THE REPORTER OF THE LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC.

National Legal Research Group, Inc. David Wagoner, J.D., Editor

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THANK YOU FOR RENEWING!
Amy V. Sales, Executive Director

Thank you for renewing your LGA membership through the 2024-2025 year. We look forward to working with you and your offices, and just want to let you know how much we appreciate your membership in this great organization.

NEW WEBSITE, NEW DATABASE, NEW PROCESSES, OH, MY!
Amy V. Sales, Executive Director

We are excited to share that the LGA is undergoing an upgrade! You may have noticed the new logo shared in the 2024 Fall Conference program. This was developed to adorn the new association website, which we have scheduled to roll out in January 2025.

LGA News 297
- Thank You for Renewing! 297
- New Website, New Database, New Processes, Oh, My! 297
- Save the Date for Spring Conference 298
- 50 Years of the LGA—Your Input Needed 299
- Member News 299
- In Memoriam 300

Recent Cases 301
- Virginia Court of Appeals 301
- U.S. Court of Appeals for the Fourth Circuit 315

Attorney General's Opinions 319
Positions Available 319

In addition to the website, the LGA will also transition to a new database. Although not as scary as lions, tigers, and bears, database changes come with the need to learn new processes. Know that staff is here to help. Members will still have single sign-on access to our forums, directory, and committee communications. What will change are the conference registration and renewal processes. But never fear, staff is here!

Keep an eye out for rollout dates and guidance in upcoming issues of the *Bill of Particulars* and via email. And, you can always call us at 804-643-4433 ext. 1 (Christy Jenkins) or ext. 5 (Amy Sales).

We look forward to sharing these improvements with you, and we thank you for your LGA membership!

SAVE THE DATE FOR SPRING CONFERENCE
Christy Y. Jenkins, Associate Director

We may be decking the halls, but it's never too early to Think Spring! Charlottesville will be the backdrop for the LGA's 2025 Spring Conference, which will take place at the Omni April 24–26, 2025. Come prepared for great networking, education, fellowship, and relaxing on the Downtown Mall!

The conference committee, chaired by Matt Freedman, has hit the ground running. Anticipated session topics include:

- annual legislative update
- taxation and budget processes

- OSHA/VOSH investigations and compliance

- basics of meetings, rules of procedure, and actions

- hot topics in law enforcement, employment, contracts, code compliance, and technology.

We are grateful for the members of our conference committee, as well as all of our LGA volunteers who join our practice groups and committees. Thank you for your service to the LGA!

The support of both our annual and conference sponsors also makes a difference. If you know of a firm or other organization who might benefit from the visibility that conference sponsorship could bring, please email your suggestions to Christy Jenkins at christy.jenkins@easterassociates.com.

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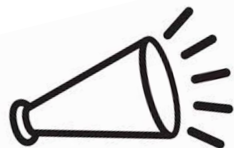
50 YEARS OF THE LGA—YOUR INPUT NEEDED
John C. Blair

I am writing because we are a little over one year away from the LGA's 50th Anniversary celebration.

As we approach the golden anniversary, I am writing to ask for your assistance.

One potential way to preserve the organization's history is to record a series of podcasts about the LGA. I would like to survey the membership to ask about who you might like to hear interviewed in one of these podcasts.

Please email me individually (blairjc@ci.staunton.va.us) with any suggestions you have about potential interviewees for a podcast series.

 **MEMBER NEWS**

WELCOME to the following new members of the LGA!

Leslie Haley (lhaley@oag.state.va.us); Deputy Attorney General, Office of the Attorney General

Julio Munoz (julio.munoz@alexandriava.gov); Assistant City Attorney, Alexandria

Steven G. Popps (spopps@oag.state.va.us); Chief Deputy Attorney General, Office of the Attorney General

Have we missed anyone? Please submit professional news announcements to dwagoner@nlrg.com.

IN MEMORIAM

Submitted by G. Timothy Oksman, Virginia Beach Sheriff's Office

Portsmouth Assistant City Attorney Bob Merhige has passed away. A Richmond native, Bob served as a Richmond Police Officer, attaining the rank of Lieutenant, and had a reputation for fearlessness, fairness, and integrity—all accompanied by a wicked and self-effacing sense of humor. He provided security for Israeli Defense Minister Moshe Dayan when that official visited Richmond. He then attended law school and became—first—General Counsel for the Washington DC Airport Authority and then Deputy Executive Director and Chief of Security for the Virginia Port Authority, where he helped develop our port into the economic powerhouse it is today. After a brief retirement from the Port Authority, he became an Assistant City Attorney for Portsmouth, where he handled zoning and code enforcement cases, earning the respect of the bench, city officials, and all members of the public with whom he interacted. His passing is a loss for Virginia.

VIRGINIA COURT OF APPEALS

BOARD OF ZONING APPEALS • CIRCUIT COURT REVIEW • RESPONSIVE PLEADINGS • CODE § 15.2-2314

Stafford Cnty. Bd. of Zoning Appeals v. Grove, 81 Va. App. 687, 905 S.E.2d 140 (2024) (Atlee, Jr., J.).

HOLDING: When a party petitions a circuit court to review a board of zoning appeals decision, respondents may file responsive pleadings.

DISCUSSION: In 2022, two Stafford County residents and their corporation (collectively, Applicants) applied for a special exception permit to operate a commercial kennel on their property. The Board of Zoning Appeals (BZA) denied the application. Applicants appealed to the circuit court pursuant to Va. Code § 15.2-2314, naming both the Stafford County Board of Supervisors (Board) and the BZA (collectively, Respondents) as respondents. Respondents jointly filed a demurrer to Applicants' petition for a writ of certiorari. The circuit court overruled the demurrer, holding that responsive pleadings may not be filed in cases brought under Va. Code § 15.2-2314. Respondents appealed.

The court of appeals held that the circuit court erred in finding that the Board could not file a demurrer in this matter. Applicants improperly named the BZA as a party—the statute makes clear that "the board [of zoning appeals] shall not be a party to the proceedings." Va. Code § 15.2-2314. By contrast, a locality's board of supervisors is a necessary party. Although the Code section is silent with regard to the filing of responsive pleadings at the petition stage, "[t]he fact that Code § 15.2-2314 does not expressly provide for a respondent to file a responsive pleading to a petition for review does not amount to a prohibition on such filings." As a preliminary matter, Va. Code § 8.01-273(A),

which permits the filing of a demurrer in any “action at law,” establishes a default presumption that the filing of a demurrer is available when appealing a BZA decision. In addition, Rule 3:8 of the Virginia Supreme Court Rules sets forth the requirements for filing responsive pleadings in all civil actions; it carves out no exception for petitions under Va. Code § 15.2-2314. Furthermore, the Supreme Court has issued several relevant rulings without any remark as to whether the underlying responsive pleadings were improper or impermissible. Finally, the circuit court’s interpretation of Va. Code § 15.2-2314 would lead to absurd results, as “a respondent would be unable to challenge any pleading prior to the issuance of a writ of certiorari, no matter how facially deficient the petition may be.” In sum, “[w]hile Code § 15.2-2314 shields the BZA from being made a party to appeals brought under that statute, it does not prohibit the Board of Supervisors—a necessary party—from filing a responsive pleading to a petition for a writ of certiorari.”

Therefore, the court reversed the circuit court’s judgment and remanded the case for further proceedings.

CONFEDERATE MONUMENT • RELOCATION • COLLATERAL DESCENDANTS • PROPERTY ENTITLEMENT • PUBLICLY OWNED CEMETERY • CODE § 15.2-1812

Cowherd v. City of Richmond, 82 Va. App. 15, 905 S.E.2d 463 (2024) (Callins, J.).

HOLDING: Because the collateral descendants of the Confederate general did not establish a claim of right to the monument, they did not possess the authority to direct its relocation.

