

October 14, 2014

Honorable Judge Charles P. Dykman
Wisconsin Board of Bar Examiners
110 East Main Street, Suite 715
P.O. Box 2748
Madison, Wisconsin 53701-2748

Re: Additional Support of Association of Corporate Counsel for strengthening Wisconsin's commitment to allow registered in-house lawyers to provide pro bono services, by amending SCR 10:03(4)(f).

Dear Judge Dykman:

On behalf of the Association of Corporate Counsel and its Wisconsin Chapter, we write to thank you for the opportunity to discuss our support of the proposed amendment to SCR 10:03(4)(f) at the Board of Bar Examiners September 19, 2014 meeting. In follow-up to concerns expressed during the September 19 meeting, specifically, concerns that the proposed amendment may not provide sufficient protections to ensure that registered in-house counsel provide pro bono services only to underserved clients, we offer the following additional perspective.

In previous communications, including our letter dated September 17, we shared with you the many benefits of adopting the proposed amendment, which would empower registered in-house counsel to provide pro bono services as defined by SCR 20:6.1.

As related below, we would like to highlight the seriousness to which Wisconsin's registered in-house counsel would take this ethical responsibility. If Wisconsin makes it easier for registered in-house lawyers to provide pro bono work, we fully expect that they will use the rule as intended – to help people and organizations in need who cannot otherwise afford to hire lawyers.

First, registered in-house counsel are already subject to and abide by the Wisconsin rules of professional conduct. As part of their registration process, Wisconsin in-house lawyers, who are licensed and in good standing in at least one other state, agree to follow all of Wisconsin's ethics rules. In the affidavits in-house counsel sign to register, they swear "I acknowledge that I am subject to the Wisconsin Supreme Court Rules, including the Rules of Professional Conduct for Attorneys."¹ There is no evidence that registered

¹ See SCR Ch. 10, App. B, Para. 4; see also Form BE-014-1, Para. 4, available at <https://www.wicourts.gov/services/attorney/inhousereg.htm>.

in-house counsel cannot be trusted to honor this pledge or that they pose any special risk to the public or the profession. Therefore, registered in-house counsel should be entitled to the same degree of trust and respect that is afforded to other lawyers. We have heard of no instances where a registered in-house lawyer has ignored this obligation. Indeed, a top Wisconsin ethics regulator speaking to the Wisconsin Chapter of ACC noted earlier this month that he sees very few ethics issues of any sort involving in-house counsel. Further, in the states that have already adopted expanded in-house pro bono provisions, we are unaware of any instances where an in-house lawyer violated the rules to help clients other than those defined by the rules of professional conduct, including a boss's relative or friend.

Second, Supreme Court Rule 20:6.1 offers a clear definition of who qualifies for pro bono legal services in charity. For free work, Rule 6.1(a) directs lawyers to focus on “persons of limited means” and organizations “in matters that are designed primarily to address the needs of persons of limited means.” Additionally, under Rule 6.1(b), free legal services may also be provided to individuals or groups in matters designed to protect “civil rights, civil liberties or public rights” or to groups where standard fees would be an undue financial burden or inappropriate. These are precisely the types of pro bono work that the roughly 225 registered in-house counsel in Wisconsin will likely pursue. In-house legal departments work closely with a variety of legal aid organizations, bar associations and community groups to develop pro bono plans that fit the interests and skills of their lawyers. If in-house lawyers feel pressure to provide legal services outside the true pro bono activities that have been authorized by the rule and the company, they have the same ethical duty as any other lawyer: to decline the request. If they perform work outside these limits and claim it is pro bono, they will have broken the rules and need to face the consequences, just like any other lawyer who breaks an ethics rule.

Third, when registered in-house counsel agree to abide by the Wisconsin Rules of Professional Conduct, that includes SCR 20:1.13, which makes clear that for in-house counsel, the true client is the organization, not any individual employee or officer. This rule states, “[a] lawyer employed or retained by an organization represents the organization.” In light of that requirement, representing senior leadership or their family members could cause a wide array of problems (such as ethical conflicts), even for an in-house counsel admitted to the Wisconsin Bar. Permitting registered in-house counsel to practice pro bono on behalf of needy clients does not alter that calculus at all.

As we stated in our September 17 letter, the need for pro bono assistance in Wisconsin is great and registered in-house counsel stand ready to provide invaluable services to underserved individual and communities. We hope that this letter clarifies questions and addresses concerns regarding the proposed amendment. We reiterate the request from our September 17 letter, and respectfully ask your committee to join other states in expanding opportunities for in-house lawyers to provide pro bono services that Wisconsin needs.

Sincerely yours,

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