in writing, within thirty days of the trial date. The case may then be heard by the Court of Appeals. (You will need to send the trial transcript to the Court of Appeals, so make sure you have a court reporter present in circuit court.)
 - c. If your case was heard in the Circuit Court, you may also file a “motion for reconsideration.” In this event, the same judge will hear the motion. A motion to reconsider must be filed within twenty-one days of the trial date.

10. For more information:

Virginia State Bar Public Information Pamphlets

<http://www.vsb.org/site/publications/public-information-pamphlets/>

Marriage in Virginia

<http://www.vsb.org/site/publications/marriage-in-virginia/>

Divorce in Virginia

<http://www.vsb.org/site/publications/divorce-in-virginia/>

Financial Issues in Divorce in Virginia

<http://www.vsb.org/site/publications/divorce-in-virginia/>

Children & Divorce

<http://www.vsb.org/site/publications/children-divorce/>

Notes: _____

Ten Things You Need to Know about Divorce & Collaborative Law

Cheryl Watson Smith, Esq.

Outline:

1. The Legal Divorce
2. The Emotional Divorce
3. The Financial Divorce
4. Process Options: Choose How You Divorce
5. The Collaborative Road-video
6. Collaboration: A Different Way to Divorce
7. Collaborative Divorce: Key Characteristics & Core Elements
8. Collaborative Team: Roles & Fishbowls
9. "Costs" of Divorce & Who is Collaborating.
10. Your Questions: What is important to You?

Program:

1. The Legal Divorce is about:

- Divorce Law in Virginia—an Overview
 - Grounds for Divorce
 - Equitable Distribution (Property Division)
 - Spousal Support
 - Child Related Issues
 - Custody & Visitation
 - Guardian Ad Litem
 - Child Support
 - Fees & Costs
- Getting Started
 - Exhaust all possibilities of reconciliation
 - Contacting Lawyers & Other Professionals
 - Discuss the pro's & con's of all your options
 - Consult before signing anything
 - Rely up your professionals
- Caveats ("Don'ts")
 - Face book
 - Don't post it, if you don't want the Judge to read it
 - You are not the FBI: Wiretapping, Computer Privacy Laws, etc.
 - Discovery is Expensive
 - Failure to Disclose
 - Unilateral Actions
 - Consider the Consequences
 - Dating: Fault is not dead as a doornail
 - Bar to support
 - Emotional Impact
 - Consider the children

2. The Emotional Divorce is about:

- The Emotional Impact of Divorce
 - Spouses: Losses, Triggers, Stressors,
 - Children: Triangulation, Blame
- The Emotional Impact on Divorce
 - Different places emotionally
 - Projecting “intentions” on the other’s actions
 - Replaying the marital dynamics
- Love your children more than you hate the other parent.
 - The impact of the level of conflict between the parents
 - Foster & encourage the children’s relationship with the other parent.
 - Plan what to say and talk with your children together.

3. The Financial Divorce is about:

- What do you have and what do you owe?
 - Document Production
 - Create a List of Assets
- Who gets what?
- Economic Realities of Maintaining Two Households
 - Budgets
- Lost Opportunity Costs (Housing, Savings, Retirement)
- More than the Money
 - The more you fuss & fight the more it costs
- Plan with the end in mind. (“Do’s”)
 - Divorce: “Di” – to turn/ “vortere” –in different directions
 - Future Focused Resolution
 - Identify your interests, goals & needs
 - Put in place a team of professionals committed to your goals
 - Resolution based on past events
 - The blame game: Who did what?
 - Who contributed or not?
 - Source of Funds
 - Resolution based on positions? Or, interests?
 - Who decides? Who lives with the decisions?
 - The parties?
 - The Judge?

