TITLE 3. PROGRAMS AND SERVICES

DIVISION 3. NON-MEMBER ATTORNEYS

CHAPTER 4. FOREIGN LEGAL CONSULTANTS

Rule 3.400 Definitions

(A) A "Registered Foreign Legal Consultant" is a person who meets the eligibility requirements of Rule of Court 9.44 of the California Rules of Court ("Rule 9.44") and is registered by the State Bar as a Foreign Legal Consultant.

(B) "Registered" means that the State Bar has issued a certificate of registration to a person it deems eligible to practice law as a Foreign Legal Consultant.

Rule 3.401 Application

(A) To practice law as a Registered Foreign Legal Consultant, a person who meets the eligibility requirements of the Rule 9.44 must

(1) submit an Application for Registration[1] as an attorney applicant for admission to the State Bar of California with the required certificate and the fee set forth in the Schedule of Charges and Deadlines;[2]

(2) submit an Application for Registered Foreign Legal Consultant[3] with the fee set forth in the Schedule of Charges and Deadlines (the Schedule);

(3) meet State Bar requirements for acceptable moral character, which are set forth in the instructions for Application for Registered Foreign Legal Consultant;

(4) submit a letter of recommendation from an authorized representative of the professional body having final disciplinary jurisdiction or a judge of the highest law court or court of original jurisdiction attesting to his or her professional qualifications in the foreign jurisdiction.

(B) An application to practice law as a Registered Foreign Legal Consultant may be denied for failure to comply with eligibility or application requirements or a material misrepresentation of fact.

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[1] See Rule 4.16(B).

[2] See Rule 4.3(B).

[3] See Rule of Court 9.44.

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(C) Upon a showing of undue hardship by the applicant, the State Bar may waive or vary this rule's requirement of the letter of recommendation attesting to the applicant's professional qualifications.

Rule 3.402 Duties of Registered Foreign Legal Consultants

A Foreign Legal Consultant must

(A) annually renew registration as a Registered Foreign Legal Consultant and submit the fee set forth in the Schedule of Charges and Deadlines;

(B) report to the State Bar within thirty days any change in eligibility or the security for claims required by these rules;

(C) at all times maintain the security for claims required by these rules and upon demand promptly provide the State Bar with current evidence of security for claims;

(D) provide legal advice in California exclusively regarding the law of a foreign jurisdiction where he or she is licensed to practice law and which is identified in the Application To Register as a Foreign Legal Consultant;

(E) use the title "Registered Foreign Legal Consultant" and no other in connection with activities performed as a Registered Foreign Legal Consultant;

(F) not claim in any way to be a member of the State Bar of California;

(G) maintain an address of record and a current e-mail address with the State Bar; and

(H) otherwise comply with Rule 9.44 and these rules.

Rule 3.403 Security for claims

A Registered Foreign Legal Consultant must provide evidence of security for claims for pecuniary losses resulting from acts, errors, or omissions in the rendering of legal services. The security assets must be maintained at all times, and the State Bar may require current evidence of security for claims at any time. The evidence

(A) may be a certificate of insurance, a letter of credit, a written guarantee, or a written agreement executed by the applicant;

(B) must be provided in a form acceptable to the State Bar; and

(C) must be computed in United States dollars.

Rule 3.404 Insurance as security for claims

If insurance serves as security for claims, it must be acceptable to the State Bar and provide the Registered Foreign Legal Consultant a minimum amount of annual insurance and a maximum deductible. These amounts are specified in the Schedule of Charges and Deadlines for a single claim and for all claims.

(A) If the insurance excludes the cost of defense, the Registered Foreign Legal Consultant may reduce the minimum amount of annual insurance as specified in the Schedule.

(B) If the insurance provides for a deductible greater than that specified in the Schedule, the Registered Foreign Legal Consultant must provide a letter of credit or a written agreement as evidence of security for the deductible.

(C) If the insurance is provided by an insurer outside California, the Registered Foreign Legal Consultant must promptly provide, upon request of the State Bar, a copy of the insurance policy and a translation if the policy is not in English.

