

October XX, 2013

John W. McConnell, Esq.
Counsel
State of New York
Unified Court System
25 Beaver Street
New York, NY 10004
Sent by email

Re: Association of Corporate Counsel's support for amending Part 522 of the Rules of the Court of Appeals, to allow all registered in-house lawyers to provide pro bono services in New York

Dear Mr. McConnell:

On behalf of the Association of Corporate Counsel, ACC's three New York chapters, and the New York Chief Legal Officers listed below, we are writing to strongly support amending Part 522 of the Rules of the Court of Appeals for the Registration of In-House Counsel. The pending proposal would permit New York in-house lawyers whose law licenses come from elsewhere, and who have registered to practice as in-house counsel, to assist New Yorkers in need.

New York has a historic opportunity to help lead the country to recognize that in-house lawyers have the sophistication, experience, and capacity to help the enormous number of people who need legal services but cannot afford to pay. If New York adopts the proposed changes, it will immediately become a national leader in the effort to clear the way for all qualified lawyers to provide free legal services to people and organizations that need it. Other states are sure to follow New York's lead.

About ACC, Our New York Chapters, And The Chief Legal Officers

ACC is a global bar association that promotes the common professional and business interests of in-house counsel, with over 30,000 members employed by over 10,000 organizations in more than 75 countries. For years, ACC has advocated across the country to remove obstacles that often make it difficult for the country's experienced and sophisticated in-house lawyers to donate their legal expertise to people who need their help. ACC's three New York chapters represent Greater New York, Central and Western New York, and Westchester (with part of Connecticut). Together they have over 2,000 New York members, and provide educational, social, and service programs to their members.

Significantly, representatives from ACC and from our New York Chapters served on the Advisory Committee that helped to craft the current proposal. And the XXX Chief Legal Officers listed below work for some of New York's largest companies. Many have sought to expand their ability to offer pro bono legal services.

New York's In-House Lawyers Already Make Significant Pro Bono Contributions

In-house legal departments have already made strong contributions to meeting the great need for legal aid to the poor and under-served. According to the Advisory Committee's Report, "[o]ver the past five years, the provision of pro bono legal services by in-house counsel has grown tremendously." Report at 3. It continues, citing to Corporate Pro Bono (a partnership of ACC and the Pro Bono Institute), that "many of the Fortune 500 companies and a majority of the Fortune 100 companies have either set up or are moving to establish formal pro bono programs for the lawyers in their legal departments." *Id.* Smaller companies are also "enhanc[ing] their pro bono efforts." *Id.* In New York alone, in-house legal departments and lawyers have "have identified and provided assistance to a broad range of clients, including children and families, veterans, victims of domestic violence, the elderly, nonprofit organizations and more." *Id.*

But New Yorkers need more legal assistance from in-house lawyers. Most people living in tough financial conditions don't get help from lawyers when they need it. According to Chief Judge of the State of New York Jonathan Lippman, New York is in the middle of a "crisis" regarding access to justice. *Chief Judge Jonathan Lippman's Law Day 2012 Remarks, N.Y.L.J.* (May 1, 2012).¹ Chief Judge Lippman's letter introducing the Advisory Committee Report states that "millions of New Yorkers facing serious legal problems cannot afford the help of a lawyer." As he said last year, "we are at best meeting only 20 percent of the civil legal services needs of New York State's low-income residents." *Law Day 2012 Remarks.*

Those same unfortunate numbers apply across the country. According to the Legal Services Corporation, fewer than "one in five low-income persons get the legal assistance they need" from pro bono or legal aid lawyers. Legal Services Corporation, *Documenting the Justice Gap In America: The Current Unmet Civil Legal Needs of Low-Income Americans, An Updated Report of the Legal Services Corporation* (2009).²

New Yorkers Need More Pro Bono Help From In-House Counsel

The amendment to Part 522, proposed by the Advisory Committee on Pro Bono Service by In-House Counsel in New York State, would allow New York's in-house legal departments and others to provide even more assistance. It would give registered in-

¹ Available at <http://tinyurl.com/l9y57a3>.

² Available at <http://tinyurl.com/ahaoc5v>. See also American Bar Association, *Legal Needs and Civil Justice, A Survey of Americans* (1994) (stating that, for low-income households, the justice system does not address nearly three quarters of situations in which courts might intervene) (*available at* <http://tinyurl.com/b6hbfs1>).

house lawyers explicit permission to offer pro bono legal services, as counselors and also as advocates in courts and tribunals, without burdening legal services organizations or other attorneys with required supervision roles.

