Maryland State Bar Association

International Law Committee of the Business Law Section

REPORT OF THE TASK FORCE ON

NON-U.S. QUALIFIED LAWYERS PRACTICING IN MARYLAND

November 1, 2016

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In April 2015, Chief Judge Mary Ellen Barbera (Court of Appeals of Maryland) sent a letter to Judge Alan M. Wilner (of the Rules Committee). Chief Judge Barbera requested that the Rules Committee advise of their thoughts regarding the practice of non-U.S. qualified lawyers in Maryland (hereinafter "**foreign lawyers**"). At a meeting on July 21, 2015, this issue was discussed in greater length at a meeting chaired by Judge Wilner and attended by others within the Maryland Bar, including Jeff Shipley (Secretary to the State Board of Law Examiners) and representatives of the Maryland State Bar Association ("**MSBA**") designated by its then-President, Judge Pamila Brown. Ultimately, it was determined that the recommendations of the International Law Committee of the MSBA would be welcomed on this issue. The International Law Committee, however, was inactive.[1]

In Fall 2015, the MSBA reconstituted the Committee and asked Alexander Koff to serve as its Chair. James M. Peppe agreed to serve as Vice-Chair. In January 2016, the Chair and Vice-Chair wrote to Judge Wilner and Alvin Frederick requesting additional time to consider this important issue. Since then, the Committee organized a Task Force to research and address the issue.[2]

Working collegially, the Task Force ultimately drafted this report on the issue of whether – and, if so, under what circumstances – foreign lawyers should be permitted to practice in Maryland. For the reasons articulated herein, the Task Force respectfully recommends the following:

(1) Maryland should allow foreign lawyers to gain "foreign legal consultant" status within the state (following the practice in over 30 other U.S. states).

(2) The specifics for implementing how this should be accomplished should be done through the Rules Committee (or another appropriate entity) with reference to the ABA Model Rule.

(3) The foreign lawyer should demonstrate being a member in good standing of the legal profession in her or his home country and limit any U.S. practice to the subject matter and experience developed in her or his home country over the last 5 to 7 years.

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[1] Prior to becoming an At-Large member of the MSBA Law Section, Richard Sternberg chaired the International Law Committee for eight years and served as its Vice-Chair for an additional year. The Task Force appreciates his many years of dedicated service in these roles.

[2] A complete listing of the members of the Task Force is included at Exhibit A.

I. BACKGROUND

As a first step to drafting a comprehensive report that would enable specific recommendations, the Task Force conducted research addressing five discrete areas: (1) the treatment of foreign lawyers under U.S. State laws (focusing on Maryland, specifically, as well as other jurisdictions); (2) the model rules approved and adopted by the American Bar Association ("**ABA Model Rules**") addressing the licensing or temporary practice of foreign lawyers in the United States; (3) the resolution adopted by the Conference of Chief Justices ("**CCJ**") in support of regulations permitting the limited practice by foreign lawyers in the United States; (4) issues raised in Annex 10-A of the Trans-Pacific Partnership Agreement ("**TPP Agreement**") regarding the provision of legal services; and (5) how countries other than the United States handle the issue of foreign lawyers practicing in their jurisdiction. The Task Force's findings on these five areas are detailed as follows:

A. State Laws

i. Maryland

In general, whether it be on a temporary or permanent basis, Maryland law makes a lawyer educated solely in a non-U.S. law school ineligible to sit for the Maryland Bar Exam. Whether the person is admitted to practice law in a country other than the United States ("**a foreign lawyer**") is not relevant to the inquiry.[3] Under certain circumstances, however, foreign lawyers are entitled to practice law in Maryland in a limited capacity. These limited circumstances include: (a) admission by discretionary waiver; (b) admission by way of attorney examination; (c) special admission *pro hac vice*; (d) admission for legal services programs; (e) special authorization for military spouse attorneys; and, (f) allowing for multi-jurisdictional practice. The exceptions to the general rule are discussed in greater detail below; however, almost all require that the foreign lawyer must first be admitted to practice law in another U.S. state.[4]

a. Discretionary Waiver of the Board

Rule 19-201(b) of the Admission Rules grants the Board of Law Examiners of the State of Maryland (the "**Board**") the discretion to waive the requirements of Admission Rule 19-201(a)(2).[5] The

[3] The Rules Governing Admission to the Bar of Maryland (the "**Admission Rules**") stipulate that an applicant for admission to the Maryland State Bar must have graduated or be unqualifiedly eligible for graduation from an American Bar Association ("**ABA**") approved law school located in a U.S. state. *See* Exhibit B for Admission Rule 19-201(a)(2). *See also* Admission Rule 19-201(a)(1) (requiring that an applicant for admission to the Maryland Bar must have completed the pre-legal education necessary to meet the minimum requirements for admission to an ABA approved law school).

[4] The term "U.S. state" is defined broadly in Rule 19-101(k) of the Admission Rules to include any U.S. state, possession, territory, or commonwealth of the United States, including the District of Columbia.

[5] *See* Exhibit B.

Board has such discretion only if the foreign lawyer is (i) a member of good standing of the bar of another U.S. state and is, in the Board's opinion, "qualified by reason of education or experience to take the bar examination," or (b) admitted to practice in a non-U.S. jurisdiction *and* has obtained an additional degree from an ABA and Board-approved U.S. law school.

b. Admission by Way of Attorney Examination

The foreign lawyer may be eligible to sit for the Out-of-State Attorney examination in Maryland, but such eligibility requires – among other things – that the foreign lawyer first be admitted to practice law in another U.S. state.[6]

c. Special Admission *Pro Hac Vice*

In Maryland, a foreign lawyer who is a member of the bar of another U.S. state is eligible for admission *pro hac vice*; however, such foreign lawyer must first be admitted to practice law in another U.S. state.[7]

d. Admission for Legal Service Programs

A foreign lawyer who is employed by or associated with an organized legal services program that is sponsored or approved by Legal Aid Bureau, Inc. may practice in Maryland if certain conditions are met; however, such foreign lawyer must first be admitted to practice law in another U.S. state.[8]

e. Special Authorization for Military Spouse Attorneys

A foreign lawyer who is a military spouse attorney may practice in Maryland if certain conditions are met; however, such foreign lawyer must first be admitted to practice law in another U.S. state.[9]

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[6] With limited exception, the Admission Rules require that a foreign lawyer must be admitted to the bar of another U.S. state prior to being permitted to sit for the Maryland Bar Exam, a necessary prerequisite to being licensed to practice law in the State of Maryland. *See* Exhibit B for Admission Rule 19-212(b); *see also* the Maryland Lawyer's Rules of Professional Conduct (the "**RPC**") at Exhibit C (RPC 5.5 addresses the unauthorized practice of law and multijurisdictional practice of law). Admission Rule 13 requires not only that the foreign lawyer be a member of the Bar of a U.S. state but also that such person pass a written bar examination in a state.

[7] *See* Exhibit B for Admission Rule 19-214 ("A member of the Bar [of Maryland] … may move ... that an attorney who is a member in good standing **of the Bar of another [U.S.] state** be admitted to practice [*pro hac vice*].") (Emphasis added.)

[8] *See* Exhibit B for Admission Rule 19-215 ("**[a] member of the Bar of another state** who is employed by or associated with an organized legal services program … may practice in this State …") (Emphasis added.) Admission Rule 19-215 requires not only that the foreign lawyer be a member in good standing of the Bar of a U.S. state but also that the person be a graduate of a law school meeting the requirements of Admission Rule 19-201(a)(2).

[9] *See* Exhibit B for Admission Rule 19-216(b) (requiring, among other things, that the military spouse attorney "is a member in good standing of the Bar of another state"). Admission Rule 19-201(a)(2) requires not only that the foreign lawyer be a member in good standing of the Bar of a U.S. state but also that such person be a graduate of a law school meeting ABA and Board requirements.

f. Allowing for Multi-Jurisdictional Practice

RPC Rule 5.5(c) and (d) address the multijurisdictional practice of law issues. RPC Rule 5.5(c) permits the temporary practice in Maryland for certain activities, including arbitration or mediation services or other legal services reasonably related the lawyer's practice and for which *pro hac vice* admission is not required. RPC Rule 5.5(d) permits the practice in Maryland for other activities, including the services a lawyer is authorized to provide by federal law and the provision of legal services to one's employer for which *pro hac vice* admission is not required. Both paragraphs (c) and (d), however, require that such foreign lawyer must first be admitted to practice law in another U.S. state.[10]

ii. Other U.S. States

Since 2010, thirty-two U.S. states have had at least one lawyer educated solely in a non-U.S. law school sit for the bar exam and ultimately be accepted to full admission in that jurisdiction. Besides permitting foreign lawyers to sit for the bar exam, there are several approaches that other U.S. states employ to authorize and govern the practice of foreign lawyers. Many of these overlap with those used by Maryland, as discussed in greater detail *supra*. These approaches include: (a) the foreign legal consultant rule; (b) permitting temporary transactional work by foreign lawyers as well as participation in arbitration or mediation proceedings; (c) permitting foreign lawyers to apply for *pro hac vice* admission; and (d) permitting foreign lawyers to act as in-house counsel. In total, thirty-nine states permit at least one of these practices.[11]

a. Foreign Legal Consultant Rules (33 States)

The most common means by which U.S. states permit foreign lawyers to practice is by allowing foreign lawyers to gain "foreign legal consultant" status within the state.[12] Without exception, the foreign legal consultant rules require that the foreign lawyer demonstrate being a member in good standing of the legal profession in the home country and, if approved by the U.S. state, agree to limit any U.S. practice to the subject matter and experience developed in the home country.[13] Additionally, these statutes generally require that foreign legal consultants do not represent themselves as being a member of the state bar in which they practice or advise or prepare documents related to U.S. real estate, wills and trusts, family law,

[10] RPC Rule 5.5(c) and (d) both state, "A lawyer admitted in another United States jurisdiction …"

[11] *See* Exhibit D for a table showing the popularity and frequency of each approach. The table was prepared by adopting information collected by the ABA Center for Professional Responsibility.

[12] These statutes are all similar to the ABA Model Rule, with minor exceptions.

[13] The amount of time she must have been a member in good standing varies from no minimum requirement (e.g., Washington, D.C.) to the past 5 years (e.g., Colorado), but the most common requirement is 5 of the past 7 years.

or state or federal law.[14]

i. Documentation

Typically a lawyer applying for foreign legal consultant status needs to submit significant documentation to the overseeing body (either the highest court of the state or the state bar association). This may include recommendations from foreign and local attorneys, a recommendation from the body that has final jurisdiction over professional discipline in the foreign country, and certain educational records. Many U.S. state rules include hardship waivers, which provide discretion to the court or U.S. state bar to reduce or vary the documentation requirements if strict adherence is impracticable.

ii. Fees and Discipline

Application fees do not necessarily mirror those assessed for those applying to become full members of the U.S. state bar. They range from one-time or recurring fees of $100 to more than $1000. Generally foreign legal consultants are subject to the same professional discipline rules as barred attorneys. In some U.S. states, they must declare an agent for service of process. Additionally, some state rules contain revocation clauses that outline the means by which the governing body may revoke a foreign legal consultant's license, such as for violating the applicable rules of professional conduct in the United States or the home country.

iii. Less Common: Reciprocity Policies and Age Requirements

Fifteen of the U.S. state foreign legal consultant rules contain reciprocity provisions. These provisions provide that if a foreign applicant's home country does not allow U.S.-barred attorneys to practice in the home country as foreign legal consultants, the applicant's U.S. state bar or court has the discretion (and, in one case, the obligation) to deny that foreign lawyer applicant admission based on the non-reciprocity reason alone. Finally, sixteen states include minimum age requirements, which range from eighteen to twenty-six.

iv. In-House Counsel (20 States)

Twenty states permit foreign lawyers to serve as in-house counsel for corporations and other organizations located in their jurisdiction. Of these U.S. states, there are two basic approaches to approving foreign lawyer in-house counsel. Fourteen of these U.S. states require foreign lawyer in-house counsels to apply for "authorization to practice," with the range of requirements mirroring the requirements placed on

[14] *See* Exhibit E for the full text of the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants.

foreign legal consultants. The remaining six jurisdictions[15] that do not require registration permit in-house counsels to practice under a statutory carve-out in the rules that specifically delineates the unauthorized practice of law in that state pursuant to ABA Rule 5.5(d).

b. Rules Explicitly Permitting Temporary Practice (11 States)

Many states permit foreign lawyers to practice temporarily under certain circumstances. Most states have adopted verbatim, or nearly verbatim, the ABA Model Rule for *Temporary Practice by Foreign Lawyers* as well as the ABA Model Rule 5.5 *Unauthorized Practice Of Law; Multijurisdictional Practice Of Law.* Typically each state's version appears under that state's provision governing the unauthorized practice of law. Together, these rules provide certain narrow circumstances under which foreign lawyers may practice law in a U.S. state jurisdiction.[16] Pursuant to these Model Rules, to practice law in an adopting state, foreign lawyers must be admitted to practice in their foreign jurisdiction, must be in good standing in their home jurisdiction, and may be authorized to perform limited legal services on a temporary basis under one of the following five circumstances:

- The foreign lawyer provides legal services on a temporary basis in association with an attorney admitted in that state who actively participates in the matter;
- The work is reasonably related to a proceeding in the foreign lawyer's home jurisdiction or to a matter that has a substantial connection to the home jurisdiction;
- The services are reasonably related to a pending alternate dispute resolution matter if there is a nexus to the lawyer's practice in the lawyer's home jurisdiction;
- The services are for a client who resides or has an office in the foreign lawyer's home jurisdiction; and
- The services are governed primarily by international law or the law of a non-US jurisdiction.

c. *Pro Hac Vice* (16 States)

Finally, sixteen states permit foreign lawyers to apply to practice *pro hac vice* without requiring them to be licensed in another state.[17] All states permitting *pro hac vice* practice have adopted the ABA Model Rule on *Pro Hac Vice Admission* verbatim or nearly verbatim.[18] The ABA Model Rule on *Pro Hac*

[15] Washington, D.C.; Georgia; Montana; North Carolina; New Hampshire; and West Virginia.

[16] Exhibit F contains the full text of the ABA Model Rule for *Temporary Practice by Foreign Lawyers*. Exhibit G contains the full text of the ABA Model Rule 5.5 *Unauthorized Practice Of Law; Multijurisdictional Practice Of Law*.

[17] *See supra* at Part I.A.i.c for a discussion regarding Maryland's *pro hac vice* rule, which requires admission in another U.S. state.

[18] *See* Exhibit H to this report for the full text of the section the ABA Model Rule on *Pro Hac Vice Admission* governing out-of-state or foreign lawyers.

Vice Admission provides that a court or agency has discretion to admit a foreign lawyer to practice solely before the court or agency for a particular court case, hearing, or arbitration.[19]

i. Application Process

The application process for *pro hac vice* admission for a foreign lawyer mirrors that of an out-of-state lawyer. The foreign lawyer must provide a history of practice in the United States and abroad, demonstrate good standing, affirm familiarity with the relevant U.S. state rules of professional conduct, and, in some states, provide consent from an in-state lawyer to accept service of any documents by a party or disciplinary counsel upon the foreign lawyer on his behalf.[20] Application fees (waived for *pro bono* matters) vary from $0 (in New York) to $600 (in Maine), with an average fee of approximately $260 nationwide.

ii. Admission Factors

U.S. state *pro hac vice* rules require a court or agency to consider certain factors when determining whether or not to permit a foreign lawyer to appear in a particular proceeding (some of which overlap). These factors include, but are not limited to:

- if the foreign lawyer's potential clients might receive inadequate representation from the foreign lawyer and cannot appreciate the risk;
- if foreign lawyer has practiced in the state frequently;
- the foreign lawyer's legal training and expertise; and,
- the extent to which the matter involves foreign or international law under the expertise of the foreign lawyer.

iii. Scope of Practice

Under these rules, if a foreign lawyer is admitted *pro hac vice*, the applicant may be admitted to practice only in a defined role as a lawyer, advisor, or consultant with an in-state lawyer, and the foreign lawyer may not be held out as a member of the U.S. state's bar. Furthermore, *pro hac vice* practice is, in every U.S. state, limited to the particular matter for which the foreign lawyer was admitted. Finally, at its discretion, a court or agency may limit the activities of the foreign lawyer or require specific action to be taken by the accompanying in-state co-council (such as signing all pleadings submitting to the court or agency).

[19] See *supra* at Part I.A.i.c for a discussion regarding Maryland's version of *pro hac vice* practice.

[20] Exhibit H contains a complete list of admission factors (listed at Appendix A of the Model Rule).

B. Foreign Lawyer Practice and the ABA Model Rules

Through its Model Rules, the American Bar Association ("**ABA**") issued many important recommendations endorsing the limited practice of law in the United States by foreign lawyers.

i. 1993 Model Rules

In 1993, the ABA adopted its *Model Rule for the Licensing of Legal Consultants*[21] ("**1993 Model Rules**") to address the work of foreign lawyers who generally were not permitted to engage in the practice of law in the United States.

a. General Regulations

Generally, the 1993 Model Rules allow courts to grant foreign lawyers a "license to practice" in the adopting U.S. state "as a legal consultant" "without examination" if the applicant is a "member in good standing of a recognized legal profession in a foreign country," is "actually … engaged in the practice of law" in a foreign country, and is subject to "effective regulation and discipline," for "at least five of the seven years immediately preceding" the application. Additional criteria include possessing the required moral character and general fitness, being at least twenty-six years of age, and having the expressed intention to practice law and maintain a law office in the U.S. state of application.

b. Application Process

Under the 1993 Model Rules, foreign lawyer applicants are required to file several documents prior to licensing. These documents include: a certificate from the foreign jurisdiction certifying the applicants good standing to practice law; a letter of recommendation from an esteemed legal authority, such as "one of the judges of the highest law court" or from a member of the "executive body" of the organization governing professional discipline; a translation of those certificates; and letters and "other evidence" of educational, professional and moral standing – though the Model Rules do not provide specific categories of evidence it would deem sufficient.

c. Prohibited Legal Services

The fourth section of the 1993 Model Rules outlines a list of prohibited legal services that a foreign legal consultant who is permitted to practice under the rules may not perform in that capacity. According to this section, legal consultants may not: appear for a person other than himself or herself, unless admitted *pro hac vice*; prepare instruments relating to the transfer of real estate located in the United States; prepare any will, trust, or instrument effecting the disposition of property located in the United States or relating to

[21] Exhibit E contains the full text of the ABA Model Rule *for the Licensing and Practice of Foreign Legal Consultants*.

the administration of an estate in the United States; prepare any instrument relating to marital or parental rights of U.S. residents, or the custody or care of children of U.S. residents; render legal advice on the laws of the relevant U.S. state or the United States except on the basis of advice from a person qualified in a manner other than the 1993 Model Rules; or hold him- or herself out as a member of the bar of the U.S. state. Section four also requires foreign legal consultants to carry on their practice using their own name, the name of the affiliated law firm, their title in the foreign jurisdiction of admission, and the title "legal consultant."

d. Right, Obligations & Discipline

The fifth section of the Rule indicates that legal consultants remain subject to the rights and obligations of the State's Rules of Professional Conduct, as well as the rights and obligations of all bar members, including the attorney-client, work-product, and similar professional privileges.[22] The Rule also includes disciplinary measures that may be taken against foreign legal consultants, indicating that a legal consultant is subject to the same professional discipline applicable to other members of the bar. Accordingly, a court of an adopting jurisdiction is permitted to censure, suspend, remove, or revoke a legal consultant's license to practice.[23]

ii. 2002 Model Rules

In 2002, the ABA adopted its *Model Rule for Temporary Practice by Foreign Lawyers* ("**2002 Model Rules**").[24] The 2002 Model Rules outline certain circumstances under which foreign lawyers, not barred in the United States, may be authorized to practice law in a U.S. state.[25]

Under the 2002 Model Rules, a foreign lawyer may practice law as an employee of an institutional client, such as a corporation or government entity, to render legal services to the client or its organizational

[22] The foreign legal consultant is also required to file with the court a commitment to follow the rules of professional conduct and to inform the court of any change in the legal consultant's good standing in the foreign jurisdiction.

[23] Section 8 permits the court to revoke a legal consultant's license if the person is shown not to be a member of good standing of the foreign jurisdiction or if the individual does not possess good moral character and requisite general fitness.

[24] The ABA amended Rule 5.5 on February 8, 2016. At the time of drafting this report, Maryland has yet to fully consider or adopt these amendments. *See* Exhibit G for a copy of the *ABA Model Rule of Professional Conduct 5.5 – Unauthorized Practice Of Law; Multijurisdictional Practice Of Law*. This report does not fully examine this propose rule; however, if Maryland were to adopt Rule 5.5 as proposed, a foreign lawyer could lawfully establish an office or a "systematic and continuous presence" in Maryland "for the practice of law" both as an in-house counsel or to provide clients legal services related to U.S. federal law.

[25] Under the 2002 Model Rules, foreign lawyers are defined as a "member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulations and discipline by a duly constituted professional body or a public authority."

affiliates (but not its officers or employees).[26] When advising on domestic law in this capacity, a foreign lawyer of this kind is required to base his or her advice on the advice of a lawyer licensed and authorized by the jurisdiction to provide it. Furthermore, a foreign lawyer acting as in-house-counsel may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

A foreign lawyer may also practice law in a U.S. state that adopts the 2002 Model Rules if that lawyer is authorized by federal or other law, including statutes, court rules, executive regulation, or judicial precedent to do so.

Foreign lawyers practicing in Maryland under the 2002 Model Rules would be subject to the disciplinary authority of Maryland. In some circumstances – particularly where the representation occurs primarily in Maryland and requires knowledge of Maryland law – the foreign lawyer may have to inform the client that the lawyer is not licensed to practice law in Maryland. Similarly, foreign lawyers who practice under the 2002 Model Rules are not permitted to advertise legal services in Maryland, and under no circumstances may such persons hold themselves out to the public or otherwise represent that they are admitted to practice in Maryland.[27]

C. CCJ Resolution Supporting the Practice of Foreign Lawyers

On January 28, 2015, the Conference of Chief Justices ("**CCJ**") – a nongovernmental body founded to, among other things, improve the administration of justice and the operation of state courts – adopted a resolution "strongly" encouraging the Conference members to adopt policies permitting foreign-educated attorneys to provide seven specific categories of legal services in U.S jurisdictions.[28] The Conference supported its resolution by citing three principled arguments in favor of permitting foreign persons to practice law in the United States: (a) that it will facilitate the quality of legal services in matters crossing national borders; (b) that it will facilitate trade between the U.S. state in question and foreign countries; and, (c) that it will encourage reciprocal rights for U.S. lawyers to practice law in foreign states.[29]

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[26] Provided those services do not require *pro hac vice* admission.

[27] *See supra* at Part B for a detailed discussion of both Model Rules; *see also* Exhibits E and F for copies of both Model Rules.

[28] *See* Exhibit I for a copy of the CCJ Resolution.

[29] Regarding this last point, the United States has, or is in the process of negotiating, trade-in-services treaties with a number of countries. Typically, such treaties provide that the signatory states will accord to service providers of the other signatory states treatment "no less favorable" than the state provides to its own service providers in like circumstances. At the same time, typically the treaties permit states to impose licensing requirements applicable both to the U.S. state's service providers and to foreign-service providers. Although an examination of any such treaty would be required, likely the Maryland Court of Appeals could, consistent with the trade agreement, require that persons be admitted to the Maryland Bar as a prerequisite to practicing law in Maryland. Note that the CCJ, in its resolution, specifically references the Transatlantic Trade and Investment Partnership Agreement between the

Many of the CCJ recommendations mirror the recommendations contained in the ABA Model Rules. These recommendations include:[30] (a) allowing for temporary practice by foreign lawyers on a matter-specific basis; (b) allowing "foreign legal consultants" to practice within a jurisdiction; (c) sanctioning the practice of foreign licensed in-house counsels; (d) enabling foreign lawyers to appear *pro hac vice*; (e) permitting foreign lawyers to participate in international arbitration and mediation proceedings located within a U.S. state;[31] (f) permitting foreign lawyers to form professional associations with lawyers barred in a U.S. state;[32] and (g) permitting and facilitating the employment of foreign lawyers by those barred in a U.S. state.[33]

D. The Trans-Pacific Partnership ("TPP")

Nothing in the Trans-Pacific Partnership ("**TPP**") Agreement[34] will require Maryland to change its provisions affecting the practice of law in Maryland by non-US qualified lawyers from foreign signatory countries.[35] The issue is whether Maryland chooses to do so.

Chapter 10 of the TPP contains the Agreement's provisions on cross-border trade in services, including the provision of legal services between signatory nations.[36] The Chapter includes obligations

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United States and the European Union. That Agreement has not been ratified by the parties, and various portions are, in fact, still being negotiated.

[30] With the exception of foreign lawyers' providing services *pro hac vice* or in connection with the arbitration of disputes crossing national borders, these seven instances allow foreign lawyers to provide advice only with respect to foreign or international law. Additionally, under each recommendation, the CCJ requires foreign lawyers to remain in good standing with the foreign bar of which they are members.

[31] This proposed rule allows foreign lawyers to participate in arbitrations or mediations in a U.S. state when the matter being arbitrated (or mediated) crosses national borders. There is no language in the resolution limiting the scope of the foreign lawyer's role within such an arbitration or mediation. For example, the CCJ did not include language prohibiting a foreign lawyer from offering advice on the law of the U.S. state.

[32] This proposed rule allows foreign lawyers and state barred attorneys to form professional associations together. This appears to be an extension of the foreign legal consultant recommendation discussed earlier and would facilitate breaking down barriers between foreign lawyers and lawyers barred in a U.S. state.

[33] This proposed rule allows for state-barred attorneys to engage and employ foreign lawyers who have been approved by the U.S. state as a foreign legal consultant, *i.e.*, mirroring the recommendation to permit foreign legal consultants to practice in the U.S. state.

[34] The TPP Agreement – between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam – is a trade agreement adopted with the purpose of eliminating substantially all barriers to trade between the signatories.[34] The agreement will be subject to periodic review by a Commission of senior officials who will regularly evaluate the agreement's economic impact among signatories and meet to propose reforms. The TPP Agreement is not a self-executing treaty in the United States, meaning that it must be ratified by the U.S. Congress prior to becoming binding as a matter of U.S. domestic law.

[35] *See* Exhibit J for a copy of Annex 10 of the TPP Agreement.

[36] *See* Exhibit J for a copy of Annex 10-A of the TPP Agreement.

regarding national treatment,[37] market access,[38] and local presence.[39] However, Article 10.7 enables a Party to maintain "non-conforming measures" to these obligations as long as they are set out in a Party's Schedules to Annex I or II.[40]

As was the case in the Uruguay Round negotiations that led to creation of the World Trade Organization (WTO), the Office of the U.S. Trade Representative (USTR), which is responsible for developing and coordinating U.S. international trade policy and overseeing negotiations with other countries, will exclude from coverage as "non-conforming measures" and make subject to the obligations of Chapter 10 of the TPP only those aspects of Maryland's current rules regarding the practice of law in Maryland by non-US qualified lawyers from foreign signatory countries that Maryland chooses to accept.

In addition to the national treatment, market access, and local presence obligations cited above, Annex 10-A of the TPP contains specific language regarding the provision of legal services between signatory nations. As such, it may affect changes that Maryland chooses to accept regarding the practice of law in Maryland by non-US qualified lawyers from foreign signatory countries.[41] These potential changes to Maryland legal practice include suggestions for monitoring responsible legal practice by foreign lawyers in the State. For example, Annex 10-A calls for foreign lawyers to have the ability to "practice foreign law on the basis of their right to practice that law in their home jurisdiction," "prepare for and appear in commercial arbitration, conciliation and mediation proceedings," and be subject to conduct and disciplinary standards "no more burdensome" than the requirements imposed on "domestic (host country) lawyers."

These and other provisions in Annex 10-A relevant to the reciprocal practice of law between and among signatory states are broad, recognize that the practice of law is unique in every jurisdiction, and demonstrate an understanding that foreign practitioners must be conversant with local practice in order to effectively represent clients in the United States.

