

President's Message

by Michael W. Robinson



Reclaiming Civility in an Age of Conflict

“Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual. We are civil to each other because we respect one another’s human aspirations and equal standing in a democratic society. We must restore civility to every part of our legal system and public discourse. Civility defines our common cause in advancing the rule of law. Freedom may be born in protest, but it survives in civility.”

— Justice Anthony Kennedy, ABA address, 1997.

I WAS RECENTLY MEETING WITH a group of in-house counsel and we began discussing my work with the bar. Someone asked if I thought the problem of declining civility among lawyers was getting better; perhaps a surprising question from a lawyer who would not regularly appear in court or deal firsthand with opposing counsel. The question prompted a thoughtful discussion within the group, but I had to admit that my answer to his question was “unfortunately not.”

The decline in lawyer civility is a well-documented concern. And the issue is not new; the Virginia State Bar instituted the Harry L. Carrico Professionalism Course for new lawyers in 1987 partly in response to growing concerns over the decline in civility and professionalism. Although the evidence may be by nature anecdotal, the concerns are not merely lawyers pining for perceived better times. Civility is a core principle of professionalism, so let me take a few words to add a voice to the chorus reminding us of the inherent benefits of enhanced civility in our profession.

The reasons are likely numerous. A commonly cited culprit is our pop culture’s depiction of lawyers. The quiet dignity of Atticus Finch is passé; TV and movies depict lawyers as combative, “hired gun” zealots. The

depiction is exaggerated, in my view, but reinforces a view strongly at odds with what we expect of ourselves. I believe technology also plays a role. In that vein, the ease and efficiency of instantaneous communication through e-mail carries with it drawbacks. First, as it has become the communication method of choice, it has put up an artificial wall in our interactions with each other; we don’t talk to each other enough. E-mail makes communications instantaneous, but is inherently colder than the interplay of in-person or telephonic discussions. More problematic, we fall victim to the urge for instantaneous replies to every real or perceived slight, with less attention to the self-editing impulse that accompanies more formal communication — like letters — allowing, hyperbole, sarcasm, and insult to substitute for productive discourse.

The decline in civility among lawyers is more concerning to me in the context of the overall decline in our civic discourse. I am not a Pollyanna; I understand politics and public debate are contact sports, and the marketplace of ideas and public concerns may be no less rough and tumble than the economic marketplace. But the debate now seems measured by volume as much as by content; we talk over each other with little effort or care to hear,

much less consider, contrary or opposing views.

As we enter an election season in which we all may bemoan the tone, content, and volume of the debate, let’s remind ourselves of the importance and underpinnings of this core value. Upon admission to the bar of the Supreme Court of Virginia, we take an oath to demean ourselves both professionally and courteously in the practice of law. We require all newly-licensed attorneys to attend an all-day program on professionalism. While naturally rooted in the rules of professional conduct, the program is intentionally expansive to address professionalism and civility as a core principle. And the Supreme Court of Virginia has approved principles of professionalism that likewise promote civility as a core principle.

For those who may not accept Justice Kennedy’s notion that civility is an end in itself, let’s remember:

- Civility is not at odds with zealous representation. To paraphrase Eric Hoffer, incivility is merely the imitation of strength. In contrast, civility should not be equated with mere politeness, or a veneer of politeness, but carries with it notions of mutual respect, fairness, and appreciation

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February 27, 2016, Council Meeting

Council debated whether the Diversity Conference should be funded with dues dollars. By a vote of 52-7, council approved the Diversity Conference being funded by VSB dues.

June 16, 2016, Council Meeting

Proposed Amendments to RPC 1.6 and 3.3

By a vote of 52-7, the council approved the proposed amendments to Rules of Professional Conduct 1.6: *Confidentiality of Information*, and 3.3: *Candor Toward the Tribunal*. The proposed amendments clarify a lawyer's obligations when a client discloses an intent to commit perjury well in advance of trial, and when the lawyer can withdraw from the representation before the client's intended perjury occurs. The proposed amendments must be approved by the Supreme Court of Virginia before becoming effective.

Legal Ethics Opinion 1884

The council unanimously approved LEO 1884: *Conflicts arising from a*

lawyer-legislator's employment with a consulting firm owned by a law firm. The proposed opinion addresses a situation where a lawyer who is a member of the Virginia General Assembly joins a consulting firm owned by a law firm. The lawyer inquires whether the lawyers and non-lawyers in the consulting firm would be barred from lobbying the General Assembly. The Standing Committee on Legal Ethics concludes that both lawyers and non-lawyers in the consulting firm, as well as all lawyers in the law firm that own the consulting firm, would be barred from representing clients or otherwise lobbying before the General Assembly. The proposed LEO must be approved by the Supreme Court of Virginia before becoming effective.

Budget

Management reported that a savings of over \$1 million is being projected for FY2015-16 over what was budgeted this time last year.

Officer Succession

At the Annual Meeting in Virginia Beach on June 18, 2016, Michael W. Robinson

of Tysons Corner succeeded Edward L. Weiner as president of the Virginia State Bar and Doris H. Causey of Richmond became president-elect.

FY2016-17 Budget

Council and the Supreme Court of Virginia approved the VSB's proposed 2016-17 budget of \$14.9 million. This is an increase of \$277,000 over the 2015-16 operating budget. The budget includes a 3 percent raise for VSB employees as authorized by the General Assembly, contingent on the state achieving its revenue forecast for FY2016. As required by law, however, the state comptroller submitted a report to the governor on July 8, 2016, on the preliminary results of revenue collections for fiscal year 2016. The data indicated that total tax collections were 1.8 percent below the official budget estimates for the year. The shortfall means pay increases for state employees, slated for December 1, cannot move forward pending budgetary actions to address the shortfall, according to the Appropriations Act.

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that enhances lawyers' representation of their clients.

- Civility enhances advocacy. Judges routinely bemoan incivility in the courtroom, so it hardly should be seen as an advocate's tool of choice. The problem is just as serious in written submissions, where attacks on counsel may not draw a rebuke, but just as detrimentally are seen as unnecessary clutter or distractions that must be cleared to address the real issues. Why have your arguments lost in the clutter?
- Civility enhances a lawyer's professional reputation, which follows that

lawyer whenever she is advocating a position for her client.

- Judges and clients rate lawyers who act civilly as more effective.
- The practice of law is undeniably stressful; and incivility among lawyers is frequently cited as a cause of unnecessary stress.

A number of courts and bar associations have adopted principles of civility, some with very detailed guidelines. We should welcome the increasing focus on civility by the courts and bar associations. But I think professionalism and civility are difficult to codify, and the effort misses the essence of what we

strive to promote: the attitude of genuine respect for others and for a system that allows us to vigorously debate, further our client's positions, and resolve disputes in an adversarial system.

As Virginia lawyers, we owe it to our clients, our profession, and ourselves to both remember the underpinnings of the oath to demean ourselves professionally and courteously in our practice of law, and to reinforce civility as a core principle of professionalism. And here, I can betray perhaps a touch of Pollyanna optimism: perhaps in doing so we can help elevate as well the level of our public discourse.