

# Office of the County Attorney

## History

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In 1964, the Code of Virginia was amended to provide for the appointment of a county attorney. The amendment is contained in Chapter 312 of the 1964 Acts of Assembly and states:

*An Act to amend the Code of Virginia by adding a section numbered 15.1-9.1, to provide for the appointment of county attorneys in certain counties and to relieve the Commonwealth's attorney of certain duties in the event of appointment of such county attorney.*

**Approved March 31, 1964**

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 15.1-9.1 as follows:

§ 15.1-9.1. The governing body of any county having a density of population in excess of five hundred inhabitants per square mile and adjoining a city situated wholly within the State and having a population in excess of two hundred thousand may create the office of county attorney. Such a county attorney to be appointed annually by the county manager, and who shall serve at a salary to be fixed by the board of county supervisors. In the event of the appointment of such county attorney, the Commonwealth's attorney shall be relieved of the duties of advising the board of county supervisors, of drafting or preparing county ordinances and of defending or bringing civil actions in which the county or any of its officials shall be a party, and all such duties shall be performed by the county attorney and he shall be accountable to the county manager in all such matters.

The Henrico County Attorney's Office was created on July 1, 1968. In his June 14, 1968 memo to County Manager E. A. Beck, Administrative Assistant D. Keith Cook stated: "As the Office of County Attorney will be created, effective July 1, 1968, you should officially make this appointment."

And County Manager Beck did just that. In his June 26, 1968 letter, Mr. Beck appointed J. Mercer White, Jr. as Henrico County's first County Attorney. He wrote:

Dear Mr. White:

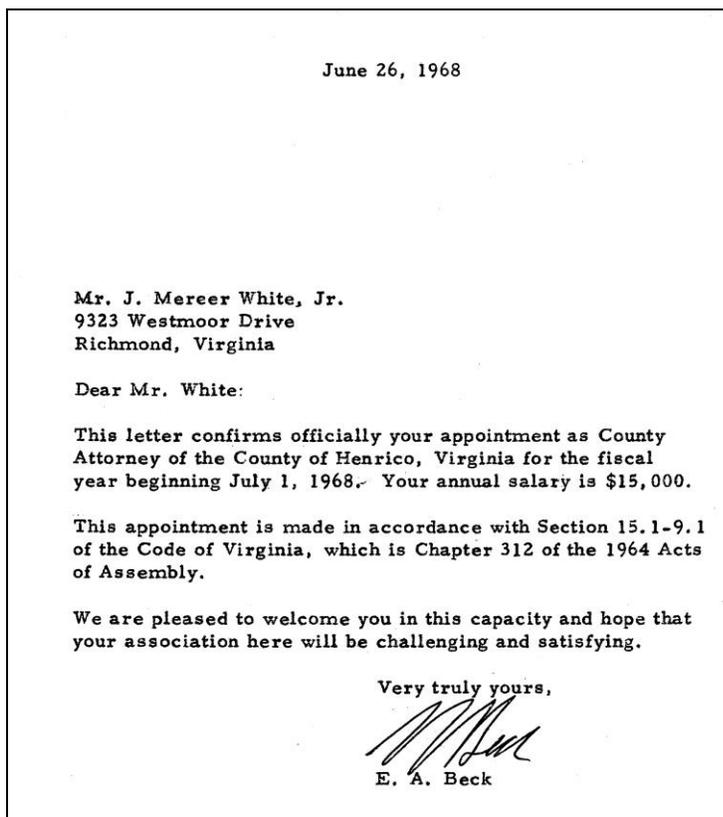
This letter confirms officially your appointment as County Attorney of the County of Henrico, Virginia for the fiscal year beginning July 1, 1968. Your annual salary is \$15,000.

This appointment is made in accordance with Section 15.1-9.1 of the Code of Virginia, which is Chapter 312 of the 1964 Acts of Assembly.

We are pleased to welcome you in this capacity and hope that your association here will be challenging and satisfying.

Very truly yours,

E. A. Beck



It appears from old office files that the Office of County Attorney was comprised only of the County Attorney and his secretary, Dee Douglas, until November 16, 1970, when Robert L. Dolbeare joined the office as an Assistant County Attorney. County offices at that time were located at 21<sup>st</sup> and Main Streets in the City of Richmond. Old files reveal Mr. Dolbeare's office was not on the same floor as Mr. White's, his office doubled as a conference room, and he and Mr. White shared a telephone.

In Henrico County's 1969 Annual Report, the County Attorney's report stated the office "operates like a law firm" and "as in a private law office, the work is varied and of the utmost importance to not only the County officials but as a protection for the interest of the residents of the County."

What follows is a sampling of the early work of the office. Opinions were rendered (e.g., a school personnel pay wage freeze), cases were litigated (e.g., the Tucker High School gym roof collapse; the rezoning of the Franklin Farms property; legislative reapportionment involving the so-called “floater seat;” and the consolidation of Henrico County Public Schools with those of the City of Richmond and Chesterfield County), matters were handled (the validity of using pumice block for fire wall – we note with interest that correspondence included a November 4, 1971 Western Union telegram), and general advice was rendered to County agencies (over-development). Advice was also regularly given to the Board of Supervisors on a myriad of topics (directions on filing as candidates; incorporation of a town; and conflict of interests).

J. Mercer White, Jr. served with distinction until May 1, 1973 when he resigned to become a judge in the Juvenile and Domestic Relations District Court for the County of Henrico. At that time, the office consisted of Mr. Dolbeare, Dee Douglas, and Andrew Wood, who had been hired as a part-time Assistant County Attorney on December 4, 1972. When Mr. White resigned, Mr. Dolbeare was appointed Acting County Attorney. He served in that capacity until William G. Broaddus was appointed as Henrico’s second County Attorney on July 1, 1973. Mr. Beck welcomed Mr. Broaddus to the County in his June 8, 1973 letter which stated “we hope that your association here will be challenging and satisfying.”

