Our big city brothers and sisters, for all their glass towers and impossible dockets, cannot match the sense of family, community and fraternity we in the hustings enjoy on a daily basis. Indeed, I have a strong suspicion that they do not even understand the experience, so foreign is it to life among those teeming masses in the big cities Thomas Jefferson thought “pestilential”. I can make this bold statement now with 34 years of practice under my ever-expanding belt and the memory of that first month on my own a distant moment of disquiet. As I recall, I grossed sixty dollars (like the punch line of the old, old story, I made a $25 fee and I also handled a few small cases).

Notwithstanding such beginnings, either inauspicious or humble, depending on whether you were the lawyer or the long-suffering spouse, I can say with some confidence that I made the right choice—and a choice made by thousands of my colleagues over the years. The reasons are self-evident:

Family. In another life, I labored on Capitol Hill as a legislative aide. It was, without a doubt, the most exhilarating job I have ever had. But it was also an unsurpassing time sponge—I would leave home before sunup and return for the 10 o’clock news and not see my young children for an entire week, week in and week out. Their toddling milestones became matters of report, not witnessed events. An interspousal assessment of options (it all sounds so simple now) led to the conclusion that we wanted and needed the small-town values for our family life. That settled, the venue was as easy as a glance at the local telephone book. Where we owned a vacation cabin there were 14 lawyers, none of whom I had ever met. Given that a few had to be sick, lame or lazy, I posited there had to be room for one more.

The reality matched the expectation. For the first two years, my “commute” to the office involved a walk across the yard to my detached garage-turned-professional chambers. When I took the big step and relocated to an office on Main Street my commute expanded another 500 feet. I will leave to my children the benediction of whether having Dad immediately accessible during their formative years was a positive factor in their lives. If the quality and pattern of their parenting is any indication, I suspect it was and I firmly believe this is a primary consideration in the
small town choice of so many attorneys.

Community. This is a corollary to the family factor. There is something about lawering, more than any other avoca- tion, that provides instant community-wide recognition. Well, maybe the greeters at Wal-Mart are right up there, but they tend to be on the steep downslope of the work- force. Being a big fish in a small pond can make up for a lack of local extended family. It has taken me twenty-five years to create a family clan in this rural county and I am confident that after another quarter century I still will be counted among those who are not from around here’. Nevertheless, I have felt part of the ebb and flow of this small community from the first day. (Getting ripped off by local artisans everyone else knew to avoid was part of it, but that, dear readers, is quite another story).

My children have always known that their presence and passing was noted and even if it occasionally chafed when they were asked “Is Lawyer Shanks a former client—and, truth be known, opponents of former them over and over again in their daily travels. To run into life just as many lives, to be sure, but they don’t see them many cadre of lawyers (and judges) on a daily basis, when you come to realize how quickly Fortune’s smile can fade from cause to cause and from client to client, and when you commit breaches of collegial etiquette, the results (and the lessons) are immediate. You can either learn from them or go in search of a more imper- sonal venue.

Moreover, seeing your colleagues some place else besides “the pit” makes the Courtroom wounds less per- manent. Next week, instead of sulking about some slight, real or imagined, you will be sharing the pride of opposing counsel’s child’s band solo or gridiron success or Science Fair award. And to appreciate the essential sameness in an adversary, to share his experiences, to personalize him, is to make peace, with him and with yourself.

The Challenges. Let there be a stampede for the rural courthouses around the Old Dominion, let me hasten to add that there are challenges unique to small town practice. Primary among them is the specter of conflicts. When your client base draws from a population of 25,000 or less you are constantly confronted with people you have represent- ed or opposed, or their families, or their associates. Prior privileged knowledge can and frequently does require close ethical inspection in criminal, domestic relations and per- sonal injury practice. And the client base is not unfamiliar with the ground rules, as I was amazed to learn many years ago. After giving some “emergency” legal advice to a potential domestic relations client on my front porch one Sunday afternoon, I soon discovered that the interview had been replicated four more times that same day. In one brief afternoon’s work, all the local attorneys doing the contested divorce trade had been trampled from representing the other party. The case developed into a protracted, expen- sive legal bloodbath, but I was not involved, nor were most of my colleagues.

