

# Special Task Force Proposes New Rule Requiring Licensing of Corporate Counsel

The Task Force on Admission of Corporate Counsel will be re-submitting its report to the Council of the Virginia State Bar at its October meeting for final approval, modification or disapproval of its proposal—the mandatory licensing of all in-house corporate counsel working in Virginia. At its February 2002 meeting, Council had approved the Task Force’s earlier version of the Rule, but in response to a number of subsequent comments, the Task Force has further revised the Rule. 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 amended report and Rule at its October 17–18, 2002, meeting in Roanoke.

The Task Force, chaired by Scott Street, a former bar president and Secretary-Treasurer of the Virginia 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 jurisdictions’ rules governing in-house corporate counsel and has explored various alternative approaches to dealing with their licensure. The Task Force’s report concludes that in-house counsel today are engaged in the practice of law, and that the interests of the public, the profession, and the state bar would best be served if they were required to be active members regulated by the Virginia State Bar. Accordingly, the Task Force proposes that by January 1, 2004, 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 latter would enable a lawyer licensed in another state to become an active member of the VSB, with his or her practice limited to representing his or her corporate or other business employer.

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: August 27, 2002

- (a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia State Bar 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 for-profit or a 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 January 1, 2004, 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 either (i) be a regularly admitted active member of the Virginia State Bar or (ii) be issued 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 Virginia State Bar an application, under oath, upon a form furnished by the Virginia State Bar.
  - (2) Furnish a certificate, signed by the presiding judge of the court of last resort of a 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 Virginia State Bar, 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) Certify that the applicant has read and is familiar with the Virginia Rules of Professional Conduct.
- (5) Pay an application fee in the amount of fifty dollars.
- (c) During the period in which an application for a Corporate Counsel Certificate is pending with the Virginia State Bar until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice under this rule, the applicant may be employed in Virginia as corporate counsel on a provisional basis by an Employer whose affidavit is filed pursuant to paragraph (b)(3).
- (d) Upon a finding by the Virginia State Bar that the applicant has complied with the requirements of paragraph (b) above, the Virginia State Bar 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 oath required of attorneys at law, the applicant shall be issued a Corporate Counsel Certificate, which shall entitle the applicant to practice law in Virginia solely as provided in this rule.
- (e) Each lawyer issued a Corporate Counsel Certificate shall immediately be registered as an active member with the Virginia State Bar, with his or her practice limited as provided in this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members.
- (f) 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. Notwithstanding the foregoing restrictions on the scope of practice, a lawyer registered under this rule may participate, and is encouraged to participate, in any pro bono program operated and controlled by any Virginia licensed legal aid society.
- (g) 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 Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. 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.
- (h) Each lawyer registered under this rule 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 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.
- (i) 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, 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, territory of the United States or District of Columbia or by any federal court or agency before which the applicant has been admitted to practice.
- (j) The applicant's authority to practice law which may be granted under this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by this rule is terminated, (ii) the lawyer fails to comply with any provision of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of this rule, which shall include an affidavit furnished by the attorney's new Employer. Any lawyer whose authority to practice is suspended under (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. In any case in which a lawyer's authority to practice under this rule is suspended or terminated under (iii) above, the lawyer must petition for reinstatement under Part 6, Section IV, Paragraph 13 (J) of the Rules of the Supreme Court of Virginia.
- (k) The period of time a lawyer practices law 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 Virginia without examination under Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.
- (l) The Virginia State Bar may adopt regulations as needed to implement the requirements of this rule.

VIRGINIA STATE BAR

## Professional Guidelines

The 2001 edition of the *Professional Guidelines* was mailed to all members of the bar with active, in good standing, status at the end of November. The text, plus amendments, is available at [www.vsb.org/profguides](http://www.vsb.org/profguides). The 2002 edition will be mailed this fall.