The core issue concerning the TPP is how the licensing authority in each U.S. state will decide to implement the provisions of the TPP as it relates to the provision of legal services and whether any changes

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[37] Article 10.3 provides that "Each Party shall accord to services and service suppliers of another Party treatment no less favourable than it accords, in like circumstances, to its own services and service suppliers."

[38] Article 10.5 explains that these are measures that impose limitations on the number of service suppliers, value of service transactions, and the types of legal entity through which a service may be supplied.

[39] Article 10.6 explains that these are measures requiring a service supplier of another Party to maintain an enterprise or be a resident in its territory as a condition to providing the cross-border supply of a service.

[40] *See* Exhibit J for a copy of the relevant pages of the United States' Schedules to Annexes I and II of the TPP Agreement.

[41] *See* Exhibit J for a copy of Annex 10-A of the TPP Agreement.

are even required to existing practice. The language of Annex-10-A, paragraph 10, states that: "If a [jurisdiction] regulates or seeks to regulate foreign lawyers and transnational legal practice, … [that jurisdiction] shall encourage its relevant bodies to consider [the treatment of foreign lawyers], subject to its laws and regulations …"

E. Rules in Foreign Countries

The requirements and qualifications that a U.S. lawyer must satisfy in order to practice law or advise clients in a foreign jurisdiction vary significantly from nation to nation. While many jurisdictions restrict the ability of U.S.-barred attorneys from practicing in their country, some have made efforts to liberalize their legal services markets.

The following is a survey of the rules in a smattering of other countries that govern the practice of law by attorneys trained outside of that jurisdiction. Notwithstanding certain protective restrictions, in most non-U.S. jurisdictions, foreign lawyers are generally classified as either: (1) foreign legal consultants;[42] or (2) as fully-barred and locally-licensed attorneys.[43] Of the seven jurisdictions examined, Japan appears to maintain the most liberal market for legal services; by contrast, Brazil appears to maintain the most restrictive. Although the rules in each jurisdiction vary in degree and kind, most permit international lawyers to practice within their borders in the limited capacity of a foreign legal consultant.[44] Here are some examples highlighting treatment of a customs union (the European Union, to which the United States is not a member); a free trade area agreement (the NAFTA, to which the United States is a member), and three countries with whom the United States has strong relations but no agreement other than the relative commitments undertaken pursuant to the WTO GATS agreement regarding the provision of legal services, if any (Brazil, a developing country; China, a major trading partner; and Japan, a developed country).

i. Customs Union – the EU

Through its Council of Bars and Law Societies of Europe ("**CCBE**"), the European Union ("**EU**") permits lawyers of other member states to establish themselves as licensed attorneys in their fellow EU member states. This system enables foreign lawyers to practice law "on a permanent basis" in a member

[42] The World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) sets a framework to permit foreign lawyers to provide legal services in another jurisdiction, such as through cross-border services or commercial presence in the other country.

[43] *See* Matthew S. Fronk, *Making Mistakes Abroad: How the Global Delivery of Legal Services Created a Need for a Uniform Ethics Code*, 21 Mich. St. Int'l L. Rev. 493, 507–08 (2013).

[44] *See* Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, 97 A.B.A. J. 34 (Nov. 2011).

state "other than that in which [the attorney's] qualification was obtained."[45] This rule is a boon to lawyers whose home nations are members of the EU, but it does not directly benefit American lawyers practicing in the EU. With respect to attorneys of non-member states practicing in the EU, the CCBE permits only other attorneys of other EU member states to "associate with host country lawyers and [to] be employed by host country lawyers, to the extent permitted by host country law for the joint exercise of the profession."

In the United Kingdom, for instance, becoming a full solicitor as recognized by the Law Society of England and Wales is the equivalent of becoming a barred attorney in the United States.[46] Generally, to fulfill these requirements, a British attorney must obtain either a law degree or a Common Professional Examination/Graduate Diploma in Law, take the Legal Practice Course, and complete a training contract. Lawyers educated and licensed outside of the United Kingdom may qualify to be a solicitor by taking the Qualified Lawyers Transfer Test if the foreign lawyer demonstrates at least two years of practice in a common law country – one of which must be spent practicing the law of England and Wales.

ii. Free Trade Area – the NAFTA

a. Canada

Every lawyer practicing in Canada must join a law society and be governed by its rules. Individuals applying for admission to a Canadian law society who do not hold a law degree earned in an approved Canadian common law legal program must obtain a "Certification of Qualification" issued by the Federation's National Committee on Accreditation ("**NCA**").[47] Under the NCA rules, the committee applies a uniform standard to evaluate each foreign applicant so that each applicant need not satisfy different entrance standards to practice law in different provinces of Canada. Once the NCA assesses the applicant, the applicant may be asked to complete one or more exams or attend and complete specific law school courses within a prescribed amount of time in order to receive the requisite "Certificate of Qualification."

b. Mexico

To practice law in Mexico, a person must hold a law degree from a Mexican university and be authorized to practice by the Head Office of Professions (Secretariat of Education). The North American Free Trade Agreement ("**NAFTA**") provided lawyers barred in the United States (as well as those licensed

[45] Exhibit K contains the full text of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyers on a permanent basis in a Member State other than that in which the qualification was obtained. 14/03/1998, 1998 O.J. (L 77) 36-43.

[46] Brendan K. Smith, *Protecting the Home Turf: National Bar Associations and the Foreign Lawyer*, 21 Indiana J. Global Legal Stud. 667, 675 (2014).

[47] In Canada, the NCA assesses the legal credentials of individuals trained outside of Canada; the NCA is a standing committee of the Federation of Law Societies of Canada. *See Federation of Law Societies of Canada*, Federation of Law Societies of Canada http://flsc.ca/ (last visited June 7, 2016).

in Canada) to practice as foreign legal consultants in Mexico.[48] As is the case in other countries, however, foreign legal consultants are banned from giving legal advice relating to domestic law.[49]

iii. Brazil – A Developing Country

Brazil governs the practice of foreign legal practice through the Ordem dos Advogados ("**OAB**"), which is the organization responsible for the country's legal licensing. The OAB severely limits the ability of a foreign lawyer to provide legal services in Brazil. Foreign-educated lawyers are banned from practicing local law, limited to practicing international law, and are most often relegated foreign law consultant status. In 2011, the OAB concluded that foreign law consultants do not meet the definition of "lawyer" under Brazilian law, and it held that any Brazilian attorney who forms a partnership or formal alliance with a foreign law consultant does so in violation of Brazil's ban on multidisciplinary practice.[50]

iv. China – A Major Trading Partner

China's rules for foreign legal practice are more restrictive than that of the EU or Canada. China permits the practice of foreign legal consultants but bans such individuals from practicing Chinese law unless they partner directly with a Chinese law firm.

v. Japan – A Developed Country

Foreign lawyers are permitted to practice law in Japan provided they are supervised by a licensed and registered Japanese attorney. In 2009, the Japan Federal Bar Association ("**JFBA**") established additional requirements for all foreign-educated lawyers practicing in Japan.[51] Under these JFBA rules, all foreign lawyers wishing to practice in Japan must formally register with the JFBA and have at least three years of legal experience prior to registration – two years of which must have been spent practicing outside of Japan.

Japan significantly reduced these restrictions in 2012. It amended its statute on foreign lawyers to permit attorneys with foreign qualifications to establish offices in Japan as their own incorporated entities. Prior to the amendment, foreign lawyers were authorized only to establish one private office in Japan. After the 2012 amendment, once registered, foreign lawyers are now permitted to open multiple offices. The 2012

[48] Under NAFTA Article 1210(1), "each party shall ensure that any such measure [affecting the provision of legal services] is based on objective and transparent criteria, such as competence and the ability to provide a service, and is not more burdensome than necessary to ensure the quality of a service . . . [and cannot] constitute a disguised restriction." NAFTA Article 1210(1) (1994).

[49] See Exhibit L for a copy of the text of NAFTA Chapter 12 (*Cross-Border Trade in Services*).

[50] *Id.*; *see also* Laurel S. Terry, *Transnational Legal Practice (International)*, 47 The Year in Review 485, 490-91 (2013).

[51] Carolyn Elefant, *Japan to Crack Down on Foreign Lawyers*, Legal Blog Watch (Feb. 10, 2009, 3:15 PM), http://legalblogwatch.typepad.com/legal_blog_watch/2009/02/japan-to-crack-down-on-foreign-lawyers.html.

amendments have been interpreted as placing foreign lawyers "on an equal footing" with their Japanese counterparts.

II. DISCUSSION

At multiple meetings – and in a sober, professional, collegial, and exhaustive manner – the Task Force considered issues related to whether foreign lawyers should be permitted to practice in Maryland. An illustrative sampling of the wide range of issues researched and discussed by the Task Force is categorized here into three broad categories: economic impact, objections to authorization, and other input. These are addressed *in seriatim*.

A. Economic Impact

The Task Force began by addressing whether Maryland (*i.e.*, the State and its economy) would be at an economic disadvantage in our evolving global economy should it decide that foreign lawyers should continue to be barred from practicing in the state. This topic broadened quickly to include an examination of the economic impact, if any, this issue may have on the business of existing lawyers admitted to the Bar. (What impact this decision may have on the quality of the profession and other non-economic issues is addressed *infra* in Sections II.B and II.C.)

i. Maryland Impact

Recognizing the steady growth of the international marketplace and the consistent effort of nations to reduce or eliminate barriers to trade in the last half century – and most recently in areas related to legal services – the Task Force is cognizant of an increase in the demand by businesses for foreign lawyers and foreign legal advice. We are sensitive to the fact that restrictions on the use of foreign lawyers may impact Maryland's ability to attract new investment in the state. But despite our unabashedly biased view that the selection of legal counsel must be an important consideration for any business entity, we recognize that likely other factors are of paramount importance in deciding whether to locate in one jurisdiction versus another, *e.g.*, state tax rates, geographic location to customers or potential customers, whether there is ready-access to a steady stream of qualified employees, *etc*. Similarly, apart from anecdotal evidence or personal experiences, the available data reviewed and discussed proved inconclusive as to the impact of this particular issue on the broader question examined. As a result, we were unable to determine definitely whether maintaining the status quo would prove to be a significant advantage or disadvantage to Maryland from an economic perspective.

ii. Impact in Other States

From a slightly different perspective, the Task Force examined whether there was any identifiable economic impact on those jurisdictions that now permit foreign lawyers to practice. Jurisdictions examined

and discussed include New York, California, the District of Columbia, and Tennessee. Although many believe that such jurisdictions enjoy a small economic advantage in attracting and retaining businesses as compared to those states that do not permit foreign lawyers, as in Section II.A.i, there was insufficient data available to permit a definitive, quantitative answer on this issue.

iii. Maryland Lawyers

There was concern that permitting a new swath of foreign lawyers to practice in Maryland would have a negative impact on those who currently practice in Maryland. The argument is that there are a number of factors – such as an increase in the use of technology – that are placing a downward economic pressure on the ability of existing lawyers to charge higher rates and are resulting in the commoditization of certain practice areas. Against this backdrop, there is concern that an introduction of a new supply of qualified providers with no foreseeable increase (or even a decrease) in demand for legal services will result in a further downward pressure on prices. Although this impact may benefit consumers of legal services, the argument is that permitting foreign lawyers to practice in Maryland may have a negative impact on the ability of some existing Maryland lawyers to maintain rates and may even drive some from the practice of law in Maryland altogether.[52]

B. Objections to Authorization

The Task Force considered and discussed various objections to authorizing foreign lawyers to practice in Maryland, including the following:

i. Increased Competition for Jobs

As noted *supra* in Section II.A.iii, the Task Force recognized that adopting a rule that permits foreign lawyers to practice in Maryland may negatively impact the practice of existing Maryland lawyers. But the Task Force weighed this concern against the benefits associated with permitting foreign lawyers to practice in Maryland. Such benefits include, among other things, bringing top-quality legal talent to Maryland, making it easier for large international companies to conduct business in Maryland, and eliminating any barriers faced by in-house counsel when presented with the option of moving an international company to Maryland.

ii. Inappropriate Legal Training

The Task Force discussed whether foreign lawyers permitted to practice in Maryland possess the

[52] Richard Sternberg prepared detailed comments regarding this issue and asked that they be included, unedited, as an attachment to this report. They are so included at Exhibit M. No other member of the Committee has joined in these views.

legal training sufficient to ensure that such practitioners meet certain minimum thresholds required of all attorneys currently practicing in Maryland. The Task Force emphasized the importance of examining the rigor, style, content, substance, skills, and values of the system in which each foreign lawyer was trained abroad. Ultimately, the Task Force recognized the difficulties associated with developing and administering a separate requirement applicable to each country, including the costs associated with doing so.

Besides these issues, the Task Force considered a number of other issues in significant detail, including the similarities and differences between common law and non-common law countries, the importance of requiring that foreign lawyers possess the same or comparable educational equivalency as compared to U.S.-qualified lawyers (and balancing such issues against a situation where the foreign lawyer has practiced for years in their jurisdiction),[53] and even whether law school graduates from foreign law schools who have not completed foreign exams or required apprenticeships should be permitted to practice in Maryland. Of particular note, the Task Force addressed whether a foreign lawyer applicant who has obtained an LLM from an ABA accredited law school but who has not yet completed the requisite number of credits in bar tested subjects should be permitted to supplement their education with a limited number of classes to meet this requirement at an ABA-accredited law school in Maryland.[54] Finally, the Task Force discussed whether non-U.S. qualified lawyers should be subject to continuing legal education (CLE) or multistate professional responsibility examination (MPRE) requirements as a means to ensure that such person possesses the training comparable to a U.S.-qualified lawyer.

iii. Constitutional Principal of the Rule of Law

The Task Force considered whether the constitutional principal of the rule of law was supported by admitting foreign lawyers. For example, if a foreign lawyer has been practicing in a foreign country with significant variations in its understanding of political philosophy and institutional morality, the Task Force considered whether there may be questions as to whether such foreign lawyer would uphold the constitution

[53] The discussion included whether a "years in practice" requirement adequately protects the public when such years are devoted to practicing in a jurisdiction that may be wildly different from one in the United States.

[54] Under current rules, foreign lawyers become eligible to sit for the bar exam in Maryland, among other methods, if they graduate from an ABA-accredited law school with an LLM and have taken the requisite number of credits in subjects tested on the bar. In other words, ABA-accredited law schools are already carrying out the obligation of confirming whether there is a competent legal force to service the needs of the people and judiciary in Maryland. Currently the LLM programs act as a conversion or transitional course for these otherwise foreign lawyers, *i.e.*, the combination of a law degree abroad, the license to practice in the home country, and a year study at an ABA-accredited law school provides the ability to sit for the law exam in Maryland. Whether foreign lawyers who have not yet completed the requisite number of credits in bar tested subjects should be permitted to supplement their education with a limited number of classes to meet this requirement at an ABA-accredited law school in Maryland such that they are deemed qualified to sit for the bar exam in Maryland is beyond the scope of Task Force's examination.

of the United States when practicing in Maryland (and whether this issue is even relevant).

iv. Undermining Current U.S. Lawyer Regulatory System

The Task Force was concerned with the difficulty of monitoring the activities of foreign lawyers practicing in Maryland, *i.e.*, those not domiciled in Maryland and who are not U.S. citizens. Specifically, there was discussion regarding the effect of disciplinary action regarding foreign lawyers (when such lawyers may simply leave the jurisdiction). This discussion arose in the context of malpractice and whether foreign lawyers should be required to maintain specific insurance policies in the United States, *e.g.*, malpractice insurance. Similarly, the Task Force considered whether should such attorneys should have separate rules regarding the maintenance of Interest on Lawyer Trust Accounts ("**IOLTA**") accounts.

C. Other Input

The Task Force identified key stakeholders, consulted with them for their comments and input, and discussed and considered their views prior to finalizing the report. Specific groups for discussion included Bar Council of the Attorney Grievance Commission (AGC), the State Board of Law Examiners (SBLE), the University of Baltimore School of Law (UB), the University of Maryland Francis King Carey School of Law (UM), the MD/DC District Export Council (DEC), the Association of Corporate Council, Baltimore Chapter (ACC), the Maryland Department of Commerce (Office of International Investment and Trade), and the Baltimore U.S. Export Assistance Center (USEAC). Comments and suggestions fell into three main categories (which were considered by the Task Force): quality control, practical implications, and expanded opportunity. Although some of the issues identified by these third parties overlap with those addressed by the Task Force, they are summarized again here as follows:

i. Expanded Opportunity

- Maryland consumers may benefit, both financially and perhaps from a quality of service standpoint, from the greater competition that would result from a larger number of qualified lawyers in Maryland.
- In an environment where there are an inadequate number of lawyers, perhaps in rural areas, the repeal of this law may improve access to services.
- Foreign lawyers may be well connected in their own country, which would facilitate international business prospects. They may contribute to the Maryland economy while also bringing foreign investments to this state. Foreign lawyers may facilitate their clients' immigration process here or abroad and assist Maryland firms looking to export or expand their business overseas.
- Adopting the UBE (Uniform Bar Examination) and facilitating the transfer of scores from other jurisdictions may give some incentive to foreign lawyers in other states to seek admission in

Maryland and bring their business here.

- The liberal rules that Maryland has for in-house practice should be maintained (*i.e.*, membership in any state bar allows one to practice in-house).

ii. Practical Implications

- Vetting and admitting foreign lawyers would have administrative and financial implications for the State Board of Law Examiners and Bar Counsel. Currently the State Board of Law examiners reports that it is working at capacity. There is concern that additional monitoring and other administrative requirements may only increase such strain without identifying additional budgetary resources to help address the situation.
- The authorization may impact the LLM programs at Maryland Law Schools making the programs less necessary for foreign lawyers to practice and/or be admitted in Maryland.
- Clients in Maryland who speak English as second language fluently may be more comfortable with a fellow national or with an attorney who speaks their language.
- Diversity is important and often beneficial – and Maryland lawyers may become better informed by practicing with more foreign lawyers as members of the bar.

iii. Quality Control

- Would there be a negative effect on Maryland consumers with regard to the malpractice or other legal accountability that a consumer would enjoy if the law was repealed?
- The quality of the bar exam should be maintained at a high standard in both its questions and scoring in order to avoid a negative impact.
- Maryland precedents in the health care, education, and engineering fields exist and efforts should be made to ensure that Maryland State laws and policies are uniform across the range of disciplines.
- Bar Exam and/or admission requirements in foreign countries may not be as rigorous as those in Maryland.

iv. Miscellaneous Views from Companies

- Whether there is a negative effect on consumers in Maryland with regard to the malpractice or other legal accountability that a consumer would enjoy (assuming the quality of the non-U.S. qualified lawyer is maintained at a high standard).
- Whether there are Maryland precedents in the health care, education, and engineering fields (suggesting that such precedents may exist and urging that State laws and policies should be uniform across the range of disciplines).
- Noting that the Maryland consumer has potential benefits, both financially and perhaps from a

quality of service, from the greater competition that would result from a larger number of qualified lawyers in Maryland.

- In an environment where there are an inadequate number of lawyers, perhaps in rural areas, the repeal of this law may improve access to services.
- Adoption of the UBE (Uniform Bar Examination) may facilitate the transfer of scores from other jurisdictions. This could give some incentive to foreign lawyers in other states to be barred in MD and bring their business to the state.
- It is possible that the training in certain non-U.S. countries is more rigorous than that offered by certain ABA-accredited law schools, *e.g.*, in Brazil, at a minimum, reportedly a law school curriculum consists of 10 full-time semesters, *i.e.*, five years of training as compared to three in the United States.
- Some clients are more comfortable selecting counsel from their home country (typically ensuring that their counsel speaks the same foreign language).
- Permitting non-U.S. qualified lawyers to be licensed to work in Maryland may substantially contribute to the Maryland economy through an increase in foreign investment as typically foreign lawyers are well connected in their home country. Such connections may may facilitate international business prospects (both with investments in Maryland and exports abroad).

III. RECOMMENDATIONS

While it is impractical to summarize all considerations and discussion points raised during the Task Force's examination, there are a few issues and conclusions that the Task Force considered sufficiently important that it should highlight them here.

A. Issues

First, as noted in Section II.C.iii, vetting and admitting foreign lawyers would have administrative and financial implications for the State Board of Law Examiners and Bar Counsel. Currently the State Board of Law examiners reports that it is working at capacity. There is concern that additional monitoring and other administrative requirements may only increase such strain without identifying additional budgetary resources to help address the situation. Such administrative issues include issues related to admission, *e.g.*, evaluating whether non-U.S. qualified lawyers are sufficiently credentialed on a case-by-case basis such that they qualify to be licensed in Maryland. Although beyond the scope of the Task Force, it is cognizant of this issue and notes that provision should be made to cover any increased administrative costs.

Second, there are many issues that are beyond the scope of the Task Force. One example involves the issue of reciprocity. The Task Force intentionally decided to refrain from opining on this issue, *e.g.*, whether foreign lawyers waiving into one jurisdiction should be permitted to waive into Maryland. The Task Force understands that this issue is being considered currently by another committee of the Maryland State Bar Association. Similarly, issues associated with *pro hac vice* admission and what specific changes are required to existing rules should these recommendation be adopted are better left to others, such as the Rules Committee.

B. Conclusions

With the aforementioned understanding, and working on the basis of consensus after weighing the proposed detrimental effects of not changing existing rules against the proposed advantages of proceeding, the Task Force recommends that:

- Maryland should allow foreign lawyers to gain "foreign legal consultant" status within the state (following the practice in over 30 other U.S. states).
- The specifics for implementing how this should be accomplished should be done through the Rules Committee (or another appropriate entity) with reference to the ABA Model Rule.
- The foreign lawyer should demonstrate being a member in good standing of the legal profession in her or his home country and limit any U.S. practice to the subject matter and experience developed in her or his home country over the last 5 to 7 years.

IV. APPENDIX

EXHIBIT A

The Task Force included (in alphabetical order):

- Steven Boggs (Director of Law Registration, University of Maryland Francis King Carey School of Law)
- Jeb Cook (Venable)
- Alexis Colon (Dominican Republic-qualified lawyer)
- Monty Crawford (DLA Piper)
- Suzanne De Deyne (University of Baltimore School of Law Recent Graduate)
- James Denvil (Hogan Lovells)
- Joseph Dyer (Seyfarth Shaw)
- Christy Fisher (Bonner Kiernan Trebach & Crociata)
- Professor Eric Easton (University of Baltimore School of Law)
- Assistant Dean Jill Green (University of Baltimore School of Law)
- Jesse Hervitz (University of Maryland Francis King Carey School of Law Student)
- Alexander Koff (Venable and Chair of the Committee)
- Doug List (University of Baltimore School of Law Student)
- Peggy Chaplin Louie (Sandler, Travis & Rosenberg)
- Gandhi Mohan Maniam (Malaysian-qualified lawyer)
- Anastasia Thomas Nardangeli (Thomas and Libowitz)
- James M. Peppe (West & Feinberg and Vice-Chair of the Committee)
- Denise Sarchiapone (Brazilian qualified lawyer, member of the bar of the District of Columbia, plans to sit for the Maryland Bar, and employed in Maryland at KCI Technologies, Inc. in an Int'l Business Development role)
- Professor Mortimer Sellers (University of Baltimore School of Law)
- Richard Sternberg (Metro-Washington Law Consortium)

The Task Force expresses its gratitude to Professor Christopher Parlin (Deputy Director, Institute of International Economic Law (IIEL), Georgetown University Law Center; Principal, Parlin & Associates) for reviewing and commenting on a portion of the draft report.

EXHIBIT B

Rules Governing Admission to the Bar of Maryland

(Maryland Rules, Title 19, Chapters 100 and 200)

(Adopted by the Court of Appeals of Maryland June 6, 2016)
(Effective July 1, 2016)

and

Rules of the Board

(Adopted and amended through June 6, 2016)

These Rules Governing Admission to the Bar of Maryland are contained in the CURRENT REPLACEMENT VOLUME OF THE ANNOTATED CODE OF MARYLAND, MARYLAND RULES

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This unofficial copy of the Bar Admission Rules has been assembled as a convenience for bar applicants. In the event of any conflict between this document and the official, published editions of the Maryland Rules, the published Rules control.

MARYLAND RULES OF PROCEDURE
TITLE 19 – ATTORNEYS
CHAPTER 100 – STATE BOARD OF LAW EXAMINERS AND CHARACTER COMMITTEES

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MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 100 – STATE BOARD OF LAW EXAMINERS

AND CHARACTER COMMITTEES

Rule 19-101. DEFINITIONS

In this Chapter and Chapter 200 of this Title, the following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(a) ADA

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

(b) Applicant; Petitioner

"Applicant" means an individual who applies for admission to the Bar of Maryland (1) pursuant to Rule 19-202, or (2) as a "petitioner" under Rule 19-213.

(c) Board

"Board" means the Board of Law Examiners of the State of Maryland.

(d) Court

"Court" means the Court of Appeals of Maryland.

(e) Filed

"Filed" means received in the office of the Secretary of the Board during normal business hours.

(f) MBE

"MBE" means the Multistate Bar Examination published by the NCBE.

(g) Member of the Bar of a State

"Member of the Bar of a State" means an individual who is unconditionally admitted to practice law before the highest court of that State.

(h) MPT

"MPT" means the Multistate Performance Test published by the NCBE.

(i) NCBE

"NCBE" means the National Conference of Bar Examiners.

(j) Oath

"Oath" means a declaration or affirmation made under the penalties of perjury that a certain statement of fact is true.

(k) State

"State" means (1) a state, possession, territory, or commonwealth of the United States or (2) the District of Columbia.

(l) Transmit

"Transmit" means to convey written material in a manner reasonably calculated to cause the intended recipient to receive it.

Source: This Rule is derived from former Rule 1 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-102. STATE BOARD OF LAW EXAMINERS

(a) Appointment

There is a State Board of Law Examiners. The Board shall consist of seven members appointed by the Court. Each member shall have been admitted to practice law in Maryland. The terms of members shall be as provided in Code, Business Occupations and Professions Article, §10-202 (c).

(b) Quorum

A majority of the authorized membership of the Board is a quorum.

(c) Authority

(1) Generally

The Board shall exercise the authority and perform the duties assigned to it by the Rules in this Chapter and Chapter 200 of this Title, including general supervision over the character and fitness requirements and procedures set forth in those Rules and the operations of the character committees.

(2) Adoption of Rules

The Board may adopt rules to carry out the requirements of this Chapter and Chapter 200 of this Title. The Rules of the Board shall follow Chapter 200 of Title 19.

(d) Amendment of Board Rules - Posting

Any amendment of the Board's rules shall be posted on the Judiciary website at least 45 days before the examination at which it is to become effective, except that an amendment that substantially increases the area of subject-matter knowledge required for any examination shall be posted at least one year before the examination.

(e) Professional Assistants

The Board may appoint the professional assistants necessary for the proper conduct of its business. Each professional assistant shall be an attorney admitted by the Court of Appeals and shall serve at the pleasure of the Board.

Committee note: Professional assistants primarily assist in writing and grading the bar examination. Section (e) does not apply to the secretary or administrative staff.

(f) Compensation of Board Members and Assistants

The members of the Board and assistants shall receive the compensation fixed by the Court.

(g) Secretary to the Board

The Court may appoint a secretary to the Board, to hold office at the pleasure of the Court. The secretary shall have the administrative powers and duties prescribed by the Board and shall serve as the administrative director of the Office of the State Board of Law Examiners.

(h) Fees

The Board shall prescribe the fees, subject to approval by the Court, to be paid by applicants under Rules 19-202, 19-204, and 19-208 and by petitioners under Rule 19-213.

Cross reference: See Code, Business Occupations and Professions Article, §10-208 (b) for maximum examination fee allowed by law.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is new.

Sections (c) through (g) are derived from former Rule 20 of the Rules Governing Admission to the Bar of Maryland (2016).

