

STATE OF MINNESOTA

IN SUPREME COURT

C5-84-2139

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENT TO THE RULES OF THE SUPREME
COURT FOR ADMISSION TO THE BAR

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 12, 1993 at 9:00 a.m., to consider the recommendation of the State Board of Law Examiners to amend the Rules of the Supreme Court for Admission to the Bar to include a Foreign Legal Consultant Rule. A copy of the proposed rule is annexed to this order.

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 this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before April 9, 1993 and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 9, 1993.

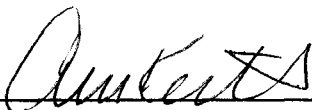
Dated: February 22, 1993

BY THE COURT:

OFFICE OF
APPELLATE COURTS

FEB 24 1993

FILED


A.M. Keith
Chief Justice

PROPOSED

FOREIGN LEGAL CONSULTANT RULE

Rule VII. License For Foreign Legal Consultants

A. Eligibility

A person who is admitted to practice in a foreign country as an attorney or counselor at law may apply for, and at the discretion of the Board of Law Examiners, may obtain a license to render services as a foreign legal consultant in the State of Minnesota, without examination, subject to the limitations set forth in this Rule.

B. Requirements

In order to qualify for the license the applicant must:

1. have been admitted to practice in a foreign country as an attorney or counselor at law or the equivalent; and
2. as principal occupation, have been engaged in the practice of law of that country in that country for at least five of the seven years immediately preceding the application; and
3. be in current good standing as an attorney or counselor at law or the equivalent in that country, and have remained in good standing throughout the period of his/her practice; and
4. possess the good character and fitness required for admission to practice in this state; and
5. be at least 24 years of age; and
6. maintain an office in the state of Minnesota for the rendering of services as a foreign legal consultant.

C. Applications

In order to qualify for the foreign legal consultant license, an applicant must file with the Minnesota Board of Law Examiners the following documents, together with duly authenticated English translations, if they are not in English:

1. a sworn and notarized typewritten Application for Foreign Legal Consultant License;
2. a duly authenticated certificate from the authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted to practice, which shall be accompanied by the official seal, if any, of such authority, and which shall certify:
 - a. the authority's jurisdiction in such matters;
 - b. the applicant's admission to practice in such foreign country, the date of admission, and the applicant's good standing as an attorney or

- counselor at law or the equivalent in that jurisdiction;
3. a duly authenticated document from any foreign country or jurisdiction in which said consultant has been licensed as an attorney or as a foreign legal consultant indicating whether any charge or complaint has ever been filed against the applicant with such authority, if so, the substance of each such charge or complaint, and the adjudication or resolution of each such charge or complaint;
 4. a letter or recommendation signed by, and accompanied with the official seal, if any, of one of the members of the executive body of such authority or from one of the judges of the highest court of law of such foreign country, certifying to the applicant's professional qualifications;
 5. a summary of the law or rule, if any, of such foreign country which permits members of the bar of Minnesota to establish offices for the giving of legal advice to clients in such foreign country;
 6. letters of recommendation from at least three attorneys or counselors at law or the equivalent admitted in and practicing in such foreign country, setting forth the length of time, and under what circumstances they have known the applicant and stating their appraisal of the applicant's good character and fitness for admission;
 7. notarized letters of recommendation from at least two members in good standing of the Minnesota Bar, setting forth the length of time, and under what circumstances they have known the applicant and their appraisal of the applicant's good character and fitness for admission;
 8. such other evidence as to the applicant's educational and professional qualifications, good character and fitness and compliance with the requirements of this rule as the Minnesota Board of Law Examiners may require; and
 9. a fee in the amount of \$1,000, in the form of a certified check or money order.

D. Investigation

The Minnesota Board of Law Examiners shall conduct such investigation into the applicant's background and verification of supporting documents as the Board may deem appropriate or necessary in the circumstances.

E. Scope of Practice

A person licensed as a foreign legal consultant under this rule may render legal services in the State of Minnesota regarding the laws of the country in which such person is admitted to practice as an attorney, counselor at law or equivalent. The foreign legal consultant shall not, however, conduct any activity or render any services constituting the practice of the law of the United States, the State of Minnesota, or that of any other state, commonwealth or territory of the United States or the District of Columbia including, but not limited to, the restrictions that such person shall not:

1. appear for another person as attorney in any court or before any magistrate or

- other judicial officer or before any federal, state, county or municipal governmental agency, quasi-judicial or quasi-governmental authority in the State of Minnesota, or prepare pleadings or any other papers in any action or proceedings brought in any such court or before any such judicial officer, except as authorized in any rule or procedure relating to admission pro hac vice, or pursuant to administrative rule;
2. provide legal advice in connection with the preparation of any deed, mortgage, assignment, discharge, lease, agreement of sale or any other instrument affecting title to:
 - a. real property located in the United States of America;
 - b. personal property located in the United States of America, except where the instrument affecting title to such personal property is governed by the law of a jurisdiction in which the foreign legal consultant is admitted to practice as an attorney or counselor at law or the equivalent;
 3. prepare:
 - a. any will or trust instrument affecting the disposition of any property located in the United States of America and owned by a resident thereof;
 - b. any instrument relating to the administration of a decedent's estate in the United States of America;
 4. prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of such a resident;
 5. render professional legal advice on the law of the State of Minnesota or the United States of America or any other state, subdivision, commonwealth or territory of the United States of America or the District of Columbia (whether rendered incident to the preparation of a legal instrument or otherwise);
 6. in any way represent that such person is admitted to the Bar of the State of Minnesota or is licensed as an attorney or foreign legal consultant in another state, territory or the District of Columbia, or as an attorney or counselor at law or the equivalent in a foreign country, unless so licensed;
 7. use any title other than "Foreign Legal Consultant, Not Admitted to Practice Law in Minnesota", provided that such person's authorized title and firm name in the foreign country in which such person is admitted to practice as attorney or counselor at law or the equivalent may be used if the title, firm name, and the name of such foreign country are stated together with the above-mentioned designation;
 8. render any legal services for a client without utilizing a written retainer agreement which shall specify in bold type that the foreign legal consultant is not admitted to practice law in the State of Minnesota, nor licensed to advise on the laws of the United States or the District of Columbia, and that the practice of the foreign legal consultant is limited to the laws of the foreign country where such person is admitted to practice as an attorney or counselor

- at law or the equivalent; or
9. hold any client funds or valuables without entering into a written retainer agreement which shall specify in bold type the name of a Minnesota licensed attorney in good standing who is also representing the particular client in the particular matter at hand.

F. Disciplinary Provisions

1. A foreign legal consultant is expressly subject to the Minnesota Rules of Professional Conduct and to continuing review of qualifications to retain any license granted hereunder, and shall be subject to the disciplinary jurisdiction of the Minnesota Office of Lawyers Professional Responsibility and the Minnesota Supreme Court.
2. Section 1 above shall not be construed to limit in any way concurrent disciplinary procedures to which the foreign legal consultant may be subject in the country of admission.
3. A foreign legal consultant shall execute and file with the Board of Law Examiners, in such form and manner as the court prescribes:
 - a. a statement that the foreign legal consultant has read, understood, and made a commitment to observe the Minnesota Rules of Professional Conduct; and
 - b. either:
 - 1) an undertaking or appropriate evidence of professional liability insurance, in such amount as the Minnesota Supreme Court may prescribe, to assure such foreign legal consultant's proper professional conduct and responsibility; or
 - 2) an appropriate undertaking in the amount of \$50,000.00 in the form of a bond, letter of credit or other financial guaranty instrument issued by a reputable financial institution based in, and authorized to do business in, the United States of America or any state therein for the purpose of assuring the foreign legal consultant's proper professional conduct and responsibility; and
 - c. a duly acknowledged instrument in writing setting forth such foreign legal consultant's address within the State of Minnesota and designating the Clerk of the Appellate Courts as agent for the service of process for all purposes; and
 - d. a commitment to notify the Minnesota Board of Law Examiners of any resignation or revocation of such foreign legal consultant's admission to practice in the foreign country of admission, or in any other state or jurisdiction in which the foreign legal consultant has been licensed as an attorney or counselor at law or equivalent or as a foreign legal consultant, or of any censure, suspension, or expulsion in respect of such admission.

