

# CORPORATE COUNSEL NEWS

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Virginia State Bar Corporate Counsel Section

<http://www.vsb.org/sections/cc/index.htm>

## Pro Bono for In-House Counsel: Further Amendments to Rule 1A:5

By David Ross Rosenfeld

**M**ay a non-Virginia licensed in-house counsel working in Virginia participate in *pro bono* activities? Not now; but maybe soon.

On June 4, 2003, the Virginia Supreme Court adopted Rule 1A:5 which required that after July 1, 2004, all non-Virginia licensed attorneys employed as in-house counsel in Virginia must either (i) become a regularly admitted active member of the Virginia State Bar; or (ii) obtain a "Corporate Counsel Certificate" under Part I of the rule, or (iii) become "Registered" with the Virginia State Bar under Part II of the rule. Although the Court has amended Rule 1A:5 twice since its original adoption, conspicuously missing from the rule from its inception (although recommended by the task force that conceived the rule) is a provision which would enable Certificated or Registered in-house counsel to perform *pro bono* legal services in Virginia.

To the surprise of many and the distress of some, on October 21, 2005, the Virginia State Bar Council will consider an amendment to Virginia Supreme Court Rule 1A:5 which would permit some foreign in-house counsel to provide *pro bono* legal services in Virginia. However, as many are quick to point out, this is not a rose without thorns.

Among the many of its limitations and restrictions, the proposed *pro bono* amendment would entitle only those non-Virginia licensed in-house counsel who are "certified pursuant to Part I" of Rule 1A:5 to perform *pro bono* legal services. In addition, the proposed amendment further limits the in-house attorney to providing *pro bono* services through a "licensed legal aid society," and then only where the services are being performed "only under the supervision" of an active member of the Virginia State Bar who must also assume "personal responsibility

for supervising the conduct of" the *pro bono* services being performed.

Numerous individuals and organizations continue to speak out against the limitations on in-house corporate counsel *pro bono* activities imposed by the proposed amendment. The formal deadline for submitting comments on this proposed amendment is October 3, 2005 and to do so, you must file "nine copies with the Clerk of the Court and three copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar." However, since the Council of the Virginia State Bar meets to consider this amendment on October 21, 2005, there is plenty of time to send your comments directly to your local state bar delegate or Jennifer McClellan, the Chair of the Corporate Counsel Section of the Virginia State Bar. ♦

### Antitrust Forum

**I**n May of this year, the Corporate Counsel Section of the Virginia State Bar joined with the Corporate Counsel Section of the Richmond Bar Association and McGuire Woods LLP to sponsor the 2005 Antitrust Forum. Held on May 19, 2005 at the Omni Richmond Hotel, this one-half day program, designed for corporate counsel and business executives, explored the antitrust constraints on strategic business decision making and the enforcement priorities of the federal and state antitrust agencies. A stellar panel comprised of Deborah Platt Majoras, Chair, Federal Trade Commission, Thomas O. Barnett, Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice, and Patricia A. Conners, Immediate Past Chair, NAAG Multistate Antitrust Task Force, Florida Attorney General's Office and moderated by Howard Feller, Partner, McGuireWoods LLP, spoke to an audience of more than 90 people. The program concluded with animated interaction between the audience and the panelists and was a resounding success. ♦

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# View from the Chair

By Jennifer L. McClellan, Verizon Communications

Welcome to the 2005-2006 Bar Year. As Chair of the Corporate Counsel Section, I would like to extend a warm 'thank you' to last year's Chair, Eileen Johnson, for her outstanding service to the Section. I look forward to building on her success in the coming year. I would also like to thank the returning members of the Board of Governors for their hard work and dedication.

At its recent annual meeting in Virginia Beach, the section elected two new members to the Board: Robert Chambliss Light, Jr. and Guenet Beshah.

