IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

IN RE: PETITION TO AMEND

THE RULES REGULATING THE FLORIDA BAR -- 1-3.7; 3-5.1(g); 3-5.2; 14-1.1 AND CHAPTER 15.

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CASE NO. 75,716

COMMENTS OF
CSX CORPORATION AND UNITED TECHNOLOGIES CORPORATION
REGARDING PROPOSED CHAPTER 15 (Authorized House Counsel)

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ABBREVIATIONS AND RECORD CITES

Bar	=	The Florida Bar
Board	=	The Board of Governors of The Florida Bar
CSX	=	CSX Corporation
CSXT	=	CSX Transportation
Chapter 15 or the "proposed rule"	=	The proposed rule as submitted by the Board which would add a new Chapter 15 (Authorized House Counsel) to the Rules Regulating The Florida Bar
Special Committee	=	The Bar's six-person Special Study Committee on Corporate Counsel
Special Committee Report	=	The January 1990 Report of the Special Committee
UPL	=	Unlicensed or Unauthorized Practice of Law
UPL Committee	=	The Bar's Unlicensed Practice of Law Committee
UTC	=	United Technologies Corporation

RECORD CITES

ABA Report at ___.	=	ABA Standing Committee on Lawyer's Responsibility for Client Protection, American Bar Association, Colloquilium on Admission on Corporate Law Department Attorneys, Part 4, at 1-7 (Oct. 17, 1986) (unpublished materials)
Board Minutes	=	Regular Minutes, Florida Board of Governors (Jan. 25-26, 1990)
Special Report at _____.	=	Citation to the Special Committee's January 1990 Report
Transcript at _____.	=	Citation to Transcript of Public Hearing FAO #89003, Non-Florida Attorney Acting As In-House Counsel (Sept. 8, 1989), reprinted in Special Report App. C-1

INTRODUCTION AND SUMMARY OF ARGUMENT

The proposed house counsel rule is unnecessary, unwise, and possibly unconstitutional.[1]

It is unnecessary because, as its sponsors have themselves conceded, there is absolutely no evidence that the problem the rule supposedly addresses even exists. Evidence of actual harm to the public has always been deemed by this Court to be a prerequisite to the adoption of any new rule of professional responsibility or to the expansion of the definition of unlicensed practice of law to include new activities. See Point I of the Argument below.

The proposed rule is unwise due to (1) its arbitrary three-year practice limitation (and corollary bar exam requirement), (2) its two-year prior practice requirement, and (3) its overbroad application to house counsel "employed in Florida." All of these provisions would disrupt the legal departments and the hiring and transfer policies of multistate corporations operating in Florida, and would ultimately injure Florida and its economy by making this state less attractive for corporate relocations. See Point II.

The proposed rule would have an adverse impact on nonresident corporations operating in Florida and on the locally unlicensed house counsel they seek to hire or transfer thus raising serious questions of federal constitutional law. Those questions can and should be avoided by rejecting The Florida Bar's proposal. See Point III.

This Brief suggests various alternatives which meet the legitimate concerns raised, without intruding into areas of questionable constitution-

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1. The proposed Chapter 15 is summarized infra page 43. This Brief addresses only Chapter 15 and not the other rule revisions proposed by the Bar.

ality. Proposed Chapter 15 was drafted to respond to the concerns mentioned in the record,[2] including:

* Providing The Florida Bar with jurisdiction and disciplinary powers over house counsel;

* Insuring that house counsel practicing within Florida are responsible, competent, and ethical;

* Preventing the unauthorized practice of law by house counsel; and

* Removing the uncertainty for house counsel residing within Florida.

To the extent that proposed Chapter 15 attempts to address these concerns, CSX and UTC do not object, but assert that the proposal overreaches its mark. More closely tailored alternatives are available and are detailed in Point IV.

The Special Study Committee on Corporate Counsel concluded its Report with the assertion that its proposed rule "is an innovative approach to this long standing problem and, if enacted, likely to become a model rule for enactment in other jurisdictions." Special Report at 8-9. Leaving aside for the moment the fact that the reference to a "long standing problem" is mere verbage unsupported by the record, this is an extraordinary statement. The proposed rule's "innovation" lies entirely in ignoring the experience and example of every other state to address the issue of locally unadmitted house counsel. Each of the twelve states that has specifically addressed the house counsel issue has rejected the requirement that such lawyers take a second state bar examination.[3]

If Florida were to adopt this proposed rule it would not establish a

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2. See, e.g., Regular Minutes, Florida Board of Governors at 6 (Jan. 25-26, 1990) (hereinafter "Board Minutes) (Appendix C hereto); Special Report at 6-8.

3. Many other states have solved the problem by allowing attorneys admitted in other jurisdictions to gain admission to the local bar on motion.

"model" but rather, stake out a course avoided by all other states.

STATEMENT OF INTEREST

CSX Corporation ("CSX") and United Technologies Corporation ("UTC") are vitally interested in these proceedings because Chapter 15, if adopted, will severely impact their ability to receive advice of counsel and to staff their Florida legal departments with attorneys hired in or transferred from other jurisdictions.

CSX is a Virginia corporation with its principal place of business in Richmond, Virginia. It employs 53,097 people (over 5400 of them in Florida) and engages in transportation services throughout the United States, Europe, and Asia. CSX is the parent corporation of CSX Transportation ("CSXT"), one of the nation's largest railway systems, which operates in twenty states including Florida.[4] CSX's legal department employs fifty-five attorneys worldwide, sixteen of them in the CSXT legal department headquartered in Jacksonville.[5] House counsel specialize in such fields as federal antitrust, transportation regulation, maritime, and labor law, and are, from time-to-time, transferred between CSX's far-flung operations (including Florida) in order to gain insight and experience with the regard to other segments of CSX's operations. For local representation, CSXT alone does business with some forty-six Florida firms listed in its current internal directory.

UTC is a Delaware corporation with its principal place of business in Hartford, Connecticut. UTC conducts business in fifty-seven different

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4. Other subsidiaries include Sea-Land, a container shipping vessel operator, American Commercial Lines, one of the nation's largest inland barge lines, and CSX/Sea-Land.

5. Eight of these attorneys are not admitted in Florida.

countries around the globe, employs over 180,000 people, and operates 300 manufacturing plants.[6] UTC employs over 9,000 Floridians and is the largest industrial employer in Palm Beach County. UTC's legal department employs 145 attorneys in some thirty-two locations worldwide. These attorneys concentrate in such areas as antitrust, government procurement, international trade, and patent law and divide their time among the different UTC facilities. Nine attorneys are currently located in Palm Beach County, while three Connecticut-based lawyers are allocated on a part-time basis to the Florida operations.[7] It is UTC's practice to rotate attorneys throughout its different facilities. All of UTC's house counsel, like those of CSX, are admitted to practice in at least one jurisdiction.

Both UTC and CSX appeared at the public hearing conducted by the UPL Committee on September 8, 1989 to oppose the characterization of house counsel practice as the unlicensed practice of law.[8]

BACKGROUND

UTC and CSX do not believe that there is any problem concerning corporate house counsel that could possibly justify the rule as proposed. The checkered history of attempts to identify and to deal with the problem

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6. Among the more well-known UTC divisions and subsidiaries are Otis Elevator Company, Sikorsky Aircraft, Pratt & Whitney Aircraft, and Carrier Air Conditioning.

7. Three of the nine Florida counsel practice patent law and two of them exclusively so. Five of the remaining lawyers devote all or a portion of their practice to federal contract procurement law. Presently, two of the Florida-based counsel and one of those in Connecticut are members of The Florida Bar.

8. See Letter from J. C. Schultz to Lori S. Holcomb (Aug. 31, 1989), reprinted in Special Report App. C-1; John Henneberger remarks; Public Hearing FAO #89003, Non-Florida Attorney Acting As In-House Counsel 69-75 (Sept. 8, 1989) (hereinafter "Transcript"), reprinted in Special Report App. C-1.

supposedly presented by corporate house counsel who are not admitted to practice law in Florida is revealing.

A. UPL Committee Proceedings.

The Florida Bar's first recorded attempt to address this "problem" was the issuance by the UPL Committee in 1967 of its Advisory Opinion 67-1. The Committee opined that a lawyer admitted to practice in another state but not in Florida may not render any legal services to an employer. The UPL Committee based this conclusion on the dubious premise that "nonadmitted out-of-state attorneys stand in the same position as a layman as far as the practice of law in Florida is concerned."

In 1975, the UPL Committee reaffirmed Opinion 67-1. Special Report at 3 & App. A-2. That decision was at the very least in tension with Opinion 70-44 of the Professional Ethics Committee. In the latter opinion, a separate and distinct bar committee concluded that it was not improper for a Florida corporate house counsel to use a business card bearing a corporation's name and Florida address and identifying the attorney as legal counsel to that company, even if not admitted to practice law in Florida, so long as the card disclosed the limitations of bar membership.

In 1984, the UPL Committee recommended against adoption of a proposal by the Corporation, Banking and Business Law Section of The Florida Bar to provide for corporate counsel "affiliate" status. Special Report at 4. The Committee feared that affiliate status classifications "would unavoidably confuse the public," id., even though this Court had in 1982, without adverse consequences, approved a "law faculty affiliate" status for full-time law school professors in Florida who are admitted only in another jurisdiction, see In re The Florida Bar, 425 So. 2d 1 (Fla. 1982), and even though there was no evidence of such a problem in other states that

had adopted special admissions rules for house counsel.