G. Annual Certification and Renewal Fees

1. A foreign legal consultant shall submit on a biennial basis to the Minnesota Board of Law Examiners:
 - a) a sworn statement attesting to his/her continued good standing as an attorney or counselor at law or equivalent in the foreign country in which he/she is admitted to practice;
 - b) a fee in the amount of \$200.

2. The foreign legal consultant shall submit on an annual basis to the Minnesota Attorney Registration office an attorney registration fee equivalent to the renewal fees paid by Minnesota licensed attorneys pursuant to the Rules of the Supreme Court for Registration of Attorneys.

SHERWOOD & MCKENZIE

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April 8, 1993

OFFICE OF
APPELLATE COURTS

APR 09 1993

FILED

Mr. Frederick Grittner
Clerk of Appellate Courts
Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN 55155

**Re: Minnesota Rule Number CS-84-2139
Foreign Legal Consultants**

Dear Mr. Grittner:

Please receive this letter as our request to speak in favor of adoption of Minnesota's proposed Foreign Legal Consultant Rule (the "Minnesota Rule") at the hearing scheduled for Monday, April 12, 1993. If granted leave to speak at the hearing, our presentation would be based on the following background information and reasons for our support of the Minnesota Rule.

BACKGROUND

Throughout the latter half of the 1980s, over a dozen states joined New York in adopting rules governing the local practice of foreign legal consultants.* These states adopted (and more states are considering the adoption of) foreign legal consultant rules in an era of dramatic acceleration in world trade, foreign direct investment and international financial transactions. The adoption of these rules is also occurring as trade in international services has been added to trade in goods on the agenda for the Uruguay Round of the General Agreement on Tariff and Trade, the mechanism by which the leading trading countries of the world have been attempting to reduce world trade barriers. At their core, these rules generally have two trade-related purposes: first, to open the adopting state to foreign lawyers for the local provision of advice on foreign law; and secondly, to enable lawyers

*The first foreign legal consultants rule was adopted in New York in 1974. The following additional states adopted such rules throughout the latter half of the 1980s and into the early 1990s: Alaska, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Michigan, New Jersey, Ohio, Oregon, Texas and Washington.

Mr. Frederick Grittner
April 6, 1993
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based in the adopting state to provide U.S. legal advice in foreign countries where, as a condition of licensure, American lawyers are required to demonstrate that their home states allow foreign lawyers to practice there on a reciprocal basis.

In 1986, Japan adopted a relatively strict reciprocity rule, providing that American lawyers would be allowed to advise in Japan on the laws of their home state, as long as they were from a state that would allow Japanese lawyers to practice there on a reciprocal basis. 1986 also saw the adoption of the Single European Act and the promulgation of laws designed to move the European Community towards a more complete economic integration by the end of 1992. The EC's unification program includes directives aimed at reducing barriers to the international provision of legal services within the EC, but the American bar continues to be concerned about barriers to American lawyers, especially those who are from states that lack practice reciprocity rules. Germany presently has under consideration a proposed foreign attorney rule that lists specific states with reciprocity rules that will meet German criteria. Minnesota is not on the list.

It was in this context that, in 1989, the International Business Law Section of the Minnesota State Bar Association ("IBLS") approached the Minnesota State Board of Law Examiners (the "Board") with the concept of a foreign legal consultants rule. The Board invited the IBLS to prepare and submit a draft rule for the Board's consideration. Accordingly, a rule was drafted by an ad hoc committee appointed by the IBLS' governing Council. The committee's draft rule was approved by the IBLS at its annual meeting in June, 1990.

The IBLS draft rule, which was submitted to the Board in August, 1990, was based in large part on New York's relatively liberal rule on foreign legal consultants. For example, it provided that a foreign legal consultant "may provide legal services and give professional legal advice in Minnesota," subject to specified limitations, including a prohibition on providing legal services or advice on the law of Minnesota "except on the basis of advice from [a Minnesota qualified lawyer]."

After lengthy and careful consideration of the IBLS' draft rule, the Board submitted to the IBLS in December, 1991, a revised version that had the effect of making the rule more restrictive. For example, the Board's draft restricted the foreign legal consultant to providing legal advice only on the consultant's home country law and prohibited the consultant from providing advice on Minnesota law, arguably even where such advice would have been based on advice from a qualified Minnesota lawyer.

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The IBLs responded to the Board's draft rule by suggesting a number of revisions. These were submitted to the Board in February, 1992, and were aimed generally at making the rule less restrictive and closer in content to New York's more liberal rule. Among other changes it sought, the IBLs urged the Board to reconsider its restriction on foreign legal consultants' scope of practice and allow them to advise on third country and international laws (as well as their own countries' laws), and to clarify in the rule that foreign legal consultants could pass on to clients advice on Minnesota law based on advice received from Minnesota qualified lawyers.

The Board gave the IBLs' second draft rule equally lengthy and careful consideration. The Board and its staff hosted at least two meetings with representatives of the IBLs' ad hoc committee. As a result of these further deliberations, the Board produced another draft which it submitted to the IBLs in October, 1992. This fourth version of the rule incorporated a number of changes suggested by the IBLs and retained certain provisions which the IBLs sought to change, including the more restrictive scope of practice provision. It is this fourth draft that is now before the Supreme Court for adoption.

On April 5, 1993, a special meeting of the IBLs' Council and ad hoc committee members was convened to consider a resolution supporting the rule in its present form. The resolution was adopted and the undersigned were authorized and directed by the Council to prepare this letter in support of the Minnesota Rule.

THE MINNESOTA RULE

If adopted by the Supreme Court, the Minnesota Rule would create a new category of lawyer -- a foreign legal consultant -- who could be licensed to practice in Minnesota without having to pass the Bar examination.

Under the Minnesota Rule, the Minnesota State Board of Law Examiners may issue, in its discretion, a foreign legal consultant's license to a lawyer who is duly qualified and in good standing under the applicable rules of practice in a foreign country. An applicant for the license must have been so qualified and practicing in the foreign country for five of the seven years preceding the application for the license. The applicant must provide the Board with supporting character and professional reference letters from judicial authorities and practicing lawyers in the foreign country and in Minnesota. The applicant must maintain an office in Minnesota and agree to submit to the

Mr. Frederick Grittner
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jurisdiction of this state in the event a claim should arise in connection with the applicant's practice here. The Board would establish the application fee at \$1,000.00 (an amount which may or may not be sufficient to cover costs associated with verifying applicant information originating in a foreign country).

Foreign lawyers to whom a license is granted pursuant to the Minnesota Rule "may render legal services in the State of Minnesota regarding the laws of the country in which such person is admitted to practice," but may not provide services that constitute the practice of U.S. or Minnesota law, "including, but not limited to," making appearances in Minnesota courts (except pro hac vice); giving Minnesota or U.S. legal advice in connection with local real estate transactions; and advising on the Minnesota and U.S. aspects of trust, estate or family law matters. The Minnesota Rule also requires the foreign legal consultant to utilize "a written retainer agreement" in connection with legal advisory and fiduciary obligations assumed in connection with the licensee's Minnesota practice.

The Minnesota Rule makes the foreign legal consultant "subject to the Minnesota Rules of Professional Conduct and . . . the disciplinary jurisdiction of the Minnesota Office of Lawyers Professional Responsibility and the Minnesota Supreme Court."