Admitted to the bar in 1980, "Cham" Light has spent the past 20 years at Nationwide Mutual Insurance in Lynchburg, Virginia and, for the past five years, served as Senior Claims Legal Counsel. Before joining Nationwide, Cham spent five years in private practice in Lynchburg and Fairfax. Cham also serves as an arbitrator for Arbitration Forums, Inc. and for the National Association of Mutual Insurance Companies. He is president of the Leftwich Historical Association and the Dunlora Institute's Board of Directors, Captain of the University of Virginia Law Advisory Committee, and a member of the Board of Directors of the Lynchburg Historical Foundation and the Central Virginia Land Conservancy. Cham is a graduate of T.C. Williams School of Law (1980) and the University of Virginia (1976).

Guenet Beshah currently serves as

Associate General Counsel and Director of Capital One in Richmond, Virginia. She leads and manages the Strategic Support Group which provides integrated legal support to the Company's auto finance, global finance, securities, human resource, brand, IT and intellectual property functions. Prior to her joining Capital One in 1998, Guenet spent 5 years as an associate at Christian & Barton, LLP, in Richmond. She also spent a semester as an adjunct professor at T.C. Williams School of law teaching legal writing. Guenet is a member of the boards of Team Up Richmond, Court Appointed Special Advocates (Richmond), and, the Richmond Bar Association, and the Old Dominion Bar Association (Richmond chapter). She also serves on a committee appointed by Mayor Douglas Wilder to study the City Attorney's Office. Guenet is a graduate of Duke University School of Law (1993) and Hampton University (1986).

To learn more about the Corporate Counsel Section Board of Governor's and Section activities, visit our web site at <http://www.vsb.org/sections/cc/index.html>.

To our returning section members, thank you for renewing your membership in the Corporate Counsel Section. To our new members: Welcome!. And to all of you - Please join us in the numerous functions and activities sponsored by the Corporate Counsel Section. You are all in for an exciting year. ❖

## Mark Your Calendars

**October 21, 2005** — VSB Council Meeting Boar's Head Inn, Charlottesville, Virginia

**November 10-17, 2005** — VSB 32nd Annual Midyear Legal Seminar, Barcelona, Spain

**December 7, 2005** — Corporate Counsel Section Board of Governors Meeting, Alexandria, Virginia

**February 1 -7, 2006** — ABA Midyear Meeting, Chicago, Illinois (NB: Relocated from New Orleans)

**May 19, 2006** — Annual Spring Luncheon for the VSB Corp Counsel Section in Richmond, Tidewater, & Northern Virginia. Details to be announced

**June 15-18, 2006** — Virginia State Bar Annual Meeting, Virginia Beach, Virginia.

**August 3-9, 2006** — ABA Annual Meeting, Honolulu, Hawaii

\* For a complete listing of Professionalism course dates, check the VSB website: <http://www.vsb.org/calendar.htm>

## Editorial Policy

CORPORATE COUNSEL NEWS is published by the Virginia State Bar Corporate Counsel Section and is intended to provide information relating to law practice and management for the education and benefit of in-house counsel and others with similar interests. Statements or expressions of opinion or comments appearing herein are those of the editors, authors and contributors and should not be deemed as endorsed by the Corporate Counsel Section or the Virginia State Bar.

CORPORATE COUNSEL NEWS welcomes articles of interest to fellow members of the Corporate Counsel Section for publication in future editions.

Newsletter Editor

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# Pro Bono Rule Amendment

*The following is a copy of the letter sent by Jennifer McClellan, Chair of the Corporate Counsel Section regarding the proposed change to Rule 1A:5 dealing with pro bono legal services for in-house corporate counsel.*

Patricia L. Harrington, Clerk  
Supreme Court of Virginia  
100 North Ninth Street  
Richmond, VA 23218-1315

October 3, 2005

Re: Pro Bono Services and Corporate Counsel

Dear Ms. Harrington:

We are writing regarding proposed amendments to Rule 1A:5 of the Rules of the Supreme Court. As you are aware, the Corporate Counsel Section was active in developing and promoting Rule 1A:5, but expressed concern at the deletion of language relating to the participation of certified corporate counsel in pro bono activities. We, therefore, requested that the Court reconsider the decision to strike that part of the proposed Rule 1A:5 to permit a lawyer certified under Part I of the Rule to participate in pro bono programs operated and controlled by any licensed legal aid society. We are delighted that the proposed amendment would reinstate that language.

