

DOCKET CALL NEWSLETTER

Vol. 18, No. 4 • Spring 2002 • Editor: Jeffrey H. Geiger

Young
Lawyers
Conference



Virginia State Bar

The Professionalism Course: A View from the Inside

James M. Snyder

Within one year of being admitted to the Virginia State Bar, Virginia attorneys must complete a mandatory Course on Professionalism. In an effort to accommodate the varying geographic locations and hectic work schedules of its newly minted lawyers, the VSB offers the course six different times at six different locations throughout the Commonwealth.

On March 21, 2002, I attended the Course on Professionalism at the Double Tree Hotel in Charlottesville. The day began at 8:30 a.m. with opening remarks from the day's moderator, the Honorable Judge Stanley P. Klein from the Fairfax Circuit Court. The tone of the course was established early and repeated often—being a lawyer is more than long hours and enhanced lifestyles, it is an opportunity to change the community for the better and to renew the esteemed reputation of the legal profession.

The lawyers attending the course spent part of the day as a large group, learning from practicing lawyers and judges. The issues for discussion included the effect legal advertising can have on the public's perception of lawyers, the VSB's disciplinary process (and why we do not want to become a part of it), the judges' duties in ensuring judicial professionalism and, finally, a plenary session regarding civility within the Bar and our responsibilities to each other and the community at large.

The attendees spent the rest of the day broken into small discussion groups to review and analyze hypothetical situations in which lawyers found themselves in ethically questionable and professionally dire circumstances. At the luncheon, the Honorable Harry L. Carrico, Chief Justice of the Supreme Court of Virginia, delivered a truly uplifting and heartfelt message, instilling those in

the audience with the ideals for which he stands and for which he has spent a lifetime pursuing. It was the highlight of the day, and, by itself, would have made the course worth attending.

I must admit, going into the Course on Professionalism, I was less than enthusiastic about a daylong lecture on ethics. I had just completed a mandatory young lawyer course in another jurisdiction and was not looking forward to hearing the same speeches about the same issues. But, the work of the VSB Course on Professionalism faculty members, who participate and educate those to whom they will pass the torch, was inspiring, and we, as young lawyers, owe them a tremendous debt of gratitude. The course was educational, it was entertaining, and I know that I and all the other new lawyers attending will be better attorneys and better community participants for having done so.

For those young lawyers who still must attend the course, do not succumb to the initial knee jerk reaction of "if they have to force me to do it, it must be terrible." It is not terrible and you are not being forced to attend out of "revenge." It is mandatory because it is necessary, and I thank the VSB and its faculty for showing me that such is the case.

Jim Snyder is an Associate in the Richmond office of Sands Anderson Marks & Miller and a member of the Indiana and Virginia bars. You may reach him at jsnyder@sandsanderson.com.

Marketing Mana

Jeffrey H. Geiger

We have all heard it a hundred times and in a hundred ways. Here it is once more—get involved.

Lawyer Organizations. Not only do bar groups help you develop professionally, they also serve up an excellent way to develop a network of potential referrals from fellow lawyers. But don't throw your money away. Simply joining an organization gives you very little return on your investment. Indeed, many firms decline to financially support lawyers who do little more than send in the membership fee. Take on a committee leadership role, volunteer to write an article in your field, assist in putting together a service project. Again, it is not necessarily the activity itself that is important from a marketing perspective, rather it is the building of trust and contacts among lawyers from different firms in different cities and states. Who would the lawyer in Abingdon call to send a referral in Fairfax: you or the person with whom she served over the past year on a Virginia State Bar committee?

Trade Groups. It seems intuitive. How can you predict and resolve your client's problems if you do not know anything about the widget business? Look at it from a different angle. Who is the widget business owner going to call when trouble comes knocking? Just as with bar groups, the same can be said for getting involved with industry, special interest and trade groups. How better to get to know your client base (or desired client base) then to learn first-hand what your client actually does, what

problems your client faces and how you can assist in providing knowledgeable solutions. I challenge you to search the Internet and see if you can find a profession, avocation or economic sector that is not represented by at least one trade organization and one monthly publication.

