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Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Mortgage Foreclosure Rule Amendments
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

Re: Special Committee on Attorney Ethics and Admissions Report and Recommendations; Foreign Attorney In-House Counsel

Dear Judge Grant:

My firm, McElroy, Deutsch, Mulvaney & Carpenter, represents a number of international corporations that have a need to transfer attorneys from other countries to the United States, particularly New Jersey, in order to best serve their needs. I, myself, have been practicing law for over forty years and have worked closely with various companies and in-house counsel in my practice. I have personally experienced the increased necessity in legal departments to call upon the expertise of these foreign attorneys and the need to have these attorneys work from corporate offices here. Pursuant to the June 9, 2015 Notice to the Bar issued by Your Honor seeking public comment on the Report and Recommendations of the New Jersey Supreme Court Special Committee on Attorney Ethics and Admissions, I respectfully submit the following comments.

I commend and fully support the Committee's recommendation that New Jersey join the ranks of 15 of her sister states, including neighbors Delaware and Connecticut, in permitting foreign-educated attorneys to serve as in-house counsel. In 2013, the American Bar Association (ABA) recognized the globalization of the business and legal worlds. Although a number of states have yet to acknowledge this shift, I am pleased that the Special Committee understands the need for the rule amendment. However, I have certain concerns and recommendations about this proposed rule change that I respectfully submit to you today.

First, I suggest that either the Rule or a Comment to the Rule explicitly state that there is no restriction on a foreign attorney, based in New Jersey, advising his corporate client on the laws of the country from which the attorney is licensed. Although the Report does recognize that a "company can assess whether to hire the foreign lawyer to advise it on foreign law," I believe

that, in the interest of clarity, this should be explicitly noted in the Rule or Comment to the Rule. Such language should alleviate any confusion a corporation may have when hiring in-house counsel.

Second, I respectfully disagree with the Special Committee that a "foreign lawyer may not advise a company on United States law." This is a broad statement and, in my opinion and experience, an unnecessary restriction. The ABA's Model Rule permits a foreign attorney to provide its corporate client advice on U.S. law, so long as the advice is based upon the advice of a duly licensed U.S. attorney. The ABA's rule appreciates the unique roles that in-house counsel play. Large, multi-national corporations have business interests across the word and thus must comply with the regulations and laws of numerous countries. In-house counsel are rarely limited to a purely legal role in their respective countries, but instead are hired to provide advice on mixed matters of law and business. The Special Committee's broad restriction would unduly restrict foreign attorneys. For example, if outside counsel provides a foreign-attorney in-house counsel with an update and analysis of a newly passed regulation, the in-house counsel is expected to take this advice and advise the corporate client about the legal and business concerns the new law presents. This is a classic example of mixed legal and business advice. Under the Special Committee's proposed limitation, arguably, the in-house counsel would be engaging in the unauthorized practice of law in this situation. From reading the Report, I do not believe the Special Committee intended to so constrict foreign attorneys. However, such broad language would do just that.

I appreciate that the Special Committee is concerned with foreign attorneys providing advice on U.S. laws without the necessary and rigorous U.S. legal education and licensing requirements. However, I believe Special Committee's recommended limitation overlooks the nature and duties of an in-house counsel. Moreover, as the Special Committee noted, the employers and clients here are corporations. These sophisticated companies can be expected to know how to hire employees best suited for their needs. It simply would not make good business sense to hire in-house counsel, licensed in Germany, for example, to provide legal advice on New Jersey statutes. The unauthorized practice of law rules were designed to protect the public. However, as the New Jersey Committee on the Unauthorized Practice of Law has said, the "corporate employer, who is aware of the qualifications and competency of his attorney-employee, does not require the same protection as the general public, which, when engaging counsel, must often rely solely on the fact that the attorney is a licensed member of the bar." Comm'n on the Authorized Practice of Law, Opinion No. 14, 98 N.J.L.J. 399 (1975).

Accordingly, I respectfully urge the Court to reject the Special Committee's recommended limitation, and instead adopt the ABA's approach to the rule. Under the ABA's rule, there would still be safeguards to maintain the high standards for the legal profession in this State. Foreign attorneys would still be required to register as in-house counsel and have a limited legal role. Moreover, the foreign attorney would not be permitted to provide legal advice on U.S. law *sua sponte*. Instead, all legal advice would originate from a duly licensed attorney.

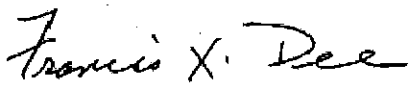
Finally, I recommend that the Rule or Comment to the Rule explicitly state that only those foreign attorneys that will actually be serving as in-house counsel are required to register. This, again, is simply for clarity. In my experience, often the foreign attorney is serving a purely business role for a corporation and should not be required to register. I would also submit that job titles are not determinative as to whether the foreign attorney is actually practicing law. For example, an attorney may have the title "Vice President Law" or "Associate Counsel," but may not actually be practicing law. I recommend that the Court only require registration for the foreign attorneys who actually have at least some legal role. If the Court is concerned that this would create an incentive for companies or foreign attorneys to forgo registration, I respectfully disagree. Neither corporations nor foreign attorneys would want to risk an ethics complaint and/or investigation for the unauthorized practice of law.

I hope the Court finds these concerns and recommendations helpful. In my practice, I have the opportunity to work with the corporations and foreign attorneys who will be most affected by the proposed change. I hope the Court recognizes my experience and insight into the need for this amendment and the practical affects of the limitations of the Special Committee's recommended restriction. Once again, I applaud the Court for moving forward with this amendment and for providing me this opportunity for comment and participation.

Should there be any questions about this proposal or if you believe a meeting to discuss these comments would be productive, please do not hesitate to contact me.

Very truly yours,

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



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