



NEW YORK STATE BAR ASSOCIATION

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November 8, 2013

John W. McConnell, Esq.
Counsel
New York State Unified Court System
25 Beaver Street
New York, New York 10004

**Re: Report of the Advisory Committee on Pro Bono
Service by In-House Counsel**

Dear John:

As you know, in 2010 the New York State Bar Association, together with the New York City Bar Association and the New York County Lawyers' Association, initially proposed rules governing the registration of in-house counsel. Our proposal contained a provision by which registered in-house counsel could provide pro bono services through a legal services organization. Similarly, in 2012 our Association approved a proposal from our Corporate Counsel Section that would permit pro bono service by registered in-house counsel, provided that in making appearances before tribunals counsel would obtain pro hac vice admission to appear.

We are gratified that the Advisory Committee on Pro Bono Service by In-House Counsel has issued a report recommending that registered in-house counsel be permitted to provide pro bono service in New York. Our Association long has supported voluntary pro bono service by attorneys in all types of practice settings. After issuance of the Advisory Committee's report, we asked several of our sections and committees to review and provide comments, and I am pleased to enclose comments submitted by our Committee on Standards of Attorney Conduct and our Committee on Legal Aid. The Committee on Standards of Attorney Conduct supports the proposal in total; the Committee on Legal Aid similarly supports pro bono service, but recommends that such service be provided through a legal services organization.

I commend these comments for the Court of Appeals' review. Please do not hesitate to contact me if we can provide additional information or be of further assistance.

Sincerely,

David M. Schraver

**NEW YORK STATE BAR ASSOCIATION
COMMITTEE ON STANDARDS OF ATTORNEY CONDUCT**

**COMMENTS ON THE REPORT AND RECOMMENDATIONS
OF THE ADVISORY COMMITTEE ON
PRO BONO SERVICE BY IN-HOUSE COUNSEL**

October 24, 2013

The Committee on Standards of Attorney Conduct (COSAC) recommends that the New York State Bar Association support the September 2013 *Report and Recommendations of the Advisory Committee on Pro Bono Service by In-House Counsel in New York State* (the “Advisory Committee Report” or the “ACR”). The *Advisory Committee Report* addresses the urgent need to expand legal services for indigent and low-income New Yorkers by proposing a practical and efficient rule permitting pro bono practice by registered in-house counsel. We have a single suggestion to streamline the rule – that notice of pro bono counsel’s status simply be noted on all filings rather than requiring the filing of a new form – but otherwise we endorse the drafting of the rule without reservation.

COSAC has long-supported authorizing pro bono representation by registered in-house counsel. Like the Advisory Committee, we believe the goal of expanding access to justice is well served by such authorization. Indeed, in our 2010 report recommending that New York adopt a rule licensing in-house counsel -- which was joined by the Association of the Bar of the City of New York and the New York County Lawyers’ Association and served as the basis for the rule that the Court of Appeals adopted -- we proposed permitting pro bono representation by registered in-house counsel.¹

Our 2010 proposal, unlike the ACR’s, recommended that in-house counsel pro bono representation be offered only “through an established not-for-profit bar association, pro bono or legal services program or through such other organization(s) as are specifically authorized to provide pro bono representation in New York.”² We chose that limitation to ensure that clients would be protected by adequate supervision of in-house lawyers who may be unfamiliar with the areas of law or forums in which they would practice pro bono. The Advisory Committee eschews such a limitation, following models in Illinois, Virginia, and Colorado, which rely on the same requirement of competence that applies to admitted lawyers.³ ACR at 7, 9.

¹ See Report of the NYSBA, the Association of the Bar of the City of New York, and the New York County Lawyers’ Association, *Proposed Rules for Licensing of In-House Counsel* (November 2010).

² *Id.* at 13.

³ Rule 1.1 of the New York Rules of Professional Conduct provides, “A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.”

After a thorough review of the *Advisory Committee Report*, we are persuaded that requiring pro bono service through particular organizations will unnecessarily restrict the overarching goal of fulfilling New York's promise of equal access to justice, especially in these times of fiscal austerity, when pro bono organizations are "already stretching their resources" and facing "reduced staff" and "funding cuts." ACR at 8. In addition, notes the ACR, "[B]ecause some legal services providers and similar 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," the restriction unreasonably prevents in-house counsel from providing services they are "often well-suited" to provide, especially to "non-profits and social entrepreneurs." *Id.*

The ACR proposal streamlines and encourages pro bono services by registered in-house counsel in other ways. First, the proposal does not require pro hac vice admission. Registered in-house counsel could appear before any tribunal in the state, in the discretion of the tribunal, upon the filing of a "Notice of Pro Bono Representation" certifying that counsel is duly registered with the Appellate Division and authorized to appear pro bono under the Rules of the Court of Appeals. While, as noted below, we question the need for an additional form, we support the goal of streamlining pro bono counsel's appearance.⁴

Eliminating the "pro hac vice" requirement makes practical sense. Counsel need only "notify the court or tribunal of their bar status prior to each representation before that body." *Id.* at 11. This notice-only requirement "ease[s] administration by the courts while [still] allowing the courts to exercise their discretion to deny a lawyer permission to appear." *Id.* Notice-only also "eliminat[es] unnecessary restrictions [and so] will encourage participation." *Id.*⁵

⁴ The ACR proposes no other changes to the current in-house registration rules. So, for example, registered in-house counsel would remain prohibited from holding themselves out as admitted to practice law in the state and from making court appearances other than in pro bono matters.

