



A Brave New Legal World or Quicksand

Tracy A. Giles 2000–2001 Young Lawyers Conference President

Things change, even in the legal profession, even in Virginia. Change is necessary to improve both ourselves and our profession and for us to adapt and thrive in new conditions. But change is not always for the better and must, therefore, be approached thoughtfully and cautiously. This is especially true when the changes deal with the foundations supporting our profession.

These foundations have been painstakingly built by previous generations of Virginia lawyers. They have been built upon the bedrock principals of independent professional judgment, zealous but civil representation, client confidentiality and a strong, independent judiciary. The pillars of this foundation include an effective and fair disciplinary system, rules of conduct precluding fee sharing with nonlawyers, and a code that protects our clients. They have, for the most part, allowed us to participate in a respected profession and earn a decent living while serving our clients and the public. Most of us have constructed our careers atop these pillars. They have allowed us to earn a good living and serve our individual clients and the public well.

Changes are in the works, and decisions are being made that will either strengthen or undermine the foundations of our profession. It is important that all Virginia lawyers, especially young lawyers, pay attention to how these issues are being addressed, or one day soon we might wake up to find that the practice of law has changed almost beyond recognition. It is hard, especially during the first years of practice, to pull your head up from the grindstone and peer at the horizon. But now the stakes are so high that we must make that effort if our voices are to be heard and our views are to be taken into account. So what are the issues, and how can your views be expressed effectively?

One important way to make yourself heard is through the Virginia State Bar. If you are reading this magazine, you are most likely a member of the VSB. That means your mandatory dues dollars support it, and you have the opportunity to elect its leaders. You should expect that a portion of your money is being used by the State Bar leadership to study and address important issues relating to your profession and your practice. For the most part, this expectation is not misplaced. For example, we recently witnessed a rigorous and sometimes contentious review of malpractice insurance companies by VSB volunteers and staff to make sure Virginia lawyers were receiving the best coverage at the best price. Because of this hard work, many of us have already seen our prices and options for malpractice insurance improve. But as important as the availability and pricing

of insurance is, other issues are in play that will have an even greater impact. Among these are multidisciplinary practice, multijurisdictional practice, the selection of judges and the proposal to open the disciplinary system. How these issues are dealt with will affect every one of us.

There is a proposal on the table to open the disciplinary system. Here is the short version: Earlier in the bar year, a task force was appointed by VSB President Joseph A. Condo to study the disciplinary system and recommend changes regarding the level of openness. Currently, the process is open to the press and the public if there is a hearing on suspension or revocation before the disciplinary board or if a district committee imposes a public reprimand. Otherwise it is not a public event. The task force has completed its work, and the majority has recommended the process be opened at the district committee level. Presently, any one of the three members of a district subcommittee can find probable cause to hold a hearing before the full district committee. If the task force's proposal is adopted, that hearing would be open, regardless of the outcome.

Perhaps this is a needed change, and maybe it would only affect a small percentage of cases. Still, the proposed change does not seem as slight as I have heard some make it out to be. In addition, there are many lawyers and nonlawyers who support the current system. For example, it is my understanding that the current system is supported by most of the lay members of the district committees. Therefore, I believe it is important that all of us, including young lawyers, take a long hard look before dramatically changing a system that seems to have worked well for so many years.

But it is also important to understand that the disciplinary system is not static and unchanging. Areas of concern to the bar and the public are being addressed. One concern is the sometimes extended length of time it takes between the filing of a complaint and its resolution. This delay has occurred mainly because of a gap between the resources of the disciplinary system and the number of complaints it is expected to handle. One of the main reasons VSB dues increased last year was to close this gap. Another concern has been the excessive number of private reprimands given to a few attorneys that have only come to light after something big happens and they are publicly disciplined. The Committee on Lawyer Discipline has adopted a policy, soon to become a rule, limiting the number of private reprimands to two. Most lawyers would agree with these improvements. They have strengthened the system without changing its nature.

Unfortunately, few outside the profession see the hard work and dedication of those who administer the disciplinary system. The current proposal to open investigations to the public at the “probable cause” stage is essentially a compromise between those who want all complaints public at the time of filing and those who believe the current system best serves the public and the profession. Even though I fall into the latter category, I recognize that there is considerable pressure from some in the media and the legislature to make the system more public. Maybe this is the best compromise we can make to maintain the privilege of self-regulation. Maybe this compromise is where we draw the line, but it is still a shame when perception drives reality.

