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**June 23, 2008**

**COMMENTS OF  
HALT, INC. TO SUPREME COURT OF MASSACHUSETTS  
REGARDING PROPOSED AMENDMENTS TO  
MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT**

Pursuant to the Massachusetts Supreme Court's request, HALT, Inc. hereby submits comments regarding proposed amendments to the Massachusetts Rules of Professional Conduct.

To uphold and extend its commitment to fully protecting legal consumers, HALT urges the Supreme Court to consider our comments regarding the proposed Rule of Professional Conduct 8.5 (Disciplinary Authority and Choice of Law). HALT respectfully recommends that the Supreme Court:

- adopt the proposed changes to Rule 8.5 in order to provide protections to the widest range of clients possible.

HALT is a nonprofit public interest group dedicated to increasing access and accountability in the civil justice system. HALT's Lawyer Accountability Project works to make lawyers more responsive to the needs of legal consumers and to empower legal consumers to protect themselves from negligent, unscrupulous and incompetent attorneys. Through our well-known Report Cards, appellate litigation, media campaigns, legislative work, white paper releases and grassroots lobbying, HALT has been on the forefront of fights to improve systems in place to weed out unethical lawyers and provide recourse to victimized legal consumers.

Recently, we have directed much of our work toward state rules of professional conduct. In 1999, HALT staff testified before the American Bar Association's Ethics 2000 Committee and urged adoption of our Legal Consumers Bill of Rights, which offers model standards for attorney-client communication. We have worked with several jurisdictions, including the District of Columbia, Georgia, Arizona and Maryland, to bring about long-overdue changes to their rules of professional conduct. We have made these efforts a priority because members of the public tell us that ambiguous and often lax ethics rules for lawyers mark one of the greatest obstacles facing legal consumers.

## **I. Rule 8.5(a) – Disciplinary Authority**

Massachusetts Proposed Rule of Professional Conduct 8.5(a) provides, with the proposed addition in italicized text and the proposed deletion in stricken text:

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. *A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.* A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction ~~where the lawyer is admitted~~ for the same conduct.

HALT supports the revisions to Rule 8.5(a), which follows the American Bar Association's Model Rule 8.5(a) and authorizes regulation of out-of-state lawyers providing or offering legal services in the Massachusetts jurisdiction. Previously, the current rule did not address lawyers unlicensed in Massachusetts, should their conduct ever place them within this jurisdiction. By establishing the authority of this jurisdiction over all lawyers admitted to practice or providing services in it, the rule ensures that any citizens residing in Massachusetts that might be adversely affected by the conduct of an out-of-state lawyer would be protected.

The proposed Massachusetts rule would also provide out-of-state attorneys with clearer guidance about their ethical duties to their Massachusetts clients. Attorneys often deal with matters outside their home states and may take clients residing in Massachusetts, though they are not admitted in the Massachusetts jurisdiction. With states having different ethics rules, it can be difficult to determine which rules to follow and what course of action to take. The proposed revisions would make very clear to out-of-state attorneys the primacy of Massachusetts rules over their conduct, when representing Massachusetts clients.

Numerous other states have already adopted ABA's Model Rule 8.5(a), including Connecticut, Pennsylvania, New Hampshire, and Delaware. The New York State Bar Association and Maine's Board of Overseers of the Bar have also adopted this rule, and are awaiting approval from their respective State Supreme Courts. We urge the Massachusetts Supreme Court to follow this modern trend of expanding its jurisdictional authority over out-of-state lawyers providing in-state legal services.

## **II. Rule 8.5(b) – Choice of Law**

Massachusetts Proposed Rule of Professional Conduct 8.5(b) provides:

*In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: (1) For conduct in*

*connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise. (2) For any other conduct, the rules of the jurisdiction in which the lawyer maintains his or her principal office shall apply; provided, however, if the lawyer's principal office is in this jurisdiction, the lawyer's conduct does not implicate a significant interest of this jurisdiction, and the predominant effect of the lawyer's conduct is clearly in another jurisdiction, then the rules of that other jurisdiction shall apply. A lawyer shall not be subject to discipline if the lawyer acts in accordance with a reasonable application of the foregoing principles.*

HALT supports the addition of Rule 8.5(b), as it provides greater protection to citizens who need it the most. The proposed rule follows a principle of the ABA Model Rule, of recognizing that a lawyer's conduct may affect the interests of another jurisdiction, and that the rules of that other jurisdiction should apply. However, the ABA's method to test this principle is overly complicated, and the Massachusetts proposed rule would greatly simplify it. While the ABA emphasizes the location of the effect of the lawyer's conduct, the proposed Massachusetts rule emphasizes the significant interest of Massachusetts' jurisdiction. According to the Model Rule, which employs a single-factor geographic test, lawyers would have to determine if the predominant effect of their conduct is clearly in another state, even if their conduct implicates multiple interests in multiple states. This problematic procedure would leave greater room for error and could lead to one group of citizens garnering more protection, though another group may feel greater effects of the lawyer's conduct.

The proposed Massachusetts rule takes into account the multiple factors that so frequently affect choice of law decisions and simplifies the choice of law process. Instead of first determining the location of the predominant effect of their conduct, lawyers would first determine whether their conduct implicates a significant interest of Massachusetts. If it does, even if the predominant effect of the conduct may be in another jurisdiction, the rules of the other jurisdiction cannot be applied in Massachusetts. Such a rule ensures that the citizens of Massachusetts, if they are determined to have significant interests in a lawyer's conduct and thus are in definite need of protection, will be shielded from his or her misconduct. If another jurisdiction experiences a predominant effect without implicating the interests of the Massachusetts jurisdiction, then the rules of the other jurisdiction would apply, again ensuring that the group in definite need of protection would receive it.

Furthermore, this rule still allows for the possibility of multiple jurisdictions to subject a lawyer to discipline, allowing for as wide a scope as possible in order to protect as many citizens as possible.

## **Conclusion**

HALT supports the Massachusetts Supreme Judicial Court's Standing Advisory Committee's recommended modifications to the Rules of Professional Conduct. The proposed changes represent a marked improvement over the former rule, by regulating out-of-state lawyers and simplifying the choice of law process, leading to greater protections for affected citizens.

Respectfully submitted,

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