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ARTICLE

ANOTHER EFFECT OF GLOBALIZATION: ROLE OF FOREIGN EDUCATED LAWYERS IN MARYLAND LEGAL PRACTICE¹

By: Professor Michele Gilligan

One's initial reaction is that their role is extremely limited, but in today's world that would not even be close to accurate. Companies and individuals that do business in foreign countries deal with foreign educated lawyers directly and indirectly with every transaction.² Even in transactions within Maryland one can be dealing with a foreign educated lawyer because United States ("US") citizenship and state citizenship cannot be a prerequisite for becoming a member of any bar, including the Maryland Bar.³ Foreign educated attorneys are admitted to the surrounding jurisdictions of the District of Columbia ("DC"),⁴ West Virginia⁵ and Pennsylvania⁶ without the requirement of

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1. I became interested in this topic in 2000 when I taught Property and the Law of Lawyering in China at Shandong University under a US State Department Rule of Law Partnership grant to the University of Baltimore School of Law and Shandong University, and a professional development grant from the Hoffberger Center on Professional Ethics. For making my participation possible I would like to thank Professor Eric Easton, principal investigator on the State Department Grant and Professor Fred Guy, Director of the Hoffberger Center on Professional Ethics.
 2. See discussion of consequences *infra* Section VIII.
 3. In *re* Griffiths, 413 U.S. 717 (1973) (holding that requiring US citizenship for admission to the bar violated the equal protection clause of the 14th Amendment of the US Constitution); *Supreme Court of N.H. v. Piper*, 470 U.S. 274 (1985) (holding that requiring state citizenship for admission to the bar violated the privileges and immunities clause of the US Constitution).
 4. In the District of Columbia ("DC"), the Court of Appeals' Rule 46(b)(4), Admission to the Bar, provides that an applicant who did not graduate from an American Bar Association ("ABA") approved law school, in order to take the DC Bar examination must take twenty-six semester hours at an ABA-approved school in subjects tested on the bar examination. D.C. CT. APP. R. 46(b)(4).
 5. In West Virginia, the State Court Rules for Admission to the Practice of Law, Rule 3(b)(4)(a)-(c), allows graduates of foreign law schools to sit for the bar examination if they graduated from a law school in a country whose jurisprudence is based on English common law, the education requirements of that country to become an attorney are equivalent to West Virginia, and the applicant takes a minimum of thirty credit hours at an ABA-approved school from a list of basic courses in the rule. W. VA. CODE ANN. 3(b)(4)(a)-(c) (LexisNexis 2006).
 6. In Pennsylvania, Bar Admission Rule 205 allows the graduate of a law school located outside the geographic area in which the ABA approves law schools, who is admitted to the highest court of a foreign jurisdiction, is in good standing, and has practiced five of the last eight years in the foreign jurisdiction, to take the Pennsylvania bar after

a law degree from an ABA-approved school,⁷ and under multijurisdictional practice rules, may be practicing in Maryland.⁸ Also foreign educated attorneys who are first admitted in another state can subsequently be admitted in Maryland by examination. Depending on the number of years the attorney has practiced, admission may require that the applicant pass the full bar examination (after the waiver of the legal education requirements)⁹ or the attorney's bar examination (which has no legal education requirement).¹⁰ Consequently, a Maryland lawyer has a high likelihood of dealing with a foreign educated lawyer in Maryland legal practice, and should therefore be aware that different understandings and experiences apply that do not apply with US educated lawyers practicing in Maryland.

I. EDUCATION ISSUES WITH FOREIGN EDUCATED LAWYERS

Unlike medicine, foreign educated lawyers study, and often know a "law" different from Maryland law.¹¹ Many study civil, rather than common law legal systems,¹² and the adversary system with particular rules like attorney client privilege,¹³ the work product doctrine¹⁴ and

successful completing thirty credit hours at an ABA-approved school from a list of basic courses in the rule. PA. BAR ADMISSION R. 205.

