

Virginia State Bar Council to Review a Proposed Amendment to Rule 1.3 of the Rules of Professional Conduct

Pursuant to Part Six: Section IV, Paragraph 10(c) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on October 20–21, 2005, in Charlottesville, Virginia, is expected to consider for approval, disapproval, or modification, a proposed amendment to Rule 1.3 of the Rules of Professional Conduct by the Receivership Task Force and the Standing Committee on Legal Ethics.

RULE 1.3

In November of 2003, the Receivership Task Force was formed to study the costs and procedures involved when receivers are appointed to terminate the law practices of deceased or impaired attorneys, or of attorneys whose licenses to practice law have been suspended or revoked under circumstances that would preclude their further involvement in client matters, or with funds in the possession of the law practice. The Task Force has focused on the issues of costs of receiverships, qualifications and responsibilities of receivers, insurance for receivers and amendments to Sections 54.1-3900.01, 54.1-3936 and 2.2-1839 of the Code of Virginia, which were adopted this past year by the General Assembly. The Task Force continues to work on a handbook and potential CLE training to be provided to receivers to assist them in completion of their duties.

The proposed amendment to Rule 1.3 (Diligence) includes the addition of a new comment to the rule to clarify that the duty of diligence includes planning for client protection in the event of the attorney's death or disability. The purpose of that provision is to inform and educate the legal profession about their continuing obligation to safeguard the client by addressing the transition of client matters should the lawyer suddenly be unable to continue the representation.

Inspection and Comment

The proposed amendment 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 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendment 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 amendment by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than
October 3, 2005.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.**
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.**
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.**

COMMENT

- [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's work load should be controlled so that each matter can be handled adequately.
- [1a] Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategy in pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.
- [2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when

the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

[4] A lawyer should plan for client protection in the event of the lawyer's death, disability, impairment, incapacity or disappearance. The plan should be in writing and should designate a responsible attorney capable of properly discharging the lawyer's responsibilities to clients.

Virginia State Bar Council to Review Proposed Amendments to Paragraph 14 of Rules Governing the Organization and Government of the Virginia State Bar

RICHMOND—The Virginia State Bar Council is expected to consider for approval, disapproval, or modification, proposed amendments to Part 6, Section IV, Paragraph 14 of the Rules of the Supreme Court of Virginia ("Paragraph 14"). Under current law, lawyers admitted in a U.S. jurisdiction other than Virginia may establish a law office in Virginia if their practice is limited exclusively to areas involving federal law (i.e., patent, trademark, copyright, immigration, social security, federal taxation, etc). Moreover, the Code of Virginia permits those lawyers to conduct their limited practice in Virginia through limited liability entities—professional corporations, professional limited liability companies and registered limited liability partnerships. However, lawyers who practice through such limited liability entities must register those entities with the Virginia State Bar. Under existing law and rules, only Virginia licensed lawyers may apply to the Virginia State Bar to register their limited liability entity. No provision is made for non-Virginia lawyers whose practice is limited solely to matters for which a Virginia law license is not required. Under existing law, the non-Virginia lawyer may be authorized by law to establish a limited practice in Virginia and therefore form a limited liability entity, but he or she cannot register that entity with the Virginia State Bar to conduct their practice.

On October 21, 2005, at its meeting at the Boar's Head Inn in Charlottesville, Virginia, the Virginia State Bar Council will consider whether to seek an amendment to Virginia Code Section 54.1-3902, which currently restricts the registration of limited liability entities to those owned by Virginia licensed lawyers. The proposed statutory amendment would permit lawyers otherwise authorized to practice law in Virginia to register their limited liability entity with the Virginia State Bar. In addition, the Virginia State Bar Council will vote on whether to approve, disapprove or modify proposed amendments to Paragraph 14 that would

allow an attorney admitted in a U.S. jurisdiction other than Virginia to register with the Virginia State Bar a limited liability entity for the practice of law, where such practice is otherwise authorized by law. The full text of the applicable statute showing the proposed amendment, followed by the proposed rule changes are set out below:

14. PROFESSIONAL CORPORATIONS, PROFESSIONAL LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS (LIMITED LIABILITIES ENTITIES).—The rules and regulations in the following provisions of this Paragraph 14 shall constitute a Code of Ethics governing the professional conduct of the practice of law through professional law corporations, professional limited liability companies and registered limited liability partnerships in Virginia.

