

STATE OF MINNESOTA

IN SUPREME COURT

C5-84-2139

In Re Amendment to Minnesota Rules
for Admission to the Bar and Rules
of the State Board of Law Examiners
for Admission to the Bar

ORDER FOR PUBLIC HEARING

WHEREAS, Minnesota Statutes 481.01 charges the Board of Law Examiners with the administration of the Rules for Admission to Practice Law in this State,

WHEREAS, on February 12, 1988, the Board of Law Examiners requested a public hearing concerning proposed amendments to the Rules for Admission to the Bar and Rules of the State Board of Law Examiners for Admission to the Bar,

NOW, THEREFORE, it is hereby ordered that a public hearing be held in the Supreme Court Chambers at the State Capitol in St. Paul at 3:00 p.m. on May 12, 1988, to consider amendments to the Minnesota Rules for Admission to the Bar and Rules of the State Board of Law Examiners for Admission to the Bar.

IT IS FURTHER ORDERED that any person wishing to obtain a copy of the petition write to the Clerk of the Appellate Court, 230 State Capitol, St. Paul, Minnesota, 55155.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar desiring to present written statements concerning the subject matter of the hearing, but who do not desire to make an oral presentation at the hearing shall file 10 copies of such statement with the Clerk of Appellate Courts, 230 State Capitol, St. Paul, Minnesota, 55155 on or before April 29, 1988, and
2. All persons desiring to make an oral presentation at the hearing shall file 10 copies of the materials to be so presented with the aforesaid clerk together with 10 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before April 29, 1988.

Dated: February 19, 1988

OFFICE OF
APPELLATE COURTS

FEB 19 1988

FILED

BY THE COURT


Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

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APR 28 1988

FILED

May It Please The Court ;

The Minnesota Board of Law Examiners have given notice of proposed rulemaking and amendments to the Minnesota Rules for Admission to the Bar and Rules of the State Board of Law Examiners for Admission to the Bar, A Notice of Hearing on the proposed rules before this honorable Court on May 12, 1988 has been published,

Your petitioner, the Minnesota Corporate Counsel Association, is an organization affiliated with the Minnesota State Bar Association and represents more than six hundred attorneys. Petitioner believes that a majority of its constituents are employed by corporations while a number of others are members of law firms or sole practitioners. Petitioner operates through its directors and officers who are elected. The board has authority to act on behalf of the Association and counsel has been instructed by the board.

Petitioner believes that it is substantially the largest such organization in the State of Minnesota and one of the larger such organizations in the United States,

The following statement is filed on behalf of the petitioner pursuant to the Order For Public Hearing and permission is also requested for petitioner, through its counsel, to make an oral presentation at the hearing,

1. A DETAILED STATEMENT OF PURPOSE SUPPORTING THE NEED FOR AND REASONABLENESS OF SEPARATE REGULATION OF ATTORNEYS EMPLOYED BY A CORPORATION SHOULD BE PREPARED AND CIRCULATED BY THE BOARD OF LAW EXAMINERS, THIS STATEMENT SHOULD RELATE IN DETAIL THE PROPOSED REGULATORY PROVISIONS TO THAT NEED AND EXPLAIN HOW THAT NEED APPLIES SPECIFICALLY TO ATTORNEYS WHO ARE EMPLOYED BY A CORPORATION BUT NOT TO ATTORNEYS WHO ARE EMPLOYED BY OR WHO ARE PARTNERS OF A LAW FIRM OR WHO PRACTICE ALONE, OR OTHERWISE, IN THE ABSENCE OF SUCH A STATEMENT OF PURPOSE PETITIONER IS HANDICAPPED IN COMMENTING ON THE

PROPOSED RULE CHANGES AND IS UNABLE TO SUGGEST APPROPRIATE MODIFICATIONS OF THOSE CHANGES.

Proposed Rule VI is headed "Temporary License for In-House Counsel." Proposed Rule IV (E) has an apparently related change.

Counsel who serve as employees of business corporations (colloquially "in-house" counsel) are sensitive to discrimination in any form by being classified, or treated, in any way differently from other counsel. They have a perception of having been treated historically as "second class" citizens-counsel. Current responsibilities and practice require full equality between "in-house" and "out-house" counsel.

It is, therefore, with a certain amount of suspicion that corporate counsel approach a proposed new Rule VI addressed exclusively to "in-house counsel." What is the intended purpose of such a classification and rule? What is the need, applying only to one group of attorneys ("in-house"), and how is that need reflected in and addressed by the proposed Rule? Why is the proposed Rule not applicable to all members of the bar?

