

FINAL TRANSCRIPT

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****ACC - In-House Counsel Working in California without a California License: This program is for you!**

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Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

Phyllis Culp

State Bar of California - Director of the Office of Certification and Membership Records

PRESENTATION

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Good afternoon, now that it's officially afternoon out there in California. My name is Susan Hackett. I am the Senior Vice President and General Counsel of the Association of Corporate Counsel. I'm in the Washington, D.C. headquarters offices and I wish to welcome you to our Webinar today, which is on the rules of in-house practice for registered in-house counsel in the State of California. We have today two wonderful faculty members joining us, and I'd like to very briefly introduce them, then outline for you what it is that we plan to try to cover during the call. And also go over a few of the logistics of the Webinar, and then we'll get right underway.

We are planning for this Webinar to last for approximately one hour. First of all, I'd like to let you know that we are joined today by Karen Randall who is a member of ACC's Board of Directors, and also a leader on the California MJP Commission which were developed to develop how MJP performs in the state. We're also joined by Phyllis Culp, who is the Director of the Office of Certification and Membership Records for the State Bar of California.

On today's program we will start with Karen who will give a background and overview of how the MJP reforms in the state came about. And then we will move to Phyllis who will give an overview of what is contained specifically in the new rules adopted for registered in-house counsel in the state. And then we will move to a period where we will discuss questions and answers that have arisen in the context of the rules. A number of these questions are questions that have been raised to us over the past few months as this rule has started into its implementation phase. Additional questions, however, have been received by members of the audience, of this Webinar, and if there are those of you who have questions, as we continue on with our discussion today, and would like for us to try to address them, please feel free to do so. You may do so by sending an email to dorsett@acca.com. That's d-o-r-s-e-t-t@a-c-c-a.com, dorsett@acca.com. Those emails will be forwarded to me, and we will do our best to cover all questions that have been submitted so far as well as those that may be submitted during the course of our hour together today.

Of course, if there are issues that we have not been able to address during the time for the Webinar we will still be here in our offices later today and on through the rest of the week, and so you're welcome, obviously, to call us here and to contact me at hackett@acca.com or Ian whose address I just gave you at dorsett@acca.com. So with that brief intro of how we're going to proceed, let me start by introducing Karen Randall. As I noted Karen Randall is a leader within the Association of Corporate Counsel but she is well-known in the California legal community as well. She was named Executive Vice President and General Counsel of Universal Studios in March of 2000, and served in that role until her recent retirement. We don't know if we're going to be able to induce her to come back in-house. She's been having so much fun. But while at Universal Karen was responsible for all the legal operations of Universal's businesses. She joined the company in 1996 as Senior Vice President and General Counsel.

Karen has served on the Board of Directors of the Loews Cineplex Entertainment Corporation and the United International Pictures. She was Universal's liaison to the Motion Picture Association of America where she was a member of the Board of Directors and on the special policy group. Prior to joining Universal, Karen was the managing partner of the Los Angeles office of Katten Muchin & Zavis and served on the firm's national executive committee and their board of directors. As noted by me,

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most importantly for me, she's provided several years of outstanding service as a member of ACC's Board of Directors. But most importantly for all of you, she was a leader and served on the statewide committee focusing on the development of MJP reforms in California, and was the only in-house counsel on that commission. These were -- this was the commission that reported what eventually went to the California Supreme Court to be adopted as rules, and I was hoping that Karen could begin our Webinar today by outlining how the MJP's process in the state got started and how this Rule was eventually adopted.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Sure, thank you Susan for that very nice introduction, and I'd like to welcome you all to this Webcast. My perspective on MJP in California really started in September, 2002 when I was appointed to the California Supreme Court Multijurisdictional Practice Committee. Before that I really had very little knowledge about MJP, and I'd like to share with you all my perspective on the reform which was gleaned from my service on this committee. California is not alone in MJP reform. Many states have adopted MJP reform. In fact, I understand that approximately 15 have already adopted full reform packages. The remaining states are in process. The Supreme Court MJP Practice Committee was composed of a number of very well-respected members of the California Bar. The committee included administrators from the California Supreme Court, administrators from the State Bar, a very well-respected judge, several prominent private practitioners from big firms and me, the sole in-house lawyer.

And I definitely felt the minority among that group. The committee met and deliberated in San Francisco four times. They were full-day meetings over a one-year period. The work of the committee culminated with a news release on April 8, 2004 announcing the Supreme Court's adoption of the committee's recommendations with respect to four new rules for Multijurisdictional Practice, each taking effect on November 15, 2004. First is Rule 964, which created a registration for a limited license for legal services attorneys, not admitted in California, for up to 3 years. Second is Rule 965 which we're talking about today creating a registration for in-house counsel who wish to work in California for a single qualifying institution but who are not admitted in California. Rule 966 which authorizes the temporary practice incursion of lawyers from other states who travel to California to provide services as part of a lawsuit. And finally, Rule 967 which authorizes the temporary practice for lawyers from other states traveling to California to provide non-litigation transactional services.