7. Nine states allow graduates of foreign law schools to sit for the bar examination if they receive a Masters of Law ("LL.M.") from an ABA-approved law school (in Arizona, Connecticut, Kentucky, Michigan, Montana, New York, North Carolina, South Carolina and Texas) and four states allow graduates of foreign law schools to sit for the bar examination if they take the equivalent of one year of study at an ABA-approved US law school (Alaska, District of Columbia, Pennsylvania and West Virginia). *Bar Admission Requirements*, NATIONAL CONFERENCE OF BAR EXAMINERS AND ABA SEC. PUB. LEGAL EDUC. & ADMISSIONS TO THE BAR 32-33 (Erica Moeser & Margaret Fuller Corneille eds. 2005).
8. The Maryland Lawyers' Rules of Professional Conduct [hereinafter MRPC] adopted February 8, 2005 and effective July 1, 2005 in Rule 5.5(c) & (d) provide for limited practice in Maryland by non-Maryland lawyers. The key in MRPC R. 5.5(c) is the *temporary* nature of the work and in MRPC R. 5.5(d) it is that the work is for an employer and does not require pro hac vice admission or is authorized by law. MRPC R. 5.5(c)-(d) ("Unauthorized Practice of Law"; "Multijurisdictional Practice of Law"). See discussion *infra* Section VII.
9. In Maryland, Rules Governing Admission to the Bar Rule 4(b), controls admittance to the bar. MD. CODE ANN., RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND 4(b) [hereinafter Admission Rules]. See discussion of Rule 4(b) *infra* Section III.
10. Admissions Rules R. 13 ("Out-of-State Attorneys"). See discussion *infra* Section IV.
11. MARY ANN GLENDON, MICHAEL GORDON & PAOLO CAROZZA, *COMPARATIVE LEGAL TRADITIONS* 74-77 (2d ed. West Nutshell 1999) (1982).
12. *See, e.g., In re Gluckselig*, 697 N.W.2d 686 (Neb. 2005) (stating that a foreign educated applicant studied Roman civil law and the court found this a difficulty only overcome by subsequent extensive study of the common law system).
13. J. Triplett Mackintosh & Kristen M. Angus, *Conflict in Confidentiality: E.U. Laws Leave In-House Counsel Outside the Privilege*, 38 INT'L LAW. 35, 35-38, 40-48, 53 (2004).

the judge as a neutral decision maker are unfamiliar.¹⁵ Some study a system of law that has historic roots in a traditional model of leaders making all rules and decisions.¹⁶ These systems change when leaders change, as opposed to our concept of the rule of law with its guarantees, predictions and protections.¹⁷ A lawyer's role in the legal system and relationship with government can be very different.¹⁸ For example, in 1980, China, in its *Provisional Regulations on the Work of Lawyers*, viewed lawyers as state workers who advance government interests like economic development, and who did not act to curb government excesses.¹⁹

Many study legal systems which have a different working relationship with clients.²⁰ These systems are subject to different regulation,²¹ discipline²² and loyalties. Another difference is that

14. *Id.* at 35, 37, 42, 53.

15. GLENDON, *supra* note 11. Dr. Masahisa Deguchi, Address at the International Forum on New Legal Education Method in the Global Society: Legal Education for Global Citizen Lawyers in the Global Society (Sept. 20, 2006) (discussing in Part V, the need for changes in legal education in Japan to educate Global Citizen Lawyers including courses in English and courses on Anglo-American law).

16. *See, e.g.*, Wang Chenguang, *Introduction: An Emerging Legal System*, in INTRODUCTION TO CHINESE LAW 1-2 (Wang Chenguang & Zhang Xianchu eds., Sweet & Maxwell Asia 1997).

17. *Jia v. Bd. of Bar Exam'rs*, 696 N.E.2d 131 (Mass. 1998) (holding the application was denied because the applicant had no evidence of legal education in the English common law system). The history of China showed reliance on a different system. *See* Chenguang, *supra* note 16, at 6-7 ¶ 1.05. Historically, in China, legal education by private institutions was not the norm; rather, law depended on decisions of individuals in power and those individuals taught their successors. *Id.* at 8-11 ¶¶ 1.07-10. From the opening of China as a result of the Opium Wars in 1840 until the Cultural Revolution, an effort was made to create a legal system by legal reforms that was a system of rules rather than the "traditional" system dependent on individual decisions. *Id.*

18. In the US, lawyers have historically been a counterbalance to the power of government or big business. Alexis de Tocqueville observed this when he visited the US in the 1800s. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, Vol. I, 283-90 (P. Bradley ed., H. Reeve trans., 1973) (1st ed. 1835), *reprinted in* GEOFFREY C. HAZARD & DEBORAH L. RHODE, *THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION* 33-37 (3d ed., Foundation Press 1994) (1985).