4. Process Options: Choose How You Divorce

- How you divorce is your choice
 - Well... almost--It takes one to Litigate but two to Negotiate, Mediate or Collaborate
 -
- Process Options
 - Kitchen Table
 - Do it yourself/on your own
 - Collaboration
 - Trained Collaborative Professionals
 - More than being nice/more than cooperating/more than just settling cases
 - Signed Participation Agreement/withdrawal clause
 - Interests, Goals & Needs, Full Disclosure, Transparency, Correct Mistakes

- Mediation
 - Third Party Neutral
 - Information but not advice
 - Interest-based & related skills
 - Full disclosure, but not transparent
 - Adversarial Representation
 - Advice in private
 - Strategizing
 - Risk Analysis negotiations
- Negotiation
 - Positional Representation
 - Risk analysis, threats of litigation
- Litigation
 - Adversarial Representation
 - Pleadings, Discovery, Case Development, Opposing Experts, Witnesses, Depositions, Hearings, Trial, Re-hearings, Appeals, Modification Hearing

5. The Collaborative Road-video

6. Collaboration: A Different Way to Divorce

- A distinct resolution process
- A commitment in writing to seek resolution
- Resolving Disputes Respectfully
- Giving Informed Consent

7. Collaborative Divorce: Key Characteristics & Core Elements

- Key Characteristics
 - No Court
 - Focused on settlement and the future
 - Professionals Guide and Clients Decide
 - Respectful
 - Private
- Core Elements
 - Signed Collaborative Participation Agreement with Withdrawal Clause
 - Trained Collaborative Professionals
 - Full Disclosure & Transparent
 - Mutual decisions before acting
 - Correct mistakes
- Phases in a Collaborative Case
 - In-take, Enrolling, Assembling a Team
 - Selecting Collaboration
 - Consultation
 - Enrolling Spouse
 - Getting Started
 - Jointly Selecting a Team
 - Client and Professional preparation
 - First Team Meeting to sign CPA

ATTORNEYS

JENNINGS T. BIRD, LL.B., ATTORNEY has practiced law in Roanoke since 1965. After graduating from Harvard Law School, he practiced with Woods, Rogers, Muse, Walker & Thornton (now Woods Rogers) until 1973, when he opened his office as a sole practitioner. Three years later Carr Kinder, Donald Huffman and he established Bird, Kinder & Huffman, P.C., a general practice firm consisting of 6 or 7 attorneys until it was dissolved in 1995. Mr. Bird then continued his practice as a sole practitioner as The Bird Law Firm, P.C. His legal work over the years has included extensive work in business and corporate matters, residential and commercial real estate, personal injury litigation (both plaintiff's and defense representation), eminent domain litigation, land use and zoning matters, estate planning and administration, and, for the last 20 years or so, concentration on domestic relations and family law. He was trained as a mediator in 1996 and trained as a Collaborative Law Attorney in 2005 and as an Interdisciplinary Collaborative Team attorney in 2008 and again in 2010. He is a member of the Collaborative Professionals of Roanoke (CPR), the Virginia Collaborative Professionals (VaCP) and the International Academy of Collaborative Professionals (IACP). Mr. Bird may be contacted at The Bird Law Firm, P.C., at 540-982-1500, via email at jbird@birdlawva.com or by mail at P.O. Box 2795, Roanoke, Va, 24001.

CHERYL WATSON SMITH, J.D., ATTORNEY AND MEDIATOR, has been in the private practice of law in Roanoke Virginia since 1988. She is a mediator certified by the Supreme Court of Virginia since 1995. Ms. Smith is a Fellow in the American Academy of Matrimonial Lawyers (AAML). She trained as a Collaborative Family Law attorney in 2004 and as an Interdisciplinary Collaborative Team attorney in 2009. She is a founding member of the Collaborative Practice Training Institute (CPTI), the Virginia Collaborative Professionals (VaCP) and the Collaborative Professionals of Roanoke (CPR). She is a member of the International Academy of Collaborative Professionals (IACP). Ms. Smith has served the Roanoke Valley Family Law Bar Association as President in 1997, on the Virginia State Bar, Family Law Board of Governors 2003-2006, Virginia Bar Association Domestic Relations Council (Secretary 2003, Vice-Chair 2004, 2005, At-Large rep. 2006-2010) and on the Joint ADR Committee, Collaborative Law Sub-Committee. Ms. Smith is a Collaborative Practice trainer with CPTI including the most recent 3-day Interdisciplinary Collaborative Divorce Team Training in Roanoke, VA in November 2010. She has been a frequent lecturer and presenter at Family Law, Mediation, Collaborative programs. Ms. Smith may be contacted at Cheryl Watson Smith, P. C. at 540-265-9022 or via email at cws@cwsmithpc.com.