(a) Scope.

All applications, reports and other documents required to be filed with the Virginia State Bar by this Paragraph 14 shall be signed and verified by an officer, director, partner, or manager of the applicant who is ~~an~~ a duly licensed, active member of the Virginia State Bar or who is otherwise legally authorized to practice law in Virginia ~~and duly licensed to practice law or admitted to practice patent law in Virginia under the provisions of Section 54.1-3901 and Rule 1A:2 of the Rules of the Supreme Court (which for purposes of this Paragraph 14 shall be deemed included whenever the term "duly licensed to practice law in Virginia" is used herein except to the extent inconsistent with Section 54.1-3901 or Rule 1A:2)~~ and filed at the office of the Virginia State Bar.

(b) Certificate of Registration.

An applicant for registration as a limited liability entity shall file with the Virginia State Bar an application for a Certificate of Registration, on a form furnished by the Virginia State Bar, and pay a fee of \$100. The term "limited liability entity," as used in this Paragraph 14 shall include a professional law corporation, professional limited liability company, and a registered limited liability partnership.

- (i) The Executive Director of the Virginia State Bar, or a person or persons designated by him, shall review such application for registration and, within 15 days after receipt of such application, approve the application and issue a Certificate of Registration provided the application conforms to the requirements of law and this Paragraph 14. If the application fails to include the information required in subparagraphs (c)(i) through (c)(v) of this Paragraph 14, the Executive Director shall refuse to approve the application and notify the applicant of the reasons therefor. A request by the Executive Director for further information to comply with the requirement of said subparagraph (c) of this Paragraph 14, or a request that the application be amended, may be deemed by the applicant to be a refusal to approve the application for purposes of initiating review under subparagraph (b)(iii) of this Paragraph 14.
- (ii) The effective date of the Certificate of Registration shall be the date on which the applicant has filed with the Virginia State Bar all material required for approval of the application; provided, however, that (1) a later effective date may be granted if requested by the applicant prior to the issuance of the Certificate of Registration, or (2) in the discretion of the Executive Director an earlier effective date may be granted if good cause appears therefore.
- (iii) An applicant may request a review of a refusal to approve its application within sixty days after the date of the notice of such refusal. Such request shall be heard by the Executive Committee of the Virginia State Bar. Upon completion of review, which may include examination of all information submitted by the applicant and a hearing, the Committee shall either (1) approve the application and order the issuance of a Certificate of Registration, or (2) request further information required by subparagraph (c) of this Paragraph 14 or amendments not theretofore supplied by the applicant, or (3) refuse to approve the application in any case where the applicant fails or refuses to supply the required information or has made a material misrepresentation of fact. The Committee

shall report in writing its findings of fact and the reasons for its order, whether approving or refusing to approve the application. Notice of the order and a copy of the report shall be mailed to the applicant.

- (iv) Insofar as applicable, the rules of procedure of the Virginia State Bar shall apply to the procedure in (b)(iii) above. An aggrieved applicant may proceed in a court of competent jurisdiction by motion for declaratory judgment for review of matters relating to its application.

(c) Application for Certificates.

