

Amendments to Virginia Supreme Court Rule 1A:5 Virginia Corporate Counsel and Corporate Counsel Registrants

In April 2003, the Virginia State Bar's Task Force on Admission of Corporate Counsel submitted proposed Rule 1A:5 to the Virginia Supreme Court requiring the mandatory licensing of all in-house corporate counsel working in Virginia, including a provision for corporate counsel attorneys to opt out of the requirements necessary for active members of the bar. On June 4, 2003, the Supreme Court of Virginia approved proposed Rule 1A:5 which becomes effective September 1, 2003. The adoption of this new rule effectively overrules UPL Op. 178, since the rule now provides that an in-house counsel is engaged in the practice of law in Virginia when he or she provides legal services to a Virginia employer. Under Part One of the rule, a lawyer in good standing in another state may obtain a corporate counsel certificate from the bar under which his or her practice is limited to the representation of one Virginia employer. A corporate counsel certificate authorizes the in-house counsel to represent his or her employer in state courts without having to meet the *pro hac vice* requirements applicable to foreign attorneys under Rule 1A:4. Lawyers obtaining a certificate under Part One must meet all the requirements for active membership in the Virginia State Bar, including the twelve hour mandatory MCLE requirement which active members must fulfill annually. Another significant change made by Part One is that the period of time a lawyer practices law under a Corporate Counsel Certificate 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. Under the current rules of admission, in-house counsel are not regarded as "practicing law" in Virginia and therefore cannot include their years in service as in-house counsel for a Virginia employer when moving for admission to the Virginia bar without examination.

Under Part Two, a foreign attorney in good standing in another state who intends to work in Virginia as in-house counsel may "opt out" of the requirements for active membership in the bar. In-house counsel choosing to "opt out" must nevertheless register with the bar as in-house counsel and pay a registration fee and annual dues. Unlike their counterparts licensed under Part I, registrants under Part II may not represent their employer in court unless they associate a Virginia admitted attorney and move for admission *pro hac vice*. Also, their time in service as in house counsel for a Virginia employer shall not be considered by the Board of Bar Examiners should such counsel seek admission to the Virginia bar without examination.

Any in-house lawyer who receives a certificate under Part One or registers under Part Two becomes subject to the Virginia Rules of Professional Conduct and the jurisdiction of the Virginia State Bar's Disciplinary System, if a disciplinary complaint is made against them while employed as in-house counsel in Virginia.

The Virginia State Bar will be prepared to register applicants as of the date this rule becomes effective and the deadline for registration is July 1, 2004.

Copies of the rule 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 www.vsb.org.