DISCUSSION: The collateral descendants of A.P. Hill, a Confederate general who died in 1865, objected to the City of Richmond’s plan to relocate the A.P. Hill monument and A.P. Hill’s remains on the basis that the site was a publicly owned cemetery. The statue in question was constructed in 1892, above A.P. Hill’s remains, at the intersection of Laburnum Avenue and Hermitage Road in Richmond. Since 1914, the monument site has been exclusively owned and maintained by the City. In 2020, the Richmond City Council adopted an ordinance authorizing the City to remove Confederate statues from City-owned property. Approximately two years later, the City petitioned the circuit court for permission to disinter the remains of A.P. Hill and relocate them to a cemetery in Culpeper, and to remove the statue and gift it to the Black History Museum and Cultural Center.

The collateral descendants did not object to the City’s plans to relocate A.P. Hill’s remains, given the fact that Culpeper was A.P. Hill’s place of birth. However, they maintained that because the monument had stood as a grave marker over the remains, the monument site constituted a publicly owned cemetery, thereby divesting the City of

any right to determine the statue's relocation. Claiming a superior property entitlement, the collateral descendants proposed that the monument be moved to Cedar Mountain Battlefield in Culpeper County. The circuit court determined that the City alone possessed the authority to decide the final placement of the A.P. Hill monument. This appeal followed.

The court held that the collateral descendants lacked the right to determine where the monument would be relocated. The collateral descendants based their argument primarily on statutory language stating that a local governing body has the sole authority to relocate war monuments and memorials situated on public property, *except* for "a monument or memorial located in a publicly owned cemetery." Va. Code § 15.2-1812(A). The circuit court had disposed of this argument, finding that the monument site, which contained the remains of only one person, did not qualify as a "publicly owned cemetery." (The lower court applied the definition of "cemetery" codified in Richmond City Code § 7-1, which explicitly references "deceased persons" (plural).) The appeals court, however, found this issue to be irrelevant because the collateral descendants did not object generally to the removal of the statue, but only asserted a right to determine its place of relocation. "By agreeing to remove A.P. Hill's remains and to relocate the statue, there is no remedy under Code § 15.2-1812 upon which [the collateral descendants] can now rely." Moreover, the common law presumption of ownership based on possession vested the City with title to the monument. The collateral descendants' admission that they had not contributed financially to the statue's construction or helped to maintain the site rendered futile their claim to superior title.

Therefore, the court of appeals affirmed the judgment of the circuit court.

REAL PROPERTY • TAX ASSESSMENTS • CODE § 58.1-3984(B)

Tysons Corner Hotel Plaza LLC v. Fairfax County, 82 Va. App. 382, 907 S.E.2d 165 (2024) (Annunziata, J.).

HOLDINGS: (1) The property owner presented prima facie evidence that the county overvalued its real property. (2) The tax assessments did not violate generally accepted appraisal principles or applicable Virginia law. (3) The tax assessments were uniform.

DISCUSSION: The owner of a parcel of land in Fairfax County containing a hotel, a standalone restaurant, and an open-air plaza challenged the County's real estate tax assessments for tax years 2018, 2019, and 2020. The County used a mass appraisal system for these assessments. Relevant to this appeal, the County used an income approach known as the "Rushmore" method to calculate the fair market value of the hotel, which contained a restaurant on its first floor. The County independently assessed the fair market value of the standalone restaurant building by using a "market rent" income approach. The property owner challenged the assessments before the Fairfax County Board of Equalization of Real Estate Assessments, asserting that the County assessed its

real property for more than fair market value and failed to uniformly apply its methodology to other similar properties. The Board slightly reduced the valuation of the real property for tax year 2018 but affirmed the remaining assessments. On appeal, the circuit court affirmed, finding that the property owner's expert appraiser ignored available data, relied on speculative hypotheticals, and lacked credibility; the tax assessments did not violate generally accepted appraisal practices (GAAP) and were uniform; and the property owner failed to rebut the presumption of correctness afforded to tax assessments under Va. Code § 58.1-3984(B). The property owner appealed this decision, arguing first that the County overestimated the fair market value of its real property and violated GAAP, and second that the tax assessments were nonuniform and thus unconstitutional.

The court held first that the property owner presented a prima facie case before the circuit court that the County overvalued its real property. The property owner's expert testified that he used the "parsing income" method, sometimes referred to as the "business enterprise value" (BEV) method, to estimate the fair market value of the real property in question. After explaining his methodology and calculations, the expert opined that the County overvalued the hotel building by approximately 50 million dollars during each of the tax years at issue. "Contrary to the circuit court's findings, the evidence, when viewed in the light most favorable to [the property owner], showed that [the expert]'s methodology had existed for 'a long time,' was used by local hotels, and was subject to debate among appraisers." Thus, the circuit court erred by failing to accept this evidence as true and by judging the expert's credibility when ruling on the County's motion to strike.

The court held second that the tax assessments did not violate GAAP or applicable Virginia law. The County used the Rushmore method, in accordance with the standards of the International Association of Assessing Officers, to separate the hotel's business value from its real estate value. According to the County's expert appraiser, the Rushmore method was "widely accepted" as the industry standard, whereas the alternative BEV methodology was not widely used. The property owner's expert recognized that some tax assessors prefer to use the Rushmore method to assess the value of hotel real estate. Additionally, the property owner did not attribute any defect in the County's valuation to its use of a mass appraisal. "In sum, [the property owner] failed to introduce any evidence impeaching the County's methodology."

The court held third that the assessments were uniform. The property owner pointed to the County's assessment of a similar property as evidence that it assessed them differently. On the contrary, the County assessed each portion of real estate operated as a hotel by using the Rushmore method. Whereas the comparator hotel included an additional commercial space leased by an independent third party, the County determined the value of that space by using a market rent approach, which was the same approach it used to determine the value of the property owner's leased standalone restaurant building.

Therefore, the court affirmed the circuit court's judgment.

SCHOOL BOARD • GROSS NEGLIGENCE • OFFICIAL CAPACITY CLAIM • SOVEREIGN IMMUNITY

Drasovean v. Walts, No. 0259-23-4, 2024 Va. App. LEXIS 640 (Nov. 6, 2024) (Causey, J.).

HOLDING: The school board was not entitled to sovereign immunity on the claim of gross negligence.

DISCUSSION: A high school student sued three school employees for their allegedly negligent role in allowing her to suffer sexual assault at the hands of another student. During the 2016-2017 school year, the student was enrolled in the special education program at a high school in Prince William County. In November 2016, a student with a known propensity for abusive behavior transferred into the program from another school. Prior to the transfer, a teacher alerted the school's Head of the Special Needs Education Department that the transferee would pose a danger to other students. The Department Head relayed this concern to the Principal, who contacted the Director of Special Education for Prince William County Schools (PWCS) about the transfer, but no action was taken. According to the complaint, the transferee sexually assaulted the student from the time of his transfer until January 2017, when the student complained to her mother, who, in turn, reported the assaults to school personnel. Many of these acts occurred in a class attended by only six students, yet the teachers were unaware.

After commencing a first action which was eventually nonsuited, the student filed the instant suit, asserting a single count of gross negligence against the Principal, the Director of Special Education, and PWCS's Superintendent (collectively, School Board employees) in their official capacities only. The circuit court granted the School Board employees' plea in bar, in which they contended that the suit against them in their official capacities amounted to a suit against the Prince William County School Board itself, which was entitled to sovereign immunity for tort claims. The student appealed.

