Spotsylvania judge defangs snake bite suit

By Peter Vieth

A restaurant is not liable to a customer who was bitten by a copperhead snake as she entered the establishment, a Spotsylvania County judge has ruled, citing a doctrine on liability for wild animals.

The judge dismissed the victim's claims against owners of both the restaurant and a nearby retaining pond. The defendants were blamed for the unexpected presence of the young viper in the entranceway of a LongHorn Steakhouse, where it bit the would-be customer three times.

Confronting a case of first impression in Virginia, Circuit Judge William E. Glover said the $25 million lawsuit could not survive since the snake's entry into the restaurant appeared "unpredictable." Glover allowed three weeks for the plaintiff to file an amended complaint with any additional details regarding the restaurant's liability.

Glover's Jan. 20 letter opinion is *Myrick v. Rare Hospitality International Inc.* (VLW 021-8-015).

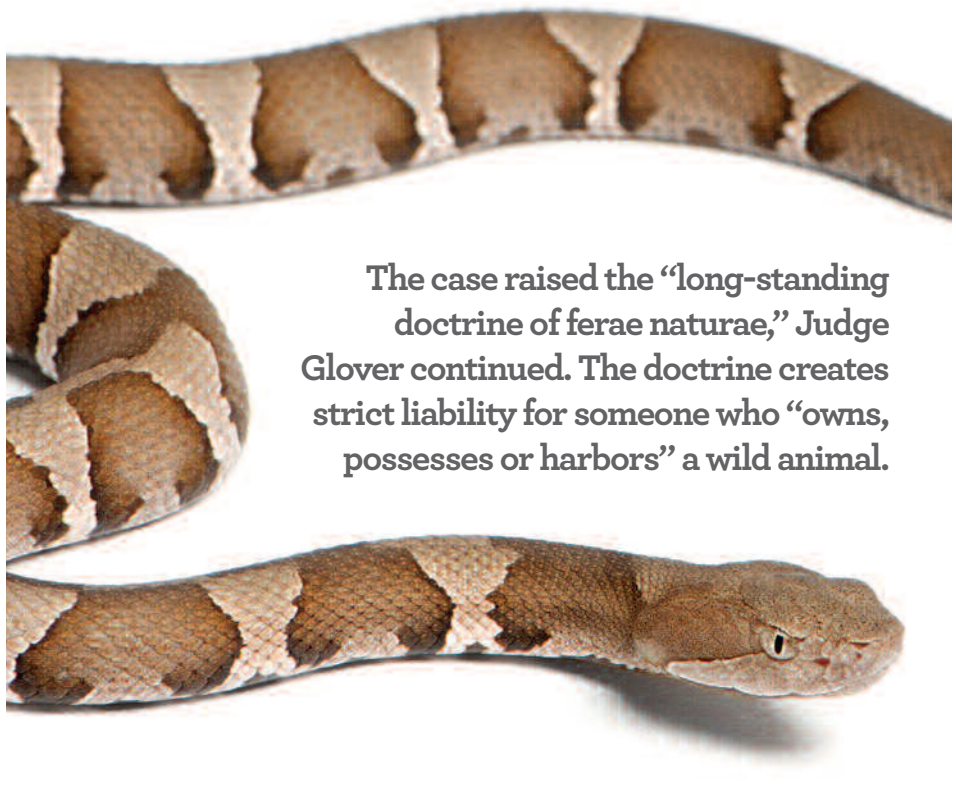
Unexpected visitor

Rachel Myrick of Fredericksburg spent 11 days in a hospital after being bitten by an eight-inch copperhead as she entered the restaurant in 2017, according to news accounts at the time. "I got bit! I got bit!" she reportedly exclaimed.

The snake was killed on the spot by two family members who accompanied Myrick.

Glover noted the absence of any clear explanation for the presence of the snake. Myrick's complaint did not allege the restaurant defendants were "aware in real time" of the snake's presence, he said. The complaint also did not specifically allege the snake came from the nearby retention pond.

"Rather, the Complaint makes repeated and diffuse allegations that [the restaurant management] had seen snakes on their premises before, and that [the nearby landowner] knew or should have known that snakes would go from its property into the Restaurant," Glover wrote.



The case raised the "long-standing doctrine of ferae naturae," Judge Glover continued. The doctrine creates strict liability for someone who "owns, possesses or harbors" a wild animal.

