

Friday

2nd

June, 2006.

On November 10, 2005 came the Virginia State Bar, by Phillip V. Anderson, its President, and Thomas A. Edmonds, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Paragraph 14, Section IV, of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be amended to read as follows:

**14. Professional Corporations, Professional Limited Liability Companies and Limited Liability Partnerships (Limited Liabilities Entities).**—The rules and regulations in the following provisions of this Paragraph 14 shall constitute a Code of Ethics governing the professional conduct of the practice of law through professional law corporations, professional limited liability companies and registered limited liability partnerships in Virginia.

(a) Scope.

All applications, reports and other documents required to be filed with the Virginia State Bar by this Paragraph 14 shall be signed and verified by an officer, director, partner, or manager of the applicant who is a duly licensed, active member of the Virginia State Bar or who is otherwise legally authorized to practice law in Virginia and filed at the office of the Virginia State Bar.

(b) Certificate of Registration.

An applicant for registration as a limited liability entity shall file with the Virginia State Bar an application for a Certificate of Registration, on a form furnished by the Virginia State Bar, and pay a fee of \$100. The term "limited liability entity," as used in this Paragraph 14 shall include a professional law corporation, professional limited liability company, and a registered limited liability partnership.

(i) The Executive Director of the Virginia State Bar, or a

person or persons designated by him, shall review such application for registration and, within 15 days after receipt of such application, approve the application and issue a Certificate of Registration provided the application conforms to the requirements of law and this Paragraph 14. If the application fails to include the information required in subparagraphs (c)(i) through (c)(v) of this Paragraph 14, the Executive Director shall refuse to approve the application and notify the applicant of the reasons therefore. A request by the Executive Director for further information to comply with the requirement of said subparagraph (c) of this Paragraph 14, or a request that the application be amended, may be deemed by the applicant to be a refusal to approve the application for purposes of initiating review under subparagraph (b)(iii) of this Paragraph 14.

(ii) The effective date of the Certificate of Registration shall be the date on which the applicant has filed with the Virginia State Bar all material required for approval of the application; provided, however, that (1) a later effective date may be granted if requested by the applicant prior to the issuance of the Certificate of Registration, or (2) in the discretion of the Executive Director an earlier effective date may be granted if good cause appears therefore.

(iii) An applicant may request a review of a refusal to approve its application within sixty days after the date of the notice of such refusal. Such request shall be heard by the Executive Committee of the Virginia State Bar. Upon completion of review, which may include examination of all information submitted by the applicant and a hearing, the Committee shall either (1) approve the application and order the issuance of a Certificate of Registration, or (2) request further information required by subparagraph (c) of this Paragraph 14 or amendments not theretofore supplied by the applicant, or (3) refuse to approve the application in any case where the applicant fails or refuses to supply the required information or has made a material misrepresentation of fact. The Committee shall report in writing its findings of fact and the reasons for its order, whether approving or refusing to approve the application. Notice of the order and a copy of the report shall be mailed to the applicant.

(iv) Insofar as applicable, the rules of procedure of the Virginia State Bar shall apply to the procedure in (b)(iii) above. An aggrieved applicant may proceed in a court of competent jurisdiction by motion for declaratory judgment for review of matters relating to its application.

(c) Application for Certificates.

A Certificate of Registration as a limited liability entity shall be issued if the application shows:

(i) The applicant is organized and qualified under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Corporations Act), organized and qualified under the provisions of Chapter 13 (Section 13.1-1100 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Limited Liability Company Act), organized and qualified under the provisions of Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 (the Virginia Registered Limited Liability Partnership Act), or organized and qualified under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in Section 13.1-543(A) of the *Code of Virginia*.

(ii) All of the applicant's shareholders, directors, officers, partners, members or managers and their names and addresses are set forth in full in the application.

