

The Myth of Self-Regulation



By Marta-Ann Schnabel

I was recently cross-examined by Loyola University Law School Professor (and Rules of Professional Conduct maven) Dane Ciolino. Seriously. This was not an exchange at a cocktail party or some CLE presentation. I was on the witness stand during the course of a lawyer discipline hearing, the subject of which is not particularly relevant here, espousing — as I sometimes do — about the importance of self-regulation in our profession. On cross-examination, Professor Ciolino challenged my position by pointing out the state Constitution's provisions about the Supreme Court's authority in the discipline of lawyers. "We're not really self-regulating, are we?" he asked. "Well," I said, "there is some philosophical debate about that." Professor Ciolino, a talented trial lawyer, knew enough to move on. His demeanor implied, however, that I might be the only one engaged in that debate.

And perhaps I am. But at the risk of revealing the full nature and extent of the delusions under which I operate, I want to say publicly that I do believe that our profession continues to have more control over its own destiny and regulation than virtually any other. I also want to say that we seem to have a troubling disregard for our good circumstance.

A surprising number of readers were touched by my August/September President's Message, wherein I told the lessons of citizenship that my father — a German Jewish immigrant who arrived in this country in 1939 — had taught me. The essence of those lessons, of course, was that with the privilege and opportunity of citizenship came the responsibility of being an active contributing participant. Virtually all who took the time to call or write endorsed my father's lessons.¹

And, yet, in October of 2006, there

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remain 36 seats in the House of Delegates for which *no one* qualified to run — more than 30 percent of the available seats in this election cycle. Moreover, despite the fact that 118 seats in the House were open for election in the 20th through 40th Judicial Districts, plus Orleans Parish, there is not a single contested race this year. Indeed, there are seats for which no one has qualified in both Orleans and Jefferson parishes! Admittedly, the hurricanes may have played a part in this, but our records show that the net loss of lawyers for Orleans Parish has been only about 600 and Jefferson Parish hovers at about the same lawyer population as it maintained pre-Katrina. Combined, those two parishes are still the home to nearly 7,000 lawyers — about 35 percent of the total number of lawyers in the state. Of the 10 nominating committee districts and subdistricts, there are three in which the race is not contested, and one in which *no one* qualified at all.

Perhaps I shouldn't complain. After all, if no member qualifies to run in any

given race, the president is obliged to fill the position by appointment. That may mean that my dreams of creating "The World According to Marta" are closer to fulfillment.

This is a pivotal time for our profession. We are confronted by many complex issues that promise to impact how we practice and live for years to come. Lawyer advertising, stricter enforcement of requirements for lawyer admission, rooting the "bad actors" out of the practice, ensuring access to the civil justice system, improving the criminal justice system, deciding on the size and shape of our courts, limiting paraprofessional inroads into our practice areas, and assuring lawyer competency are just a few of the matters which have been a prominent part of my activities in the first six months of my term. With these issues on the table, why would we shrug our shoulders and whine that we have no say in what the Supreme Court or, as an arm of the court, the Disciplinary Board does to us? Why wouldn't we do everything we can to shape policy?

I am sympathetic to the argument that all of this policy stuff takes way too much time and energy, especially when it is increasingly harder to make payroll each month. And in the post-storm universe, even payroll sometimes takes a back seat to the reconstruction of files, or the financing of new office equipment, or the renovation of office space, or the horror that the phone is not ringing as much as it used to. My four-person firm effectively became a three-person firm when I was sworn in last June, and my family is still partially living out of boxes and sitting on folding chairs, so I genuinely do understand that there is not an extra second in anyone's day to devote to unimportant matters.

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the House of Delegates, or the Board of Governors, or the Nominating Committee, or any of the active committees of the LSBA are more trouble than they are worth, then we have effectively squandered the last piece of the process that gives us a voice.

For example, a proposal to amend the Rules of Professional Conduct (RPCs) governing lawyer advertising will be presented to the House of Delegates at the LSBA Midyear Meeting in New Orleans next month. The proposal was developed through the Ethics Advisory Service subcommittee of the Rules of Professional Conduct Committee. It has been presented at open meetings across the state

for public comment. In addition, public comments have been solicited on the LSBA Web site.² In many ways, the proposal mirrors the rules adopted by Florida, which severely restrict lawyer conduct and speech related to advertising. Only the Supreme Court has the authority to amend the RPCs and only the Attorney Disciplinary Board is empowered to enforce the RPCs. But both have enough respect for the lawyers of this state to allow the committee, the House and those who wish to comment to have their say.

Maybe there is no philosophical debate about it. Maybe we should all just tend to making a living and leaving the regulation to others. That way, we'll be

sure to have someone other than ourselves to blame.

FOOTNOTES

1. For you folks, this column will be a variation on the same theme, so accept my advance apology for repetition. This is, apparently, a theme that merits some repetition. The experience as a mother of teenagers has left me with a pedantic streak.

2. To review the proposed new rules and comments online, go to: www.lsba.org/committees/ethicrulescomments.asp.

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Baton Rouge Area	Ann G. Scarle	(225)214-5563	ann@brba.org
Covington/Mandeville Area	Suzanne E. Bayle	(504)524-3781	sebayle@bellsouth.net
Denham Springs Area	Mary E. Heck Barrios	(225)664-9508	mary@barrioslaw.com
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Jefferson Parish Area	Pat M. Franz	(504)455-1986	patfranz@bellsouth.net
Lafayette Area	Susan Holliday	(337)237-4700	susan@lafayettebar.org
Lake Charles Area	Joel Lutz	(337)433-0022	joel@stuteslaw.com
Monroe Area	Daniel J. Ellender	(318)647-3311	mail@ellenderlaw.com
Natchitoches Area	Peyton Cunningham, Jr.	(318)352-6314 Cell (318)481-5815	peytonc1@bellsouth.net
New Orleans Area	Helena N. Henderson	(504)525-7453	hhenderson@neworleansbar.org
Opelousas/Ville Platte/Sunset Area	John L. Olivier	(337)662-5242 (337)942-9836 (337)232-0874	johnolivier@centurytel.net
Shreveport Area	Patti Guin	(318)222-3643	pguin@shreveportbar.com

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