

**Comments of the Boston Bar Association's Ethics Committee on Proposed Revisions
to Rule 5.5 of the Massachusetts Rules of Professional Conduct
(10/21/15)**

In response to an invitation for comments from the Supreme Judicial Court (SJC) Standing Advisory Committee on the Rules of Professional Conduct (SAC), the Boston Bar Association's Ethics Committee reviewed the proposed revisions to Rule 5.5 of the Massachusetts Rules of Professional Conduct (MRPC).

Members of the BBA Ethics Committee are concerned that the proposed revision drops the language included in ABA Model Rule 5.5(d)(1) requiring an in-house lawyer, licensed only in a foreign jurisdiction, to seek advice or guidance from duly licensed and authorized local counsel when performing legal services requiring advice on the law of Massachusetts, another U.S. jurisdiction, or the laws of the United States. Committee members expressed some concerns that, whether currently or in the future, not all organizations that find it convenient to employ lawyers locally are equally sophisticated or equally capable of assessing adequately the foreign lawyer's competency with respect to local laws and, consequently, the employment relationship alone may not be sufficient to safeguard the client's interests. For this reason, it would be prudent to reconsider retaining the ABA requirement that foreign in-house counsel involve local counsel when a legal matter involves local laws.

The SAC reads that ABA requirement as compelling a foreign lawyer "to associate with or be supervised by a locally admitted lawyer." However, a foreign lawyer could also fulfill the ABA requirement by retaining a local attorney to advise on a particular matter without any formal or long-term association or supervision. For example, a foreign in-house counsel might engage on a temporary basis a Massachusetts employment lawyer to review the employer's leave policy for compliance with the Massachusetts sick leave law.