MULTI-JURISDICTIONAL PRACTICE TASK FORCE

Marni E. Byrum, chair

Status summary

After a hiatus since December 2005, the Multi-Jurisdictional Task Force reconvened on April 24, 2007. The purpose of the meeting was to address issues raised by the Supreme Court of Virginia during its review of the Foreign Legal Consultant Rule and the amendments to Rules 5.5 and 8.5 of the Rules of Professional Conduct, which had been brought before the Court for approval. The Court and Virginia State Bar representatives met on February 13, 2007, to discuss these rules. As a result of comments and concerns exchanged during this meeting, the bar withdrew its petitions for approval and referred the rules back to the task force for revision. The MJP Task Force met on April 24, 2007, and revised the rules and petition in accordance with the Court's recommendations. The rules as revised will be prepared for review by the task force again and then published for comment. They will be presented again to the VSB Council in March 2008.

Summary of action taken

Issues raised by Court:

- **Foreign Legal Consultant (FLC) Rule:** (1) The scope of practice of a FLC should be limited to the law of his or her home country and any other country where he or she is authorized to practice and international law. The language of the proposed rule did not state this explicitly. (2) The FLC Rule should also clarify the FLC's qualification as in-house for a Virginia corporation under Rule 1A:5, the Corporate Counsel Rule. Revisions required to accomplish this would be substantive changes that will be published for notice and comment and presented again to the council for approval.
- **Petition in support of proposed rule and rule amendments:** The General Agreement on Trade and Services is no longer the driving force behind the MJP rules. The bar's petition needs to restate the need for adoption of the MJP rules in light of more current developments in international practice, such as individual foreign countries negotiating directly with individual U.S. states that already have FLC rules in effect.
- **Rules of Professional Conduct 5.5 and 8.5:** Amendments to these rules were withdrawn along with FLC Rule because of related content.

Action Taken by the MJP Task Force:

- **Proposed Rule 1A:7 Foreign Legal Consultant Rule**
  A. Further revision of Paragraph (d) Scope of Practice:
  The task force approved a rewrite of this paragraph to limit scope of practice of FLCs to *only matters involving the law of the jurisdiction(s) in which the person is admitted to practice or international law.* The task force also tasked staff to research and draft a definition of "international law" to include in this paragraph.
  B. FLC as in-house counsel for a Virginia employer
  Under Rule 1A:5, the Corporate Counsel Rule, a non-US foreign lawyer may apply under Part 2 for a corporate counsel registration, so presumably a foreign lawyer licensed as a FLC could do so also. The task force agreed that there is no reason why the FLC should be prohibited from serving as in-house counsel when the proposed FLC Rule allows them to open a free standing office or work in a Virginia law firm. For consistency and clarity an amendment to paragraph (e) of the FLC Rule is proposed to include employment as in-house counsel under Part II of Rule 1A:5 among the rights and obligations that a FLC will be entitled.
- **Rule 5.5**
  Revised paragraph (d) to prohibit FLCs from engaging in "temporary practice" by adding a new subparagraph (5): A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.
- **Redrafting of petitions for adoptions of the MJP Rules**
  Petitions will be redrafted removing discussion of GATS and focusing on more recent developments, including the informal mutual recognition and bilateral negotiations between countries such as Australia and, states such as New York and Georgia, and the resolutions adopted by the Council of Chief Justices.