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THE FLORIDA BAR)
IN RE: AMENDMENT TO RULES)
REGULATING THE FLORIDA BAR)
_____)

Case No. 79,288

COMMENTS OF THE FLORIDA BOARD OF BAR EXAMINERS
ON THE
PROPOSED FOREIGN LEGAL CONSULTANCY RULE

Submitted by:

FLORIDA BOARD OF BAR EXAMINERS
VIRGINIA B. TOWNES, CHAIRMAN

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INTRODUCTION

This brief contains the comments of the Florida Board of Bar Examiners (hereinafter referred to as the "Board") in response to the proposed foreign legal consultancy rule.

The Board initially considered a version of the proposed rule at its September 1990 meeting. Following such consideration, the Board concluded that it would oppose adoption of the proposal. The Board expressed the reasons for its opposition in a letter to The Florida Bar dated September 21, 1990. A copy of that letter is attached as Exhibit "A."

In response to the Board's initial opposition, a conference committee was formed which produced additional versions of the proposal. The last version was evaluated by the Board at its May 1991 meeting. Although the Board recognized the efforts of the conference committee to address the concerns of the Board, the Board reaffirmed its opposition to the proposed rule. The Board's continuing opposition was conveyed to The Florida Bar by letter dated May 29, 1991. A copy of that letter is attached as Exhibit "B."

A primary objection by the Board to the different versions was the provision which required the Board to conduct a background investigation for all applicants seeking certification as a foreign legal consultant. That objection was

based upon the Board's experience that investigations in foreign countries have been time consuming, expensive and generally unsatisfactory.

Based upon its continuing opposition, the Board concluded its May 29, 1991 letter with the following statement and request: "Accordingly, the Florida Board of Bar Examiners opposes this Rule and respectfully requests that if this Rule is passed that the Board of Bar Examiners not be given a role in its implementation." The Bar subsequently approved the proposed rule amendment pending before the Court. The pending proposal deleted the provision regarding the Board's involvement.

The Board is grateful for the final action taken by the Bar by which the Board's responsibility to conduct character investigations was eliminated. The Board, however, is still unable to endorse the final version. In its argument below, the Board will point out the deficiencies of the proposed foreign legal consultancy rule and how the proposal fails to fulfill a compelling need and fails to protect the public in Florida.

PRELIMINARY STATEMENT

The Board will use the following citation: "Brief" references the International Law Section Comments on the Proposed Foreign Legal Consultancy Rule dated February 27, 1992 and filed with the Court.

SUMMARY OF ARGUMENT

The proposed foreign legal consultancy rule does not ensure the public in Florida against incompetent foreign

attorneys. The proposal has no provisions requiring a foreign legal consultant to graduate from law school, pass a bar examination or attend a continuing legal education course. Unlike admission requirements for The Florida Bar, the proposal requires no demonstration by the consultants of their minimum technical competence.

The proposed rule also does not ensure the public in Florida against unethical foreign attorneys. The proposal has no provisions requiring an investigative determination of good moral character. The proposal simply defers to the disciplinary systems of the foreign countries. Such an approach is unreliable and inadequate. The proposal will also likely encourage foreign legal consultants to engage in prohibited conduct by advising clients on legal matters besides the laws of their respective countries.

In addition to being undesirable because of its failure to protect the public, the proposed foreign legal consultancy rule is simply not needed. Florida's international trade and investment is currently experiencing significant growth without a rule authorizing foreign legal consultants. An expert on the laws of a particular foreign country can be retained by a Florida lawyer in the same way as experts in other areas are retained. With the innovative long distance communication devices available today, there is no need to create a special class of lawyers to provide access to competent foreign legal advice. Such access is readily available without the proposed rule. The Board, therefore, urges the Court to disapprove the proposed foreign legal consultancy rule.

ARGUMENT

POINT I

THE PROPOSED RULE DOES NOT PROTECT THE PUBLIC

(Section's Point I)

In its comments filed with the Court, the International Law Section of The Florida Bar (hereinafter referred to as the "Section") concludes that the proposed "foreign legal consultancy rule would provide a regulatory system which would protect the public from incompetent or unethical foreign attorneys...." (Brief at 6) With such conclusion, the Board disagrees.