A Certificate of Registration as a limited liability entity shall be issued if the application shows:

- (i) The applicant is organized and qualified under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Corporations Act), organized and qualified under the provisions of Chapter 13 (Section 13.1-1100 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Limited Liability Company Act), organized and qualified under the provisions of ~~Article 7 (Section 50-43.1 et seq.) of Chapter 1~~ Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 (the Virginia Registered Limited Liability Partnership Act), or organized and qualified under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in Section 13.1-543(A) of the *Code of Virginia*.
- (ii) All of the applicant's shareholders, directors, officers, partners, members or managers and their names and addresses are set forth in full in the application.
- (iii) Each member, manager, partner, employee or agent of the applicant who will practice law in Virginia, the names and addresses of whom are set forth in full in the application, whether or not a director, officer, shareholder, partner, member or manager of the applicant, is an active member of the Virginia State Bar and duly licensed to practice law in Virginia or otherwise legally authorized to practice law in Virginia. Nothing in this Paragraph 14(c)(iii) shall be deemed to prohibit a non-licensed individual from serving as secretary, treasurer, office manager or business manager of any limited liability entity, provided, however, that such individual shall not be held out to be qualified or otherwise authorized to practice law or give advice on a legal or related matter to the clients of the entity. Any employee or agent of the applicant

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who is duly licensed to practice law in Virginia and who is not held out to the public to be so authorized shall be deemed for the purposes of these Rules to be a non-licensed individual.

(iv) A trade name may be used by a limited liability entity if it does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of Virginia Rules of Professional Conduct 7.1(a). The name of a lawyer holding a public office shall not be used in the name of the entity, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the entity.

(v) The applicant has advised or intends to advise the clients of any predecessor organization, and the clients of any shareholder, director, officer, member, partner, manager, employee or agent of the applicant who will practice law, of the transfer of such organization's or lawyer's practice to a limited liability entity.

(d) Ownership.

An interest in or shares of a professional law corporation or professional limited liability company may be owned only in accordance with the provisions of Chapter 7 or Chapter 13 of Title 13.1. Ownership of shares of a professional law corporation or professional limited liability company for the purpose of construing this subparagraph (d) shall mean both legal and beneficial ownership. All the trustees of any voting trust which may be entered into by any shareholder shall be duly licensed or otherwise legally authorized to practice law in Virginia, and no proxy to vote any of such shares shall be valid unless granted to and voted by an individual or individuals duly licensed or otherwise legally authorized to practice law in Virginia.

(e) Control Over and Rendition of Legal Services; Letterhead.

No person not a member of the Virginia State Bar and duly licensed to practice law in Virginia shall have the right to direct or control the professional judgment of any employee of a limited liability entity or the conduct of employees of the entity with respect to the practice of law in Virginia. Any limited liability entity practicing law in a foreign jurisdiction and which enumerates its employees on its letterhead and in other permissible listings shall do so in a manner which will make clear the jurisdictional limitations on those employees and agents of the entity not licensed to practice in all listed jurisdictions.

(f) Correspondence, Pleadings and Documents.

Correspondence, pleadings and other documents, the execution of which constitutes the practice of law in

Virginia, shall be executed on behalf of a limited liability entity by an employee who is an active member of the Virginia State Bar and duly licensed to practice law in Virginia. Corporate documents, the execution of which does not constitute the practice of law, may be executed on behalf of a limited liability entity by any authorized employee, whether or not licensed to practice law.

(g) Division of Fees.

It shall be lawful, ethical and proper for a lawyer employed by a limited liability entity, as part of the terms of his employment, to agree to turn over to the entity by which he is employed all fees, compensation or reimbursement which he may be entitled to receive for his professional services, regardless of where such professional services are rendered. No limited liability entity with a Certificate of Registration in effect shall be deemed a lay agency, nor shall any employee of such entity be deemed to be practicing law through an intermediary during any period for which such entity maintains a Certificate of Registration in effect.

(h) Professional Responsibility.

Nothing in this Paragraph 14 shall be deemed to diminish or change the obligation of any lawyer employed by a limited liability entity to conduct the practice of law in accordance with any specific standards promulgated by the Supreme Court of Virginia. Any lawyer who by act or omission causes the entity by which he is employed to act or fail to act in a manner which violates any applicable standard of professional conduct, including any of the provisions of this Paragraph 14, shall be personally responsible for such act or omission and subject to discipline therefor.

(i) Attorney-Client Privilege.