The judge said the plaintiff's position – that seeing one snake would create a duty of the restaurant to prevent other snakes – would impose "a near-strict liability upon the defendant."

"If the same snake, or indistinguishable snakes, repeatedly entered the Restaurant perhaps the plaintiff could successfully claim that the Defendant was on notice of the risk presented to their patrons, with a concomitant duty to protect or warn," Glover wrote. The allegations suggested only that copperheads could be encountered anywhere in the development, he said.

Law of wild animals

The case raised the "long-standing doctrine of ferae naturae," Glover continued. The doctrine creates strict liability for someone who "owns, possesses or harbors" a wild animal.

"Conversely, a property owner owes an invitee no duty of care to protect him from wild animals indigenous to the area, unless he reduces the animals to his possession," Glover said. The restaurant owner and manager were not alleged to have done anything to bring any snake into the restaurant, he said.

"As a result, the entry of the snake that bit the plaintiff was as unpredictable as if she had encountered it in the parking lot, or on the sidewalk, or at another neighboring business," Glover wrote.

Glover rejected a negligence per se claim based on violation of restaurant pest control regulations. "This argument stretches the common sense meaning of the food safety regulation beyond its reasonable interpretation," Glover said.

Similarly, the claim against the pond owner faltered, the judge ruled.

"Plaintiff has not alleged, and likely could not allege, that the snake that bit her came from the Southpoint property. The only possible basis for such an allegation would require an observation of that snake moving across the property to the entrance to the restaurant at a time proximate to the plaintiff's injury," Glover wrote.

Glover sustained demurrers to all three counts of Myrick's complaint, but he granted leave to amend the claims against the restaurant owner and its manager.

Myrick is represented by Christopher J. Toepp of Richmond. The restaurant defendants are represented by Brian A. Cafritz of Richmond. The nearby landowner was represented by Mark C. Nanavati of Midlothian.

Fire ants

Another Virginia lawyer may contend with some of the same issues in a lawsuit in Georgia federal court alleging that an Air Force veteran lost his life from an infestation of fire ants at a veterans facility near Atlanta.

Richmond's Brewster Rawls is on the plaintiff's team in a suit against the U.S. and Orkin Pest Control over the death of Joel Marrable, who died in 2019. The lawyers contend Marrable's death resulted from two separate fire ant attacks.

Significantly, the Marrable lawsuit alleges the staff and management at the federal facility were well aware of the fire ant infestation for several months before the incidents.

Habitual offender repeal crosses over to House

A bill that reinstates the driving privileges of thousands of Virginians labeled as "habitual offenders" has been taken up by the House of Delegates.

Senate Bill 1122, sponsored by Sen. Bill Stanley, R-Moneta, would repeal the remaining provisions of the Habitual Offenders Act and reinstate the driving privileges to those who lost their drivers licenses solely because of a violation under the Habitual Offenders Act.

The Habitual Offenders Act, which declared persons "habitual offenders" if they accumulated numerous traffic violations, was partially repealed in 1999. However, the repeal was not retroactive, leaving 32,000 people with habitual offender status presently. Those persons are subjected to harsh penalties, including mandatory minimum jail sentences for being caught driving without a license.

"That is patently unfair," Stanley told the Senate on Jan. 25. "That is applying the law one way to one person you have labeled, than to another that commits the same offense." Stanley urged the Senate to pass the bill, saying "it's about time that we do this."

Stanley's proposal proved successful, as the bill passed the Senate with bipartisan support on Jan. 25. Five Republicans, including Stanley, joined all 21 Democrats in voting for the bill.

The bill previously passed the Senate Judiciary Committee in a 10-4 vote on Jan. 18. During debate on the bill, Stanley referred to the remaining provisions of the Habitual Offenders Act as "arcane."

"We need to make a clean repeal of the habitual offender statute. We have taken care of that kind of behavior in other ways," Stanley told the committee on Jan. 18.

The Legal Aid Justice Center spoke in support of the bill during the judiciary committee meeting. The organization's website lists the bill on its legislative agenda.

"For more than two decades now, our criminal code is applied differently to 32,000 people under this Habitual Offender Act that you all repealed in '99," LAJC Director of Policy Amy Woolard said. "It's been too long, but certainly long enough for the 32,000 people who still endure it."