Regarding the assurance of competency, the proposed rule has only one provision: membership in the bar of a foreign country. The Board submits that the foreign bar membership requirement is grossly inadequate to assure that foreign legal consultants are well trained and competent to render advice on the laws of their countries.

Unlike applicants for admission to The Florida Bar, there is no requirement in the proposed rule that foreign legal consultants must graduate from an accredited law school. See Fla. Sup. Ct. Bar Admiss. Rules, art.III, sec. 1.b. Unlike applicants for admission to The Florida Bar, there is no requirement in the proposed rule that foreign legal consultants must demonstrate their minimum technical competence by successfully completing a bar examination on the fundamental principles of law of their countries. See Fla. Sup. Ct. Bar Admiss. Rules, art. VI. Unlike members of The Florida Bar,

there is no requirement that foreign legal consultants must participate in continuing legal education. Rules Reg. Fla. Bar 6-10.

The Board's experience is that the required educational training and the degree of difficulty of bar exams vary greatly among the states in this country. It is thus reasonably assumed that such requirements--if they even exist--vary greatly among foreign countries. Thus, there will be no established minimum level of legal training and technical competence required of foreign legal consultants. Furthermore, it will be possible for individuals who achieved bar membership in their respective countries in unorthodox ways to be certified as foreign legal consultants in Florida. Such individuals may have never graduated from law school or passed a bar exam or attended a continuing legal education course.

Regarding the assurance of ethical conduct, there is no provision in the proposed rule for the determination of an applicant's character based upon the results of a thorough background investigation. As this Court has recognized in the past, such a determination is essential for persons wishing to advise the public on the law: "It is our constitutional responsibility to protect the public by taking necessary action to ensure that the individuals who are admitted to practice law will be honest and fair and will not thwart the administration of justice." Florida Board of Bar Examiners Re: G.W.L., 364 So.2d 454, 458 (Fla. 1978).

The proposed rule amendment attempts to address this issue by excluding individuals who have "been disciplined for

professional misconduct by the bar or courts of any jurisdiction within 10 years immediately preceding the application for certification [or who are] the subject of any disciplinary proceeding or investigation pending at the date of application for certification...." Proposed Foreign Legal Consultancy Rule 16-1.2(d). The Board's experience, however, is that out-of-state attorneys seeking membership in The Florida Bar often have serious character problems for which they were never disciplined by their respective jurisdictions.

Equally significant is the proposal's failure to account for the anticipated differences in disciplinary systems among foreign countries. The proposed rule simply provides that a certified foreign legal consultant must be "admitted to practice in a foreign country whose disciplinary system for attorneys is generally consistent with that of The Florida Bar..." Proposed Foreign Legal Consultancy Rule 16-1.2(c).

Noticably absent from the proposal is any mechanism by which to evaluate the disciplinary systems of foreign countries. The Board fears that the vagueness of the "generally consistent" standard will result in the automatic approval of any foreign country which has an organized bar regardless of the existence or inadequacies of its disciplinary system.

The Board submits that few--if any--foreign countries have the same committment to maintaining the integrity of its membership as exhibited by the Court and The Florida Bar. The Bar in this state spends millions of dollars each year in the area of lawyer regulation. The Florida Bar News, April 15, 1992 at 8, col. 1. "The processing and investigation of

inquiries and complaints [about Florida attorneys] is a basic responsibility of the Bar as mandated by the Florida Supreme Court." "Assuring Integrity" 65 THE FLORIDA BAR JOURNAL 13 (September, 1991).

