DISTRICT OF COLUMBIA BAR
GLOBAL LEGAL PRACTICE TASK FORCE

FINAL REPORT
TO THE
BOARD OF GOVERNORS
OF THE
DISTRICT OF COLUMBIA BAR

Members of the Task Force

Darrell G. Mottley, Chair

Brigida Benitez
Gary B. Born
Anastasia D. Kelly
Philip S. Khinda
Geoffrey M. Klineberg
Therese Lee
The Hon. Gregory E. Mize (Sr. Judge)
Alejandra C. Montenegro Almonte
Lorena Perez McGill
James Phalen
James P. Schaller
Anthony E. Varona
Claudia A. Withers
Cynthia G. Wright

Patrick McGlone, Ex Officio
Esther H. Lim, Ex Officio

January 2018

Final Report of the
D.C. Bar Global Legal Practice Task Force

EXECUTIVE SUMMARY

Upon review and analysis of comments received on the Global Legal Practice Task Force's *Report for Public Comment* (*July 2017 Report*) which is attached as Appendix 1 to this *Final Report of the D.C. Bar Global Legal Practice Task Force* ("*Final Report*"), the Global Legal Practice Task Force ("Task Force") issues its final proposals to amend D.C. Court of Appeals Rule 46 — Admission to the Bar — ("Rule 46") for graduates of non-ABA-accredited law schools, including graduates of foreign law schools.

In light of the comments received, the Task Force modified part of its initial proposal about the required course subjects of the additional education required under Rule 46. The Task Force has substituted its initial proposal in its *July 2017 Report* of three credit hours in U.S. constitutional law and three credits in civil procedure with six credit hours in subjects tested on the Uniform Bar Examination ("UBE") of the applicant's choice. This change would allow students to tailor their studies to intended practice areas, reduce redundant coursework, and better align the District's admission rule with that of New York.

The Task Force did not make any other changes to the remaining proposals and reaffirms the proposals as published in its *July 2017 Report*.

The final proposed amendments to Rule 46 are to:

- Reduce the number of credit hours to satisfy the additional education requirement from 26 credit hours to 24 credit hours;

- Change the subject matter requirement from 26 credit hours in subjects tested on the District of Columbia Bar Examination to: six credit hours of specific courses listed in Rule 46, six credit hours of subjects tested on the UBE and 12 hours in elective courses (a total of 24 hours); and

- Allow any amount of the additional education to be completed by distance learning that the law school would certify as complying with ABA distance education standards.

These proposals would require that the law school issuing the credit hours certify that the courses taken by the applicant comply with the requirements in Rule 46.

All of the proposed changes would apply to graduates from non-ABA-accredited law schools, which comprise both American and foreign law schools, regardless of the path they choose to seek admission to the D.C. Bar — whether by: (1) admission based on examination in this jurisdiction (Rule 46(c)(4); (2) admission by transfer of a UBE score attained in another jurisdiction (Rule 46(d)(3)(D)); or (3) admission without Examination of Members of the Bar of Other Jurisdictions (Rule 46 (e)(3)(B)(i)).

The Task Force is proposing no change to the rule for admission for members of the bar of other jurisdictions who are in good standing of the bar of any state or territory of the United States for at least five years (Rule 46(e)(3)(A)).

The Task Force recommends that the Court not adopt the proposed language that the additional education required under Rule 46 occur "in classroom courses in a law school . . .".

The Task Force also recommends that the term "ABA-approved" be changed to "ABA-accredited:" use of the term "Rules of Professional Conduct"; and that the Committee on Admissions of the D.C. Court of Appeals consider creating a "Frequently Asked Questions" webpage and periodically issue advisory guidelines explaining the Admissions Committee's interpretation of Rule 46.

The Task Force held a period for public comment on its initial proposals from July 7, 2017, through September 5, 2017. The Task Force received 41 comments: 27 from individuals, six from law firms, four from law schools, two from voluntary bar associations, one from a foreign bar association, and one from a foreign lawyer regulatory body.

Twenty-one comments supported all or some of the Task Force's proposals (two of these on the condition that foreign jurisdictions have equal or less stringent admission requirements for D.C. lawyers). Twenty comments supported reducing the number of additional credit hours required from 26 hours to 24 hours; 17 supported changing the course subject requirements; and 17 supported permitting distance education courses to qualify for additional education credit hours.

Several commenters recommended new paths to full admission for foreign-educated lawyers from common-law countries and for D.C.-licensed SLCs. For the reasons set forth in the *July 2017 Report*, the Task Force was not persuaded by these comments and accordingly did not modify any of its proposals.

Several commenters recommended that the Task Force conduct additional research about admissions requirements in Virginia; recent developments in distance legal education; and a survey of foreign-educated D.C. Bar members. The Task Force researched several of these issues, but did not modify its proposals as a result of that research.

The Task Force received 17 comments opposed to all or some of the proposals. Fifteen comments were opposed to all of the Task Force's proposals, while two were opposed to only some proposals. The Task Force addressed these comments. For the reasons set forth in the *July 2017 Report*, the additional research conducted, and comments in support of the Task Force's proposals, the Task Force did not revise its proposals in light of any opposition comments.

Final Report of the D.C. Bar Global Legal Practice Task Force

January 2018

TABLE OF CONTENTS

I. INTRODUCTION 1
- A. Task Force Charge 1
- B. The Comment Process 2

II. FINAL PROPOSALS 3

III. COMMENTS SUPPORTING THE TASK FORCE PROPOSED REVISIONS TO RULE 46 5
- A. Comments in Support of all of the Task Force's Proposals 6
- B. Additional Comments in Support 7
  1. Comments supporting the proposal to reduce the number of credit hours of additional education from 26 credit hours to 24 credit hours 8
  2. Comments in Support of the Proposal that all of the Additional Education may be Completed by Distance Education from an ABA-accredited Law School 9
- C. Task Force Analysis of Comments in Favor of Its Proposed Revisions 10

IV. THE TASK FORCE HAS MODIFIED ITS PROPOSAL TO CHANGE THE SUBJECT MATTER REQUIREMENTS 11
- A. The Task Force's Initial Proposal: July 2017 11
- B. The Task Force's Revised Final Proposal: November 2017 12
  1. The Modified Proposal Would Eliminate Redundant Coursework 12
  2. More Choice in Required Courses Would Better Align Rule 46 with New York's Admission Rule, thus Allowing for More Foreign-Educated Attorneys who are Admitted to New York to Become Admitted to the District of Columbia 13

V. COMMENTS OPPOSED TO THE TASK FORCE PROPOSALS 14
- A. Comments in opposition to the proposal to reduce the number of credit hours to satisfy the additional education requirement of graduates of non-ABA accredited law schools from 26 credit hours to 24 credit hours 15
- B. Comments in Opposition to the Proposal to Change the

Required Subjects of Additional Coursework 16
C. Comments in Opposition to the Proposal that any Amount of the Additional Education May Be Earned Through Distance Education 16
1. Comments about the Quality of Online Legal Education and Institutions 16
2. Comments about English Proficiency 16
3. Comments About the Requirement of a Foreign First Law Degree 18
D. Comment About the Discipline and Regulation of Foreign-Educated Attorneys 19
E. Other Comments in Opposition to the Task Force's Proposals 20

VI. COMMENTS RECOMMENDING ALTERNATIVE PROPOSALS FOR RULE 46 21

VII. COMMENTS REQUESTING FURTHER RESEARCH 22

VIII. OTHER ITEMS: D.C. COURT OF APPEALS PROPOSED LANGUAGE; ADMINISTRATIVE CHANGES PROPOSED BY THE TASK FORCE; RECOMMENDATIONS FOR PUBLISHED GUIDANCE BY THE COMMITTEE ON ADMISSIONS 23

IX. CONCLUSION 24

X. REDLINE AND CLEAN VERSIONS OF THE TASK FORCE PROPOSED CHANGES TO RULE 46 – ADMISSION TO THE BAR 25

LIST OF APPENDICES

Appendix 1 *District of Columbia Bar Global Legal Practice Task Force Report for Public Comment – July 7, 2017*

Appendix 2 Rule 46 *D.C. Bar Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 — Admission to the Bar (January 2018)* (redlined)

Appendix 3 Rule 46 *D.C. Bar Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 — Admission to the Bar (January 2018)* (clean)

Appendix 4 Comparison of Additional Course Requirements for Foreign Lawyers: Task Force Proposal and New York (Chart)

I. INTRODUCTION

This *Final Report of the D.C. Bar Global Legal Practice Task Force* ("*Final Report*") sets forth the final recommendations of the Task Force to amend District of Columbia Court of Appeals Rule 46 – Admission to the Bar ("Rule 46"). Specifically, the *Final Report* proposes amendments to the sections of Rule 46 that govern the admission to the D.C. Bar of graduates from non-ABA-accredited law schools – a category that includes graduates of foreign law schools.[1] In light of comments received by the Task Force on its proposals published in its *Report for Public Comment* ("*July 2017 Report*"), the Task Force modified its initial proposal concerning the subject matter courses that would satisfy the additional education requirement. The reasons for the modification are fully discussed in Section IV(B) of this report.

A. Task Force Charge

At the recommendation of then-D.C. Bar president Brigida Benitez, on September 16, 2014, the D.C. Bar Board of Governors ("Board of Governors" or "Board") approved the creation of the Global Legal Practice Task Force to explore issues arising from the globalization of legal practice that have an impact on members of the D.C. Bar and the Bar as an organization and to make recommendations about what the Bar may consider doing to address them. The charge to the Task Force stated:

> District of Columbia Bar Board of Governors
> Charge to Global Legal Practice Task Force
> September 16, 2014
>
> The Board of Governors directs the Global Legal Practice Task Force to study and make recommendations about a number of issues that have a significant impact on law practice for members of the District of Columbia Bar and for the Bar as an organization. Among the potential areas of interest are admissions and authorization to practice for foreign and cross-border attorneys who are not currently members of the D.C. Bar; discipline and other regulation of those who might become authorized to practice whether or not they are admitted to the D.C. Bar; roles and relationships of regulatory bodies across borders and internationally; and the expectations of D.C. Bar members with international practices, both those who are practicing in the United States and those who are practicing abroad.
>
> The recommendations should consider and balance the needs of the members and the Bar in light of available resources; minimize any administrative burdens to the D.C. Court of Appeals; ensure the protection of the public; and maintain the highest professional standards.

[1] Throughout this report, the term "foreign-educated individual" includes both a graduate of a foreign law school and a foreign-educated attorney. A foreign-educated individual is not required to be currently admitted to practice in another U.S. or foreign jurisdiction to qualify for admission to the District of Columbia under Rule 46.

The Board requests that the Task Force submit its report and any recommendations as soon as practicable.

From 2015 to 2017, the Task Force undertook a review of Rule 46, and ultimately focused its work on how foreign-educated individuals become fully admitted to the District of Columbia Bar under Rule 46.[2]

B. The Comment Process

The Task Force's review, analysis and proposals to amend Rule 46 were set forth in its *July 2017 Report*. The proposed amendments were approved by the Task Force at its meeting on April 18, 2017.[3]

A request for comment from the public on the *July 2017 Report* and proposals was published on the Bar's website on July 7, 2017. The *July 2017 Report* and call for comments were also published on the Bar's website, the Bar's social media channels, *Bar Bulletin*, and the *D.C. Bar SmartBrief*. The August 2017 *Washington Lawyer*, which covered the topic of globalization, included a summary of the Task Force's proposals and a reminder about the comment period. The call for comment was also sent to individuals and groups with whom the Task Force consulted, and other individuals who may have had an interest in the proposals,

[2] From 2014 to 2016, the Task Force worked on issues involving the D.C. Bar members who live in the United States and provide legal services in foreign countries and have international practices and clients, and on the Bar members who live and work abroad ("Outbound D.C. Bar Members"). Its recommendations were set forth in the *Global Legal Practice Task Force Interim Report to the Board of Governors of the District of Columbia Bar*, May 10, 2016 [hereinafter "Interim Report"] *available at* https://www.dcbar.org/about-the-bar/reports/upload/GLPTF-Final-Report-with-exhibits-May-2016.pdf. The Board approved the recommendations on June 7, 2016. The recommendations, which include the facilitation of connections with members with transnational practices and with members who work in the same regions of the world; access to resources to meet the challenges of practicing abroad; and enhanced education and professional development opportunities about international and transnational issues. The recommendations are now a strategic initiative of the D.C. Bar and are being implemented. The Board also approved the Task Force recommendations to engage in the ongoing study and monitoring of developments in the areas of Alternative Business Structures and Multidisciplinary Practice.

[3] One member of the Task Force had a differing viewpoint, including concerns about the proposal to change the subject matter requirements and the proposal that any amount of the additional education could be earned through distance education. The Task Force member did not have an opinion about the proposal to reduce the number of credit hours from 26 hours to 24 hours, and wanted to consider which specific courses should be required, including whether there should be an opportunity for elective courses. The member's views were circulated to the Task Force's Inbound Foreign Lawyer Subgroup before its meeting of February 10, 2017, to the full Task Force before its meeting of April 18, 2017, and expressed to the leadership of the Task Force. Although the member ultimately did not vote for or against any of the Task Force proposals, the Task Force fully noted and discussed the member's views. The concerns about the subject matter requirements and distance education raised by the member were addressed by the Task Force in its *July 2017 Report* and are addressed again by the Task Force in this report.

The member also expressed a concern about the lack of clarity about which kinds of foreign degrees should qualify towards the requirement in Rule 46 of "graduation from a law school" and the potential administrative burden on the Committee on Admissions of determining what should qualify as a "first law degree." However, the Task Force did not focus its study on what would qualify as a "first law degree" and made no recommendations in this area for reasons that are discussed in Section V(C)(3) of this report.

including: Special Legal Consultants[4] ("SLCs") licensed in the District of Columbia; leaders of the Bar's International Law Community; managing partners of the Washington, D.C. offices of the top 25 global law firms; leaders of voluntary bars in the District; the D.C. Bar Foundation; and the Office of Disciplinary Counsel.[5] The comment period ended on September 5, 2017.

The Task Force received a total of 41 comments, including 27 from individuals. Of the 27 individuals, 22 were D.C. Bar members; two were SLCs licensed in D.C. (one of whom was also a licensed New York attorney and licensed in a foreign country); one individual was a licensed attorney in New York; and one was a retired English solicitor. The fifth individual was anonymous. Six comments were received from law firms, four from law schools, two from voluntary bar associations, one from a foreign bar association, and one from a foreign lawyer regulatory body. The Task Force met on September 18, 2017, to review and discuss the comments, and to consider whether, in light of any specific comment, changes should be made to any of the initial July 2017 recommendations.

All of the 41 comments (with the exception of two) focused their remarks on one or more of the Task Force's proposals about the additional education requirements and the proposal to earn any amount of the credits through distance education, or generally supported or opposed all of the proposals in their entirety. The commenters were silent about the minor "housekeeping" proposals. The two comments referenced above, in addition to addressing the proposals about the additional education requirements, specifically supported the Task Force's recommendation that the Admissions Committee create an "FAQ" page for the benefit of applicants to the D.C. Bar and law schools.

II. FINAL PROPOSALS

Under existing D.C. Court of Appeals Rule 46 governing admission to the D.C. Bar, graduates from non-ABA-approved law schools — a category that includes graduates of foreign-law schools[6] — may qualify for admission to the D.C. Bar by first completing 26 additional

[4] Under Rule 46(f), a Special Legal Consultant is licensed by the D.C. Court of Appeals and is an "affiliate" of the D.C. Bar with a limited ability to practice. An SLC is limited to providing legal advice on the laws of his or her foreign jurisdiction, and is prohibited from providing advice on District of Columbia or U.S. law, or holding himself or herself out as a fully admitted member of the D.C. Bar. The SLC must establish an office in the District of Columbia for the purpose of his or her work. SLCs are typically referred to as "Foreign Legal Consultants in many other U.S. jurisdictions, and have s similar limited ability to practice in the U.S. jurisdiction in which they are licensed.

[5] Wallace E. "Gene" Shipp, Jr., served as a member of the Task Force until his retirement as District of Columbia Disciplinary Counsel on June 6, 2017. Elizabeth J. Branda served on the Task Force until her retirement as Executive Attorney of the District of Columbia Court of Appeals Board on Professional Responsibility ("BPR") on September 2, 2016; James Phalen, the Executive Attorney for the BPR, was appointed to the Task Force on October 3, 2016. Ginger T. Faulk served as a member of the Task Force until July 2017. The Task Force thanks Mr. Shipp, Ms. Branda and Ms. Faulk for their contributions to the work of the Task Force.

[6] Throughout this report, the term "foreign-educated individual" includes both a graduate of a foreign law school and a foreign-educated attorney. A foreign-educated individual is not required to be admitted to practice in a U.S. or foreign jurisdiction to qualify for admission to the District of Columbia Bar under Rule 46.

credit hours of education at an ABA-approved law school. All of the additional credit hours must be earned in subjects tested on the Uniform Bar Exam ("UBE").

For the reasons set forth below, and in its *July 2017 Report*, the Task Force reaffirms its initial proposals to amend Rule 46 to:

(1) Reduce the number of credit hours to satisfy the additional education requirement from 26 hours to 24 hours. (The Task Force is not proposing that foreign-educated individuals be required to earn an LL.M. degree. However, many foreign-educated individuals who earn an LL.M. do so by completing 24 education credit hours);

After a careful review of the matter, the Task Force revised its initial proposal about specific subject matter courses that a graduate from a foreign law school or a non-ABA-accredited law school would be required to complete. The Task Force now proposes to amend Rule 46 to change the subject matter requirement to:

(2)
- Six (6) credit hours from a list of specific courses described in Rule 46;
  - -Professional Responsibility (two credits)
  - -U.S. legal institutions (two credits)
  - -Common law legal reasoning, research and writing (two credits);
- Six (6) credit hours from subjects tested on the Uniform Bar Examination ("UBE"); and
- Twelve (12) hours in elective courses of the applicant's choosing.

Total: 24 credit hours from an ABA-accredited law school.

This modification reflects comments submitted from three law schools in the District. (The fourth law school that submitted a comment did not propose a modification to the Task Force's initial recommendation.) The Task Force carefully considered the comments and found them to be persuasive. Discussion about the revised proposal is set forth in Section IV(B) of this report.

(3) Change the existing language that the additional education requirement be satisfied "in a law school" to "from a law school," rejecting the proposal to require that the credits be earned in "classroom courses in" a law school;[7] and

(4) Clarify that any amount of the 24 credit hours may be completed by distance education from an ABA-accredited law school, provided that the law school issuing the credit hours certifies in writing that its distance education methods comply with the ABA's distance education standards.

[7] The D.C. Court of Appeals' most recent amendments to Rule 46 became effective March 1, 2016. The Court considered, but did not adopt an amendment that would have required that the additional 26 credit hours of study occur "in classroom courses in" a law school . . .". Thus, existing Rule 46 provides that the additional 26 credit hours of education take place, "in a law school that at the time of such study was approved by the ABA . . .". The Court chose to "consider that issue at a later date, in light of the recommendations of the Global Legal Practice Task Force." See Appendix 1, *July 2017 Report*, Exhibit G, Letter from Timothy Webster.

The Task Force also reaffirms its initial proposed "housekeeping" recommendations to conform Rule 46 to proper terminology:

1) change "ABA-approved" to "ABA-accredited" throughout Rule 46; and

2) use the term "Rules of Professional Conduct" in Rule 46 to reflect the existing title of the applicable rules.

Lastly, the Task Force reaffirms its recommendation that the Admissions Committee consider creating a "Frequently Asked Questions" webpage and periodically issue advisory guidelines for the benefit of applicants and the law schools regarding how the COA interprets Rule 46.

The proposed changes would apply to graduates of non-ABA-accredited law schools, including but not limited to foreign law schools, who are seeking admission to the D.C. Bar by: (1) admission based on examination in this jurisdiction; (2) admission by transfer of a UBE Score attained in another jurisdiction; or (3) admission without examination based on a combination of a qualifying MBE score and membership in good standing of fewer than five years in another U.S. jurisdiction upon successful completion of that jurisdiction's written bar examination.

The Task Force proposes no changes for admission on motion of an applicant who has been a member in good standing of the bar of any state or territory of the United States for at least five years immediately preceding the application to the D.C. Bar.

Redlined and clean versions of the proposed amendments to Rule 46 are attached as Appendices 2 and 3.

III. COMMENTS SUPPORTING THE TASK FORCE PROPOSED REVISIONS TO RULE 46

Of the total 41 comments received, a total of 21 supported all or some of the Task Force's proposed changes to Rule 46.

Two of the 21 comments supported the Task Force's proposals on the condition that foreign jurisdictions have equal or less stringent admission requirements for District of Columbia lawyers.

Several commenters supported one or more proposals, but opposed or did not comment on other proposals, or offered revisions to a proposal.

A total of 20 comments supported the proposal to reduce the number of additional credit hours required from 26 hours to 24 hours; and a total of 17 comments supported the proposal to change the subject matter course requirements. A total of 17 comments supported the proposal

that would permit all of the additional education credit hours to be earned through distance education.

Several additional commenters did not address any of the Task Force's proposed changes, but offered new, alternative proposals to amend Rule 46.[8]

A. Comments in Support of all of the Task Force's Proposals

Fifteen comments supported all of the Task Force's proposed changes. Of those 15 comments, four were from law firms in the District. Three of those firms are large global law firms with offices in the District, whereas the fourth is a small law firm with several "of counsel" attorneys in foreign countries. Seven comments were from D.C. Bar members; two were from voluntary bar associations (one of which was a local chapter of a national bar association); one was from a foreign lawyer regulatory body; and one was from a law school in Virginia.

The authors of these comments generally agreed with the rationale behind the Task Force's proposals – that proposed Rule 46 would reduce unnecessary barriers to admitting qualified, foreign-educated lawyers in the District by more closely aligning Rule 46 with the requirements of New York's admission rule in the number of credit hours required and specific course subjects required.[9] These commenters also supported the proposals because they align more closely with the requirements of most LL.M. programs from ABA-accredited law schools. Most foreign-educated individuals enrolled in LL.M. programs, including law schools in and around the District, typically choose to comply with New York's 24-credit hour requirement for admission, but those who do so would fall short of the credit hours needed to qualify for admission to the D.C. Bar. The proposed change would harmonize the District's requirement with that of New York and of the ten other jurisdictions that require an additional 24 credit hours for at least some foreign-educated applicants to become admitted.[10]

The commenters also agreed with the Task Force's overall policy justification for its proposals: to reduce the barriers of admission for qualified foreign lawyers, thereby enriching the legal community in the District and strengthening the rule of law in the greater, global community.

The law-firm commenters were frustrated with what they perceived as barriers in the current text of Rule 46 to the admission of foreign-educated attorneys in the District. One firm stated that, under existing Rule 46, it could not place foreign-trained attorneys in its Washington, D.C. office:

> [W]e have had a number of foreign-educated lawyers who enrolled and received advanced law degrees in the U.S. However, these lawyers

[8] *See infra* Section VI of this report.

[9] New York tests more foreign-educated applicants than any other U.S. jurisdiction: an average of 4,708 foreign-educated individuals annually between 2010 and 2017.

[10] The ten other jurisdictions are Alabama, Massachusetts (civil law background applicants), Missouri, New Hampshire, New York, Pennsylvania, Texas, Utah, Vermont, and Wisconsin.

> were not able to seek admission to the D.C. bar without first taking additional credits at an ABA-approved law school beyond those required as part of an LL.M. program. Unwilling to shoulder that additional burden, these lawyers chose to seek admission to the bars of other jurisdictions instead – most often New York. Without admission in D.C., the firm could not allow these foreign-educated lawyers to be assigned to the D.C. office even if that was the location that would most readily meet our clients' needs.

A second firm expressed similar sentiments in the comment that it submitted.

Several firms also noted that because New York law governs many international transactions, some firms require their foreign-educated lawyers to be admitted in New York.

One commenter — a D.C. Bar member — noted that Vermont was reviewing its admission rule for foreign-educated attorneys to align with that of New York in certain respects. (Vermont's amended rule became effective on September 18, 2017).[11]

Individual Bar members also indicated that the Task Force's proposals might increase business opportunities for all D.C. Bar members by creating greater networking opportunities among D.C. lawyers and foreign lawyers.

The law school in Virginia specifically noted that distance education would reduce financial challenges for foreign-educated students because requiring foreign-educated students to come to the U.S. to take the required courses would impose financial burdens that would "place advanced studies out of reach for many prospective D.C. bar candidates." The law school added that if "schools are required to adhere to ABA guidelines regarding online education then safeguards are in place that set minimum standards for online courses.", and that the bar examination acts as an effective "gatekeeper"[12] for professional competence.

B. Additional Comments in Support

In addition to the law school in Virginia, three law schools in the District of Columbia submitted comments that were generally supportive of the Task Force's proposals. All three schools supported the proposal to reduce the number of credit hours from 26 hours to 24, but

---

[11] *See* Vermont Rule of Admission 8, *available at* https://www.vermontjudiciary.org/sites/default/files/documents/PROMULGATED%20Rule%208%20of%20Rules%20of%20Admission.pdf.

Effective September 18, 2017, the Vermont Supreme Court amended that jurisdiction's lawyer admission rule to more closely align with New York's rule. The amendments allow foreign-educated individuals seeking admission to practice law in Vermont to, "cure" foreign education not equivalent to a U.S. J.D. by taking an LL.M. at an ABA-approved law school. The LL.M. must be at least 24 credit hours. The required courses are professional responsibility; legal writing/research/analysis; American Legal Studies; and six other credit hours in UBE courses. The additional 12 credits are electives, similar to New York's admission rule. Vermont is a UBE jurisdiction, with a passing score of 270.

[12] *See* Appendix 1, *July 2017 Report* at 37.

offered an alternative approach to the proposal to change the subject matter of additional course work that would be required. As discussed below in Section IV(B) of this report, the Task Force was persuaded by the law schools' comments and modified the proposal.

Two additional D.C. Bar members supported the Task Force's proposals on the condition that foreign jurisdictions implement similar or less stringent standards ("reciprocity") for D.C. Bar members. The Task Force noted in its *July 2017 Report* that reciprocity of admission between the District and foreign jurisdictions would require the Court of Appeals to negotiate reciprocal admission standards for each foreign jurisdiction, and such a project is beyond the scope of the Task Force's work.[13]

A third D.C. Bar member supported the proposal to reduce the number of credit hours from 26 hours to 24 hours, but opposed the proposed changes in subject matter course requirements. A fourth Bar member opposed the proposal to reduce the credit hours, but agreed with the proposal to change the subject matter course requirements. Neither individual commented on the proposal that all credit hours may be earned through distance education.

1. Comments supporting the proposal to reduce the number of credit hours of additional education from 26 credit hours to 24 credit hours

A total of 20 comments supported the Task Force proposal to reduce the number of credit hours of additional education required by Rule 46 from 26 credit hours to 24 credit hours. Twelve of the 20 comments supported the proposal as part of their overall support of the Task Force's proposals without singling out this recommendation for specific discussion. Of those 20 comments, two were from voluntary bars; one was from a foreign lawyer regulatory body; four were from law schools; five were from law firms; and six were from individual D.C. Bar members. Of the 20 comments, two D.C. Bar members expressed support for the proposed credit hour requirement on the condition that foreign bars adopt equal or less stringent standards in reciprocity.

Eight of the supporting comments specifically discussed the Task Force's proposed reduction of the number of credit hours. One law school in the District noted that the additional two credit hours (beyond the 24-credit-hour requirement) "has proven to be a challenge for our students" because, "visa regulations and time limits can make it difficult for students to complete additional credits." A second law school in the District reported, "many of our LL.M. graduates are interested in sitting for the D.C. Bar Exam, but end up opting for the New York Bar" because, "New York's eligibility requirements can be met within the scope of a typical course of LL.M. study…"

Other comments indicated that current Rule 46, including the 26-credit hour requirement, had a detrimental effect on law firms and client services in the District. As one large, multinational law firm with offices in the District described, "very few of our foreign lawyers seek admission to the D.C. Bar, even when they have completed an LL.M. program in the Washington area and have practice interests well suited to participation in our practice here."

[13] *See id.* at 9.

Another large, multinational law firm with offices in the District expressed frustration that a number of its foreign lawyers, "were not able to seek admission to the D.C. Bar without first taking additional credits at an ABA-approved law school beyond those required as part of an LL.M. program."

2. Comments in Support of the Proposal that all of the Additional Education may be Completed by Distance Education from an ABA-accredited Law School

A total of 17 commenters supported the proposal that any amount of the additional education requirement may be completed by distance education that the law school would certify as complying with ABA distance education standards. Fourteen of the 17 comments supported the proposal as part of their overall support of the Task Force's proposals without singling out this recommendation for specific discussion.

Three of the four law schools that submitted comments discussed this specific proposal and the Task Force research and reasoning behind it.[14] A law school in the District commented generally that it supported, "the proposal to accept all 24 credits in online courses that meet the ABA standards on distance education J.D. Programs."

Another law school, also based in the District, although supporting some amount of additional education that could be earned by distance education, suggested that the Task Force limit the number of credit hours that students could earn through distance education under Rule 46 to 15 credit hours (which is currently the total number of hours that can be earned through distance education in a J.D. curriculum from an ABA-accredited law school).

The Task Force declined to limit distance education for several reasons. First, a review of whether to increase this limit (for J.D. programs) is underway by the ABA.[15] Secondly, although the same law school that "questioned" whether completion of all 24 credit hours, "can prepare a foreign-trained lawyer adequately not only for bar passage, but also for potential practice in the United States," also "defer[ed] to the Task Force's thorough consideration of the pros and cons of distance learning and its ability to serve as the basis for the bar applicant's professional competence." Finally, the three other commenting law schools supported the Task Force's proposal, two of which specifically cited it, and one of which supported the proposal as part of the overall proposed amendments to Rule 46.

Of the six law firms that submitted comments, four supported the proposal to expressly permit distance education. Three of the four firms supported distance education as part of their overall support of all of the Task Force's proposals without singling out the distance education proposal for specific discussion. One firm specifically discussed distance education, noting:

> We do not have sufficient experience with distance learning to comment knowledgeably on it. We appreciate, however, the Task

[14] *See id.* at 31-37.

[15] Press Release, Barry Currier, Managing Director, Accreditation and Legal Education ABA Section of Legal Education and Admissions to the Bar, *available at* http://www.abajournal.com/files/Legal_ed_-_SRC_actions_-_fall_2017.pdf. *See also infra* Section V(C)(2) of this Report.

> Force's efforts to take account of continuing changes in legal education and advances in distance legal education technology to reduce the housing, travel, and immigration burdens associated with any in-person academic credit hours requirements.

The firm added, "we believe that the multi-jurisdictional and multi-national practice in firms like ours can adequately serve the acculturation objectives of in-person education."

One law firm in favor of most of the Task Force's proposals did not comment in support of or against the distance legal education proposal, or address it all. The firm simply commented that it supported, "aligning the D.C. Bar rules of admission of foreign-educated lawyers with those of the New York Bar." The Task Force viewed this comment to mean that the law firm was generally in favor of aligning Rule 46 with that of New York to eliminate the most commonly cited hurdles to the admission of foreign-educated attorneys in the District: the number of credit hours and subject matter requirements. Although New York specifically prohibits distance learning for foreign-educated attorneys, the Task Force did not view this comment as opposed to its proposal about distance education, but rather that the law firm was not expressing an opinion about it.

C. Task Force Analysis of Comments in Favor of Its Proposed Revisions

The comments in support of the Task Force's proposals are consistent with the research and rationale for its proposed changes to Rule 46 in the *July 2017 Report* — that: 1) existing Rule 46 contains unnecessary barriers to admitting qualified, foreign-educated attorneys to practice in the District, and 2) that the Task Force's proposals will help reduce those barriers by aligning the Rule with some of the requirements of New York's admission rule and with the requirements of most of the LL.M. programs from ABA-accredited law schools that many foreign-educated attorneys enroll in to complete additional education requirements for bar admission in other jurisdictions. A comment from a law school in the District noted:

> Many of our LL.M. graduates are interested in sitting for the D.C. Bar Exam, but end up opting for the New York Bar because, as the Report notes, New York's eligibility requirements can be met within the scope of a typical course of LL.M. study, and provide foreign-educated lawyers with exposure to the U.S. legal system and bar-tested subjects while still allowing them to take additional classes related to their particular areas of interest and specialization.

