

## **VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 1<sup>st</sup> day of November, 2019.*

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective January 1, 2020.

Amend Rule 1A:5 as follows:

### **Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants.**

#### **Introduction**

Notwithstanding any rule of this Court to the contrary, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services (“Employer”), for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as “in-house counsel,” “corporate counsel,” “general counsel,” or other similar title indicating that he or she is serving as legal counsel to such Employer, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

#### **Part I**

#### **Virginia Corporate Counsel**

(a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia Board of Bar Examiners

(“Board”) for a certificate as a Virginia Corporate Counsel (“Corporate Counsel Certificate”) to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.

(b) Required Evidence. Each applicant for a Corporate Counsel Certificate shall file with the Secretary of the Board an application under oath on a form furnished by the Board and shall submit evidence satisfactory to the Board that he or she:

(1) has been admitted by examination to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia;

(2) holds a Juris Doctor degree from a law school accredited by the American Bar Association at the time of the applicant’s graduation;

(3) is currently an active member in good standing in at least one state or territory of the United States, or the District of Columbia, where the applicant is admitted to the practice of law, and is a member in good standing in all jurisdictions where the applicant has been admitted;

(4) is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(5) possesses the good moral character and general fitness to practice law in Virginia, and has submitted all requested information, in a manner and to the extent established by the Board, including all required supporting documents;

(6) has read and is familiar with the Virginia Rules of Professional Conduct;

(7) has paid such fees as may be set by the Board to cover the costs of the character and fitness investigation and the processing of the application; and

(8) has filed an affidavit, upon a form furnished by the Board, from an officer of the applicant’s Employer attesting to the fact that the applicant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the applicant’s employment conforms to the requirements of Part I of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the applicant’s employment.

(c) Provisional Certificate. During the period in which an application for a Corporate Counsel Certificate is pending with the Board until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice pursuant to Part I of this rule, the

applicant may be employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I(b)(8) of this rule.

(d) Admission. Upon a finding by the Board that the applicant has complied with the requirements of Part I(b) of this rule, the Board shall notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant shall be issued a Corporate Counsel Certificate, which shall permit the applicant to practice law in Virginia solely as provided in Part I(e) of this rule. The applicant may take the required oath by appearing before the Justices of the Supreme Court of Virginia in Richmond at an appointed date and time.

(e) Scope. The practice of a lawyer certified pursuant to Part I of this rule shall be limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(8) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically authorized under Part I(f), no lawyer certified pursuant to Part I of this rule shall (i) undertake to represent any person other than his or her Employer before a Virginia court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to any other person through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(f) Pro Bono Service. Notwithstanding the restrictions set out in Part I(e) on the scope of practice, a lawyer certified pursuant to Part I of this rule may, and is encouraged to, provide voluntary *pro bono publico* services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct.

(g) Rights and Obligations. A lawyer issued a Corporate Counsel Certificate shall immediately become an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(e) of this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.

(1) All legal services provided in Virginia by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law in Virginia and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the

Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.

(2) A lawyer certified pursuant to Part I of this rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to Part I of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part I(b)(8) of this rule.

(3) A lawyer certified pursuant to Part I of this rule shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States or the District of Columbia in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice.

(4) The period of time a lawyer practices law under a Corporate Counsel Certificate issued pursuant to Part I of this rule shall be considered in determining whether the lawyer has fulfilled the active practice of law requirement for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme Court of Virginia for review of applications for admission without examination.

(h) Termination. A lawyer's authority to practice law which may be permitted pursuant to Part I of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part I(b)(8) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part I of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part I of this rule, which evidence shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose

authority to practice is suspended or terminated under (iii) above shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25 of the Rules of the Supreme Court of Virginia.

(i) The Board and the Virginia State Bar may adopt regulations as needed to implement the requirements of Part I of this rule.

**Part II**

**Corporate Counsel Registrants**

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(h) A lawyer's authority to provide legal services which may be permitted pursuant to Part II of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part II(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part II of this rule, or (iii) the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, other country, or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part II of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated pursuant to (iii) above, shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13-25 of the Rules of the Supreme Court of Virginia.

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A Copy,

Teste:



Clerk