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*Standing Committee on Professional Ethics*

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

December 6, 2021

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

Re: Proposal to amend Practice Book §2-44A and Rule 5.5 the Connecticut Rules of Professional Conduct to provide that remote practice from Connecticut by attorneys licensed and in good standing in other jurisdictions is not the unauthorized practice of law

Dear Justice McDonald,

On behalf of the Connecticut Bar Association's Standing Committee on Professional Ethics and State of the Legal Profession Taskforce, as authorized by the Executive Committee of the Connecticut Bar Association at its December 3, 2021 meeting, I write to propose an amendment of Practice Book §2-44A and of Rule 5.5 of the Connecticut Rules of Professional Conduct ("RPC") and to request that the proposal be placed on the Rules Committee's agenda for December 13, 2021.

Practice Book § 2-44A (Definition of the Practice of Law) defines the practice of law, and Rule 5.5 (Unauthorized Practice of Law) prohibits the practice of law in Connecticut by attorneys licensed in other jurisdictions. The proposed amendment of Rule 5.5 and Practice Book § 2-44A would provide that remote practice in Connecticut by attorneys in good standing in another jurisdiction will not be considered unauthorized practice of law in Connecticut.

Specifically, the proposal is to amend Practice Book § 2-44A and Rule 5.5 of the RPC to add the following:

To the extent that a lawyer is physically present in this jurisdiction and remotely engages in the practice of law as authorized under the laws of another United States jurisdiction in which that lawyer is admitted and in good standing, and the lawyer is not disbarred or suspended from the practice of law in any jurisdiction, such conduct does not constitute the unauthorized practice of law in this jurisdiction.

The proposal also includes the following proposed amendment of the Official Commentary to Rule 5.5 to add the following:

Subsection (f) reflects the reality that with the advancement of technology, many lawyers work remotely from locations outside the jurisdiction(s) in which they are admitted to practice law. Subsection (f) allows those lawyers to practice law as authorized in the jurisdiction(s) in which they are admitted while physically present in Connecticut. This section coordinates with Practice Book 2-44A (c) which provides that a lawyer admitted and in good standing in another United States jurisdiction engaged in the remote practice of law as authorized by that jurisdiction while physically present in Connecticut is not engaged in the unauthorized practice of law.

Complete copies of Practice Book § 2-44A and Connecticut Rule 5.5 showing the proposed amendments are attached hereto.

The proposed amendments address the increasingly common situation where an attorney licensed to practice law in another jurisdiction provides legal services to clients in that jurisdiction, but does so while physically present in Connecticut. The proposed changes are an attempt to provide a common sense solution to the dilemma that the current provisions pose for such lawyers.

Rule 5.5 prohibits the practice of law in Connecticut by attorneys licensed in other jurisdictions, and references Practice Book § 2-44A for its definition of the practice of law. Rule 5.5(c)(4) permits an attorney licensed in another jurisdiction (“the home jurisdiction”) to provide legal services to clients in the home jurisdiction while the attorney is physically present in Connecticut without running afoul of unauthorized practice restrictions. But this authorization applies *only if*: (1) the lawyer’s home jurisdiction accords similar privileges to Connecticut attorney; (2) such services are provided “on a temporary basis”; (3) the legal services involve an “existing” client of the lawyer; and (4) the lawyer complies with the notification and payment requirements of Rule 5.5(f) for *each* matter in which the attorney provides legal services. And this is true even if the legal services concern clients in the home jurisdiction, the matter involves the law of the home jurisdiction, and the matter has no nexus to Connecticut other than the fact that the attorney is physically located in Connecticut. Strict compliance with these requirements imposes significant burdens on a lawyer attempting to meet the needs of her clients in the home jurisdiction while working remotely (either by necessity or choice).

But remote law practice conducted through devices and other resources that are fully integrated with an office in the lawyer’s home jurisdiction is functionally equivalent to law practice conducted while physically present in an office in the home jurisdiction. Thus the regulation of such activities is somewhat inconsistent with modern practice and service to clients. As the authors of the Restatement (Third) of the Law Governing Lawyers have noted:

The rules governing interstate practice by nonlocal lawyers were formed at a time when lawyers conducted very little practice of that nature. Thus, the limitation on legal services threatened by such rules imposed little actual inconvenience. . . . Applied literally, the old restrictions on practice of law in a state by a lawyer admitted elsewhere

could seriously inconvenience clients who have need of such services within the state.

Restatement (Third) of the Law Governing Lawyers § 3 (2000).