On September 8, 1989, the UPL Committee conducted a public hearing to consider "whether it constitutes the unlicensed practice of law for an attorney who is not a member of The Florida Bar to act as house counsel for his or her corporate employer in Florida by rendering legal services and advice to the corporate employer on corporate matters only." Special Report at 4-5. Some Committee members admitted that they were "having trouble ...trying to identify what problem exists that we're trying to fix today ...." Transcript at 50 (remarks of Karen Sue Jennemann), reprinted in Special Report App. C-1. See also id. at 53 (remarks of James McDonald) ("I'm struggling with trying to understand what public harm -- incidences of public harm -- have come to light in the past").

Among the numerous comments received was a letter from the Business Law Section of The Florida Bar contending that employment as a corporate house counsel does not constitute the unlicensed practice of law. Letter of Chairman Henry Fox at 1, 5 (Sept. 6, 1989), reprinted in Special Report App. C-1. The Business Law Section also explained why the usual concerns over unauthorized practice of law are absent in the corporate context:

> [T]he employer in such an instance has the opportunity to be fully aware of the extent of the education, training, experience, and background of his employee. The employer is not relying on the status of the employee as being a member of The Florida Bar, in the same manner that a member of the general public relies . . . .

Id. at 3-4. In a similar vein, the Corporate Counsel Committee concurred that "it is not the unlicensed practice of law for non-Florida bar attorneys to act as in-house corporate counsel for a Florida corporate employer." Letter of Chair Patricia Blizzard at 1 (Sept. 8, 1989), reprinted in Special Report App. C-1. This letter explained that corporate counsel routinely specialize in areas of federal law entirely foreign to Florida

law, and further stressed the differences between the private practice of law and employment as house counsel:

> A common bond among corporate counsel is that they each have one "client" -- their corporation. They are employees of that corporation, just as the accountants, managers, and secretaries. As employees, corporate counsel may be asked for business advice as well as legal advice, and they may be promoted or moved throughout the various locations of the company.

Id. at 2.[9]

Additional letters and resolutions were received from the Florida Chamber of Commerce, the Florida Bankers' Association, the Jacksonville Chamber of Commerce, and the American Corporate Counsel Association (South Florida Chapter), all expressing deep concern over the proposed rule and underscoring the "chilling effect" it would have on Florida's ability to attract corporate business into the state. Special Report App. D-1. See also testimony of Keith Lembo, Transcript at 49.

Chesterfield Smith, former President of both The Florida Bar and the American Bar Association, testified that corporations are far more sophisticated as consumers of legal services than the public at large, and that they do not need the additional protection of Florida bar admission on top of their attorneys' experience and existing bar memberships. Transcript at 10-11, 16-20. He suggested that no rule would be better than the proposed rule. Id. at 21.

The Committee ultimately declined to issue any opinion or report; indeed, the UPL Committee did not even reaffirm its earlier Advisory Opinion 67-1, Special Report at 5, "deciding instead to review the matter

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9. Keith Lembo of First Union testified that much of a house counsel's job was management and that he did not see how it was practical to define what part of such a job was law and what was management except on a "case by case" basis. Transcript at 42-43.

on a cases by case basis."[10] In subsequent correspondence with bar members and house counsel describing its lack of conclusions, the UPL Committee did not even mention the older Opinion 67-1, and instead included copies of Ethics Opinion 70-44. See, e.g., letter of Lori Holcomb, Assistant UPL Counsel, to Bar Governor Patricia Seitz (Sept. 12, 1989) (Appendix F hereto).

B. Special Study Committee Proceedings.

The Special Study Committee on Corporate Counsel was created in September of 1989 in response to the UPL Committee's decision not to answer the question it had posed for itself. The Special Committee decided that public hearings were unnecessary for its deliberations, Special Report at 1, and it did not provide any notice to affected house counsel or their corporate employers, apparently concluding that it could adequately understand their circumstances and determine their fate without seeking their comment.

The Committee met only once and then in January of this year issued its report and proposed Chapter 15. The Committee rather quixotically averred that the "proposed Rule is consistent with the preliminary conclusions of the ABA Standing Committee on Lawyer's Responsibility for Client Protection," Special Report at 7, yet it is manifest that the proposed rule is entirely inconsistent with the very conclusions that the Special Committee itself quoted. For example, the proposed rule requires all house counsel to take the Florida Bar exam to become full, regular members of The Florida Bar, while the ABA's report noted that house counsel are hindered

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10. P. Blizzard, UPL Committee Investigates Corporate Counsel, III The Quarterly Report 6, 6 (Fla. Bar Business Law Section, Spring 1990) (Appendix E hereto).

by "unrealistic barriers to admission" such as a "full bar exam", that corporations doing business in such states "will encounter significant frustration, not to mention additional costs, in attempting to have house counsel comply with the full admission requirements," and that the experience of many jurisdictions suggests that "special licensing or admission procedures permit appropriate regulation of the character and competence of in-house counsel" while avoiding this undue burden on multistate corporations. See ABA Standing Committee on Lawyer's Responsibility for Client Protection, Colloquium on Admission of Corporate Law Department Attorneys, Part 4, pp. 7, 9 (Oct. 17, 1986) (hereinafter "ABA Report") (Appendix D hereto); see also Special Report at 8.

C. Board of Governors Proceedings.

The Board of Governors of The Florida Bar met to consider the proposed rule on January 25, 1990. In its formal presentation, the Special Committee stated that although there are up to 3,000 house counsel in Florida who are not members of The Florida Bar, there is not a single reported instance of such a person appearing unauthorized before a Florida court or advising Florida citizens on legal matters, and no corporate counsel "has ever been prosecuted" for unlicensed practice of law. Board Minutes at 5 (statement of Committee Chairman Scott Baena). The Chairman of the Board of Bar Examiners similarly underscored this paradox: "the whole motivation behind the rule is that it constitutes the unlicensed practice of law. But no one has ever been prosecuted." Id. at 6 (statement of Ron Carpenter). Nevertheless, the Board approved the proposed rule by a narrow margin of 24-20. Id. at 7.

ARGUMENT

I.

THE PROPOSED RULE DOES NOT ADVANCE ANY LEGITIMATE STATE INTEREST.

The subject of the proposed rule is the employment in Florida of house counsel who are admitted to the practice of law only in other jurisdictions. The Florida Bar asks this Court to assume, for the first time, that such employment constitutes the unlicensed practice and to impose the Florida Bar exam within three years of their employment as house counsel. We do not believe that employment of attorneys licensed by other states and acting as house counsel should be included within the rubric of unlicensed practice, and it is clear that The Florida Bar has failed to demonstrate any public harm flowing from the conduct of house counsel.

As this Court has often recognized, "[t]he single most important concern in the Court's defining and regulating the practice of law is the protection of the public from incompetent, unethical, or irresponsible representation." Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980). To that end, those who are not admitted to The Florida Bar may not "appear in court to represent a litigant," or "hold themselves out to all persons as advisors on legal matters and as scriveners whose services are available for a fee to all who may seek them." Cooperman v. West Coast Title Co., 75 So. 2d 818, 820 (Fla. 1954).

These traditional fears of the unauthorized practice of law are not present in this case and the sponsors of the rule concede that there is not a single reported instance of a house counsel appearing unauthorized before a Florida court or advising Florida citizens on legal matters and that no corporate counsel "has ever been prosecuted" for unlicensed practice of law. Board Minutes at 5 (statement of Special Committee Chairman Scott

Baena) (emphasis added). See id. at 6 (statement of Ron Carpenter, Chairman of the Board of Bar Examiners). Similarly, in a recent Spring 1990 article Special Committee member Patricia Blizzard stated "[i]t is clear that there is no public harm done by the actions of in-house corporate counsel." See Appendix E-3 hereto. In more than twenty years of tinkering with the "problem" supposedly presented by locally unlicensed house counsel, the various committees and organs of The Florida Bar have been unable to adduce even a scintilla of evidence that these attorneys, admitted in other states, pose any threat.

That glaring fact brings this matter to a close. For this Court has always required record evidence of public harm before issuing new disciplinary rules or expanding the definition of unauthorized practice of law.

In The Florida Bar, In re Petition to Amend the Code of Professional Responsibility, 330 So. 2d 9 (Fla. 1976), this Court considered a petition of The Florida Bar to amend the Code to prohibit interstate law firms from using their firm names on offices in Florida, unless those named were members of The Florida Bar. The contention, similar to that raised in the matter now before the Court, was that such "interstate law firms present jurisdictional disciplinary problems and foster the unauthorized practice of law in Florida by attorneys not admitted in this state." Id. at 10. In a remarkable parallel to this case, there was "opposition to the proposed amendment by firms interested in the interstate practice of law, some of whom have already opened offices and made necessary commitments including expenditure of funds and movement of personnel for the operation of offices." Id. at 9. Furthermore, there, as here, it was recognized that adoption of the proposed rule would require the Court to confront constitutional issues. Id. at 10. The Court observed that "no actual problems

have occurred," and further noted -- in another striking parallel to this case -- that those proposing the new rule "admit[] that there has not been the 'slightest impropriety in the operation of interstate firms under their national name in Florida.'" Id. The final words of this Court's per curiam opinion in The Florida Bar would be an apt choice to dispose of the proposed Chapter 15: "Petitioner has shown no actual incident of public complaint against deception, unauthorized practice of law, or other conduct requiring an immediate review" or the promulgation of a new rule. Id.