The court held that the official capacity suit against the School Board employees was, indeed, effectively a suit against the School Board itself, and the School Board was not entitled to sovereign immunity. In 2017, a federal district court in Virginia employed a four-factor analysis to conclude that a Virginia school board is not an arm of the state and, therefore, not entitled to sovereign immunity. *Drewrey v. Portsmouth City Sch. Bd.*, 264 F. Supp. 3d 724 (E.D. Va. 2017). Applying this same analysis, the court found that the School Board should be considered a municipal corporation because: (1) the School Board's funds were not part of the Virginia State Treasury; (2) the Commonwealth exercised a limited degree of control over the School Board; (3) the School Board's concerns were primarily local; and (4) overall, Virginia has treated school boards as municipalities. Regarding the fourth *Drewrey* factor, the court explained that this required a "nuanced analysis." It first

acknowledged that the Virginia Supreme Court has labeled school boards as "arm[s] of the state" for the purpose of "a school board's immunity from liability for tortious injury." *Kellam v. Norfolk City Sch. Bd.*, 202 Va. 252, 117 S.E.2d 96 (1960). Nevertheless, the court justified its conclusion as follows:

> Although the present case involves a tort law claim, and therefore invokes *Kellam*, it would be a mistake to "treat[] a state court decision as to whether an entity is a state actor as determinative." [*Drewrey*, 264 F. Supp. 3d at 730 (quoting *Harter v. Vernon*, 101 F.3d 334, 342 (4th Cir. 1996)).] Rather than applying the dicta of a single case in isolation, *Drewrey*'s fourth factor is better analyzed through a wholistic understanding of the state's treatment of the entity over time.

Once deciding that "Virginia school boards should be considered municipal corporations rather than arms of the state," the court explained how the sovereign immunity analysis applies:

> Although a school board should be entitled to sovereign immunity insofar as such entitlement serves the doctrinal purpose of protecting a local government entity's ability to promulgate its state-apportioned duties, its sovereign immunity should be qualified in the same manner as the immunity to which an employee or official is entitled. The school board can create, adopt, and implement policies according to its statutory duties. Where a school board is sued based on its policies, the doctrine of sovereign immunity is reasonable. However, where a school board employee is sued for the actions taken under color of his title, the sovereign immunity to which he is entitled is based upon the characterization of his conduct. In this case, although the underlying alleged actions are attributable to the three individually named defendants, the "official capacity" status of the suit necessarily characterizes those actions as actions *taken by the school board*. In reality, the school board cannot, as an entity, "act" in the ordinary sense of the term; it "acts" through its agents and employees . . . . This distinction closely mirrors the distinction of governmental and proprietary functions comparatively in the determination of the sovereign immunity available to municipal corporations or local government entities.
>
> For that reason, the same analysis should be applied to school boards. Where a school board's actions should be considered governmental, like the promulgation and implementation of policies, it should be entitled to sovereign immunity. But where, as here, the underlying claim is based upon individual actors or actions rather than policy or other governmentally necessary duties,

> a school board's "actions" should be considered proprietary. When based upon the characterization of the actions or omissions of its employees, the extent of the school board's sovereign immunity should be subject to the analysis in *Lentz* [*v. Morris*, 236 Va. 78, 372 S.E.2d 608 (1988)]: the school board should be immune for acts of simple negligence, but should not be immune for acts of gross negligence or intentional misconduct.

Applying this analysis to the facts of the instant case, the court determined that the School Board employees' claim of sovereign immunity was subject to abrogation because the student properly pleaded her gross negligence claim—she alleged that the School Board employees allowed a violent student to be enrolled in her intellectual disability class and did nothing to prevent the sexual assaults that she subsequently suffered, which occurred in plain view of the teachers in the classroom.

Therefore, the court reversed the circuit court's grant of the plea in bar and remanded the case for further proceedings.

(Callins, J., dissenting): "It is true that when an agent of a governmental agency . . . engages in conduct which rises to the level of gross negligence, those individuals are liable in their individual capacities . . . . But here, all three school board employees were explicitly sued in their *official* capacities . . . . Given that the school board as an arm of the Commonwealth enjoys absolute sovereign immunity, the trial court below properly sustained appellees' plea in bar. *See Kellam . . . .* Ultimately, the issue here is one of proper pleading. I would affirm."

TERMINATION OF PARENTAL RIGHTS • DEPARTMENT OF COMMUNITY & HUMAN SERVICES • CODE § 16.1-283 • SUBJECT MATTER JURISDICTION • DUE PROCESS RIGHTS

Guevara-Martinez v. Alexandria Dep't of Cmty. & Hum. Servs., No. 1848-22-4, 2024 Va. App. LEXIS 557 (Oct. 1, 2024) (Causey, J.).

HOLDINGS: (1) The circuit court possessed subject matter jurisdiction. (2) The circuit court prematurely terminated the father's parental rights and erred in approving the foster care goal of adoption.

DISCUSSION: The father of a minor child opposed the judicial termination of his parental rights. In July 2019, the mother of the then-five-year-old child fled Honduras for Mexico, and eventually moved to the United States, to escape what she described as "constant physical and psychological abuse" by the father. In late 2019, the City of Alexandria Juvenile and Domestic Relations District Court (JDR court) entered a temporary

order awarding sole custody of the child to a friend of the mother and terminated the mother's parental rights, finding that the child had been abused or neglected by the mother. In April 2020, the friend declared that she could no longer care for the child. The City of Alexandria Department of Community and Human Services (Department) petitioned for emergency removal, which the JDR court granted. Since the Department had determined that the father was not a placement option because of the mother's allegations of abuse, the child was placed in foster care.

When the father indicated that he wanted the child returned to his care, the Department established requirements that he had to complete before he could be reunited with the child. Although the father did not travel from Honduras to the United States because of the COVID-19 pandemic and his lack of a passport or visa, he participated virtually in family partnership meetings and several treatment team meetings. In August 2020, the Directorate for Children, Youth, and Family (DINAF) completed a home study in Honduras, interviewing several of the father's relatives. All recommended that the child should remain in the United States and not return to the father's care. Accordingly, DINAF did not recommend placing the child with the father.

A paternal uncle and aunt in Texas were considered for approval as a relative foster home, but the Department determined that this would not work because the uncle was neither a legal resident nor a U.S. citizen. Thus, the Department sought to change the goal of foster care to adoption. It did not recommend placing the child with the father because of his "history of aggression and domestic violence" and failure to address the Department's concerns. In October 2021, the JDR court granted the Department's petition to terminate the father's parental rights and approved the foster care goal of adoption. The father appealed these rulings.

On November 14, 2022, the father appeared in person for a hearing before the circuit court, having obtained a visa. The Department presented evidence of the now-eight-year-old child having made significant improvements in his mental health. It also presented evidence from one of the father's older sons, who testified to frequently witnessing the father physically and verbally abuse the mother. The father denied abusing the mother, testified that he had been an exemplary father to the child, and stated that when the mother had absconded with the child, he filed a report with immigration to have the child returned to Honduras. The circuit court found that the evidence was sufficient to terminate the father's parental rights under Va. Code § 16.1-283(C)(2) and approve the foster care goal of adoption, determining this to be in the best interests of the child. The father appealed.

The court held first that the circuit court had subject matter jurisdiction to adjudicate the case. The father contended that "this case is *apparently* covered by the Hague Convention on the Civil Aspects of International Child Abduction." However, he did not file

a petition under the Convention in the International Child Abduction Remedies Act (ICARA) seeking return of the child, so the Hague Convention was not implicated. Notwithstanding, the circuit court would have concurrent original jurisdiction of this controversy under ICARA. *See* 22 U.S.C. § 9003(a).

