

## TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007

### DIVISION 3. NON-LICENSEE 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~~ **approved** 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 3.400 adopted effective July 1, 2010.*

##### Rule 3.401 Application

- (A) To **apply for approval** ~~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<sup>1</sup> 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;<sup>2</sup>
  - (2) submit an Application for Registered Foreign Legal Consultant<sup>3</sup> with the fee set forth in the Schedule of Charges and Deadlines ~~(the Schedule)~~;
  - (3) **submit a complete moral character application with the fee set forth in the Schedule of Charges and Deadlines, unless the attorney possesses an unexpired California positive moral determination or an application is currently under review; and** ~~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.

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<sup>1</sup> See Rule 4.16(B).

<sup>2</sup> See Rule 4.3(B).

<sup>3</sup> See Rule of Court 9.44.

- (B) An application to practice law as a Registered Foreign Legal Consultant ~~may~~ shall be denied for failure to comply with eligibility or application requirements or a material misrepresentation of fact.
- (C) Upon a showing of undue hardship by the applicant, the State Bar may waive or vary this rule's requirement ~~of~~ for the letter of recommendation attesting to the applicant's professional qualifications.
- (D) An applicant cannot begin practice until their Registered Foreign Legal Consultant application has been approved.

*Rule 3.401 adopted effective July 1, 2010.*

#### 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 imply or claim in any way to be a licensee of the State Bar of California;
- (G) report to the State Bar a change in status within 30 days;
- (H) maintain an address of record and a current e-mail address with the State Bar; and
- (I) otherwise comply with Rule 9.44 and these rules.

*Rule 3.402 adopted effective July 1, 2010; amended effective March 1, 2019.*

#### 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 must be provided in a form acceptable to the State Bar; and
- (B) must be computed in United States dollars.

*Rule 3.403 adopted effective July 1, 2010.*

#### 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 of Charges and Deadlines.
- (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 3.404 adopted effective July 1, 2010.*

#### 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 3.405 adopted effective July 1, 2010.*

#### 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 of Charges and Deadlines for a single claim and for all claims.

- (A) The guarantor must be a California law firm or law corporation, an active licensee

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 3.406 adopted effective July 1, 2010; amended effective March 1, 2019.*

#### 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 3.407 adopted effective July 1, 2010.*

#### 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 renew registration ~~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 or meet the eligibility requirements of Rule 9.44(c) (3), (4), (5), (6), (7), (8), (9), and (10), these rules or with the laws or standards of professional conduct applicable to a licensee of the State Bar.
- (B) A Foreign Legal Consultant suspended under these rules is not permitted to practice law during the suspension.
- (C) A notice of suspension is effective ten days from the date of receipt. **"Receipt" of a document that the State Bar or Committee sends an applicant is: (1) calculated as the date of electronic transmission or five 5 days from the date of mailing to a California address; 10 days from the date of mailing to an address elsewhere in the United States; and 20 days from the date of mailing to an address outside the United States; or (2) when the State Bar or Committee delivers a document physically by personal service or otherwise** ~~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 3.408 adopted effective July 1, 2010; amended effective March 1, 2019.*

#### Rule 3.409 Termination of Registration

- (A) Registration as a Foreign Legal Consultant terminates

- (1) for failure to meet the eligibility requirements of Rule 9.44(c)(1) or Rule 9.44(c)(2);
- (2) upon imposition of discipline for misconduct by a professional or occupational licensing authority;
- (3) upon admission to the State Bar;
- (4) for failure to address all grounds for suspension within six months of notice;
- (5) upon receipt of a negative moral character determination or when an applicant's moral character has been suspended in accordance with State Bar Rule 4.48;
- (6) upon repeal of Rule 9.44 or termination of the Foreign Legal Consultants program; or
- (7) upon request.

- (B) An attorney whose registration has been terminated under these rules is not permitted to practice law in California and must submit a new application and comply with Rules of Court, rule 9.9.5 governing attorney fingerprinting to register as a Foreign Legal Consultant in order to practice law in California.

- (C) A notice of termination is effective ten days from the date of receipt. "Receipt" of a document that the State Bar or Committee sends an applicant is: (1) calculated as the date of electronic transmission or five 5 days from the date of mailing to a California address; 10 days from the date of mailing to an address elsewhere in the United States; and 20 days from the date of mailing to an address outside the United States; or (2) when the State Bar or Committee delivers a document physically by personal service or otherwise. ~~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 termination is subject to the disciplinary procedures of the State Bar.

*Rule 3.409 adopted effective July 1, 2010; amended effective March 1, 2019.*

**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 3.410 adopted effective July 1, 2010.*~~

**Rule 3.410 3.411 Public information**

State Bar records for attorneys ~~permitted~~ **approved** to practice law as Foreign Legal Consultants are public to the same extent as licensee records.

*Rule 3.411 adopted effective July 1, 2010; amended effective March 1, 2019.*