

Virginia State Bar Council to Review Proposed Amendments to Rules of Virginia Supreme Court Rule 1A:5

RICHMOND—*The Virginia State Bar Council, at its meeting on February 20-21, 2004, in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, proposed amendments to Virginia Supreme Court Rule 1A:5. After receiving comments to Rule 1A:5, now in force and effect, the VSB Corporate Counsel Task Force recommends another amendment under Part II, permitting a lawyer from a country other than the United States to serve as Registered Corporate Counsel in Virginia under Part II only, provided all other requirements as set forth in the rule are met. In addition, the Task Force recommends several other minor editorial changes. The full text of the rule, including the proposed revisions, is set out below:*

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 ~~Registered~~ 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 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 employed in Virginia as ~~legal counsel~~ 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. 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) The provision of legal services to his or her Employer by a lawyer certificated 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.

- (h) 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.
- (i) A lawyer certificated 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.
- (j) 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.
- (k) 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.
- (l) 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 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 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 ~~legal counsel~~ 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 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 ~~or~~, 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, or 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 provision 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 ~~or~~, the District of Columbia, or 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 rule and proposed revisions may be inspected at the offices of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, between the hours of 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the rule can be obtained from the Virginia State Bar by contacting the Office of Ethics Counsel at (804)775-0557, or from the Virginia State Bar's Web site at <http://www.vsb.org>.

*Any comments to the proposed revisions should be made in writing and sent to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219 not later than **February 18, 2004**. *

Virginia State Bar Council to Review New Rule to be Added to Virginia Supreme Court Rules Part Six, Section I: Rule 10—Court Personnel: Assisting Self-Represented Persons

RICHMOND—Pursuant to Part Six: Section IV, Paragraph 10(c)(iv) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting February 20–21, 2004, in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, a proposed new rule to be added to the Unauthorized Practice Rules, Part Six, Section I, of the Rules of the Supreme Court of Virginia.

Part Six, Section I, Rule 10

In September of 2001, Chief Justice Carrico formed a Pro Se Litigants Planning Committee to review policies, practices, and protocols for Virginia's court system to use in the handling of cases in which the parties are self-represented. The Committee, chaired by Justice Elizabeth B. Lacy, presented a report containing recommendations, one of which requested that the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law ("UPL Committee") consider drafting a new Rule of Court concerning the scope of assistance that may be provided by court personnel to self-represented litigants. On April 15, 2003, the UPL Committee issued a proposed new rule that would specifically enable clerks of court and staff to fulfill their duties, as public servants, to assist self-represented litigants who are using or are interested in the court system and its processes without improperly engaging in the unauthorized practice of law. Council, at its June 2003 meeting, reviewed the rule and sent it back to the UPL Committee for approval of language clarifying that assistance by court personnel to pro se litigants in filing documents would be limited to assistance with pre-printed, court-approved forms. The UPL Committee, at its meeting on August 12, 2003, approved the clarifying language proposed by Council.

Unauthorized Practice Rule 10. Court Personnel (Clerks, their Deputies and Staff)

UPR 10-101. *Assisting Self-Represented Persons.* A self-represented person is one who does not retain an attorney and appears in court on his or her own behalf. For purposes of this rule, a self-represented person "appears" in court when he or she communicates orally or in writing with court personnel, files documents in a court clerk's office or participates in a proceeding on his or her own behalf. In the performance of their official duties, court personnel are prohibited from giving legal advice to a self-represented person, except that:

- (A) In dealing with a self-represented person, court personnel may:
- (1) Answer questions and provide information concerning court rules, procedures, filing fees and filing fee waivers, schedules, office policies or practices;
 - (2) Provide pre-printed, court-approved forms, ~~pleadings~~ or publications to a person based on the person's stated need, desire or intention;
 - (3) Answer questions that assist a person to identify, select or complete any pre-printed, court-approved form provided by the court or clerk's office, including explaining the meaning of any terms or language used in such approved form;
 - (4) Assist a person in the completion of any pre-printed, court-approved form, ~~pleading or document~~ provided that the court clerk or employee believes that the person is unable to do so;