Section (h) is derived from former Rule 18 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-103. CHARACTER COMMITTEES

The Court shall appoint a Character Committee for each of the seven Appellate Judicial Circuits of the State. Each Character Committee shall consist of not less than five members whose terms shall be five years each, except that in the Sixth Appellate Judicial Circuit the term of each member shall be two years. The terms shall be staggered. The Court shall designate the chair of each Committee and vice chair, if any. For each application referred to a Character Committee, the Board shall remit to the Committee a sum to defray some of the expense of the investigation.

Cross reference: See Rule 19-203 for the Character Review Procedure.

Source: This Rule is derived from former Rule 17 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-104. SUBPOENA POWER

(a) Subpoena

(1) Issuance

In any proceeding before the Board or a Character Committee pursuant to Rule 19-203 or Rule 19-213, the Board or Committee, on its own initiative or the motion of an applicant, may cause a subpoena to be issued by a clerk pursuant to Rule 2-510. The subpoena shall issue from the Circuit Court for Anne Arundel County if incident to Board proceedings or from the circuit court in the county in which the Character Committee proceeding is pending. The proceedings shall be docketed in the issuing court and shall be sealed and shielded from public inspection.

(2) Name of Applicant

The subpoena shall not divulge the name of the applicant, except to the extent this requirement is impracticable.

(3) Return

The sheriff’s return shall be made as directed in the subpoena.

(4) Dockets and Files

The Character Committee or the Board, as applicable, shall maintain dockets and files of all papers filed in the proceedings.

(5) Action to Quash or Enforce

Any action to quash or enforce a subpoena shall be filed under seal and docketed as a miscellaneous action in the court that issued the subpoena.

Cross reference: See Rule 16-906(g)(3).

(b) Sanctions

If a person subpoenaed to appear and give testimony or to produce books, documents, or other tangible things fails to do so, the party who requested the subpoena, by motion that does not divulge the name of the applicant, except to the extent that this requirement is impracticable, may request the court to issue an attachment pursuant to Rule 2-510 (j), or to cite the person for contempt pursuant to Title 15, Chapter 200 of the Maryland Rules, or both. Any such motion shall be filed under seal.

(c) Court Costs

All court costs in proceedings under this Rule shall be assessable to and paid by the State.

Source: This Rule is derived from former Rule 22 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-105. CONFIDENTIALITY

(a) Proceedings Before Accommodations Review Committee, Character Committee, or Board

Except as provided in sections (b), (c), and (d) of this Rule, the proceedings before the Accommodations Review Committee and its panels, a Character Committee, and the Board, including related papers, evidence, and information, are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Right to Attend Hearings and Inspect Papers

An applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, the Board, and the Court pertaining to his or her application and, except as provided in subsection (b)(2) of this Rule, to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee or the Board pertaining to the applicant.

(2) Exclusions

Subsection (b)(1) of this Rule does not apply to (A) papers or evidence received, considered, or prepared by the National Conference of Bar Examiners, a Character Committee, or the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work papers of members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; (C) correspondence between or among members or staff of the National Conference of Bar Examiners, a Character Committee, or the Board; or (D) an applicant's bar examination grades and answers, except as authorized in Rule 19-207 and Rule 19-213.

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of an individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) if the applicant has consented in writing, any material pertaining to the applicant that the applicant would be entitled to inspect under section (b) of this Rule;

(4) for use in a pending disciplinary proceeding against the applicant as an attorney or judge, a pending proceeding for reinstatement of the applicant as an attorney after suspension or disbarment, or a pending proceeding for original admission of the applicant to the Bar, any material pertaining to an applicant requested by:

(A) a court of this State, another state, or the United States;

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state;

(C) the authority in another jurisdiction responsible for investigating the character and fitness of an applicant for admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction;

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this or any other State, a committee of the Senate of Maryland, the President of the United States, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of individuals who graduated from that law school who took a bar examination, whether they passed or failed the examination, and the number of bar examination attempts by each individual;

(7) to the Maryland State Bar Association and any other bona fide bar association in the State of Maryland, the name and address of an individual recommended for bar admission pursuant to Rule 19-209;

(8) to each entity selected to give the orientation program required by Rule 19-210 and verify participation in it, the name and address of an individual recommended for bar admission pursuant to Rule 19-209;

(9) to the National Conference of Bar Examiners, the following information regarding individuals who have filed applications for admission pursuant to Rule 19-202 or petitions to take the attorney's examination pursuant to Rule 19-213: the applicant's name and any aliases, applicant number, birthdate, Law School Admission Council number, law school, date that a juris doctor or equivalent degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

(10) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

(11) to the Child Support Enforcement Administration, upon its request, the name, Social Security number, and address of an individual who has filed an application pursuant to Rule 19-202 or a petition to take the attorney's examination pursuant to Rule 19-213.

Unless information disclosed pursuant to subsections (c)(4) and (5) of this Rule is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the individual or entity to whom the information was disclosed.

(d) Proceedings and Access to Records in the Court of Appeals

(1) Subject to reasonable regulation by the Court of Appeals, Bar Admission ceremonies shall be open.

(2) Unless the Court otherwise orders in a particular case:

(A) hearings in the Court of Appeals shall be open, and

(B) if the Court conducts a hearing regarding a bar applicant, any report by the Accommodations Review Committee, a Character Committee, or the Board filed with the Court, but no other part of the applicant's record, shall be subject to public inspection.

(3) The Court of Appeals may make any of the disclosures that the Board may make pursuant to section (c) of this Rule.

(4) Except as provided in subsections (d)(1), (2), and (3) of this Rule or as otherwise required by law, proceedings before the Court of Appeals and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

Source: This Rule is derived from former Rule 19 of the Rules Governing Admission to the Bar of Maryland (2016).

MARYLAND RULES OF PROCEDURE

TITLE 19 – ATTORNEYS

CHAPTER 200 – ADMISSION TO THE BAR

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Rule 19-201. ELIGIBILITY TO TAKE MARYLAND GENERAL BAR EXAMINATION

(a) Educational Requirements

Subject to section (b) of this Rule, in order to take the Maryland General Bar examination an individual:

(1) shall have completed the pre-legal education necessary to meet the minimum requirements for admission to a law school approved by the American Bar Association; and

(2) shall have graduated or be unqualifiedly eligible for graduation with a juris doctor or equivalent degree from a law school (A) located in a state and (B) approved by the American Bar Association.

(b) Waiver

The Board may waive the requirements of subsection (a)(2) of this Rule for an applicant who (1) has passed the bar examination of another state, is a member in good standing of the Bar of that state, and the Board finds is qualified by reason of education or experience to take the bar examination; or (2) is admitted to practice in a jurisdiction that is not defined as a state by Rule 19-101 (k) and has obtained an additional degree from a law school approved by the American Bar Association that meets the requirements prescribed by the Board Rules.

(c) Minors

If otherwise qualified, an applicant who is under 18 years of age is eligible to take the bar examination but shall not be admitted to the Bar until 18 years of age.

Source: This Rule is derived from former Rules 3 and 4 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-202. APPLICATION FOR ADMISSION

(a) By Application

An individual who meets the requirements of Rule 19-201 or had the requirement of Rule 19-201(a)(2) waived pursuant to Rule 19-201(b) may apply for admission to the Bar of this State by filing with the Board an application for admission, accompanied by a Notice of Intent to Take a Scheduled General Bar Examination, and the prescribed fee.

Cross reference: See Rule 19-204 (Notice of Intent to Take a Scheduled General Bar Examination).

(b) Form of Application

The application shall be on a form prescribed by the Board and shall be under oath. The form shall elicit the information the Board considers appropriate concerning the applicant's character, education, and eligibility to become an applicant. The application shall require the applicant to provide the applicant's Social Security number and shall include an authorization to release confidential information pertaining to the applicant's character and fitness for the practice of law to a Character Committee, the Board, and the Court. The application shall be accompanied by satisfactory evidence that the applicant meets the pre-legal education requirements of Rule 19-201 and a statement under oath that the applicant is eligible to take the examination. No later than the first day of September following an

examination in July or the fifteenth day of March following an examination in February, the applicant shall cause to be sent to the Office of the State Board of Law Examiners an official transcript that reflects the date of the award to the applicant of a qualifying law degree under Rule 19-201, unless the official transcript already is on file with the Office.

(c) Time for Filing

(1) Without Intent to Take Particular Examination

At any time after the completion of pre-legal studies, an individual may file an application to determine whether there are any existing impediments, including reasons pertaining to the individual's character and the sufficiency of pre-legal education, to the applicant's qualifications for admission.

(2) With Intent to Take Particular Examination

(A) Generally

An applicant who intends to take the examination in July shall file the application no later than the preceding May 20. An applicant who intends to take the examination in February shall file the application no later than the preceding December 20.

(B) Acceptance of Late Application

Upon written request of the applicant and for good cause shown, the Board may accept an application filed after the applicable deadline prescribed in subsection (c)(2)(A) of this Rule. If the Board rejects the application for lack of good cause for the untimeliness, the applicant may file an exception with the Court within five business days after notice of the rejection is transmitted.

(d) Preliminary Determination of Eligibility

On receipt of an application, the Board shall determine whether the applicant has met the pre-legal education requirements set forth in Rule 19-201 (a) and in Code, Business Occupations and Professions Article, §10-207. If the Board concludes that the requirements have been met, it shall forward the application to a Character Committee. If the Board concludes that the requirements have not been met, it shall promptly notify the applicant in writing.

(e) Updated Application

If an application has been pending for more than three years since the date of the applicant's most recent application or updated application, the applicant shall file with the Board an updated application contemporaneously with filing any Notice of Intent to Take a Scheduled General Bar Examination. The updated application shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(f) Withdrawal of Application

At any time, an applicant may withdraw an application by filing with the Board written notice of withdrawal. No fees will be refunded.

Committee note: Withdrawal of an application terminates all aspects of the admission process.

(g) Subsequent Application

An applicant who reapplies for admission after an earlier application has been withdrawn or rejected pursuant to Rule 19-203 must retake and pass the bar examination even if the applicant passed the examination when the earlier application was pending. If the applicant failed the examination when the earlier application was pending, the failure shall be counted under Rule 19-208.

Source: This Rule is derived from former Rule 2 of the Rules Governing Admission to the Bar of Maryland (2016). Section (b) is derived in part from former Rule 6 (d).

Rule 19-203. CHARACTER REVIEW

(a) Investigation and Report of Character Committee

(1) On receipt of an application forwarded by the Board pursuant to Rule 19-202 (d), the Character Committee shall (A) through one of its members, personally interview the applicant, (B) verify the facts stated in the questionnaire, contact the applicant's references, and make any further investigation it finds necessary or desirable, (C) evaluate the applicant's character and fitness for the practice of law, and (D) transmit to the Board a report of its investigation and a recommendation as to the approval or denial of the application for admission.

(2) If the Committee concludes that there may be grounds for recommending denial of the application, it shall notify the applicant in writing and schedule a hearing. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods. The applicant shall have the right to testify, to present other testimony and evidence, and to be represented by an attorney. The Committee shall prepare a report and recommendation setting forth findings of fact on which the recommendation is based and a statement supporting the conclusion. A transcript of the hearing shall be transmitted by the Committee to the Board along with the Committee's report. The Committee shall transmit a copy of its report to the applicant, and a copy of the hearing transcript shall be furnished to the applicant upon payment of reasonable costs.

(b) Hearing by Board

If the Board concludes after review of the Character Committee's report and the transcript that there may be grounds for recommending denial of the application, it shall promptly afford the applicant the opportunity for a hearing on the record made before the Committee. In its discretion, the Board, may permit additional evidence to be submitted. If the recommendation of the Board differs from the recommendation of the Character Committee, the Board shall prepare a report and recommendation setting forth findings of fact on which the recommendation is based and a statement supporting the conclusion and shall transmit a copy of its report and recommendation to the applicant and the Committee. If the Board decides to recommend denial of the application in its report to the Court, the Board shall first give the applicant an opportunity to withdraw the application. If the applicant withdraws the application, the Board shall retain the records. If the applicant elects not to withdraw the application, the Board shall transmit to the Court a report of its proceedings and a recommendation as to the approval or denial of the application together with all papers relating to the matter.

(c) Review by Court

(1) If the Court, after reviewing the report of the Character Committee and any report of the Board, believes there may be grounds to deny admission, the Court shall order the applicant to appear for a hearing and show cause why the application should not be denied.

(2) If the Board recommends approval of the application contrary to an adverse recommendation by the Character Committee, within 30 days after the filing of the Board's report, the Committee may file with the Court exceptions to the Board's recommendation. The Committee shall transmit copies of its exceptions to the applicant and the Board.

(3) Proceedings in the Court under section (c) of this Rule shall be on the record made before the Character Committee and the Board. If the Court denies the application, the Board shall retain the records.

(d) Burden of Proof

The applicant bears the burden of proving to the Character Committee, the Board, and the Court the applicant's good moral character and fitness for the practice of law. Failure or refusal to answer fully and candidly any question in the application or any relevant question asked by a member of the Character

Committee, the Board, or the Court is sufficient cause for a finding that the applicant has not met this burden.

Committee note: Undocumented immigration status, in itself, does not preclude admission to the Bar, provided that the applicant otherwise has demonstrated good moral character and fitness.

(e) Continuing Review

All applicants remain subject to further Character Committee and Board review and report until admitted to the Bar.

Source: This Rule is derived from former Rule 5 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-204. NOTICE OF INTENT TO TAKE A SCHEDULED GENERAL BAR EXAMINATION

(a) Filing

An applicant may file a Notice of intent to Take a Scheduled General Bar Examination if (1) the applicant is eligible under Rule 19-201 to take the bar examination, (2) the applicant contemporaneously files or has previously filed an application for admission pursuant to Rule 19-202, and (3) the application has not been withdrawn or rejected pursuant to Rule 19-203. The notice of intent shall be under oath, filed on the form prescribed by the Board, and accompanied by the prescribed fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall indicate that request on the Notice of Intent to Take a Scheduled General Bar Examination, and shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with the supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (c) of this Rule for filing the Notice of Intent to Take a Scheduled General Bar Examination. The Board may reject an accommodation request that is (1) substantially incomplete or (2) filed untimely. The Board shall notify the applicant in writing of the basis of the rejection and shall provide the applicant an opportunity to correct any deficiencies in the accommodation request before the filing deadline for the current examination or, if the current deadline has passed, before the filing deadline for the next administration of the examination.

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

An applicant who intends to take the examination in July shall file the Notice of Intent to Take a Scheduled General Bar Examination no later than the preceding May 20. An applicant who intends to take the examination in February shall file the Notice of Intent to Take a Scheduled General Bar Examination no later than the preceding December 20. Upon written request of an applicant and for good cause shown, the Board may accept a Notice of Intent to Take a Scheduled General Bar Examination filed after that deadline. If the Board rejects the Notice of Intent to Take a Scheduled General Bar Examination for lack of good cause for the untimeliness, the Board shall transmit written notice of the rejection to the applicant. The applicant may file an exception with the Court within five business days after notice of the rejection is transmitted.

(d) Withdrawal of Notice of Intent to Take a Scheduled General Bar Examination or Absence from Examination

If an applicant withdraws the Notice of Intent to Take a Scheduled General Bar Examination or fails to attend and take the examination, the examination fee shall not be refunded. The Board may apply the examination fee to a subsequent examination if the applicant establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived from former Rule 6 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-205. APPEAL OF DENIAL OF ADA TEST ACCOMMODATION REQUEST

(a) Accommodations Review Committee

(1) Creation and Composition

There is an Accommodations Review Committee that shall consist of nine members appointed by the Court of Appeals. Six members shall be attorneys admitted to practice in Maryland who are not members of the Board. Three members shall be non-attorneys. Each non-attorney member shall be a licensed psychologist or physician who, during the member's term, does not serve the Board as a consultant or in any capacity other than as a member of the Committee. The Court shall designate one attorney as Chair of the Committee and one attorney as Vice Chair. In the absence or disability of the Chair or upon express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(2) Term

Subject to subsection (a)(4) of this Rule, the term of each member is five years. A member may serve more than one term.

(3) Reimbursement; Compensation

A member is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations. In addition, the Court may provide compensation for the members.

(4) Removal

The Court of Appeals may remove a member of the Accommodations Review Committee at any time.

(b) Procedure for Appeal

(1) Notice of Appeal

An applicant whose request for a test accommodation pursuant to the ADA is denied in whole or in part by the Board may note an appeal to the Accommodations Review Committee by filing a Notice of Appeal with the Board.

Committee note: It is likely that an appeal may not be resolved before the date of the scheduled bar examination that the applicant has petitioned to take. No applicant "has the right to take a particular bar examination at a particular time, nor to be admitted to the bar at any particular time." Application of Kimmer, 392 Md. 251, 272 (2006). After an appeal has been resolved, the applicant may file a timely petition to take a later scheduled bar examination with the accommodation, if any, granted as a result of the appeal process.

(2) Transmittal of Record

Upon receiving a notice of appeal, the Board promptly shall (A) transmit to the Chair of the Accommodations Review Committee a copy of the applicant's request for a test accommodation, all documentation submitted in support of the request, the report of each expert retained by the Board to analyze the applicant's request, and the Board's letter denying the request and (B) transmit to the applicant notice of the transmittal and a copy of each report of an expert retained by the Board.

(3) Hearing

The Chair of the Accommodations Review Committee shall appoint a panel of the Committee, consisting of two attorneys and one non-attorney, to hold a hearing at which the applicant and the Board have the right to present witnesses and documentary evidence and be represented by an attorney. In the interest of justice, the panel may decline to require strict application of the Rules in Title 5, other than those relating to the competency of witnesses. Lawful privileges shall be respected. The hearing shall be recorded verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of those methods.

(4) Report

The panel shall (A) file with the Board a report containing its recommendation, the reasons for the recommendation, and findings of fact upon which the recommendation is based, (B) transmit a copy of its report to the applicant, and (C) provide a copy of the report to the Chair of the Committee.

(c) Exceptions

Within 30 days after the report of the panel is filed with the Board, the applicant or the Board may file with the Chair of the Committee exceptions to the recommendation and shall transmit a copy of the exceptions to the other party. Upon receiving the exceptions, the Chair shall cause to be prepared a transcript of the proceedings and transmit to the Court of Appeals the record of the proceedings, which shall include the transcript and the exceptions. The Chair shall notify the applicant and the Board of the transmittal to the Court and provide to each party a copy of the transcript.

(d) Proceedings in the Court of Appeals

Proceedings in the Court of Appeals shall be on the record made before the panel. The Court shall require the party who filed exceptions to show cause why the exceptions should not be denied.

(e) If No Exceptions Filed

If no exceptions pursuant to section (c) of this Rule are timely filed, no transcript of the proceedings before the panel shall be prepared, the panel shall transmit its record to the Board, and the Board shall provide the test accommodation, if any, recommended by the panel.

Source: This Rule is derived from former Rule 6.1 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-206. GENERAL BAR EXAMINATION

(a) Scheduling

The Board shall schedule a written general bar examination twice annually, once in February and once in July. The examination shall be scheduled on two successive days. The total duration of the examination shall be not more than 12 hours nor less than nine hours, unless extended at the applicant's request pursuant to Rules 19-204 and 19-205. At least 30 days before a scheduled examination, the Board shall post on the Judiciary website notice of the dates, times, and place or places of the examination.

(b) Purpose of Examination

The purpose of the general bar examination is to enable applicants to demonstrate their capacity to achieve mastery of foundational legal doctrines, proficiency in fundamental legal skills, and competence in applying both to solve legal problems consistent with the highest ethical standards. It is the policy of the Court that no quota of successful applicants be set but that each applicant be judged for fitness to be a member of the Bar as demonstrated by the examination answers.

(c) Format and Scope of Examination

The Board shall prepare the examination and may adopt the MBE and the MPT as part of it. The examination shall include an essay test. The Board shall define by rule the subject matter of the essay test, but the essay test shall include at least one question dealing in whole or in part with professional conduct.

(d) Grading

(1) The Board shall grade the examination and, by rule, shall establish a passing grade for the examination. The Board, by rule, may provide that an applicant may adopt in Maryland an MBE score that the applicant achieves in another state in an administration of the MBE that is concurrent with Maryland's administration of the Written Test to that applicant.

(2) At any time before notifying applicants of the results, the Board, in its discretion and in the interest of fairness, may lower, but not raise, the passing grade it has established for any particular administration of the examination.

(e) Voiding of Examination Results for Ineligibility

If an applicant who is determined by the Board not to be eligible under Rule 19-201 takes an examination, the applicant's Notice of Intent to Take a Scheduled General Bar Examination shall be deemed invalid and the applicant's examination results shall be voided. No fees shall be refunded.

Source: This Rule is derived from former Rule 7 of the Rules Governing Admission to the Bar of Maryland (2016). Section (e) is derived from former Rule 6 (e).

Rule 19-207. NOTICE OF GRADES AND REVIEW PROCEDURE

(a) Notice of Grades; Alteration

The Board shall transmit written notice of examination results to each applicant. The Board, by Rule, shall determine the form and method of delivery of the notice of results. Successful applicants shall be notified only that they have passed. Unsuccessful applicants shall be given their grades in the detail the Board considers appropriate. Thereafter, the Board may not alter any applicant's grades except when necessary to correct a clerical error.

(b) Review Procedure

The Board, by Rule, shall establish a procedure by which unsuccessful applicants may obtain their written examination materials and request review of their MBE scores.

Source: This Rule is derived from former Rule 8 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-208. RE-EXAMINATION AFTER FAILURE

(a) Notice of Intent to Take Maryland General Bar Examination

An unsuccessful applicant may file a Notice of Intent to Take a Scheduled General Bar Examination to take another scheduled examination. The Notice of Intent to Take a Scheduled General Bar Examination shall be on the form prescribed by the Board and shall be accompanied by the required examination fee.

(b) Request for Test Accommodation

An applicant who seeks a test accommodation under the ADA for the bar examination shall indicate that request on the Notice of Intent to Take a Scheduled General Bar Examination and shall file an Accommodation Request pursuant to Rule 19-204 (b).

Committee note: An applicant who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

Cross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.

(c) Time for Filing

An applicant who intends to take the July examination shall file the Notice of Intent to Take a Scheduled General Bar Examination, together with the prescribed fee, no later than the preceding May 20. An applicant who intends to take the examination in February shall file the Notice of Intent to Take a Scheduled General Bar Examination, together with the prescribed fee, no later than the preceding December 20. Upon written request of an applicant and for good cause shown, the Board may accept a Notice of Intent to Take a Scheduled General Bar Examination filed after that deadline. If the Board rejects the Notice of Intent to Take a Scheduled General Bar Examination for lack of good cause for the untimeliness, the Board shall transmit written notice of the rejection to the applicant. The applicant may file an exception with the Court within five business days after notice of the rejection is transmitted.

(d) Three or More Failures - Re-examination Conditional

If an applicant fails three or more examinations, the Board may condition retaking of the examination on the successful completion of specified additional study.

(e) Withdrawal of Notice of Intent to Take a Scheduled General Bar Examination or Absence from Examination

If an applicant withdraws the Notice of Intent to Take a Scheduled General Bar Examination or fails to attend and take the examination, the examination fee shall not be refunded. The Board may apply the examination fee to a subsequent examination if the applicant establishes good cause for the withdrawal or failure to attend.

Source: This Rule is derived from former Rule 9 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-209. REPORT TO COURT - ORDER

(a) Report and Recommendations as to Applicants

As soon as practicable after each examination, the Board shall file with the Court a report containing (1) the names of the applicants who successfully completed the bar examination and (2) the Board's recommendation for admission. The Board's recommendation with respect to each applicant shall be conditioned on the outcome of any character proceedings relating to that applicant and satisfaction of the requirement of Rule 19-210.

(b) Order of Ratification

On receipt of the Board's report, the Court shall enter an order fixing a date at least 30 days after the filing of the report for ratification of the Board's recommendations. The order shall include the names of all applicants who are recommended for admission, including those who are conditionally recommended. The order shall state generally that all recommendations are conditioned on character approval and satisfaction of the requirement of Rule 19-210, but shall not identify those applicants as to whom proceedings are still pending. The order shall be posted on the Judiciary website no later than 5 days after the date of the order and remain on the website until ratification.

(c) Exceptions

Before ratification of the Board's report, any person may file with the Court exceptions relating to any relevant matter. For good cause shown, the Court may permit the filing of exceptions after ratification of the Board's report and before the applicant's admission to the Bar. The Court shall give notice of the filing of exceptions to (1) the applicant, (2) the Board, and (3) the Character Committee that passed on the applicant's application. A hearing on the exceptions shall be held to allow the person filing exceptions, the applicant, the Board, and, if an exception involves an issue of character, the Character Committee to present evidence in support of or in opposition to the exceptions and be heard. The Court may hold the hearing or may refer the exceptions to the Board, the Character Committee, or an examiner for hearing. The Board, Character Committee, or examiner hearing the exceptions shall file with the Court, as soon as practicable after the hearing, a report of the proceedings. The Court may decide the exceptions without further hearing.

(d) Ratification of Board's Report

On expiration of the time fixed in the order entered pursuant to section (b) of this Rule, the Board's report and recommendations shall be ratified subject to the conditions stated in the recommendations and to any exceptions noted under section (c) of this Rule.

Source: This Rule is derived from former Rule 10 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-210. REQUIRED ORIENTATION PROGRAM

(a) Approval of Program

The Court of Appeals shall approve an orientation program for effectively informing applicants of certain core requirements, established by Rules of the Court or other law, for engaging in the practice of law in Maryland.

(b) Contents of Program

The program shall include information regarding (1) reporting requirements established by Rules of the Court, (2) obligations to the Client Protection Fund and the Disciplinary Fund established by Rule or statute, (3) Rules governing attorney trust accounts and the handling of client funds and papers, and (4) the Rules of Professional Conduct regarding competence, scope of representation, diligence, communications with clients, fees, confidentiality, conflicts of interest, declining representation, meritorious claims, candor toward tribunals, and law firms.

(c) Timing

The program shall be given at the times and for the periods directed by the Court.

(d) Duration; Materials; Participation from Remote Location

The program shall not exceed three hours in duration. It may include the provision of written materials distributed in a manner determined by the Court but, to the extent practicable, it shall be given in electronic form, so that an applicant may participate from a remote location, subject to appropriate verification of the applicant's actual participation.

(e) Participation Requirement

An applicant may not be admitted to the Bar unless (1) prior to admission, the applicant has produced evidence satisfactory to the Board that the applicant satisfactorily participated in the program, or (2) the applicant has been excused from that requirement by Order of the Court of Appeals.

Committee note: The purpose of the orientation program is to assure that newly admitted attorneys are familiar with core requirements for practicing law in Maryland, the violation of which may result in their authority to practice law being suspended or revoked. The program is not intended to take the place of broader programs on professionalism offered by law schools, bar associations, and other entities, in which the Court of Appeals strongly encourages all attorneys to participate.

Source: This Rule is derived from former Rule 11 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-211. ORDER OF ADMISSION; TIME LIMITATION

(a) Order of Admission

When the Court has determined that an applicant is qualified to practice law and is of good moral character, it shall enter an order directing that the applicant be admitted to the Bar on taking the oath required by law.

(b) Time Limitation for Taking Oath - Generally

An applicant who has passed the Maryland General Bar examination may not take the oath of admission to the Bar later than 24 months after the date that the Court of Appeals ratified the Board's report for that examination.

(c) Extension

For good cause, the Board may extend the time for taking the oath, but the applicant's failure to take action to satisfy admission requirements does not constitute good cause.

(d) Consequence of Failure to Take Oath Timely

An applicant who fails to take the oath within the required time period and wishes to be admitted shall reapply for admission and retake the bar examination, unless excused by the Court.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for form of oath.

Source: This Rule is derived from former Rule 12 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-212. ELIGIBILITY OF OUT-OF-STATE ATTORNEYS FOR ADMISSION BY ATTORNEY EXAMINATION

(a) Generally

An individual is eligible for admission to the Bar of this State under this Rule if the individual:

(1) is a member in good standing of the Bar of a state;

(2) has passed a written bar examination in a state or is admitted to a state bar by diploma privilege after graduating from a law school accredited by the American Bar Association;

(3) has the professional experience required by this Rule;

(4) successfully completes the attorney examination prescribed by Rule 19-213; and

(5) possesses the good moral character and fitness necessary for the practice of law.