Two cases decided just last year confirm that the existence vel non of evidence of actual public harm makes or breaks a Florida Bar proposal for expanding the definition of unauthorized practice of law. In The Florida Bar, In re Advisory Opinion HRS Nonlawyer Counselor, 547 So. 2d 909 (Fla. 1989), this Court reviewed the practice of social workers, or "lay counselors" employed by the Department of Health and Rehabilitative Services, in drafting legal documents and representing the Department in court during juvenile dependency and foster care proceedings. After referring the matter to a designated committee for thorough study, this Court found convincing evidence that "harm . . . has come to children through the current practice" and that "their clients suffer through inadequate representation." Id. at 910. The child dependency system was backlogged and on the verge of total breakdown in significant part because of the legal practice of these nonlawyers. Id. This Court had no difficulty in unanimously concluding that such courtroom practice and legal representation of endangered minor children by nonlawyer social workers constituted a threat to the public and the undeniable "unauthorized practice of law." Id. at 910-11.

The contrasting decision in The Florida Bar, Non-Lawyer Preparation of Notice to Owner and Notice to Contractor, 544 So. 2d 1013 (Fla. 1989), completes the picture. This Court found the record there "devoid of any evidence of public harm", id. at 1015, and refused to declare the challenged activities to be the unauthorized practice of law. Id. at 1016. The same dearth of evidence is conceded by The Florida Bar in this case; therefore, the same result is in order. The proposed rule is without justification and should be rejected.

The employment of non-Florida house counsel does not implicate the usual unlicensed practice of law concerns because there is no specter of a corporation being disserved by representation in the Florida courts by a nonattorney, compare Szteinbaum v. Kaes Inversiones y Valores, 476 So. 2d 247, 250 (Fla. 3rd DCA 1985), nor of an employee pension plan being bungled by a nonlawyer financial advisor. The only issue is whether foreign corporations in Florida may employ in-house attorneys who are not admitted to the local bar, and in this respect it is crucial to recognize that the relationship between a house counsel and the corporate employer is not the same as that between an attorney and client. As this Court has observed, "to practice law one must have a client," and when corporations "inform themselves" or "search for intelligence upon which must depend the[ir] decision" to take some action, "their clients are themselves." Cooperman, 75 So. 2d at 820. Unlike the unwitting public that this Court protects from unlicensed legal advisors, corporations are among the most sophisticated consumers of professional legal services, particularly with respect to those attorneys that they hire as permanent employees. For this reason, every jurisdiction of which we are aware that has specifically addressed the issue by rule, statute, or decision has concluded that it does not

constitute the unauthorized practice of law for a house counsel who is admitted in another jurisdiction to render out-of-court advice to his corporate employer.[11] The conduct of each such house counsel is subject to the professional code and the judicial discipline of at least one state bar, so the corporate employer is adequately protected from unethical conduct. A multistate corporation has no need of the redundant professional accountability that would come from having its house counsel admitted to and subject to the discipline of more than one state bar. Moreover, such a corporation has other in-house attorneys as well as outside counsel in every state where it operates, and these lawyers provide an additional safeguard against the possibility of incompetent or irresponsible conduct on the part of a house counsel.[12]

There are other respects in which corporations are not vulnerable to

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11. See, e.g., (1) Opinion 14, 98 N.J.L.J. Index 399 (N.J. Comm. on UPL, May 1, 1975) ("The corporate employer, who is aware of the qualifications and competency of his attorney-employee, does not require the same protection as the general public ...."); (2) Application of Hunt, 155 Conn. 186, 230 A.2d 432, 434, 435 (1967); (3) Formal Ethics Opinion 84-F-74 (Bd. of Prof. Resp. of the Sup. Ct. of Tenn. 1984) ("There is no impropriety in an attorney employee ...counseling ... or appearing on behalf of the corporation ... either in or out of court"); (4) Md. Code Ann. art. 10, § 32(b) (1989). Compare the following rules and statutes, all of which allow house counsel registration without a second bar exam requirement: (5) Idaho Sup. Ct. Bar Comm'n R. 220; (6) Kan. Sup. Ct. R. 706; (7) Ky. Sup. Ct. R. 2.111; (8) Mich. Sup. Ct. R. for Bd. of Exam. 5; (9) Minn. Sup. Ct. R. for Adm. to the Bar IX; (10) Ohio Sup. Ct. R. Governing Cts VI (5); (11) 5 Okla. Stat. Ann. Ch. 1, App. 5, R. 2 (Supp. 1990); and (12) S.C. Code Ann., Ct. R. 15 (Supp. 1989). See also Special Report at B-1 to B-8; ABA Report at 8-9 (Appendix D hereto); and Potts, Interstate Law Practice by In-House Corporate Counsel, The Bar Examiner 4, 10 n.5 (May 1987).

12. The admission of attorneys is remarkably uniform. Almost every state requires an undergraduate degree plus graduation from an organized law school. ABA Section of Legal Education and Admissions and the National Conference of Bar Examiners Comprehensive Guide to Bar Admission Requirements at 8 (1989) (hereinafter "Bar Admission Requirements"). Forty-nine states plus the District of Columbia require all new applicants to pass a written bar exam. Id. at 14-15; Am. Jur. 2d Desk Book Item No. 95 pp. 160-79 (Supp. March 1989). The multistate bar exam is now used by 46 states and the District of Columbia. Bar Admission Requirements at 14-15.

misconduct by their house counsel in the manner that private citizens are. Attorneys in private practice have more leverage over their clients than house counsel do over their corporate employers, and this constitutes a major, if not the primary, area of abuse. Unlike regular lawyers, house counsel do not control "client accounts" containing retainers and settlement payments, and house counsel have no authority to withhold their work product in order to recover payment for services rendered or to impose a lien for unpaid fees, since a corporation lawyer's salary is not treated as a private lawyer's fees.

This illustrates just one of the many ways that the house counsel/-corporation relationship differs from the attorney/client relationship. These differences diminish the usual concerns about the unlicensed practice of law. For example, corporations and their house counsel do not resolve differences over services rendered in the same way as clients and attorneys do: house counsel are not sued for malpractice by their employers; they're simply fired. This is because house counsel are not separate entities rendering legal services to the corporation, they are -- despite their particular responsibilities under the legal profession's code of conduct -- employees embedded in the corporate hierarchy, just like foremen, accountants, and vice-presidents.

Just because house counsel has graduated from law school and been admitted to the bar (somewhere) does not mean that "legal" advice is always being provided. While an attorney in private practice specializes in problems relating to a particular area of the <u>law</u>, a house counsel specializes in problems relating to a particular <u>corporation</u> -- the employer. The advice rendered by house counsel to the employer in any given situation may partake as much of the realm of financial, managerial, commercial or

political expertise as of the world of legal advice.

This Court's unlicensed practice of law decisions consistently focus on the threat to "the public" posed by nonattorneys who seek to "establish an office in this state and to hold themselves out to the citizens of this state as qualified to practice law before [the courts]." State v. Sperry, 140 So. 2d 587, 594 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963). See also id., 140 So. 2d at 592, 595; Moses, 380 So. 2d at 417. But the sponsors of this proposed rule concede that they have not unearthed a shred of evidence that house counsel pose such a threat to the public. House counsel for the hundreds of corporations who have accepted Florida's entreaties to situate offices in this state are not preying upon unwary Florida citizens or misrepresenting themselves as licensed to appear in Florida courts and qualified to advise the public on matters of Florida law (or of any other jurisdiction's law, for that matter).

Whatever legitimate concerns Florida may have about the unlicensed practice of law, such concerns are simply not implicated here. The authors of Chapter 15 seem to have simply assumed that the "problem" the rule supposedly addresses in fact exists.

II.

THE PROPOSED RULE WOULD DISRUPT AND BURDEN THE OPERATIONS OF MULTISTATE CORPORATIONS IN FLORIDA AND DISCOURAGE OTHER CORPORATIONS FROM MOVING TO FLORIDA.

Although multistate corporations operating in Florida employ local attorneys for matters of local law and for appearances before local courts, the day-to-day needs of such businesses are served by house counsel who not only specialize in the pertinent areas of non-Florida (especially federal) law, but who also have special knowledge of the needs of the one company that employs them. House counsel are not just purveyors of legal advice;

they are contract negotiators, financial advisors, and business consultants. The most efficient way for multistate corporations to meet their need for this panoply of services is to employ house counsel.

The proposed rule would frustrate this practice and interfere with the ability of multistate corporations to obtain adequate legal counsel from their staff attorneys. Corporate counsel are often required to give advice to the entire corporate structure spread across many states, and to rotate through the far-flung legal departments maintained by their employer. The Corporate Counsel Committee of The Florida Bar explained it thus:

> [T]he Xerox Corporation's legal department is centralized in Stamford, Connecticut, but fields questions from all 50 states. To illustrate the difficulty, evaluate the process when a Connecticut in-house counsel negotiates a patent agreement for a Florida branch of the corporation. The negotiation may take place in Connecticut or, for lengthy negotiations, the attorney may temporarily relocate to Florida. Should that attorney be barred from such temporary relocation because of restrictive bar admission policies? Further complicating this issue is the multi-state character of certain legal departments. Promotional opportunities must occur within the corporate structure. For example, IBM shifts corporate counsel throughout the corporation to expose them to different aspects of the business. Must the corporation be forced to wait for six to twelve months before promoting an out-of-state employee into the Florida position while that attorney submits an application, studies, and sits for the bar examination? Should an entire corporate legal department branch office be forced to submit to licensure simply because that corporation desires to relocate the branch office from Georgia to Florida?

Letter of Patricia A. Blizzard, Chair of the Corporate Counsel Committee, at 2-3 (Sept. 8, 1989), reprinted in Special Report App. C-1.

