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## TESTIMONY OF BURTON B. COHEN

**Member of the Connecticut Bar Association Board of Governors, House of Delegates and  
Committee on the Unauthorized Practice of Law**

### IN SUPPORT OF SB 829

#### **An Act Concerning the Unauthorized Practice of Law**

Senator Coleman, Representative Fox, and members of the Judiciary Committee, thank you for this opportunity to appear before the Committee to comment on SB 829, *An Act Concerning the Unauthorized Practice of Law*. My name is Burton B. Cohen, and I am a delegate to the Connecticut Bar Association's House of Delegates and Board of Governors and also a member to the CBA's Committee on the Unauthorized Practice of Law. I have also recently chaired a CBA Task Force on the Unauthorized Practice of Law in Administrative Agencies. I practice law at Murtha Cullina LLP and am Partner-in-charge in our New Haven office.

SB 829 presents a well-balanced approach to clarifying the elements of the offense of the unauthorized practice of law set forth in General Statutes § 51-88. It also increases the penalty for a proven violation that is more consistent with the nature of the illegal activity.

The Problem. The unauthorized practice of law by individuals who are not duly licensed attorneys in the state of Connecticut is harmful to our citizens and preys upon those less privileged and more vulnerable. The issue of individuals masquerading as lawyers, along with the explosion of legal services offered through websites and by lawyers or firms that are not licensed to practice in Connecticut, has become a critical problem. The current penalty is so minimal that it does not serve as a deterrent to these illegal activities.

Most attorneys licensed to practice law in our State are residents of Connecticut. They pay State income and sales taxes; State and local property taxes; remit an annual attorney's registration fee to the State; and pay into the client security fund which reimburses those who suffer at the hands of an attorney who has violated his or her responsibilities to a client. Admitted attorneys are active in our State and local bar associations, our communities, our local municipalities and, as are most of you, in our State government. Those engaged in the unauthorized practice of law generally operate "under the radar." They typically do not pay taxes to the State. They certainly are not paying an occupational tax or into the client security fund. They have no professional or ethical constraints and are not concerned with the Connecticut Rules of Court or our Rules of Professional Conduct. The primary danger here is not to the attorneys admitted to the Connecticut bar, but to the "clients" of these unscrupulous practitioners who will ultimately be harmed. The victims can often be the poor and immigrants, and the consequences of erroneous or unprofessional advice can be devastating.

Other states have recognized the danger and have strengthened their unauthorized practice of law statutes. Rhode Island, for instance, has long had very stringent rules to prevent non-admitted out of state attorneys from practicing in that state. In December 2012, New York passed a measure that increased the penalty for engaging in the unauthorized practice of law to a felony (from up to one year in jail to up to four years imprisonment under the new statute).

The Statute. SB 829 amends existing law by further clarifying what is and is not the unauthorized practice of law. For instance, a lawyer who neglects to pay the occupational tax on attorneys will not be in violation of the law. If, however, a person provides legal services without being admitted to practice in Connecticut, unless authorized pursuant to a court order or statute, that person will be engaging in the unauthorized practice of law in violation of General Statutes § 52-88. The proposal will make the unauthorized practice of law a class A misdemeanor, which is a modest increase that subjects the perpetrator to imprisonment for a term of not more than one year imprisonment and a fine of no more than two thousand dollars. While not a felony, it certainly will give the enforcement authorities such as the State's Attorney's Office and the Office of Statewide Grievance Counsel further leverage in enforcing the law and prosecuting the unauthorized practice of law. The penalty would be reduced if the violator was a member in good standing of another jurisdiction's bar in the U.S., in which case the violation would only be a class C misdemeanor. SB 829 limits any prosecution for soliciting, requesting, commanding, importuning or intentionally aiding in the unauthorized practice of law to those cases where the state can prove beyond a reasonable doubt that the defendant had actual knowledge that the violator was not admitted to practice law in any jurisdiction at the time such the violation occurred.

SB 829 leaves in place many of the safe harbors in subdivisions (b)(2) and (d), which are unaffected by the bill. In short, the bill before you is a modest, but essential, step in ensuring that the practice of law in Connecticut remains in full conformity with applicable legal requirements and rules of court.

Conclusion. The CBA and the State's Attorney's Office fully supports SB 829, which clarifies the elements of the offense of the unauthorized practice of law in Connecticut and imposes a modest increase in the penalty for any such offense. The proposal is consistent with protecting Connecticut citizens from unscrupulous individuals and ensures that the penalty for the unauthorized practice of law is increased as a further measure of deterrence.

Thank you for the opportunity to address the Judiciary Committee. I am pleased to answer any questions.