

Report 201 H

**AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES**

RECOMMENDATION

- 1 RESOLVED, that the American Bar Association encourage jurisdictions to adopt the
- 2 *ABA Model Rule for the Licensing of Legal Consultants*, dated August 1993.

REPORT

In 1993, the ABA House of Delegates approved the *Model Rule for the Licensing of Legal Consultants*, which addresses the work of foreign lawyers in United States jurisdictions.¹ The Model Rule responded, in part, to the concern of foreign lawyers that, while American lawyers enjoyed a broad right of practice in other countries (or sought such a right in countries that did not afford it), foreign lawyers generally could not engage in the practice of law in the United States, even if limited to advising on the law of their own countries, without attending an accredited American law school, sitting for the bar examination and becoming a full member of the bar. The ABA identified both a need for a streamlined admissions process for foreign lawyers seeking to establish a law practice providing limited legal services and a need for greater uniformity.

Many states have not adopted either the ABA's Model Rule or an alternative provision for licensing foreign legal consultants.² The experience of those states that have adopted such a rule does not disclose regulatory problems resulting from licensing foreign legal consultants.³ Therefore, the Commission recommends that the ABA renew its support for foreign legal consultant provisions by encouraging states that have not yet done so to adopt the ABA Model Rule. States with a foreign legal consultant rule that vary from the ABA Model Rule, possibly because their rule was adopted before 1993, should be urged to amend their rule to conform to the ABA *Model Rule for the Licensing of Legal Consultants* in the interest of uniformity and clarity.

¹See generally Carol A. Needham, *The Licensing of Foreign Legal Consultants in the United States*, 21 FORDHAM INT'L L.J. 1126 (1998).

²To date, 24 states have enacted a rule licensing foreign legal consultants in the United States. See ABA Section of International Law and Practice, Report 113E to the House of Delegates, at 2 (February 3, 2002).

³See ABA Section of International Law and Practice, Follow-up Testimony on Multi-jurisdictional Practice Attorney Conduct Rules (June 1, 2001), http://www.abanet.org/cpr/mjp-comm_silp2.html.

ABA MODEL RULE FOR THE LICENSING OF LEGAL CONSULTANTS

§ 1. General Regulation as to Licensing

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 of the said foreign country;¹
- (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;² and
- (e) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

§ 2. Proof Required

An applicant under this Rule shall file with the clerk of the [name of court]:

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

¹ Section 1(b) is optional; it may be included as written, modified through the substitution of shorter periods than five and seven years, respectively, or omitted entirely.

² Section 1(d) is optional; it may be included as written, modified through the substitution of a lesser age than twenty-six years, or omitted entirely.

- (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 1 of this Rule as the [name of court] may require.

§ 3. Reciprocal Treatment of Members of the Bar of this State

In considering whether to license an applicant to practice as a legal consultant, the [name of court] 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 [name of court] may do so *sua sponte*.

§ 4. Scope of Practice

A person licensed to practice as a legal consultant under this Rule 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 [citation of applicable rule]);
- (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 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;
- (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 (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;
- (f) be, or 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]”.

§ 5. Rights and Obligations

Subject to the limitations set forth in Section 4 of this Rule, 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 [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] 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:
 - (i) affiliation in the same law firm with one or more members of the bar of this State, including by:
 - (A) employing one or more members of the bar of this State;
 - (B) 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
 - (C) 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
 - (ii) attorney-client privilege, work-product privilege and similar professional privileges.

§ 6. 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 these Rules:

- (i) shall be subject to control by the [name of court] and to censure, suspension, removal or revocation of his or her license to practice by the [name of court] and shall otherwise be governed by [citation of applicable statutory provisions]; and
- (ii) shall execute and file with the [name of court], in such form and manner as such court may prescribe:
 - (A) his or her commitment to observe the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] and the [rules of court governing members of the bar] to the extent applicable to the legal services authorized under Section 4 of this Rule;
 - (B) 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;
 - (C) 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 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and
 - (D) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the clerk of such court 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 address specified by him or her as aforesaid.

§ 7. Application and Renewal Fees

An applicant for a license as a legal consultant under this Rule shall pay an application fee which shall be equal to the fee required to be paid by a person applying for admission as a member of the bar of this State under [rules of court governing admission without examination of persons admitted to practice in other States]. A person licensed as a legal consultant shall pay renewal

fees which shall be equal to the fees required to be paid by a member of the bar of this State for renewal of his or her license to engage in the practice of law in this State.

§ 8. Revocation of License

In the event that the [name of court] determines that a person licensed as a legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or Section 1(c) of this Rule, it shall revoke the license granted to such person hereunder.

§ 9. Admission to Bar

In the event that a person licensed as a legal consultant under this Rule is subsequently admitted as a member of the bar of this State under the provisions of the Rules governing such admission, the license granted to such person hereunder shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this State.

§ 10. Application for Waiver of Provisions

The [name of court], upon application, may in its discretion vary the application or waive any provision of this Rule 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.