In response to the Section's argument that the proposal will provide a regulatory system to "an uncertain and largely unregulated environment" (Brief at 6), the Board fears that the cure will be worse than the sickness. It seems highly unlikely that certified foreign legal consultants will compliantly refuse to offer legal advice to their clients except on the law of their respective foreign countries. Thus, conferences between consultants and clients will, at the very least, result in the consultant "knowingly skating on thin ice, that is, to the very edge of legality." The Florida Bar v. Kalser, 397 So.2d 1132, 1133-34 at fn. (Fla. 1981). Unfortunately, the proposed rule will needlessly create opportunities for consultants to violate "the defined border between permitted and prohibited conduct." Id.

POINT II

A COMPELLING NEED FOR THE PROPOSED RULE HAS NOT BEEN DEMONSTRATED

(Section's Point II)

The Board does not dispute the figures regarding Florida's international trade as represented by the Section in its comments before the Court. (Brief at 7) The Board also accepts the statement that "[f]oreign investment in Florida is increasing at a 22% compound rate and major international

corporations are moving their headquarters to Florida in increasing numbers." (Id.)

The Board would observe, however, that Florida's significant growth in international trade and foreign investment is occurring without a rule authorizing certified foreign legal consultants. In fact, the facts and figures presented by the Section effectively refute the following argument presented by the Section: "Without such a rule, international investors may be less likely to choose Florida as a place to invest." (Id. at 9)

In the case of Florida Board of Bar Examiners Re: Applicant, 443 So.2d 71, 75 (Fla. 1983), the Court recognized "that the state's interest in ensuring that only those fit to practice are admitted to the Bar is a compelling state interest." The Court further observed:

It is imperative for the protection of the public that applicants to the Bar be thoroughly screened by the Board.

* * *

Because of a lawyer's constant interaction with the public, a wide range of factors must be considered which would not customarily be considered in the licensing of tradesmen and businessmen. The Florida Bar, Petition of Rubin, 323 So.2d 257 (Fla. 1975).

Id.

The proposed foreign legal consultancy rule fails to incorporate the traditional methods of screening applicants wishing to practice law (i.e. background investigation and bar examination). At the very least, a compelling need should be demonstrated for the absence of such methods. The Board submits

that the Section has failed to demonstrate such a need in its comments before the Court.

The Board fully agrees with the proposition that individuals in Florida should "have access to competent foreign legal advice from attorneys well trained in the laws of a particular country." (Brief at 9) As discussed under Point I above, the proposed rule does nothing to ensure that foreign legal consultants are either competent or well trained.

The Board submits that access to competent foreign legal advice is currently being achieved in the best possible fashion: through the services of members of The Florida Bar. Lawyers in Florida routinely retain the services of a well-trained, competent expert skilled in such areas as accounting, engineering, medicine or the laws of a foreign country. Why create this special class of lawyers to provide access to competent foreign legal advice when, in fact, such access is currently being achieved?

The Section argues that "it is highly impractical and often detrimental to secure adequate foreign legal services...by long distance communication." (Brief 8-9) Contrary to the Section's unsupported argument, the innovations of modern, long distance communications (e.g. conference calls, fax machines, etc.) have made it possible to communicate with an expert on the other side of the world in a fast, reliable manner. Lawyers constantly communicate with experts by long distance communication. It would be highly impractical to operate a law office by requiring only face to face communications between a lawyer and an expert.

POINT III

THE PROPOSED RULE IS NEITHER NEEDED NOR DESIRED

(Section's Point III)

Contrary to the Section's arguments, the proposed foreign legal consultancy rule does not fulfill "an increasing need in Florida" nor does it provide "maximum protection to the public." (Brief at 11) The Board reaffirms the arguments presented under Points I and II above as to the lack of protection for the public and the lack of need for the proposed rule.

In its comments, the Section correctly notes that "[t]he rule does not require that the applicant take any type of exam to determine each applicant's competency or ethical standards." (Brief at 11) The Section defends such position by stating: "An examination on Florida law bears no relation to the practice of a foreign legal consultant and an examination measuring the applicant's knowledge of the laws of the applicant's home country or ethical standards would be unworkable and contrary to the doctrine of comity." (Id. at 11-12) As discussed earlier, such defense is defective in that the proposed rule has no provisions requiring a demonstration of competency (bar exam) to gain membership in the bar of the foreign jurisdiction and participation in continuing legal education to maintain such membership.

