

Executive Director's Message

by Karen A. Gould



An Update from the Front

THE BAR STAFF AND VOLUNTEERS are constantly evaluating how we carry out the Virginia State Bar's mission. Here are some recent developments:

Multijurisdictional Practice Rules

The worldwide meltdown that followed the collapse of the U.S. economy demonstrates the interconnectedness of nations. Improvements in technology have tied Virginia to distant lands. The Virginia State Bar website gets hits from Australia, the United Kingdom, Canada, India, Brazil, Germany, Japan, and China.

The bar's Multijurisdictional Practice (MJP) Task Force, created in 2004, recognized this trend and the need to address the proliferation of foreign legal consultants and foreign lawyers who practice in Virginia. At the task force's recommendation, the Supreme Court of Virginia has approved the addition of a multijurisdictional practice rule to the Rules of Professional Conduct. When the rule goes into effect January 1, Virginia will join twenty-eight other states with a foreign legal consultant rule and more than thirty-five states with multijurisdictional practice rules. Two other MJP rules were awaiting final approval from the Court at press time.

The approved rule is the Foreign Legal Consultant (FLC) rule, Va. Ct. Rule 1A:7, found at http://www.courts.state.va.us/scv/amendments/2008_1031_1a7_rule.pdf. The FLC rule establishes certification of foreign legal consultants and carves out a limited scope of practice for them. An FLC will be permitted to render legal services only with regard to matters involving

the law of the foreign nations in which the person is admitted to practice, or involving international law. The FLC cannot appear before any court and cannot hold himself or herself out as a member of the Virginia State Bar. FLCs will be certified by the Virginia Board of Bar Examiners, pay bar dues, and be subject to the ethics rules and discipline system in Virginia.

This new rule offers many benefits. The rule will

- provide unprecedented public protection by holding FLCs to the same standards as Virginia lawyers and by providing disciplinary oversight;
- give Virginia lawyers an opportunity to partner with FLCs in law firms, which enhances the marketability of a practice;
- enable corporations to hire FLCs in-house for legal advice based on the laws of the jurisdiction in which the FLC is licensed. This increases the efficiency of the many Virginia companies that conduct business worldwide.
- allow lawyers and the public to obtain basic information about FLCs, including contact information and public disciplinary history in Virginia, by contacting the VSB or consulting its website;
- open reciprocal relationships so that Virginia lawyers can receive similar courtesy when they are called to advise in other countries;

- assert Virginia's regulatory authority and self-governance of the legal profession in the changing landscape of multinational commerce.

The Supreme Court's approval is pending on two other changes recommended by the task force to address foreign attorneys who already have been practicing in Virginia. See <http://www.vsb.org/site/regulation/proposed-amendments-to-rules-55-and-85-of-rules-of-professional-conduct>. These changes are:

- Amend Rule 5.5 to allow foreign lawyers, in association with Virginia lawyers, to provide legal services in Virginia on a "temporary and occasional basis." (In this case, "foreign lawyers" are those licensed elsewhere in the U.S. or in another country, but not in Virginia.)
- Amend Rule 8.5 to extend the VSB's disciplinary authority over any lawyer who provides or holds out to provide legal services in Virginia, regardless of where the lawyer is licensed.

I hope that Virginia's lawyers will read these rules and ponder how to apply them to your practices and clients. We look forward to seeing the creativity and diversity that Virginia's legal community can create with this new flexibility.

Five-year Planning: MCLE, Member Services, and the Virginia Lawyer Directory

At the urging of President Manuel A. Capsalis, the VSB is reviewing how it carries out its mission and planning how it should operate during the next five years. One area that warrants a thorough look at its regulatory scheme is mandatory continuing legal education (MCLE). Some of the rules, such as requirements for a flat writing surface and reviewing videotapes with at least one other person, seem inconsistent in an environment where podcasts are being approved for course delivery. The MCLE Board has formed a study group to review the rules. The concept of mandatory education will remain, but major changes to the MCLE system may result.

Technology has made it possible for the bar to carry out its regulatory function more efficiently and economically. The ability to change addresses of record on the VSB website and to certify MCLE compliance are two examples of these improvements. Member response to the online certification of MCLE compliance has been overwhelmingly positive. Since the bar receives thousands of MCLE paper forms every week during October, the electronic option is a welcome development to staff, as well. We hope to continue to improve the VSB website. Progress is slow, however, due to financial limitations and the cumbersome process of making such changes in the state system.

Online member renewal has been postponed due to the merchant fees imposed by credit card companies. Given the bar's limited fiscal resources, it just is not possible for the bar to pay those fees, nor does it seem reasonable to pass those fees on to the members.

Another example of improving member services through technology is the Virginia Lawyer Directory, which will go live on the website in January 2009. The directory will list the VSB's active members and active corporate counsel members with their addresses and tele-

phone numbers, unless a member chooses to opt out of inclusion. The directory will make it easier for the public and our members to find a lawyer, if they know the lawyer's last name. The bar staff fields phone calls on a regular basis from the public and other lawyers requesting contact information for our members.

The Virginia Lawyer Directory replaces the VSB's Member Directory, which since April 2007 has listed only attorneys who opted to be listed. Only 3,674 of 27,156 active members in good standing participated in that directory. The VSB received complaints from attorneys and the public who found the directory of limited use and misleading. Bars in twenty-nine other states provide comprehensive public attorney directories on-line.

Public Protection Update

Defalcations by dishonest lawyers give all lawyers a bad name. The shocking revelation of over \$4 million dollars stolen from 315 clients by a Prince William lawyer has unfolded over the last year. President Capsalis convened a Public Protection Conclave in July 2008 to discuss what the bar is already doing and consider what more we should do to protect the public from dishonest lawyers. The VSB's primary mission is the protection of the public. Approximately half its resources are

considering whether to suggest that random trust account audits or less detailed reviews be added to the toolbox of the disciplinary system.

There is concern that, with the worsening economic situation, lawyers may turn to inappropriate use of client funds to resolve financial problems. The bar has a zero tolerance policy for such misuse.

If you have thoughts, suggestions, or concerns regarding these topics, please do not hesitate to email me at gould@vsb.org. If your voluntary bar would like me to present a one-hour continuing legal education program on the bar's disciplinary system, I would welcome the opportunity to do so.

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dedicated to that mission. The new bar counsel, Edward L. Davis, has vowed to improve the flow of cases through the system. The Task Force on Public Protection is studying whether to propose legislation to require payee notification of insurance settlements, among other remedies. The Standing Committee on Lawyer Discipline is