Item 07-03c
(031620)

STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE
Michael P. Bowler, *Statewide Bar Counsel*

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March 11, 2020

VIA EMAIL

Attorney Joseph J. Del Ciampo
Director of Legal Services
Counsel to the Rules Committee
of the Superior Court
100 Washington Street, 3rd Floor
Hartford, CT 06106

Re: Rule 5.5 of the Rules of Professional Conduct
CBA Proposals

Dear Attorney Del Ciampo:

On January 21, 2020, the Rules Committee of the Superior Court ("Rules Committee") referred a proposal by the Connecticut Bar Association's Standing Committee on Professional Ethics ("CBA Ethics Committee") to amend Rule 5.5(d) of the Rules of Professional Conduct ("Rule 5.5(d)") to the Statewide Grievance Committee ("SGC") for comment. Thereafter on February 27, 2020, the Rules Committee referred an additional proposal from the Connecticut Bar Association's Pro Bono Committee and Standing Committee on Professional Ethics ("CBA Pro Bono Committee") to amend Rule 5.5(d) to the SGC for comment. The SGC cannot support either amendment as currently proposed.

The first proposal, from the CBA Ethics Committee, recommends modifying Rule 5.5(d) to permit out of state attorneys to practice law in Connecticut for six months before applying to the Connecticut Bar for admission.

> (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 Rule 7.1 through 7.5 of these Rules.

The second proposal, from the CBA Pro Bono Committee, recommends modifying Rule 5.5(d) of the Rules of Professional Conduct to permit out of state attorneys to participate in *pro bono publico* matters in Connecticut.

> (d) A lawyer admitted in another United States jurisdiction, who is not disbarred or suspended from practice in any jurisdiction, or who has taken retirement status while in good standing in another jurisdiction, may participate in the provision of any and all legal services *pro bono publico* in Connecticut offered under the supervision of an organized legal aid society, a state or local bar association project, or of a member of the Connecticut bar who is also working on the pro bono representation.

At a meeting of the SGC on February 20, 2020[1], the SGC unanimously voted not to support these amendments as proposed. The SGC's concerns are addressed below. If the proposals were modified to take these concerns into consideration, then the SGC would be willing to review the modifications and reconsider its current position.

SGC Concerns Regarding both Proposals

The SGC observed that both rules permit the practice of law by attorneys who are not admitted in Connecticut, not the professionalism with which the attorneys should conduct themselves. Admission and practice matters are governed by Chapter 2 of the Connecticut Practice Book, not the Rules of Professional Conduct. See, e.g., Practice Book Sections 2-8 through 2-11A, 2-13, 2-13A, 2-15A, 2-16, and 2-18. The SGC concluded that the proposals should appear as amendments to Chapter 2 of the Practice Book and not as amendments to the Rules of Professional Conduct.

The SGC also noted that both proposals are available to attorneys from other jurisdictions who are not "disbarred or suspended." The proposals do not contemplate attorneys who are on inactive (disability) status or whose license is not active for another reason connected to a disciplinary investigation (e.g. a resignation in response to a disciplinary proceeding). Neither proposal is clear regarding how it interacts with Connecticut's *pro hac vice* provision, Practice Book Section 2-16.

SGC Concerns Regarding Practice Pending Admission Proposal

The SGC noted that the proposed process is not similar to or as rigorous as the processes for

1 The SGC anticipated the February 27, 2020 referral regarding the CBA Pro Bono Committee's proposal to amend Rule 5.5(d) and considered both proposals at its February 20, 2020 meeting.

admission without examination (Practice Book Section 2-13), for the temporary licensing of military spouses (Practice Book Section 2-13A), or for permission to serve as a foreign legal consultant (Practice Book Section 2-18), among others, and recommended a similar process be established. The SGC appreciated the trend to allow greater practice across state lines, but was concerned that the proposal allows an attorney to practice first and then apply for admission, an approach the SGC believed is backwards. To that end, the SGC was concerned that there was no effective way to enforce the requirement that the attorney start the admission process within six months of the commencement of the attorney's practice. The SGC noted the Branch's responsibility to the public to vet potential attorneys through a substantial review of their competency and character and fitness prior to conferring a practice privilege upon them.

SGC Concerns Regarding *Pro Bono Publico* Proposal

The SGC noted the proposal does not track the language of Practice Book §2-55(e), which authorizes retired Connecticut attorneys to perform certain *pro bono* work. Practice Book §2-55(e) requires *pro bono* work to be uncompensated and is limited to the provision of legal services with formally recognized pro bono organizations. Unlike the CBA Pro Bono Committee's proposal, Section 2-55(e) does not allow retired Connecticut attorneys to provide legal services with "a member of the Connecticut bar who is also working on the *pro bono* representation." Thus the proposal would extend greater practice rights to attorneys who were never admitted in Connecticut over those who were but have since retired. The SGC acknowledged that Practice Book §2-15A(c)(5) does permit authorized house counsel to provide these *pro bono* services while working with a member of the Connecticut bar, but the SGC observed that authorized house counsel are certified as such only after a vigorous investigation into their competency and fitness to practice.

Please let us know if you have any questions. Thank you for giving the SGC the opportunity to comment on these proposals.

Very truly yours,

Michael P. Bowler
Statewide Bar Counsel

cc: By email only:
Attorney Brian Staines
Attorney Jessica Kallipolites
Attorney Kathleen B. Harrington