

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 761

Short Title: Foreign Legal Consultants.

(Public)

Sponsors: Representative Hensley.

Referred to: Judiciary I.

April 5, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE LICENSURE OF FOREIGN LEGAL
3 CONSULTANTS AND TO AUTHORIZE FOREIGN LEGAL CONSULTANTS TO
4 ENGAGE IN A LIMITED PRACTICE OF LAW IN NORTH CAROLINA.

5 The General Assembly of North Carolina enacts:

6 Section 1. The General Statutes are amended by adding a new Chapter to read:

7 **"CHAPTER 84A.**

8 **"FOREIGN LEGAL CONSULTANTS.**

9 **"§ 84A-1. License to practice as a foreign legal consultant.**

10 (a) The North Carolina Supreme Court may issue a license to practice in the form
11 of a certificate of registration as a foreign legal consultant to any applicant who satisfies
12 all of the following requirements:

13 (1) Has been admitted to practice as an attorney, or the equivalent thereof,
14 in a foreign country for at least five years as of the date of application
15 for a certificate of registration;

16 (2) Possesses the character, ethical, and moral qualifications required of a
17 member of the North Carolina State Bar;

18 (3) Intends to practice in the State as a foreign legal consultant and intends
19 to maintain an office in the State for this practice;

20 (4) Is at least 21 years of age;

1 (5) Has been actively and substantially engaged in the practice of law or a
2 profession or occupation that requires admission to the practice of law,
3 or the equivalent thereof, in the foreign country in which the applicant
4 holds a license for at least five of the seven years immediately preceding
5 the date of application for a certificate of registration and is in good
6 standing as an attorney, or the equivalent thereof, in that country; and

7 (6) Obtains a certificate of registration as a foreign legal consultant
8 pursuant to G.S. 84A-3.

9 (b) An applicant is not required to take an examination to be licensed under this
10 Chapter.

11 (c) As used in this section, 'foreign country' means any country other than the
12 United States of America. 'Foreign country' includes Puerto Rico, Guam, the Virgin
13 Islands, and the possessions of the United States.

14 **"§ 84A-2. Application for a certificate of registration.**

15 (a) Any person desiring to obtain a certificate of registration as a foreign legal
16 consultant shall file an application, in duplicate, with the North Carolina State Bar on a
17 form prescribed by the North Carolina State Bar. The application shall be made under
18 oath, and shall contain information relating to the applicant's age, residence, address,
19 citizenship, occupation, general education, legal education, moral character, and any
20 other matters requested by the North Carolina State Bar.

21 (b) An applicant shall submit two 2-inch by 3-inch photographs of the applicant
22 showing a front view of the applicant's head and shoulders.

23 (c) The applicant shall submit all fees required by the North Carolina State Bar
24 with the application. Applications that are received without fees or applications that are
25 not substantially complete shall be promptly returned to the applicant, with a notice
26 stating the reasons for returning the application unprocessed and stating any additional
27 fees that the State Bar determines are required as a condition of reapplication.

28 (d) The application shall be accompanied by all of the following documents, and,
29 if any documents are not in English, accompanied by duly authenticated English
30 translations of:

31 (1) A certificate from the authority that has final jurisdiction regarding
32 matters of professional discipline in the foreign country or jurisdiction
33 in which the applicant was admitted to practice law, or the equivalent
34 thereof. This certificate must be signed by a responsible official or one
35 of the members of the executive body of the authority, imprinted with
36 the official seal of the authority, if any, and must certify:

37 a. The authority's jurisdiction in such matters;

38 b. The applicant's admission to practice law, or the equivalent
39 thereof, in the foreign country, the date of admission, and the
40 applicant's standing as an attorney or the equivalent thereof; and

41 c. Whether any charge or complaint ever has been filed with the
42 authority against the applicant, and, if so, the substance of and
43 adjudication or resolution of each charge or complaint.

1 (2) A letter of recommendation from one of the members of the executive
2 body of this authority or from one of the judges of the highest law court
3 or court of general original jurisdiction of the foreign country, certifying
4 the applicant's professional qualifications, and a certificate from the
5 clerk of this authority or the clerk of the highest law court or court of
6 general original jurisdiction, attesting to the genuineness of the
7 applicant's signature.