Home office lawyers for foreign corporations like CSX and UTC often provide counsel to corporate officers located in Florida by travelling to this state or by being temporarily relocated here. The proposed rule on its face makes no distinction between these temporary visitors and corporate counsel who are located in Florida permanently or at least in-

definitely. And the Special Committee Report forthrightly declares the conclusion that "the distinction between the two classes [i]s without difference" and the determination that even house counsel who are in Florida only temporarily must nevertheless comply with all the rule's requirements and undertake the process of becoming full members of The Florida Bar. Special Report at 7. Nevertheless, a determination must still be made whether a particular house counsel is "employed in Florida" within the meaning of the rule. The difficulties that arise from this phrase would not only plague corporate employers trying to comply with the rule and Florida Bar officials trying to enforce it, but also demonstrate another respect in which the rule is entirely unsuited to multistate corporations. Some counsel located in the Florida branch of a foreign corporation may be carried, in whole or in part, on the payroll of a corporate division located in another state, or they may labor at the direction not of any Florida-based corporate superior but at the behest of a house counsel residing elsewhere.[13]

The requirement of being forced to take the Florida Bar exam, whether within three years or within any other period, is an onerous burden upon house counsel who have already been admitted in at least one other jurisdiction. In unanimously striking down Florida's attempt to require local patent attorneys to become members of The Florida Bar, the United States Supreme Court criticized the "disruptive effect" of state laws that would require lawyers already admitted elsewhere to become members of the local bar even when their practice has nothing to do with local law. Sperry v. Florida, 373 U.S. 379, 401 (1963). The Court recognized the burden

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13. This sort of staffing and sharing of corporate legal department resources is common to UTC, for example, and affects some house counsel who go to work each day at the Pratt & Whitney facility in West Palm Beach.

inherent in "forc[ing]" such attorneys "to relocate, apply for admission to the State's bar, or discontinue practice." Id. As Justice Kennedy more recently stated for the Court "[a] bar examination, as we know judicially and from our own experience, is not a casual or lighthearted enterprise." Supreme Court of Virginia v. Friedman, 108 S. Ct. 2260, 2266 (1988). Being compelled to take another bar examination is a particular hardship for experienced attorneys whose career specialties have carried them far afield from the rote knowledge of general law retained by recent law school graduates. "As an attorney becomes further removed from the systemized knowledge of his law school days, his chances of success on the bar exam will decrease [even though] his general ability may have increased through active practice." Note, Restrictions on Admissions to the Bar: A By-Product of Federalism, 98 U. Pa. L. Rev. 710, 716 (1950).

The bar examination requirement is an imposition on the corporate employer as well. Such foreign corporations would have to fire their locally unadmitted house counsel and replace them with Florida attorneys, or suffer the interim loss of their house counsel while such counsel, already admitted to the practice of law, prepared for and passed the Florida Bar examination.

The subject corporations would gain nothing from this meaningless calisthenic because the vast majority of house counsel specialize in areas of federal, international or multi-jurisdictional law that are not tested on Florida's examination. Corporate hiring or transfer to Florida of recent law graduates admitted in other jurisdictions would be all but eliminated by the proposed rule, since rules 15-1.2(a)(1) & (2) forbid even the temporary certification as house counsel of an attorney who has not been a member of another bar for two years and who has not been engaged in

the "active practice of law" for at least two of the preceding four years. There is no reason to restrict the hiring of house counsel to recent graduates who have chosen to take the Florida Bar exam, because there is no reason to believe that lawyers who have survived another state's bar exam are less competent than their Florida-licensed counterparts.

The two-year experience rule would also preclude corporations from hiring from a wide range of reservoirs of legal talent. For example, all federal and most state judicial law clerks are forbidden by law from "practicing law" while in their courts' employ, and they would thus be barred from employment as house counsel by the requirement that they have engaged in the "active practice of law" for the preceding two years. Similarly, a lawyer with twenty years of experience as a nonlegal corporate officer or as a government official could easily be barred by this "active practice" provision, despite a wealth of experience and knowledge and a long track record of integrity.[14] The rule would also appear to bar employment as house counsel of many attorneys from other jurisdictions who had recently taken extensive time off from the practice of law for very good reasons -- to return to law school to teach, or perhaps to obtain a specialty L.L.M. in tax or government procurement that would be of great benefit to a corporate employer. This "active practice" requirement obviously raises a host of troublesome issues of interpretation that would

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14. In Application of Dodd, 43 A.2d 224 (Conn. 1945), employment by a federal agency, even though the work may have been of a legal nature, was deemed not to be the actual practice of law. In In re Huntley, 424 A.2d 8 (Del. Sup. 1980), employment by a corporation was declared not to be the practice of law where the attorney's residence was in the state where he sought admission to the bar. See also Collins v. State Bd. of Law Examiners, 295 N.W.2d 83 (Minn. 1980).

have to be judicially resolved if the rule were adopted.[15]

Finally, we must not overlook the adverse impact that the proposed rule would have on the Florida economy itself and on the state's ability to attract corporate operations. Attracting corporate investment and relocation has long been a centerpiece of Florida's development strategy.[16] Since January of 1988, 144 corporations have relocated to Florida from other states, bringing with them nearly 30,000 employees and a capital investment in excess of $1 billion.[17] Since these corporations were eagerly invited by the Florida state government, the imposition of this onerous house counsel rule smacks at the very least of bad manners, and, more ominously, in the message it sends to other businesses eyeing a Florida relocation, of a self-inflicted wound that the Florida economy could do without.

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15. See the prior note and cases cited; In Re Application of R.G.S., 541 A.2d 977, 983 (Md. 1988); Salibra v. Supreme Court of Ohio, 730 F.2d 1059 (6th Cir.), cert. denied, 469 U.S. 917 (1984); Haugh, Corporate Counsel: Qualifications for Admission to the Bar on Motion under Reciprocity Statutes, 41 Notre Dame L. Rev. 235 (1965); Annotation, Validity, Construction, and Effect of Reciprocity Provisions for Admissions, 14 A.L.R. 4th 7 (1982).

16. In State v. Washington County Development Authority, 178 So. 2d 573 (Fla. 1965), it was stated: "The development and promotion of our economic and recreational potentials have long been recognized as public purposes in our state. The Florida Development Commission [has]...spent millions of dollars...to promote...our industrial possibilities to aid private interests..." Id. at 580 (J. Ervin dissenting). This has been recognized by a number of subsequent cases. See, e.g., Linscott v. Orange County Industrial Development Authority, 443 So. 2d 97, 100 (Fla. 1983) (public interest is served by facilitating private economic development); State v. Osceola County Industrial Development Authority, 424 So. 2d 739 (Fla. 1982) (same).

17. See Letter of Patricia A. Blizzard, Chair of the Corporate Counsel Committee, at 1 (Sept. 8, 1989), reprinted in Special Report App. C-1. The Special Committee seems to have misquoted these figures. Compare Special Report at 6 n.2.

III.

THE PROPOSED RULE RAISES SERIOUS CONSTITUTIONAL QUESTIONS.

In recent years the United States Supreme Court has repeatedly struck down rules restricting the freedom of attorneys admitted in one jurisdiction to practice law in another, even when the case concerned the right to represent clients in court and the right to advise the public on matters of local law. See, e.g., Barnard v. Thorstenn, 109 S. Ct. 1294 (1989); Supreme Court of Virginia v. Friedman, 108 S. Ct. 2260 (1988); Frazier v. Heebe, 482 U.S. 647 (1987). The restriction that would be imposed by the adoption of Chapter 15 is both broader and more constitutionally suspect, for it would deny house counsel not only these broad privileges of the traditional practice of law, but also the right to be employed in Florida by nonresident corporations to advise such businesses on corporate, financial, commercial, and legal matters that do not have any particular pertinence to Florida law. It is only this latter, more narrow right that is implicated by the proposed rule and that house counsel seek to avail themselves of in Florida.

Although the precise constitutional issue posed here is a matter of first impression, available precedent suggests that the proposed house counsel rule is in several respects even more problematic than the restrictions on out-of-state attorneys that the Supreme Court has consistently invalidated. In order to avoid these constitution problems, this Court should not stretch the prohibition on "unlicensed practice of law" to reach the giving of out-of-court advice to nonresident corporations by house counsel admitted in another jurisdiction.[18]

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18. Point IV below suggests alternatives to avoid these constitutional problems.

A. The Proposed Rule Discriminates Against Nonresident Corporations in Violation of the Commerce Clause.

It is important to recognize that the rule addresses business employers as well as their house counsel by imposing elaborate reporting and certification requirements on corporations and by skewing the hiring of house counsel in favor of Florida lawyers to the detriment of lawyers admitted in other states. The adverse impact of the proposed rule on corporations with operations in Florida has been demonstrated above in Point II.

With this proposed rule, foreign corporations would have to suffer the loss of their house counsel while those lawyers, already admitted to the practice of law, prepared for and passed the Florida Bar examination. The rule would likewise play havoc with corporate transfers to Florida of house counsel currently employed and admitted in other jurisdictions. Even temporary relocations or business trips to Florida of house counsel from corporate offices in other states would be hampered, since non-Florida attorneys could not give advice to the corporation while employed in Florida. Corporate hiring or transfer to Florida of recent law graduates admitted in other jurisdictions would be all but eliminated, since proposed rules 15-1.2(a)(1) & (2) forbid the certification as house counsel of attorneys who have not practiced law for at least two years.