This is the “other” reality of the “unearned retainer” debate that seldom gets much mention, much less support: in a small community, being associated with a cause or a client has an immediate and far-reaching ripple effect. If you are representing an unhappy spouse, you are not likely to be seeing any “in-laws” in DUI, criminal, real estate, wills and estates, worker’s compensation, social security or personal injury matters—at least until the dust settles and, perhaps, for years after.

Another aspect “unique” to small-town practice is free advice. I’m not talking about being button-holed at Rotary Club or coming out of church. I speak of “drop-ins”, those who, as my dear legal assistant of twenty years used to say, “just want to speak a word with you”. In the metropolitan areas where people are trained to endure the sacrosanct schedules of everyone from the lawyer to the plumber, camping out in someone’s lobby for an unscheduled half- hour interruption is the height of folly. In a small town, it is acceptable behavior and its rejection is treated with wounded scorn (and see the preceding paragraph for all those who will feel similarly rejected). The problem is compounded by the fact that these unexpected would-be clients often have the most delightful stories to relate, not that you can do anything to alleviate their legal woes, and to turn them away in the name of “the clock” is to deny yourself a glimpse of the rich texture of small town fabric. Of course, you are also well advised to keep a can of aerosol spray in your drawer—many of the drop-ins coincide with stock sale day.

Closely aligned with the free advice crowd is the unpaid fee group which, as you learn by the school of hard knocks, should dwindle over the course of your small town practice to a manageable number no longer approximating the first mortgage on your home. But unlike the experience of our city friends, these folks will return. Believe me, they will return. After they have stifled all the other soft hearts in the Bar, you will see them again, probably in more dire circumstances than last time and definitely more con- ining. Exacting a fee under these circumstances ought to be the subject of a special ethical admonition, so delectable is the experience. In a big city, you couldn’t live that long!

Change (or resistance to it). Nothing is so sure in life as change, except in a small town. Life in a community off the beaten path is like Brigadoon without the singing feeling. Where else can you go in this fast-paced, e-tech age where the raging local debate is over building a consolidated high school, a debate which was front-page news twenty-five years ago and, incredibly, in the fore of the body politic in the 1950’s? To appreciate this glacial pace of life is to under- stand why life outside the beltway (any beltway) is lived on another plane, make that another planet. With the con- struction of the Wal-Mart, we gained another stop light. Now there are five green-yellow-red lights in the county (there were three when I arrived and found a gridlock at one of them, caused by some departing dinosaurs). You might think that such an environment would make the personal injury trade shiver like a ten year-old too long in the pool. Nothing could be further from the truth. In fact, the change resistant factor has made the one dual highway bisecting the county a fertile source of litigation, invariably involving a befuddled visitor, usually from another time zone, and a local who simply can’t get used to a) the dual highway that got put in back in the 60’s, and b) befuddled visitors, usually from another time zone.

The mantra of change resistance: “That’s the way we’ve always done it around here” or “That’s not the way we do it around here”, is also fertile ground for the zoning/build- ing code/municipal law/real estate/right-of-way practice. Even folks who have lived here for generations don’t like to be crowded by bureaucrats or anyone who disrespects a boundary line or a right-of-way, however tenuous the basis. Finally, of course, there is technological change. Most of the local Bar now possess maxims and cell phones. We have computers, scanners and digital cameras. Some- times we even use them in our practice (not the cell phones —in the mountains, they’re about as reliable as tin cans and weathered string). But mostly, we mass all ecologic infor- mation over the counters in the record room of the Clerk’s Office or in the parking lot beside the Courthouse. Even in this e-world, word of mouth still sets the small town stan- dard: “Good news travels fast; bad news travels faster.” Years ago, West (including my college alma mater, the Bar) would ask me: Why did you come here? and I would try to respond with some pithy, eye watering philosophy. Now, I frankly don’t know. But I sure wouldn’t leave. Don’t tell any- one, though. It’s the best kept secret in the practice of law.

ABOUT THE AUTHOR
George Shanks used to be Special Assistant to US Senator Harry F. Byrd, Jr. until that momentous day in 1977 when he abandoned his series and his Federal paychecks and cast his professional fortunes and his growing family’s fate on the uncertain practice of law in Page County, Virginia, a lovely little county in the Shenandoah Valley lying in an isolated sort of way between the Blue Ridge and Massanutten Mountain, where 24,000 or so souls and many more chickens live and die that way and pack and do what they can to make this world an interesting place in which to spend some time.