(b) Required Professional Experience

The professional experience required for admission under this Rule shall be on a full time basis as (1) a practitioner of law as provided in section (c) of this Rule; (2) a teacher of law at a law school

accredited by the American Bar Association; (3) a judge of a court of record in a state; or (4) a combination thereof.

(c) Practitioner of Law

(1) Subject to subsections (c)(2) and (3) of this Rule, a practitioner of law is an individual who has regularly engaged in the authorized practice of law:

(A) in a state;

(B) as the principal means of earning a livelihood; and

(C) whose professional experience and responsibilities have been sufficient to satisfy the Board that the individual should be admitted under this Rule and Rule 19-213.

(2) As evidence of the requisite professional experience, for purposes of subsection (c)(1)(C) of this Rule, the Board may consider, among other things:

(A) the extent of the individual's experience in the practice of law;

(B) the individual's professional duties and responsibilities, the extent of contacts with and responsibility to clients or other beneficiaries of the individual's professional skills, the extent of professional contacts with practicing attorneys and judges, and the individual's professional reputation among those attorneys and judges; and

(C) any professional articles or treatises that the individual has written.

(3) The Board may consider as the equivalent of practice of law in a state practice outside the United States if the Board concludes that the nature of the practice makes it the functional equivalent of practice within a state.

(d) Duration of Professional Experience

(1) An individual shall have the professional experience required by section (b) of this Rule for (A) a total of ten years, or (B) at least five of the ten years immediately preceding the filing of a petition pursuant to Rule 19-213.

(e) Exceptional Cases

In exceptional cases, the Board may treat an individual's actual experience, although not meeting the literal requirements of subsection (c)(1) or section (d) of this Rule, as the equivalent of the professional experience otherwise required by this Rule.

Source: This Rule is derived from sections (a) through (e) of former Rule 13 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-213. ADMISSION OF OUT-OF-STATE ATTORNEYS BY ATTORNEY EXAMINATION - PROCEDURE

(a) Petition

(1) An individual eligible pursuant to Rule 19-212 shall file with the Board a petition under oath on a form prescribed by the Board, accompanied by the fees required by the Board and the costs assessed for the character and fitness investigation and report by the National Conference of Bar Examiners.

(2) The petitioner shall list (A) each state in which the petitioner has been admitted to the Bar and whether each admission was by examination, by diploma privilege or on motion; and (B) the additional facts showing that the petitioner meets the requirements of section (a) of Rule 19-212 or should be qualified under section (e) of Rule 19-212.

(3) The petitioner shall file with the petition the supporting data required by the Board as to the petitioner's professional experience, character, and fitness to practice law.

(4) The petitioner shall be under a continuing obligation to report to the Board any material change in information previously furnished.

(b) Request for Test Accommodation

A petitioner who seeks a test accommodation under the ADA for the attorney examination shall file with the Board an "Accommodation Request" on a form prescribed by the Board, together with any supporting documentation that the Board requires. The form and documentation shall be filed no later than the deadline stated in section (d) of this Rule for filing a petition to take a scheduled attorney examination.

Committee note: A petitioner who may need a test accommodation is encouraged to file an Accommodation Request as early as possible.

C*ross reference: See Rule 19-205 for the procedure to appeal a denial of a request for a test accommodation.*

(c) Time for Filing

The petition shall be filed at least 60 days before the scheduled attorney examination that the petitioner wishes to take. On written request of the petitioner and for good cause shown, the Board may accept a petition filed after the deadline. If the Board rejects the petition for lack of good cause for the untimeliness, the petitioner may file an exception with the Court within five business days after notice of the rejection is transmitted.

Cross reference: See Board Rule 2.

(d) Preliminary Determination of Eligibility

Upon receipt of a petition, required supporting documentation, and all applicable fees, the Board shall determine whether, on the face of the petition, the petitioner is qualified to apply for admission pursuant to Rules 19-212 and 19-213.

(i) If the petitioner is qualified, the Board shall deposit the fees, seat the petitioner for the attorney exam, and begin the character investigation.

(ii) If the Board determines that, on the face of the petition, the petitioner is not qualified, it shall promptly transmit written notice to the Petitioner of the basis for the determination. If the petitioner takes exception to the Board's preliminary determination or seeks determination as an exceptional case pursuant to Rule 19-212 (e), the petitioner shall transmit written notice to the Board of the exception within five business days of the date the Board transmits notice of the preliminary determination. Upon receipt of an exception, the Board shall deposit the fees, seat the petitioner for the attorney examination, and begin the character investigation.

(e) Return of Fees; Deferral of Examination Fee

If the Board determines on the face of the petition that the petitioner is not qualified to sit for the attorney's examination and the petitioner does not file any exception to the preliminary determination of eligibility, all fees shall be returned undeposited. If, in other circumstances, a petitioner withdraws the petition, no fees shall be refunded. If a petitioner fails to attend and take the attorney examination with or without prior notice, the Board may apply the examination fee to a subsequent examination if the petitioner shows good cause for the withdrawal or failure to attend.

(f) Standard for Admission and Burden of Proof

(1) The petitioner bears the burden of proving to the Board and the Court that the petitioner is qualified on the basis of professional experience and possesses the good moral character and fitness necessary to practice law in this State.

(2) If the petitioner does not meet the burden of proof, the Board shall recommend denial of the petition. Failure or refusal to answer fully and candidly any relevant question in the NCBE character questionnaire or asked by the Board, either orally or in writing, or to provide relevant documentation is sufficient cause for the Board to recommend denial of the petition.

(g) Action by Board on Petition

The Board shall investigate the matters set forth in the petition.

(1) If the petitioner has passed the attorney examination and the Board finds that the petitioner has met the burden of proof, it shall transmit written notice to the petitioner of its decision to recommend approval of the petition.

(2) If the Board concludes that there may be grounds for recommending denial of the petition, the Board shall transmit written notice to the petitioner and shall afford the petitioner an opportunity for a hearing. The hearing shall not be held until after the National Conference of Bar Examiners completes its investigation of the petitioner's character and fitness to practice law and reports to the Board. The petitioner may be represented by an attorney at the hearing. Promptly after the Board makes its final decision to recommend approval or denial of the petition, the Board shall transmit written notice of its decision to the petitioner.

(3) If the Board decides to recommend denial of the petition, it shall file with the Court a report of its decision and all papers relating to the matter.

(h) Exceptions

Within 30 days after the Board transmit written notice of its adverse decision to the petitioner, the petitioner may file with the Court exceptions to the Board's decision. The petitioner shall mail or deliver to the Board a copy of the exceptions. The Court may hear the exceptions or may appoint an examiner to hear the evidence and shall afford the Board an opportunity to be heard on the exceptions.

(i) Attorney Examination

In order to be admitted to the Maryland Bar, the petitioner shall pass an attorney examination prescribed by the Board. The Board, by rule, shall define the subject matter of the examination, prepare the examination, and establish the passing grade. The Board shall administer the attorney examination on a date and at a time coinciding with the administration of the general bar examination pursuant to Rule 19-206 and shall post on the Judiciary's website at least 30 days in advance notice of the date and time of the examination. The Board shall grade the examination and shall transmit written notice of examination results to each petitioner. The Board, by Rule, shall determine the form and method of delivery of the notice of results. Successful petitioners shall be notified only that they have passed. Unsuccessful petitioners shall be given their grades in the detail the Board considers appropriate. Thereafter, the Board may not alter any petitioner's grades except to correct a clerical error. Review by unsuccessful petitioners shall be in accordance with the provisions of Rule 19-207 (b).

(j) Re-examination

In the event of failure on the first attorney examination, a petitioner may file a petition to retake the examination, but a petitioner may not be admitted under this Rule after failing four attorney examinations. A petition for re-examination shall be accompanied by the required fees. Failure to pass the attorney examination shall not preclude any individual from applying and being admitted under the rules pertaining to the general bar examination.

(k) Report to Court - Order

The Board shall file a report and recommendations pursuant to Rule 19-209. Proceedings on the report, including the disposition of any exceptions filed, shall be as prescribed in that Rule. If the Court determines that the petitioner has met all the requirements of this Rule, it shall enter an order directing that the petitioner be admitted to the Bar of Maryland on taking the oath required by law

(l) Required Orientation Program

A petitioner recommended for admission pursuant to section (j) of this Rule shall comply with Rule 19-210.

(m) Time Limitation for Admission to the Bar

A petitioner under this Rule is subject to the time limitation of Rule 19-211.

Cross reference: See Code, Business Occupations and Professions Article, §10-212, for the form of oath.

Source: This Rule is derived from sections (f) through (q) of former Rule 13 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-214. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS PRO HAC VICE

(a) Motion for Special Admission

(1) Generally

A member of the Bar of this State who (A) is an attorney of record in an action pending (i) in any court of this State, or (ii) before an administrative agency of this State or any of its political subdivisions, or (B) is representing a client in an arbitration taking place in this State that involves the application of Maryland law, may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.

Committee note: "Special admission" is a term equivalent to "admission pro hac vice." It should not be confused with "special authorization" permitted by Rules 19-215 and 19-216.

(2) Where Filed

(A) If the action is pending in a court, the motion shall be filed in that court.

(B) If the action is pending before an administrative agency, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in any other circuit court in which an action for judicial review of the decision of the agency may be filed.

(C) If the matter is pending before an arbitrator or arbitration panel, the motion shall be filed in the circuit court for the county in which the arbitration hearing is to be held or in any other circuit court in which an action to review an arbitral award entered by the arbitrator or panel may be filed.

(3) Other Requirements

The motion shall be in writing and shall include the movant's certification that copies of the motion have been served on the agency or the arbitrator or arbitration panel, and all parties of record.

Cross reference: See Appendix 19-A following Title 19, Chapter 200 of these Rules for Forms 19-A.1 and 19-A.2, providing the form of a motion and order for the Special Admission of an out-of-state attorney.

(b) Certification by Out-of-State Attorney

The attorney whose special admission is moved shall certify in writing the number of times the attorney has been specially admitted during the twelve months immediately preceding the filing of the motion. The certification may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) Order

The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a docket of all attorneys granted or denied special admission. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) Limitations on Out-of-State Attorney's Practice

An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. An attorney specially admitted is subject to the Maryland Attorneys' Rules of Professional Conduct during the pendency of the action or arbitration.

Cross reference: See Code, Business Occupations and Professions Article, §10-215.

Committee note: This Rule is not intended to permit extensive or systematic practice by attorneys not admitted in Maryland. Because specialized expertise or other special circumstances may be important in a particular case, however, the Committee has not recommended a numerical limitation on the number of special admissions to be allowed any out-of-state attorney.

Source: This Rule is derived from former Rule 14 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-215. SPECIAL AUTHORIZATION FOR OUT-OF-STATE ATTORNEYS AFFILIATED WITH PROGRAMS PROVIDING LEGAL SERVICES TO LOW-INCOME INDIVIDUALS

(a) Definition

As used in this Rule, "legal services program" means a program operated by (1) an entity that provides civil legal services to low-income individuals in Maryland who meet the financial eligibility requirements of the Maryland Legal Services Corporation and is on a list of such programs provided by the Corporation to the State Court Administrator and posted on the Judiciary website pursuant to Rule 19-505; (2) the Maryland Office of the Public Defender; (3) a clinic offering pro bono legal services and operating in a courthouse facility; or (4) a local pro bono committee or bar association affiliated project that provides pro bono legal services.

(b) Eligibility

Pursuant to this Rule, a member of the Bar of another state who is employed by or associated with a legal services program may practice in this State pursuant to that program if (1) the individual is a graduate of a law school meeting the requirements of Rule 19-201 (a)(2) and (2) the individual will practice under the supervision of a member of the Bar of this State.

Cross reference: For the definition of "State," see Rule 19-101 (k).

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the out-of-state attorney shall file with the Clerk of the Court of Appeals a written request accompanied by (1) evidence of graduation from a law school as defined in Rule 19-201 (a)(2), (2) a certificate of the highest court of another state certifying that the attorney is a member in good standing of the Bar of that state, and (3) a statement signed by the Executive Director of the legal services program that includes (A) a certification that the attorney is currently employed by or associated with the program, (B) a statement as to whether the attorney is receiving any compensation other than reimbursement of reasonable and necessary expenses, and (C) an agreement that, within ten days after cessation of the attorney's employment or association, the Executive Director will file the Notice required by section (e) of this Rule.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule, subject to the automatic termination provision of section (e) of this Rule. The certificate shall state (1) the effective date, (2) whether the attorney (A) is authorized to receive compensation for the practice of law under this Rule or (B) is authorized to practice exclusively as a pro bono attorney pursuant to Rule 19-504, and (3) any expiration date of the special authorization to practice. If the attorney is receiving compensation for the practice of law under this Rule, the expiration date shall be no later than two years after the effective date. If the attorney is receiving no compensation other than reimbursement of reasonable and necessary expenses, no expiration date shall be stated.

Cross reference: An attorney who intends to practice law in Maryland for compensation for more than two years should apply for admission to the Maryland Bar.

(e) Automatic Termination

Authorization to practice under this Rule is automatically terminated if the attorney ceases to be employed by or associated with the legal services program. Within ten days after cessation of the attorney's employment or association, the Executive Director of the legal services program shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, an attorney authorized to practice under this Rule shall notify the Executive Director of the legal services program of the disciplinary matter. An attorney authorized to practice under this Rule who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend an attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all out-of-state attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Out-of-state attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State, except in connection with practice that is authorized under this Rule. They are required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund, except that an attorney who is receiving no compensation other than reimbursement of reasonable and necessary expenses is not required to make the payments.

(i) Rules of Professional Conduct

An attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct. (j) Reports

Upon request by the Administrative Office of the Courts, an attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 15 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-216. SPECIAL AUTHORIZATION FOR MILITARY SPOUSE ATTORNEYS

(a) Definition

As used in this Rule, a "military spouse attorney" means an (1) attorney admitted to practice in another state but not admitted in this State, (2) is married to an active duty service member of the United States Armed Forces and (3) resides in the State of Maryland due to the service member's military orders for a permanent change of station to Maryland or a state contiguous to Maryland.

Cross reference: For the definition of "State," see Rule 19-101 (k).

(b) Eligibility

Subject to the conditions of this Rule, a military spouse attorney may practice in this State if the individual:

(1) is a graduate of a law school meeting the requirements of Rule 19-201(a)(2);

(2) is a member in good standing of the Bar of another state;

(3) will practice under the direct supervision of a member of the Bar of this State;

(4) has not taken and failed the Maryland Bar examination or attorney examination;

(5) has not had an application for admission to the Maryland Bar or the Bar of any state denied on character or fitness grounds;

(6) certifies that the individual will comply with the requirements of Rule 19-605; and

(7) certifies that the individual has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland laws and Rules relating to any particular area of law in which the individual intends to practice.

Cross reference: See Rule 19-305.1 (5.1) for the responsibilities of a supervising attorney.

(c) Proof of Eligibility

To obtain authorization to practice under this Rule, the military spouse attorney shall file with the Clerk of the Court of Appeals a written request accompanied by:

(1) evidence of graduation from a law school meeting the requirements of Rule 19-201(a)(2);

(2) a list of states where the military spouse attorney is admitted to practice, together with a certificate of the highest court of each such state certifying that the attorney is a member in good standing of the Bar of that state;

(3) a copy of the service member's military orders reflecting a permanent change of station to a military installation in Maryland or a state contiguous to Maryland;

(4) a certificate from or on behalf of the Department of Defense or a unit thereof acceptable to the Clerk of the Court of Appeals attesting that the military spouse attorney is the spouse of the service member;

(5) a statement signed by the military spouse attorney certifying that the military spouse attorney:

(A) resides in Maryland;

(B) has not taken and failed the Maryland Bar examination or attorney examination;

(C) has not had an application for admission to the Maryland Bar or the Bar of any state denied on character or fitness grounds;

(D) will comply with the requirements of Rule 19-605; and

(E) has read and is familiar with the Maryland Rules of civil and criminal procedure, the Maryland Rules of Evidence, and the Maryland Attorneys' Rules of Professional Conduct, as well as the Maryland law and Rules relating to any particular area of law in which the individual intends to practice; and

(6) a statement signed by the supervising attorney that includes a certification that (A) the military spouse attorney is or will be employed by or associated with the supervising attorney's law firm

or the agency or organization that employs the supervising attorney, and (B) an agreement that within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney will file the notice required by section (e) of this Rule and that the supervising attorney will be prepared, if necessary, to assume responsibility for open client matters that the individual no longer will be authorized to handle.

(d) Certificate of Authorization to Practice

Upon the filing of the proof of eligibility required by this Rule, the Clerk of the Court of Appeals shall issue a certificate under the seal of the Court certifying that the attorney is authorized to practice under this Rule for a period not to exceed two years, subject to the automatic termination provisions of section (e) of this Rule. The certificate shall state the effective date and the expiration date of the special authorization to practice.

(e) Automatic Termination

(1) Cessation of Employment

Authorization to practice under this Rule is automatically terminated upon the earlier of (A) the expiration of two years from the issuance of the certificate of authorization, or (B) the expiration of ten days after the cessation of the military spouse attorney's employment by or association with the supervising attorney's law firm or the agency or organization that employs the supervising attorney unless, within the ten day period, the military spouse attorney files with the Clerk of the Court of Appeals a statement signed by another supervising attorney who is a member of the Bar of this State in compliance with subsection (c)(6) of this Rule. Within ten days after cessation of the military spouse attorney's employment or association, the supervising attorney shall file with the Clerk of the Court of Appeals notice of the termination of authorization.

(2) Change in Status

A military spouse attorney's authorization to practice law under this Rule automatically terminates 30 days after (A) the service member spouse is no longer a member of the United States Armed Forces, (B) the service member and the military spouse attorney are divorced or their marriage is annulled, or (C) the service member receives a permanent transfer outside Maryland or a state contiguous to Maryland, except that a service member's assignment to an unaccompanied or remote assignment does not automatically terminate the military spouse attorney's authorization, provided that the military spouse attorney continues to reside in Maryland. The military spouse attorney promptly shall notify the Clerk of the Court of Appeals of any change in status that pursuant to this subsection terminates the military spouse attorney's authorization to practice in Maryland.

Committee note: A military spouse attorney who intends to practice law in Maryland for more than two years should apply for admission to the Maryland Bar. The bar examination process may be commenced and completed while the military spouse attorney is practicing under this Rule.

(f) Disciplinary Proceedings in Another Jurisdiction

Promptly upon the filing of a disciplinary proceeding in another jurisdiction, a military spouse attorney shall notify the supervising attorney of the disciplinary matter. A military spouse attorney who in another jurisdiction (1) is disbarred, suspended, or otherwise disciplined, (2) resigns from the bar while disciplinary or remedial action is threatened or pending in that jurisdiction, or (3) is placed on inactive status based on incapacity shall inform Bar Counsel and the Clerk of the Court of Appeals promptly of the discipline, resignation, or inactive status.

(g) Revocation or Suspension

At any time, the Court, in its discretion, may revoke or suspend a military spouse attorney's authorization to practice under this Rule by written notice to the attorney. By amendment or deletion of this Rule, the Court may modify, suspend, or revoke the special authorizations of all military spouse attorneys issued pursuant to this Rule.

(h) Special Authorization not Admission

Military spouse attorneys authorized to practice under this Rule are not, and shall not represent themselves to be, members of the Bar of this State.

(i) Rules of Professional Conduct; Required Payments

A military spouse attorney authorized to practice under this Rule is subject to the Maryland Attorneys' Rules of Professional Conduct and is required to make payments to the Client Protection Fund of the Bar of Maryland and the Disciplinary Fund.

(j) Reports

Upon request by the Administrative Office of the Courts, a military spouse attorney authorized to practice under this Rule shall timely file an IOLTA Compliance Report in accordance with Rule 19-409 and a Pro Bono Legal Service Report in accordance with Rule 19-503.

Source: This Rule is derived from former Rule 15.1 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-217. LEGAL ASSISTANCE BY LAW STUDENTS

(a) Definitions

As used in this Rule, the following terms have the following meanings:

(1) Law School

"Law school" means a law school that meets the requirements of Rule 19-201(a)(2).

(2) Clinical Program

"Clinical program" means a law school program for credit in which a student obtains experience in the operation of the legal system by engaging in the practice of law that (A) is under the direction of a faculty member of the school and (B) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of the Maryland State Bar Association, Inc.

(3) Externship

"Externship" means a field placement for credit in a government or not-for-profit organization in which a law student obtains experience in the operation of the legal system by engaging in the practice of law, that (A) is under the direction of a faculty member of a law school, (B) is in compliance with the applicable American Bar Association standard for study outside the classroom, (C) has been approved by the Section Council of the Section of Legal Education and Admission to the Bar of Maryland State Bar Association, Inc., and (D) is not part of a clinical program of a law school.

(4) Supervising Attorney

"Supervising attorney" means an attorney who is a member in good standing of the Bar of this State and whose service as a supervising attorney for the clinical program or externship is approved by the dean of the law school in which the law student is enrolled or by the dean's designee.

(b) Eligibility

A law student enrolled in a clinical program or externship is eligible to engage in the practice of law as provided in this Rule if the student:

(1) is enrolled in a law school;

(2) has read and is familiar with the Maryland Attorneys' Rules of Professional Conduct and the relevant Maryland Rules of Procedure; and

(3) has been certified in accordance with section (c) of this Rule.

(c) Certification

(1) Contents and Filing

The dean of the law school shall file the certification of a student with the Clerk of the Court of Appeals. The certification shall state that the student is in good academic standing and has successfully completed legal studies in the law school amounting to the equivalent of at least one-third of the total credit hours required to complete the law school program. It also shall state its effective date and expiration date, which shall be no later than one year after the effective date.

(2) Withdrawal or Suspension

The dean may withdraw the certification at any time by mailing a notice to that effect to the Clerk of the Court of Appeals. The certification shall be suspended automatically upon the issuance of an unfavorable report of the Character Committee made in connection with the student's application for admission to the Bar. Upon any reversal of the unfavorable report, the certification shall be reinstated.

(d) Practice

In connection with a clinical program or externship, a law student for whom a certification is in effect may appear in any trial court or the Court of Special Appeals, or before any administrative agency, and may otherwise engage in the practice of law in Maryland, provided that the supervising attorney (1) is satisfied that the student is competent to perform the duties assigned, (2) assumes responsibility for the quality of the student's work, (3) directs and assists the student to the extent necessary, in the supervising attorney's professional judgment, to ensure that the student's participation is effective on behalf of the client the student represents, and (4) accompanies the student when the student appears in court or before an administrative agency. The law student shall neither ask for nor receive personal compensation of any kind for service rendered under this Rule, but may receive academic credit pursuant to the clinical program or externship.

Source: This Rule is derived from former Rule 16 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-218. ADDITIONAL CONDITIONS PRECEDENT TO THE PRACTICE OF LAW

Maryland Rule 19-605 (Obligations of Attorneys) and Maryland Rule 19-705 (Disciplinary Fund) require individuals admitted to the Maryland Bar, as a condition precedent to the practice of law in this State, to pay an annual assessment to the Client Protection Fund of the Bar of Maryland and the Attorney Grievance Commission Disciplinary Fund. Except as otherwise provided in Rule 19-215 (h), out-of-state attorneys specially authorized to practice pursuant to Rule 19-215 and military spouse attorneys specially authorized to practice pursuant to Rule 19-216 also shall pay the annual assessments required by Rules 19-605 and 19-705.

Source: This Rule is new but is derived from the cross reference to former Rule 12 of the Rules Governing Admission to the Bar of Maryland (2016).

Rule 19-219. SUSPENSION OR REVOCATION OF ADMISSION

If an attorney admitted to the Bar of this State is discovered to have been ineligible for admission under circumstances that do not warrant disbarment or other disciplinary proceedings, the Court of Appeals, upon a recommendation by the Board and after notice and opportunity to be heard, may suspend or revoke the attorney's admission. In the case of a suspension, the Court shall specify in its order the duration of the suspension and the conditions upon which the suspension may be lifted.

Source: This Rule is derived from former Rule 21 of the Rules Governing Admission to the Bar of Maryland (2016).

MARYLAND RULES OF PROCEDURE

RULES OF THE BOARD

Board Rule 1. APPLICATION FEES

(a) General Bar Examination

(1) An application filed pursuant to Rule 19-202 shall be accompanied by a fee in the amount of: $225 if filed by the preceding January 15 for a July examination or by the preceding September 15 for a February examination, otherwise, $275.

(2) An updated application filed pursuant to Rule 19-202 (e) shall be accompanied by a fee of $70.

(3) A Notice of Intent to Take a Scheduled Maryland General Bar Examination pursuant to Rule 19-204 or Rule 19-208 shall be accompanied by a fee of $250.

(b) Out-of-State Attorney Examination

(1) A petition filed pursuant to Rule 19-213 shall be accompanied by a fee of $700 and a separate check, money order, or credit card authorization payable to the National Conference of Bar Examiners in the amount required to cover the cost of the character and fitness investigation and report.

(2) A petition for re-examination filed pursuant to Rule 19-213 shall be accompanied by a fee of $250.

Board Rule 2. FILING LATE FOR GOOD CAUSE

An applicant's written request for acceptance of an application or petition filed late for good cause pursuant to Rule 19-202 (c)(2)(B), Rule 19-204, or Rule 19-213 (d) shall include a statement indicating:

(a) whether the applicant's failure to timely file was due to facts and circumstances beyond the applicant's control**,** and stating those facts and circumstances**;**

(b) whether the applicant presently has a bar application pending in any other state;

(c) whether the applicant presently is a member of the Bar of any other state; and

(d) the specific nature of the hardship that would result if the applicant's request is denied.

Board Rule 3. TEST ACCOMMODATIONS PURSUANT TO THE AMERICANS WITH DISABILITIES ACT

(a) Policy

In accordance with the ADA, the Board shall provide test accommodations to an individual taking the Maryland General Bar examination or the attorney examination, to the extent that such accommodations are reasonable, consistent with the nature and purpose of the examination and necessitated by the applicant's disability.

(b) Requesting Test Accommodations

An individual shall apply for admission to the Bar of Maryland prior to or contemporaneously with requesting test accommodations. In order to request test accommodations, an individual shall file a completed Applicant's Accommodations Request Form along with the specified supporting documentation. The Applicant's Accommodations Request Form shall be filed not later than the deadline for filing a Notice of Intent to Take a Scheduled General Bar Examination or a petition to retake the attorney examination pursuant to Rules 19-204, 19-208, or 19-213.

(c) Review by Board

(1) Initial Review for Sufficiency

The Board's staff shall conduct an initial review of a request for test accommodations. The Board's staff shall reject a request if the request fails to adequately specify the test accommodations required or if the supporting documentation is substantially incomplete or is otherwise deficient. If the request is rejected, the Board's staff shall advise the applicant in writing of the deficiencies in the request and supporting documents.

(2) Board Determination

If there is uncertainty about whether the requested test accommodation is warranted pursuant to the ADA, the applicant's request and all supporting documentation may be referred to a qualified expert retained by the Board to review and analyze whether the applicant has documented a disability and requested a reasonable accommodation. Thereafter, a designated member of the Board shall determine whether test accommodations should be granted after examining the applicant's request and the report of the Board's expert. The Board's staff shall advise the applicant in writing whether the request for test accommodations is granted or denied in whole or in part.

(d) Appeal to the Accommodations Review Committee

If the Board denies a request for test accommodations in whole or in part, the applicant may file an appeal with the Accommodations Review Committee pursuant to Rule 19-205.

Board Rule 4. EXAMINATION – SUBJECT MATTER

Pursuant to section (c) of Rule 19-206, the subject matter of the Board's essay test is defined as follows:

AGENCY

The law of agency shall be included on the examination only to the extent provided in the definitions of Business Associations, Contracts and Torts.

