

From: Del Ciampo, Joseph
Sent: Wednesday, November 25, 2020 2:06 PM
To: O'Donnell, Shanna
Subject: FW: Rules Committee / Agenda Item 2020-008 / Proposal to Amend Rule 5.5
Attachments: Corr Justice McDonald re Rule 5.5 Pro Bono Amendment 11.25.2020.PDF

Follow Up Flag: Follow up
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From: Stovall, Marcy [mailto:MStovall@PULLCOM.COM]
Sent: Wednesday, November 25, 2020 2:02 PM
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Cc: Chapman, Bill (bchapman@ctbar.org) <bchapman@ctbar.org>; Amy Lin Meyerson <amy@almesq.com>; ccoul3417@gmail.com; Cecil Thomas <CThomas@ghla.org>; Kim E. Rinehart <krinehart@wiggin.com>; Petruzzelli, Lori <Lori.Petruzzelli@jud.ct.gov>; Bowler, Michael <Michael.Bowler@jud.ct.gov>
Subject: Rules Committee / Agenda Item 2020-008 / Proposal to Amend Rule 5.5

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Dear Attorney DelCiampo,

Attached please find correspondence to Justice McDonald concerning an amendment to Rule 5.5 of the Rules of Professional Conduct proposed by the CBA Pro Bono Committee and the CBA Standing Committee on Professional Ethics. If approved, the amendment would permit, under limited circumstances, pro bono practice in Connecticut by attorneys licensed in other jurisdictions. A copy of the current iteration of the proposed amendment of Rule 5.5 is attached to the letter.

At the November Rules Committee meeting, the Rule 5.5 proposal was tabled so that Statewide Bar Counsel Michael Bowler and I could confer to see whether the outstanding issues could be resolved. Mr. Bowler and I did confer, and were able to resolve the outstanding issues.

With Mr. Bowler's consent, I request that the proposal to amend Rule 5.5 be added to the Rules Committee Agenda for December 14, 2020.

I hope you have a Happy Thanksgiving.

Marcy

Marcy Tench Stovall
Attorney

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Sent Via Email (Joseph.DelCiampo@jud.ct.gov)

November 25, 2020

Honorable Andrew J. McDonald
Connecticut Supreme Court
Chair, Superior Court Rules Committee
231 Capital Avenue
Hartford, CT 06106

Re: Rules Committee Agenda Item 2020-008

Proposal to Amend Rule 5.5 the Connecticut Rules of Professional
Conduct to permit pro bono practice in Connecticut by attorneys licensed
and in good standing in other jurisdictions

Dear Justice McDonald,

With the agreement of Statewide Bar Counsel Michael Bowler, I write to request that the proposal to amend Rule 5.5 of the Connecticut Rules of Professional Conduct (Unauthorized Practice of Law) to permit pro bono practice in Connecticut by attorneys admitted in other jurisdictions be placed on the Rules Committee's agenda for December 14, 2020. A complete copy of Rule 5.5 and its Commentary reflecting the current iteration of the proposed amendment is attached.

The proposed amendment of Rule 5.5 was first on the Rules Committee's Agenda for February 10, 2020. Subsequent to the initial submission, the proposal to amend Rule 5.5 was revised in order to address comments the Rules Committee received from the Statewide Grievance Committee. The revised proposal was on the Rules Committee's Agenda for November 16, 2020. During discussion of the proposed amendment, you suggested that the proposal be tabled so that Mr. Bowler and I would have the opportunity to confer to determine if the areas of concern could be resolved.

I am happy to report that Mr. Bowler and I have conferred and were able to reach an agreement on appropriate language and placement of the proposed new Rule. Specifically, Mr. Bowler has previously indicated that Chapter Two of the Practice Book might be the appropriate place to address the pro bono practice contemplated under the proposed Rule. After discussion, Mr. Bowler agrees that amendment of Rule 5.5 as proposed is the appropriate mechanism by which to address pro bono practice exception.

The current proposal to amend of Rule 5.5 would add the following to the Rule:

(d) A lawyer admitted in another United States jurisdiction, who is in good standing in each jurisdiction in which he or she has been admitted, or who has taken retirement status or otherwise left the active practice of law while in good standing in another jurisdiction, may participate in the provision of uncompensated pro bono publico legal services in Connecticut where such services are offered under the supervision of an organized legal aid society or state or local bar association project.

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

To recap previous submissions concerning the proposed amendment of Rule 5.5: 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 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 practice that would, under limited circumstances, permit attorneys who are licensed and in good standing in other jurisdictions to engage in pro bono practice in Connecticut.

The proposed pro bono rule would encourage attorneys who live in Connecticut, but are licensed to practice law in another jurisdiction, to volunteer to provide pro bono assistance in this state. The proposed amendment would expand the pool of potential volunteers to provide essential legal representation to the growing number of vulnerable Connecticut citizens who cannot effectively represent themselves. This proposed amendment also advances the policy set forth in Rule 6.1 of the Rules of Professional Conduct and in Article II of the CBA Constitution.

Amy Lin Meyerson, Craig Coulombe, and I plan to attend the Rules Committee's December meeting to address any questions the Committee may have about the proposed amendment of Rule 5.5.