Several members of the Corporate Counsel Section have raised concerns that the restrictions outlined for Part I certified in-house counsel would likewise apply to fully licensed Virginia attorneys who happen to be in-house counsel. Because the Corporate Counsel Section was not involved in the development of the proposed amendment, as it was in the development of Rule 1A:5, we have not had sufficient time to explore this concern. However, we would respectfully request that the Court consider adopting rules that would clarify the ability of fully licensed in-house counsel to participate in pro bono activities.

As we stated in comments on Rule 1A:5 last year, the demand for pro bono legal services far exceeds the supply of attorneys willing to provide them. Attorneys in corporate positions have sufficient training and access to practice aides in the legal subject matters typically faced by indigent people to provide adequate representation. Moreover, the ethics rules bind in-house counsel, as they do all attorneys, to be competent to represent any client we undertake to assist. However, recent unauthorized practice of law opinions, as well as the proposed restrictions on Part I certified in-house counsel may have a chilling effect on a fully licensed in-house counsel's ability to provide pro bono services.

Sincerely,



Copy to:  
Thomas A. Edmonds

Jennifer L. McClellan  
Chair, Corporate Counsel Section

# Amendment to Pro Hac Vice Rule

By David Ross Rosenfeld

At its meeting on October 21, 2005, the Council of the Virginia State Bar will vote on a proposed new *pro hac vice* rule. Developed to replace the existing Rule 1A:4 of the Virginia Supreme Court rules, this proposal, the work product of the VSB's Task Force on Multi-Jurisdictional Practice, seeks to develop rules that define and regulate temporary practice in Virginia by lawyers who are not members of the VSB. To accomplish that end, the rule being considered by Counsel provides that the out-of-state lawyer seeking admission must be licensed and in good standing to practice in a U.S. jurisdiction, file a verified application and a written motion to appear *pro hac vice*, and pay an application fee of \$250.00. The proposed rule limits the number of appearances that out of state lawyer may make to seven within a 12 month period, requires the association of local counsel whose signature must appear on all pleadings, and requires the applicant to consent to the jurisdiction of the courts and agencies of the Commonwealth of Virginia and the disciplinary jurisdiction of the Virginia State Bar.

On October 3, 2005, Jennifer McClellan, the CCS Chair, wrote to Tom Edmonds, the Executive Director of the Bar supporting Council's desire to achieve 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 applauding "the efforts of the MJP Task Force in seeking to achieve these goals." However, Ms. McClellan did note that the rule as proposed lacks reasonable exceptions to the required participation of local counsel, unreasonably expands the malpractice exposure of local counsel, inappropriately accords the "tribunal the unbridled discretion" to approve, reject or revoke an out of state attorneys *pro hac vice* application, and imposes "bureaucratic requirements that will serve only to delay, obfuscate and complicate the application process.

A complete copy of Ms. McClellan's October 3, 2005 letter may be found on the CCS web site: <http://www.vsb.org/sections/cc/index.html>. ❖

# Corporate Counsel Career Program

by David Ross Rosenfeld

For the past several years, the Corporate Counsel Section of the Virginia State Bar (CCS) has sponsored programs for law school students designed to explore and illuminate the role of in-house corporate counsel in the public and the private sector. On March 29, 2005, Chris Floyd, General Counsel of Hall Automotive in Virginia Beach and a member of the CCS Board of Governors, led a panel of corporate lawyers in a program held at Regent Law School. Sitting on the panel with Chris were Randy Noe, counsel with Norfolk Southern Corp. and also a Board member, Lori-Don Gregory, Vice President and Senior Counsel at Amerigroup Corporation, and Rebecca Colaw, a Regent alum and a staff attorney with Hall. More than forty students, career services employees and professors attended this hour long program during which the panel discussed the role of corporate counsel and answered students' questions on such topics as how to find and market yourself for an in-house position, the pros and cons of in-house practice, and

the quality of life in-house verses in a law-firm environment. Pizza and soda were provided compliments of the CCS.

