



Spring Sections Seminar

MAY 3 - 5, 2023

HOTEL 24 SOUTH | STAUNTON

DRAFT AGENDA

Requesting 9.0 CLE (3.0 Ethics) Hours

Wi-Fi Name: VADA | Password: Attorneys2023

Wednesday, May 3

- 6:00-7:30 PM **Welcome Reception "Sip & Shop"**
Yelping Dog Wine & CFO Trading Company
Enter via 13 E. Beverley St. (5 minute walk from hotel)
- 7:30 PM **Dinner on Your Own**

Sponsored by:



Thursday, May 4

- 7:30 AM **VADA Welless Committee Group Run or Walk**
Meet in the Hotel Lobby
- 8:30-9:00 AM **Breakfast and Registration**
Lobby and Magnolia South Restaurant

Sponsored by:



MORNING SECTIONS

Morning Snack Break Available in Lobby 10:00 AM – 11:15 AM

APPELLATE ADVOCACY with PROFESSIONAL LIABILITY

Salon C

- 9:00-10:00 AM **Ethical Considerations for Professional Liability and Appellate Lawyers (1.0 HR ETHICS)**
Topics will include a discussion of attorney-client privilege and how it differs from the ethical duty of confidentiality under Rule 1.6; ethics considerations in hiring and dealing with expert witnesses; the division of authority between lawyer and client and what decisions the lawyer controls; and a refresher on conflicts of interest, including positional conflicts when your clients may be taking different or contradictory legal positions at the same time.

Emily F. Hedrick, *Virginia State Bar*
Dennis J. Quinn, *Carr Maloney*

APPELLATE ADVOCACY

Salon A

10:00-11:00 AM

The Lemons Court: a Retrospective Look (1.0 HR)

Donald Lemons presided as Chief Justice of the Supreme Court of Virginia from January 2015 to December 2021. This presentation examines voting patterns of the Justices, identifies key cases that divided the Court, and examines long-term trends in the case law.

Joseph Rainsbury, *O'Hagan Meyer*

11:00-Noon

Switching Gears for Assignments of Error with Appeals of Right (1.0 HR)

As a result of the recent jurisdictional expansion of the Court of Appeals of Virginia, assignments of error must be filed earlier in the appellate process and before the opening brief is due. Understanding the specificity requirements for assignments of error and the interplay between the law of the case doctrine and assignments of error is therefore more important than ever. This course will guide practitioners in crafting persuasive, effective, and all-encompassing assignments of error.

Elaine D. McCafferty, *Woods Rogers Vandeventer Black*

PROFESSIONAL LIABILITY

Salon C

10:00-11:00 AM

Addressing Attorney Errors (1.0 HR ETHICS)

This session will explore an attorney's ethical and professional obligations when he/she has made (or might have made) an error in the course of representing a client including a discussion of whether and when the attorney must inform the client of the error and other considerations in attempting to rectify or address the error.

Mark Loftis, *Woods Rogers Vandeventer Black*
Dennis Quinn, *Carr Maloney*

11:00-Noon

Pursuing, Defending, and Avoiding Sanctions in Virginia (1.0 HR)

Sooner or later most litigators will deal with a lawsuit or pleading that clearly has no colorable basis. Code of Virginia § 8.01-271.1 requires that pleadings be well grounded in fact, warranted by law, and not brought for an improper purpose. Introduced in 1987, the sanctions statute was rarely applied or upheld for 20 years. The *Ford Motor Co. v. Benitez* opinion, where defense counsel was sanctioned, radically changed the legal landscape in 2007. A number of important rulings since then have clarified the technical and pragmatic limits of the statute. We will discuss the history of the statute; considerations for filing a sanctions motion; who to bring a sanctions motion against; when to bring a sanctions motion; how to bring a sanctions motion; how to defend a sanctions motion; how to avoid a sanctions motion; and the latest sanctions jurisprudence.

