

— VSB Attorney Profile —

Harry M. Hirsch

This is one in a series of Virginia Lawyer magazine profiles of state bar attorneys.

Harry M. Hirsch, deputy bar counsel of the Virginia State Bar, has been with the agency since 1984. His duties include prosecuting lawyers on ethics charges, supervising the VSB's ten investigators and managing the professional regulation department when VSB Counsel Barbara A. Williams is absent.

He came to the VSB after practicing privately for eight years, first in insurance subrogation and transportation law and then as a solo general practitioner. He earned a bachelor's degree in economics in 1968 from the University of Virginia, and received his law degree from the University of Richmond's T.C. Williams School of Law in 1975.

Before law school, he served in the U.S. Army's Signal Corps and worked as a microwave radio systems officer in what was then West Germany.

He is a member of the Richmond and American Bar associations, and he has taken leadership roles with the National Organization of Bar Counsel.

In the Richmond community, he is a former emergency medical technician with the Goochland County Fire and Rescue Association and a former trombone player in the Henrico Community Band. He is a former chair of the Jewish Community Federation of Richmond's Holocaust education subcommittee, and a current member of the board of governors, parliamentarian and nominating committee chair at Temple Beth-El synagogue.

You are the longest-tenured member of the Virginia State Bar prosecution team. Describe the array of lawyer respondents you have faced over the years. What goes wrong that brings them to your door?

My experience indicates that most respondents fall into one or more of several categories. First, there are those respondents

who are inexperienced, relatively new to the bar or to the area of law in which they attempted to practice. Second are the respondents who are experienced but who have not developed the law-office management skills needed to stay out of trouble. Third are the respondents who place their own interests ahead of their clients'. Fourth are those respondents who are good experienced lawyers and have good law office management skills, but who have violated an ethics rule because of a lack of understanding of the rules. The newest category includes those respondents who have come to the attention of the disciplinary system due to health problems, aging or substance abuse.

I have seen "sad" cases and "bad" cases. And those terms can sometimes apply to the respondents, the complainants, or both. Everybody makes mistakes, because we are all human beings. But I believe effective client communication combined with good law-office management skills can often prevent a mistake; and when a mistake has been made those skills can also prevent the mistake from becoming a bar complaint. The reality is that every person who receives a law degree and hangs out a shingle does not come into the practice with such skills. I think that is a prescription for trouble—particularly for a solo or small-firm practitioner.

Before you joined the state bar staff in 1984, you practiced privately for nine years—most of them in a solo general practice. What do you remember about the challenges of practice, and how do those memories shape your work today?

In a nutshell, I remember how difficult and stressful it was. It is a lesson I have constantly kept in mind at the bar, since the vast majority of respondents are either solo or small-firm lawyers. A solo or small-firm lawyer has to know all of the ethics rules, because he or she is responsible for implementing or supervising everything



that occurs in the law office. That is to be distinguished from a lawyer who is in a big firm and is backed up by systems which help both clients and lawyers. A large-firm lawyer does not need to know the basics of a trust account. He or she only needs to know to whom to direct a deposit or from whom to request a disbursement. A large-firm lawyer also has a backup system that provides a client another contact person to whom the client can vent a concern or discuss a problem related to the representation without contacting the VSB.

It is a huge distinction, with tremendous implications for the solo or small-firm attorney who has no backup system.

In the twenty years you've been at the VSB, the number of lawyers and the VSB staff have grown tremendously. How has the disciplinary system changed?

It has changed dramatically and for the better. A basic characteristic of the system—and one of its primary strengths—is that it is constantly undergoing change because it is continually subjected to oversight and review.

A little perspective is probably helpful here. If one studies legal ethics one will quickly realize that it is a relatively young area of the law. As it has developed so has the disciplinary system. The system that exists today is very different from the system of twenty or even fifteen years ago. The disciplinary rules have evolved and become more sophisticated. The old adage used to be, "If your mother would not like what you are doing then you should not do it." Unfortunately or fortu-

nately, our mothers never knew the provisions of the Virginia Rules of Professional Conduct or the Virginia Code of Professional Responsibility. You can't just fly by the seat of your pants. You have to know the rules.

I was the third lawyer on the staff when I was hired. At that time we had one or two investigators. Everything was handled out of the Richmond office. The system was basically a volunteer-staffed system, except for cases which reached the Disciplinary Board and cases of the unauthorized practice of law. The district committees were composed of volunteer lawyers and lay members as they are today. All district committee investigations and trials, however, were handled by the volunteer lawyer district committee members. The staff lawyers acted as advisors to the district committees. If a case went to the Disciplinary Board or a three-judge circuit court panel, the staff lawyers prosecuted the case. Each case that was tried before the board or a three-judge court had already been tried once before at the district committee. District committee reviews of investigations were done as a committee of the whole. It was a great learning experience for district committee members but it also involved a tremendous commitment of volunteer time to conduct all of those investigations, meetings and trials.