The vast majority of house counsel specialize in areas of federal or multi-jurisdictional law that are not tested on Florida's (or any other state's) bar exam. As the Supreme Court observed in Frazier v. Heebe, "[r]ules that discriminate against nonresident attorneys are even more difficult to justify in the context" of federal and international law "than they are in the area of state court practice, where laws and procedures may differ substantially from state to state." 482 U.S. at 647 n.7. In Frazier, the Supreme Court also recognized that "[t]here is a growing body

of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries." Id.

The most efficient way for multistate corporations to meet their need for this panoply of services is to employ house counsel while retaining local attorneys as necessary to advise on local law or to appear in local courts. The proposed rule would frustrate this practice. Worse, this rule cannot, from the perspective of the commerce clause of the Federal Constitution, be viewed in isolation. If Florida can require all house counsel within its borders to be members of the local bar, then so can every other jurisdiction in the country. The crushing burden upon house counsel and their multistate employers of being required to gain admission to up to 50 state bars needs no elaboration. The example of CSX and UTC, with operations throughout the United States, is ample illustration.

Like other laws that have been invalidated under the commerce clause[19] the effect of the proposed rule would be "'to divert to [the regulation-issuing state] employment and business which might otherwise go to [another state]; the necessary tendency of the statute is to impose an artificial rigidity on the economic pattern of the industry.'" Pike v. Bruce Church, Inc., 397 U.S. 137, 146 (1970). By putting pressure on foreign corpora-

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19. Analogous restrictions have been unanimously held to violate the commerce clause. In Hunt v. Washington Apple Advertising Commission, 432 U.S. 333 (1977), the forbidden discriminatory effect flowed from a North Carolina regulation that "rais[ed] the costs of doing business in the North Carolina market for Washington apple growers and dealers, while leaving those of their North Carolina counterparts unaffected. . . . North Carolina apple producers, unlike their Washington competitors, were not forced to alter their marketing practices in order to comply with the statute." Id. at 351. In the instant case, neither Florida attorneys nor the indigenous Florida businesses that employ them as house counsel will have to do anything to comply with the proposed rule, all the cost and inconvenience will fall on their foreign corporate counterparts.

tions operating in Florida to send their in-house legal work to Florida law firms or to hire Florida attorneys as house counsel, Chapter 15 "impose[s] just such a straightjacket on the [multistate] company with respect to the allocation of its interstate resources." Id. "The effect of such a rule is to drive up the cost of [legal services] and to steer business almost exclusively to the in-state bar." Frazier, 482 U.S. at 650 n.12.[20]

As the Supreme Court explained in Best & Co. v. Maxwell, 311 U.S. 454 (1940), a court's duty under the commerce clause is to determine whether the rule under attack, "whatever may be the ostensible reach of [its] language," and "whatever its name may be, will in its practical operation work discrimination against interstate commerce." Id. at 457, 456 (emphasis added). In Maxwell the Court agreed that a state business tax imposed upon individuals selling their wares from hotel rooms "nominally" applied to residents and nonresidents alike, but the Court readily "assume[d]" that nonresidents would bear the brunt of the tax, since the law forced foreign corporations to employ local distributors, who had full-time local outlets, rather than out-of-state distributors, who in the main did not. Id. at 456-57. In striking down the law, the Court unanimously declared that the commerce clause "forbids discrimination, whether forthright or ingenious." Id. at 455.

In the instant case, requiring house counsel admitted in other jurisdictions to pass the Florida Bar exam in order to give their corporate

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20. It matters not that the self-proclaimed purpose of Chapter 15 is to "facilitate the relocation to Florida" of house counsel. Rule 15-1.1. The commerce clause requires reviewing courts to look beyond a challenged rule's stated purpose, City of Philadelphia v. New Jersey, 437 U.S. 617, 625-26 (1978), especially when that statement is as transparently disingenuous as the one at issue here. A rule that requires foreign corporations either to fire their house counsel or to divert their energies to passing yet another bar exam hardly "facilitates" their relocation to Florida.

employers out-of-court advice (largely on matters pertaining to non-Florida law) would effectively condition the right of a foreign corporation to do business in Florida on the corporation's employment of local Florida lawyers rather than their current in-house attorneys. The Supreme Court has always "viewed with particular suspicion" state laws that in effect require the hiring of local workers as the price of doing business in that state, particularly when the work or services in question could be more efficiently performed by those from other states. Pike v. Bruce Church, 397 U.S. at 145. See also Maxwell, 311 U.S. at 456-57; South-Central Timber Development, Inc. v. Wunnicke, 467 U.S. 82, 100-01 (1984) (plurality opinion).

B. The Proposed Rule Imposes a Severe Burden on Nonresident Corporations Without Significantly Advancing Any Legitimate Local Interest.

Even if the proposed rule were not presumptively invalid under the commerce clause because it discriminates against interstate commerce, Florida would still have to justify the restraints the rule places on the hiring, transfer and staffing decisions of nonresident corporations as necessary to achieve some important state goal. "[T]he burden falls on the State to justify [its law] both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 353 (1977). Florida cannot meet either burden here.

The subject of the proposed rule is the unlicensed practice of law in Florida by house counsel admitted in other jurisdictions. As this Court has often recognized, "[t]he single most important concern in the Court's defining and regulating the practice of law is the protection of the public

from incompetent, unethical, or irresponsible representation." Florida Bar v. Moses, 380 So. 2d 412, 417 (Fla. 1980). Accordingly, those who are not admitted to the bar in Florida may not "appear in court to represent a litigant," or "hold themselves out to all persons as advisors on legal matters and as scriveners whose services are available for a fee to all who may seek them." Cooperman v. West Coast Title Co., 75 So. 2d 818, 820 (Fla. 1954).

This particular state purpose is not implicated here and, astonishingly, the sponsors of the rule concede as much. In its formal presentation to the Board, the Special Study Committee on Corporate Counsel stated that although there are up to 3,000 house counsel in Florida who are not members of The Florida Bar, there is not a single reported instance of such a person appearing unauthorized before a Florida court or advising Florida citizens on legal matters and no corporate counsel "has ever been prosecuted" for unlicensed practice of law. Board Minutes at 5 (statement of Committee Chairman Scott Baena) (emphasis added). The Chairman of the Board of Bar Examiners similarly underscored this paradox: "the whole motivation behind the rule is that it constitutes the unlicensed practice of law. But no one has ever been prosecuted." Id. at 6 (statement of Ron Carpenter).

Thus the fear that a corporate employee admitted to the practice of law in another jurisdiction will "establish an office and hold himself out in this state as being qualified to represent Florida citizen"[21] is patently unfounded. If a challenged regulation "cannot be said to make more than the most speculative contribution" to the state's purported goal, it cannot

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21. State v. Sperry, 140 So. 2d 587, 594 (Fla. 1962), vacated on other grounds, 373 U.S. 379 (1963).

survive scrutiny under the commerce clause. Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 447 (1978).[22]

Unlike the unwitting public that this Court endeavors to protect from the predations of unlicensed legal advisors, corporations are among the most sophisticated consumers of professional legal services, particularly with respect to those attorneys whom they hire as permanent employees. The justification proffered for the house counsel rule therefore appears no more persuasive than that asserted by the State of North Carolina in Hunt, where the Supreme Court unanimously invalidated the challenged law after observing that, "although the statute is ostensibly a consumer protection measure, it directs its primary efforts, not at the consuming public at large, but at [business entities] who are . . . presumably the most knowledgeable individuals in this area." 432 U.S. at 353. And foreign corporations employing house counsel in Florida are adequately protected from unethical conduct by the fact that every house counsel is subject to the professional code and the judicial discipline of at least one state bar. A multistate corporation has no need of the redundant professional accountability that would come from having its house counsel admitted to and subject to the discipline of more than one state bar.

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22. The proposed rule seeks to regulate the relationship between nonresident corporations and an entire class of employees. The only cognizable beneficiary of this regulation is the corporation itself, for "the constituents of the corporation [are] the very people sought to be protected by the rule against the unauthorized practice of law." Szteinbaum v. Kaes Inversiones y Valores, 476 So. 2d 247, 250 (Fla. 3d DCA 1985). Yet Florida would appear to have no constitutionally legitimate interest in applying its unlicensed practice rules to the out-of-court advice provided to a nonresident corporation by an attorney admitted to practice in another jurisdiction. In upholding a state anti-takeover law that applied to corporations incorporated in the regulating state, the Supreme Court agreed that a state "has no interest in protecting nonresident shareholders of nonresident corporations." CTS Corp. v. Dynamics Corp., 481 U.S. 69, 93 (1987) (emphasis in original).

Moreover, even if locally unlicensed house counsel did pose a legitimate problem for the State of Florida, the proposed Chapter 15 would still succumb to a commerce clause challenge unless it could be shown that the rule would be effective in addressing the problem. Hunt, 432 U.S. at 353; Rice, 434 U.S. at 443-44, 447. Neither the state body promulgating a rule nor a court reviewing it is free "to assume" that the rule significantly contributes to the state's avowed public purpose. Rice, 434 U.S. at 444 (emphasis added). But with respect to Chapter 15, such forbidden assumptions are all the proof there is.[23]

The proposed rule could not withstand scrutiny under the commerce clause because Florida's "legitimate sphere of regulation is not much enhanced by the statute while interstate commerce is subject to substantial restraints." Bendix Autolite Corp. v. Midwesco Enterprises, 108 S. Ct. 2218, 2221 (1988). And even if the State of Florida could establish the existence of a local problem and prove that the proposed rule would make significant progress toward eliminating it, the state would still have to demonstrate "the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." Hunt, 432 U.S. at 353. In Point IV, infra, alternatives are suggested which fully meet any conceivable state interest. See also Appendices A and B.