The commenters also agreed that the admission of a greater number of foreign-educated lawyers would increase networking and business opportunities for all D.C. Bar members through greater connections with foreign-educated lawyers; reduce financial burdens on foreign-trained law students by making distance learning an option for completing the additional education required; and strengthening the rule of law globally by widening the exposure of foreign attorneys to the U.S. legal system.

IV. THE TASK FORCE HAS MODIFIED ITS PROPOSAL TO CHANGE THE SUBJECT MATTER REQUIREMENTS

In light of the comments submitted from three law schools in the District, the Task Force has modified its proposal to change the specific course subjects that a graduate of a non-ABA-accredited or foreign law school would be required to complete.[16] The law schools recommended changing the part of the Task Force's initial proposal that would require three credit hours in U.S. constitutional law and three credit hours in civil procedure as part of the required 24 credit hours of additional education. The courses would be replaced with six credit hours in subjects tested on the UBE of the applicant's choice (of which U.S. Constitutional Law and Civil Procedure courses are included and could be chosen by the applicant). The law schools reasoned that offering more student choice in course subjects would permit students to tailor their studies to intended practice areas, reduce redundant coursework, and better align the District's admission rule with that of New York's.

The law schools agreed with the part of the Task Force proposal to require courses in professional responsibility (two credit hours); U.S. legal institutions (two credit hours); and common law legal reasoning, research, and writing (two credit hours).

This modification would not change the total number of credit hours — 24 hours — required by the Task Force's proposal. The law schools supported this part of the proposal — to reduce the required number of credit hours from 26 total credit hours to 24 hours.

A. The Task Force's Initial Proposal: July 2017

In its *July 2017 Report*, the Task Force proposed that graduates of non-ABA-accredited law schools, including foreign law schools, complete 24 credit hours of education from an ABA-accredited law school. Twelve of the 24 credit hours would be completed in courses specifically listed in Rule 46. The Task Force drew from admission rules in New York[17] and Washington State[18] in proposing that Rule 46 require 12 credit hours of courses in:

- Professional responsibility (two credit hours);
- U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system) (two credit hours);
- Common law legal reasoning, research, and writing (two credit hours);
- Civil procedure (three credit hours); and
- U.S. constitutional law (three credit hours).

---

[16] The fourth law school that submitted a comment supported all of the proposed changes by the Task Force, and did not recommend any modifications to the proposals.

[17] 22 NYCRR 520.6(b)(3).

[18] Admission and Practice Rule 3(b)(5) (as amended by WSR 17-14-082). APR 3 was based on the content of the ABA *Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States.*

The remaining 12 credit hours would be earned through elective courses of the student's choice from an ABA-accredited law school.

B. The Task Force's Revised Final Proposal: November 2017

After a thorough discussion of the issues, the Task Force was persuaded by the law schools' comments and revised its proposal: the Task Force's final proposal is to eliminate the required subjects of three credit hours of Constitutional Law and three hours of Civil Procedure and to substitute a requirement of six credits in other subjects tested on the Uniform Bar Examination. The revised final proposal would require:

- Professional responsibility (two credits);
- U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system (two credits);
- Common law legal reasoning, research, and writing (two credits);
- Six credits in other subjects tested on the UBE (among which constitutional law and civil procedure are included); and
- 12 credits of electives in courses from an ABA-accredited law school.[19]

While applicants could still choose to take U.S. Constitutional Law and/or Civil Procedure courses to fulfill this requirement, applicants could also choose from other UBE subjects to fulfill this requirement.[20] The Task Force also clarified the language of its proposal that the remaining 12 of the 24 total credit hours would be earned by elective law school courses of the student's choosing from an ABA-accredited law school. The subjects would not need to be among those tested on the UBE, but could be, if the student chooses.

1. The Modified Proposal Would Eliminate Redundant Coursework

As the three law schools noted, increasing student choice in required subjects would eliminate redundant coursework because students already would be introduced to fundamental concepts of U.S. constitutional law through a required "U.S legal institutions course." Furthermore, ABA-accredited law schools nationwide, including law schools in the District, have developed courses in U.S. legal institutions specifically to educate foreign-educated lawyers and individuals in the basics of the U.S. legal system, and to respond to the bar admission requirements of other U.S. jurisdictions.[21] A course in "U.S. legal institutions" or

[19] *See* Appendices 2 and 3. *D.C. Bar Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 — Admission to the Bar (January 2018).*

[20] *See* 2018 MBE SUBJECT MATTER OUTLINE, http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F201 (last visited September 26, 2017); 2018 MEE SUBJECT MATTER OUTLINE, http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F183 (last visited September 26, 2018).

[21] *See e.g.*, INTRODUCTION TO AMERICAN LEGAL INSTITUTIONS (LLM ONLY), HTTPS://WWW.WCL.AMERICAN.EDU/REGISTRAR/COURSESAPP/INF_COURSE.CFM?NUMBER=LAW-580-001&TIME=SPRING_2017 (last visited September 28 2017); LAW7535 - U.S. LAW AND LEGAL INSTITUTIONS, https://www.law.uconn.edu/academics/courses/LAW7535/us-law-and-legal-institutions (last visited September 28, 2017); and COURSES FOR LEGAL INSTITUTIONS STUDENTS, https://law.wisc.edu/grad/prospective/llm-li/courses.html (last visited September 28, 2017).

similar course typically covers how U.S. law is developed and enforced; the role of lawyers in the U.S.; the foundational value of U.S. law; the structure and operation of U.S. government, etc. Many law schools now offer these courses, or an entire LL.M. curriculum in "American" or "U.S. Legal Studies."

Requiring separate, dedicated courses in civil procedure and constitutional law might deepen students' understanding of those subjects, but doing so was, as one law school put it, "rather narrow", and would, "limit students' exposure to other fundamental areas that are both tested on the bar, and relevant for many foreign-educated lawyers, such as Contracts, Corporations, Evidence, or Torts." Offering more choice from the full list of UBE subjects would better provide a useful, focused underpinning in U.S. law.

The revised proposal retains the requirement that the law school issuing the credit hours certify that the courses taken by the applicant comply with Rule 46. The law school commenters generally agreed with retaining that requirement, and the Task Force notes that the law schools, as experts in legal education, are well-situated to perform this task.

2. More Choice in Required Courses Would Better Align Rule 46 with New York's Admissions Rule, thus Allowing for More Foreign-Educated Attorneys who are Admitted to New York to Become Admitted to the District of Columbia

Allowing for more student choice in required coursework would also better align the District's admissions rule with that of New York, a goal of the Task Force proposals.[22] Under New York's admission rule, foreign-educated applicants who must "cure" an "educational deficiency" under New York's rule must take courses in professional responsibility (two credits); legal research, writing and analysis (two credits); and American legal studies (two credits) or a similar course.

New York's admission rule for foreign-educated attorneys does not have specific requirements for courses in civil procedure or U.S. constitutional law and instead allows for applicants to choose two "other courses" that principally focus on subject matter tested on the New York Bar Examination or New York Law Examination.[23] New York tests and admits far more foreign-educated individuals than any other U.S. jurisdiction: an average of 4,708 annually between 2010 and 2017.[24] Thus, a system allowing for student choice in required subjects is already working to admit qualified, foreign-educated attorneys in New York.

---

[22] *Compare* Task Force proposed D.C. App. R. 46 *with* 22 NYCRR 520.6, available at http://www.nybarexam.org/rules/rules.htm#520.6.

[23] 22 NYCRR 520.6(b)(3). *See also* Appendix 4, *Comparison of Additional Course Requirements for Foreign Lawyers: Task Force Proposal and New York* (chart).

[24] Appendix 1, *July 2017 Report* at 18. *See* National Conference of Bar Examiners Statistics, http://www.ncbex.org/publications/statistics/ (last visited November 13, 2017. *See also* Press Release, New York State Board of Bar Examiners, July 2017 Bar Exam Press Release (October 24, 2017), *available at* https://www.nybarexam.org/Press/Press_Release_July2017.pdf; New York State Board of Bar Examiners, February 2017 Bar Exam Press Release (April 26, 2017), *available at* https://www.nybarexam.org/Press/Press_Release_Feb2017.pdf.

The law schools also correctly pointed out that more closely aligning Rule 46 to New York's admission rules for foreign-educated applicants would allow them to more easily transfer a qualifying UBE score from New York to the District (New York and the District have the same UBE pass score of 266). Presumably many applicants, who have already met New York's additional education requirements, would likely not need to take any additional courses to qualify for admission to the D.C. Bar.

The law schools' proposed revision is also consistent with the Task Force goal of minimizing potential visa difficulties faced by some foreign law students. Student visas often expire after an academic year – a period of time during which 24 credit hours of education can typically be completed. Many LL.M. degrees require completion of 24 credit hours (or slightly fewer), and students often tailor their LL.M. program to comply with New York's admission requirements – which do not require courses in U.S. constitutional law and civil procedure.[25] However, under the Task Force's initial proposal, at least some foreign-educated individuals who qualified for and were admitted to the New York bar, would be required to return to school to take U.S. constitutional law and civil procedure to qualify for admission to the D.C. Bar. The potential difficulties with visas regulations and time limits that students may face would discourage or prevent them altogether from completing their required additional course work, and discourage pursuit of admission to the D.C. Bar. The Task Force's revised final proposal would minimize the students' potential visa challenges.

V. COMMENTS OPPOSED TO THE TASK FORCE PROPOSALS

The Task Force received a total of 17 comments that were opposed to all or some of the proposals. Fifteen comments were opposed to all of the Task Force's proposals. Of the 15 commenters, 14 were from individuals and one commenter was from a law firm. Of the 14 individual commenters, 13 were from D.C. Bar members, and one individual was anonymous.[26] The law firm was a small firm focusing on family law in the District of Columbia.

Two of the 17 commenters were opposed to one of the Task Force's proposals, but supported a second proposal, and did not comment on a third (each commenter supported and opposed a different proposal).

In general, the commenters were opposed to the Task Force's proposals because they believed the proposed changes would: lower admission standards for graduates of non-ABA accredited law schools and foreign law schools, leading to the admission of unqualified individuals; there would not be enough legal work to support the increase in foreign-educated lawyers admitted to the D.C. Bar; and the Task Force's proposals were unfair because they created an easier path of admission for foreign-educated individuals than was required of graduates of ABA-accredited law schools.

[25] Appendix 1, *July 2017 Report* at 24.

[26] The status of this commenter is unknown.

A comment from an individual expressed concerns that the proposed changes would cause challenges for the attorney discipline office to regulate and investigate foreign-educated attorneys who live and work abroad, and these attorneys may be the source of an increase in unethical conduct because they may be outside the reach of the discipline office.

Several commenters believed that because the inherent complexity of U.S. law would be alien to most foreign attorneys, the proposed changes to the subject matter requirements would not provide a sufficient foundation in U.S. law, and that a course in "U.S. legal studies" would not be sufficiently rigorous.

Several commenters believed that the proposals, if adopted, would lead to an increase in individuals with limited English proficiency taking — but not passing — the Bar examination.

Some commenters also expressed concern about the proposal that all the additional credit hours could be earned through distance education, believing that quality legal education was unlikely to be earned through online or distance education methods. One commenter was concerned that distance education is, "too novel", and that students and professors need to be in the same classroom to provide complete legal education. Another commenter believed that foreign law schools were of, "questionable quality," and that a combination of online education and lower credit hours will "unleash untrained attorneys" on the public.

Several commenters raised the issue of what would or should qualify as a foreign first law degree, noting that legal education in some countries is a course of undergraduate study instead of post-graduate study as it is in the United States, and in several other countries.[27] Existing Rule 46 does not impose any requirements with respect to a foreign "first law degree," and the Task Force had determined not to recommend any change to Rule 46 with regard to that issue. *See* Sections I(B) and V(C)(3).

The Task Force considered these comments, but found them to be unpersuasive. Most of the issues raised by the commenters had been addressed in the *July 2017 Report*, where the Task Force had reached different conclusions.

A. Comments in opposition to the proposal to reduce the number of credit hours to satisfy the additional education requirement of graduates of non-ABA accredited law schools from 26 credit hours to 24 credit hours.

A total of 16 commenters did not support this proposal. Thirteen of the commenters opposed the proposal as part of their overall opposition of all the Task Force's recommendations without singling out this proposal for specific discussion.

One Bar member did not support the proposal because he believed that the bar to admission for foreign-trained lawyers is already "low enough." However, the commenter

[27] Canada and, relatively recently, Australia, Japan and South Korea have begun recognizing law as a post-graduate degree. *See e.g.*, Jasper Kim, *Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model*, 10 ASIAN-PAC. L. & POL'Y J. 322 (2009); THE MELBOURNE J.D. (JURIS DOCTOR), http://law.unimelb.edu.au/study/jd (last visited November 14, 2017).

supported the proposed change in the required course subjects to accommodate electives taken in most LL.M. programs, and to permit "a lawyer to focus on a narrower set of subjects." The individual did not comment on the proposal about distance learning.

B. Comments in Opposition to the Proposal to Change the Required Subjects of the Additional Coursework

A total of 16 commenters opposed the change in the required subject matter of additional course work. Fifteen of the commenters opposed the proposal as part of their overall opposition of all of the Task Force's recommendations without singling out this proposal for specific discussion.

A Bar member opposed the change because it would render the legal education inadequate in crucial, core subjects, and stated that the proposed core subjects are "grossly inadequate" and further stated that "[p]ermitting candidates to allocate half of their U.S. legal education to electives creates a high likelihood that the candidates will not have adequate training in the principles of law which are necessary for all attorneys to have." However, the commenter supported the proposed change from 26 to 24 hours. The individual did not comment on the proposal about distance learning.

C. Comments in Opposition to the Proposal that any Amount of the Additional Education May be Earned Through Distance Education

1. Comments about the Quality of Online Legal Education and Institutions

Five commenters who opposed all of the proposals singled out the proposal about distance education for discussion. The overall theme centered around the perception that distance legal education was inferior to legal education earned "in person." Commenters believed that degrees earned from online universities, even those that are accredited, function as "diploma mills"; and that permitting the additional education requirements to be met by distance education is setting law students up for failure — the underlying presumption being that institutions that offer distance legal education admit unqualified applicants, and that distance legal education does not adequately prepare students to pass a bar examination.

2. Comments About English Language Proficiency

Commenters were also concerned that the distance education proposal would open up the D.C. Bar admission process to individuals who, because they were not required to study in the United States, may have poor English skills, making passage of the bar examination very challenging, or even unlikely. One commenter did not believe that passing the Test of English as a Foreign Language ("TOEFL") – which is required by most law schools before they will admit foreign students – was enough to ensure English fluency. One commentator believed that even ABA accreditation of law schools is an insufficient assurance of education quality, and that the accreditation of an increasing number of law schools has, "done a disservice, not only to the profession, but also to the students who attend these schools."

The Task Force addressed English language proficiency in its *July 2017 Report.*[28] It noted that "ABA-accredited law schools generally have rigorous English language fluency requirements, such as testing, live interviews, and/or pre-requisite courses in legal English. Testing may include a minimum score on the TOEFL as a requirement for admission to an LL.M. program."[29] Coursework conducted online from ABA-accredited law schools is conducted in English. "Rule 46 has never included an English proficiency requirement, and the Task Force if not proposing that it do so."[30]

The Task Force acknowledges that differing opinions exist about what should be the appropriate level of English language proficiency for the purposes of admission to the D.C. Bar. Regardless, passing the D.C. Bar Examination is evidence of a high degree of proficiency in written legal English. As one law school noted, the bar examination acts as a leveler:

> If we believe the bar examination itself is a fair evaluation of a candidate's knowledge of the law then we should rely on that to determine whether an individual should be admitted to the practice of law. Why should a foreign law student or a student who attended a non-ABA accredited law school be denied the opportunity to demonstrate whether or not (s)he possesses the requisite knowledge to be admitted to the practice of law[?]

An individual D.C. Bar member similarly commented, the requirement of "passage of a U.S.-based bar exam remains intact, which is critical."

The D.C. Bar Examination is a challenging, equalizing "gatekeeper" for all individuals – including foreign-educated individuals – who seek admission to the D.C. Bar. This is all the more true since the Court's adoption of the Uniform Bar Exam -- the same bar examination that was administered in 26 other U.S. jurisdictions as of July 2017, and will be administered in 27 jurisdictions as of July 2018, and in 30 jurisdictions as of July 2019.[31]

****

The Task Force's proposal, if adopted, would make the District of Columbia the first jurisdiction to specifically allow completion of any amount of the required additional education by distance education. Ten jurisdictions, including New York, specifically prohibit the use of distance learning for the completion of additional education credits for foreign-educated bar applicants. Although distance education credits for foreign-educated individuals are currently accepted in two jurisdictions, most are simply silent on the issue.[32]

---

[28] Appendix 1, *July 2017 Report* at 34.

[29] The TOEFL is an extensive test requiring proficiency in reading, listening, speaking, and writing. *See* ABOUT THE TOEFL IBT TEST, https://www.ets.org/toefl/ibt/about (last visited November 14, 2017).

[30] *See* Appendix 1, *July 2017 Report* at 34.

[31] *See id.* at 14.

[32] *Id.* at 32. Distance education credits for foreign-educated individuals are currently accepted in both Washington State and California. In Washington State, the admission rule is silent about distance education, but the

The Task Force conducted a thorough study of legal education provided by distance education methods, and that study is discussed in detail in its *July 2017 Report*.[33] The efficacy of distance learning has never been definitively determined and continues to be studied. However, for the reasons discussed in its *July 2017 Report*, the Task Force reiterates its belief that the use of distance education methods as set forth in its proposal can provide effective legal education, and would be a valid means of earning the additional education credits required under Rule 46. Under the Task Force proposal, the ABA-accredited law school issuing the credit hours would be required to certify that its distance education methods comply with the ABA's distance education standards — an established benchmark of quality.[34] Furthermore, nothing in the Task Force's proposal requires applicants to take courses by distance education; they could continue to take courses in-person, if they so choose. Finally, the Task Force's proposal would not allow completion of the additional education through traditional correspondence courses. ABA Education Standard 306 is written in such a way that a traditional correspondence course would not be acceptable distance learning requires.[35]

Methods of distance learning have improved dramatically in recent years and continue to evolve. Quality, real-time interactive education can be offered to students who are not in the same physical location as their professors or their classmates, and online classes can be rigorous and even more demanding of student participation than in-person classes. A wide variety of means exist by which law schools can verify student attendance, assignment completion, and examination performance. The ABA has become more flexible about the use of distance education in J.D. programs in recent years; it is currently reviewing its existing limit of 15 credit hours by distance learning in J.D. programs,[36] and it has granted a variance to at least one law school's J.D. program in which 50 percent of class instruction time is online.[37] Changes in legal education and the evolution of technology will increase the use and acceptance of distance learning.

3. Comments About the Requirement of a Foreign First Law Degree

The Task Force did not focus its study on whether to propose a requirement that a foreign-educated applicant to the Bar have a foreign first law degree because it wanted to maintain the existing structure of Rule 46, which does not distinguish between graduates of foreign law schools and graduates of non-ABA-accredited law schools in the United States.

---

rule has been interpreted to permit distance learning. In California, at least one law school has developed a distance education program for some foreign-educated attorneys that qualifies them to take the California Bar Examination.

[33] *Id.* at 31-37.

[34] *ABA Standards and Rules of Procedure for Approval of Law Schools 2017-2018: Standard 306: Distance Education* ("Standard 306"), *available at* https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf.

[35] *See* Standard 306(a) and (d).

[36] *See supra* Section III(B)(2) of this report.

[37] MITCHELL-HAMLINE SCHOOL OF LAW HYBRID J.D. PROGRAM, http://mitchellhamline.edu/about/mitchell-hamlines-hybrid-program/ (last visited November 14, 2017).

Moreover, requiring a determination about what would qualify as a foreign first law degree would potentially increase administrative burdens on the Admissions Committee.[38] A first law degree means different things in different countries. Because the kinds of activities that constitute the practice of law vary from country to country, a degree granting the recipient the "ability to practice law in his or her country" may not be the equivalent of a J.D. degree from an ABA-accredited law school.[39]

The requirements under existing Rule 46 apply equally to graduates from non-ABA-accredited law schools and foreign law schools, regardless of whether a particular applicant has a foreign first law degree. The Task Force's proposed amendments to Rule 46 would also apply equally: (1) All applicants would be required to complete the same kind and number of credit hours of additional education from an ABA-accredited law school; (2) the law schools must certify that any distance education courses comply with ABA distance education standards; and (3) all applicants who seek admission by taking the D.C. Bar examination, take the same examination.

In addition, all qualifying applicants must complete these additional education requirements regardless of the path by which they seek admission: whether by taking and passing the Bar examination; admission by transfer of a qualifying UBE score; or admission on motion as a member of another U.S. jurisdiction for fewer than five years and a qualifying MBE score.

All qualifying applicants who seek admission by taking the D.C. Bar examination take the same examination, and must earn the same passing score. The Bar examination works as the ultimate "gatekeeper" or leveler – it is not an easy examination – but those who meet the qualifications to take it should be given the opportunity to take the examination. With the Court's adoption of the UBE in July 2016, the D.C. Bar examination has become more of a leveler because the same bar examination — the UBE — will be administered in a total of 30 U.S. jurisdictions as of July 2019.

D. Comment About the Discipline and Regulation of Foreign-Educated Attorneys

A comment from a Bar member expressed concerns that the proposed changes would cause challenges for the attorney discipline office to regulate and investigate foreign-educated attorneys who live and work abroad, and these attorneys may be the source of an increase in unethical conduct that would be difficult to stop because they may be outside the reach of the discipline office.

---

[38] *See supra* Section I(A) of this report.

[39] *See* Washington State Admission and Practice Rule 3(b)(4)(B). Washington State recently clarified the requirements for qualifying foreign first law degrees to reduce confusion surrounding admission standards. Effective September 1, 2017, the Washington State Supreme Court amended its admission rules to clarify that the applicant's foreign law school graduation or first law degree must now be, "a degree in law that would qualify the applicant to practice law in that [the foreign] jurisdiction." Prior to this change APR 3 required that the applicant's foreign first law degree only include, "graduation from a university or law school outside the United States with a degree in law."

The Task Force did not find any data to support the supposition that members of the D.C. Bar who live and work outside of the United States, or members of the D.C. Bar who earned their legal education abroad, or from non-ABA-accredited law schools, account for a larger percentage of unethical conduct and disciplinary complaints than their counterparts who were educated and live in the United States. In fact, no particular source of education gives rise to a higher rate of disciplinary complaints[40] at the D.C. Office of Disciplinary Counsel.[41] Foreign-educated lawyers admitted to the D.C. Bar, like all new admittees to the D.C. Bar, must also complete the Court's post-admission requirement of attending the day-long Mandatory Course on the D.C. Rules of Professional Conduct and District of Columbia Practice.[42]

E. Other Comments in Opposition to the Task Force's Proposals

One Bar member, who is also licensed in a foreign country, opposed the proposals for not facilitating sufficient "connections" between foreign lawyers and the District. The commenter urged the Task Force to either leave the Rule 46 requirements unchanged, or else add Continuing Legal Education requirements or other means to keep foreign lawyers "vested and engaged in D.C. Bar affairs and interests." The commenter stated that:

> [I]f more "foreign" lawyers are admitted to practice in D.C. under the revised Rule 46, I predict that the D.C. Bar itself will, over time, not reflect the interests and concerns of locally-based lawyers who may practice law in the D.C. area for their entire careers.

The Bar has over 104,000 members, and 42,000 of them live and work outside of the Washington, D.C. metropolitan area. Over 1,500 members live and work in 83 different countries. The D.C. Bar is responsive to the needs and interests of all of its members, and it recognizes that in an increasingly globalized legal environment, its members may spend all, some or none of their career physically located in the Washington, D.C. area.

---

[40] *See generally In the Matter of Ahmed M. Elhillali*, District of Columbia Court of Appeals Board on Professional Responsibility Docket No. 16-BD-030 (August 28, 2017). In the first disciplinary proceeding brought by the Office of Disciplinary Counsel against an individual licensed under the Rules of the D.C. Court of Appeals as a Special Legal Consultant ("SLC"), an Ad Hoc Hearing Committee of the Board on Professional Responsibility ("BPR") has recommended revocation of Respondent's SLC license for five years for violations of a number of D.C. Rules of Professional Conduct.

Among the Rule violations, the Hearing Committee found that Respondent had intentionally held himself out as a licensed attorney and engaged in the practice of law in violation of Rule of Professional Conduct 5.5(a) when he was in fact, licensed as an SLC pursuant to Rule 46 of the D.C. Court of Appeals. As an SLC, Respondent is not a member of the D.C. Bar, but is considered an affiliate of the Bar, and is not permitted to render legal advice on or under the laws of the District, or the United States, or hold himself out as a member of the D.C. Bar. An SLC license is conditioned on the applicant's swearing that he or she is licensed by a foreign nation; however, Respondent did not obtain a license from his country of origin until after he was granted SLC status in the District. Respondent also failed to pass the bar examinations of several jurisdictions, including the District, despite multiple attempts. The Hearing Committee recommended that upon reapplication, Respondent must pay restitution to several former "clients" and prove his fitness to practice as an SLC.

[41] *See* Appendix 1, *July 2017 Report* at 37 n.114.

[42] *See id.* at 2.

The recommendations from the Task Force for "outbound" D.C. Bar members – members who live and practice abroad, and members who are based in the United States and have international/transnational practices and clients – are detailed in its *Global Legal Practice Task Force Interim Report* of May 2016.[43] Those recommendations, which are now an ongoing strategic initiative of the D.C. Bar, include the facilitation of connections with members with transnational practices and with member who work in the same regions of the world; access to resources to meet challenges of practicing abroad; and enhanced education and professional development opportunities about international and transnational issues.

VI. COMMENTS RECOMMENDING ALTERNATIVE PROPOSALS FOR RULE 46

Five commenters neither supported nor opposed the Task Force proposals, but instead offered alternative recommendations. The commenters included four individuals who are not admitted to the D.C. Bar: a retired English solicitor; a D.C.-licensed Special Legal Consultant; a D.C.-licensed Special Legal Consultant who is fully admitted in New York and in a foreign country; a lawyer educated in the U.K. and fully admitted in New York); and one foreign bar association from a common-law country.

These commenters generally urged proposals that would provide new, and in some circumstances, streamlined paths to full admission to the D.C. Bar for foreign-educated lawyers from common-law countries, and for D.C.-licensed SLCs. One of the proposed alternatives would allow qualified solicitors and individuals educated in English common law countries to take the D.C. Bar examination without completing additional legal education at an ABA-accredited law school.[44]

Another commenter proposed: (1) dropping any requirement of graduation from a "law school" (on the assumption that the law school in question is outside of the United States) as a prerequisite to completing the required additional 24 credit hours of legal education from an ABA-accredited law school because law is studied as an undergraduate subject in some countries, and (2) that all applicants seeking admission by examination would need to take an unspecified amount of additional legal education. Another commenter proposed that some D.C.-licensed SLCs should be able to be fully admitted to the D.C. Bar on motion if they met certain other requirements such as a specific number of years of practice as an SLC in good standing and the completion of a certain number of D.C. Bar CLE courses. One of these commenters generally agreed with the Task Force rationale to align its admissions rule in some respects with that of New York, and also offered an alternative proposal.

The Task Force was not persuaded by these comments and did not modify any of its proposed revisions. A proposal that would require the Committee on Admissions to conduct an in-depth review of an applicant's educational credentials – even legal education from a common-law country – would have the practical effect of increasing administrative burdens on the

---

[43] *See Interim Report*, *supra* note 2 at 13-20.

[44] *See* 22 NYCRR 520.6. Some English solicitors and graduates of law schools in English common law countries are regarded in New York as having foreign legal education "equal" to a J.D. from an ABA-accredited law school.

Committee. Eliminating the requirement of additional education for only foreign-educated lawyers from common law countries would also raise questions of fairness for graduates of non-ABA-accredited law schools in the United States.[45]

VII. COMMENTS REQUESTING FURTHER RESEARCH

Several commenters recommended that the Task Force conduct additional research on several topics.

A D.C. Bar member commented on the admission rates of foreign-educated lawyers in Virginia that was included in the *July 2017 Report*. The commenter noted that the number of foreign-educated individuals taking the bar examination in Virginia had decreased from 35 individuals in 2010 to four individuals in 2016. In 2012, Virginia revised its admission rule to make its educational requirements more restrictive.[46] The commenter asked the Task Force to, "determine the cause for Virginia's increased educational restriction." The same commenter also requested that the Task Force conduct more research about the efficacy of distance legal education, calling it, "too novel."

Prior to 2012, a foreign-educated attorney could qualify to take the Virginia Bar Examination upon furnishing the Virginia Board of Bar Examiners ("VBBE") written certification from the dean of an ABA-approved law school in Virginia that the applicant's foreign legal education together with the additional education from the ABA-approved law school was the equivalent of an LL.B. or J.D. from that ABA-approved law school.[47] However, the reluctance of law schools in Virginia to conduct certifications of the equivalence of foreign lawyers' educations, along with low bar examination passage rates for foreign-educated lawyers in Virginia, led the VBBE to recommend a change to the admission rule for foreign-educated attorneys. As of 2012, applicants must earn a J.D. from an ABA- or VBBE-approved law school, or complete an eligible "law reader program" prior to taking the Virginia Bar Examination.[48] Limited numbers of foreign-educated lawyers continue to sit for the Virginia bar examination because the rule change contained a "grandfather clause" allowing individuals who had

---

[45] *See* Appendix 1, *July 2017 Report* at 15. In making its proposals. the Task Force made underlying assumptions that Rule 46 would continue to not distinguish between an individual who has graduated from a foreign law school and an individual who has graduated from a non-ABA accredited law school in the United States, and that an individual with a foreign law degree seeking full admission to the D.C. Bar must meet the same criteria as an individual with a degree from a "non-ABA approved law school" in the United States. A member in good standing of another U.S. jurisdiction for at least five years immediately preceding the application to the D.C. Bar may be admitted on motion. Neither additional education nor a degree from an ABA-accredited law school is required.

[46] *Id*. at 1.

[47] The National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2011*, at 19, *available at* https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2011_comprehensive_guide_to_bar_admissions.authcheckdam.pdf.

[48] *See* the National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2012*, at 14-15, *available at* https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2012_comprehensive_guide_to_bar_admissions.authcheckdam.pdf. *See also* Rules of the Virginia Board of Bar Examiners, Section II, *available at* http://barexam.virginia.gov/bar/barrules.html.

previously sat for the Virginia bar examination under the old rule — but had not passed — to re-take the examination even after the rule change had taken effect.

The same commenter also requested that the Task Force conduct additional research about the "efficacy" of distance legal education. The Task Force conducted considerable research on this topic during its deliberations and preparation of its *July 2017 Report*. Research conducted since publication of the *July 2017 Report* produced more information supporting the Task Force's proposals. First, during 2017, law schools continued to expand and refine online course offerings in a variety of legal subjects.[49] Secondly, as of the date of this report, the Council of the ABA Section of Legal Education and Admissions to the Bar put out for "notice and comment" a proposed change to Standard 306 [Distance Learning] that would increase the percentage of course work a J.D. student could take through online courses without a variance, from 15 credit hours up to 50 percent of the work needed to earn the J.D. degree.[50]

A small law firm in the District urged the Task Force to survey the opinions of foreign-educated D.C. Bar members on the subject of the Task Force's proposed changes to Rule 46. The Task Force did not conduct such research because the Bar does not maintain records of where its members went to law school, so it would not be possible reliably to identify foreign-educated members. However, as part of its study of "outbound D.C. Bar members" for its 2016 *Interim Report*,[51] the Task Force surveyed the SLCs licensed in the District. The majority of the survey respondents indicated that they intended to apply for admission to the D.C. Bar by waiving in after five years of membership in the Bar of another U.S. jurisdiction. Given the existing Rule 46, most SLCs did not intend to take the D.C. Bar examination.[52]

VIII. OTHER ITEMS: D.C. COURT OF APPEALS PROPOSED LANGUAGE; ADMINISTRATIVE CHANGES PROPOSED BY THE TASK FORCE; RECOMMENDATIONS FOR PUBLISHED GUIDANCE BY THE COMMITTEE ON ADMISSIONS

The Task Force did not receive any comments on the D.C. Court of Appeals proposed language that the additional education of 26 credit hours occur, "in classroom courses in a law school . . .". (Proposed new language underlined). The D.C. Court of Appeals amended Rule 46 on February 4, 2016, effective March 1, 2016. The Court considered, but did not adopt an amendment that would have required any necessary, additional education occur "in classroom courses in a law school . . .".[53] Instead, the Court asked for the D.C. Bar's view of the Court's

[49] *See e.g.*, Katie Thisdell, *Berkeley Law Launches Hybrid Option for LL.M.*, THE INTERNATIONAL JURIST, August 11, 2017, http://www.nationaljurist.com/international-jurist/berkeley-law-launches-hybrid-option-llm (last visited October 30, 2017). *See e.g.*, Katie Thisdell, *GMU expands LL.M. to Online*, THE INTERNATIONAL JURIST, October 10, 2017, http://www.nationaljurist.com/international-jurist/gmu-expands-llm-online (last visited October 30, 2017).