I must say the committee took its task very seriously, and by this I mean that the committee deliberated carefully over every word in the Rule and every provision; importantly you should understand that always with an inherent bias against allowing attorneys who did not sit for and pass the California Bar to practice in the state. Also with the knowledge that many in-house attorneys were already practicing in the state under the radar without a license to practice here in California often having been moved by their employer into the state from a state where they were licensed or simply having been hired by their employer without California Bar admission with the notion that somehow it is okay for an in-house attorney to practice in the state without a license.

California was very rigorous; perhaps the most rigorous of any state that has already adopted MJP reforms in adopting this reform. It is clearly a privilege to practice in the state particularly without taking the dreaded California Bar exam. In fact, California is very well-known for its concern over the number of lawyers who are allowed to practice here and the tradition of our state bar has been to deny access to outsiders, and that was clearly evident sitting on this committee. That was certainly the view of most of the committee members. Why should lawyers be allowed to come into this state and practice without succumbing or subjecting themselves to the California Bar and the other rigors of Bar membership in this state.

The Rules, while not perfect, were really a triumph, and are really a wonderful thing for in-house counsel who are moved from state by state by their employers. They don't have to take the Bar. They do have to register and pay a fee but that is really, in my view, a very small thing to do for the privilege of practicing in this state. With that I'm going to turn it over to Phyllis to talk a little bit about the Rules, and then we'll get into your questions.

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Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Phyllis, before you begin -- this is Susan -- let me give a short introduction of your background so that those who are listening will know a little bit more about where your expertise on this issue comes from and what kinds of questions you can specifically be addressing. As I noted at the start of the call Phyllis is the Director of the Office of Certification of Membership Records of the State Bar of California. She and her staff of 25 oversee the membership records' function and the 15 state Bar programs such as MCLE, legal specialization, and the Multijurisdictional Practice programs including registered in-house counsel and registered legal services attorney programs. Phyllis is a member of the Ohio and California Bars, most importantly, and has been employed by the State Bar of California for many years. She's a former member of the ABA Standing Committee on Specialization, the past president of the Black Women Lawyers of Northern California, a former member of the Judicial Council of California Access and Fairness Standing Advisory Committee and past Chair of the Education and Gender Fairness Sub-Committees and is a current member of the Board of Directors of the National Board of Trial Advocacy serving on its executive committee.

So with that, Phyllis, if you could give us an overview specifically of Rule 965, how it works, how it is that lawyers who are interested in taking advantage of the registration should go about doing so, and anything else that you feel we should know.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Oh, thank you Susan. And thank you for the opportunity to provide some information and insights from the regulatory point of view. And what I'll start with is I have a -- I believe that the new in-house rules are on a continuum here in California that would allow non-California lawyers to practice. We started initially in 1972 with the pro hac vice admission. We had practical training of law students in the early '70s, our Foreign Legal Consultant rule was in '97. Our Out-of-State Attorney Arbitration Counsel rule began -- was effective in '99, and now we have the two rules the one of which I will emphasize today, which is the in-house counsel. So first I will tell you I hope that you have access to the State Bar's Web site that has not only our rules and regulations, the application form and our FAQs, but if you don't have access this very minute I will go through the two important rules that you need to look at in order to better understand the application process for registry.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Phyllis, before you begin let me note for the registrants who are on the program that those links to the California pages are provided on the Home page of the Webinar form that you went to when you signed in today. So you can find those links and follow along if you like.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Great. Okay the first -- there are two levels of what, shall I say, requirements. The Rule, of course, which Karen has described Rule 965, and then the details of the implementation are the State Bar of California Registered In-House Counsel program rules and regulations. Basically, and I'll do this quickly because I think that it's probably as important for you to ask questions as it is for me to tell you, in order to register for -- in order to qualify to be a registered in-house counsel you have to be admitted and active in at least one jurisdiction. You have to work for what's called a qualifying entity. You submit an application which is really a simple two-page application, along with your moral character application, and you have to after you -- after you are registered you comply not only with the requirements for the continuing education but there's an annual renewal process.

Details of the programs are contained in our registered in-house counsel rules and the Scope of Practice probably is the most interesting, at this point, for those of you who are concerned about what you can do for your qualifying entity, and then the next, probably most important issue, is once you leave that qualifying entity, how can you work for another qualifying entity. So I can address those right away. The in-house counsel -- as an in-house counsel, once you have submitted your application and we've turned -- we say on our form that it's 30 days but we've been turning around in less than a week for some with all of

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the information. Normally the process time is at least 2 weeks. What you receive, you are immediately placed on our State Bar Web site so that you are available, and there's information about who you are, what the entity and so forth.

