

NOTICE TO THE BAR

Amendments to Supreme Court Supplemental Administrative Determinations Regarding In-House Counsel Licensure Pursuant to Rule 1:27-2

The Supreme Court has approved the following amendments to its Supplemental Administrative Determinations regarding in-house counsel licensure. This action follows the Court's consideration of an administrative recommendation by the Professional Responsibility Rules Committee concerning pro bono activities, and requests from an in-house counsel organization and attorney to temporarily relax certain requirements relating to termination of employment in light of the economic climate. The complete text of the Supplemental Administrative Determinations, as amended, is posted on the website of the Board of Bar Examiners (www.njbarexams.org).

/s/ Mark Neary

Mark Neary
Clerk of the Supreme Court

Dated: June 3, 2009

[New language is **bold**. Deleted text is shown in ~~strikethrough~~.]

March 1, 2004

Amended February 14, 2007, **and June 3, 2009**

Supreme Court of New Jersey

Supplemental Administrative Determinations

Re: In-House Counsel Licensure under *Rule* 1:27-2

Subsequent to the adoption of the Rule mandating the limited licensure of in-house counsel, the Bar Admissions Unit of the Supreme Court has received a number of inquiries that relate to the scope of the program and its implementation. The issues that were not clearly covered in the Rule and the Supreme Court's initial Administrative Determination were referred to the Court for its consideration. The Supreme Court's actions in response to the inquiries involve a combination of new initiatives, interim relaxations, and modifications of the Rule.

In 2009, the Court amended its Administrative Determinations to clarify that in-house counsel may work part-time by providing legal services for a single employer on a per diem or contract basis, and to clarify that, as out-of-state attorneys, in-house counsel may volunteer for *pro bono* work with Legal Services of New Jersey or with other approved Rule 1:21-1(e) legal services organizations provided that the requirements of Rule 1:21-3(c) are satisfied. The Court has also temporarily extended the time period, set forth in Rule 1:27-2(e), within which in-house counsel must secure new employment without having to reapply for a limited license. Finally, language concerning extensions of the original rule's effective date, which is no longer temporally relevant, was deleted.

Temporary Employees. Several inquiries related to how and whether the Rule applies to attorneys who are not admitted to the New Jersey Bar but who perform in-house counsel work for one or more companies on a temporary basis. Most, but not all, of the inquirers have been using the services of a temporary staffing agency. None met the Rule's requirement of employment with the business entity for which they perform legal services.

The Court has concluded that temporarily employed in-house counsel cannot obtain a limited license under the Rule. Business entities that wish to use legal services on a temporary basis (whether full-time or part-time) must look to attorneys with a plenary license who are in good standing at the New Jersey Bar.

~~Because of the impact this will have on those who are currently providing temporary services to business entities, the Court further concluded that the prohibition on the use of attorneys without a New Jersey plenary license will not take effect until January 1, 2005. Attorneys who do not have a plenary license but wish to continue to~~

~~work as in-house counsel on a "temporary" basis will therefore have to take the July 2004 bar examination and be admitted prior to that date.~~

~~Although attorneys in temporary employment situations will not have to obtain a limited license during the remainder of 2004, they will be obliged to provide the business entities for whom they work with satisfactory evidence of their good standing in a United States jurisdiction as defined by the Rule.~~

In 2009, the Court received requests for permission for an in-house counsel, whose employment is terminated, to continue working on a temporary basis as a "contract or per diem" in-house counsel solely for the in-house counsel's former employer. The Court has concluded that the request is consistent with the Court's previous determination regarding part-time work with a single employer (discussed below in Part-Time Employees). Accordingly, if the practice otherwise complies with the Rule, in-house counsel may work part-time by providing legal services for a single employer on a per diem or contract basis without having to obtain a plenary license. They may not, however, work as a temporary in-house counsel providing legal services for multiple entities until a permanent position can be found because that is inconsistent with the requirement that in-house counsel perform legal services solely for a single designated employer.