[50] *See* Currier, *supra* note 15.

[51] *See Interim Report*, *supra* note 2 at 34.

[52] *See* Appendix 1, *July 2017 Report* at 8 n.24.

[53] *Id.* at 28.

proposed language.[54] The Court's proposed language appears to have the intended effect of requiring that students who are completing the required additional education to qualify for admission to the D.C. Bar attend courses in person, on campus, and in the United States at an ABA-accredited law school.

The Court's proposed language remains open to a wide variety of interpretations, as the Task Force found in its interviews with legal educators.[55] In the absence of any comments or new information on this topic, the Task Force reaffirms its earlier recommendation that the Court not adopt the proposed language that the additional education of 26 credit hours occur "in classroom courses in a law school . . ."

Comments from two law schools in the District specifically supported the Task Force recommendation that the Admissions Committee consider creating a "Frequently Asked Questions" webpage and periodically publish guidance on its interpretation of Rule 46 for the benefit of bar applicants, students, and law schools.[56] One of the two law schools observed that there would need to be a way of addressing applications from individuals who tailored their additional legal education to existing Rule 46, but who are applying under the amended Rule (assuming adoption by the Court). That implementation issue is an example of the kind of guidance that may be addressed through published guidance from the Admission Committee.

The Task Force did not receive any comments about the proposal to change the term "ABA-approved" to "ABA-accredited" to describe the ABA accreditation status of law schools and to use the correct title of the "Rules of Professional Conduct.".

IX. CONCLUSION

The final proposals of the Task Force fulfill its mandate from the D.C. Bar Board of Governors. The proposed amendments to Rule 46 would encourage qualified, foreign-educated individuals to seek admission to the D.C. Bar by eliminating unnecessary burdens on admission, while requiring a foundation in American legal education. The proposals would balance a foundation in American legal education with an option for career-focused coursework through up-to-date educational methods for foreign-educated individuals seeking admission to the D.C. Bar.

Furthermore, the ability to use distance education from an ABA-accredited law school to complete the required additional credit hours could reduce travel and housing costs, as well as immigration burdens on foreign-educated individuals. The reduction of unnecessary barriers to admitting qualified, foreign-educated attorneys would improve the ability of lawyers to meet clients' increasingly diverse legal service needs in the District and abroad.

---

[54] *Id*.

[55] *Id.* at 29.

[56] *Id*. at 39.

X. REDLINE AND CLEAN VERSIONS OF THE TASK FORCE PROPOSED CHANGES TO RULE 46 -- ADMISSION TO THE BAR

Proposed changes from the Global Legal Practice Task Force ("GLPTF") are represented by a strikethrough for ~~deletions~~ and a double underline for additions.

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study ~~in~~ from a Law School Not ~~Approved~~ Accredited by the ABA. An applicant who graduated from a law school not ~~approved~~ accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by

NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA.~~, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE; and~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA.~~, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards;

(e)(3)(B)(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(e)(3)(B)(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

CLEAN VERSION OF THE TASK FORCE PROPOSED CHANGES TO RULE 46 -- ADMISSION TO THE BAR

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study from a Law School Not Accredited by the ABA. An applicant who graduated from a law school not accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was accredited by the ABA; or, if the applicant graduated from a law school not accredited by the ABA, the applicant successfully completed at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was accredited by the ABA; or, if the applicant graduated from a law school not accredited by the ABA, the applicant successfully completed at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards;

(e)(3)(B)(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(e)(3)(B)(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

APPENDIX 1
to Final Report
January 2018

DISTRICT OF COLUMBIA BAR
GLOBAL LEGAL PRACTICE TASK FORCE

REPORT FOR PUBLIC COMMENT

Members of the Task Force

Darrell G. Mottley, Chair

Brigida Benitez
Gary B. Born
Ginger T. Faulk
Anastasia D. Kelly
Philip S. Khinda
Geoffrey M. Klineberg
Therese Lee
The Hon. Gregory E. Mize (Sr. Judge)
Alejandra C. Montenegro Almonte
Lorena Perez McGill
James Phalen
James P. Schaller
Anthony E. Varona
Claudia A. Withers
Cynthia G. Wright

Patrick McGlone, Ex Officio
Esther H. Lim, Ex Officio

The views expressed in this report are those of the Task Force
and not those of the D.C. Bar or its Board of Governors.

July 7, 2017

Report for Public Comment of the District of Columbia Bar Global Legal Practice Task Force

EXECUTIVE SUMMARY

Under existing D.C. Court of Appeals Rule 46 governing admission to the D.C. Bar, graduates from non-ABA approved law schools — a category that includes graduates of foreign-law schools[1] — may qualify for admission to the D.C. Bar by first completing 26 additional credit hours of education at an ABA-approved law school. The additional credit hours must be in subjects tested on the Uniform Bar Exam ("UBE").

The Global Legal Practice Task Force proposes amendments to Rule 46 that would: (1) reduce the number of credit hours to satisfy the additional education requirement from 26 hours to 24 hours; (2) change the subject matter requirement to 12 credit hours from a list of specific courses described in Rule 46 and 12 credit hours in elective courses; and (3) allow any amount of the additional education requirement to be completed by distance education that the law school would certify as complying with ABA distance education standards.

All of the proposed changes would apply to graduates from non-ABA approved law schools, which comprise both American and foreign law schools, regardless of the path they choose to seek admission to the D.C. Bar — whether by: (1) admission based on examination in this jurisdiction (Rule 46(c)(4)); (2) admission by transfer of a UBE score attained in another jurisdiction (Rule 46(d)(3)(D)); or (3) admission without Examination of Members of the Bar of Other Jurisdictions (Rule 46(e)(3)(B)(i)).

However, the Task Force is proposing no change to the rule for admission for members of the bar of other jurisdictions who are in good standing of the bar of any state or territory of the United States for at least five years. (Rule 46(e)(3)(A)).

The proposed changes to Rule 46 would eliminate or modify requirements that pose a significant burden on admitting otherwise qualified, foreign-educated individuals, while maintaining the value of acquiring a foundation in American legal education by meeting the new additional education criteria under the Rule. Further, the proposed changes would improve the ability of lawyers to meet their clients' legal service needs. Although many foreign-educated individuals enroll in and receive advanced law degrees (LL.M.s) from District of Columbia law schools, the current rule leads most of them to seek admission to the bars of other U.S. jurisdictions. The proposed changes are intended to encourage these foreign-educated individuals to seek admission to the D.C. Bar.

The ability of candidates to use distance education methods from an ABA-accredited law school to complete all the additional education hours would reduce significant travel and housing costs, as well as immigration burdens, on foreign-educated individuals. The Task Force also

[1] Throughout this report, the term "foreign-educated individual" includes both a graduate of a foreign law school and a foreign-educated attorney. A foreign-educated individual is not required to be admitted to practice in a U.S. or foreign jurisdiction to qualify for admission to the District of Columbia Bar under Rule 46.

anticipates that allowing distance education methods to satisfy the additional educational requirements would make the D.C. Bar attractive as a bar for foreign-educated attorneys to join to service their clients' legal needs. Traditional notions of legal education are changing. The significant advances in and the adoption of distance education in law schools in recent years have shown that this method can provide effective education for foreign-educated individuals. The Task Force believes that regardless of the method used to satisfy the additional substantive credit hours from an ABA-accredited law school (in residence or distance education), taking and passing the demanding professional licensing bar examination in a U.S. jurisdiction is the standard that establishes an individual's professional competence to practice law at the time of admission.

The proposed changes are intended also to ease the administrative burdens on the Committee on Admissions ("COA" or "Admissions Committee") of the D.C. Court of Appeals. Under the current rule, the COA is tasked with determining in each individual case whether the additional credit hours were "substantially concentrated on a single subject tested on the UBE." Under the Task Force's proposal, not only would the rule itself provide specific guidance about the required and elective courses, but it would be law schools themselves that would certify that the applicant's education complies with the specific course requirements in Rule 46. While the COA may choose to analyze the content of specific courses of any applicant to the Bar, the COA would not be required to do so.

The proposed changes also contain two "housekeeping" amendments. The changes would conform the Rule to proper terminology:

1) change "ABA-approved" to "ABA-accredited" throughout Rule 46; and

2) change "Rules of Professional Responsibility" to "Rules of Professional Conduct" in Rule 46 "to reflect nomenclature of the ABA Model Rules.

Lastly, the Task Force recommends that the Admissions Committee consider creating a "Frequently Asked Questions" webpage and periodically issue advisory guidelines for the benefit of applicants and the law schools on an as-needed basis on how the COA interprets Rule 46.

Report for Public Comment of the Global Legal Practice Task Force of the District of Columbia Bar

July 7, 2017

TABLE OF CONTENTS

I. INTRODUCTION 1

II. TASK FORCE APPOINTMENT AND CHARGE 3

III. THE TASK FORCE'S REVIEW 6
- A. Scope of the Task Force's Study 6
- B. Task Force Subgroups and Study Group 6
- C. Global Legal Practice Task Force Interim Report to the Board of Governors of the District of Columbia Bar, May 10, 2016 7

IV. INBOUND FOREIGN LAWYERS SUBGROUP – SCOPE AND SUMMARY OF STUDY 8
- A. Admission to the D.C. Bar under Existing Rule 46 10
  - 1. Admission by the D.C. Bar Examination 10
  - 2. Admission by Transfer of a Qualifying UBE Score 10
  - 3. Admission without Examination: Qualifying Multistate Bar Examination Score and Member of the Bar of Another U.S. Jurisdiction for Fewer than Five Years 11
  - 4. Admission without Examination: Member of the Bar of Another U.S. Jurisdiction for Five Years 11
- B. Admission Rates of Foreign-Educated Lawyers in the District of Columbia: 2010 to 2016 11
  - 1. 2010 to 2015 11
  - 2. 2016: D.C. Bar Examination and the Uniform Bar Examination 12
- C. Post-Admission Requirement 13
- D. Amendments to Rule 46 in 2016 by the D.C. Court of Appeals 13
  - 1. Uniform Bar Examination 13
  - 2. Admission Without Examination 14
- E. Proposed Language Not Adopted 15
- F. Provisions of Rule 46 that Remain Unchanged 15

V. PROPOSED CHANGES TO D.C. RULE 46 – ADMISSION TO THE BAR 16

A. Reduce the number of credit hours to satisfy the additional education requirement of graduates of non-ABA-accredited law schools from 26 credit hours to 24 credit hours. 17
   1. Existing Rule 17
   2. Proposed Rule 17
   3. Why is This Change Being Proposed? 17
   4. Admission by Transfer of UBE Score 19
   5. Admission by Transfer of an MBE Score with Admission to Practice Law in Another U.S. Jurisdiction (Admission Without Examination) 21

B. Revise the existing requirement that completion of all of the credit hours of additional education be earned in subjects tested on the UBE to a requirement that 12 of the required 24 credit hours be earned in specific subjects listed in Rule 46 and the remaining 12 credit hours be earned in electives of the individual's choosing. 21
   1. Existing Rule 21
   2. Proposed Rule 22
   3. Why is This Change Being Proposed? 23

C. Change the existing language that the additional educational requirement be satisfied "in a law school" to "from a law school" and do not require that the credits be earned in "classroom courses in" a law school. 28

D. Clarify that any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, if the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards for J.D. programs. 29
   1. Current Rule 29
   2. Proposed Rule 30
   3. Rationale Supporting This Proposal – Why is This Change Being Proposed? 31
   4. Conclusion 37

E. Amend the phrase “ABA-approved” to “ABA-accredited,” and change the word “approved” to “accredited” in referring to law schools accredited by the ABA as necessary throughout the Rule.

Change “Rules of Professional Responsibility” to “Rules of Professional Conduct” to reflect nomenclature of the ABA Model Rules. 38

F. The Task Force Recommends that the Court of Appeals Committee on Admissions Consider Creating a “Frequently Asked Questions” Webpage and Issue Advisory Guidance on How it Interprets Rule 46. 39

VI. CONCLUSION 40

VII. REDLINE OF THE TASK FORCE PROPOSED CHANGES TO RULE 46 – ADMISSION TO THE BAR 41

LIST OF EXHIBITS

Exhibit A	Jurisdictions with Rules Regarding Foreign Lawyer Practice (Map)
Exhibit B	Conference of Chief Justices Resolution 2: In Support of Regulations Permitting Limited Practice by Foreign lawyers in the U.S. to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice
Exhibit C	Letter from William C. Hubbard, President, ABA, to Aldo Bulgarelli, President, Council of Bars and Law Societies of Europe (November 19, 2014)
Exhibit D	Taking and Passing the District of Columbia and New York Bar Examinations by Source of Legal Education (Chart)
Exhibit E	District of Columbia Court of Appeals Rule 46 – Admission to the Bar
Exhibit F	District of Columbia Court of Appeals Rule 46 – Admission to the Bar (as Proposed by the D.C. Court of Appeals, October 28, 2015)
Exhibit G	Letter from Timothy Webster, President, D.C. Bar, to The Honorable Eric Washington, Chief Judge, D.C. Court of Appeals (December 22, 2015)
Exhibit H	Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 (July 7, 2017)
Exhibit I	ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017: Standard 306: Distance Education

.

REPORT OF THE GLOBAL LEGAL PRACTICE TASK FORCE
FOR PUBLIC COMMENT

July 7, 2017

I. INTRODUCTION

The globalization of the practice of law is expanding, driven by clients with cross-border[2] legal service needs.[3] These clients demand greater choice in attorneys, including lawyers with knowledge of the legal systems and practices of multiple countries; fluency in multiple languages; and familiarity with the culture of different regions of the world. Attorneys have responded by increasing the provision of cross-border legal services, which often require the admission to practice law in multiple countries.[4]

In this environment, foreign-educated lawyers increasingly recognize the importance of U.S. law in international business transactions, and are seeking admission to practice in a U.S. jurisdiction for business purposes and as a professional credential that is highly valued in certain regions of the world. Some U.S. jurisdictions have begun to recognize that the full admission of qualified foreign-educated lawyers is beneficial to the legal profession, clients, the public and the development of business in a global economy, and they have modified their rules of admission for foreign-educated individuals to make it easier for them to be admitted to practice.[5]

---

[2] "International law" and "international practice" in this report encompass the law of international bodies, the law of sovereign states with cross-border implications (i.e., transnational), the provision of legal services by D.C. Bar members to international clients, the provision of legal services abroad by D.C. Bar members, and the provision of legal services in the United States by foreign lawyers.

[3] *See generally* Gregory E. Mize, *Law Practice Regulation in the United States & Issues Raised by Cross Border Legal Practice* (January 2017), http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Web%20Documents/Law-Practice-Regulation-in-the-USA.pdf; Brigida Benitez, *Our Increasingly Global Profession*, WASHINGTON LAWYER, January 2015, *available at* https://www.dcbar.org/bar-resources/publications/washington-lawyer/articles/january-2015-from-the-president.cfm.

[4] Aebra Cole, *Four Firms Lead the Pack in Global Expansion*, LAW 360, June 20, 2016, https://www.law360.com/articles/807408/4-firms-lead-the-pack-in-global-expansion.

[5] *See* Washington State Admission to Practice Rule 3. Effective January 1, 2014, Washington [State] Supreme Court added a new avenue of admission for individuals who graduated from non-ABA-accredited law schools through completion of a qualifying LL.M. at an ABA-accredited law school. *See also* Texas Rules Governing Admission to the Bar Rule XIII. Effective October 1, 2014, the Supreme Court of Texas added several avenues of admission for individuals who graduated from law schools outside the United States.

The number of foreign attorneys taking and passing the bar examinations in Washington State and Texas increased after changes to those jurisdictions' admissions rules. The number of foreign-educated individuals taking the Washington State Bar Examination increased from 14 in 2013 to 83 in 2016. The number of foreign-educated individuals taking the Texas State Bar increased from 14 in 2013 to 230 in 2016. In contrast, the number of foreign-educated individuals taking the bar examination in Virginia decreased from 35 in 2010, to 19 in 2013, and finally to four in 2016, after Virginia revised its admission rule in 2012 to make its educational requirements more restrictive.

An estimated total of 12,709 foreign students were enrolled in undergraduate law programs, J.D. programs, and LL.M. programs in the United States in 2016, an increase of 8.3 percent from the previous year.[6] More than 100 law schools in the United States offer advanced law degree programs, bringing in about $350 million annually, at a time when enrollment in J.D. programs has been declining. The American Bar Association estimates that 9,866 students were enrolled in LL.M. programs in 2016.[7] Although that number includes some U.S. students, most are foreign-educated students.

The District of Columbia region is home to a dynamic mix of highly educated immigrants, multinational firms, inter-governmental organizations, and almost all of the foreign embassies and consulates.[8] The region's "financial, legal and managerial services . . . collectively [exported] $5.3 billion in 2014."[9] "Multinational firms . . . account for the vast majority of services export and foreign direct investment activity . . ."[10] Thus, the need for lawyers to be admitted to the District of Columbia to provide full service to their clients locally and internationally can be expected to increase in the future.

Rule 46 of the Rules of the D.C. Court of Appeals ("Rule 46") governs admission to the D.C. Bar, and it has long permitted the full admission of qualified foreign-educated lawyers. The Court's ongoing support for the admission of foreign-educated lawyers was confirmed in its revisions to Rule 46 in February 2016, which included an additional route of admission for foreign-educated lawyers.[11] The Task force believes that foreign-educated lawyers increase the diversity of the District of Columbia's legal community and can serve the greater population by bringing to it different perspectives and by expanding into the global market. The District's legal community derives strength from the talents of foreign-educated lawyers to provide the best legal representation for all citizens, including long-term residents as well as recent immigrants. Importantly, the District of Columbia courts have strongly and consistently supported expanding the rule of law around the world, and our courts are committed to the development of justice systems through international community outreach.[12] Encouraging and simplifying the admission of foreign-educated lawyers, the majority of whom return to their home countries, enhances all these efforts.

---

[6] Karen Sloan, *Will Law Schools' LL.M. Programs Suffer from Trump's 'America First' Stance?*, THE AMERICAN LAWYER, April 18, 2017.

[7] *Id.*

[8] Nick Marchio and Alan Berube, *Benchmarking Greater Washington's Global Reach: The National Capital Region in the World Economy* (2015), *available at* https://www.brookings.edu/wp-content/uploads/2015/11/GCI_DC_Oct29Ifinal.pdf.

[9] *Id.* at 11-12

[10] *Id.* at 22.

[11] See Section IV(A)(3) of this report.

[12] District of Columbia Courts, *2015 Annual Report*, *available at* http://www.dccourts.gov/internet/documents/2015-Annual-Report-Narative.pdf.

This report sets forth the proposed changes to Rule 46 from the Global Legal Practice Task Force ("Task Force"). The Task Force recommends amendments to the sections of the Rule that set forth the additional requirements that must be met by foreign-educated individuals who seek full admission to practice law in the District of Columbia.[13]

Traditional notions of legal education are changing. Client needs in an increasingly globalized legal environment will continue to expand, while the expense of obtaining a law school education will likely escalate. The proposed revisions to Rule 46 would eliminate or modify some of the existing requirements in the Rule that pose a significant cost and administrative burden on admitting otherwise qualified, foreign-educated individuals, while maintaining the requirement that such attorneys acquire a foundational knowledge about the United States' laws and legal system.

The changes are intended to encourage foreign-educated individuals who enroll in and receive advanced law degrees from U.S. law schools to seek admission to the D.C. Bar in the first instance. The proposed changes would also ensure that foreign-educated lawyers are able to satisfy the additional education requirements under Rule 46 by taking advantage of significant advances in technology and more cost-effective learning methods, without sacrificing important educational objectives. The proposed changes would also reduce the administrative burdens for the Admissions Committee. These Rule 46 proposals would address the current landscape of barriers to admission of foreign-educated individuals to the District of Columbia Bar, and would prepare the Court to respond to changes in legal education and the ever-evolving technological landscape. Lastly, the changes would make the District of Columbia a more attractive bar for foreign-educated individuals to join.

II. TASK FORCE APPOINTMENT AND CHARGE

At the recommendation of then-D.C. Bar president Brigida Benitez, on September 16, 2014, the D.C. Bar Board of Governors ("Board of Governors" or "Board") approved the creation of the Global Legal Practice Task Force to explore issues arising from the globalization of legal practice that have an impact on members of the D.C. Bar and the Bar as an organization and to make recommendations about what the Bar may consider doing to address them. The charge to the Task Force stated:

District of Columbia Bar Board of Governors
Charge to Global Legal Practice Task Force
September 16, 2014

[13] Rule 46 does not distinguish between individuals who have graduated from foreign law schools and those who have graduated from "non-ABA approved law schools." An individual with a foreign law degree seeking full admission to the D.C. Bar must meet the same criteria as an individual with a degree from a "non-ABA approved law school" in the United States. The proposed revisions to Rule 46 from the Task Force would apply equally to individuals who have graduated from foreign law schools and to U.S. graduates of non-ABA accredited law schools.

The Board of Governors directs the Global Legal Practice Task Force to study and make recommendations about a number of issues that have a significant impact on law practice for members of the District of Columbia Bar and for the Bar as an organization. Among the potential areas of interest are admissions and authorization to practice for foreign and cross-border attorneys who are not currently members of the D.C. Bar; discipline and other regulation of those who might become authorized to practice whether or not they are admitted to the D.C. Bar; roles and relationships of regulatory bodies across borders and internationally; and the expectations of D.C. Bar members with international practices, both those who are practicing in the United States and those who are practicing abroad.

The recommendations should consider and balance the needs of the members and the Bar in light of available resources; minimize any administrative burdens to the D.C. Court of Appeals; ensure the protection of the public; and maintain the highest professional standards.

The Board requests that the Task Force submit its report and any recommendations as soon as practicable.

Global Legal Practice Task Force Members[14]

The chair of the Task Force is:

Darrell G. Mottley	Principal Shareholder, Banner & Witcoff, Ltd., past D.C. Bar president

The members of the Task Force include:

Brigida Benitez	Partner, Steptoe and Johnson LLP, past D.C. Bar president (appointed July 19, 2016)
Gary B. Born	Wilmer Cutler Pickering Hale and Dorr LLP, chair, International Arbitration Practice Group
Ginger T. Faulk	Partner, Baker Botts LLP

[14] Initial appointments to the Task Force were made at the September 16, 2014, meeting of the Board of Governors. The Task Force would like to recognize past presidents of the Bar who provided support to the Task Force's work during their tenures as president and/or immediate past president: Annamaria Steward (2016-17); Timothy K. Webster (2015-16), (2016-17); Brigida Benitez (2014-15), (2015-16); and Andrea Ferster (2013-14).

The Task Force also would like to recognize and thank Wallace E. "Gene" Shipp, Jr., who served on the Task Force until his retirement as District of Columbia Disciplinary Counsel on June 6, 2017; and Elizabeth J. Branda, who also served on the Task Force until her retirement as Executive Attorney of the District of Columbia Court of Appeals Board on Professional Responsibility on September 2, 2016.

Anastasia D. Kelly	Co-Managing partner, DLA Piper LLP
Philip S. Khinda	Partner, Steptoe & Johnson LLP
Geoffrey M. Klineberg	Partner, Kellogg, Hansen, Todd, Figel & Frederick PLLC
Therese Lee	Senior Counsel, Google Inc.
The Hon. Gregory E. Mize	Senior Judge, Superior Court of the District of Columbia & Fellow, National Center for State Courts
Alejandra C. Montenegro Almonte	General Counsel, Gate Gourmet, Inc.
Lorena Perez McGill	Adjunct Professor, Georgetown University Law Center
James Phalen	Executive Attorney, Board on Professional Responsibility (appointed October 3, 2016)
James P. Schaller	Of Counsel, Jackson & Campbell, PC (appointed January 19, 2016)
Anthony E. Varona	Professor and Associate Dean for Faculty and Academic Affairs; American University Washington College of Law
Claudia A. Withers	Chief Operating Officer, NAACP; chair of the Committee of Admissions of the District of Columbia Court of Appeals
Cynthia G. Wright	Assistant U.S. Attorney, Office of the United States Attorneys; former chair, Committee on Unauthorized Practice of Law of the District of Columbia Court of Appeals

Serving on the Task Force *ex officio* are:

Patrick McGlone	Senior Vice President, General Counsel and Chief Compliance Officer Ullico Inc., D.C. Bar president

Esther H. Lim[15]	Partner, Finnegan Henderson Farabow, Garrett & Dunner LLP, D.C. Bar President-elect

The D.C. Bar staff liaisons[16] to the task force are:

Robert Spagnoletti	Chief Executive Officer
Carla J. Freudenburg	Director, Regulation Counsel
Hope C. Todd	Assistant Director for Legal Ethics, Regulation Counsel
Michael D. Rybak[17]	Senior Staff Attorney, Regulation Counsel

III. THE TASK FORCE'S REVIEW

A. Scope of the Task Force's Study

The Task Force studied a wide range of issues about the globalization of legal practice, including: (1) lawyer mobility; (2) cross-border practice, both domestic and international; (3) international developments in the legal profession; (4) inbound legal services (foreign lawyers providing legal services in the United States); (5) outbound legal services (U.S. attorneys providing legal services in foreign countries); (6) D.C. Bar member needs and expectations as to global legal practice; (7) regulation (including discipline) of cross-border and inbound legal practice; and (8) how current rules may affect the attractiveness of the District of Columbia as a business climate and for foreign trade and investment.[18]

B. Task Force Subgroups and Study Group

To explore those issues and fulfill its mandate from the Board, the Task Force divided its work and members into two subgroups and one study group: the Inbound Foreign Lawyers Practicing in the District of Columbia Subgroup ("Inbound subgroup");[19] the Outbound District of

---

[15] Esther H. Lim served as a member of the Task Force from September 14, 2014, to June 13, 2017. Ms. Lim took office as president-elect of the D.C. Bar on June 14, 2017, and now serves on the Task Force as an *ex officio* member.

[16] Effective April 30, 2017, Katherine A. Mazzaferri retired as Chief Executive Officer of the D.C. Bar and was succeeded by Robert Spagnoletti. Cynthia D. Hill retired as Chief Programs Officer on June 30, 2017. The Task Force thanks Ms. Mazzaferri and Ms. Hill for their years of service to the D.C. Bar and their contributions to the work of the Task Force.

[17] Mr. Rybak joined the D.C. Bar staff on February 16, 2016.

[18] *See* Benitez, *supra* note 3.

[19] The members of the Inbound Foreign Lawyers Practicing in the District of Columbia Subgroup are: Geoffrey M. Klineberg (subgroup leader), Alejandra C. Montenegro Almonte, The Hon. Gregory E. Mize (Sr. Judge), Lorena Perez

Columbia Lawyers Subgroup ("Outbound subgroup");[20] and the Alternative Business Structures ("ABS") and Multi-Disciplinary Practice ("MDP") Study Group.[21]

"Outbound" D.C. Bar members include members who live and practice abroad, and members who are based in the United States and have international/transnational practices and clients.

Alternative business structure refers to a legal service business model that is different from a traditional sole proprietorship or partnership. An ABS can include a publicly traded law firm, external investment in a law firm, non-lawyer ownership of a law firm, or other ways to offer legal services outside of traditional models. A multidisciplinary practice is a type of ABS firm providing both legal and related non-legal services.

C. Global Legal Practice Task Force Interim Report to the Board of Governors of the District of Columbia Bar, May 10, 2016

Recommendations from the Outbound subgroup and the ABS and MDP Study Group were approved by the Task Force on March 22, 2016, and set forth in the *Global Legal Practice Task Force Interim Report to the Board of Governors of the District of Columbia Bar*, May 10, 2016 ("Interim Report").[22]

The recommendations for Outbound D.C. Bar members included the facilitation of connections with members with transnational practices and with members who work in the same regions of the world; access to resources to meet challenges of practicing abroad; and enhanced education and professional development opportunities about international and transnational issues. The Task Force also recommended the ongoing study and monitoring of developments in the areas of ABS and MDP.

The Board of Governors approved the recommendations on June 7, 2016. The recommendations for Outbound members are now a strategic initiative of the D.C. Bar and are being implemented.

McGill, Anthony E. Varona, Claudia A. Withers, Cynthia G. Wright; Wallace E. "Gene" Shipp, Jr. (September 16, 2014, to June 6, 2017); and Elizabeth J. Branda (September 16, 2014, to September 2, 2016). *See supra* note 14.

[20] The members of the Outbound District of Columbia Lawyers Subgroup are: Esther H. Lim (subgroup leader until elected as the Bar's president-elect), Gary B. Born, Ginger T. Faulk, Philip S. Khinda, Therese Lee and Anastasia D. Kelly.

[21] The members of the Alternative Business Structures (ABS) and Multi-Disciplinary Practice (MDP) Study Group are: Darrell G. Mottley (subgroup leader), Geoffrey K. Klineberg, the Hon. Gregory E. Mize (Sr. Judge), and Timothy K. Webster (2015-16), (2016-17) (*ex officio*).

[22] D.C. BAR GLOBAL LEGAL PRACTICE TASK FORCE, INTERIM REPORT TO THE BOARD OF GOVERNORS OF THE DISTRICT OF COLUMBIA BAR (May 10, 2016), *available at* https://www.dcbar.org/about-the-bar/reports/upload/GLPTF-Final-Report-with-exhibits-May-2016.pdf.

The Interim Report also included an update on the status of the work of the Inbound subgroup. Several amendments to Rule 46 were adopted by the Court on February 4, 2016, taking effect on March 1, 2016. In light of that development, the Inbound subgroup continued its work, including careful consideration of the changes to Rule 46 and the impact, if any, on the subgroup's work and ultimate recommendations to the full Task Force.

IV. INBOUND FOREIGN LAWYERS SUBGROUP – SCOPE AND SUMMARY OF STUDY

The Inbound subgroup studied how individuals from foreign countries can be admitted and fully licensed to practice law in the District of Columbia under Rule 46 and reviewed the rules under which foreign lawyers may practice in the District without full admission under exceptions to Rule 49 –Unauthorized Practice of Law ("Rule 49"),[23] or under limited circumstances as Special Legal Consultants.[24] Ultimately, the subgroup focused on how foreign-educated individuals become fully admitted to the District of Columbia under Rule 46.

The subgroup conducted meetings and performed research; members of the full Task Force participated in some of these meetings and conversations. Meetings and discussions were held with legal educators and representatives from a total of 12 ABA-accredited law schools,[25]

---

[23] Foreign-educated lawyers who are not fully licensed to practice in the District may practice under the same exceptions to Rule 49 as their domestic counterparts who are not licensed to practice in the District, including: providing legal services on an incidental and temporary basis; application for admission *pro hac vice* up to five times annually; and the provision of legal services in up to five alternative dispute resolution proceedings per calendar year. As is true of domestic counterparts, a foreign-educated attorney may provide legal advice only to his or her regular employer as in-house counsel.

[24] Special Legal Consultants ("SLCs") are admitted without full licensure and may engage in limited practice in the District. As a general matter, they are limited to providing legal advice regarding foreign or international law and are expressly prohibited from rendering legal advice about the law of the District of Columbia or of any other U.S. jurisdiction. D.C. App. R. 46(f) provides that, "[a] person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, notwithstanding the prohibitions of Rule 49(b)," subject to certain limitations. *See also* Committee on the Unauthorized Practice of Law of the District of Columbia Court of Appeals ("CUPL"), Opinion 8-00, *available at* http://www.dccourts.gov/internet/documents/rule49_opinion8.pdf. In Opinion 8-00, the CUPL clarifies that foreign lawyers who are not licensed SLCs in the District of Columbia, or who are licensed SLCs but are providing legal services beyond those permitted by Rule 46(f), are subject to Rule 49 and its exceptions.