Finally, the Minnesota Rule requires the foreign legal consultant to renew his or her license on an annual basis.

REASONS TO ADOPT THE MINNESOTA RULE

The IBLS supports the Minnesota Rule and urges the Supreme Court to adopt it.

There are two good reasons for the Court to adopt the Minnesota Rule. First, its adoption will place Minnesota among the growing number of states to welcome foreign lawyers to their bars. The ability of foreign lawyers to open offices and practice here could benefit the consumer of legal services in Minnesota by making more accessible advice on the foreign law implications of business transactions, dispute settlement procedures, and estate and family law matters in which Minnesotans are becoming increasingly involved as the state's population grows and the world's economies become increasingly interdependent. The availability of foreign lawyers in Minnesota should also encourage and enhance the ability of foreign businesses and individuals to invest in Minnesota. Even if adoption of the Minnesota Rule will not produce a dramatic influx of foreign lawyers into the state, at least it will place Minnesota

Mr. Frederick Grittner
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among the major states of the Union in opening its doors to international trade in legal services, and it will have done so without a trade-restrictive reciprocity requirement.

Secondly, the adoption of the Minnesota Rule should improve the ability of Minnesota lawyers to offer Minnesota and other Midwestern clients better and more economical international legal services and, in doing so, to compete with lawyers from states that already have reciprocity rules. Adoption of the Minnesota Rule should allow Minnesota lawyers and law firms to open and maintain offices in such key foreign countries as, for example, Japan and Germany, where strict reciprocity rules either exist or are about to be adopted. The presence of offices of Minnesota law firms in foreign countries should also help facilitate investments from those countries into Minnesota.

In January of this year, the American Bar Association's Section on International Law and Practice completed its work on a proposed model rule for foreign legal consultants (the "Proposed Model Rule"). Apparently the Proposed Model Rule will be presented to the ABA for adoption at its annual meeting next August. If adopted, it is anticipated that states having, or considering the adoption of, foreign legal consultant rules will be encouraged to conform their rules to the Proposed Model Rule. The IBLS is informed that a presentation on the Proposed Model Rule will be made at the April 12 hearing and that the Supreme Court will be urged to adopt the Proposed Model Rule rather than the Minnesota Rule.

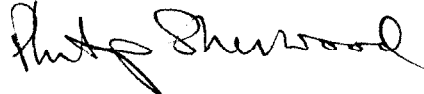
Like the New York rule, the Proposed Model Rule contains fewer restrictions than the Minnesota Rule and therefore would be preferable from an international trade policy standpoint. However, the key provisions of the Proposed Model Rule were explained to the Board and its staff at a meeting in July, 1992, and a draft was provided to the Board's staff in September, 1992. Thus, the Proposed Model Rule was taken into account in the exchanges of rule drafts and related discussions between the IBLS and the Board. The Board has given the IBLS its reasons for insisting on a more conservative rule; the Board is insisting on maximum protection for the consumer of legal services in this state. The IBLS appreciates the considerable time and effort the Board and its staff have invested in the Minnesota Rule over the past three years and understands and respects the Board's convictions on the subject, particularly in circumstances where the states (except for New York) have not yet had a great deal of experience with foreign legal consultant rules.

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While the IBLS recognizes the risk that, in its present form, the Minnesota Rule may be perceived in a given foreign country as too restrictive to meet that country's reciprocity requirements, the IBLS believes that the risk is far outweighed by the potential benefits to be derived from the Minnesota Rule. If in time the Minnesota Rule should prove problematic in some respect in any given country, the IBLS would undoubtedly ask the Board and the Supreme Court to consider amending the Rule to correct the problem in a manner that is consistent with the proper protection of consumers of legal services in Minnesota. In that case, the IBLS would hope and expect that any such corrections would move the Minnesota Rule closer to conformity with the Proposed Model Rule.

The IBLS wishes to thank and commend the Board and its staff for the considerable time and effort they have invested in developing the Minnesota Rule over the past three years. We also wish to express our appreciation to the Supreme Court for taking the time to understand the importance of the Minnesota Rule, and we respectfully request its prompt adoption by the Court.

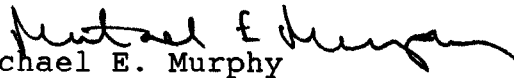
Respectfully submitted,



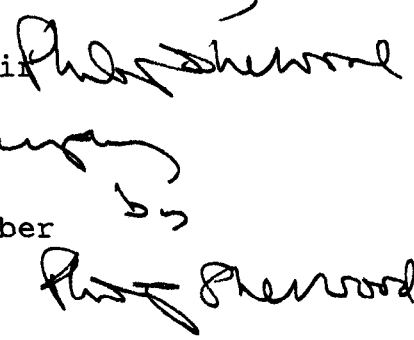
Philip Sherwood
Sherwood & McKenzie
Chair, IBLS



Michael Prichard
Dorsey & Whitney
Ad hoc committee chair



Michael E. Murphy
Faegre & Benson
Ad hoc committee member



PRS/m

cc: Mr. John D. Kelly, President
Minnesota State Board of Law Examiners
Ms. Margaret Fuller Corneille, Director
Minnesota State Board of Law Examiners

STATE OF MINNESOTA

IN SUPREME COURT

C5-84-2139

OFFICE OF
APPELLATE COURTS

APR 08 1993

FILED

In re: Proposed Amendment
to the Rules of the Supreme
Court for Admission to the Bar

Request of the Minnesota Board
of Law Examiners to Make Oral
Presentation

John D. Kelly, President of the Minnesota Board of Law Examiners, and Margaret Fuller Corneille, Director of the Minnesota Board of Law Examiners, request that they be permitted to address the Court regarding the pending Rule VII of the Rules of the Supreme Court for Admission to the Bar. A copy of proposed comments has been filed with the Court.

Respectfully submitted,

MINNESOTA BOARD OF LAW EXAMINERS



John D. Kelly, President
Attorney License No. 54732



Margaret Fuller Corneille, Director
Attorney License No. 179334

John D. Kelly, *President*
Joseph R. Cade, *Secretary*
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Hon. Isabel Gomez
David Higgs
Judith G. Schotzko
Robert C. Swenson
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Margaret Fuller Corneille
Director

THE SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS

April 5, 1993

Honorable A. M. Keith
Chief Justice
Supreme Court of Minnesota
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

RE: Proposed Foreign Legal Consultant Rule

Dear Chief Justice Keith:

The Minnesota Board of Law Examiners initiated its study of a Foreign Legal Consultant Rule at the urging of the International Business Law Section (IBLS) of the Minnesota State Bar Association. The IBLS drafted and submitted to the Board a Rule licensing foreign attorneys to engage in the limited practice of law in Minnesota. The IBLS members advised the Board of the pressing need for adoption of this Rule to facilitate practice by Minnesota attorneys in foreign, particularly European, jurisdictions. Through the application of strict rules of reciprocity, foreign jurisdictions often prohibit practice by United States attorneys unless their own attorneys have similar rights in the United States.

A committee of the Board was formed to study the proposed Rule and make recommendations regarding the possibility of adopting such a Rule. The members of the IBLS met with the members of the committee and reviewed various proposed revisions. The Board committee then submitted the Rule to the full Board which adopted a resolution recommending adoption by this Court.

In essence, this Rule authorizes an attorney licensed in a jurisdiction outside of the United States to be licensed as a foreign legal consultant, and to provide legal advice in the state of Minnesota, but only concerning the laws of the country in which the foreign legal consultant is admitted as an attorney. This Rule prohibits the foreign legal consultant from rendering advice on the laws of the United States, or on the laws of the state of Minnesota.