Regarding an exam on ethical standards, it is noteworthy that the Section offers the following argument as a means of protecting the public:

In order to protect the public further, the proposed foreign legal consultancy rule imposes the same standards for conduct on such foreign attorneys as The Florida Bar imposes on Florida Bar members. A foreign legal consultant must sign a statement that he or she has read and is familiar with the Rules of Professional Conduct adopted by the Supreme Court of Florida and that he or she agrees to abide by such rules. A foreign legal consultant is thus bound, as are Florida attorneys, by the rules governing conflict of interest, trust accounts, attorney/client privilege, etc.

(Id. at 13)

It is interesting that all individuals wishing to be members of The Florida Bar must demonstrate their knowledge of the ethical standards of the American legal profession by passing the Multistate Professional Responsibility Examination (MPRE). Yet, foreign legal consultants need only sign a piece of paper because to require them to take the MPRE would be "unworkable."

The Section fails to offer a reason as to why the requirement of passing the MPRE would be unworkable. The Board submits that there are no good reasons.

The MPRE is produced and administered by the National Conference of Bar Examiners without any involvement by the Board. The examination is administered three times each year at established test centers around the country. In 1992, Florida has eleven test centers throughout the state with four locations in the South Florida area.

Contrary to the Section's representation, the proposed rule does not provide "for a vigorous application process." (Brief at 11) In fact, it is clear that much effort was made to produce a certification process which is as convenient as

possible for the applicants at the expense of protecting the public.

CONCLUSION

The purpose of the Board's comments is not to convince the Court that the proposed rule needs a provision requiring a thorough background investigation conducted by the Board. The Board reviewed such a proposal and properly concluded that such an investigation would be either impossible or cost prohibitive. The Board reaffirms its previously expressed position that it wants no involvement in the implementation of the proposed rule should it be adopted by the Court.

The only purpose of the Board's comments is to inform the Court that the proposed rule is neither needed nor desired. In considering the merits of the comments presented by the Section and the Board, the Court is asked to consider the motivation for the proposed rule.

The Board respectfully suggests that the motivation is probably contained in the following provision of the proposal:

A foreign legal consultant is any person who:

* * *

(c) is admitted to practice in a foreign country whose professional disciplinary system for attorneys is generally consistent with that of The Florida Bar and that recognizes, by law or by practice, the reciprocal right of attorneys admitted to The Florida Bar to render legal services, limited to the laws of the State of Florida, in said foreign country;

Proposed Foreign Legal Consultancy Rule 16-1.2

If the only motivations for the rule are the protection of the public and promotion of international trade within Florida, then why the need for the provision of reciprocity? It

seems reasonable to conclude that the primary--if not sole--motivation for the proposed rule is to create the opportunity for Florida lawyers to open up offices in foreign countries with little or no screening.

In reaching its decision, the Court should address the following question: Does a significant, economic benefit to a few Florida lawyers and law firms constitute sufficient justification for compromising the traditional means of protecting the public in Florida? The Board respectfully submits that it does not. The Court is urged to reach the same conclusion.

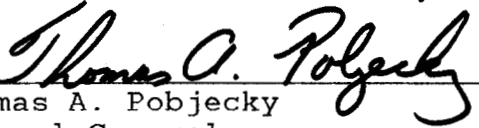
WHEREFORE, the Board requests an order disapproving the proposed foreign legal consultancy rule.

DATED this 20th day of April, 1992.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
VIRGINIA B. TOWNES, CHAIRMAN

John H. Moore
Executive Director

By: 
Thomas A. Pobjecky
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief has been served by U.S. Mail this 20th day of April, 1992 to: John F. Harkness, Executive Director and John A. Boggs, Esquire, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300; Davis S. Willig, Esquire, One Datran Center-Suite 1000, 9100 S. Dadeland Blvd., Miami, Florida; Kyle Lewis Weigel, Esquire, Noronha Advogados, 1200 Brickell Avenue, Suite 601, Miami, Florida 33131; Nelson Slosbergas, Esquire, Freeman, Newman & Butterman, 520 Brickell Avenue, Suite 0-305, Miami, Florida 33131; Robert M. Sondak, Esquire, Paul, Landy, Beiley, & Harper, P.A., 200 S.E. 1st Street, Miami, Florida 33131.


