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July 29, 2019

ATTN: Rules Committee

Indiana Office of Judicial Administration

251 N. Illinois Street, Suite 1600

Indianapolis, IN 46204

RulesComments@courts.in.gov

Sent via email

Re: Proposed Admission and Discipline Rule 6.2 and Amendment to Rule 6,
Section 2

Dear Members of the Indiana Supreme Court Rules Committee:

Pro Bono Institute (PBI) welcomes the opportunity to provide feedback on the proposed changes to the rules governing pro bono by registered in-house counsel (RIHC) and retired, inactive, and out-of-state attorneys. PBI is a national nonprofit organization mandated to explore and identify new approaches to and resources for the provision of legal services to the poor, disadvantaged, and other individuals or groups unable to secure legal assistance to address critical problems. PBI's work has supported, enhanced, and transformed the pro bono efforts of thousands of law firms, in-house legal departments, and public interest organizations in the U.S. and around the world.

Through its Corporate Pro Bono project, PBI has provided services and developed resources to expand pro bono by legal departments and Association of Corporate Counsel chapters since 2000. During this time, in-house counsel have increasingly provided vital pro bono services that include full representation, brief legal advice, research and more.

PBI urges the Indiana Supreme Court to adopt (1) proposed Admission and Discipline Rule 6.2, which "would permit inactive or retired attorneys, including out-of-state attorneys, to practice on a limited basis providing legal services free of charge through a pro bono or legal service organization," and (2) the proposed amendment to Rule 6, Section 2, which would permit attorneys admitted in Indiana pursuant to a Business Counsel License to deliver pro bono legal services.¹

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¹ <https://www.in.gov/judiciary/5519.htm>.

Currently, 40 jurisdictions among the 50 states and the District of Columbia permit non-locally licensed in-house counsel to provide pro bono legal services in the jurisdiction they practice law for their employer. These authorizations come in the form of practice rules permitting registered in-house counsel, or out-of-state attorneys more broadly, to practice pro bono. PBI commends Indiana for taking steps to join the jurisdictions that allow registered in-house counsel (*i.e.*, attorneys granted an Indiana Business Counsel License) – as well as inactive, retired, and out-of-state attorneys – to provide pro bono legal services in the state, subject to the obligations and disciplinary provisions set forth in Rule 6.2, Sections 4 and 5.

The proposal provides a pathway for registered in-house counsel and others to assist “persons of limited means” access free legal services. There is a severe gap between the need for legal services by low-income Americans and the availability of legal help. According to the Legal Services Corporation’s 2017 Justice Gap Report, “86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.”² The proposed rules would increase the availability of pro bono legal assistance by paving the way for attorneys to volunteer who have hitherto not been able to contribute. The amendments will ease the barriers to participation by registered in-house lawyers, retired, inactive, and out-of-state attorneys. The proposal will give registered in-house lawyers and others explicit permission to offer pro bono legal services, as counselors and also as advocates in courts and tribunals, without burdening legal services organizations.

PBI respectfully suggests that the Court eliminate two phrases in the proposed rule: (i) “through a pro bono or other legal service organization eligible for a fee waiver under IC 33-37-3-2(b)” in Rule 6.2, Section 1(b), and (ii) “through a pro bono or other legal assistance organization” in Rule 6.2, Section 3(a). These qualifications place undue restrictions on the breadth of pro bono work that can be provided. Four states – Illinois, New York, Virginia, and Wisconsin – have model provisions that do not limit the types of organizations through which registered in-house counsel can provide pro bono services, subject only to the rules of professional conduct. By removing that limitation, the rule would be broadened to permit covered attorneys to do pro bono in partnership with law firms, nonprofit organizations that provide vital services to the community but that are not traditional legal services providers (e.g., United Way), community services organizations, and civil rights organizations. The model jurisdictions have recognized that a requirement of affiliation with a pro bono or legal assistance organization is unnecessary to protect the public in light of the many requirements of the professional conduct rules and limits the number of low-income families and individuals served.

We appreciate your consideration of our comments on the proposed rules governing in-house pro bono. Please let us know if you have any questions or if you would like to discuss our recommendations. Additionally, PBI supports the comments on proposed Admission and Discipline Rule 6.2 filed by the Association of Corporation Counsel (“ACC”) and its Indiana Chapter.

² <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-ExecutiveSummary.pdf>

In conclusion, we respectfully request that the Court adopt the amendments to Rule 6, Section 2 and proposed new Rule 6.2, which will increase the ability of registered in-house counsel, out-of-state attorneys, retired attorneys, and inactive attorneys to provide much-needed pro bono services in Indiana.

Sincerely,



Eve Runyon,
President and CEO, Pro Bono Institute