

# THE ADVOCATE

MUNDY  
ROGERS  
& ASSOCIATES, LLP

SPRING 2011

## G. Marshall Mundy and Frank W. Rogers III recognized by *Best Lawyers*<sup>®</sup>

*The Best Lawyers in America*—the oldest and most respected peer-review publication in the legal profession—has recognized **G. Marshall Mundy** and **Frank W. Rogers III** of **Mundy Rogers & Associates, LLP**. Mr. Mundy was listed in the area of personal injury litigation, and Mr. Rogers was recognized in the areas of personal injury litigation, family law, and alternative dispute resolution.

*Best Lawyers* compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 17th Edition of *Best Lawyers* (2011) is based on more than 3.1 million detailed evaluations of lawyers by other lawyers.

After more than a quarter of a century in publication, *Best Lawyers* has for the first time designated “Lawyers of the Year” in high-profile legal specialties in large legal communities. Only

a single lawyer from each community in each specialty was so honored. *Best Lawyers* named Mr. Rogers as “Roanoke’s Family Lawyer of the Year” for 2011. Lawyers honored as “Lawyers of the Year” received particularly high ratings in *Best Lawyers*’ surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity.

Steven Naifeh, president of *Best Lawyers*, said, “We continue to believe—as we have believed for more than 25 years—that recognition by one’s peers is the most meaningful form of praise in the legal profession. We’d like to congratulate Frank W. Rogers III as being selected as Roanoke’s *Best Lawyers* Family Lawyer of the Year for 2011.”

In addition, both Mr. Mundy and Mr. Rogers were recently listed among Virginia’s Super Lawyers by *Virginia Super Lawyers Magazine*. Only 5 percent of Virginia attorneys are chosen for this distinction each year.

### VEHICLE ACCIDENT Q & A “Totaled vehicle”

**Q:** I was in an accident. I wasn’t injured, but my insurer said my older pickup was “totaled.” What does that mean?

**A:** “Totaled” means an insurer determines that a vehicle’s repair costs exceed its retail value.

**Q:** How does my insurance company calculate this?

**A:** Your insurer should document that it obtained its “totaled” estimate from averaged retail sales of comparable trucks according to the NADA Used Car Guide, compiled by the National Automobile Dealers Association.

**Q:** If I accept the “totaled” value, who keeps the truck?

**A:** Your insurer will probably keep it and transfer it to a recycler for “salvage” value.

**Q:** I’m thrifty. Can I keep my “totaled” truck and get it repaired?

**A:** Yes, it’s still your property. However, the insurer will probably pay you only its “salvage” value. So, in addition to paying repair costs, you may have to deal with other issues such as remaining vehicle payments, liens against the vehicle from the accident, and reinsuring a vehicle with only a “totaled” value.



MUNDY  
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G. Marshall Mundy  
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#### SPECIALIZING IN:

- Medical malpractice
- Family law
- Personal injury
- Wrongful death
- Nursing home litigation

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# Premises liability

Businesses that invite customers to their premises have a legal duty to provide sensibly safe parking for those who enter their grounds. Attorneys counsel many who are injured through others' negligence.

## A parking-lot pothole

After a woman parked her car in an unlit casino parking lot, she stepped into a large pothole, fell, and fractured her leg. When her attorney sued the establishment for failing to maintain safe conditions for customers, the casino claimed the hole was an obvious condition that it had no duty to repair or to warn anyone about.

Casino attorneys also argued that the victim should have seen the pothole and avoided it. The parties settled before a jury trial.



# Medical negligence

Attorneys can help obtain fair compensation for patients who have suffered serious injury or the loss of a loved one due to physician negligence, delivery-room mistakes, or emergency-room errors.

## Faulty anesthesia equipment

A patient who can no longer walk, work, or take care of her family sued the manufacturer of anesthesia machinery used in her hysterectomy. Her attorney demonstrated that the manufacturer knew the equipment produced carbon monoxide based on documentation, but failed to warn physicians using it. The court found the defendant breached its duty of care and ordered a substantial award that included past and future pain and suffering and loss of consortium with a child.



# Ways to protect yourself and your family

- Always drive safely.
- Purchase sufficient automobile liability and collision insurance, including uninsured- and underinsured-driver coverages.
- Select crash-resistant autos with safety features such as airbags, antilock braking systems, head restraints, auto-locking seat belts, tire-pressure monitors, and others.
- Summon law enforcement to an accident scene.
- Obtain immediate medical care.
- Record all accident information and take photos.
- Make no statements at the accident scene.
- Notify your insurer about the accident.
- Seek legal counsel.



## Child-custody criteria

Our practice can help referral clients resolve family-law disputes.

Courts may consider many factors in determining child custody in divorces:

**Abuse**—From court and medical records.

**Alienation**—Parents turning a child against the other.

**Children's wishes**—Who does the child prefer?

**Consideration**—Which parent seems less selfish about custody?

**Domestic violence**—From police or court orders.

**Duration of parental contact**—Who spends more time with the children?

**Employment**—Promotes stability.

**Home ownership and children's quarters**—For a safe and secure home.

**Nurturance**—Who provides the best environment for a child?

**Parental cooperation**—Do parents agree about the child's welfare?

**Parental health**—Serious physical or mental issues can play a role.

**Relocation of parents**—Judges try to keep families close geographically.

**Romantic relationships**—Can complicate custody.

**Statutory guidelines**—In some cases, state law guides judges' actions.

**Where child is lodged**—Moving children can be traumatic.

## Debunking myths

### MYTH—

#### *Insurance premiums are skyrocketing due to lawsuits.*

Premiums may be going up, but lawsuits have nothing to do with it. The more likely culprits are rising medical costs and insurance-industry profits that get bigger every year. In 2004, the insurance industry recorded a \$38.7 billion profit, an all-time record. By 2007, that number shot up to \$61.9 billion.

