



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

**Testimony of the Division of Criminal Justice
Joint Committee on Judiciary**

March 29, 2012

In Support of:

S.B. No. 454: An Act Concerning the Unauthorized Practice of Law

The Division of Criminal Justice respectfully recommends and requests the Committee's JOINT FAVORABLE SUBSTITUTE Report for S.B. No. 454, An Act Concerning the Unauthorized Practice of Law. The Division submits with this testimony our recommended substitute language, which clarifies the language and addresses some concerns raised by those involved in several years of discussion on this matter.

It is important to stress what this bill is and what is and is not. It is an effort to strengthen the penalty for the practice of law by those who were never admitted to the practice of law or whose right to practice has been suspended or rescinded for serious breaches. The bill is not intended in any way to restrict beyond existing law the ability of out of state attorneys to practice within the State of Connecticut. In fact, the Division of Criminal Justice has consistently opposed efforts to cloud the issues addressed by this bill by attempting to transform it into a vehicle for debate of *pro hac vice* issues.

The right to practice law carries with it tremendous responsibility. It is a position of public trust. As one newspaper commentator recently observed as Commissioners of the Superior Court attorneys in this state are in a sense public officials. Attorneys can and must be held to a higher standard for the protection and benefit of the public and for the protection of the integrity of our judicial system. S.B. No. 454 would provide for meaningful penalties for those who violate this public trust by either posing as a lawyer or continuing to engage in the practice of law when the right to do so has been suspended or revoked for serious breaches of the law or professional conduct.

The bill establishes a felony penalty for the practice of law by someone who is not licensed do so. Again, this has nothing to do with whether or to what extent a lawyer admitted in another state is allowed to practice in this state, whether as "in-house" counsel or in some other capacity. What it would prohibit - and appropriately punish - is the paralegal from New York who tried a case Stamford after falsely identifying himself as having been admitted to the bar.

Nor would this bill punish those who have been suspended solely for not having paid any occupational fees or taxes to Connecticut. But it would provide for a felony offense for the

Connecticut attorney whose right to practice was suspended for serious disciplinary violations and who subsequently surrendered his Connecticut license under threat of disbarment.

The Division of Criminal Justice extends its appreciation to the Connecticut Bar Association, and notably its immediate past president, attorney Ralph Monaco, for their efforts with this legislation. The proposed substitute language that follows was largely the product of these discussions. In conclusion, the Division wishes to thank the Committee for its consideration of this legislation. We would be happy to provide any additional information or to answer any questions the Committee might have.

PROPOSED JOINT FAVORABLE SUBSTITUTE - S.B. NO. 454

Section 1. Section 51-88 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):

(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 having been admitted under said section, has been disqualified from the practice of law due to resignation, disbarment, suspension for reason other than the failure to pay the occupational tax on attorneys imposed pursuant to section 51-81b or the client security fund fee imposed pursuant to section 51-81d, 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 guilty of a class C felony. It shall be an affirmative defense that the accused is a member in good standing of the bar in another state, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States, in which case such person shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both for any violation of this section. 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 or her employment, renders legal advice to his or her 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 or her 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.

