

Highlights of Council Meeting

October 19, 2001

At its regular fall meeting on October 19, 2001, 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 an amendment to paragraph 13.C.(3) of the Rules of Court, which would authorize use of former disciplinary board members when they are needed to fill out a quorum for a board hearing panel. The docket of the disciplinary board has now gotten quite full, with up to four panels sitting each month on the designated hearing day. There are times when conflicts, illness or scheduling difficulties make it impossible for the 20 current members of the board to staff the necessary number of panels. This amendment will allow the bar to preserve hearing dates, rather than continue matters, when this situation occurs.

The council also unanimously approved an increase in the administrative charge that the council is authorized by the rules of court to set for disciplinary matters where the respondent is sanctioned. The administrative charge has not been increased since it was initially set by the council in 1990 at \$300 per case. The council concurred in the recommendation of the standing committee on lawyer discipline that the administrative charge be increased to \$500 per case in district committee matters and \$750 per case in disciplinary board matters. These increases will become effective on January 1, 2002.

The council also heard an informational report from Frank B. Miller, Jr., chair of the special committee to rewrite the procedural rules for disciplinary proceedings. This group has been working since February 2000 to examine paragraph 13 of the rules of court, the council rules of disciplinary procedure, and the disciplinary board rules of procedure. Because each of these sets of rules has been developed somewhat independently, there are some inconsistencies among them, and the various rules are not indexed. Thus, the committee was asked to harmonize and consolidate all procedural rules governing attorney disciplinary matters, creating a proposed new paragraph 13 that will be comprehensive in nature and accompanied by an index. The committee provided the council with a draft of its proposal for study between now and the next council meeting in February 2002, when action is expected to be taken. Notice of the proposed new paragraph 13 will be published in the next two issues of the bar's magazine. A complete copy of the proposal will be posted on the bar's Web site, or mailed upon request.

Multi-Disciplinary Practice

The council received for information only a report and recommendations from the joint commission on multi-disciplinary practice. This commission was appointed by the Virginia State Bar and the Virginia Bar Association to study whether the bar's pre-

sent rules of conduct that prohibit lawyers from practicing or sharing fees with non-lawyers should be modified. After more than two years of study and work, the commission recommends that the Rules of Professional Conduct be changed to permit multi-disciplinary practices that include lawyers and also non-lawyers, with appropriate safeguards to insure preservation of the legal profession's core values. Lawyers who practice in such settings would be required to insure that they exercise independent professional judgment on behalf of the firm's legal services clients, that client information provided to the lawyer is safeguarded and maintained in confidence, and that the bar's conflict of interest rules are strictly observed.

After a presentation to council by John A. C. Keith of Fairfax, chair of the commission, and Thomas E. Spahn of McLean, a member of the commission, there were a number of questions, comments and observations about the commission's recommendations from members of council. The commission is currently engaged in an extensive effort to provide educational opportunities for the bar at large about the issues involved in multi-disciplinary practice. The commission has offered to send a member of the group to meet with any local bar association in the Commonwealth that would like such a visit. Future issues of the bar's publications will also contain educational pieces, both pro and con, on this subject, and the commission's full report and recommendations will be published for comment in the January 2002 issue of the *Virginia Lawyer Register*. Once this process has been completed, the commission's report and recommendations will be back before council for further debate and action. Only if and when council approves the report and recommendations would specific rule changes be drafted to implement the recommendations. Any such proposed rule changes would, of course, be published for comment and acted on by council before they could be recommended to the Virginia Supreme Court. Multi-disciplinary practice is a subject that has drawn considerable attention and debate throughout the country during the past several years, with the ABA House of Delegates taking a position against allowing MDPs, and the 30 or so states that have considered the matter being about evenly divided on the issue. Thus, it is important for all members of the Virginia State Bar to educate themselves about this matter and convey their opinions to their council representatives during the next several months.

Limited Admission Rule for Corporate Counsel

The Virginia Supreme Court requested that the bar, along with the Virginia Board of Bar Examiners, study the 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 reported to the council for information only that his task force has developed such a proposed limited admission rule, and copies were made available to the members of the council. The proposed rule will be published in an upcoming issue of the *Virginia Lawyer Register* for comment, and the council will be asked to take a position on the proposed rule in February 2002, before it is submitted to the Virginia Supreme Court.

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.

Unauthorized Practice of Law

The standing committee on unauthorized practice of law reported that it has developed a proposed unauthorized practice rule governing real estate matters. The proposed rule was published for comment earlier in the fall, and the committee will take the comments that have been received and make further revisions before again publishing the proposed rule in the January 2002 issue of the *Virginia Lawyer Register*. The proposed rule is designed to replace UPL Opinion #183, which has long been pending in the Virginia Supreme Court. Action on the proposed new rule is anticipated at the February 2002 meeting of the council. ☺