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PASSAIC COUNTY BAR ASSOCIATION

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July 30, 2015

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ACPE

Carol Johnston, Esq.
Professional Services Unit
Administrative Office of the Courts
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re : Special Committee on Attorney Ethics and Admissions

Dear Ms. Johnston,

On July 13, 2015, the Passaic County Bar Association (PCBA) convened a special meeting of our Officers and Trustees, to discuss the changes to the Model Rules of Professional Conduct (MRPC) which have been proposed by the American Bar Association (ABA). By a consensus of the Officers and Trustees in attendance, I have been authorized to convey the following position on behalf of the PCBA :

Admissions

1. Admissions on Motion.

The PCBA is opposed to ABA Rule (Resolution 105E) for substantially the same reasons enumerated by the New Jersey State Bar Association (NJSBA) in the letter from Past President Paris P. Eliades, Esq. dated June 13, 2014. Furthermore, the PCBA believes that the current Court Rules regulating *Pro Hac Vice* admission in the State of New Jersey (i.e. R. 1:21-2) are adequate to allow out-of-state practitioners to seek admission in this State on a case-by-case basis.

2. Practice Pending Admission.

The PCBA is opposed to ABA Rule (Resolution 105D), which would allow a lawyer to practice for up to one year in another jurisdiction where that lawyer has applied for bar admission, if certain criteria are met, such as association with local counsel, payment of applicable fees, possession of a clear disciplinary record, etc. Once again, the PCBA takes the position that the current Rules concerning *Pro Hac Vice* admission in the State of New Jersey (i.e. R. 1:21-2) have more than adequately addressed any need for an out-of-state practitioner to seek temporary admission in the State of New Jersey.

3. In-House Practice by Foreign Lawyers.

The PCBA takes no position with respect to the following proposals :

- MRPC 5.5(d) (Resolution 107A).
- MRPC 5.5(e) (Resolution 107A).
- MRPC Comment [16] (Resolution 107A).
- Model Rule for Registration of In-House Counsel (Resolution 107B).

4. Pro Hac Vice Admission of Foreign Lawyers.

The PCBA takes no position with respect to Model Rule New Paragraph III (Admission of Foreign Lawyer in Pending Litigation Before a Court or Agency) (Resolution 107C).

Technology and Confidentiality

5. Competence with Technology.

The PCBA is opposed to MRPC 1.1 (Competence), which seeks to implement a new requirement for attorneys to stay informed about "the benefits and risks associated with relevant technology." Unlike the NJSBA, the PCBA does not believe that this proposed verbiage represents a reasonable interpretation or extrapolation of RPC 1.1. Instead, the proposal seeks to add language which is overly broad and vague, and is likely to create a "catch-all" category for allegations of unethical conduct against attorneys. This proposal also appears to be overly onerous to certain new attorneys, older attorneys, small law firms and/or solo practitioners, who may often struggle, financially and otherwise, to remain at the forefront of technological advances in computer systems, programs, and other business equipment.

6. Confidentiality and Competence with Using Technology.

A. MRPC 1.0(n) (Terminology). The PCBA does not oppose the recommended RPC revision to clarify that a "writing" denotes an "electronic communication," not just an "e-mail". However, the PCBA does perceive any need for the proposed amendment concerning "screened" lawyers, and therefore opposes the same.

MRPC 1.4 (Communication). The PCBA does not oppose the recommended RPC revision to replace "telephone calls" with "client communications."

B. MRPC 1.6 (Confidentiality of Information). The PCBA is opposed to the ABA's proposed amendment. Instead, the PCBA maintains that RPC 1.6, as presently constituted, adequately addresses and protects the confidentiality of client information and communications. Thus, the proposed revision is superfluous and redundant.

C. MRPC 5.3 (Responsibilities Regarding Nonlawyer Assistants). The PCBA is not opposed to the proposed title change from "Responsibilities Regarding Nonlawyer Assistants" to "Responsibilities Regarding Nonlawyer Assistance". However, the PCBA opposes the balance of the revisions proposed by the ABA. The PCBA maintains that RPC 5.3, as presently constituted, adequately addresses and protects the confidentiality of client information when dealing with both in-house non-lawyer assistants, and third-party vendors. Furthermore, the ABA's proposal seeks to impose a heightened standard of care, which threatens to expand both the potential ethics exposure and professional liability of all attorneys in the State of New Jersey.