In February 2016, the Task Force emailed a survey to the 95 SLCs licensed in the District. Thirty (30) responses were received, a response rate of 31 percent. The majority of the respondents are in the Washington, D.C. metropolitan area; became licensed as SLCs because they needed it for their work; and intend to apply for admission to the Bar, but do not intend to become admitted by taking the D.C. Bar examination. The majority also were aware that an attorney could be admitted to the D.C. Bar on motion if he or she had been a member in good standing of the bar of another U.S. jurisdiction for at least five years. Of the 10 respondents admitted to the bar of another U.S. jurisdiction, all were admitted to New York.

[25] Discussions were held with educators and deans from the following law schools: American University Washington College of Law; the Catholic University of America Columbus School of Law; George Mason University Antonin Scalia Law School; Georgetown University Law Center; George Washington University Law School; Howard University School of Law; the John Marshall Law School (Chicago); Mitchell-Hamline School of Law; the University

including schools that have designed and provide LL.M. curricula using cutting-edge online programs,[26] and two law schools that extensively use distance legal education in J.D. programs through online and "hybrid" courses.[27] The subgroup held a discussion with a representative from a non-ABA accredited law school abroad that offers a three-year (six semesters; 105 credit hours), "American-style" legal education that provides a "Masters of Law" (which the school describes as, "J.D. equivalent").[28] There also were discussions with representatives from the American Bar Association ("ABA"); the Committee on Admissions of the D.C. Court of Appeals; the National Conference on Bar Examiners ("NCBE"), and the New York State Board of Law Examiners ("NYBOLE"). The Task Force greatly benefited from the subgroup's discussions with legal educators and other admissions experts, and found their insights and experience to be invaluable.

The subgroup reviewed materials about the evolving global legal market; monitored efforts to allow access to the U.S. legal market by lawyers from foreign countries;[29] and reviewed ABA Model Rules and Policies as well as Resolutions from the Conference of Chief Justices[30] ("CCJ") about the admission and regulation of foreign-educated lawyers. The subgroup reviewed existing rules that regulate the admissions and authorization of practice for foreign and domestic attorneys who are not D.C. Bar members, and the rules of other U.S. jurisdictions that permit the admission of foreign-educated attorneys.[31] It also studied how the rates for foreign attorneys (1) taking and (2) passing the bar examinations in the District and other U.S. jurisdictions compared to those of J.D. students from ABA-accredited law schools.[32]

---

of the District of Columbia David A. Clarke School of Law; the University of Southern California Gould School of Law; Wake Forest University School of Law; and Washington University in St. Louis School of Law.

[26] The University of Southern California Gould School of Law and the Washington University (St. Louis) School of Law.

[27] The John Marshall Law School and the Mitchell-Hamline School of Law.

[28] *See* HANDONG INTERNATIONAL LAW SCHOOL, https://lawschool.handong.edu/ (last visited June 13, 2017). Handong International Law School is located in the Republic of Korea ("South Korea").

[29] *See* Exhibit A, *Jurisdictions with Rules Regarding Foreign Lawyer Practice (Map).*

[30] CONFERENCE OF CHIEF JUSTICES, http://ccj.ncsc.org (last visited May 10, 2017). The CCJ is an organization that provides an opportunity for the highest judicial officers of the states to discuss matters of legal importance. *See also* Exhibit B, *Conference of Chief Justices Resolution 2: In Support of Regulations Permitting Limited Practice by Foreign lawyers in the U.S. to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice.*

[31] The Inbound subgroup researched reciprocity of admission between the District and foreign countries, but concluded that it could not make a recommendation on this issue. Reciprocity would require considerable time and resources from the Court of Appeals in negotiating admission standards with foreign jurisdictions. *See* Exhibit C, *Letter from William C. Hubbard, President, ABA, to Aldo Bulgarelli, President, Council of Bars and Law Societies of Europe (November 19, 2014).*

[32] The Inbound subgroup met on May 20, 2015, November 20, 2015, and July 26, 2016. It participated in meetings of the full Task Force on October 30, 2014, December 18, 2015, and March 22, 2016. On October 12, 2016, the Task Force met with representatives of District of Columbia law schools and several law schools from the Washington metropolitan area.

The subgroup approved proposed amendments at its meeting on February 10, 2017, and at a meeting on April 18, 2017, the subgroup presented -- and the Task Force approved -- a set of recommendations.

A. Admission to the D.C. Bar under Existing Rule 46

Rule 46 does not distinguish between individuals who have graduated from foreign law schools and individuals who have graduated from "non-ABA-approved law schools" in the United States.[33] An individual with a foreign law degree seeking full admission to the D.C. Bar must meet the same criteria[34] as an individual with a degree from an American "non-ABA approved law school." Unlike some other jurisdictions,[35] Rule 46 does not require that the foreign-educated individual be first admitted to practice law in a foreign country or another U.S. jurisdiction to be admitted to the District.

1. Admission by the D.C. Bar Examination

An applicant who graduated from a non-ABA approved law school must complete 26 credit hours of additional legal educational at an ABA-approved law school before qualifying to take the D.C. Bar examination, with all such 26 hours earned in courses substantially concentrated on a single subject that is tested on the Uniform Bar Examination ("UBE").[36]

2. Admission by Transfer of a Qualifying UBE Score

An applicant who graduated from a non-ABA-approved law school must complete the 26 hours of additional education described above when seeking admission through the transfer of a passing UBE score from another U.S. jurisdiction.[37] It is not required that the applicant be admitted to the jurisdiction in which the applicant took the UBE.

---

[33] D.C. App. R. 46(c).

[34] This includes the requirement that individuals pass the Multistate Professional Responsibility Examination ("MPRE") if applying for admission to the D.C. Bar through the methods set forth in subsections 1, 2, or 3, below.

[35] *See, e.g.*, Georgia (Supreme Court of Georgia Rules Governing Admission to the Practice of Law Part B, Section 4(c)) and Pennsylvania (Pennsylvania Bar Admission Rule 205(a)(1)). *See also* The National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2017*, at 12-16, *available at* http://www.ncbex.org/pubs/bar-admissions-guide/2017/index.html#p=24.

[36] The D.C. Court of Appeals adopted the Uniform Bar Examination for the District, effective with the bar examination administered in July 2016.

[37] D.C. App. R. 46(d).

3. Admission without Examination: Qualifying Multistate Bar Examination Score and Member of the Bar of Another U.S. Jurisdiction for Fewer than Five Years

An applicant who graduated from a law school not approved by the ABA must complete the 26 hours of additional education described above when seeking admission based on a combination of a qualifying Multistate Bar Examination ("MBE") and membership in good standing of fewer than five years in another U.S. jurisdiction upon successful completion of that jurisdiction's written bar examination. This route constitutes a Bar admission "without examination."[38] This route is a new path to admission that became available with the Court's revisions to Rule 46 effective on March 1, 2016. Before the amendment, the only option for a foreign-educated applicant was to take the D.C. Bar examination.

4. Admission without Examination: Member of the Bar of Another U.S. Jurisdiction for Five Years

An applicant who has been a member in good standing of another jurisdiction for at least five years immediately preceding the application to the D.C. Bar may be admitted on motion.[39] Neither additional education nor a degree from an ABA-approved law school is required.

B. Admission Rates of Foreign-Educated Lawyers in the District of Columbia: 2010 to 2016

1. 2010 to 2015

Between 2010 and 2015, a total of 2,918 attorneys took the D.C. Bar examination.[40] Of that number, 958 were foreign-educated individuals, about 33 percent of all exam-takers.

The number of foreign-educated individuals who have taken the D.C. Bar examination increased each year for five consecutive years: from 76 exam-takers in 2010, to 244 exam-takers in 2014. It declined to 204 in 2015. In comparison, during this same period, the number of exam-takers from ABA-approved law school decreased for four consecutive years: from 366 exam-takers in 2010, to 261 exam-takers in 2013. The number of exam-takers increased to 303 in 2014 and to 324 in 2015.

---

[38] D.C. App. R. 46(e)(3)(B).

[39] D.C. App. R. 46(e)(3)(A).

[40] The vast majority of attorneys admitted to the D.C. Bar each year are admitted on motion. The attorneys gain admission either through a combination of the requisite test scores and prior admission to practice law in another U.S. jurisdiction by taking and passing that jurisdiction's written bar examination, or by becoming admitted to and maintaining the status of a member in good standing for at least five years in that jurisdiction. From 2010 to 2015, a total of 16,664 attorneys were admitted to the D.C. Bar on motion, compared to 1,134 who were admitted by taking and passing the written D.C. Bar examination.

Of the 958 foreign-educated exam-takers, a total of 280 passed, an average passage rate of 29 percent. The passage rate ranged from a low of 18 percent in 2010 to a high of 35 percent in 2012. In comparison, of the total 1,845 exam-takers from ABA-approved law schools, 997 passed, a passage rate of 54 percent. The passage rate for exam-takers from ABA-approved law schools ranged from a low of 47 percent in 2010 to a high of 62 percent in 2013.[41]

2. 2016: D.C. Bar Examination and the Uniform Bar Examination

The total number of bar exam-takers nearly doubled in 2016, the year in which the UBE was administered with the July 2016 bar examination cycle.[42] Because an individual's UBE score is portable, it can therefore be transferred to other UBE jurisdictions. Applicants who applied to and took the UBE in the District may intend to seek admission to practice in other jurisdictions in addition to the District of Columbia.

A total of 1,020 individuals took the bar examination in the District of Columbia in 2016, compared to a total of 555 individuals in 2015, an increase of nearly 84 percent. The number of exam-takers included 332 who took the former D.C. Bar examination in February 2016, and 688 who took the Uniform Bar Examination in July 2016.[43]

The number of foreign-educated exam-takers also increased. Of the 1,020 bar exam-takers in 2016, 270 individuals (or 26 percent) were from law schools outside the United States, compared to 204 individuals in 2015, an increase of 32 percent. The number of foreign-educated exam-takers in 2016 -- 270 -- was the highest number since 2010.

Of the 270 foreign-educated exam-takers, 69 passed (or 26 percent), compared to 29 percent in 2015. In comparison, the passage rate for the 733 exam-takers from ABA-accredited law schools was 69 percent, and the passage rate for the 17 exam-takers from non-ABA approved law schools in the United States was 18 percent. The overall passage rate for all exam-takers in 2016 was 57 percent.

It is unknown how many of the exam-takers who earned a passing UBE score for the District of Columbia will use it to become admitted to the D.C. Bar.

---

[41] *See* Exhibit D, *Taking and Passing the District of Columbia and New York Bar Examinations by Source of Legal Education (Chart).* Of the 2,918 exam-takers who took the D.C. Bar examination, 115 had attended non-ABA-approved law schools in the United States. The average passage rate for this group was 15 percent. The passage rate ranged from a high of 26 percent in 2013 to a low of 7 percent in 2014.

[42] *See infra* section IV(D)(1) of this report (discussion about the Uniform Bar Examination).

[43] Of the 1,020 individuals who took the D.C. Bar examination in 2016, a total of 578 passed. In comparison, 3,116 individuals were admitted on motion in 2016. *See* NATIONAL CONFERENCE OF BAR EXAMINERS STATISTICS, http://www.ncbex.org/publications/statistics/ (last visited May 10, 2017). *See also* Exhibit D, *Taking and Passing the District of Columbia and New York Bar Examinations by Source of Legal Education (Chart).*

C. Post-Admission Requirement

All individuals admitted to the District of Columbia Bar after July 1, 1994, must complete the Mandatory Course on the D.C. Rules of Professional Conduct and District of Columbia Practice ("Course") within 12 months after the date of their admission to the Bar.[44] The day-long course gives an overview of the D.C. Rules of Professional Conduct; Bar regulatory services and functions; an introduction to the District of Columbia courts and administrative practice; voluntary civility standards; pro bono opportunities; and highlights of the disciplinary system. In-person attendance at the Course is required.[45] Requests to complete the course by an alternative method are rarely granted, and are determined on a case-by-case basis.

D. Amendments to Rule 46 in 2016 by the D.C. Court of Appeals

1. Uniform Bar Examination

The D.C. Court of Appeals amended Rule 46 on February 4, 2016, effective March 1, 2016.[46] The most significant amendment was the adoption by the District of Columbia of the UBE, effective with the July 2016 D.C. Bar examination. The UBE is a standardized bar examination composed of the multiple-choice Multistate Bar Examination ("MBE"); the Multistate Essay Examination ("MEE"); and the Multistate Performance Test[47] ("MPT"). The NCBE developed the UBE as a bar examination with a portable score that can transfer between other UBE jurisdictions, improving the professional and economic mobility of lawyers. However, the score alone does not result in reciprocal admission. Each jurisdiction sets its own passing UBE score and any other required qualifications to sit for the examination. Exam-takers must still comply with a jurisdiction's local requirements for admission, including character and fitness evaluations, additional courses or tests on local law, and any additional education requirements.[48]

---

[44] *See* D.C. Bar R. II, § 3.

[45] The D.C. Court of Appeals holds several swearing-in ceremonies on one day each month. Because the date for each swearing-in ceremony is set well in advance, the Bar's CLE Program can make arrangements to schedule the Course for the following day, which provides a degree of convenience for new admittees who must travel to Washington, D.C. to be sworn-in and to attend the Course.

[46] *See* Exhibit E, *District of Columbia Court of Appeals Rule 46 – Admission to the Bar*. *See also* Exhibit F, *District of Columbia Court of Appeals Rule 46 – Admission to the Bar (as Proposed by the D.C. Court of Appeals, October 28, 2015).* The D.C. Court of Appeals published the proposed amendments to D.C. App. Rule 46 on October 28, 2015, with the period for public comment ending on December 28, 2015.

[47] The MPT simulates a written task that would be a typical assignment for a new lawyer (e.g., a written memorandum).

[48] *See* THE UNIFORM BAR EXAMINATION, http://www.ncbex.org/exams/ube (last visited May 8, 2017).

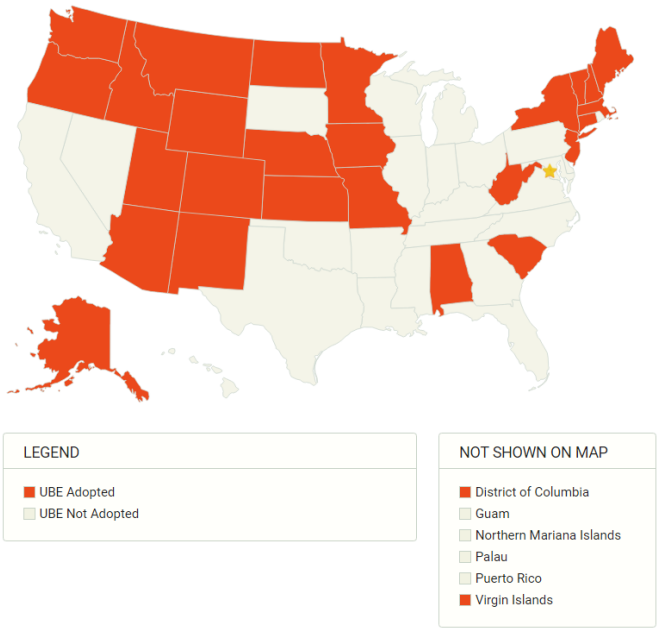


Figure 1 - Jurisdictions That Have Adopted the UBE (Source NCBE)

The UBE has rapidly gained acceptance since the first jurisdictions, Missouri and North Dakota, began administering it in February 2011. As of July 2017, 27 jurisdictions will administer the UBE; in 2018, 28 jurisdictions will administer the UBE (see Figure 1).[49] The number of individuals who have been admitted to a jurisdiction by transfer of a UBE score has increased each year since 2013 -- the first year that the NCBE began collecting data for admission by transferred UBE score. In 2013, 171 individuals were admitted by transfer of a UBE score; by 2016, 982 individuals were admitted by transfer of a UBE score.

In 2016, six individuals transferred a passing UBE score to the District; this is expected to increase in the future.[50]

2. Admission Without Examination

Another amendment, described in Section IV(A)(3), above, established a new path for full admission to practice for graduates of non-ABA-approved law schools, including foreign law schools. Such an applicant who has been admitted to another U.S. jurisdiction through successful

[49] *Id.* Maine and the U.S. Virgin Islands are the most recent jurisdictions to adopt the UBE. The Maryland Court of Appeals has appointed an Advisory Committee to Explore the Feasibility of Maryland's Adoption of the Uniform Bar Examination. Between 2010 and 2016, Maryland had 110 foreign-educated exam-takers, with 48 percent passing the exam (*See* NATIONAL CONFERENCE OF BAR EXAMINERS STATISTICS, http://www.ncbex.org/publications/statistics/ (last visited May 10, 2017). In January 2017, the Illinois State Bar Association recommended that that state also adopt the Uniform Bar Examination. *See* https://www.isba.org/ibj/2017/01/lawpulse/isbaboardassemblyrecommendadoptiono (last visited June 8, 2017). As of the date of this report, Virginia has not adopted the UBE, nor is it engaged in a publicized study of it.

[50] *See* National Conference of Bar Examiners, *2016 Statistics*, THE BAR EXAMINER, March 2017, at 34, *available at* http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F205.

completion of its written bar exam, and who has also attained the requisite score on the MBE, may be admitted to practice in the District with the completion of additional education: 26 credit hours of study in a law school approved by the ABA at the time of the study, with all 26 credits in courses of study substantially concentrated on UBE subjects. Previously, such applicants were required to take the D.C. Bar examination.

E. Proposed Language Not Adopted

The Court did not adopt language that it had initially considered that would have required that the 26 credit hours of study required of students who graduated from a non-ABA-approved law school be fulfilled by "classroom courses in" an ABA-approved law school. The Court chose to "consider that issue at a later date, in light of the recommendations of the Global Legal Practice Task Force."[51] The existing language in Rule 46 provides that the additional education be fulfilled "in a law school," which must be an ABA-approved law school.

F. Provisions of Rule 46 that Remain Unchanged

The subgroup predicated its analysis and proposed amendments to Rule 46 on the 2016 revisions by the Court described above, and on the assumption that certain policies of Rule 46 would remain unchanged:

- Rule 46 does not distinguish between an individual who has graduated from a foreign law school and an individual who has graduated from a non-ABA accredited law school in the United States.

- An individual with a foreign law degree seeking full admission to the D.C. Bar must meet the same criteria as an individual with a degree from a "non-ABA approved law school" in the United States.

- Rule 46 provides several routes of admission for graduates of non-ABA accredited law schools, including foreign law schools, if the graduate completes the additional educational requirements set forth in Rule 46.

- A member in good standing of another U.S. jurisdiction for at least five years immediately preceding the application to the D.C. Bar may be admitted on motion. Neither additional education nor a degree from an ABA-accredited law school is required.

[51] *See* Exhibit G, *Letter from Timothy Webster, President, D.C. Bar, to The Honorable Eric Washington, Chief Judge, D.C. Court of Appeals (December 22, 2015). See also* Exhibit E, *District of Columbia Court of Appeals Rule 46 – Admission to the Bar* at 1 (Order).

V. PROPOSED CHANGES TO D.C. RULE 46 – ADMISSION TO THE BAR

Briefly, the Task Force proposes the following amendments to Rule 46 – Admission to the Bar:

- Reduce the number of credit hours to satisfy the additional education requirement for graduates of non-ABA-accredited law schools from 26 to 24.

- Change the requirement that all of the credit hours of additional education be earned in subjects tested on the UBE to a requirement that 12 out of 24 credit hours be earned by studying specific subjects listed in Rule 46 and the remaining 12 credit hours be earned by studying electives of the individual's choosing.

- Change the existing language that the additional educational requirement be satisfied "in a law school" to "from a law school" and do not require that the credits be earned in "classroom courses in" a law school.

- Clarify that any amount of the 24 credit hours may be completed through distance education from an ABA-accredited law school, provided that the law school issuing the credit hours certifies in writing that its distance education methods comply with the ABA's distance education standards.

The proposed changes would apply to graduates of non-ABA-accredited law schools, including but not limited to foreign law schools, who are seeking admission to the D.C. Bar by: (1) admission based on examination in this jurisdiction; (2) admission by transfer of a UBE Score attained in another jurisdiction; or (3) admission without examination based on a combination of a qualifying MBE score and membership in good standing of fewer than five years in another U.S. jurisdiction upon successful completion of that jurisdiction's written bar examination.[52]

The Task Force proposes no changes for admission on motion of an applicant who has been a member in good standing of the bar of any state or territory of the United States for at least five years immediately preceding the application to the D.C. Bar.

The Task force also proposes one minor, administrative amendment to Rule 46: change "ABA-approved" to "ABA-accredited" throughout Rule 46.

The Task Force proposes that "Rules of Professional Responsibility" be changed to "Rules of Professional Conduct" to reflect nomenclature of the ABA Model Rules.

---

[52] *See* Exhibit H, *Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 (July 7, 2017).*

Finally, the Task Force recommends that the COA consider creating a "Frequently Asked Questions" ("FAQ") webpage about Rule 46, and as necessary, issue advisory guidelines similar to those that it issued in December 2016 for graduates of law schools not approved by the ABA.[53]

A. Reduce the number of credit hours to satisfy the additional education requirement of graduates of non-ABA-accredited law schools from 26 credit hours to 24 credit hours.

1. Existing Rule

If an individual has graduated from a law school not accredited by the ABA, completion of 26 credit hours of additional education in subjects tested on the UBE in an ABA-accredited law school is required when: (1) taking the UBE in the District of Columbia; (2) transferring a passing UBE score earned in another UBE jurisdiction to the District; or (3) qualifying based on admission to practice in another U.S. jurisdiction through successful completion of its written bar exam combined with a scaled MBE score of 133 or higher from that examination.

2. Proposed Rule

The Task Force recommends that the Court of Appeals reduce the number of credit hours to satisfy the additional education from 26 credit hours to 24 credit hours.

3. Why is This Change Being Proposed?

The 26-credit hour requirement discourages qualified, foreign-educated individuals from seeking admission to the D.C. Bar. Most foreign-educated individuals enrolled in LL.M. programs, including in law schools in the District of Columbia, typically choose to comply with New York's 24-credit hour requirement for admission, but those who do so would fall short of the credit hours needed to qualify for admission to the D.C. Bar. The proposed change would harmonize the District's requirement with that of New York and of the eight other jurisdictions that require an additional 24 credit hours for at least some foreign-educated applicants to become admitted.[54]

Because existing Rule 46 exceeds the typical 24 hours in an LL.M. program by two hours, the requirement poses a substantial burden on admitting otherwise qualified, foreign-educated individuals. Many foreign-educated individuals struggle to complete the additional two education

---

[53] D.C. Court of Appeals Committee on Admissions, *Guidance for Graduates of Non-ABA Approved Law Schools – 26 Semester Hours*, December 1, 2016, http://www.dccourts.gov/internet/documents/Guidance_for_Graduates_of_Non-ABA_Approved_Law-Schools_11-29-16.pdf.

[54] The eight jurisdictions requiring 24 credit hours of additional education for at least some foreign-educated applicants are: Alabama; Massachusetts (civil law background applicants); Missouri; New Hampshire; New York; Pennsylvania; Texas; Utah; and Wisconsin.

credit hours before their limited-duration student visas expire. The Task Force learned that a student visa generally expires at the end of an academic year, after completion of a 24-credit LL.M. degree, which allows a student to take a bar examination in a jurisdiction requiring 24 additional education credit hours, but not a jurisdiction requiring 26 credit hours. Thus, a student who wants to qualify for admission to the D.C. Bar often must take additional coursework, thereby incurring additional expense and government-imposed administrative burdens, to meet the 26-hour requirement.

The general consensus from discussions with D.C. area legal educators was that 24 credit hours was an appropriate amount of additional education. It is the most commonly used measurement of additional education for foreign-educated individuals. Twenty-four hours is also the measurement chosen by New York when it revised its admission rule in 2011; its change increased the number of required credit hours from 20 to 24. New York tests the vast majority of foreign-educated individuals who take a U.S. bar examination.[55] The Task Force is not proposing that foreign-educated individuals earn an LL.M. degree (as New York requires for the majority of its foreign-educated applicants) to qualify for admission to the D.C. Bar. However, many foreign-educated individuals who earn an LL.M. do so by completing 24 education credit hours. It is the conclusion of the Task Force that 24 additional education credit hours is an appropriate standard.

i. Credit Hour Requirements in Other Jurisdictions

LL.M. Programs in U.S. legal studies offered by ABA-accredited schools typically consist of 24 hours. LL.M. programs nationally generally range from 20 to 24 credit hours. Administrators and educators of these programs generally believe that 24 credit hours provide a solid foundation in U.S. law for foreign-educated individuals.

Twenty-four credit hours of additional education for foreign-educated individuals seeking a bar admission in the 36 jurisdictions that permit admission of foreign-educated attorneys is the most common additional educational requirement.[56] Nine jurisdictions, including New York, require 24 credit hours of additional legal education for at least some foreign-educated applicants. Some jurisdictions require an LL.M. degree comprising 24 credit hours. Twenty of the 36

[55] New York tests more foreign-educated applicants than another U.S. jurisdiction: an average of 4,674 foreign-educated individuals annually between 2010 and 2016. The next largest jurisdictions for foreign-educated applicants, California; the District of Columbia; and Texas, have far smaller numbers of foreign-educated applicants. Between 2010 and 2016, a total of 6,616 foreign-educated individuals took the California bar examination; 16 percent passed the examination. During that same period, 1,228 foreign-educated individuals took the bar examination in the District; 28 percent passed. In Texas, 466 foreign-educated individuals took the bar examination; 29 percent passed. *See* NATIONAL CONFERENCE OF BAR EXAMINERS STATISTICS, http://www.ncbex.org/publications/statistics/ (last visited May 10, 2017).

[56] The National Conference of Bar Examiners, *Comprehensive Guide to Bar Admission Requirements 2017*, at 12-16, *available at* http://www.ncbex.org/pubs/bar-admissions-guide/2017/index.html#p=24.

jurisdictions[57] require some other amount of additional legal education from an ABA-accredited law school for at least some foreign-educated applicants.[58]

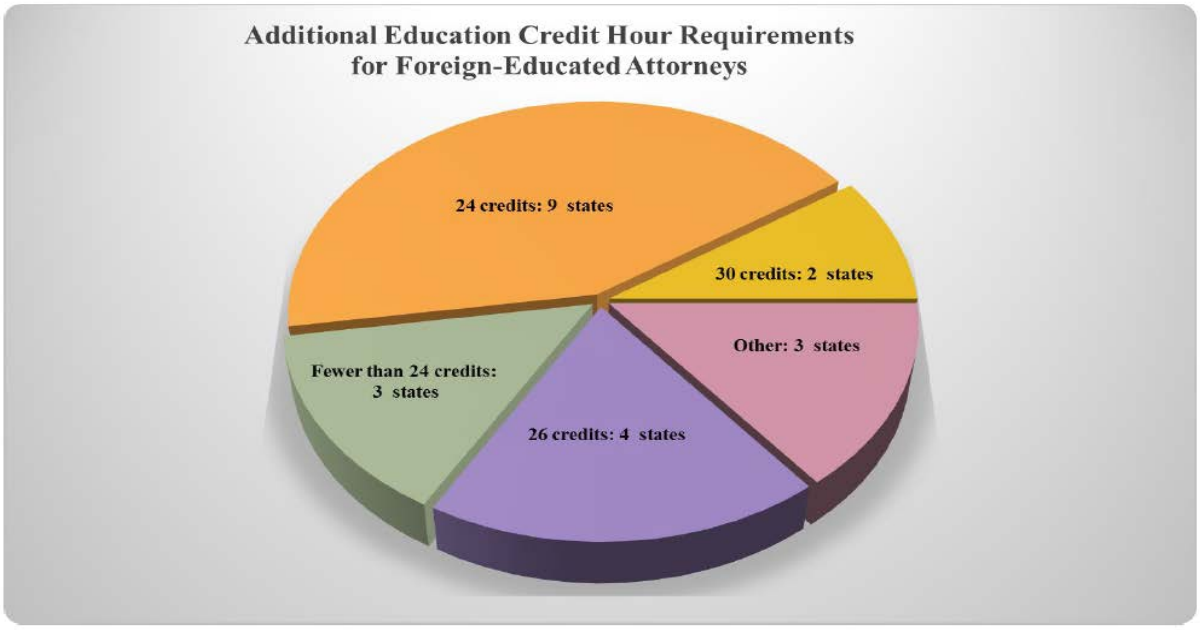


Figure 2

In addition to the District, three other jurisdictions require 26 credit hours, or the equivalent in minutes of instruction: Georgia, Maryland, and Washington State. Of the 17 UBE jurisdictions permitting the admission of foreign-educated lawyers, six require 24 credit hours of additional education of at least some foreign-educated applicants: Alabama; Massachusetts[59]; Missouri; New Hampshire; New York; and Utah (see Figure 2).

4. Admission by Transfer of UBE Score

The proposed reduction to 24 credit hours would improve the professional and economic mobility of lawyers and would also reduce the burden on foreign-educated individuals seeking to become admitted to practice in the District by the transfer of a qualifying UBE score. Notably, applicants to the District in this category have already taken and passed the challenging UBE in another jurisdiction. The Task Force believes that the adoption of the UBE by the Court of Appeals

[57] This number includes jurisdictions that grant case-by-case "waivers" of the requirement of a J.D. degree from an ABA-accredited law school. A waiver may be granted based on the applicant's relevant legal education, which may include an LL.M. degree from an ABA-approved law school, professional experience, admission to practice in a foreign country, and other factors.

[58] Some jurisdictions, including New York, allow individuals with educations equivalent to a J.D. from an ABA-accredited law school to take the bar examination without any additional legal education. In addition to some amount of additional education credits from an ABA-accredited law school, some jurisdictions have other requirements for foreign-educated individuals, such as a certain number of years of admission to, or active practice in, a foreign country; or a first degree in law from a common-law country.

[59] Massachusetts will begin administering the UBE in July 2018.

and rapid adoption of the UBE in other jurisdictions provides new opportunities for attorneys to meet their clients' legal service needs by the ability of attorneys to be admitted in multiple jurisdictions by transfer of a UBE score.[60]

Many foreign-educated individuals, including students enrolled in the six District of Columbia law schools and local LL.M. programs, structure their studies to conform to New York's 24 credit hour requirement. Consequently, in response to student demand, many of the District and area law schools have created and offer LL.M. programs that meet the additional education requirements of New York's admission rule. These students take the UBE and earn a passing score -- which is the same passing score as for the District -- yet, they do not qualify for admission to the D.C. Bar by transfer of that UBE score without first completing an additional two credit hours in specific subjects.

By 2018, 28 jurisdictions will administer the UBE. Five jurisdictions will have pass scores lower than the District's; eight, including New York, will have the same pass score as the District; and 14 will have higher pass scores than the District.[61] Eighteen UBE jurisdictions allow foreign-educated lawyers to sit for their bar examinations, with six requiring the completion of 24 education credit hours by foreign-educated individuals who wish to become admitted by the transfer of a UBE score.[62]

Washington State allows a foreign-educated individual who has earned a qualifying UBE score in another jurisdiction to become admitted by transfer of the score; the individual is not required to complete the additional education that is required of a foreign-educated individual who wishes to take the UBE in Washington.[63] The remaining UBE jurisdictions require foreign-educated individuals who wish to transfer a qualifying UBE score to complete the same additional education as that required of an individual sitting for the UBE in that particular jurisdiction.

---

[60] *See* FINAL REPORT, FINDINGS & RECOMMENDATIONS OF THE ISBA [ILLINOIS STATE BAR ASSOCIATION] STANDING COMMITTEE ON LEGAL EDUCATION, ADMISSION AND COMPETENCE ON THE ADOPTION OF THE UNIFORM BAR EXAMINATION (2016), at 3, 16, *available at* https://www.isba.org/sites/default/files/committees/2016-10-07%20ISBA%20LEAC%20Final%20UBE%20Report.pdf.

[61] *See* THE UNIFORM BAR EXAMINATION, http://www.ncbex.org/exams/ube (last visited May 8, 2017).

[62] Those eighteen jurisdictions are: Alabama, Alaska, Arizona (in limited circumstances); Colorado, Connecticut, the District of Columbia, Iowa (in limited circumstances), Maine, Massachusetts, Missouri, New Hampshire, New Mexico, New York, Utah, Vermont, the Virgin Islands (special admission status), Washington State, and West Virginia. Nine UBE jurisdictions require at least some foreign-educated bar applicants to complete additional education before being admitted to practice law. Six of those nine jurisdictions require the completion of 24 education credit hours by at least some foreign-educated individuals: Alabama, Massachusetts (civil law background applicants), Missouri, New Hampshire, New York, and Utah.

