

THE PENNSYLVANIA BOARD OF LAW EXAMINERS

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

[204 PA. CODE]

Amendments to the Pennsylvania Bar Admission Rules
and
Pennsylvania Rules of Disciplinary Enforcement
Relating to Foreign Legal Consultants

Notice of Proposed Rulemaking

Notice is hereby given that The Pennsylvania Board of Law Examiners and The Disciplinary Board of the Supreme Court of Pennsylvania are considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Bar Admission Rules as set forth in Annex A and the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex B to add provisions relating to foreign legal consultants.

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. 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. The experience of those states that have adopted such a rule does not disclose regulatory problems resulting from licensing foreign legal consultants. The rule changes that the Board of Law Examiners and the Disciplinary Board are considering recommending are very similar to the ABA model rule.

Interested persons are invited to submit written comments regarding the proposed amendments. Comments should be sent to both the Executive Director, Pennsylvania Board of Law Examiners, 5070A Ritter Road, Suite 300, Mechanicsburg, PA 17055-4879 and the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before **May 7, 2004**.

By The Pennsylvania Board of Law Examiners
Supreme Court of Pennsylvania

Mark Dows
Executive Director

By The Disciplinary Board of the
Supreme Court of Pennsylvania

Elaine M. Bixler
Executive Director and Secretary

Note: Material to be added is underlined.
Material to be deleted is bracketed.

Annex A

Chapter 71. Pennsylvania Bar Admission Rules

Subchapter C. Restricted Practice of Law

FOREIGN LEGAL CONSULTANTS

Rule 341. Licensing of foreign legal consultants.

(a) *Required qualifications.* An applicant may be licensed to practice in this Commonwealth as a foreign legal consultant, without examination, if the applicant:

(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;

(2) 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 in the foreign country and has actually been engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;

(3) possesses the good moral character and general fitness requisite for a member of the bar of this Commonwealth;

(4) is at least 26 years of age;

(5) intends to practice as a foreign legal consultant in this Commonwealth and to maintain an office in this Commonwealth for that purpose; and

(6) has passed the Multistate Professional Responsibility Exam with the score required by the court to be achieved by successful applicants under Rule 203.

(b) *Application.* An applicant under this rule shall file with the Board an application in the form prescribed by the Board, which shall be accompanied by:

(1) a certificate from the professional body or public authority in the 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;

(2) 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 the foreign country;

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

(4) a statement indicating his or her understanding of, and commitment to observe the Rules of Professional Conduct and the Enforcement Rules to the extent applicable to the legal services authorized under Rule 342;

(5) appropriate evidence of professional liability insurance, in such amount as the Board may prescribe, to assure his or her proper professional conduct and responsibility;

(6) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Subdivision (a) of this Rule as the Board may require;

(7) a written statement agreeing to notify the Prothonotary of the Supreme Court and the Secretary of the Disciplinary Board of any change in the applicant's good standing as a member of the foreign legal profession referred to in Subdivision (a)(1) of this Rule and of any final action of the professional body or public authority referred to in Subdivision (b)(1) of this Rule imposing any disciplinary censure, suspension, or other sanction upon such person; and

(8) a duly acknowledged instrument, in writing, setting forth his or her address in this Commonwealth and designating the Prothonotary of the Supreme 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 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 the Prothonotary by means of a duly acknowledged supplemental instrument in writing or shall have furnished in the last registration statement filed by him or her in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys).

(c) Application fee. An applicant for a license as a foreign legal consultant under this Rule shall pay an application fee fixed by the Board.

(d) Action by the Board. The board may, in its discretion, issue to an applicant its certificate recommending his or her licensure as a foreign legal consultant if the applicant has met the requirements of this rule. In considering whether to issue a certificate recommending an applicant to practice as a foreign legal consultant under this Rule, the Board 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 to consider whether applicants from that country should be denied the opportunity to be licensed as foreign legal consultants under this Rule, or the Board may do so sua sponte.

(e) Motion for licensure. An applicant shall file a motion for licensure as a foreign legal consultant with the Prothonotary of the Supreme Court, accompanied by the certificate from the Board recommending such licensure . If the motion is in proper order, the Prothonotary shall:

(1) Enter the name of the applicant upon the docket of persons licensed as foreign legal consultants in this Commonwealth.

(2) Notify the Administrative Office of the licensure of the foreign legal consultant.

(3) If the requisite fee has been paid therefore, issue an engrossed certificate of licensure under seal.

(f) Subsequent admission to 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 Subchapter B (relating to admission to the bar generally), the license granted to such person under this Rule shall be deemed superseded by the license granted to such person to practice law as a member of the bar of this Commonwealth.

Rule 342. Practice by foreign legal consultants.

(a) Prohibited activities. A person licensed to practice as a foreign legal consultant under Rule 341 (relating to licensing of foreign legal consultants) may render legal services in this Commonwealth with respect to the law of the foreign country

where the foreign legal consultant is admitted to practice law, subject, however, to the limitations that he or she shall not:

(1) 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 Rule 301 (relating to admission *pro hac vice*));

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

(3) 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;

(4) 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;

(5) render professional legal advice on the law of this Commonwealth, of any other jurisdiction in which he or she is not authorized to practice law or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise);

(6) be, or in any way hold himself or herself out as, a member of the bar of the Supreme Court of Pennsylvania; or

(7) 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]".

