

General Counsel Frustrated with Licensing Rules

In-House News:

General Counsel Frustrated with Licensing Rules

By Jen Woods

Frustration is brewing for many general counsel, as new licensing laws are being approved in more states. Abiding by the new rules, which require lawyers to obtain limited licenses to practice in states in which they have not been admitted to the bar, can be costly and time-consuming.

The American Bar Association developed the new rules because it is increasingly common for lawyers to relocate to different states when changing jobs.

Since 2002, 26 states have approved the new rules. Most of the passed legislation has gone into effect over the last two years, with Utah and Washington recently following suit in November and September, respectively.

Initially, general counsel advocated the new rules, which clarify that they are authorized to practice law if they have not taken local bar exams.

However, obtaining a limited license is no easy task. Many general counsel are not following the licensing rules because they have to fill out mountains of paperwork, pay expensive registration and annual fees, and, in some instances, provide fingerprints for background checks.

It's a lot of paperwork for people who, in many cases, have been in practice for 15 or more years," Philip Crowley, Assistant General Counsel at Johnson & Johnson, which has more than 100 corporate counsel in New Jersey, told *In-House Counsel*.

For instance, as of 2004, California general counsel must complete continuing legal education courses, pass a professional responsibility exam, and provide fingerprints. In New Jersey, general counsel must fill out a 26-page application, pay a \$750 registration fee, provide driving records, get fingerprinted, and take an hour-long ethics course.

In 2002, the American Bar Association proposed an amendment to the regulations clearly defining the requirements for lawyers who practice in multiple states. Part of that amendment, known as Model Rule 5.5, allows general counsel to practice in states without local licenses as long as they are registered to practice elsewhere. More than half of the states with limited licensing rules have adopted Model 5.5 or similar regulations that apply to corporate counsel.

General counsel who do not obtain limited licenses subject themselves to public scrutiny. For instance, Judge Thomas Griffith of the U.S. Circuit Court of Appeals for the District of Columbia was criticized last year because he was not licensed to practice in Utah when he served as General Counsel of Brigham Young University.

In 2004, Virginia passed legislation that requires general counsel who have not passed the state's bar exam to obtain limited licenses. In August, Richard Poulson, the then General Counsel of Smithfield Foods, a Virginia-based pork

processing company, was stripped of his legal title after a labor union pointed out that he was not licensed to practice in Virginia.

However, in October, the Virginia Bar Association concluded that Poulson did not violate the law, since he works primarily in New York. Poulson's title has since been changed to Vice President of External Affairs.

A Wisconsin blog called MilwaukeeWorld brought the licensing issue to the forefront when it released an investigative report criticizing the general counsel of four Wisconsin-based companies for not being admitted to practice law in that state.

Bryan Blankfield, Executive Vice President and General Counsel of Oshkosh Truck Corporation; John "Jack" Hammond, General Counsel, Vice President, and Secretary of Sensient Technologies Corporation; Robert Heath, Vice President and General Counsel of Briggs & Stratton Corporation; and W. David Romoser, Vice President, General Counsel, and Corporate Secretary of A.O. Smith Corporation were all placed in the spotlight by the blog.

Even though general counsel working in Wisconsin do not need to be licensed in the state, the bad publicity was damaging. "With such high stakes, it is confounding that attorneys who make a career of practicing in Wisconsin are too lazy or indifferent to get a license here. This is perplexing, since the state offers relatively simple access to license for qualifying attorneys," Michael Horne commented on MilwaukeeWorld.

American Bar Association

www.abanet.org

MilwaukeeWorld

www.milwaukeeeworld.com

Virginia Bar Association

www.vba.org