Respectfully submitted,



Marcy Tench Stovall
Legislative Liaison, CBA Standing Committee on
Professional Ethics

Enclosure

cc: Bill Chapman, CBA Director of Government and Community Relations (via email)
Michael Bowler, Statewide Bar Counsel (via email)
Amy Lin Meyerson, CBA President (via email)
Kim Rinehart, Chair, Standing Committee on Professional Ethics (via email)
Cecil Thomas, Chair, CBA Pro Bono Committee (via email)
Craig Coulombe, Legislative Liaison, CBA Pro Bono Committee (via email)
Lori A. Petruzzelli, Counsel, Legal Services, Connecticut Judicial Branch

11.25.20

Proposed Amendment of Rule 5.5 of the Rules of Professional Conduct to include pro bono practice by attorneys admitted in another jurisdiction as a form of permissible temporary practice

Additions underlined; [deletions in brackets]

Rule 5.5. Unauthorized Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The practice of law in this jurisdiction is defined in Practice Book Section 2-44A. Conduct described in subsections (c) and (d) in another jurisdiction shall not be deemed the unauthorized practice of law for purposes of this subsection (a).

(b) A lawyer who is not admitted to practice in this jurisdiction, shall not:

(1) except as authorized by law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction which accords similar privileges to Connecticut lawyers in its jurisdiction, and provided that the lawyer is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction, that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, with respect to a matter that is substantially related to, or arises in, a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within subdivisions (c)(2) or (c)(3) and arise out of or are substantially related to the legal services provided to an existing client of the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, who is in good standing in each jurisdiction in which he or she has been admitted, or who has taken retirement status or otherwise left the active practice of law while in good standing in another jurisdiction, may participate in the provision of uncompensated pro bono publico legal services in Connecticut where such services are offered under the supervision of an organized legal aid society or state or local bar association project.

([d]e) A lawyer admitted to practice in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) the lawyer is authorized to provide pursuant to Practice Book Section 2-15A and the lawyer is an authorized house counsel as provided in that section; or

(2) the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

([e]f) A lawyer not admitted to practice in this jurisdiction and authorized by the provisions of this Rule to engage in providing legal services on a temporary basis in this jurisdiction is thereby subject to the disciplinary rules of this jurisdiction with respect to the activities in this jurisdiction.

([f]g) A lawyer desirous of obtaining the privileges set forth in subsections (c)(3) or (4): (1) shall notify the statewide bar counsel as to each separate matter prior to any such representation in Connecticut, (2) shall notify the statewide bar counsel upon termination of each such representation in Connecticut, and (3) shall pay such fees as may be prescribed by the Judicial Branch.

Official Commentary

A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Subsection (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer's assisting another person. For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.

A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular

law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed as self-represented parties.

Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates subsection (b)(1) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b). A lawyer not admitted to practice in this jurisdiction who engages in repeated and frequent activities of a similar nature in this jurisdiction such as the preparation and/or recording of legal documents (loans and mortgages) involving residents or property in this state may be considered to have a systematic and continuous presence in this jurisdiction that would not be authorized by this Rule and could, thereby, be considered to constitute unauthorized practice of law.

There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Subsection (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of subdivisions ([d]e)(1) and ([d]e)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here. There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction and may, therefore, be permissible under subsection (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Subsections (c) and (d) apply[ies] to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in subsections (c) and (d) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who, while technically admitted, is not authorized to practice, because, for example, the lawyer is in an inactive status.

Subdivision (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this subdivision to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac

vice or pursuant to informal practice of the tribunal or agency. Under subdivision (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

Subdivision (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, subdivision (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

Subdivision (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential mediation or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

Subdivision (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction if they arise out of or are substantially related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within subdivisions (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

Subdivision (c)(3) requires that the services be with respect to a matter that is substantially related to, or arises out of, a jurisdiction in which the lawyer is admitted. A variety of factors may evidence such a relationship. However, the matter, although involving other jurisdictions, must have a significant connection with the jurisdiction in which the lawyer is admitted to practice. A significant aspect of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law

of that jurisdiction. The necessary relationship might arise when the client's activities and the resulting legal issues involve multiple jurisdictions. Subdivision (c)(4) requires that the services provided in this jurisdiction in which the lawyer is not admitted to practice be for (1) an existing client, i.e., one with whom the lawyer has a previous relationship and not arising solely out of a Connecticut based matter and (2) arise out of or be substantially related to the legal services provided to that client in a jurisdiction in which the lawyer is admitted to practice. Without both, the lawyer is prohibited from practicing law in the jurisdiction in which the lawyer is not admitted to practice.

For purposes of subsection (d), an attorney in "good standing" is one who: (1) has been admitted to practice law in any United States jurisdiction; (2) is not suspended or disbarred in any other jurisdiction; (3) has never resigned or retired from the practice of law while subject to discipline or disciplinary proceedings in any other jurisdiction; (4) has not been placed on inactive status while subject to discipline or disciplinary proceedings in any other jurisdiction; and (5) is not currently subject to disciplinary proceedings in any other jurisdiction.

Subdivision ([d]e)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

A lawyer who practices law in this jurisdiction pursuant to subsections (c), [or](d) or (e) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

In some circumstances, a lawyer who practices law in this jurisdiction pursuant to subsections (c), [or](d) or (e) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction.

Subsections (c), [and] (d) and (e) do not authorize communications advertising legal services in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services in this jurisdiction is governed by Rules 7.1 to 7.5.