- (5) Provide information contained in court dockets, indexes, court records and files that are open to the public and not protected under seal nor confidential under law, and other local court-approved legal resources which the self-represented person may consult to prepare his or her case;
 - (6) Communicate any information pursuant to the direction of a judge;
 - (7) Provide information about the types of cases heard by the court, the court's jurisdiction, the court's procedures, and legal resources which a person may consult to prepare his or her case, including information concerning the legal aid societies serving the locality.
- (B) Court personnel may not do the following, which would constitute the unauthorized practice of law:
- (1) Advise a person to take a particular course of action, other than to secure the services of an attorney, when there is a choice of options available or the person asks whether or not the person should take a particular course of action;
 - (2) Predict or advise a person involved in a court proceeding how the court may rule, or has ruled, on a particular case or matter; however, this does not prohibit a court clerk or employee from releasing information about a court's decision that is not under seal or otherwise confidential under law;
 - (3) Explain the significance of legal documents and forms that do not originate from the court or clerk's office;
 - (4) Prepare pleadings or legal documents or, except as provided in sub-paragraph (A) above, assist a person in the preparation of pleadings or legal documents.

UNAUTHORIZED PRACTICE CONSIDERATIONS.

UPC 10-1. Court personnel generally are public servants charged with the obligation to assist persons interested in access to the courts. Therefore, court personnel must be accorded some latitude in providing information to unrepresented parties and members of the public to assist such persons in having meaningful access to the judicial system.

UPC 10-2. Many unrepresented persons seeking assistance from court personnel may have decided that they do not intend or cannot afford to employ an attorney to represent them. However, when court personnel are asked questions the answer to which would constitute giving legal advice, court personnel should suggest that a lawyer be consulted and may provide information concerning bona fide lawyer referral service programs operated by a local bar association or the Virginia State Bar and legal aid societies licensed by the Virginia State Bar serving the locality. Court personnel should not recommend a particular lawyer to self-represented persons or the general public.

UPC 10-3. Court personnel may ask a person whether he or she has considered mediation or other dispute resolution processes that may be appropriate and available and provide the person with information about dispute resolution services available in the community, including a list of certified mediators or other approved neutrals. Court personnel should not


recommend a particular mediator or neutral to self-represented persons or the general public.

UPC 10-4. In the performance of their official duties, court personnel are prohibited from giving legal advice or counseling to a self-represented person as to their specific cases. Court personnel may assist a self-represented person in completing pre-printed, court-approved forms but may not select a particular form for the self-represented person if that selection involves the exercise of legal knowledge or skill.

Issued by UPL Committee
June 3, 2003
As revised by Council
June 19, 2003
As approved by UPL Committee
August 12, 2003

Inspection and Comment

The proposed new Unauthorized Practice Rule 10 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 new Rule 10 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 new Rule 10 by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **February 18, 2004**. *

Virginia State Bar Council to Review Proposed Amendments to Rules of Virginia Supreme Court Part 6, Section IV, Paragraph 10—Regarding Promulgation of Advisory Opinions

RICHMOND—*The Virginia State Bar Council, at its meeting on February 20–21, 2004, in Richmond, Virginia, is expected to consider for approval, disapproval, or modification, proposed amendments to Paragraph 10 of the Rules of Virginia Supreme Court, Part 6, Section IV, regarding the promulgation of legal ethics, lawyer advertising and solicitation, and unauthorized practice of law opinions.*

Part 6, Section IV, Paragraph 10

In order to stimulate more bar and public comment on advisory opinions, the Virginia State Bar's Standing Committees on Lawyer Advertising, Legal Ethics, and the Unauthorized Practice of Law Committees are proposing amendments to Part 6, Section IV, Paragraph 10 of the Rules of the Virginia Supreme Court. The current rules governing the process for issuing advisory opinions do not provide for notice and public comment *before* the opinions are issued by one of the Standing Committees. The proposed amendments to Paragraph 10 would require the Standing Committees to issue "draft" or "proposed" opinions which would be published for comment while the opinions are still pending before the committee.

Two other areas of needed improvement in Paragraph 10 have also been identified. The first clarifies the application of Paragraph 10. Specifically, the rule-making process outlined in Paragraph 10 applies only to changes to Rules of Professional Conduct and the Unauthorized Practice Rules, and not to changes to Paragraph 13 containing the rules of procedure for the discipline system. To reinforce that Paragraph 13 changes are not subject to the Paragraph 10 process, a definitional change limits this paragraph's application to rule changes proposed by the Legal Ethics Committee, the Unauthorized Practice of Law Committee, or the Lawyer Advertising Committee.

The final amendment regards the informal ethics advice that the bar's Ethics Counsel provide via the telephone. While it has always been Ethics Counsel's policy that these calls are confidential, that policy is not written. Language has been added to establish that the calls are confidential and that Ethics Counsel may only testify regarding the content of such a call if the caller consents.