(iii) Each member, manager, partner, employee or agent of the applicant who will practice law in Virginia, the names and addresses of whom are set forth in full in the application, whether or not a director, officer, shareholder, partner, member or manager of the applicant, is an active member of the Virginia State Bar or otherwise legally authorized to practice law in Virginia. Nothing in this Paragraph 14(c)(iii) shall be deemed to prohibit a non-licensed individual from serving as secretary, treasurer, office manager or business manager of any limited liability entity, provided, however, that such individual shall not be held out to be qualified or otherwise authorized to practice law or give advice on a legal or

related matter to the clients of the entity. Any employee or agent of the applicant who is duly licensed to practice law in Virginia and who is not held out to the public to be so authorized shall be deemed for the purposes of these Rules to be a non-licensed individual.

(iv) A trade name may be used by a limited liability entity if it does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of Virginia Rules of Professional Conduct 7.1(a). The name of a lawyer holding a public office shall not be used in the name of the entity, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the entity.

(v) The applicant has advised or intends to advise the clients of any predecessor organization, and the clients of any shareholder, director, officer, member, partner, manager, employee or agent of the applicant who will practice law, of the transfer of such organization's or lawyer's practice to a limited liability entity.

(d) Ownership.

An interest in or shares of a professional law corporation or professional limited liability company may be owned only in accordance with the provisions of Chapter 7 or Chapter 13 of Title 13.1. Ownership of shares of a professional law corporation or professional limited liability company for the purpose of construing this subparagraph (d) shall mean both legal and beneficial ownership. All the trustees of any voting trust which may be entered into by any shareholder shall be duly licensed or otherwise legally authorized to practice law in Virginia, and no proxy to vote any of such shares shall be valid unless granted to and voted by an individual or individuals duly licensed or otherwise legally authorized to practice law in Virginia.

(e) Control Over and Rendition of Legal Services; Letterhead.

No person not a member of the Virginia State Bar and duly licensed to practice law in Virginia shall have the right to

direct or control the professional judgment of any employee of a limited liability entity or the conduct of employees of the entity with respect to the practice of law in Virginia. Any limited liability entity practicing law in a foreign jurisdiction and which enumerates its employees on its letterhead and in other permissible listings shall do so in a manner which will make clear the jurisdictional limitations on those employees and agents of the entity not licensed to practice in all listed jurisdictions.

(f ) Correspondence, Pleadings and Documents.

Correspondence, pleadings and other documents, the execution of which constitutes the practice of law in Virginia, shall be executed on behalf of a limited liability entity by an employee who is an active member of the Virginia State Bar and duly licensed to practice law in Virginia. Corporate documents, the execution of which does not constitute the practice of law, may be executed on behalf of a limited liability entity by any authorized employee, whether or not licensed to practice law.

(g) Division of Fees.

It shall be lawful, ethical and proper for a lawyer employed by a limited liability entity, as part of the terms of his employment, to agree to turn over to the entity by which he is employed all fees, compensation or reimbursement which he may be entitled to receive for his professional services, regardless of where such professional services are rendered. No limited liability entity with a Certificate of Registration in effect shall be deemed a lay agency, nor shall any employee of such entity be deemed to be practicing law through an intermediary during any period for which such entity maintains a Certificate of Registration in effect.

(h) Professional Responsibility.

Nothing in this Paragraph 14 shall be deemed to diminish or change the obligation of any lawyer employed by a limited liability entity to conduct the practice of law in accordance with any specific standards promulgated by the Supreme Court

of Virginia. Any lawyer who by act or omission causes the entity by which he is employed to act or fail to act in a manner which violates any applicable standard of professional conduct, including any of the provisions of this Paragraph 14, shall be personally responsible for such act or omission and subject to discipline therefore.

(i) Attorney-Client Privilege.

Nothing in this Paragraph 14 shall be deemed to modify, abrogate or reduce the attorney-client privilege or any comparable privilege or relationship, whether derived by statute or from common law.

(j) Discipline.

