

President's Message

by Kevin E. Martingayle



Exhibiting Professionalism Goes Beyond Ethical Requirements

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.

—“Virginia Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities.”

YEARS AGO, I served two terms on the Virginia State Bar Second District Disciplinary Committee. This is the local disciplinary committee that decides whether ethical complaints against attorneys should proceed, and if so, in what manner and at what level. After that, I served two terms on the VSB Standing Committee on Legal Ethics, which includes among its duties the responsibility for proposing changes to the Virginia Rules of Professional Conduct and issuing legal ethics opinions. In both roles, I frequently had to remind myself and others that the VSB does not control matters of style nor mandate good taste. Engaging in such exercises would be virtually impossible.

So, is the enforcement of minimum standards of conduct the sole focus of our self-regulation efforts at the VSB? Is compliance with baseline requirements all that is expected of us? Of course not.

When I attended a recent VSB Professionalism Course for new VSB admittees, I was reminded that there is more to “professionalism” than mere adherence to the ethical standards set forth in the Rules of Professional Conduct. Complying with ethical standards is required, while acting with professionalism is not. Nevertheless, we should strive to exhibit the highest level of professional conduct whenever,

however, and wherever we can. And contrary to popular belief in some quarters, there are good business reasons for doing so.

One thing that any new lawyer needs to understand—and that we all need to remember—is that reputation matters. Many of the best and most engaging attorneys I know are supremely skilled at being vigorous advocates while always maintaining a reputation for courtesy, decency, and civility. This is true with litigators, appellate attorneys, transactional lawyers, and so on. These are the lawyers to whom the lion's share of important, interesting, and complex case and client referrals are made. These attorneys know that in addition to being the right thing to do, exhibiting professionalism is the smart thing to do. Their reputations bring home the best opportunities.

Many times over the years I have received calls from potential clients claiming to want a “pit bull” or “bulldog” to handle their issues and fight opponents. But in our profession, we are not here to act as attack dogs or guard dogs, or animals of any kind. What clients really need are problem solvers. And the most skilled and successful problem solvers know how to get to solutions with the least amount of conflict, expense, and aggravation necessary.

There is an old saying that when the only tool you have is a hammer, everything looks like a nail. We have all dealt from time to time with attorneys who are unyielding, unreasonable, unpleasant, and consistently uncompromising. They are also usually unsuccessful at finding efficient solutions, especially when compared with their more mentally flexible, better-mannered peers.

None of this is meant to say that one should never stand firm and refuse to give in to unreasonable demands. Those situations arise, and when they do, we have to act accordingly. Some amount of conflict is to be expected. But a willingness and ability to collaborate, compromise, and advocate with professionalism should be the rule, not the exception.

Although enforcement of the mandatory ethical requirements is a core function of the VSB, we strive for better than minimum standards. The VSB Professionalism Course for new bar admittees has emerged as one effective way to teach our newest members to aim higher and expect better. It is also critical that those of us with more experience never lose sight of the goal of demonstrating the utmost professionalism in everything we do. We set the example daily.

As stated by the Virginia Supreme Court in *National Airlines v. Shea*, 223 Va. 578 (1982), “Higher standards should prevail in the practice of law.” *Id.* at 583. These words remain as true today as they were more than three decades ago. It's not up to our Supreme Court or VSB discipline case prosecutors to establish those “higher standards.” That job is ours.