Inspection and Comment

The following proposed amendments to Rule of Virginia Supreme Court, Part 6, Section IV, Paragraph 10 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 amendments by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **February 18, 2004**.*

10. PROMULGATION OF LEGAL ETHICS, LAWYER ADVERTISING, SOLICITATION AND UNAUTHORIZED PRACTICE OF LAW OPINIONS AND RULES OF COURT.

(a) Definitions.

- (i) "Bar" shall mean the Virginia State Bar.
- (ii) "Committee" shall mean the Legal Ethics Committee, the Unauthorized Practice of Law Committee, the Committee on Lawyer Advertising and Solicitation, or all of them, as required by the context in which it is used.
- (iii) "Council" shall mean the Council of the Virginia State Bar.
- (iv) "Court" shall mean the Supreme Court of Virginia.
- (v) "Member" shall mean any active member of the Virginia State Bar.
- (vi) "Executive Director" shall mean the Executive Director of the Virginia State Bar.
- (vii) "Advisory Opinion" shall mean a written statement of the subject involved, the question presented, the Rule of Court or other precedents relied upon, the opinion reached and the reasons therefor; if dealing with a subject of general application, an

- advisory opinion may be stated in the form of a proposed Rule of Court or amendment thereto.
- (viii) "Ethics Counsel" shall mean the Ethics Counsel or an Assistant Ethics Counsel of the Virginia State Bar.
- (ix) "Rule" and "Rule of Court" shall mean throughout this paragraph only those rules proposed by either the Standing Committee on Legal Ethics, the Standing Committee on Lawyer Advertising and Solicitation, or the Standing Committee on the Unauthorized Practice of Law.
- (x) "Informal Staff Opinion" shall mean advice and opinions provided to Members requesting same from Ethics Counsel.
- (b) Requests for Advisory Opinions.
- (i) A legal ethics, lawyer advertising, solicitation or unauthorized practice of law advisory opinion of the Bar concerning contemplated or actual conduct may be requested by any member.
- (ii) All requests for advisory opinions shall be in writing, addressed to the appropriate Committee, in the hypothetical, and on a form prepared by the Committee calling for such information as the Committee may request; provided, however, that a request for an opinion as to the propriety of advertising or solicitation may include the specific advertisement or solicitation in question.
- (c) Advisory Opinions of the Committees.
- (i) Upon receipt of a request for an advisory opinion, the Ethics Counsel shall review such request to determine whether the request should be referred to the Chairman of the appropriate Committee. If the Ethics Counsel or Committee determines that the request presents a previously resolved issue, the requestor shall be so informed and the request shall be considered terminated unless the requestor states in writing that the requestor has not previously presented the issue and requests that it be reconsidered.
- (ii) The Committee, upon determining that the request presents a previously unresolved issue, or presents for reconsideration an issue not previously presented by the requestor, shall issue, in response to the request, at a proposed advisory opinion, with notice to the requester that the opinion remains pending during the course of the public comment period outlined in subparagraph (iii). Opinions or requests for reconsideration may be by summary affirmation of a prior opinion. The Committee may in its discretion decline to render an opinion regarding any matter which is currently the subject of any disciplinary proceeding or litigation or which presents an issue beyond its purview.
- (iii) ~~In the case of (A) any advisory legal ethics or lawyer advertising or solicitation opinion, and (B) any advisory unauthorized practice of law opinion in which the Committee concludes that the conduct in question is not the unauthorized practice of law, it shall decide, by a vote of the majority of the Committee as in its discretion it may deem appropriate, either to publish the advisory opinion as an informal advisory opinion, or to transmit the advisory opinion to Council for approval, modification or disapproval as a formal advisory opinion. Within 45 days of the issuance of a proposed advisory opinion, the Bar shall cause to be issued a press release that shall state (A) the question presented by the request for an advisory opinion; (B) the conclusion reached by the Committee; (C) a brief synopsis of the rationale for the conclusion; (D) that the advisory opinion may be inspected at the office of the Bar; (E) that at the conclusion of the comment period, the Committee will review the opinion in light of any comments received; (F) that any individual, business, or other entity may submit written comments in support of, or in opposition to, the proposed advisory opinion to the Executive Director, within thirty days of the date on which the press release was issued; and (G) the Committee may choose to adopt, modify, or rescind the opinion in response to the comments received.~~
- (iv) In the case of an advisory unauthorized practice of law opinion in which the Committee concludes following the conclusion of the public comment period that the conduct in question constitutes or would constitute the unauthorized practice of law, the advisory opinion shall be sent to Council for approval, modification or disapproval.
- (v) In the case of any other advisory opinion, the Committee may, by majority vote, publish the opinion as an informal advisory opinion of the Committee or ask Council to review the advisory opinion in accordance with the procedures set out in paragraphs (d), (e) and (f).
- ~~(vi)~~ (vi) Any party requesting an advisory legal ethics, lawyer advertising or solicitation, or unauthorized practice of law opinion who disagrees with the result stated in the Committee's advisory opinion issued following the conclusion of the public comment period, may appeal such opinion, as a matter of right, to Council for approval, modification or disapproval.
- ~~(vii)~~ (vii) Any such opinion expresses the judgment of the Committee and is advisory only. It shall have no legal effect and is not binding on any judicial or administrative tribunal.
- ~~(viii)~~ (viii) Copies of opinions rendered by the Committees will be provided upon request. All such opinions will be provided without