One year after being appointed County Attorney, Mr. Broaddus hired G. Timothy Oksman as a full-time Assistant County Attorney on July 1, 1974. Mr. Oksman replaced Mr. Dolbeare, who had resigned in the spring of 1974 to enter private practice. Stuart Settle was hired as a part-time Assistant County Attorney in November, 1974, followed by John L. Knight, a full-time Assistant County Attorney, on July 21, 1975. With Messrs. Oksman and Knight on board full-time, the part-time attorneys, Messrs. Wood and Settle, left the office to return to their private practices.

Mr. Broaddus’ eight and one-half years as Henrico County’s second County Attorney were challenging. Mr. Broaddus’ early years as County Attorney were busy as the County’s population increased and staff was added to provide legal services to a growing county.

One of Mr. Broaddus’ important roles was serving as the principal liaison between the County and its representatives in the General Assembly. This responsibility required reviewing all bills before the General Assembly and advising County administration on bills of interest.

Mr. Broaddus had significant involvement in the adoption of two pieces of legislation. At the time, no one fully realized the impact they would have on Henrico County and its future. One dealt with immunity from annexation and the second with state funding for roads.

During its 1979 session, the General Assembly enacted a statute to give Henrico and other urban counties immunity from annexation under certain circumstances. The statute required a judicial proceeding and a court determination that criteria for immunity had been

met. It was a proud day when, on March 20, 1981, the Henrico Circuit Court entered its order granting the County immunity from annexation. While some persons may criticize the unique Virginia separation of counties and cities and may criticize Henrico and Chesterfield Counties for not being more supportive of City concerns, the annexation immunity order enabled the County to become significantly involved in many situations of benefit to the City once the County was freed of the threat that every action it took would be used to show a community of interest justifying annexation.

For example, the County quickly moved to assist the City in developing an authority to run what had previously been called Byrd Airport. The City had never managed to operate the Airport on a break-even basis and always had to subsidize it. Mr. Broaddus drafted the charter for the authority that was approved by the General Assembly in 1975 and, as a result, the City was relieved of a significant millstone around its neck. Given the expert administration which followed the creation of the independent authority, the Richmond International Airport has thrived under the regional governance of the Capital Region Airport Commission.

Nearly 80 years ago, Henrico voters went to the polls. The election did not vote people into office. Rather, the votes cast helped change the course of the County's future by making it unique among all but one other Virginia locality in one very significant way – maintenance of its road system. The election outcome authorized the County to opt out of the newly-created state-operated road maintenance program which was implemented in 1932 as part of the Byrd Act. Mr. Broaddus helped push through legislation which memorialized the amount of state funding allocated to Henrico County for maintenance of its road system.

Mr. Broaddus' role also included advising the County Manager on matters such as the Conflict of Interests Act, protecting the County's interests in litigation, trying cases in the Henrico County General District Court and Juvenile and Domestic Relations District Court, and representing the School Board and the Industrial Development Authority. In addition, he advised County agencies on many topics.

Several noteworthy cases arose during Mr. Broaddus' tenure. A sampling of those cases follows.

*Gayton Triangle Land Co. v. Board of Supervisors.* The County zoned the triangle formed by Gayton, Gaskins, and Quioccasin Roads so that it would have to be developed as a whole. A developer, who wanted to develop a small, stand-alone parcel within the larger area, sued. The County was successful in upholding the County's zoning on a procedural point.

*Snap 'N Pops v. C. A. Browning.* One year in the mid-70s saw the development of a nationwide phenomenon called pop rocks. These were large grains of sand that had been dipped in a chemical substance so that when jarred would create a popping sound. Students quickly bought them and started throwing them on blackboards and floors in classrooms. The School Board quickly banned them and the Board of Supervisors followed suit. The County was sued in the United States District Court for banning the popular product. The Honorable Robert R. Merhige, Jr. quickly understood the disruptive impact of pop rocks on

the educational process and ruled in favor of the County. Following this litigation, pop rocks quickly lost popularity nationwide.

*Susan Paxman and Leslie Gough v. Woodrow W. Wilkerson, Dr. W. E. Campbell, et al.* Dr. Campbell was Superintendent of Henrico County Public Schools. This federal action was a challenge to the School Board's requirement that pregnant teachers stop teaching and go on "maternity leave" after they were five months pregnant. Ultimately, the School Board lost after an appeal to the Fourth Circuit Court of Appeals.

*Daniel J. Kruse, et al. v. W. E. Campbell, et al.* This was a special education class action case that challenged the County's provision of services to special needs students. The County ultimately ended up representing all school boards in the Commonwealth at the direction of Judge Merhige and hired an out-of-state expert who was very helpful to the case's defense.

Some of Mr. Oksman's fondest memories of the office include:

- ❖ A case involving an elderly gentleman who represented himself and who purportedly entertained Franklin and Eleanor Roosevelt in his East End home. During cross-examination by Mr. Oksman in Henrico Circuit Court, the defendant had a heart attack and collapsed. According to Mr. Oksman, the presiding judge looked calmly down at the defendant who was unconscious on the floor and said his motion for a continuance was granted.
- ❖ Successfully defending the constitutionality of the County's massage parlor ordinance in U. S. District Court. The County was one of the very first to promulgate a stringent massage parlor ordinance.
- ❖ Helping to create Henrico's first public park – Meadow Farm.



*Mr. Oksman, County officials, and Elizabeth Adam Crump at the conveyance of her property for the park.*

Mr. Oksman resigned September 1, 1976 to enter private practice. George T. Elmore, III was hired as his replacement and joined the office on September 27, 1976.

Soon thereafter, Messrs. Broaddus, Elmore, and Knight were joined by a fourth attorney, Joseph P. Rapisarda, Jr. who joined the office on March 22, 1977. Soon thereafter, two more attorneys were hired to handle the increasing workload associated with the County's growth: Michael K. Jackson in 1978 and J. T. "Tom" Tokarz on July 21, 1980. This would bring the office complement to six attorneys and two support staff in the late 1970s.



*Bill Broaddus, Tom Tokarz, Jackie Foster, Mike Jackson, George Elmore, Karen Grizzard, John Knight, and Joe Rapisarda gather for a farewell lunch for staff member Gwen Cramer.*

In 1981, Mr. Tokarz was assigned to represent the School Board and its administration. He relocated to a permanent office at Schools Central Office in the eastern portion of the County.

