



Virginia State Bar

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October 3, 2005

Thomas A. Edmonds, Executive Director
Virginia State Bar
707 East Main Street
Suite 1500
Richmond, Virginia

Re: Proposed New Pro Hac Vice Rule
Rule 1A:4, Rules Of The Supreme Court Of Virginia

Dear Mr. Edmonds:

I write on behalf on the Corporate Counsel Section of the Virginia State Bar and in response to the published proposed new Rule 1A:4 dealing with *pro hac vice* admissions in the Commonwealth of Virginia.

The Corporate Counsel Section recognizes the need for a more comprehensive state-wide rule governing the *pro hac vice* admission of non-Virginia attorneys and the obvious deficiencies in current Rule 1A:4, and the Section applauds the efforts of the MJP Task Force in seeking to achieve these goals through the promulgation of proposed new Rule 1A:4. It is in this spirit that the Section presents the following comments and hopes that they will be of assistance to the Council of the Virginia State Bar in its consideration of this proposed rule change.

Section 2. Association of Local Counsel.

1. Although it may be appropriate to require that local counsel be present and participate "in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal," it is suggested that an exception to this requirement should be specifically carved out for the conduct of all pre-trial depositions, whether discovery or *de benne esse*.
2. The language of this provision which imposes upon local counsel "joint responsibility with the out-of-state lawyer to the client, other parties, witnesses"

would appear to be excessively broad in that it could be interpreted to impose upon local counsel absolute civil liability when the goal of this rule should be limited to holding local counsel responsible to the tribunal for the conduct of the *pro hac* attorney.

Section 3. Procedure for applying

3. The introductory paragraph of this section together with **Section 5** gives a tribunal the unbridled discretion to approve or reject an attorney's application to appear *pro hac vice* notwithstanding that attorney having satisfied each and every requirement of the rule. **Section 6** gives a tribunal the unbridled discretion to summarily revoke an attorney's previously granted application to appear without cause or justification. Declining to approve the application of an attorney with a lengthy record of in-court misconduct, or revoking approval where an attorney previously granted the privilege to appear *pro hac* has been publicly sanctioned in his/her home state for misconduct, would be appropriate. However, granting the tribunal absolute discretion in these matters can lead to an inappropriate use of such authority and has the serious potential for prejudicing the party on whose behalf the non-Virginia attorney is appearing, to say nothing of denying that both the client and the attorney due process.
4. The third full sentence in the introductory paragraph of **Section 3**, starting with the words "For good cause shown . . ." permits a tribunal to let an attorney appear *pro hac vice* even if that attorney's application is not completed. This would appear to be inconsistent with Section 38) which states that "an out of state lawyer shall make no appearance in a case until the tribunal . . . enters the order granting the motion to associate counsel *pro hac vice*."
5. The representations contained in any application to appear *pro hac vice* are clearly binding upon both the local counsel and the applicant and subjects each to the Rules of Professional Conduct of Virginia and any other state wherein either of the attorneys is admitted. Thus, **Section 3(a)**'s requirement that the application be verified and **Section 3(b)**'s requirement for a formal "certificate of good standing" from the applicant attorney's home state are simply unnecessary bureaucratic requirement that will serve only to delay, obfuscate, and complicate the application process.
6. The requirement for a \$250 fee appears to be unjustifiably high.

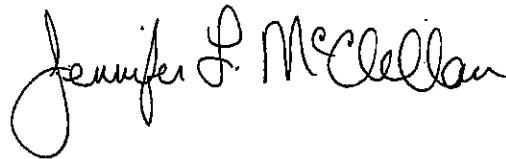
Section 4. Verified Application

Section 4(h) requires the applicant attorney to disclose the specific details of any pending disciplinary matter; **Section 4(I)** requires the applicant attorney to disclose whether the applicant had "within the past three (3) years been disciplined by any court, agency or organization authorized to discipline the out-

of-state lawyer.” Such requirements fail to take into consideration the fact that a pending or past disciplinary matter might be non-public under the rules of the jurisdiction where the discipline is pending or was imposed. The rules which might render such matters non-public were formulated for the protection not only the subject of the disciplinary procedure but of other persons such as the complainant. Indeed, it should be born in mind that Virginia’s own rules make the initial states of a disciplinary matter and certain sanctions non-public, and that these rules were promulgated for the benefit of all parties and the system itself.

As noted above, the Corporate Counsel Section hopes that these comments will be of assistance to the Council of the Virginia State Bar in its consideration of this proposed rule change.

Respectfully submitted

A handwritten signature in black ink, reading "Jennifer F. McClellan". The signature is written in a cursive style with a large initial "J" and "M".

Chair, Virginia State Bar Corporate Counsel Section