8 (3) A letter of recommendation from at least two attorneys, or the
9 equivalent thereof, admitted in and practicing law in the foreign
10 country, stating the length of time, when, and under what circumstances
11 they have known the applicant and their appraisal of the applicant's
12 moral character.

13 (4) Any other relevant documents or information as may be required by the
14 North Carolina State Bar.

15 (e) In addition to the documents set forth in subsection (d) of this section, the
16 North Carolina State Bar may require other evidence as to the applicant's education,
17 professional qualification, character, fitness, and moral qualification.

18 (f) Records, papers, and other documents containing information collected or
19 compiled by the North Carolina State Bar or any of its members or employees as a result
20 of any investigation, application, inquiry or interview conducted in connection with an
21 application for a certificate of registration are not public records within the meaning of
22 Chapter 132 of the General Statutes.

23 (g) Reciprocity between North Carolina and the foreign country in which the
24 applicant is licensed is not necessary to be licensed as a foreign legal consultant under
25 this Chapter.

26 **"§ 84A-3. Issuance of a certificate of registration; waiver.**

27 (a) The North Carolina State Bar shall review the statements and the supporting
28 documents contained in an application submitted pursuant to G.S. 84A-2 and shall report
29 the results of their review, with recommendations, to the North Carolina Supreme Court.

30 (b) The North Carolina Supreme Court may issue to an applicant a certificate of
31 registration as a foreign legal consultant.

32 (c) The North Carolina Supreme Court shall not grant a certificate of registration
33 as a foreign legal consultant unless it is satisfied that the applicant possesses good moral
34 character.

35 (d) Upon a showing that strict compliance with all of the provisions of G.S. 84A-2
36 would cause the applicant unnecessary hardship or upon a showing of professional
37 qualifications to practice as a foreign legal consultant satisfactory to the North Carolina
38 Supreme Court, the North Carolina Supreme Court may issue a certificate of registration
39 under this Chapter to an applicant who did not satisfy the provisions of G.S. 84A-2.

40 **"§ 84A-4. Scope of practice.**

41 (a) Subject to the limitations set forth in subsections (b) and (c) of this section, a
42 person licensed as a foreign legal consultant under this Chapter may provide legal
43 services in the State and be compensated for those legal services.

1 (b) A person licensed as a foreign legal consultant shall not engage in any of the
2 following:

- 3 (1) Appear on behalf of another person or entity as the attorney for that
4 person or entity in any legal proceeding or before any judicial officer or
5 State or municipal agency or tribunal.
- 6 (2) Sign or file in the capacity of an attorney any pleadings, motions, or
7 other documents in any legal proceeding or before any judicial officer or
8 State or municipal agencies, or tribunal.
- 9 (3) Prepare any deed, deed of trust, mortgage, option, lease, assignment,
10 agreement or contract of sale, or any other instrument that may affect
11 title to real estate located in the United States.
- 12 (4) Prepare any will or trust instrument affecting the disposition of any
13 property located in the United States and owned by a resident of the
14 United States.
- 15 (5) Prepare any instrument relating to the administration of a decedent's
16 estate in the United States.
- 17 (6) Prepare any instrument affecting the marital relationship, rights, or
18 duties of a resident of the United States or affecting the custody or care
19 of the children of such a resident.
- 20 (7) Render professional legal advice regarding State law, the laws of any
21 other state, the laws of the District of Columbia, the laws of the United
22 States or the laws of any foreign country other than the country in which
23 the foreign legal consultant is admitted to practice as an attorney or the
24 equivalent thereof.
- 25 (8) In any way represent that the foreign legal consultant is licensed as an
26 attorney in the State or in any other jurisdiction unless he or she is
27 licensed in that jurisdiction.
- 28 (9) Use any title other than 'foreign legal consultant'; provided, however,
29 that the foreign legal consultant's authorized title and firm name in the
30 foreign country in which he or she is admitted to practice as an attorney
31 or the equivalent thereof, may be used, if the title, firm name, and the
32 name of the foreign country are stated together with the title 'foreign
33 legal consultant'. Nothing may be added to the title to create the
34 impression that the foreign legal consultant holds a license to practice
35 law in North Carolina.
- 36 (10) Be hired by a firm as a partner, member, or in any capacity other than as
37 a foreign legal consultant whose services shall be overseen by an
38 attorney licensed to practice law in North Carolina.

