

Virginia State Bar Council to Review New Rule to be Added to Virginia Supreme Court Rules Part Six, Section I: Rule 10— Court Personnel: Assisting Self-Represented Persons

RICHMOND—Pursuant to Part Six: Section IV, Paragraph 10(c)(iv) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting February 20–21, 2004, in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, a proposed new rule to be added to the Unauthorized Practice Rules, Part Six, Section I, of the Rules of the Supreme Court of Virginia.

Part Six, Section I, Rule 10

In September of 2001, Chief Justice Carrico formed a Pro Se Litigants Planning Committee to review policies, practices, and protocols for Virginia's court system to use in the handling of cases in which the parties are self-represented. The Committee, chaired by Justice Elizabeth B. Lacy, presented a report containing recommendations, one of which requested that the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law ("UPL Committee") consider drafting a new Rule of Court concerning the scope of assistance that may be provided by court personnel to self-represented litigants. On April 15, 2003, the UPL Committee issued a proposed new rule that would specifically enable clerks of court and staff to fulfill their duties, as public servants, to assist self-represented litigants who are using or are interested in the court system and its processes without improperly engaging in the unauthorized practice of

law. Council, at its June 2003 meeting, reviewed the rule and sent it back to the UPL Committee for approval of language clarifying that assistance by court personnel to *pro se* litigants in filing documents would be limited to assistance with pre-printed, court-approved forms. The UPL Committee, at its meeting on August 12, 2003, approved the clarifying language proposed by Council.

Inspection and Comment

The proposed new Unauthorized Practice Rule 10 may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed new Rule 10 can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at <http://www.vsb.org>.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed new Rule 10 by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than February 2, 2004.

Unauthorized Practice Rule 10. Court Personnel (Clerks, their Deputies and Staff)

UPR 10-101. *Assisting Self-Represented Persons* A self-represented person is one who does not retain an attorney and appears in court on his or her own behalf. For purposes of this rule, a self-represented person "appears" in court when he or she communicates orally or in writing with court personnel, files documents in a court clerk's office or participates in a proceeding on his or her own behalf. In the performance of their official duties, court personnel are prohibited from giving legal advice to a self-represented person, except that:

- (A) In dealing with a self-represented person, court personnel may:
- (1) Answer questions and provide information concerning court rules, procedures, filing fees and filing fee waivers, schedules, office policies or practices;
 - (2) Provide pre-printed, court-approved forms, ~~pleadings~~ or publications to a person based on the person's stated need, desire or intention;
 - (3) Answer questions that assist a person to identify, select or complete any pre-printed, court-approved form provided by the court or clerk's office, including explaining the meaning of any terms or language used in such approved form;
 - (4) Assist a person in the completion of any pre-printed, court-approved form, ~~pleading or document~~ provided that the court clerk or employee believes that the person is unable to do so;

- (5) Provide information contained in court dockets, indexes, court records and files that are open to the public and not protected under seal nor confidential under law, and other local court-approved legal resources which the self-represented person may consult to prepare his or her case;
 - (6) Communicate any information pursuant to the direction of a judge;
 - (7) Provide information about the types of cases heard by the court, the court's jurisdiction, the court's procedures, and legal resources which a person may consult to prepare his or her case, including information concerning the legal aid societies serving the locality.
- (B) Court personnel may not do the following, which would constitute the unauthorized practice of law:
- (1) Advise a person to take a particular course of action, other than to secure the services of an attorney, when there is a choice of options available or the person asks whether or not the person should take a particular course of action;
 - (2) Predict or advise a person involved in a court proceeding how the court may rule, or has ruled, on a particular case or matter; however, this does not prohibit a court clerk or employee from releasing information about a court's decision that is not under seal or otherwise confidential under law;
 - (3) Explain the significance of legal documents and forms that do not originate from the court or clerk's office;

- (4) Prepare pleadings or legal documents or, except as provided in sub-paragraph (A) above, assist a person in the preparation of pleadings or legal documents .

UNAUTHORIZED PRACTICE CONSIDERATIONS.

UPC 10-1. Court personnel generally are public servants charged with the obligation to assist persons interested in access to the courts. Therefore, court personnel must be accorded some latitude in providing information to unrepresented parties and members of the public to assist such persons in having meaningful access to the judicial system.

UPC 10-2. Many unrepresented persons seeking assistance from court personnel may have decided that they do not intend or cannot afford to employ an attorney to represent them. However, when court personnel are asked questions the answer to which would constitute giving legal advice, court personnel should suggest that a lawyer be consulted and may provide information concerning bona fide lawyer referral service programs operated by a local bar association or the Virginia State Bar and legal aid societies licensed by the Virginia State Bar serving the locality. Court personnel should not recommend a particular lawyer to self-represented persons or the general public.

UPC 10-3. Court personnel may ask a person whether he or she has considered mediation or other dispute resolution processes that may be appropriate and available and provide the person with information about dispute resolution services available in the community, including a list of certified mediators or other approved neutrals. Court personnel should not recommend a particular mediator or neutral to self-represented persons or the general public.

UPC 10-4. In the performance of their official duties, court personnel are prohibited from giving legal advice or counseling to a self-represented person as to their specific cases. Court personnel may assist a self-represented person in completing pre-printed, court-approved forms but may not select a particular form for the self-represented person if that selection involves the exercise of legal knowledge or skill.

Issued by UPL Committee
June 3, 2003
As revised by Council
June 19, 2003
As approved by UPL Committee
August 12, 2003