

**Spring Sections Seminar**

May 4-6, 2022

Boar’s Head Resort

***DRAFT AGENDA****Requesting 9.0 HRS (2.0 Ethics)*

# Wednesday, May 4

# 2:30-5:30 Women’s Section Optional Wine Tasting Event*Sponsored by Planet Depos* *(Meet the bus at the Pavilion Portico Circle)*

# Join our private wine tasting event at Stinson Vineyards for views, wine, and casual conversation with other VADA women. $25 fee includes sampling of all 5 wines and transportation to and from the Boar’s Head, leaving promptly at 2:30 and returning at 5:30.

# 6:00-7:30 Welcome Reception, Hearth Arbor Patio (HAP) Room, Main Lodge*Sponsored by Planet Depos & S-E-A*

# 7:30 Dinner on Own

# Thursday, May 5

6:30 **Wellness Committee Run (**Meet in the main lodge lobby) *Sponsored by Metadata*

8:00-9:00 **Registration & Breakfast,** *Pavilion Lobby
Sponsored by InQuis Global*

9:00-12:00 **Professional Liability, 3.0 HRS** *(Pavilion i)*

9:00-11:00 **Traversing Your Ethical Obligations: A Refresher and Update on Changes and Trends in Ethics, 2.0 HRS ETHICS**
This will focus on how best to navigate the rules of ethics in your practice. The presentation will address changes in the ethics rules and recent decisions and trends in all things "legal ethics." The program promises to be an entertaining, interactive and engaging discussion.

Jeffrey Geiger, *Sands Anderson*

**DPOR Processes, Investigations and Formal Proceedings, 1.0 HR**
Our speaker will analyze the Virginia Department of Professional and Occupational Regulation ("DPOR") and the manner in which it conducts its investigations.  As part of this program, Mr. Robbins will provide insight into the investigation process, the steps through which DPOR and a client communicate, exchange information, negotiate potential resolution, proceed to an informal fact-finding conference, and a potential finding of probable cause.

##  C. Jay Robbins, IV, *C. Jay Robbins, IV P.C.*

9:00-12:00 **Policy Coverage, 3.0 HRS** *(Pavilion iii)*

**Appraisals Under Property-Insurance Contracts, 1.5 HR**The panel will discuss issues from both the insurer’s and the insured’s perspective that arise in the context of appraisal of first-party property claims in Virginia, including:  the statutory appraisal provision under Virginia Code §38.2-2105, including whether surplus lines carriers are subject to the statute; identification of issues appropriate for consideration by the appraisal panel (“actual cash value or the amount of loss”); the difference between “coverage” issues and the scope of damage caused by a covered cause of loss; who may serve as an appraiser or an umpire, including questions of competency and disinterest; potential structure of the appraisal award form to ensure that the appraisal panel provides the information necessary to resolve coverage disputes; potential comparison of Virginia’s statutory process to surrounding jurisdictions that do not have a statutory framework for the appraisal provision; and  the binding or non-binding nature of appraisal and the impact of the federal arbitration act.

Charles T. Brown, *Silver & Brown*
Diane U. Montgomery, *Midkiff, Muncie & Ross*

**Liability Coverage for Towing Claims, 1.5 HRS**The Virginia Bureau of Insurance issued an administrative letter in 2020 that requires auto/trucking insurers to pay for towing and recovery expenses under liability coverage, even where the insured has not purchased towing coverage as part of their comp/collision coverage.  Insurers now face exorbitant fees from towing companies because of this sea change.  This presentation will discuss the changes implemented in 2020 and best practices for handling these claims on behalf of insurers.

Lindsey Lewis, *Franklin & Prokopik*Lindsay L. Rollins, *The Progressive Group*

9:00-12:00 **Products & Toxic Torts Liability, 3.0 HRS** *(Ednam West)*

**Evidentiary Issues Concerning Experts in Products Liability Cases, 3.0 HRS**This panel will focus on evidentiary issues concerning experts in products liability cases. The discussion will cover the Advisory Committee’s Note to Federal Rule of Evidence 702 dated April 30, 2021 which provides a clear directive to trial courts: a threshold finding of reliability for any expert’s opinion is a precondition to admission. The panel will use the Fourth Circuit’s decision in Sardis v. Overhead Door Corp., 10 F.4th 268 (4th Cir 2021) as a framework for discussing those issues, from pre-suit investigation until entry of the final order.

Hon. Daniel S. Fiore, II, *17th Judicial Circuit*
Jonathan E. Halperin, *The Halperin Law Center*
Lisa Moran McMurdo, *Moran Reeves & Conn*

12:00-1:00 **Lunch,** *(Pavilion II)*

1:00-2:00 **“Doggy Play Time” Break** *(Pavilion Portico) Weather Dependent**Sponsored by the Wellness Committee*Weather permitting, we will offer Doggie Play Time, compliments of the Charlottesville Albemarle SPCA, and sponsored by our Wellness Committee.