BUSINESS ASSOCIATIONS

The legal principles pertaining to forming, organizing, operating and dissolving business entities in Maryland and related principles of agency. The business entities include: (a) corporations, (b) close corporations, (c) limited liability companies, (d) professional service corporations, (e) general, limited,

and limited liability partnerships, (f) joint ventures, (g) unincorporated associations, and (h) sole proprietorships. The subject also includes: (a) the rights, powers, duties and liabilities of owners, partners, member, shareholders, managers, directors, officers, (b) the issuance of shares or other ownership interests in business entities, (c) the distribution of dividends and assets, and (d) the allocation of profits and losses from business entities.

COMMERCIAL TRANSACTIONS

The law governing commercial transactions derived from the following titles of the Maryland Code, Commercial Law Article: Sales (Title 2); Leases (Title 2A); Negotiable Instruments (Title 3); Bank Deposits and Collections (Title 4); Bulk Transfers (Title 6); and Secured Transactions (Title 9).

CONSTITUTIONAL LAW

The interpretation of the Constitution of the United States and its amendments, division of powers between the states and national government, powers of the President, the Congress, and the Supreme Court, limitations on the powers of the state and national government.

CONTRACTS

The consideration of agreements enforceable at law. The subject includes: (a) formation of contracts - offer and acceptance, mistake, fraud, misrepresentation or duress, contractual capacity, effect of illegality, consideration; informal contracts; (b) third-party beneficiary contracts; (c) assignment of contracts; (d) statute of frauds; (e) parol evidence rule, interpretation of contracts; (f) performance-conditions, failure of consideration, aleatory promises, rights of defaulting plaintiff, substantial performance, specific performance, (g) breach of contract and remedies therefor, including measure of damages; (h) impossibility of performance, frustration of purpose; and (i) discharge of contracts. This subject may also include law dealing with an agent’s ability to bind a principal to a contract, and the agent’s personal liability on a contract made for a principal.

CRIMINAL LAW AND PROCEDURE

The law of crimes against the person; crimes against public peace and morals; property crimes; crimes involving the breach of public trust or civic duty, obstruction of justice; criminal responsibility, causation, justification and other defenses; constitutional limitations and protections. The law of criminal procedure includes the provisions of the Criminal Procedure Article of the Annotated Code of Maryland, Maryland Rules, Title 4, Criminal Causes, and to prosecutions for violations of criminal law.

EVIDENCE

The law governing the proof of issues of fact in civil and criminal trials including functions of the court and jury; competence of witnesses; examination, cross-examination and impeachment of witnesses; presumptions, burden of producing evidence and burden of persuasion; privileges against disclosure of information; relevancy; demonstrative, experimental and scientific evidence; opinion evidence; admissibility of writings; parol evidence rule; hearsay rule; judicial notice. The Board’s Test shall cover only the Maryland substantive Law of Evidence, common law and statute, including the Maryland Rules of Evidence.

FAMILY LAW

The principles of Maryland law regarding creation of (or the existence of) the marriage relationship; termination of the marriage; alimony and support of the marriage partner; support and custody of children; marital property issues; and prenuptial agreements. Includes both statutory and common law principles of Maryland law and procedure except for matters of adoption, paternity, and juvenile law.

MARYLAND CIVIL PROCEDURE

The various procedural steps and matters involved in an action at law or in equity, from commencement of the action to final disposition on appeal. The subject includes: (a) jurisdiction of courts; (b) venue; (c) parties and process; (d) forms of pleading; (e) motions and other means of raising procedural objections or defenses, including affirmative defenses and counter-claims; (f) discovery and other pre-trial procedures; (g) trial practice; (h) entry, effect and enforcement of judgments; (i) methods of taking appeal or otherwise securing appellate review; and (j) appellate practice and procedure. The subject embraces civil procedure and practice in the State courts. Federal Rules of practice and procedure are not covered on the examination.

PROFESSIONAL CONDUCT

The Maryland Attorneys' Rules of Professional Conduct set forth in Title 19, Chapter 300 of the Maryland Rules.

PROPERTY

The fundamentals of real property law including concepts of possession; concurrent and consecutive future estates in land (and their counterparts in testamentary and inter vivos trusts); leaseholds and landlord-tenant relationships; fixtures and the distinction between real and personal property; covenants enforceable in equity; easements, profits and licenses; rights of user and exploitation in land (including rights to lateral and subjacent support); contracts of sale of real estate; the statute of limitations on real actions (adverse possession) and prescription; conveyancing priorities and recording (including marketable title); remedies. Problems of rules against perpetuities shall appear only on the MBE test.

TORTS

The law of civil wrongs. The subject includes, but is not limited to: (a) negligent torts including causation, standard of care, primary negligence, comparative and contributory negligence, assumption of risk, limitations on liability, contribution and indemnity; impact of insurance; (b) intentional torts; (c) strict liability, products liability; (d) nuisance; (e) invasion of privacy; (f) defamation; (g) vicarious liability; and (h) defenses, immunity and privilege, and damages in connection with any of these areas.

Board Rule 5. EXAMINATION FORMAT, SCORING, AND PASSING STANDARD

(a) Authority

Pursuant to section (c) of Rule 19-206, the State Board of Law Examiners adopts the Multistate Bar Examination and the Multistate Performance Test as part of the Maryland Bar Examination. Pursuant to section (d) of Rule 19-206, the Board establishes the policies and standards set forth in the following sections of this Board Rule to govern the format, scoring, and passing standard for the Maryland Bar Examination.

(b) Multistate Bar Examination (MBE)

(1) One part of the Maryland Bar Examination is the Multistate Bar Examination (MBE). The MBE is published and scored by the National Conference of Bar Examiners (NCBE) and its agents.

(2) The MBE is a multiple choice test. An applicant's MBE raw score is the number of questions answered correctly. MBE raw scores are scaled to adjust for possible differences in average question difficulty across administrations of the examination. As a result of scaling, a given MBE scale score indicates about the same level of performance regardless of the particular administration of the examination on which it is earned.

(c) Written Test: Board's Essay Test and the Multistate Performance Test (MPT)

(1) The other part of the Maryland General Bar Examination is the Written Test, which comprises the Board's Essay Test and one MPT question. The Board shall prepare and grade the Board's Essay test. The MPT is published by the NCBE and graded by the Board.

(2) The Board's Essay test shall consist entirely of questions requiring essay answers. Questions shall not be labeled by subject matter. Single questions may involve two or more subject matters from the list in Board Rule 4.

(3) The format and specifications for the MPT are determined by the NCBE.

(4) The raw score for the Written Test shall be calculated as follows:

Written Test raw score = Sum of Board's Essay test raw scores + (MPT raw score x 1.5)

(5) The Written Test raw score shall be converted to the same scale of measurement as that used on the MBE to adjust for possible differences in average question difficulty across administrations of the examination.

(d) Combining MBE and Written Test Scores to Calculate Total Examination Score

(1) For purposes of calculating an applicant's total scale score, both the MBE and Written scale scores shall be rounded to the nearest whole number.

(2) The Written Test shall be weighted twice as heavily as the MBE in the computation of the total scale score. The following formula shall be used to compute an applicant's total scale score on the Maryland Bar Examination:

Total Test Scale Score = (Written Scale Score x 2) + MBE Scale Score

(e) Passing Standard

In order to pass the Maryland Bar Examination, an applicant shall achieve a total scale score, as defined in subsection (d)(2), of 406 or higher.

(f) No Carryover of MBE Score or Written Score from Prior Examinations

For purposes of the Board's calculation of the total scale score and determination of the applicant's pass/fail status, an applicant shall achieve both the MBE and Written Test scale scores on the same administration of the Bar Examination.

(g) Recognition of MBE Score Achieved Concurrently in Another State

The Board shall accept an MBE score which an applicant achieves in another state in an administration of the MBE which is concurrent with Maryland's administration of the Written Test to the applicant. For purposes of the Board's calculation of the total scale score and determination of the applicant's pass/fail status, the concurrent MBE score shall be treated exactly as though it were achieved in Maryland.

(h) Adjustment of Passing Standard

For any particular administration of the Maryland General Bar examination, the Board may, in the interest of fairness, lower (but not raise) the passing score standard at any time before notices of the examination results are transmitted.

Board Rule 6. OUT-OF-STATE ATTORNEY EXAMINATION

(a) Subject Matter

The out-of-state attorney examination shall be prepared and graded by the Board and shall consist entirely of questions requiring essay answers. It shall relate to:

(1) Maryland Rules of Procedure governing practice and procedure in civil cases and criminal causes in all the Courts of the State of Maryland, including the Appendix of forms,

(2) the Maryland Attorneys' Rules of Professional Conduct, as set forth in Title 19, Chapter 300 of the Maryland Rules,

(3) the provisions of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, and

(4) the provisions of the Criminal Procedure Article of the Annotated Code of Maryland.

(b) Time - Duration

The attorney examination shall be conducted contemporaneously with a part of the essay day of each regularly scheduled general bar examination. A total of three hours writing time shall be allowed for the entire test. The point score allotted for each question shall be noted on the examination sheet.

(c) Requirement for Passing

In order to pass the examination, a petitioner shall attain a score of at least 70% of the total point score allotted to the entire test.

Board Rule 7. ELIGIBILITY TO TAKE THE MARYLAND GENERAL BAR EXAMINATION PURSUANT TO RULE 19-201(b)(2)

In order for an additional degree from an ABA approved law school to qualify under Rule 19-201(b):

(a) the applicant, in the course of meeting the requirements of the award of the degree from the applicant's law school, shall complete a minimum of 26 credit hours from among the bar examination subjects listed in Board Rule 4 and federal civil procedure and;

(b) the applicant shall furnish the following documents and certifications in a form required by the Board:

(1) a certification from the dean, assistant dean or acting dean of an ABA approved law school that the applicant's foreign legal education, together with the applicant's approved law school degree, is the equivalent of that required for an LL.B. or a J.D. Degree in that law school;

(2) a certification from the dean, assistant dean or acting dean of an ABA approved law school that the applicant has successfully completed a minimum of 26 credit hours from among the bar examination subjects listed in Board Rule 4 and federal civil procedure; and

(3) all documents considered for admission of the applicant to the degree program of an ABA approved law school must be submitted by the law school and translated into the English language.

Board Rule 8. REQUESTING REVIEW OF WRITTEN EXAMINATION MATERIALS AND REVIEW OF MBE SCORES

On written request filed within 60 days after the date notice of the examination results is transmitted, an unsuccessful applicant may (1) review in person in the Board's office, and upon payment of the required fee obtain copies of, the applicant's essay test answers, MPT answer, MPT question book, and the NCBE's MPT point sheet; and (2) upon submitting to the Board's office a request form and check payable to the NCBE in the required amount, the Board will obtain confirmation of the applicant's MBE score. No further review of the MBE shall be permitted.

Source: This Rule is new.

CITATIONS

Statutes Relating to Bar Admissions:

Ann. Code Md., *Business Occupations and Professions*, **Title 10, Lawyers**.

Decisions Relating to Admission of Out-of-State Attorneys:

In Re Application of Mark W., 303 Md. 1, 491 2d 576(1985) (Employment as hearing examiner with Department of Employment and Training merely involves work with legally related matters and does not fall within fair intendment of term "practitioner of law" so as to permit individual who is member of another bar to become member of state bar without taking bar examination. Code 1957, Art. 10, Sec. 7; Admission to the Bar Rule 14, subis. a (iii), d.)

Attorney Grievance Commission of Maryland v. Michael Patrick Keehan, 311 Md. 161, 533A.2d 278 (1987). In his application for admission to the Bar of Maryland as an out-of-state attorney, Keehan failed to disclose his full-time employment as an adjuster for an insurance company. He was admitted to the Maryland Bar based on his representation that he was a sole practitioner in Pennsylvania. Following investigation by the Attorney Grievance Commission and subsequent disciplinary proceedings, Keehan was disbarred by the Court of Appeals of Maryland for deliberately failing to disclose material information in his Bar application.

In the Matter of the Application of R.G.S. for Admission to the Bar of Maryland, 312 Md. 626, 541 A.2d 977 (1988). The Court held, by a 4-3 majority, that applicant, who was formerly a law professor and who was admitted to practice in another state, was "practicing law" for purposes of bar admissions rule during period in which he was employed full-time by Maryland law firm and applicant was not engaged in "unauthorized practice of law." The majority stressed that applicant's activities were very close to those of corporate house counsel.

Thomas F. Kennedy v. the Bar Association of Montgomery County, Inc. 316 Md.646, 561 A.2d 200 (1989). Kennedy was a member of the Bar of the District of Columbia Court of Appeals and had been admitted to practice before the United States District Court for the District of Maryland, but was not admitted to practice before the Bar of the Court of Appeals of Maryland. The Bar Association of Montgomery County successfully sought an injunction in which the Circuit Court for Montgomery County found, among other facts, that Kennedy deliberately attempted to engage in an extensive and systematic practice of law in the State of Maryland while not being licensed to practice in the State of Maryland. In an appeal to the Court of Appeals of Maryland, Kennedy challenged the scope of the permanent injunction which was issued against him. In its opinion upholding in part and reversing in part the Circuit Court's injunction, the Court of Appeals asserted: "Kennedy may not utilize his admission to the bar of the federal court in Maryland, or his admission in Washington, D.C. as a shield against injunctive relief by asserting that he will operate a triage. He is not permitted to sort through clients who may present themselves at his Maryland office and represent only those whose legal matters would require suit or defense in a Washington, D.C. court or in the federal court in Maryland because the very acts of interview, analysis, and explanation of legal rights constitute practicing law in Maryland. For an unadmitted person to do so on a regular basis from a Maryland principal office is the unauthorized practice of law in Maryland." **Decisions Relating to Moral Character**

In Re Application of Allan S., 282 Md. 683, 387 A.2d 271 (1978)

In Re Application of David H., 283 Md. 632, 392 A.2d 83 (1978)

In Re Application of Howard C., 286 Md. 244, 407 A.2d 1124 (1979)

In Re Application of A.T., 286 Md. 507, 408 A.2d 1023 (1979)

In Re Application of K.B., 291 Md. 170, 434 A.2d 541 (1981)

In Re Application of G.S., 291 Md. 182, 433 A.2d 1159 (1981)

In Re Application of G.L.S., 292 Md. 378, 439 A.2d 1107 (1982)

In Re Application of Maria C. For Admission To the Bar Of Maryland, 294 Md. 538, 451 A.2d 655 (1982) (Dissenting Opinion by Smith, J.)

In Re Application of David H. For Admission To The Bar Of Maryland, 294 Md. 546, 451 A.2d 657 (1982) (Dissenting Opinions by Smith, J. and Rodowsky, J.)

In Re Application of James G., 296 Md. 310, 462 A.2d 1198 (1983) (Dissenting Opinion by Smith, J., in which Rodowsky, J. concurs.)

Attorney Grievance Commission of Maryland v. James Henry Gilbert, 307 Md. 481, 515 A.2d 454 (1986)

See *supra, In Re Application of James G.*, 296 Md. 310 (1983), 5-2 Decision of the Court of Appeals admitting to practice, applicant James Gilbert, following extensive hearings before the Character Committee and the Board of Law Examiners regarding prior criminal charges, conviction and overall good moral character.

The Court of Appeals, following proceedings for disbarment, agreed with the findings of fact and conclusion reached by the Circuit Trial Judge assigned to hear the case, that the applicant had intentionally failed to disclose a material fact by not disclosing the information requested on the bar admission application. This raised serious questions as to the attorney's fitness to practice law. Because of the gravity of this misconduct and the absence of any compelling circumstances, "disbarment" was the appropriate sanction.

In Re Application of George B., 297 Md 421, 466 A.2d 1286 (1983)

In Re Application of J. L. L., 304 Md. 394, 499 A.2d 935 (1985) *In Re Application of Charles M.*, 313 Md. 168, 545 A.2d 7(1988) *In Re Application of Jeb F.*, 316 Md. 234, 558 A.2d 378 (1989)

Attorney Grievance Commission v. Jeffrey Thomas Joehl, 335 Md.83, 642 A.2d 194 (1994). The Attorney Grievance Commission charged Jeffrey Thomas Joehl, the respondent in this appeal, with professional misconduct primarily arising out of certain representations and omissions made by Joehl in connection with his application for admission to the Bar of Maryland. The Court of Appeals noted a pattern of dishonesty over a prolonged period of time: Joehl omitted material facts from his application and lied about them to his character interviewer and to the Bar's inquiry panel. The court concluded that disbarment was the appropriate sanction in this case.

Application of Hyland, 339 Md. 521, 663 A.2d 1309 (1995). The applicant disclosed in his Bar application that he was convicted in 1986 of fifteen counts of failure to file state sales tax returns arising from his operation of a Pennsylvania restaurant. He also failed to pay applicable Federal payroll withholding taxes. The Court of Appeals concluded that the applicant had not demonstrated an appreciation for the fiduciary responsibility incumbent upon an attorney when entrusted with the monies of another person. The applicant's conduct reflected adversely on his personal commitment to the proper administration of justice. The applicant's lack of candor and misleading or evasive answers to the Character Committee and Board of Law Examiners contributed to the Court's finding that the applicant's claim of rehabilitation was not persuasive.

In the Matter of the Application of John Curtis Dortch for Admission to the Bar of Maryland, 344 Md. 376, 687 A.2d 245 (1997). Dortch had been convicted of second degree murder, conspiracy to commit a felony, and attempted armed robbery in 1975. He was sentenced to fifteen years to life imprisonment. Dortch's Petition for Parole was granted in March 1990. He remained on supervised parole as of the date of filing his application. The Court of Appeals denied his application stating that "A person on parole is still serving a prison sentence....We will not even entertain an application to admit a person to the practice of law when that person is still directly or indirectly serving a prison sentence for a crime so severe that

disbarment would be clearly necessitated if the crime were committed by an attorney." The Court stated that the application was premature.

In the Matter of the Application of Emsean L. Brown for Admission to the Bar of Maryland, 392 Md. 44, 895 A.2d 1050 (2006). The applicant disclosed in his application that he was convicted of bank fraud in 1991. He was sentenced to 10 months incarceration and 3 years of probation and ordered to pay restitution to the bank. It was unclear whether the applicant completed court ordered restitution to the bank. He did not disclose the conviction on his application for admission to law school in 1999, but disclosed it in the first semester of his second year in law school, allegedly believing that the conviction had been expunged. He also did not disclose to the law school that he had been terminated from employment with the bank, and he failed to disclose his lapse in his employment history because of his incarceration. The Court found that the applicant exhibited a lack of candor in his law school application and failed to prove by clear and convincing evidence that he was rehabilitated after committing a crime of moral turpitude. The applicant was denied admission.

In the Matter of the Application of Kevin Charles Stern for Admission to the Bar of Maryland. 403 Md. 615, 943 A.2d 1247 (2008), 2008 Md. LEXIS 115. The applicant admitted his prior financial irresponsibility, but claimed that he had been rehabilitated. However, he satisfied his creditors using the resources of others, specifically a loan from his mother and gifts received after his graduation from law school. Absent the exigency of the bar admission process, he likely would have continued to ignore his obligation to repay his debt. He had allowed his debts to increase even when it appeared he had the means to resolve his obligations. Further, he was involved in an inappropriate relationship with a 15 year old female. The applicant was denied admission.

In the Matter of the Application of Gregory John Strzempek for Admission to the Bar of Maryland. 407 Md.102, 962 A.2d 988 (2008), 2008 Md. LEXIS 633. This case involves an applicant's duty to immediately disclose to the Maryland Board of Law Examiners any changes to responses previously submitted on a Bar Application. After Gregory John Strzempek submitted his Bar Application in December of 2005, he was arrested in Fairfax, Virginia, the next February, for driving under the influence, refusing a breath test, reckless driving speed, eluding a police officer, and unsafe lane changing. In April of 2006, Strzempek pled guilty to driving under the influence, reckless driving, eluding a police officer and unsafe lane changing and was sentenced to four days in prison, as well as a fine. Nine days after being released from prison, he sat for his Character Committee interview, during which he did not disclose his arrest, convictions or sentences. In November of 2006, after Strzempek learned that he had passed the bar examination and received an Affirmation Form, which required him to affirm that his application was current; he provided documents to the Board reflecting his violations. The Board entered an exception to

Strzempek's admission, and returned the file to the Character Committee, which, after a hearing, recommended that Strzempek be denied admission. The Board, thereafter, held a hearing and recommended admission, based upon Strzempek's voluntarily disclosure and professed intent not to conceal. The Court of Appeals held that Strzempek did not carry his burden of proof that he possessed the present moral character and fitness for admission, because Strzempek intentionally breached his duty to disclose and his disclosure was not voluntary; his purported intent to ultimately reveal was not relevant, because he had not disclosed when required to do so.

Decision Relating to Test Accommodations pursuant to the Americans with Disabilities Act:

In the Matter of the Application of Robert J. Kimmer for Admission to the Bar of Maryland., Misc. Docket No. 12, September Term, 2005. The applicant requested double time and the use of a computer to take the bar examination because of an alleged learning disability. The applicant had not been diagnosed with a learning disability or accorded test accommodations prior to law school. After having the Board's expert review the documentation of the alleged learning disability submitted by the applicant**,** the Board denied his request and rejected his appeal of that decision. The applicant obtained a temporary restraining order in state circuit court compelling the Board to grant him the requested accommodations, and he took

the bar examination with those accommodations. The Board advised him that, should he pass the bar examination, he would not be recommended for admission to the bar unless he first established on the merits that he was entitled to the accommodations he received. The applicant passed the bar examination. After the Board filed an exception to his admission with the Court of Appeals, the applicant sought to have the circuit court compel the Board to recommend him for admission to the bar. The Board petitioned the Court of Appeals to deny the applicant's admission prior to a hearing on the merits and to affirm that bar admission decisions are controlled exclusively by the Court of Appeals. The Court of Appeals, following a hearing on these questions, issued an opinion and order denying the applicant admission to the Maryland bar and affirming that all questions regarding bar admissions are to be decided by the Court of Appeals.

Decisions Involving Constitutional Rights in Admission and Disbarment Proceedings:

In Re Ruffalo, 390 U.S. 544, 20 L. Ed.2d 117 (1968)

Spevack v. Klein, 385 U.S. 511, 17L. Ed.2d 574 (1967)

Willner v. Committee on Character, 373 U.S. 96, 10 L. Ed. 2d 224 (1963)

Konigsberg V. State Bar, 366 U.S. 36, 6L. Ed. 2d 105 (1961)

Konigsberg V. State Bar, 353 U.S. 252, 1L. Ed. 2d 810 (1957)

Schware v. Board of Bar Examiners, 353 U.S. 232, 1L. Ed. 2d 96 (1957)

EXHIBIT C

MARYLAND LAWYER'S RULES OF PROFESSIONAL CONDUCT (THE "RPC")

PREAMBLE, SCOPE AND TERMINOLOGY

PREAMBLE: A LAWYER'S RESPONSIBILITIES

Maryland Lawyer's Rules of Professional Conduct

PREAMBLE, SCOPE AND TERMINOLOGY

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Maryland Lawyers' Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of

the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Maryland Lawyers' Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Maryland Lawyers' Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Maryland Lawyers' Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Maryland Lawyers' Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Maryland Lawyers' Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intra-governmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule does not itself give rise to a cause of action against a lawyer nor does it create any presumption that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, in some circumstances, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct. Nothing in this Preamble and Scope is intended to detract from the holdings of the Court of Appeals in Post v. Bregman, 349 Md. 142 (1998) and Son v. Margolius, Mallios, Davis, Rider & Tomar, 349 Md. 441 (1998).

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0 Terminology

(a) "**Belief**" or "**believes**" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "**Confirmed in writing**," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (f) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "**Consult**" or "**consultation**" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(d) "**Firm**" or "**law firm**" denotes:

(1) an association of a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association formed for the practice of law; or

(2) a legal services organization or the legal department of a corporation, government or other organization.

(e) "**Fraud**" or "**fraudulent**" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(f) "**Informed consent**" denotes the agreement by a person to a proposed course of conduct

after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(g) "**Knowingly**," "**known**," or "**knows**" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(h) "Law firm." See Rule 1.0(d).

(i) "**Partner**" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(j) "**Reasonable**" or "**reasonably**" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(k) "**Reasonable belief**" or "**reasonably believes**" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(l) "**Reasonably should know**" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(m) "**Screened**" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(n) "**Substantial**" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(o) "**Tribunal**" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal decision directly affecting a party's interests in a particular matter.

(p) "**Writing**" or "**written**" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video-recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

CLIENT-LAWYER RELATIONSHIP

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after

consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required by these Rules;

(2) keep the client reasonably informed about the status of the matter;

(3) promptly comply with reasonable requests for information; and

(4) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Maryland Lawyers' Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.5 Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be responsible whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter, and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or custody of a child or upon the amount of alimony or support or property settlement, or upon the amount of an award pursuant to Md. Code, Family Law Article, §§8-201 through 213; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the joint representation and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate, or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules, a court order or other law;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge, civil claim, or disciplinary complaint against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with these Rules, a court order or other law.

Rule 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client or confirmed on the record before a tribunal. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) subject to Rule 1.5, contract with a client for a reasonable contingent fee in a civil case.

(j) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Rule 1.9 Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) from whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 1.10 Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which the newly associated lawyer is disqualified under Rule 1.9 unless the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer

participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party

neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) When the organization's highest authority insists upon action, or refuses to take action, that is clearly a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is reasonably certain to result in substantial injury to the organization, the lawyer may take further remedial action that the lawyer reasonably believes to be in the best interest of the organization. Such action may include revealing information otherwise protected by Rule 1.6 only if the lawyer reasonably believes that:

(1) the highest authority in the organization has acted to further the personal or financial interests of members of the authority which are in conflict with the interests of the organization; and

(2) revealing the information is necessary in the best interest of the organization.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.14 Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained pursuant to Title 16, Chapter 600 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the lawyer and shall be preserved for a period of at least five years after the date the record was created.

(b) A lawyer may deposit the lawyer's own funds in a client trust account only as permitted by Rule 16-607 b.

(c) Unless the client gives informed consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the lawyer's own benefit only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall render promptly a full accounting regarding such property.

(e) When a lawyer in the course of representing a client is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall distribute promptly all portions of the property as to which the interests are not in dispute.

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Maryland Lawyers' Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon action or inaction that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 1.17 Sale of Law Practice

(a) Subject to paragraph (b), a law practice, including goodwill, may be sold if the following conditions are satisfied:

(1) Except in the case of death, disability, or appointment of the seller to judicial office, the entire practice that is the subject of the sale has been in existence at least five years prior to the date of sale;

(2) The practice is sold as an entirety to another lawyer or law firm; and

(3) Written notice has been mailed to the last known address of the seller's current clients regarding:

(A) the proposed sale;

(B) the terms of any proposed change in the fee arrangement;

(C) the client's right to retain other counsel, to take possession of the file, and to obtain any funds or other property to which the client is entitled; and

(D) the fact that the client's consent to the new representation will be presumed if the client does not take any action or does not otherwise object within sixty (60) days of mailing of the notice.

(b) If a notice required by paragraph (a)(3) is returned and the client cannot be located, the representation of that client may be transferred to the purchaser only by an order of a court of competent jurisdiction authorizing the transfer. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer.

Rule 1.18 Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

COUNSELOR

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 2.2 Intermediary. [DELETED]

Rule 2.3 Evaluation for Use by Third Parties

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the

client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Rule 2.4 Lawyer Serving as Third-Party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

ADVOCATE

Rule 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes, for example, a good faith argument for an extension, modification or reversal of existing law. A lawyer may nevertheless so defend the proceeding as to require that every element of the moving party's case be established.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(e) Notwithstanding paragraphs (a) through (d), a lawyer for an accused in a criminal case need not disclose that the accused intends to testify falsely or has testified falsely if the lawyer reasonably believes that the disclosure would jeopardize any constitutional right of the accused.

