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Amnesty opportunity for in-house counsels

The Illinois Supreme Court recently announced a one-year amnesty period that started Jan. 1 for corporate in-house counsels who are licensed in another state to apply for a limited license to practice law in Illinois pursuant to Illinois Supreme Court Rule 716 (Limited Admission of House Counsel).

A Rule 716 limited license allows a lawyer employed as in-house counsel in Illinois to act on behalf of the employer as if the employed lawyer were fully licensed to practice in Illinois.

Failure to obtain the limited license will prevent lawyers licensed only in other states from serving as in-house counsels in Illinois after the expiration of the amnesty period. Because the Rule 716 application process may be lengthy, in-house counsels would be wise to begin the process as soon as possible.

The apparent lack of awareness of Rule 716 among lawyers may be due to the somewhat ambiguous language of Illinois Rule of Professional Conduct 5.5(d) and comments which seem to permit lawyers licensed in other states to provide legal services to their employers as long as those services do not require pro hac vice admission.

Many in-house counsels apparently believed in good faith that they were exempt from the rule.

The Supreme Court's recent order leaves little doubt now about the broad application of Rule 716.

It permits affected lawyers to escape the potential disciplinary consequences of non-compliance, but it requires payment of significant fees. And a Rule 716 application may require a great deal of work. Here is a summary of what affected in-house counsels need to do now.

Who is affected by the amnesty program?

- The rule applies to in-house counsels, defined in Rule 716 as lawyers employed in Illinois "exclusively for single corporation, partnership, association or other legal entity (as well as any parent, subsidiary or affiliate thereof), the lawful business of which consists of activities other than the practice of law or the provision of legal services ..."

- Rule 716 does not require any action by in-house counsels who are licensed Illinois lawyers in good standing, including Continuing Legal Education requirements.

- An attorney who is a co-employee of an unlicensed in-house counsel may face discipline under Rules of Professional Conduct 8.3 — think *Himmel* — for knowingly assisting that lawyer to hold himself or herself out falsely as a licensed Illinois lawyer. See also Rule 5.5 of the Rules of Professional Conduct. During the amnesty period, neither in-house counsel practicing in violation of Rule 716 nor any co-employee will face discipline.

What are the benefits of a Rule 716 limited license?

- A lawyer licensed and employed as provided in Rule 716 may act on behalf of the employer for all purposes as if licensed in Illinois. But the lawyer may not offer legal services or advice to the public and may not hold herself or himself out to be authorized to practice law in Illinois. The employed lawyer may not offer legal services to co-employees. The lawyer may provide voluntary pro bono services, as defined in Rule 756(f).

- The period of time the employed lawyer practices law while licensed under Rule 716 may be counted toward eligibility

ADVOCACY AND ETHICS



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for admission on motion under Supreme Court Rule 705 that allows lawyers who have been in continuous, active law practice for more than five years to seek admission on motion.

- A Rule 716 license terminates within 120 days of the employed lawyer's ceasing to be employed, but it may continue if the lawyer obtains other employment that meets Rule 716.

What are the requirements for obtaining a limited license?

- Applicants must meet the educational and character and fitness requirements to be licensed as an Illinois lawyer. The applicant must be in good disciplinary standing in the highest court of every jurisdiction in which he or she has ever been admitted and must have active status in at least one such jurisdiction.

- Applicants must complete an application and other documents in the form prescribed by the bar's board of admissions, including certification by the employer.

- The board will conduct the same rigorous background check required for applicants to the Illinois bar.

- Lawyers licensed under Rule 716 must pay all fees, comply with CLE requirements and follow disciplinary rules as required of active lawyers.

- Applicants with less than 15 years in practice must provide proof of having passed the Multistate Professional Responsibility Exam in Illinois or another jurisdiction.

What are the consequences of non-compliance with Rule 716?

- Non-compliance subjects the violating lawyer, and potentially co-employee lawyers, to discipline and penalties for unauthorized practice of law, namely a fine up to \$5,000, actual damages and equitable relief. See 705 ILCS 205/1.

- Rules of Professional Conduct 5.5 subjects licensed Illinois lawyers to discipline for assisting in the unauthorized practice of law.

How does a lawyer apply for a limited license under Rule 716?

- The applicant may begin the application process by contacting the Illinois Board of Bar Admissions at its website.

- The board's forms include: an application, a character and fitness questionnaire, an attorneys' questionnaire (bar admission information, attorney references and more), a state police form, employer's certification, certificate of applicant's law school dean and release authorizing the Committee(s) on Character and Fitness to obtain pertinent information about the applicant.

In sum, the Supreme Court's Rule 716 amnesty program will result in the licensing of many more Illinois lawyers. Corporate legal officers and in-house counsel should not delay to investigate the requirements of Rule 716.

In-house counsels, welcome to the Illinois bar.