Thomas A. Pobjecky

Florida Board of Bar Examiners

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ADMINISTRATIVE MANAGER

September 21, 1990

Mr. Tony Boggs
Director of Lawyer Regulation
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

Dear Mr. Boggs:

In Re: Foreign Lawyer Consultancy Rule

Please be advised that the Florida Board of Bar Examiners while in formal session at its September 1990 meeting considered the Foreign Legal Consultancy Rule proposed by the International Law Section of The Florida Bar. Following consideration, the Board decided to oppose the adoption of the proposed rule.

In reaching its position of opposition, the Board generally observed that the proposed rule is an unnecessary lessening of the bar admission standards. The Board respectfully suggests that a foreign legal consultant should be treated in the same manner as any other nonlawyer employed or retained by or associated with a Florida attorney. Under such an approach, the provisions of Rule 4-5.3 of the Rules of Professional Conduct would be applicable to a foreign legal consultant.

The Board felt such a rule is especially deficient because it deletes the need for demonstration of minimum technical competence and passage of a test on ethics, which are major aspects of the licensing process to protect the public. Additionally, the investigation outlined in the proposal fails to recognize the extreme difficulty that will be encountered in conducting an in-depth background investigation on a person who may come from a cultural and educational background far different from that of the people of this country.

EXHIBIT "A"

Mr. Tony Boggs
September 21, 1990
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The rule, if enacted, would also place an impossible burden upon this Board to determine, among many other things, what academic standards are used in each country from which an applicant may spring, obtain police information (impossible in some countries), and would require expensive special investigation in each case. It is estimated, for example, that an investigation in Korea could cost up to \$6000 with no guarantee that police arrest information would be obtained. The Board also observed that the provision for waivers in the proposed rule is inconsistent with the Board's policy of treating all Bar applicants equally and of requiring strict compliance with all Bar admission requirements.

The Board is appreciative of this opportunity to present its position to the Board of Governors. The Board is hopeful that the Board of Governors will agree that the proposed rule is neither needed nor desired.

Very truly yours,

John H. Moore
Executive Director

JHM:jk

mc: Ronald A. Carpenter, Chairman
Wayne Thomas, Vice Chairman
Full Board
George R. Harper, International Law Section Chairman
Nelson Slosbergas, Ad Hoc Committee Chairman

Florida Board of Bar Examiners

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May 29, 1991

Mr. James Fox Miller
President
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

VIA FAX

Re: Foreign Legal Consultants Rule

Dear Jim:

The purpose of this letter is to report to you that, notwithstanding the diligent efforts of the Bar/Board Committee on the Foreign Legal Consultants Rule, the Florida Board of Bar Examiners remains opposed to that Rule. The Committee did make a good faith effort to address the Board of Bar Examiners' concerns and some improvements were made to the rule. However, at our meeting held May 16, 1991, the Board of Bar Examiners unanimously rejected the proposed Foreign Legal Consultants Rule for reasons that are fundamental and probably not subject to remedy. Essentially, the Board of Bar Examiners does not believe that it would be able to conduct an in-depth background investigation of an applicant for certification as foreign legal consultant consistent with the requirements applied to regular applicants to The Florida Bar or adequate to protect the public interest. For this reason, the Board of Bar Examiners does not perceive the investigation of foreign legal consultants to be within its usual task of protection of the public through the bar examination and in-depth background investigation process and is concerned that its mission would be compromised by its involvement in the plan suggested by the Rule. Accordingly, for the reasons set forth hereafter, the Board of Bar Examiners cannot support the Foreign

EXHIBIT "B"

Mr. James Fox Miller
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Legal Consultants Rule and requests that if such Rule is passed the Board will not be given any role in that Rule's implementation.