2:00-5:00 **Corporate & Commercial Litigation, 3.0 HRS** *(Ednam West)**Sponsored by J.S. Held*

**Premises Security Claims, 3.0 HRS**In Virginia, there is a general rule that there is no duty to warn or protect against criminal acts of third parties. However, some exceptions to this rule do exist.  This session will explore third-party premises security claims as they relate to actions taken by third parties on a premises, what factors are necessary for liability, and under what circumstances is liability limited.  Relationships to be discussed include the duties owed by community associations to property owners, employers to employees, and businesses to customers.”

Philip Abbruscato, *Fox Rothschild*Jonathan Gonzalez, *Gordon Rees Scully Mansukhani*
Brett Herbert, *Gordon Rees Scully Mansukhani*

2:00-3:30 **Appellate Advocacy, 1.5 HRS** *(Pavilion III)*

 **Appealable Orders Under Rule 1:1, .50 HR**
What is and is not an appealable or "final" order? Because this question impacts appellate jurisdiction, getting the answer right can mean the life or death of an appeal. In 2018, the Supreme Court of Virginia amended Rule 1:1 to clarify what is and is not a final order. While the new rule certainly helps, there are always challenges in applying to individual cases and claims. This presentation will focus on the recent amendments, Supreme Court and Court of Appeals case law, practical applications, and tips for ensuring your appeal is proper.

John O'Herron, *Thompson McMullan*

**Effective Appellate Advocacy in the New Appellate Landscape, 1.0 HR**Appellate advocacy is different in many ways from trial advocacy. With appellate jurisdiction expanded in Virginia, this program will address effective written and oral advocacy for trial counsel to bring to their appellate work. Topics will include unique appellate style issues, Do's and Don'ts of effective research, how to write effective appellate briefs, and strategies and preparation for oral argument.

John O'Herron, *Thompson McMullan*
S. Virginia Bondurant Price, *McGuireWoods*

2:00-3:30 **Medical Malpractice, 1.5 HR** *(PAVILION I)*

**COVID-19 Statute of Limitation Tolling Statutes, 1.5 HR**
Over the past year, the scope of statute of limitations tolling provision contained in the Virginia Supreme Court Judicial Emergency Orders, issued in response to Covid-19, has been a frequently litigated issue with immense stakes for plaintiffs and defendants.  This presentation will discuss the relevant language in the Orders of Judicial Emergency, recent trial court rulings on the issue, and how similar provisions have been interpreted in other jurisdictions.

Anthony S. Cottone, *Byrne Canaan Law*
Matt Daly, *MGC Law*

3:30-5:00 **Joint Session: Appellate Advocacy and Medical Malpractice, 1.5 HR CLE** *(PAVILION I)*

**Defending Wrongful Death and Survival Actions in Virginia, 1.5 HRS**
Although death is universal, it poses unique challenges for litigators.  This session starts with a general overview of the main issues raised in death cases—including standing, the statute of limitations, the dead man’s statute, election of remedies, damages, and res judicata—with an emphasis on recent cases from the Supreme Court of Virginia.  Following this will be a panel discussion with practical tips on how to apply these principles in real-world situations.

Brian Cafritz, *KPM Law*Janeen Koch, *Chadwick Washington Moriarty Elmore & Bunn*
Donald Morris, *Robert Harrington & Associates*
Joseph Rainsbury, *Miles and Stockbridge*Nancy Reynolds, *Woods Rogers*

5:00-6:30 **Cocktail Reception** *(Pavilion Lobby)*

*Sponsored by The McCammon Group*

6:30**Dinner on own**

9:00 –10:30 **VADA Late Night** *(Madison Room – Across from Pavilion Portico)*

# Friday, May 6

7:00 **Wellness Committee Yoga** *(Pavilion Portico)**Sponsored by Metadata*

8:00-9:00 **Breakfast** *(Pavilion Lobby)*
*Sponsored by MDD*

9:00-12:00 **Medical Malpractice Pt 2, 2.0 HRS** *(Pavilion I)*

**Diversity, Equity, and Inclusion in the Legal Profession, 1.0 HR**

The objective of my CLE is to provoke thought, discussion, and action regarding diversity, equity, and inclusion (DEI) in the legal profession.  This will be accomplished by educating attorney attendees on the meaning of DEI, why its ethically and practically important, and to provide some tactics to achieving a more diverse, equitable, and inclusive environment in the legal profession.  The CLE will also address issues surrounding implicit biases and the challenges that diverse and non-diverse attorneys face when working together.