Proposed Foreign Legal Consultant Rule

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In studying this issue, the Board of Law Examiners reviewed similar rules currently in place in New York, California, Texas, Alaska, Wisconsin, Illinois, and the District of Columbia. Three of these jurisdictions adopted a restrictive version of a foreign legal consultant rule similar to that proposed in Minnesota which limits the scope of practice to rendering advice on the laws of the foreign legal consultant's jurisdiction. The more liberal approach, adopted in the other jurisdictions surveyed, permits the foreign legal consultant to advise on the laws of the United States or the licensing jurisdiction. Several jurisdictions required that such advice be based upon the advice of a fully licensed attorney.

The Minnesota Board chose a more restrictive approach, limiting the foreign legal consultant to advising solely on the laws of the jurisdiction from which he/she came. This course was taken out of concern for protection of the public. The Board wished to prevent the possibility of unscrupulous practitioners using such a license to exploit vulnerable persons unfamiliar with United States law due to language or cultural differences.

In addition to generally limiting the consultant's scope of practice, the proposed Rule specifically lists activities the foreign legal consultant is prohibited from engaging in, including court appearances, real property transfers, preparation of any deed or mortgage, preparation of any will or trust instrument, and preparation of any instrument regarding divorce or custody matters. Furthermore, the foreign legal consultant is not permitted to represent himself/herself in any capacity other than as a foreign legal consultant. Also, for the benefit of public protection, the foreign legal consultant must execute a written client retainer which expressly states that the foreign legal consultant is subject to the Minnesota Rules of Professional Conduct. Finally, the foreign legal consultant is prohibited from holding client funds except after associating with a fully licensed Minnesota attorney and disclosing that attorney's name in the client retainer agreement.

To be eligible for admission, the foreign legal consultant will be required to have practiced five of the previous seven years in his/her home jurisdiction. This provision will preclude admission of foreign lawyers who may not be current with the law of that jurisdiction. As with all of the other states surveyed, the Board wishes to require a minimum number of years of experience before a foreign legal consultant license can be granted. The Board intends to license seasoned practitioners, not neophyte lawyers.

Proposed Foreign Legal Consultant Rule

April 5, 1993

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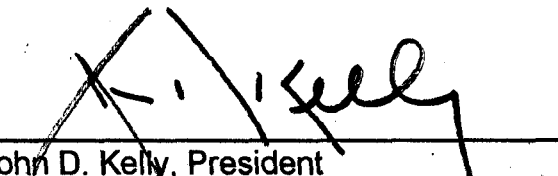
An application fee of \$1,000 is calculated to cover the considerable cost of investigating the foreign applicant's background and verifying all credentials, as the Board does in the case of attorneys applying from other states of the United States. The \$200 annual fee paid to the Board of Law Examiners reflects the anticipated annual cost of monitoring the foreign legal consultant's eligibility, including verifying continued good standing in the home jurisdiction. Also anticipated is the payment of an annual attorney registration fee, like any other Minnesota attorney.

As an additional assurance of performance, the Rule requires the foreign legal consultant to provide evidence of professional responsibility insurance or a bond. This requirement reflects the Board's interest in the prevention of losses. All of the other jurisdictions surveyed by the Board required either a bond or professional liability insurance. Illinois and California require both.

In drafting the Rule, the Board attempts to balance the need to facilitate the full participation of Minnesota attorneys within the international legal community, and at the same time, to protect the citizens of this state. The Board is satisfied that the proposed Rule achieves both of these ends and, therefore, recommends the adoption of this Rule as Rule VII of the Rules of the Supreme Court for Admission to the Bar.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS



John D. Kelly, President



Margaret Fuller Corneille, Director

One West Water Street, Suite 250
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April 29, 1993

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Mr. Frederick Grittner
Clerk of Court
245 Judicial Center
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Dear Mr. Grittner:

OFFICE OF
APPELLATE COURTS

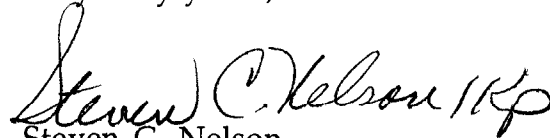
MAY - 3 1993

FILED

Re: Proposed Rule on the Licensing of Legal Consultants

Enclosed herewith please find twelve (12) copies of the letter and enclosures to Chief Justice Keith in reference to the above matter.

Very truly yours,


Steven C. Nelson

SCN/kmp
Enclosures

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April 28, 1993

OFFICE OF
APPELLATE COURTS

MAY 3 1993

FILED

Chief Justice A. M. Keith
Minnesota Supreme Court
245 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Proposed Rule on the Licensing of Legal Consultants

Dear Mr. Chief Justice:

I am writing to supplement the record of the hearing before the Court on Monday, April 12, 1993 concerning the Foreign Legal Consultant Rule proposed by the Minnesota Board of Law Examiners for adoption as a new Rule VII of the Rules of the Supreme Court for Admission to the Bar. There have been two developments since that hearing that have a direct bearing upon the views I expressed to the Court in my oral and written presentations on this subject and which I consider myself obliged to bring to the Court's attention.

First, in my presentation on April 12, 1993, I urged that the Court adopt as the basis for a rule on the licensing of legal consultants in Minnesota, in preference to the draft rule proposed by the Minnesota Board of Law Examiners, the Model Rule adopted by the Section of International Law and Practice of the American Bar Association for submission to the ABA's House of Delegates in August of 1993. Subsequently, on April 15, 1993, I received a copy of a Report issued by the Task Force on International Legal Services of the Association of the Bar of the City of New York, of which I enclose a copy. In the Report, the Task Force endorses the proposed ABA

DORSEY & WHITNEY

Chief Justice A. M. Keith
Minnesota Supreme Court
April 28, 1993
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Model Rule with a small number of relatively minor changes. The most substantive of these is the insertion into Section 4 of the Model Rule of a carefully-drafted list of specific legal services which would be excluded from the scope of practice of the legal consultant, along the same general lines as those proposed by the Minnesota Board of Law Examiners. It is my intention to recommend that the Section of International Law and Practice adopt the substance of all of the proposed changes before forwarding its Report and Recommendation to the ABA House of Delegates. I expect that this will be done at the meeting of the Section Council on Saturday, May 1, 1993. I hereby modify my recommendation to the Court accordingly.

Second, I was asked at the hearing whether the result of the adoption by the Court of a legal consultant rule embodying the restrictive scope-of-practice provision incorporated in the rule proposed by the Minnesota Board of Law Examiners might be that countries such as Germany and Japan, which have reciprocity requirements in their own legislation and regulations on this subject, would take the position that Minnesota does not accord reciprocity to lawyers from those countries. My response was that this was one possibility and that the other was that they would hold Minnesota lawyers to the same impractical and unworkable scope of practice in their countries, either result being unsatisfactory. It was suggested by Mr. Michael Murphy, by way of rebuttal to my remarks, that the Court might have been misled by my response because, in his view, the German authorities had already indicated that they would treat states such as Illinois -- which has equally restrictive scope-of-practice provisions in its rules -- as according reciprocity, and there was no reason to believe that Minnesota would be treated otherwise. I subsequently put this same question to Mr. Sydney M. Cone, III of the Paris office of Cleary, Gottlieb, Steen & Hamilton, who chairs the Section's Task Force on Regulation of Foreign Lawyers. It happened that Mr. Cone was about to attend another in a series of meetings with the German Ministry of Justice to discuss the question of reciprocity. He subsequently sent me a report on that meeting, of which I enclose a copy. I believe the Court will find that it sheds considerable light on the question of the extent to which the adoption of a restrictive rule in Minnesota, particularly at this time, may influence the thinking of foreign governments, or at least the German government, on the subject of reciprocity.

DORSEY & WHITNEY

Chief Justice A. M. Keith
Minnesota Supreme Court
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I apologize for burdening the Court with additional material at this stage but felt that it was incumbent upon me to provide this supplemental information in light of its direct and material bearing on the subject matter of my earlier submissions to the Court.