VICKI L. WIESE, J.D. ATTORNEY, obtained a B.S. in Psychology from the University of Wisconsin-Oshkosh. She obtained a Juris Doctor degree from Oklahoma City University School of Law where she was awarded the Order of the Barristers recognizing excellence in courtroom advocacy. She is licensed to practice law in Commonwealth of Virginia (1998) and District of Columbia (1999). She has been trained in Collaborative Law and Practice since 2004. She is also a co-founder and charter member of the Ted Dalton Inn of Court in Roanoke. She handles a variety of family law matters in both the litigation context and collaboratively, and she continues to serve as a guardian *ad litem* for the area courts. In addition to her legal practice, she is a USSF State soccer referee and a USSF associate soccer referee instructor. She is a proud native of Green Bay, Wisconsin and a Green Bay Packers shareholder. Ms. Wiese may be reached at the Wiese Law Firm, PLC, at (540) 206-3770 or via email at vwiese@wieselawfirm.com.

FINANCIAL SPECIALISTS:

PATRICIA E. EGGLESTON, MA, CPA co-founded Eggleston & Eggleston in 1995. She serves as a consultant and has extensive experience in the fields of accounting, tax, and advisory services. After receiving her Bachelor of Business Administration degree in 1989 from Roanoke College and her Master of Accountancy degree in 1991 from Virginia Polytechnic Institute and State University, Patricia worked with KPMG and Brown, Edwards & Company. Throughout her college years and professional career, Patricia has been an instructor of Accounting at Virginia Tech, Virginia Western Community College and Roanoke College. Patricia is a licensed Certified Public Accountant, a member of the American Institute of Certified Public Accountants (AICPA), the Virginia Society of Certified Public Accountants (VSCPA), the Collaborative Professionals of Roanoke (CPR), the Virginia Collaborative Professionals (VaCP), and the International Academy of Collaborative Professionals (IACP). Ms. Eggleston may be contacted at Eggleston & Eggleston, at (540) 345-3556 or via email at patricia@egglestonandeggleston.com.

PAMELA FULGHUM WILLIAMS, C.F.P. with her own firm Williams Wealth Management, is a Certified Financial Planner a licensed life and disability insurance agent, is an Investment Adviser Representative with Financial Network. Having entered the financial services industry in 1995, Pamela has built a clientele that consists of individuals as well as small business owners. Pamela places emphasis on intelligent decisions by working closely with each client to develop a personalized financial plan. Knowledge and experience play key roles in helping Pamela's clients more effectively work toward their financial goals. A longtime resident of Roanoke, Virginia, Pamela is active in the community. After graduating from Virginia Commonwealth University with Bachelor of Arts degrees in both History and French, Pamela completed her CFP Certification Professional Education Program through the College of Financial Planning. Financial Network Investment Corporation, member SIPC, is a full service broker-dealer and Registered Investment Adviser providing financial planning, investment advice and brokerage services. Ms. Williams may be contacted at Williams Wealth Management at (540) 527-6067 or via email at williamsp@financialnetwork.com.

MENTAL HEALTH PROFESSIONALS:

SUSAN WITT, LCSW, is a native Roanoker with over 25 years of experience in the mental health field. Ms. Witt has extensive experience in providing counseling services to children, adolescents, adults, and families in a variety of settings including inpatient psychiatric hospitals, VA. Baptist Children's Home (currently Hopetree Family Services), community mental health, and private practice. She has also worked part time at Hollins University providing counseling services to students. Ms. Witt has extensive volunteer service in youth – related organizations including the Girl Scouts and youth ministry programs at three different churches. For the past twenty years, Ms. Witt has been co-owner and therapist with Comprehensive Counseling Services. Professional affiliations include membership in VA. Society for Clinical Social Work (VSCSW) and National Association of Social Work (NASW). Ms. Witt has served on the VSCSW board for 10 years and is immediate past president of VSCSW. Ms. Witt was trained in the 3-day Interdisciplinary Collaborative Divorce Team Training in 2008. She is currently a member of Collaborative Professionals of Roanoke (CPR), Virginia Collaborative Professionals (VaCP), and International Academy of Collaborative Professionals (IACP). Ms. Witt may be contacted at Comprehensive Counseling Services at 540-343-0004 or via email at shwitt@cox.net.