A Certificate of Registration shall continue in effect until it is suspended or revoked as provided herein. Such certificate may be suspended or revoked if a limited liability entity fails at any time to comply fully with the provisions of this Paragraph 14, the Rules of Professional Conduct, the Code of Professional Responsibility, the applicable Virginia Professional Corporation Act, the Virginia Professional Limited Liability Company Act, or the Virginia Registered Limited Liability Partnership Act, after notice and an opportunity to be heard as provided in 14(j)(ii) below; provided that, if the violation be such as can be corrected upon notice to the entity of its violation, or if the violation be that of one or several persons only, suspension or revocation of the certificate need not be invoked if the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individual(s) involved.

- (i) Upon receipt of a resolution of the board of directors or the written statement of the manager(s) or partner(s) of a limited liability entity requesting the cancellation of the Certificate of Registration of that entity, such certificate shall be cancelled by the Executive Director of the Virginia State Bar, or by a person or persons designated by him. The cancellation of a Certificate of Registration at the request of a limited liability entity

shall be effective as of the date such request is received at the office of the Virginia State Bar, except that a later effective date shall be granted upon request of the entity or, in the discretion of the Executive Director of the Virginia State Bar, an earlier effective date may be granted if good cause appears therefore.

- (ii) Where a limited liability entity has violated or is about to violate any pertinent statute, rule or any provision of this Paragraph 14, the Executive Director of the Virginia State Bar, or a person or persons designated by him, may issue a notice directing Bar Counsel to investigate the alleged violation. Bar Counsel may issue such summons and subpoenas, and/or compel the production of such documents as he/she may reasonably deem necessary or material for the effective conduct of an investigation. Every Circuit Court shall have power to enforce any summons or subpoena issued by Bar Counsel and to adjudge disobedience thereof as contempt. If the report of Bar Counsel concludes either that the allegation is without merit or that specific corrective action has been or will be taken, the Executive Director shall dismiss the matter forthwith. If Bar Counsel concludes that the allegation has merit warranting court action, Bar Counsel shall file with the Circuit Court having jurisdiction in the premises a verified complaint. The court shall issue a rule against the limited liability entity concerned and conduct further proceedings in the matter in accordance with Section 54.1-3937 of the *Code of Virginia*, as amended, which is incorporated herein by reference. In addition to or in lieu of a Circuit Court complaint against the entity, Bar Counsel may refer the matter to the appropriate District Committee pursuant to Part 6, Section IV, Para. 13, B.(5)(a) et seq. of these Rules. After the court has held its hearing pursuant to its rule, it shall enter an order reprimanding the entity or revoking or suspending its Certificate of Registration if it finds that the circumstances of the violation warrant such action; otherwise the court shall dismiss the matter.

(k) Certificate Renewal.

On the date two years after the effective date of its initial Certificate of Registration and biennially thereafter, each limited liability entity shall pay a fee of \$50 whereupon its Certificate of Registration shall be automatically renewed.

(l) Annual Report; Corporate or Partnership Changes.

Each limited liability entity shall file with the Virginia State Bar a copy of any document or report required to be filed with the State Corporation Commission. In addition, each such entity shall file a special report on a form provided by the Virginia State Bar within thirty days after any change in its shareholders, directors, officers, members, managers, partners, employees or agents duly licensed to practice law. Each such change in personnel of a limited liability entity shall be brought to the attention of each of its clients, so that such client may know by whom he is represented or may be represented and with whom his confidences may be shared, in the same manner as is customary with partnerships.

(m) Effective Dates.

This Paragraph 14 shall become effective on [to be effective after the proposed statutory change goes into effect] and shall apply in like manner to professional corporations theretofore or thereafter organized under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to professional limited liability companies theretofore or thereafter organized under the provisions of Chapter 13 (Section 13.1-1100 et. seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to registered limited liability partnerships theretofore or thereafter organized under the provisions of Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 of the *Code of Virginia* to practice law, except where inconsistent with the provisions of such laws.

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of

Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective July 1, 2006.

A Copy,

Teste:

Clerk