The bill was referred to the House Committee for Courts of Justice on Feb. 2. The committee has continued the bill for review at the special session later this month.

- Jason Boleman

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HOME WORK

Remote jobs complicate insurance issues

By Jason Boleman

If a messenger slips and falls on the sidewalk while delivering a business document to a person working at home, is the subsequent claim covered by the person's homeowners insurance policy?

With the COVID-19 pandemic causing more people to work full-time from their homes than ever before, Alexandria attorney Daniel Borinsky pondered this potential issue.

"I don't know how commonly my hypothetical would occur, but it is just a dimension of working at home that I think people should be aware of," Borinsky said.

At the height of the pandemic in April 2020, a Gallup poll found that 51% of American workers were working remotely full-time. Although that number has steadily declined as mass vaccination and health and safety protocols have been adopted, more people than ever before found their commute to be a matter of steps rather than miles. That adjustment prompted new legal concerns about insurance coverage for incidents that take place during the remote workday.

Homeowners Insurance

With employees moving into their home offices full time, they are bringing with them items that are business property, such as laptops. Christine Barlow, CPCU and managing editor of FC&S Expert Coverage Interpretation, said the line between personal property and business property can get "very complicated."

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VLW announces 2021 Hall of Fame honorees

Virginia Lawyers Weekly has announced the Class of 2021 for the "Virginia Lawyers Hall of Fame.

The Virginia Lawyers Hall of Fame honors Virginia lawyers age 60 and older. Criteria for inclusion in the Hall include career accomplishments, contributions to the development of the law in Virginia, contributions to the bar and to the commonwealth at large and efforts to improve the quality of justice in Virginia. The Class of 2021 honorees are:

- Thomas E. Albro, Tremblay & Smith, Charlottesville
- Harris D. Butler III, Butler Curwood, Richmond
- Mark T. Coberly, Vandeventer Black, Norfolk

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Spoliation prompts dismissal as sanction

By Peter Vieth

An insurance company's bid to recover payments for a fire loss was thrown out of court this month because the company failed to preserve the fire scene.

U.S. District Judge Michael F. Urbanski of Roanoke said he dismissed the insurer's lawsuit against a power company as a sanction for spoliation of evidence. The insurance company's conduct was so prejudicial it substantially denied the defendant the ability to defend itself, the judge ruled.

Urbanski's April 8 decision is *Nautilus Ins. Co. v. Appalachian Power Co.* (VLW 021-3-176).

Demolition approved

The dispute centers on a workshop for a business known as "Electro Finishing Inc." in Rural Retreat. The shop was damaged by fire on June 3, 2018.

With coverage on the business, Nautilus Insurance called on expert John Moore to inspect the property, according to the judge's review of evidence offered for summary judgment. Moore examined the site five days after the fire. He reported in a deposition that he told a Nautilus official that evidence at the scene needed to be preserved so that Appalachian Power Co. – which provided electric service to the site – could conduct its inspection as well. He assumed Nautilus would arrange for a joint inspection.

But the Nautilus official later told Moore not to retain any evidence from the scene. In July 2018, the official told Moore he could close his file.

Moreover, the Nautilus official told the business owner he could demolish the building. The building was razed in July or August 2018. It was not until October of that year that Nautilus sent a letter to Appalachian placing it on notice of a potential claim for the fire.

Appalachian's expert arrived to inspect the scene on Dec. 19, 2018, only to find the building gone.

'Most extreme sanction'

Nautilus filed a subrogation action against Appalachian in 2019 claiming the power company's electrical conductor caused the fire. Appalachian responded that the opinions of Nautilus' expert should be excluded as unreliable and his evidence could not support any claim. The utility also argued the action should be dismissed because Nautilus allowed the building and all evidence to be destroyed except for Moore's photographs and observations.

Urbanski agreed.

While he recognized that dismissal without deciding the merits is the "most extreme sanction" for failing to preserve

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She continued, "You're sitting at your desk, with your laptop, doing your work. But was the desk bought with the intent that it's for work, or was the desk bought as your at-home desk?" These distinctions can become important in cases where property that is used for business purposes is damaged or destroyed.

"If the insured has a fire, the carrier is not likely to say, 'well, your desk you're using for business purposes, and you're limited to $2,500 for business property, so we're not going to cover it.'" Barlow said. "It's not likely that they are going to say that, but technically, they could." Barlow mentioned that it is important to be aware of what each policy covers, noting that standard homeowners insurance covers up to $2,500 for "business personal property" that is lost or damaged at home.