Nothing in this Paragraph 14 shall be deemed to modify, abrogate or reduce the attorney-client privilege or any comparable privilege or relationship, whether derived by statute or from common law.

(j) Discipline.

A Certificate of Registration shall continue in effect until it is suspended or revoked as provided herein. Such certificate may be suspended or revoked if a limited liability entity fails at any time to comply fully with the provisions of this Paragraph 14, the Rules of Professional Conduct, the Code of Professional Responsibility, the applicable Virginia Professional Corporation Act, the Virginia Professional Limited Liability Company Act, or the Virginia Registered Limited Liability Partnership Act, after notice and an opportunity to be heard as provided in 14(j)(ii) below;

provided that, if the violation be such as can be corrected upon notice to the entity of its violation, or if the violation be that of one or several persons only, suspension or revocation of the certificate need not be invoked if the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individual(s) involved.

- (i) Upon receipt of a resolution of the board of directors or the written statement of the manager(s) or partner(s) of a limited liability entity requesting the cancellation of the Certificate of Registration of that entity, such certificate shall be cancelled by the Executive Director of the Virginia State Bar, or by a person or persons designated by him. The cancellation of a Certificate of Registration at the request of a limited liability entity shall be effective as of the date such request is received at the office of the Virginia State Bar, except that a later effective date shall be granted upon request of the entity or, in the discretion of the Executive Director of the Virginia State Bar, an earlier effective date may be granted if good cause appears therefore.
- (ii) Where a limited liability entity has violated or is about to violate any pertinent statute, rule or any provision of this Paragraph 14, the Executive Director of the Virginia State Bar, or a person or persons designated by him, may issue a notice directing Bar Counsel to investigate the alleged violation. Bar Counsel may issue such summons and subpoenas, and/or compel the production of such documents as he/she may reasonably deem necessary or material for the effective conduct of an investigation. Every Circuit Court shall have power to enforce any summons or subpoena issued by Bar Counsel and to adjudge disobedience thereof as contempt. If the report of Bar Counsel concludes either that the allegation is without merit or that specific corrective action has been or will be taken, the Executive Director shall dismiss the matter forthwith. If Bar Counsel concludes that the allegation has merit warranting court action, Bar Counsel shall file with the Circuit Court having jurisdiction in the premises a verified complaint. The court shall issue a rule against the limited liability entity concerned and conduct further proceedings in the matter in accordance with Section 54.1-3937 of the *Code of Virginia*, as amended, which is incorporated herein by reference. In addition to or in lieu of a Circuit Court complaint against the entity, Bar Counsel may refer the matter to the appropriate District Committee pursuant to Part 6, Section IV, Para. 13, B.(5)(a) et seq. of these Rules. After the court has held its hearing pursuant to its rule, it shall enter an order reprimanding the entity or revoking or suspending

its Certificate of Registration if it finds that the circumstances of the violation warrant such action; otherwise the court shall dismiss the matter.

- (k) Certificate Renewal.

On the date two years after the effective date of its initial Certificate of Registration and biennially thereafter, each limited liability entity shall pay a fee of \$50 whereupon its Certificate of Registration shall be automatically renewed.

- (l) Annual Report; Corporate or Partnership Changes.

Each limited liability entity shall file with the Virginia State Bar a copy of any document or report required to be filed with the State Corporation Commission. In addition, each such entity shall file a special report on a form provided by the Virginia State Bar within thirty days after any change in its shareholders, directors, officers, members, managers, partners, employees or agents duly licensed to practice law. Each such change in personnel of a limited liability entity shall be brought to the attention of each of its clients, so that such client may know by whom he is represented or may be represented and with whom his confidences may be shared, in the same manner as is customary with partnerships.

- (m) Effective Dates.

This Paragraph 14 shall become effective on ~~July 1, 1995~~ [to be effective after the proposed statutory change goes into effect] and shall apply in like manner to professional corporations theretofore or thereafter organized under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to professional limited liability companies theretofore or thereafter organized under the provisions of Chapter 13 (Section 13.1-1100 et seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to registered limited liability partnerships theretofore or thereafter organized under the provisions of ~~Article 7 (Section 50-43.1 et seq.) of Chapter 1~~ Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 of the *Code of Virginia* to practice law, except where inconsistent with the provisions of such laws.