Community Organizations. If you take lawyers out of the equation, I daresay many service, community and charitable organizations would not exist. These groups need people who can provide a legal perspective. But the traits and skills a lawyer takes into the courtroom—organization, motivation and zealotness to name a few—translate well into non-legal setting as well. And the people with whom you serve, play and pray can be your biggest supporters—you will get phone calls (for good and bad). Again, it is about relationship marketing.

Caveat. Whether it is on the soccer field, at the industry conference or writing for the Docket Call Newsletter, do something you enjoy. Life is too short, your time is too valuable and it becomes painfully obvious when someone is merely participating and not contributing. You don't want the lawyer in Abingdon to not call you because she does know you.

Do you have a marketing story, tip or question you want to pass on (anonymously or otherwise)? Contact Jeff Geiger, who is Counsel in the Richmond office of Sands Anderson Marks & Miller. You may reach him at jgeiger@sandsanderson.com.

New for 2002 Only!

**MCLE REQUIREMENT: 15 CLE HOURS
INCLUDING (2) ETHICS HOURS**

**New MCLE Completion Deadline is
October 31, 2002.**

Attorneys taking courses after the October 31 deadline must pay a \$50 non-compliance penalty.

MCLE Reporting Deadline is December 15, 2002
to avoid Late Filing Fee.

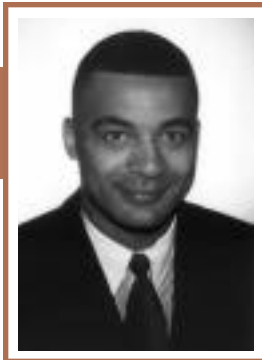
Check your MCLE Record on-line at
www.vsb.org/mcle/mcle_record.html

Join a Practice Section

There are 20 specialty practice and substantive law sections of the Virginia State Bar.

For more information and a registration form visit the bar's Web site at

www.vsb.org/sections/



MESSAGE FROM THE PRESIDE



O'Kelly E. McWilliams, III

Why Aren't There More Minority Partners?

First, I want to be candid—I am currently being considered for partnership this year in my law firm. Last year, my wife, Karen Turner McWilliams, was elected to the partnership of Verner Liipfert Bernhard McPherson & Hand. Both of us are minorities. However, don't let my examples mislead you.

More than 10 years ago, top-ranked law schools admitted classes more diverse than ever. Since then, more than 20 percent of the students at some elite schools have been members of minority groups, and the percentages at other law schools have exceeded 10 percent. Many of those graduates spent summers working as interns at big firms and went on to become lawyers there. By 1993, at least eight percent of starting associates belonged to minority groups. It takes about eight years to become a partner at most firms. So some partners hoped that by now these increasingly diverse classes of young lawyers would have become a diverse class of young partners. That has not happened. To find out why there aren't more minority partners, several committees on diversity in the profession from affiliate bar associations interviewed minority associates at large law firms. Almost all of the associates interviewed perceived the same obstacles in obtaining the Holy Grail of partnership.

Lack of High-Quality Assignments

Firms groom associates on the partnership track by giving them progressively more challenging assignments on important cases. According to the minority associates interviewed, they are usually given unchallenging, low-profile assignments and are relegated to the backwater of undesirable cases. As a result, minority associates are not able to prove that they can handle greater responsibilities because they do not have an opportunity to show that they can meet the demands.

Lack of Mentoring/Coaching

Another widely shared belief is that, in order to make partner, it is critical to have at least one politically powerful mentor (i.e., a partner) in one's corner. The minority associates uniformly said that

non-minority partners tended to select non-minority associates to mentor. Moreover, because there are so few minority partners in most firms (in some cases, none), minority associates could not realistically expect to be mentored by minority partners.

