

— VSB Attorney Profile —

Seth Guggenheim



Seth M. Guggenheim has over twenty years of law practice in both the public and private sectors, supplemented by experience as chair of important bar association committees; judge of student competitions at area law schools; public speaker and writer on legal topics and producer of and panelist on video and television public legal education programs. He has been assistant bar counsel since February 2000, and works in the bar's Alexandria office. He evaluates and supervises investigations of misconduct complaints against Virginia-licensed attorneys; prosecutes misconduct complaints before disciplinary committees, the Virginia State Bar Disciplinary Board, and three-judge circuit courts; and advances and defends the interests of the Virginia State Bar in attorney reinstatement actions and receivership cases

VL: What were your first impressions of lawyers as you grew up, and how have they changed?

SG: I grew up in a New Jersey suburb of New York City. As a child, my only connection to lawyers was of a social nature. My parents had a few friends who were attorneys, and my uncle practiced law in Washington, D.C., in a firm that he founded. To be honest, I was, back then, incurious about what lawyers actually did, but I was extremely impressed by their erudition, common sense, and evident success.

As an adult (and lawyer), I respect the legal profession because the best of its practitioners keep civilizations civi-

lized—whether through the orderly transfer of wealth between generations, the control of those who would inflict harm upon others, the constant adjustment of the competing interests of individuals and private and public entities, or the preservation of a system of government that protects our freedom and allows us to pursue our personal notions of happiness.

You seem to always be in urban environments, NYC to Boston to DC. Why? Is practicing law vastly different and appealing in cities?

This is an interesting and good question. I did not set out on a conscious path either to live or practice law in an urban environment. I was born in New York City, and lived either in the city or its suburbs for the first 18 years of my life. My “home away from home” was always Washington, D.C., where my mother's side of the family is from, and where they continue to live. I went to college in Washington (George Washington University) and in Boston (Boston University), and returned to Washington to attend law school (American University).

I like the hustle-and-bustle of urban environments, but I must say that I would be as content to live and practice law in a slower-paced, “country lawyer,” environment. Some of the sharpest and most personable attorneys on our volunteer disciplinary tribunals practice law in bucolic, rural settings, where, speaking figuratively, the ponds are small and the fish are big. On behalf of the Bar, I have attended hear-

ings or conducted trials in these beautiful rural settings, and have been very impressed by the pleasure that lawyers derive from their practices and from their relationships with their colleagues and members of the judiciary.

Mapquest says that it should take 27 minutes to drive from your house in Bethesda to the VSB office in Alexandria. Does it? What do you do in your car during the commute?

When the moons are in perfect alignment, and there is no traffic, it takes me 27 minutes to commute to and from work. That works out to 17 days per year. Whether it takes me 27 minutes, 40 minutes, or one and one-half hours, I *enjoy* the “buffer” between life at work and at home. Matters I am working on “marinate” in my brain, and things which have not, but perhaps should have, occurred to me while seated at my desk at work “jump out” at me while I am driving. As I am sure is the case for many of us, some of my best “thinking” is done while I am not thinking. And, unlike those poor souls with very short commutes, I get to listen to whole program segments on NPR and C-Span, Jacques Barzun on audiocassette, or the Mamma Mia! soundtrack on CD.

Your wife is a lawyer. What does she think of your working for the bar?

My wife is probably *responsible* for my working for the bar. In late 1999, my wife called me at my office in Washington, D.C., said “listen to this,” and read me *verbatim* the Virginia State Bar announcement in *Virginia Lawyers Weekly* for the assistant bar counsel position. I promptly applied, was interviewed, and was offered and accepted the position. I credit my wife with alerting me to the open position, which I might not have otherwise been able to act upon before the application closing date.

As a lawyer admitted to practice in three jurisdictions, including Virginia, my wife enjoys discussing with me what I am allowed to talk about concerning what I do. Interestingly, I went to a national conference of bar counsels after I started working here, and one of the presenters identified the profile of an attorney, using birth year and year of admission to the bar, who would likely face discipline for ethical misconduct. I was shocked when I realized that those two dates applied to my wife! I am happy to report that she has not been a victim of those statistics.

Can you tell me something about your children?

Our son, Nate, is twenty. He is an art history major in his third year at the University of St. Andrews, in Scotland. St. Andrews is the birthplace of golf, and, fortunately, Nate loves the game and has been able to play the courses there at special rates offered to students. Our older daughter, Annie, is eighteen. She attends the nursing school affiliated with Washington University in St. Louis. Her desire to be a nurse stems from her experiences

during high school as a volunteer firefighter and EMT in Montgomery County, Maryland, where she has received commendations for extraordinary performance in those roles. Our younger daughter, Ari, is thirteen, and a public school student in the seventh grade. She reads voraciously, is a master of the video game universe, and enjoys shooting hoops on the basketball court. Those who know me will tell you that I’m very, very proud of my children.

What are your duties at the VSB?

I evaluate bar complaints, supervise their investigation by our staff investigators, recommend to tribunals whether complaints should be dismissed or prosecuted, and represent the bar in prosecutions before volunteer bar tribunals and circuit courts. In addition, I am called upon to represent the bar in receivership matters that the bar must, from time to time, initiate in circuit courts when an attorney’s practice must be disposed of due to absence, misconduct, death or disability. This is very interesting and *necessary* work. When I attend national bar counsel conferences and learn how other jurisdictions discipline their attorneys, I am struck by the beautiful simplicity of our disciplinary structure compared to those of other states.

