

Highlights of Council Meeting

June 17, 2004

At its annual meeting on June 17, 2004, in Virginia Beach, the Council of the Virginia State Bar heard the following reports and took the following significant actions:

Leadership Development Issues

The Virginia State Bar President has appointed a Leadership Department Task Force that will examine certain issues relevant to leadership of and planning for the agency. These issues include:

- Should the VSB establish a vice president's position, to give officers one additional year of experience and preparation before becoming president? Currently, an officer serves as president-elect for only a year, then is sworn in as president.
- Does the bar provide adequate support for its presidents, especially those who come from small firms or solo practices? Should a stipend be paid, or VSB dedicated staff support be provided, to assist the president in his or her duties?
- What should the agency do to meet its space needs when its Richmond lease expires in 2008?
- How should the next VSB chief administrator be selected when current Executive Director Thomas A. Edmonds elects to retire?

Corporate Counsel Registration

A new Supreme Court rule that requires in-house counsel to be certified by or registered with the Virginia State Bar had drawn 525 applicants by the June meeting, with more expected to apply by the rule's deadline on July 1. The rule applies to lawyers who are licensed in states other than Virginia, but who work exclusively for a business in Virginia.

Disciplinary Cases

Barbara Williams, bar counsel, reported that the disciplinary case backlog has decreased. There are currently fewer than

900 open complaints. She attributed the decrease in the case backlog to new procedural rules, such as the interim suspension provision applicable when respondents fail to comply with subpoenas duces tecum and disciplinary board orders, and new substantive rules making failure to cooperate in a bar investigation a separate disciplinary offense. In addition to the rule changes, she noted that the district committees, the disciplinary board and the clerk's office are making concerted efforts to resolve cases more expeditiously. These developments appear to have precipitated an increase in the number of respondents electing three-judge circuit court panels, and a corresponding need for the bar to provide prospective panel members more information about the attorney disciplinary process.

Lawyer Advertising

On the recommendation of the Standing Committee on Lawyer Advertising, the Council without dissent approved and recommended to the Supreme Court rule changes that would:

- Require lawyers to submit copies of their audio or video advertisements to the bar within thirty days of the ad's first airing. Currently, lawyers are required to maintain copies of the ads and provide them at the committee's request.
- Allow all law firms that advertise to file a written statement with the VSB that identifies the individual lawyer who is responsible for the ads. The written statement would be in lieu of identifying the responsible lawyer in each and every ad.
- Clarify language governing the use of the name of a retired or deceased lawyer in a firm name. The clarification states that the lawyer's name can be used if the lawyer was a member of the firm, if the use is authorized by law or contract, and if the public is not misled.

Committee on Lawyer Discipline

On the committee's recommendation, the Council without dissent approved and recommended to the Court rule changes that would:

- Allow a district committee panel to reconsider misconduct charges it has previously dismissed only if material evidence not originally available has been discovered, and if the original panel votes unanimously for reconsideration.
- Allow a respondent in a disciplinary case to appeal a subcommittee issuance of an admonition without terms imposed without his or her consent. The appeal must be made to the district committee within ten days of the issuance.
- Requires an attorney charged with misconduct to file an answer, regardless of whether the case is heard by a district committee, the disciplinary board or a three-judge panel.

Unauthorized Practice of Law

The UPL Committee recommended, and Council without dissent approved and referred to the Court, proposed changes that would clarify Rule 1.7, which addresses concurrent conflicts in representation. The new language, which was taken from the American Bar Association's Ethics 2000 initiative, requires lawyers to memorialize in writing that the attorney and client discussed a conflict and the client consented to the lawyer continuing representation. While it would be preferable for the client to consent in writing according to the proposal, the lawyer's memorialization would be sufficient.

VSB Budget

The Council approved expenditures of \$9,908,189 for the fiscal year ending June 30, 2005. The budget was reviewed by the

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Supreme Court, which approved it with some modifications. Line items of note include:

- A 3.5 percent annual raise pool increase for bar staff, effective November 25, in keeping with increases in other state employees' salaries.
- The Court directed that the VSB allocate \$10,000 to support a pro bono child custody program, which will, for the time being, be implemented on a pilot basis in two locations by the VSB's Virginia Lawyer Referral Service.
- The Court also directed that \$25,000 be added to the budget to support programs that offer legal practice management education and assistance to rural, solo and small-firm attorneys.
- The Court has asked for an actuarial study of the Clients' Protection Fund, to assure it will be in solid financial shape to meet its obligations in coming years. The VSB has budgeted funds for the study.
- A further \$225,000 will be spent on the bar's computer software re-write and integration project, with more likely to be needed in the following fiscal year.
- Efforts to improve indigent defense—including increasing the fees paid to court-appointed criminal defense attorneys.
- Increasing access of *pro se* parties to the judicial system.
- Preserving the dignity and civil rights of respondents who face involuntary civil commitment proceedings.
- Providing practice support to rural, small-firm and solo practitioners to help them avoid trust account violations and other professional misconduct related to office management. Justice Cynthia Kinser will also be involved in the project, he said.
- Making court buildings and forms "user friendly" for senior citizens, who will make up 15 to 20 percent of Virginia's population by 2015.
- Ongoing public relations efforts to explain to schoolchildren, adult citizens and members of the General Assembly the role of the judicial system, including the VSB. The Court would like to sponsor community forums during which lawyers could voice opinions about the judicial system, ethics rules and the Virginia State Bar, he said.

Chief Justice's Initiatives

Chief Justice Leroy R. Hassell Sr. asked to speak to the Council to describe how he views the relationship of the Court and the VSB, as well as some initiatives he hopes to implement during his tenure as chief justice.

The Chief Justice said the Court intends to be more active in its oversight responsibilities with the VSB and other entities that fall under the judicial branch of government. The Court also will expect the bar's help with certain projects, he said. Those projects include:

- Hassell's pro bono child custody program, which will help ensure that people engaged in custody and visitation disputes obtain legal representation when they don't have resources to hire a lawyer.