Another insurance issue complicated by the pandemic involves liability coverage. Similar to Borinsky's scenario, there are questions as to what types of incidents are covered by what insurance policies. Barlow noted that in some situations, a business' commercial general liability insurance could come into play if the incident was related to business conducted at the home.

"When you look at the commercial liability coverage that the insured's employer is going to have, that is going to provide coverage because the insured is performing his work duties," Barlow said.

Workers' compensation

At issue as well as employers and employees adapted to remote work is workers' compensation. Virginia Code § 65.2-105, part of the Virginia Workers Compensation Act, states that work-related accidents must arise out of or in the course of employment in order to be compensable. With the lines between work-related activity and activity within the home more blurred than ever, what exactly defines an activity "in the course of employment" is essential to define in each case.

"A lot of these injuries are not witnessed, which being on the defense side creates complexity for our investigation," Richmond attorney Amanda T. Belliveau said. Belliveau added that it is important to gather as many facts as possible early on to establish what exactly the employee was doing at the time of the injury.

"I think it's important to, early on, gather as many facts as you can about what happened," Belliveau said. "Gather as much fact-finding information as possible, close in time to when the injury occurred, so that the matter can be assessed and properly determined."

Existing case law provides some guidance as to what injuries are compensable. In 2004, the Virginia Workers' Compensation Commission found in *Miller v. Walsworth Publishing Company* that an employee who slipped on ice in her driveway could be compensated for her accident. The employee worked from home and was walking to her car to commute to a client meeting. One year later, in *Baker v. B&H Construction Inc.*, the VWCC found in favor of an employee who was injured when his home office chair overturned after being entangled with a carpet. The commission found the incident to be a "unique hazard of the claimant's employment."

Barlow, who said workers' compensation claims can get "very complicated" in a remote work environment, cited two out-of-state cases: one where a Tennessee woman was attacked by a neighbor while preparing lunch at home during the workday and one where a Maryland customer service representative fell on ice while downloading his work route. Both claims were rejected in their respective states.

In its 2019 annual report, the VWCC cited 48,294 major workplace injuries reported during the year along with 77,318 minor injuries. Although data from 2020 has not been released yet, Belliveau said the number of claims her firm has handled has not been "significantly affected one way or the other."

"I was a little surprised about [that] because we were anticipating perhaps a drop in claims due to layoffs by employers and a smaller workforce. However, we haven't really seen that impacting the number of claims that have come in or gone through the litigation process," Belliveau said. Belliveau noted that the types of claims have been affected by the pandemic, noting an increase in wage loss claims related to furloughs caused by the pandemic.

Belliveau said that in her practice, the most notable uptick of claims comes not from those working from home, but from first responders who have contracted COVID. SB 1375, which was signed into law earlier this month, establishes COVID-19 as a compensable disease under the Workers' Compensation Act when the disease causes death or disability of first responders, correctional officers and regional jail officers.

Despite the challenges of navigating the pandemic, Belliveau noted that she is "very pleased" with the cooperation throughout that have helped claims continue to move through the system.

Evaluating coverage

Back to the original question: Would homeowners insurance cover the insured if a messenger slipped and fell while delivering business correspondence?

Barlow said the situation is tricky. If the courier works for the post office and is delivering other personal letters and bills, then the courier would have been on the sidewalk anyways. In that case, Barlow said, the injured person would likely need to make a workers' compensation claim. If the messenger's sole purpose is to deliver that one business-related message, then liability issues begin to crop up that could vary from policy to policy.

"With insurance, it always depends on the policy language. It always comes down to how the policy language is worded," Barlow said.

As for Borinsky, the question marks around his specific concern encouraged him to look into a business owners policy to fill any gap in his insurance coverage.

"I think that it is prudent to have it," Borinsky said, noting that the benefits outweigh the cost in cases of loss of business property. "Even though it is unusual for this type of claim to occur, when it occurs, it could be devastating."

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evidence, Urbanski found Nautilus responsible for spoliation of "critical evidence."

Nautilus sought to show that Appalachian ignored the opportunity to do its own inspection, the judge said. The insurer claimed the power company was on notice of a potential claim when it came to the site to repair and replace the electrical cables after the fire.