Today the system is much more sophisticated and is fully professionally staffed. We have an Alexandria office as well as a Richmond office, ten trial attorneys and ten investigators. Staff investigators perform all investigations. Staff attorneys put on most of the trials. We have an intake section, which includes attorneys, that has largely been responsible for weeding out the thousands of complaints which the bar receives each year that do not involve issues of legal ethics. We have a separate ethics section to help lawyers stay out of trouble by answering thousands of phone calls annually. The volunteer commitment of time is still tremendous but it is much less than it used to be. In short, the system has grown to meet the demands of what historically has been an ever-increasing number of complaints and a continually increasing bar membership.

The system has also become much more open. All trials other than those involving disability are now public.

Change is good and the proof is in our statistics. The system is in the best shape it has ever been during my twenty years. That has resulted from good leadership, a lot of hard work by the staff and the 190-plus volunteers who work in the system. What has not changed is the great experience of working with wonderful staff, volunteer lawyers and lay people. The emphasis is on prevention, efficiency and fairness. This probably sounds like a canned speech but it really is the case.

How does putting together a disciplinary case compare with preparing a case in the private sector?

There are several distinctions that immediately come to mind. First, the bar does not choose its complainants. We have to deal with anyone who walks in the door. There is only limited discovery. Our respondents know the facts of their cases intimately because they were players in the facts. The opposing party is always an attorney, whether *pro se* or represented. Once we start a case, we cannot dismiss it if a complainant decides he or she no longer wishes to proceed. The rules of evidence are not strictly enforced; the applicable rule favors the receipt of "reasonably probative evidence to satisfy the ends of justice." Trials are held before hearing panels which can be composed of one of many possible permutations of membership. The hearing panels can and do ask questions of the witnesses. You have to remember that it is essentially an administrative system with the purpose of enabling a complainant and a respondent to put forth their versions of the facts so that a fully informed and fair disposition of a complaint is made. I am biased, of course, but I believe it works well.

Did you have experiences as a youth that nurtured or challenged your sense of justice? What drew you to the law?

I grew up in a small Virginia town as the son of a doctor. I came to understand from my father the satisfaction one gets from

helping society and individuals. After beating myself up in the sciences, I decided that the law was the way for me to help in my own way. Working in the office of bar counsel fits that idea perfectly for me.

You have faced tragedy in your life. You survived serious illness only to lose your first wife to cancer after a protracted battle. Your courage and dignity throughout inspired the VSB staff. What lessons have you learned from this process, and where do you draw your strength from?

I learned that life is a great teacher. I learned that there are a lot of people who are in the midst of various health or other crises and who are dealing with their circumstances in the best way they can. I learned that we who have the good health to go about our daily lives and work need to be more appreciative of the ability to do so. I learned that the most important aspects of life are the most basic ones: being part of a family environment, being able to wake up in the morning and appreciate a new day, being able to relish doing the mundane things of daily living which all of us tend to take for granted, viewing the glass as half full and not half empty, maintaining a healthy perspective in our lives of what is truly important and what is really not worth fighting about. I drew strength from family, faith and friends. The support and encouragement of the staff and volunteers of the VSB was unbelievable; it is a great group of people. I now know what it is like to have an overwhelming health issue that demands priority over and above everything else in one's life. And I know the necessity of having a support structure to make it through such an experience.

Tell us about your family.

My wife Lois and I have created a wonderful blended family structure. Lois is an occupational therapist at Virginia Commonwealth University-Medical College of Virginia. My daughter, Dara, and her husband, Jon, are parents of two beautiful daughters in Winston-Salem. My son, Ari, just received his medical degree from VCU-MCV and has started an internship there. My stepdaughter, Sarah, just gradu-

ated from VCU and is working at a life insurance company as she develops her career. My stepson, James, is a student at VCU majoring in kinetic imaging. My brother, Jack, lives in Charlottesville and he has three grown children and lots of grandchildren. My sister-in-law from my first marriage, Shelli, and her husband and daughter live in Alexandria. Lois's sister, Lynn, and family live in Cleveland. My mother, Margaret; Lois' father, Louis; and my mother-in-law from my first marriage, Millie, and her husband are all in Richmond and are obviously important parts of the blend.

How do you unwind from your job?

Being with family and friends, gardening, reading, listening to music, taking in the news in any available form and, when I am really doing what I am supposed to be doing, exercising.

One of the first things people notice about you is your resonant bass speaking voice. How has that served you in court and before disciplinary panels?

I doubt that it has made any difference.

Tell us about a case in which you were particularly satisfied by the outcome.

The best moments of satisfaction occur after a disciplinary hearing has ended and a complainant has just realized the full import of how the entire disciplinary process dealt with his or her complaint from start to finish. It is as if a light bulb just got turned on. The complainant suddenly gains an appreciation for the disciplinary system. This is particularly interesting to me since the results of the process are either a dismissal or a sanction related to an attorney's license, which cer-

tainly does not put any money in a complainant's pocket.

Any funny case stories?

None come to mind. It is a serious business because an attorney's reputation and livelihood are on the line. There are, of course, light moments but they are always tempered by the reality of what we are about. However, those of us who do this work for a living are frequently amazed at the fact patterns in which some attorneys are able to place themselves.