39 (c) If a particular matter requires legal advice from a person admitted to practice
40 law as an attorney in a jurisdiction other than the one in which the foreign legal
41 consultant is admitted to practice law, or its equivalent thereof, then the foreign legal
42 consultant shall consult an attorney, or the equivalent thereof, in that other jurisdiction,

1 obtain written legal advice on the particular matter, and transmit the written legal advice
2 to the client.

3 **"§ 84A-5. Duties of a foreign legal consultant.**

4 A foreign legal consultant shall:

- 5 (1) Be subject to rules adopted by the North Carolina Supreme Court and
6 the North Carolina State Bar and be subject to professional discipline in
7 the same manner as is prescribed for disciplinary proceedings against
8 attorneys;
- 9 (2) Be subject to a proceeding brought by the North Carolina State Bar in
10 superior court pursuant to G.S. 84-28(j) to protect the interests of clients
11 of disabled, incapacitated, or deceased foreign legal consultants;
- 12 (3) Provide the Clerk of the North Carolina Supreme Court with evidence
13 of professional liability insurance, in an amount as prescribed by the
14 Supreme Court to assure the foreign legal consultant's proper
15 professional conduct and responsibility;
- 16 (4) Subject his or her trust accounts to audit in the same manner as is
17 prescribed for attorneys licensed to practice law in North Carolina;
- 18 (5) Execute and file with the Clerk of the North Carolina Supreme Court, in
19 a form and manner as prescribed by the Clerk:
- 20 a. An oath attesting that the foreign legal consultant will abide by
21 the Rules of Professional Conduct of the North Carolina State
22 Bar and those rules and directives of the North Carolina Supreme
23 Court that are applicable to foreign legal consultants;
- 24 b. A document setting forth the foreign legal consultant's address in
25 the State and designating the Clerk of the North Carolina
26 Supreme Court as agent upon whom process may be served, with
27 the same effect as if served personally upon the foreign legal
28 consultant in any judicial, quasi-judicial, or administrative
29 proceeding brought against the foreign legal consultant arising
30 out of or based upon any legal services rendered or offered to be
31 rendered by the foreign legal consultant within the State or to
32 residents of the State; and
- 33 c. The foreign legal consultant's commitment to notify the Clerk of
34 the North Carolina Supreme Court of any resignation or
35 revocation of the foreign legal consultant's admission to practice
36 law, or the equivalent thereof, in the foreign country in which he
37 or she is admitted to practice as an attorney, or the equivalent
38 thereof, and of any censure, suspension, reprimand, or expulsion
39 with respect to that admission, or of any change of address within
40 the State.
- 41 (6) Pay an annual administration fee to the North Carolina State Bar equal
42 in amount to the annual membership fee charged to active members of
43 the North Carolina State Bar. Such fee shall be due on January 1 and

1 delinquent on July 1 for each year or portion of a year in which the
2 foreign legal consultant holds a certificate of registration. No portion of
3 the annual administrative fee shall be waived or prorated. The State
4 Bar's rules and regulations regarding enforcement and collection of
5 annual membership fees shall apply to the enforcement of the obligation
6 to pay the administrative fee; and

7 (7) The North Carolina State Bar is authorized to adopt and amend such
8 rules, subject to approval of the North Carolina Supreme Court, as are
9 appropriate to accomplish the provisions of this chapter.

10 **§ 84A-6. Service of process on foreign legal consultant.**

11 Service of process on the Clerk of the North Carolina Supreme Court, pursuant to this
12 Article, shall be made by personally delivering to and leaving with the Clerk duplicate
13 copies of such process together with a fee of ten dollars (\$10.00). The Clerk shall
14 promptly send one of such copies to the foreign legal consultant to whom the process is
15 directed, by certified mail, return receipt requested, addressed to the foreign legal
16 consultant at the address specified by the foreign legal consultant in his or her application
17 under G.S. 84A-2, as updated pursuant to G.S. 84A-5(4).

18 **"§ 84A-7. Delegation of duties.**

19 The North Carolina State Bar may delegate any of its duties under this Chapter to the
20 North Carolina Board of Law Examiners."

21 Sec. 2. This act becomes effective January 1, 1996, and applies to applications
22 filed on or after that date.