Mr. Broaddus served with honor and distinction until January 12, 1982. Upon his resignation, Mr. Broaddus became Chief Deputy Attorney General of Virginia in the administration of Governor Charles S. Robb. In July, 1985, the Henrico County Attorney's Office was honored when Mr. Broaddus was sworn in as Attorney General of Virginia by



### **New attorney general sworn in**

Chief Justice Harry L. Carrico of the Supreme Court of Virginia. Mr. Broaddus served out the unexpired term of Mr. Gerald L. Baliles who resigned to run for Governor.

On January 12, 1982, Mr. Rapisarda was appointed Acting County Attorney by County Manager Frank A. Faison. He served three months in this capacity before being named Henrico County's third County Attorney on April 21, 1982. Mr. Rapisarda's panel interview, chaired by Henrico Circuit Court Judge L. Paul Byrne, was the first one held by the County administration.

Over 33 years later, Mr. Rapisarda continues to serve Henrico County with honor and distinction. Over his long career as Henrico County Attorney, he has seen tremendous growth and change in the County as well as in the office. This growth has resulted in the majority of his time spent advising the County Manager and Board of Supervisors on important matters affecting County government and daily affairs as well as supervising and overseeing an office staff of 10 attorneys and seven support staff. It is noteworthy that his administrative assistant and office manager, Karen W. Grizzard, has worked for him since joining the office in 1978.

The office hired its first paralegal in June, 1990. Margaret H. Lewis was proud to serve as the office's first paralegal. Sadly, Mrs. Lewis died suddenly in March, 2008. The office now employs three paralegals.

The office experienced its first major reorganization in December, 2004 when Assistant County Attorneys Tom Tokarz and Karen M. Adams were promoted to Senior Assistant County Attorney. This reorganization ensured that a succession management plan was in place for the future needs of the Henrico County Attorney's Office and Henrico County.

A round of retirements began in 2006 when Assistant County Attorney James T. Moore, III retired after serving Henrico County for 17 years. He was involved in representing the County in numerous lawsuits, handling contractual matters for Henrico County Public Schools (high school and middle school laptop initiatives), and conducting many hours of training for the Division of Police, Sheriff's Office, and the Department of General Services, Security Section.

In December, 2007, Assistant County Attorney George Elmore retired after serving Henrico County for 31 years. For most of those years, Mr. Elmore represented the Department of Social Services.



*George Elmore and Mike Jackson confer with Director of Social Services Bettie Kienast and her staff.*

When Mr. Elmore joined the office, it was a very significant time to be representing a local department of social services due to changes in the laws governing abused and neglected children and children in need of supervision and services. Many of these changes resulted in increased litigation in the Juvenile and Domestic Relations District Courts, the Circuit Courts, and the Court of Appeals. Mr. Elmore became highly regarded in the Commonwealth for his knowledge and expertise in juvenile law. As his practice gradually shifted from representation of the Department of Social Services and new attorneys were hired, Mr. Elmore's time and efforts turned to the office's increasing workload in the area of real property. He stayed equally as busy in this capacity.



*George Elmore and Karen Grizzard confer on an assignment.*

Henrico County is only one of two Virginia localities which maintains its own road system. Working with the Real Property Department, Mr. Elmore assisted with the acquisition of rights-of-way and drainage easements for various road projects (either new roads or alteration or improvement of existing roads) including John Rolfe Parkway, the East Ridge Road widening, and the Francis Road project. He assisted with the land acquisition of approximately 15 school and library sites as the middle and northwestern quadrants of the County grew. In addition, acquisition of property was needed for other County facilities such as parks and fire stations. Mr. Elmore also represented Henrico County in condemnation proceedings in the Henrico Circuit Court when landowners refused to convey property or easements for County projects. He also assisted with major real estate closings; some are included later in our history.

The office experienced its first major transition in June, 2011 when Deputy County Attorney John Knight and Senior Assistant County Attorney Karen Adams retired. Between the two of them, 58 years of institutional knowledge left Henrico County on the same day. Although Mr. Knight represented virtually all County agencies in a wide variety of matters in his 36-year career with Henrico County, he was highly regarded for his specialized work in bond financings for both the County and the Economic Development Authority. He also had a wealth of expertise and knowledge involving the Freedom of Information Act and guiding County agencies in responding timely and accurately to FOIA requests. Mr. Knight also was an expert in employment and public procurement matters. In addition, for many years he served as counsel to the Economic Development Authority. Ms. Adams was highly regarded for her expertise in the areas of local government taxation, cable television franchising, and training for the Division of Police and Mental Health and Developmental Services. At last report, both are enjoying retirement!

On the occasion of these two major retirements, Senior Assistant County Attorney Tom Tokarz was promoted to Deputy County Attorney and long-time Assistant County Attorney Rhysa G. South was promoted to Senior Assistant County Attorney. Ms. South joined the office in 1987 and has been an integral part of the office's bankruptcy and real estate practices, litigation team, and leader in finance-related matters.

Numerous colleagues have passed away over the years. We remember fondly the contributions and friendships of Dee Douglas, Judy Hansen, Kacey Collier, Margaret Lewis, James Eichner, Esquire, W. Todd Benson, Esquire, and Benjamin A. Thorp, Esquire.

In 2010, Mr. Rapisarda was asked by the Henrico County 2011 Commemoration Advisory Commission to prepare a list of memorable cases involving the County government. What follows is a sampling of cases that span the years 1964-2013.

*City of Richmond v. County of Henrico* (1964)

In 1961, after attempts to negotiate a voluntary merger between the City of Richmond and the County of Henrico were defeated in a ballot initiative, the City of Richmond filed an annexation proceeding in the Henrico County Circuit Court. The City sought to annex 142 miles, which constituted 60 percent of the County and contained 115,000 residents. During the negotiations and litigation, many citizens spoke out against annexation including Henrico County Manager, Edward A. Beck. As a result, the County resisted annexation fiercely in litigation. In 1964, the court awarded the City of Richmond 17 miles that contained valuable tax resources and 45,000 residents at a cost to the city of 55 million dollars. After deliberation, the City of Richmond chose to reject the award.

