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IN-HOUSE COUNSEL & INACTIVE ATTORNEYS NEW JERSEY MANDATORY CLE REQUIREMENTS

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The Supreme Court's Ad Hoc Committee on Continuing Legal Education (the "Ad Hoc Committee") recommended that in-house counsel be subject to the same mandatory continuing legal educational (MCLE) requirements as attorneys in private firms. The Ad Hoc Committee, however, did not recommend requiring inactive attorneys be subject to MCLE requirements.

In-House Counsel. Notwithstanding objections and alternative proposals from the New Jersey Corporate Counsel Association (NJCCA), the Ad Hoc Committee, without much analysis, has recommended that all in-house counsel (including those practicing under a limited license) be subject to the same MCLE requirements as other attorneys. Under Rule 1:27-2 in-house counsel licensed in another state but employed in New Jersey may obtain a limited license to practice law (subject to certain limitations) in New Jersey solely for his or her employer. The Ad Hoc Committee rejected the NJCCA's proposal that in-house counsel holding a limited license be subject to the MCLE requirements of the state in which they hold a plenary license to practice law.

In-House counsel (especially those holding a limited license) may be particularly interested in submitting comments prior to the expiration date.

Inactive Attorneys. The Ad Hoc Committee did not recommend extending the MCLE requirements to attorneys categorized as "inactive." The Ad Hoc Committee noted that the term "inactive" is used in Rule 1:28-2(b) to excuse "inactive" attorneys from payments to the New Jersey Client Protection Fund. However, since the rule does not define the term "inactive", the Ad Hoc Committee is recommending that the Supreme Court define the term and create a registry for inactive attorneys who would be exempt from MCLE. The Ad Hoc Committee also recommended that just as attorneys admitted to practice for 50 years are exempt from payments to the New Jersey Client Protection Fund, such attorneys should also be exempt from MCLE requirements.

Currently, the Rule only uses the term "inactive" in the context of disabled, retired attorneys and attorneys on active duty with the armed forces, VISTA or the Peace Corp. However, there are clearly many other categories of attorneys who might very well consider themselves "inactive" including attorneys practicing in other professions (e.g., accountants, investment bankers, etc.). Moreover, attorneys who are suspended or disbarred may also be considered inactive.

Presumably an accountant holding a JD might have reservations about having his or her name appear on the same inactive list as disbarred attorneys.

Attorney's who consider themselves to be "inactive" may be particularly interested in submitting comments prior to the expiration date.

The Report & Comment Period. The Ad Hoc Committee's report was submitted to the New Jersey Supreme Court on November 10, 2008 although the Supreme Court did not publish notice of it until December 1, 2008. The Supreme Court will be accepting comments on the report until February 17, 2009.

For links to all the official reports and rules mentioned in this article please visit Kurt's Blog Site, <http://kurtsblogsite.blogspot.com>.

Kurt E. Anderson is a shareholder in the firm's Intellectual Property & Technology Practice Group and the Corporate & Business Law Practice Group. Mr. Anderson guides clients through the complexities of trademark development, registration, licensing, infringement and policing. He also counsels clients regarding copyright registration, licensing and infringement. Mr. Anderson prepares, reviews and negotiates licensing and development agreements, supply and distribution agreements, independent contractor agreements and intellectual property related professional service agreements. In the area of corporate and business law, he counsels closely held small to medium sized companies regarding a variety of general corporate matters, including business entity formation, real estate, land and dredge related matters, bank financing deals, merger and acquisition transactions and employment matters.

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