You get a letter from us telling you that you have satisfied the requirements of the application, and that your moral character application is being processed by our admissions department. But once you are registered with us you are immediately -- your registration is immediately effective. There is no waiting time for the processing of the moral character application. In fact, there's a presumption, unlike those of us who had to take the California Bar, there is a presumption that you will pass the moral character. And with that I think I should probably answer questions although, Susan or Karen, are there other issues that you'd like me to address?

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Well, I would jump in first with some preliminary background if we could on some of the specifics within the Rule. We've been asked quite frequently about the kind of employer client that qualifies under the rules for an attorney to be registered with. And I was hoping you could explain a little bit about what it is that makes an institution that employs in-house counsel who wishes to apply for this registration, a qualified institution under the Rule.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, basically it was both the Task Force as well as the initial application -- initial committee that decided that it would be a sophisticated client that could -- could qualify as an employer for an in-house counsel. That is, a client that does not provide legal services to a third party so that you have an institution that you're an in-house for -- I hate to use it -- for a corporation or another legal entity.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

You know if I could just add to that I'm sort of presuming that most of the people participating in this Web cast are members of ACCA, and so really the rule the committee was thinking of, most of your employers, corporations although sometimes they're limited liability companies or other form of legal entity that do business and have law departments that are of a certain size. So that really was what was in mind.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Thank you, Phyllis, did you have anything further to add to that?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

No.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

I know that there were within the rules two stated criterion, one having to do with the number of employees that the company employed, and the other having to do with whether or not there was another lawyer in the legal department who was a California admitted attorney through the regular process, if you would. Karen, could you give us a little background on how those two specific issues or how those two specific criteria came about?

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Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

Well, in terms of the number, again it was designed to fit the typical law department or a company of a certain size that was doing business here in California. There was a concern or a paranoia by the committee in adopting all of the rules that were adopted that somehow a loophole would be created for non-respectable legal services organizations who just wanted to do business in California without a license.

The other notion that the committee clung to, and frankly I was the sole resistor of, but didn't really prevail on this one, was the notion that the in-house lawyer that was registering needed to be supervised by someone. They couldn't be the only lawyer. They couldn't be, in effect, the general counsel or the managing lawyer, the sole lawyer of a legal department. They had to be someone that had a boss, a general counsel resident in California, or a senior lawyer resident in California that could supervise them. Again, this was due to the concern that these rules might be misused or misapplied by entities that were not legitimate.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Thus, I would wrap up this part of the question by referring you specifically within 965 to sub-rule 5 which is called Qualifying Institutions, and which states that a qualifying institution under the California Rules of Court 965 is a corporation, partnership, association, or other legal entity including its subsidiaries and organizational affiliates which either 1) employees at least 10 employees full-time in California, not in the law department, but has 10 employees full-time in California or 2) employees in California, an attorney who is an active member in good standing of the State Bar of California. Thus, as Karen noted there was a concern about this issue, but you do not have to have a supervising attorney in order to work for a qualifying institution. You can be a sole practitioner so long as your employer client employs at least 10 employees full-time in California.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

And this is Phyllis now, and one more, the qualifying institution does not include a government agency.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Right.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

Or entity that provides legal services to others.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

So thus associates and law firms, for instance, would not qualify for this rule because they work for a corporate organization full-time as a lawyer so this rule is only for in-house lawyers and not those working for legal services providers, if you will. I had wanted to also ask another question that is a common question in the process of the registration details. The rules require that the application process in order to be completed requires that the attorney provide a certificate of good standing and eligibility to practice law in at least one jurisdiction in the United States. This has led to a couple of questions. The first is, do they have to get some kind of paperwork from the states in which they are in good standing? And if so, do they have to get that paperwork from every state where they have been admitted?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

And this is Phyllis, and I'll answer that. They need to get what's called a Certificate of Standing from at least one jurisdiction in which they're an active member. We don't require them to be an active member in all of their -- in all of the jurisdictions, but that's the license upon which they're practicing here in California. So, yes we do need what's called a Certificate of Standing. They come in various forms, various languages, but we need that as the basis for their license here in California.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

But they don't need it for every state in which they are currently admitted?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

No, no.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Okay, the other question that comes up as a part of this language is it says, at least one jurisdiction of the United States. What if the practitioner, for instance, is licensed in good standing, in say Canada or a European jurisdiction, or anywhere else in the world for that matter?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Okay, and we have had non-U.S. attorneys who are licensed in a U.S. jurisdiction apply. The basis upon which they are practicing is a U.S. jurisdiction. This is not a program that allows non-U.S. attorneys to practice on their non-U.S. license here.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So the fact that they're licensed outside of the U.S. is not a bar as long as they do have a license within the U.S.?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct, and we have, as I say we have admitted and processed people who are admitted in other countries.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Another part of the application process requires a declaration signed by an officer, director, general counsel or another senior leader, if you will, on behalf of the qualifying institution where the attorney works. Can either of you give a little bit more detail on exactly how it is that the registrant should go about getting that letter and what it should say? Is there a form that they use, et cetera?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

This is Phyllis again. There is an attachment to the application that has check boxes really, who are you, the name and address, and they either -- they sign it saying that they either employee 10 full-time or a number of the -- the number of people that they, are employees in the State of California, or that a California licensed member is there, and then they sign the declaration and submit it along with their application.