This annexation proceeding followed the City's annexation of 12 miles of Henrico County in 1914 and 10 miles in 1940. Pursuant to an order entered in 1981 by the Henrico County Circuit Court, the County is now immune from annexation by the City of Richmond.

*Carolyn Bradley v. School Board of the City of Richmond*, 462 F.2d 1058 (4<sup>th</sup> Cir. 1972)

This case was an appeal from the order of United States District Judge Robert R. Merhige, Jr. compelling the consolidation of Richmond's public school system with the public school systems of Henrico and Chesterfield counties. Judge Merhige had ordered consolidation after concluding that unlawful segregation was being perpetuated in the counties' public schools, thus denying African-American students the equal protection of the laws under the Fourteenth Amendment to the federal Constitution. The appeals court, however, ruled that Judge Merhige's conclusion was not supported by substantial evidence. Finding that the last vestiges of state-imposed segregation have been eradicated in the public schools of Richmond, Henrico and Chesterfield, the Fourth Circuit concluded that no constitutional violation was present, and thus Judge Merhige exceeded his power of intervention in ordering that the three separate public school systems be consolidated to achieve racial balance in the assignment of pupils.

On May 21, 1973, the United States Supreme Court ended twelve years of school desegregation litigation in Richmond when it upheld the Fourth Circuit's decision by a 4-4 vote. The Supreme Court's ninth member, Justice Lewis F. Powell, Jr., took no part in the Court's consideration of the case because of his prior membership on the Richmond School Board, one of the parties to the case.

*Board of Supervisors v. Edward G. Heatwole*, 214 Va. 210 (1973)

This was a suit by the Henrico County Board of Supervisors seeking to compel Edward G. Heatwole, the County's Director of Finance, to comply with the Board's resolution directing him to "disestablish" sinking funds that he had established pursuant to an order of the Henrico County Circuit Court. The sinking fund consisted of net system revenues derived from the operation of water supply and sewage systems of four Sanitary Districts of the County. The purpose of the fund was to provide for the payment of principal and interest on bonds issued by the Sanitary Districts. The Supreme Court of Virginia granted Heatwole's motion to dismiss the Board's suit, for two principal reasons: (1) the proceeding was an internal dispute between County officials; and (2) the proper parties in interest, namely the bondholders, landowners, and the users and owners of the system, were not before the Court.

*Cosner v. Dalton*, 522 F.Supp. 350 (E. D. Va. 1981)

This case involved a suit by several individuals, organizations and counties, including Henrico, challenging the General Assembly's 1981 reapportionment of electoral districts for the Virginia House of Delegates. The County contended that the reapportionment denied it fair representation as required by the Virginia Constitution. The three-judge court ruled that the reapportionment was unconstitutional, ordered the General Assembly to devise a new plan that was fairer to the localities, and limited the terms of members of the House of Delegates elected under the original plan to one year.

*Henrico County v. F. & W., Inc.*, 222 Va. 218 (1981)

This land use dispute involved a developer's challenge to a decision of the Board of Supervisors to downzone a 16.64 acre parcel of vacant property on Woodman Road from a multi-family to a single-family zoning classification. The developer, Fralin & Waldron, sought to construct a 197-unit apartment project, to be called Woodman West, on the property. In defense of its downzoning decision, the Board argued that the multi-family zoning classification placed on the property by the 1964 Board was a mistake, and that a change in circumstances between 1964 and 1978 justified the downzoning. Like the Henrico County Circuit Court, the Supreme Court of Virginia rejected the Board's arguments and invalidated the downzoning. The Supreme Court noted that the County's 1974-95 Land Use Plan was based on a thorough study and recommended that apartments be built on the subject property.

*B. Lynette Banks v. Joseph B. Sellers*, 224 Va. 168 (1982)

B. Lynette Banks, a student at Henrico High School, was cut and stabbed by another student while on school grounds. Banks brought a suit for personal injuries against Superintendent of Henrico County Public Schools Joseph B. Sellers and Colin G. Steele, Principal of Henrico High School, claiming they were responsible for the attack because they failed to provide a safe environment for her education. After the suit was dismissed by the Henrico County Circuit Court, Banks appealed to the Supreme Court of Virginia. In a 6-1 decision, the Supreme Court upheld the Circuit Court, deciding that Sellers and Steele, because they performed several discretionary and managerial functions, were entitled to the defense of sovereign immunity and thus were not liable in damages for Banks' injuries.

*First Virginia Bank-Colonial v. Margaret Baker*, 225 Va. 72 (1983)

First Virginia Bank-Colonial made a loan to certain borrowers that was secured by a deed of trust on their property. Later, the bank was surprised to learn that the same borrowers had previously executed another deed of trust on their property in favor of a different lender. That prior deed of trust was not discovered when the bank did its title examination, because one of the deputies in the office of the Clerk of the Henrico County Circuit Court had indexed the deed of trust on the wrong page of the grantor's index book. After the homeowners defaulted on their loan, the bank foreclosed on the property and had to pay off the prior deed of trust that it had no knowledge of due to the clerk's indexing error. The bank then sued Margaret Baker, the Clerk of Court, to recover this amount. Reversing the decision of the Henrico County Circuit Court, the Supreme Court of Virginia ruled that Margaret Baker was not entitled to the defense of sovereign immunity, but was responsible to the bank for the indexing error made by her deputy clerk that caused the bank's loss.