THE BEST KEPT SECRET IN THE PRACTICE OF LAW… Continued from page 3
Call for Nomination for the 19th Annual Tradition of Excellence

Announcement. The General Practice Section of the Virginia State Bar is seeking nominations for its 19th Annual Tradition of Excellence Award, which will be presented at next year’s Virginia State Bar Annual Meeting in Virginia Beach on Saturday morning, June 18, 2005.

This award recognizes an outstanding lawyer who embodies the highest tradition of personal and professional excellence in Virginia and, in doing so, enhances the image and esteem of attorneys in the Commonwealth.

General Qualifications. To qualify, nominees must be current members of the Virginia State Bar in good standing who have practiced for a minimum of ten years, five of which must be in general practice. Nominees also should have achieved both personal and professional distinction in their community.

Nominations. Nominations must be submitted in writing, mailed to the VSB General Practice Section and include the nine areas of information outlined below. Nominees may also be interviewed by the selection committee or a representative of the committee at any time after submission of the nomination.

Deadline. The General Practice Section must receive your nomination by close of business on Friday, April 15, 2005.

Notification of Winner. The recipient of this year’s Tradition of Excellence Award will be notified on or before May 20, 2005. The recipient will be invited to be the honored guest of the General Practice Section at the Virginia State Bar Annual Meeting.

N "ow it’s easier than ever for consumers to retrieve annual reports for the more than 200,000 corporations currently registered with the State Corporation Commission (SCC). The SCC Clerk’s Office recently introduced a new annual report search feature on its website which allows consumers, at no charge, to view online and print images of almost two million annual reports dating back to 1995.

Information contained in an annual report includes the corporation’s name, the address of its principal office, its state or country of incorporation, the name and address of its Virginia registered agent and registered office, the names and post office addresses of its directors and principal officers, and the total number of shares of stock which the corporation has authority to issue, itemized by class.

Although the information set forth in an annual report should be correct as of the date of the report, any or all of the data can change during the year. Thus, it is a good idea to check the Clerk’s Information System (CIS) or contact the Clerk’s Office Call Center to determine if any such changes have been made since the most recent annual report was filed with the SCC.

Consumers now have three convenient ways to obtain copies of annual reports filed with the Clerk’s Office:

By Computer. To view an annual report online 24 hours a day, seven days a week, go to the SCC website at http://scc-internet.scc.state.va.us:8080/corporate/arfilings/corpsearch.asp. Annual report searches require a corporate identification number (Corp ID), which is a unique corporation registered number assigned by the SCC to each with the Clerk’s Office. Visitors to the SCC website can look up a corporation name and find its corresponding Corp ID through the CIS feature which is also available on the annual report web page.

By Calling the Clerk’s Office. Annual report information can be obtained by calling the Clerk’s Office during normal office hours at (804) 371-9733 or toll-free in Virginia at 1-866-SCC-CLK1 (866-722-2551).

By Visiting the Clerk’s Office. Annual report images can be viewed on computers during normal office hours in the Clerk’s Office Public Access Area, first floor, Tyler Building, 1300 East Main Street, Richmond. Normal office hours are Monday through Friday from 8:15 a.m. to 5 p.m.
Lawyers who have been practicing for a reasonable length of time realize that one can always do legal work. The trick is to do legal work and get paid for it. Getting paid fairly, however, is an issue in all professions, and certainly the megafirms with multinational clients have fundamentally the same issue. This article, however, is directed to smaller practitioners or corporate practitioners who find themselves at some point representing individuals as opposed to businesses.

The Initial Consultation and Engagement Meeting
At the end of the initial consultation with the client, it is desirable to summarize and identify the problems, review the potential proposed solutions and estimate the costs for your services in order to achieve the goals of the client. You should stress that the estimated time and cost to perform the services are based on the information and the assumptions discussed at that meeting and the information provided. State quite clearly that the cost may vary if the facts or assumptions change.

It is also at this meeting that you should explain that (depending on your office situation) other lawyers, paralegals, or administrative staff may be working on your client’s behalf in order to resolve their problems. Therefore, clients should not be surprised or upset if other members of your office contact them. You should tell them that this practice provides for a much more efficient flow of information. You may mention to them that while you were meeting with them, other clients might have called and had answers provided by your support team. If the representation involves hourly billing, you may also wish to point out that the costs and time for the junior associates, paralegals, or staff may be significantly less expensive to the client than your time, and therefore it is more cost effective for the client to deal with those personnel. If indeed your representation will maintain supervision of their files so that ultimately you will be responsible for the work provided to them regardless of who does the actual work.

