

STATEMENT OF THE **ASSOCIATION OF PROFESSIONAL RESPONSIBILITY LAWYERS** (APRL)
CONCERNING THE PROPOSED MODEL RULE FOR REGISTRATION OF IN-HOUSE COUNSEL
RECOMMENDED BY THE COUNCIL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS
TO THE BAR

GENERAL PRINCIPLES

1. APRL remains committed to the principles we espoused in connection with the MJP debates of several years ago, which recognize that the legal needs of many clients do not stop at state or even national borders. Effective advocacy of client rights and protection of client interests become more difficult if arbitrary barriers are erected to the delivery of legal services across such borders. The policy behind MRPC 5.5 is to minimize or eliminate such barriers in a manner consistent with rational protection of clients and the public. Both retained and employed lawyers must have freedom of movement to provide legal services in an efficient and seamless way.

2. With respect to lawyers employed as in-house counsel, a natural extension of these principles is the encouragement of state regulatory regimes that permit in-house lawyers to move between corporate employers and between their corporate employers' places of business with ease and that afford those employers flexibility to marshal their legal resources in an optimum fashion. This principle is reflected in MRPC 5.5(d) in its current form.

3. While APRL believes that additional rules that would detract from the latitude created by 5.5(d) must be viewed with caution, it supports the proposition that states have an interest in creating a means of identifying and bringing fully within the lawyer regulatory system in-house lawyers who are not admitted to the bars of the states in which they are based.. Part of this state interest is served by MRPC 8.5, but that Model Rule does not fully address the issue at hand. APRL recognizes the equity and political reality of permitting state disciplinary agencies to recoup part of the costs of administering the disciplinary system from in-house lawyers and the companies that employ them, as contemplated in Comment 17 to MRPC 5.5. APRL regards the ABA's proposed Model Rule for Registration of In-House Counsel as designed to reasonably address these issues.

APRL applauds the ABA Council of the Section of Legal Education and Admission to the Bar for the thought and care that has gone into the drafting and revision of the proposed Model Rule and in the accompanying Report to the House of Delegates. The Model Rule is narrowly tailored to accomplish the goal of identifying in-house lawyers who are not admitted to the bars of the states in which they are based, in getting their express agreement to be bound by state ethics rules, and in providing a framework for assessing such lawyers and their employers for the cost of administering the registration process and recouping an equitable share of the costs of the disciplinary system.

4. APRL particularly applauds the Council's responsiveness to concerns expressed about an earlier draft of the proposed Model Rule that might have encouraged and empowered state disciplinary or admissions

authorities to impose burdensome, superfluous requirements as part of the registration process, such as provision of driving histories, academic records, and the like. Such requirements would turn the registration process into an intrusive, full-blown, and unnecessarily time-consuming licensing system, as was unfortunately done in some jurisdictions' early versions of in-house counsel registration rules.

5. APRL notes with approval the strongly worded conclusion of the Report, at page 8:

By this Rule, the Council proposes a straightforward registration process that neither creates a *de facto* licensing process nor places an undue burden on in-house counsel or on states' bar regulatory systems. The Rule will encourage in-house counsel to come forward and register and that registration will inure to the benefit of the bar as well as to the benefit of the public.

Consistent with this conclusion – and in observance of linguistic rigor that distinguishes “registration” from “licensing” – APRL urges that states refrain from encumbering their registration processes with information and documentation demands and burdens that ignore and duplicate the thorough vetting that in-house lawyers have already received, both from the bars of the jurisdictions to which they have been admitted and from their corporate employers' personnel and legal departments.

APRL URGES CONSIDERATION BY THE SECTION AND/OR BY THE HOUSE OF DELEGATES OF THE FOLLOWING SUGGESTED CHANGES TO SPECIFIC PROVISIONS OF THE PROPOSED MODEL RULE

I. Expanded Eligibility to Register – the Rule should permit in-house lawyers duly admitted to practice before the bars of foreign countries to register as in-house counsel upon certification that they are admitted, active, and in good standing in such bars. This can be accomplished by deleting the words “United States” in Section A, and by making a corresponding change to MRPC 5.5(d).

II. Mobility of In-House Counsel to Move Between Organizational Employers – the Rule should permit in-house lawyers who change jobs, or leave an in-house job with the intention and expectation of taking a job as in-house counsel with a new organizational employer to retain their registered status so long as they become employed by such new organizational employer within six months of leaving the organization with respect to which they were registered as in-house counsel.

III. Transition Rules – the Rule should expressly provide that a lawyer's employment as in-house counsel in any jurisdiction at a time when such jurisdiction did not have an in-house lawyer registration program for which that lawyer was eligible to apply may not be denied registration or the right to work as in-house counsel because of such past work as in-house counsel so long as that lawyer applies for registration within six months of becoming eligible to apply.

IV. Discipline – there are some drafting inconsistencies and other concerns regarding certain disciplinary aspects of the proposed rule. First, Paragraph D(3)(c) would require the lawyer to report “any disciplinary charge,” whether or not it is public. Many states permit disciplinary charges to remain non-public unless

and until there is a finding of misconduct, and in our view, the lawyer should not have to report any disciplinary charge unless and until misconduct has been found and/or discipline has been imposed. Second, we are concerned about the requirement in Paragraph (F)(2) that a lawyer automatically loses her rights and privileges under the registration rule when suspended from practice in another jurisdiction. In our view, the lawyer should not have her registration automatically cancelled if she is suspended for six months (or such other period as the jurisdiction decides) or less, since the conduct which results in a short suspension may not warrant cancellation. However, these shorter suspensions should be required to be reported to the appropriate body administering the in-house counsel registration process, which will have discretion as to what penalty, if any, to impose.