The court held second that the circuit court violated the father's due process rights by terminating his parental rights because there was not clear and convincing evidence that he was an unfit parent. Termination decisions under Va. Code § 16.1-283(C)(2) hinge primarily on the demonstrated failure of the parent to make reasonable changes. Here, the record did not evince such a failure. The father complied with the Department's requirements, including submitting to the home study, attending parent coaching services, maintaining contact with the child through phone and video calls, and participating virtually in treatment team meetings. The father continuously expressed his desire to regain custody of the child and contended that the mother took the child out of Honduras without his permission. And when the father was finally able to travel to the United States, days before the hearing, the Department did not afford him a meaningful opportunity to remedy its concerns. Ultimately, "[t]he Department determined that [the] father was not a placement option at that time because of [the] mother's allegations that [the] father had been abusive toward *her*, not the child." In summation:

> Considering the totality of the record, "reasonable and appropriate efforts" were not made by the Department to remedy the conditions that led to the child being placed in foster care. Furthermore, the Department has failed to provide clear and convincing evidence that demonstrates that [the] father's unfitness cannot be remedied within a reasonable period of time. Thus, the circuit court prematurely terminated [the] father's parental rights under Code § 16.1-283(C)(2) and erred in approving the foster care goal of adoption.

Therefore, the court reversed the judgment of the circuit court and remanded the case for further proceedings.

(Athey, J., concurring): "[T]he Department failed to provide clear and convincing evidence that [the] father failed to remedy his situation under Code § 16.1-283(C)(2). As this ground by itself is sufficient for reversal, I would not address [the] father's remaining assignments of error."

(Callins, J., concurring in part & dissenting in part): "[W]hether the evidence presented at the termination hearing regarding the child's best interests reached the 'clear and convincing' threshold is not a determination that we, as an appellate court, can make sitting in review of the circuit court's judgment . . . . Because evidence was presented as to [the] father's history of abuse and aggression on which the circuit court could rely in finding that termination of [the] father's parental rights was in the best interests of the child, the circuit court's findings were not plainly wrong or without evidence to support them."

TERMINATION OF PARENTAL RIGHTS • DEPARTMENT OF SOCIAL SERVICES • CODE § 16.1-283

Benton v. Nelson Cnty. Dep't of Soc. Servs., Nos. 2033-23-3 & 0056-24-3, 2024 Va. App. LEXIS 588 (Oct. 15, 2024) (Lorish, J.).

HOLDINGS: (1) The children's health and development were substantially threatened by the abuse and neglect they suffered under the parents' care. (2) There was no reasonable expectation that the parents could provide the necessary care for their children. (3) The Department of Social Services' initial insufficient offer of services was not enough to alter the outcome. (4) The termination of parental rights was in the best interests of the children.

DISCUSSION: The parents of four minor children, ages 8 to 11, opposed the judicial termination of their parental rights. Due to a history of methamphetamine use and domestic violence by the parents, the family had been placed on a safety plan by the Nelson County Department of Social Services (DSS). During a surprise visit on December 30, 2021, a social worker observed an overwhelming odor of urine, cigarettes, and marijuana; bare plywood floors where the carpet had been stripped due to mold; no sheets on the children's beds; and a disposable pan that one child explained was the children's "litter box." During the visit, the mother tested positive for marijuana and the father refused to take a drug test. Finding that the home environment was unsuitable for children, DSS removed them due to "physical neglect and inadequate supervision."

In January 2022, the parents moved into a house in Rockbridge County which, according to social workers, had no issues that would prevent the children from living there. At this time, the parents were being offered services from DSS, Region Ten Community Services Board, and the Rockbridge County Community Service Board. These services included individual counseling, group therapy, substance abuse therapy, and substance abuse counseling. Due to a lack of staffing at DSS, the parents did not begin supervised visitation with the children until more than six months after they were removed from the home. Visitation stopped in April 2023 following a hearing in Juvenile and Domestic Relations District Court, during which a counselor testified that the father had exhibited "delusional thinking." Following this hearing, the father refused to participate in visitation with the children if this counselor was supervising. DSS's staffing issues precluded it from providing another counselor to supervise visitations.

At trial in circuit court, the children's counselors and the guardian ad litem described them as doing "fairly well" in foster care. Nevertheless, the eldest child was still traumatized by the sexual abuse that she and her siblings had suffered at the hands of a family friend of the parents, in whose care they had been left unattended. The eldest child also reported that the father was physically abusive to both herself and her mother, and that he allowed her to consume wine and beer in the home. The eldest child acted out in foster care by stealing money and engaging in hyper-sexual behavior. The second-oldest

child was diagnosed with adjustment disorder and also exhibited hyper-sexual behavior. The two youngest children suffered from social anxiety and behavioral issues, as well as trauma and stress-related disorders that worsened around the time of parental visitations. Two counselors who were working with the family recommended terminating visitation, expressing their beliefs that reunification with the parents would be especially detrimental to the two younger children. Another counselor, who had been providing joint co-parenting sessions to the parents, testified that they had each been dealing with significant physical and sexual trauma in their own pasts which prevented them from progressing in therapy. In this counselor's opinion, the mother and father were not at a point where they could be healthy parents for their children. The guardian ad litem also opined that termination of parental rights was in the children's best interests.

Counsel for DSS conceded that DSS's actions at the beginning of the case were "atrocious," but that once the services and visitations were in place, the parents failed to take full advantage of these opportunities. The circuit court issued orders terminating both the mother and father's parental rights over all four children under Va. Code §§ 16.1-283(B) and (C)(2). The parents appealed.

The court held first that the circuit court did not abuse its discretion in finding that the children's health and development were threatened by the abuse and neglect they suffered under the care of the parents. The statutory requirement that such neglect amounted to "a serious and substantial threat to [the children's] life, health or development" was met here by clear and convincing evidence. Va. Code § 16.1-283(B)(1). The counselors testified extensively about the children's emotional and developmental issues, which were directly attributable to the mother and father's parenting.

The court held second that DSS clearly and convincingly evinced that the severity of the parents' deficiencies were such that there was no reasonable expectation of them undertaking the responsibility of providing the care their children needed. Although the parents' efforts to better the living situation for their children were "commendable," Va. Code § 16.1-283(B)(2) required the circuit court to consider more than just the presence of an adequate housing option. DSS presented evidence of the parents' emotional difficulties stemming from past trauma and their continued illegal drug use as a coping mechanism. Two counselors opined that the parents would be unable to work through these issues within a period of time that would allow them to adequately care for their children, and the guardian ad litem expressed concern that if the children were returned to their parents, the parents would not be able to meet the children's significant mental health needs.

The court held third that DSS's initial inadequacies, alone, were not a reason to find that the circuit court abused its discretion. Acknowledging that it was "regrettable" that DSS "failed to provide an ideal level of services in this case," precedential rulings have established that the provision of social services is not a prerequisite to termination under Va. Code § 16.1-283(B).

The court held fourth that the circuit court did not abuse its discretion in finding that the termination of parental rights was in the best interests of the children. This was borne out by the testimony of the counselors and guardian ad litem.

Therefore, the court affirmed the judgment of the circuit court.

TERMINATION OF PARENTAL RIGHTS • DEPARTMENT OF SOCIAL SERVICES • CODE § 16.1-283

Cline v. City of Roanoke Dep't of Soc. Servs., No. 1963-23-3, 2024 Va. App. LEXIS 622 (Oct. 29, 2024) (Frucci, J.).

HOLDING: The circuit court's termination of the mother's parental rights was not plainly wrong or without evidence to support it.

DISCUSSION: The mother of a 16-year-old child diagnosed with Down syndrome, autism, and attention-deficit/hyperactivity disorder opposed the judicial termination of her parental rights. In 2022, the Juvenile and Domestic Relations District Court of Roanoke City (JDR court) entered emergency and preliminary removal orders and adjudicated that the child had been, or was at risk of being, abused or neglected. The Roanoke City Department of Social Services (DSS) then filed a foster care plan with the primary goal of relative placement and a concurrent goal of adoption, which the JDR court approved, and the circuit court affirmed. The JDR court later entered orders approving DSS's permanent foster care goal of adoption and terminating the mother's parental rights.