Mikhael Charnoff, *Charnoff Simpson*

LOCAL GOVERNMENT

Salon B

9:00-10:00 AM

Who Has Standing to Challenge Land Use Cases? (1.0 HR)

Let's explore the Virginia Supreme Court's recent opinions in land use cases and how they could change whether a third party has standing to challenge legislative land use decisions.

John C. Blair II, *City of Staunton*

10:00-11:00

Hot Topics in Employment Law (1.0 HR)

Join us to get the latest scoop on updates and hot topics in Virginia employment law. From the Virginia Values Act, to navigating the EEOC/VHRC administrative process, to recent changes and best practices (what is the deal with cannabis, anyway?), the landscape for employers has changed dramatically and all employers need to be aware of the challenges ahead. This panel is sure to bring you up to speed and arm you with what you need to handle these situations and know when to seek outside help.

Rachael L. Laughlin, *O'Hagan Meyer*

Charles G. Meyer III, *O'Hagan Meyer*

11:00-Noon

Breaking Down the Nazario Trial and Strategies (1.0 HR)

Police use of force continues to be a front-page issue, focal point of public debate, and liability concern for local governments. Join us to hear from the defense teams that represented Officer Gutierrez and Officer Crocker in the U.S. District Court for the Eastern District of Virginia, Norfolk Division. They will discuss what strategies worked, what did not, how they navigated the publicity surrounding the case, their experience with the Court and jury, and share tips for those facing challenging use of force claims and lawsuits.

Anne C. Lahren, *Pender & Coward*

Richard "Rick" Matthews, *Pender & Coward*

12:00-1:00 PM

Lunch

Colonnade Room

AFTERNOON SECTIONS

Ice Cream & Fruit Break in Lobby 2:00 PM – 3:15 PM

CORPORATE & COMMERCIAL LITIGATION

Salon A

1:00-2:30 PM

Positioning Complex Civil Cases for Successful Mediation (1.5 HR)

The preparations and case management leading up to mediation often is the deciding factor on how successful it will be. Join this experienced panel for an informative and relevant discussion on how to best prepare a case for mediation, what timing in a case cycle is ideal, and how to best prepare the client's mindset for the mediation process.

Cameron Beck, *McCandlish Holton*

Hon. J. Michael Gamble (Ret.), *The McCammon Group*

Mike Gladstone, *McCandlish Holton*

Moderator Jonathan W. Gonzalez, *Gordon Rees*

2:30-4:00 PM

Effective Advocacy in Mediation (1.5 HR)

Learn from sitting and retired judges and attorneys on how to be the best advocate in a successful mediation. This session will be a companion to the prior one, and will cover such topics as presentation of the case, different negotiating styles and when one might work over another, how to close a deal and when to walk away for another day, and what terms should go into a written settlement agreement.

Hon. David B. Carson, *Roanoke Circuit Court*

Hon. Beverly W. Snukals (Ret.), *The McCammon Group*

James Snyder, *McCandlish Holton*

Moderator Jonathan W. Gonzalez, *Gordon Rees*

POLICY COVERAGE

Salon B

1:00-2:00 PM

The Exception to the Fungi/Bacteria Exclusion: What it Means to be "Intended for Bodily Consumption" (1.0 HR)

This CLE takes a deep dive into the meaning of the phrase "intended for bodily consumption" as used in bacteria and fungi exclusions throughout the country. The CLE will also look at recent decisions out of the 4th Circuit and Western District of Virginia interpreting this phrase.

Lacey Conn, *Thomas, Thomas & Hafer*

2:00-3:00 PM

Changes in Insurance Coverage – Auto & Fire Insurance (1.0 HR)

Discuss the changes in Fire Insurance in relation to the "clean slate" new regulations that go into effect in 2024, the changes in Underinsured Motorists Coverage in relation to credit and stacking which go into effect in July of 2023 and the Bureau's position on coverage for towing expenses.