Whenever possible you should consider trying to distance yourself from the details of the billing process. It is not unusual for clients, particularly clients who are not used to dealing with law firms, to have billing questions that deal with abbreviations, time breakdown, or staff initials that appear on the bill. They may have questions regarding a computer error on the bill. First and foremost, these are obviously issues that are best dealt with at the administrative level. Additionally, for many clients with complicated issues, quite often they really did not fully comprehend the legal process (at least in the detail that a lawyer must), and therefore to some extent they are placing some amount of faith and trust in your ability. If there are typos, incorrect entries, duplicate entries, or various computer errors on the bill and you are directly involved with this (as opposed to being ultimately responsible), then their faith can very easily be shaken. Many seasoned practitioners have had the extremely uncomfortable experience explaining a complicated trust, contract, or business agreement to a client who clearly is relying on the lawyer’s expertise, only to have the client’s faith severely shaken when they discover a middle initial, a date, an address, or zip code in the otherwise perfectly prepared documents is incorrect. They may not understand the document, but they do know their name and zip code were incorrect and, if that is the case, how do they know that the rest of the document is correct?

Of course, if there are significant errors, the lawyer should be responsible and deal directly with the client explaining what the problem was and how the lawyer is prepared to correct the problem. However, because the vast majority of billing errors in most firms are of a clerical nature, it is the type of process where the lawyer can only lose credibility and gain nothing. Therefore, it’s best to distance yourself from it.

The Retainer Letter
You should always have a retainer letter signed by the client in your files. Consider using a two-page format for the retainer letter. The first page can be customized to the individual clients detailing the work that would be performed, telling them how they are to be charged, and providing an estimate of the total cost for the services. The second page, a form letter requiring the client’s signature and directed to be returned to your office, explains your firm’s policy on payments, billing procedures, charges for phone calls, travel time, copy and mailing costs, and so forth. Effective examples, you may have a retainer package rather than a retainer letter. In this manner, the client feels that the first part of the retainer letter is unique to them and very specific, which enhances the attorney-client relationship. The second letter, which is clearly a standardized procedure, makes the more mundane but essential billing process a standard procedure as opposed to something imposed strictly on the client.

It also makes very clear from the initial engagement what your office rules and policies are.

Whenever possible, the retainer letter should estimate the cost for your services. This may not always be possible for every client’s situation, but to the extent that you can use your experience to safely estimate costs, this is very comforting to the client. Whenever you do this you should provide a range of costs: for example, “We estimate our costs for these services would range between $2,500 and $3,000.” In this way, you can minimize your exposure to minor quibbles or small glitches that may come up during your representation for the client in this matter. Your letter should also clearly reference that the estimated costs for services is based upon the information and objectives discussed at the initial meeting, and you should state the date of that meeting. You should not leave yourself open-ended with an estimate of costs and then have the client adding additional facts and circumstances that complicate the matter and drive up the costs. If this happens, then you can provide an additional estimate and cite the fact that those facts were new and not discussed in the first meeting.

Some Thoughts on the Billing Process
Try to put your work in perspective with the issues or assets involved with your services. The use of this technique is as follows, and you will note within the adjacent examples that both have the same work listed. The amount of the fee standing alone is not insignificant; however, the fee, when placed in the perspective of the value of the work involved, becomes much more acceptable to the client.

Always bill at least monthly. This will greatly help your firm’s cash flow. Your client is already programmed through normal consumer and business transactions to expect bills on a monthly basis. This minimizes large bills arriving unexpectedly, and when the engagement will take several months, spreads the large cost and therefore makes it easier and more likely for you to be paid promptly. Also, since you more than likely will be meeting with the client, talking with the client, and copying the client on correspondence, it is best to bill when they see activity, because clients tend to forget all the work that was done for them three months ago—especially when they receive a large bill and nothing has been done for them recently.

Put detail on the bill rather than a simple entry “for professional services rendered” and the dollar amount. Make sure your billing indicates who in your office is doing work for the client. This is helpful to the client and also helps you to monitor lawyer and staff interaction with the client.