The proposal helps clear the way for registered in-house counsel to assist clients in need, on the same terms as all other New York lawyers. New York's in-house attorneys are smart, experienced, responsible, and zealous, no matter where they received their law licenses. That is why their employers hire them, and why New York already allows them to serve their employers. The pending amendment simply recognizes that all of New York's in-house lawyers should be able to serve pro bono clients with the same excellence that they already serve their employers. In the words of the Advisory Committee, adopting the proposal "would result in utilizing the talent and expertise of in-house counsel to serve the public interest" Report at 5.

Growing National Trend In Favor Of Expanded In-House Pro Bono

Fortunately, some states have taken an enlightened approach toward expanding opportunities for in-house lawyers to volunteer on a pro bono basis. Colorado, Illinois, and Virginia have led the way. They allow registered in-house counsel to provide pro bono assistance to clients, even in court, without unnecessary restrictions and bound solely by the same state practice rules that apply to all other lawyers practicing in those states. That is precisely what the New York proposal would accomplish.

From experience so far, the results are impressive. Not only has ACC not heard reports of misconduct by in-house counsel in any of the states that have expanded access to pro bono assistance from in-house counsel, but there has been a sharp increase in the number of lawyers from whom pro bono clients can obtain needed legal services. For instance, since Virginia changed its rules in 2011, more than 900 certified in-house counsel have become available to offer their services to needy individuals and organizations. Illinois has also recently amended its rules broadly to allow more than 400 registered in-house lawyers to provide legal services on a pro bono basis. Naturally, New York – a leader in so many legal areas – would add significant momentum to this trend if it adopts the proposal.

New York Should Expand Access To In-House Pro Bono Assistance

As the Advisory Committee's Report makes clear, the current practice rules in New York prevent many in-house lawyers from fully engaging in pro bono work. Nevertheless, New York's Professional Conduct Rules – which registered in-house lawyers pledge to follow – state that "[l]awyers are strongly encouraged to provide pro bono legal services" and encourage them to volunteer at least 50 hours per year. *See* Rule 6.1. However, the current system makes it impossible for registered lawyers to achieve this goal. Indeed, New York now requires law students to donate 50 hours of pro bono assistance. But it prohibits many seasoned in-house lawyers from doing the same.

The Advisory Committee's Report also offers strong reasons for avoiding the problems of imposing too many restrictions, which other states have imposed. First, the proposed rule would not waste resources by requiring registered in-house lawyers to affiliate with other New York lawyers or legal assistance organizations. "Mandated supervision increases the burden on overworked organizations." Report at 8. Additionally, because many legal aid organizations "exclude certain types of clients, such as nonprofit organizations, micro-entrepreneurs and community economic development groups, or certain types of matters, such as foreclosures and divorce, we see that the role in-house lawyers can play is limited by such restrictions." *Id.*

The proposal also would permit registered in-house lawyers to more fully meet the needs of pro bono clients, by representing them in state courts and tribunals. "Pro bono practice often presents unique opportunities for lawyers to appear before a court or tribunal that distinguish it from other representations." Report at 11. Further, "[r]egistered in-house counsel, through the registration process, have already certified that they are licensed and in good standing in another jurisdiction and possess the good moral character and general fitness required to be a member of the New York bar." *Id.*

As the Advisory Committee astutely summarized its reasoning: "We conclude that the result of these unnecessary restrictions is not that the work will get done by licensed attorneys, but that it simply will not get done at all." Report at 7.

Conclusion

The pending amendment offers another step toward addressing New York's massive unmet need for legal assistance, by making available the time and skills of experienced registered in-house lawyers. And doing so would continue the spirit of a resolution passed last summer by the Conference of Chief Justices, to expand pro bono legal services. That resolution supports allowing "non-locally licensed in-house counsel who are permitted to work for their employer to also provide pro bono legal services." Conf. of Chief Justices, Resol. 11 (passed July 25, 2012).³

In short, the New York amendment recognizes that lawyers who help their corporations and organizations with difficult problems are equally qualified to help people and organizations in legal distress who cannot pay. As the Advisory Committee Report states, "[t]o realize Chief Judge Lippman's aspirations, we urge that registered in-house counsel seeking to do pro bono work should not face more onerous requirements than any other lawyer licensed in New York." Report at 10. We agree, and therefore strongly urge that New York adopt the proposal.

³ See <http://ccj.ncsc.org/~media/microsites/files/ccj/resolutions/07252012-in-support-of-practice-rules-enabling-in-house-counsel-to-provide-pro-bono-legal-services.ashx>.

Very truly yours,

Amar D. Sarwal
Vice President and
Chief Legal Strategist
sarwal@acc.com

Evan P. Schultz
Senior Counsel and
Director of Advocacy

David H. Brill
President
Greater New York Chapter

David Mowry
President
Central & Western New York Chapter

Charles S. Biener
Advocacy Liaison
Westchester/Southern Connecticut
(WESFACCA) Chapter

[signatures of NY Chief Legal Officers]

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