

October 4, 2013

Clerk of the Supreme Court of Iowa
Judicial Branch Building
1111 East Court Avenue
Des Moines, Iowa 50319
rules.comments@iowacourts.gov
Sent by email

*Re: Letter from Association of Corporate Counsel and ACC's Iowa Chapter
Protesting Proposal to Amend Rules to Raise Fees on Iowa's In-House
Counsel*

To the Clerk:

On behalf of the Association of Corporate Counsel and our Iowa Chapter, we are writing to strongly protest the proposal to raise fees on Iowa's in-house counsel. The increased fees would bolster Iowa's Client Security Trust Fund, but there is no way the fund can help the clients that employ in-house lawyers. These organizations are sophisticated business players who know that they can fire in-house lawyers who abuse their trust. We have not found any instances of in-house lawyers in Iowa stealing client funds they hold. We also have not found any instances of corporate clients attempting to draw benefits from the fund.

As full members of Iowa's bar, in-house lawyers already pay fees that help the profession, such as the annual CLE operations fee. But the proposal would not do that. Even worse, the proposal risks double or even triple charging registered house counsel who work in Iowa, and who already pay into the Client Security Trust Fund. Nothing in the proposal even seeks to justify such a large penalty against in-house counsel, but the risk remains.

Therefore, we request that the Supreme Court maintain the current fees that in-house counsel already contribute, and reject the pending proposal.

About ACC

ACC is a global bar association that promotes the common professional and business interests of in-house counsel. Since its founding in 1982, ACC has grown to become the world's largest organization serving the professional and business interests of lawyers who practice in private-sector legal departments. ACC has over 30,000 members employed by over 10,000 organizations in more than 75 countries. Our Iowa Chapter has

160 members, and provides educational, social, and service programs to its members. Since ACC's founding over 30 years ago, we have worked to help ensure that state supreme courts and bar organizations treat in-house as full members of the bar. At the same time, ACC has fought attempts to use dunning techniques to extract cash from in-house lawyers to fund unrelated court and bar operations.

Problems with the pending proposal.

1) *In-house clients do not need protection from the fund.*

The clients of in-house counsel will never benefit from the Client Security Trust Fund. That fund exists to reimburse clients whose lawyers have stolen money from clients or otherwise acted dishonorably. The fund makes sense in the context of law firms. In theory, a lawyer at a firm can simply walk away with a client's cash. But that scenario doesn't apply in the context of in-house lawyers. Unlike other clients, organizations that employ in-house lawyers can fire their employees – not just from a single case or project, but from a salaried job and livelihood. Organizations that employ in-house lawyers also have the sophistication to work with government authorities to help disbar or criminally prosecute delinquent in-house lawyers.

History confirms this. Since the fund began operating in 1974, we have not found a single instance from a publicly available source indicating that a lawyer has stolen protected trust funds or retainer fees from an employer, or that any organizational clients of in-house lawyers have sought reimbursement from the Iowa's Client Security Trust Fund.¹

Given that the clients of in-house lawyers have not and will not benefit from the fund, there is no good reason to increase the \$25 fee that every in-house lawyer already pay to the fund in most years.

2) *In-house lawyers already pay other fees.*

ACC notes that in-house counsel already pay fees to the bar and the Court each year. These fees include the annual fee for Iowa's Continuing Legal Education Committee. And experienced in-house lawyers who wish to join the Supreme Court Bar must pay hundreds of dollars to either waive in my motion or to take the bar exam.

Often, in-house lawyers must pay such fees out of their own pockets – many employers do not reimburse for professional dues and expenses. There is no good reason to force

¹ In one case, an in-house lawyer stole money from a bank he worked for. But he did not rely on or use his position as an in-house lawyer to commit the crime. *See Cmte. on Prof. Ethics v. Austin*, 427 N.W.2d 465 (Iowa 1988). Additionally, in-house lawyers who on the side take on individual clients are in effect acting like solo-practitioners or law firm lawyers, and so should have the same obligations as law firm lawyers to pay into the Client Security Trust Fund.

Iowa's in-house lawyers to pay for a fund unrelated to protecting their clients, or to advancing their own professional development.

3) *The proposal may lead to double- and even triple-charging registered house counsel.*

While ACC and our Iowa Chapter strongly oppose the current funding proposal, if this Court does nonetheless proceed to implement it, this Court must make clear that the proposal will not lead to extra charges for house counsel who registered to practice under Rule 31.16. According to Court Rule 31.16(2)(c), registered house counsel must already pay \$200 to the "Client Security Commission" as a "client security assessment."

For the moment, put aside that it makes no sense for them to pay this fee, for the reasons that this letter has already explained. Given that registered house counsel already pay \$200, they should not need to pay the additional fees that the proposals would charge. If they did, then registered house counsel would in effect need to pay a total of \$400, plus any special assessments, even though no authority offers any justification for such a large amount.

Additionally, Iowa requires registered house-counsel to become full members of the bar after five years. *See* Iowa Court Rule 31.16(9). Any Iowa in-house lawyer who makes the transition from registered house counsel to become a full member of the bar should not need to pay the \$200 again. If that were to happen, then an in-house lawyer would face the possibility of paying **\$600** in client security fees – \$200 as registered counsel under 31.16(2)(c), another \$200 as registered counsel under the pending proposal, and still another \$200 when the in-house lawyer transitions from registered to full member.

That would add up to an exorbitant and unjustified charge. Given that this Court has offered no reason to explain such price-gouging, it seems fair to assume that the proposal contains an error that this Court no doubt will want to fix.

Conclusion

In-house counsel are full members of Iowa's bar, and are happy to pay appropriate fees. At the same time, there is no reason to treat in-house counsel as revenue sources for projects unrelated to in-house practice. In-house counsel in Iowa already pay into the Client Security Trust Fund. They do so even though it is difficult to even conceive of an in-house client that would use the fund. And they do so even though there is no record that in-house clients have ever sought to tap the fund in the past. Nothing can justify forcing in-house counsel to pay even higher fees to support the fund. Worse, the proposal might inadvertently force registered house counsel to pay double or even triple the stated dues. For all of these reasons, this Court should either reject the proposal, or rewrite it to exclude in-house and registered house counsel.

Thank you considering the views of ACC and our Iowa Chapter, and please feel free to contact us to discuss our views in more detail.

Sincerely yours,



Amar D. Sarwal
Vice President and
Chief Legal Strategist
Association of Corporate Counsel
sarwal@acc.com

Henry F. Marquard
Member, Board of Directors
Iowa Chapter –
Association of Corporate Counsel

Evan P. Schultz
Senior Counsel and
Director of Advocacy
Association of Corporate Counsel