Kathleen M. McCauley, *Moran Reeves & Conn*

**Defending Advanced Practitioners in the Age of Telemedicine and Expanding Autonomy, 1.0 HR**
The scope of practice requirements for mid-level healthcare providers line nurse practitioners and physician assistants have been in flux during the COVID pandemic, and new statutes memorializing some of the changes necessitated by COVID are taking effect this summer.  This presentation will address the practical development of the mid-level provider’s role in the practice of medicine from pre-pandemic to now, and discuss the upcoming statutory changes and their potential impacts on the mid-level provider’s role.  The presentation will also discuss defending mid-level providers in medical negligence cases, and the effects the statutory changes may have on those types of cases.

Samuel T. Bernier, *Frith Anderson & Peake*Matthew E. Kelley, *Frith Anderson & Peake*

**Medical Malpractice Roundtable** *(Medical Malpractice Members Only)*

9:00-10:00 **JOINT SESSION:** **Auto & Transportation Liability with Local Government, 1.0 HR** *(Pavilion III)*

**Data Extraction – What is it, Can You Use It and If So, How, 1.0 HR**As motor vehicles and cell phones are becoming more and more sophisticated, more and more data is available which may be of use to those defending motor vehicle accident and other cases.  How fast was a vehicle going?  Was the driver on the cell phone?  This section will explore the information that is currently available from motor vehicles and cell phones, Virginia Code § 46.2-1088.6 and who owns the data, how to get the data, spoliation, and the current state of the law in the admissibility

 of expert witness testimony and accident reconstruction.

Patrick Eller, *Metadata Forensics*
Christopher R. Hedrick, *Mason, Mason, Walker and Hedrick*
P. Bradenham Michelle, IV, *Harman Claytor Corrigan & Wellman*

10:00-12:00 **Auto & Transportation Liability, 2.0 HRS** *(Pavilion III)*

**Technology in Collision Reconstruction, 2.0 HRS**As technological advances in vehicle accident reconstruction continue to evolve at a rapid pace, practitioners must stay abreast of the changing landscape.  Our speakers will discuss these technological advances, the capabilities of an accident reconstructionist in using this technology, and applications of this technology in current and future cases.  Practical case overviews will be provided to demonstrate how this technology is applied in vehicle accident reconstruction.

Drake Hudgins, *Hudgins Law Firm*
Tracie Jones, *Rimkus*

10:00-12:00 **Local Government, 2.0 HRS** *(EDNAM WEST)*

**Local Government Legislative Update, 1.0 HR**
A presentation regarding new legislations affecting local government litigation, under the following general categories:  Local Government, Counties, Cities and Towns, Administration of Government, Court Systems, Courts Not of Record, Courts of Record, Police, Auto Liability, and FOIA.

Hon. Mark Peake, *Senate of Virginia*

**Police Litigation – Where We Are Now, and How to Prepare for Trial, 1.0 HR**As more and more civil cases are being filed against police officers, our panel will discuss the defenses available to police officers, police defense trial tactics, new Virginia Code § 19.2-83.5 regarding the use of deadly force by a law-enforcement officer, and tips for how to choose jurors in police litigation.

Jeffrey Frederick, PhD, *Jeffrey Frederick Trial Consulting Services*
Julie A. C. Seyfarth, *Chesterfield County Attorney's Office*William W. Tunner, *ThompsonMcMullan*

9:00-12:00 **Workers’ Compensation, 3.0 HRS** *(EDNAM EAST)*

**PPD Ratings and AMA Guides in Virginia Workers’ Compensation, 1.0 HR**

Our speakers will cover the evolution of the AMA guides, particularly contrasting the 5th and 6th editions. Dr. Grant will illustrate which factors were at play in developing the 6th edition. They will use unique examples to illustrate how to assess whether a doctor improperly calculated a rating and how to cross examine doctors in light of such errors. Ms. Carr will provide recent cases regarding PPD ratings and AMA rating discrepancies.

Claire Cafritz Carr, *Kalbaugh, Pfund & Messersmith*
William T. Grant, MD, *Albemarle Orthopaedics*

**“I’m Not A Cat” - The Perils and Possibilities of Virtual Hearings and Mediations, 1.0 HR**Deputy Commissioner Bill Culbreth will address the challenges and requirements of remote hearings and mediations including evidentiary issues and the use of interpreters. Deputy Commissioner Culbreth will also discuss the growth of the use of ADR at the Commission and how to prepare for the unique challenges of remote mediations.

Hon. William Culbreth, *Virginia Workers’ Compensation Commission*

**The Ombudsman - Where is She Now? 1.0 HR**Now that the Ombud’s Department with the Virginia Workers’ Compensation Commission has been open for almost a year, Lori D’Angelo, Ombudsman, will discuss what has happened during that time, who they have spoken to, what they have talked about, and what exactly those exceptions to Ombudsman confidentiality really mean.

Lorraine B. D’Angelo, *Virginia Workers’ Compensation Commission*

12:00 **“Grab & Go” or “Sit & Chat” Lunches**