7. Disclosure of Confidential Information to Determine Conflicts of Interest.

A. The PCBA takes no position with respect to MRPC 1.6 (Confidentiality of Information).

B. The PCBA takes no position with respect to MRPC 1.7 (Sale of Law Practice).

Everything Else

8. Respect for Rights of Third Persons - Receipt of Electronic Information.

The PCBA takes no position with respect to MRPC 4.4(b) (Respect for Rights of Third Persons).

9. Conflicts of Interest - Prospective Clients.

The PCBA takes no position with respect to MRPC 1.18 (Duties to Prospective Client).

10. Advertising.

The PCBA takes no position with respect to the following proposals :

- MRPC 7.2 (Advertising).
- MRPC 7.3 (Solicitation of Clients).

11. Responsibilities When Outsourcing Legal Services.

The PCBA is opposed to the ABA's proposal concerning MRPC 1.1 (Competence), which seeks implement a new comment stating that before a lawyer retains or contracts with other lawyers outside the firm to provide legal services to a client, the lawyer should obtain informed consent from the client, and must reasonably believe that the other lawyers' services will "contribute to the competent and ethical representation of the client." Initially, the PCBA believes that the proposed "reasonableness" standard sought to be imposed by the ABA is highly subjective, and therefore subject to uneven application and inconsistent results. Furthermore, the ABA's proposal seeks to impose a heightened standard of care, which threatens to expand both the potential ethics exposure and professional liability of all attorneys in the State of New Jersey. Lastly, the PCBA must note that each lawyer in the State of New Jersey is independently obligated to comply with all RPC's, and it would be inequitable and unjust for any attorney to be held accountable for the acts or omissions of other lawyers from outside of their law firm.

12. Choice of Law for Determining Whether Conflict Arises.

The PCBA is opposed to the ABA recommendation concerning MRPC 8.5 (Disciplinary Authority; Choice of Law). The proposal seeks to implement an additional layer of professional exposure for all lawyers in the State of New Jersey; thereby requiring a modification and enlargement of every written retainer agreement between attorneys and their clientele. The PCBA believe that the proposed amendment is wholly unnecessary, and that the current method for determining "choice of law" in disciplinary matters is both adequate and proper.

13. Multi-jurisdictional Practice & 7Unauthorized Practice of Law.

The PCBA takes no position with respect to MRPC 5.5 (Unauthorized Practice of Law; Multi-jurisdictional Practice of Law).

Other Matters

14. New or Revised RPC or Comment to Existing Rule Regarding Civility and Professionalism.

The PCBA takes no position with respect to this proposal.

15. New or Revised Rule or Official Comment Providing "Safe Harbor" for Lawyers Who Present Issues of Ethical Conduct in Good Faith to Firm Counsel, the Appropriate Committee of the New Jersey Supreme Court, or an Appropriate Bar Association Professional Specializing in Rendering Legal Opinions for the Benefit of its Members, and Who in Good Faith Follow the Advice Received in Response.

The PCBA concurs with the position espoused by the NJSBA in the letter of Past President Paris P. Eliades, Esq. dated June 13, 2014. Therefore, that position shall not be reiterated at length herein.

16. New Language in RPC 8.5(b)(2).

The Committee has sought comment on whether to add the last sentence in MRPC 8.5(b)(2), which states : "A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur." The PCBA is opposed to the inclusion of this verbiage, and submits that the rules of professional conduct in that alternate jurisdiction should be determinative as to whether a violation occurred, and whether discipline against the attorney is warranted.

17. Revision of RPC 5.5 to Include Lawyers Licensed in Jurisdictions Outside the United States as Multi-Jurisdictional Practitioners and/or to Include a Definition of the "Practice of Law".

The PCBA takes no position with respect to this proposal.

18. Adoption of Additional Official Comments to Any or All of New Jersey's RPC's.

The PCBA opposes this proposal, and concurs with the position espoused by the NJSBA in the letter of Past President Paris P. Eliades, Esq. dated June 13, 2014. Therefore, that position shall not be reiterated at length herein.

In conclusion, the PCBA appreciates the opportunity to have submitted comments upon the proposed rule changes set forth within the Special Committee's Notice to the Bar. We look forward to reviewing the Special Committee's final report and recommendations.

Very truly yours,

Jeffrey J. Trapanese
President

cc: Karen Corsi, Executive Director
All Officers and Trustees of
the Passaic County Bar Association