Rule 3.405 Letter of credit as security for claims

If a letter of credit serves as security for claims, the Registered Foreign Legal Consultant must maintain the letter of credit at all times in the minimum amount specified in the Schedule of Charges and Deadlines for a single claim and for all claims.

Rule 3.406 Written guarantee as security for claims

If a written guarantee serves as security for claims, the Registered Foreign Legal Consultant must maintain the written guarantee at all times for a minimum amount in favor of the State Bar. The amount is specified in the Schedule for a single claim and for all claims.

(A) The guarantor must be a California law firm or law corporation, an active member of the State Bar, or a financial institution.

(B) The written guarantee must be supported by an independent accountant's certified financial statements and subsidiary records evidencing that tangible net worth for the most recent fiscal year is equivalent to the minimum amount required for security for claims, exclusive of intangible assets such as good will, licenses, patents, trademarks, trade names, copyrights, and

franchises. Net worth may include fifty percent of earned fees that have not been billed and billed fees that have not been collected.

Rule 3.407 Written agreement as evidence of security for claims

If a Foreign Legal Consultant's written agreement serves as security for claims, the agreement must be for the minimum amount specified in the Schedule of Charges and Deadlines for a single claim and for all claims.

Rule 3.408 Suspension of registration as a Foreign Legal Consultant

(A) Registration as a Foreign Legal Consultant is suspended

(1) for failure to annually register as a Foreign Legal Consultant and submit any related fee and penalty by the date set forth in the Schedule of Charges and Deadlines;

(2) for failure to otherwise comply with these rules or with the laws or standards of professional conduct applicable to a member of the State Bar; or

(3) upon imposition of discipline by a professional or occupational licensing authority.

(B) A Foreign Legal Consultant suspended under these rules is not permitted to practice law during the suspension. A Foreign Legal Consultant suspended for failure to comply with annual registration requirements may be reinstated upon compliance.

(C) A notice of suspension is effective ten days from the date of receipt. Receipt is deemed to be five days from the date of mailing to a California address; ten days from the date of mailing to an address elsewhere in the United States; and twenty days from the date of mailing to an address outside the United States. Alternatively, receipt is when the State Bar delivers a document physically by personal service or otherwise.

(D) Appeal of a suspension is subject to the disciplinary procedures of the State Bar.

Rule 3.409 Termination of Registration

Permission to practice law as a Registered Foreign Legal Consultant terminates

(A) upon failure to meet the eligibility requirements of Rule 9.44 or these rules;

(B) as required by Rule 9.44 or these rules;

(C) upon admission to the State Bar;

(D) upon repeal of Rule 9.44 or termination of the Foreign Legal Consultants program; or

(E) upon request.

Rule 3.410 Reinstatement after termination

An attorney terminated as a Registered Foreign Legal Consultant who seeks reinstatement must meet all eligibility and application requirements of these rules. Reinstatement is effective from the date of compliance.

Rule 3.411 Public information

State Bar records for attorneys permitted to practice law as Foreign Legal Consultants are public to the same extent as member records.

REGISTERED FOREIGN LEGAL CONSULTANT RULES AND REGULATIONS
(effective January 1, 1994; revised 3/2/96, 6/1/97, 3/18/06)

1.0 PURPOSE

The purpose of the Registered Foreign Legal Consultant Rules and Regulations is to authorize a person who is not a member of the State Bar of California or licensed in the United States as an attorney or counselor at law to provide legal advice in California limited to the law of the foreign country in which he or she is licensed to practice law.

2.0 DEFINITIONS

2.1 A "Registered Foreign Legal Consultant" is a person who is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country and has a currently effective State Bar Certificate of Registration as a Foreign Legal Consultant.

2.2 "Good moral character" is that which is defined in the Rules Regulating Admission to Practice Law in California.

2.3 The "Rules" are these Registered Foreign Legal Consultant Rules and Regulations.

2.4 The "State Bar" is the chief executive officer of the State Bar, or person or persons designated by the chief executive officer, who shall have the authority to administer and interpret these rules.