But Nautilus did not dispute that it first notified Appalachian of the potential claim two months after the building was razed.

"Nautilus essentially suggests that any time Appalachian receives a call to terminate electrical service at a fire scene, it is on notice that a claim might be asserted against it and it should hire a fire cause and origin expert to conduct an investigation. The Fourth Circuit has recognized that this sort of implied notice is insufficient to avoid sanctions for spoliation," Urbanski wrote.

The spoliation is "entirely the result of the client's actions," the judge said, observing that the Nautilus official approved removal of the building despite the company's own expert urging preservation of the fire scene.

"There is no suggestion that Nautilus took these actions upon counsel's recommendation. Rather, Nautilus approved demolition of the building and spoliation of the fire cause and origin evidence," Urbanski wrote.

"Appalachian argues that no other remedy besides dismissal will truly level the playing field given the fact that Appalachian will be forced to rely on a record developed by Nautilus' expert," the judge said. "The court agrees that nothing short of dismissal will do."

Urbanski said a lesser sanction would "reward improper conduct, place Appalachian at a significant disadvantage, and unacceptably hinder fair adjudication."

Nautilus was represented by Johneal M. White of Roanoke, who was unavailable for comment. Appalachian was represented by Mark D. Loftis of Roanoke, who deferred to an Appalachian spokesperson who was unavailable for comment.

WORK |

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post-pandemic game plan.

Many of my clients have been pondering these questions: "What should our post-pandemic work life look like? How should we operate?"

Learning to foster connection and culture, with or without in-person time together, should be paramount. People have reported liking work from home, while missing the camaraderie and collaboration – they feel isolated and out of the loop.

Without clear accountabilities or structure, we can mistakenly default to being busy. Just notice how often people use that word. Busyness does not equal productive or rewarding. Be careful about wearing "busy" or "burnout" as a badge of honor. Meetings are neither inherently good nor bad; however, back-to-back virtual meetings are not sustainable for mental well-being, quality of work or productivity.

As some gathering restrictions begin to ease, many people have expressed difficulty socializing. From not finding the right words, to feeling more awkward in in-person social interactions, people feel they are rusty on the communication basics.

One client is looking at offering a series of 30-minute training vignettes to help staff re-enter with a refresher on communications, emotional intelligence, and life/stress management.

A challenge going forward

Leverage this time to reimagine your work world – your culture, protocols/processes, meeting structure and effectiveness, accountabilities, reporting systems, etc.

Cease holding unnecessary meetings. Do a communications audit to find out types of meetings being held, their frequency and purpose, who should attend, how you will report out, etc. so that it best serves your organization's needs.

Stop unnecessary videoconferencing. Zoom fatigue is real. Pick up the phone. You'll likely find you save time and build better rapport.

If you must videoconference, be present and focused. Be OK with the silent gaps that inevitably occur after making a request or asking a question. Also consider hosting meetings that are shorter than an hour to create a buffer between meetings.

Create a commute. Take a walk around the block before and after work as a way to delineate the workday starting/ending points.

Eliminate the word "busy" from your lexicon. Shift to being purposefully and sustainably productive.

Ask team members what they need to feel equipped and supported in making the transition to your organization's next chapter of work.

We have a pressing need and opportunity to cultivate a thriving new work community. What will you create?

Karen Natzel is a business therapist in Portland, Oregon, who helps leaders create healthy, vibrant and high-performing organizations.

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Partners sacrifice to repay clients after embezzlement

By Peter Vieth

Four partners in a Charlottesville law firm went without pay for several months last year as the firm struggled to repay clients affected by a half-million-dollar embezzlement.

A long-time bookkeeper took money from accounts at Dygert, Wright, Hobbs & Hernandez for more than seven years, according to a civil lawsuit. The bookkeeper pleaded guilty to felony embezzlement April 23. The law firm's managing partner accepted a public reprimand from the Virginia State Bar on May 3.

Lawyers continue to work on a plan to resolve what the former bookkeeper might be able to repay as the firm claims losses of more than $600,000. Sentencing for the bookkeeper is scheduled in August.

The case is yet another reminder that lawyers are ultimately responsible for money under their control, even when they hire trusted help to handle finances. The consequences of leaving the books entirely to others can be devastating.

