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In the Matter of the Petition to Create  
Supreme Court Rule SCR 40.056 Authorizing  
Registered Legal Consultants

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PETITION

To: Chief Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Louis B. Butler  
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker  
Clerk of Supreme Court Office  
110 East Main Street, Suite #215  
Madison, WI 53703

The Board of Bar Examiners, by its director John E. Kosobucki, hereby petitions the Supreme Court of Wisconsin for an order creating Supreme Court Rule 40.056. The new section would create a category of registered legal consultants comprising lawyers licensed and in good standing in other nations and authorized to serve clients in Wisconsin in the areas of international law and the law of the nations, other than the United States, in which they are expert. If the Court issues this order, SCR 40.056 will read as follows:

PROPOSED AMENDMENT:

**SCR 40.056 REGISTERED LEGAL CONSULTANTS.**

(1) In its discretion, the board may certify for practice in this State as a legal consultant, without examination, an applicant who:

(a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys 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;

(b) for at least five years immediately preceding his or her application has been a member in good standing of the legal profession and has been actually and continuously engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country;

(c) possesses the good moral character and general fitness requisite for a member of the bar of this State;

(d) is at least 26 years of age; and

(e) intends to practice as a legal consultant in this State and to maintain an office in this State for that purpose.

**(2) Proof Required**

An applicant under SCR 40.056 shall file with the board:

(a) a certificate from the professional body or public authority in the foreign country having final jurisdiction over professional discipline, certifying as to the applicant's admission to practice and the date thereof, and as to his or her good standing as an attorney or counselor at law or the equivalent;

(b) a letter of recommendation from one of the members of the executive body of the professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction of the foreign country;

(c) a duly authenticated English translation of the certificate and the letter if, in either case, it is not in English; and

(d) such other evidence as to the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of SCR 40.056(1) as the board may require.

**(3) Reciprocal Treatment of Members of the Bar of this State**

In considering whether to license an applicant to practice as a legal consultant, the board may in its discretion take into account whether a member of the bar of this State would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or has sought to establish an office in that country may request the court to consider the matter, or the board may do so *sua sponte*.

**(4) Scope of Practice**

A person licensed to practice as a legal consultant under this Rule may render legal services in this State relating to international law and the law of other countries subject, however, to the limitations that he or she shall not:

(a) render professional legal advice on the law of this State or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except

on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this Rule) to render professional legal advice in this State;

(b) 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 (other than upon admission *pro hac vice* pursuant to applicable rules;

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

(d) prepare:

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

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

(e) 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 a resident;

(f) be, or in any way hold himself or herself out as, a member of the bar of this State; or

(g) carry on his or her practice under, or use in connection with his or her practice, any name, title or designation other than one or more of the following:

(i) his or her own name;

(ii) the name of the law firm with which he or she is affiliated;

(iii) his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of the country; and

(iv) the title "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]".

#### (5) **Rights and Obligations**

Subject to the limitations set forth in SCR 40.056(4), a person licensed as a legal consultant shall be considered a lawyer affiliated with the bar of this State and shall be entitled and subject to:

(a) the rights and obligations set forth in the Rules of Professional Conduct, SCR 20, or arising from the other conditions and requirements that apply to a member of the bar of this State under the rules of the Supreme Court; and

(b) the rights and obligations of a member of the bar of this State with respect to:

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

(A) employing one or more members of the bar of this State;

(B) being employed by one or more members of the bar of this State or by any partnership or professional corporation which includes members of the bar of this State or which maintains an office in this State; and

(C) being a partner in any partnership or shareholder in any professional corporation which includes members of the bar of this State or which maintains an office in this State; and

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

**(6) Disciplinary Provisions**

A person licensed to practice as a 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 State and to this end, every person licensed to practice as a legal consultant under these rules:

(a) shall be subject to control by 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 SCR 21 and 22; and

(b) shall execute and file with the supreme court, in the form and manner as the court may prescribe:

(i) his or her commitment to observe the Rules of Professional Conduct and all other rules of the supreme court governing members of the bar to the extent applicable to the legal services authorized under SCR 40.056(4);

(ii) an undertaking or appropriate evidence of professional liability insurance, in the amount the court may prescribe, to assure his or her proper professional conduct and responsibility;

(iii) a written undertaking to notify the court of any change in the person's good standing as a member of the foreign legal profession referred to in SCR 40.056(1) (a) and

of any final action of the professional body or public authority referred to in SCR 40.056 (2) (a) imposing any disciplinary censure, suspension, or other sanction upon the person; and

(iv) a duly acknowledged instrument, in writing, setting forth his or her address in this State and designating the clerk of the supreme court as his or her agent upon whom process may be served, with like effect as if served personally upon him or her, in any action or proceeding thereafter brought against him or her and arising out of or based upon any legal services rendered or offered to be rendered by him or her within or to residents of this State, whenever after due diligence service cannot be made upon him or her at the address or at the new address in this State as he or she shall have filed in the office of the clerk by means of a duly acknowledged supplemental instrument in writing.

(7) **Subject to suit.**

After suit is commenced in any state or federal court, process may be served on a registered legal representative by serving the summons and complaint on the clerk of the Supreme Court pursuant to the above designation. Service may be made by personally delivering to and leaving with the clerk, or with a deputy or assistant authorized by him or her to receive service, at his or her office, duplicate copies of the process together with a fee of \$10. Service of process shall be complete when the clerk has been served. The clerk shall promptly send one of the copies to the registered legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the consultant at the legal consultant's last known address.

(8) **Fees**

(a) An applicant for a license as a legal consultant under this rule shall pay an application fee in the amount set out in SCR 40.14(3)(c). The Board may add a surcharge in individual cases if it finds that extraordinary costs have been or will be incurred in its investigation of the applicant's qualifications.

(b) Registered legal consultants shall be adjunct members of the State Bar of Wisconsin and shall pay annual dues at a rate set by the bar.

(9) **Revocation of License**

Persons licensed as legal consultants shall be subject to the lawyer regulation system set out in SCR 21 and 22. In the event that the supreme court determines that a legal consultant no longer meets the requirements for licensure set forth in SCR 40.056(1)(a) or (c), it shall revoke the license granted to the person hereunder.

(10) **Admission to Bar**

In the event that a person licensed as a legal consultant is subsequently admitted as a member of the bar of this State under the provisions of SCR 40.03, 40.04 or 40.05, the license

granted to the person hereunder shall be deemed superseded by the license granted to the person to practice law as a member of the bar of this State.

**JUSTIFICATION:**

Like the proposed SCR 40.055, this rule is intended to benefit Wisconsin consumers of legal services. In a global economy, Wisconsin clients may need advice about the laws of foreign nations. SCR 40.056 is designed to create a category of Wisconsin practitioners – to be known as registered legal consultants – who may be able to satisfy that need.

The proposed SCR 40.056 is patterned on a model rule drafted by the American Bar Association. (See <http://www.abanet.org/cpr/mjp/FLC.pdf>). Registered legal consultants under the rule would be lawyers licensed to practice and in good standing in one or more foreign countries. Their practice would be limited to international and foreign law. They would be expressly forbidden, except in conjunction with a Wisconsin lawyer, to practice Wisconsin law.

Dated this 31<sup>st</sup> day of March, 2008.

Respectfully submitted,

// Original Signed //

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