19. The model for the practice of law contained in the Provisional Regulations was the Soviet model: the lawyers' work had legal and social implications but under the system they had no access to internal documents or fact finding that were the source of decisions, and they were subject to government control. ALBERT H.Y. CHEN, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* 130-31 (Butterworths Asia 1988).

20. Under the English common law tradition, solicitors dealt directly with clients and barristers made the arguments in court. Solicitors hired barristers to represent the solicitor's clients. GLENDON, *supra* note 11 at 215-17.

21. In the US, the highest court of the state has inherent power to regulate the practice of law. *See infra* note 36, *In re Allan S.*, 282 Md. at 689, 387 A.2d at 275; *Hahn Trasp. Inc.*, 253 Md. at 583, 253 A.2d at 852. In other countries, for example, in China, the government

education is conducted in a language other than English.²³ Further, much training is done in an unregulated office setting.²⁴

The method of teaching law students is also different. US legal education is graduate education with the objective of preparing students to sit for state bar examinations.²⁵ Before attending law school, US students obtain a four year undergraduate degree.²⁶ For much of the rest of the world, law is an undergraduate education, as

regulates the practice of law because the judiciary is an arm of the executive branch and not an independent third branch of government. GUIGUO WANG, *THE LEGAL SYSTEM IN CHINA IN CHINESE LAW* 5-6, 15, 18, 53, 67 (Guiguo Wang & John Mo eds., Kluwer Law International 1999) (“[T]he nature of law is a reflection of the will of the ruling class, whose contents are decided by the material conditions of the society.” (quoting FA LI XUE, *JURISPRUDENCE* 28 (Zongling Shen ed., Wunan Book Publisher 1994))).

22. RONALD BROWN, *UNDERSTANDING CHINESE COURTS AND LEGAL PROCESS: LAW WITH CHINESE CHARACTERISTICS*, 25 (Kluwer 1997). In the Appendix containing the 1996 Lawyer’s Law, Chapter 1, Article 4, the text of the law quotes, “the judicial administration department under the State Council shall supervise and guide lawyers, law firms and lawyer associations in accordance with this Law.” *Id.* at 335. *See also* Lawyer’s Law (1996) Chapter VII which lists the sanctions for failure to follow regulations governing conduct. *Id.* at 340-42.
23. *In re Singh*, 800 N.E.2d 1112, 1116-17 (Ohio 2003) (holding the applicant was denied permission to sit for the bar because of the failure to speak and write English. The applicant was directed to study English and reapply in eighteen months). Interestingly, the Daily Record carried an article about the European Union’s highest court, the European Court of Justice, striking down the Luxembourg bar’s rule that foreign lawyers had to pass a test in the three official languages of Luxembourg to be admitted to the bar. The Court adopted the argument of the European Commission that European Union (“EU”) law allows lawyers who are fully qualified in their own country to practice in any EU country. Such a language requirement broke the EU law. Stephanie Bodon, *Court Strikes Down Luxembourg’s Language Test for Foreign Lawyers*, DAILY RECORD, Sept. 20, 2006, at B6.
24. *In re Brown*, 708 N.W.2d 251 (Neb. 2006) (describing the requirement of such traineeships or clerkships for an attorney in Canada). *See also* *Sodha v. N.Y. State Bd. of Law Exam’rs*, 431 N.Y.S.2d 885 (N.Y. Sup. Ct. 1980) (describing the requirement of such traineeships or clerkships for an attorney from India); *In re Anderson*, 377 So. 2d 1185 (La. 1980) (describing the requirement of such traineeships or clerkships for an attorney from the United Kingdom).
25. GLENDON, *supra* note 11, at 211; *Standard Rules of Procedure for Approval of Law School*, 2005-2006 ABA SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR [hereinafter ABA Standards] Standard 301.
26. *Comprehensive Guide to Bar Admission Requirements 2005* (Erica Moeser & Margaret Fuller Comeille eds., 2005) ABA SEC. PUB. LEGAL EDUC. AND ADMISSIONS TO THE BAR AND NAT’L CONFERENCE OF BAR EXAM’RS 3-5, 10-13. Maryland’s requirement is typical of the requirement in other states. MD. CODE ANN., BUS. OCC. & PROF. § 10-207(d) (“(d) *Education* – An applicant shall: (1) have completed the academic work necessary to meet the minimum requirements for admission to an American Bar Association approved law school . . .”). That a minimum requirement is set in ABA Standard 502(a). ABA Standards 502(a) (requiring generally a bachelor’s degree). *See also* Admission Rules R. 3 (stating that in Maryland, an applicant for admission must have completed the pre-legal education necessary to meet the minimum requirements for admission to an ABA-approved law school.).