In the absence of a detailed statement of purpose and reasonableness, issued by the Board of Law Examiners as the moving party urging the proposed Rule change, your petitioner can only speculate or guess about underlying purpose, need, application and implementation. Speculation and guessing are an inadequate basis from which to comment on the proposed Rule changes.

Where a Rule applies unequally, that is to say to some attorneys but not others, the unequal treatment and classification must be supported by a substantial state purpose. Where such a rule operates in a discriminatory fashion against out-of-state residents, it is subject to review under the Privileges and Immunities Clause of the United States Constitution. Such a rule may also operate, in practice, as a clog on interstate commerce and thus be subject to review under the Commerce Clause of the United States Constitution.

If one were to speculate or guess about the purpose of the proposed Rule, it might be to encourage more corporate counsel to be admitted to the Minnesota Bar. The temporary license procedure would make it easier for some to become licensed temporarily. Once licensed temporarily, they would be required to proceed on a timely basis to full licensing. A related purpose could be to require an affirmation by all corporate attorneys seeking admission to the Minnesota Bar on the basis or prior admission in another state that they have not been previously "employed in Minnesota...."

The words "employed in Minnesota," occurring in proposed Rule VI (A) defining "Eligibility," are unclear and ambiguous. Is one employed in Minnesota if one's employer corporation is incorporated under Minnesota law, or if it has its principal office or even another office in Minnesota? Or is the intended reach of the definition related to the residence or domicile of the attorney? Or is it intended to describe an attorney who has his or her principal office in Minnesota, or an office in Minnesota? Or is it intended to describe an attorney who visits Minnesota in the course of his or her employment to, for instance, investigate a problem or situation of interest to his or her employer, or perhaps to negotiate and consummate the acquisition or merger of another corporation incorporated under Minnesota law

and located in Minnesota ? Or is it intended to describe an attorney who appears before a court, tribunal or agency of government in Minnesota ?

Because of the uncertain reach of this key provision in proposed Rule VI, (and therefore Rule IV (E) as well), petitioner is handicapped in assessing and commenting upon the reasons that may be thought by the Board of Law Examiners to justify a separate rule for corporate counsel than for all attorneys. Experience suggests that attorneys licensed in other states, and practicing with law firms rather than corporations, come to Minnesota for many or even all of the possible purposes mentioned above. If the Board of Law Examiners deem it important to require temporary licensing for corporate counsel engaging in such activities (followed by a requirement of general admission) would not that importance attach equally to other counsel, not employed by a single employer or corporation performing similar work ?

Further doubt as to the purpose of the proposed Rule VI (and IV E) can be derived from Paragraph B (4). This provision requires that an applicant for a temporary license have practiced law for at least five of the previous seven years. Whether the general counsel of a corporation practices law on a full time basis doubtless varies from corporation to corporation, but this provision could inhibit significantly the application and reach of Rule VI, but not necessarily Rule IV (E). If the purpose is to encourage early admission of single employer corporate counsel through a temporary licensing procedure, the five year practice requirement appears counterproductive. Either no period of prior practice or a very short period would be more likely to encourage use of the temporary procedure. Moreover, such a provision could be helpful to a corporation hiring a new counsel in one state and then assigning that counsel to an office in another state (if that other state is Minnesota).

It is possible that an attorney employed by a single corporation might change position and become employed by another single corporation during the one year period of the temporary license. One could speculate that, under such circumstances, a purpose of the temporary license provision would extend the license to the new employment rather than, as in Paragraph D, terminating it.

The Board of Law Examiners make no statement as to whether a similar provision can be found in other states or whether the proposed Rule is a new and previously untried formulation.

The proposed fee for a temporary license, as provided in Rule 105, is \$700. This appears to be a chilling amount, even a revenue raising provision. In the absence of a statement of purpose, and a written indication of how the Board proposes to proceed under this Rule, there is no apparent linkage between the supervisory responsibility of the agency in granting a temporary license and the amount of this fee as proposed.

2. PETITIONER RECOMMENDS THAT A COMMITTEE BE CONSTITUTED TO LOOK INTO THE FACTS AND CIRCUMSTANCES SURROUNDING ACTIVITY IN MINNESOTA OF ATTORNEYS FROM LAW FIRMS INSIDE AND OUTSIDE THE STATE AS WELL AS ACTIVITY OF ATTORNEYS EMPLOYED BY SINGLE CORPORATE EMPLOYERS. OTHERS ARE COMMENTING UPON THE GROWING "NATIONAL PRACTICE" PHENOMENON.

