

Executive Director's Message

by Karen A. Gould



VSB Status Report

VSB/VBA Pro Bono Task Force

The Supreme Court of Virginia has asked the Virginia State Bar, in conjunction with the Virginia Bar Association, to submit for the Court's consideration a proposed rule on pro bono practice by corporate counsel admitted under the Virginia Corporate Counsel Rule (Sup. Ct. Rule 1A:5). That rule now generally requires that Virginia corporate counsel licensed under Rule 1A:5 and providing pro bono services to be associated with a legal aid society and to have his or her pro bono work overseen by a supervising attorney who is a VSB member.

The request followed comments made April 29, 2010, by Randal S. Milch, executive vice president and general counsel of Verizon Communications Inc., about "regulatory impediments" to pro bono work by corporate counsel. Milch contended at the VBA's Pro Bono Summit in April that corporate counsel are "no less talented or committed to meeting the needs of the poor" than are other lawyers.

A Joint VSB/VBA Corporate Counsel Pro Bono Task Force has been formed to draft a revised rule. This proposal will be published for comment and then presented to the VSB Council for approval, hopefully at the October 2010 meeting.

Permanent Bar Cards

Associate VSB members will receive newly designed permanent cards upon payment of their 2011 dues this summer. Active members will receive the current card design upon payment of their 2011 dues. This is an interim card and will expire December 31, 2010. New permanent cards will be issued in December to all active members in

good standing. Membership cards will no longer be issued each year. Members will be able to receive a replacement card for a \$10 fee.

Spare the Child DVD

With funding from the Virginia Law Foundation, the VSB Family Law Section's *Spare the Child* DVD has been completed. The new production replaces an outdated video, which was used for many years to guide divorcing parents in visitation, custody, and child support issues, stressing the best interests of children. Many courts show the video in mandatory litigant education programs required under Va. Code § 16.1-278.15. It is also used by judges, lawyers, and civic groups to encourage mediation and responsible parental behavior. It is anticipated that the video will be seen by at least thirty thousand people a year. English and Spanish versions of *Spare the Child* will be made available for viewing at www.vsb.org. A copy of the DVD will be available from the VSB on request, by contacting Shannon Quarles at quarles@vsb.org or (804) 775-0512.

Supreme Court Forms

The Supreme Court Forms for Bar Members project is moving forward and is expected to be online by July 1, 2010. The forms are ones to which lawyers have indicated they would like to have online access. The Court's Office of the Executive Secretary will make the forms available to VSB members through a Web-based interface between the VSB and the Virginia's Judicial System website. The forms will be accessible through the VSB's members-only portal at <https://member.vsb.org/vsbportal/>.

The forms will not be placed on the Court's public website.

Supreme Court Rule Changes

At its business meeting on March 19, 2010, the Supreme Court of Virginia approved several proposed rule changes, effective immediately:

- Paragraph 10 of Part 6, § IV of the Rules of the Virginia Supreme Court, which governs the promulgation of Legal Ethics and Unauthorized Practice of Law (UPL) Opinions and Rules of Court, was amended to update terminology and eliminate redundancy in procedures for notice and public comment. The rule was reformatted into new subparagraphs to conform to the recent reformatting of Paragraph 13 of the Rules of the Virginia Supreme Court. Paragraph 10 was further amended to require that the bar seek comment from the Attorney General's Office analyzing any restraint on competition resulting from any proposed UPL opinions or Unauthorized Practice Rule amendments that declare activity conducted by a nonlawyer to be UPL. The amendment eliminated the requirement that an attorney general's opinion on restraint of trade be sought for all other UPL and ethics opinions and for all other rule amendments.
- Paragraph 13 of Part 6, § IV of the Rules of the Virginia Supreme Court was amended in various subparagraphs to clarify the term "charge of misconduct." Paragraph 13-10 was amended to delete language regarding mutual agreement. Paragraph 13-22

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was amended to change the procedure for a show cause hearing after a guilty plea or adjudication of a crime.

Still pending before the Supreme Court is the proposal for an Emergency Legal Services rule which would, if adopted, set up a system for the provision of emergency legal services in the event of a disaster. The Supreme Court would first have to declare an emergency to trigger the rule coming into play. Out-of-state lawyers could provide pro bono legal services to Virginia citizens within certain constraints, and displaced out-of-state lawyers could provide legal services in Virginia on a temporary basis if those services were reasonably related to the lawyer's practice in the affected jurisdiction. The proposal was unanimously approved by the VSB Council on June 19, 2008, and has been pending with the Court since July 11, 2008.

Also still pending is a proposed amendment to Rule of Professional Conduct 4.2, which would clarify that a commonwealth's attorney may advise a law enforcement officer regarding the legality of an interrogation or other investigative conduct when a defendant in custody, formally charged, and represented by counsel waives *Miranda* rights and wants to give a statement without his or her counsel present. The amendment was unanimously approved by the VSB Council on October 16, 2009.

New Rule of Professional Conduct 1.18 was approved by the VSB Council on October 16, 2009, by a vote of 67 to 1, and is pending before the Supreme Court. New Rule 1.18 would define a prospective client to whom the duty of confidentiality is owed, and distinguish that prospective client from someone who unilaterally communicates with a lawyer with no reasonable expectation of forming an attorney-client relationship. The proposed amendment also would allow a law firm to screen the lawyer who discussed the possibility of employment by a prospective client to avoid imputation of a conflict to other lawyers in the firm.