



March 27, 2002

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W. Scott Street III, Esquire
Chair, Virginia State Bar Task Force on Admission of Corporate Counsel
Williams Mullen
Two James Center
1021 East Cary Street
Richmond, Virginia 23219

Re: Proposed New Rule Requiring Licensing of Corporate Counsel

Dear Messrs. Glasser and Street:

I am writing as President of the Washington Metropolitan Area Corporate Counsel Association ("WMACCA"), a professional association that serves the needs and represents the interests of corporate counsel. WMACCA, a chapter of the national American Corporate Counsel Association, has more than 400 members in Virginia, a significant percentage of whom will be affected by the proposed new rule requiring licensing of corporate counsel (the "Rule").

In October 2000, WMACCA encouraged the State Bar to undertake the study of alternative approaches to the current method of licensing in-house counsel in Virginia to the end that it would broaden the availability of admission without examination to corporate counsel. We were pleased that the study was conducted and that Edward F. Rodriguez Jr., a former WMACCA Board member, and Cathy Mayes, Co-Chair of the Corporate Counsel Section of the Virginia State Bar, were part of the study committee. Our Board of Directors has discussed at length the final draft of the Rule as published in the January issue of the Virginia Law Register and has received feedback from members about it.

In this letter, we offer comments and suggestions for revisions to the Rule and strongly urge the Bar Council to revisit the rule before forwarding it to the Virginia Supreme Court. We think it is important to recognize that not all corporate counsel in Virginia will want to "waive" into membership in the Virginia Bar after five years. Accordingly, the registration process should be tailored so that the Virginia State Bar ("VSB") knows who is engaged in corporate practice in the state without being overly burdensome to the Virginia State Bar or to the affected attorneys. Our suggestions, described more fully below, are:

- Greatly simplifying the application form and process;
- Modifying the professional responsibility examination requirement;
- Reducing the application fee and annual dues;
- Improving the transferability/portability of the Certificate;
- Recognizing that part-time practice needs to be given greater weight in determining whether a lawyer has fulfilled the requirements for admission without examination;
- Allowing a lawyer with a Corporate Counsel Certificate to engage in pro bono work.

We believe our suggestions reflect the realities of corporate practice and address important concerns about the potential adverse impact of the Rule on more senior attorneys and women.

The Application Form: We urge that the registration process for this status be greatly simplified by adopting a more streamlined form than the one the rule contemplates. Many of our members have expressed deep concern that the application form for registration is too onerous and cumbersome. Please note that, generally, in-house counsel are senior attorneys who have been practicing for many years. For them, completing a form that requires all previous addresses, jobs, and references from each is an unwieldy task. Also, streamlining the application process would be consistent with the understanding that not all corporate counsel in Virginia will apply to "waive" into membership after five years. (If an attorney later wants to "waive" into the Virginia Bar, he or she then would submit him/herself to the more lengthy, detailed application process.)

The Multistate Professional Responsibility Examination: We draw attention to the requirement that applicants provide evidence that they have taken the Multistate Professional Responsibility Examination ("MPRE") and achieved a scaled score of 85 or higher. Many persons in in-house practice never took the MPRE because they were admitted to the Bar before it was implemented. We question whether making these long-serving attorneys take this exam really serves the purpose of this requirement. We offer an alternative approach that could apply to all corporate counsel registering under the Rule: (1) Require that corporate counsel provide certification(s) from the jurisdiction(s) in which the applicant is admitted to practice law that the applicant has not been the subject of any disciplinary actions (and that none are pending); and/or (2) Require that all corporate counsel take a course in Virginia Bar ethics within one year of becoming a Registered Virginia Corporate Counsel. At the very least, senior attorneys who were admitted to practice prior to the implementation of the MPRE should be exempted from this requirement.

The Fee for Registration/Dues: We understand that it is the intention of the Special Task Force that the application fee be the same as the fee for filing an application for admission without examination (\$1500) and that the annual dues for Registered Virginia Corporate Counsel be the same as for other members of the Virginia Bar (\$250). We know that much thought went into setting these fees, but believe that it is inappropriate to charge the same amount for this status as for full membership in the Bar. (We feel particularly strongly about this point given the fact that Registered Virginia Corporate Counsel can practice only for their employer and the limits on transferability/portability of registration.) We are concerned that these costs may have a disparate impact on small businesses and could well deter some businesses from locating in Virginia. It also is of concern to large employers; we note that Freddie Mac, for example, may have to pay more than \$90,000 in initial application fees alone.

Transferability/Portability: As currently drafted, a lawyer practicing under a Corporate Counsel Certificate shall be able to, in effect, transfer that Certificate from one employer to another if he/she gets a new in-house job within six months of his/her last day of employment. In these times, we need to recognize that people may be in transition for more than six months, and that it is not right to then require that they apply for a new Certificate (or pay another full fee). We can tell you that WMACCA currently has several dozen members in transition and that many of these very talented attorneys are finding that the job market is very tight. We believe a more reasonable length of time for transferability would be twelve to eighteen months.

Part-time Practice: Virginia's admission without examination guidelines require that attorneys applying for "waiver" into the Virginia Bar have practiced on a full-time basis for at least five of the previous seven years in a jurisdiction in which the attorney is licensed to practice. The Rule tracks that requirement in stating that "the period of time a lawyer practices law full time on the basis of a Corporate Counsel Certificate issued pursuant to this rule shall be considered in determining" whether the attorney is eligible for admission without examination. We would urge that the Bar examine this requirement and consider changing it. We are concerned that this requirement has a disparate impact on women, who are more likely to practice on a part-time basis than men. It is our experience that, at least in corporate practice, many women have gone to part-time status after establishing their careers while practicing full-time. It would therefore be more appropriate to consider the totality of a part-time attorney's years in practice, rather than a snapshot of five years or give pro-rated "credit" for years worked part-time.

Pro Bono: We concur with the groups that are urging that the Rule be amended to allow attorneys with Corporate Counsel Certificate to engage in pro bono work. Such an amendment would serve the best interests of our communities as well as the desire of many in-house counsel to engage in pro bono activities.

We acknowledge the Virginia Bar's interest in regulating the practice of law by corporate counsel in Virginia and appreciate the thought that went into crafting the Rule. We believe that with these modifications, we will have a registration scheme that will work to serve the Bar's interests and address concerns that many corporate counsel in the state have with the Rule as currently drafted.

Please feel free to call me (703-641-2595) if you wish to discuss our comments and suggestions further.

With best regards,

Robin McCune

cc: Catherine D. Mayes, Esq.
Edward F. Rodriguez, Jr., Esq.
Thomas A. Edmunds, Esq.
James. M. McCauley, Esq.