Prior to this, DSS had placed the child in foster care on three separate occasions. DSS first became involved in 2011 due to concerns about the mother's mental health, alcohol abuse, and potential physical abuse of the child. In 2013, DSS placed the child in foster care for five months after the mother reported being overwhelmed with caring for him. DSS intervened again in 2017 after receiving a report that the mother's boyfriend had physically abused the child. Shortly after this "strangulation incident," the child was found wandering the streets. As a result, the child was placed in foster care for two years while DSS provided the mother with mental health counseling and other services. She eventually regained custody on the condition that her boyfriend have no contact with the child. But about seven months later, DSS received a report that the mother and her boyfriend had a physical altercation at her home while the child was present. DSS then placed the child in foster care for a third time, which lasted 16 months. Meanwhile, the JDR court approved DSS's foster care plan with the goal of adoption and terminated the mother's parental rights. The circuit court overturned the JDR court's orders, however, and directed DSS to return the child to the mother's custody.

In late 2021, the child's father moved in with the mother for a short time following his release from incarceration, and the two used methamphetamine. In January 2022, DSS was notified of domestic abuse between the mother and the biological father of her adult son, which occurred in the presence of the child. In February 2022, the JDR court ordered the mother to submit to a hair-follicle drug screen, which tested positive for methamphetamine and cocaine. This prompted DSS's removal of the child. After the JDR court terminated the mother's parental rights (again), the mother appealed to the circuit court. At the hearing, a licensed psychologist who had conducted parental capacity evaluations on the mother in 2018 and 2022 testified that the mother had a history of trauma, which led to "a risk of chronic illness, social problems, increased risk for toxic relationships, [and] increased risk for poor quality of life"; opined that the mother had a "very poor pattern of engaging in relationships" that caused harm to both her and the child; and attested that the mother had been "unsuccessful in incorporating the tools that she ha[d] been taught through counseling." DSS also offered testimony indicating that the child was doing "really well" in foster care and had made "a tremendous amount of progress" in the months preceding the circuit court hearing. After considering the evidence and arguments, the circuit court terminated the mother's parental rights under Va. Code §§ 16.1-283(B), (C)(1), and (C)(2), and approved the foster care goal of adoption. The mother appealed.

The court held that the circuit court's termination of the mother's parental rights was not plainly wrong or without evidence to support it. It explained that since the child first entered foster care in 2013, DSS provided the mother with numerous services, including referrals for outpatient therapy, case management, medication management, and parenting classes. Although she initially engaged in those services, she did not continue to do so after DSS returned the child to her care. Moreover, the mother continued to engage in negative relationships that exposed the child to domestic violence and drug use.

Therefore, the court affirmed the judgment of the circuit court.

TERMINATION OF PARENTAL RIGHTS • DEPARTMENT OF SOCIAL SERVICES • VA. CODE § 16.1-283

Cullipher v. Spotsylvania Cnty. Dep't of Soc. Servs., No. 1660-23-2, 2024 Va. App. LEXIS 645 (Nov. 6, 2024) (Callins, J.).

HOLDINGS: (1) Termination of parental rights was in the best interests of the children. (2) The mother substantially failed to remedy the conditions that led to the children being placed in foster care. (3) The paternal grandmother was not a suitable placement option.

DISCUSSION: The mother of two minor children challenged the judicial decision to terminate her parental rights. In 2021, the Spotsylvania County Juvenile and Domestic Relations District Court (JDR court) ratified the emergency removal of the children by the Spotsylvania County Department of Social Services (DSS) following the mother's arrest for child neglect. The JDR court determined that the children had been "abused or neglected" as defined in Va. Code § 16.1-228. Over approximately the next year and a half, the children remained in foster care while DSS investigated and attempted to work with the mother and paternal grandmother, preparing and revising its plans for the children's care and eventual placement. In April 2023, the JDR court terminated the parental rights of both the mother and father, granted custody to DSS, and approved DSS's foster care plan with the goal of adoption based on the father's continued drug use and incarceration, the children's unstable living arrangements, and the mother's continued residence with her boyfriend—a convicted registered sex offender. The JDR court also determined that the paternal grandmother was not a suitable placement given their special needs. The circuit court, on appeal, found on clear and convincing evidence that DSS met its burden under Va. Code § 16.1-283(C)(2) and that it was in the children's best interests to terminate parental rights. The mother appealed.

The court held first that the circuit court had sufficient evidence before it to conclude that termination was in the best interests of the children. Among other things, the circuit court found that: (1) the children had been in foster care for nearly 17 months by the time the JDR court held its hearing to terminate the mother's parental rights; (2) the mother was actively residing with her boyfriend, a convicted child sex offender, in a motel room; (3) the mother had intellectual and mental disabilities of her own; and (4) the mother could not afford her own expenses, let alone the added expenses necessary to care for the children.

The court held second that the circuit court had evidence before it sufficient to find that the mother had substantially failed to remedy the conditions that led to the children being placed in foster care. Under the original foster care plan, the mother was required to: (1) maintain an active role with DSS and all treatment providers for the children; (2) maintain a consistent alcohol-free and drug-free lifestyle; and (3) obtain and maintain suitable and stable housing, free from negative influences, and financial stability. The record demonstrated that the mother's steps toward addressing the plan's goals were, at best, perfunctory, and that DSS ceased offering its services due to the mother's inability to meaningfully engage with them. Moreover, at the time of removal, the children were found "living in a single bedroom, infested with pests, riddled with trash and animal feces, with liquor bottles easily accessible."

The court held third that the circuit court had sufficient evidence before it to determine that the paternal grandmother was not a suitable placement option for the children, and that placing them in her custody would not have been in their best interests. Although the paternal grandmother appeared to have been willing to take custody, she lived in a three-bedroom trailer with three other individuals (some of whom regularly smoked cigarettes

in the home); was already the custodian of a nine-year-old child; permitted the father to come and go as he pleased, despite being aware of his ongoing substance abuse issues; and evinced a reticence to engage in the services extended to her by the North Carolina Department of Social Services.

Therefore, the appeals court affirmed the circuit court's judgment.

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

FIRE DEPARTMENT • TERMINATION OF EMPLOYMENT • AGE DISCRIMINATION IN EMPLOYMENT ACT • RETALIATION • PRETEXT

Fitzgerald v. Botetourt County, No. 22-1081, 2024 U.S. App. LEXIS 27096 (4th Cir. Oct. 25, 2024) (Wilkinson, J.).

HOLDING: The former fire department employee failed to show that the county's articulated reason for terminating his employment was pretextual.

DISCUSSION: A former employee with the Botetourt County Department of Fire and Emergency Medical Services alleged that he was fired for complaining about age discrimination, in violation of the Age Discrimination in Employment Act (ADEA). He was hired in 2007, at age 47. Between 2010 and 2012, he made informal complaints about being denied opportunities to serve as the officer on a fire engine. He complained to the County Administrator in 2014 about superiors making inappropriate comments concerning his age and deliberately relegating him to an inconsistent work schedule. He was promoted to Lieutenant in 2016, and then to Battalion Chief in 2017. A different County Administrator took over in 2016 who, in May 2017, hired a new Fire Chief. In September 2017, the Fire Chief began exploring the acquisition of a new brush truck for a local volunteer fire department. On November 20, 2017, the Fire Chief was let go. The next day, the County Administrator met with all of the Battalion Chiefs and asked them to ensure that the County's volunteer departments were "taken care of" in light of the Fire Chief's removal.