STATE BY STATE REGULATION OF APPEARANCE BEFORE THE COURTS IS CLEAR, BUT REGULATION OF WHAT MIGHT BE CALLED "ADVISORY" PRACTICE MAY BE UNDER REVIEW, ATTEMPTING TO MAKE NEW RULES FOR ATTORNEYS "EMPLOYED IN MINNESOTA" BY A SINGLE CORPORATE EMPLOYER WITHOUT EXAMINING COMPARABLE ACTIVITIES BY LAW FIRMS AND OTHERS, AND WITHOUT REVIEWING THE GROWING PHENOMENON OF MULTISTATE, NATIONAL, OR INTERNATIONAL PRACTICE, COULD BE UNWISE.

Corporate counsel representing clients with a multistate or international business could be seriously impeded, and their clients subject to unreasonable and excessive costs, if they were subject in their advisory practice to regulation by every state in which their client might happen to do business. Clearly, appearance before the courts of a particular state requires meeting local bar provisions through general, or as the case may be, pro hac vice admission. Beyond that, what constitutes the practice of law in a particular state is a matter of increasing debate - a debate not intended, presumably, to be affected by the proposed Rule changes. Stated in another way, petitioner presumes that the instant proposed Rules are not intended to change in any way the existing standards of unauthorized practice of law in the State of Minnesota.

Yet another challenge to state bar admission requirements is before the United States Supreme Court in the case of Supreme Court of Virginia v. Friedman. Petitioner believes that argument on this case was heard in March, 1988. Several statements to be considered, should petitioner's suggestion be adopted, are to be found in briefs submitted in that case.

"Overwhelming evidence suggests that one may engage in the interstate practice of law without first being admitted to practice in a particular state, so long as the individual does not appear in court." The Hon. Norman Krivosha, former Chief Justice of the Nebraska Supreme Court quoted in the Brief of the American Corporate Counsel Association as Amicus Curiae in Support of Appellee.

"The bar examination has been employed as a form of economic protectionism to deter out-of-state attorneys from entering the local legal market." Brief of the New York State Bar Association as Amicus Curiae in Support of Appellee.

Respectfully submitted ;

MINNESOTA CORPORATE COUNSEL ASSOCIATION

By its counsel,



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SCHOOL OF LAW
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March 24, 1988

OFFICE OF
APPELLATE COURTS

MAR 28 1988

Clerk of Appellate Courts
230 State Capitol
St. Paul, MN 55155

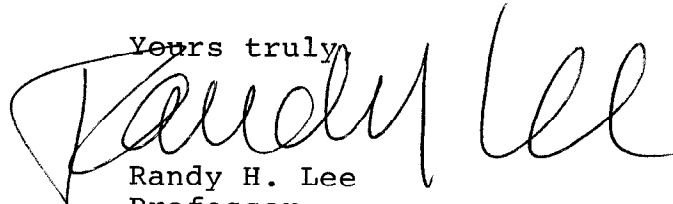
Re: C5-84-2139, Order of 2/19/88 (Admission Rules)

Thank you for sending the copy of the proposed amendments to the admission rules.

I will be submitting no statement on the proposed amendments. However, I call your attention to what may be a proofing error in what would become new Rule VI B (3) if the amendments are adopted as proposed. In line one of that subsection, I believe that the word office was likely intended to be officer; this is not necessarily the case, however, and you can find out what the drafters wanted -- but it is rather hard for an office to make affidavit (unless it has some statutory power to authenticate documents).

My assumption is that calling your attention to this possible proofing error does not constitute presentation of a written statement "concerning the subject matter of the hearing;" if, however, your view is that it does, and that I need to have provided you with ten copies of this letter in order for you to consider the matter or to alert the Court to it so that it can see whether there is an r missing, let me know and I will send you ten copies.

Yours truly,



Randy H. Lee
Professor

RHL:sms

3/17/88

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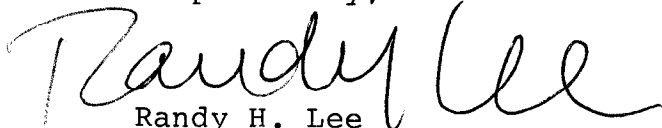
March 15, 1988

Clerk of the Appellate Court
230 State Capitol
St. Paul, Minnesota 55155

Re: Petition to Amend Minnesota Bar Admission Rules (C5-84-2139)
(Order for Public Hearing dated 2/19/88; Hearing on 5/12/88)

The order for public hearing executed for the Court by Chief Justice Amdahl includes a provision that persons desiring copies of the petition for amendment should write you. Many of our students seek Minnesota admission. We would like, therefore, to examine the proposed amendments, and would appreciate your forwarding a copy of that to us. It may be directed to me at the address printed in the margin. Thanks in advance for your assistance.

Respectfully,


Randy H. Lee
Professor

RHL:sms

sent 3-17-88