*James Cocke Memorial Foundation v. County of Henrico* (1988)

This suit was brought by the James Cocke Memorial Foundation and the heirs of James Cocke to obtain a judicial declaration that the lot located at the southwest corner of 22<sup>nd</sup> and Main Streets in the City of Richmond, the former site of the Henrico County Courthouse, was no longer being used as a courthouse and thus title to the property had reverted to the Cocke heirs. In 1751, James Cocke had conveyed the one-half acre lot to the County subject to a "possibility of reverter," which provided that title to the lot would return to James Cocke and his heirs upon removal of the County Courthouse from the lot. In 1974, after a referendum approved by the voters in 1972, the Henrico County Circuit Court entered an order terminating the holding of judicial sessions in the courthouse on the lot and declaring the opening of a new County Courthouse located at the southeast intersection of Parham and Hungary Spring Roads for judicial sessions beginning December 2, 1974. In 1988, after the County had ceased its occupation of any portion of the lot located at 22<sup>nd</sup> and Main Streets, the Circuit Court entered an order declaring that the County no longer had any interest in the lot, and that title to the lot was transferred, by operation of the reverter clause in the 1751 deed, to the known and unknown heirs of James Cocke, who died in 1775.

*Mattie S. McDaniel v. Anthony P. Mehfood*, 702 F. Supp. 588 (1988)

Several African-American residents of Henrico County, joined by the Henrico County Civic League, the Montezuma Oak-Hill Civic Association, and the Henrico Political Task Force, brought suit under the Voting Rights Act of 1965 against the members of the Board of Supervisors, the Electoral Board, and the County's General Registrar. The suit claimed that the County's 1981 redistricting plan was adopted to dilute minority voting strength in violation of the Voting Rights Act and the federal Constitution. After a lengthy trial, U.S. District Judge Robert R. Merhige, Jr. found that the County had denied African-Americans an equal opportunity to participate in the political process in violation of federal law, and ordered the County to submit a new plan to remedy the violation. In December, 1991, the four years of litigation came to an end after the court approved the County's 1991 redistricting plan that created a majority-minority district for the first time in County history. In November, 1995, County voters elected the first African-American to the Board of Supervisors; that individual, Frank J. Thornton, was serving as Chairman of the Board at the time of this report.

*Muriel M. Patch v. A. E. Clarke*, 873 F.2d 1140 (4<sup>th</sup> Cir. 1989)

For a period of years beginning in 1980, Muriel Patch and several of her followers picketed the Grove Avenue Baptist Church located in western Henrico County. Their demonstrations brought them into collision with the County's sign ordinance, which was violated by Patch's posting of her protest signs on County right-of-way. Patch brought suit against County zoning enforcement officers, claiming that they selectively enforced the sign ordinance and that the ordinance was unconstitutional because it violated Patch's First Amendment rights of free speech and free exercise of religion. After a jury verdict was returned in favor of the County officials in the United States District Court and the District Court found the ordinance was constitutional, Patch appealed to the Fourth Circuit Court of Appeals. Rejecting Patch's appeal, the Fourth Circuit ruled that the ordinance did not violate Patch's constitutional rights. Instead, the ordinance substantially advanced the County's substantial interests in public safety and aesthetics.

*County of Henrico v. George Ehlers*, 237 Va. 594 (1989)

This case was a dispute over entitlement to \$128,464.04 in cash that was seized by Henrico police from George Ehlers after he was arrested on an Amtrak train on suspicion of possessing illegal drugs. A police dog trained to locate certain drugs by scent had "alerted" on Ehlers' sleeping compartment as well as his luggage. After Ehlers was removed from the train and taken to the police station, the cash was found during a search of his luggage, along with marijuana residue. During questioning by police, Ehlers disavowed any knowledge or ownership of the cash, which was then kept by the police. No criminal charges were filed against Ehlers.

The County, Amtrak, and the Commonwealth of Virginia all claimed they were entitled to the money: the County because its police had seized it; Amtrak because the money was abandoned on its train; and the Commonwealth under the Virginia Unclaimed

Property Act. Later, even Ehlers claimed the money, despite his previous statements that he knew nothing about the cash.

At trial, the Henrico County Circuit Court would not allow the jury to hear Ehlers' statements disclaiming any knowledge or ownership of the money. After the trial judge ruled that Ehlers was entitled to the money because he possessed it when it was seized, the other parties appealed to the Supreme Court of Virginia. The Supreme Court ruled that the trial judge erred by not allowing the jury to consider Ehlers' statements, and sent the case back for another trial.

After several more years of litigation, Ehlers' claim to the money was dismissed, and the remaining parties – the County, Amtrak and the Commonwealth – reached an agreement that split the money among them in various shares.

*Colonial First Properties, LLC v. Henrico County*, 166 F. Supp. 2d 1070 (E. D. Va. 2001)

Colonial First Properties, LLC, doing business as Gold City, owned and operated a restaurant and bar on Brook Road that offered semi-nude dance performances. After the County charged Gold City's dancers with violating the County's public nudity ordinance, Gold City sued the County in federal court, claiming the ordinance violated its First Amendment rights. Granting the County's motion to stay all proceedings in federal court, United States District Judge Robert E. Payne declined to entertain Gold City's claims and allowed them to be decided by the state courts of Virginia.

*Taubman Regency Square Associates, LLC v. Board of Supervisors* (2002)

This was a suit filed by the owner of Regency Square Mall against the Board of Supervisors, the County's Economic Development Authority, and the Short Pump Town Center Community Development Authority to block the financing and construction of the Short Pump Town Center, an upscale pedestrian-oriented shopping mall in the far western portion of the County. Taubman claimed that the County's formation of a community development authority to finance the new shopping center, along with the County's agreement to pay monetary incentives to the developer of the new center, were unlawful and violative of the Virginia and federal constitutions. After a trial, the Henrico County Circuit Court ruled that the community development authority was legally formed and that the accompanying financial structure and monetary incentives to induce construction of the shopping center were also lawful. After the Supreme Court of Virginia declined to entertain Taubman's appeal of that decision, the community development authority issued its bonds, the developer proceeded to construction, and the shopping center was opened in the fall of 2003.

*Sharon C. Boyd v. County of Henrico*, 42 Va. App. 495 (2004)

Sharon Boyd, who engaged in semi-nude dance performances at the Gold City restaurant and bar on Brook Road, was convicted in the Henrico County General District Court of violating the County's public nudity ordinance and fined \$125. On appeal, she argued that the ordinance was unconstitutional because it violated her First Amendment

rights and thus her conviction should be overturned. In an 8-3 decision, the Virginia Court of Appeals upheld the conviction and the constitutionality of the ordinance, finding that the ordinance: (1) restricted the least amount of expressive nudity possible; (2) was clear in the type of behavior it restricted; (3) was a valid exercise of the County's police power to regulate nude and semi-nude dancing; and (4) was not selectively enforced by the police. The appeals court also agreed with the trial judge's finding that the strip club was not a theater, so the ordinance's exception for artistic performances was not applicable.