The proposed changes to Section 2-44A and Rule 5.5 are a small but necessary step to align the rules of practice with modern life, including the multiple ways in which lawyers use technology to serve their clients when circumstances dictate that they work outside the jurisdiction in which they are admitted. Indeed, the COVID-19 pandemic has underscored the necessity of modifying the regulations governing attorneys in order to reflect the reality of modern practice and the practical, efficient use of technology. Remote work may have become much more prevalent out of necessity during the pandemic, but it will almost certainly continue to be a prominent feature of law practice in the post-pandemic work environment. The proposed revisions make the multi-jurisdictional practice regulations consistent with, and appropriate for, the new reality of increased reliance on remote technology.

The proposed changes keep intact the overarching purpose of Rule 5.5: to protect Connecticut consumers of legal services from unlicensed and unqualified attorneys. Under the proposed amendments, attorneys licensed to practice law in another jurisdiction but not licensed in Connecticut will still be: (1) prohibited from establishing law offices in Connecticut; (2) prohibited from advertising their services to Connecticut consumers of legal services; and (3) prohibited from holding themselves out as attorneys licensed to practice law in Connecticut. And the permission granted under the proposed amendment does not extend to lawyers subject to the serious disciplinary sanctions of disbarment or suspension in any jurisdiction (not limited to the home jurisdiction). In addition, lawyers licensed in another jurisdiction practicing here under the proposed amendment will still be subject to discipline in Connecticut, including exposure to discipline if they engage in law practice outside the practice permitted under the proposed amendment.

As the ABA's Standing Committee on Ethics and Professional Responsibility pointed out in Formal Opinion 495 (December 16, 2020):

The purpose of Model Rule 5.5 is to protect the public from unlicensed and unqualified practitioners of law. That purpose is not served by prohibiting a lawyer from practicing the law of a jurisdiction in which the lawyer is licensed, for clients with matters in that jurisdiction, if the lawyer is for all intents and purposes invisible as a lawyer to a local jurisdiction where the lawyer is physically located, but not licensed.

(copy attached).

Even Florida, generally viewed as extremely protectionist in regard to practice within its borders by attorneys licensed in other jurisdictions, has recently blessed remote practice from that state. Florida Supreme Court, *Florida Bar re Advisory Opinion – Out-of-State Attorney Working Remotely from Florida Home* (May 20, 2021). See also Joint Opinion of the New Jersey Committee on the Unauthorized Practice of Law (Opinion 59) and the Advisory Committee on Professional Conduct (Opinion 742), *Non-New Jersey Licensed Lawyers Associated With Out-of-State Law Firms or Serving as In-House Counsel to Out-of-State*

*Companies Remotely Working from New Jersey Home* (October 6, 2021) (“[N]on-New Jersey licensed lawyers who are associated with an out-of-state law firm, or are in-house counsel for an out-of-state company, and who simply work remotely from their New Jersey homes but do not exhibit such outward physical manifestations of presence, . . . are not considered to be engaging in the unauthorized practice of New Jersey law.”). Copies of the Florida and New Jersey opinions are attached.

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 and Practice Book § 2-44A.

Respectfully submitted,



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

Enclosures:

- Tab A: Proposed Amendment of Rule 5.5 and Commentary (Unauthorized Practice of Law) (showing proposed changes to Rule 5.5 and Commentary as in effect on January 1, 2022)
- Tab B: Proposed Amendment of Practice Book § 2-44A
- Tab C: American Bar Association, Standing Committee on Ethics and Professional Responsibility Formal Opinion 495, *Lawyers Working Remotely* (December 16, 2020)
- Tab D: Florida Supreme Court, *Florida Bar re Advisory Opinion – Out-of-State Attorney Working Remotely from Florida Home* (May 20, 2021)
- Tab E: Joint Opinion of the New Jersey Committee on the Unauthorized Practice of Law (Opinion 59) and the Advisory Committee on Professional Conduct (Opinion 742), *Non-New Jersey Licensed Lawyers Associated with Out-of-State Law Firms or Serving as In-House Counsel to Out-of-State Companies Remotely Working from New Jersey Home* (October 6, 2021)

cc: Cecil Thomas, CBA President (via email)  
Kim Rinehart, Chair, Standing Committee on Professional Ethics (via email)  
Bill Chapman, CBA Director of Government and Community Relations (via email)  
Desi Imetovski, CBA State of the Legal Profession Taskforce (via email)  
Michael Bowler, Statewide Bar Counsel (via email)  
Brian Staines, Chief Disciplinary Counsel (via email)  
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