

S.J.C.Rule 3:05, Licensing of Foreign Legal Consultants, Section 1

**RULES OF THE SUPREME JUDICIAL COURT
CHAPTER THREE. ETHICAL REQUIREMENTS AND RULES CONCERNING THE
PRACTICE OF LAW
RULE 3:05 LICENSING OF FOREIGN LEGAL CONSULTANTS**

SECTION 1. GENERAL REGULATION AS TO LICENSING

1.1 Petitions. A person desiring to be licensed to practice in this Commonwealth as a foreign legal consultant shall apply by filing an application for such license with the Clerk of the Supreme Judicial Court for the County of Suffolk on such form as the Clerk may prescribe for this purpose. Upon the recommendation of the Board of Bar Examiners, the Supreme Judicial Court may, in its discretion, grant such application.

1.2 General Qualifications. A person will be considered eligible for licensing as a foreign legal consultant only if such person:

- (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 years immediately preceding his or her application has been a member in good standing of such legal profession and has been engaged in the practice of law in such 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;
- (c) possesses the good moral character and general fitness requisite for a member of the bar of this Commonwealth; and
- (d) intends to practice as a foreign legal consultant in this Commonwealth and to maintain an office in this Commonwealth for that purpose.

SECTION 2. PROOF REQUIRED

Every applicant for a license as a foreign legal consultant shall file with the application to the Clerk:

- (a) a certificate from the professional body or public authority in such foreign country having final jurisdiction over profession 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;

- (d) affidavits as to the applicant's good moral character and fitness from three reputable persons residing in this Commonwealth and not related to the applicant, one of whom shall be a member of the bar of the Commonwealth; and
- (e) such other evidence as to the nature and extent of 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 Board of Bar Examiners may require.

SECTION 3. RECIPROCAL TREATMENT OF MEMBERS OF THE BOARD OF THE COMMONWEALTH

In considering whether to recommend an applicant to practice as a foreign legal consultant, the Board of Bar Examiners may in its discretion take into account whether a member of the bar of this Commonwealth 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 Board of Bar Examiners to consider the matter, or the Board may do so *sua sponte*.

SECTION 4. DISPOSITION OF APPLICATIONS

4.1 Qualified Applicants. The applications of those who are found by the Board of Bar Examiners to have satisfied the requirements for licensing as foreign legal consultants may be allowed by the Supreme Judicial Court and the applicants may be licensed upon (i) the taking of such oaths as the Supreme Judicial Court shall prescribe, (ii) paying the prescribed registration fee, [FN*] and (iii) fulfilling all other requirements set forth in this Rule or otherwise promulgated by the Supreme Judicial Court.

4.2 Non-Qualified Applicants. The applications of those who are not recommended by the Board of Bar Examiners for licensing as foreign legal consultants shall be denied, subject to the right of the applicant to request a hearing on the matter before the Supreme Judicial Court.

SECTION 5. SCOPE OF PRACTICE

5.1 Limitations. A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this Commonwealth 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 Commonwealth (other than upon admission pro hac vice pursuant to G. L. c. 221, § 39);
- (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 Commonwealth or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise);
- (f) be, or in any way hold himself or herself out as, a member of the bar of this Commonwealth unless duly admitted as such; 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 "foreign 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]."

5.2 Not Unauthorized Practice of Law. A duly licensed foreign legal consultant acting in accordance with the foregoing limitations shall not be considered engaged in the unauthorized practice of law for purposes of G.L. c. 221, § 46A (or any successor provision).

SECTION 6. RIGHTS AND OBLIGATIONS

6.1 Rules of Professional Conduct. Subject to the limitations set forth in Section 5 of this Rule, a person licensed to practice as a foreign legal consultant under this Rule shall be entitled and subject to the rights and obligations set forth in Rule 3:07 (Massachusetts Rules of Professional Conduct) or arising from the other conditions and requirements that apply to a member of the bar of this Commonwealth under the rules of the Supreme Judicial Court.

6.2 Affiliation. A person licensed to practice as a foreign legal consultant under this Rule may affiliate with one or more members of the bar of this Commonwealth, including by:

- (a) employing one or more members of the bar of this Commonwealth;
- (b) being employed by one or more members of the bar of this Commonwealth or by any partnership or professional corporation which includes members of the bar of this Commonwealth or which maintains an office in this Commonwealth; or
- (c) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of this Commonwealth or which maintains an office in this Commonwealth.

6.3 Privilege. A person licensed to practice as a foreign legal consultant under this Rule shall enjoy the same attorney-client privilege, work-product privilege and similar professional privileges as members of the bar of this Commonwealth.

SECTION 7. SERVICE OF PROCESS

7.1 Appointment of Clerk as Agent for Service of Process. Every person licensed to practice as a foreign legal consultant under these Rules shall execute and file with the Supreme Judicial Court, in such form and manner as such court may prescribe, an instrument, in writing, setting forth his or her address in this Commonwealth and designating the Clerk of the Supreme Judicial Court for Suffolk County 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 the Commonwealth or to residents of this Commonwealth, whenever after due diligence service cannot be made upon him or her at such address or at such new address in this Commonwealth as he or she shall have filed in the office of such Clerk by means of a supplemental instrument in writing.

7.2 Effect of Service on Clerk. 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 foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to such foreign legal consultant at the address specified by him or her as aforesaid.

SECTION 8. REVOCATION OF LICENSE

In the event that the Supreme Judicial Court determines that a person licensed as a foreign legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1 of this Rule, it shall revoke the license granted to such person hereunder.

SECTION 9. ADMISSION TO THE BAR

In the event that a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this Commonwealth 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 Commonwealth.

SECTION 10. APPLICATION FOR WAIVER OF PROVISIONS

The Supreme Judicial Court, upon application, may in its discretion vary the application of 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.

(Adopted July 28, 1999, effective January 1, 2000).