

Written Testimony of Thomas A. Klee  
Concerning

**Raised Bill No. 919, An Act Concerning the Unauthorized Practice of Law**

Submitted to the Judiciary Committee

February 23, 2011

Senator Coleman, Representative Fox and members of the Judiciary Committee, thank you for the opportunity to submit written remarks to the Committee on Raised Bill No. 919, An Act Concerning the Unauthorized Practice of Law.

My name is Thomas Klee. I am an attorney in private practice in Bloomfield and Hartford where I focus on representing business organizations.

Raised Bill No. 919 would amend Section 51-88 dealing with the unauthorized practice of law. While I do not object to the intent of the Bill, I do object to the potential negative effect of the increased criminal penalties in paragraph (b) on the reputation of Connecticut as a business-friendly state.

Generally, the Bill increases the penalty for those who engage in the unauthorized practice of law. To the extent that it does so with respect to persons who are not admitted as attorneys in any jurisdiction and take money from unsuspecting victims who may be among the most vulnerable members of society by purporting to be attorneys able to help them with their legal problems, the goal of the Bill is laudable and I support it. Nonetheless, it seems unlikely that there are not currently criminal statutes on the books that could deal with these situations, such as fraud, taking under false pretenses, impersonation, etc.

I start from the premise that the purpose of this statute should be to protect the citizens of Connecticut as consumers of legal services, not to protect Connecticut attorneys from out-of-state competition. To the extent that the Bill protects citizens from unscrupulous persons masquerading as attorneys, I believe it serves a valid purpose. To the extent that it inhibits citizens and businesses from engaging in legitimate activities based on legal advice from the attorneys best able to help them and their business partners, I believe it is not in the best interests of Connecticut.

I recognize that our legal system is based on admission to the practice of law on a state-by-state basis. Nevertheless, it is recognized that the practice of law often transcends state boundaries. Therefore, the Connecticut Supreme Court has adopted Rule 5.5 of the Rules of Practice dealing with the multi-jurisdictional practice of law. It is important to bear in mind that Rule 5.5 is not currently available to attorneys admitted in New York and about eight other jurisdictions because those states do not offer reciprocity to Connecticut attorneys.<sup>1</sup> This is the rule despite the fact that the state in which the non-Connecticut attorney practices has nothing to do with his or her ability to serve the needs of Connecticut citizens.

The Bill's penalties may cover persons authorized to practice law in another jurisdiction. Consider the following hypotheticals:

A licensed New York attorney comes into Connecticut with his New York client to negotiate and draft a transactional agreement with a Connecticut-based corporation and meets at, and uses the facilities of, the Connecticut attorney representing the Connecticut-

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<sup>1</sup> I am not aware of any other state's equivalent provision to Rule 5.5 that contains a similar reciprocity requirement.

based business. Has the New York attorney violated the statute, subjecting that attorney to a possible punishment of a fine of \$5,000 or imprisonment of five years, or both?

The general counsel of a corporation based in Connecticut invites in-house counsel from various locations in the United States to a meeting in Connecticut to provide legal advice to senior management on issues relevant to the businesses that they advise. Have these attorneys violated the statute, subjecting them to a possible punishment of a fine of \$5,000 or imprisonment of five years, or both

Additionally, this Bill could have an adverse affect on Connecticut attorneys. For example, in the above circumstances, would the Connecticut attorney in the business transaction or the Connecticut-based general counsel licensed in Connecticut have an obligation to warn the out-of-state attorneys of the possible adverse consequences of coming into Connecticut? Would the Connecticut attorney be at risk of engaging in a conspiracy to violate the statute or aiding or abetting the out-of-state attorneys in doing so if he or she acted as described in the examples, thereby subjecting the Connecticut attorneys to criminal liability?

These may be extreme results, and it may not be the intent of the Bill 919 that there be prosecutions in these circumstances, but there does not appear to be an exception for either set of facts. I do not believe that the lines are clear enough to risk subjecting Connecticut and out-of-states attorneys to such severe penalties.

Moreover, it is a Connecticut business that is potentially harmed by the possibility that it is not able to close the transaction because the attorney for the other side is unable to efficiently negotiate the transaction or because it is not able to receive the advice it

needs to conduct its business. This could give rise to a reputation of Connecticut being hostile to business and hinder efforts to promote job growth in Connecticut.

For these reasons, I request that the Bill not be favorably reported unless it is revised to provide that an attorney who is duly licensed in another state not be subject to the criminal penalties provided in the Bill. It should be emphasized that this would not give free rein to out-of-state attorneys to practice in Connecticut. Paragraph (c) provides that any person who violates the statute is in contempt of court and is subject to the jurisdiction of the Superior Court upon an action brought by any Connecticut attorney, including the Chief Disciplinary Counsel. That appears to be an adequate remedy as the Superior Court judge could craft an appropriate remedy for the circumstances. Also, the Office of the Chief Disciplinary Counsel may refer the matter to the attorney's home state disciplinary body for appropriate action.

**I respectfully request that the Judiciary Committee not favorably report Bill No. 919 without making changes that address the issues raised in these remarks.**

Thank you again for the opportunity to submit written remarks to the Committee to comment on Bill 919.