A similar program being led by David Rosenfeld will be given at the George Mason University Law School in Arlington, Virginia, on November 2, 2005. Other programs are in the planning stages for the University of Virginia in Charlottesville (led by Ed Beck of Exxon Mobil - 703-846-5877), Washington & Lee, Liberty University, and Appalachian School of Law (led by Robert (Cham) Light - 434-238-1086), William and Mary (led by Randy Noe (757-533-4887), and University of Richmond School of Law (led by Guenet Beshah - 804-284-2721). CCS member interested in participating in one of these panels or in organizing a law school Corporate Counsel Career program, are urged and encouraged to call the program leader in your area. ❖

# An Ethics Quiz for Corporate Counsel

by David Ross Rosenfeld

The CCS Board of Governors and Editor of the Corporate Counsel Section Newsletter are delighted to introduce this new feature in the Newsletter. Devoted exclusively to addressing ethics issues of concern to all corporate counsel, beginning with this edition, each newsletter will present a practical question focusing on legal ethics in the corporate arena. The suggested solution to the question together with letters commenting on the question and solution will be published on the corporate counsel section web site: <http://www.vsb.org/sections/cc/index.html>.

## This Month's Question

The management of the Widget Mfg Corp. ("Widget") learns that Vice President X approved a corporate transaction that violated a series critical corporate policies and created serious civil and criminal exposure for Widget. Widget's in-house counsel immediately calls in Law Firm that has defended Widget and its officers in past matters, but has never represented VP X, individually.

In the presence of in-house counsel, an associate of Law Firm conducts an interview of VP X during which the associate tells VP X that he has the right to have his own lawyer attend. VP X responds that he doesn't need a lawyer since "Obviously, the associate and in-house counsel are his lawyers!" Neither associate nor in-house counsel respond and during the course of the interview damaging evidence is obtained from VP X which is used thereafter to terminate VP X's employment for cause, thereby causing him to lose significant termination benefits.

Did Law Firm and/or in-house counsel have any duty to VP X? Did they violate any duty to VP X? May Law Firm continue to represent Widget in any matter, claim, or controversy, which relates to VP X's conduct. ♦

# Student Interns for In-house Corporate Counsel

By David Ross Rosenfeld

As a pilot project, this year the Corporate Counsel Section will offer itself as a clearing house for Virginia corporate employers seeking to engage legal interns for the summer of 2006, and law students interested in securing such positions. Corporate counsel and corporate employers seeking interns for the summer of 2006 and interested in participating in this project should prepare a

brief statement identifying the entity's name and address, and the name and phone number of the entity contact person. The statement should also describe the nature of the position to be filled and whether the position is salaried. These statements will be posted on the CCS web site alphabetically according to entity name. Law students at Virginia law schools seeking summer intern positions will be invited to submit their resumes which

will also be scanned and posted alphabetically on the CCS web site.

The Board of Governors is also looking for a CCS member who might be willing to work with the Section's web master and oversee this pilot project. Interested persons should contact Jennifer McClellan, the CCS Chair by phone at 804-772-1512, or by e-mail at: [jennifer.i.mcclellan@verizon.com](mailto:jennifer.i.mcclellan@verizon.com). ♦

# Annual Spring Luncheon *by David Ross Rosenfeld*

**C**elebrating their rites of spring, on May 19, 2005, Virginia corporate counsel gathered throughout the Commonwealth to participate in the annual Corporate Counsel Section luncheons. Held simultaneously in Northern Virginia, Richmond, and Tidewater, corporate counsel from around the state joined for a luncheon of networking, fellowship, and good food.

