

December 17, 2007

The Honorable Justices of the Supreme Court of Wisconsin
c/o Julie Rich, Supreme Court Commissioner
16 East State Capitol
P.O. Box 1688
Madison, WI 53701-1688

Re: State Bar of Wisconsin Petition 06-06
(Proposed Rule 20:5.5 In-House Practice Issues)

Honorable Justices:

Please accept this comment letter on behalf of the Association of Corporate Counsel (ACC); the Wisconsin Chapter of ACC and the Corporate Counsel Committee of Wisconsin Manufacturers & Commerce. These groups all represent and serve the in-house counsel community in Wisconsin.

As the Court is aware, ACC previously filed a comment letter regarding this Petition on March 30, 2007. While the State Bar of Wisconsin has proposed portions of ABA Model Rule 5.5 to the Court in this Petition, not all language in the ABA Model Rule was included. ACC urged the Court to adopt the language of ABA Model Rule 5.5 (d)(1) which provides:

“(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that: (1) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission;”

This language was adopted by the ABA after considerable study and debate and was intended to facilitate the practice of in-house lawyers who may be required by their employer-clients to advise the client on the laws of many jurisdictions and sometimes engage in activities that could be considered the “practice of law” in jurisdictions where the lawyer is not admitted.

While it is likely that the vast majority of lawyers practicing in-house in Wisconsin are already admitted to the State Bar, there are probably a small number of lawyers who have

moved to Wisconsin from other jurisdictions, either to take a new job or as a result of a relocation required by their employer-client. The ABA Model Rule language would make it clear that such lawyers are not engaged in the “unauthorized practice of law” in Wisconsin.

This rule has the added benefit of being simple, clear, and eliminating any doubt as to the ability of a licensed in-house lawyer to represent his or her employer-client in this state, even if the lawyer is not admitted in Wisconsin. This would provide clear guidance to companies or lawyers contemplating a move or relocation to Wisconsin and would eliminate a potential barrier to such movements if the lawyer’s ability to practice in-house in Wisconsin was in doubt.

This rule also appears to be consistent with this Court’s statements in Mostkoff v. Board of Bar Examiners, 2005 WI 33 (3/24/2005), to the effect that an in-house lawyer could continue to practice in Wisconsin notwithstanding the fact that he was not admitted in this state.

Following an April public hearing by this Court on this Petition, the State Bar appointed a Special Committee to look into this issue and make a recommendation to the Board of Governors. We are pleased that several in-house attorneys were asked to serve as members of this Special Committee, including two signatories of this letter, Ms. Pam Patzke, current President of the Wisconsin ACC Chapter and Mr. Michael McCarty, a Wisconsin ACC Chapter board member who also acted as the representative of Wisconsin Manufacturers & Commerce Corporate Counsel Committee on this Special Committee. We thank the State Bar for the opportunity to be heard on this important matter.

In June, the Special Committee, by a divided vote, decided to recommend to the Board of Governors that the State Bar should not recommend adoption of ABA Model Rule 5.5(d)(1) to this Court. Rather, the Special Committee recommended that the State Bar put forth a procedure to implement a “limited license” to practice in-house in Wisconsin for attorneys not otherwise admitted. The Special Committee put forth a specific recommendation in this regard, including a proposed application, applicant affidavit and a proposed modification to SCR 10.03.

Following this vote, a group of 40 Wisconsin General Counsel (chief legal officers of Wisconsin based companies), sent a letter to the State Bar voicing support for the adoption of ABA Model Rule 5.5(d)(1) and urging the Bar, if it could not recommend this language, to adopt a simple and inexpensive application process for the proposed limited license. A copy of this letter is attached hereto.

The Board of Governors adopted the Special Committee’s recommendation at a meeting held December 7. We do not have issues with the specifics of this proposal, which

appears to be fair and reasonable, but we continue to urge the Court to consider the adoption of ABA Model Rule 5.5(d)(1) rather than the limited license approach.

It is simple. It appears to codify existing law stated in the *Mostkoff* decision. It puts Wisconsin on an equal footing with many other states which have adopted the ABA's language. It also provides clarity to employers seeking to hire or move non-Wisconsin admitted lawyers that they will be free to practice in Wisconsin immediately.

The 5.5 (d)(1) language also would not require any additional regulatory effort, no increase in State Bar fees, and no additional burden on the Office of Lawyer Regulation or Board of Bar Examiners.

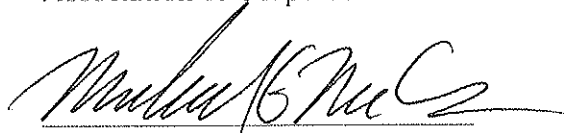
We thank the Court for its consideration of our position and would appreciate the chance to be heard at the January 9, 2008 hearing on this Petition.



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Pam Patzke
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Michael G. McCarty
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cc: Dean Dietrich – Chairman, State Bar Ethics Committee
Thomas Basting – President, State Bar of Wisconsin