*McBurney v. Young*, 133 S.Ct. 1709 (2013)

This case involved a challenge to the "citizens-only" provision in the Virginia Freedom of Information Act, which grants access to public records in Virginia only to Virginia citizens. A California business whose request for real estate tax records from the County assessor's office was denied filed suit in federal court, claiming the "citizens-only" provision violated the Privileges and Immunities Clause and the dormant Commerce Clause of the federal Constitution. In a unanimous decision, the United States Supreme Court rejected the constitutional claims and upheld the County's denial of the records request.

**MAJOR REAL  
ESTATE TRANSACTIONS  
HANDLED BY THE  
HENRICO COUNTY ATTORNEY'S OFFICE**

With the growth of the County, there have been significant real estate transactions over the past 40 years in which the County Attorney's Office has played a major role.

One of the first major real estate transactions was the County's purchase of the Old Hermitage Country Club – now Belmont Park – in the mid-1970s. This purchase occurred as the result of a bond referendum for parks. At the end of the decade, the County acquired the regional wastewater treatment plant off Kingsland Road, including approximately 70 miles of easements for utility lines leading to the plant site. In the 1980s, the County acquired the regional water treatment plant site at the intersection of Three Chopt and Pemberton Roads along with necessary easements for water intake from the James River and easements to allow water distribution in the western and central portions of the County from the plant. During the 1990s, the Hartford Building on Parham Road was purchased to house the Divisions of Police and Fire. The office assisted the Economic Development Authority with the acquisition of a large tract of land known as the Elko Tract in the eastern portion of the County from the Commonwealth of Virginia. The White Oak Technology Park located at the site and was home to Infineon, a chip manufacturing facility. In 2007, the County purchased the Tuckahoe Sports Complex at Tuckahoe Park, a 65-acre site home to the Tuckahoe Little League.

In addition, in early 2000, the County began negotiations to sell a closed landfill which was acquired during the 1970s. Waste Systems of Virginia, LLC, a national waste management company, acquired the property for the expansion of its existing landfill. The transaction closed in 2007.

Preceded by more than a decade of negotiations and legwork involving state and federal agencies, local governments, and private landowners, construction of the \$280 million Cobbs Creek Reservoir began in June, 2015. The County anticipates the reservoir, which will provide for the drinking water needs of Henrico County and the region for the next 50 years, will be operational by early 2022. The office assisted the Real Property Department, over a 30-month period, with the acquisition of property for the reservoir ranging in size from small easements to a few hundred acres. The County worked with 22 property owners to purchase 1,830 acres at a cost of \$9.8 million. Final transactions were completed in February, 2015.

**TRANSACTIONAL MATTERS  
HANDLED BY THE  
HENRICO COUNTY ATTORNEY'S OFFICE**

Much of the routine, daily (albeit important) work done by the Henrico County Attorney's Office is transactional in nature. For FY 2014-15 (ending June 30, 2015), the following statistics reveal the scope and variety of this transactional work:

Category	No.
Contracts drafted or reviewed	1,490
Deeds and leases drafted or reviewed	325
Board papers drafted or reviewed	339
Freedom of Information Act requests handled	312
Subpoenas Duces Tecum handled	226
Restrictive covenants reviewed	29
Proposed Legislation reviewed (note: occurred during the months of the General Assembly Session – January-March)	136
Festival permit applications reviewed	16
Sets of conditional zoning proffers reviewed	149
Official opinions rendered	3

In addition, the office spends a considerable amount of time and effort recovering substantial revenue for Henrico County in the areas of bankruptcy, overweight vehicle citations, and delinquent tax sales. This work involves coordinated efforts among numerous County agencies; namely, Finance, Public Utilities, Public Works, and Police. Since maintaining records, collection amounts through FY 2014-15 are:

Bankruptcy: \$15,435,591

Overweight vehicle citations: \$419,813

Delinquent tax sales: \$424,630

Another important role of the office is assisting the County when it issues bonds to build new schools, libraries, fire stations, parks and roads according to the wishes of County citizens who go to the polls to vote on bond referenda or when the County refinances bonds to achieve significant interest savings. The office works alongside the County's outside bond counsel, financial advisor, and Department of Finance in reviewing and preparing bond documents and assisting with closings.

**MAJOR PROJECTS  
HANDLED BY  
THE HENRICO COUNTY ATTORNEY'S OFFICE**

There have been significant projects undertaken by the County Attorney's Office over the past 40 years.

**Recodification of the Henrico County Code**

To date, there have been three Code recodifications: 1980, 1995, and 2010. The office has been at the helm of each one.

Recodification is a comprehensive legal review of the entire County Code. This review identifies and eliminates conflicts, inconsistencies and obsolete provisions against the Code of Virginia, identifies and eliminates obsolete, redundant or conflicting provisions, and identifies and eliminates potentially unconstitutional provisions. The office works closely with County agencies in the review process and the Code publisher in the publishing process. From start to finish, the process takes one and one-half years to complete. Before the recodified Code becomes effective, the Board of Supervisors must approve a recodification ordinance.

This office also serves as the liaison between Henrico County and the Code publisher. The office ensures ordinances approved by the Board of Supervisors are sent to the publisher for posting on its website and inclusion in annual printed supplements. Supplementation is very important to the continuing usefulness of the County Code. We are pleased that the Code of 2010 (effective January 1, 2011) now has a presence on the County's Internet site and is kept current by the office. This is beneficial to not only County agencies but also County citizens who need access to the Code.

**Redistricting**

Federal and state law requires localities to reapportion the representation in the governing body among the magisterial districts every 10 years based on United States Census Bureau data. The simple definition of redistricting is drawing new magisterial district lines. However, there is nothing simple about the process.