The employee heard from the volunteer fire department's Chief shortly thereafter that they had selected a truck. The employee relayed this information via e-mail to the County Administrator and the other Battalion Chiefs, stating that the Purchasing Manager was "just waiting on the go ahead to execute the order." A few weeks later, the employee confirmed with the Administrative Battalion Chief that the budget contained sufficient funds, and the Purchasing Manager executed the $37,500 purchase order. Three months later, the County Administrator questioned the employee about his role in authorizing

the purchase of the truck. The employee explained that the purchase "was something [the previous Fire Chief] put in motion" and that "it never would have occurred to [him] that [the previous Fire Chief] would have executed a bid process for something without approval." On May 16, 2018, the County sent the employee a termination letter, citing the unauthorized brush truck purchase, in violation of the County's personnel policy, as the essential reason for this decision. The district court granted the County's motion for summary judgment on the ground that the employee did not show that the stated reason for his termination was pretext for retaliation related to the employee's ADEA complaints. This appeal followed.

The court held that the employee failed to produce evidence that the unauthorized purchase of the brush truck was a false or otherwise pretextual reason for his termination. The County's personnel policy made clear that an employee who makes a purchase without authorization may be terminated. The policy and the County's purchasing manual identify that only the County Administrator and individuals to whom the County Administrator delegates purchasing responsibility may wield the County's procurement power. The employee's arguments that he possessed such authorization were unavailing. First, the employee contended that the County Administrator's awareness of the impending purchase and his failure to intervene added up to authorization. The district court identified the employee's e-mail to the County Administrator and the other Battalion Chiefs as the only evidence that the County Administrator knew about the truck before it was purchased, and nowhere in the e-mail did the employee ask the County Administrator for authorization or indicate that he intended to purchase the truck without it. "We cannot reasonably infer from [the County Administrator]'s lack of response the kind of authorization contemplated by the County's policy." Next, the employee argued that the County Administrator's comment about ensuring that the volunteer fire departments were "taken care of" following the Fire Chief's departure showed that the employee was authorized to purchase the brush truck. However, the employee produced no evidence that, at the time of this meeting, the County Administrator knew that the former Fire Chief had been communicating with the volunteer fire department about a new truck. "[The County Administrator]'s general charge to the battalion chiefs cannot reasonably be understood as delegating to [the employee] the authority to spend $37,500 in County funds on a purchase that [the County Administrator] did not know about." Finally, the employee averred that he was authorized to make the purchase because he was simply carrying out a directive from the former Fire Chief. This argument failed because the former Fire Chief was let go before the decision to purchase a particular truck had been made.

Therefore, the court affirmed the district court's judgment.

POLICE • VIOLENT PROTEST • 42 U.S.C. § 1983 • FIRST AMENDMENT • FOURTEENTH AMENDMENT • STATE-CREATED DANGER • HECKLER'S VETO • EQUAL PROTECTION • QUALIFIED IMMUNITY • MUNICIPAL LIABILITY

Balogh v. Virginia, 120 F.4th 127 (4th Cir. 2024) (Diaz, C.J.).

HOLDINGS: (1) The state-created danger doctrine did not apply to the First Amendment claim. (2) The allegations did not establish the occurrence of a heckler's veto. (3) The equal protection claim failed for lack of supporting facts. (4) The alleged constitutional rights were not clearly established. (5) The municipal liability claim could not proceed.

DISCUSSION: A participant (protester) in the 2017 Unite the Right rally that took place in Charlottesville filed suit, alleging, *inter alia*, 42 U.S.C. § 1983 claims against the City of Charlottesville, its Police Chief, and a Police Lieutenant for violations of his First and Fourteenth Amendment rights. Those opposing the City's removal of a Confederate statue from a City park (protesters) validly obtained a permit to hold the rally. When these protesters and counter-protesters clashed violently, police officers stood by, per the operational plan developed by the Chief of Police. After some time, the Chief declared an unlawful assembly, at which point officers intervened in a haphazard manner that did not ensure separation of the groups in an effort to disperse everyone from the site.

As to his First Amendment claims, the protester argued that the Police Chief and Lieutenant's initial refusal to suppress the counter-protesters and the Chief's subsequent order for all to disperse effectuated a heckler's veto. As to the Fourteenth Amendment claims, the protester asserted that the actions of the police, and by extension the City, violated his equal protection rights. The district court dismissed the complaint largely on qualified immunity grounds. The protester appealed.

The court held first that the state-created danger doctrine did not apply to the protester's First Amendment claim. A government's failure to protect an individual against private violence generally does not constitute a violation of the Fourteenth Amendment's Due Process Clause. One exception is the state-created danger doctrine, "under which state actors may be liable for failing to protect injured parties from dangers which the state actors either created or enhanced." *Turner v. Thomas*, 930 F.3d 640, 644 (4th Cir. 2019). The court, however, could not locate a single instance in which this doctrine has been applied in the context of a First Amendment claim. "[T]he First Amendment merely guarantees that the state will not suppress one's speech. It does not guarantee that the state will protect individuals when private parties seek to suppress it." *Kessler v. City of Charlottesville*, 441 F. Supp. 3d 277, 286–87 (W.D. Va. 2020).

The court held second that the Police Chief and Lieutenant did not effect a heckler's veto. The Sixth Circuit Court of Appeals has described this doctrine as follows: "When a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals." *Bible Believers v. Wayne County*, 805 F.3d 228, 252 (6th Cir. 2015). The Sixth Circuit somewhat qualified this doctrine, explaining: "If, in protecting the speaker or attempting to quash the lawless behavior, the officer must retreat due to risk of injury, then retreat would be warranted." *Id.* at 253. Here, even a deferential reading of the complaint showed that the protesters were not "peaceful," but attended the rally prepared for combat and engaged in it. Nor did the police selectively quiet the protesters; rather, they ordered everyone to disperse, including the counter-protesters. Given the violence at hand, the officers were also "entitled to the benefit of *Bible Believers*' officer-safety backstop."

The court held third that the complaint's factual allegations did not support the equal protection claim. The protester argued that he and the other protesters "were intentionally and harmfully discriminated against based on their viewpoint," but did not direct the court to any facts to bolster this bare assertion.

The court held fourth that, even if the protester had identified constitutional violations, he did not show that his alleged rights were clearly established at that time. The complaint cited general First Amendment principles in support of the argument that the Chief and the Lieutenant were on notice that the protester had the right to some level of police protection, but the cases cited in support did not grapple with the particular circumstances at hand—a violent confrontation between the protesters and counter-protesters. In conducting a qualified immunity analysis, Fourth Circuit precedent requires courts to not define clearly established law at such a high level of generality as presented in the complaint.

The court held fifth that the municipal liability claim against the City could not proceed because the City Manager, who was not named as a defendant, functioned as the final policymaker for the City. The protester argued that the City Manager ratified the Police Chief's non-intervention order or delegated his authority to the Chief, but the only fact identified for this proposition was a particular report's single mention that the City Manager may have been present in law enforcement's Command Center with the Police Chief during the rally. "Such a bare assertion doesn't constitute either delegation or ratification."

Therefore, the court affirmed the district court's judgment.

ATTORNEY GENERAL'S OPINIONS

As of the time of publication, there were no recent Attorney General's Opinions that may be of interest to local government attorneys.

POSITIONS AVAILABLE

(Positions posted in order received, sorted by most recent)

Orange County Attorney's Office

Position: Assistant County Attorney
or
Senior Assistant County Attorney

Deadline: Open until filled

Details: The Orange County Attorney's Office seeks qualified applicants for an Assistant County Attorney position; however, the position may be filled as a Senior Assistant County Attorney, depending on candidate qualifications and experience. The successful candidate will assist the County Attorney in providing a wide range of legal services to the Board of Supervisors, constitutional officers, the Planning Commission, the Broadband Authority, the Livestock Advisory Commission, and other County departments, boards, and agencies. Duties include drafting and reviewing contracts, ordinances, resolutions, and other legal

documents; litigating cases before administrative agencies and state and federal courts; performing legal research; and providing legal advice. The successful candidate may be responsible for assigning projects and reviewing the work product of legal assistants and interns.