§ 54.1-3902. Professional corporations; professional limited liability companies; and registered limited liability partnerships.—

- A. No professional corporation organized or qualifying under the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1, professional limited liability company organized or qualifying under the provisions of Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1, or registered limited liability partnership organized or qualifying under the provisions of Article

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7 (§ 50-43.1 et seq.) of Chapter 1 of Title 50 shall render the professional services of attorneys in this Commonwealth unless the professional corporation, professional limited liability company, or registered limited liability partnership is registered under this section.

B. A professional corporation organized or qualifying under the provisions of Chapter 7 of Title 13.1, a professional limited liability company organized or qualifying under the provisions of Chapter 13 of Title 13.1, or a registered limited liability partnership organized or qualifying under the provisions of Article 7 (§ 50-43.1 et seq.) of Chapter 1 of Title 50 shall be issued a professional corporation, a professional limited liability company, or a registered limited liability partnership registration certificate by the Virginia State Bar upon application and payment of a registration fee of \$100 provided that:

1. Each member, manager, partner, employee or agent of the professional corporation, the professional limited liability company, or the registered limited liability partnership who will practice law in Virginia is an active member of the Virginia State Bar, or otherwise legally authorized to practice law in Virginia, except that nothing herein shall prohibit a nonlicensed individual from serving as secretary, treasurer, office manager or business manager of any such corporation, limited liability company, or registered limited liability partnership; and
2. The name of the professional corporation, the professional limited liability company, or the registered limited liability partnership and the conduct of its practice conform with the ethical standards which the shareholders, members, managers, partners, employees and

agents are required to observe in the practice of law or patent law as defined in § 54.1-3901 in this Commonwealth and that, in the case of a corporation, the corporate name complies with subsection A of § 13.1-630; in the case of a limited liability company, the limited liability company name complies with subsection A of § 13.1-1012; and, in the case of a registered limited liability partnership, the registered limited liability partnership name complies with § ~~50-43.2 - 73.2~~.

C. Professional corporation, professional limited liability company, and registered limited liability partnership registration certificates shall be renewed biennially for a fee of fifty dollars. (1962, c. 389, § 54-42.1; 1968, c. 10; 1973, c. 484, § 54-42.2; 1974, c. 597; 1981, cc. 103, 516; 1982, c. 633; 1988, c. 765; 1992, c. 574; 1995, c. 116; 2000, c. 355.)

Virginia Code § 54.1-3902

Inspection and Comment

The proposed amendments 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 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendments 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 www.vsb.org.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendments by filing nine copies with the Clerk of the Court and three copies with Thomas A. Edmonds, the Executive Director of

Virginia State Bar Council to Review Proposed Amendments to Rule 1:A5 of the Supreme Court of Virginia

RICHMOND—On October 21, 2005, at its meeting at the Boars Head Inn in Charlottesville, Virginia, the Virginia State Bar Council is expected to consider for approval, disapproval, or modification, additional proposed amendments to Virginia Supreme Court Rule 1A:5. These new amendments would permit lawyers certified as in-house counsel under Part I to provide pro bono legal services under the direct supervision of a Virginia-licensed attorney employed by a licensed legal aid society and increase the application fee from \$50.00 to \$150.00 under both Parts I and II. The full text of the rule, including the proposed revisions, is set out below:

Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants

Introduction

Notwithstanding any rule of this Court to the contrary, after July 1, 2004, any person 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 provisions of legal services ("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, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