Very truly yours


Steven C. Nelson

SCN/kmp
Enclosures

cc (w/encl): John D. Kelly, Esq.
Minnesota Board of Law Examiners

Ms. Margaret Fuller Corneille
Minnesota Board of Law Examiners

Phillip Sherwood, Esq. (w/encl)
Sherwood & McKenzie

Michael E. Murphy, Esq. (w/encl)
Faegre & Benson

CLEARY, GOTTLIEB, STEEN & HAMILTON

41, avenue de Friedland, 75008 Paris, France

40.74.68.00

FACSIMILE MESSAGE

Fax Number: 19.1.612.340.2868

To: Steven C. Nelson, Esq.

From: Sydney M. Cone, III

Company: Dorsey & Whitney

Date: April 17, 1993

City: Minneapolis

Number of Pages
(including cover): 4

Country: U.S.A.

Telephone Number: 19.1.612.340.2942

IF COPY IS ILLEGIBLE OR INCOMPLETE PLEASE CALL 40.74.68.00

Telecopier/Fax Numbers: 45.63.66.37 OR 45.63.35.09

Dear Steve:

In the context of consideration being given to the adoption of legal consultant rules by the State of Minnesota, you have asked me for a status report on Germany. As you know, Section 206(2) of the German Ordinance on the Legal Profession, as amended in 1989, permits lawyers from other countries to be recognized as lawyers in Germany and to practice law in Germany, provided (a) their practice is limited to the law of their country of origin, and (b) that country offers reciprocal treatment to German lawyers. As regards item (a), the permitted scope of practice of U.S. lawyers is expected to include and be limited to U.S. state and federal law. As regards item (b), Section 206(2) authorizes the German Ministry of Justice to issue a decree which, if approved by the Bundesrat, will determine the countries that meet the reciprocity requirement.

Last year the German Ministry of Justice prepared a draft decree on reciprocity as it affects the United States, and circulated the draft for comments. The draft names fourteen U.S. states by name; they are the states which, at the time the draft was prepared, had legal consultant rules in effect. The list of states in the draft has not been kept up to date, nor does the draft provide for the inclusion of additional states in the future. Thus, if the draft were to be submitted to and approved by the Bundesrat in its present form, the decree would have to be formally amended from time to time in order to be updated.

Certain German Bar organizations have raised questions about the draft, and representatives of the German Ministry of Justice have had two meetings at the Ministry with American representatives concerning these questions. At the initiative of the Ministry, I was invited to attend both meetings. The first of these meetings occurred on September 15, 1992, and the second on April 15, 1993.

The April 15 meeting was attended on the German side by three representatives of the Ministry (Messrs. Thomas, Vreden and Meng), by a Mr. Barth from the German Ministry of Economics, by two permanent secretaries of a German Bar organization, and by Heinz Weil and Hans-Jürgen Rabe; and, on the American side, by two representatives from the U.S. Embassy (Ray A. Meyer, the Legal Adviser, and Ms. Dubravka Maric), and by Charles E. Stewart and myself.

Mr. Rabe began with observations on the GATT negotiations on legal services. Mr. Barth from the Economics Ministry said that the proposed decree on reciprocity would be tantamount to a bilateral agreement between Germany and the U.S. and inconsistent with the multilateral approach of the GATT negotiations. The Americans present said, in different ways, that the arguments being raised with respect to GATT were, transparently, delaying tactics having nothing to do with Germany's pending decree on reciprocity. Ray Meyer, the Legal Adviser of the U.S. Embassy in Bonn, said that

there was no inherent conflict between the "internal German issue" of the proposed decree on reciprocity, on the one hand, and the GATT negotiations, on the other. He added: "We hope this internal German issue can be resolved quickly to foster trade and services between the U.S. and Germany."

Mr. Thomas of the German Ministry of Justice then said that the Ministry would not submit its draft decree to the Bundesrat until "a reasonable period of time" had elapsed to permit the GATT negotiations on legal services to be concluded. While he did not indicate an exact time for submission, at one point he mentioned December 15, 1993 as a possible date (this being the date by which President Clinton apparently would like to conclude the current GATT negotiations generally).

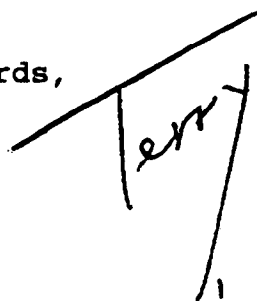
As regards reciprocity, the German Bar representatives said that the U.S. must be viewed as a whole and not state by state. The American representatives then pointed out that even Japan and France had been able to deal with the fact that the U.S. (like Canada and Australia) has a federal system. The German Bar representatives next raised the specter that a U.S. lawyer from a state without legal consultant rules might become a member of the bar in a state with legal consultant rules in order to open an office in Germany. There seemed to be general agreement, however, that if this were considered to be a problem it should not be difficult for the Germans to draft a solution.

The German Bar representatives also focused the attention of the German Ministry of Justice on the fact that not all of the U.S. states with legal consultant rules necessarily qualify for reciprocal treatment; that some of the states have far more restrictive rules than other states; and that the Ministry might be well advised to confine the benefits of the draft decree to those U.S. states which in fact merit reciprocal treatment by virtue of their relatively unrestrictive legal consultant rules.

Unfortunately, the German Bar representatives had a copy of the proposed Minnesota legal consultant rules. The German Bar representatives, claiming that the proposed Minnesota rules were about to be adopted, emphasized various restrictions in the proposed rules, and cited these restrictions as arguments against affording reciprocal treatment to U.S. lawyers.

Finally, the American representatives raised the point that, under Section 206(2) of the German Ordinance, even if the proposed decree were approved by the Bundesrat, a U.S. lawyer established in Germany pursuant to the decree would be able to advise only on the law of his home country (presumably meaning U.S. state and federal law), but would not be entitled to advise on international or European Community law. Even so, the German representatives did not hold out any hope of broadening the scope of practice of such a lawyer established in Germany.

Regards,



THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
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NEW YORK, N.Y. 10036-6690

TASK FORCE ON INTERNATIONAL LEGAL SERVICES

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April 14, 1993

BY UPS OVERNIGHT

Steven C. Nelson, Esquire
Dorsey & Whitney
220 South Sixth Street
Minneapolis, Minnesota 55402

Dear Steve:

I enclose the Report of the Task Force on International Legal Services on the proposed ABA Model Rule. The Report has been approved by the President of the Association of the Bar of the City of New York. Please call me after you have read it.

We have enjoyed working with you, and we congratulate the American Bar Association and you personally on this initiative.

Yours sincerely,



Donald H. Rivkin

Enclosures

cc: Louis Sohn, Esquire (with enclosures)
Alaire Rieffel, Esquire (with enclosures)
Virginia M. Russell, Esquire (with enclosures)
James H. Carter, Jr., Esquire (with enclosures)
Joseph P. Griffin, Esquire (with enclosures)
Albert Pergam, Esquire (with enclosures)
John D. Feerick, Esquire (with enclosures)
Fern Schair Sussman, Esquire (with enclosures)
Alan Rothstein, Esquire (with enclosures)

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TASK FORCE ON INTERNATIONAL LEGAL SERVICES

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R E P O R T

- of the -

TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION
RULE FOR THE LICENSING
OF LEGAL CONSULTANTS

Background and Mandate of the Task Force

The Task Force on International Legal Services ("Task Force") of The Association of the Bar of the City of New York ("Association") was established with the mandate to consider what positions or role the Association should take with respect to lawyers of foreign countries seeking to practice in the United States and United States lawyers seeking to practice in other countries. The term "practice" includes the full right to practice in a foreign jurisdiction as well as more limited arrangements such as those provided in New York State's legal consultancy rules. The defined scope of the Task Force's jurisdiction includes:

1. Proposed treaties or other arrangements designed to govern the practice of law in foreign countries by lawyers

NOTE: The Task Force expresses its particular appreciation to Michael L. Sher. Mr. Sher acted as liaison from the Task Force to the United States Trade Representative, served as Rapporteur of the Task Force deliberations concerning the proposed ABA Model Rule and is the principal drafter of this Report.