C. The Proposed Rule Violates the Privileges and Immunities Clause by Discriminating Against House Counsel Who Have Moved to Florida from Other Jurisdictions.

The proposed house counsel rule also implicates the Federal Constitution's central prohibition on state discrimination against outsiders and

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23. The state bar's ability to enforce the proposed rule was questioned by several parties during the Board of Governors meeting. Board Minutes at 6-7.

recent arrivals. That clause provides that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. . . ." U.S. Const., Art. IV, § 2.

The privilege of working for one's corporate employer in Florida is undoubtedly protected by the privileges and immunities clause. The "pursuit of a common calling is one of the most fundamental of those privileges protected by the Clause," United Bldg. & Constr. Trades Council v. Major & Council of Camden, 465 U.S. 208, 219 (1984), and "professional pursuits" have been included within the clause since the earliest days of the republic. Corfield v. Coryell, 6 F. Cas. 546, 552 (No. 3,230) (C.C.E.D. Pa. 1825) (Washington, J.). Thus it is by now well settled that the practice of law is a privilege protected by such clause, see Supreme Court of Virginia v. Friedman, 108 S. Ct. 2260, 2265 (1988); Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 280-81 (1985), and it is worth noting that the United States Supreme Court has invalidated under that clause every attorney licensing restriction it has reviewed in the last decade. See Barnard v. Thorstenn, 109 S. Ct. 1294 (1989); Supreme Court of Virginia v. Friedman, supra; Supreme Court of New Hampshire v. Piper, supra.

The proposed rule cannot be rescued from scrutiny under the privileges and immunities clause by the argument that house counsel transferred to Florida by their employers are not totally excluded from work within the state because they can always undergo the expense and trouble of taking the Florida Bar exam in addition to the examination(s) they have already passed. For "[n]othing in [the Supreme Court's] precedents . . . supports the contention that the privileges and immunities clause does not reach a State's discrimination against nonresidents when such discrimination does

not result in their total exclusion from the State." Friedman, 108 S. Ct. at 2265. Similar arguments have failed to save state discrimination against outside attorneys in the past. See id. at 2265; Frazier v. Heebe, 482 U.S. at 650; Piper, 470 U.S. at 274 n.2. It is enough that the challenged rule "imposes a financial and administrative burden on nonresident counsel" that is not borne by their local counterparts, Frazier, 482 U.S. at 650-51, or that it creates some sort of preference for private corporate employers to hire local attorneys rather than those who have arrived from other states.[24]

Nor is it any defense that a challenged law does not explicitly discriminate on the basis of state residency. It might be supposed that Chapter 15 does not implicate the privileges and immunities clause at all because it does not bar all nonresident attorneys from employment as Florida house counsel, only those who are not admitted to The Florida Bar, while it does bar even some attorneys residing in Florida -- those who are admitted to practice law elsewhere but not in Florida. But a nearly unanimous Supreme Court did not hesitate in invalidating a state licensing rule in New Hampshire v. Piper, even though the challenged rule did "not provide explicitly that only New Hampshire residents may be admitted to the

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24. See Hicklin v. Orbeck, 437 U.S. 518 (1978) (striking down Alaska statute giving preference to residents over new arrivals in hiring from all positions related to development of the state's oil reserves); see also Friedman, 108 S. Ct. at 2265 (applying Hicklin in state bar lawyer licensing context). If such disparate burdens result from the rule, it is no defense that the rule's advocates claim that it is an "ameliorative provision" that goes at least "part way towards accommodating the present mobility of our population." Friedman, 108 S. Ct. at 2267 (Rehnquist, C.J., dissenting) (protesting invalidation of a state rule that did not entirely exclude outside attorneys).

bar." 470 U.S. at 277 n.1.[25] The Supreme Court has long been intolerant of state rules that deprive those who have recently moved into the state of benefits and opportunities enjoyed by longer-term residents. See, e.g., Zobel v. Williams, 457 U.S. 55 (1982); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Shapiro v. Thompson, 394 U.S. 618 (1969).

The privileges and immunities clause does not merely prohibit the more blatant forms of state protectionism, leaving states free to violate its guarantees through artful recitation of supposedly neutral criteria that in practice discriminate against nonresidents or recent arrivals. A statute cannot be made to conform to the dictates of the clause by the simple expedient of omitting the term "nonresident." It is obvious that the vast majority of members of The Florida Bar are Florida residents; these individuals will in no way be burdened by the proposed rule if they should seek employment as house counsel. In stark contrast, nearly all of the attorneys who will be disadvantaged in seeking or in continuing employment as house counsel for foreign corporations operating in Florida will be individuals who have passed the bar in another jurisdiction and moved to Florida from another state. The "leg-up" that the proposed rule thus affords Florida residents and the corresponding hobbles it fastens onto attorneys transferred into Florida by their employers is precisely the type of protectionism that the privileges and immunities clause is designed to guard against.

Of course, "'[l]ike many other constitution provisions, the privileges and immunities clause is not an absolute.'" Piper, 470 U.S. at 284. The

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25. And a law giving local residents preference in hiring by private employers was invalidated in United Bldg. & Constr. Trades Council v. Mayor & Council of Camden, 465 U.S. 208, 216-18 (1984), even though the law did not discriminate on the basis of state residency and actually burdened a good number of state residents as well as outsiders.

clause does not preclude discrimination against outsiders if (1) they "constitute a peculiar source of the evil at which the statute is aimed," Toomer v. Witsell, 334 U.S. 385, 398 (1948), and if (2) the restriction imposed on them is "closely related to the advancement of a substantial State interest." Friedman, 108 S.Ct. at 2264. Moreover, (3) "[i]n deciding whether the discrimination bears a close or substantial relationship to the State's objective, the Court has considered the availability of less restrictive means." Piper, 470 U.S. at 284. The proposed house counsel rule cannot pass any part of this test.

It is important to bear in mind that the challenge the privileges and immunities clause poses to the proposed rule is a narrow one. That clause does not require a state to grant admission to its bar to any lawyer who has passed another state's examination, and no such principle is necessary to question the constitutionality of the rule proposed here.[26] But the restrictions at issue here go well beyond regulating the right to represent

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26. As the Supreme Court noted in Piper, a state is "free to prescribe the qualifications for admission to practice and the standards of professional conduct for those lawyers who appear in its courts." 470 U.S. at 284 n.16 (emphasis added). This same distinction between being an in-house corporate counsel and a practicing attorney suffices to distinguish cases that might otherwise be thought to limit the vitality of the privileges and immunities clause in this context. For example, Leis v. Flynt, 439 U.S. 438 (1979) (per curiam), held only that "[t]here is no right of federal origin that permits . . . lawyers to appear in state courts without meeting that State's bar admission requirements." Id. at 443 (emphasis added). See also id. at 444 n.5 ("the suggestion that the Constitution assures the right of a lawyer to practice in the court of every State is a novel one, not supported by any authority brought to our attention. Such an asserted right flies in the face of the traditional authority of state courts to control who may be admitted to practice before them.") (emphasis added). And Sperry v. Florida, 373 U.S. 379 (1963), which concerned the rights of someone who had never attended law school or been admitted to the bar in any state, confirmed only that a state may "validly prohibit nonlawyers from engaging" in the practice of law. Id. at 383 (emphasis added). Moreover, neither Leis nor Sperry involved a challenge under the privileges and immunities clause, and both cases were decided before the recent series of Supreme Court decisions invalidating restrictive state admission rules under that clause.

clients in Florida courts or the right to provide legal advice to the Florida public, and impinge on the house counsel's ability to perform a job that has nothing to do with appearing in court or advising the public on local law. A house counsel who fails to comply with Chapter 15 and to pass the Florida examination is barred from giving any "advice" to her corporate employer "with respect to its business and affairs," and from "negotiating, documenting and consummating transactions to which the business organization is a party." Rule 15-1.3(a)(1).

As a result, the justifications usually proffered on behalf of state rules restricting the rights of nonresident attorneys -- unavailability for unscheduled court appearances or pro bono work, lack of knowledge of the local court's rules, see, e.g., Thorstenn, 109 S. Ct. at 1300-02; Friedman, 108 S. Ct. at 2267 -- are utterly irrelevant here, because locally unadmitted house counsel for foreign corporations do not (and do not wish to) "appear in [Florida] court[s] to represent a litigant," Cooperman v. West Coast Title Co., 75 So. 2d 818, 820 (Fla. 1954). Nor do such house counsel "hold themselves out to all persons as advisors on legal matters and as scriveners whose services are available for a fee to all who may seek them." Id. In particular, locally unlicensed house counsel for foreign corporations do not hold themselves out, either to the public or even to their own employers, as qualified to advise on issues of Florida law. It is therefore difficult to discern just how house counsel for foreign corporations could "constitute a peculiar source of the evil at which the statute is aimed," Toomer v. Witsell, 334 U.S. 385, 398 (1948), since they do not engage in the activities that this Court itself has identified as posing risks to the public involving the unlicensed practice of law.

Since being house counsel to a foreign corporation in Florida has

little, if anything, to do with a knowledge of Florida law, there is no reason to suppose that Florida attorneys could perform that job better than experienced house counsel transferred in from outside the state, or to suppose that the performance of such transferred house counsel would be improved by forcing them to study for and to pass the Florida Bar exam.

