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1001 G Street NW
Suite 305 West
Washington, DC 20001
www.probonoinst.org
www.cpbo.org

January 4, 2019

Chief Justice Mark D. Martin
Chair
Professionalism and Competence of the Bar Committee of the
Conference of Chief Justices
c/o Association and Conference Services
300 Newport Avenue
Williamsburg, VA 23185-4147

Dear Chief Justice Martin:

We are pleased to provide this update on the progress of implementation of *Resolution 11: In Support of Practice Rules Enabling In-House Counsel to Provide Pro Bono Legal Services*, adopted by the Conference of Chief Justices (CCJ) Professionalism and Competence of the Bar Committee and the CCJ/Conference of State Court Administrators (COSCA) Access, Fairness and Public Trust Committee (the Conferences) at the 2012 Annual Meeting on July 25, 2012.

When the Conferences adopted *Resolution 11*, most U.S. jurisdictions permitted non-locally licensed in-house counsel to practice in-state for their employer but more than half did not authorize non-locally licensed in-house counsel to also engage in pro bono legal services. Since then, more than 15 jurisdictions have amended their practice rules to empower non-locally licensed in-house counsel to engage more broadly in pro bono. Some jurisdictions authorized permission for the first time. Others amended their rules to permit greater engagement in pro bono by non-locally licensed in-house counsel.

Since our last letter dated July 7, 2017, several jurisdictions have amended or are seeking to amend practice rules to allow non-locally licensed in-house counsel to provide pro bono legal services.

Kansas

Kansas adopted a new rule, effective September 6, 2018, permitting non-locally licensed in-house counsel registered to work in-state for their employer to also provide pro bono legal services in affiliation with an approved entity. Previously, Kansas did not have a rule permitting registered in-house counsel to practice pro bono. Now, under amended Supreme Court Rule 712, an attorney with a restricted license “to perform only legal services for the employer’s business” is “authorized to provide pro bono legal services through (1) a not-for-profit provider of civil legal services approved by the Supreme Court for this purpose or (2) an accredited law school clinic approved by the Supreme Court for this purpose.” Kan. Sup. Ct. R. 712. This new rule opens up opportunities for registered in-house counsel to provide pro bono legal services in Kansas.

District of Columbia

On November 1, 2018, the District of Columbia Court of Appeals issued an order amending Rule 49(c)(9), which addresses the provision of pro bono legal services by several categories of attorneys not licensed to practice law in the District of Columbia. The rule change, effective January 1, 2019, streamlines the prior rule and affirms D.C.'s authorization for non-locally licensed in-house counsel.

Under amended Rule 49(c)(9)(A), any person who “is an enrolled inactive or enrolled retired member of the D.C. Bar or the bar of another state or territory or is authorized to practice law and in good standing in another state or territory” is permitted to “provide legal services *pro bono publico* in affiliation with, but not as an employee of, a non-profit organization located in the District of Columbia that provides legal services to individuals with limited means at no charge or for a nominal processing fee” and “is supervised by an enrolled, active member of the D.C. Bar in good standing.” This includes non-locally licensed in-house counsel.

During the public comment period for the proposed rule, the Association of Corporate Counsel (“ACC”) and its National Capital Region Chapter along with Pro Bono Institute (“PBI”) submitted comments to the D.C. Court of Appeals, urging the court to remove the supervision and affiliation requirements for in-house counsel when delivering pro bono legal services to be more consistent with rules adopted in Virginia, Illinois, New York, and Wisconsin. Unfortunately, the Court did not eliminate those requirements.

California

On December 12, 2018, the State Bar of California filed a petition to request that the California Supreme Court adopt proposed revisions to the State Bar Rules of Court, including California Rule of Court 9.46 on Registered In-House Counsel. Under the current rule, non-locally licensed in-house counsel registered to practice for their employer in-state must also register as Legal Services Attorneys to provide pro bono services and do so under the supervision of a licensed California lawyer while working with only one legal services organization and only for a period of three years. The modifications proposed by the State Bar include eliminating the requirement that registered in-house counsel also register as Legal Services Attorneys, eliminating the time limitations on pro bono engagement, and permitting registered in-house counsel to provide pro bono services through their employer as well as multiple legal aid organizations.

In a letter dated October 22, 2018, ACC and its four California chapters along with PBI submitted comments on the proposed rule change. More than 30 chief legal officers and general counsel signed on in support of the proposed revisions that permit registered in-house counsel to provide pro bono legal services with fewer restrictions than under the current rules.

Although ACC and PBI generally supported the proposed changes that would eliminate unnecessary restrictions on in-house counsel pro bono, the letter submitted to the Bar called for further changes, including eliminating the requirement that registered in-house counsel be supervised by a California attorney when performing pro bono; eliminating the requirement that registered in-house counsel submit a supplemental form before offering pro bono services and when the supervising attorney changes; and broadening the unnecessarily restrictive definition of eligible legal aid organizations with which in-house counsel may affiliate to do pro bono.

Looking Forward

As the global project of PBI to enhance in-house pro bono, Corporate Pro Bono (CPBO) has worked with hundreds of legal departments and ACC chapters across the U.S. interested in contributing to access to justice. PBI and CPBO are pleased to see a growing number of states liberalizing their rules to permit non-locally licensed in-house counsel to deliver pro bono legal services. However, we are disappointed that some states have chosen to impose or retain unnecessary restrictions on in-house pro bono. Protections already exist that require all attorneys, including non-locally licensed in-house counsel who are authorized to work locally for their employers,

to be competent and zealous advocates and follow the rules of professional conduct, including seeking training and supervision when needed. Restrictive in-house pro bono practice rules do not add more protection for clients but, instead, create unnecessary barriers to helping those in need. These restrictive pro bono practice rules duplicate efforts by requiring members of the local bar to supervise pro bono lawyers whether needed or not; restrict pro bono opportunities to those offered by approved organizations, excluding nonprofits and others in need and limiting the clients served; and generally discourage thousands of skilled in-house counsel from providing pro bono. We look towards a day when these unnecessary restrictions will be eliminated, opening more avenues for in-house counsel to serve communities in need.

Thank you for your sustained support on these issues and for your dedication and leadership in the fight for access to justice for all. If we can be of assistance, please do not hesitate to contact us. We look forward to continuing to work with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Runyon', with a stylized flourish extending to the right.

Eve L. Runyon, Esq.
President and Chief Executive Officer
Pro Bono Institute

cc: CPBO Advisory Board