Salary: The hiring range for the Assistant County Attorney begins at $88,632 annually and the hiring range for a Senior Assistant County Attorney position begins at $111,326 annually.

Link/Contact: Orange Assistant County Attorney/Senior Assistant County Attorney

Virginia Beach City Attorney's Office

Position: Associate City Attorney—Eminent Domain Litigator

Deadline: Open until filled

Details: The Virginia Beach City Attorney's Office seeks an attorney with an interest in, and knowledge of, eminent domain law and litigation. This position requires solid problem-solving, negotiation, and communication skills. The primary function is to perform all aspects of the eminent domain litigation process, including drafting condemnation petitions, pleadings, memoranda, and discovery, and representing the City in Virginia trial and appellate courts of record in eminent domain cases and related administrative proceedings. Excellent writing and oral advocacy skills, sharp analytical abilities, and strong research capabilities are essential. Applicants with at least five years of experience with eminent domain litigation, jury trials, and/or expert witness examination are strongly preferred.

Salary: $94,648–$146,704

Link/Contact: Virginia Beach Associate City Attorney—Eminent Domain Litigator

Virginia Beach City Attorney's Office

Position: Associate City Attorney—Litigation

Deadline: Open until filled

Details: The Virginia Beach City Attorney's Office seeks an experienced and highly motivated civil litigation attorney to handle high-profile federal and state court litigation. The successful candidate must have five years of civil litigation experience representing clients in both state and federal courts and must be admitted to practice in Virginia, the U.S.

District Court for the Eastern District of Virginia, and the U.S. Court of Appeals for the Fourth Circuit. Typical cases involve police activities, civil rights matters, personal injury claims, and employment litigation, and will also include administrative proceedings and preparation of legal opinions. Applicants with first chair jury trial and federal court litigation experience are strongly preferred.

Salary: $94,648–$146,704

Link/Contact: Virginia Beach Associate City Attorney—Litigation

Leesburg Town Attorney's Office

Position: Assistant Town Attorney

Deadline: Open until filled

Details: The Town of Leesburg is seeking an Assistant Town Attorney. The Assistant Town Attorney works with the Town Attorney, Deputy Town Attorney, and other attorney and non-attorney staff to provide legal services for the Town of Leesburg. The focus of this position is on real property matters, including deed review and preparation, land acquisition in fee, temporary and permanent easements, the use of eminent domain, and the support of plan review, as well as other civil legal matters that affect the Town. The Assistant Town Attorney advises the Town Manager, Department Directors, and Town staff in assigned areas of the law.

Salary: $77,329–$157,429

Link/Contact: Leesburg Assistant Town Attorney

Taxing Authority Consulting Services, P.C. (Henrico)

Position: Associate Attorney

Deadline: Open until filled

Details: Taxing Authority Consulting Services is a government receivables collections law firm headquartered in Henrico, Virginia. The firm's team of eight attorneys and over 120 supporting staff represents government clients throughout Virginia. The firm seeks to immediately hire a proactive and detail-oriented Associate Attorney for its West End, Henrico office. The ideal candidate will have passed the Virginia Bar and will have 0-2 years of legal experience. This role is mostly in-office, with

some travel required throughout the Commonwealth of Virginia to meet with clients and attend court proceedings.

Key responsibilities:

- Represent government clients in delinquent tax collection matters, including Circuit Court and General District Court litigation and enforcement actions.
- Conduct legal research and draft legal documents such as briefs, memos, pleadings, and deeds.
- Review case files, assist in case preparation, appear in court hearings, and discuss sensitive collection matters with delinquent taxpayers or their representatives.
- Collaborate with senior attorneys and support staff to manage caseloads and develop effective case strategies.
- Stay informed about developments in collections law and practices to provide accurate and up-to-date legal advice.

Salary: $70,000–$90,000

Link/Contact: Questions about the position, the firm, or the application process may be submitted to Andy Neville at aneville@taxva.com. Interested candidates should submit their résumé and cover letter and may submit any other documents they feel would be beneficial for the firm to review (e.g., transcript, writing sample, letter of recommendation, etc.). Applications may be made by submitting the documents directly to Andy Neville at aneville@taxva.com with the subject line “Associate Attorney Application—[Your Name].” Applicants are requested to highlight their relevant experience and explain their interest in the firm’s area of practice in the cover letter.

Royer Law Firm, P.C. (Roanoke)

Position: Associate Attorney

Deadline: Open until filled

Details: Royer Law Firm, P.C., has an immediate opening for a Virginia-licensed associate attorney with at least three years of civil litigation experience in state and federal courts. Candidate with experience in defending or advising local governments is preferred. Travel required.

Salary: Competitive compensation and benefits offered

Link/Contact: Send cover letter, résumé, and brief writing sample to: cfore@royerlawfirm.com

Loudoun County Attorney's Office
(land use, zoning, and comprehensive planning and development)

Position: Senior Deputy County Attorney

or

Deputy County Attorney

or

Senior Assistant County Attorney

Deadline: Open until filled

Details: The Loudoun County Attorney's Office is seeking an attorney to focus on land use, zoning, and comprehensive planning and development matters. The attorney will provide legal advice and counsel to County staff, the Board of Supervisors, the Planning Commission, and other advisory boards and commissions in matters related to the review and process of land development applications, and the interpretation and enforcement of the County's land development ordinances. The attorney may also represent the County and its officials in land use litigation, zoning appeals, and Code enforcement proceedings.

Responsibilities of the position may include coordinating review of subdivision site plans and surety instruments; reviewing proffers and special exception conditions; drafting and reviewing proposed ordinance amendments and amendments to the Comprehensive Plan; negotiating, drafting, and/or reviewing deeds, easements, and land development agreements; and drafting or reviewing staff reports for the Board of Supervisors and Planning Commission.

Salary: Senior Deputy (requires at least six years of experience as a licensed practicing attorney, including at least four years of experience in local government or a specific relevant practice area, and one year of supervisory experience): $116,166–$220,715

Deputy (requires at least five years of experience as a licensed practicing attorney, including at least three years of experience in local government or a specific relevant practice area): $104,775–$199,072

Senior Assistant (requires at least three years of experience as a licensed practicing attorney, including at least two years of experience in local government or a specific relevant practice area): $96,159–$177,894

Link/Contact: www.loudoun.gov/jobs

Alexandria City Attorney's Office

Position: Assistant City Attorney I or II (Collective Bargaining)

Deadline: Open until filled

Details: The Office of the City Attorney, legal counsel to the City of Alexandria, is accepting applications for a permanent full-time position of Assistant City Attorney I or II (depending on qualifications). This position will focus on employment law matters, including advice to the Human Resources Department as well as various departments regarding personnel policies, employee grievances, issues related to collective bargaining agreements, and litigation involving employment matters. Other duties of this position may include the general duties of an Assistant City Attorney I such as: legal research, drafting of opinions and ordinances, and assisting in representing the City in a wide variety of operational, administrative, and judicial proceedings.

Salary: $84,029–$147,875

Link/Contact: Alexandria Assistant City Attorney I/II

Frederick County Attorney's Office

Position: County Attorney

Deadline: Open until filled

Details: Frederick County is seeking an experienced professional to serve as County Attorney. The County Attorney handles civil, criminal, and zoning legal proceedings for the County; brings lawsuits necessary to be instituted by the County; prosecutes violations of County ordinances; defends the County in court proceedings brought against it; handles appellate litigation to which the County is a party; prepares drafts of resolutions and ordinances; and analyzes cases, statutes, regulations, and proposals which may affect the County's legal rights and obligations. The County Attorney's office performs collections work and contractual reviews. It provides legal advice and opinions to the Board of Supervisors, the Planning Commission, and all other County boards and commissions, County departments and agencies, and constitutional officers. A full outline of required qualifications, experience, and characteristics is available here.