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TASK FORCE ON INTERNATIONAL LEGAL SERVICES
- concerning -
PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

from the United States, and the practice of law in the United States by foreign lawyers;

2. Arrangements regarding foreign lawyers' employment of local lawyers, entrance into professional associations with local lawyers and practice as a branch of their home jurisdiction firm;

3. The actual and potential impact of treaties and arrangements on the rules governing practice in New York State; and

4. The actual or potential impact of treaties and arrangements with foreign countries on rules governing the practice of law in different states of the United States.

The Task Force was officially constituted and held its organizational meeting on Thursday, January 14, 1993. The roster of the members of, and Special Consultant to, the Task Force is annexed to this report.

Work of the Task Force

The Task Force has examined the proposed ABA Model Rule for the Licensing of Legal Consultants ("proposed ABA Model Rule") and the accompanying Report thereon ("proposed ABA Report") by the International Law and Practice Section of the American Bar Association (draft dated January 1993), and makes this report. Such examination consisted of a reading of the proposed ABA Model Rule and proposed ABA Report by the members of the Task Force. Several meetings of the Task Force were held during which the mandate was reviewed and discussed vis-à-vis both the proposed ABA Model Rule and the proposed ABA Report. Subsequent meetings of the Task Force were held during which the Task Force, by discussion, formed, on a section by section basis, a consensus with respect to recommendations for the position of the Association. The Task Force also met with Steven C. Nelson and Joseph P.

NOTE: The Task Force expresses its particular appreciation to Michael L. Sher. Mr. Sher acted as liaison from the Task Force to the United States Trade Representative, served as Rapporteur of the Task Force deliberations concerning the proposed ABA Model Rule and is the principal drafter of this Report.

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REPORT

- of the -

TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

Griffin. Mr. Nelson, a member of the Minnesota bar, is Chair of the program on International Legal Services of the International Law and Practice Section of the ABA, and Mr. Griffin, a member of the District of Columbia bar, is Chair of the European component of such program.

The Task Force has had consultations with, and received written comments from, the New York State Bar Association, in particular, Albert S. Pergam, Chair of the International Law and Practice Section and his immediate predecessor, J. Truman Bidwell, Jr.

In addition to its examination of the proposed ABA Model Rule and proposed ABA Report, the Task Force also examined the Draft Directive of the Council of the Bars and Law Societies of Europe ("CCBE") on the Right of Establishment for Lawyers.

The Task Force received and appreciated the cooperation of Sidney Gribetz, Executive Secretary of the Committee on Character and Fitness of Applicants for Admission to the Bar, First Judicial Department of the Appellate Division of the Supreme Court of the State of New York, and the Clerks of that Committee.

Members of the Task Force have attended meetings with the staff of the United States Trade Representative ("USTR") at the office of the USTR in Washington and with the Delegation of the Japanese Ministry of Justice Study Commission on Foreign Legal Consultants ("Japanese Delegation") which visited New York City in March 1993. The Task Force organized and hosted a luncheon in the House of the Association on Monday, March 1, 1993, in honor of the Japanese Delegation. The President of the Association presented a history of the Association and set forth the purposes, goals and programs of the Association. At the invitation of the Task Force, Judith S. Kaye, then Chief Judge-Designate of the Court of Appeals, greeted the guests. Oral presentations were made by members of the Association on pro bono publico services voluntarily rendered, institutionally, by the Association, collectively, by law firms in New York City, by independent, publicly supported, not-for-profit organizations, by William J. Dean, Executive Director of the Volunteers of Legal Service, Inc., and, individually, by members of the New York bar, followed by a question and answer period with members of the Japanese Delegation. Peter D. Ehrenhaft, a member of the District of Columbia bar, who served as the ABA's traveling host for the visit to the United States by the Japanese Delegation, also attended the luncheon. Mr. Ehrenhaft is Chair of the Japanese com-

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TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

ponent of the program on International Legal Services of the International Law and Practice Section of the ABA.

Under the New York State Rules of the Court of Appeals for the Licensing of Legal Consultants (Part 521), one hundred sixty-nine persons have been licensed as Legal Consultants, one of whom subsequently resigned (First Department - Japan). Schedules setting forth (i) Licensed Legal Consultants in the State of New York by Judicial Department, by Country, and (ii) Statewide Country Summary are annexed to this Report.

Recommendation of the Task Force

The Task Force unanimously recommends the acceptance by the Association of the proposed ABA Model Rule and proposed ABA Report, with the specific exceptions and comments noted immediately below.

<u>Section</u>	<u>Comment and Recommendation</u>
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1	<u>General Regulation as to Licensing</u>
---	---

1(a)	No change to the draft of the proposed ABA Model Rule.
------	--

The prefatory phrase "[i]n its discretion ..." might be thought to detract from the goal of creating a common standard throughout the United States, but the expression is a term of art in licensing regulations, particularly the licensing of lawyers. Lawyers from the United States who have explained the rules for the licensing of legal consultants to lawyers in other jurisdiction have succeeded in explaining that courts can be relied on to discharge their discretion properly in licensing attorneys, and that there are remedies for abuse of discretion. For example, see section 521.1, General Regulation as to Licensing: "In its discretion the Appellate Division ... may".

The change in the language from "in good standing as an attorney or counselor at law or the equivalent in a foreign country" (New York Rule (section 521.1(a) -- Rules of the Court of Appeals for the Licensing of Le-

Continued....

gal Consultants, General Regulation as to Licensing)) to a "recognized legal profession" seems to be a more artful way of dealing with legal systems that may be different from those in the United States.

"[S]ubject to effective regulation and discipline by a duly constituted professional body or public authority" in section 1(a) of the draft of the proposed ABA Model Rule is not found in the New York Rule (Part 521 -- Rules of the Court of Appeals for the Licensing of Legal Consultants). In the context of New York, the appropriate language would be "[a] public authority," that is, the Departmental Disciplinary Committee. The alternative language, "[a] duly constituted professional body," refers to a bar committee that has disciplinary authority.

A more rigorous test than that proposed by the ABA Model Rule does not seem necessary, and also seems difficult to apply, since no rule can "insure" the proper "rendition" of services.

"Good standing" should remain as is set forth in the draft of the proposed ABA Model Rule.

1(b)

The so-called "Five Year Rule", as set forth in the draft of the proposed ABA Model Rule, should be modified as set forth immediately below (new text is bold-faced and underlined; deleted text is in brackets).

for at least three [five] of the five [seven] years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law substantially involving or relating to the rendering of advice or provision of legal services concerning the law of said foreign country;

The purpose for this change is to respond to the claim by foreign bars, particularly the German bar, that the "Five Year Rule" is contrary to true reciprocity. Set forth below is a table of states which have a similar "'X' of 'Y' Year Rule" and the number of "X" and "Y" years in such states.

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TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

<u>NUMBER OF YEARS</u>	<u>STATES</u>
5 of 7	11 states (Alaska, Connecticut, Florida, Georgia, Hawaii, Illinois, New Jersey, New York, Oregon, Texas and Washington)
5 of 8	District of Columbia
4 of 6	2 states (California and Ohio)
3 of 5	Michigan

1(e) No change to the draft of the proposed ABA Model Rule.

Nonetheless, it is the consensus of the Task Force that a misreading, consequential confusion and unintended interpretation could result with respect to the phrase "maintain an office" conjunctive with "practice as a legal consultant". Accordingly, the Task Force recommends a clarifying addition to the proposed ABA Report to accompany the proposed ABA Model Rule. Such addition should clearly set forth the legislative intent of the meaning of the phrase "maintain an office". Suggested clarifying language to be added to the proposed ABA Report is set forth immediately below.