[63] *See* UNIFORM BAR EXAM, http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Uniform-Bar-Exam (last visited June 7, 2017).

5. Admission by Transfer of an MBE Score with Admission to Practice Law in Another U.S. Jurisdiction (Admission Without Examination)

The proposed reduction to 24 credit hours would also reduce the burden on foreign-educated individuals seeking to become admitted to practice in the District by the transfer of a qualifying MBE score with admission to practice in another U.S. jurisdiction by passing its written examination. Like the applicants who seek to become admitted by the transfer of a qualifying UBE score, applicants to the District in this category have already taken and passed a demanding bar examination. In addition, applicants in this category have been admitted to the practice of law in a U.S. jurisdiction. In July 2017, 27 U.S. jurisdictions will administer their own bar examination; of which the MBE is a component. Of this number, 10 jurisdictions permit foreign-educated individuals to become admitted upon meeting additional criteria, some of which are in the form of additional education credit hours or a qualifying LL.M. degree of 24 hours; or admission on a case-by-case "waiver."

By harmonizing the District with other "24-credit hour jurisdictions," the proposed change would mean that more foreign-educated lawyers and individuals enrolled in the District and local law schools for L.L.M. programs, or completing their additional education, could qualify to take the UBE administered in the District. It would also mean that these individuals could qualify for admission to the D.C. Bar through one of the other methods of admission without investing in more education.

B. Revise the existing requirement that completion of all of the credit hours of additional education be earned in subjects tested on the UBE to a requirement that 12 of the required 24 credit hours be earned in specific subjects listed in Rule 46 and the remaining 12 credit hours be earned in electives of the individual's choosing.

1. Existing Rule

Existing Rule 46 requires that all 26 credit hours of additional education for graduates of non-ABA approved law schools, including graduates of foreign law schools, must be earned in subjects tested on the UBE.[64] Rule 46 does not allow for qualifying elective courses unless the courses are a subject tested on the UBE. Further, Rule 46 does not specify which particular courses would qualify "as a subject tested on the UBE." In December 2016, the Committee on Admissions clarified that although existing Rule 46 does not specifically list the subjects tested on the UBE, the NCBE website does list the UBE subjects tested.[65]

---

[64] The Uniform Bar Examination may include questions in the following subject areas: Business Associations (with Agency), Civil Procedure (Federal), Conflict of Laws, Constitutional Law, Contracts & Sales (with Uniform Commercial Code Article 2), Criminal Law, Criminal Procedure, Evidence, Family Law, Real Property, Torts, Trusts and Estates, and Uniform Commercial Code Article 9 (Secured Transactions).

[65] D.C. Court of Appeals Committee on Admissions, *Guidance for Graduates of Non-ABA Approved Law Schools – 26 Semester Hours*, December 1, 2016, http://www.dccourts.gov/internet/documents/Guidance_for_Graduates_of_Non-ABA_Approved_Law-Schools_11-29-16.pdf (clarifying which subjects can be tested on the UBE based on the NCBE's website).

2. Proposed Rule

The proposed change would eliminate the requirement that completion of all of the credit hours of additional education be earned in subjects tested on the UBE. Instead, Rule 46 would require that 12 out of the 24 credit hours[66] be earned by studying specific subjects that would be described in Rule 46 and the remaining 12 credit hours be earned by studying electives in legal courses of the individual's choosing. As proposed, Rule 46 would specifically require:

- U.S. Constitutional Law (including separation of powers and federalism) (three credit hours);
- Civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States) (three credit hours);
- Professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction) (two credit hours);
- "U.S. Legal Institutions" (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system) (two credit hours);[67] and
- Common law legal reasoning/research/writing (two credit hours).

Although U.S. constitutional law and civil procedure are tested on the UBE, the other subjects are not. The UBE does not test directly on legal reasoning, research, and writing, although the Multistate Performance Test portion of the UBE does test legal reasoning and writing generally.

The remaining 12 credit hours would be filled by elective courses of the applicant's choice. These could be subjects tested on the UBE, or they could be subjects relevant to the applicant's field of practice.

---

[66] If the proposal to reduce the number of additional hours of education from 26 hours to 24 hours is not approved, the Task Force recommends 12 credit hours in the subjects described above and 14 hours in elective subjects.

[67] A course in "U.S. legal institutions" typically covers how U.S. law is developed and enforced; the role of lawyers in the U.S.; the foundational value of U.S. law; the structure and operation of U.S. government, etc. These courses are typically intended for foreign-educated lawyers/individuals and many law schools now offer these courses, or an entire LL.M. curriculum in "American Legal Studies."

3. Why is This Change Being Proposed?

i. Balance Knowledge of Fundamental American Jurisprudence with Career-Oriented Electives

Twelve credit hours in the proposed subjects would balance knowledge of fundamental American jurisprudence with 12 hours of electives that may be useful to an applicant's interests or practices in a specialized legal field.

The Task Force recognizes the high importance of a lawyer having an understanding and knowledge about the unique features of the United States' laws and legal system. Hence, courses in U.S. Constitutional Law, U.S. Legal Institutions, and civil procedure would provide a focused underpinning in the unique aspects of the U.S. legal system, particularly federalism, separation of powers, and the role of attorneys in the U.S. legal system. Courses in legal research, analysis and writing would provide a foundation in the concept of common law, and English language research and drafting skills. A course in the rules of professional conduct would educate foreign-educated individuals about the unique aspects of legal ethics rules in the United States. Although earning a qualifying score on the Multistate Professional Responsibility Exam ("MPRE") is required for admission for all applicants to the District of Columbia, legal education experts recommended to the Task Force that a legal ethics course should be included in any proposed coursework required of foreign-educated individuals.

Many of the students seeking admission to practice in a U.S. jurisdiction do so in order to practice in specialized areas in law in their home countries or because the credential of admission has a perceived professional value in their region of the world.

Most, although not all, of the District of Columbia and area law schools structure their LL.M. or non-degree programs to meet the educational requirements of New York's admission rule.[68] Between 2013 and 2016, around 800 foreign-educated individuals were enrolled in LL.M. or non-degree programs in law schools in the District of Columbia and the Washington, D.C. area that could qualify the student to take a U.S. bar examination. Of that number, almost 375 individuals took the New York bar examination; and around 40 took the D.C. Bar examination. Less than 10 individuals took the bar examinations of other U.S. jurisdictions.

Legal education experts emphasized that more LL.M. students in the local area would likely take the D.C. Bar examination, but for the difficulty in fulfilling the educational criteria in Rule 46. The education experts also noted that LL.M. students who are initially interested in taking the D.C. Bar examination typically end up taking the New York bar examination because New York's educational requirements are less administratively complicated to satisfy. New York's rule provides a list of specific, required courses, and permits a student to take up to 12 hours in elective courses that could be professionally useful for the student.

In contrast, the existing requirement in D.C. Rule 46 of 26 hours in subjects tested on the UBE has limited practical value for foreign-educated individuals because, given the subject matter requirements and no opportunity for electives in specialized areas of study, it would rarely result

[68] See 22 NYCRR 520.6(b)(3)

in an LL.M. degree for students. And the inverse is also true: completion of an LL.M. program would likely fail to satisfy the additional education requirements in number of credit hours and subject matter under the current provisions of Rule 46.

The subject matter requirements discourage qualified foreign attorneys from seeking admission to the D.C. Bar because they require investment in yet more education that is expensive and likely redundant. Many foreign-educated individuals are completing additional education in the United States on limited duration visas. The extra time required of them to complete the current educational requirements can cause difficulties with their legal immigration status in the United States.

ii. The Proposed Change Would Enable More Foreign-Educated Individuals to Qualify for Admission

Similar to the proposal to reduce the number of education credit hours from 26 hours to 24 hours, the proposed change in subject matter requirements would mean that more foreign-educated lawyers and individuals enrolled in the District and area LL.M. programs, or completing their additional education locally, could qualify to take the UBE administered in the District or could qualify for admission to the D.C. Bar through one of the other methods of admission without investing in additional courses.

A greater number of foreign-educated individuals who have completed their additional education to qualify to take the UBE for admission to practice law in other U.S. jurisdictions also likely would be able to qualify for admission to the D.C. Bar without investing in more education.

iii. The Proposal Would Provide Clarity for Students and the Committee on Admissions

In discussions with D.C. area legal educators, the Task Force learned that the existing requirement of 26 credit hours of additional education, all "substantially concentrated on a single subject tested on the Uniform Bar Examination" (UBE courses), is confusing to students and law school administrators. They are not always clear about which courses count for credit, resulting in increased inquiries to and burdens on the Committee on Admissions. The proposed combination of a list of specific courses plus considerable elective flexibility would provide welcome clarity for applicants and the Committee on Admissions.

iv. New York, Washington State and the ABA

In creating the proposal, the Task Force particularly studied the subject matter requirements in the admissions rules of New York and Washington State. It also reviewed the "Proposed Criteria for ABA Certification of an LL.M. for the Practice of Law in the United States" from the ABA Section of Legal Education and Admissions to the Bar ("ABA Proposed Criteria").[69] The

[69] The Task Force studied the admissions rule of New York because it tests and admits the vast majority of foreign-educated attorneys who seek admission to a U.S. jurisdiction. Washington State's admissions rule for foreign-educated attorneys was studied because it had been recently amended (2014) and was based on the ABA's "Proposed Criteria for ABA Certification of an LL.M. for the Practice of Law in the United States."

Task Force also relied on the experience and feedback of education experts from law schools in the District of Columbia and the surrounding area.

a. New York

Under New York's admission rule, an applicant may "cure" a deficiency in either substance or duration (but not both) in a foreign first legal degree to qualify to take the New York bar examination by earning an LL.M. from an ABA-accredited law school. The LL.M. curriculum must include a total of six credit hours in professional responsibility, legal research and writing, and American Legal Studies; and a total of six credits hours in other subjects tested on the UBE or subjects in the New York Law Examination. Twelve (12) credit hours in electives are permitted, for a total of 24 additional education credit hours.[70] Most individuals who wish to qualify to take the New York bar examination must "cure" an educational deficiency, and do so by completing an LL.M. degree.[71] The NYBOLE reported that these requirements were based, in part, on comments from law schools "as well as by the ABA proposed Model Rule on qualifications of a foreign-educated lawyer to sit for a bar exam in the United States".[72]

b. Washington State

Under Washington State's admission rule, a foreign-educated individual may qualify to take the bar examination by earning a "qualifying LL.M. degree"[73] from a law school approved by the Board of Governors of the Washington State Bar Association. Washington State's rule is expressed in minutes of instruction, typically equivalent to 26 education credit hours.

An individual must complete courses in U.S. Constitutional Law, including separation of powers and federalism (equivalent to three credits); civil procedure, including state and federal courts of the United States (equivalent to three credits); the history, structure, values, rules and responsibility of the United States legal profession and its members (equivalent to two credits);

---

[70] 22 NYCRR 520.6(b)(3)(vi). The New York Law Examination is a 50 question, two hour, open book, multiple choice, online test on New York law in several subjects. A passing score on the New York Law Examination is required in addition to a passing score on the UBE and completion of the online New York Law Course for admission to the New York bar. *See* UNIFORM BAR EXAMINATION, NEW YORK LAW COURSE & NEW YORK LAW EXAM, https://www.nybarexam.org/UBE/UBE.html (last visited June 5, 2017).

[71] *See* Diane Bosse, *Testing Foreign-Trained Applicants in a New York State of Mind*, THE BAR EXAMINER, December 2014, at 35, *available at* http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2014%2F830414-bosse.pdf.

[72] Letter from John McAlary, Executive Director, New York Board of Law Examiners to Richard L. Revesz, Dean, New York University School of Law (April 28, 2011), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20110927_comments_proposed_rule_criteria_foreign_educated_lawyers.authcheckdam.pdf.

[73] Under Washington State's admission rule (APR 3), foreign-educated individuals can sit for the bar examination (1) by earning a qualifying LL.M. degree; or (2) through admission to the practice of law together with current good standing in any jurisdiction where the common law of England is the basis of its jurisprudence, and active legal experience for at least three of the five years immediately preceding the filing of the application for admission to practice in Washington State.

and legal research, analysis, writing, oral communication, and problem solving (equivalent to two credits).

In addition to the specific courses equivalent to 10 credit hours, the individual must complete an additional eight credits in elective courses in general "principles of domestic United States law." The remaining eight credits may be in electives of the student's choosing. The Washington State rule was based on the "Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States" proposed by the ABA's Section of Legal Education and Admission to the Bar described below. [74]

Between 2010 and 2016, Washington State had a total of 159 foreign-educated bar exam-takers, of whom 40 percent passed the examination.[75]

c. ABA "Proposed Model Rule on Admission of Foreign Educated Lawyers" and "Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States."

In April 2011, the ABA Section of Legal Education and Admissions to the Bar ("Section") published for comment a "Proposed Model Rule on Admission of Foreign Educated Lawyers" and "Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States."[76] The purpose of the proposed Model Rule was to provide a set of uniform standards for the admission of foreign-educated lawyers, including a requirement that the foreign-educated lawyers complete an LL.M. for the Practice of Law in the United States. The ABA Proposed Criteria were intended to define the content of such an LL.M. program, which would "aid the state courts and bars in identifying LL.M. programs that meet certain criteria designed to prepare graduates of foreign law schools to take the bar examination and to be prepared to practice law in the United States."[77]

The Proposed Criteria included a minimum of 18,200 minutes of instruction, typically the equivalent of 26 hours of education credit. Specific subject matter requirements included courses in U.S. Constitutional Law, including principles of separation of powers and federalism (the equivalent of three credits); civil procedure, including state and federal courts of the United States

---

[74] *See* American Bar Association Section of Legal Education and Admissions to the Bar, *Proposed Model Rule on Admission of Foreign Educated Lawyers and Proposed Criteria for ABA Certification of an LL.M Degree for the Practice of Law in the United States* (2011), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20110420_model_rule_and_criteria_foreign_lawyers.authcheckdam.pdf. *See also* Washington State Bar Association APR Review Task Force, *APR Task Force Recommendations to Washington State Bar Association Board of Governors*, 4-6 (2012).

[75] *See* NATIONAL CONFERENCE OF BAR EXAMINERS STATISTICS, http://www.ncbex.org/publications/statistics/ (last visited May 10, 2017).

[76] American Bar Association Section of Legal Education and Admissions to the Bar, *supra* note 74.

[77] *Id.* at 1.

(the equivalent of three credits); the history, goals, structure, values, rules and responsibility of the United States legal profession and its members (the equivalent of two credits); and legal analysis and reasoning, legal research, problem solving, and oral and written communication (the equivalent of two credits). The equivalent of eight credits in elective courses in the "principles of domestic United States law" also had to be completed. The remaining eight credits could be fulfilled in elective courses of the student's choosing.

Ultimately, the Section's Special Committee on International Issues concluded that assessing foreign legal education and certifying LL.M. degrees for the practice of law in the United States was beyond the Section's capacity.[78]

v. Admission by Transfer or UBE Score

The subject matter requirements in the existing provisions of Rule 46 also discourage individuals who have already taken and earned a qualifying UBE score in another U.S. jurisdiction from transferring the score to the District of Columbia. The additional education that most individuals would have completed to qualify to take the UBE in another jurisdiction would fail to satisfy the subject matter requirements under existing Rule 46, even though the individual has taken the same exam and earned the same passing score as that of the District of Columbia. For example, a foreign-educated individual who has earned an LL.M. degree that meets the requirements of New York's admission rule, and who has taken the UBE in New York and earned the qualifying score of 266 for admission – the same qualifying score as that of the District – would not be admitted to the District by transfer of the UBE score unless that individual earned additional credit hours and completed additional education beyond the LL.M. degree.

vi. Admission by MBE Score with Admission to Practice Law in Another U.S. Jurisdiction (Admission Without Examination)

In July 2017, 27 U.S. jurisdictions will administer the MBE as part of their own bar examinations. Of this number, 10 jurisdictions[79] allow foreign-educated individuals to become admitted upon meeting additional criteria, some of which is in the form of additional education credit hours or a qualifying LL.M. degree. For the same reasons cited above, including student

---

[78] *See* Conference of Chief Justices, *Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar* (August 1, 2011).

Among the reasons cited by the Special Committee were that in 2011 New York had adopted amendments to its admission rule for foreign lawyers which were similar to some of the proposals from the Section. The Section's reasoning was that because New York admits the vast majority of foreign-educated lawyers seeking admission to a U.S. jurisdiction, and other jurisdictions would be able to look to New York's rule as a model, the Section believed that its proposals were no longer necessary. Additionally, although the commenters to the Section's proposals agreed that issues surrounding foreign lawyer admissions were challenging, and needed addressing, there was a lack of a strong consensus about how to address the issues.

[79] California, Massachusetts, Pennsylvania, Texas, Wisconsin, Georgia, Maryland, Ohio, Michigan, and Tennessee. Michigan may permit a foreign-educated attorney to take the Michigan bar on a case-by-case basis, and cites the completion of an LL.M. by the individual as helpful to an applicant.

demand for specialized, elective courses; the need for students to complete their studies on limited-duration visas; and ambiguity surrounding which courses qualify for credit under Rule 46 subject matter requirements, the subject matter requirements in Rule 46 currently discourage foreign-educated individuals from seeking admission to the D.C. Bar.

vii. The Proposed Changes Are Intended to Decrease Administrative Burdens on the Committee on Admissions

The Task Force's proposal is that law schools would be required to certify that an applicant's education complies with the specific course requirements in Rule 46. The Committee on Admissions would not have to analyze the content of specific courses for UBE subject matter compliance as the current Rule requires.

Notably, ABA-approved law schools can determine which courses meet the specific subject matter requirements in an admissions rule like the one proposed by the Task Force. Law school educators stay current on the various admission rules in U.S. jurisdictions for foreign-educated individuals, and modify their LL.M. programs and non-degree programs accordingly. A process through which a law school certifies to an admissions entity that its courses comply with the specific course requirements of an admissions rule appears to be a workable solution that would not add administrative burdens for the Committee.

C. Change the existing language that the additional educational requirement be satisfied "in a law school" to "from a law school" and do not require that the credits be earned in "classroom courses in" a law school.

Additionally, clarify that any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided that the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards for J.D. programs.

The D.C. Court of Appeals amended Rule 46 on February 4, 2016, effective March 1, 2016. The Court considered, but did not adopt an amendment that would have required that the additional education of 26 credit hours occur "in classroom courses in a law school . . .".[80] Thus, Rule 46 currently provides that the additional 26 credit hours of education take place, "in a law school that at the time of such study was approved by the ABA…".

The Court of Appeals has specifically asked for the D.C. Bar's view on whether to require that completion of the additional education be in "classroom courses in" a law school."[81]

[80] *See* Exhibit E, *District of Columbia Court of Appeals Rule 46 – Admission to the Bar*. *See also* Exhibit F, *District of Columbia Court of Appeals Rule 46 – Admission to the Bar (as Proposed by the D.C. Court of Appeals, October 28, 2015).*

[81] *See* Exhibit G, *Letter from Timothy Webster, President, D.C. Bar, to The Honorable Eric Washington, Chief Judge, D.C. Court of Appeals (December 22, 2015)*

The phrase "classroom courses in" a law school is subject to broad interpretation. It appears that the intended effect of the amendment that the Court considered is to require that the students attend courses in person, on campus, and in the United States at an ABA-accredited law school. However, the language is open to a wide variety of interpretations, given the increased use of distance learning at law schools, and the rapid, ongoing advances in technology that allow for a high quality, interactive educational experience through distance learning.

The Inbound subgroup and members of the Task Force solicited feedback from legal education experts about the phrase "classroom courses in" a law school. The experts offered a variety of interpretations, ranging from a conclusion that all courses must be taught exclusively on campus and in person; to a belief that any form of simultaneous, "live" courses, whether conducted in person or online would be permitted, and that only pre-recorded courses would be prohibited. Other interpretations offered were that only in-person classes would be permitted, whether or not they took place physically in the United States; or that direct interaction would be required between faculty and students in a brick-and-mortar law school classroom where the professor either appeared in person, or was broadcast into the classroom live via online technology.[82]

Because the Task Force is proposing that any amount of the 24 additional credit hours may be completed through distance education, the Task Force's proposed language would clarify that all 24 credit hours must be completed through courses "from a law school" that at the time of study was accredited by the ABA, provided that the law school issuing the credit hours certifies in writing that its distance education methods comply with the ABA's distance education standards. Although ABA standards apply to the accreditation of only J.D. programs, and the ABA does not accredit LL.M. programs, the education standards provide a known benchmark of quality.

D. **Clarify that any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, if the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards for J.D. programs.**

1. Current Rule

Under the current provisions of Rule 46, completion of the additional education must be "in a law school" that at the time of the study was approved by the ABA. The use of distance education to complete course work is not specifically addressed in the Rule.

[82] The ABA Standards and Rules of Procedure for Approval of Law Schools 2016-17, Standard 311. Academic Program and Academic Calendar provides an interpretation of "classroom courses in" a law school. Under Standard 311(a), "A law school shall require, as a condition of graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction." Interpretation 311-1(a) states, "In calculating the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction for the purpose of Standard 311(a0, the credit hours may include: (1) Credit hours earned by attendance in regularly scheduled classroom sessions or direct faculty instruction; (2) Credit hours earned by participation in a simulation course or law clinic in compliance with Standard 304; (3) Credit hours earned through distance education in compliance with Standard 306; and Credit hours earned by participation in law-related studies or activities in a country outside the United States in compliance with Standard 307.

2. Proposed Rule

The Task Force proposes that Rule 46 should clarify that any amount of the credit hours of additional education may be completed through distance education methods from an ABA-accredited law school, if the law school issuing the credit hours certifies in writing that its distance education methods comply with the ABA's distance education standards. The completion of any amount of the credit hours in courses conducted in person would also continue to meet the criteria of the required additional education.

The Task Force's proposal incorporates the definition of distance education in ABA Standard 306, "A course in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously."[83] This technology may include: the internet; open broadcast or closed circuit systems; wireless communications; audio or video conferencing. DVDs, CD-ROMs, and other pre-recorded media may be used, but only to supplement one of the more interactive components listed above. Thus, under Standard 306, a course in which up to one-third of the course is conducted by distance education methods will not be considered a distance education course.

Synchronous education methods use real-time interaction to "approximate face-to-face teaching strategies" (e.g., live classes held by online video teleconferencing software).[84] Asynchronous education methods are methods with "lag time between the presentation of instructional stimuli and student responses" (e.g., threaded discussions, emails, and pre-recorded videos).[85]

The Task Force's proposal would *not* allow completion of the additional education through traditional correspondence courses. The U.S. Department of Education characterizes a correspondence course as a home-based class where fixed media (e.g., printed materials, or recorded video or tape recordings) are not combined with more interactive, telecommunications components. Although ABA Education Standard 306 does not specifically prohibit

---

[83] *See* Exhibit I, *ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017: Standard 306: Distance Education.* ABA Standards and Rules of Procedure to Approval of Law Schools 2016-17, Standard 306 ("Standard 306"). Distance education courses are awarded J.D. credit only if the academic content, the method of course delivery, and the method of evaluating student performance are subject to the same, rigorous approval process as face-to-face courses. Regular and substantive interaction between students and instructors; regular monitoring of student effort; and "opportunity for communication about that effort are all required of distance education courses at ABA-accredited law schools. Additionally, ABA-accredited law schools must establish an effective process for verifying student identity in any distance education courses.

[84] *See, e.g.*, WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW STUDENT EXPERIENCE, https://onlinelaw.wustl.edu/experience/ (last visited May 10, 2017).

[85] Barbara Means et al, *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*, U.S. Department of Education (2010), 1-4, *available at* https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf.

correspondence courses, the standard is written in such a way that a traditional correspondence course would not be acceptable distance learning.

3. Rationale Supporting This Proposal- Why Is This Change Being Proposed?

Allowing the additional educational requirement to be satisfied through distance learning would make the D.C. Bar more attractive as a bar for foreign-educated lawyers to join, while maintaining the value of acquiring a foundation in American legal education. The proposal would provide opportunities for admission to those foreign-educated individuals who may not have the financial means to obtain visas, travel and reside in the United States for the length of time needed to complete the additional education in-person; or who may be required to give up employment in their home countries while completing their additional education in the United States.

Because of uncertainty surrounding travel regulations and student visas, and how recent travel policies may affect them, foreign students may be wary of travel to the United States. The use of distance learning to complete their additional education would permit individuals to start or continue their studies.[86]

As described in more detail below, methods of distance learning have evolved substantially from the simple correspondence courses of old and can provide effective legal education. The ABA has also recently become more flexible in authorizing the use of distance learning.

i. Distance Learning Can Provide Effective Legal Education

Distance legal education from ABA-accredited law schools can provide effective education for foreign-educated individuals in subject matter competence and in the acculturation of U.S. legal norms and values.

The technology used to deliver distance legal education has improved dramatically in recent years and continues to evolve. Online legal education has advanced to the point that quality, real-time interactive education can be offered to students who are not in the same physical location as their professors or their classmates. Some LL.M. programs for foreign-educated attorneys and individuals are conducted entirely through distance education.[87]

Online classes can be rigorous and even more demanding of student participation than in-person classes. Online law school classrooms, which are intentionally small, have "no back row" where students can withdraw from discussion. The consistent class participation has also helped students acculturate to the legal education community. Asynchronous education methods can involve extensive, written reflection assignments. Synchronous classes can be capped in size to ensure that all students participate in each live, online class session. Online courses can feature

---

[86] Sloan, *supra* note 6.

[87] *See, e.g.*, WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW STUDENT EXPERIENCE, https://onlinelaw.wustl.edu/experience/ (last visited May 10, 2017). UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW ONLINE MASTER OF LAWS (LL.M.), http://onlineLL.M..usc.edu/ (last visited May 10, 2017). The University of Southern California Gould School of Law also offers LL.M. programs on campus.

both online, live classes by teleconference and asynchronous, written assignments or discussion boards, which compel students to interact frequently with their peers and instructors.[88]

A wide variety of means exist by which law schools can verify student attendance, assignment completion, and examination performance, including online test proctoring, computer log-in verifications, and examination software.

ii. Distance Education Around the Country

Ten jurisdictions, including New York, specifically prohibit the use of distance learning for the completion of additional education credits for foreign-educated bar applicants. Others are silent on the issue. [89] However, distance education credits for foreign-educated individuals are currently accepted in both Washington State and California.[90] In Washington State, the admission rule is silent about distance education,[91] but the rule has been interpreted to permit distance learning. In California, which is second only to New York in the number of foreign-educated attorney admissions, at least one law school has developed a distance education program for some foreign-educated attorneys that qualifies them to take the California bar examination.[92]

Although New York prohibits the use of distance learning for foreign-educated bar applicants, the local component of its bar exam, which tests New York state law, is conducted entirely online. Applicants who wish to be admitted to New York must complete an online course and the online examination, in addition to earning a passing score on the UBE.[93] The distance education course, New York Law Course ("NYLC"), is a 15-hour on-demand video lecture course in the subjects of Administrative Law, Business Relationships, Civil Practice and Procedure, Conflict of Laws, Contracts, Criminal Law and Procedure, Evidence, Matrimonial and Family Law, Professional Responsibility, Real Property, Torts and Tort Damages, and Trusts, Wills and

---

[88] *See, e.g.*, WELCOME TO THE @WASHULAW; ONLINE LL.M. IN U.S. LAW PROGRAM!, https://www.youtube.com/watch?v=uHmFxoBdlIg (last visited May 10, 2017) (live, online class sessions can include discussion and involve the Socratic Method, previously only practiced in in-person classes).

[89] In addition to New York, the jurisdictions that prohibit the use of distance learning for the completion of additional education credits for foreign-educated bar applicants are: Georgia, Massachusetts, Missouri, New Hampshire, New York, Pennsylvania, Tennessee, Texas, and Wisconsin.

Ten U.S. jurisdictions have admissions rules which are silent or ambiguous on the use of distance learning for the completion of additional education by foreign-educated bar applicants: Alabama, Alaska, the District of Columbia, Louisiana, Maryland, Michigan, Ohio, Utah, Washington State, and West Virginia.

[90] *See* WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW STUDENT EXPERIENCE, https://onlinelaw.wustl.edu/experience/ (last visited May 10, 2017); UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW ONLINE MASTER OF LAWS (LL.M.), http://onlineLL.M..usc.edu/ (last visited May 10, 2017).

[91] Washington State APR 3(b)(iii).

[92] UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW ONLINE MASTER OF LAWS (LL.M.), http://onlineLL.M..usc.edu/ (last visited May 10, 2017).

[93] *See* UNIFORM BAR EXAMINATION, NEW YORK LAW COURSE & NEW YORK LAW EXAM, https://www.nybarexam.org/UBE/UBE.html (last visited June 5, 2017).

Estates. The applicant can take the on-line NYLC course anywhere in the world and complete the course within one year before sitting for the UBE or up to three years after successful completion of the UBE in New York or in another UBE jurisdiction in the case of a transfer score application.

iii. Recent Developments in Technology to Deliver Distance Legal Education Have Improved Online Legal Education

There have been significant advances in distance legal education technology, as well as the adoption of distance education in law schools in the last 10 years. Technology for delivering distance legal education continues to evolve, to the extent that some LL.M. programs for foreign-educated individuals are conducted entirely through distance education.[94] Recent improvements in Internet bandwidth, video teleconferencing, and online class administration software have made more interactive, better-quality distance legal education possible.[95] Thus, distance education today does not resemble the static, non-interactive correspondence courses of years ago.

Online legal education experts from several law schools reported to the Inbound subgroup that with proper design, any law school course could be taught effectively online, with perhaps the exception of certain specialty practice clinics.

Jurisdictions that specifically rejected distance education for foreign-educated individuals generally did so before the most recent advances in distance learning technology. In 2008, the Supreme Court of Georgia rejected the use of distance learning based on testimony from an ABA consultant that distance learning was inappropriate for first-year courses and that the on-campus environment was "formative" for students.[96] In 2010, the Minnesota Board of Law Examiners rejected distance education as well as attendance of individuals at non-ABA-accredited law schools to take that state's bar examination, generally based on the same rationale.

New York has never permitted credit for distance education for foreign-educated individuals. The NYBOLE and the New York Court of Appeals view legal education conducted in person in a law school in the United States as necessary to acculturate foreign individuals to the U.S. legal community and to legal English language.

---

[94] *See, e.g.*, WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW STUDENT EXPERIENCE, https://onlinelaw.wustl.edu/experience/ (last visited May 10, 2017); UNIVERSITY OF SOUTHERN CALIFORNIA GOULD SCHOOL OF LAW ONLINE MASTER OF LAWS (LL.M.), http://onlineLL.M..usc.edu/ (last visited May 10, 2017).

[95] *See, e.g.*, WELCOME TO THE @WASHULAW ONLINE LL.M. IN U.S. LAW PROGRAM!, https://www.youtube.com/watch?v=uHmFxoBdlIg (last visited May 10, 2017); 2U NO BACK ROW, https://2u.com/#no-back-row (last visited May 10, 2017).

[96] GEORGIA SUPREME COURT COMMITTEE ON LEGAL EDUCATION, COMMITTEE REPORT AND RECOMMENDATIONS TO THE BOARD OF BAR EXAMINERS AND THE SUPREME COURT REGARDING ANY POSSIBLE REVISIONS TO THE RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN GEORGIA GOVERNING EDUCATIONAL ELIGIBILITY AND ANY OTHER RELEVANT ISSUE (2008), *available at* https://www.gabaradmissions.org/committee-report#part2_1. Between 2010 and 2016, 62 foreign-educated individuals took the bar examination in Georgia; 38 percent passed (*See* NATIONAL CONFERENCE OF BAR EXAMINERS STATISTICS, http://www.ncbex.org/publications/statistics/ (last visited May 10, 2017).

iv. English Language Proficiency

ABA-accredited law schools generally have rigorous English language fluency requirements, such as testing, live interviews, and/or pre-requisite courses in legal English.[97] Testing may include a minimum score on the Test of English as a Foreign Language ("TOEFL") as a requirement for admission to an LL.M. program.[98] Rule 46 has never included an English proficiency requirement, and the Task Force if not proposing that it do so.

v. ABA Distance Education Standards - Compliance with ABA Education Standards is a Safeguard of Quality in Distance Legal Education

The Task Force is proposing that law schools certify that the distance education courses they offer as part of an LL.M. program or other courses offered for foreign-educated individuals, meet the ABA distance education standard that applies to J.D. programs.