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5 Impartiality and Decorum of the Tribunal

(a) A lawyer shall not:

(1) seek to influence a judge, prospective, qualified, or sworn juror, or other official by means prohibited by law;

(2) before the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with anyone known to the lawyer to be on the jury list for trial of the case;

(3) during the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with any member of the jury;

(4) during the trial of a case with which the lawyer is not connected, communicate outside the course of official proceedings with any member of the jury about the case;

(5) after discharge of a jury from further consideration of a case with which the lawyer is connected, ask questions of or make comments to a jury member that are calculated to harass or embarrass the jury member or to influence the jury member's actions in future jury service;

(6) conduct a vexatious or harassing investigation of any prospective, qualified, or sworn juror;

(7) communicate ex parte about an adversary proceeding with the judge or other official before whom the proceeding is pending, except as permitted by law;

(8) discuss with a judge potential employment of the judge if the lawyer or a firm with which the lawyer is associated has a matter that is pending before the judge; or

(9) engage in conduct intended to disrupt a tribunal.

(b) A lawyer who has knowledge of any violation of paragraph (a) of this Rule, any improper conduct by a prospective, qualified, or sworn juror or any improper conduct by another towards prospective, qualified, or sworn juror, shall report it promptly to the court or other appropriate authority.

Rule 3.6 Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

Rule 3.7 Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

Rule 3.9 Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1 Truthfulness in Statements to Others

(a) In the course of representing a client a lawyer shall not knowingly:

(1) make a false statement of material fact or law to a third person; or

(2) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(b) The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Rule 4.2 Communication with Person Represented by Counsel

(a) Except as provided in paragraph (c), in representing a client, a lawyer shall not communicate about the subject of the representation with a person who the lawyer knows is represented in the matter by another lawyer unless the lawyer has the consent of the other lawyer or is authorized by law or court order to do so.

(b) If the person represented by another lawyer is an organization, the prohibition extends to each of the organization's (1) current officers, directors, and managing agents and (2) current agents or employees who supervise, direct, or regularly communicate with the organization's lawyers concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The lawyer may not communicate with a current agent or employee of the organization unless the lawyer first has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this paragraph and has disclosed to the individual the lawyer's identity and the fact that the lawyer represents a client who has an interest adverse to the organization.

(c) A lawyer may communicate with a government official about matters that are the subject of the representation if the government official has the authority to redress the grievances of the lawyer's client and the lawyer first makes the disclosures specified in paragraph (b).

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Rule 4.4 Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that the lawyer knows violate the legal rights of such a person.

(b) In communicating with third persons, a lawyer representing a client in a matter shall not seek information relating to the matter that the lawyer knows or reasonably should know is protected from disclosure by statute or by an established evidentiary privilege, unless the protection has been waived. The lawyer who receives information that is protected from disclosure shall (1) terminate the communication immediately and (2) give notice of the disclosure to any tribunal in which the matter is pending and to the person entitled to enforce the protection against disclosure.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Maryland Lawyers' Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Maryland Lawyers' Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Maryland Lawyers' Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.2 Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Maryland Lawyers' Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Maryland Lawyers' Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Maryland Lawyers' Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and

(d) a lawyer who employs or retains the services of a nonlawyer who (i) was formerly admitted to the practice of law in any jurisdiction and (ii) has been and remains disbarred, suspended, or placed on inactive status because of incapacity shall comply with the following requirements:

(1) all law-related activities of the formerly admitted lawyer shall be (A) performed from an office that is staffed on a full-time basis by a supervising lawyer and (B) conducted under the direct supervision of the supervising lawyer, who shall be responsible for ensuring that the formerly admitted lawyer complies with the requirements of this Rule.

(2) the lawyer shall take reasonable steps to ensure that the formerly admitted lawyer does not:

(A) represent himself or herself to be a lawyer;

(B) render legal consultation or advice to a client or prospective client;

(C) appear on behalf of or represent a client in any judicial, administrative, legislative, or alternative dispute resolution proceeding;

(D) appear on behalf of or represent a client at a deposition or in any other discovery matter;

(E) negotiate or transact any matter on behalf of a client with third parties;

(F) receive funds from or on behalf of a client or disburse funds to or on behalf of a client; or

(G) perform any law-related activity for (i) a law firm or lawyer with whom the formerly admitted lawyer was associated when the acts that resulted in the disbarment or suspension occurred or (ii) any client who was previously represented by the formerly admitted lawyer.

(3) the lawyer, the supervising lawyer, and the formerly admitted lawyer shall file jointly with Bar Counsel (A) a notice of employment identifying the supervising lawyer and the formerly admitted lawyer and listing each jurisdiction in which the formerly admitted lawyer has been disbarred, suspended, or placed on inactive status because of incapacity; and (B) a copy of an executed written agreement between the lawyer, the supervising lawyer, and the formerly admitted lawyer that sets forth the duties of the formerly admitted lawyer and includes an undertaking to comply with requests by Bar Counsel for proof of compliance with the terms of the agreement and this Rule. As to a formerly admitted lawyer employed as of July 1, 2006, the notice and agreement shall be filed no later than September 1, 2006. As to a formerly admitted lawyer hired after July 1, 2006, the notice and agreement shall be filed within 30 days after commencement of the employment. Immediately upon the termination of the employment of the formerly admitted lawyer, the lawyer and the supervising lawyer shall file with Bar Counsel a notice of the termination.

Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a lawyer who is deceased or disabled or who has disappeared may, pursuant to the provisions of Rule 1.17, pay the purchase price to the estate or representative of the lawyer.

(3) a lawyer who undertakes to complete unfinished legal business of a deceased, retired, disabled, or suspended lawyer may pay to that lawyer or that lawyer's estate the proportion of the total compensation which fairly represents the services rendered by the former lawyer;

(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Rule 5.6 Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

Rule 5.7 Responsibilities Regarding Law-Related Services

(a) A lawyer shall be subject to the Maryland Lawyers' Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

PUBLIC SERVICE

Rule 6.1 Pro Bono Publico Service

(a) Professional Responsibility. A lawyer has a professional responsibility to render pro bono publico legal service.

(b) Discharge of Professional Responsibility. A lawyer in the full-time practice of law should aspire to render at least 50 hours per year of pro bono publico legal service, and a lawyer in part-time practice should aspire to render at least a pro rata number of hours.

(1) Unless a lawyer is prohibited by law from rendering the legal services described below, a substantial portion of the applicable hours should be devoted to rendering legal service, without fee or expectation of fee, or at a substantially reduced fee, to:

(A) people of limited means;

(B) charitable, religious, civic, community, governmental, or educational organizations in matters designed primarily to address the needs of people of limited means;

(C) individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights; or

(D) charitable, religious, civic, community, governmental, or educational organizations in matters in furtherance of their organizational purposes when the payment of the standard legal fees would significantly deplete the organization's economic resources or would otherwise be inappropriate.

(2) The remainder of the applicable hours may be devoted to activities for improving the law, the legal system, or the legal profession.

(3) A lawyer also may discharge the professional responsibility set forth in this Rule by contributing financial support to organizations that provide legal services to persons of limited means.

(c) Effect of Noncompliance. This Rule is aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions.

Rule 6.2 Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Maryland Lawyers' Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rule 6.3 Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

Rule 6.4 Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Maryland Lawyers' Rules of Professional Conduct or other law; or

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3(b), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television advertising, or through communications not involving in person contact.

(b) A copy or recording of an advertisement or such other communication shall be kept for at least three years after its last dissemination along with a record of when and where it was used.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may

(1) pay the reasonable cost of advertising or written communication permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;

(3) pay for a law practice purchased in accordance with Rule 1.17; and

(4) refer clients to a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(d) Any communication made pursuant to this Rule shall include the name of at least one lawyer responsible for its content.

(e) An advertisement or communication indicating that no fee will be charged in the absence of a recovery shall also disclose whether the client will be liable for any expenses.

Cross References: Maryland Lawyers' Rules of Professional Conduct, Rule 1.8(e).

(f) A lawyer, including a participant in an advertising group or lawyer referral service or other program involving communications concerning the lawyer's services, shall be personally responsible for compliance with the provisions of Rules 7.1, 7.2, 7.3, 7.4, and 7.5 and shall be prepared to substantiate such compliance.

Rule 7.3 Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone, or real-time electronic contract even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the prospective client could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress, or harassment.

(c) Every written, recorded, or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Rule 7.4 Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law, subject to the requirements of Rule 7.1. A lawyer shall not hold himself or herself out publicly as a specialist.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

Rule 7.5 Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and

regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission or reinstatement to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.2 Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) Canon 5C (4) of the Maryland Code of Judicial Conduct, set forth in Rule 16-813, provides that a lawyer becomes a candidate for a judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office. A candidate for a judicial office:

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee Note: Rule 8.2(b)(2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate’s record as long as the response does not otherwise violate this Rule.

Rule 8.3 Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Maryland Lawyers' Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in a lawyer or judge assistance or professional guidance program.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Maryland Lawyers' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this paragraph;

(f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maryland Lawyers' Rules of Professional Conduct or other law; or

(g)knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority.

(1) A lawyer admitted by the Court of Appeals to practice in this State is subject to the disciplinary authority of this State, regardless of where the lawyer's conduct occurs.

(2) A lawyer not admitted to practice in this State is also subject to the disciplinary authority of this State if the lawyer

(i) provides or offers to provide any legal services in this State,

(ii) holds himself or herself out as practicing law in this State, or

(iii) has an obligation to supervise or control another lawyer practicing law in this State whose conduct constitutes a violation of these Rules.

Cross References: Md. Rule 16-701(a).

(3) A lawyer may be subject to the disciplinary authority of both this State and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this State, the rule of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

EXHIBIT D

COMPARISON OF STATE FOREIGN LAWYER PRACTICE RULES

Jurisdictions	Foreign Legal Consultant Rules	Permit Foreign Lawyer Pro Hac Vice	Rules Explicitly Permitting Foreign Lawyer Temporary Practice	Permit Foreign In-House Counsel
39	**33**	**16**	**11**	**20**
Alaska	✓			
Arizona	✓			✓
California	✓			
Colorado	✓	✓	✓	✓
Connecticut	✓			✓
Delaware	✓		✓	✓
District of Columbia	✓	✓	✓	✓
Florida	✓		✓	
Georgia	✓	✓	✓	✓
Hawaii	✓			
Idaho	✓			
Illinois	✓	✓		✓
Indiana	✓			✓
Iowa	✓			✓
Kansas				✓
Louisiana	✓			
Maine		✓		✓
Massachusetts	✓			
Michigan	✓	✓		
Minnesota	✓			
Missouri	✓			
Montana				✓
New Hampshire	✓		✓	✓
New Jersey	✓			
New Mexico	✓	✓	✓	✓
New York	✓	✓	✓	
North Carolina	✓			
North Dakota	✓			
Ohio	✓	✓		
Oklahoma		✓		
Oregon	✓	✓	✓	✓
Pennsylvania	✓	✓	✓	
South Carolina	✓			✓
Texas	✓	✓		✓
Utah	✓	✓		
Virginia	✓	✓	✓	✓
Washington	✓			✓
Wisconsin		✓		
West Virginia				✓

EXHIBIT E

ABA MODEL RULES FOR THE LICENSING AND PRACTICE OF FOREIGN LEGAL CONSULTANTS

§ 1. General Regulation as to Licensing

In its discretion, the [name of court] may license to practice in this United States jurisdiction as a foreign legal consultant, without examination, an applicant who:

(a) is, and for at least five years has been, a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;

(b) for at least five years preceding his or her application has been a member in good standing of such legal profession and has been lawfully engaged in the practice of law in the foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the foreign country; [1]

(c) possesses the good moral character and general fitness requisite for a member of the bar of this jurisdiction; and

(d) intends to practice as a foreign legal consultant in this jurisdiction and to maintain an office in this jurisdiction for that purpose.

§ 2. Application

An applicant under this Rule shall file an application for a foreign legal consultant license, which shall include all of the following:

(a) a certificate from the professional body or public authority having final jurisdiction over professional discipline in the foreign country in which the applicant is admitted, certifying the applicant's admission to practice, date of admission, and good standing as a lawyer or counselor at law or the equivalent;

(b) a letter of recommendation from one of the members of the executive body of such professional body or public authority or from one of the judges of the highest law court or court of original jurisdiction in the foreign country in which the applicant is admitted Section 1(b) is optional; it may be included as written, modified through the substitution of shorter periods than five and seven years, respectively, or omitted entirely.

(c) duly authenticated English translations of the certificate required by Section 2(a) of this Rule and the letter required by Section 2(b) of this Rule if they are not in English;

(d) other evidence as the [name of court] may require regarding the applicant's educational and professional qualifications, good moral character and general fitness, and compliance with the requirements of Section 1 of this Rule;

(e) an application fee as set by the [name of court].

§ 3. Scope of Practice

A person licensed to practice as a foreign legal consultant under this Rule may render legal services in this jurisdiction but shall not be considered admitted to practice law in this jurisdiction, or in any way hold himself or herself out as a member of the bar of this jurisdiction, or, do any of the following:

(a) appear as a lawyer on behalf of another person in any court, or before any magistrate or other judicial officer, in this jurisdiction (except when admitted pro hac vice pursuant to [citation of applicable rule]);

(b) prepare any instrument effecting the transfer or registration of title to real estate located in the United States of America;

(c) prepare:

(i) any will or trust instrument effecting the disposition on death of any property located and owned by a resident of the United States of America, or

(ii) any instrument relating to the administration of a decedent's estate in the United States of America;

(d) prepare any instrument in respect of the marital or parental relations, rights or duties of a resident of the United States of America, or the custody or care of the children of such a resident;

(e) render professional legal advice on the law of this jurisdiction or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person duly qualified and entitled (other than by virtue of having been licensed under this Rule) to render professional legal advice in this jurisdiction;

(f) carry on a practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

(i) the foreign legal consultant's own name;

(ii) the name of the law firm with which the foreign legal consultant is affiliated;

(iii) the foreign legal consultant's authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of that country; and

(iv) the title "foreign legal consultant," which may be used in conjunction with the words "admitted to the practice of law in [name of the foreign country of his or her admission to practice]".

[(g) render legal services in this jurisdiction pursuant to the Model Rule for the Temporary Practice by Foreign Lawyers.]

§ 4. Practice by a Foreign Legal Consultant in Another United States Jurisdiction

[A person licensed as a foreign legal consultant in another United States jurisdiction may provide legal services in this jurisdiction on a temporary basis pursuant to the Model Rule for Temporary Practice by Foreign Lawyers. A person licensed as a foreign legal consultant in another United States jurisdiction shall not establish an office or otherwise engage in a systematic and continuous practice in this jurisdiction or hold out to the public or otherwise represent that the foreign legal consultant is licensed as

a foreign legal consultant in this jurisdiction.]

§ 5. Rights and Obligations

Subject to the limitations listed in Section 3 of this Rule, a person licensed under this Rule shall be considered a foreign legal consultant affiliated with the bar of this jurisdiction and shall be entitled and subject to:

(a) the rights and obligations set forth in the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] or arising from the other conditions and requirements that apply to a member of the bar of this jurisdiction under the [rules of court governing members of the bar, including ethics]; and

(b) the rights and obligations of a member of the bar of this jurisdiction with respect to:

(i) affiliation in the same law firm with one or more members of the bar of this jurisdiction, including by:

(A) employing one or more members of the bar of this jurisdiction;

(B) being employed by one or more members of the bar of this jurisdiction or by any partnership [or professional corporation] that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

(C) being a partner in any partnership [or shareholder in any professional corporation] that includes members of the bar of this jurisdiction or that maintains an office in this jurisdiction; and

(ii) attorney-client privilege, work-product privilege and similar professional privileges.

§ 6. Discipline

A person licensed to practice as a foreign legal consultant under this Rule shall be subject to professional discipline in the same manner and to the same extent as members of the bar of this jurisdiction. To this end:

(a) Every person licensed to practice as a foreign legal consultant under this Rule:

(i) shall be subject to the jurisdiction of the [name of court] and to censure, suspension, removal or revocation of his or her license to practice by the [name of court] and shall otherwise be governed by [citation of applicable rules]; and

(ii) shall execute and file with the [name of court], in the form and manner as the court may prescribe:

(A) a commitment to observe the [Rules] [Code] of Professional [Conduct] [Responsibility] of [citation] and the [rules of court governing members of the bar] to the extent applicable to the legal services authorized under Section 3 of this Rule;

(B) an undertaking or appropriate evidence of professional liability insurance, in an amount as the court may prescribe, to assure the foreign legal consultant’s proper professional conduct and responsibility;

(C) a written undertaking to notify the court of any change in the foreign legal consultant's good standing as a member of the foreign legal profession referred to in Section 1(a) of this Rule and of any final action of the professional body or public authority referred to in Section 2(a) of this Rule imposing any disciplinary censure, suspension, or other sanction upon the foreign legal consultant; and

(D) a duly acknowledged instrument in writing, providing the foreign legal consultant's address in this jurisdiction and designating the clerk of [name of court] as his or her agent for service of process. The foreign legal consultant shall keep the clerk advised in writing of any changes of address in this jurisdiction. In any action or proceeding brought against the foreign legal consultant and arising out of or based upon any legal services rendered or offered to be rendered by the foreign legal consultant within or to residents of this jurisdiction, service shall first be attempted upon the foreign legal consultant at the most recent address filed with the clerk. Whenever after due diligence service cannot be made upon the foreign legal consultant at that address, service may be made upon the clerk. Service made upon the clerk in accordance with this provision is effective as if service had been made personally upon the foreign legal consultant.

(b) Service of process on the clerk under Section 5(a)(ii)(D) of this Rule shall be made by personally delivering to the clerk's office, and leaving with the clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of the process together with a fee as set by the [name of court]. The clerk shall promptly send one copy of the process to the foreign legal consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the foreign legal consultant at the most recent address provided in accordance with section 5(a)(ii)(D).

§ 7. Annual Fee

A person licensed as a foreign legal consultant shall pay an annual fee as set by the [name of court].

§ 8. Revocation of License

If the [name of court] determines that a person licensed as a foreign legal consultant under this Rule no longer meets the requirements for licensure set forth in Section 1(a) or Section 1(b) of this Rule, it shall revoke the foreign legal consultant's license.

§ 9. Admission to Bar

If a person licensed as a foreign legal consultant under this Rule is subsequently admitted as a member of the bar of this jurisdiction under the Rules governing admission, that person's foreign legal consultant license shall be deemed superseded by the license to practice law as a member of the bar of this jurisdiction.

§ 10. Application for Waiver of Provisions

The [name of court], upon written application, may waive any provision or vary the application of this Rule where strict compliance will cause undue hardship to the applicant. An application for waiver shall be in the form of a verified petition setting forth the applicant's name, age and residence address, the facts relied upon and a prayer for relief.

Adopted August 10-11, 1993 by the ABA House of Delegates. Amended, August 7-8, 2006.

EXHIBIT F

ABA MODEL RULE FOR TEMPORARY PRACTICE BY FOREIGN LAWYERS

(a) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) are governed primarily by international law or the law of a non-United States jurisdiction.

(b) For purposes of this grant of authority, the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

EXHIBIT G

ABA MODEL RULE OF PROFESSIONAL CONDUCT 5.5:
UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction or in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, are not services for which the forum requires pro hac vice admission; and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized by federal or other law or rule to provide in this jurisdiction.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors

at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or,

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, [the highest court of this jurisdiction].

EXHIBIT H

ABA MODEL RULE ON PRO HAC VICE ADMISSION

I. Admission In Pending Litigation Before A Court Or Agency

A. Definitions

1. An "out-of-state" lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia,and not disbarred or suspended from practice in any jurisdiction.

2. An out-of-state lawyer is "eligible" for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

3. A "client" is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this state.

4. An "alternative dispute resolution" ("ADR") proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

5. "This state" refers to [state or other U.S. jurisdiction promulgating this Rule]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court or Agency To Permit Appearance By Out-of-State Lawyer

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

2. Administrative Agency Proceeding. If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

C. In-State Lawyer's Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer.

D. Application Procedure

1. Verified Application. An eligible out-of-state lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court where the proceeding is filed. The application shall be served on all parties who have appeared in the case and the [Disciplinary Counsel]. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The [Disciplinary Counsel] or a party to the proceeding may file an objection to the application or seek the court's imposition of conditions to its being granted. The [Disciplinary Counsel] or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The [Disciplinary Counsel] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [Disciplinary Counsel] or objecting party may move that the pro hac vice admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The courts and agencies of this state have discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:

a. may be detrimental to the prompt, fair and efficient administration of justice,

b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,

c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk, or

d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

4. Revocation of Admission. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in Section I.D.3 above.

E. Verified Application and Fees:

1. Required Information. An application shall state the information listed on Appendix A to this Rule. The applicant may also include any other matters supporting admission pro hac vice.

2. Application Fee. An applicant for permission to appear as counsel pro hac vice under this Rule shall pay a non-refundable fee as set by the [court or other proper authority] at the time of filing the application. The [court or other proper authority] shall determine for what purpose or purposes these fees shall be used.

3. Exemption for Pro Bono Representation. An applicant shall not be required to pay the fee established by I.E.2 above if the applicant will not charge an attorney fee to the client(s) and is:

a. employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs: or

b. involved in a criminal case or a habeas proceeding for an indigent defendant.

4. Lawyers' Fund for Client Protection. Upon the granting of a request to appear as counsel pro hac vice under this Rule, the lawyer shall pay any required assessments to the lawyers' fund for client protection. This assessment is in addition to the application fee referred to in Section (E)(2) above.

F. Authority of the [Disciplinary Counsel], the Court: Application of Rules of Professional Conduct, Rules of Disciplinary Enforcement, Contempt, and Sanctions

1. Authority Over Out-of-State Lawyer and Applicant.

a. During pendency of an application for admission pro hac vice and upon the granting of such application, an out-of-state lawyer submits to the authority of the courts and the jurisdiction of [Disciplinary Counsel] of this state for all conduct arising out of or relating in any way to

the application or proceeding in which the out-of-state lawyer seeks to appear, regardless of where the conduct occurs. An applicant or out-of-state lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

b. The court's and the [Disciplinary Counsel's] authority includes, without limitation, the court's and the [Disciplinary Counsel's] rules of professional conduct, rules of disciplinary enforcement, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with all applicable rules of professional conduct, rules of disciplinary enforcement, local court rules, and policies and procedures of the court before which the applicant seeks to practice.

II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All ADR

A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding. In connection with proceedings pending outside this state, an out-of-state lawyer admitted to appear in that proceeding may render in this state legal services regarding or in aid of such proceeding.

B. Consultation by Out-of-State Lawyer

1. Consultation with In-State Lawyer. An out-of-state lawyer may consult in this state with an in-state lawyer concerning the in-state's lawyer's client's pending or potential proceeding in this state.

2. Consultation with Potential Client. At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state lawyer may consult in this state with that person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

C. Preparation for In-State Proceeding. On behalf of a client in this state or elsewhere, the out-of-state lawyer may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out-of-state lawyer reasonably believes he is eligible for admission pro hac vice in this state.

D. Preparation for Out-of-State Proceeding. In connection with a potential proceeding to be filed outside this state, an out-of-state lawyer may render legal services in this state for a client or potential client located in this state, provided that the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for admission generally or pro hac vice in the jurisdiction where the proceeding is anticipated to be filed.

E. Services Rendered Outside This State for In-State Client. An out-of-state lawyer may render legal services while the lawyer is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed in or outside this state.

F. Alternative Dispute Resolution ("ADR") Procedures. An out-of-state lawyer may render legal services in this state to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

G. No Solicitation. An out-of-state lawyer rendering services in this state in compliance with this Rule or here for other reasons is not authorized by anything in this Rule to hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in this state.

H. Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

I. Authorized Services. The foregoing services may be undertaken by the out-of-state lawyer in connection with a potential proceeding in which the lawyer reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice admission is denied.

III. Admission of Foreign Lawyer in Pending Litigation Before a Court or Agency

A. A foreign lawyer is a person admitted in a non-United States jurisdiction and who is a member of a recognized legal profession in that jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority, and who is not disbarred, suspended or the equivalent thereof from practice in any jurisdiction.

B. The definitions of "client" and "state" in paragraphs I(A)(3) and (5) are incorporated by reference in this Paragraph III.

C. A court or agency of this state may, in its discretion, admit a foreign lawyer in a particular proceeding pending before such court or agency to appear pro hac vice in a defined role as a lawyer, advisor or consultant in that proceeding with an in-state lawyer, provided that the in-state lawyer is responsible to the client, responsible for the conduct of the proceeding, responsible for independently advising the client on the substantive law of a United States jurisdiction and procedural issues in the proceeding, and for advising the client whether the in-state lawyer's judgment differs from that of the foreign lawyer. See paragraph III(E).

D. In addition to the factors listed in paragraph I(D)(3) above, a court or agency in ruling on an application to admit a foreign lawyer pro hac vice, as a lawyer, advisor, or consultant, or in an advisory or consultative role, shall weigh factors, including:

1. the legal training and experience of the foreign lawyer including in matters similar to the matter before the court or agency;

2. the extent to which the matter will include the application of:

a. the law of the jurisdiction in which the foreign lawyer is admitted or

b. international law or other law with which the foreign lawyer has a demonstrated expertise;

3. the foreign lawyer's familiarity with the law of a United States jurisdiction applicable to the matter before the court or agency;

4. the extent to which the foreign lawyer's relationship and familiarity with the client or with the facts and circumstances of the matter will facilitate the fair and efficient resolution of the matter;

5. the foreign lawyer's English language ability; and

6. the extent to which it is possible to define the scope of the foreign lawyer's authority in the matter as described in paragraph III(F) so as to facilitate its fair and efficient resolution, including by a limitation on the foreign lawyer's authority to advise the client on the law of a United States jurisdiction except in consultation with the in-state lawyer.

E. The court or agency shall limit the activities of the foreign lawyer or require further action by the in-state lawyer, as appropriate in its discretion in light of paragraph III(D). It may, for example, require the in-state lawyer to sign all pleadings and other documents submitted to the court or to other parties, to be present at all depositions and conferences among counsel, or to attend all proceedings before the court or agency.

F. The provisions of Section I, paragraphs (D), (E), and (F) and Section II, paragraphs (G) and (H), applicable to out-of-state lawyers, also apply to foreign lawyers for purposes of the requirements of Paragraph III of this Rule.

APPENDIX A

The out-of-state or foreign lawyer's verified application for admission pro hac vice shall include:

1. the applicant's residence and business address, telephone number(s), and e-mail address(es);

2. the name, address, telephone number(s), and e-mail address(es) of each client sought to be represented;

3. the U.S. and foreign jurisdictions in, and agencies and courts before which theapplicant has been admitted to practice, the contact information for each, and the respective period(s) of admission;

4. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years and the date of each application;

5. a statement as to whetherthe applicant (a) within the last [five (5)] years has been denied admission pro hac vice in any jurisdiction, U.S. or foreign, including this state, (b)has ever had admission pro hac vice revoked in any jurisdiction, U.S. or foreign, includingthis state, or (c) has ever been disciplined or sanctioned by any court or agency in any jurisdiction, U.S. or foreign, including this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings. A certified copy of the written finding or order shall be attached to the application. If the written finding or order is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation;

6. whether any disciplinary proceeding has ever been brought against the applicant by a disciplinary counsel or analogous foreign regulatory authority in any jurisdiction within the last [five (5)] years and, as to each such proceeding: the nature of the allegations; the date the proceedings were initiated, which, if any, of the proceedings are still pending, and, for those proceedings that are not still pending, the dates upon which the proceedings were concluded; the caption of the proceedings; and the findings made and actions taken in connection with those proceedings, including exoneration from any charges. A certified copy of any written finding or order shall be attached to the application. If the written order or findings is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation;

7. whether the applicant has been held in contempt by any court in a written order in the last [five (5)] years, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order, the caption of the proceedings, and the substance of the court's rulings. (A copy of the written order or transcript of the oral rulings shall be attached to the application. If the written finding or order is not in English, the applicant shall submit an English translation and satisfactory proof of the accuracy of the translation;

8. an averment as to the applicant's familiarity with the rules of professional conduct, rules of disciplinary enforcement, local or agencyrules, and policies and procedures of the court or agency before which the applicant seeks to practice;

9. the name, address, telephone number(s), e-mail address(es), and bar number of the active member in good standing of the bar of this state who supports the applicant's pro hac vice request, who shall appear of record together with the out-of-state lawyer, and who shall remain ultimately responsible to the client as set forth in Paragraph C of this Rule; and

10. for applicants admitted in a foreign jurisdiction, an averment by the in-state lawyer referred to in Paragraph 9 above and by the lawyer admitted in a foreign jurisdiction that, if the application for pro hac vice admission is granted, service of any documents by a party or Disciplinary Counsel upon that foreign lawyer shall be accomplished by service upon the in-state lawyer or that in-state lawyer's agent.