seen in *Sodha v. New York State Board of Law Examiners*,²⁷ where the attorney was from India and *In re Anderson*,²⁸ where the attorney was from the United Kingdom (“UK”). In contrast, US law schools do not provide a broad undergraduate theoretical education and they do not require students to take practical training to learn how to perform as an attorney either before or subsequent to required examinations.²⁹ US law schools build on an existing base of four years of undergraduate education and focus on in depth training in law: its theory, skills, ethics and practice.³⁰ For a law school to be ABA-approved, the students must take courses on substantive law, professional ethics, courses in writing, research, oral and written argumentation and skills training.³¹ US legal education is conducted in a Socratic dialogue, involves live-clients or other real life experiences and, must be, in part, conducted in small classes.³² This is generally different than the large lecture method favored in the rest of the world.³³

For a foreign educated applicant, passing a state bar examination does not remove their background. Their method of study and the legal system they know remain with them. Further, it does not provide the knowledge of the US legal system gained in US law school programs. Consequently, the highest courts of each state have grappled with what constitutes sufficient legal education to permit a foreign educated applicant to sit for their bar.³⁴ The choices made in Maryland mirror the choices made in other states.

27. *Sodha*, *supra* note 24.

28. *Anderson*, *supra* note 24.

29. Typical of the type of requirements the law school graduates face in the rest of the world are the requirements for a Post-Diploma Training Contract with a solicitor in Scotland. DIVISION F (SOLICITORS) OF THE PARLIAMENT HANDBOOK, *reprinted in* GREENS SOLICITORS PROFESSIONAL HANDBOOK 2000/2001, at F 316, Part II(B).

30. The ABA is constantly concerned about preparing law students for the membership in the profession. One of the more recent reports emphasizing the need to teach skills and values in law student preparation is the Report of the Task Force on Law Schools and the Profession. *Legal Education and Professional Development – An Educational Continuum*, REPORT OF THE TASKFORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, 1992 A.B.A. SEC. PUB. LEGAL EDUC. AND ADMISSIONS TO THE BAR. It is also known as the MacCrate Report after the chair of the Task Force. Foreign legal education does not focus on this type of skills training in law school leaving it to a traineeship.

31. ABA Standards 302(a).

32. ABA Standards 302(b).

33. *See, e.g.*, James Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional Into Legal Education*, 13 PAC. RIM L. & POL'Y J. 303 (2004).

34. ABA Council of the Section of Legal Education and Admissions to the Bar sent a letter in Spring 1999 to the Chief Justices of State Supreme Courts and the Directors of Boards of Bar Examiners questioning the equation of an LL.M. or one-year of courses plus a foreign degree with the Juris Doctorate programs in the US. J. Richard Hurt, *Foreign-*

II. BARRIER TO FOREIGN EDUCATED APPLICANTS TAKING THE MARYLAND BAR: ADMISSION RULES 3 AND 4³⁵

The Court of Appeals of Maryland, through the Maryland Board of Law Examiners³⁶ will not permit a foreign educated applicant to sit for the Maryland Bar examination as the applicant's first US Bar.³⁷ It does not matter if the foreign educated applicant has merely completed legal education or is fully licensed; both are barred based on the foreign legal degree from sitting for original bar admission in Maryland.³⁸ To sit for the Maryland bar under Rule 3 one must have completed appropriate pre-legal education that qualifies one for admission to an ABA-approved law school³⁹ and under Rule 4 must have graduated from an ABA-approved law school located in a state.⁴⁰ Since the ABA does not approve law schools outside the US, foreign law schools cannot be approved. Rules 3 and 4 have not been challenged in Maryland.