The phrase "maintain an office" is intended to mean that the applicant shall have and utilize, on a continuing and continuous basis, at premises he or she owns or leases or at the premises of an employer, a place from which to function as a legal consultant. An associate of a law firm shall be deemed to "maintain an office" at the premises of his or her employing law firm regardless of the fact that the physical location of such premises assigned to such person by the employing law firm shall, from time to time, be changed by such law firm. The same shall be true with respect to an applicant, employed by an entity which is not a law firm, who is performing for his or her employer the services normally provided by a lawyer (e.g., house counsel). A person who has designated an area in his or her personal residence which qualifies under the Internal Revenue Code as a "home office" shall similarly be deemed to maintain an office, regardless of the frequency with which such person changes the physical location or premises of the personal residence.

Continued....

2 Proof Required

- 2(b) In line two, the words "professional body or public" should be inserted between the words "such" and "authority". Such line should, in its entirety, read as set forth immediately below (new text is bold-faced and underlined).

such professional body or public
authority or from one of the judges of
the highest law court or court of

3 Reciprocal Treatment of Members of the Bar of this State

No change to the draft of the proposed ABA Model Rule.

Section 3 of the proposed ABA Model Rule is parallel to section 521.1(b) of the New York Rule.

4 Scope of Practice

- 4(b) The limitations in the proposed ABA Model Rule should be modified as set forth in the New York Rule section 521.3(b), (c) and (d). Specifically, the legal consultant should not engage in specific defined activity. Accordingly, the following should be added to the Model Rule to form: new sections 4(b), 4(c) and 4(d), - renumbering old sections 4(b), 4(c) and 4(d) as sections 4(e), 4(f) and 4(g) (new text is bold-faced and underlined).

(b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

(c) prepare:

(i) any will or trust instrument

Continued....

- of the -

TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or

(ii) any instrument relating to the administration of a decedent's estate in the United States of America; or

(d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident.

4(c)

The addition of the proposed restriction that a legal consultant shall not "be" a member is ambiguous as to whether a legal consultant may become a member of the bar. The suggested text makes it clear that a legal consultant who becomes a member of the bar must cease to be a legal consultant.

Now renumbered as 4(f), such section should be amended and section 4(f) should read in its entirety as set forth immediately below (new text is bold-faced and underlined and deleted text is in brackets).

be, simultaneously, both a legal consultant and a member of the bar of this State, or in any way hold himself or herself out as[,] a member of the bar of this State; or

5

Rights and Obligations

5(a)

No change to the draft of the proposed ABA Model Rule.

The proposed ABA Report should make clear that the proposed ABA Model Rule is intended to parallel the approach taken in the CCBE draft directive on the right of establishment in dealing with established foreign lawyers whose Home State rules differ from those of the Host State. The following should be added as a second grammatical paragraph to section E of the Report on the

Continued....

proposed ABA Model Rule (new text is bold-faced and underlined).

In the event that a legal consultant is subject to disciplinary proceedings, the court or ethics committee should take into consideration as a possible extenuating circumstance any relevant difference between the professional rules of conduct of the Host State and those of the legal consultant's Home State legal profession. If appropriate, the court or ethics committee should - permit an authorized representative of the legal consultant's Home State disciplinary authority to provide an explanation or interpretation, or both, of the Home State's relevant professional rules.

6 Disciplinary Provisions

- 6(a)(ii)(B) The requirement for financial responsibility to assure his or her proper professional conduct and responsibility, as set forth in the draft of the proposed ABA Model Rule, should be modified as set forth immediately below (new text is bold-faced and underlined).

an undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure his or her proper professional conduct and responsibility;

The modification is intended to reduce the applicant's dependence on professional liability insurance, which may not be reasonably available to the applicant, due, e.g., to its prohibitive cost. In the event that such insurance is reasonably available, the applicant would have the option of either obtaining the insurance or providing the undertaking. In the event that such insurance is not reasonably available, then an alternate means of assuring the applicant's proper professional conduct and responsibility would be

Continued....

available. This language parallels the language in New York Rule section 521.4(a)(2)(ii).

7 Application and Renewal Fees

No change to the draft of the proposed ABA Model Rule.

New York has neither an application fee nor a renewal fee for legal consultants.

8 Revocation of License

No change to the draft of the proposed ABA Model Rule.

9 Application for Waiver of Provisions

No change to the draft of the proposed ABA Model Rule.

Respectively submitted,

Donald H. Rivkin, Chair

Sydney M. Cone, III
Special Consultant
Nancy D. Zehner
Secretary
Alan D. Berlin
James E. Brumm
Ivo G. Caytas
Anthony E. Davis

Melvin Epstein
Roger J. Goebel
Norman Redlich
Gabriel B. Schwartz
Michael L. Sher
Ruth G. Wedgwood
Glenn A. Weiner

Dated: April 9, 1993

Attachments: 1. Proposed Model Rule for the Licensing of Legal Consultants and the accompanying Report thereon by the International Law and Practice Section of the American Bar Association (draft dated: January 1993)

Continued....

- of the -

TASK FORCE ON INTERNATIONAL LEGAL SERVICES

- concerning -

PROPOSED AMERICAN BAR ASSOCIATION FOR THE LICENSING OF LEGAL CONSULTANTS

2. New York State Rules on Legal Consultancy
(Court of Appeals, Part 521. Rules of the Court of Appeals for the Licensing of Legal Consultants)
(marked to show changes between existing proposed ABA Model Rule and suggested changes to the proposed ABA Model Rule)

3. Listing, by Judicial Department, by Country, and Statewide Country Summary of Licensed Legal Consultants in the State of New York

Proposed ABA Model Rule and Accompanying Report

[Submitted separately to the Minnesota Supreme Court
with Statement of Steven C. Nelson]

Bracketed text indicates proposed deletions.

Bold-face underscored text indicates proposed additions.

PART 521 - RULES OF THE COURT OF
APPEALS FOR THE LICENSING OF
LEGAL CONSULTANTS

§521.1 General Regulation as to Licensing

(a) In its discretion the Appellate Division of the Supreme Court, pursuant to subdivision 6 of section 53 of the Judiciary Law, may license to practice as a legal consultant, without examination, an applicant who:

(1) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

[(1)](2) for at least [five] three of the [seven] five years immediately preceding his or her application, has been [admitted to practice and] a member in good standing [as an attorney or counselor at law or the equivalent in a foreign country] of such legal profession and [while so admitted] has actually [practiced] been engaged in the practice of law substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of [such] the said foreign country;

[(2)](3) possesses the good moral character and general fitness requisite for a member of the bar of this State;

[(3) is an actual resident of this State; and]

(4) is over 26 years of age[.]; and

(5) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

(b) In considering whether to license an applicant to practice as a legal consultant, the Appellate Division may in its discretion take into account whether a member of the bar of this State would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the Appellate Division may do so *sua sponte*.

§521.2 Proof Required

[(a)] An applicant under this Part shall file with the clerk of the Appellate Division in the department in which he or she resides:

[(1)](a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as such attorney or counselor at law or the equivalent[, together with a duly authenticated English translation of such certificate if it is not in English];

[(2)](b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of such foreign country[, together with a duly authenticated English translation of such letter if it is not in English]; [and]

(c) a duly authenticated English translation of such certificate and such letter if, in either case, it is not in English; and

[(3)](d) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of section 521.1 of this Part as such Appellate Division may require.

[(b) Upon a showing that strict compliance with the provisions of paragraph (a)(1) or (a)(2) of this section would cause the applicant unnecessary hardship, such Appellate Division may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.]