Dearth of Rainmaking Opportunities

The key to making partner, in the view of most of the associates interviewed, is to develop business and bring new clients to

Continued on Page 7

DOCKET CALL

*A quarterly publication of the
Young Lawyers Conference
of the Virginia State Bar.*

EDITOR

Jeffrey H. Geiger

EDITORIAL BOARD

Suzanne Fay Garwood

James M. Snyder

BOARD LIAISON

Mary Louise Costello Daniel

DESIGN & PRODUCTION

Cheryl L. Pavkov

Docket Call welcomes contributions from members of the YLC.

SEND SUBMISSIONS TO:

Publications Dept.

Virginia State Bar

707 E. Main St., Suite 1500

Richmond, VA 23219-2800

Legal Ethics Opinion

Jeffrey H. Geiger

The lawyer, who in order to excel in his profession, has devoted years to preliminary studies and has spent much labor and money to thoroughly fit himself for his calling, so that he might be able to act as an advocate or as a counselor to guide and direct others—to furnish them from his vast storehouse of knowledge ripened and perfected from long experience, with such ideas and suggestions which, when carried out and followed up, would lead to his success—how shall his services be estimated?

County of Campbell v. Howard, 133 Va. 19, 53, 112 S.E. 876, 886 (1922) (citation omitted).

A lawyer's fee shall be reasonable.

Rule 1.5(a).

Q Just great! I have been representing Cliff Lemming for two years in an action arising out of injuries he sustained when he fell into a canyon. Now, just three days before trial, he fires me and hires his sister, who just graduated from law school. Well, at least the legal services agreement provides for a one-third contingency fee. I guess I will just keep my mouth shut, sit in the back of the courtroom and await my big fat pay day.

A You might want to bring your toothbrush because you may have a long wait. Notwithstanding the contingency fee agreement, “contracts for legal services are not the same as other contracts.”

Heinzman v. Fine, Fine, Legum & Fine, 217 Va. 958, 962, 234 S.E.2d 282, 285 (1977). Unlike other commercial contracts, the foundation of the agreement rests upon an attorney-client relationship affecting the rights and duties owed by each. It is a foundation of trust and confidence. Accordingly, the client has an absolute right to discharge his attorney with or without cause. Otherwise, a client would be compelled to continue to engage counsel in whom she has lost confidence, rightly or wrongly. This is also why a lawyer must withdraw from representing a client when she is discharged. Rule 1.16(a)(3) & Comment 4. Of course, the court may not always see it that way, but that is another story.

The difficulty here is that you have spent countless hours in anticipation of recovering one-third of Lemming's award.



Yet, a client's right to fire you would be of little value if he was "forced to choose between continuing the employment of an attorney in whom he has lost faith, or risking the payment of double contingent fees." *Heinzman*, 217 Va. at 964, 234 S.E.2d at 286. However, all is not lost. While you cannot recover "damages" for the breach of the contract or the full contingent fee, an attorney may recover in *quantum meruit*—the reasonable value of the services rendered prior to the termination. Again, that is the reasonable value of the services themselves and not

necessarily the benefit received by the client. See Legal Ethics Opinion 1606.

Practice pointer: Keep detailed time records. Billing records show what you did, and when you did it. This is an excellent client relations/marketing tool—a client can see how hard you have been working on his behalf. And, the cold reality is that such records will often assist you not only in fee disputes, but also when clients make claims against you for malpractice. While not glamorous, writing down all of those "point ones" makes good financial and professional sense.

Jeff Geiger is Counsel in the Richmond office of Sands Anderson Marks & Miller. You may reach him at jgeiger@sandsanderson.com.

**Tired of scripting briefs?
Are billable hours overrated?**

How about becoming an editor
or author for the
Docket Call Newsletter!

For more information on how to join the award-winning *Docket Call Newsletter*, please e-mail Jeff Geiger at jgeiger@sandsanderson.com or call him at 804.783.7248.

64th Annual Meeting

June 12-16, 2002



Annual Meeting brochures, containing complete registration and hotel information, were mailed to all Virginia State Bar members in mid-April.

Complete Annual Meeting information, including registration forms, is available on the Virginia State Bar's Web site at www.vsb.org.

If you do not receive a brochure and/or need more specific information, call the Virginia State Bar, Bar Services Department, at (804) 775-0518. You will be able to submit registration forms on-line this year at www.vsb.org.

