

CONFERENCE OF CHIEF JUSTICES

Resolution 2

In Support of Regulations Permitting Limited Practice by Foreign Lawyers in the United States to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice

WHEREAS, the United States is the world's largest national economy and leading global trader;
and

WHEREAS, since World War II, the opening of world markets and the expansion of
international trade has increased real incomes in the United States by 9%; and

WHEREAS, 49 out of 50 states exported more than one billion dollars worth of goods in 2013;
and

WHEREAS, the globalization of commerce naturally increases the need for and provision of
legal services across international borders; and

WHEREAS, the interests of organizations and individuals in the United States are served by
access to legal experts in the laws of foreign countries; and

WHEREAS, the Council of Bars and Law Societies of Europe has recommended to the
negotiators of the pending Transatlantic Trade and Investment Partnership Agreement (a
United States-European Union free trade agreement known as the "TTIP") that, with
respect to legal services, duly licensed European lawyers be allowed certain practice
privileges in the United States; and

WHEREAS, in addition to the TTIP, the United States is actively negotiating several multilateral
trade-in-services agreements that, if adopted, will likely boost the need for cross-border
legal practices in both the United States and the foreign trade partner countries; and

WHEREAS, in an effort to develop lawyer regulations that promote both quality service and
high ethical standards, the Conference of Chief Justices adopted Resolution 11 (January 29,
2014) encouraging states to "consider the 'International Trade in Legal Services and
Professional Regulation: A Framework for State Bars Based on the Georgia Experience'
(Updated January 8, 2014) as a worthy guide for their own state endeavors to meet the
challenges of ever-changing legal markets and increasing cross-border law practices"; and

WHEREAS, it is increasingly necessary to proactively address the complex issues that arise from legal market globalization and cross-border legal practice involving domestic lawyers seeking to meet their clients' needs abroad and foreign lawyers seeking to meet their clients' needs in the United States; and

WHEREAS, the American Bar Association, after making studious efforts to balance client protection and the public interest, has endorsed several model policies with respect to foreign lawyers practicing in the United States; and

WHEREAS, although the Conference of Chief Justices has expressed its support for these ABA policies, not all jurisdictions have considered each of these policies;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices strongly encourages its members to adopt explicit policies that permit the following qualified activities by foreign lawyers as a means to increase available legal services and to facilitate movement of goods and services between the United States and foreign nations:

- 1) Temporary practice by foreign lawyers (ABA Model Rule for Temporary Practice by Foreign Lawyers),
- 2) Licensing and practice by foreign legal consultants (ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants),
- 3) Registration of foreign-licensed in-house counsel (ABA Model Rule of Professional Conduct 5.5),
- 4) *Pro hac vice* appearance in pending litigation in a court or agency by licensed foreign lawyers (ABA Model Rule for *Pro Hac Vice* Admission),
- 5) Foreign lawyer participation in international arbitration or mediation, as counsel, arbitrator, or mediator (ABA Model Rule for Temporary Practice by Foreign Lawyers and ABA Policy Favoring Recognition of Party Freedom to Choose Representatives Not Admitted to Practice Law),
- 6) Formal professional association between foreign and United States lawyers who are duly licensed in their home country (ABA Model Rule of Professional Conduct 5.4 and ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants allow such association), and
- 7) Foreign lawyer employment of United States lawyers and United States lawyer employment of foreign lawyers who are duly licensed in the United States as a foreign legal consultant or in their home country (ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants provides that locally licensed lawyers may be employed by a law firm based in another country (or lawyer based in another country)).

Adopted as proposed by the CCJ Task Force on the Regulation of Foreign Lawyers and the International Practice of Law at the CCJ Midyear Meeting on January 28, 2015.