any identifying data. However, all Committee deliberations, draft opinions, memoranda, correspondence, and the like shall be confidential and privileged from discovery and/or subpoena and as such will not be provided to anyone absent Court order entered upon a showing of good cause. Without waiving the confidentiality provision stated above, the Committees, in their discretion, may disseminate draft opinions to the Boards of Governors of Virginia State Bar Sections for written comment when those Sections have an interest in the subject matter of the proposed opinion.

(d) Notice of Advisory Opinions to Be Considered by Council.

- (i) In any case where an advisory opinion is to be considered by Council, and no later than 45 days next preceding the date of such Council meeting at which final action with respect to such advisory opinion is to be taken, the Bar shall cause to be issued a press release which shall state (A) the question presented by the request for an advisory opinion; (B) the conclusion reached by the Committee; (C) a brief synopsis of the rationale for the conclusion; (D) that the advisory opinion may be inspected at the office of the Bar; (E) that the advisory opinion shall be considered by the Council, which will approve, disapprove or modify the advisory opinion; (F) that any individual, business or other entity may file 10 copies of written comments in support of, or in opposition to, the advisory opinion with the Executive Director, within thirty days of the date on which the press release was issued; and (G) that the decision of Council concerning the advisory opinion may be reviewed by the Court.
- (ii) The press release so issued shall also be printed in that issue of the *Virginia Lawyer Register* next preceding the Council meeting at which final action with respect to such advisory opinion will be taken.

(e) Provisions for Comments.

- (i) Within thirty days from the date of the press release provided for in (d) (i), any individual, business or other entity may file with the Executive Director 10 copies of written comments in support of, or in opposition to, the advisory opinion.
- (ii) Within thirty days from the date of the press release provided for in (d) (i), the Attorney General of Virginia shall file with the Executive Director 10 copies of written comments which analyze any restraint on competition which may result from promulgation and implementation of the advisory opinion.
- (iii) Except as specifically authorized by Council, there shall be no oral argument.

(f) Action by Council.

- (i) Upon due consideration of all materials submitted to it, including an evaluation of the competitive effects of approving or disapproving the advisory opinion, Council shall approve, modify or disapprove the advisory opinion, by a majority vote of those present and voting.
- (ii) In the case of any advisory opinion which is not transmitted to the Court for review pursuant to (f) (iii) below, if such advisory opinion is disapproved by a majority of Council present and voting, such action shall be recorded in the minutes of the meeting; if such advisory opinion is approved or modified, it shall be published as an advisory opinion of the Bar.
- (iii) All advisory unauthorized practice of law opinions in which Council concludes that the proposed or actual conduct constitutes the unauthorized practice of law, and all other advisory opinions which Council, by majority vote of those present and voting, desires to transmit, shall be reviewed by the Court pursuant to the notice and review procedures hereinafter set forth.
- (iv) Any such opinion expresses the judgment of Council and is advisory only. It shall have no legal effect and is not binding on any judicial or administrative tribunal.

(g) Review by the Supreme Court of Virginia.