The ABA Standards and Rules of Procedure for Approval of Law Schools apply to J.D. programs — the only law school program the ABA approves. The ABA "acquiesces" to an LL.M. program. Acquiescence means that an ABA-approved law school may not establish any degree program other than its J.D. degree, unless the school is fully approved and the other degree program will not detract from a law school's ability to maintain a sound J.D. program. The school must obtain acquiescence from the ABA before commencing such a program. [99]

Although the education standards do not apply to LL.M. programs, the standards provide an established benchmark of quality.[100] It is in law schools' interests to offer high quality LL.M. programs for foreign-educated individuals that may qualify the students to take a U.S. bar exam or provide a professional credential. The ABA also requires law schools to employ means of ensuring the educational quality and methods of verifying student performance and identity in distance learning courses.[101]

---

[97] *See, e.g.*, WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW LL.M. ADMISSIONS, https://onlinelaw.wustl.edu/LL.M./admissions/ (last visited May 10, 2017) (interview required for admission at the Washington University in St. Louis online LL.M. program - conducted in English via internet video conference.).

[98] The TOEFL is an extensive test requiring proficiency in reading, listening, speaking, and writing.

[99] S*ee* ABA Standard 313. *See also* POST-J.D. AND NON-J.D. PROGRAMS, http://www.americanbar.org/groups/legal_education/resources/LL.M.-degrees_post_j_d_non_j_d.html (last visited May 18, 2017).

[100] *See* ABA Standards and Rules of Procedure to Approval of Law Schools 2016-17, Standard 313. American Bar Association; POST J.D. AND NON J.D. PROGRAMS, http://www.americanbar.org/groups/legal_education/resources/LL.M.-degrees_post_j_d_non_j_d.html (last visited May 10, 2017).

[101] ABA Standard 306(g).

vi. The ABA Has Become More Flexible About Distance Legal Education

The ABA has also become more flexible about the use of distance education in J.D. programs since Georgia and Minnesota studied the issue.

The ABA limits the use of distance education in approved J.D. programs. The ABA does not allow a distance education course to count for J.D. credit until the student has completed 28 credits in in-person courses. A student is limited to completing a total of 15 credits by distance education — an increase in 2014 from the previous limit of 12 credits.[102]

In 2013, the ABA granted a variance from its limitation on the use of distance education in J.D. programs to Mitchell-Hamline School of Law. In the Mitchell-Hamline Hybrid[103] J.D. program, 50 percent of class instruction time is in person and 50 percent is online.[104] The Hybrid J.D. program began in January 2015; the ABA has extended the variance to 2022. There has not yet been a graduating class. The variance caps the program at 96 seats per entering class. There were 85 students in the entering class of 2015. For the entering class of 2016, there were 400 applicants for the 96 seats.[105] The school describes its program as "consistent with the growing need for innovation in order to facilitate access to legal education and promote access to justice."[106]

The use of distance education has also increased in recent years in in-person J.D. programs. John Marshall Law School in Chicago now offers over 50 courses online.[107] These courses are offered in both the J.D. and LL.M. programs; ABA Standard 306 applies to J.D. program coursework at John Marshall.

Most of the legal education experts with whom Task Force members held discussions noted that distance education was simply "different" from in-person learning. Distance education did not automatically equate to education of lesser quality. Most legal educators expressed that ABA-approved law schools still require that the requirements in ABA Standard 306 are met in LL.M. programs. Several legal educators noted that there is less "passive listening" and more active

---

[102] ABA Standard 306.

[103] A "hybrid" course involves the use of in-person class sessions with online or distance learning components. *See, e.g.*, HYBRID J.D. PROGRAM, http://mitchellhamline.edu/academics/juris-doctor-program/hybrid-j-d-program/ (last visited May 16, 2017). Under ABA Standard 306, a hybrid course becomes "distance" education when more than one-third of the instruction time takes place by distance rather than in-person learning.

[104] *See, e.g.*, MITCHELL-HAMLINE SCHOOL OF LAW HYBRID J.D. PROGRAM, http://mitchellhamline.edu/about/mitchell-hamlines-hybrid-program/ (last visited May 10, 2017).

[105] Eric Janus et al, *William Mitchell College of Law's Hybrid Program for J.D. Study: Answering the Call for Innovation*, THE BAR EXAMINER, September 2014, at 28, *available at* http://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1265&context=facsch.

[106] *Id.* at 30.

[107] *See* JOHN MARSHALL LAW SCHOOL J.D. LAW COURSES ONLINE, http://www.jmls.edu/academics/jd/jd-online.php (last visited May 30, 2017).

listening and engagement by students when the professor asks questions through an online bulletin board or in a live video teleconference class, than in an in-person class.

One law school educator expressed concern that compliance with the ABA education standards, alone, is not enough to prove that a distance education (whether online or a hybrid) program is a quality program.

vii. Empirical Studies

The Task Force did not find any published studies that examined differences in legal education learning or outcomes between students taking in-person classes and students taking online courses. An empirical study conducted in a graduate program that is somewhat similar in curriculum to a J.D. program showed a one percent difference in the failure rate between students learning substantive subject matter courses online compared to students taking in-person courses.

a. California State University

In 2013, a study at the California State University in San Bernardino followed students in a post-graduate Masters of Public Administration ("MPA") program. The MPA program includes courses in methodology and procedure, and courses in substantive subject matters, making it somewhat similar to a law school curriculum.[108]

The study indicated that class participation in online courses seemed to be less intimidating for students,[109] a finding similar to the reports from legal educators who developed and taught online courses. Sixty percent of the online students overall in the MPA program reported that their participation increased in the online setting.

Five percent of students in the online, core substantive courses failed, compared to four percent in the in-person classes. Eight percent of the students failed in the online methods courses, compared to three percent of the students in the in-person methods courses. However, the failure rate was due largely to students dropping out of the online class rather than by failing examinations.[110]

Although the online methods/procedural courses were somewhat more challenging to administer and complete compared to the in-person courses,[111] 87 percent of the students in the

[108] Anna Ya Ni, *Comparing the Effectiveness of Classroom and Online Learning: Teaching Research Methods*, 19 J. PUB. AFF. EDUC. 2, 199-215.

[109] *Id.* at 211.

[110] *Id.* at 205-11. The study did not indicate why the students dropped out. However, 93% of the online students were employed full-time while taking classes, compared to 70% of the in-person students who were employed full-time while taking classes.

[111] The study indicated that perhaps improved course design could eliminate the challenge.

online methods courses rated the learning experience as successful. One hundred percent of the students in face-to-face methods courses rated the learning experience as successful.

The study noted that "some educational programs simply may not fit into an online setting," citing medical and physical education as such possibilities.[112]

b. U.S. Department of Education

In 2010, the U.S. Department of Education reviewed over 1,000 previous studies of online learning that had taken place between 1996 and 2008.[113] These studies examined all levels of education, but focused mainly on college and post-graduate education, not including law school. Students who received online instruction performed modestly better than those receiving only in-person instruction. Student achievement was even higher in hybrid programs. The most positive aspect of hybrid programs appeared to be that students spent more time with the class materials. The Department noted that an online-only or hybrid program was not necessarily better than an in-person program as a medium of instruction because there may be other factors causing the higher student achievement.

4. Conclusion

The efficacy of distance education has never been definitively concluded and continues to be studied.[114] However, the Task Force believes its proposed change to Rule 46 that would specifically permit the use of distance education to fulfill all of the required additional education credit hours addresses the current landscape in which changes in legal education and the evolution of technology will increase the use and acceptance of distance learning.

Regardless of the mode of obtaining hours to qualify to satisfy the additional substantive credit hours from an ABA-approved law school, the applicant has the extraordinary challenge of either (1) completing the demanding bar examination for admission to the D.C. Bar; (2) completing the UBE in another jurisdiction and attaining a high enough score to transfer to the District; or (3) gaining admission by written examination to another jurisdiction's bar, with a qualifying MBE score.

In the latter two paths of admission, the additional educational requirement is somewhat analogous to the "local law component" of the UBE.[115] That is, the applicant needs to show

---

[112] Ya Ni, *supra* note 108 at 211.

[113] Barbara Means et al, *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*, U.S. Department of Education (2010), *available at* https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf.

[114] No particular source of education gives rise to a higher rate of disciplinary complaints at the D.C. Office of Disciplinary Counsel.

[115] The District of Columbia does not have a "local law component" of the UBE. As of July 2018, 10 of the 28 UBE jurisdictions will have a "local law component" which generally will take the form of a course, a test, or both on jurisdiction-specific distinctions from general legal principles. Six of these local components are offered online, two require in-person attendance, and two others are still under development.

completion of a certain number of credit hours prior to admission. In all three noted paths for admission to practice in the District, the bar examination works to ensure that only those qualified individuals (domestic and foreign law school graduates) are able to be admitted to the District of Columbia.

E. Amend the phrase "ABA-approved" to "ABA-accredited," and change the word "approved" to "accredited" in referring to law schools accredited by the ABA as necessary throughout the Rule.

Change "Rules of Professional Responsibility" to "Rules of Professional Conduct" to reflect nomenclature of the ABA Model Rules.

The Task Force proposes a minor, administrative change to Rule 46 to reflect the nomenclature used by the ABA Council of the Section for Legal Education and Admission to the Bar ("Council"). The Council is described as the "accreditor" of law schools for the ABA, although ABA accreditation literature uses the phrase "ABA-approved" as shorthand for the more complete concept of full accreditation by the Council.[116] Although the definitions contained in the ABA's literature on accreditation list the term "approved law school," the Council is also referred to as an "accreditation committee."[117] In addressing "frequently asked questions," the ABA describes the general process as the "accreditation" process for law schools.[118]

Because the Council acts as the "accrediting" body for law schools, the Task Force proposes that the term "ABA-approved" be changed to "ABA-accredited," and that the term "approved" be changed to "accredited" in referring to ABA accreditation in Rule 46.[119] This

---

See supra note 70. The local law component of the New York Bar examination ("New York Law Exam") consists of a 50-question, two hour, open book, multiple choice, online test on New York law in several subjects. Exam-takers must answer 30 questions correctly (60 percent). Applicants are permitted to take the New York Law Exam up to one year before the taking the UBE or up to three years after passing the UBE, subject to the application filing deadline of New York Court of Appeals Rule 520.12(d). There is no restriction on the right of a failing applicant to retake the New York Law Examination.

[116] *See* ABA ACCREDITATION OVERVIEW, http://www.americanbar.org/groups/legal_education/accreditation.html (last visited May 10, 2017); ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf at v, 5.

[117] ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_standards_definitions.authcheckdam.pdf at ix-x.

[118] *See* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR FREQUENTLY ASKED QUESTIONS, http://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions.html (last visited May 10, 2017).

[119] ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_standards_definitions.authcheckdam.pdf at ix-x.

proposed change would occur throughout Rule 46 but would have no effect on the application or administration of the Rule.

The Task Force proposes that the term "Rules of Professional Responsibility" be changed to "Rules of Professional Conduct" in Rule 46 to reflect nomenclature of the ABA Model Rules.[120]

F. **The Task Force Recommends that the Court of Appeals Committee on Admissions Consider Creating a "Frequently Asked Questions" Webpage and Issue Advisory Guidance on How it Interprets Rule 46.**

Educators from the law schools in the District of Columbia and the surrounding area reported that students and legal educators appreciate the NYBOLE's webpages that offer guidance and explanations about how the NYBOLE interprets New York's admission rules. The NYBOLE's guidance webpage is helpful in explaining how the NYBOLE addresses ambiguity surrounding the education required of many foreign attorneys, including "frequently asked questions."[121]

The D.C. Committee on Admissions already has begun to issue guidance to bar applicants and law schools. In December 2016, the Committee published a guidance memorandum about subjects qualifying for credit under Rule 46; amended in March 2016.[122] Similar guidance memoranda may be helpful where questions arise on particular issues under Rule 46.

Thus, the Task Force recommends that the Committee on Admissions consider creating a "Frequently Asked Questions" webpage and periodically publish guidance on its interpretation of Rule 46 for the benefit of bar applicants, students, and law schools. It is anticipated that such written guidance may minimize routine inquiries to the Committee, and provide consistency of responses. To be sure, one of the benefits of the proposed amendments to the Rule will be to make the additional educational requirements clearer, thereby lessening the burden on the Committee on Admissions to provide guidance. Nevertheless, questions will arise even under the proposed amendments, and the Task Force believes that clarifying guidance will be well received by applicants and law schools alike.

---

[120] MODEL RULES OF PROFESSIONAL CONDUCT, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last visited July 6, 2017).

[121] NEW YORK STATE BOARD OF LAW EXAMINERS: FOREIGN LEGAL EDUCATION, https://www.nybarexam.org/Foreign/ForeignLegalEducation.htm (last visited May 10, 2017).

[122] D.C. Court of Appeals Committee on Admissions, *Guidance for Graduates of Non-ABA Approved Law Schools – 26 Semester Hours*, December 1, 2016, *available at* http://www.dccourts.gov/internet/documents/Guidance_for_Graduates_of_Non-ABA_Approved_Law-Schools_11-29-16.pdf.

VI. CONCLUSION

The Task Force carefully considered the proposals from its Inbound subgroup. It reviewed the work of the Inbound subgroup, including local and national trends in the admission of foreign-educated attorneys; admissions rules in other U.S. jurisdictions; discussions with legal education experts and admissions officials; and new developments in distance legal education.

As more jurisdictions adopt the Uniform Bar Examination, more lawyers will be poised to meet the legal needs of clients domestically and abroad. The Task Force believes that its proposed changes to Rule 46 would continue to maintain competence standards for admission to the D.C. Bar while eliminating barriers to the admission of qualified, foreign-educated individuals.

The requirements of 24 additional education credit hours from an ABA-accredited law school that balances course content in American jurisprudence with electives of the individual's choosing would provide for attorney competence and protection of the public, and would meet an applicant's desire to take electives in specialized areas that would be useful in meeting career goals. The ability to fulfill all of the additional credit hours by distance learning from an ABA-accredited law school would provide educational access to foreign-educated individuals who otherwise may not have the means or opportunity to complete the additional education required under the Rule.

The proposed changes would not be expected to increase the administrative burdens on the Court's Committee on Admissions because law schools would be required to certify that the foreign-educated applicant's additional education meet the requirements under the Rule.

Increasing numbers of foreign-educated individuals have demonstrated interest in becoming admitted to the District of Columbia. The Task Force believes that its proposed changes to Rule 46 would provide effective educational requirements for maintaining the value of acquiring a foundation in American legal education, and would enable more foreign-educated individuals to meet the educational requirements.

VII. REDLINE OF TASK FORCE PROPOSED CHANGES TO RULE 46-ADMISSION TO THE BAR

Proposed changes from the Global Legal Practice Task Force are represented by a strikethrough for ~~deletions~~ and a double underline for additions.

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study ~~in~~ from a Law School Not ~~Approved~~ Accredited by the ABA. An applicant who graduated from a law school not ~~approved~~ accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by

NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule; and

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule; and

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(e)(3)(B)(iii) *(Renumbered)* Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

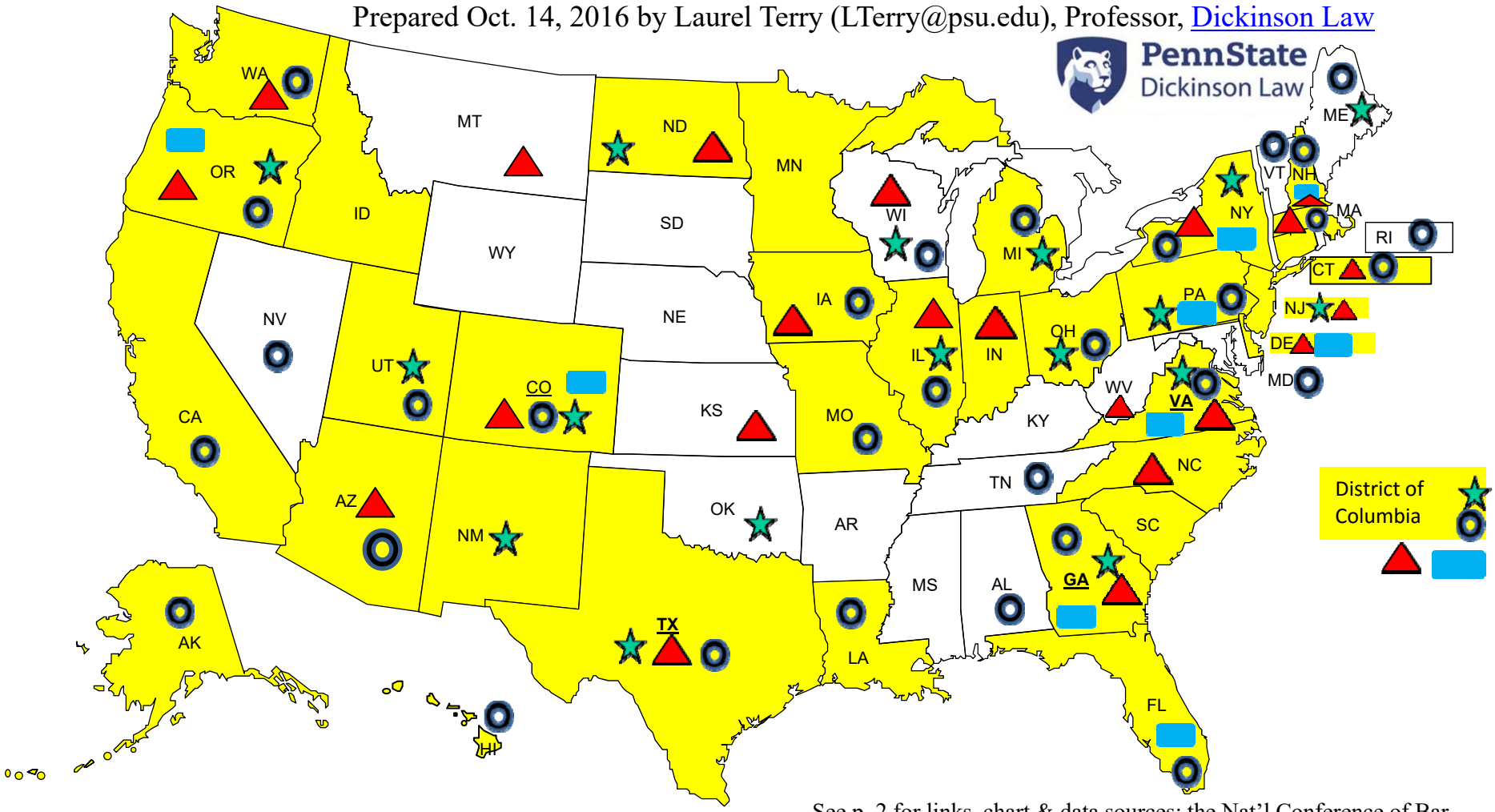
(e)(3)(B)(v) (*Renumbered)* Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

EXHIBIT A

Jurisdictions with Rules Regarding Foreign Lawyer Practice

Prepared Oct. 14, 2016 by Laurel Terry (LTerry@psu.edu), Professor, Dickinson Law



LEGEND (see back page for additional information)

See p. 2 for links, chart & data sources: the Nat'l Conference of Bar Examiners and the ABA Center for Professional Responsibility

Yellow shading = has a foreign legal consultant rule

= rule permits temporary practice by foreign lawyers (also known as FIFO or fly-in, fly-out)

= rule permits foreign pro hac vice admission

= rule permits foreign in-house counsel

= has had at least one foreign-educated applicant sit for a bar exam between 2010 and 2014.

Summary of State Foreign Lawyer Practice Rules (10/14/16*)

Prepared by Laurel Terry (LTerry@psu.edu), Professor, Dickinson Law

PennState Dickinson Law
DICKINSON LAW | PRACTICE GREATNESS

Based on implementation information contained in charts prepared by the ABA Center for Professional Responsibility

dated 4/20/2016 and 9/29/16 available at http://tinyurl.com/ABA-MJP-Chart and http://tinyurl.com/ABA-20-20-Chart

*This document is regularly updated. You can find the most recent version online on this ABA webpage and my webpage: *see* http://tinyurl.com/laurelterrymap

There are five methods by which foreign lawyers might ***actively*** practice in the United States: 1) through a license that permits only limited practice, known as a foreign legal consultant rule [addressed in ABA MJP Report 201H]; 2) through a rule that permits temporary transactional work by foreign lawyers or arbitration or mediation [addressed in ABA MJP Report 201J]; 3) through a rule that permits foreign lawyers to apply for *pro hac vice* admission in which a court grants a lawyer to appear temporarily in ongoing litigation [ABA Resolution #107C (Feb. 2013)]; 4) through a rule that permits foreign lawyers to serve as in-house counsel [ABA Resolutions #107A&B (Feb. 2013)]; and 5) through full admission as a regularly-licensed lawyer in a U.S. jurisdiction. (The ABA does not have a policy on Method #5 although there are a number of foreign lawyers admitted annually; information about state admission rules is available in NCBE's annual COMPREHENSIVE GUIDE TO BAR ADMISSIONS. *See also* NCBE Statistics.) Links to the ABA policies appear in the chart below.

In 2015, the Conference of Chief Justices [CCJ] adopted a Resolution that urged states to adopt explicit policies on issues 1-4 and on the issue of "association." (For a related map, *see* here). States that are considering whether to adopt rules regarding these five methods of foreign lawyer admission might want to consider the model provided in *International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience*, available at http://tinyurl.com/GAtoolkit. The CCJ endorsed this "Toolkit" in 2014.

Jurisdictions with FLC Rules	Explicitly Permit Foreign Lawyer Temporary Practice	Jurisdictions that Permit Foreign Lawyer Pro Hac Vice	Jurisdictions that Permit Foreign In-House Counsel	Since 2010 has had a foreign-educated full-admission applicant
33	11	18	23	32
AK, AZ, CA, CO, CT, DE (Rule 55.2), DC, FL, GA, HI, ID, IL, IN, IA, LA, MA, MI, MN, MO, NH, NJ, NM, NY, NC, ND, OH, OR, PA, SC, TX, UT, VA, WA	CO, DE, DC (Rule 49(c)(13) (RPC 5.5(d)), FL, GA, NH, NM (includes transactional matters), NY, OR, PA, VA	CO, DC (Rule 49), GA (Rule 4.4), IL, ME, MI, (Rule 8.126), NJ, NM, NY, ND, OH (Rule XII), OK (Art. II(5)), OR, PA, TX (Rule XIX), UT (appellate courts only). (Note: not on the CPR's list. Cf. Utah Rule of Appellate Procedure 40 with Rule 14-806), VA, WI	AZ (R. 38(a) , CO (205.5), CT, DC, DE (Rule 55.1), GA, IL, IA, IN, KS, MA, MT, NH, NJ, NC, NY, ND, OR (allowed on a temporary basis under Rule 5.5(c); further study underway); TX, VA (Part 1A), WA, WI, WV	AL, AK, AZ, CA, CO, CT, DC, FL, GA, HI, IL, IA, LA, ME, MD, MA, MI, MO, NV, NH, NY, OH, OR, PA, RI, TN, TX, UT, VT, VA, WA, WI
ABA Model FLC Rule (2006)	ABA Model Rule for Temporary Practice by Foreign Lawyers	ABA Model Pro Hac Vice Rule	ABA Model Rule 5.5 (d) re Foreign In-House Counsel and Registration Rule	No ABA policy; Council did not act on Committee Proposal; see state rules
ABA Commission on Multijurisdictional Practice web page	State Rules—Temporary Practice by Foreign Lawyers (ABA chart)	Comparison of ABA Model Rule for Pro Hac Vice Admission with State Versions and Amendments since August 2002 (ABA chart)	In-House Corporate Counsel Registration Rules (ABA chart); Comparison of ABA Model Rule for Registration of In-House Counsel with State Versions (ABA chart); State-by State Adoption of Selected Ethics 20/20 Commission Policies (ABA chart)	NCBE COMPREHENSIVE GUIDE TO BAR ADMISSIONS

*Note: As the map on the back of this page shows, six jurisdictions (CO, DC, GA, NY, OR, VA) have rules for all 5 methods; four jurisdictions have rules on 4 methods (IL, NH, PA and TX); and thirteen jurisdictions have rules on 3 methods (AZ, CT, DE, FL, IA, MA, MI, NJ, ND, OH, UT, WA, and WI). [Prior editions of the map erroneously included PA among the "five method" states. This chart covers 50 U.S. states & the District of Columbia.]

EXHIBIT B

CONFERENCE OF CHIEF JUSTICES

Resolution 2

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

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

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

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

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

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

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

WHEREAS, in 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 C

Defending Liberty
Pursuing Justice

William C. Hubbard
President

AMERICAN BAR ASSOCIATION

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5109
Fax: (312) 988-5100
abapresident@americanbar.org

November 19, 2014

Mr. Aldo Bulgarelli
President
Council of Bars and Law Societies of Europe
Rue Joseph II, 40/8
B 1000 Brussels
Belgium

Dear Aldo:

On behalf of Immediate Past President James Silkenat and myself, I would like to express our appreciation for the CCBE's engagement with the ABA on an ongoing basis regarding issues impacting legal services in the pending Transatlantic Trade and Investment Partnership (TTIP) negotiations.

I understand that representatives of our organizations had a productive discussion at the ABA Annual Meeting in Boston and that you have graciously extended an invitation for several ABA members to join in the November 27th meeting with Chief Judge Jonathan Lippman to be held in conjunction with the CCBE Plenary Session in Brussels. Continuing and enhancing the dialogue among the CCBE, the ABA, the Conference of Chief Justices, and other U.S. organizations such as the National Conference of Bar Presidents is important to advance our shared goal of facilitating the ability of our respective lawyers to effectively serve their clients through cross-border practice in a way that also adequately protects those clients and the public.

Because the U.S. system is grounded on state-based judicial regulation of the legal profession, progress in the United States must be made on a state-to-state basis. Trade negotiations such as the TTIP are useful mechanisms to facilitate dialogue on liberalization, and the ABA welcomes the opportunity to work closely with the CCBE to ensure that clients have the legal services access they need in both the U.S. and the EU. As was discussed in Boston, we believe that the more constituencies that speak to regulators here and in the EU about these important issues, the more effective we are likely to be in reducing unnecessary barriers.

We have carefully studied the CCBE's requests to the United States and look forward to further discussion regarding how best to implement cross-border practice. It is important to emphasize that, unlike the CCBE, the ABA does not have the authority to speak for or make commitments on behalf of the lawyer regulatory authorities or state bar associations

in the United States, so we cannot provide a response or a similar request that would represent the "U.S." position. However, we can provide information to the CCBE (and to state regulators) on policies adopted by the ABA (and implemented in a number of U.S. jurisdictions) that address many of the relevant issues, and we can work with the CCBE to stimulate a dialogue in the U.S. and the EU about these issues.

The ABA has adopted policies designed to allow lawyers to effectively serve their clients, at home and abroad, through cross-border practice. To facilitate this goal, the ABA has adopted a number of Model Rules and policies that seek to facilitate access by foreign lawyers in the United States, including: (1) the Model Rule for the Licensing and Practice of Foreign Legal Consultants; (2) the Model Rule for Temporary Practice by Foreign Lawyers; (3) the Model Rule on Pro Hac Vice Admission; and (4) Model Rule of Professional Conduct 5.5(d) and (e), along with the Model Rule for Registration of In-House Counsel; and (5) the ABA Model Rule on Practice Pending Admission that applies to foreign legal consultants. Section a(3) of the Model Rule for Temporary Practice includes lawyers who represent clients in mediation and international arbitration.

The only topic addressed in the CCBE "requests" for which the ABA does not have a policy position is the issue of lawyers who serve as neutrals in international arbitration and mediation, as opposed to representing clients. The ABA has adopted a policy, however, that favors recognition of freedom of parties to international commercial arbitration proceedings to choose as their representatives in those proceedings lawyers who need not be admitted to practice law in the jurisdiction where the arbitration proceeding takes place. All of these policies are available on the webpage of the ABA Task Force on International Trade in Legal Services: http://www.ambar.org/itils.

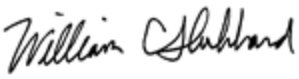
As the ABA urges adoption of these Model Rules by all U.S. jurisdictions, we would also encourage that similar access to those found in the CCBE "requests" be afforded to U.S. lawyers and law firms in foreign jurisdictions. We note that the CCBE request indicates that issues relating to pro hac vice admission, in-house counsel registration, full admission, and the Services and Establishment Directives are considered "off the table." These issues represent serious impediments to the ability of some U.S. lawyers and law firms to engage in providing legal services in the EU, and the latter two are of particular concern because they are based solely on the question of nationality rather than competence. We hesitate to foreclose further discussion on these issues and propose that they remain on the agenda for consideration. Because of the leadership role held by both of our organizations, we believe that all issues related to cross-border legal practice should be available for discussion, even if some of these issues are not ultimately included in our respective government's TTIP "requests." We believe that both organizations share the goal of reducing unnecessary trade barriers and promoting a dialogue regarding which barriers might – or might not – be considered unnecessary in light of the goals of lawyer regulation.

In sum, the ABA welcomes the opportunity to work closely with the CCBE to ensure that clients have the legal services access they need in both the U.S. and the EU. We welcome the CCBE's letter and believe that it provides a useful basis for ongoing discussions in

the U.S. and in Europe. As our combined letters reveal, the ABA and the CCBE agree on a number of policy issues with respect to cross-border practice. We believe that our organizations can serve an effective role in gathering data about the barriers that lawyers face and working with a variety of stakeholders, including regulators, to help them understand the issues and remove any unnecessary barriers.

We look forward to working with the CCBE as the trade negotiations progress, as well as in other efforts to ensure that the interests of our respective lawyers are addressed.

Sincerely,



William C. Hubbard

EXHIBIT D

Source: National Conference of Bar Examiners Statistics (http://www.ncbex.org/publications/statistics/)

Taking and Passing the District of Columbia Bar Examination by Source of Legal Education

	Law School Outside the USA			All Examinees		
	Taking	Passing	Passing %	Taking	Passing	Pass %
2016	270	69	26%	1,008	564	56%
2015	204	59	29%	555	232	42%
2014	244	78	32%	561	223	40%
2013	196	54	28%	476	222	47%
2012	144	51	35%	447	227	51%
2011	94	24	26%	418	201	48%
2010	76	14	18%	461	189	41%
Total	**1,228**	**349**	**28%**	**3,926**	**1,858**	**47%**

Taking the District of Columbia Bar Examination by Education

	ABA-Approved Law School			Non-ABA Approved Law School			Law School Outside the USA			All Examinees		
	Taking	Passing	Passing %	Taking	Passing	Passing %	Taking	Passing	Passing %	Taking	Passing	Pass %
2016	733	506	69%	17	3	18%	270	69	26%	1,020	578	56%
2015	324	169	52%	27	4	15%	204	59	29%	555	232	42%
2014	303	144	48%	14	1	7%	244	78	32%	561	223	40%
2013	261	163	62%	19	5	26%	196	54	28%	476	222	47%
2012	287	173	60%	16	3	19%	144	51	35%	447	227	51%
2011	304	175	58%	20	2	10%	94	24	26%	418	201	48%
2010	366	173	47%	19	2	11%	76	14	18%	461	189	41%
Total	**2,578**	**1,503**	**58%**	**132**	**20**	**15%**	**1,228**	**349**	**28%**	**3,926**	**1,858**	**47%**

Comparison of Admission by Examination Versus Admission on Motion in the District of Columbia

Year	By Examination	On Motion	UBE Transfer
2016	564	3,116	6
2015	200	2,189	-
2014	253	2,670	-
2013	92	3,028	-
2012	204	2,932	-
2011	194	2,970	-
2010	191	2,875	-
Total	**1,134**	**16,664**	**6**

Source: National Conference of Bar Examiners Statistics (http://www.ncbex.org/publications/statistics/)

All First-Time Exam Takers and Repeaters of the District of Columbia Bar Examination

		First-Timers[1]			Repeaters[2]		
		Taking	Passing	Passing %	Taking	Passing	Passing %
2016*	February	200	117	59%	132	38	29%
	July	571	404	71%	117	19	16%
	Total	771	521	68%	249	57	23%
2015	February	163	86	53%	96	16	17%
	July	173	100	58%	123	30	24%
	Total	**336**	**186**	**55%**	**219**	**46**	**21%**
2014	February	179	110	61%	118	26	22%
	July	140	73	52%	124	14	11%
	Total	**319**	**183**	**57%**	**242**	**40**	**17%**
2013	February	159	92	58%	70	15	21%
	July	134	88	66%	113	27	24%
	Total	**293**	**180**	**61%**	**183**	**42**	**23%**
2012	February	150	100	67%	87	16	18%
	July	125	88	70%	85	23	27%
	Total	**275**	**188**	**68%**	**172**	**39**	**23%**
2011	February	112	82	73%	98	22	22%
	July	120	77	64%	88	20	23%
	Total	**232**	**159**	**69%**	**186**	**42**	**23%**
2010	February	126	77	61%	98	15	15%
	July	141	84	60%	96	13	14%
	Total	**267**	**161**	**60%**	**194**	**28**	**14%**

[1] "First-time exam takers" are individuals taking the examination for the first time in the reporting jurisdiction.

