

Highlights of Council Meeting

February 22–23, 2002

At its regular winter meeting on February 22–23, 2002, in Richmond, the Council of the Virginia State Bar heard the following reports and took the following significant actions:

Lawyer Discipline

The council unanimously approved and recommended to the Virginia Supreme Court a set of revised and consolidated procedural rules governing the bar's disciplinary system. An experienced group of lawyers chaired by Frank B. Miller, III, of Richmond, has been working since February 2000 to examine and integrate Paragraph 13 of the Rules of Court, the Council Rules of Disciplinary Procedure and the Disciplinary Board Rules of Procedure. A draft of the proposed new rules was presented by Mr. Miller to the council last October for information and preliminary discussion. The proposed new rules will now be submitted to the Court for approval as a replacement Paragraph 13.

The council also unanimously approved several recommended rule changes presented by the Standing Committee on Lawyer Discipline. These rule changes will be incorporated into the proposed replacement Paragraph 13 developed by Mr. Miller's committee and submitted to the Court for approval. The changes would: 1) give district disciplinary committees the authority to impose up to a one-year suspension, only as an alternative sanction, in the event terms imposed by the district committee are not complied with by the respondent; 2) make it clear that pleas to felonies or other serious crimes under the first offender statute may serve as a basis for a suspension or revocation; 3) provide for a limited appeal by bar counsel, on a petition basis, to the disciplinary board from district committee determinations that are clearly erroneous; 4) clarify the qualifications for service on district committees and the disciplinary board by persons who have had a *de minimus* dismissal or dismissal for exceptional circumstances of a complaint in the bar's disciplinary system; and 5) clarify and tighten up the procedures for resignation as a member of the Virginia State Bar, both where disciplinary charges are pending and where there are no such charges pending.

Lawyer Advertising and Solicitation

The council received, for information only, a report and recommendations from the Standing Committee on Lawyer Advertising and Solicitation. The committee proposes splitting present Virginia Rule of Professional Conduct 7.1 into two rules, with Rule 7.1 applying to all communications from a lawyer about legal services and proposed new Rule 7.2 dealing specifically with lawyer advertising issues. One part of the proposal, about which there are significant differences of opinion, is the commit-

tee's recommendation that lawyers be prohibited from advertising specific or cumulative case results. These proposals have been published for comment, and they will be placed on the action portion of council's agenda in June.

Unauthorized Practice of Law

The Standing Committee on Unauthorized Practice of Law presented to the council revised Unauthorized Practice Rule 6, governing real estate matters. The proposed rule is designed to replace UPL Opinion 183, which has long been pending in the Virginia Supreme Court, and it undertakes to delineate what does and does not constitute the unauthorized practice of law in the real estate field when undertaken by a nonlawyer. The proposed rule will now be submitted to the Virginia Supreme Court for its consideration and approval.

The council also unanimously approved and recommended to the Court UPL Opinion 203, which concludes it is the unauthorized practice of law for a nonlawyer agent to pursue collection of a debt through the courts when the original creditor maintains an interest and will share in any recovery obtained. The opinion will now be transmitted to the Virginia Supreme Court for its consideration and approval.

Multi-Disciplinary Practice

The council was treated to a spirited debate about the pros and cons of allowing multi-disciplinary practices in Virginia. Taking the pro side was Frank A. Thomas, III, of Orange, a member of the Joint Commission on Multi-Disciplinary Practice. The con arguments were presented by past VSB President William R. Rakes, of Roanoke. After 20-minute presentations by each debater, council members had an opportunity to ask questions of either presenter. Following the debate, past President John Keith, of Fairfax, chair of the commission, reviewed again with the council the report and recommendations of the commission. Approval of the report and recommendations would result in changes being developed to the Virginia Rules of Professional Conduct that would authorize lawyers to form business relationships and share fees with nonlawyer service providers. The commission's recommendations will be before Council for action at its next meeting in June.

Limited Admission Rule for Corporate Counsel

The Virginia Supreme Court requested that the bar, along with the Virginia Board of Bar Examiners, study the current status of

in-house corporate counsel in Virginia and whether a special limited admission rule should be developed for such lawyers who are members of the bar in other jurisdictions, but not in Virginia. A task force was created to study this matter, with W. Scott Street, III, a past president of the Virginia State Bar and secretary to the Board of Bar Examiners, serving as chair. Mr. Street presented a draft of a proposed rule to the council, for information only, at its October meeting, and the council approved a revised version of the draft rule at its winter meeting.

In essence, the proposed rule would allow an attorney working in-house for a corporate employer in Virginia to become an active member of the Virginia State Bar, with his or her practice limited to representing the corporate employer. The attorney would have to be a member in good standing of the bar in another United States jurisdiction and would be required to complete the character and fitness process the Virginia Board of Bar Examiners prescribes for other applicants for admission. Upon admission, corporate counsel would pay the same dues and have the same member obligations as any other active member of the bar, and the time spent working in Virginia as in-house counsel for a corporate employer would be treated as the practice of law and counted toward the required time for regular admission on a waive-in basis.

Other Matters

The council approved changes in its bylaws to authorize that replacement ballots be provided in contested elections for president-elect of the Virginia State Bar when members fail to receive their ballots in the mail.

A proposal for a law student *pro bono* award by the Special Committee on Access to Legal Services was unanimously approved. The award will be named for Oliver W. Hill.

Also unanimously approved was a memorial resolution honoring past President William Rosenberger, Jr., of Lynchburg.

Council unanimously authorized the officers to prepare and sign a resolution of sympathy and support for the Appalachian Law School community in light of the shootings there earlier this year. (The resolution was prepared and presented to representatives of the school during the Bar Leader’s Institute sponsored by the Conference of Local Bar Associations in Abingdon on March 15, 2002.)

Finally, the council unanimously approved having the bar oppose in its then existing form Senate Bill 81, which was pending in the Virginia House of Delegates. An amendment to the original bill adopted during Senate consideration would have authorized lawyers to pay referral fees for real estate settlement business steered to them by their employees. This amendment put the bill in conflict with the running and capping provisions in Title 54.1 of the Code, as well as Virginia Rule of Conduct 7.3. (The House Committee on Commerce and Labor re-amended the bill, at the bar’s request, to remove the offending language, and the Senate concurred with the House amendment.)

New Membership Opportunity

The Joint Committee on Alternative Dispute Resolution, with the support of The Virginia Bar Association and the Virginia State Bar, recently opened its membership to all interested members of the VBA and VSB.

For an annual dues payment of \$25, members of the Joint ADR Committee will receive the following:

- access to practical CLEs on advocacy and techniques in mediation, arbitration and negotiation
- a newsletter with information about recent ADR developments and practice tips
- opportunities for networking and mutual assistance
- participation in legislative processes

Attorneys interested in joining the Joint ADR Committee should contact Judy King at the VBA, (804) 644-0041, jking@vba.org.