Part-Time Employees. The Court is aware that not all attorneys who are hired to work as in-house counsel do so on a "full-time" basis. In-house counsel whose employment otherwise complies with the requirements of the Rule qualify for licensure notwithstanding that they work fewer hours per week than full-time attorney employees. **As noted above (see Temporary Employees), part-time work includes providing legal services on a contract or per diem basis for a single employer.**

Attorney Employees Who Do Not Work Full-Time in New Jersey. Attorneys and business entities presented several questions on whether attorneys who do not work 100% of the time in New Jersey still have to obtain an in-house counsel license. The answer is "Yes" to the following situations:

a. Attorneys who perform the New Jersey in-house legal work of the business entity must obtain a limited license regardless of where they are physically located. Just as a plenary licensed attorney may have his or her *bona fide* office in a United States jurisdiction other than New Jersey, so an in-house counsel who does New Jersey-related work may operate out of an office, full-time or part-time, in another state. In-house counsel who have offices in other jurisdictions but who work with outside legal counsel for the business entity in New Jersey also fall within the scope of the Rule and must obtain a limited in-house counsel license.

b. An in-house counsel who has a primary office in another jurisdiction may still have to be licensed under the Rule if he or she has substantial contacts with the business entity in New Jersey. Having an office in New Jersey or regularly spending

several weeks out of the year in New Jersey are indicia that would require licensing under the Rule. (Please note, however, that if an in-house counsel located in another jurisdiction has only occasional and irregular contact with the New Jersey office, licensure would not be required. The provisions of the Multijurisdictional Practice Rule of Professional Responsibility (RPC 5.5(b)) may be applied for guidance.)

Attorneys in Non-Legal Positions. Employees who are admitted to the Bar of another United States jurisdiction but who do not serve in a legal capacity for the business entity are not required to obtain a limited license as in-house counsel. Examples of such positions include: a Chief Financial Officer; a Director of Safety; and Tax Department employees who report to the finance department and not the legal department. Similarly, attorneys from another jurisdiction who are employed in "paralegal" positions and perform work within the meaning of UPLC Opinion 24 are not required to obtain a limited license as in-house counsel. (The converse is, of course, true. Employees who *are* engaged in legal work for the business entity -- regardless of their title -- must be admitted to the Bar of New Jersey either with a plenary license or with a limited license if their functions fall within the scope of the in-house counsel Rule.)

Attorneys Not Admitted to Another United States Jurisdiction. The Rule requires all applicants for a limited in-house counsel license to be in good standing in at least one other United States jurisdiction (as defined by the Rule). Attorneys admitted to the Bar of another country do not meet that qualification. The Court has decided to "grandfather" in-house counsel who were employed by a New Jersey business entity as of the effective date of the Rule based on their admission to, and in good standing in, the Bar of another country. Affected in-house counsel must otherwise meet all of the requirements of the Rule for a limited license.

Pro Hac Vice Attorneys and In-House Licensure. An in-house counsel based in another jurisdiction has New Jersey contacts for his employer that are limited to *pro hac vice* admissions several times a year before the Board of Public Utilities. Under those circumstances, the attorney is not required to obtain a limited in-house counsel license, which would not in any case permit him to litigate before a court or administrative agency.

In-House Counsel and Pro Bono Publico Obligations. In-house counsel are not required to participate in mandatory *pro bono* because of the limitations of their license in respect of their practicing before the courts. The Court notes, however, that it has previously approved a proposal by a New Jersey corporation that would enable its in-house counsel to volunteer for *pro bono* work through Legal Services of New Jersey. The Court encourages all business entities to explore the opportunity to work with Legal Services **or other approved Rule 1:21-1(e) legal services organization to provide volunteer pro bono services pursuant to Rule 1:21-3(c)(1)(b).** As a reminder, for each attorney performing pro bono work pursuant to Rule 1:21-3(c)(1)(b), the Rule requires that the following be filed with the Clerk of the Supreme Court: evidence of graduation from an ABA-approved law school, a certificate of good standing, and a statement by the executive director of the organization certifying that the

attorney is serving on a voluntary pro bono basis for that organization. Melville D. Miller, Jr., Esquire, President of Legal Services of New Jersey, Inc., can be reached at 732-572-9100 for additional information.