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Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Great, one of the other requirements is the completion of an application for determination of moral character in the state, and I know that Phyllis you had mentioned that that process is one that can continue even after the registration forms have been received, and that the attorney can go ahead and begin to work under the license subject to that application going forward. Could you spend just a little bit of time on what's involved in that application since for many people this has been much more time consuming than the underlying registration process?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Certainly the application which is down -- it's up on our Web; you can download the application itself is 22 pages and it's the same application that all attorneys who work in California must fill out. If you are a foreign legal consultant, and you are coming into this jurisdiction, you have to fill it out as well as now if you're a regular attorney applicant who takes the Bar, and now if you are coming in as an in-house counsel. And it basically tracks your life from I believe it's 18 until the present. Who you are? What you've done? Where you've worked? And as I said at the beginning, the presumption for in-house counsel is that they will pass moral character.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Okay, one of the reasons I raise this is because we have found that for many people who have started to take advantage of this registration process, filling out this form has turned out to be much more time-consuming than they had thought, and with the registration deadlines coming reasonably close you're well-advised to get started on that form. Looking up all of those addresses and contact info can sometimes be a very voluminous process.

So we wanted to host this call not only to encourage people to understand more about the rules but to get going soon because getting those certificates of good standing from the other states, and getting this form filled out is sometimes a more time-consuming process and something that has to be attended to by the attorney, him or herself.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes, and I want to urge people to make sure that they submit both applications together so that we can -- we know that we have a complete application because, as you can imagine, there are I think about 12,000 people who submit a moral character application to take the California Bar each year. So this is a separate process that we want to make sure that we are able to handle our in-house counsel applicants on a more (inaudible - background noise) or a process that's separate and apart from general applications.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Great, I had heard several people and several people who have been sending their questions have also asked this question, so I'm hoping you can help us a little bit with this one. Phyllis, we have people who have been working in the state in the past as in-house lawyers without a California license but are now in transition. And they would like to know whether or not they're eligible to apply for this Rule as they continue to look for a new job as an in-house counsel or should simply wait until they have a position in place that would allow them to fill out all the forms including things like the certification from their employer and so on?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, they need to have a certification from their employer. We've looked at the issue of -- you can't apply under this Rule without an employer, basically. This is meant to provide the opportunity for an entity to choose an employee of its choice. So without having an employer it would be impossible to apply.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

I think probably this is a back door to a discussion point that we should probably raise which is so many people's concern and, if you will, coming out of the woodwork to register for this Rule that their past practice as in-house counsel without a license in California would be held against them in the registration process. And I know that you have assured us in the past and would be willing to assure this audience that those who go through the application process who are employed currently, and who register will not have that past practice as an in-house lawyer without a local license held against them, per se. For purposes of this question we just had about the person in transition do they need to worry that if they find a job on June 1st, after that May 15 amnesty period has ended, that their past practice which may have terminated before they could file for this registration would in some way be held against them?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Of course, it's a case by case decision. But the Rule, and Karen can probably address this in more detail, was to provide such a period for those attorneys who had been practicing and could not qualify absent taking the California Bar, this is their opportunity to register with us to come into the fold so to speak.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So you would not presume that if other facts were not working against the candidate that that alone would be a bar?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That would be my presumption.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

On the subject of in-transition and sticking with that, let's say someone registers for this Rule, is successfully accepted as a registered in-house counsel under the Rule, and now is working along and unfortunately loses his or her position in a few months.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Okay.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

What is it that one does at the point in time if one is presuming to be looking for another job in the state as an in-house counsel?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, first you let us know that you are no longer with that entity, and you have 30 days to -- to let us -- to qualify or find another position without having to, say go through the moral character application process again. Because you're working for an entity, the entity itself needs to send us the appropriate declarations attesting to the applicant's working and employment. But that's what I would do. Notify us that you are no longer with that qualifying entity and you have 30 days to provide us with new information. And if you look at Rule 6, it's under Address of Record. Basically within 30 days of secession of employment the qualified person is to let us know. I mean the registered person is to let us know a forwarding address.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Okay so there's a 30-day window, if you will, for you to transfer that registration to a new employer.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

But after that 30-day window if you were still unemployed after 60 days, and you got a new job then you'd have to go through the application process again as if it was the first time?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, I think it's -- that's -- we would like you to have to let us know if there's extenuating circumstances I would at least address that. This isn't meant to be a long period of time, a year between the time in which you are employed in one entity, and then you are here and then you want to extend that. But 30 days, definitely you have 30 days. After that time period I think would probably use my best argument.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

You know I would say, this is not something that was really considered in the legislative history, but in today's marketplace it would not be unusual for it to take more than 30 days to find a new job. And I would assume that you have to reapply once you have a new employer to register again.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes, you have to reapply for the applicant's employer but the concern I'm hearing is whether you have to reapply with the moral character.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

And the answer is, yes you do.

