



September 7, 2004

Mr. Robert McPhail  
Office of Certification  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

(Submitted via fax to: 415-538-2180 and by email to: [Robert.Mcphail@calbar.ca.gov](mailto:Robert.Mcphail@calbar.ca.gov))

**SUBJECT: COMMENTS OF THE SAN DIEGO CHAPTER OF THE ASSOCIATION OF CORPORATE COUNSEL REGARDING THE PROPOSED RULES OF THE STATE BAR OF CALIFORNIA REGISTERED IN-HOUSE COUNSEL PROGRAM**

Dear Mr. McPhail:

Please accept this comment letter on behalf of the San Diego Chapter of the Association of Corporate Counsel ("ACC-SD", formerly known as the American Association Corporate Counsel or ACCA-San Diego). The San Diego Chapter of ACC represents the interests of in-house counsel working in San Diego County, California, as well as non-members who work in San Diego County-based legal departments with ACC members, who rely on ACC-SD's advocacy initiatives.

We support the State Bar's efforts to enact the Multi-Jurisdictional Practice (MJP) reforms. ACC-SD worked closely with the State Bar and submitted comments, testimony, and also advocated on behalf of ACC for the inclusion of in-house counsel representation on the commissions appointed by the Supreme Court. Our recommendations are similar to and supportive of ACC's overall recommendations to streamline the proposed process and remove unnecessary burdens on both the State Bar and applicants without adversely impacting the overall goal of protecting California clients and the reputation of the California State Bar.

#### SUMMARY OF COMMENTS

1. Remove the requirement that a Registrant must utilize the title "Registered In-house Counsel."

2. Remove the prohibition that a Registered In-house Counsel is not permitted to make court appearances in California where the Registered In-house Counsel makes application pursuant to, and is admitted, under the Pro Hac Vice admission requirements.
3. Allow Registrants to provide pro bono services through a program recognized by the State Bar.
4. Create a shorter or alternative form of the California State Bar's Application for Determination of Moral Character for Rule 965 registrants that is more appropriate for individuals already admitted to practice elsewhere.

**1. Remove the requirement that a Registrant must utilize the title "Registered In-house Counsel."**

Rule 14 of the proposed Registered In-house Counsel Program requires that an individual registered pursuant to Rule 965 utilize the title "Registered In-house Counsel" and no other title.

Rule 965 prohibits an individual from holding oneself out as a member of the California Bar, and from providing services to anyone other than the entity that employs the Registrant (see comment below regarding pro bono services). Any violation of Rule 965 regarding the ability of the registrant to otherwise practice within the state would subject the registrant to appropriate disciplinary action.

Prohibiting an individual from utilizing the title assigned them within an organization, such as Senior Vice President, General Counsel, or Vice President for Legal Affairs, does not advance or protect the interests of California consumers. The "Registered In-House Counsel" designation does not in and of itself mean that the individual is a member of the California State Bar or otherwise offering legal services to the general public. Instead, requiring the Registrant to utilize the designated title without utilizing the actual title the person utilizes within the organization will create confusion within commercial entities, the transactions they conduct, and the regulations with which they must comply. No longer will other individuals or attorneys know the person's responsibilities or authority within the organization when corresponding with the registrant. Rather, outside individuals will need to make an additional inquiry as to the authority and duties of the registrant independent of information supplied through the typical forms of correspondence and communication engaged in by in-house counsel and third parties.

**2. Remove the prohibition that a Registered In-house Counsel is not permitted to make court appearances in California where the Registered In-house Counsel makes application pursuant to, and is admitted, under the Pro Hac Vice admission requirements.**

It appears that the requirement within Rule 965-(a) (2) provides that a Registered In-

house Counsel “is not permitted to make court appearances in California State Courts or to engage in any other activities for which Pro Hac Vice admission is required...”, is prematurely being interpreted to mean, that an applicant who receives approval for his or her application may not appear in a matter, even under the Pro Hac Vice requirements (should the applicant also meet those requirements). There seems to be no logic in that interpretation.

From plain reading of Rule 965-(a) (2), it appears that a registered in-house counsel may not appear in court where the Pro Hac Vice Rules come into play. This would mean that the Registered In-house Counsel would need to apply under the Pro Hac Vice rules, and if the Registered In-house Counsel meets the appropriate requirements within Rule 983 for Pro Hac Vice appearances, the Registered In-house Counsel could there after so appear.

One rule is not mutually exclusive of the other rule and should not be so interpreted. Rather, each rule should be viewed on its own and an applicant under one rule may or may not meet the requirements of the other rule. However, since both rules set up distinctly different parameters for the practice of law within the State of California, each rule should stand on its own and preliminary interpretations stating that an individual who is a Registered In-house Counsel may not participate in any litigation, even under the Pro Hac Vice admission requirements, should be eliminated.