10 Things You Need to Know About the Legislative Process

The Honorable William H. Fralin, Jr.

1. To understand the law you have to understand the Code of Virginia and how it is written.
 - a. In our system the courts issue decisions known as case law that interpret the Code or the Constitution so the Code is usually the first place to look to discover the law that controls a given situation.
 - b. The Code is written solely by the legislature and approved by the Governor. How the code is written (and its laws made) is just as important as how cases decide and make law.
 - c. The Code is the place in the law where you have influence. The laws are literally written in your name through your elected representatives.

2. You should understand how you are represented in the State Legislature
 - a. Every Virginian has 1 Delegate and 1 Senator (and 1 Governor).
 - b. Delegates represent approximately 80,000 individuals for 2 years.
 - c. Senators represent approximately 200,000 individual (or 2 and ½ times the number represented by a Delegate) for 4 years.

3. You can influence the process.
 - a. Out of the 80,000 only a finite number are of voting age, only a percentage of those are eligible to vote, only a percentage of those (usually less than ½) actually vote, and only a percentage of those vote regularly!

4. Individual action matters.
 - a. Your relationship with your representative can get things done.
 - b. Out of those that vote regularly only a small percentage actually communicate with their representatives in any way.
 - c. Out of those only a smaller percentage show up, advocate, and get involved politically.

5. Group action matters more.
 - a. Collective position can represent votes and ideas that have broad appeal (or disapproval)
 - b. The larger to organization usually the more influence, but subject to same rules of participation.

6. Lobbyists have a role.
 - a. They can represent a collective position on a fluid piece of legislation.
 - b. They can give a perspective based on their client's understanding.
 - c. They can impart knowledge in a specialized area.
 - d. But is a balancing act. The legislator must balance all pieces of information in order to make a decision as to whether an idea should become law.

7. Money in politics matters, but relationships matter more.

Ten Things You Should Know About Consumer Law
Henry L. Woodward, Esq.

1. **Car Title Loans** – Even after “reform,” these lenders charge up to 264% interest and can take your car if you don’t pay on time.
2. **Payday Loans** – Even after ”reform,” these lenders can charge 390% interest. **Similar loans advertised on the Internet by out-of-state lenders not licensed in Virginia are illegal.**
3. **Arbitration Agreements** – Almost every consumer contract has a clause that may allow the creditor to take you to court but forbid you from taking the creditor to court; and if you go to arbitration, there’s no appeal.
4. **Debt Settlement Companies** –Some advertise on TV that they can solve your debt problems, but many add to your debt problem by requiring extensive payments to out-of-state banks before they lift a finger. Many are not licensed to conduct business in Virginia and many use methods forbidden by federal law.
5. **Zombie Debt** - When your credit card or other debt has grown so old that you forgot about it, sale of the debt to a debt buying company may raise it from the grave to haunt you.
6. **Bank Accounts** – In an age of electronic banking, banks pay your money to anyone who knocks on the door with your account number, and ask questions later. But there is good news about protection of benefits paid into bank accounts!
7. **Used Car Purchases** – The used car business is justly famous for sharp practices and unethical practices, despite many forms of legal restriction and regulation. Some scams to watch out for are worthless service contracts, spot delivery and other and delayed title tricks.
8. **Membership Contracts** - What happens if your health club or buying club goes out of business while you have two years left to pay?
9. **Cell Phone Contracts** – Watch out for huge penalties for changing companies and hidden charges for what you need most.
10. **Student Loans** – Federally guaranteed loans never go away, and even cancellation allowed by law is very hard to get.

Notes: _____

