

CBA LPRC POSITION REQUEST FORM

The CBA Standing Committee on Professional Ethics **position request** is as follows:

1) Proposed legislative concept:

The Committee seeks authorization to propose an amendment of Rule 5.5 of the Connecticut Rules of Professional Conduct (Unauthorized Practice of Law) for consideration by the Rules Committee of the Superior Court.

Rule 5.5 prohibits the practice of law in Connecticut by individuals who are not licensed in the state. It does, however, contain a number of exceptions to permit temporary practice in Connecticut for lawyers who are admitted and in good standing in another jurisdiction. The proposed amendment would create a new category of permissible temporary practice that would permit a lawyer who has relocated to Connecticut from another state to practice in Connecticut provided that he or she seeks admission in Connecticut (by exam, motion, or transfer of UBE score) within a reasonable time after relocating.

The Ethics Committee proposes an amendment of Rule 5.5 to add the following to the Rule and its Commentary:

Proposed Addition to Rule 5.5

(d) A lawyer admitted in another United States jurisdiction, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that are undertaken when the lawyer intends to seek admission to practice in this jurisdiction provided that the lawyer:

(i) files an application for admission by motion, by transfer of UBE score, or by examination within a reasonable time, not to exceed six months, after first engaging in practice in this jurisdiction;

(ii) associates with a lawyer who is admitted in this jurisdiction; and

(iii) discloses the limited practice authority and jurisdiction of licensure in all communications with potential clients, and to all potential clients before agreeing to represent them; does not hold himself or herself out as admitted to practice in this jurisdiction; and otherwise complies with Rules 7.1 through 7.5 of these Rules.

Proposed Addition to Rule 5.5 Commentary

Subsection (d) recognizes that a lawyer admitted in another jurisdiction may need to relocate to, or commence practice in, this jurisdiction, sometimes on short notice. The admissions process can take considerable time, thus placing a relocating lawyer at risk of being considered to be engaged in unauthorized practice of law while the application is pending. Subsection (d) closes this gap by providing that practice pending admission is a form of permissible temporary practice, provided the lawyer is diligent in seeking admission. If the application for admission is voluntarily withdrawn or deemed withdrawn, or if the lawyer thereafter fails the bar exam, or is otherwise denied

admission, temporary practice under subsection (d) will not be permitted subsequent to such withdrawal of the application or denial of admission.

A complete copy of the Rule 5.5 and its Commentary reflecting the proposed amendment is attached.

2) Explanation and rationale for advancing this position:

When the ABA revised the Model Rules of Professional Conduct (MRPC) in 2012 (all under the umbrella name Ethics 20/20), it also proposed a free standing proposal (not proposed to be part of the Model Rules) called ABA Model Rule on Practice Pending Admission.

Versions of all the Ethics 20/20 amendments to the MRPC made their way into the Connecticut RPC (in effect January 1, 2014), but the proposal to adopt the Model Rule on Practice Pending Admission was not adopted at that time.

The Ethics Committee has recently revisited the issue of practice pending admission, and now suggests a codification of what appears to be the informal practice of the Connecticut Bar Examining Committee (CBEC) to afford attorneys relocating to Connecticut from another state a grace period to apply for admission, so long as the lawyer does not delay his or her application for admission and does not hold himself or herself out as authorized to practice in Connecticut prior to admission.

The CBEC's informal practice is not applied consistently, and there have been bar applicants admitted in other jurisdictions who, when applying for admittance to the Connecticut bar (either by exam or on motion), have been referred to the Office of Disciplinary Counsel for investigation of unauthorized practice of law issues. While such investigations are usually resolved in favor of the applicant, they delay the application process.

3) Is draft legislation or a proposed bill included?

Yes. Attached.

4) What is the date of any legislative hearing, if known?

Rules Committee Meeting December 16, 2019.

5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

7) Potential or actual CBA opposition from another CBA section or committee?

Unknown.

8) Strength of section position (including process and results of section vote taken on issue):

At its April 17, 2019 meeting, with 19 members present, the Committee voted, to adopt this position without dissent.

9) Fiscal impact (on the state):

None.

10) Are you seeking “fast-track” approval?¹

Yes.

¹ A “fast track” recommendation will be submitted to the House of Delegates (HOD) or Board of Governors (BOG) at its next scheduled meeting (or, if between meetings of the HOD or BOG and during the legislative session, to the Executive Committee), and is warranted only when the Legislative Policy & Review Committee concludes that further analysis and study is unnecessary and where there is legitimate time pressure to address pending legislation.