Young Lawyers Conference

YLC Meeting and Reception

Friday, June 14, 12:30 p.m.
Cavalier Beach Club

Are you one of the 8,000 members of the Young Lawyers Conference? If so, you are invited to attend the YLC General Membership Meeting and Reception on Friday afternoon. Stop by for a quick bite to eat, meet old friends, make new friends, help celebrate the accomplishments of the YLC and elect their new Board of Governors. Register now on the Annual Meeting Registration form.

Dance Under the Stars

Friday, June 14, 9:00 p.m.
Cavalier Beach Club

Live music, surf-side on the moonlit deck of the Cavalier Hotel! Come dance under the stars immediately following the Banquet from 9:00 p.m. to 1:00 a.m. "The TFC Band," is well known in the Mid Atlantic region for its fun loving brand of R&B and Rock and Roll.

YLC SPECIAL PROGRAM "Judging the Terrorists— Military Tribunals or Criminal Courtrooms?"

Saturday, June 15, 9:45 a.m.
Cavalier Oceanfront Hotel

In the wake of the 9/11 tragedy, debate still rages regarding the appropriate forum for trying the terrorists. Join a panel of experts and learn about the two competing forums. Listen and ask questions or comment regarding which is the more appropriate place for these trials and why.



YLC Beat

Suzanne F. Garwood

As you know, the Young Lawyers Conference is the vehicle through which young Virginia lawyers can participate in the governance of the Virginia State Bar, serve the profession and the public, and enhance public awareness of the legal profession. Throughout the year, YLC members engage in a number of activities including: No Bills Nights, Community Law Week and various other community outreach projects.

Just recently, on March 15 and 16, the YLC held its Second Annual Professional Development Seminar in Charlottesville, Virginia. Young lawyers from around the Commonwealth gathered in the state-of-the-art facilities of the University of Virginia's Darden School to attend a variety of programs intended to help young attorneys improve their lives and practices. In addition to covering substantive legal topics such as "Contracts: What You Didn't Learn in Law School" and "Employment Law 101," the Conference offered a number of programs designed to assist new attorneys in adapting to law firm life such as "Partnership Considerations: If They Offer It, Will You Take It?" and "Striking a Healthy Balance Between Your Professional and Personal Goals." If you are interested, a copy of the agenda is still available at: www.vsb.org/sections/yl/PDC02.pdf.

If you missed the Conference, but want to participate in upcoming YLC events, the YLC Board is busy planning a full schedule for the rest of the year. Below are the highlights:

Community Law Week

The YLC, along with the VBA Young Lawyers Division, is planning to focus on Immigrant Outreach and Tolerance Education during Community Law Week. The Young Lawyers Division will issue Tolerance Education Video Tapes and Training Materials to be used in elementary schools. Community Law Week is scheduled for May.

Virginia State Bar 64th Annual Meeting

The Virginia State Bar is holding its 64th Annual Meeting at Virginia Beach from June 12th through the 16th. As it does every year, the YLC is hosting a number of activities. In addition to its annual "Dance Under the Stars," the YLC is sponsoring Saturday morning's special program: "Judging the Terrorists—Military Tribunals or Criminal Courtrooms." A complete schedule of events for the Meeting is included in this issue of the Docket Call and also is available at: www.vsb.org/anmtng/sched02.pdf.

The Oliver Hill Pre-Law Institute

As you may know, the Millennium Diversity Initiative is a program run by the Virginia State Bar that encourages high school students of color to attend college and law school. The Oliver Hill Pre-Law Institute is a direct outgrowth of that Initiative. Beginning this year, thirty 10th and 11th grade students who have a serious interest in a legal career and are willing to give up a week of their summer will be selected to attend the Institute. The Institute is scheduled for Sunday, July 28th through Saturday, August 3rd at the University of Richmond. The YLC Board is seeking volunteers to work with the kids during that week to teach courses and serve on panels. If you are interested in participating, contact a member of the YLC Board for details: www.vsb.org/sections/yl/board.html.