Allen L. Kidd, *Sinnott, Nuckols & Logan*

R. Jamie Sinnott, IV, *Sinnott, Nuckols & Logan*

3:00-4:00 PM

Using Forensic Accountants (1.0 HR)

Attorneys who have not used or rarely use forensic accountants, are often surprised too late to learn that the “missing piece” from their case could have been completed by the services of a forensic accountant. In his presentation, Getting the Most from Your Forensic Accountant, Les Robson, CPA of Robson Lenhart, PC will open our eyes to the things forensic accountants can do and how they can best be utilized.

Leslie W. Robson, *Robson P.C.*
Kevin Streit, *Setliff Law*

MEDICAL MALPRACTICE (PART 1)

Salon C

1:00-2:00 PM

Teamwork Makes the Dream Work: Winning Strategies for the Litigation Team (1.0 HR)

This panel will discuss approaches and best practices to optimize the working relationship between attorneys and paralegals during preparation of a case, from initial case workup through trial. We will discuss how to improve communication among your team to maximize efficiency and achieve the best outcome for the client. The panel will include the perspective of attorneys, paralegals, and nurse paralegals.

Gena Sellers, RN, *Moran Reeves Conn*
Daniel Zoellner, *Moran Reeves Conn*
Moderator: Anthony Cottone, *Byrne Canaan Law*

2:00-3:00 PM

Dead Man's Statute (1.0 HR)

Virginia's Dead Man's Statute, its corroboration requirement and broad hearsay exception, and recent cases interpreting these provisions. The practical application of the statute to medical malpractice cases and use of Model Jury Instruction 2.240 will also be discussed. Time permitting, the presentation will also include group discussion of recent experiences with the Dead Man's Act in trial practice.

Patrick R. Kelly, *Lewis Brisbois Bisgaard & Smith*

3:00-4:00 PM

To Err is Human, Making it Hard to Do, Divine: Utilizing Human Factors for Risk Mitigation in Healthcare Settings (1.0 HR)

In this session, attendees will gain an understanding and appreciation of the role that human capabilities and limitations play in health care professionals (HCP's) decisions and actions within healthcare settings; how a human factors approach and measurement methods can be effectively applied to investigate hazards and risk mitigation strategies within healthcare settings; and, how an integrated approach can enhance the risk analysis approach with healthcare settings.

Regan Lawson, *Exponent*
Karol Silva, *Exponent*

GENERAL SESSION

Salon C

Complimentary for all registrants

4:00-5:00 PM **Speaking with the Enemy? Communicating With Opposing Counsel (1.0 Ethics)**
This presentation will cover ethical, practical, and strategic considerations in communicating with opposing counsel. Presented in a conversational panel with perspectives from both sides of the civil bar, this presentation will discuss how to handle difficult adversaries, zealous advocacy in communicating with opposing counsel, the interwoven duties of confidentiality and candor, and other related issues.

Lauren Darden, *Wharton Aldhizer & Weaver*
David Irvine, *Allen Allen Allen & Allen*
Moderator: Tate Love, *TimberlakeSmith*

5:00-6:30 PM **Networking Reception**
[Lobby](#)

Sponsored by:



6:30-9:00 PM **Dinner on Your Own**

6:45 PM **Optional Women's Section Dinner**
[Ox-Eye Vineyard Tasting Room, 44 Middlebrook Ave.](#) (5 minute walk)
Join us for a wine, pizza, salads, and conversation.

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9:00-10:30 PM **Late Night**
[The 1924 Lobby Bar](#)
Beer, wine, and soft drinks, courtesy of our sponsor.

Sponsored by:



Friday, May 5

8:30-9:00 AM

Breakfast and Registration
Lobby and Magnolia South Restaurant

Sponsored by:



MORNING SECTIONS

Snack Break in Lobby 10:00 AM – 11:15 AM

AUTOMOBILE & TRANSPORTATION LIABILITY with PRODUCTS & TOXIC TORTS

Salon A

9:00-11:00

Rapid Response, Investigations, and Preservation: From Notice of First Loss to Notice of Appeal (2.0 HR)

Our panelists will discuss various legal and evidentiary considerations in rapid response investigations, on-site inspections, and accident reconstruction; how to leverage these findings and conclusions in depositions, mediations, and dispositive motions; and how to get your best return on investment by resisting evidentiary challenges and preserving the record for appeal.