'Trusted employee'

Cathy Tyler came to the firm with "glowing" references in 2003, according to the civil lawsuit the firm filed against Tyler. About a year later, she began working as a real estate paralegal.

The firm sought to create a "family-type environment," where employees enjoyed a collegial work experience, a bar prosecutor said, explaining there were few checks on financial transactions. "She was a trusted employee," VSB Assistant Bar Counsel Scott Prince told the VSB Disciplinary Board

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State firms join alliance to address racism

By Jason Boleman

In the wake of nationwide protests about racial injustice last summer, organizations across the country sought out ways to address the issue internally and externally. The legal field was no exception.

The Law Firm Antiracism Alliance was founded last June as a collaborative alliance of law firms across the country; the group was created as a partnership between the Shriver Center's Racial Justice Institute and the Association of Pro Bono Counsel. The LFAA seeks to facilitate pro bono work in order to tackle the issue of systemic racism and ensure racial equity.

"Lawyers and law firms are uniquely positioned to analyze and advocate to change laws and policies that encourage, perpetuate or allow racial injustice," the LFAA's charter reads.

The alliance has 291 member firms from across the country, ranging in size from thousands of attorneys to offices in the single digits. Virginia firms of all sizes have joined the alliance as well. Alicia Russman, marketing

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Negligent hiring suit reinstated

By Peter Vieth

The Supreme Court of Virginia has reversed the early dismissal of a lawsuit against two church bodies accused of negligent hiring and retention of a pastor who – after his official retirement – allegedly molested a 13-year-old girl.

The lawsuit alleged the Church of God organizations were on notice of a "progressive pattern" of sexual misconduct by the pastor and still allowed him to act as a spiritual advisor on behalf of the church.

Although the lawsuit was dismissed in its entirety by Waynesboro Circuit Judge Charles L. Ricketts III in 2019, the Supreme Court reversed and reinstated claims of negligent hiring or retention, vicarious liability and negligent infliction of emotional distress.

Trial lawyers welcomed the decision as a signal that disputed claims should be resolved by a jury and not cut short by a judge.

The court's unanimous April 29 opinion is *Doe v. Baker* (VLW 021-6-028).

The trouble with Pastor King

Jonathan Eugene King served as a pastor with the Church of God for more than 40 years, from 1967 until his announced retirement in 2011, according to allegations of an amended complaint summarized by the court. In 1995, he was hired as a pastor by Celebration, a Church of God congregation in Waynesboro.

While there were two vague allegations of "inappropriate behavior" at other Virginia churches before King joined the Waynesboro church, the allegations were far more specific during his service in Waynesboro, the suit said. A letter from one of King's daughters referenced "multiple incidents" of "sexual misconduct and predatory behavior."

A church official in Virginia directed King to counseling in 2002, the lawsuit said. Members of the treatment team reported that King "needed to set healthy boundaries with women" and "need[ed] someone to hold him accountable" for inappropriate actions. King should meet regularly with that person, the report said. The report was filed with the Virginia office of the Church of God.

More letters followed. Two women wrote in 2005 to report persistent sexual advances to one of the letter writers, the suit said. King allegedly offered money for pictures of the woman in "various states of undress." Another of King's daughters

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May 3.

But in 2012, Tyler secretly began to use certified checks to obtain money to pay her personal credit card bills, moving money between accounts to "cover her tracks," according to a forensic audit cited in the firm's lawsuit, filed in August. She made it look like the checks were normal disbursements from real estate closings, the suit said.

Later, Tyler wired money from the firm's real estate trust account straight to her checking account, the suit said.

Call from the bank

The thefts did not stop until Jan. 24 last year, according to the suit. That, day, a banker called managing partner Joseph W. Wright III to report irregularities in the firm's three accounts.

Wright went to the bank and examined some of the transaction records. The partners met and fired Tyler the next day, the complaint said. The partners were "quite astounded" at the revelation of theft, according to Wright's lawyer at the bar hearing.

Accountants later calculated a total embezzlement of $560,069.59, the suit alleged.

Tyler used the stolen money to pay credit card bills, fund personal expenses and take vacation trips, the lawsuit alleged based upon "information and belief." The law firm estimated its losses at $606,813.26, including a higher insurance premium, the forensic accounting fee and legal fees.

