

The Honorable Robert Zoellick
United States Trade Representative
600 Seventeenth Street, N. W.
Washington, D. C. 20508

Re: Regulation of Foreign Lawyers delivering Legal Services in the United States

Dear Mr. Ambassador:

I am writing to you on behalf of the National Organization of Bar Counsel (N. O. B. C). N. O. B. C. is a non-profit organization of legal professionals whose members enforce ethics rules that regulate the professional conduct of lawyers who practice in the United States, Canada and Australia. It was formed in 1965 to enhance the professionalism and effectiveness of its members.

I am enclosing for your consideration a copy of a resolution adopted by the Association's Executive Committee on June 17th.

The resolution addresses our concern over the lack of a process for effective regulation of foreign lawyers who deliver legal services within the United States on a temporary or permanent basis. Our resolution does not address the issue of United States lawyers who practice in foreign countries.

Because foreign lawyers are licensed by their home jurisdiction, regulation is difficult if not impossible in the absence of appropriate restrictions on their practice and agreements by their home jurisdiction concerning reciprocal discipline.

We believe the four principles contained in our resolution will enable us to protect the public while not constituting undue disincentives to cross-border practice.

We appreciate the consideration you and your staff will give to our recommendations and stand ready to assist you in this consideration in any way you might feel appropriate.

Sincerely,

Robert J. Saltzman
President

The National Organization of Bar Counsel (N. O. B. C.)
Recommendation Concerning Delivery of Legal Services in the United States
by Lawyers Admitted to Practice in Foreign Jurisdictions and not United States
Jurisdictions.

Whereas, the United States Trade Representative is engaged in ongoing negotiations concerning the GATS and in particular the cross-border delivery of legal services; and

Whereas, the objective of these negotiations is to reduce barriers to cross border practice and thus will involve the delivery of legal services in the United States by lawyers admitted in foreign jurisdictions on a temporary and permanent basis; and

Whereas, the result of these negotiations may encourage more of a foreign lawyer presence and a corresponding need for more effective oversight and regulation; and

Whereas, regulation of the practice of law is in no small measure dependent upon the regulation of the practitioner's license; and

Whereas, the foreign lawyer operates under a license issued by a foreign jurisdiction and thus can not be directly regulated by the several jurisdictions of the United States; and

Whereas, the public is put at risk unless foreign lawyers are competent and subject to the same regulations and discipline as the lawyers licensed in the several United States jurisdictions; and

Whereas, the public is put at risk unless foreign jurisdictions agree to give reciprocal recognition to United States discipline processes.

Now Therefore, the National Organization of Bar Counsel recommends that the United States Trade Representative include the following four principles in any negotiations concerning the practice of law in the United States by foreign lawyers:

1. Any foreign lawyer who is allowed to practice on a temporary basis in any jurisdiction of the United States must meet the standards contained in §1 of the Model Rule for the Licensing of Legal Consultants adopted by the American Bar Association. A copy of §1 is attached hereto as Exhibit "A" and made a part hereof by reference.
2. Any foreign lawyer who is allowed to practice in the United States on a permanent basis must comply with the admission requirements of the jurisdiction in which the practice takes place.

3. Any foreign lawyer who practices law or renders or offers to render any legal services in any of the United States jurisdictions must be subject to the disciplinary process of that jurisdiction.
4. As a prerequisite to being allowed to practice on a temporary basis in any of the jurisdictions of the United States, the foreign lawyer's jurisdiction must agree to impose reciprocal discipline upon the terms and conditions similar to those found in Rule 22 of the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement. A copy of Rule 22 is attached hereto as Exhibit "B" and made a part hereof by reference.

Respectfully submitted this ____ day of June 2002.

Robert J. Saltzman
President

Exhibit "A"

§1 of the Model Rules for the Licensing of Legal Consultants

"In its discretion, the [name of court] may license to practice in this State as a legal consultant without examination, an applicant who:

- a) 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.
- b) For at least five of the 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 in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law or the said foreign country.
- c) Possesses the good moral character and general fitness requisite for a member of the bar of this State.
- d) Is at least twenty-six years of age, and

Exhibit "B":

RULE 22. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS.

A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in [this jurisdiction] shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in [name of jurisdiction] has been disciplined or transferred to disability inactive status in another jurisdiction, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

- (1) A copy of the order from the other jurisdiction; and
- (2) An order directing that the lawyer or disciplinary counsel inform the court, within [thirty] days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this jurisdiction would be unwarranted and the reasons for that claim.

C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this jurisdiction shall be deferred until the stay expires.

D. Discipline to be Imposed. Upon the expiration of [thirty] days from service of the notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

- (1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) The discipline imposed would result in grave injustice; or be offensive to the public policy of the jurisdiction; or

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of

the same discipline is not appropriate.

E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.