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Testimony of Peter L. Costas, Past President of the Connecticut Bar Association and Chair of the Connecticut Bar Association's Task Force on Multijurisdictional Practice,

Senate Bill 321

An Act Concerning The Unauthorized Practice Of Law

Judiciary Committee

March 3, 2008

Senator McDonald, Representative Lawler and members of the Judiciary Committee, thank you for the opportunity to appear before the Committee to comment in support of Senate Bill 321, An Act Concerning the Unauthorized Practice of Law.

My name is Peter L. Costas. I am a partner in the Hartford law firm of Pepe & Hazard, LLP. I am a past president of the Connecticut Bar Association and the chair of the Connecticut Bar Association's Task Force on Multijurisdictional Practice and GATS. The CBA has a great interest in legislation that affects the legal profession in general and legislation that concerns the integrity of the practice of law in particular. On behalf of this CBA, I respectfully request that the Judiciary Committee **favorably report** Senate Bill 321 as shown on the attached revision of the bill.

Ministering to the legal needs of our citizens is often a complex and difficult task involving great knowledge and technical expertise. Often, the consequences for getting it wrong are serious and permanent for the clients. Unfortunately, Connecticut citizens have been increasingly exposed to many charlatans masquerading as lawyers and lawyers not admitted in Connecticut who prepare documents which do not meet Connecticut requirements. Some out of state providers have devised procedures to skirt restrictions on the unauthorized practice of law. Moreover, prior to the adoption of Practice Book Section 2-15a, Connecticut did not have any

real body of law as to what constituted the practice of law to enable Disciplinary Counsel to engage in more vigorous enforcement of cases involving UPL.

Moreover, clients have become more mobile and expect their counsel to provide legal services which might involve states where they were not admitted to practice.

In 2000, the CBA established a Task Force to deal with the increasing cross border legal activity by lawyers who were not admitted to practice in a state in which they were engaged in some limited legal matters arising from work for clients arising in their home offices, and the problem of house counsel who were not admitted in Connecticut.

The American Bar Association adopted modifications to Rules 5.5 and 8.5 of the Rules of Professional Conduct and the Task Force, following several years of discussions, proposed to the Rules Committee of the Superior Court a package of rules changes including a procedure to accommodate temporary practice in Connecticut as to matters originating in the attorneys home state, a program for registration of house counsel, and a definition of the practice of law to facilitate actions against activities by non-lawyers and others not admitted to practice in Connecticut. The Task Force and the Rules Committee of the Superior Court worked together to finalize the package of rule changes which was adopted at the annual meeting of the Judges of the Superior Court in June 2007, and the Judicial Branch took prompt action to implement these programs which are up and running since January.

The Bar recognized the importance of having a thorough and clear definition of what constituted the practice of law to give statewide counsel (and the Bar) clear guidelines for protecting the public from non-lawyers who were not qualified to properly represent the public and from lawyers from other states who were not knowledgeable of Connecticut law.

The Task Force recognized the need to modify Section 51-88 to incorporate the rules changes and to recognize that both the legislature and the judicial branch may authorize persons to perform legal services. This is the purpose of the proposed amendment to 1(a). To avoid creating unintended exposure, the word “disciplinary” should be added before “suspension”; otherwise the administrative suspension for failure to pay into the client security fund would become a violation.

Although the Task Force believes the deletion in Section (b) relative to the safe harbor would be appropriate since house counsel are being registered and encouraged to do so, these are several situations where present house counsel could not be registered under the Rule. Until we have done so, the retention of the current safe harbor in subsection (b) can be continued.

As to the proposed increase in the penalty for unauthorized practice, there is substantial support for a change and we will confer with the states attorneys to prepare a statutory change which considers various factors and the impact of doing so as we are fine tuning the various parts of the MJP package.

Attached hereto is a revised version of Senate Bill 321 which reflects only the changes to subsection 1(a) and deletes the proposed changes to subsections (b)-(d) other than gender additions.

Proposed substitute language for SB 321, AN ACT CONCERNING THE UNAUTHORIZED PRACTICE OF LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 51-88 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2008*):

(a) [A] Unless a person is providing legal services pursuant to statute or rule of court, a person who has not been admitted as an attorney under the provisions of section 51-80 or has been disqualified from the practice of law due to resignation, disciplinary suspension, disbarment or being placed on inactive status shall not:

(1) practice law or appear as an attorney-at-law for another, in any court of record in this state, (2) make it a business to practice law, or appear as an attorney-at-law for another in any such court, (3) make it a business to solicit employment for an attorney-at-law, (4) hold himself or herself out to the public as being entitled to practice law, (5) assume to be an attorney-at-law, (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he or she is a legal practitioner of law, or (7) advertise that he or she, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

(b) Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months, or both. The provisions of this subsection shall not apply to any employee in this state of a stock or nonstock corporation, partnership, limited liability company or other business entity who, within the scope of his employment, renders legal advice to his employer or its corporate affiliate and who is admitted to practice law before the highest court of original jurisdiction in any state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States or in a district court of the United States and is a member in good standing of such bar. For the purposes of this subsection, "employee" means any person engaged in service to an employer in the business of his employer, but does not include an independent contractor.

(c) Any person who violates any provision of this section shall be deemed in contempt of court, and the Superior Court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation.

(d) The provisions of this section shall not be construed as prohibiting: (1) A town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which the town clerk holds office; (2) any person from practicing law or pleading at the bar of any court of this state in his or her own cause; (3) any person from acting as an agent or representative for a party in an international arbitration, as defined in subsection (3) of section 50a-101; or (4) any attorney admitted to practice law in any other state or the District of Columbia from practicing law in relation to an impeachment proceeding pursuant to Article Ninth of the Connecticut Constitution, including an impeachment inquiry or investigation, if the attorney is retained by (A) the General Assembly, the House of Representatives, the Senate, a committee of the House of Representatives or the Senate, or the presiding officer at a Senate trial, or (B) an officer subject to impeachment pursuant to said Article Ninth.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline.]