[2] "Repeaters" are individuals who have taken the bar examination in the reporting jurisdiction at least once prior to the listed administration.

Source: National Conference of Bar Examiners Statistics (http://www.ncbex.org/publications/statistics/)

District of Columbia Bar Examination Takers and Repeaters from ABA-Approved Law Schools

		ABA-Approved Law School First-Timers			ABA-Approved Law School Repeaters		
		Taking	Passing	Passing %	Taking	Passing	Passing %
2016*	February	124	91	73%	42	17	40%
	July	525	390	74%	42	8	19%
	Total	649	481	74%	84	25	30%
2015	February	105	74	69%	45	8	18%
	July	112	60	64%	57	2	4%
	Total	**217**	**134**	**67%**	**102**	**10**	**10%**
2014	February	107	71	72%	29	8	28%
	July	94	71	80%	44	13	30%
	Total	**201**	**142**	**76%**	**73**	**21**	**29%**
2013	February	99	74	74%	48	11	23%
	July	89	77	77%	39	11	28%
	Total	**188**	**151**	**76%**	**87**	**22**	**25%**
2012	February	100	75	75%	63	18	29%
	July	100	66	74%	52	16	31%
	Total	**200**	**141**	**75%**	**115**	**34**	**30%**
2011	February	100	75	65%	68	11	16%
	July	89	75	65%	67	12	18%
	Total	**189**	**150**	**65%**	**135**	**23**	**17%**
2010	February	126	77	61%	98	15	15%
	July	141	84	60%	96	13	14%
	Total	**267**	**161**	**60%**	**194**	**28**	**14%**

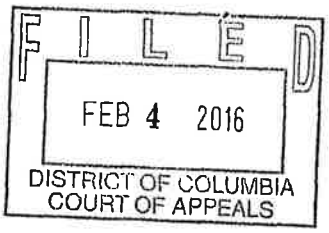
Source: National Conference of Bar Examiners Statistics (http://www.ncbex.org/publications/statistics/)

Taking and Passing the New York Bar Examination by Source of Legal Education

Year	Total Number of Bar Exam Takers	Total Number of Individuals Who Passed the Bar Exam	Pass %	Total Examinees from ABA Schools	Pass rate for ABA school Examinees	Total Number of Foreign-Educated Attorneys Taking the Bar Exam	Total Foreign-Educated Attorneys Passing the Bar Exam	Foreign Educated Attorney Pass Rate
2016	14,490	8,275	57%	9,618	69%	4,852	1,657	34%
2015	14,668	8,209	56%	9,893	68%	4,754	1,454	31%
2014	15,227	9,167	60%	10,392	72%	4,813	1,565	33%
2013	15,846	10,163	64%	11,219	76%	4,602	1,588	35%
2012	15,745	9,680	61%	11,038	73%	4,675	1,604	34%
2011	15,063	9,607	64%	10,611	77%	4,427	1,442	33%
2010	15,588	10,060	65%	10,097	77%	4,596	1,565	34%
Total	**106,627**	**65,161**	**61%**	**72,868**	**73%**	**32,719**	**10,875**	**33%**

EXHIBIT E

District of Columbia
Court of Appeals



No. M-252-15

BEFORE: Washington, Chief Judge; Glickman, Fisher, Blackburne-Rigsby, Thompson, Beckwith, Easterly, and McLeese, Associate Judges.

ORDER
(FILED – February 4, 2016)

On consideration of the proposed amendments to Rule 46 of this court's rules, published for notice and comment on October 28, 2015, and the comments received concerning those proposed amendments, it is

ORDERED that, with two exceptions, the proposed amendments are hereby adopted, effective March 1, 2016. The text of the Rule as amended is attached to this order.

It is further ORDERED that the proposal to amend Rule 46 to permit third-year law students to take the Bar Examination in certain circumstances is not adopted at this time. Rather, the notice and comment period with respect to that proposed amendment is hereby reopened. Interested parties may submit written comments concerning that proposed amendment and any suggested modifications to the proposed language. Ten copies of any comments should be addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001, by March 31, 2016. All comments submitted pursuant to this notice will be available to the public.

It is further ORDERED that the proposal to amend Rule 46 (c)(4), (d)(3)(D), and (e)(3)(B)(i) to provide that the 26 hours of study required of students who have graduated from a law school not accredited by the American Bar Association be fulfilled by "classroom" courses is not adopted at this time. Rather, the court will consider that issue at a later date, in light of the recommendations of the Global Legal Practice Task Force of the D.C. Bar.

PER CURIAM

Amended Rule 46

Rule 46. Admission to the Bar.

(a) *Committee on Admissions.*

(1) The court shall appoint a standing committee known as the Committee on Admissions (Committee) consisting of at least seven members of the Bar of this court, one of whom shall serve as counsel to the Committee. Each appointment shall be for a term of three years. In case of a vacancy arising before the end of a member's term, the successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which that member was appointed, the time served after the expiration of that term shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three-year terms, unless an exception is made by the court.

(2) Subject to the approval of the court, the Committee may adopt such rules and regulations as it deems necessary to implement the provisions of this rule. The members of the Committee shall receive such compensation and necessary expenses as the court may approve.

(3) Members of the Committee and their lawfully appointed designees and staff are immune from civil suit for any conduct in the course of their official duties.

(b) *Admission to the Bar of this jurisdiction.* Admission may be based on (1) examination in this jurisdiction; (2) transfer of a Uniform Bar Examination score attained in another jurisdiction; (3) the applicant's qualifying score on the Multistate Bar Examination administered in another jurisdiction and membership in the bar of such other jurisdiction; or (4) membership in good standing in the bar of another jurisdiction for at least five years immediately prior to the application for admission.

(c) *Admission based on examination in this jurisdiction.*

(1) Place and Dates of Examination. Examinations for admission to the Bar shall be held on two successive days in February and July of each year in Washington,

D.C., at a place designated by the Committee and on dates designated by the National Conference of Bar Examiners (NCBE). The Committee may extend the days for examination for an applicant pursuant to a request for testing accommodations.

(2) Time to Apply and Fees.

(A) An application to take the bar examination shall be submitted in a format approved by the Committee and filed with the Director of Admissions (Director) not later than December 15 for the February examination and May 3 for the July examination unless, for exceptional cause shown, the time is extended by the Committee. The contents of the application to take the examination shall be confidential except upon order of the court.

(B) The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals (Clerk), in an amount and form approved by the Committee and specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.

(C) Late applications may be filed within 15 days from the closing dates specified in subparagraph (i) and must be accompanied by an additional, non-refundable payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee.

(3) Proof of Legal Education in a Law School Approved by the American Bar Association. An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association (ABA) shall be permitted to take the bar examination. Under no circumstances shall such an applicant be admitted to the Bar without first having submitted to the Director a certificate that the applicant has graduated from an ABA-approved law school with a J.D. or LL.B. degree.

(4) Law Study in a Law School Not Approved by the ABA. An applicant who graduated from a law school not approved by the ABA shall be permitted to take the bar examination only after successfully completing at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA. All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken

the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. Arrangements to take the MPRE, including the payment of any fees therefor, shall be made directly with NCBE. The score received on the MPRE shall not be used in connection with the scoring of the bar examination.

(6) Examination of Applications. The Director shall examine each application to determine the applicant's eligibility and to verify the completeness of the application. If eligibility is not demonstrated, the applicant shall be permitted to furnish additional information. If the application is not complete, the needed information shall be provided upon the Director's request.

(7) Examination Identification Number. The Director shall assign an examination number to each accepted applicant. Each applicant shall be notified by the Director of the applicant's examination number and shall be furnished an admission card and a list of instructions. Further disclosure of the examination number of any applicant is prohibited.

(8) General Considerations Regarding the Examination.

(A) The examination shall be the Uniform Bar Examination (UBE) developed by NCBE. The UBE consists of a written component, consisting of the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT), and a multiple choice component, which is the Multistate Bar Examination (MBE).

(B) An applicant may request the Committee to accept an MBE score from a prior examination administration provided that:

(i) The prior MBE scaled score is not less than 133; and

(ii) The prior administration was within 25 months of the present administration.

(C) An applicant may request the Committee to accept a written component score from a prior examination administration in the District of Columbia provided that:

(i) The prior written component scaled score is not less than 133; and

(ii) The prior administration was within 25 months of the present administration.

(D) An applicant requesting acceptance of a score from a prior administration shall submit with the application to sit for the bar examination a score transfer form. Any score earned in a prior administration may not be used to earn a UBE score

that can be transferred to seek admission in another U.S. jurisdiction. To earn a transferrable UBE score, an applicant must take both the written and MBE components in a single administration of the examination.

(E) Examination booklets shall be furnished by the Committee. Computers or typewriters furnished by the applicants may be used by prearrangement with the Director.

(F) Except by permission of the Committee's representative, no applicant shall leave the examination room during the examination. Each applicant, upon leaving the examination room, shall turn in the examination materials to the Committee's representative.

(9) Computation of Written Component Scaled Scores. The raw scores on the written component shall be converted to scaled scores by NCBE in accordance with UBE policies.

(10) Determining Pass/Fail Status.

(A) An applicant taking the written and MBE components concurrently must attain a combined UBE scaled score of 266 or greater to pass the examination.

(B) If an MBE component score from a prior administration is accepted by the Committee under (c)(8)(B) above, the applicant must attain a scaled score of 133 or higher on the written component in the current administration to pass the examination. If a written component score from a prior administration is accepted by the Committee under (c)(8)(C) above, the applicant must attain a scaled score of 133 or higher on the MBE component in the current administration to pass the examination.

(C) Before notice and publication of the examination results, the Committee shall review the written component answers of all applicants who have attained a written component scaled score or a combined UBE scaled score within a specified number of points below the passing score, as determined by the Committee.

(11) Time of Notice and Publication of Results. Applicants shall be notified in writing of the results of their examination.

(A) The Director shall notify each successful applicant of his or her written component scaled score, MBE scaled score, and combined UBE scaled score, as applicable. An alphabetical list of the successful applicants shall be published with the request that any information tending to affect the eligibility of an applicant on moral grounds be furnished to the Committee. The first publication shall be at least

30 days before the Committee reports to the court. A copy of this list shall be posted in the office of the Clerk for three weeks.

(B) The Director shall notify in writing each unsuccessful applicant of the applicant's score. The notification shall contain the applicant's raw score for each question in the written component, the written component scaled score, the MBE scaled score, and the combined UBE scaled score.

(12) Post-examination Review. Each unsuccessful applicant may review his or her graded written component answers by executing and returning the review request form so that it is received by the Director by the 30th day after examination results are published. A review of the MBE is not available. The Director shall advise the unsuccessful applicant of the date, time, and place at which the written component answers may be reviewed. The review period shall not exceed three hours.

(13) Destruction of the Written Component Answers. Destruction of the applicant answers in the written examination component may commence 30 days from the date of publication of the examination results, but destruction of the written component answers of an unsuccessful applicant who takes advantage of the post-examination review procedure shall be delayed until at least 15 days after the review.

(14) Previous Failures. An applicant who has taken the bar examination or a component of the bar examination four times in the District of Columbia and failed to earn a passing score will not be permitted to take a further examination, except upon a showing of extraordinary circumstances. An applicant who has previously taken the bar examination in the District of Columbia four or more times before the effective date of this rule will be permitted to take the bar examination one additional time without a showing of extraordinary circumstances.

(15) Communication with Committee Members and Graders. No applicant shall communicate with Committee members or graders concerning any applicant's performance in the examination.

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

(1) Application. Applicants seeking admission to this Bar on the basis of a UBE score attained in another jurisdiction shall submit to the Director an application in a

format approved by the Committee. The content of the application shall be confidential except upon order of the court.

(2) Fees. The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.

(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

(A) The combined UBE scaled score, as certified by NCBE, is not less than 266 (the passing combined UBE scaled score);

(B) The passing combined UBE scaled score was attained by taking the UBE not more than five years before the filing of the application;

(C) The passing combined UBE scaled score was attained by taking the UBE no more than 4 times, including any attempts in the District of Columbia.

(D) The applicant has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA; or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

(1) Application. An application of an applicant seeking admission to this Bar from another state or territory shall be submitted in a format approved by the Committee and filed with the Director. The contents of the application shall be confidential except upon order of the court.

(2) Fees. The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and

specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

(A) Has been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of at least five years immediately preceding the filing of the application; or

(B) (i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA; or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in a law school that at the time of such study was approved by the ABA, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;

(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

(f) *Special Legal Consultants.*

(1) Licensing Requirements. In its discretion, the court may license to practice as a Special Legal Consultant, without examination, an applicant who:

(A) Has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and is in good standing as an attorney or counselor at law (or the equivalent of either) in that country;

(B) Possesses the good moral character and general fitness requisite for a member of the Bar of this court;

(C) Intends to practice as a Special Legal Consultant in the District of Columbia and to maintain an office for such practice in the District of Columbia which, if the applicant is a teacher of law at a law school approved by the American Bar Association, may be the office of the teacher at the law school; and

(D) Is at least twenty-six years of age.

(2) Filings Required.

An applicant for a license to practice as a Special Legal Consultant shall file with the Committee:

(A) An application in the form prescribed by the Committee addressed to the court in executive session, which without further order of the court shall be referred to the Committee;

(B) Payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director;

(C) A certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

(D) A summary of the law and customs of the foreign country that relate to the opportunity afforded to members of the Bar of this court to establish offices for the giving of legal advice to clients in such foreign country.

(3) Upon a showing that strict compliance with the provisions of subparagraph (2) of this paragraph (f) is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a Special Legal Consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(4) The Committee may investigate the qualifications, moral character, and general fitness of any applicant for a license to practice as a Special Legal Consultant and may in any case require the applicant to submit any additional proof or information as the Committee may deem appropriate. The Committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(5) Opportunity to Establish Law Office in Applicant's Country of Admission. In considering whether to license an applicant to practice as a Special Legal Consultant, the court may in its discretion take into account whether a member of

the Bar of this court would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the Bar who is seeking or has sought to establish an office in that country may request the Court to consider the matter, or the Court may do so sua sponte.

(6) Scope of Practice. A person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, notwithstanding the prohibitions of Rule 49(b), subject, however, to the limitations that any person so licensed shall not:

(A) Appear for a person other than himself or herself as attorney in any court, before any magistrate or other judicial officer, or before any administrative agency, in the District of Columbia (other than upon admission pro hac vice in accordance with Rule 49 (b) or any applicable agency rule) or prepare pleadings or any other papers or issue subpoenas in an action or proceeding brought in any such court or agency or before any such judicial officer;

(B) Prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(C) Prepare:

(i) Any will or trust instrument effecting the disposition on death of any property located in the United States and owned, in whole or in part, by a resident thereof, or
(ii) Any instrument relating to the administration of a decedent's estate in the United States;

(D) Prepare any instrument in respect of the marital relations, rights, or duties of a resident of the United States or the custody or care of one or more children of any such resident;

(E) Render professional legal advice on or under the law of the District of Columbia or of the United States or of any state, territory, or possession thereof (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person acting as counsel to such Special Legal Consultant (and not in his or her official capacity as a public employee) duly qualified and entitled (other than by virtue of having been licensed as a Special Legal Consultant under this paragraph (f)) to render professional legal advice in the District of Columbia on such law who has been consulted in the particular matter at hand and has been identified to the client by name;

(F) In any way hold himself or herself out as a member of the Bar of this court; or

(G) Use any title other than one or more of the following, in each case only in conjunction with the name of the person's country of admission:

(i) "Special Legal Consultant";

(ii) Such Special Legal Consultant's authorized title in foreign country of his or her admission to practice;

(iii) The name of such Special Legal Consultant's firm in that country.

(7) Disciplinary Provisions.

Every person licensed to practice as a Special Legal Consultant under this paragraph (f):

(A) Shall be subject to the Rules of Professional Conduct of this jurisdiction to the extent applicable to the legal services authorized under this paragraph (f), and shall be subject to censure, suspension, or revocation of his or her license to practice as a Special Legal Consultant by the court; and

(B) Shall execute and file with the Clerk, in such form and manner as the court may prescribe:

(i) A written commitment to observe the Rules of Professional Conduct;

(ii) An undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the Special Legal Consultant's proper professional conduct and responsibility;

(iii) A duly acknowledged instrument in writing setting forth the Special Legal Consultant's address in the District of Columbia and designating the Clerk of the D.C. Court of Appeals as his or her agent upon whom process may be served, with like effect as if served personally upon the Special Legal Consultant, in any action or proceeding thereafter brought against the Special Legal Consultant and arising out of or based upon any legal services rendered or offered to be rendered by the Special Legal Consultant within or to residents of the District of Columbia, whenever after due diligence service cannot be made upon the Special Legal Consultant at such address or at such new address in the District of Columbia as he or she shall have filed in the office of the Clerk by means of a duly acknowledged supplemental instrument in writing; and

(iv) A written commitment to notify the Clerk of the Special Legal Consultant's resignation from practice in the foreign country of his or her admission or of any censure in respect of such admission, or of any suspension or revocation of his or her right to practice in such country.

(C) Service of process on the Clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the Clerk, or with a deputy or assistant authorized by the Clerk to receive service, at the Clerk's office, duplicate copies of such process together with a fee of $10.00. Service of process shall be complete when the Clerk has been so served. The Clerk shall promptly send one of the copies to the Special Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the Special Legal Consultant at the address given to the court by the Special Legal Consultant as aforesaid.

(D) In imposing any sanction authorized by subparagraph (7)(A), the court may act sua sponte, on recommendation of the Board on Professional Responsibility, or on complaint of any person. To the extent feasible, the court shall proceed in a manner consistent with its Rules Governing the Bar of the District of Columbia.

(8) Affiliation with the District of Columbia Bar.

(A) A Special Legal Consultant licensed under this paragraph (f) shall not be a member of the District of Columbia Bar, provided, however, that a Special Legal Consultant shall be considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of this paragraph (f).

(B) A Special Legal Consultant licensed under this paragraph (4) shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

"I, _____, do solemnly swear (or affirm) that as a Special Legal Consultant with respect to the laws of_____, licensed by this court, I will demean myself uprightly and according to law."

(g) *Moral Character and General Fitness to Practice Law*. No applicant shall be certified for admission by the Committee until the applicant demonstrates good moral character and general fitness to practice law. The Committee may, in its discretion, give notice of the application by publication in a newspaper or by posting a public notice. For applicants who apply to take the UBE in this jurisdiction, the Committee shall endeavor to complete its character and fitness inquiry so as to be in a position to recommend for or against a successful bar examinee's admission to the practice of law no later than the time the results of the UBE are available. This time limitation is aspirational only, and may be extended when circumstances so require.

(h) *Quantum and Burden of Proof.* The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the applicant possesses good moral character and general fitness to practice law in the District of Columbia.

(i) Hearing by the Committee.

(1) In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated or may require the applicant to appear for an informal hearing. If the Committee is unwilling to certify an applicant after an informal hearing, it shall notify the applicant of (A) the adverse matters on which the Committee relied in denying certification, and (B) the choice of withdrawing the application or requesting a formal hearing. Notice shall be given by certified mail at the address appearing on the application. Within 30 days from receipt of the notice, the applicant may file with the Committee a written request for a formal hearing. If the applicant fails to file a timely request for a formal hearing, the applicant's application shall be deemed withdrawn. If the applicant requests a formal hearing within the 30-day period, the request shall be granted and the formal hearing shall be conducted by the Committee under the following rules of procedure:

(2) The Director shall give the applicant no less than 10 days' notice of:

(A) The date, time, and place of the formal hearing;

(B) The adverse matters upon which the Committee relied in denying admission;

(C) The applicant's right to review in the office of the Director those matters in the Committee file pertaining to the applicant's character and fitness upon which the Committee may rely at the hearing; and

(D) The applicant's right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on moral character and general fitness to practice law and, for such purpose, to make reasonable use of the court's subpoena power.

(3) The hearing before the Committee shall be private unless the applicant requests that it be public. The hearing shall be conducted in a formal manner; however, the Committee shall not be bound by the formal rules of evidence. It may, in its discretion, take evidence in other than testimonial form and determine whether evidence to be taken in testimonial form shall be taken in person at the hearing or by deposition. The proceedings shall be recorded and the applicant may order a transcript at the applicant's expense.

(4) If after the hearing the Committee is of the opinion that an adverse report should be made, it shall serve on the applicant a copy of the report of its findings and conclusions and permit the applicant to withdraw an application within 15 days after the date of the notice. The Committee may, in its discretion, extend this time. If the applicant elects not to withdraw, the Committee shall deliver a report of its findings and conclusions to the court with service on the applicant.

(j) *Review by the Court.*

(1) The Committee shall deliver a report of its findings and conclusions to the court for its approval in the case of any applicant for admission after a formal hearing.

(2) After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied. Proceedings under this Rule shall be heard by the court on the record made by the Committee on Admissions.

(3) Except for the review by the court provided in this paragraph (j), no other review by the court of actions by or proceedings before the Committee shall be had except upon a showing (A) of extraordinary circumstances for instituting such review and (B) that an application for relief has previously been made in the first

instance to the Committee and been denied by the Committee, or that an application to the Committee for the relief is not practicable.

(k) *Admission Order*. (1) The Committee shall file with the court a motion to admit the successful applicants by examination, or a certification of attorneys for admission by transferred UBE score or of attorneys for admission without examination, after successful completion of a character and fitness study. Each candidate shall be notified of the time and place for the taking of the oath.

(2) An applicant whose name is on an order of admission entered by the court or who is certified for admission by the Committee without a formal hearing shall complete admission within 90 days from the date of the order or the certification by taking the oath prescribed and by signing the roll of attorneys in the office of the Clerk.

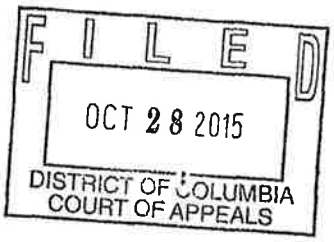
(3) An applicant who fails to take the oath and sign the roll of attorneys within 90 days from the date of the admission order or the certification may file, within one year from the date of the order or certification, an affidavit with the Director explaining the cause of the delay. Upon consideration of the affidavit, the Committee may reapprove the applicant and file a supplemental motion with the court or may deny the applicant's admission and direct the applicant to file a new application for admission.

(l) *Oath.* An applicant admitted to the Bar of this court shall take the following oath before the court or the Clerk of the court or his or her designee, unless granted permission to be admitted in absentia.

"I_____ do solemnly swear (or affirm) that as a member of the Bar of this court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America."

EXHIBIT F

District of Columbia
Court of Appeals



No. M-252-15

NOTICE

The District of Columbia Court of Appeals seeks public comment on proposed amendments to its Rule 46, governing admissions to the bar. Some proposed revisions are minor and involve only renumbering, re-arranging, omission of unnecessary detail, or updating provisions pertaining to application fees. However, there are several important changes. The major changes that would be made under the proposed amended rule are as follows:

- The proposed amended rule adopts the Uniform Bar Examination (UBE) and establishes the District of Columbia as a UBE jurisdiction. This would not effect any change in the examination materials to be used (our jurisdiction already use all UBE components) or in the passing score. Rather, it would establish that (1) this jurisdiction accepts the conditions of use developed by the National Conference of Bar Examiners (NCBE) for UBE jurisdictions (including, under current policy, that examinations will not be re-graded once scores are released); (2) this jurisdiction agrees to accept UBE scores (i.e., the combined scaled scored on the multiple choice and written components of the examination) earned in other jurisdictions if they meet the passing score in this jurisdiction (266); and (3) those who take the UBE in our jurisdiction can be admitted to other UBE jurisdictions whose passing scores they meet. In other words, scores are portable.

- The proposed amended rule also permits law students to take the bar examination during the last semester of law school with certification by the law school. Bar admission, however, still requires law school graduation.

- A limit is imposed on the number of times an applicant may sit for the bar examination, absent extraordinary circumstances. This limit applies as well to those seeking to transfer in UBE scores earned in other UBE jurisdictions.

New material is underlined, and language to be deleted is stricken through.

This notice is published to afford interested parties an opportunity to submit written comments concerning the amendments under consideration. Ten copies of any comments should be addressed to the Clerk, D.C. Court of Appeals, 430 E Street, N.W. Washington, D.C. 20001 by December 28, 2015. All comments submitted pursuant to this notice will be available to the public.

Proposed Amended Rule 46

Rule 46. Admission to the Bar.

(a) *Committee on Admissions.*

(1) The court shall appoint a standing committee known as the Committee on Admissions (~~hereafter the~~ Committee) consisting of at least seven members of the Bar of this court, one of whom shall serve as counsel to the Committee. Each appointment shall be for a term of three years. In case of a vacancy arising before the end of a member's term ~~caused by death, resignation or otherwise~~, the~~a~~ successor appointed shall serve the unexpired term of the predecessor member. When a member holds over after the expiration of the term for which that member was appointed, the time served after the expiration of that term shall be part of a new term. No member shall be appointed to serve longer than two consecutive regular three-year terms, unless an exception is made by the court.

(2) Subject to the approval of the court, the Committee may~~shall~~ adopt such rules and regulations as it deems necessary to implement the provisions of this rule. The members of the Committee shall receive such compensation and necessary expenses as the court may approve.

(3) Members of the Committee and their lawfully appointed designees and staff are immune from civil suit for any conduct in the course of their official duties.

(b) *Admission to the Bar of this jurisdiction.* ~~Admission by Examination.~~ Admission may be based on (1) examination in this jurisdiction; (2) transfer of a Uniform Bar Examination score attained in another jurisdiction; (3) the applicant's qualifying score on the Multistate Bar Examination administered in another jurisdiction and membership in the bar of such other jurisdiction; or (4) membership in good standing in the bar of another jurisdiction for at least five years immediately prior to the application for admission.

(c) *Admission based on examination in this jurisdiction.*

(1) Number and Dates of Examination. Examinations for admission to the Bar shall be held on two successive days in February and July of each year in Washington, D.C., at a place ~~and on the dates~~ designated by the Committee and on dates designated by the National Conference of Bar Examiners (NCBE). The Committee may extend the days for examination for an applicant ~~upon good cause having been demonstrated to the Committee~~ pursuant to a request for testing accommodations.

(2) Time to Apply and Fees.

(i) An application to take the bar examination shall be ~~typewritten and~~ submitted in a format~~on a form~~ approved by the Committee and filed with the Director of Admissions (~~hereafter~~ Director) not later than December 15 for the February examination and May 3 for the July examination unless, for exceptional cause shown, the time is extended by the Committee. The contents of the application to take the examination shall be confidential except upon order of the court.

(ii) The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals (Clerk), in an amount and form approved by the Committee and specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, ~~(1) a certified check, cashier's check, or money order in the amount of $ 100, which shall be nonrefundable, made payable to the Clerk, D.C. Court of Appeals, together with (2) the applicable certified checks, cashier's checks, or money orders made payable to the National Conference of Bar Examiners, the purposes and amounts of which shall be~~ in an amount and form specified on the application form.

(iii) Late applications may be filed within 15 days from the closing dates specified in subparagraph (i) and must be accompanied by an additional, non-refundable ~~certified check, cashier's check, or money order in the amount of $ 200 made payable~~ payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee.

(3) Proof of Legal Education in a Law School Approved by the American Bar Association.

(i) An applicant who has graduated from a law school that at the time of graduation was approved by the American Bar Association (ABA) shall be permitted to take the bar examination.

(ii) An applicant shall be permitted to take the bar examination prior to graduation from law school if the applicant (1) is a currently enrolled student in good standing at a law school approved by the ABA; (2) is expected to graduate from that law school with a J.D. or LL.B. degree within one hundred ninety (190) days of the first day of administration of the bar examination; and (3) provides, by the application deadline, a certification by the law school that the applicant meets the foregoing criteria.

(iii) Under no circumstances shall ~~such~~ an applicant described in this paragraph (3) be admitted to the Bar without first having submitted to the Director a certificate that the applicant has graduated from an ABA-approved law school with a J.D. or LL.B. degree.

(4) Law Study in a Law School Not Approved by the ABA. An applicant who graduated from a law school not approved by the ABA~~merican Bar Association~~ shall be permitted to take the bar examination only after successfully completing at least 26 credit~~semester~~ hours of study ~~in the subjects tested in the bar examination~~ in classroom courses in a law school that at the time of such study was approved by the ABA.~~merican Bar Association.~~ All such 26 credit ~~semester~~ hours shall be earned in courses of study, each of which is substantially concentrated on a single ~~tested~~ subject tested on the Uniform Bar Examination.

(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE ~~an examination on the Code of Professional Responsibility given under the auspices of the Multistate Bar Examination Committee of the National Conference of Bar Examiners~~ and has received thereon the~~a~~ minimum required grade as determined by the Committee. ~~on Admissions.~~ Arrangements to take the MPRE~~said examination~~, including the payment of any fees therefor, shall

be made directly with NCBE. ~~the Multistate Bar Examination Committee of the National Conference of Bar Examiners.~~ The score received on the MPRE ~~Multistate Professional Responsibility Examination (MPRE)~~ shall not be used in connection with the scoring of the bar examination. ~~There shall be no limit to the number of times an applicant may take the MPRE.~~

(6) Examination of Applications. -- The Director shall examine each application to determine the applicant's eligibility and to verify the completeness of the application. If eligibility is not demonstrated, the applicant shall be permitted to furnish additional information. If the application is not complete, ~~either it shall be returned to the applicant for completion or~~ the needed information shall be provided upon the Director's request. ~~requested by letter.~~

(7) Examination Identification Number. The Director shall assign an examination number to each accepted applicant. Each applicant shall be notified by the Director of the applicant's examination number and shall be furnished an admission card and a list of instructions. Further disclosure of the examination number of any applicant is prohibited.

(8) General Considerations Regarding the Examination.

(A~~i~~) ~~Applicants shall be examined on~~ The examination shall be the Uniform Bar Examination (UBE) developed by NCBE. The UBE consists of a written component, consisting of the Multistate Essay Examination (MEE) and the Multistate Performance Test (MPT), and a multiple choice component, which is the ~~both the essay and the~~ Multistate Bar Examination (MBE). ~~sections at the examination site designated by the Committee.~~

(B~~A~~) An applicant may request the Committee to accept an ~~prior~~ MBE score from a prior examination administration provided that:

~~1~~(i). The prior MBE scaled score is not less than 133; and

~~2~~(ii). The prior administration was within 25 months of the present administration.

(~~B~~C) An applicant may request the Committee to accept a written component ~~prior essay a~~ score from a prior examination administration in the District of Columbia provided that:

~~1~~(i)~~.~~ The prior written component ~~essay~~ scaled score is not less than 133; and

~~2~~(ii)~~.~~ The prior administration was within 25 months of the present administration.

(~~ii~~D) ~~Any prior section administration accepted pursuant to this rule shall be valued as set forth in (b)(10)(ii) below.~~ An applicant requesting acceptance of a score from a prior -administration shall submit with the application to sit for the bar examination a score transfer form. ~~either a duly executed MBE score and release form or an essay scaled score release form.~~ Any score earned in a prior administration may not be used to earn a UBE score that can be transferred to seek admission in another U.S. jurisdiction. To earn a transferrable UBE score, an applicant must take both the written and MBE components in a single administration of the examination.