Since the Supreme Court has refused to "assume that a nonresident lawyer -- any more than a resident -- would disserve his clients by failing to familiarize himself with the local law" that constitutes some portion of his practice, Thorstenn, 109 S. Ct. at 1300 (quotation marks and brackets omitted), a fortiori a state may not assume that a house counsel would fail to keep abreast of the federal, international, and other law that constitutes the entirety of the legal knowledge demanded by his job description. See also Friedman, 108 S. Ct. at 2266-67; Piper, 470 U.S. at 285.

Indeed, on the crucial issue of whether a state-designated class of "undesirable" outsiders constitutes a peculiar threat to a legitimate state goal, the federal courts will not "assume" anything. "[E]mpirical evidence" must be adduced to show why this group of attorneys poses a threat to the people of Florida. Frazier v. Heebe, 107 S. Ct. at 2612.[27]

Even if some evidence of a peculiar problem posed by house counsel could be mustered, the privileges and immunities clause further requires that the restriction imposed on them be closely tailored to the eradication of that problem. Friedman, 108 S. Ct. at 2264. Once again, this is a

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27. Mere "speculation . . . is insufficient to justify discrimination against nonresidents." Thorstenn, 109 S. Ct. at 1302. See also Piper, 470 U.S. at 285 ("There is no evidence to support appellant's claim that nonresidents might be less likely to keep abreast of local rules and procedures."). No such evidence has been adduced by those who support Chapter 15. Indeed, as explained above, they have conceded that there have never been any complaints about house counsel to The Florida Bar and that there is not a single reported instance of house counsel engaging in the unauthorized practice of law.

burden the proposed rule cannot meet. If one of the objects of the ban on unlicensed practice of law is to protect "the public from incompetent . . . representation," Florida Bar v. Moses, 380 So. 2d at 417, then the proposed rule is "markedly overinclusive" and therefore "does not bear a substantial relationship to the State's objective." Piper, 470 U.S. at 285 n.19. The rule forbids the giving of any legal advise to one's corporate employer when situated within the state boundaries, regardless of whether Florida law is at issue. Thus the proposed rule would prevent a house counsel who was a member of the Delaware bar from tendering advice in Florida to his employer, a Delaware-chartered corporation, on an issue of Delaware law relating solely to corporate activities in Delaware.[28] Being able to answer a bar exam question on, for instance, the grounds for no-fault divorce in Florida, would not appear to be terribly relevant to that task.

Furthermore, the proposed rule is underinclusive with respect to those attorneys who have been admitted to The Florida Bar but who know nothing about the legal issues on which they are asked to advise. Since these lawyers are allowed to advise not only foreign corporations operating in Florida, but the general public as well, on issues of, for example, federal, international, California, New York, South Korean, and Singaporean law by virtue of the fact that they have passed a Florida examination testing none of these subjects, the purported state interest in ensuring that businesses in Florida receive competent in-house legal advice rings a bit hollow.

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28. This is not merely hypothetical. For instance, one of CSXT's Jacksonville attorneys, licensed in both Alabama and Kentucky but not in Florida, practices primarily before administrative agencies in Alabama and Kentucky. The rule would purport to limit him from giving legal advice to CSXT while "employed in Florida," even though that advice related solely to Alabama and Kentucky law where he is fully authorized and competent to practice.

As for the other problem justifying state restriction of the unauthorized practice of law -- "unethical or irresponsible representation," Moses, 380 So. 2d at 417 -- the house counsel employed in Florida but admitted to practice law elsewhere is, just like a regular Florida-licensed attorney, subject to the professional standards and disciplinary jurisdiction of at least one state bar organization. There is no reason to assume that such supervision is inadequate to ensure ethical conduct in Florida; the Supreme Court itself has recognized the efficacy of long-distance discipline by state bar organizations. See Piper, 470 U.S. at 286 & n.20.[29]

Before imposing the requirements of a bar exam and full bar membership on house counsel in order to remedy a purported problem of unaccountable and unethical behavior, the state must demonstrate the actual impracticality of apparent and less restrictive alternatives. See Friedman, 108 S. Ct. at 2266; Piper, 470 U.S. at 284; Toomer, 334 U.S. at 398-99. The obvious alternative here, as mentioned above, would be to require house counsel in Florida to submit to the disciplinary jurisdiction of this Court and its bar organization, and to pay a reasonable fee to defray any added costs of operation.

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29. The Supreme Court has consistently held that "there is no reason to believe that a nonresident lawyer will conduct his practice in a dishonest manner. The nonresident lawyer's professional duty and interest in his reputation should provide the same incentive to maintain high ethical standards as they do for resident lawyers." Piper, 470 U.S. at 285-86. See also Thorstenn, 109 S. Ct. at 1301; Friedman, 108 S. Ct. at 2266-67. Indeed, a house counsel employed in Florida but not admitted to practice law here has an even greater incentive to behave ethically than does a practicing Florida attorney. If the latter behaves unethically with respect to a client, he may lose the client; if the former misbehaves with respect to his one and only employer, he may lose his job and hence his entire source of income -- he would then be stranded, unemployed in a state where he was not licensed to practice his profession outside the corporate environment.

Since the proposed rule is not necessary to achieve the state's purported goals, nor closely tailored to doing so, nor even likely to contribute to doing so, there remains only the possible motivation mentioned by the Supreme Court in Piper: "'Many of the states that have erected fences against out-of-state lawyers have done so primarily to protect their own lawyers from professional competition.' This reason is not 'substantial.' The privileges and immunities clause was designed primarily to prevent such economic protectionism." 470 U.S. at 285 n.18 (citation omitted).

Whatever the motivation behind the proposed rule, its protectionist impact is hard to overlook. Attorneys residing in and admitted to practice in other states who wished to go to work for corporations in Florida, or house counsel who wished to retain their jobs when transferred into Florida by their multistate corporate employers, would have to take a second bar examination -- while Florida attorneys competing for those house counsel jobs would already have taken the only exam required by Florida law. Likewise, house counsel wishing to retain their jobs in Florida corporate offices would have to convince their employers that they were so valuable that the corporation should endure the disruption that attends preparation for another bar exam, rather than replace those house counsel with Florida attorneys who would suffer no such distractions from their corporate duties. As the Supreme Court unanimously held in Hicklin v. Orbeck, 437 U.S. 518 (1978), the privileges and immunities clause bars a state from hoarding local employment opportunities for its own residents by placing additional hurdles in front of newly arrived outsiders who wish to compete for those jobs. Id. at 527-28.

IV.

THESE DIFFICULT CONSTITUTIONAL ISSUES CAN BE AVOIDED, AND ANY LEGITIMATE STATE CONCERN MAY BE MET, BY REJECTING THE PROPOSED RULE OR CONSIDERING, IF NECESSARY, LESS BURDENSOME ALTERNATIVES.

The failure of the Bar to demonstrate any evil to be remedied suggests the following alternatives.

A. Reject the Proposal.

The easiest and most straightforward option is for this Court simply to reject The Florida Bar's proposed rule, as it has on similar occasions in the past, on grounds that no public harm has been demonstrated. See, e.g., In re Petition to Amend the Code of Professional Responsibility, 330 So. 2d at 10; Non-Lawyer Preparation of Notice to Owner and Notice to Contractor, 544 So. 2d at 1016. The Special Committee conceded before the Board of Governors that there is no evidence of any harm to any party from the "unlicensed practice of law" by house counsel.

B. Declare that House Counsel Practice Is Not the "Unlicensed Practice of Law."

This Court may nevertheless be concerned, as we are, with the residual uncertainty that, even without the proposed rule, house counsel may at some point be deemed by The Florida Bar to be engaging in the unlicensed practice of law. We are informed that some of the "inquiries" on the status of house counsel that originally prompted the UPL Committee to resurrect this issue in September of 1989, see Special Report at 5, were from out-of-state house counsel who were considering relocation to Florida, but who were concerned about The Florida Bar's position on house counsel admitted only in other jurisdictions.

This Court can easily dispel this cloud, as have other states,[30] by declaring that house counsel do not engage in the unauthorized practice of law so long as (1) they do not make court appearances or advise any client other than their employer, and (2) they are admitted to the practice of law and are in good standing before some jurisdiction's bar. There is ample justification for such a position, as demonstrated above. And such a ruling would not constitute a stretch beyond prior positions taken by this Court. For example, in The Florida Bar v. Savitt, 363 So. 2d 559 (Fla. 1978), the Court approved a stipulation permitting locally unadmitted attorneys to engage in:

> . . . [t]ransitory professional activities "incidental" to essentially out-of-state transactions; and professional activities that constitute "coordinating-supervisory" activities in essentially multi-state transactions in which matters of Florida law are being handled by members of The Florida Bar, . . . [to] give legal advice concerning a right or obligation governed by federal law, . . . [to] give legal advice in regard to matters related primarily to federal administrative agency practice, . . . [and to] give legal advice on the law of jurisdictions other than Florida to non-Florida clients in transactions with persons residing in Florida or with business enterprises having their principal place of business in Florida; provided that matters of Florida law, if any, are handled by members of The Florida Bar . . . .

363 So. 2d at 560-561 (citations omitted).[31] See also, The Florida Bar v.

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30. See supra note 11.

