

Special Task Force Proposes New Rule Requiring Licensing of Corporate Counsel

Responding to a charge from the Chief Justice Carrico and bar president Joe Condo, the Task Force on Admission of Corporate Counsel will be submitting its report to the Council of the Virginia State Bar for comment and approval of its proposal—the mandatory licensing of all in-house corporate counsel working in Virginia. If Council approves the Task Force's recommendation, the Task Force will report its conclusions and recommendations to the Virginia Supreme Court which could act by promulgating a new Rule of Court if it agrees with the Task Force's report and recommendations. The Council will act on the Task Force's report at its February 22-23, 2002 meeting in Richmond.

The Task Force, chaired by Scott Street, a former bar president and secretary-treasurer of the Virginia State Bar Board of Bar Examiners, was composed of in-house corporate counsel and other Virginia attorneys. During the last year the Task Force has examined Virginia's and other jurisdiction's rules governing in-house corporate counsel and has explored various alternative approaches in dealing with their licensure. The result of these efforts is a Task Force report recommending that in-house counsel would best serve the interests of the consuming public, the profession, and the state bar if they were required to be active members of the Virginia State Bar. Accordingly, the Task Force proposes that by July 1, 2003, any person serving as in-house counsel for a Virginia employer must be a regularly admitted active member of the Virginia State Bar or have received a Corporate Counsel Certificate.

The text of the proposed Rule 1A:5 is set out here:

VIRGINIA SUPREME COURT RULES PROPOSED RULE 1A:5

REGISTERED VIRGINIA CORPORATE COUNSEL

Draft: December 12, 2001

- a) A lawyer admitted to the practice of law in a state or territory of the United States, other than Virginia, or in the District of Columbia may apply to the Board of Bar Examiners for a certificate as a Registered Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in-house counsel in this state when he or she is employed in Virginia as a lawyer exclusively for a profit or non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provision of legal services ("Employer"). Notwithstanding any Rule of this Court to the contrary, after July 1, 2003, any person employed in Virginia by an Employer for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, must be a regularly admitted active member of the Virginia State Bar or have a Corporate Counsel Certificate and thereby become an active member of the Virginia State Bar, with his or her practice limited as provided in this rule.
- b) Each applicant for a Corporate Counsel Certificate shall:
 - (1) File with the secretary of the Virginia Board of Bar Examiners an application, under oath, upon a form furnished by the Board.
 - (2) Furnish a certificate, signed by the presiding judge of the court of last resort of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.
 - (3) File an affidavit, upon a form furnished by the Board, from an officer of the applicant's Employer attesting to the fact that the applicant is employed as a lawyer to provide legal services exclusively to the Employer, including its subsidiaries and affiliates, that the nature of the applicant's employment conforms to the requirements of this rule, and that the Employer shall notify the Virginia State Bar immediately upon the termination of the applicant's employment.
- (4) Complete the Applicant's Character and Fitness Questionnaire and cause to be furnished such report as the Board may prescribe concerning the applicant's past practice and record, and pay the fee for such report.
- (5) Pay the application fee as may be established from time to time by the Board of Bar Examiners.
- (6) Furnish whatever additional information or proof is required in the course of investigating the applicant's character and fitness.
- (7) Furnish evidence that the applicant has taken the Multistate Professional Responsibility Examination and achieved a scaled score of 85 or higher.
- c) Upon a finding by the Board of Bar Examiners that the applicant has produced evidence sufficient to satisfy the Board that the applicant is a person of honest demeanor and good moral character who possesses the requisite fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the Board shall notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the Board shall issue to the applicant a Corporate Counsel Certificate, which shall entitle the applicant to practice law in the Commonwealth solely as provided in this rule.
- d) Each lawyer issued a Corporate Counsel Certificate shall immediately register as an active member with the Virginia State Bar, with his or her practice limited as provided in this rule, and pay to the Virginia State Bar the same dues required of regularly admitted active members.
- e) The practice of a lawyer registered under this rule shall be limited to practice exclusively for the Employer furnishing

the affidavit required by this rule, including its subsidiaries and affiliates, and may include appearing before a court or tribunal as counsel for the Employer. No lawyer registered under this rule shall (i) undertake to represent any person other than his or her Employer before a court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to another through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

- f) The provision of legal services to his or her Employer by a lawyer registered under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and the Rules of Procedure for Disciplining Lawyers (Rules of Court, Pt. 6, Section IV, Paragraph 13). Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.
- g) Each person registered with the Virginia State Bar as an active member on the basis of a Corporate Counsel Certificate shall be subject to the same membership obligations as other active members, including completion of the required Professionalism Course and annual Mandatory Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer which filed the affidavit on the lawyer's behalf.
- h) Each person issued a Corporate Counsel Certificate shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state or territory of the United States or the District of

Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

- i) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (i) employment by the Employer furnishing the affidavit required by this rule is terminated, (ii) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of Part 1A of these Rules, (iii) the lawyer fails to comply with any provision of this rule, (iv) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States, other than Virginia, or the District of Columbia, or (v) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law. If a lawyer's employment is terminated but the lawyer, within six months after the last day of employment, is re-employed by the same Employer or employed by another Employer filing the affidavit required under this rule, the Corporate Counsel Certificate shall be reinstated upon evidence satisfactory to the Board that the lawyer remains in full compliance with all requirements of this rule.
- j) The period of time a lawyer practices law full time on the basis of a Corporate Counsel Certificate issued pursuant to this rule shall be considered in determining whether such lawyer has fulfilled the requirements for admission to practice law in this Commonwealth without examination under Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination. 