Another issue that is being addressed is multidisciplinary practice. In short, should lawyers be permitted to partner with and share fees with nonlawyers such as accountants, doctors, psychologists and insurance salespersons? A task force headed by former VSB President John Keith is studying the issues and can be expected to make a recommendation in the near future.

Those who support multidisciplinary practice make it sound pretty good. There would be obvious advantages, including one-stop-shopping for clients and perhaps more money for some lawyers. But there might also be some costs such as conflicts of interests and erosion of a lawyer’s independent judgment. The committee is aware of these problems and will be analyzing them.

Multidisciplinary practice is not a new issue. More than two years ago, the president of the American Bar Association appointed a blue ribbon commission to study the issues involved. After lengthy research and hearings around the country, the ABA commission proposed that the model rules be changed to allow certain forms of multidisciplinary practice. In 1999, after lengthy debate, the ABA house of delegates, which is made up mostly of state and local bar leaders from around the country, voted overwhelmingly not to adopt the commission’s proposal. In 2000, after another year of study and hearings, the ABA commission proposed that another form of multidisciplinary practice be adopted. Again after debate, the ABA house of delegates voted overwhelmingly to reject the commission’s new proposal, so this is not a generational issue. It should be noted that both years the assembly of the ABA’s Young Lawyers Division overwhelmingly voted to reject the commission’s proposals. The YLD assembly is made up of young lawyer leaders from around the country. The ABA board of governors also voted to reject changing the model rules to permit multidisciplinary practice.

I was privy to the debate in each of these settings and the proponents of MDPs made it sound appealing. But I could not stop thinking about Disney’s movie, *The Lion King*, where the idea of “Lion shall lie down with hyena” sounded good for a while, too. I also thought of the old saying, “He who pays the piper calls the tune.” I thought of how many doctors seem hamstrung by HMOs and insurance companies. Lately, I have been thinking about the eroded barriers between investment bankers and stock brokers and the “analysts” hawking Priceline.com even as it plummeted beneath \$3 a share. This gave me pause, and I voted not to change the current rules. I believe most of the Virginia delegation to the ABA house voted no as well.

The Virginia task force is made up of thoughtful people, and maybe they can find a way to make MDP work for lawyers and

clients. But I will have to hear something new before buying into something that may threaten the core values of our profession.

There are two other issues I expect the bar to address soon. The first issue will be multi-jurisdictional practice or proposals to change the rules to make it easier for out-of-state lawyers to practice in Virginia. The other issue is the decrease in influence local bar associations have in the selection of judges. This is not happening everywhere, but it seems to be an issue in more and more communities throughout Virginia.

Readers may or may not agree with my positions on the above issues, but their resolution will affect your lives and practices. You can influence the outcome. Many of these issues will be addressed by the council of the Virginia State Bar. These are lawyers you elected to represent you. Give them a call or e-mail them your thoughts. Find out what they are thinking. There is also a contested election for VSB president-elect this year. When the candidates speak at your local bar meeting or call to ask for your vote, ask them about the issues that are important to you. The VSB Young Lawyers Conference did this recently, and the answers were straight-forward, thoughtful, enlightening, AND DIFFERENT. ☺



CALL FOR YLC BOARD NOMINATIONS

THE NOMINATIONS COMMITTEE of the VSB Young Lawyers Conference is now accepting nominations for seats on the Board of Governors which are up for election at this summer’s Annual Meeting. Elections will be held for positions representing the following Young Lawyers Districts:

YLC DISTRICT CONSISTS OF

- 1st District
- 2nd District
- 3rd District
- 4th District
- 5th District
- 6th District
- 8th District
- 9th District
- 10th District

JUDICIAL CIRCUITS

- 1,3,5,7,8
- 2,4
- 6,11,12,13,14
- 17,18
- 19,31
- 9,15
- 23,25
- 10,21,22,24
- 27,28,29,30

and two At-Large positions.

Anyone interested in serving on the Board of Governors for the Young Lawyers Conference or in nominating a young lawyer to the Board of Governors should forward a letter of interest or nomination to:

J. Tracy Walker, IV
 YLC Nominating Committee
 One James Center, 901 E. Cary Street, Richmond, VA 23219
 Fax (804) 698-2201

The deadline for receipt of nominations is April 30, 2001.