⁵ In proposing that registered in-house counsel be permitted to provide pro bono service, the State Bar in June 2012 suggested retaining the requirement of pro hac vice admission but noted that retaining the requirement would "diminish the benefits that in-house counsel can bring to those in need of representation in New York" and urged a study of whether the application of the pro hac vice rules is necessary to protect clients in need. NYSBA Report, *Proposed Amendments to Part 522 of the Rules of the Court of Appeals – Right to Practice Reform: Registered In-House Counsel and Pro Bono Service*.8 (June 23, 2012). We

Second, the proposal does not require supervision by a fully licensed New York attorney. Instead, the *Advisory Committee Report* emphasizes the role that the rules of professional conduct play in assuring adequacy of representation. It says, and we agree, that “requiring supervision by a New York licensed attorney unnecessarily duplicates the protection provided by the existing applicable rules of professional conduct requiring competence, hampers the ability of qualified in-house counsel to provide advice and services to communities in need and fails to acknowledge the years of experience and knowledge of in-house lawyers who are trusted to represent their companies.” ACR at 9.

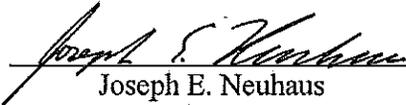
To emphasize the important role of the professional conduct rules, in a provision we also support, the ACR recommends that § 522.8 “reiterate” that in-house counsel doing pro bono work are “subject to the ethical rules and disciplinary oversight of the State.” ACR at 10. The ACR adds: “[B]y holding in-house counsel to the same high standards of competency and zealous representation that all lawyers practicing in a state must follow, pro bono clients are protected as their volunteer in-house attorneys are subject to the rules of the jurisdiction in which they are admitted as well as to the New York Rules of Professional Conduct.” ACR at 9-10.

We recommend one change to the proposed rule: we question the need for a new form by which the pro bono counsel certifies his or her eligibility to appear in pro bono cases. We suggest that the rule might instead provide that, by making an appearance in a qualifying case, the pro bono counsel is deemed to have certified that he or she is duly registered and authorized to appear pro bono under the relevant rules. The function of notice to the court or tribunal and parties might be accomplished by requiring counsel to note the capacity in which he or she appears on all documents filed in the matter. The rule could provide appropriate language, such as: “[Name], Appearing Pro Bono Pursuant to Section 522.8 of the Rules of the Court of Appeals.” Substituting this simplified notice requirement will enhance the Advisory Committee’s goal of eliminating unnecessary restrictions and easing administration of the program while still allowing courts and tribunals to exercise their discretion to deny permission to appear, without burdening rule books, court clerks and parties with an additional form.

agree with the ACR’s conclusion that pro hac vice rules are not necessary to protect clients in these circumstances.

Accordingly, COSAC recommends that the New York State Bar Association support the September 2013 *Advisory Committee Report*, but suggests that the notice requirement be further streamlined by requiring only that counsel appearing under the rule note the capacity in which they appear and identify the applicable rule in any documents they file in a matter, rather than requiring the filing of a special form.

Dated: October 24, 2013
New York, New York



Joseph E. Neuhaus
Chair
Committee on Standards of Attorney Conduct



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October 30, 2013

John W. McConnell, Esq.
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Office of Court Administration
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Sent by email to Part522@nycourts.gov

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 38 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 38 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/19y57a3>.

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,



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Director of Advocacy

David H. Brill
President
Greater New York Chapter

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General Counsel
Whitsons Culinary Group

2013



New York State
Association of County Clerks

MEMORANDUM

October 28, 2013

To: Office of Court Administration
Via email (Part522@courts.gov)

From: Elizabeth Larkin
President, NYSACC
Cortland County Clerk

CC: NYSACC

Re: Comment from the NYSACC concerning the Report of the Advisory Committee on Pro Bon Service by In-House Counsel, recommending amendment to Part 522 of the Rules of the Court of Appeals to permit registered in-house counsel to provide pro bono legal services.

The New York State Association of County Clerks appreciates the notification and request for comment on the above proposed rule change. Not only are the duties of the New York State County Clerks wide and varied, but implementation of the duties can vary based on regional, personnel/human resources and technology considerations.

After review and consideration of the above proposed amendment, NYSACC is not opposed to the proposed amendment to Part 522 of the Rules of the Court of Appeals.

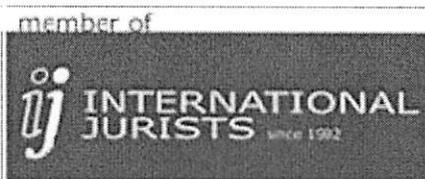
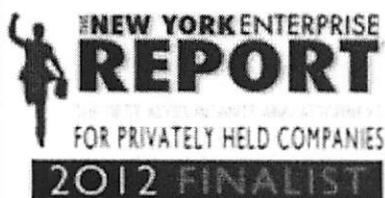
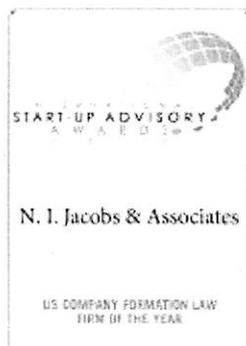
Part522 - Pro Bono

From: "Neil Jacobs" <neil@nijlaw.com>
To: <Part522@nycourts.gov>
Date: 10/21/2013 1:24 PM
Subject: Pro Bono

Please allow registered in-house counsel to provide pro bono services. They have the same capacities as lawyers in private practice and the pro bono community needs all the help it can get.

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