

May 31, 2013

Patricia L. Harrington, Clerk
Supreme Court of Virginia
100 North Ninth Street
5th Floor
Richmond, VA 23219

Re: Comments on Proposed Amendments to Rules 1A:1 and 1A:3

Dear Ms. Harrington:

The Washington Metropolitan Area Corporate Counsel Association (WMAACCA) and the Association of Corporate Counsel (ACC) respectfully submit comments in response to the proposed amendments to Rules 1A:1 and 1A:3 of the Rules of the Supreme Court of Virginia (the “Proposed Rules” and the “Court”) released on April 15, 2013.

WMAACCA is a 501(c)(6) non-profit corporation established in 1980 and is the leading professional association for the in-house bar throughout Virginia, in Washington, D.C. and in suburban Maryland. WMAACCA has approximately 2,100 members from more than 700 private-sector organizations, of whom approximately 1,200 are located in Virginia. WMAACCA is also one of the largest chapters of ACC, a global bar association that promotes the common professional and business interests of in-house counsel. Since its founding in 1982, ACC has grown to become the world’s largest organization serving the professional and business interests of lawyers who practice in private sector legal departments. ACC now has over 30,000 members employed by over 10,000 organizations in more than 75 countries.

WMAACCA and ACC greatly appreciate the Court’s efforts to address the comments that were received last December in response to its then-proposed amendments to Rules 1A:1 and 1A:3 concerning the procedures for admission without examination granted to foreign attorney applicants and potential revocation of such admission. WMAACCA and ACC were among the groups and individuals that submitted comments requesting that the Court “consider additional amendments that would align its admission rules with those of many other jurisdictions and . . . the realities of modern legal practice.”

WMAACCA and ACC are very pleased that the new Proposed Rules appear to embrace this suggested realignment by eliminating unnecessary barriers to admission without examination. For example, the Court reduced the prior practice period threshold to “at least three of the

immediately preceding five years” (Proposed Rule 1A:1(c)(2)).¹ The new Proposed Rules also do not contain certain provisions that WMACCA and ACC asked the Court to reconsider, including:

- The requirement that an applicant for admission without examination have practiced law “full time.” Rather, the new proposal simply requires that the applicant demonstrate that (s)he “has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination.” (Proposed Rule 1A:1(c)(2))
- The requirement that an applicant have an “intent to practice” “predominantly” in the Commonwealth after admission without examination “for at least five years immediately thereafter.” The removal of this requirement puts such an applicant on the same footing as one who takes the bar examination.²

Finally, we note that this proposal eliminates any difference between those licensed to practice in the Commonwealth after taking the bar examination and those who are admitted without examination with regard to the revocability of their certificates to practice law. All of these differences from the previous proposed revisions appear to acknowledge changes within the legal profession and the importance of mobility to the in-house bar.

However, there are some aspects of the Proposed Rule 1A:1 for which WMACCA and ACC respectfully request the Court provide clarification.

Proposed Rule 1A:1(a) provides that admission without examination is open to any person admitted to practice law in any state or territory of the United States or of the District of Columbia “if counsel licensed to practice in this Commonwealth may be admitted in that jurisdiction without examination.” Proposed Rule 1A:1(c) specifies that the applicant must have practiced law for at least three of the immediately preceding five years” and have “made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination.” Subsection (c) also states that, “[i]f the applicant’s license to practice law in any other jurisdiction is subject to any restriction or condition, the Board shall

¹ WMACCA and ACC are grateful that the Court saw fit to reduce the practice requirement to bring it in line with several other states and the ABA Model Rules.

² These comments are premised on the assumption that such changes will be reflected in the Regulations Governing Applications for Admission to the Virginia Bar Pursuant to the Rules of the Supreme Court of Virginia – Rule 1A:1 dated November 18, 2008 (the “Regulations”), referenced in Proposed Rule 1A:1(c). Prompt revision of the Regulations would be appropriate to avoid unnecessary conflict with the final Rules.

determine whether the nature of such restriction or condition is inconsistent with the general practice of law and, if so, shall deny the application.”

Our questions are as follows:

- Must the jurisdiction in which an applicant has practiced for three of the previous five years also be the one that has reciprocity with Virginia?³ Given the mobility of lawyers in this day and age, WMACCA and ACC urge that it need not be the same. Where an applicant acquired his or her experience does not affect whether (s)he “has made such progress in the practice of law that it would be unreasonable to require the applicant to take an examination.”
- Will the Court view practice as in-house counsel under a corporate counsel designation in any jurisdiction as “unrestricted”? WMACCA and ACC would urge that it should be. Treating practice under another jurisdiction’s corporate counsel designation as “unrestricted” would be consistent with Rule 1A:5, which provides that the period of time practicing with a Corporate Counsel Certificate under Part I fulfills the previous practice requirements to apply for admission without examination in Virginia.⁴ From WMACCA and ACC’s perspectives as voluntary bar associations for in-house counsel, practicing law under a corporate counsel designation is as full and robust as any other practice.
- WMACCA and ACC note that the Court expanded the Board’s scope of inquiry into an application for admission without examination by requiring it to determine, if an applicant’s license to practice law in any other jurisdiction is subject to any restriction or condition, whether the nature of such restriction or condition “is inconsistent with the general practice of law,” in which case the Board “shall deny the application.” The term “general practice of law” is not defined in Proposed Rule 1A:1(c).
 - WMACCA and ACC are unclear on the meaning of the term “general practice

³ Both the prior proposal to revise Rule 1A:1 and the existing Regulations had required that such prior practice occur “within a jurisdiction other than Virginia while holding an unrestricted license to practice law therein” This language is not included in the current version of Proposed Rule 1A:1(c)(2).

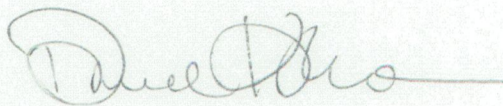
⁴ Like Virginia, many jurisdictions that allow for practice under a corporate counsel designation treat in-house counsel the same as full members of the bar, with all the rights and privileges appurtenant thereto. They are also subject to the same disciplinary rules as full members, must complete mandatory continuing legal education requirements, and can render legal advice to a corporate client that is protected by the attorney-client privilege.

of law.” This term is an integral part of the standard for determining if an applicant can be admitted without examination. Will it be a defined term?

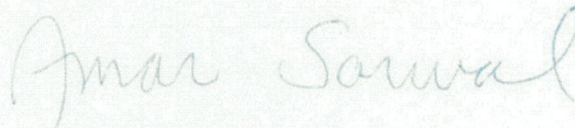
- WMACCA and ACC are also unsure whether the direction that the Board “shall deny the application” was meant to eliminate the discretion that the Board otherwise has in evaluating applications for admission without examination.

WMACCA and ACC appreciate the opportunity to provide comments on the proposed amendments to Rules 1A:1 and 1A:3 of the Rules of the Virginia Supreme Court. WMACCA and ACC hope that their comments are helpful and that the Court will consider these further suggestions.

Sincerely,



David A. Kessler
Vice-President, Public Policy
Washington Metropolitan Corporate
Counsel Association (WMACCA)



Amar D. Sarwal
Vice President and
Chief Legal Strategist
Association of Corporate Counsel (ACC)