In-House Counsel and the Skills and Methods Course. Because of the limitations on the ability of in-house counsel to practice law in the courts and administrative agencies of the State, the Court has concluded that those receiving a limited license do not have to take the Skills & Methods Course required of plenary-admitted attorneys. The Court, however, is directing the Commission on Professionalism and the Institute for Continuing Legal Education to develop a special ethics/professionalism course for in-house counsel. All attorneys receiving a limited license under the Rule will be required to complete the course within one year of it first being offered or one year of licensure, whichever occurs first.

Newly-Hired In-House Counsel -- Applying for Limited License. In adopting *Rule* 1:27-2, the Court set a deadline of March 31, 2004, for currently employed in-house counsel to file their applications for a limited license. Prospectively, each applicant for employment must provide the business entity with satisfactory evidence that he or she meets the bar admission and good standing requirements of the Rule. The Court initially directed that new hires had to complete their applications within thirty days of commencing employment. On reconsideration, the Court has decided that new hires should have *sixty* days from the date they commence employment within which to submit a completed application for a limited license under the Rule. If the application is filed in a timely manner, the attorney will be permitted to continue working for the business entity pending the successful -- or unsuccessful -- conclusion to the licensing process. Unless a timely application has been filed, the employee cannot continue to serve in an in-house counsel position. The Court believes that a sixty-day period from the commencement of employment provides ample opportunity for the applicant to file with the Bar Admissions Unit all required documentation and fees.

In-House Counsel Who Change Employers. ~~As with new hires (discussed above), the Court has reconsidered the thirty-day period the Rule currently gives in-house counsel to secure new employment without having to reapply for a license. The Rule will be amended to provide~~ **Rule 1:27-2(e) currently provides** that attorneys with a limited in-house counsel license ~~will have~~ *ninety* days from the termination of their current employment within which to submit satisfactory evidence of new employment. ~~Attorneys who are not re-employed within ninety days will, as the Rule currently states, have,~~ **without having** to reapply for a limited license. **In 2009, in recognition of the economic climate, the Court temporarily relaxed the ninety-day period within which to secure new employment to one year; however, notice of termination of employment must still be provided within ninety days. This temporary rule relaxation is effective until further notice.**

Definition of Employer -- Mergers & Acquisitions. An applicant whose company has gone through a number of mergers and acquisitions has asked what date he should use

as his date of employment. The application should reflect the date of his initial employment with explanations on when and how the entity's name changed.

Plenary-Admitted Attorneys Working As In-House Counsel: Good Standing Status (Annual Registration Fees; Skills & Methods Course). An attorney with a New Jersey plenary license who is working as an in-house counsel must be in good standing at the Bar of this State. This includes being current with the annual registration fees and the Skills & Methods Course. ~~For those who are administratively ineligible because they have not completed the Skills & Methods Course in a timely manner, the Court is granting a blanket extension to January 1, 2005, to meet all outstanding obligations.~~

A plenary-licensed New Jersey attorney cannot also obtain a limited license. An in-house counsel can terminate his or her plenary license by resigning from the Bar without prejudice, but that person would then have to obtain a limited license and be subject to all of its limitations.

"Practicing Law" Under *Rule* 1:27-2. Although the Rule has superseded Opinion 14 of the UPLC as the means by which the Supreme Court is exercising its authority over the practice of law by in-house counsel, the Opinion and the Rule are to be read together in their identification of the activities that come within the scope of an in-house counsel. The limitations on in-house counsel relate to their ability to practice and appear before the courts (and administrative bodies). *Rule* 1:27-2 and *Rule* 1:21-1(a) and (c) have to be read together. The new Rule has not expanded the scope of functions in-house counsel could perform under Opinion 14 of the UPLC. It has created a mandatory licensing procedure for the attorneys who perform those functions.