

July 8, 2015

Jan B. Zekich
Committee Secretary
Supreme Court Rules Committee
222 N. LaSalle Street, 13th Floor
Chicago, Illinois 60601

Sent via email and first-class mail

*Re: Amendments to Rule 5.5 of the Illinois Rules of Professional Conduct and
Supreme Court Rule 716 included in Proposal 15-04 (P.R. 0229).*

Dear Ms. Zekich:

The Association of Corporate Counsel (“ACC”), our Chicago Chapter, and the 22 chief legal officers from Illinois companies listed below are writing to express our strong support for the amendments to Rule 5.5 of the Illinois Rules of Professional Conduct and Supreme Court Rule 716 included in the Supreme Court Rules Committee’s Proposal 15-04 (P.R. 0229).

ACC is a global bar association that promotes the common professional and business interests of in-house counsel, with more than 35,000 members employed by more than 10,000 organizations in more than 75 countries. For years, ACC has worked to expand lawyers’ right to practice. That is, we try to remove unnecessary barriers within the United States and around the world that prevent in-house lawyers from working where their employers need to send them. ACC’s Chicago Chapter has more than 2,000 in-house counsel members representing leading local, national and international companies. The chapter is dedicated to serving the needs and interests of the in-house counsel community most particularly in Chicago and the State of Illinois as well as supporting those members whose job responsibilities are more national and/or global in scope.

In April 2014, the ACC, the Chicago Chapter and numerous chief legal officers from Illinois companies submitted a letter to the Illinois Supreme Court Committee on Professional Responsibility to encourage the Committee to consider amending the Illinois Rules of Professional Conduct to allow companies to more easily utilize foreign in-house counsel. The letter advocated for an approach very similar to the one included in the proposed amendments. Needless to say, we are elated that the Supreme Court has taken up this issue and strongly urge the approval of the amendments to Rule 5.5 and Rule 716.

We are very supportive of the rules as proposed. The rules treat registered in-house lawyers the same, whether their authorization to practice comes from the United States or from abroad. Importantly, in using the phrase “admitted *or otherwise authorized to*

practice in a foreign jurisdiction” (emphasis added), the rules also accommodate in-house lawyers from jurisdictions such as France or South Africa who must surrender their law licenses upon entering in-house practice, as well as in-house lawyers from the Netherlands or Lithuania, which do not require law licenses for many facets of in-house practice. We understand this was the intent of the rule – to embrace those jurisdictions that do not have the same requirements for in-house counsel as the United States – and we are pleased to see this language incorporated in the rule. The signatories to this letter feel strongly that a foreign in-house lawyer should not be restricted from in-house practice in the United States simply because their home jurisdiction’s legal system differs from ours with respect to how it regulates the practice of in-house counsel.

A minor note of concern we have is that comment [22] to proposed Rule 5.5 could be interpreted in a way to exclude jurisdictions such as France, where in-house lawyers are not regulated by a professional body or public authority, nor are they required to pass a bar exam or other requirements of licensing. To make it clear that a foreign legal system may still satisfy the requirements of Rule 5.5(e) even when in-house counsel in that jurisdiction are not subject to the same degree of regulation and discipline that we would expect in the United States, we would replace the last sentence of comment [22] with the following language:

Where the foreign legal system bars or does not require in-house counsel to participate in such a system of regulation, paragraph (e) may still be satisfied by a showing that the foreign legal system’s regulatory scheme allows the foreign lawyer in question to provide legal advice to a corporation or other business entity.

We believe this modification will clearly indicate that foreign in-house attorneys may qualify under the Illinois rule even when their home jurisdiction does not follow a similar system of attorney regulation and discipline as is present in the United States. This more inclusive language proposes no risk to the public or the Illinois legal community. Companies that retain in-house lawyers are sophisticated legal consumers, and as comment [16] notes, the employers of in-house counsel are well situated to assess the lawyer’s qualifications and the quality of the lawyer’s work. Moreover, like his or her domestic counterparts, a foreign in-house lawyer seeking to practice under Rule 5.5(d) and Rule 716 must first survive a character and fitness review. If the foreign in-house counsel is successful, he or she is then subject to the full disciplinary authority of Illinois – in the event that a foreign lawyer practicing under these rules is involved in unethical conduct, the lawyer could be barred from further practice in Illinois, in addition to whatever consequences the lawyer would face from their employer.

Finally, we would suggest an additional change to the Rule 5.5 commentary to ensure consistency with other parts of the commentary to Rule 5.5 and the language of the Rule itself. In comment [7], there is a newly added sentence stating that Paragraph (d) of the Rule applies to lawyers admitted in a foreign jurisdiction. We would suggest adding “or otherwise authorized to practice” after the word “admitted.”

We believe the proposed changes to Rule 5.5 and Rule 716 will enhance Illinois' stature as a business-friendly jurisdiction that is attractive to global businesses. Companies need a wide choice of foreign counsel to accommodate their expanding global needs. Making it easier for companies to employ in-house lawyers from foreign countries will greatly boost Illinois' ability to compete on the global stage. We strongly urge the Illinois Supreme Court to adopt the amendments to these rules.

Sincerely yours,



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