### **3. Allow Registrants to provide pro bono services through a program recognized by the State Bar.**

Rule 965 appears to prevent Registered In-house Counsel from participating in sanctioned pro bono activities. Given the fact that ACC and ACC-SD have been extremely active in the Pro bono arena over the past several years, and that ACC-SD has made inroads with Pro bono programs sponsored, in part, through IOLTA funds, we respectfully request that Rule 965 be amended to clarify that pro bono services provided by a Registered In-house Counsel are not prohibited.

Currently, members of the ACC-SD serve on the Board of Directors of the San Diego Volunteer Lawyer Program and Legal Aid Society of San Diego. In addition, members of ACC-SD participate in pro bono services sponsored by most of these programs and other sanctioned pro bono service programs within the community.

Over the years the in-house Bar has become acutely aware of the need for the kinds of services that in-house Attorneys can provide to pro bono service programs. As such, the ACC, through its various chapters has become extremely active in promoting pro bono work by its members, creating avenues for in-house Lawyers to find Pro bono programs where their talents can be utilized and matching members with those programs in an attempt to assist the programs, various State Bar organizations, and members in providing such services. In-house counsel, as well as outside counsel, recognize the obligation that attorneys have to provide pro bono services comparable with their expertise and experience to assist those who otherwise may not be able to afford competent counsel.

Prohibiting Registered In-house Counsel from those activities removes from the sanctioned programs a vast collective of knowledge, talent, capability and willingness to assist those programs to deliver those services.

Commonly, volunteer lawyers engaged in pro bono representations must first learn skill sets and law outside of those exercised in their daily practice. Thus, there should be no concern that a Registered In-house Counsel would not be able to effectively participate, or effectively represent, the client of the pro bono program. In fact, many pro bono programs have “mentoring” or “partnering” programs that allow attorneys that have the necessary skill sets to assist those without those skill sets to assist clients of the pro bono program. This allows to the program to assist greater numbers of individuals than it otherwise could.

The Registered In-house Counsel who must learn the necessary skill set to assist a pro bono program is no different than an Attorney admitted to the State Bar of California having to learn the very same skill set to provide the very same services. Therefore, Rule 3 of the proposed Rules of the State Bar of California Registered In-house Counsel Program should be amended to allow Registered In-house Counsel to engage in pro bono activities so long as they are appropriately supervised by the provider of the Pro bono services and programs.

**4. Create a shorter or alternative form of the California State Bar’s Application for Determination of Moral Character for Rule 965 registrants that is more appropriate for individuals already admitted to practice elsewhere.**

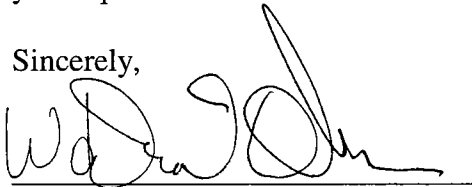
As proposed, Rule 965 Registrants must complete the current State Bar Application for Determination of Moral Character. This is unnecessary to protect the public, creates an unnecessary burden on the State Bar personnel, and therefore, an unnecessary, additional expense for both the State Bar and the applicant. Rule 965 requires that the applicant complete the form for review by the Committee of Bar Examiners. We suggest the State Bar adopt the more tailored “short-form” of the Application for Determination of Moral Character proposed by the ACC for lawyers that are members in good standing of another state bar and apply for in-house licensure.

An individual who is applying for in-house licensure must already meet specified requirements of eligibility, including an existing admission in at least one jurisdiction of the United States. That jurisdiction will already have conducted an investigation into the background of the registrant. Since the registrant must also obtain a Certificate of Good Standing and Eligibility from the jurisdiction he or she is already admitted to, most of the work has already been done on behalf of the California State Bar. Justifiably, a certain amount of information is going to be necessary for a registrant to provide to the State Bar for review. However, since the registrant has already been admitted to practice in at least one jurisdiction within the United States, a significant part of the existing Application for Determination of Moral Character is unnecessary and redundant. In fact, creating a specialized form requiring more pertinent information relative to an individual who is a

member of the state bar in another jurisdiction within the United States would provide a better indication of the moral character of the individual than utilizing the existing form and format for first time registrants.

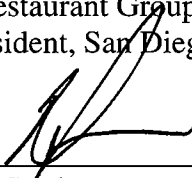
The San Diego chapter of the American Corporate Counsel Association appreciates the opportunity to comment upon the proposals for the Registered In-house Counsel Program. You should feel free to contact any of the undersigned if there are questions or you require further information with regard to our comments and recommendations.

Sincerely,



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W. David Osborne  
Vice President, General Counsel and Assistant Secretary  
Moose Restaurant Group  
2004 President, San Diego Chapter, Association of Corporate Counsel



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Dennis J. Stryker  
General Counsel  
Glenn A. Rick Engineering & Development Company  
Member, Board of Directors, Association of Corporate Counsel - America

DJS: kla