

Maine Supreme Judicial Court

Ethics 2000

Comments of the Northeast Chapter of the Association of Corporate Counsel

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November 10, 2008

Members of the Supreme Judicial Court:

On behalf of the Northeast Chapter of the Association of Corporate Counsel (“ACC”), I write to urge the adoption of the proposals of the Maine Task Force on Ethics to amend the Maine Bar Rules to conform with the American Bar Association’s Model Rule of Professional Conduct 5.5 and 8.5. This proposed amendment addresses the needs and concerns of both the bar and corporate clients by balancing the bar’s mission to protect the public, assuring that lawyers working in the state are properly licensed, competent and regulated, with the need for clients to retain lawyers who are authorized to engage in limited and regulated cross-border practice.

ACC is the world’s largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector organizations around the globe. We provide a voice and represent the needs of more than 25,000 lawyers in over 10,000 business entities in more than 80 countries. ACC’s Northeast Chapter is the local representative of ACC’s 956 members in the states of Maine, Vermont, Rhode Island, Massachusetts and New Hampshire.

Cross-border authorizations, codified in the proposed multijurisdictional practice (MJP) reforms before the Court, are crucial to both lawyers’ practice and clients’ service and protection. In today’s world, clients’ legal needs are addressed in the regional, national and international marketplace. It is thus especially crucial to the hundreds of

corporate counsel representing corporate clients who are resident in the state that MJP reforms are passed. The proposals before you are the result of extensive hearings and deliberations: the ABA adopted these Model Rules after hearing and incorporating the views of state and local bars, national and specialty practice groups, disciplinary and regulatory counsel, legal and ethics academics, client's representatives, and scores of individual lawyers over a two-year period. The proposals were passed almost unanimously by the ABA's house of delegates made up of hundreds of lawyers from all over the nation and are now the rules that regulate the unauthorized practice of law in 37 states. As you know, the remaining states are all in some part of the process of consideration of adoption of these rules as well, since they represent both a recognition for needed rule reform and the creation of powers for states to regulate and address any problems created by MJP practitioners who are not locally licensed.

The MJP provisions before you create exceptions to the traditional rules prohibiting practice in the state by a lawyer who is not locally licensed. The exceptions offered in this rule affect two general groups of lawyers, both important to ACC's interests:

- One group is lawyers who are licensed and in good standing in another jurisdiction, and who need to enter the state on a temporary basis. Under these rules, such lawyers can make temporary "incursions" into the state in furtherance of matters that the lawyer is licensed to perform: for instance, authorizing a lawyer from another state to come to Maine to take a deposition of a resident in furtherance of a case that lawyer is trying in his home state of admission, or engage in a negotiation on a transaction related to the

lawyer's home-state representation of a local company. Both in-house and outside counsel are in need of such practical authorizations, just as the bars are in need of the authority to regulate any mishaps in lawyer conduct that could happen during such an incursion. In-house counsel are particularly concerned about such authorizations since they may retain a single firm to help them assure compliance with local laws in multiple jurisdictions, and the idea that they must hire 50 firms to perform compliance audits in 50 states is just not practical.

- The other group of lawyers who are excepted by these rules from traditional unauthorized practice provisions in the Maine codes are in-house counsel, who are empirically more likely to take a new job with another corporation in a state in which they are not licensed, or be transferred from a client facility in the state in which they are licensed to another client facility (for the same employer) in a new state, such as Maine. Such in-house counsel are generally highly competent, carefully vetted lawyers at the top of their game (in-house jobs are hotly contested, and generally awarded to highly experienced and well-recognized lawyers), and they present no danger to the local public since they do not hold themselves out for retention – indeed, they practice only for their in-house client, who by definition is a large and sophisticated company that can assess the qualifications of the lawyer they wish to hire, and can fire that lawyer (the ultimate discipline which forces them to thus leave the state) if the lawyer does not live up to their expectations.

While in-house counsel, and MJP practitioners in general are the least likely (empirically, according to the National Organization of Bar Counsel) to pose any threat to

the local public in terms of malfeasance or need for disciplinary regulation, we would note to the court that the proposals before them include not only an ABA MRPC 5.5 authorization of MJP, but a corresponding proposed Rule 8.5 regarding reciprocal discipline. Reciprocity and the ability of the state to regulate lawyers who are not locally licensed but are at work in their state is crucial to the practical implementation of a system in which states wish to assure enforcement of appropriate lawyer standards of admission and practice. In other words, we suggest that lawyers from other jurisdictions are already likely making temporary incursions into your state without local licenses, but more importantly, without local authority for the Maine authorities to yank their licenses or control their behavior. The combination of ABA MRPC 5.5 and 8.5 allows states to regulate lawyers who are already here, rather than forcing the bar to refer any infractions of local rules to the home state that "owns" the offending lawyers' admission and regulation.

ACC enthusiastically supports the proposals of the Maine Task Force on Ethics stated in their Ethics 2000 report and would welcome the opportunity to address specific questions or provide the court with more information on corporate counsel's perspective on this important issue. We are also happy to refer you to resources from the headquarters offices or staff of the Association of Corporate Counsel should you require them; ACC staff were leaders on the ABA MJP Task Force that proposed and have worked with many states in their consideration of MJP reforms – indeed our continued work with the Commission was requested by then-ABA President and longtime Maine local bar leader Bob Hirshon. We stand ready to provide whatever help we can, and

encourage you to consult with us if we can be of assistance.



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