11. Optional: the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

12. Optional: any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

EXHIBIT I

CONFERENCE OF CHIEF JUSTICES' RESOLUTION REGARDING PERMITTING PRACTICE BY FOREIGN LAWYERS

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 additional 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.

EXHIBIT J

CHAPTER 10 OF THE TRANS-PACIFIC PARTNERSHIP ("TPP") AGREEMENT: CROSS-BORDER TRADE IN SERVICES

Article 10.1: Definitions

For the purposes of this Chapter:

airport operation services means the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

cross-border trade in services or **cross-border supply of services** means the supply of a service:

(a) from the territory of a Party into the territory of another Party;

(b) in the territory of a Party to a person of another Party; or

(c) by a national of a Party in the territory of another Party,

but does not include the supply of a service in the territory of a Party by a covered investment;

enterprise means an enterprise as defined in Article 1.3 (General Definitions), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organised under the laws of a Party, or a branch located in the territory of a Party and carrying out business activities there;

ground handling services means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments or authorities; or

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services or the applicable conditions;

service supplied in the exercise of governmental authority means, for each Party, any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers;

service supplier of a Party means a person of a Party that seeks to supply or supplies a service; and

specialty air services means any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing,

spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.

Article 10.2: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of another Party. Such measures include measures affecting:

(a) the production, distribution, marketing, sale or delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution, transport or telecommunications networks and services in connection with the supply of a service;

(d) the presence in the Party's territory of a service supplier of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the supply of a service.

2. In addition to paragraph 1:

(a) Article 10.5 (Market Access), Article 10.8 (Domestic Regulation) and Article 10.11 (Transparency) shall also apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment[55]; and

(b) Annex 10-B (Express Delivery Services) shall also apply to measures adopted or maintained by a Party affecting the supply of express delivery services, including by a covered investment**.**

3. This Chapter shall not apply to:

(a) financial services as defined in Article 11.1 (Definitions), except that paragraph 2(a) shall apply if the financial service is supplied by a covered investment that is not a covered investment in a financial institution as defined in Article 11.1 (Definitions) in the Party's territory;

(b) government procurement;

(c) services supplied in the exercise of governmental authority; or

(d) subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance**.**

4. This Chapter does not impose any obligation on a Party with respect to a national of another Party who seeks access to its employment market or who is employed on a permanent basis in its territory, and does not confer any right on that national with respect to that access or employment.

5. This Chapter shall not apply to air services, including domestic and international air transportation services, whether scheduled or non-scheduled, or to related services in support of air services, other than the following:

(a) aircraft repair and maintenance services during which an aircraft is withdrawn from service, excluding so-called line maintenance;

(b) selling and marketing of air transport services;

[55] For greater certainty, nothing in this Chapter, including Annexes 10-A (Professional Services), 10-B (Express Delivery Services), and 10-C (Non-Conforming Measures Ratchet Mechanism), is subject to investor-State dispute settlement pursuant to Section B of Chapter 9 (Investment).

(c) computer reservation system services;

(d) specialty air services;

(e) airport operation services; and

(f) ground handling services.

6. In the event of any inconsistency between this Chapter and a bilateral, plurilateral or multilateral air services agreement to which two or more Parties are party, the air services agreement shall prevail in determining the rights and obligations of those Parties that are party to that air services agreement.

7. If two or more Parties have the same obligations under this Agreement and a bilateral, plurilateral or multilateral air services agreement, those Parties may invoke the dispute settlement procedures of this Agreement only after any dispute settlement procedures in the other agreement have been exhausted.

8. If the *Annex on Air Transport Services* of GATS is amended, the Parties shall jointly review any new definitions with a view to aligning the definitions in this Agreement with those definitions, as appropriate.

Article 10.3: National Treatment[56]

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers.

2. For greater certainty, the treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that regional level of government to service suppliers of the Party of which it forms a part.

Article 10.4: Most-Favoured-Nation Treatment

Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or a non-Party.

Article 10.5: Market Access

No Party shall adopt or maintain, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

(a) impose limitations on:

i. the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;

ii. the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

iii. the total number of service operations or the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[57] or

[56] For greater certainty, whether treatment is accorded in "like circumstances" under Article 10.3 (National Treatment) or Article 10.4 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

[57] Subparagraph (a)(iii) does not cover measures of a Party which limit inputs for the supply of services.

iv. the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or

(b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 10.6: Local Presence

No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

Article 10.7: Non-Conforming Measures

1. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

i. the central level of government, as set out by that Party in its Schedule to Annex I;

ii. a regional level of government, as set out by that Party in its Schedule to Annex I; or

iii. a local level of government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence).[58]

2. Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out by that Party in its Schedule to Annex II.

3. If a Party considers that a non-conforming measure applied by a regional level of government of another Party, as referred to in subparagraph 1(a)(ii), creates a material impediment to the cross-border supply of services in relation to the former Party, it may request consultations with regard to that measure. These Parties shall enter into consultations with a view to exchanging information on the operation of the measure and to considering whether further steps are necessary and appropriate.[59]

[58] With respect to Viet Nam, Annex 10-C applies.

[59]For greater certainty, a Party may request consultations with another Party regarding non-conforming measures applied by the central level of government, as referred to in subparagraph 1(a)(i).

Article 10.8: Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service; and

(b) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. In determining whether a Party is in conformity with its obligations under paragraph 2, account shall be taken of international standards of relevant international organisations applied by that Party.[60]

4. If a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:

(a) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(b) to the extent practicable, establish an indicative timeframe for the processing of an application;

(c) if an application is rejected, to the extent practicable, inform the applicant of the reasons for the rejection, either directly or on request, as appropriate;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application;

(e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required; and

(f) if they deem appropriate, accept copies of documents that are authenticated in accordance with the Party's laws in place of original documents.

5. Each Party shall ensure that any authorisation fee charged by any of its competent authorities is reasonable, transparent and does not, in itself, restrict the supply of the relevant service.[61]

6. If licensing or qualification requirements include the completion of an examination, each Party shall ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) a reasonable period of time is provided to enable interested persons to submit an application.

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[60] "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Parties to the Agreement.

[61] For the purposes of this paragraph, authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

7. Each Party shall ensure that there are procedures in place domestically to assess the competency of professionals of another Party.

8. Paragraphs 1 through 7 shall not apply to the non-conforming aspects of measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex I, or to measures that are not subject to the obligations under Article 10.3 (National Treatment) or Article 10.5 (Market Access) by reason of an entry in a Party's Schedule to Annex II.

9. If the results of the negotiations related to paragraph 4 of Article VI of GATS, or the results of any similar negotiations undertaken in other multilateral *fora* in which the Parties participate, enter into effect, the Parties shall jointly review these results with a view to bringing them into effect, as appropriate, under this Agreement**.**

Article 10.9: Recognition

1. For the purposes of the fulfilment, in whole or in part, of a Party's standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of paragraph 4, it may recognise the education or experience obtained, requirements met, or licences or certifications granted, in the territory of another Party or a non-Party. That recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the Party or non-Party concerned, or may be accorded autonomously.

2. If a Party recognises, autonomously or by agreement or arrangement, the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of another Party or a non-Party, nothing in Article 10.4 (Most-Favoured-Nation Treatment) shall be construed to require the Party to accord recognition to the education or experience obtained, requirements met, or licenses or certifications granted, in the territory of any other Party.

3. A Party that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity to another Party, on request, to negotiate its accession to that agreement or arrangement, or to negotiate a comparable agreement or arrangement. If a Party accords recognition autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licences or certifications obtained or requirements met in that other Party's territory should be recognised.

4. A Party shall not accord recognition in a manner that would constitute a means of discrimination between Parties or between Parties and non-Parties in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services.

5. As set out in Annex 10-A (Professional Services), the Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Professional Services Working Group.

Article 10.10: Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise.

2. A Party may deny the benefits of this Chapter to a service supplier of another Party if the service supplier is an enterprise owned or controlled by persons of a non-Party or by persons of the denying Party that has no substantial business activities in the territory of any Party other than the denying Party.

Article 10.11: Transparency

1 Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations that relate to the subject matter of this Chapter.[62]

2. If a Party does not provide advance notice and opportunity for comment pursuant to Article 26.2.2 (Publication) with respect to regulations that relate to the subject matter in this Chapter, it shall, to the extent practicable, provide in writing or otherwise notify interested persons of the reasons for not doing so.

3. To the extent possible, each Party shall allow reasonable time between publication of final regulations and the date when they enter into effect.

Article 10.12: Payments and transfers[63]

1. Each Party shall permit all transfers and payments that relate to the cross-border supply of services to be made freely and without delay into and out of its territory.

2. Each Party shall permit transfers and payments that relate to the cross-border supply of services to be made in a freely usable currency at the market rate of exchange that prevails at the time of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent or delay a transfer or payment through the equitable, non-discriminatory and good faith application of its laws[64] that relate to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities, futures, options or derivatives;

(c) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offences; or

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings.

Article 10.13: Other Matters

The Parties recognise the importance of air services in facilitating the expansion of trade and enhancing economic growth. Each Party may consider working with other Parties in appropriate fora toward liberalising air services, such as through agreements allowing air carriers to have flexibility to decide on their routing and frequencies.

[62] The implementation of the obligation to maintain or establish appropriate mechanisms may need to take into account the resource and budget constraints of small administrative agencies.

[63] For greater certainty, this Article is subject to Annex 9-E (Transfers).

[64] For greater certainty, this Article does not preclude the equitable, non-discriminatory and good faith application of a Party's laws relating to its social security, public retirement or compulsory savings programmes.

Annex 10-A

Professional Services

General Provisions

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services when two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.

2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing or registration procedures.

3. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing and registration.

4. A Party may consider, if feasible, taking steps to implement a temporary or project specific licensing or registration regime based on a foreign supplier's home licence or recognised professional body membership, without the need for further written examination. That temporary or limited licence regime should not operate to prevent a foreign supplier from gaining a local licence once that supplier satisfies the applicable local licensing requirements.

Engineering and Architectural Services

5. Further to paragraph 3, the Parties recognise the work in APEC to promote the mutual recognition of professional competence in engineering and architecture, and the professional mobility of these professions, under the APEC Engineer and APEC Architect frameworks.

6. Each Party shall encourage its relevant bodies to work towards becoming authorised to operate APEC Engineer and APEC Architect Registers.

7. A Party shall encourage its relevant bodies operating APEC Engineer or APEC Architect Registers to enter into mutual recognition arrangements with the relevant bodies of other Parties operating those registers.

Temporary Licensing or Registration of Engineers

8. Further to paragraph 4, in taking steps to implement a temporary or project-specific licensing or registration regime for engineers, a Party shall consult with its relevant professional bodies with respect to any recommendations for:

(a) the development of procedures for the temporary licensing or registration of engineers of another Party to permit them to practise their engineering specialties in its territory;

(b) the development of model procedures for adoption by the competent authorities throughout its territory to facilitate the temporary licensing or registration of those engineers;

(c) the engineering specialties to which priority should be given in developing temporary licensing or registration procedures; and

(d) other matters relating to the temporary licensing or registration of engineers identified in the consultations.

Legal Services

9. The Parties recognise that transnational legal services that cover the laws of multiple jurisdictions play

an essential role in facilitating trade and investment and in promoting economic growth and business confidence.

10. If a Party regulates or seeks to regulate foreign lawyers and transnational legal practice, the Party shall encourage its relevant bodies to consider, subject to its laws and regulations, whether or in what manner:

(a) foreign lawyers may practise foreign law on the basis of their right to practise that law in their home jurisdiction;

(b) foreign lawyers may prepare for and appear in commercial arbitration, conciliation and mediation proceedings;

(c) local ethical, conduct and disciplinary standards are applied to foreign lawyers in a manner that is no more burdensome for foreign lawyers than the requirements imposed on domestic (host country) lawyers;

(d) alternatives for minimum residency requirements are provided for foreign lawyers, such as requirements that foreign lawyers disclose to clients their status as a foreign lawyer, or maintain professional indemnity insurance or alternatively disclose to clients that they lack that insurance;

(e) the following modes of providing transnational legal services are accommodated:

i. on a temporary fly-in, fly-out basis;

ii. through the use of web-based or telecommunications technology;

iii. by establishing a commercial presence; and

iv. through a combination of fly-in, fly-out and one or both of the other modes listed in subparagraphs (ii) and (iii);

(f) foreign lawyers and domestic (host country) lawyers may work together in the delivery of fully integrated transnational legal services; and

(g) a foreign law firm may use the firm name of its choice.

Professional Services Working Group

11. The Parties hereby establish a Professional Services Working Group (Working Group), composed of representatives of each Party, to facilitate the activities listed in paragraphs 1 through 4.

12. The Working Group shall liaise, as appropriate, to support the Parties' relevant professional and regulatory bodies in pursuing the activities listed in paragraphs 1 through 4. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in the Parties' territories.

13. The Working Group shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in paragraphs 1 through 4. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Group.

14. The Working Group shall report to the Commission on its progress and on the future direction of its work, within two years of the date of entry into force of this Agreement.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

(a) otherwise agreed by all Parties; or

(b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

Annex I

Schedule of the United States

INTRODUCTORY NOTES

(b) **Description** provides a general non-binding description of the measure for which the entry is made.

In accordance with Article 9.12.1 (Non-Conforming Measures) and Article 10.7.1 (Non-Conforming Measures), the articles of this Agreement specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the **Measures** element of that entry.

Appendix I-A: Illustrative list of U.S. regional non-conforming measures[65]

	Sectors in which regional measures are described	Sectors in which regional measures do not current affect U.S. specific commitments under GATS
Business services		
Professional services		
Legal services	X	
Accounting, auditing and bookkeeping services	X	
Architectural services	X	
Engineering services	X	
Integrated engineering services	X	
Urban planning and landscape architectural services	X	
Computer and related services		X
Research and development services		X
Real estate services	X	
Rental/leasing services without operators		X
Other business services		
Advertising services		X
Market research and public opinion polling services		X
Management consulting service		X
Services related to management consulting		X
Technical testing and analysis services		X
Services incidental to agriculture, hunting and forestry		X
Services incidental to fishing		X
Services incidental to mining		X
Services incidental to energy distribution		X
Placement and supply services of personnel	X	
Investigation and security	X	
Related scientific and technical consulting services		X
Maintenance and repair of equipment		X
Building-cleaning services		X
Photographic services		X
Packaging services		X

[65] This document is provided for transparency purposes only, and is neither exhaustive nor binding. The information contained in this document is drawn from U.S. commitments under GATS, the May 2005 Revised U.S. Services Offer under the Doha Development Agenda negotiations, and related documents.

Appendix I-A: Illustrative list of U.S. regional non-conforming measures

	Sectors in which regional measures are described	Sectors in which regional measures do not current affect U.S. specific commitments under GATS
Printing, publishing		X
Convention services		X
Other		X
Communication services		
Express delivery services		X
Other delivery services		X
Telecommunication services		X
Audiovisual services		X
Construction and related engineering services	X	
Distribution services		X
Educational services	X	
Environmental services		X
Health related and social services	X	
Tourism and travel related services		X
Recreational, cultural and sporting services (other than audiovisual services)		
Entertainment services (including theatre, live bands and circus services)		
News agency services		
Libraries, archives, museums and other cultural services		
Sporting and other recreational services		
Transport services		
Air Transport Services (Maintenance and repair of aircraft)		
Rail Transport Services	X	
Road Transport Services		
Pipeline Transport		
Services auxiliary to all modes of transport		
Cargo-handling services		
Storage and warehouse services		
Freight transport agency services		

Appendix I-A: Illustrative list of U.S. regional non-conforming measures

Sector	Non-conforming measure of jurisdiction
Legal services (practice of U.S. law)	Residency: Iowa, Kansas, Massachusetts, Michigan, Minnesota (or maintain an office in Minnesota), Mississippi, Nebraska, New Jersey, New Hampshire, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia and Wyoming. In-state office: District of Columbia, Indiana, Michigan, Minnesota (or maintain individual residency in Minnesota), Mississippi, New Jersey, Ohio, South Dakota and Tennessee.
Legal services (foreign legal consulting)	Residency: Michigan and Texas. In-state office: Arizona, District of Columbia, Indiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio and Utah.
Accounting, auditing and bookkeeping services	Residency: Arizona, Arkansas, Connecticut, District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee and West Virginia. In-state office: Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont and Wyoming. Citizenship: North Carolina.
Architectural services, urban planning and landscape architecture services	Senior Managers and Boards of Directors: Michigan.
Engineering services and integrated engineering services	Residency: Idaho, Iowa, Kansas, Maine, Mississippi, Nevada, Oklahoma, South Carolina, South Dakota, Tennessee, Texas and West Virginia.

Appendix I-A: Illustrative list of U.S. regional non-conforming measures

Sector	Non-conforming measure of jurisdiction
Real estate services	Residency: South Dakota. Citizenship: Mississippi and New York.
Placement and supply services of personnel	Citizenship: Arkansas.
Investigation and security	Residency: Maine, Michigan and New York.
Construction and related engineering services	In-state office: Michigan
Educational services (Cosmetology schools)	Limited number of licenses: Kentucky
Health and related social services	Corporate form: Michigan and New York
Rail transport services	Incorporation requirement: Vermont

Annex II

Schedule of the United States

Sector:	Communications
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favored-National Treatment (Article 9.5 and Article 10.4)
Description	<u>Investment and Cross-Board Trade in Services</u> The United States reserves the right to: (a) adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access, or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services; and (b) prohibit a person of a Party from offering DTH or DBS television and digital audio services into the territory of the United States unless that person establishes that the Party of which it is a person: i. Permits U.S. persons to obtain a license for such service in that Party in similar circumstances; and ii. Treats the supply of audio or video content originating in the Party no more favorably than the supply of audio or video content originating in a non-Party or any other Party.

Appendix II-A

For the following Sectors, U.S. obligations under Article XVI of GATS as set out in the U.S. Schedule of Specific Commitments under GATS (GATS/SC/90, GATS/SC/90/Suppl. 1, GATS/SC/90/Suppl.2, and GATS/SC/90/Suppl. 3) are improved as described.

Sector/Subsector	**Market Access Improvements**
Foreign Legal Consulting Services	Insert new commitments for the following states: Louisiana, New Mexico: No limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section." Arizona, Indiana, Massachusetts, North Carolina, Utah: No limitations modes 1-2; for mode 3 "in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, an in-state law office required." Missouri: No limitations modes 1-2; for mode 3 "Association with in-state law office required," and mode 4 "Unbound, except as indicated in the horizontal section. Additionally, association with an in-state law office required."
Accounting, Auditing and Bookkeeping Services	Modify mode 3 limitation as shown in the following mark-up: "Sole proprietorships or partnerships are limited to persons licensed as accountants~~, except in Iowa where accounting firms must incorporate~~." Modify mode 4 limitation as show in the following mark-up: "In addition, an in-state office must be maintained ~~for licensure in~~ <u>to receive a license to perform audits in</u>:"
Engineering Services Integrated Engineering Services	Replace existing description of Mode 4 with "Unbound, except as indicated in the horizontal section."
Research and development services: R&D services on natural sciences, social sciences and humanities, and interdisciplinary **R&D** services,	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the

Annex 10-B

Express Delivery Services

1. For the purposes of this Annex, **express delivery services** means the collection, transport and delivery of documents, printed matter, parcels, goods or other items, on an expedited basis, while tracking and maintaining control of these items throughout the supply of the service. Express delivery services do not include air transport services, services supplied in the exercise of governmental authority, or maritime transport services.[66]

2. For the purposes of this Annex, **postal monopoly** means a measure maintained by a Party making a postal operator within the Party's territory the exclusive supplier of specified collection, transport and delivery services.

3. Each Party that maintains a postal monopoly shall define the scope of the monopoly on the basis of objective criteria, including quantitative criteria such as price or weight thresholds.[67]

4. The Parties confirm their desire to maintain at least the level of market openness for express delivery services that each provides on the date of its signature of this Agreement. If a Party considers that another Party is not maintaining that level of market openness, it may request consultations. The other Party shall afford adequate opportunity for consultations and, to the extent possible, provide information in response to inquiries regarding the level of market openness and any related matter.

5. No Party shall allow a supplier of services covered by a postal monopoly to cross-subsidise its own or any other competitive supplier's express delivery services with revenues derived from monopoly postal services.[68]

6. Each Party shall ensure that any supplier of services covered by a postal monopoly does not abuse

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[66] For greater certainty, express delivery services does not include: (a) for Australia, services reserved for exclusive supply by Australia Post as set out in the Australian Postal Corporation Act 1989 and its subordinate legislation and regulations; (b) for Brunei Darussalam, reserved exclusive rights for collection and delivery of letters by the Postal Services Department as set out in the Post Office Act (Chapter 52 of the Laws of Brunei), the Guidelines to Application of License for the Provision of Local Express Letter Service (2000) and the Guidelines to Application of License for the Provision of International Express Letter Service (2000); (c) for Canada, services reserved for exclusive supply by Canada Post Corporation as set out in the Canada Post Corporation Act and its regulations; (d) for Japan, correspondence delivery services within the meaning of the Law Concerning Correspondence Delivery Provided by Private Operators (Law No. 99, 2002) other than special correspondence delivery services as set out in Article 2, paragraph 7 of the law; (e) for Malaysia, reserved exclusive rights for collection and delivery of letters by Pos Malaysia as provided for under the Postal Services Act 2012; (f) for Mexico, mail services reserved for exclusive supply by the Mexican Postal Service as set out in the Mexican Postal laws and regulations, as well as motor carrier freight transportation services, as set forth in Title III of the Roads, Bridges, and Federal Motor Carrier Transportation Law and its regulations; (g) for New Zealand, the fastpost service and equivalent priority domestic mail services; (h) for Singapore, postal services as set out in the Postal Services Act (Cap 237A) 2000 and certain express letter services which are administered under the Postal Services (Class License) Regulations 2005; (i) for the United States, delivery of letters over post routes subject to 18 U.S.C. 1693–1699 and 39 U.S.C. 601–606, but does include delivery of letters subject to the exceptions therein; and (j) for Viet Nam, reserved services as set out in Viet Nam Postal Law and relevant legal documents.

[67] For greater certainty, the Parties understand that the scope of Chile's postal monopoly is defined on the basis of objective criteria by Decree 5037 (1960) and the ability of suppliers to supply delivery services in Chile is not limited by this Decree.

[68] In the case of Viet Nam, this obligation shall not apply until three years after the date of entry into force of this Agreement for it. During this period, if a Party considers that Viet Nam is allowing such cross-subsidisation, it may request consultations. Viet Nam shall afford adequate opportunity for consultations and, to the extent possible, shall provide information in response to inquiries regarding the cross-subsidisation.

its monopoly position to act in the Party's territory in a manner inconsistent with the Party's commitments under Article 9.4 (National Treatment), Article 10.3 (National Treatment) or Article 10.5 (Market Access) with respect to the supply of express delivery services.[69]

7. No Party shall:

(a) require an express delivery service supplier of another Party, as a condition of authorisation or licensing, to supply a basic universal postal service; or

(b) assess fees or other charges exclusively on express delivery service suppliers for the purpose of funding the supply of another delivery service.[70]

8. Each Party shall ensure that any authority responsible for regulating express delivery services is not accountable to any supplier of express delivery services, and that the decisions and procedures that the authority adopts are impartial, non-discriminatory and transparent with respect to all express delivery service suppliers in its territory.

[69] For greater certainty, a supplier of services covered by a postal monopoly that exercises a right or privilege incidental to or associated with its monopoly position in a manner that is consistent with the Party's commitments listed in this paragraph with respect to express delivery services is not acting in a manner inconsistent with this paragraph.

[70] This paragraph shall not be construed to prevent a Party from imposing non-discriminatory fees on delivery service suppliers on the basis of objective and reasonable criteria, or from assessing fees or other charges on the express delivery services of its own supplier of services covered by a postal monopoly.

Annex 10-C

Non-Conforming Measures Ratchet Mechanism

Notwithstanding Article 10.7.1(c) (Non-Conforming Measures), for Viet Nam for three years after the date of entry into force of this Agreement for it:

(a) Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) and Article 10.6 (Local Presence) shall not apply to an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of entry into force of this Agreement for Viet Nam, with Article 10.3 (National Treatment), Article 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access) or Article 10.6 (Local Presence);

(b) Viet Nam shall not withdraw a right or benefit from a service supplier of another Party, in reliance on which the service supplier has taken any concrete action,[71] through an amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that decreases the conformity of the measure as it existed immediately before the amendment; and

(c) Viet Nam shall provide to the other Parties the details of any amendment to any non-conforming measure referred to in Article 10.7.1(a) (Non-Conforming Measures) that would decrease the conformity of the measure, as it existed immediately before the amendment, at least 90 days before making the amendment.

[71] Concrete action includes the channeling of resources or capital in order to establish or expand a business and applying for permits and licenses.

EXHIBIT K

DIRECTIVE 98/5/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 February 1998

to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 49, Article 57(1) and the first and third sentences of Article 57(2) thereof,

Having regard to the proposal from the Commission ([72]),

Having regard to the Opinion of the Economic and Social Committee ([73]),

Acting in accordance with the procedure laid down in Article 189b of the Treaty ([74]),

(1) Whereas, pursuant to Article 7a of the Treaty, the internal market is to comprise an area without internal frontiers; whereas, pursuant to Article 3(c) of the Treaty, the abolition, as between Member States, of obstacles to freedom of movement for persons and services constitutes one of the objectives of the Community; whereas, for nationals of the Member States, this means among other things the possibility of practising a profession, whether in a self-employed or a salaried capacity, in a Member State other than that in which they obtained their professional qualifications;

(2) Whereas, pursuant to Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration ([75]), a lawyer who is fully qualified in one Member State may already ask to have his diploma recognised with a view to establishing himself in another Member State in order to practise the profession of lawyer there under the professional title used in that State; whereas the objective of Directive 89/48/EEC is to ensure that a lawyer is integrated into the profession in the host Member State, and the Directive seeks neither to modifiy the rules regulating the profession in that State nor to remove such a lawyer from the ambit of those rules;

(3) Whereas while some lawyers may become quickly integrated into the profession in the host Member State, inter alia by passing an aptitude test as provided for in Directive 89/48/EEC, other fully qualified lawyers should be able to achieve such integration after a certain period of professional practice in the host Member State under their home-country professional titles or else continue to practise under their home-country professional titles;

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[72] OJ C 128, 24. 5. 1995, p. 6 and
OJ C 355, 25. 11. 1996, p. 19.

[73] OJ C 256, 2. 10. 1995, p. 14.

[74] Opinion of the European Parliament of 19 June 1996 (OJ C 198, 8. 7. 1996, p. 85), Council Common Position of 24 July 1997 (OJ C 297, 29. 9. 1997, p. 6), Decision of the European Parliament of 19 November 1997 (Council Decision of 15 December 1997).

[75] OJ L 19, 24. 1. 1989, p. 16.