§521.3 Scope of Practice

A person licensed to practice as a legal consultant under this Part may render legal services in this State; subject, however, to the limitations that he or she shall not:

(a) appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this State (other than upon admission *pro hac vice* pursuant to section 520.9(e) of Part 520)[, or prepare pleadings or any other papers or issue subpoenas in

any action or proceeding brought in any such court or before any such judicial officer];[.]

(b) prepare any [deed, mortgage, assignment, discharge, lease or any other] instrument [affecting] effecting the transfer or registration of title to real estate located in the United States of America;

(c) prepare:

(1) any will or trust instrument effecting the disposition on death of any property located in the United States of America and owned by a resident thereof, or

(2) any instrument relating to the administration of a decedent's estate in the United States of America;

(d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

(e) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise), except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Part) to render professional legal advice in this State on such law;

(f) in any way hold himself or herself out as a member of the bar of this State; or

(g) carry on his or her practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

- (i) his or her own name;
- (ii) the name of the law firm with which he or she is affiliated;
- (iii) his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of such country; and
- (iv) the title "legal consultant", which may be used in conjunction with the words "admitted to the practice of law in (name of the foreign country of his or her admission to practice)".

[(g) use any title other than "legal consultant", or his authorized title and firm name, or either, in the foreign country of his admission to practice, in each case in conjunction with the name of such foreign country.]

§521.4 Rights and Obligations

Subject to the limitations set forth in section 521.3 of this Part, a person licensed as a legal consultant under this Rule shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

(a) the rights and obligations set forth in the Code of Professional Responsibility of the New York State Bar Association or arising from the other conditions and requirements that apply to a member of the bar of this State under the rules of court governing members of the bar; and

(b) the rights and obligations of a member of the bar of this State with respect to:

- (1) affiliation in the same law firm with one or more members of the bar of this State, including by:
- (i) employing one or more members of the bar of this State;
 - (ii) being employed by one or more members of the bar of this State or by any partnership or professional corporation which includes members of the bar of this State or which maintains an office in this State; and
 - (iii) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of this State or which maintains an office in this State; and
- (2) attorney-client privilege, work-product privilege and similar professional privileges.

§521.5[4] Disciplinary Provisions

A person licensed to practice as a legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this State and to this end:

(a) Every person licensed to practice as a legal consultant under this Part:

(1) shall be subject to control by the Supreme Court and to censure, suspension, removal or revocation of his or her license to practice by the Appellate Division and

shall otherwise be governed by subdivisions 2 through 10 of section 90 of the Judiciary Law; and

(2) shall execute and file with the Appellate Division, in the department in which he or she is licensed, in such form and manner as such Appellate Division may prescribe:

(i) his or her commitment to observe the Code of Professional Responsibility of the New York State Bar Association and the rules of court governing members of the bar to the extent applicable to the legal services authorized under section 521.3 of this Part;

(ii) an undertaking or appropriate evidence of professional liability insurance, in such amount as such Appellate Division may prescribe, to assure his or her proper professional conduct and responsibility;
[and]

(iii) a written undertaking to notify the court of any change in such person's good standing as a member of the foreign legal profession referred to in section 521.1(a)(1) of this Part and of any final action of the professional body or public authority referred to in section 521.2(a) of this Part imposing any disciplinary censure, suspension, or other sanction upon such person; and

[(iii)](iv) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the clerk of such Appellate Division as his or her agent upon

whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of this State, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this State as he or she shall have filed in the office of such clerk by means of a duly acknowledged supplemental instrument in writing.

(b) Service of process on such clerk, pursuant to the designation filed as aforesaid, shall be made by personally delivering to and leaving with such clerk, or with a deputy or assistant authorized by him or her to receive such service, at his or her office, duplicate copies of such process together with a fee of \$10. Service of process shall be complete when such clerk has been so served. Such clerk shall promptly send one of such copies to the legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such legal consultant at the [his] address specified by him or her as aforesaid.

§521.6[5] Separate Authority

Nothing in this Part shall be deemed to limit or otherwise affect the provisions of section 520.8 of Part 520.

§521.7[6] Application for Waiver of Rules

The Court of Appeals, upon application, may in its discretion vary the application or waive any provision of

these rules where strict compliance will cause undue hardship to the applicant. Such application shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

§521.8 **Revocation of License**

In the event that the Appellate Division determines that a person licensed as a legal consultant under this Part no longer meets any of the requirements for licensing set forth in section 521.1(a)(1) or section 521.1(a)(3) of this Part, it shall revoke the license granted to such person hereunder.

LICENSED LEGAL CONSULTANTS
IN THE
STATE OF NEW YORK
As at April 6, 1993

JUDICIAL DEPARTMENT, SUPREME COURT OF THE STATE OF NEW YORK

<u>DEPARTMENT</u>	<u>COUNTRY</u>	<u>NUMBER</u>
First	Argentina	1
	Australia	6
	Belgium	3
	Canada	1
	Dominican Republic	2
	Egypt	1
	England	7
	England & Wales	20
	England, Wales & Hong Kong	1
	Ecuador	1
	France	11
	Germany	4
	Greece	1
	Hong Kong	1
	Hungary	1
	Iran	1
	Israel	5
	Italy	6
	Japan	2
	Korea	1
	Lebanon	3
	Luxembourg	1
	Mexico	2
	Netherlands	8
Netherlands Antilles	1	
Netherlands & Netherlands Antilles	1	
Pakistan	1	
Poland	1	
Spain	2	
Sweden	3	
Switzerland	1	
Uruguay	<u>1</u>	
	TOTAL	101
Second	Australia	1
	Bolivia	1
	Brazil	2
	Canada	1
	Denmark	1
	Dominican Republic	3
	Egypt	3
	England	10
	Germany	3
Ghana	1	

Continued....

LICENSED LEGAL CONSULTANTS IN THE STATE OF NEW YORK
AS AT APRIL 6, 1993
PAGE 2

<u>DEPARTMENT</u>	<u>COUNTRY</u>	<u>NUMBER</u>	
	Greece	3	
	Guyana	1	
	Hungary	1	
	India	2	
	Iran	2	
	Ireland	1	
	Israel	3	
	Italy	1	
	Korea	2	
	Mexico	1	
	Netherlands	3	
	Pakistan	4	
	Peru	1	
	Philippines	1	
	Poland	2	
	Rumania	1	
	Russia	2	
	South Africa	1	
	Spain	1	
	Sweden	1	
	Taiwan	1	
	Turkey	2	
	TOTAL	<u>63</u>	63
Third	Egypt	1	
	Pakistan	1	
	Russia	1	
	TOTAL	<u>3</u>	3
Fourth	Canada	1	
	Poland	1	
	TOTAL	<u>2</u>	2
GRAND TOTAL			<u>169</u> ===

LICENSED LEGAL CONSULTANTS
IN THE
STATE OF NEW YORK
As at April 6, 1993

STATEWIDE -- BY COUNTRY

<u>COUNTRY</u>	<u>NUMBER</u>
Argentina	1
Australia	7
Belgium	3
Bolivia	1
Brazil	2
Canada	3
Denmark	1
Dominican Republic	5
Egypt	5
England	17
England & Wales	20
England, Wales & Hong Kong	1
Ecuador	1
France	11
Germany	7
Ghana	1
Greece	4
Guyana	1
Hong Kong	1
Hungary	2
India	2
Iran	3
Ireland	1
Israel	8
Italy	7
Japan	2
Korea	3
Lebanon	3
Luxembourg	1
Mexico	3
Netherlands	11
Netherlands Antilles	1
Netherlands & Netherlands Antilles	1
Pakistan	6
Peru	1
Philippines	1
Poland	4
Rumania	1
Russia	3
South Africa	1
Spain	3
Sweden	4
Switzerland	1
Taiwan	1
Turkey	2
Uruguay	1
TOTAL	169
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