

## Opinion 06-04

Your inquiries, together with the supplemental materials forwarded, have been reviewed by the Committee on the Unauthorized Practice of Law (the “Committee”).

You contend that the Commission on Human Rights and Opportunities (the “Commission”), has no authority to authorize appearances by Massachusetts lawyers during the investigative stage of an employment discrimination complaint. You believe that the Commission’s recent action in permitting representation by foreign lawyers contravenes Connecticut General Statute §51-88 and Connecticut Rules of Professional Conduct §5.5. The statute and the rule prohibit only the unauthorized practice of law. The core question then is does the Commission have the legal authority to permit foreign lawyers to represent persons during the investigative phase of employment discrimination complaints.

You ask first for the Committee’s opinion on the “legitimacy of CHRO’s policy and practice under RPC §5.5 and my obligations under it...” The Committee does not have the authority to define the legal powers of the Commission. As suggested by Chief Disciplinary Counsel Mark A. Dubois, the Commission may have the power to control its own forum. The separation of powers doctrine may insulate the Commission’s policy in this area from review by other branches of government, but this is a constitutional issue which has never been fully resolved. It follows that foreign counsel appears to have been authorized to represent a respondent before the Commission.

Secondly, you ask how you are to act when an agency permits foreign counsel to appear in a matter in which you are involved as counsel. We do not believe the Connecticut Rules of Professional Conduct §5.5 places any special burden on you. As an attorney admitted in Connecticut, your primary duty is to your client. As representative of your client, your advocacy of your client’s claim and your communications with opposing counsel do not amount to assisting in the unauthorized practice of law

Third, you ask us how the Commission would apply its policies to foreign counsel for corporate respondents and foreign counsel for individual complainants. We believe that you should address these questions to the Commission.

You state that local Connecticut counsel appears to have assisted in the unauthorized practice of law by seeking *pro hac vice* status for foreign counsel. When filing such a motion on behalf of a client who wishes to be represented by foreign counsel, local counsel acts properly. Any other conclusion would make it impractical for a party to seek *pro hac vice* status for foreign counsel.

We are unable to evaluate the truth of your accusations that local counsel made misrepresentations in the motion for admission *pro hac vice* filed with the Commission. The Committee is not a disciplinary body that can compel a person to give evidence and make findings of fact and law.

You state that the Commission on Human Rights and Opportunities has closed the discrimination case and that

your client's claim is now the subject of litigation in the U.S. District Court for Connecticut. You have informed us that you have raised objections to foreign counsel appearing in the litigation. Because your objections are *sub judice* we will not address them.

It is interesting to consider the possible implications of the separation of powers doctrine should it be applied by the judicial branch to executive branch bodies and independent commissions which regulate practice in their own forums. Though it is an interesting topic, the Committee has no role in explicating the separation of powers doctrine.

Unauthorized Practice of Law Committee