31. In the Savitt case, this Court relied on Appell v. Reiner, 204 A.2d 146 (N.J. 1964), which permitted a New York lawyer to resolve financial difficulties in New Jersey for a New Jersey resident where those matters were "intertwined" with various debts owed both in New Jersey and New York. The New Jersey court recognized that numerous multistate transactions arise in modern times and eschewed an inflexible rule detrimental to the public interest, holding that the New York and New Jersey transactions were inseparable and that there was no unauthorized practice of law. 204 A.2d at 148. The Savitt Court also relied on In re Estate of Waring, 221 A.2d 193 (N.J. 1966), in which the court noted that multistate relationships "are a common part of today's society and are to be dealt with in a common sense fashion." Id. at 197. The court also observed that

Kaiser, 397 So. 2d 1132, 1133 (Fla. 1981) ("Kaiser is a New York attorney . . . [h]is practice is limited to immigration and naturalization matters. . . . Neither The Florida Bar nor the referee have suggested that Kaiser can or should be restricted in any way from practicing naturalization or immigration law in this state even though he is not a member of The Florida Bar, and nothing in this opinion should be construed as suggesting otherwise.") (citation omitted).[32]

C. Adopt a Simple Registration Rule.

Although the United States Supreme Court has recognized the efficacy of interstate professional supervision and discipline by state bar organizations over their far-flung members, see Supreme Court of New Hampshire v. Piper, 470 U.S. 274, 286 & n.20 (1985), this Court may harbor some residual concern about the professional accountability of house counsel who are not members of The Florida Bar. In that event the Court may wish to follow other jurisdictions and adopt a simple registration system requiring such out-of-state attorneys to submit to the disciplinary jurisdiction of The Florida Bar and this Court. A draft of such a rule is

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although the public is entitled to protection against unlicensed practitioners, "their freedom of choice in the selection of their own counsel is to be highly regarded and not burdened by technical restrictions which have no reasonable justification." Id.

32. In other settings, this Court has permitted practice of law by out-of-state attorneys without the requirement of a bar exam. For instance, Chapter 12, Rules Regulating the Bar (Emeritus Attorneys Pro Bono Participation Program) permits experienced out-of-state retired attorneys to appear in any court, prepare pleadings, and to engage in such other activities as necessary for the matter involved. Rule 12-1.2. All activities are done under supervision of a supervising attorney. Rule 12-1.4. Emeritus attorneys are not permitted to represent themselves to be active members of The Florida Bar, but unlike the instant proposed Chapter 15, there is no requirement that they disclose this limitation on their letterhead and business cards. Moreover, unlike Chapter 15, a retired member may fail the Florida Bar exam three times before he is prohibited from practicing. Rule 12-1.2(A)(3).

attached as Appendix B. This should be more than sufficient to shore up any perceived inadequacies in the professional supervision of house counsel by their own state bar organizations.[33] The experience of many other jurisdictions with a registration rule but no bar exam requirement indicates:

> That special licensing or admission procedures permit appropriate regulation of the character and competence of in-house counsel, while providing house counsel with essential freedom of movement, and eliminating divisiveness within the profession by encouraging increased fraternization with other bar members.

ABA Report at 9 (Appendix D hereto). At least thirty-one states generally permit admission of house counsel licensed in another jurisdiction.[34] Of these, we know of twelve that have specific rules tailored for house counsel,[35] while the others allow admission by motion or by reciprocity of all qualified licensed out-of-state lawyers.[36]

D. Adopt the Proposal with Amendments.

If the Court feels some rule is necessary, but prefers the structure of the proposed rule, amendments to that rule will eliminate the features which are overbroad, not supported by the record, and possibly unconstitutional. A draft of such an amended rule with comments is attached as Appendix A.

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33. In Keyes Co. v. Dade County Bar Ass'n, 46 So. 2d 605, 606 (Fla. 1950), this Court's decision not to deem it the unauthorized practice of law for real estate brokers to prepare real estate contracts was influenced by the fact that Florida regulates real estate licensees.

34. Board Minutes at 6 (Statement of Chair Scott Baena).

35. See supra note 11.

36. See Board Minutes at 6, where Special Committee Chair Scott Baena indicated there were twenty-two such states and nine others with specific rules. The particular on motion states are listed in Bar Admission Requirements, supra note 12, at 28-29.

The proposed rule contains at least eighteen separate elements. CSX and UTC recognize that the first eleven of these may be appropriate but object to the last six (see Appendix A), especially the unnecessary and arbitrary time limits of (16) and (17). Paraphrased, the elements are:

May Be Appropriate

(1) *Member of Another State Bar.* The applicant must be a bar member in good standing of another state;

(2) *Single Business Organization Employer.* The applicant must be employed in Florida and provide legal services exclusively to a business organization.

(3) *Submission to Jurisdiction and to Discipline.* The applicant must agree to abide by The Florida Bar Rules and to submit to the jurisdiction and discipline of this Court;

(4) *No Court Practice Permitted.* The applicant is not permitted to appear as counsel, in any court, agency, or commission in Florida unless governing rules otherwise authorize same;

(5) *Activities Limited to those for Corporate Employer.* The applicant is limited to providing advice only to the directors, officers, employees and agents of the business organization; negotiating, documenting and consummating transactions; and representing the business organization in dealings with administrative agencies;

(6) *Ethics Exam.* The applicant must have taken and passed a Professional Responsibility examination for admission to another jurisdiction and, if not, must take and pass the Multistate Professional Responsibility Examination within twelve months;

(7) *No Representation of Active Status.* Counsel may not represent themselves to be active Florida Bar members.

(8) *No Prior Denials of Admission.* The applicant must not have, during the past ten years, been denied admission to practice before the courts of any jurisdiction based upon character or fitness;

(9) *No Prior Discipline.* The applicant must not have been disciplined for professional misconduct by any jurisdiction within the last ten years;

(10) *Character and Background Investigation.* The applicant must submit to and pass a character and background investigation within twelve months.

(11) *Full Application With Fees.* The applicant must submit a full application and pay appropriate fees.

Objectionable

(12) *No Prior Certification.* The applicant must not have been previously certified under Chapter 15.

(13) *No Prior Bar Failures.* The applicant must not have, during the last ten years, failed the Florida Exam;

(14) *Negative Disclosures on Business Communications.* The applicant must represent on all written communications, stationary, letterhead, and business cards that he or she is not an active member of The Florida Bar licensed to practice in Florida.

(15) *"Employed in Florida" Requirement.* The rule purports to apply whenever house counsel is "employed in Florida". See Points II, III, and Appendix A for concerns as to the potentially overbroad meaning of "employed in Florida";

(16) *Two-Year Prior Practice Barrier.* The applicant must have been a bar member of another state for at least two years and actively engaged in the practice of law for two of the previous four years; and

(17) *Three-Year Practice Barrier; Exam Requirement.* The applicant must apply for and take the Florida Bar exam within three years.

The proposed amendments shown in Appendix A will continue the first eleven elements and eliminate the remaining arbitrary, unnecessary, and overbroad elements.

E. Refer for Further Study.

Finally, although we believe that the present record is sufficient for this Court to rule that house counsel admitted in other states are not engaged in the unlicensed practice of law or to adopt a simple registration or amended rule, if the Court feels that further study is appropriate, it should reject The Florida Bar's proposal and refer this matter to a specially designated committee of its choosing. There is ample precedent for this option.[37]

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37. See, e.g., Florida Bar, In re Advisory Opinion HRS Nonlawyer Counselor, 518 So. 2d 1270, 1272 (Fla. 1988) ("While we agree with the Committee that HRS lay counselors are engaged in the practice of law, we are not convinced that such practice is the cause of the alleged harm, or

CONCLUSION

In keeping with the Roman philosopher Seneca's dictum that remedies are to be disfavored if they are more grievous than the harms they address,[38] we urge this Court to reject the proposed house counsel rule.

DATED this 18th day of April, 1990.

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that enjoining this practice is the most effective solution to this complex problem. The parties have raised legitimate and pressing concerns which are worthy of further study. The Chief Justice shall appoint an ad hoc committee to study the problem and make recommendations to this Court.").

38. "Quaedam remedia graviora sunt quam ipsa pericula."

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Brief and accompanying Appendices have been furnished by hand delivery to (1) Mr. John F. Harkness, Jr., Mr. Stephen N. Zack, Mr. James Fox Miller, and Mr. John A. Boggs, all of The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; (2) Mr. Jim Brainerd, Florida State Chamber of Commerce, 136 S. Bronough Street, Tallahassee, FL 32301; and (3) Mr. Wayne Clance, General Counsel, State of Florida Department of Commerce; and by federal express to (4) Mr. Scott L. Baena, Strook & Strook & Lavan, 200 South Biscayne Boulevard, Miami, Florida 33131-2385; (5) Ms. Nancy Nord, American Corporate Counsel Association, 1225 Connecticut Ave., N.W., Suite 302, Washington, D.C. 20036; (6) Mr. Barlow Keener, Southern Bell, 150 W. Flagler Street, Suite 1910, Miami, FL 33130; (7) Mr. J. B. Harris, Southeast Bank Legal Department, 200 S. Biscayne Blvd., 38th Floor, Miami, Florida 33131; (8) Mr. Ladd Fassett, 14 E. Washington Street, Suite 502, Orlando, FL 32802; (9) Mr. Franklin Deak, GTE Telephone Operations, 1 Tampa City Center, Tampa, FL 33601-0110; (10) Mr. Richard Bruning, Martin Marietta Corp, 5600 E. Sandlake Road, Orlando, FL 32819; (11) Mr. Lawrence A. Mondragon, 1000 N.W. 51st Street, Boca Raton, FL 33432; (12) Mr. George Lane, Senior Counsel, Harris Ethics Corporation, 1025 W. Nasa Blvd., Melbourne, FL 32919; and (13) Mr. Frank F. Ioppolo, Senior Vice President, Walt Disney Attractions, 1675 Buena Vista Drive, Suite 535, Lake Buena Vista, FL 32830 this 18th day of April, 1990.

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