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

And my answer actually is that I would make my best argument that within the time period that nothing has changed or that your employer is the only thing that has changed not the fact that there are additions to your moral character application.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So registrants on the program take Phyllis' answer; it's better.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

But there's no guarantee that that's going to happen but that's what I would -- .

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Understood, I'm not trying to handcuff you to it but I did want to explore that a little bit. I think it's also worth noting that the underlying principle of this Rule, therefore, is that if you leave the employment of your current employer with whom you have registered you do not have a license to continue practicing in any other entity or, for instance, to do a little part-time work with a law firm or do some moonlighting while you're looking or whatever. That that registration is specific to the employer for whom you were working when it was filed, and that while you may have that 30-day window to try to transfer it over, and perhaps as Phyllis has noted, maybe a little bit more if you want to talk with the Bar, the presumption should be you can't just -- that once license as a registrant under this Rule, it's not a transferable kind of a thing in a general way.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct. It's only -- you're registered only for that particular entity.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Now for those who do register under this Rule there are a number of requirements. Frankly many of things that one will be required to do as a registrant are things that are common to other members of the Bar of the State of California. Could you please outline to start with, Phyllis, some of the requirements having to do with CLE, Continuing Legal Education requirements?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Certainly and Karen feel free to add the history of the CLE requirement. However, in the first year of your registration as in-house counsel you have to do 25 hours of continuing education. That's the same 25 hours that the California member has to comply with. And we've divided it into two compliance periods so that we don't have what's -- we don't have what I call the DMV model of compliance; that is, on every single day in which you are registered they're would be a MCLE requirement. There are two. There's a February 1st, 2006 and then there's an August 6th, 2006. There are two compliance periods for those whom initially have registered with us.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Karen, did you have anything to add?

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Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

Well again, I mean the background, the consideration of the committee is that you have to take the burdens of practicing in California along with the benefits. So the genesis really of the CLE requirement was that if you're going to benefit by practicing in the state you have to take the same burdens that a lawyer who passed the California Bar and is practicing in the state would have, mainly compliance with the CLE requirement.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Right, I wanted to address another aspect of the Rule that a number of people have questioned, especially since it does relate to the rules that otherwise apply to other California practitioners. Under this Rule, in-house counsel who are registered may not litigate or appear before a California tribunal on behalf of their corporate client. One of the questions that has come up with is that excepting that, why is it that an in-house counsel can't apply for a pro hac vice admission given that as a licensed member of say, the Pennsylvania Bar, that person would otherwise have the right to come to the state to apply for a pro hac admission in the case in which the court agreed that they were appropriate to represent their client?

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

And Susan this is Phyllis. You said the operative word, come to the state, because one of the prohibitions for applying under the pro hac vice rules is that you're not a resident here in California.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Okay. So there is no opportunity for an in-house attorney under this registration rule to appear in court while they're under this registration rule, period. Correct?

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

That's correct.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Okay another question that comes up and this is probably the most heated question that has come up, is the use of the term registered in-house counsel. In documents and paperwork and any kind of manner in which the attorney is identified, and I'd like to spend a few minutes exploring this issue with you both to get your thoughts on it. The first question that comes up is that people understand what the Rule says. It says that you must use the words registered in-house -- or the words, the magic words if will, of 'registered in-house counsel' when you are writing, when you are, for instance, on business cards et cetera. Could you detail for us, first of all, when that moniker has to be used? Is it only in written correspondence? Do you have an affirmative responsibility to introduce yourself as such? How is it that the use of the term registered in-house counsel should be applied?

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

This is Phyllis, and again feel free to add any information that you would like but basically this is, again, in the continuum of programs that we have here in California for non-California admitted attorneys. For instance if you are here under the pro hac vice rule you have to note that you are appearing as counsel pro hac vice. If you are here in California as a foreign legal consultant you have to note that you are a registered foreign legal consultant, and even our practical rules -- practical law student rules require that those students note that they are appearing or are a part of the exception by using the title of Certified Law Student

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so that when you are providing information to the public under our rules of professional conduct which I believe is 1-400, it's a communication, you need to note that you are a registered in-house counsel. This is not to say that you -- Bachelor of Licensor or your admission identification. This is not to say that your work title which may include vice president business affairs -- .