Dannel Duddy, *Harman Claytor Corrigan & Wellman*
Gavin O'Hare, *CED Technologies, Inc.*
Hon. Daniel Ortiz, *Court of Appeals of Virginia*
Abe Warfel, *CED Technologies, Inc.*

AUTOMOBILE AND TRANSPORTATION LIABILITY

Salon A

11:00-Noon

Impact of New Optional Nature of UM/UIM Credit for Tortfeasor's Liability Coverage (1.0 HR)

Effective July 1, 2023, Virginia insureds will have the option of purchasing UM/UIM coverage with the offset for the at fault driver's available liability coverage or without. In addition to providing an overview of this new UM/UIM regime, and how to calculate an insurer's UM/UIM exposure, this session will analyze the impact this change will have on the defense of insurers and insureds in claims arising from motor vehicle accidents.

Jason G. Moyers, *Frankl Miller Webb & Moyers*

MEDICAL MALPRACTICE (PART 2)

Salon C

9:00-10:00 AM

Virginia Code Sections 8.01-581.16-17 and the Patient Safety and Quality Improvement Act of 2005 (1.0 HR)

If you defend or advise healthcare facilities in litigation, you have undoubtedly asserted objections on the basis of Virginia Code Sections 8.01-581.16-17 and the Patient Safety and Quality Improvement Act of 2005. But how well do you understand the parameters and implications of each? We will dive into each protection and what is required to secure the privileges that could apply to pre-suit record requests or during litigation.

Christina Dwyer, *Mitchell Law Group*

10:00-11:30 AM **The Virginia Birth-Related Neurological Injury Compensation Program (1.5 HR)**
The Virginia Birth-Related Neurological Injury Compensation Program, founded in 1987, is widely known among the Virginia medico-legal community but often misunderstood. Considering the limited number of medical malpractice cases which are eligible for the Birth-Injury Program, and the even smaller number of attorneys who elect to pursue remedies for their clients under the Birth Injury Program, this presentation aims to provide a comprehensive examination of the Birth Injury Fund's history, purpose, its effect, and key lessons learned from first-hand navigation of its procedures.

Ray Escobar, *Woods Rogers*

11:30 AM **Medical Malpractice Roundtable** (MedMal members only, please)

WORKERS' COMPENSATION

[Salon B](#)

9:00-10:00 AM **Workers' Compensation and Employment Law Issues (1.0 HR)**
Employment-related matters commonly emerge during the course of workers' compensation claims. Many clients have questions that pertain to general employment matters, including termination and the use of sick leave by injured workers. This presentation will focus on the interplay between workers' compensation and general employment law, including discussion of the Americans with Disability Act and the Family and Medical Leave Act.

Megan Wagner, *Kalbaugh Pfund & Messersmith*

10:00-11:00 AM **Perspectives from the Bench: Best Practices in Workers' Compensation (1.0 HR)**
This presentation will discuss the best practices and methods for various aspects of the litigation and alternative dispute resolution processes in the context of workers' compensation, including for hearings and mediations. Deputy Commissioners Cording and Cornett will offer tips and suggestions for use by attorneys inside and outside the courtroom.

Commissioner P. Jason Cording, *Virginia Workers' Compensation Commission*
Commissioner John T. Cornett, Jr., *Virginia Workers' Compensation Commission*

11:00-Noon **The Claims that Never End: Practice Tips to Move Stagnant Claims Towards Resolution (1.0 HR)**
As claims (and claimants) age, claim exposure inevitably increases for a number of reasons. Because of the "lifetime medical award", if the employer/carrier are unable to settle a claim, we are often stuck with what feels like a never-ending, revolving door of claim issues for years. This presentation identifies particular issues and red flags which may cause certain claims to linger, as well as provides ethical practice tips to help move a stagnant claim towards satisfactory resolution, while limiting costs to the client.

K. Elizabeth O'Dea, *PennStuart*

12:00 PM **Box Lunch** (Grab-N-Go or Sit-N-Chat)