At least two clients were told there was not enough money to immediately pay what they were owed. A surety bond company sued in federal court asking a judge to freeze the firm's assets until the firm could post security for the bond. That suit was later withdrawn but at least one other lawsuit was filed against the firm, the complaint said.

Agreed reprimand

The firm scrambled to recover. All four partners "joined together" to address the defalcation and restitution, said Leslie A.T. Haley of Richmond, representing Wright before the Disciplinary Board. Now, two assistants provide cross checks on recordkeeping, she said.

Wright told the board that the firm's partners went seven to eight months without salaries last year as the firm struggled to make amends. He said in a later interview that insurance covered some of the loss, but all the partners worked together to overcome the unreimbursed deficit.

All the firm's clients had been made whole, the bar prosecutor said May 3. The firm had been released from all financial claims. Wright, facing ethics charges related to safekeeping property and supervision of nonlawyer assistants, had been "genuinely remorseful," Prince said.

The board approved the public reprimand of Wright with terms including two annual audits of law firm finances.

"They could have had some tighter and better oversight of recordkeeping," Haley said May 5, explaining Wright's agreement to the penalty. "No good deed goes unpunished," she added ruefully, referring to the fact that Wright inherited the managing partner position with the bookkeeper's role well-established in the firm.

The firm's Albemarle County lawsuit demands the full $606,813.26 plus punitive damages, treble damages for statutory conspiracy and attorneys' fees.

Tyler's April 23 plea to the embezzlement charge came without any agreement as to her sentence, according to Commonwealth's Attorney Joseph Platania. Sentencing is set for Aug. 6.

"She faces a maximum possible sentence of 20 years in prison, as well as full payment of restitution to the victims of the crime," Platania said in a May 3 statement.

Tyler is represented by Bryan Jones of Charlottesville in the criminal action. He was not available for comment.

Charlottesville attorney William W. Tanner, representing Dygert, Wright in the civil lawsuit, said May 3 that discussions were underway about terms of a possible repayment. He said he could not be more specific because no agreement had been reached and he was not authorized to speak on behalf of the firm.

Bookkeeping software available

Wright's bar discipline is consistent with penalties for other lawyers who unknowingly allowed staff to make off with client money. Prince noted three prior cases of substantial defalcations where the supervising attorneys received public reprimands with terms.

The trusted-but-dishonest office assistant is an all too common story for law firms everywhere.

In Virginia, three such situations generated news reports in 2017:

• A Virginia Beach real estate lawyer gave up her license altogether in the face of allegations that she allowed an outsider to control disbursements from real estate transactions.

• An administrator at a Richmond-based personal injury firm was sentenced to four years for stealing more than $330,000 over eight years.

• A Fredericksburg lawyer was reprimanded for allowing a trusted staffer to take more than $200,000 from a trust account.

"In a small firm, it's a very easy trap to fall into," said attorney Frank A. Thomas III of Orange, who co-authored the oft-cited VSB publication called "Lawyers and Other People's Money."

Thomas said he personally looks at every transaction, and recommends that routine for small law firms. "It is too important an issue not to have control over it," Thomas said.

The lawyer's duties with regard to a trust account "are not delegable," the VSB publication reads. "A lawyer may not ignore the bookkeeping side of the practice to attend to substantive matters on behalf of clients and to build the practice."

Haley, who also advises attorneys on law office management, says there are inexpensive software programs now that can keep track of all law firm records and transactions.

"If someone just puts their eyes on that once a month, it becomes much simpler," she said. The applications provide an ease of tracking records "that didn't exist years ago."

Haley said the Dygert, Wright firm has now implemented two such software programs to monitor finances.

COVATI I

■ continued from page 2

The court's order of July 8 found that Covati "knowingly and intentionally made materially false statements of fact to the court concerning arrearages to conceal his professional negligence and gain an unfair advantage at trial in the Malpractice Action," the bar certification said.

The bar charges include alleged violations of rules prohibiting false statements and "conduct involving dishonesty, fraud, deceit or misrepresentation."

No assets

Ferrance says his efforts to collect on the judgment have been largely fruitless. He said Covati has closed his law office. Covati reportedly said he had malpractice insurance coverage, but did not timely notify his carrier.

"My client's not happy, we're not happy, but it is what it is," Ferrance said May 4.

Covati did not respond to an email seeking comment. There was no answer at the phone number listed as part of Covati's address of record with the VSB.