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

General Counsel.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

General Counsel, of course, that's separate and apart from the fact that the reason that you're allowed to practice law in California or you're qualified to provide legal services in California is that you're a registered in-house counsel.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Phyllis, let me see if I can get some clarification from you on this? I had assumed that this really relates mainly to when you're holding yourself out to the public as opposed to the normal operation of an in-house counsel who's practicing with their colleagues in-house, may be practicing with colleagues from another company. I was never clear as to whether just on your letterhead if you happen to write a letter to a -- send an email to a colleague or write a letter to a colleague in another company that you necessarily have to disclose that. I thought it was more of a public facing requirement as opposed to an intra-company requirement?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, and I think that we have to look at what is the communication under our rules of professional conduct. And I guess it says, stationary letterhead, business cards, et cetera. I personally would err on the side of -- .

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Including them.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Including. You're correct in that it is, if what your colleagues know that you are not admitted in California but they would need to know the basis of your authority to provide information. So again, I would look at Rule 1-400, and use that as my guide.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Let me read the actual section which is Rule 14 which says, use of title 'registered in-house counsel'. An attorney duly registered under these rules shall be known as 'registered in-house counsel' and shall use this title and no other title -- which is where a lot of these questions then come up -- in connection with activities performed pursuant to California Rule of Court Rule 965. It goes on to say that, 'registered in-house counsel' shall not in any way hold him or herself out as a member of the California Bar. I think that's more obvious but I think that that language that says, 'and no other title' is what has led many people who have read this Rule to believe that they have to substitute 'registered in-house counsel' for their other corporate titles so that if they were signing a letter or on their email auto-signature, or in any other place where their name might appear from the company Web site to business cards, that they could no longer be known as senior vice president and general counsel or executive for litigation or whatever their title might be.

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Oh, excuse me.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So I was just going to say so what you're saying is that so as long as they use the term 'registered in-house counsel' they may also -- .

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Right.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

-- use their other corporate titles.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Right.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

And so, for instance, their letterhead could say, senior vice president and general counsel/registered in-house counsel in the State of California.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Right, this was to clarify what their ability to practice in California was, not their business titles, not to restrict any business titles.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So you would suggest, and this is not necessarily -- this is more specifically dealt with in Rule 1-400 that you've mentioned, but you would suggest that on correspondence, on their business cards, on internal communications that are written, on their auto-signature, on email, on letterhead where their name might appear, on their company Web site, if they have a page for the legal department et cetera that this term should appear along with any other corporate titles that they may have?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Would you go so far as to say anytime that their name is used in writing in the provision of legal services this title should be used?

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Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

It would appear that that would be the safer or more prudent conduct.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

One of the reasons I ask is because the language in connection with activities performed pursuant to this license is quite raw, meaning pretty much having to admit what you're licensed to do as a lawyer.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

Right.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

All right. Let's move onto the next issue that has been raised by several people which is that the registration says that you may only represent the entity and not officers, employees or others in a personal or individual capacity. Now I think it's pretty clear the personal capacity meaning you shouldn't do your CFO's brother-in-law's will or whatever. But the individual capacity has raised several questions. It's not uncommon for lawyers within the corporation to represent the company at some level when the company has been named, for instance, along with individual officers or directors or others. Does this license, therefore, suggest that the in-house counsel registered under this Rule may not provide legal services when the company and individual officers or directors or others within the organization are named, because that might violate their representing individuals?

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

I would direct you to the Rule and the Scope of Practice Rule 3, and it specifically lists registered in-house counsel as not permitted to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, service, or agents of the qualifying institution. And that appears to have been the decision of both the Task Force as well as the Implementation Task Force, and Susan, you might want talk about the discussions?

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

(inaudible)

Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

Well, again, I mean I think that the thought that the committee had in mind with that language was that you couldn't represent your CFO in connection with his will or you couldn't represent your CEO, "Please go to court and handle this small claims matter for me." Or, "I have this personal matter. Please go to court and get it dismissed." Or, "I have this traffic ticket, would you please handle it for me?" I don't think, although it's not going to be up to me to interpret the rule, it would be up to the State Bar, I don't think it was meant to exclude the in-house counsel who may be handling a litigation matter from not working on a case where the officers and directors are individually named in addition to the corporation. It's just, again, it was designed to plug one of those fears and one of those potential loopholes that the registered in-house counsel would then be enabled to kind of go represent somebody on a personal capacity. So it wasn't necessarily thought through to the level that we're discussing now. But I don't think it was designed to hamper a registered in-house counsel from doing whatever their normal job is so long as they are otherwise in compliance with the Rule.

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Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

I think there's probably going to be a little bit of question about this issue then as we continue forward and it may just have to be that it plays out over time. I think that Karen's interpretation of this is certainly what I would argue were this raised. But the Rule's language does seem to specifically say, personal and individual, quite intentionally. An individual in this context especially for such things as joint defense agreements or other kinds of issues that may arise in the corporate context may cause some angst for those of you under this registration rule in the future. So hopefully none of you will have to be the test case, but we may not have a good word on that at this point in time for you.