Courts in other states with similar educational requirements have faced constitutional challenges to the requirements on equal protection

Trained Lawyers, American Graduate Legal Education and Bar Admissions: Should the LL.M. Satisfy Educational Requirements to Practice Law? 69 THE BAR EXAMINER 4, at 35 (Nov. 2000).

35. Admission Rules R. 3-4.
36. MD. CODE ANN., BUS. OCC. & PROF. § 10-103(a) (Repl. Vol. 2004) (“[T]he Court of Appeals shall adopt rules that govern the standards and procedures for admission to the Bar.”). The legislature in 10-103(b) specified that the resulting rules should include standards for: a uniform system of bar examination, registration of each applicant, qualifications of each applicant, character examination of each applicant and fees. *In re Allan S.*, 282 Md. 683, 387 A.2d 271 (1978); *Pub. Serv. Comm’n. v. Hahn Transp. Inc.*, 253 Md. 571, 253 A.2d 845 (1960) (stating the Court of Appeals had primary and ultimate responsibility for admitting and regulating members of the Maryland Bar).
37. Admission Rule 4(b) gives the Board discretion to waive the pre-legal education requirement of Rule 3 and the requirement of graduating from a law school located in a state in Rule 4(a) but only if the applicant has already been admitted to another state's bar and is a member in good standing. Admission Rules R. 4(b).
38. Admission Rule 3 requires an applicant to show pre-legal education necessary to be admitted to an ABA-approved law school and Rule 4 requires an applicant to have graduated from an ABA-approved law school located in a state. The legislature is in accord with the Court of Appeals of Maryland on not accepting foreign legal education as equivalent to US legal education as seen in the standards it sets for admission to the Bar: 1. Pre-legal education that qualifies one to be admitted to an ABA-approved school and 2. A Juris Doctorate or equivalent from a law school the Court of Appeals of Maryland recognizes through the Maryland Board of Law Examiners. Admission Rules R. 3. See also § 10-207(d) *supra* note 26.
39. Admission Rules R. 3.
40. Admission Rules R. 4.

and due process grounds.⁴¹ These challenges have not been successful. The educational requirement is not arbitrary or capricious⁴² because requiring bar admissions staff to evaluate the programs of foreign law schools overburdens the resources of state bars' admissions offices.⁴³ The foreign law schools have different accrediting systems, different languages, teach other than the common law legal system, and instruct content that is not comparable to an ABA-approved law school.⁴⁴ Further, the ABA has a sophisticated and time consuming procedure to