The Florida Board of Bar Examiners sees itself as an agency whose purpose is both to promptly recommend the admission of persons qualified to practice law in this state and, at the same time, protect the public from those who, because of a lack of the requisite character or fitness, are not qualified. The Board of Bar Examiners performs this task by, first, a determination of minimum technical competence through administration of the bar examination and, secondly, through a detailed investigation of such applicant's past conduct to try to determine whether each applicant presently possesses the required character and fitness to serve as a lawyer in Florida.

For obvious reasons, the Foreign Legal Consultants Rule does not contemplate any bar examiner involvement in testing competence: that would already be determined by the applicant's native country's licensing authorities prior to the applicant's seeking certification in Florida. Clearly, this Board is in no position to determine whether a foreign national possesses the requisite competence to advise persons in this State of the laws of a foreign country. Thus, one-half of this Board's usual function is not within the contemplation of this Rule.

The Rule does contemplate, however, that foreign legal consultants will be held to the same high standard of good moral character and general fitness as are applied to all applicants to The Florida Bar and that the Florida Board of Bar Examiners will verify such adherence following a "satisfactory investigation". See Rule 16-1.4. I am sure that this language, which is new, was inserted in the rule in an attempt by the Bar/Board Committee to satisfy our concerns. However, based upon our past experience and, after research and input from staff, the Board of Bar Examiners is convinced that it cannot, in the usual case, conduct a satisfactory investigation of applicants for certification under this Rule. Certainly such an investigation would never be comparable to, nor could we obtain the same confidence level as with, the typical applicant to The Florida Bar.

The reason for this is that the usual foreign legal consultant, which by the Rule is limited to those "persons who have engaged in the practice of law of the foreign country for a period of "not less than five of the seven years immediately preceding the application" will have virtually no history in this country. The investigation of the foreign legal consultant applicant would thus consist almost completely of an investigation in a foreign

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country. We do, of course, occasionally have applicants to The Florida Bar who were born or raised in a foreign country or who have traveled extensively outside of the United States. These investigations have always been very difficult for us, but there is almost always some track record in the United States to follow since, for example, at an absolute minimum the applicant will have gone to law school in the United States. On the other hand, the investigation of the foreign legal consultant will be a purely foreign investigation with no history whatsoever within the United States.

We have other objections to the proposed Rule: for example, we see no logic whatsoever to the waiver of an ethics exam for the legal consultant applicant. For reasons that will be discussed herein, we do not believe it possible to allocate the costs of this program to the particular foreign applicant causing the expense. These expenses will be borne, instead, by the general population of applicants. Nevertheless, our chief concern is that our investigation of this group of applicants will be substandard and perhaps damaging to our entire program.

Our experience with investigations through foreign agencies has been time consuming, expensive and almost always unsatisfactory. For example, in attempting to obtain arrest record checks from foreign jurisdictions, we have worked with Interpol. Typically a request for assistance through Interpol takes over one year to complete and the results have been unreliable. Interpol does not have access to the criminal records of many of the countries from which we would have applicants for foreign legal consultant certification such as France, Germany, Japan, Norway, Spain, Belgium, Sweden, and Denmark. Our attempts at direct criminal record checks with foreign police have also come up with mixed results in the Netherlands, England, France, and Italy. Japan and Germany have refused to cooperate entirely. In addition, even Canadian police have generally been uncooperative or worse.

While we have had very little experience with regard to investigating the discipline of persons by bar authorities in other countries, the experience we have had indicates it may not be an easy matter to disgorge information regarding ethical violations in these foreign countries. For example, the Canadian Judicial Qualifications Council has simply refused to release the records of a former judge who was investigated for ethical and judicial violations. By contrast, United States authorities are much more cooperative.