(b) *Rights and obligations.* Subject to the limitations set forth in Subdivision (a) of this Rule, a person licensed as a foreign legal consultant under Rule 341 shall be considered a lawyer affiliated with the bar of this Commonwealth and shall be entitled and subject to:

(1) the rights and obligations set forth in the 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 Enforcement Rules; and

(2) the rights and obligations of a member of the bar of this Commonwealth with respect to:

(i) affiliation in the same law firm 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 law firm that includes members of the bar of this Commonwealth or which maintains an office in this Commonwealth; and

(C) being a partner in any law firm that includes members of the bar of this Commonwealth or which maintains an office in this Commonwealth; and

(ii) attorney-client privilege, work-product privilege and similar professional privileges.

(c) *Discipline.* A person licensed to practice as a foreign legal consultant under Rule 341 shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this Commonwealth. The license of a foreign legal consultant shall be revoked when he or she no longer meets the requirements and obligations for licensing set forth in Rule 341 (a)(1). A foreign legal consultant shall not be subject to the Pennsylvania Rules for Continuing Legal Education.

(d) *Service of process.* Service of process on the Prothonotary of the Supreme Court, pursuant to the designation filed under Rule 341(b)(8), shall be made by personally delivering to and leaving with the Prothonotary, 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 as set by the Prothonotary. Service of process shall be complete when the Prothonotary has been so served. The Prothonotary 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

the foreign legal consultant at the address specified by him or her as provided in Rule 341(b)(8).

Annex B

Chapter 83. Pennsylvania Rules of Disciplinary Enforcement

Rule 102. Definitions.

(a) General rule. Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

* * *

“Foreign legal consultant.” A person who holds a current license as a foreign legal consultant issued under Rule 341 of the Pennsylvania Bar Admission Rules.

* * *

“Practice of law.” Includes the provision of legal services as a foreign legal consultant.

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“Respondent-attorney” or “attorney.” Includes any person subject to these rules.

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Rule 203. Grounds for discipline.

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(b) The following shall also be grounds for discipline:

* * *

(5) Ceasing to meet the the requirements for licensure as a foreign legal consultant set forth in Pennsylvania Bar Admission Rule 341(a)(1) or (3).

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Rule 212. Substituted service.

In the event a respondent-attorney cannot be located and personally served with notices required under these rules, such notices may be served upon the respondent-

attorney by addressing them to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys) or, in the case of a foreign legal consultant, by serving them on the Prothonotary of the Supreme Court pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8).

Rule 216. Reciprocal discipline.

(a) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension or disbarment in another jurisdiction, the Supreme Court shall forthwith issue a notice directed to the respondent-attorney containing:

(1) a copy of said order from the other jurisdiction; and

(2) an order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline in this Commonwealth would be unwarranted, and the reasons therefor.

The Board shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys) or, in the case of a foreign legal consultant, by serving it on the Prothonotary of the Supreme Court pursuant to the designation filed by the foreign legal consultant under Pennsylvania Bar Admission Rule 341(b)(8).

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Rule 217. Formerly admitted attorneys.

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(h) Within ten days after the effective date of an order of disbarment or suspension for a period longer than one year, the formerly admitted attorney shall surrender to the Board the certificate issued by the Court Administrator of Pennsylvania under Rule 219(e) (relating to periodic assessment of attorneys; voluntary inactive status) for the current year, along with any certificate of good standing issued under Pennsylvania Bar Admission Rule 201(d) (relating to certification of good standing) **[or]**, certificate of admission issued under Pennsylvania Bar Admission Rule 231(d)(3) (relating to action by Prothonotary) or certificate of licensure issued under Pennsylvania Bar Admission Rule 341(e)(3) (relating to motion for licensure). The Board may destroy the annual certificate issued under Rule 219(e), but shall retain other documents

surrendered under this subdivision and shall return those documents to the formerly admitted attorney in the event that he or she is subsequently reinstated.

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Rule 219. Periodic assessment of attorneys; voluntary inactive status.

(d) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office in accordance with the following procedures:

(1) The statement shall set forth:

(i) The date on which the attorney was first admitted to practice or licensed as a foreign legal consultant in this Commonwealth, and a list of all courts (except courts of this Commonwealth) and jurisdictions in which the person has ever been licensed to practice law, with the current status thereof.

* * *

(4) Upon original admission to the bar of this Commonwealth or licensure as a foreign legal consultant, a person shall concurrently file a statement under this subdivision for the current assessment year, but no annual fee shall be payable for the assessment year in which originally admitted or licensed.

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Rule 512. Covered attorney.

This subchapter covers conduct of an active member of the bar of the Supreme Court or active foreign legal consultant which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct of a foreign legal consultant outside of this Commonwealth unless the conduct related to the provision of legal services to a resident of this Commonwealth.