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41. Robin Cheryl Miller, Annotation, *Validity, Construction, and Application of Enactment, Implementation or Repeal of Formal Educational Requirement for Admission to the Bar*, 44 A.L.R. 4th 910, 923 (1986) (discussing cases on this topic).
 42. See discussion on equal protection in *Teare v. Comm. on Admissions*, 566 A.2d 23, 29 (D.C. 1989). Under a conventional rational basis analysis, see *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (per curiam) (holding that the requirement that applicants who seek admission without examination graduate with a J.D. from an ABA-approved law school has a rational connection with a legitimate state purpose. Such a requirement bears a rational connection to the applicant's fitness to practice law which comports with the District's substantial interest in establishing standards for licensing of attorneys who will practice in the jurisdiction). *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (noting in footnote 15 Maryland joins a long line of cases from various jurisdictions which have upheld as reasonable the requirement that a bar applicant graduate from an ABA-approved law school). See, e.g., *In Re Urie*, 617 P.2d 505, 507 (Alaska 1980); *Rosenthal v. State Bar Examining Comm.*, 165 A. 211, 214 (Conn. 1933); *In re Hansen*, 275 N.W.2d 790, 793-95 (Minn. 1978); *Petition of Batten*, 428 P.2d 195 (Nev. 1967); *Henington v. State Bd. of Bar Exam'rs*, 291 P.2d 1108, 1109-11 (N.M. 1956); *Ostroff v. N.J. Supreme Court*, 415 F. Supp. 326, 329 (D.N.J. 1976); *Appeal of Kartorie*, 406 A.2d 746, 747 (Pa. 1979).
 43. See *Eyerly v. Alaska Bar Ass'n*, 631 P.2d 480 (Alaska 1981); Fla. Bd. of Bar Exam'rs *In re Hale*, 433 So. 2d 969 (Fla.1983); *Jia, supra* note 17; *Matter of Adams*, 700 P.2d 194 (N.M. 1985).
 44. *In Re Urie*, 617 P.2d at 508 (finding it would be very difficult for this Court to determine whether the quality of education afforded by an unaccredited law school was comparable to that of an accredited one); *Teare*, 566 A.2d at 30 ("[T]he task of making separate subjective evaluations of each applicant's training and education . . . would be even more difficult to make when confronted, as in these appeals, with law schools in foreign countries whose legal systems may be very different from our own."); *Hale*, 433 So. 2d at 971 (quoting that the Court refused to waive the education requirement for an attorney educated in Nova Scotia and stated, "[I]n 1955, this Court initiated the requirement that all applicants submitting to the Florida Bar Examination be graduates of ABA-approved law schools or Association American Law Schools. We did this, in part, in an effort to provide uniform and measurable standards by which to assess the qualifications of applicants."); *LaBossiere v. Fla. Bd. of Bar Exam'rs*, 279 So. 2d 288, 289 (Fla. 1973) ("[W]e were unequipped to make such a determination ourselves because of financial limitations and the press of judicial business."); *Adams*, 700 P.2d at 195-96 (quoting that the ABA's expertise in evaluating and re-evaluating law schools is "[A] task which is beyond the capabilities of most state judiciaries."); *In Re Altshuler*, 490 N.W.2d 1, 3-5 (Wis. 1992) (quoting the Board refused to waive the legal education requirement for an Israeli law graduate who received an LL.M. from the University of Chicago because "[I]t is not feasible that it evaluate the quality of the law school education provided by a law school located in Israel or, for that matter, in any foreign country" and her pursuit of an LL.M. degree did not substitute for a J.D.).

evaluate US law schools on which the state bar admissions offices are justified in relying.⁴⁵

Although foreign educated applicants do not meet the legal education requirement to sit for the bar in Maryland, other jurisdictions do allow foreign educated applicants to take their state bar examination if they either receive an LL.M. from an ABA-approved school or take the equivalent of one year of study at an ABA-approved school.⁴⁶ In the past, the State of New York has even allowed foreign educated attorneys to be admitted to the bar without examination if they obtain a certificate of substantial educational equivalency and have practiced in their admitting country.⁴⁷ The practice of these states is of concern to the ABA Council of the Section of Legal Education and Admissions to the Bar and resulted in the Spring 1999 letter of Chief Judge Shepard to the Chief Justices of State Supreme Courts and the Directors of Boards of Bar Examiners questioning the equation of an LL.M. or one year of courses plus a foreign degree with the Juris Doctorate programs in the US.⁴⁸ Despite this concern there has been a growth of LL.M. programs at ABA-approved schools for foreign educated lawyers.⁴⁹

III. WAIVER OF THE EDUCATION REQUIREMENT IN MARYLAND: ADMISSION RULE 4(B)

In creating Rule 4(b), the Court of Appeals of Maryland has provided a waiver to this absolute barrier.⁵⁰ This rule allows a foreign educated attorney to sit for the Maryland bar examination if the

45. Miller, *supra* note 41.

46. See discussion *supra* notes 4-6. Pennsylvania requires successful completion. Proof must be submitted to the bar such as either a transcript or a letter of good standing which requires a "C" average. Other jurisdictions do allow foreign educated applicants to take their state bar if they either receive an LL.M. from an ABA-approved school or take the equivalent of one year of study at an ABA-approved school.

47. Compare *Pascual v. State Bd. of Law Exam'rs*, 435 N.Y.S.2d 387, 388 (1981) (stating the certificate of substantial educational equivalency for Philippine law schools was denied by New York Board of Law Examiners after evaluation of the educational program with the help of consultants who were expert in Philippine law so applicants could only be admitted by examination) with *Sodha*, 431 N.Y.S.2d at 886 (holding the certificate of substantial educational equivalency for the University of Bombay, India law school was granted by New York Board of Law Examiners so applicant could be admitted without examination).

