

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ORDER AMENDING RULE 55.2 §
OF THE RULES OF THE §
SUPREME COURT OF §
DELAWARE §

Before **STRINE**, Chief Justice; **VALIHURA**, **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices, constituting the Court *en banc*.

ORDER

This 5th day of January 2018, it appears to the Court that it is desirable to amend Supreme Court Rule 55.2. These amendments are effective January 8, 2018.

(1) Supreme Court Rule 55.2 is amended as set forth below:

RULE 55.2 FOREIGN LEGAL CONSULTANTS

(a) ~~(a)~~ A lawyer who is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, may apply for a Delaware Certificate of Limited Practice as a Foreign Legal Consultant.

(b) Application. ~~(b)~~ An applicant for a Delaware Certificate of Limited Practice as a Foreign Legal Consultant shall: ~~(1) File under oath the Supreme Court's form application for a Delaware Foreign Legal Consultant Certificate.~~ file an application with the Delaware Board of Bar Examiners ("Board") on a form furnished by the Board and which shall include all of the following:

(1) ~~(2) Furnish a~~ A certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent.

(2) ~~(3) Furnish a~~ A duly authenticated English translation of the certificate required by section (b)(~~2~~1) above if it is not in English.

~~(3)~~ ~~(4) Furnish other~~ Other evidence as the Supreme Court or the Board may require regarding the applicant's educational and professional qualifications and good moral character.

~~(4)~~ ~~(5) Certify~~ A certification under oath that the applicant has read, is familiar with, and will abide by the Delaware Lawyers' Rules of Professional Conduct and all other rules and regulations applicable to licensed Foreign Legal Consultants in the State of Delaware.

~~(5)~~ ~~(6) Pay an~~ An application fee ~~in the amount~~ consisting of: (i) U.S. \$1001,000-dollars; payable to the Board of Bar Examiners, and (ii) a copy of the receipt evidencing payment by the applicant to the National Conference of Bar Examiners ("NCBE") of the U.S. \$825 application fee (or such other amount set by the NCBE) to obtain a Character Report from the NCBE. In addition, the Board may impose on an applicant any additional reasonable fees relating to the application including without limitation expenses incurred in connection with the character investigation set forth in subparagraph (c) below.

~~(c)~~ ~~(e) Upon finding that~~ Investigation and Recommendation of the Board; Applicant's Oath. After the applicant has complied with the requirements of section (b) above, the ~~Supreme Court shall notify the applicant that he or she is eligible to be issued~~ Board shall conduct an investigation of the same type described in Supreme Court Rule 51(c)(6), after which the Board shall make a recommendation to the Supreme Court regarding the suitability of the applicant to receive a Delaware Certificate of Limited Practice as a Foreign Legal Consultant. ~~Each~~ If the application is approved by the Supreme Court, each applicant shall take and subscribe to the following oath or affirmation:

I _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; and that I shall conduct myself strictly in accordance with all the terms and conditions of the Rules of the Delaware Supreme Court, in particular Rule 55.2; that I will behave myself in the office of a Foreign Legal Consultant according to the best of my learning and ability and with all good fidelity as well to the Court as to the client; that I will use no falsehood nor delay any person's cause through lucre or malice.

After the applicant has taken and subscribed to the foregoing oath or affirmation, the applicant shall be issued a certificate entitling the applicant to practice law in the state as provided in this Rule.

(d) Limitations on Scope of Activities. ~~(d)~~ A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this jurisdiction with respect to the law of the foreign country or countries in which the ~~Foreign Legal Consultant~~ foreign legal consultant is admitted to practice law, but shall not be considered admitted to practice law in this jurisdiction, or in any way hold himself out as a member of the bar of this jurisdiction, or do any of the following:

(1) ~~(1)~~ appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted *pro hac vice*);

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

(3) ~~(3)~~ prepare:

(A) ~~(A)~~ any will or trust instrument effecting the disposition on death of any property located and owned by a resident of the United States of America, or

(B) ~~(B)~~ any instrument relating to the administration of a decedent's estate in the United States of America;

(4) ~~(4)~~ prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

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

(6) ~~(6)~~ carry on a practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

(A) ~~(A)~~ the foreign legal consultant's own name;

(B) ~~(B)~~ the name of the law firm with which the foreign legal consultant is affiliated;

(C) ~~(C)~~ the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and

(D) ~~(D)~~ the title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]."