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Investigations under this Rule will also typically be conducted in a language other than English. This poses special problems and expense. For example, it is the practice of the Board of Bar Examiners to send out inquiry forms to all past employers. The Board has a good rate of return within the United States because our staff spends a great deal of time on the telephone getting sources to respond to those requests. This is impossible to do overseas because of the language barrier. In addition, our forms would have to be translated into the foreign language of the legal consultant applicant in order for us to expect any response at all. We have done this before for criminal record inquiry forms and found, as you might expect, that the response comes back in the applicant's native language. This, of course, requires additional translation at incredible expense. Of necessity, the expense of translating of the forms into foreign languages would be borne by the general applicant population - you could not make the first applicant from Japan pay for the costs of translating all of the forms into Japanese.

There is also a dearth of qualified investigators for foreign investigations. Typically, the Florida Board of Bar Examiners uses former FBI agents for its investigations within the United States. These are trained, professional investigators who do a great job for us. Clearly, a special investigation on each case of a foreign legal consultant would be highly desirable. However, former FBI agents or other qualified investigators who live in foreign countries, are quite rare. For example, two agents live in France and only one lives in either Japan or Germany.

I do not wish to exaggerate the problems of foreign investigations. I hope I am not perceived as "crying wolf" with regard to this problem. It is a fact, however, that this Board has never been particularly happy with its experience in conducting foreign investigations, and most of those have been conducted in English. It would be a whole new ballgame to now start conducting extensive investigations from scratch in Japanese, German, Arabic or the myriad of other languages. As most lawyers who have gone through it know, the Florida Board of Bar Examiners conducts the most complete and exhaustive character and fitness investigation of any board of bar examiners in the United States. We have a well-deserved national reputation for the thoroughness of our investigations and the rejection of unqualified applicants. We are sure that our reputation not only helps us in determining unqualified applicants, but also discourages others with bad character problems from making an application in the first place.

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We are convinced that the type of investigation we would routinely conduct upon a foreign legal applicant would not be sufficient to protect the public and, thus, we are concerned that to do any investigation at all would detract from that which we now do well. The certification by the Florida Board of Bar Examiners of an applicant under the proposed foreign legal consultants rule might well lead members of the public to believe that these consultants have been subjected to the same rigorous standards as members of the Florida Bar in general. In fact, that would not be the case and, consequently, it is the Bar Examiner's belief that our basic mission of protection of the public through the bar examination and the in-depth background investigation could well be compromised by the suggested rule.

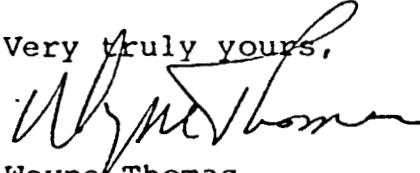
It should be noted that in the other states which have adopted a foreign legal consultants rule none conduct a character and fitness investigation similar to the one contemplated by this proposed Rule. It may be that the best way to protect the public within this context is to require foreign legal consultants to carry substantial malpractice and fidelity insurance (Texas requires \$500,000), rather than by attempting what would be, at best, a mediocre investigation.

We also believe that, notwithstanding a requirement that the foreign legal consultant pay the actual cost of investigation, the financial burden caused by implementation of this rule could not, as a practical matter, be limited to the consultants seeking certification. There would be substantial start-up costs in development of forms and additional administrative costs which could not be allocated to any particular file. Since the benefits flowing from this Rule would go primarily to the foreign legal consultants certified, as well as a limited membership of the Bar, we feel it would be unfair to require the general population of those who are applying for Bar membership to shoulder any part of the burden and expense of implementation of this Rule. This is especially true now since the proposal comes at a time when the Florida Board of Bar Examiners will soon be recommending to the Supreme Court a substantial fee increase. Accordingly, the Florida Board of Bar Examiners opposes this Rule and respectfully

Mr. James Fox Miller
May 29, 1991
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requests that if this Rule is passed that the Board of Bar
Examiners not be given a role in its implementation.

Very truly yours,



Wayne Thomas
Chairman

WLT/smk

cc: Mr. Benjamin H. Hill, III (via fax)
Mr. Scott L. Baena (via fax)
Ms. Virginia B. Townes
Mr. William Kalish
Mr. John H. Moore (via fax)