The office has been involved in five redistrictings: 1971, 1981, 1991, 2001, and 2011.

The Board of Supervisors, in considering and adopting a redistricting plan, must comply with the requirements of the United States Constitution, the Virginia Constitution, the federal Voting Rights Act of 1965, and the Virginia Code. One can see the important legal role the County Attorney's Office plays in this process. The office ensures that redistricting criteria are met, that the County complies with the federal Voting Rights Act, that necessary documentation is sent to the United States Department of Justice for preclearance, and that public participation is encouraged. Public participation is accomplished by means of public hearings, information sessions, newspaper articles and notices, the County's web site, and local television including HCTV, the County's award-winning station. And, last but not least, the office compiles and maintains a complete record for the next redistricting.

In the redistricting process, the office works closely with the Board of Supervisors and many County agencies, including the County Manager's Office, Public Relations & Media Services, Information Technology, Planning, and Registrar.

### **Formation of Community Development Authorities**

Community development authorities ("CDAs") provide a legal and financing structure to facilitate a proposed project by helping developers obtain better financing rates and other benefits (*i.e.*, public infrastructure including utilities and roads). The office has been involved in the establishment of three CDAs: The Short Pump Town Center, Reynolds Crossing, and The Shops at White Oak Village. The office participates in meetings with developers to evaluate the proposal and review and prepare legal documents necessary to create and maintain the CDAs.

### **Contract With Dr. Louis Manarin**

Dr. Louis Manarin was commissioned by Henrico County to write "Henrico County Field of Honor". Dr. Manarin's book, published in 2004, focuses on the lives, battles and historic significance of the Civil War in Henrico County. The office handled the various contracts required to implement the project.

### **Boundary Between Henrico County and Goochland County**

Some years ago, negotiations began to end longstanding questions over the proper location of the boundary line between Henrico County and Goochland County. The new boundary line, which was effective January, 2005, provided residents who previously straddled boundary lines with a single county tax bill and removed confusion as to which locality citizens in the affected areas resided in.

### **Cable Television Franchising**

Since 1976, the office has worked on the franchising of cable television operators as that new technology emerged. More recently, in the mid-1990s, the office spent several

years working on the renewal of the Comcast cable television franchise and award of a new franchise to Verizon. This office's involvement included negotiating terms and conditions of the franchises as well as a comprehensive rewrite of the County laws on cable television.

On November 12, 2013, the Board of Supervisors approved a new cable television franchise agreement with Comcast. The 15-year agreement will expire in 2028. The office worked closely with the Department of General Services through every step of the negotiation process. In addition to participating in the negotiations, the office drafted the new agreement and other related papers. Under federal law, cable providers cannot offer cable services in a locality without a franchise agreement.

### **Notary Public Training**

The Commonwealth of Virginia made significant changes to the Notary Act in 2007. As a result, this office trained 138 staff to make sure County agencies were up to date on the important changes.

### **Independent Commission on Land Acquisition**

Appointed by the County Manager in 2007, the Independent Commission on Land Acquisition studied and evaluated concerns expressed about the process, practices and methods used in the acquisition of properties by Henrico County. The commission, which was comprised of local real estate and legal professionals, held 22 public meetings and reviewed and recommended various changes to land-buying practices. The County Attorney served as resource staff to the Commission to assist with providing access to staff, documents, information requested and any other assistance needed. The commission's work culminated in its 543-page report issued on January 28, 2008.

## **CONTRIBUTIONS OF THE HENRICO COUNTY ATTORNEY'S OFFICE TO THE LEGAL COMMUNITY**

The Henrico County Attorney's Office is proud to acknowledge contributions of its members to various organizations and bar associations which enhance the legal profession and bring credit to Henrico County.

### **Local Government Attorneys of Virginia**

The Local Government Attorneys of Virginia, Inc. ("LGA") is a nonprofit professional corporation created to (1) promote the continuing legal education of local government attorneys; (2) furnish information to local government attorneys and departments that enable them to perform their functions better; (3) offer a forum through which LGA members may meet and exchange professional ideas of import to Virginia local government attorneys; and (4) initiate, support, or oppose legislation and litigation that, in the judgment of LGA, is significant to Virginia local governments.

Former County Attorney William Broaddus was a founding member of LGA in 1975. What started as a small core group some 35 years ago has since grown to a membership of over 650 public and private attorneys who practice local government law. Five members of the office, William Broaddus, Joe Rapisarda, Tim Oksman, John Knight, and Rhysa South served as president of LGA. Mr. Knight was the first attorney ever elected to this office who was not the chief or primary legal counsel of a locality. Members of the office regularly serve as speakers or panel moderators during LGA's bi-annual conferences. In addition, members often serve on ad hoc and regular committees of LGA.

The office has been honored through the years by the bestowing of special awards by LGA.

The Cherin Award for an Outstanding Deputy or Assistant Local Government Attorney, established in 1994, honors a deputy or assistant local government attorney who has demonstrated distinguished public service that has enhanced the image of local government attorneys in the Commonwealth and reflects personal commitment to the highest ethical and professional principles. John Knight was the first recipient of this prestigious award. Two other attorneys have been honored to receive this award: Rhysa South in 2000, Karen Adams in 2010, and Tom Tokarz in 2014.

The Edward J. Finnegan Award for Distinguished Service, established in 1991, recognizes an individual in the Commonwealth of Virginia who has made significant contributions to local government law or to LGA. Joe Rapisarda was honored to receive this prestigious award in 1996 and William Broaddus in 1999.

### **Local Government Paralegal Association of Virginia, Inc.**

The Local Government Paralegal Association of Virginia, Inc. ("LGPA"), which has a membership of 75 paralegals throughout the Commonwealth of Virginia, is a nonprofit organization that serves the following purposes: (1) to promote the continuing education, professionalism and high ethical standards of its members; (2) to educate lawyers, students and LGPA members as to the benefits and utilization of paralegals; and (3) to act as a liaison among various bar associations and the paralegal community.

Two paralegals have been or are involved in LGPA. Margaret Lewis was a founding member in 1999 and also served as its first president. Garry Soles was elected as president in January, 2011, and will end his second two-year term in December, 2015.