3.0 ELIGIBILITY FOR CERTIFICATION

To be eligible to become a Registered Foreign Legal Consultant, an applicant must:

3.1 Present satisfactory proof that the applicant has been admitted to practice and has been in good standing as an attorney or counselor at law or the equivalent in a foreign country for at least four of the six years immediately preceding the application, and while so admitted, has actually practiced the law of that country;

3.2 Present satisfactory proof that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California;

3.3 Agree to comply with Section 6.0 relating to security for claims against a Foreign Legal Consultant by his or her clients;

3.4 Agree to comply with Section 7.0 relating to maintaining an address of record for State Bar purposes;

3.5 Agree to notify the State Bar of any change in his or he status in any jurisdiction where he or she is admitted to practice or of any discipline with respect to such admission;

3.6 Agree to be subject to the jurisdiction of the courts of this state with respect to the laws of the State of California governing the conduct of attorneys, to the same extent as a member of the State Bar of California;

3.7 Agree to become familiar with and comply with the standards of professional conduct required of members of the State Bar of California;

3.8 Agree to be subject to the disciplinary jurisdiction of the State Bar of California;

3.9 Agree to be subject to the rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges, to the same extent as attorneys admitted to practice law in California, and

3.10 Agree to comply with the laws of the State of California, the Rules and Regulations of the State Bar of California, and these Rules.

4.0 APPLICATION FOR CERTIFICATION

4.1 All Applications for Certification must be submitted:

4.1.1 On a form provided by the State Bar;

4.1.2 With all the information requested on the form;

4.1.3 With the appropriate non-refundable processing fee; and

4.1.4 At the designated office of the State Bar.

4.2 All Applications for Certification must be accompanied by all requested documents, including, but not limited to:

4.2.1 A duly authenticated English translation of any documents not in English;

4.2.2 A certificate from the authority in the foreign country having final jurisdiction over professional discipline certifying

a. that it is the entity having jurisdiction over professional discipline matters;

b. the applicant's date of admission, and

c. that for at least four of the past six years, the applicant has been in good standing as an attorney or counselor at law or the equivalent; and

4.2.3 A letter of recommendation setting forth the applicant's professional qualifications from

a. a member of the executive body of the authority having final disciplinary jurisdiction, or

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b. a judge of the highest law court or court of original jurisdiction of the foreign country.

4.2.4 Evidence of the required security for claims, which shall be furnished to the State Bar in the form of a written agreement stating that the Foreign Legal Consultant shall maintain security for claims against the Foreign Legal Consultant due to the Foreign Legal Consultant's acts, errors or omissions in the rendering of legal services in the amounts as set forth in Section 6.0.

4.3 Upon a showing that strict compliance with the provisions of Section 4.2 would cause the applicant unnecessary hardship, the State Bar may, in its discretion, waive or vary the application of those provisions and require the applicant to furnish other evidence in lieu thereof.

4.4 The State Bar may audit the Foreign Legal Consultant at any time to ensure that the Foreign Legal Consultant in fact has the required security for claims as set forth in Rule 6.0.

5.0 MORAL CHARACTER REVIEW

5.1 Each applicant must be found to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California. The moral character review of all applicants will be conducted by the State Bar's Committee of Bar Examiners. Insofar as applicable and not inconsistent with these rules, the Rules Regulating the Admission to Practice Law in California, as they relate to the determination of whether an applicant for admission as a California attorney is possessed of good moral character, shall be applicable to the determination of whether an applicant for a Certificate of Registration as a Registered Foreign Legal Consultant is possessed of good moral character.

5.2 If the Committee of Bar Examiners concludes that the applicant possesses good moral character, it shall certify that the applicant possesses the good moral character requisite for a person to be licensed as a member of the State Bar of California. Otherwise, the Committee of Bar Examiners shall comply with the Rules Regulating Admission to Practice Law in California insofar as they relate to the procedures to be followed when an applicant for admission to practice law in California has been found not to possess the good moral character requisite for a person to be licensed as a member of the State Bar of California.

6.0 SECURITY FOR CLAIMS AGAINST A FOREIGN LEGAL CONSULTANT

6.1 The Foreign Legal Consultant shall maintain security for claims for pecuniary losses resulting from his or her acts, errors or omissions in the rendering of legal services that is acceptable to the State Bar, as follows:

6.1.1 If in the form of insurance and the cost of defense is included in the policy limits, in an amount of at least $150,000 for each claim, with an aggregate limit of $450,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed $10,000, unless any deductible portion in excess of $10,000 Is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution.