~~(Eiii) The bar examination may cover the following subjects: administrative law, contracts, agency, Uniform Commercial Code and, equity, business associations, conflicts of laws, evidence, torts, wills, trusts, administration of estates, family law, real and personal property, civil and criminal procedure, constitutional law, criminal law, legal ethics and tax law. In its discretion, the Committee may change the subjects.~~

~~(iv) Each day of the examination shall require six hours writing time unless modified by the Committee for an applicant pursuant to a request for testing accommodations. One day shall be devoted to essay questions approved by the Committee; the other day shall be devoted to the MBE multiple choice questions prepared by the National Conference of Bar Examiners.~~

(E~~v~~) Examination booklets shall be furnished by the Committee. Computers or typewriters furnished by the applicants may be used by prearrangement with the Director.

(F~~vi~~) Except by permission of the Committee's representative, no applicant shall

leave the examination room during the examination. Each applicant, upon leaving the examination room, shall turn in the examination materials ~~examination booklets~~ to the Committee's representative.

(9) Computation of Written Component~~Essay~~ Scaled Scores. The raw~~essay~~ scores on the written component ~~each examination~~ shall be converted to scaled scores by NCBE in accordance with UBE policies. ~~using the standard deviation method. The basis for this scaling shall be the distribution of MBE scaled scores of the applicants taking the essay portion of that examination.~~

(10) Determining Pass/Fail Status.~~.~~–

(~~i~~A)~~)~~ An applicant taking the written~~essay~~ and MBE ~~sections~~ components concurrently must attain a combined UBE scaled score of ~~shall be successful if the sum of the applicant's essay and MBE scaled scores is~~ 266 or greater to pass the examination. ~~(i.e., an average scaled score of 133 or greater).~~

(~~ii~~B)~~)~~ ~~Where~~If ~~-~~an MBE component score from a prior administration is accepted by the Committee under (c~~b~~)(8)(B) above, ~~an~~the applicant must attain a scaled score of 133 or higher on the written component in the current administration to pass the examination. If a written component score from a prior administration is accepted by the Committee under (c)(8)(C) above, the applicant must attain a scaled score of 133 or higher on the MBE component in the current administration to pass the examination. ~~shall be successful only if:~~

~~(A) Both the prior essay scaled score and the concurrent MBE scaled score are not less than 133; or~~

~~(B) Both the prior MBE scaled score and the concurrent essay scaled score are not less than 133, as the case may be.~~

~~For purposes of this subsection (i) an applicant's passing status on a section will remain intact for 25 months from the date the section was administered even if the applicant fails the section on subsequent administrations.~~

(C~~iii~~) Before notice and publication of the examination results, the Committee shall review the ~~essay~~written component answers~~examination papers~~ of all applicants who have attained a written component~~n essay~~ scaled score or a

combined UBE scaled score within a specified number of ~~five~~ points below the passing score, as determined by the Committee.~~grade.~~

(11) Time of Notice and Publication of Results. -- Applicants shall be notified in writing of the results of their examination.

(A) The Director shall notify each ~~S~~successful applicant of his or her ~~shall be notified in writing of the~~ written component scaled score, ~~they attained in the~~MBE scaled score, and ~~the~~ combined UBE scaled score, as applicable.~~section of the examination~~. An alphabetical list of the successful applicants shall be published with the request that any information tending to affect the eligibility of an applicant on moral grounds be furnished to the Committee. The first publication shall be at least 30 days before the Committee reports to the court. A copy of this list shall be posted in the office of the Clerk for three weeks.

(B) The Director shall notify in writing each unsuccessful applicant of the applicant's score. The notification shall contain the applicant's raw score for each question in the written component, the written component scaled score, the MBE scaled score, and the combined UBE scaled score.

(12) Post-examination Review. –

~~(i) The Director shall notify in writing each unsuccessful applicant of the applicant's score. The notification shall contain the applicant's score for each essay question, the scaled essay score, the MBE scaled score, and the combined score. Scores will not be rounded.~~

~~(ii)~~ Each unsuccessful applicant may review his or her graded written component answers ~~the essay section of the examination~~ by executing and returning the review request form so that it is received by ~~to~~ the Director by the ~~within~~ 30th day after examination results are published.~~the time period specified by the Committee. The examiner's questions and comments thereto shall be made available to the unsuccessful applicant.~~ A review of the MBE is not available. The Director shall advise the unsuccessful applicant of the date, time, and place at which the ~~essay~~ written component answers~~papers~~ may be reviewed. The review period shall not exceed three hours.

~~(iii) Within 10 days after review (excluding Saturdays, Sundays and legal holidays), the applicant may submit a petition for regrading setting forth the reasons in support of such petition. The petition shall be addressed to the appropriate examiner and delivered or mailed to the Director. The only identifying mark to be placed on the petition is the number assigned to the applicant for taking the examination, which number shall serve as identification. Any references to the applicant's combined score, economic status, social standing, employment, personal hardship, or other extraneous information is strictly prohibited. An applicant shall submit a separate petition to each examiner from whom the applicant seeks regrading. The petition for regrading shall be directed to the merits of the applicant's response to the examination questions.~~

~~(iv) Upon receipt of a petition for regrading, the Director shall forward to the appropriate examiner a file composed of the examiner's questions and comments with respect to such questions, the applicant's examination booklet, and the applicant's petition for regrading.~~

~~(v) Unless otherwise extended by the Chairman, the examiner shall, within 15 days (excluding Saturdays, Sundays, and legal holidays), return to the Director the applicant's file together with the examiner's disposition of the petition. The Director shall notify the applicant of the final decision.~~

(13) Destruction of the ~~Essay~~Written Component Answers~~Examination Papers~~. -- Destruction of the applicant answers in the written~~essay~~ examination component ~~papers~~ may commence 30 days from the date of publication of the examination results~~;~~, but destruction of the written component answers~~essay examination papers~~ of an unsuccessful applicant who takes advantage of the post-examination review procedure shall be delayed ~~for not less than~~until at least 15 days after the review. ~~30 days after notification of the final decision on the applicant's petition for review.~~

(14) Previous Failures. ~~-- Previous failures in a bar examination shall not disqualify an applicant from taking the examination.~~An applicant who has taken the bar examination or a component of the bar examination four times in the District of Columbia and failed to earn a passing score will not be permitted to take a further examination, except upon a showing of extraordinary circumstances. An applicant who has previously taken the bar examination in the District of Columbia four or

more times before the effective date of this rule will be permitted to take the bar examination one additional time without a showing of extraordinary circumstances.

(15) Communication ~~W~~with Committee Members and Graders. -- No applicant shall communicate with Committee members or graders concerning any applicant's performance in the examination.

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.* ~~Without Examination of Members of the Bar of Other Jurisdictions.~~

(1) Application. Applicants seeking admission to this Bar on the basis of a UBE score attained in another jurisdiction shall submit to the Director an application in a format approved by the Committee. The content of the application shall be confidential except upon order of the court.

(2) Fees. The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.

~~(1) Application. -- An application of an applicant seeking admission to this Bar from another state or territory shall be typewritten and submitted on a form approved by the Committee and filed with the Director. The contents of the application shall be confidential except upon order of the court.~~

~~(2) Fees. -- The applicant shall be accompanied by (1) certified check, cashier's check, or money order in the amount of $ 400 made payable to the Clerk, D.C. Court of Appeals, together with (2) a certified check, cashier's check, or money order made payable to the National Conference of Bar Examiners, the amount of which shall be specified on the application form.~~

(3) Admission Requirements. -- An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

(A) The combined UBE scaled score, as certified by NCBE, is not less than 266 (the passing combined UBE scaled score);

(B) The passing combined UBE scaled score was attained by taking the UBE not more than five years before the filing of the application;

(C) The passing combined UBE scaled score was attained by taking the UBE no more than 4 times, including any attempts in the District of Columbia.

(D) The applicant ~~(1)~~ has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA; or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in classroom courses in a law school that at the time of such study was approved by the ABA, with all such 26 credit –hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

(e) *Admission Without Examination of Members of the Bar of Other Jurisdictions.*

(1) Application. An application of an applicant seeking admission to this Bar from another state or territory shall be submitted ~~on a form~~ in a format approved by the Committee and filed with the Director. The contents of the application shall be confidential except upon order of the court.

(2) Fees. The application shall be accompanied by (1) a payment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director, and (2) payment to NCBE, or proof of payment to NCBE, in an amount and form specified on the application form.

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

(~~i~~A) Has been a member in good standing of a Bar of a court of general jurisdiction in any state or territory of the United States for a period of at least five years immediately preceding the filing of the application; or

(~~ii~~B) (~~A~~i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was approved by the ABA;~~merican Bar~~

~~Association;~~ or, if the applicant graduated from a law school not approved by the ABA, the applicant successfully completed at least 26 credit hours of study in classroom courses in a law school that at the time of such study was approved by the ABA, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;

(~~B~~ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE~~ultistate Bar Examination~~ which the state or territory deems to have been taken as a part of such examination; and

(~~C~~iii) Has taken and passed, in accordance with paragraph (c~~b~~)(5), the ~~Multistate Professional Responsibility Examination (~~MPRE~~)~~.

(f) *Special Legal Consultants.*

(1) Licensing Requirements. In its discretion, the court may license to practice as a Special Legal Consultant, without examination, an applicant who:

(A) Has been admitted to practice (or has obtained the equivalent of admission) in a foreign country, and is in good standing as an attorney or counselor at law (or the equivalent of either) in that country;

(B) Possesses the good moral character and general fitness requisite for a member of the Bar of this court;

(C) Intends to practice as a Special Legal Consultant in the District of Columbia and to maintain an office for such practice in the District of Columbia which, if the applicant is a teacher of law at a law school approved by the American Bar Association, may be the office of the teacher at the law school; and

(D) Is at least twenty-six years of age.

(2) Filings Required.

~~(A1)~~ An applicant for a license to practice as a Special Legal Consultant shall file with the Committee:

(A) A~~a~~n ~~typewritten~~ application in the form prescribed by the Committee addressed to the court in executive session, which without further order of the court shall be referred to the Committee;

(B) P~~p~~ayment to the Clerk, D.C. Court of Appeals, in an amount and form approved by the Committee and specified by the Director; ~~a certified check, cashier's check, or money order in the amount of $ 450.00 made payable to the Clerk, D.C. Court of Appeals;~~

(C) A~~a~~ certificate from the authority in the foreign country having final jurisdiction over professional discipline, certifying to the applicant's admission to practice (or the equivalent of such admission) and the date thereof and to the applicant's good standing as attorney or counselor at law (or the equivalent of either), together with a duly authenticated English translation of such certificate if it is not in English; and

(D) A~~a~~ summary of the law and customs of the foreign country that relate to the opportunity afforded to members of the Bar of this court to establish offices for the giving of legal advice to clients in such foreign country.

(3) Upon a showing that strict compliance with the provisions of subparagraph (2) of this paragraph (f) is impossible or very difficult for reasons beyond the control of the applicant, or upon a showing of exceptional professional qualifications to practice as a Special Legal Consultant, the court may, in its discretion, waive or vary the application of such provisions and permit the applicant to make such other showing as may be satisfactory to the court.

(4) The Committee may investigate the qualifications, moral character, and general fitness of any applicant for a license to practice as a Special Legal Consultant and may in any case require the applicant to submit any additional proof or information as the Committee may deem appropriate. The Committee may also require the applicant to submit a report from the National Conference of Bar Examiners, and to pay the prescribed fee therefor, with respect to the applicant's character and fitness.

(5) Opportunity to Establish Law Office in Applicant's Country of Admission. -- In considering whether to license an applicant to practice as a Special Legal Consultant, the court may in its discretion take into account whether a member of the Bar of this court would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. ~~(as referred to in subparagraph (A)(1) of this paragraph (4)).~~ Any member of the Bar who is seeking or has sought to establish an office in that country may request the Court to consider the matter, or the Court may do so sua sponte.

(6) Scope of Practice. A person licensed to practice as a Special Legal Consultant may render legal services in the District of Columbia, notwithstanding the prohibitions of Rule 49(b), subject, however, to the limitations that any person so licensed shall not:

(A) A~~a~~ppear for a person other than himself or herself as attorney in any court, before any magistrate or other judicial officer, or before any administrative agency, in the District of Columbia (other than upon admission pro hac vice in accordance with Rule 49 (b) or any applicable agency rule) or prepare pleadings or any other papers or issue subpoenas in an action or proceeding brought in any such court or agency or before any such judicial officer;

(B) P~~p~~repare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States;

(C) P~~p~~repare:

(i) A~~a~~ny will or trust instrument effecting the disposition on death of any property located in the United States and owned, in whole or in part, by a resident thereof, or

(ii) A~~a~~ny instrument relating to the administration of a decedent's estate in the United States;

(D) Pprepare any instrument in respect of the marital relations, rights, or duties of a resident of the United States or the custody or care of one or more children of any such resident;

(E) Rrender professional legal advice on or under the law of the District of Columbia or of the United States or of any state, territory, or possession thereof (whether rendered incident to the preparation of legal instruments or otherwise) except on the basis of advice from a person acting as counsel to such Special Legal Consultant (and not in his or her official capacity as a public employee) duly qualified and entitled (other than by virtue of having been licensed as a Special Legal Consultant under this paragraph (f)) to render professional legal advice in the District of Columbia on such law who has been consulted in the particular matter at hand and has been identified to the client by name;

(F) Iin any way hold himself or herself out as a member of the Bar of this court; or

(G) Uuse any title other than one or more of the following, in each case only in conjunction with the name of the person's country of admission:

~~(1)~~ (i) "Special Legal Consultant";

(ii) Ssuch Special Legal Consultant's authorized title in foreign country of his or her admission to practice;

(iii) Tthe name of such Special Legal Consultant's firm in that country.

(7) Disciplinary Provisions.

~~(1)~~ Every person licensed to practice as a Special Legal Consultant under this paragraph (f):

(A) Sshall be subject to the Rules of ~~Code of~~ Professional Conduct of this jurisdiction~~Responsibility of the American Bar Association, as amended by the court,~~ to the extent applicable to the legal services authorized under this paragraph (f), and shall be subject to censure, suspension, or revocation of his or her license to practice as a Special Legal Consultant by the court; and

(B) Sshall execute and file with the Clerk, in such form and manner as the court may prescribe:

(i) Aa written commitment to observe the Rules of Professional Conduct Code of Professional Responsibility as referred to in subparagraph (7)(A)(E)(1)(a) of this paragraph ();

(ii) Aan undertaking or appropriate evidence of professional liability insurance, in such amount as the court may prescribe, to assure the Special Legal Consultant's proper professional conduct and responsibility;

(iii) Aa duly acknowledged instrument in writing setting forth the Special Legal Consultant's address in the District of Columbia and designating the Clerk of the court D.C. Court of Appeals as his or her agent upon whom process may be served, with like effect as if served personally upon the Special Legal Consultant, in any action or proceeding thereafter brought against the Special Legal Consultant and arising out of or based upon any legal services rendered or offered to be rendered by the Special Legal Consultant within or to residents of the District of Columbia, whenever after due diligence service cannot be made upon the Special Legal Consultant at such address or at such new address in the District of Columbia as he or she shall have filed in the office of the Clerk by means of a duly acknowledged supplemental instrument in writing; and

(iv) Aa written commitment to notify the Clerk of the Special Legal Consultant's resignation from practice in the foreign country of his or her admission or of any censure in respect of such admission, or of any suspension or revocation of his or her right to practice in such country.

(C) Service of process on the Clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the Clerk, or with a deputy or assistant authorized by the Clerk to receive service, at the Clerk's office, duplicate copies of such process together with a fee of $10.00. Service of process shall be complete when the Clerk has been so served. The Clerk shall promptly send one of the copies to the Special Legal Consultant to whom the process is directed, by certified mail, return receipt requested, addressed to the Special Legal Consultant at the address given to the court by the Special Legal Consultant as aforesaid.

(D) In imposing any sanction authorized by subparagraph (7)(A), the court may act sua sponte, on recommendation of the Board on Professional Responsibility, or on complaint of any person. To the extent feasible, the court shall proceed in a manner consistent with its Rules Governing the Bar of the District of Columbia.

(8) Affiliation With the District of Columbia Bar.

(A) A Special Legal Consultant licensed under this paragraph (f4) shall not be a member of the District of Columbia Bar, provided, however, that a Special Legal Consultant shall be considered an affiliate of the Bar subject to the same conditions and requirements as are applicable to an active or inactive member of the Bar under the court's Rules Governing the Bar of the District of Columbia, insofar as such conditions and requirements may be consistent with the provisions of this paragraph (f).

(B) A Special Legal Consultant licensed under this paragraph (4) shall, upon being so licensed, take the following oath before this court, unless granted permission to take the oath in absentia:

"I, _____, do solemnly swear (or affirm) that as a Special Legal Consultant with respect to the laws of_____—, licensed by this court, I will demean my self uprightly and according to law."

(g) *Moral Character and General Fitness to Practice Law*. No applicant shall be certified for admission by the Committee until the applicant demonstrates good moral character and general fitness to practice law. The Committee may, in its discretion, give notice of the application by publication in a newspaper or by posting a public notice. For applicants who apply to take the UBE in this jurisdiction, the Committee shall endeavor to complete its character and fitness inquiry so as to be in a position to recommend for or against a successful bar examinee's admission to the practice of law no later than the time the results of the UBE are available. This time limitation is aspirational only, and may be extended when circumstances so require.

(h) *Quantum and Burden of Proof.* The applicant shall have the burden of demonstrating, by clear and convincing evidence, that the applicant possesses~~d~~ good moral character and general fitness to practice law in the District of Columbia.

(i) Hearing by the Committee.

(1) In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated or may require the applicant to appear for an informal hearing. If the Committee is unwilling to certify an applicant after an informal hearing, it shall notify the applicant of (A) the adverse matters on which the Committee relied in denying certification, and (B) the choice of withdrawing the application or requesting a formal hearing. Notice shall be given by certified mail at the address appearing on the application. Within 30 days from receipt ~~the date~~ of the notice, the applicant may file with the Committee a written request for a formal hearing. If the applicant fails to file a timely request for a formal hearing, the applicant's application shall be deemed withdrawn. If the applicant requests a formal hearing within the 30-day period, the request shall be granted and the formal hearing shall be conducted by the Committee under the following rules of procedure:

(2) The Director shall give the applicant no less than 10 days' notice of:

(A) The date, time, and place of the formal hearing;

(B) The adverse matters upon which the Committee relied in denying admission;

(C) The applicant's right to review in the office of the Director those matters in the Committee file pertaining to the applicant's character and fitness upon which the Committee may rely at the hearing; and

(D) The applicant's right to be represented by counsel at the hearing, to examine and cross-examine witnesses, to adduce evidence bearing on moral character and general fitness to practice law and, for such purpose, to make reasonable use of the court's subpoena power.

(3) The hearing before the Committee shall be private unless the applicant requests that it be public. The hearing shall be conducted in a formal manner; however, the

Committee shall not be bound by the formal rules of evidence. It may, in its discretion, take evidence in other than testimonial form and determine whether evidence to be taken in testimonial form shall be taken in person at the hearing or by deposition. The proceedings shall be recorded and the applicant may order a transcript at the applicant's expense.

(4) If after the hearing the Committee is of the opinion that an adverse report should be made, it shall serve on the applicant a copy of the report of its findings and conclusions and permit the applicant to withdraw an application within 15 days after the date of the notice. The Committee may, in its discretion, extend this time. If the applicant elects not to withdraw, the Committee shall deliver a report of its findings and conclusions to the court with service on the applicant.

(j) *Review by the Court.*

(1) The Committee shall deliver a report of its findings and conclusions to the court for its approval in the case of any applicant for admission after a formal hearing.

(2) After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied. Proceedings under this Rule shall be heard by the court on the record made by the Committee on Admissions.

(3) Except for the review by the court provided in this ~~section~~ paragraph (j), no other review by the court of actions by or proceedings before the Committee shall be had except upon a showing (A~~1~~) of extraordinary circumstances for instituting such review and (B~~2~~) that an application for relief has previously been made in the first instance to the Committee and been denied by the Committee, or that an application to the Committee for the relief is not practicable.

(k) *Admission Order*. (1) The Committee shall file with the court a motion to admit the successful applicants by examination, or a certification of attorneys for admission by transferred UBE score or of attorneys for admission without examination, after successful completion of a character and fitness study. Each candidate shall be notified of the time and place for the taking of the oath.

(2) An applicant whose name is on an order of admission entered by the court or who is certified for admission by the Committee without a formal hearing shall

complete admission within 90 days from the date of the order or the certification by taking the oath prescribed and by signing the roll of attorneys in the office of the Clerk.

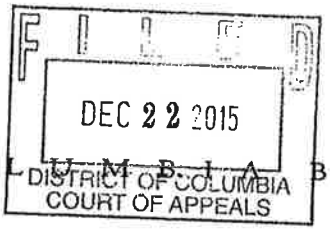
(3) An applicant who fails to take the oath and sign the roll of attorneys within 90 days from the date of the admission order or the certification may file, within one year from the date of the order or certification, an affidavit with the Director explaining the cause of the delay. Upon consideration of the affidavit, the Committee may reapprove the applicant and file a supplemental motion with the court or may deny the applicant's admission and direct the applicant to file a new application for admission.

(l) *Oath.* An applicant admitted to the Bar of this court shall take the following oath before the court or the Clerk of the court or his or her designee, unless granted permission to be admitted in absentia.

"I_____ do solemnly swear (or affirm) that as a member of the Bar of this court, I will demean myself uprightly and according to law; and that I will support the Constitution of the United States of America."

EXHIBIT G

DISTRICT OF COLUMBIA BAR



December 22, 2015

The Honorable Eric T. Washington
Chief Judge
District of Columbia Court of Appeals
Historic Courthouse
430 E Street NW
Washington, DC 20001

Timothy K. Webster
President

Annamaria Steward
President-Elect

Lindsey R. Vaala
Secretary

Christopher P. Zubowicz
Treasurer

Board of Governors
Brigida Benitez
Steven N. Berk
Susan Low Bloch
Rodney J. Bosco
Cindy A. Conover
Moses A. Cook
Ann K. Ford
Lily M. Garcia
Stephen I. Glover
Arian M. June
Sara Kropf
Bridget Bailey Lipscomb
Richard J. Marks
Bonnie Montgomery
Leah M. Quadrino
Gregory S. Smith
Keiko K. Takagi
Michelle C. Thomas
Benjamin F. Wilson

Katherine A. Mazzaferri
Chief Executive Officer

Cynthia D. Hill
Chief Programs Officer

Victor L. Velazquez
Chief Operating Officer

Dear Chief Judge Washington:

In light of the fact that that the Court is currently considering, and has published for comment, proposed amendments to D.C. Court of Appeals Rule 46, I would like to advise the Court of certain potentially relevant activities of the Global Legal Practice Task Force, which was appointed by the D.C. Bar Board of Governors in July 2014. The Task Force, which is chaired by past Bar president Darrell G. Mottley, is studying a variety of issues affecting "inbound" lawyers, including foreign-educated lawyers who wish to practice in the District of Columbia, and "outbound" lawyers, including current D.C. Bar members practicing abroad.

The Task Force's subgroup that is exploring the question of inbound, foreign-educated lawyers is considering whether to recommend amendments to Rule 46. Issues under consideration by the subgroup overlap in some respects with the current Rule 46 proposal. This includes, for example, proposed amended paragraph 46(c)(4) (requirements for applicants who did not graduate from ABA-accredited law schools).

The subgroup's work is not complete. Any subgroup proposals first would be acted upon by the full Task Force and then would be submitted to the Board of Governors for its consideration. I hope that by June 2016, the Board would decide what, if any, recommendations to submit to the Court. This letter is not intended to comment on any aspect of the proposed amendments to Rule 46 that the Court has published for comment, but rather to provide the Court with notice of D.C. Bar activities about the same rule, for your information and consideration.

Please let me know if the Court would like any additional information.

Sincerely,

Timothy K. Webster

cc: Annamaria Steward, Esq.
Darrell G. Mottley, Esq.
Katherine A. Mazzaferri, Esq.

EXHIBIT H

Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46 (July 7, 2017)

Proposed changes from the Global Legal Practice Task Force ("GLPTF") are represented by a strikethrough for ~~deletions~~ and a double underline for additions.

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study ~~in~~ from a Law School Not ~~Approved~~ Accredited by the ABA. An applicant who graduated from a law school not ~~approved~~ accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school

issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule; and

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~ Of such 24 credit hours, a total of 12 credit hours shall be earned in courses of study in the following subjects: Three credit hours of instruction in U.S. Constitutional Law (including separation of powers and federalism); three credit hours of instruction in civil procedure (including the rules of civil procedure of District of Columbia or federal courts of the United States); two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. Legal Institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing. The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule; and

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(e)(3)(B)(iii) *(Renumbered)* Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the

MBE which the state or territory deems to have been taken as a part of such examination; and

(e)(3)(B)(v) (*Renumbered)* Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

EXHIBIT I

Standard 305. OTHER ACADEMIC STUDY

(a) A law school may grant credit toward the J.D. degree for courses that involve student participation in studies or activities in a format that does not involve attendance at regularly scheduled class sessions, including, but not limited to, moot court, law review, and directed research.

(b) Credit granted for such a course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student's educational achievement in such a course shall be evaluated by a faculty member.

Interpretation 305-1

To qualify as a writing experience under Standard 303, other academic study must also comply with the requirement set out in Standard 303(a)(2). To qualify as an experiential course under Standard 303, other academic study must also comply with the requirements set out in Standard 303(a)(3).

Standard 306. DISTANCE EDUCATION

(a) A distance education course is one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.

(b) Credit for a distance education course shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school's regular curriculum approval process.

(c) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education.

(d) A law school may award credit for distance education and may count that credit toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required by Standard 311(b) if:

(1) there is opportunity for regular and substantive interaction between faculty member and student and among students;

(2) there is regular monitoring of student effort by the faculty member and opportunity for communication about that effort; and

(3) the learning outcomes for the course are consistent with Standard 302.

(e) A law school shall not grant a student more than a total of 15 credit hours toward the J.D. degree for courses qualifying under this Standard.

(f) A law school shall not enroll a student in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.

(g) A law school shall establish an effective process for verifying the identity of students taking distance education courses and that also protects student privacy. If any additional student charges are associated with verification of student identity, students must be notified at the time of registration or enrollment.

Interpretation 306-1

Technology used to support a distance education course may include, for example:

(a) The Internet;

(b) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(c) Audio and video conferencing; or

(d) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (a) through (c).

Interpretation 306-2

Methods to verify student identity as required in Standard 306(g) include, but are not limited to (i) a secure login and pass code, (ii) proctored examinations, and (iii) other technologies and practices that are effective in verifying student identity. As part of the verification process, a law school shall verify that the student who registers for a class is the same student that participates and takes any examinations for the class.

Standard 307. STUDIES, ACTIVITIES, AND FIELD PLACEMENTS OUTSIDE THE UNITED STATES

(a) A law school may grant credit for (1) studies or activities outside the United States that are approved in accordance with the Rules of Procedure and Criteria as adopted by the Council and (2) field placements outside the United States that meet the requirements of Standard 304 and are not held in conjunction with studies or activities that are approved in accordance with the Rules of Procedure and Criteria as adopted by the Council.

(b) The total credits for student participation in such studies or activities may not exceed one-third of the credits required for the J.D. degree.

Interpretation 307-1

The three Criteria adopted by the Council are the Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools, the Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools, and the Criteria for Accepting Credit for Student Study at a Foreign Institution.

Interpretation 307-2

For purposes of Standard 307, a brief visit to a country outside the United States that is part of a course offered and based primarily at the law school and approved through the school's regular curriculum approval process is not considered to be studies outside the United States.

Standard 308. ACADEMIC STANDARDS

(a) A law school shall adopt, publish, and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal.

(b) A law school shall adopt, publish, and adhere to written due process policies with regard to taking any action that adversely affects the good standing or graduation of a student.

APPENDIX 2
to Final Report
January 2018

Redline of Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46
(January 2018)

Proposed changes from the Global Legal Practice Task Force ("GLPTF") are represented by a strikethrough for ~~deletions~~ and a double underline for additions.

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study ~~in~~ from a Law School Not ~~Approved~~ Accredited by the ABA. An applicant who graduated from a law school not ~~approved~~ accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA. ~~All such 26 credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA.~~, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE; and~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was ~~approved~~ accredited by the ABA; or, if the applicant graduated from a law school not ~~approved~~ accredited by the ABA, the applicant successfully completed at least ~~26~~ 24 credit hours of study ~~in~~ from a law school that at the time of such study was ~~approved~~ accredited by the ABA.~~, with all such 26 credit hours having been earned in courses of study, each of which is substantially concentrated on a single subject tested on the UBE;~~

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards;

(e)(3)(B)(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(e)(3)(B)(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

APPENDIX 3
to Final Report
January 2018

Global Legal Practice Task Force Proposed Revisions to District of Columbia Court of Appeals Rule 46
(January 2018)

Rule 46. Admission to the Bar.

(c) *Admission based on examination in this jurisdiction.*

****

(c)(4) Law Study from a Law School Not Accredited by the ABA. An applicant who graduated from a law school not accredited by the ABA shall be permitted to take the bar examination only after successfully completing at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards.

(c)(5) Multistate Professional Responsibility Examination. An applicant for admission by examination shall not be admitted to the Bar unless that applicant has also taken the Multistate Professional Responsibility Examination (MPRE) written and administered by NCBE and has received thereon the minimum required grade as determined by the Committee. ***

****

(d) *Admission by transfer of a Uniform Bar Examination score attained in another jurisdiction.*

****

(d)(3) Admission Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court on the basis of a UBE score attained in another jurisdiction provided that:

****

(d)(3)(D) The applicant has been awarded a J.D. or LL.B. degree by a law school, which, at the time of the awarding of the degree, was accredited by the ABA; or, if the applicant graduated from a law school not accredited by the ABA, the applicant successfully completed at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards; and

(E) The applicant has also taken the MPRE written and administered by NCBE and received the minimum required grade as determined by the Committee.

****

(e) *Admission without Examination of Members of the Bar of Other Jurisdictions.*

****

(3) Admissions Requirements. An applicant may, upon proof of good moral character as it relates to the practice of law, be admitted to the Bar of this court without examination in this jurisdiction, provided that the applicant:

****

(e)(3)(B)(i) Has been awarded a J.D. or LL.B. degree by a law school which, at the time of the awarding of the degree, was accredited by the ABA; or, if the applicant graduated from a law school not accredited by the ABA, the applicant successfully completed at least 24 credit hours of study from a law school that at the time of such study was accredited by the ABA.

Of such 24 credit hours, a total of six credit hours shall be earned in courses of study in the following subjects: two credit hours of instruction in professional responsibility (based on the ABA Model Rules of Professional Conduct or rules of professional conduct of a U.S. jurisdiction); two credit hours of instruction in U.S. legal institutions (including the history, goals, structure, values, rules and responsibilities of the U.S. legal system); and two credit hours of instruction in common law legal reasoning, research, and writing.

A minimum of six credit hours shall be earned in courses of study, each of which is substantially concentrated on a single subject tested on the Uniform Bar Examination.

The law school issuing the credit hours shall certify in writing that its courses comply with the specific course requirements in this rule.

Any amount of such 24 credit hours may be completed through distance education from the ABA-accredited law school, provided the law school issuing the credit hours certifies in writing that its distance education methods comply with ABA distance education standards;

(e)(3)(B)(ii) Has been admitted to the practice of law in any state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the MBE which the state or territory deems to have been taken as a part of such examination; and

(e)(3)(B)(iii) Has taken and passed, in accordance with paragraph (c)(5), the MPRE.

****

APPENDIX 4
to Final Report
January 2018

Comparison of Additional Legal Education – Course Requirements for Foreign Lawyers - GLPTF and New York

January 2018

GLPTF Proposed Rule 46	New York
24 additional credit hours "from" an ABA-accredited law school.	**LL.M. of 24 credit hours completed in-person at an ABA-accredited law school in the U.S.**
Required Courses: 6 credits	**Required Courses: 6 credits**
Professional Responsibility (2 credits)	*Professional Responsibility* (2 credits)
Legal Research, Writing and Analysis (2 credits)	*Legal Research, Writing and Analysis* (2 credits).
U.S. legal institutions (2 credits)	*American Legal Studies* (2 credits) or similar course
Other Bar Exam Courses: 6 credits. Two other courses that focus on subjects tested on the *Uniform Bar Examination.*	**Other Bar Exam Courses: 6 credits.** Two other courses that focus on subjects tested on the *N.Y. Bar Exam or N. Y. Law Exam.*
Electives: 12 credits in any law course.	**Electives: 12 credits** in any law course.