Salary: $200,000–$240,000

Link/Contact: Qualified candidates are encouraged to submit a cover letter and résumé, with salary expectations and professional references, to The Berkley Group via email at karen.edmonds@bgllc.net. Inquiries relating to the County Attorney position may be directed to:

Karen Edmonds
The Berkley Group
P.O. Box 181
Bridgewater, Virginia 22812
Email: karen.edmonds@bgllc.net
Mobile: (540) 257-4782

Winchester City Attorney's Office

Position: City Attorney

Deadline: Open until filled

Details: The Winchester City Council has opted to re-establish the office of the City Attorney following a successful five-year period of utilizing an outside-contracted law office. The City seeks an attorney with experience serving as a legal advisor to municipal government bodies and their staff. The ideal candidate should be comfortable handling legal affairs on behalf of a municipality; reviewing, drafting, updating, and maintaining municipal code; and prosecuting violations of municipal ordinances. This position serves at the pleasure of the Common Council.

Salary: Depends on qualifications/experience

Link/Contact: Winchester City Attorney

Spotsylvania County Attorney's Office

Position: Senior Assistant County Attorney

Deadline: Open until filled

Details: The Spotsylvania County Attorney's Office is seeking to fill a Senior Assistant County Attorney position. The successful applicant will be working primarily, if not exclusively, on land use matters including, but not limited to, reviewing planning documents such as subdivision plats,

	BMP Agreements, etc., as well as more substantive matters such as zoning changes (conditional rezonings and special use permits) and amendments to the zoning ordinance. The successful applicant will also staff meetings of the Planning Commission and will rarely, if ever, litigate, but that experience is always a bonus.
Salary:	$100,592–$150,000
Link/Contact:	Spotsylvania Assistant County Attorney

Charlottesville City Attorney's Office

Position:	Assistant City Attorney or Deputy City Attorney
Deadline:	Open until filled
Details:	The Charlottesville City Attorney's Office is seeking candidates to be considered for the position of Assistant City Attorney or Deputy City Attorney who are highly motivated and who strive for success by demonstrating Charlottesville's core values of commitment, integrity, respect, innovation, and collaboration. The **Assistant City Attorney** is responsible for providing professional legal services to City departments, boards, and commissions on complex matters, and should have the ability to independently handle litigation in the City's General District and Circuit Courts. Primarily and most frequently, the work done is performed as leader or director with broad functional areas and more expertise and strategic focus. Work is completed under the general supervisor of the City Attorney. The **Deputy City Attorney** performs difficult and complex professional legal services and responsible administrative work in the rendering of legal services to the City and does related work as required. Primarily and most frequently, the work done is performed independently, with diverse functional areas and more specialization and ability to train others. Some experience in one or more of the following legal areas is helpful, but not required, for either position: juvenile or domestic relations/social services, litigation, land use, or real estate.
Salary:	Assistant City Attorney: $86,091–$105,435 Deputy City Attorney: $105,456–$129,147
Link/Contact:	Charlottesville Assistant City Attorney/Deputy City Attorney

Hanover County Attorney's Office

Position: Assistant County Attorney I

or

Assistant County Attorney II

or

Senior Assistant County Attorney

Deadline: Open until filled

Details: The Hanover County Attorney's Office seeks qualified applicants for an Assistant County Attorney I position; however, the position may be filled as an Assistant County Attorney II or Senior Assistant County Attorney position, depending on the candidate's qualifications and experience. The successful candidate will assist the County Attorney and Deputy County Attorney in providing a wide range of legal services to the Board of Supervisors, the School Board, constitutional officers, the Pamunkey Regional Library, and County departments, boards, and agencies. The duties of the position include drafting and reviewing contracts, ordinances, resolutions, and other legal documents; litigating cases before administrative agencies and state and federal courts; performing legal research; and providing legal advice. The successful candidate may be responsible for assigning projects and reviewing the work product of legal assistants.

Salary: Assistant County Attorney I: hiring range begins at $70,858

Assistant County Attorney II: hiring range begins at $83,612

Senior Assistant County Attorney: hiring range begins at $98,663

Link/Contact: Hanover Assistant County Attorney I/II/Senior Assistant County Attorney

James City County Circuit Court

Position: Attorney I/II

Deadline: Open until filled

Details: James City County's Circuit Court seeks an individual to provide legal research and recommendations to the judges of the Williamsburg and James City County Circuit Courts; provide overall training, direction,

and supervision to law clerks; and perform related work as directed by the judges.

Salary: $84,843–$90,000 or higher DOQ

Link/Contact: Click here for full job description. Accepting applications until position is filled. Cover letters and résumés may also be attached, but a fully completed application is required for the application to be considered.

Petersburg City Attorney's Office

Position: Assistant City Attorney

Deadline: Open until filled

Details: The purpose of this job within the organization is to assist the City Attorney in providing excellent legal representation for the City of Petersburg. In accordance with Section 2-192 of the City Code, this position works under the supervision and serves at the pleasure of the City Attorney. This position is not covered under the City's Grievance Policy.

Examples of duties:

- Provides support and assistance as instructed by the City Attorney in his efforts to provide legal representation for the City of Petersburg.
- Prepares, researches, and drafts legal documents as assigned, including but not limited to deeds, ordinances, resolutions, and contracts.
- Prepares legal memoranda on complex legal issues.
- Provides legal advice in matters as assigned to various City employees and constitutional officers.
- Attends meetings and other functions as assigned by the City Attorney.
- Provides representation to the City on assigned cases in various civil matters, including but not limited to Building Code enforcement, taxation, personnel matters, land use, zoning, FOIA, and other areas.
- Provides representation to the City on assigned cases in various administrative proceedings, including but not limited to employee grievances, ABC and other state licensure proceedings, state

- Technical Review Board proceedings, EEOC, DEQ, SCC, and other areas.
- Prosecutes cases involving specified misdemeanor offenses and violations of City Code as assigned.

Salary: $63,159–$104,023

Link/Contact: Petersburg Assistant City Attorney

Hopewell City Attorney's Office

Position: City Attorney

Deadline: Open until filled

Details: Under the appointment of City Council, the Hopewell City Attorney performs work of considerable difficulty in protecting the legal interests of the City, and serves as the chief legal advisor to Council and the City Manager. As designated by Council, the City Attorney also serves as the chief legal advisor to other departments, boards, commissions, and agencies of the City in all matters affecting the interests of the City. City residency is required within mutually agreed-upon terms at the time of appointment.

Examples of duties:

- Provides oral and written legal opinions and advice on complex matters to City Council, City administration, and City departments on a daily basis.
- Attends a variety of meetings—City Council, Boards, Commissions, Committees, Authorities, etc.
- Represents the City in complex legal matters; prepares and tries cases, including appeals to state and federal courts; processes and litigates claims against the City; and prosecutes suits, actions, and proceedings for and on behalf of the City.
- Prepares, reviews, and/or approves various complex legal documents on behalf of the City—contracts, ordinances, resolutions, bonds, bids, deeds, leases, policies, etc. Provides explanations and answers when necessary.
- Researches, interprets, and applies laws, court decisions, and other legal authority in the preparation of opinions, advice, and briefs.
- Advises on the purchase, sale, exchange, and/or leasing of properties.

- Reviews procurement matters to ensure compliance.
- Prepares and reviews legislation for General Assembly sessions and presents to the General Assembly as necessary.
- Supervises and reviews codifications of the City Code.
- Manages, supervises, and reviews the work of support staff, as well as manages the department budget, support contracts, etc.
- Membership and active engagement in local government organizations and attendance of continuing education seminars specializing in local government.

Salary: Negotiable

Link/Contact: Hopewell City Attorney

Have we missed anything? Please submit professional news announcements to dwagoner@nlrg.com.

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