**Part I
Virginia Corporate Counsel**

- (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 Virginia Corporate Counsel (“Corporate Counsel Certificate”) to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.
- (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 legal counsel 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 Part I 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 of one-hundred and 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 pursuant to Part I of this rule, the applicant may be
 - (d) employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I (b)(3) of this rule.
 - (d) Upon a finding by the Virginia State Bar that the applicant has complied with the requirements of Part I(b) of this rule, 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 permit the applicant to practice law in Virginia solely as provided in Part I(f) of this rule.
 - (e) A lawyer issued a Corporate Counsel Certificate shall immediately become an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(f) of this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.
 - (f) The practice of a lawyer certified pursuant to Part I of this rule shall be limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(3) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically authorized under Part I (g) below, ~~N~~ no lawyer certified pursuant to Part I of this rule shall (i) undertake to represent any person other than his or her Employer before a Virginia 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 any other person 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.
 - (g) Notwithstanding the foregoing restrictions set out in Part I (f) above on the scope of practice, a lawyer certified pursuant to Part I of this rule may participate, and is encouraged to participate, in pro bono programs operated and controlled by a legal aid society licensed by the Virginia State Bar and under the direction of a supervising attorney.
 - (1) “Supervising attorney.” is an attorney who directs and supervises an attorney engaged in activities permitted by Part I (g). The supervising attorney must:
 - (i) Be an active member of the Virginia State Bar in good standing employed by or participating as a volunteer for the licensed legal aid society; and
 - (ii) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding, or other legal service in which the certified Part I attorney engages; and

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- (iii) Direct and assist the certified Part I attorney in his or her preparation to the extent the supervising attorney considers it necessary.
- (2) A lawyer certified pursuant to Part I of this rule may, in association with a licensed legal aid society, and only under the supervision of a supervising attorney, perform only the following activities:
- (i) appear in any court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a licensed legal aid society if the person on whose behalf the certified Part I lawyer is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of the presiding judge or presiding officer in any administrative or arbitration proceeding.
- (ii) prepare and sign pleadings and other documents to be filed in any court or with any administrative tribunal or arbitrator in this state in any matter in which the certified Part I attorney is involved.
- (iii) render legal advice and perform other appropriate legal services, but only with the express approval of the supervising attorney.
- (iv) engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.
- (3) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the certified Part I attorney's participation in any proceeding.
- (4) Supervision and Limitations
- (i) The certified Part I attorney must perform all activities authorized by this subparagraph under the direct supervision of a supervising attorney.
- (ii) Certified Part I Attorneys permitted to perform services under this Part I (g) are not, and shall not represent themselves to be, active members of the Virginia State Bar licensed to practice law generally in the Commonwealth of Virginia.
- (iii) The licensed legal aid society shall be entitled to receive all court awarded attorney's fees for any representation rendered by a certified Part I attorney authorized under Part I (g).
- ~~(h)~~ The provision of legal services to his or her Employer by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law in Virginia 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.
- ~~(i)~~ A lawyer certified pursuant to Part I of this rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to Part I of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part I(b)(3) of this rule.
- ~~(j)~~ A lawyer certified pursuant to Part I of this rule 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 in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a 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.
- ~~(k)~~ A lawyer's authority to practice law which may be permitted pursuant to Part I of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part I(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part I 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 Part I of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (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. Any lawyer whose authority to practice is suspended or terminated under (iii) above shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13 I.7. of the Rules of the Supreme Court of Virginia.
- ~~(l)~~ The period of time a lawyer practices law is permitted by a Corporate Counsel Certificate issued pursuant to Part I of this rule shall be considered in determining whether the lawyer has fulfilled the requirements for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme

Court of Virginia for review of applications for admission without examination.

~~(m)~~ The Virginia State Bar may adopt regulations as needed to implement the requirements of Part I of this rule.