Suzanne Garwood is an Associate in the Washington, D.C. office of Kirkpatrick & Lockhart L.L.P. You may reach her at sgarwood@kl.com.

President's Message —

Continued from Page 3

the firm. Minority associates felt handicapped in these areas as well, reporting that they have fewer opportunities to network with potential clients. One managing partner said that minority lawyers were less likely to have relationships with important clients or to have secured a significant amount of business for the firm.

Prejudice in the Workplace

Many associates said that their co-workers often harbor stereotypical views of minorities. The associates interviewed felt the need to prove that they “deserve” to be working at their firms. Even where their credentials (e.g., grades, law review, clerkships) were superior to those of their non-minority counterparts, minority associates frequently felt that they were perceived as “inferior” and less capable than non-minority associates.

Many minority associates also felt that minorities were held to a different, higher standard. They felt that partners were more tolerant of mistakes made by non-minority associates, whereas, in contrast, a minority associate would be branded as incompetent if he or she made the same mistakes.

What to Do

I don't know what to do. However, I did call several minority partners (yes, including my wife) in major law firms to ask for advice. These partners who have risen through the ranks offer these suggestions to young lawyers seeking partnership status:

- Do not feel that, as a minority lawyer, you must select a minority partner as a mentor;
- Identify a practice area that is growing, identify a rising partner in that practice area, and then create opportunities to work with that partner;
- Develop expertise in a specific area of the law, and publish and/or lecture in this area;
- Get involved in firm life by attending firm social gatherings and volunteering to help out with firm administration;
- Appear confident and poised to meet any challenge, no matter how difficult;
- Get involved in professional organizations to increase knowledge and network, and
- Prove your potential for generating business. Even if you don't have the contacts necessary to bring in new clients, you can service current clients well and keep them happy.

By the way, I will let you know in November how well these suggestions worked for me.

YLC Supports Litigators-in-Training: National Trial Competition

Thomas Leland

On February 21 through 23, 2002, the Virginia State Bar Young Lawyers Conference, in conjunction with the Texas Bar Young Lawyers and the American College of Trial Lawyers, ran the Mid-Atlantic Regional Portion of the National Trial Competition. The competition took place in the Circuit Court for Arlington County, Virginia.

The VSB organizing committee—chaired by Thomas Leland with Virginia State Bar members Jennifer Short, Maria Votsch, Brandon Elledge and Ethan Arenson—recruited dozens of members of the Washington, D.C., Virginia and Maryland judiciary and bar to participate in the trials as judges, evaluators, witnesses and bailiffs. Law schools in the Mid-Atlantic region supported sixteen teams in the competition. The "VSB team" pulled off an unprecedented twenty-two mock trials in three days. Teams from Georgetown University Law Center took the top two spots at the competition.

Unquestionably, the law students gained invaluable experience and enjoyed the opportunity to practice their skills and meet prominent members of the bench and bar. All in all, the competition once again raised awareness of the YLC's commitment to the community and to encouraging and training young lawyers to be excellent litigators.

Tom Leland is an Associate in the Washington, D.C. office of Holland & Knight. You may reach him at tleland@hklaw.com.

Address Change?

If you have moved or changed your address, please see the VSB Membership Department's page on the Web for an **address update form** at www.vsb.org/membership/.

Clients are calling Virginia Lawyer Referral Service for legal assistance. Let us direct the clients to you.



Register today for the Virginia State Bar's Lawyer Referral Service

- Over 1,800 referrals monthly to VLRS panel members
- Pre-screened, fee-generating clients
- A valuable public service to the community
- Non-profit statewide service
- Join using Mastercard or VISA

For more information, visit www.vsb.org/vlrs.html
or contact Barbara Allen at (804) 775-0590 or allen@vsb.org.

DOCKET CALL

Virginia State Bar Young Lawyers Conference
707 East Main Street, Suite 1500
Richmond, VA 23219-2800

PRESORTED
FIRST CLASS
U.S. POSTAGE PAID
RICHMOND, VA
PERMIT NO. 709