

**NEW RULE REQUIRES IN-HOUSE COUNSEL NOT ADMITTED IN
PENNSYLVANIA WHO PERFORM LEGAL SERVICES IN PENNSYLVANIA
TO OBTAIN LIMITED LICENSE BY SEPTEMBER 25, 2004**

August 2004

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Earlier this year, the Pennsylvania Board of Law Examiners adopted Rule 302 to the Pennsylvania Bar Admission Rules, which created a new “Limited In-House Corporate Counsel License.” Rule 302 goes into effect on September 25, 2004.

Background

In Pennsylvania, the practice of law generally is defined as the performance of any act that requires the exercise of legal judgment. As a result, prior to the enactment of Rule 302, in-house counsel who were not admitted in Pennsylvania could not perform legal services in Pennsylvania – including the negotiation and drafting of contracts and other legal documents – without engaging in the unauthorized practice of law.

Rule 302 now provides in-house attorneys with a limited exception to this general rule by providing the opportunity to obtain a Limited In-House Corporate Counsel License under certain conditions. According to the Association of Corporate Counsel, approximately 13 states have adopted similar rules, and the remaining states are in the process of considering them.

Who is Required to Obtain the Limited In-House Corporate Counsel License

Rule 302 requires that an in-house attorney who performs legal services in Pennsylvania must obtain a Limited In-House Corporate Counsel License if (1) such services are performed in Pennsylvania on more than a temporary basis, (2) the attorney maintains an office in Pennsylvania, or (3) the attorney otherwise maintains a systematic and continuous presence in Pennsylvania.

For instance, if an in-house attorney maintains an office in Pennsylvania but provides legal services to his employer based in New Jersey, he is required to obtain the License. Similarly, if an in-house attorney maintains an office in New Jersey but regularly travels to her employer’s offices in Pennsylvania to negotiate contracts, she must obtain the License.

Limited Scope of Practice Pursuant to the License

Those who obtain the License only may provide legal services to the employer who sponsors the License application. Although representation of the employer in its dealings with an administrative agency or commission is allowed (so long as the agency or commission rules permit it), an in-house attorney holding the License may not represent his or her employer in any Pennsylvania court without admission *pro hac vice*. Nor may the License holder provide legal services to his or her employer’s clients or customers. Representing or providing legal advice to any shareholder, owner, officer, employee or other agent of the employer with respect

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to any personal matter also is prohibited.

An in-house attorney holding the License may participate in the provision of *pro bono* services offered under the auspices of an organized legal aid society or state/local bar association, or under the supervision of a Pennsylvania attorney who also is working on the *pro bono* representation.

Obligations of License Holders, Including Satisfaction of Pennsylvania CLE Requirements

In-house attorneys who hold the License are required to maintain active status in at least one state or U.S. territory or the District of Columbia. In addition, they must fulfill the obligations required of active members of the Pennsylvania bar, including Pennsylvania's continuing legal education requirements.

How to Apply for the License

To obtain the License, an application and filing fee of \$650, along with certain documentation, must be submitted to the Pennsylvania Board of Law Examiners. Required documentation includes a law school transcript, an employer letter, and a certificate of good standing for each jurisdiction in which the attorney is admitted.

Upon approval of the application, the Board of Law Examiners will issue a certificate recommending issuance of the License. Within six months of receipt of the certificate, the attorney must file a motion with the Prothonotary.

If an in-house attorney takes a new in-house position in Pennsylvania within 30 days of ceasing employment, the License can be carried over so long as the attorney submits a statement identifying his or her new employer and a sponsoring statement from the new employer within 30 days of starting the new position.

Amnesty Until September 25, 2004

We urge any current in-house attorneys who are not admitted in Pennsylvania to apply for and obtain the License as soon as possible. Rule 302 provides for an amnesty period prior to September 25, 2004 in which in-house attorneys will not be considered to be engaged in the unauthorized practice of law. After September 25, 2004, however, in-house attorneys not admitted in Pennsylvania and without the License must refrain from engaging in the unauthorized practice of law.

An in-house attorney who engages in the unauthorized practice of law is subject to criminal penalties under Pennsylvania law, as well as the significant risk, should he or she take a legal position in another jurisdiction in the future, that the jurisdiction would refuse to admit him or her. In addition, courts have invalidated legal documents negotiated by attorneys who engage in the unauthorized practice of law, refused to enforce fee agreements, and upheld legal malpractice claims.

The text of Rule 302 is available by visiting:

http://www.pabarexam.org/Admission_Rules/Rules_and_Regulations/302.htm

The application and instructions for obtaining the License are available by visiting:
http://www.pabarexam.org/Application_Information/Applications/302_Application.htm

An Alternative to the License – Admission by Motion

Given that the scope of practice under the License is limited, an in-house attorney may want to consider seeking general admission to the Pennsylvania bar by motion pursuant to Rule 204 of the Pennsylvania Bar Admission Rules, provided that the state in which he or she is admitted has reciprocity with Pennsylvania. Rule 204 also was recently amended, effective September 25, 2004, and its application imposes many of the same requirements as the License application.

If you have any questions regarding this matter, please contact your primary Morgan Lewis attorney or any of the following attorneys:

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