

# Self Regulation: A Privilege With Responsibilities



**W. Scott Street, III 1999–2000 VSB President**

The role of the Virginia State Bar, first and foremost, is the regulation of our profession. We are the only profession retaining the privilege of self regulation. I believe it is because we have earned that privilege and continue our efforts to make our system even better.

Each year the members of our district disciplinary committees are elected by our bar council representatives, who have themselves been elected by the lawyers in their respective circuits. The members of the Disciplinary Board are nominated by bar council and their appointments are made by the Supreme Court. Thus, unlike the healthcare professions whose regulators are appointed by the executive branch of government, we are directly involved in the selection process.

Our district committees and Disciplinary Board members, both lawyers and non-lawyers, give freely of their time to protect and preserve the integrity of our profession and the public's confidence in lawyers. Sitting as a judge of one's colleagues is not a task to be taken lightly. Sometimes the more serious violations, such as misuse of a client's trust funds, can be dealt with most easily. No one tolerates theft. As former VSB president Mike Smith once admonished a group of new lawyers in the Professionalism Course, "If you even *think* about messing with funds in your trust account, you must be an 'all-world thrill seeker,' because you are facing the loss of your license for sure!"

In most cases, however, our district committees must decide how to handle lawyers who have committed less serious offenses. Often the committee may be faced with an unintentional violation committed by a lawyer who simply was ignorant of the rule or inadvertently crossed over the line in the course of his or her zealous representation of a client. Frequently all that the offending lawyer needs is the guidance and education that can flow from a private reprimand or a dismissal with terms. For example, the lawyer may need only a better tickler system or a more efficient method to check for

potential conflicts. With such guidance and education a lawyer should be better equipped to serve the public and avoid future unintended violations of the disciplinary rules. In this way, our disciplinary system can help lawyers avoid problems.

Does there eventually come a time when repeat offenses, even minor ones, should render a lawyer ineligible for additional private discipline? How many minor violations are indicative of a larger, more serious problem? These questions have no easy answers. In a recent highly publicized case tried before a three judge court, which resulted in the suspension of a lawyer's license, it became public that the lawyer had received private discipline on seven prior occasions. One might argue that rather than redirecting the offending lawyer back to the "straight and narrow," the private disciplines may have led him to believe that he could get away with even more. Should there be a set limit to the number of private disciplines which may be imposed on a lawyer? Many would say any arbitrary limit is inherently unfair. The Standing Committee on Lawyer Discipline is studying this and other issues in a continuing effort to make certain we have a fair and effective disciplinary system which meets our obligation to the public and our system of justice.

On January 1 we will be governed by the new Virginia Rules of Professional Conduct. Although consistent in substance with most of the provisions of the former Code of Professional Responsibility (with several notable exceptions), the format of the new rules promises to provide us with clearer guidance about our ethical obligations. As we review the new rules, we should remember that the rules establish only the *minimum* standards of conduct. We should each resolve to begin the next century with a renewal of our commitment to practice ethically and professionally, to inspire by our own example professionalism and ethical behavior in others, and to support appropriate discipline for any lawyer whose actions harm our profession or any member of the public. We owe that to our clients and to our fellow lawyers. 📖