Do you feel connected to the VSB headquarters, or disconnected, and why?

I tell people that the Richmond office is our “nerve center,” which, at least figuratively, is true. Bar Counsel Barbara Ann Williams, along with other attorneys and staff in the professional regulation department, are stationed in Richmond. All of the bar’s other depart-

ments, including membership, MCLE, publications, and lawyer referral are located in the Richmond office, as well. To answer your question, I do feel “connected” to our Richmond headquarters. Despite being stationed in our “Northern Virginia Office” in Old Town Alexandria, and being physically distant from our nerve center, I am nonetheless comfortably connected via e-mail, phone, and United Parcel Service with headquarters. There are four attorneys and two staff members in the Northern Virginia office, whose duties relate primarily to professional regulation. The “chemistry” in our small satellite office is excellent. Our working relationships with those in the nerve center are excellent. E-mail greatly enhances our ability to correspond with our distant colleagues. Of course, we in Alexandria travel to Richmond for board hearings and staff meetings, so there are faces to go along with the people we speak to over the phone and via e-mail.

As former chair of the Alexandria Bar Association Lawyer Referral Service Committee, you must have strong feelings about the use of the service. Describe the service and its importance.

I chaired the committee between 1989 and 1997. During that time, we received a grant from the Virginia Law Foundation to make an instructional videotape for the *pro se* litigant in general district court. The project was a huge success. Local attorneys acted in the film, and Judge Daniel F. O’Flaherty was kind enough to “preside” at our mock trial. It is perhaps ironic that a lawyer referral service would advance the proposition that a litigant could proceed on a *pro se* basis. However,

continued on page 40

the film was intended to help those who could not afford a lawyer, whose matter did not justify the expense of a lawyer, or who actually needed a lawyer but did not realize it before seeing the film.

The VSB lawyer referral service has always made available the names of attorneys willing to give half hour consultations, for reduced fees, in specified fields of law. It has operated smoothly, and there has always been a stable core of attorneys signed up with the service. I do strongly feel that the service is a very valuable alternative to an individual selecting an attorney on the strength of the size of, and claims made in, a phone book ad. Moreover, the lawyer referral service panel members are required to have malpractice insurance. In Virginia, attorneys in private practice are not generally required to have such insurance. I find our lawyer referral service attorneys ethical and competent. They believe strongly in the mission of the service and adhere to its civic-minded policies.

You have experience working with the media. Do you enjoy it, and what advice do you have for attorneys who need to use the media, or who are in the limelight?

I have had a few cases involving the attention of the media, the most notable of which involved a female client who was tricked into marrying another woman—yes, you read that correctly.

The best advice I can give is that any attorney confronted with a matter involving intense public interest resist the temptation to be in the limelight. Do not forget that you have a client, and that your client still needs to have

his or her secrets and confidences protected. If you do decide to grant interviews of your client or yourself, grant them to those having integrity and, most of all, decide what your “message” is—and don’t stray from it or allow yourself or your client to be dragged into areas where your client doesn’t want to go. Do all of this with your client’s permission and with the understanding that your purpose is to advance the client’s interests—whatever they may be—and not your own.

If granting access to the media is not in your client’s interests, then simply don’t do it. Depending on the type of matter you are handling, you may not like what you are reading or watching about your client—but you, as an attorney, will never have to apologize to your client for mishandling an interview or for providing (even accidentally) unflattering information that was under your control.

From your experience as a judge of university law students’ competitions, are students getting the message of civility and professionalism? Are they getting any smarter, wiser? Who should be their mentors? Does anybody care?

Some years ago, I participated as a judge of law school competitions at Catholic University, American University and George Washington University. The verve, drive, enthusiasm and self-discipline on display as the students argued their cases were extremely impressive. I had to wonder—if these lawyers-to-be can get this animated about and committed to a hypothetical client, imagine what they might do with a real one!

To answer your question, I don’t know about these students “getting any smarter.” I think law students have always been smart. As to civility and professionalism, it is fair to say that law students—especially those in law school having gone there straight from college—have likely not been either the victims or beneficiaries of “un”professionalism or incivility in the legal profession. Bad habits in these areas are often a function of a new lawyer emulating regrettable traits in other lawyers that appear to have brought those other lawyers a measure of success. Based on what they see around them, some young lawyers begin to confuse bombast with force of legal argument. I have a coffee mug at home that says, “My Lawyer Can Beat Up Your Lawyer.” A moneyed client who comes into a young lawyer’s office and asks: “Are you a fighter?” may pitch that lawyer toward unsavory and unprofessional behavior. Clients who *expect* their lawyers to be rough and abrasive with the opposition contribute to the prevailing levels of incivility.

New lawyers should thus seek out mentors who are known both for their advocacy skills *and* their civility and professionalism. Lawyers who have managed for years to be honorable, trustworthy, civil, effective and successful are living proof that incivility and unprofessional behavior are *not* essential to making a good living. Mentors such as these will undoubtedly give good advice, but a new lawyer should also observe his or her mentor *in action* for a true understanding of how a good reputation gets built.