Another issue that has come up quite regularly is the question of the in-house counsel who wishes to do pro bono work in the state, and how that wish might be accommodated? Certainly we all know that there are many unmet legal needs of the indigent and poor in the state and in-house counsel have often been very important practitioners on pro bono matters. But this Rule in limiting the people who can be represented to those who basically, is limited to the entity, would seem otherwise, therefore, to prohibit pro bono work being done for third parties. Can either of you expand a little bit about whether there are ways to allow in-house counsel to do pro bono work in the state under this license?

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Well, first I'll say that I do think it would hamper an in-house and I think that was the intent of the committee to make it so that a registered in-house counsel could not represent an indigent defendant in their individual capacity in connection with doing work for public counsel or their (unofficial individual rights). That I think would violate the aspect of the Rule that says you cannot represent someone in their individual capacity.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Phyllis, do you have anything further to add to that?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

No because the intent of the Rule really is that the in-house counsel provide legal services solely to the qualifying entity.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

One of things that has come up when ACC had submitted comments on the Rule when it was in its proposed state was that it was possible for in-house counsel who were licensed or who were operating under this registration to make a separate registration application as a legal services attorney. Is that still something that you're suggesting as another way for in-house counsel who are interested in doing pro bono to proceed?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Could you give a short explanation of what that might entail since I know your offices, Phyllis, also handle the registration procedures under -- is it 964, is that correct?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

964.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

We're talking now about 965 as the in-house counsel rule. 964 is the new rule for limited license for legal services attorneys.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes, and that license actually is a bit more limited in the sense that the in-house counsel applicant is not required to be supervised, but for purposes of registered legal services attorneys a period of time in which an applicant comes into California, and this is a relocation rule, that you come into California. You can work for a qualifying legal services entity for up to 3 years provided that you are supervised by a member of the state bar.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So this rule was created for a different group of people but is a rule that an attorney who is dedicated to the idea of doing pro bono work, and working under the in-house registration might be able to him or herself of?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Should they wish to try to go about the continued provision of services in the state.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Right.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

But as a general rule there is no exception under this in-house counsel rule, 965, for pro bono work?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Okay. We have quite a number of questions that have come in while we're been on the Web cast. I'm going to start just running through some of them if that's okay, so I guess this is the 965 free-for-all portion of the program with the remaining approximately 10 minutes that we have.

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QUESTIONS AND ANSWERS

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

We had a question that said, do these rules apply to an in-house counsel living outside of California, in another state but providing advice and counsel for all of the company's sites, one of which is in California? In other words is, say a West Virginia lawyer who is working in West Virginia and licensed in West Virginia needing to register for this Rule in order to provide services to his company's sites that are located in California?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

This is Phyllis. One of the requirements for registering as an in-house counsel is that you relocate to California. That the NI will -- is that, and I'm looking quickly to find the exact rule, but you have to relocate to California.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So you must be resident in the state?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes. What possibly the applicant is looking at is this Rule 966 which is a rule that would allow an attorney to provide services not on a continuous basis.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Or 967.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

967, right.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So those two additional rules which are the temporary incursion rules, if you will, are for lawyers who are located outside of the state but on occasion providing counsel to clients inside of the state.

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

That's correct.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

And that would include advice given, for instance, over the email as well as advice they might give if they'd come on a plane and go the company's board meeting or visit the company's offices to advise employees or some such thing as that?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Great, another question that's come up is, and I'll just read it because this person has done a better job articulating it than I otherwise will. One of your speakers mentioned that under Rule 965 there is not a means whereby a lawyer from a foreign country, who is not licensed anywhere in the U.S. but is licensed in the foreign country, can come to California to practice for a qualifying employer. I understand under Rule 988 that the notion of becoming a registered foreign legal consultant could address this issue. Could you please comment briefly on that Phyllis since I know that this is a longer standing rule that's been in place within California for some time?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Certainly what Rule 988 and then as well as the registered foreign legal consultant rules and regulations provide and allow is a non-U.S. attorney to come into California upon registration to provide the law of that jurisdiction here in California. For instance, if I'm licensed in Japan or England and Wales, or any other jurisdiction I have to have been -- I have to have practiced the law of that country for over the last 6 years. I have to be an active member of that entities' bar or whatever the licensing agency is, and then again, these lawyers have both dishonest conduct and malpractice coverage requirements. But once you've registered you can practice the law of that country, and I would directly inquire to our Web page and you can see the facts, the application and any other information.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Great, a question has come in about full-time versus part-time work. Let me ask a couple of sub-questions about this so that we can make sure we go over it. Does this license automatically prohibit someone who is working for a single employer client but only working part-time for that client so long as they're not working any other entity, from registering?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

And this is Phyllis, no. There's no limitation on the hour -- your working hours. In fact, it doesn't address the working hours. It's that that is your sole employer.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So any work done for say, a second employer client, is going to make you non-eligible for the Rule?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

You're -- it's a single qualifying entity that you're working for.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So how does the person who works for two companies, for instance, successfully navigate this registration process?