Use “no charge” entries on bills whenever possible. This fosters a friendly attitude and encourages the client to let you know about potential problems or to ask you to clarify simple issues for them. This creates goodwill in the attorney-client relationship. Human nature being what it is, you do not want to have your clients hesitant to talk to you if their feeling is “Any time I talk to my lawyer, even for a few minutes, it costs me $50.” The result with many clients will be that they will be very reluctant to talk to you, which does not help in your representation and sows the seed for client’s discontent and a potential adversarial relationship with your client. This simple courtesy counteracts much of that hesitation and hostility and often is so appreciated that the clients will tell their friends about how understanding you are and what a wonderful lawyer you are, which, of course, generates new business for you and new billable matters.
Given two equal lawyers going into a case, the one who prepares better is going to win. Make this Step Number One to becoming a winning lawyer.

1. Do things right. Don’t permit second-rate work by you or anyone working for you to leave your office. Read, reread, and spell check everything to get it right.

2. Be courteous to everyone, including your adversary. You never know when you will need your adversary’s assistance, and good relations may help you obtain it.

3. Be respectful of the court. As a lawyer you have to play music for every occasion. If you have a timekeeper judge, get to court early. If you have a judge that is a stickler for the law, provide him or her with law citations that will help your position. The same holds true for the busy judge. Make it easy for him or her.

4. You are a trial lawyer, so dress the part and behave like one, especially when you are in court and when you are in front of a jury. Behave as if everyone in the court watches Law and Order, CSI, and all the other television shows about lawyers. Try your case the same way—directly, and with little wasted time.

5. Ten Tips to Win Your Next Trial

   by Stephen N. Marksberg

10 tips

Thoroughly prepare your witnesses, both lay and expert, for trial. Don’t leave anything to chance. Go through mock questions and answers and decide how the evidence should be presented and then stick to your plan.

6. Know the law that you are working on, on every issue. To prepare your case, read all of the standard jury charges dealing with the issues you will face in the case. Use the jury charges as your basic mode of preparation.

7. Be constantly vigilant in the courtroom. One minute of lapsing off into space or thinking about an office problem can cause you to lose the case. Keep focused on the trial.

8. Keep good relations with your clients. Keep them informed. If you show them how hard you are working for them, if you lose a case, they won’t hold it against you. Leave all distractions out of the courtroom.

9. Remember, there’s no excuse for not being prepared. Something suddenly came up, I thought the trial was next week, the dog ate my casework, or some other excuse, will not save you from a malpractice suit.

10. Virginia State Bar General Practice Section

History. General practice attorneys have traditionally made up a large portion of the Virginia State Bar’s membership. The General Practice Section was established in February, 1896 by the Virginia State Bar in an effort to serve and provide assistance to general practice attorneys throughout the Commonwealth. The Honorable Gerald B. Lee was the first attorney to serve as Chairman of the General Practice Section. Years later, Judge Lee went on to become a Circuit Court Judge for Fairfax County, and is now a Federal District Judge for the Eastern District of Virginia. Among other firsts, the General Practice Section hosted the first Continuing Legal Education Seminar in Virginia to be televised by satellite to multiple locations throughout the Commonwealth.

Purpose. The purpose of the General Practice Section is to plan and conduct continuing legal education seminars and programs, publish and distribute educational and professional materials, and to undertake such other diverse activities as shall enhance the competence and skill of Virginia lawyers engaged in the general practice of law.

Activity Highlights

1. Creates and sponsors the annual First Day in Practice CLE Seminar, a program which is always extremely popular with new Virginia attorneys.

2. Creates and publishes the General Practice Plus newsletter, a valuable source of information and practice tips for Virginia attorneys.

3. Sponsors a yearly CLE Workshop and The Lawyers Expo at the VSB Annual Meeting in June.

4. Creates and sponsors the Tradition of Excellence Award, an award which annually recognizes outstanding general practice attorneys in Virginia who embody the highest tradition of personal and professional excellence and who have significantly benefited their community and helped to enhance the image and esteem of general practice attorneys in the Commonwealth.

Section Dues. $20 per bar year (July 1-June 30). Dues are waived the last quarter of the fiscal year. Members of the judiciary may join the section at no charge. Anyone interested in joining the Section should complete the form below and mail it to: Patricia A. Siger, Liaison, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.
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