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CLERK OF SUPREME COURT
OF WISCONSIN

April 24, 2017

Commissioner Julie Anne Rich
Office of Court Commissioners
110 E. Main Street
Suite 440
Madison, WI 53703

Dear Commissioner Rich:

On April 21, 2017, the Board of Bar Examiners (Board) considered rule petition 16-09 filed on November 25, 2016, by the Stockbridge-Munsee Community. As you know, the petition seeks to allow legal services provided by a federally recognized Indian tribe to be "counted" for purposes of SCR 40.05 (1) (b) as long as the applicant provides proof of bar admission from the state in which that tribe is located.

Although the Board does not object to permitting legal services that are provided to a federally recognized Indian tribe to be "counted" towards a person's proof of practice as provided in SCR 40.05, it does believe that a modification to the proposal is in order. More specially, the Board would amend the language as follows:

SCR 40.05 Legal competence requirement: Proof of practice.

(1) An applicant shall satisfy the legal competence requirement by presenting to the clerk certification of the board that the applicant has provided all of the following:

(a) Proof of admission to practice law by a court of last resort in any other state or territory or the District of Columbia.

(b) Proof that the applicant has been substantially engaged in the practice of law in a state or territory, the federal government or the District of Columbia, **or a federally recognized Indian tribe** for 3 years within the last 5 years prior to filing application for admission. A lawyer may satisfy this requirement by proof of practice in more than a single jurisdiction and under more than one provision of this rule.

(2) Legal service as corporate counsel or legal service as a trust officer, or lawfully before the courts or administrative agencies of a state or territory, the federal government or the District of Columbia, if conducted in compliance with the rules where the applicant was admitted to practice law, is the practice of law for the purposes of this section.

Board: Steven M. Barkan, Chairperson, Madison; Judith G. McMullen, Vice Chairperson, Milwaukee; Patrick Delmore, Madison; Blake J. Duren, Reedsburg; Patricia Evans, Madison; Mark R. Fremgen, Madison; Jesus Garza, Madison; Kimberly Haas, Mosinee; Marc A. Hammer, Green Bay; Steven Levine, Madison; Sally M. Younger, Madison

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(2m) Legal service as corporate counsel in Wisconsin under SCR 10.03 (4) (f) is the practice of law for the purposes of sub. (1) (b). Provided a timely registration is filed, all such service conducted prior to filing the registration may be counted for purposes of sub. (1) (b).

(3) The following activities, whether or not conducted in a state or territory, the federal government or the District of Columbia where the applicant was admitted to practice law, may be deemed to be the practice of law for the purposes of sub. (1) (b):

(a) Service as a judge of a court of record of the United States, any state or territory or the District of Columbia.

(b) Legal service with any local or state government or with the federal government.

(c) Legal service in the armed forces of the United States.

(d) Teaching in any law school approved by the American bar association.

(e) Legal service with any federally recognized Indian tribe.

(4) An applicant who has failed the Wisconsin bar examination shall not be eligible for admission on proof of practice elsewhere.

The Board believes that these modifications are necessary in order to ensure that legal services that are provided to federally recognized Indian tribes are able to count towards the proof of practice requirements as found in SCR 40.05. In particular, these modifications would make clear that applicants would have to be admitted to practice law by a court of last resort, that they were substantially engaged in the practice of law, and that they had provided legal services for a federally recognized Indian tribe. With these modifications, the Board would support a change to SCR 40.05.

Thank you for your consideration. Should you have any questions about this matter, please feel free to contact me.

Very truly yours,

Jacquelynn B. Rothstein
Director

cc: Carrie Janto