

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Transaction ID 28299458
Case No. 4705-VCL



J. TRAVIS LASTER
VICE CHANCELLOR

New Castle County Courthouse
500 N. King Street, Suite 11400
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December 2, 2009

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RE: *State Line Ventures, LLC, et al. v. RBS Citizens, N.A.*
C.A. No. 4705-VCL

Dear Counsel:

Mr. Weiner wrote to me by letter dated November 25, 2009, to inquire whether I would permit "substitute local counsel" to attend a hearing in light of Mr. Weiner's trial schedule. I am told that Mr. Fellheimer, an attorney who is Mr. Weiner's forwarding counsel and who has been admitted *pro hac vice*, will be arguing the motions.

Whom a party chooses as its counsel is a matter for the party to decide. I decline to offer an advisory opinion on counsel selection.

Because the letter uses the phrase "local counsel," I believe it important to make clear that the Court of Chancery does not recognize the role. I am certainly familiar with the term, and I know well that it is often used colloquially as if it were synonymous with "Delaware counsel." It is not. Our rules make clear that the Delaware lawyer who appears in an action always remains responsible to the Court for the case and its presentation. *See* Ct. Ch. R. 170(b) ("The admission of an attorney *pro hac vice* shall not relieve the moving attorney from responsibility to comply with any Rule or order of the Court."). So do the Principles of Professionalism for Delaware Lawyers.

It is of course true that Delaware counsel and forwarding counsel necessarily allocate responsibility for work, and that in some cases, the allocation may be heavily weighted towards forwarding counsel. It is also true that forwarding counsel may have primary responsibility for a matter from the client's perspective, particularly if the Delaware litigation is one part of a larger picture. This is perfectly understandable,

efficient, and appropriate. But it does not alter the Delaware lawyer's fundamental responsibility for the Delaware proceeding. A Delaware lawyer always appears as an officer of the Court and is responsible for the positions taken, the presentation of the case, and the conduct of the litigation.

If a Delaware lawyer signs a pleading, submits a brief, or signs a discovery request or response, it is the Delaware lawyer that takes the positions set forth therein. This is true regardless of who prepared the initial draft or how the underlying work was allocated.

When a particularly questionable argument was made in the briefing, I have not hesitated to ask the **Delaware** lawyer at the hearing how the argument possibly could be advanced, regardless of whether forwarding counsel was designated to make the argument. This is a practice that I will continue (though I expect the occasions for it to be rare). It is the Delaware lawyer's responsibility to ensure that the arguments being made are appropriate. A Delaware lawyer cannot abdicate his or her obligations or cede them to forwarding counsel.

In offering these comments, I am not intimating any concern about the performance of any Delaware lawyer who might be seconded to assist Mr. Weiner while he is in trial. I am confident that if someone is chosen to assist Mr. Weiner by acting as additional Delaware counsel, that lawyer will do so in full compliance with this Court's rules and its expectations for members of the Delaware bar.

Very truly yours,

/s/ J. Travis Laster

J. Travis Laster
Vice Chancellor