

December 21, 2017

Joanna R. Mendoza  
Trustee  
State Bar of California  
c/o  
Law Offices of Joanna R. Mendoza, P.C.  
P.O. Box 550  
Roseville, CA 95661

Re: California Special Admission Rules 9.45 and 9.46

Dear Ms. Mendoza:

As chief legal officers and general counsel from legal departments in California, we write to ask the State Bar of California (State Bar) Board of Trustees Programs Committee to propose an amendment to California Rules of Court Rules 9.45 and 9.46 to remove unnecessary restrictions that prevent registered in-house counsel from providing pro bono services. This is a historic opportunity to empower all in-house lawyers to fully engage in providing pro bono services to those who cannot afford to pay. The need is critical, and the time is now. This year, the Legal Services Corporation reported that 86% of the civil legal problems of low-income Americans are inadequately addressed or not at all. In California, there is an estimated 7,500 individuals eligible for legal aid per legal aid lawyer.

#### *Impact of Current Restrictions*

In-house lawyers who are registered to practice in California under Rule 9.46 currently are permitted to provide pro bono only if they are able to satisfy several onerous requirements that make engagement impractical. They must register as a legal services attorney, work with only one qualifying legal services provider, under the supervision of a fully licensed California lawyer employed by that legal services provider, for no more than three years.

Registered in-house counsel are already skilled lawyers who must meet all of the requirements for admission to the State Bar (except taking the bar examination) and fulfill extensive registration requirements. Those requirements include being licensed and in good standing with the bar of another U.S. state, registering with the State Bar, agreeing to be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California, and obtaining an employer's declaration attesting to the applicant's employment, compliance with the rules, and good moral character. Imposing additional requirements to provide services to the poor creates extraordinary barriers to registered in-house counsel engaging in pro bono that ultimately hinder the pro bono efforts of in-house counsel and legal departments seeking to engage legal staff.

Consequently, a significant and influential sector of the California legal community is excluded from participating in local pro bono efforts. Given the immense gap in access to justice, it is imperative that willing registered in-house attorneys are authorized to practice pro bono without undergoing unnecessary additional restrictions.

#### *In-House Pro Bono Engagement*

Numerous legal departments in California support pro bono legal services and seek to engage legal staff in pro bono opportunities. They have partnered with outside law firms, public interest organizations, and local bar associations to engage in pro bono. Many have joined initiatives like the Corporate Pro Bono

Challenge<sup>®</sup> statement, committing to encourage at least 50 percent of their legal staff to provide pro bono..

Turning away lawyers willing and able to provide assistance not only results in the loss of skilled individuals able to represent low-income clients, it also undermines the overall support of pro bono engagement in the state. In January of this year, then State Bar President James Fox and then Executive Director Elizabeth Parker applauded attorneys throughout California looking to provide pro bono legal services and strongly affirmed the State Bar's commitment to access to legal services as a core part of the State Bar's public protection mission. The current rules are antithetical to the mission of the State Bar in encouraging pro bono legal services to address the justice gap.

When in-house counsel demonstrate a commitment to pro bono, law firms are incentivized to invest more in their pro bono efforts, translating into sustained pro bono partnerships with in-house departments and deepening support for legal services organizations. Pro bono culture across the state is further enhanced when all in-house lawyers are empowered to participate in local pro bono efforts.

### *Jurisdictions with Proposed Language*

To enable in-house counsel to fully engage in pro bono, California should amend its rules to permit registered in-house counsel to provide pro bono legal services broadly. In Illinois, New York, Virginia, and Wisconsin, registered in-house counsel can engage in pro bono, subject to the rules of professional conduct and the discipline of the court (See Appendix A). This broad permission increases the number of lawyers while affording protections required of all other lawyers.

Such a change in California would invigorate the state's growing in-house community to develop and promote pro bono programs for its lawyers and improve access to legal services for underserved communities in California. We ask the State Bar of California to recommend to the California Supreme Court the amendments to California Rules of Court Rules 9.45 and 9.46 reflected in Appendix B, opening the door to greater pro bono opportunities in the future and making California a model for other jurisdictions.

Sincerely,

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## Appendix A

### Illinois Rule 716. Limited Admission Of House Counsel:

(g) Authority and Limitations. A lawyer licensed and employed as provided by this Rule has the authority to act on behalf of his or her employer for all purposes as if licensed in Illinois. The lawyer may not act as counsel for the employer until the application is accepted and approved by the Court. A lawyer licensed under this rule shall not offer legal services or advice to the public or in any manner hold himself or herself out to be engaged or authorized to engage in the practice of law, except such lawyer may provide voluntary pro bono public services as defined in Rule 756(f).

### New York Rule 522.8. Pro bono legal services:

Notwithstanding the restrictions set forth in section 522.4 of this Part, an attorney registered as in-house counsel under this Part may provide pro bono legal services in this State in accordance with New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 6.1(b) and other comparable definitions of pro bono legal services in New York. An attorney providing pro bono legal services under this section:

(a) shall be admitted to practice and in good standing in another state or territory of the United States or in the District of Columbia and possess the good moral character and general fitness requisite for a member of the bar of this State, as evidenced by the attorney's registration pursuant to section 522.1(b) of this Part;

(b) pursuant to section 522.2(c)(2) of this Part, agrees to be subject to the disciplinary authority of this State and to comply with the laws and rules that govern attorneys admitted to the practice of law in this State, including the New York Rules of Professional Conduct (22 NYCRR Part 1200.0) and the rules governing the conduct of attorneys in the judicial department where the attorney's registration is issued;

(c) may appear, either in person or by signing pleadings, in a matter pending before a tribunal, as that term is defined in New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.0(w), at the discretion of the tribunal, without being admitted pro hac vice in the matter. Prior to any appearance before a tribunal, a registered in-house counsel must provide notice to the tribunal that the attorney is not admitted to practice in New York but is registered as in-house counsel pursuant to this Part. Such notice shall be in a form approved by the Appellate Division; and

(d) shall not hold oneself out as an attorney admitted to practice in this State, in compliance with section 522.4(d) of this Part.