(e) ***Rights and Obligations.*** ~~(e)~~ Subject to the limitations listed in Section (d) of this Rule, a person licensed under this Rule shall be considered a foreign legal consultant affiliated with the bar of this jurisdiction and shall be entitled and subject to:

(1) ~~(1)~~ the rights and obligations set forth in the Delaware Lawyers' Rules of Professional Conduct or arising from the other conditions and requirements that apply to a member of the Delaware Bar under the Rules of the Supreme Court; and

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

(A) ~~(A)~~ affiliation in the same law firm with one or more members of the bar of this jurisdiction, including by:

(i) ~~(i)~~ employing one or more members of the bar of this jurisdiction;

(ii) ~~(ii)~~ being employed by one or more members of the bar of this jurisdiction or by any partnership or professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

(iii) ~~(iii)~~ being a partner in any partnership or shareholder in any professional corporation that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

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

(C) ~~(C)~~ A person licensed to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this jurisdiction. To this end:

(i) ~~(i)~~ Every person licensed to practice as a foreign legal consultant under this Rule:

a. ~~(a)~~ shall be subject to the jurisdiction of the Supreme Court and to censure, suspension, removal or revocation of his or her license to practice by the Supreme Court and shall otherwise be governed by Supreme Court Rules; and

b. ~~(b)~~ shall execute and file with the Supreme Court, in the form and manner as the court may prescribe:

1. ~~(1)~~ a commitment to observe the Delaware Lawyers' Rules of Professional Conduct and the Rules of the Supreme Court to the extent applicable to the legal services authorized under this Rule:

2. ~~(2)~~ an undertaking or appropriate evidence of professional liability insurance, in an amount as the court may prescribe, to assure the foreign legal consultant's proper professional conduct and responsibility;

3. ~~(3)~~ a written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession and of any final action of the professional body or public authority referred to in Section (b)(2) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the foreign legal consultant; and

4. ~~(4)~~ a duly acknowledged instrument in writing, providing the foreign legal consultant's address in this jurisdiction and designating the clerk of Supreme Court as his or her agent for service of process. The foreign legal consultant shall keep the clerk advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this jurisdiction, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

(ii) ~~(ii)~~ Service of process on the clerk under this Rule shall be made by personally delivering to the clerk's office, and leaving with the clerk,

or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process together with a fee as set by the Supreme Court. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided to the clerk.

(f) Automatic Suspension. ~~(f)~~ The applicant's authority to practice as a foreign legal consultant as granted by this Rule shall be automatically suspended when (1) the applicant fails to comply with any provision of this Rule; or (2) when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States or by any federal court or agency or by any foreign nation before which the applicant has been admitted to practice as a lawyer or counselor at law or the equivalent. Any applicant whose authority to practice has been suspended under this section may be considered for reinstatement in accordance with Rule 22 of the Delaware Lawyers' Rules of Disciplinary Procedure.

(g) Effect of Delaware Bar Admission. ~~(g)~~ If a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this jurisdiction under the Rules governing admission, that person's foreign legal consultant license shall be deemed superseded by the license to practice law as a member of the bar of this jurisdiction.

~~(h)~~

(h) Annual Registration and Assessments. A person licensed as a foreign legal consultant shall, as a condition of remaining a foreign legal consultant, no later than March 1 of each year:

(1) file with the Clerk of this Court, in a form approved by the Court, a registration statement showing the member's name, residence address, office address, office telephone number, firm association, and such other information as the Court shall direct, and

(2) Pay a registration assessment as determined by the Delaware Supreme Court.

(i) Late Filing Assessment. Any foreign legal consultant who fails to file an annual registration statement by March 1 of each year shall pay a \$300 late filing assessment.

(j) Changes in Information. Each person licensed as a foreign legal consultant is required to notify the Clerk of the Court in writing within 30 days of any change in the information provided in the member's most recent registration statement.

(k) *Certain duties of the Clerk of Court.* The Clerk of the Court shall: (i) within a reasonable time after January 1 each year, provide to each registered Foreign Legal Consultant an annual registration form to be filed with the Clerk, (ii) deposit forthwith all assessments received under this Rule to the account specified in Rule 69(i); (iii) mail to each Foreign Legal Consultant who files a registration statement and pays the assessments, a registration card, in a form approved by the Court, certifying that such member is in good standing as a Foreign Legal Consultant.

(l) *Resignation.* Upon acceptance of the resignation by the Court, the certificate issued pursuant to subsection (c) above shall terminate and the foreign legal consultant who resigns shall no longer be entitled to engage in any of the activities enumerated in this Rule in this state.

(m) *Additional Regulations.* The Supreme Court may adopt such additional regulations as needed to implement this Rule.

(2) Form 1 and Form 2 to Rule 55.2 are stricken.

(3) The Clerk of this Court is directed to transmit a certified copy of the

Order to the clerk for each trial court in each county.

BY THE COURT:

/s/ Leo E. Strine, Jr.

Chief Justice