Meanwhile, even those in favor of "tort reform" can't promise that limiting damages will lower premiums. For example, American Insurance Association spokesman Dennis Kelly told the *Chicago Tribune* in 2005 that "we have not promised price reductions with tort reform."

### MYTH—

#### *Big awards line the pockets of attorneys and leave nothing for the victim.*

Civil justice attorneys rarely charge an hourly fee like other attorneys. Instead, they work on a "contingency fee basis." This means if they win, they get a percentage of the damages.

This contingency fee system has allowed Americans a level of access to justice that is simply unimaginable in many countries. Every American, no matter how much money they have, can stand up for their rights in court, with legal representation. That's a big deal!

### MYTH—

#### *Lawsuits are preventing people from volunteering for Scouts, Little League, and other children's programs.*

This is just flat-out wrong. This myth, like so many others, has been spread by special-interest groups dead set on restricting Americans' legal rights.

In truth, the Volunteer Protection Act of 1997 provides immunity to volunteers at nonprofits during the course of their charity work.

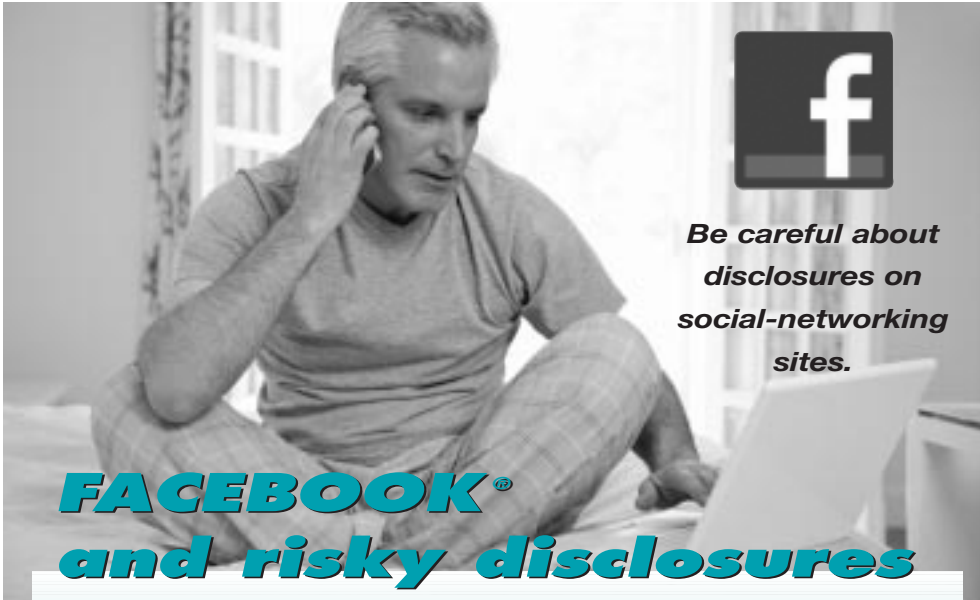


## Referrals

*Thanks to all of you who have recommended our firm to your relatives, friends, and neighbors. We appreciate your vote of confidence and pledge to care for these "VIPs" as well as we care for you.*

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The information included in this newsletter is not intended as a substitute for professional legal advice. For your specific situation, please consult the appropriate legal professional.



**Be careful about disclosures on social-networking sites.**

## FACEBOOK® and risky disclosures

People love Facebook®, Twitter®, and other social-networking Web sites to share information about their lives with "friends." Twitter will help members "share and discover what's happening right now, anywhere in the world."

However, many have learned to be careful with what they share online. Lawyers for disputants in divorce cases, for instance, are searching "social landscape" Web sites for evidence.

### WHAT KINDS?

- Diamond jewelry for a girlfriend of a separated husband who claims he has limited marital assets.
- Résumés and job applications from a divorcing wife who requested substantial alimony because she was unemployable.
- Photos of a mother in a child-custody case who swore she stopped consuming alcohol, holding a beer at a family get-together.

Others watch social-networking sites, too. For instance, law enforcement officers scan them to capture wrongdoers who brag about crimes they have committed. Employers scan job applicants' pages for embarrassing or even incriminating information and photographs.

Be careful about disclosures on social-networking sites.

## Personal injury ISSUES

Our practice can help referral clients obtain justice after personal injuries.

When innocent persons suffer serious injury from property owners' negligence, attorneys familiar with premises liability can help victims obtain compensation for medical bills, lost wages, pain and suffering, and other damages.

An experienced lawyer can evaluate an incident, communicate with property owners, negotiate with insurers, locate experts to testify on a plaintiff's behalf, if necessary, and present the case at trial.

### An elevator attack

An apartment-building tenant entering an elevator was shot by a mugger four times. He sustained one wound to his head. When he sued, his attorney claimed the



building's owner was aware that locks on doors were constantly broken. Although the owner claimed broken locks were irrelevant since the assailant followed the plaintiff into the building, the parties settled on the trial's third day.