In Northern Virginia, organized by Scott Snyder of St. Paul/Travelers, the luncheon was held at Clydes of Tysons Corner. In Richmond, corporate counsel joining with members of the Richmond Bar Association, gathered at the Downtown Club in a program orchestrated by Douglas D. Callaway of Wachovia Securities. In the Norfolk/Tidewater area, Section board members M.

Christina Floyd, Hall Automotive and Randall S. Noe, Norfolk Southern Corp hosted corporate counsel for lunch at the Harbor Club.

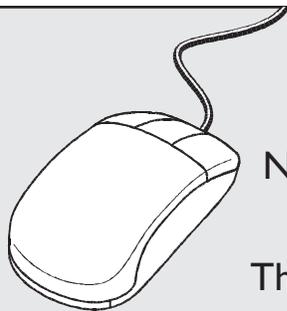
For those whose calendars and prior commitments made attendance at the 2005 luncheon impossible, you will be relieved to learn that the Annual Corporate Counsel Section Luncheon will be repeated during the second week in May, 2006. An event definitely not to be missed! ❖

*Mr. Rosenfeld is a solo practitioner in Alexandria, Virginia providing ethics counsel to attorneys and corporate counsel. He is a member of the Corporate Counsel Section Board of Governors and editor of the Corporate Counsel Section Newsletter.*

## At the Beach: Corporate and Government Ethics *by David Ross Rosenfeld*

**A**t the 67th Annual Meeting of Virginia State Bar held at Virginia Beach this past June 2005, the Corporate Counsel Section teamed up with the Business Law, Administrative Law, and Antitrust Sections to sponsor and produce an outstanding CLE program titled, "Ethical Issues in Dealing with Governmental Entities." For an hour and a half, a panel of experts consisting of Ann Marie Cushmac, Senior Assistant Attorney General and Chief of the Tobacco Unit of the Office of Attorney General Jerry Kilgore, James McCauley, Ethics Counsel to the Virginia State Bar, and Sharon Pandak, former County Attorney for Prince William County and now with Sands

Anderson Marks & Miller, P.C., grappled with a variety of hypotheticals crafted and presented by Thomas Spahn, a partner with McGuire Woods LLP. These hypotheticals addressed core ethical issues which arise when lawyers serve in government, represent the government, litigate against the government, cooperate with the government, and hire from the government and promoted lively discussion and debate among both the panel and the audience of more than 100 people attending. Definitely, this CLE was by far one of the most lively events at this summer's meeting. ❖



Need the date of the next In-House Corporate Counsel CLE?

Thinking of getting active in the Corporate Counsel Section?

**CHECK OUT OUR WEB SITE!!**

**<http://www.vsb.org/sections/cc/index.html>**

# VIRGINIA CORPORATE COUNSEL VOLUNTEER FORM

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ M.I.: \_\_\_\_\_

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City / State / Zip: \_\_\_\_\_

Business Phone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Are you (check one)

- Corporate Counsel       Attorney working for a law firm and interested in Corporate Counsel matters

I am interested in (check all that apply)

- Corporate Counsel Pro Bono work       Writing for the newsletter  
 Producing a Corporate Counsel continuing legal education program  
 Working on the CLE program for the annual meeting  
 Hosting a regional Corporate Counsel luncheon in May, 2005  
 Working with local law schools on the Corporate Counsel Career Program  
 Producing materials for the website       Other \_\_\_\_\_

Mail to: **Catherine Whitehead**, Virginia Corporate Counsel Section  
Virginia State Bar  
707 East Main Street, Suite 1500  
Richmond, VA 23219-2800

Or Fax to: Catherine Whitehead at (804) 775-0501      Or Email to: whitehead@vsb.org

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Bar (if other than Virginia): \_\_\_\_\_

Employer: \_\_\_\_\_

Address: \_\_\_\_\_  
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City / State / Zip: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**Dues:** \$20 for July 1 - June 30.

Dues are waived during the last quarter of the fiscal year (April - June). You will be billed in July for the following year.

Please return your request to:      Membership Department  
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