6.1.2 If in the form of insurance and the cost of defense is not included in the policy limits, in an amount of at least $100,000 for each claim, with an aggregate limit of $300,000 for all claims established against the Foreign Legal Consultant during the calendar year, with a deductible portion not to exceed $10,000, unless any deductible portion in excess of $10,000 is secured by means of a letter of credit or a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation, or financial institution.

6.1.3 If in the form of a letter of credit, the total amount of the letter of credit must be maintained at all times at no less than $300,000. The honor from the issuing bank is not to exceed $100,000 for each claim and $300,000 for all claims made during the calendar year; or

6.1.4 If in the form of a written guarantee executed by an active member of the State Bar of California, a California law firm, California law corporation or financial institution, the total amount of the guarantee must be maintained at all times at no less than $100,000 for each claim and $300,000 for all claims made during the calendar year.

7.0 ADRESS OF RECORD

7.1 A duly acknowledged instrument in writing shall be submitted to the State Bar with the Foreign Legal Consultant's address in the State of California for State Bar purposes. The instrument shall state that if, after due diligence, service cannot be made upon the Foreign Legal Consultant at his or her State Bar address of record, the State Bar of California is authorized to act as an agent

upon whom process may be served, with like effect as if served personally upon the Foreign Legal Consultant, in any action or proceeding brought against the Foreign Legal Consultant arising out of or based upon legal services rendered or offered to be rendered within or to residents of the State of California.

7.2 Service of process on the State Bar of California pursuant to Section 7.1 shall be made by personally delivering to and leaving with a representative authorized by the State Bar to receive service, duplicate copies of the process and the appropriate fee.

8.0 DENIAL OF APPLICATION

8.1 If the State Bar determines to deny an application for certification for any reason, the State Bar shall mail a Notice of Denial of Certification to the applicant that sets forth the reasons for the denial.

8.2 An applicant may request, in writing, a hearing on the denial to approve its application within 15 (fifteen) days after such Notice of Denial of Certification is dated.

8.3 The appropriate Board Committee shall conduct a hearing within 60 (sixty) days of the State Bar's receipt of the request.

8.4 Should the outcome of the hearing permitted by Section 8.2 be adverse to the applicant, the applicant may appeal such decision pursuant to the provisions of California Rule of court 9.13(d).

8.5 All proceedings under Section 8.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."

9.0 PERMITTED ACTIVITIES

A Registered Foreign Legal Consultant may render legal services in California, except that a Registered Foreign Legal Consultant may not:

9.1 Appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any court or before any judicial officer;

9.2 Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

9.3 Prepare any will or trust instrument affecting the disposition on death of any property located in the United States and owned by a resident or any instrument relating to the administration of a decedent's estate in the United States;

9.4 Prepare any instrument in respect of the marital relations, rights or duties of a resident of the United States, or the custody or care of the children of a resident; or

9.5 Otherwise render professional legal advice on the law of the State of California, any other state of the United States, the District of Columbia, the United States, or any country other than the country in which the Foreign Legal Consultant is admitted to practice law, whether rendered incident to preparation of legal instruments or otherwise.

10.0 USE OF THE TITLE "FOREIGN LEGAL CONSULTANT"

10.1 In connection with activities performed pursuant to these rules, a Registered Foreign Legal Consultant may use the title "Foreign Legal Consultant" only and may not use any other title than "Foreign Legal Consultant." A Foreign Legal Consultant may not use the title "Foreign Legal Consultant" in connection with activities not performed pursuant to these Rules.

10.2 A Foreign Legal Consultant must include the name of the country in which the Foreign Legal Consultant is admitted to practice law when using the title "Foreign Legal Consultant."

10.3 A Foreign Legal Consultant may include the name of his or her employer, if any, and the title by which the Foreign Legal Consultant is known in the country in which he or she is admitted to practice law when using the title "Foreign Legal Consultant."

10.4 A Foreign Legal Consultant may not in any way hold himself or herself out as a member of the State Bar of California.