- (i) Within thirty days after the Council meeting at which final action with respect to such advisory opinion was taken, Bar Counsel shall file with the Clerk of the Court 9 copies of a Notice of Advisory Opinion Review; the request for an advisory opinion; all materials submitted to Council by the Bar, the Attorney General, and the public; and the advisory opinion as approved by Council.
- (ii) Within ten days after the filing referred to in (g) (i), the Bar shall cause to be issued a press release which shall state (A) an advisory opinion on a stated subject has been filed with the Court; (B) the advisory opinion may be inspected at the office of the Bar; (C) the advisory opinion will be considered by the Court, which shall approve, disapprove or modify the advisory opinion; and (D) any individual, business or other entity may submit written comments in support of, or in opposition to, the advisory opinion by filing 9 copies with the Clerk of the Court and three copies with the Executive Director of the Bar, within 45 days from the date of issuance of the press release.
- (iii) Except as specifically requested or ordered by the Court, there shall be no oral argument.
- (iv) Upon due consideration of all material submitted to it, including an evaluation of the

competitive effects of approving or disapproving the advisory opinion, the Court shall approve, modify or disapprove the advisory opinion, with or without a written opinion by the Court. Upon modification or approval of the opinion, it shall become a decision of the Court.

(h) Complaints of Unauthorized Practice of Law.

- (i) Any written complaint of the unauthorized practice of law addressed to the Bar or to the Committee shall be investigated by the Ethics Counsel or his staff.
- (ii) Upon completion of an investigation, and not later than 180 days after the filing of the complaint, the Ethics Counsel shall report to the Committee the status of the investigation.
- (iii) Upon review of all materials submitted to it, by a majority vote of those present, the Committee may
 1. Dismiss the complaint due to insufficient evidence or other good cause; or
 2. Dismiss the complaint with cautionary language.
- (iv) After considering the evidence before it, if a majority of the Committee present finds there exists probable cause to believe the person, firm, or corporation is engaged in the unauthorized practice of law the Committee may
 1. Dismiss the complaint with a letter agreement in which the Respondent agrees to cease the activity which is the subject of the complaint; or
 2. Refer the complaint to the Attorney General of Virginia, a Commonwealth's Attorney or other appropriate agency for such action as authorized by law.

(i) Subpoena Power.

- (i) Upon receiving a complaint alleging facts indicating that a person, firm or corporation is or may be unlawfully practicing law and provided that the issuance of a summons or subpoena is necessary for the investigation of such alleged practice, the Ethics Counsel may issue a summons or subpoena in the name of the Commonwealth for the attendance of any person and production of books and records at the place and time designated in the summons or subpoena. The Committee or an investigator to whom a complaint is assigned may use a summons to examine witnesses or obtain statements from persons having knowledge of the subject matter of the complaint.
- (ii) Every circuit court shall have power to enforce any summons or subpoena issued by the Ethics Counsel and to adjudge disobedience thereof as contempt.

(j) Committee Hearing.

- (i) Within 45 days after receipt of the Ethics Counsel's report, the Committee may meet to consider the matter submitted and hear any evidence or witnesses subpoenaed by the Committee.
- (ii) After considering the evidence before it, if a majority of the Committee present finds there exists probable cause to believe the person, firm, or corporation is engaged in the unauthorized practice of law, the Committee may direct the Ethics Counsel to forward the results of the Bar's investigation, copies of any records, and a summary of the Committee's findings to the Attorney General of Virginia with a request that the conduct be enjoined and/or that any other remedy available under the Code of Virginia be pursued.

(k) Modification, Amendment or Repeal of a Rule.

- (i) The Court, upon petition by the Bar, may modify, amend, or repeal any Rule first promulgated pursuant to the procedures of this paragraph.
- (ii) Such a petition may be filed only pursuant to a majority vote at a Council meeting, by members there present and voting.

(l) Informal Staff Opinions of Ethics Counsel

- (i) Ethics Counsel shall provide informal advice and opinion to Members requesting same, based on the specific facts which Members provide to Ethics Counsel.
- (ii) In no case shall Ethics Counsel be compelled to testify, via subpoena or otherwise, in any judicial or adjudicative proceeding, except on behalf of a respondent in disciplinary proceedings of the Virginia State Bar, regarding any advice and/or opinion provided to that attorney. In no case shall Ethics Counsel be subject to subpoena or otherwise compelled to testify in any judicial or adjudicative proceeding as an expert witness regarding legal ethics and/or the practice of law. Rather, in all such instances, testimony of Ethics Counsel shall be limited to the substance of any communications by and between Ethics Counsel and the Member, where such communications are an issue in the proceeding.
- (iii) All communications between Ethics Counsel and any Member requesting advice or opinion shall be confidential and Ethics Counsel shall not disclose the content of any such discussion without the express written consent of the Member to whom Ethics Counsel provided such advice or opinion. 