



Boston Bar

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October 21, 2015

Standing Advisory Committee on the
Rules of Professional Conduct C/O
Barbara Berenson, Senior Attorney
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

**Re: Comments Proposed Revisions to Rule 5.5 of the
Massachusetts Rules of Professional Conduct**

Dear Attorney Berenson,

On behalf of the Boston Bar Association (BBA), I thank you for the opportunity to comment on the proposed revisions to Rule 5.5 of the Massachusetts Rules of Professional Conduct (MRPC). The BBA appreciates and recognizes the efforts put forth by the SJC Standing Advisory Committee on the Rules of Professional Conduct in recommending the proposed revisions.

The SJC proposed revised rule was reviewed and discussed by the BBA's Ethics Committee which drafted the attached comments. The comments were reviewed by all BBA Sections and the BBA Council, which approved their submission to the Standing Advisory Committee.

Please note that the enclosed comments do not constitute or reflect a position of the BBA as a whole, but rather summarize the comments received from the Ethics Committee. We offer these comments with the hope that they may be useful to the SJC as it considers the proposed revisions to the MRPC.

Thank you for providing members of the bar with an opportunity to weigh in on this important issue, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

A handwritten signature in blue ink that reads "Lisa G. Arrowood". The signature is written in a cursive style with a large initial "L" and "A".

Lisa G. Arrowood
President

**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.