### Virginia Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants:

g) Notwithstanding the restrictions set out in Part I(f) above on the scope of practice, a lawyer certified pursuant to Part I of this rule may, and is encouraged to, provide voluntary *pro bono publico* services in accordance with Rule 6.1 of the Virginia Rules of Professional Conduct.

(h) All legal services provided in Virginia by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.

Wisconsin Rule 10.03(4) f. Persons Included in Membership:

Counsel not admitted to the practice of law in this jurisdiction but admitted in any other U.S. jurisdiction or foreign jurisdiction, who is employed as a lawyer in Wisconsin on a continuing basis and employed exclusively by a corporation, association, or other nongovernmental entity, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 60 days after the commencement of employment as a lawyer or if currently so employed then within 90 days of the effective date of this rule, by submitting to the Board of Bar Examiners the following:

1. A completed application in the form set forth in Appendix B to this rule;
2. A nonrefundable fee of two hundred and fifty dollars (\$250) to the Board of Bar Examiners;
3. Documents proving admission to practice law in the primary jurisdiction in which counsel is admitted to practice law; and
4. An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed.

A lawyer registered under this subsection may provide pro bono legal services without fee or expectation of fee as provided in SCR 20:6.1.

## Appendix B

### **Proposed Revisions:**

#### **Rule 9.45. Registered legal services attorneys**

##### **(c) Requirements**

For an attorney to practice law under this rule, the attorney must:

- (1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (2) Register with the State Bar of California and file an Application for Determination of Moral Character;
- (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;
- (4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered Legal Services Attorney Program;
- (5) Practice law exclusively for a single qualifying legal services provider, ~~except that, if so qualified, an attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel;~~
- (6) Practice law under the supervision of an attorney who is employed by the qualifying legal services provider and who is a member in good standing of the State Bar of California;
- (7) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;
- (8) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years; and
- (9) Not have taken and failed the California bar examination within five years immediately preceding application to register under this rule.

##### **(d) Application**

To qualify to practice law as a registered legal services attorney, the attorney must:

- (1) Register as an attorney applicant and file an Application for Determination of Moral Character with the Committee of Bar Examiners;
- (2) Submit to the State Bar of California a declaration signed by the attorney agreeing that he or she will be subject to the disciplinary authority of the Supreme Court of California and the State Bar of California and attesting that he or she will not practice law in California other than under supervision at a qualifying legal services provider during the time he or she practices law as a registered legal services attorney in California, ~~except that, if so qualified, the attorney may, while practicing under this rule, simultaneously practice law as registered in-house counsel;~~ and

- (3) Submit to the State Bar of California a declaration signed by a qualifying supervisor on behalf of the qualifying legal services provider in California attesting that the applicant will work, with or without pay, as an attorney for the organization; that the applicant

#### **Rule 9.46. Registered in-house counsel**

##### **(b) Scope of practice**

Subject to all applicable rules, regulations, and statutes, an attorney practicing law under this rule is:

- (1) Permitted to provide legal services in California ~~only~~ to the qualifying institution that employs him or her **and to provide pro bono legal services;**
- (2) Not permitted to make court appearances in California state courts or to engage in any other activities for which *pro hac vice* admission is required if they are performed in California by an attorney who is not a member of the State Bar of California, **except *pro hac vice* admission is not required in pro bono legal service matters that require counsel to appear, either in person or by signing pleadings, in courts, administrative agencies, or other tribunals in this state;** and
- (3) Not permitted to provide personal or individual representation to any customers, shareholders, owners, partners, officers, employees, servants, or agents of the qualifying institution.

##### **(c) Requirements**

For an attorney to practice law under this rule, the attorney must:

- (1) Be an active member in good standing of the bar of a United States state, jurisdiction, possession, territory, or dependency;
- (2) Register with the State Bar of California and file an Application for Determination of Moral Character;
- (3) Meet all of the requirements for admission to the State Bar of California, except that the attorney:
  - (A) Need not take the California bar examination or the Multistate Professional Responsibility Examination; and
  - (B) May practice law while awaiting the result of his or her Application for Determination of Moral Character;
- (4) Comply with the rules adopted by the Board of Governors relating to the State Bar Registered In-House Counsel Program;
- (5) Practice law exclusively for a single qualifying institution, except that, while practicing under this rule, the attorney may **provide pro bono legal services, if so qualified, ~~simultaneously practice law as a registered legal services attorney;~~**
- (6) Abide by all of the laws and rules that govern members of the State Bar of California, including the Minimum Continuing Legal Education (MCLE) requirements;
- (7) Satisfy in his or her first year of practice under this rule all of the MCLE requirements, including ethics education, that members of the State Bar of California must complete every three years and, thereafter, satisfy the MCLE requirements applicable to all members of the State Bar; and
- (8) Reside in California.