**Part II
Corporate Counsel Registrants**

- (a) Notwithstanding the requirements of Part I of this rule, any lawyer as defined in the Introduction and Part I(a) of this rule may register with the Virginia State Bar as a "Corporate Counsel Registrant." A person admitted to the practice of law only in a country other than the United States, and who is a member in good standing of a recognized legal profession in that country, the members of which are admitted to practice law as lawyers, counselors at law, or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or public authority, may also register under Part II of this rule.
- (b) A registrant shall:
 - (1) Register with the Virginia State Bar upon a form, under oath, furnished by the Virginia State Bar, which shall include affirmations that (i) he or she will at no time undertake to represent his or her Employer or any other person, organization or business entity before a Virginia court or tribunal except as permitted pursuant to Rule 1A:4 of this Court, (ii) his or her work is limited to business and legal services related to issues confronting his or her Employer at a regional, national or international level with no specific nexus to Virginia, and (iii) he or she will not provide legal advice or services to any person other than his or her Employer.
 - (2) Furnish a certificate, signed by the presiding judge of the court of last resort of a jurisdiction in which the registrant is admitted to practice law, stating that the registrant 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 registrant's Employer attesting to the fact that the registrant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the registrant's employment conforms to the requirements of Part II of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the registrant's employment.
 - (4) Certify that the registrant has read and is familiar with the Virginia Rules of Professional Conduct.
 - (5) Pay a registration fee of one hundred and fifty dollars.
- (c) During the period in which a corporate counsel registration is pending with the Virginia State Bar until the registrant is notified that either (i) his or her registration is rejected; or (ii) he or she is eligible to practice pursuant to Part II of this rule, the registrant may be employed in Virginia as a Corporate Counsel Registrant on a provisional basis by the Employer furnishing the affidavit required by Part II(b)(3) of this rule.
- (d) Upon completion of the requirements of Part II(b) of this rule, the registrant shall immediately be recorded by the Virginia State Bar as a Corporate Counsel Registrant. Each registrant shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar. No lawyer registered pursuant to Part II of this rule shall (i) undertake to represent his or her Employer or any other person or entity before a Virginia court or tribunal except as permitted for lawyers licensed and in good standing in another United States jurisdiction pursuant to Rule 1A:4 of this Court; (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.
- (e) The provision of legal services to his or her Employer by a lawyer registered pursuant to Part II of this rule shall be deemed the practice of law in Virginia only for purposes of subjecting the lawyer to the Virginia Rules of Professional Conduct; the jurisdiction of the disciplinary system of the Virginia State Bar; 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 maintains the registration and irrespective of the lawyer's presence in Virginia.
- (f) A lawyer registered pursuant to Part II of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part II(b)(3) of this rule.
- (g) A lawyer registered pursuant to Part II of this rule 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, the District of Columbia, or other country in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States, the District of Columbia, or other country, or by any federal court or agency before which the lawyer has been admitted to practice.
- (h) A lawyer's authority to provide legal services which may be permitted pursuant to Part II of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part II(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provi-

PROPOSED RULE CHANGES

sion of Part II of this rule, or (iii) the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, other country, 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 Part II of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (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. Any lawyer whose authority to practice is suspended or terminated pursuant to (iii) above, shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13 I.7. of the Rules of the Supreme Court of Virginia.

- (i) No time spent as Corporate Counsel Registrant shall be considered in determining eligibility for admission to the Virginia Bar without examination.

- (j) The Virginia State Bar may adopt regulations as needed to implement the requirements of Part II of this rule.

Inspection and Comment

The proposed amendments 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 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendments 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 www.vsb.org.

*Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendments by filing nine copies with the Clerk of the Court and three copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **October 3, 2005**.*

Committee on Lawyer Discipline (COLD) Proposed Amendment to Paragraph 13

Respondent Required to Sign Responses

On June 1, 2005, COLD approved a proposed amendment that requires Respondents to sign written responses to complaints and disciplinary charges.

Part 6, Section IV, Paragraph 13 of the Rules of the Virginia Supreme Court

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS.

F. Participation and Disqualification of Counsel in Disciplinary Proceedings

1. Attorney for Respondent

- a. A Respondent may be represented by an Attorney at any time with respect to a Complaint.
- b. A Respondent must sign his or her written response to a Complaint, a Charge of Misconduct and a Certification.

Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than September 30, 2005. The Virginia State Bar Council will consider the proposed amendments when it meets on October 21, 2005, in Charlottesville, Virginia.