

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.

CASE NO. 75,716

COMMENTS OF THE YOUNG LAWYERS DIVISION
OF THE FLORIDA BAR REGARDING
PROPOSED CHAPTER 15 (AUTHORIZED HOUSE COUNSEL)

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These comments are filed by the Young Lawyers Division of the Florida Bar ("YLD") in response to proposed amendments to create Chapter 15 of the Rules Regulating The Florida Bar to set forth the Authorized House Counsel Rule ("Rule").

The YLD opposes the provisions of the proposed Rule which require a minimum period of the practice of law in another jurisdiction before an attorney can qualify as an authorized house counsel. Specifically, the YLD opposes the provisions of Section 15-1.2(a)(1) and (2) which require that an attorney be a bar member of another state for at least two years and be actively engaged in the practice of law for at least two of the preceding four years. These requirements discriminate against young lawyers and are irrational, arbitrary, and unrelated to the goal of protecting the public or other legitimate interests. Further, there is no competent evidence in the record which would support the need for these provisions.

The minimum practice requirements clearly discriminate against young attorneys who have practiced law for less than two years. If the Rule is adopted as proposed, the careers of house counsel attorneys without two years of practice will be disrupted. Corporations will be effectively prohibited from hiring attorneys to work as house counsel in Florida who have just graduated from law school and become a member of another state bar. Corporations may be reluctant to hire attorneys without two years of experience to work in other states if there

is a possibility that the corporation may need to transfer the attorney to Florida.

It is likely that the adoption of this Rule will cause young house counsel attorneys to lose their jobs. It has been estimated that there are currently 1,000 to 3,000 house counsel attorneys in Florida who are not members of The Florida Bar. The Florida Bar has not prosecuted any of these attorneys for the unauthorized practice of law. By implication through non-prosecution, the Bar's position appears to be that a house counsel attorney need not be a member of the Bar. If the Rule is adopted with the minimum practice requirement, any young house counsel attorney now working in Florida who is not a member of The Florida Bar and who has less than two years of practice experience will be in clear violation of the Rule. It is likely that some percentage of the present 1,000 to 3,000 house counsel attorneys will not meet the minimum practice requirements. In order to avoid a clear violation of the Rule, these young attorneys will either lose their jobs or be transferred to another state.

One argument advanced for allowing house counsel attorneys who are members of another bar to reside in Florida and work in Florida is that these attorneys are not providing legal services to the general public. The advise given by house counsel is limited to direct advice to their employer. It is argued that

there is no need to protect the general public. The corporations hiring house counsel are sophisticated companies that thoroughly investigate the background and competence of the attorneys before hiring them as house counsel.

If the argument that there is no need to protect the general public and that the corporations perform their own detailed analysis of an attorney's qualifications and competence is true, then there is no legitimate basis to require a minimum practice period. These young attorneys will not give advice to the general public. The corporation that hires the attorney is aware that the attorney has less than two years of practice and the corporation has made a detailed analysis of the attorney's competence.

The minimum practice requirement is arbitrary. There is no evidence to suggest that length of practice is an indication of overall legal competence or ability to perform a particular job. An attorney recently graduated from law school who concentrated legal studies on a particular area, such as securities, may be more qualified to serve as an in house corporate attorney in Florida in the securities department of a company than an experienced practitioner who has practiced for many years in another state in a completely unrelated field.

The YLD comments are limited to the issue of whether a minimum practice period should be required if the Court adopts an authorized house counsel rule. The YLD does not take a position

as to whether an authorized house counsel rule should be adopted. However, if such a rule is adopted, it is unfair and unnecessary to require a minimum practice period.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been furnished by United States mail delivery this 16th day of April, 1990 to John F. Harkness, Jr., Stephen N. Zack, James Fox Miller, and John A. Boggs, all of The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; Scott L. Baena, Strook, Strook & Lavan, 200 South Biscayne Boulevard, Miami, FL 33131-2385; and to Steven P. Seymor, Ausley, McMullen, McGehee, Caruthers & Procter, Post Office Box 391, Tallahassee, FL 32302.


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