### **Virginia State Bar**

In order to practice law in the Commonwealth of Virginia, attorneys must be licensed by the Virginia State Bar ("VSB"). For many years, several members of the Henrico County Attorney's Office have contributed their time and expertise to the VSB and its many activities.

The Third District Committee acts as a trial court to determine charges against attorneys for alleged misconduct. The Committee is composed of attorneys and lay

members. Joe Rapisarda, Karen Adams, and Lee Ann Anderson have served or are serving on the Third District Committee.

The powers of the VSB are exercised by a council which is composed of 81 members. In 2015, Rhysa South began serving a second three-year term on the Council, having served from 2003-2006. In addition, Ms. South has served on the Standing Committee on Lawyer Discipline and the Disciplinary Board, which adjudicates charges of misconduct and impairment filed against attorneys.

Each person admitted to the VSB as an active member must complete a course of study on the Rules of Professional Conduct and an attorney's broader professional obligations. The course, known as the Harry L. Carrico Professionalism Course, is prescribed by the Executive Committee of the VSB and approved by the Supreme Court of Virginia. Joe Rapisarda, Karen Adams, and Lee Ann Anderson have served or are serving on the professionalism course faculty which is a three-year commitment.

### **Henrico County Bar Association**

The mission of the 300-member Henrico County Bar Association is:

- To instill in the members of the legal profession a high standard of honor and integrity to the client, the courts and to the community.
- To promote reform in the law and in the judicial procedure.
- To participate in the affairs of Henrico County and the State of Virginia to ensure the orderly and fair administration of justice.
- To encourage social interaction among the members of the Bar.

Six attorneys have served as president: Joe Rapisarda, George Elmore, Rhysa South, Karen Adams, Ellen Fulmer, and Marissa Mitchell. Additional service includes committee work and participation in Bar activities. One of the activities is the Henrico Court Docent Program. This program provides an educational program for Henrico County middle school students. The purpose of the program is to educate eighth grade students on the Virginia judicial system. It gives students an opportunity to witness court proceedings, observe the roles of various court officers, and tour the County jail and detention facility. The program not only exposes students to many career opportunities – lawyer, judge, clerk, bailiff, court reporter - they also learn the merits of adopting law-abiding lifestyles. Attorney volunteers ensure the very best court experience and make a follow-up visit to students at their school to discuss what they observed.

### **Recodification of Title 15.1**

The 1994 General Assembly directed the Virginia Code Commission to undertake recodification of Title 15.1 which had not been recodified since 1969. Title 15.1, the main volume of state law dealing with local governments, had become increasingly difficult to use because of repetition, poor organization, contradictions, and obsolete language. County Attorney Joe Rapisarda served on the 20-member appointed task force which took the lead in the recodification. Originally, the recodification was to take two years but due to its

complexity, the project took an additional year to complete and became effective on December 1, 1997.

### COMMUNITY OUTREACH



The Henrico County Attorney’s Office is proud to have participated in the Statewide Legal Food Frenzy for the past seven years. This friendly competition benefits the seven regional food banks and the Federation of Virginia Food Banks and encourages all law firms and legal offices throughout Virginia to raise food and funds during a traditionally slow period for donations. The Frenzy, held each spring, was started in 2007 by former Attorney General and Governor Robert F. McDonnell, the Young Lawyers Division of the Virginia Bar Association, and the Federation of Virginia Food Banks. It engages the legal community in a friendly competition for the coveted Attorney General’s Cup which is given to the law firm that raises the most food per employee. Awards are also given for the total amount of food raised and for the amount raised by firms based on the size of the firm.

In 2011, the office was pleased to receive two awards: second place in the “Government Per Capita” category and third place in the “Government” category. In both 2012 and 2014, the office received an award for second place in the “Pounds Per Capita” category.

The office has benefited from the use of legal interns since the early 1980s. Law students perform legal research, attend court hearings, depositions, and trials, and draft

pleadings. To date, approximately 59 interns from law schools including the University of Virginia, T. C. Williams School of Law at the University of Richmond, and the College of William and Mary have taken part in our internship program during fall and spring semesters as well as during summer break.

The office has been pleased to participate in the Robert F. Kennedy Public Service Fellowship Program through the University of Virginia School of Law. The law school partners with public service organizations to place its graduates in order for them to gain experience and skills. Since 2012, the office has been pleased to host two Fellows, one of whom is now a member of the attorney staff.

In addition, the office began a paralegal externship partnership in 2013 with two local universities. To date, we have been pleased to host four individuals in the development of their paralegal studies.

Below is a listing of current staff as of July, 2015, along with their year of hire:

County Attorney

Joseph P. Rapisarda, Jr. (1977)

Deputy County Attorney

J. T. "Tom" Tokarz (1980)

Senior Assistant County Attorneys

Rhysa G. South (1987)

Lee Ann Anderson (2009)

Assistant County Attorneys

Wade T. Anderson (2013)

Audrey J. Burges (2012)

Karen E. Dottore-Jones (2015)

Denise M. Letendre (2014)

Marissa D. Mitchell (2003)

Andrew R. Newby (2010)

S. Michael Westermann (2013)

Business Supervisor

Karen W. Grizzard (1978)

Paralegals

E. Garry Soles (1998)

Pamela J. Otey (2002)

Tinesha M. Jackson (2008)

Secretaries

Donna L. Melton (1990)

Leonora A. Gray (2001)

Sharon O. Eichler (2004)

## **ACKNOWLEDGMENTS**

This report would not have been possible but for the assistance of many dedicated individuals, several of whom have devoted a significant portion of their lives to the betterment of Henrico County. First and foremost, Karen Grizzard collected all the information contained in the report and organized it into a preliminary draft. Former members of the office Bill Broaddus, George Elmore, Bruce Kimble, John Knight, and Tim Oksman, as well as present member Rhysa South, contributed oral histories and experiences. County Attorney Joe Rapisarda edited the final draft and supplied much of the material for the report. The report is a shining example of the professionalism and teamwork that have been the hallmarks of the County Attorney's Office over its now 47-year history.