(4) Whereas at the end of that period the lawyer should be able to integrate into the profession in the host Member States after verification that the possesses professional experience in that Member State;

(5) Whereas action along these lines is justified at Community level not only because, compared with the general system for the recognition of diplomas, it provides lawyers with an easier means whereby they can integrate into the profession in a host Member State, but also because, by enabling lawyers to practise under their home-country professional titles on a permanent basis in a host Member State, it meets the needs of consumers of legal services who, owing to the increasing trade flows resulting, in particular, from the internal market, seek advice when carrying out cross-border transactions in which international law, Community law and domestic laws often overlap;

(6) Whereas action is also justified at Community level because only a few Member States already permit in their territory the pursuit of activities of lawyers, otherwise than by way of provision of services, by lawyers from other Member States practising under their home-country professional titles; whereas, however, in the Member States where this possibility exists, the practical details concerning, for example, the area of activity and the obligation to register with the competent authorities differ considerably; whereas such a diversity of situations leads to inequalities and distortions in competition between lawyers from the Member States and constitutes an obstacle to freedom of movement; whereas only a directive laying down the conditions governing practice of the profession, otherwise than by way of provision of services, by lawyers practising under their home-country professional titles is capable of resolving these difficulties and of affording the same opportunities to lawyers and consumers of legal services in all Member States;

(7) Whereas, in keeping with its objective, this Directive does not lay down any rules concerning purely domestic situations, and where it does affect national rules regulating the legal profession it does so no more than is necessary to achieve its purpose effectively; whereas it is without prejudice in particular to national legislation governing access to and practice of the profession of lawyer under the professional title used in the host Member State;

(8) Whereas lawyers covered by the Directive should be required to register with the competent authority in the host Member State in order that that authority may ensure that they comply with the rules of professional conduct in force in that State; whereas the effect of such registration as regards the jurisdictions in which, and the levels and types of court before which, lawyers may practise is determined by the law applicable to lawyers in the host Member State;

(9) Whereas lawyers who are not integrated into the profession in the host Member State should practise in that State under their homecountry professional titles so as to ensure that consumers are properly informed and to distinguish between such lawyers and lawyers from the host Member State practising under the professional title used there;

(10) Whereas lawyers covered by this Directive should be permitted to give legal advice in particular on the law of their home Member States, on Community law, on international law and on the law of the host Member State; whereas this is already allowed as regards the provision of services under Council Directive 77/249/EEC of 22 March 1977 to facilitate

the effective excercise by lawyers of freedom to provide services ([76]); whereas, however, provision should be made, as in Directive 77/249/EEC, for the option of excluding from the activities of lawyers practising under their home-country professional titles in the United Kingdom and Ireland the preparation of certain formal documents in the conveyancing and probate spheres; whereas this Directive in no way affects the provisions under which, in every Member State, certain activities are reserved for professions other than the legal profession; whereas the provision in Directive 77/249/EEC concerning the possibility of the host Member State to require a lawyer practising under his home-country professional title to work in conjunction with a local lawyer when representing or defending a client in legal proceedings should also be incorporated in this Directive; whereas that requirement must be interpreted in the light of the case law of the Court of Justice of the European Communities, in particular its judgment of 25 February 1988 in Case 427/85, Commission v. Germany ([77]);

(11) Whereas to ensure the smooth operation of the justice system Member States should be allowed, by means of specific rules, to reserve access to their highest courts to specialist lawyers, without hindering the integration of Member States' lawyers fulfilling the necessary requirements;

(12) Whereas a lawyer registered under his home-country professional title in the host Member State must remain registered with the competent authority in his home Member State if he is to retain his status of lawyer and be covered by this Directive; whereas for that reason close collaboration between the competent authorities is indispensable, in particular in connection with any disciplinary proceedings;

(13) Whereas lawyers covered by this Directive, whether salaried or self-employed in their home Member States, may practise as salaried lawyers in the host Member State, where that Member State offers that possibility to its own lawyers;

(14) Whereas the purpose pursued by this Directive in enabling lawyers to practise in another Member State under their homecountry professional titles is also to make it easier for them to obtain the professional title of that host Member State; whereas under Articles 48 and 52 of the Treaty as interpreted by the Court of Justice the host Member State must take into consideration any professional experience gained in its territory; whereas after effectively and regularly pursuing in the host Member State an activity in the law of that State including Community law for a period of three years, a lawyer may reasonably be assumed to have gained the aptitude necessary to become fully integrated into the legal profession there; whereas at the end of that period the lawyer who can, subject to verification, furnish evidence of his professional competence in the host Member State should be able to obtain the professional title of that Member State; whereas if the period of effective and regular professional activity of at least three years includes a shorter period of practice in the law of the host Member State, the authority shall also take into consideration any other knowledge of that State's law, which it may verify during an interview; whereas if evidence of fulfilment of these conditions is not provided, the decision taken by the competent authority of the host State not to grant the State's professional title under the facilitation arrangements linked to those conditions must be substantiated and subject to appeal under national law;

[76] OJ L 78, 26. 3. 1977, p. 17. Directive as last amended by the 1994 Act of Accession

[77] [1988] ECR 1123.

(15) Whereas, for economic and professional reasons, the growing tendency for lawyers in the Community to practise jointly, including in the form of associations, has become a reality; whereas the fact that lawyers belong to a grouping in their home Member State should not be used as a pretext to prevent or deter them from establishing themselves in the host Member State; whereas Member States should be allowed, however, to take appropriate measures with the legitimate aim of safeguarding the profession's independence; whereas certain guarantees should be provided in those Member States which permit joint practice,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object, scope and definitions

1. The purpose of this Directive is to facilitate practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than that in which the professional qualification was obtained.

2. For the purposes of this Directive:

(a) 'lawyer' means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the following professional titles:

(b) 'home Member State' means the Member State in which a lawyer acquired the right to use one of the professional titles referred to in (a) before practising the profession of lawyer in another Member State;

(c) 'host Member State' means the Member State in which a lawyer practises pursuant to this Directive;

(d) 'home-country professional title' means the professional title used in the Member State in which a lawyer acquired the right to use that title before practising the profession of lawyer in the host Member State;

(e) 'grouping' means any entity, with or without legal personality, formed under the law of a Member State, within which lawyers pursue their professional activities jointly under a joint name;

(f) 'relevant professional title' or 'relevant profession' means the professional title or profession governed by the competent authority with whom a lawyer has registered under Article 3, and 'competent authority' means that authority.

3. This Directive shall apply both to lawyers practising in a selfemployed capacity and to lawyers practising in a salarial capacity in the home Member State and, subject to Article 8, in the host Member State.

4. Practice of the profession of lawyer within the meaning of this Directive shall not include the provision of services, which is covered by Directive 77/249/EEC.

Article 2

Right to practise under the home-country professional title

Any lawyer shall be entitled to pursue on a permanent basis, in any other Member State under his home-country professional title, the activities specified in Article 5.

Integration into the profession of lawyer in the host Member State shall be subject to Article 10.

Article 3

Registration with the competent authority

1. A lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification shall register with the competent authority in that State.

2. The competent authority in the host Member State shall register the lawyer upon presentation of a certificate attesting to his registration with the competent authority in the home Member State. It may require that, when presented by the competent authority of the home Member State, the certificate be not more than three months old. It shall inform the competent authority in the home Member State of the registration.

3. For the purpose of applying paragraph 1:

in the United Kingdom and Ireland, lawyers practising under a professional title other than those used in the United Kingdom or Ireland shall register either with the authority responsible for the profession of barrister or advocate or with the authority responsible for the profession of solicitor,

in the United Kingdom, the authority responsible for a barrister from Ireland shall be that responsible for the profession of barrister or advocate, and the authority responsible for a solicitor from Ireland shall be that responsible for the profession of solicitor,

in Ireland, the authority responsible for a barrister or an advocate from the United Kingdom shall be that responsible for the profession of barrister, and the authority responsible for a solicitor from the United Kingdom shall be that responsible for the profession of solicitor.

A. Where the relevant competent authority in a host Member State publishes the names of lawyers registered with it, it shall also publish the names of lawyers registered pursuant to this Directive.

Article 4

Practice under the home-country professional title

1. A lawyer practising in a host Member State under his homecountry professional title shall do so under that title, which must be expressed in the official language or one of the official languages of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title of the host Member State.

2. For the purpose of applying paragraph 1, a host Member State may require a lawyer practising under his home-country professional title to indicate the professional body of which he is a member in his home Member State or the judicial authority before which he is entitled to practise pursuant to the laws of his home Member State. A host Member State may also require a lawyer practising under his homecountry professional title to include a reference to his registration with the competent authority in that State.

Article 5

Area of activity

1. Subject to paragraphs 2 and 3, a lawyer practising under his homecountry professional title carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State and may, inter alia, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State. He shall in any event comply with the rules of procedure applicable in the national courts.

2. Member States which authorise in their territory a prescribed category of lawyers to prepare deeds for obtaining title to administer estates of deceased persons and for creating or transferring interests in land which, in other Member States, are reserved for professions other than that of lawyer may exclude from such activities lawyers practising under a home-country professional title conferred in one of the latter Member States.

3. For the pursuit of activities relating to the representation or defence of a client in legal proceedings and insofar as the law of the host Member State reserves such activities to lawyers practising under the professional title of that State, the latter may require lawyers practising under their home-country professional titles to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority or with an 'avoué' practising before it. Nevertheless, in order to ensure the smooth operation of the justice system, Member States may lay down specific rules for access to supreme courts, such as the use of specialist lawyers.

Article 6

Rules of professional conduct applicable

1. Irrespective of the rules of professional conduct to which he is subject in his home Member State, a lawyer practising under his homecountry professional title shall be subject to the same rules of professional conduct as lawyers practising under the relevant professional title of the host Member State in respect of all the activities he pursues in its territory.

2. Lawyers practising under their home-country professional titles shall be granted appropriate representation in the professional associations of the host Member State. Such representation shall involve at least the right to vote in elections to those associations' governing bodies.

3. The host Member State may require a lawyer practising under his home-country professional title either to take out professional indemnity insurance or to become a member of a professional guarantee fund in accordance with the rules which that State lays down for professional activities pursued in its territory. Nevertheless, a lawyer practising under his home-country professional title shall be exempted from that requirement if he can prove that he is covered by insurance taken out or a guarantee provided in accordance with the rules of his home Member State, insofar as such insurance or guarantee is equivalent in terms of the conditions and extent of cover. Where the equivalence is only partial, the competent authority in the host Member State may require that additional insurance or an additional guarantee be contracted to cover the elements which are not already covered by the insurance or guarantee contracted in accordance with the rules of the home Member State.

Article 7

Disciplinary proceedings

1. In the event of failure by a lawyer practising under his homecountry professional title to fulfil the obligations in force in the host Member State, the rules of procedure, penalties and remedies provided for in the host Member State shall apply.

2. Before initiating disciplinary proceedings against a lawyer practising under his home-country professional title, the competent authority in the host Member State shall inform the competent authority in the home Member State as soon as possible, furnishing it with all the relevant details. The first subparagraph shall apply mutatis mutandis where disciplinary proceedings are initiated by the competent authority of the home Member State, which shall inform the competent authority of the host Member State(s) accordingly.

3. Without prejudice to the decision-making power of the competent authority in the host Member State, that authority shall cooperate throughout the disciplinary proceedings with the competent authority in the home Member State. In particular, the host Member State shall take the measures necessary to ensure that the competent authority in the home Member State can make submissions to the bodies responsible for hearing any appeal.

4. The competent authority in the home Member State shall decide what action to take, under its own procedural and substantive rules, in the light of a decision of the competent authority in the host Member State concerning a lawyer practising under his home-country professional title.

5. Although it is not a prerequisite for the decision of the competent authority in the host Member State, the temporary or permanent withdrawal by the competent authority in the home Member State of the authorisation to practise the profession shall automatically lead to the lawyer concerned being temporarily or permanently prohibited from practising under his home-country professional title in the host Member State.

Article 8

Salaried practice

A lawyer registered in a host Member State under his home-country professional title may practise as a salaried lawyer in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise to the extent that the host Member State so permits for lawyers registered under the professional title used in that State.

Article 9

Statement of reasons and remedies

Decisions not to effect the registration referred to in Article 3 or to cancel such registration and decisions imposing disciplinary measures shall state the reasons on which they are based.

A remedy shall be available against such decisions before a court or tribunal in accordance with the provisions of domestic law.

Article 10

Like treatment as a lawyer of the host Member State

1. A lawyer practising under his home-country professional title who has effectively and regularly pursued for a period of at least three years an activitiy in the host Member State in the law of that State including Community law shall, with a view to gaining admission to the profession of lawyer in the host Member State, be exempted from the conditions set out in Article 4(1)(b) of Directive 89/48/EEC, 'Effective and regular pursuit' means actual exercise of the activity without any interruption other than that resulting from the events of everyday life.

It shall be for the lawyer concerned to furnish the competent authority in the host Member State with proof of such effective regular pursuit for a period of at least three years of an activity in the law of the host Member State. To that end:

(a) the lawyer shall provide the competent authority in the host Member State with any relevant information and documentation, notably on the number of matters he has dealt with and their nature;

(b) the competent authority of the host Member State may verify the effective and regular nature of the activity pursued and may, if need be, request the lawyer to provide, orally or in writing, clarification of or further details on the information and documentation mentioned in point (a).

Reasons shall be given for a decision by the competent authority in the host Member State not to grant an exemption where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

2. A lawyer practising under his home-country professional title in a host Member State may, at any time, apply to have his diploma recognised in accordance with Directive 89/48/EEC with a view to gaining admission to the profession of lawyer in the host Member State and practising it under the professional title corresponding to the profession in that Member State.

3. A lawyer practising under his home-country professional title who has effectively and regularly pursued a professional activity in the host Member State for a period of at least three years but for a lesser period in the law of that Member State may obtain from the competent authority of that State admission to the profession of lawyer in the host Member State and the right to practise it under the professional title corresponding to the profession in that Member State, without having to meet the conditions referred to in Article 4(1)(b) of Directive 89/48/EEC, under the conditions and in accordance with the procedures set out below:

(a) The competent authority of the host Member State shall take into account the effective and regular professional activity pursued during the abovementioned period and any knowledge and professional experience of the law of the host Member State, and any attendance at lectures or seminars on the law of the host Member State, including the rules regulating professional practice and conduct.

(b) The lawyer shall provide the competent authority of the host Member State with any relevant information and documentation, in particular on the matters he has dealt with. Assessment of the lawyer's effective and regular activity in the host Member State and assessment of his capacity to continue the activity he has pursued there shall be carried out by means of an interview with the competent authority of the host Member State in order to verify the regular and effective nature of the activity pursued.

Reasons shall be given for a decision by the competent authority in the host Member State not to grant authorisation where proof is not provided that the requirements laid down in the first subparagraph have been fulfilled, and the decision shall be subject to appeal under domestic law.

4. The competent authority of the host Member State may, by reasoned decision subject to appeal under domestic law, refuse to allow the lawyer the benefit of the provisions of this Article if it considers that this would be against public policy, in a particular because of disciplinary proceedings, complaints or incidents of any kind.

5. The representatives of the competent authority entrusted with consideration of the application shall preserve the confidentiality of any information received.

6. A lawyer who gains admission to the profession of lawyer in the host Member State in accordance with paragraphs 1, 2 and 3 shall be entitled to use his home-country professional title, expressed in the official language or one of the official languages of his home Member State, alongside the professional title corresponding to the profession of lawyer in the host Member State.

Article 11

Joint practice

Where joint practise is authorised in respect of lawyers carrying on their activities under the relevant professional title in the host Member State, the following provisions shall apply in respect of lawyers wishing to carry on activities under that title or registering with the competent authority:

(1) One or more lawyers who belong to the same grouping in their home Member State and who practise under their home-country professional title in a host Member State may pursue their professional activities in a branch or agency of their grouping in the host Member State. However, where the fundamental rules governing that grouping in the home Member State are incompatible with the fundamental rules laid down by law, regulation or

administrative action in the host Member State, the latter rules shall prevail insofar as compliance therewith is justified by the public interest in protecting clients and third parties.

(2) Each Member State shall afford two or more lawyers from the same grouping or the same home Member State who practise in its territory under their home-country professional titles access to a form of joint practice. If the host Member State gives its lawyers a choice between several forms of joint practice, those same forms shall also be made available to the aforementioned lawyers. The manner in which such lawyers practise jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(3) The host Member State shall take the measures necessary to permit joint practice also between:

(a) several lawyers from different Member States practising under their home-country professional titles;

(b) one or more lawyers covered by point (a) and one or more lawyers from the host Member State. The manner in which such lawyers practice jointly in the host Member State shall be governed by the laws, regulations and administrative provisions of that State.

(4) A lawyer who wishes to practise under his home-country professional title shall inform the competent authority in the host Member State of the fact that he is a member of a grouping in his home Member State and furnish any relevant information on that grouping.

(5) Notwithstanding points 1 to 4, a host Member State, insofar as it prohibits lawyers practising under its own relevant professional title from practising the profession of lawyer within a grouping in which some persons are not members of the profession, may refuse to allow a lawyer registered under his home-country professional title to practice in its territory in his capacity as a member of his grouping. The grouping is deemed to include persons who are not members of the profession if

the capital of the grouping is held entirely or partly, or
the name under which it practises is used, or
the decision-making power in that grouping is exercised, *de facto* or *de jure*,

by persons who do not have the status of lawyer within the meaning of Article 1(2).
Where the fundamental rules governing a grouping of lawyers in the home Member State are incompatible with the rules in force in the host Member State or with the provisions of the first subparagraph, the host Member State may oppose the opening of a branch or agency within its territory without the restrictions laid down in point (1).

Article 12

Name of the grouping

Whatever the manner in which lawyers practise under their homecountry professional titles in the host Member State, they may employ the name of any grouping to which they belong in their home Member State.

The host Member State may require that, in addition to the name referred to in the first subparagraph,

mention be made of the legal form of the grouping in the home Member State and/or of the names of any members of the grouping practising in the host Member State.

Article 13

Cooperation between the competent authorities in the home and host Member States and confidentiality

In order to facilitate the application of this Directive and to prevent its provisions from being misapplied for the sole purpose of circumventing the rules applicable in the host Member State, the competent authority in the host Member State and the competent authority in the home Member State shall collaborate closely and afford each other mutual assistance.

They shall preserve the confidentiality of the information they exchange.

Article 14

Designation of the competent authorities

Member States shall designate the competent authorities empowered to receive the applications and to take the decisions referred to in this Directive by 14 March 2000. They shall communicate this information to the other Member States and to the Commission.

Article 15

Report by the Commission

Ten years at the latest from the entry into force of this Directive, the Commsision shall report to the European Parliament and to the Council on progress in the implementation of the Directive. After having held all the necessary consultations, it shall on that occasion present its conclusions and any amendments which could be made to the existing system.

Article 16

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 2000. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be adopted by Member States.

3. Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field covered by this Directive.

Article 17

This Directive shall enter into force on the date of its publication in the Official Journal of the European Communities.

Article 18

Addressees

This Directive is addressed to the Member States.

EXHIBIT L

NAFTA CHAPTER 12

CROSS-BORDER TRADE IN SERVICES

Article 1201

Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:

(a) the production, distribution, marketing, sale and delivery of a service;

(b) the purchase or use of, or payment for, a service;

(c) the access to and use of distribution and transportation systems in connection with the provision of a service;

(d) the presence in its territory of a service provider of another Party; and

(e) the provision of a bond or other form of financial security as a condition for the provision of a service.

2. This Chapter does not apply to:

(a) financial services, as defined in Chapter Fourteen (Financial Services);

(b) air services, including domestic and international air transportation services, whether scheduled or non-scheduled, and related services in support of air services, other than

(i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and

(ii) specialty air services;

(c) procurement by a Party or a state enterprise; or

(d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

3. Nothing in this Chapter shall be construed to:

(a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment; or

(b) prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

Article 1202

National Treatment

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.

2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or

province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to service providers of the Party of which it forms a part.

Article 1203

Most-Favored-Nation Treatment

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of any other Party or of a non-Party.

Article 1204

Standard of Treatment

Each Party shall accord to service providers of any other Party the better of the treatment required by Articles 1202 and 1203.

Article 1205

Local Presence

No Party may require a service provider of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

Article 1206

Reservations

1. Articles 1202, 1203 and 1205 do not apply to:

   (a) any existing non-conforming measure that is maintained by

      (i) a Party at the federal level, as set out in its Schedule to Annex I,

      (ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or

      (iii) a local government;

   (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

   (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1202, 1203 and 1205.

2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or province, not including a local government.

3. Articles 1202, 1203 and 1205 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article 1207

Quantitative Restrictions

1. Each Party shall set out in its Schedule to Annex V any quantitative restriction that it maintains at the federal level.

2. Within one year of the date of entry into force of this Agreement, each Party shall set out in its

Schedule to Annex V any quantitative restriction maintained by a state or province, not including a local government.

3. Each Party shall notify the other Parties of any quantitative restriction that it adopts, other than at the local government level, after the date of entry into force of this Agreement and shall set out the restriction in its Schedule to Annex V.

4. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of the quantitative restrictions set out in Annex V pursuant to paragraphs 1 through 3.

Article 1208

Liberalization of Non-Discriminatory Measures

Each Party shall set out in its Schedule to Annex VI its commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures.

Article 1209

Procedures

The Commission shall establish procedures for:

(a) a Party to notify and include in its relevant Schedule

(i) state or provincial measures in accordance with Article 1206(2),

(ii) quantitative restrictions in accordance with Article 1207(2) and (3),

(iii) commitments pursuant to Article 1208, and

(iv) amendments of measures referred to in Article 1206(1)(c); and

(b) consultations on reservations, quantitative restrictions or commitments with a view to further liberalization.

Article 1210

Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

(a) is based on objective and transparent criteria, such as competence and the ability to provide a service;

(b) is not more burdensome than necessary to ensure the quality of a service; and

(c) does not constitute a disguised restriction on the cross-border provision of a service.

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in the territory of another Party or of a non-Party:

(a) nothing in Article 1203 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the territory of another Party; and

(b) the Party shall afford another Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to conclude an agreement or arrangement of comparable effect.

3. Each Party shall, within two years of the date of entry into force of this Agreement, eliminate any citizenship or permanent residency requirement set out in its Schedule to Annex I that it maintains for the licensing or certification of professional service providers of another Party. Where a Party does not comply with this obligation with respect to a particular sector, any other Party may, in the same sector and for such period as the noncomplying Party maintains its requirement, solely have recourse to maintaining an equivalent requirement set out in its Schedule to Annex I or reinstating:

(a) any such requirement at the federal level that it eliminated pursuant to this Article; or

(b) on notification to the non-complying Party, any such requirement at the state or provincial level existing on the date of entry into force of this Agreement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service providers.

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Article 1211

Denial of Benefits

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

(a) the service is being provided by an enterprise owned or controlled by nationals of a non-Party, and

(i) the denying Party does not maintain diplomatic relations with the non-Party, or

(ii) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or

(b) the cross-border provision of a transportation service covered by this Chapter is provided using equipment not registered by any Party.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

Article 1212

Sectoral Annex

Annex 1212 applies to specific sectors.

EXHIBIT M

COMMENTS OF RICHARD STERNBERG: THE ECONOMIC IMPACT OF PERMITTING FOREIGN LAWYERS TO PRACTICE IN MARYLAND

A vocal member of the Task Force believes that Maryland lawyers will be negatively affected by admitting non-U.S. qualified lawyers to practice in Maryland. His view is expressed here.

Let's start with a stark accusation: We have, during the present generation of lawyers since Watergate, eviscerated the practice of law and demeaned the administration of Justice. Perhaps those terms are strong unless weighed on the same scale in which the Sixties Generation accused its forebears of invading and colonizing Vietnam. But, now that we can see the impact of multiple attacks on the practice of Law perhaps we, like McNamara, ought to reverse the devastation and revive the respect, honor, and righteousness of the practice of Law.

Let's consider the advocates of international practice. The term was advocated strongly by a panel at the ABA Annual Meeting in Summer 2015 in which the Honorable Chief Judge of the New York State Court of Appeals proudly announced that New York is leading the way in opening its Bar to applicants who would be otherwise unqualified in order to create an international bar in which foreign interests might feel more comfortable using their newly qualified lawyer uneducated in American law. That same jurist from the Bench stepped up to require that these newly qualified practitioners buy an office in New York so that New Jersey's qualified practitioners can't as easily compete, and he readily admitted at the ABA Convention that he knew that decision was unconstitutional — Virginia tried the same nonsense twice decades ago. But, the Chief Judge, sitting in the seat John Jay occupied after he resigned as the first Chief Justice of the United States, proudly noted that about one-third of the admittees to the NY Bar are previously unqualified foreign admitted lawyers.

The learned justice was joined on the panel by a more junior but no less august professor of law from Northwestern, who recited a series of statistics that shall not be repeated here for fear of embarrassing her. Basically, she noted that there is a grave shortage of lawyers working on pro bono programs and that her law school needs more students. Under questioning, she did not deny that the Chinese lawyers admitted in such fast-track efforts never actually get to practice Law, but, she noted that many return to their countries (with several hundred thousand fewer dollars than they started) with a wonderful new credential that could aid them in understanding American law and business.

While assiduously avoiding being classified as a neo-Wobbly, let's look at a few rough statistics. Enrollment in law schools is down nationally about 40%. It is easy to hire young and very qualified talent who crave a mentor to learn the practice of Law for just a few dollars more than the contract rate for a housekeeper. It's a good deal for them. They get paid the same hourly rate to sit as dysfunctional drones before computer screens doing e-discovery and document review while being informed by their New Normal mentors that there is no path for advancement in the job. Another participant at the Chicago meeting — a professor at a second tier law school — noted that, in the current academic year for all of the law schools in the entire country, there have been 56 new law professors hired. So, Maryland should ask — since New York is working hard to reduce the qualifications needed to practice Law and the ABA has an augustly led committee advocating that we mint more practitioners so they'll be available to perform more free pro bono work — is there a noticeable lack of supply in the practice of the Law?

The supply is easy to find, and they sure seem to be victims of fraud. Fraud is a thing lawyers know a bit about. Lawyers are quite anxious to make sure it isn't being perpetrated on the public. So, lawyers stood by while state legislatures across the country opened up the practice of real estate closings to non-lawyers, and then stood by when the non-lawyer title agents perpetrated the biggest series of frauds in U.S. history through flipping, predatory lending, and mortgage recovery scams, and, perhaps because the best

jokes are always heard twice, Maryland is now excluding lawyers from being involved in honest mortgage workouts unless they qualify as non-lawyer mortgage workout licensees.

Simultaneously, lawyers are a bit less cognizant of frauds committed on lawyers and law students. It is clear how Judge Lippman got his one-third of the Bar from Hong Kong. Every time a lawyer puts an ad for new affiliates in the local placement offices in DC and Maryland, there are a stack of applications from Chinese LLM students who are admitted in Hong Kong and NY with no chance of ever getting admitted to practice in Maryland, DC, or Virginia. If the prospective defendants weren't the NY Court of Appeals and some of the most prestigious law schools in the country, it might be called a fraud.

The issue here isn't solely the false hope intentionally dangled to foreign students to separate them from their foreign money. The issue here is bigger. Internet forms providers, like Legal Zoom, the deprofessionalization of real estate settlements, limited practice semi-professional lawyers, to name a few, have already reduced the applicant pool to law schools by 40%.

These repeated assaults on what was the useful trade of Jefferson, Lincoln, and the vast majority of our political leaders throughout the history of this country have demeaned the profession and its practitioners. It has not improved respect among the laity for the educational achievements of those who need to be trusted to do their jobs. Rather, it has economically devastated the Bar, deprofessionalized its members, demoted its practice to clerks, and made the professionals who aspire to understand it unable to compete in the marketplace. It has not decreased fraud, for it is a fraud on the public costing billions if not trillions of dollars, and our only excuse for buying into the desuetude of the practice of Law is that lawyers are too good to speak of guilds or to protect the profession. Indeed, more powerful, senior lawyers stand to gain much, for they will be able to hire even cheaper sources of foreign labor in lieu of promoting educated professionals. It would be unusual if an industry already suffering a 40% drop could survive having to compete with another one-third addition to its members by foreign lawyers untrained, uneducated, and otherwise unqualified to practice in Maryland. The public deserves a Bar that respects itself and its role in history.