11.0 DURATION OF CERTIFICATE OF REGISTRATION

Certification by the State Bar shall commence on the date indicated on the Notice of Registration. The State Bar shall renew the Certificate of Registration, provided that the Foreign Legal Consultant timely submits to the State Bar:

11.1 A complete Annual Report/Renewal Form; and

11.2 Appropriate Special Report forms, if required.

12.0 INVOLUNTARY REVOCATION/SUSPENSION OF CERTIFICATE OF REGISTRATION

12.1 The State Bar may suspend the Certificate of Registration of a Foreign Legal Consultant:

12.1.1 For failure to file the annual report and pay the filing fee, including any fee for late filing;

12.1.2 Sixty days following written notice of delinquency sent to his or her address for State Bar purposes.

12.2 The State Bar may revoke/suspend the Certificate of Registration of a Foreign Legal Consultant:

12.2.1 If any of the requirements for certification no longer exist; or

12.2.2 The Foreign Legal Consultant fails at any time to comply with the provisions of these rules.

12.3 The State Bar shall mail a Notice of Revocation/Suspension of Certificate of Registration to the Foreign Legal Consultant setting forth the reasons for the determination to revoke/suspend the certificate and stating that the revocation/suspension shall be effective 10 days from the date the State Bar mails the Notice.

12.4 A Foreign Legal Consultant may request, in writing, a hearing to stay the revocation of the Certificate of Registration, which hearing the State Bar may allow or disallow upon good cause shown.

12.5 Within 15 days of mailing of the Notice of Revocation of Certificate of Registration, the Foreign Legal Consultant may contest the revocation by sending to the State Bar a written request for a hearing to show cause why the Certificate of Registration should be reinstated.

12.6 The hearing permitted by Section 12.4 shall be commenced within 60 (sixty) days of the State Bar's receipt of the request.

12.7 Should the outcome of the hearing permitted by Section 12.4 be adverse to the applicant, the applicant may appeal such decision pursuant to provisions of California Rule of Court 9.13(d).

12.8 All proceedings under Section 12.0 shall be confidential, unless otherwise requested by the applicant or ordered by the Board of Governors. Insofar as applicable, the Rules of Procedure of the State Bar shall apply to such proceedings. For the purpose of applying the Rules of Procedure, the word "member" therein shall be deemed to mean "Foreign Legal Consultant."

13.0 VOLUNTARY REVOCATION OF CERTIFICATE OF REGISTRATION

The State Bar may revoke the Certificate of Registration of a Foreign Legal Consultant at the request of the Foreign Legal Consultant.

14.0 REPORTS

14.1 Each Foreign Legal Consultant shall file an Annual Report/Renewal Form covering the calendar year immediately preceding on a form provided by the State Bar. The Annual Report/Renewal Form shall not be accepted unless submitted:

14.1.1 On a form provided by the State Bar;

14.1.2 With all the information requested on the Annual Report;

14.1.3 With the non-refundable processing fee and any penalty fee, if appropriate;

14.1.4 At the designated office of the State Bar; and

14.1.5 With a certificate from the authority in the foreign country or countries named by the Foreign Legal Consultant having final jurisdiction over professional discipline of persons admitted to practice law in the country or countries, certifying as to the Registered Foreign Legal Consultant's good standing as an attorney or counselor at law or the equivalent, with a duly authenticated English translation of the certificate if it is not in English, or other proof of good standing as the State Bar may permit.

14.1.6 With a Special Report, pursuant to Section 14.2, if applicable.

14.1.7 Reinstatement after suspension. A Certificate of Registration suspended under rule 12.1.1 may be reinstated upon the filing of all delinquent annual reports and payment of all accrued fees and penalties, and payment of any fees and penalties due after the suspension but before the date of reinstatement. Reinstatement shall be effective from the date of compliance.

14.2 Each Foreign Legal Consultant shall file a Special Report setting forth any changes no more than 30 days after the changes as follows:

14.2.1 Address changes shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, in a form acceptable to the State Bar; and

14.2.2 Changes in any of the requirements for certification as set forth in Sections 3.1, 3.3, and 3.5, shall be filed with the office of the State Bar responsible for regulating Foreign Legal Consultants, on a form provided by the Sate Bar, and must include all information requested on such form.