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Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

And that's a question that needs to be addressed in the clean-up provisions of the Rules.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Okay, so we don't have them now apparently.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

I think right now they don't. They don't work for a single qualifying institution.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

So would you recommend at this point that they register with one of the qualifying institutions or are they prohibited from doing so because they also work for a second?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, and this is my opinion, I think that you want to at least be registered and not in the -- to register to provide the legal services to at least one of the entities so that you are here providing legal services under some authority.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

Great, I've been asked to have you give a quick overview of the renewal procedures. So long as your status and information hasn't changed, I understand under the rule that your registration can be renewed indefinitely. How does that happen though? Do you receive notification from the Bar that your renewal period is up and you need to resubmit fees or is there some other process by which one goes about the renewal process?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

No, you will receive all of the applicants who have been registered for a calendar year will receive a renewal notice from the Bar.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

And simply follow those instructions, and your renewal is completed?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Yes, it will be a one-page application and the most important being status, that you are currently in good status in the jurisdiction in which you are -- base your license on.

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Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Related to this, I know that the fees can change over time. But Phyllis, can you please give us a sense of what the fees are for the initial process underway right now, and what the renewal fees would be if the rates did not change by next year?

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

Certainly, the application itself is \$550 plus the moral character which has changed and it's \$378. So if you provide us with an application fee and the moral character fee it should be \$923. And for those people who have applied to the California Bar and already have submitted the application for moral character you don't have to resubmit the \$378. And then on an annual basis the registered in-house counsel are assessed the fee of an active member of the State Bar which is \$390.

Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

And again, in terms of the legislative history, there was a very, very strong feeling among the committee members that this is a real advantage to employers that enables them essentially to move members of their legal department from New York to California to wherever, and they should pay for that. I mean I was again in the minority. I didn't personally agree with that but there was a view that this was such an advantage to the corporate client to be able to do this that the fees should be higher than a regular member of the state bar.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

This is Phyllis again. I look at -- it's comparable to -- .

Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

It's comparable.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

-- taking the Bar.

Karen Randall - Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios

Right.

Phyllis Culp - State Bar of California - Director of the Office of Certification and Membership Records

It would be about the same in terms of the fees.

Susan Hackett - Association of Corporate Counsel - SVP and General Counsel

Great, we have time for at least one more quick question. I've received a question here that says, to be eligible -- excuse me -- to be eligible to fall within Rule 965 do you have to be employed as in-house counsel per se providing traditional legal work or can the person work in a capacity in which legal knowledge or judgments are made on a regular basis but in which you may not be a part of the legal department? Say you might be the head of the Human Resources department or some other kinds of

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thing, but you're regularly giving judgment or maybe in the tax department but you're not necessarily in the legal department. Any reason why that person can't register under this Rule?

Phyllis Culp - *State Bar of California - Director of the Office of Certification and Membership Records*

Well, this is Phyllis again. If you look under the Scope of Practice if that person believes that what he or she is providing is practice in law, legal advice, then it doesn't -- we're not concerned about the business title but just the scope of the practice that the applicant is providing to the institution.

Karen Randall - *Association of Corporate Counsel - Board Member and former EVP and General Counsel of Universal Studios*

Let me -- let me kind of look at that from the perspective of the corporate client. If you are an HR executive you're really not considered to be practicing law even if you use your legal judgment in that capacity. Your communications are not privileged generally. You're not considered to be practicing law. So I wouldn't necessarily think that an HR executive or a finance executive that just happens to be a lawyer needs to register.

Susan Hackett - *Association of Corporate Counsel - SVP and General Counsel*

I think we need to close and let people get back to the rest of their day. I did want to end by, first of all, thanking our wonderful faculty members for joining us, and for giving us so much information. I know that Phyllis and her department are there to answer questions for you if you have them, and can be reached through contact information available on the California Bar's Web site. And those links again are on the information that was sent out as part of the Webinar Home page. There are additional resources on that Home page for you to look at including the applications forms, and information that gives you background about the Rules.

I would also, once again, emphasize that the May 15th deadline is rapidly approaching. These forms do take some time to complete. It is most important to get them all in, so that you can be registered by that date since the state bar does have the ability, and probably now the will, an increasing amount, to go after those who may have not registered once this system has been made available to you to avail yourselves and your companies of.

If you have additional questions that we can be of a service in assisting you on at the Association, please feel free to contact us. I will once again give you my address. It's hackett@acca.com. That's h-a-c-k-e-t-t@a-c-c-a.com. You may also reach Ian Dorsett here on the ACCA staff. His address is d-o-r-s-e-t-t@a-c-c-a.com, dorsett@acca.com. And we thank you for joining us today. We wish you luck in completing your applications by May 15th, and once again, thank you very much to our faculty. That concludes our program for today. Thank you.

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