48. Hurt, *supra* note 34 at 35-36.

49. The University of Baltimore School of Law started such a program in 2003.

50. Admission Rules R. 4(b).

applicant has been admitted to another state's bar.⁵¹ Specifically, the Court of Appeals of Maryland directs the Maryland Board of Law Examiners to find that the applicant has passed the bar of another state, is a member in good standing of that state bar, and is qualified to take the Maryland bar by education, experience or both.⁵² Other states look only for educational equivalency and do not have a restrictive waiver provision that requires the applicant to take another state's bar examination and be a member in good standing of that state's bar association.

Nebraska, Louisiana, and Florida are examples of states which have reviewed the equivalency of the applicant's foreign legal education to the standards of the ABA to determine if an applicant can sit for the state bar examination. *In re Collins-Bazant*,⁵³ the applicant for admission to the Nebraska bar had been educated in Canada, which was a common law system, with instruction in English.⁵⁴ The Dean of the Canadian law school, from which the applicant graduated, said that the curriculum was comparable to a US ABA-approved law school.⁵⁵ The Supreme Court of Nebraska found that the educational requirements were met.⁵⁶ *In re Anderson*, the Supreme Court of Louisiana reviewed the applicant's legal education in the United Kingdom and found it to be the equivalent of the ABA requirements.⁵⁷ This education consisted of a three-year course at a university leading to a Bachelor of Laws⁵⁸ ("LL.B"), followed by a six-month qualifying examination oriented course run by the Law Society,⁵⁹ which governs attorneys, and three years of articles of clerkship in a law firm.⁶⁰ The Supreme Court of Florida evaluated the education of an Indian law school graduate. The court waived the requirement of graduating from

51. In the Admission Rules, "state" is defined as, "(1) a state, possession, territory, commonwealth of the United States or (2) the District of Columbia." Admission Rules R. 1(h).

52. Admission Rules R. 4(b).

53. *In Re Collins-Bazant*, 578 N.W.2d 38 (Neb. 1998).

54. *Id.* at 40.

55. *Id.*

56. *Id.* at 44. Nebraska has considered the question of waiver in several cases. *See id.*; *In re Gluckselig*, *supra* note 12; *In re Brown*, 708 N.W.2d 251 (Neb. 2006).

57. *In re Anderson*, 377 So. 2d 1185 (La. 1980).

58. The LL.B is an undergraduate bachelor's degree in law. Stephen Parker, *Legal Education in Australia: The Perfect Storm?*, 43 S. TEX. L. REV. 535, 538 (2001).

59. The Law Society is a professional organization of solicitors which controls the practical education of solicitors after graduation from university and the discipline of solicitors. GLENDON, *supra* note 11 at 219-20.

60. Parker, *supra* note 58, at 537 (defining that articles of clerkship follow the awarding of an academic degree and are a form of apprenticeship).

an ABA-approved law school and having the required pre-legal education in *Hale*.⁶¹

Courts that have reviewed this type of waiver are concerned by the ad hoc nature of the review.⁶² Although individual review means the merits of each applicant's situation can be probed, this probing can lead to inconsistent results. Consequently, the Florida Supreme Court in *Hale*⁶³ looked at the historic data in their state on waivers and found that of the fifty-five applications, nine had been granted. The Court determined it would no longer permit waivers because of the appearance of, if not actual, discriminatory results, and found the ABA was in the best position to evaluate law schools.⁶⁴

IV. BARRIER TO FOREIGN EDUCATED ATTORNEYS BEING ADMITTED TO MARYLAND BY THE ATTORNEY EXAMINATION AFTER TEN YEARS OF PRACTICE: ADMISSION RULE 13

Practically, there is no barrier.⁶⁵ Foreign educated lawyers, who are members in good standing of the bar of another state, can become members of the Maryland Bar under Rule 13 which allows out-of-state attorneys to take a special attorney examination.⁶⁶ In Rule 13, there is no requirement of graduating from an ABA-approved law school located in the US. The Maryland Board of Law Examiners, under Rule 13, must be sure that all applicants for admission taking the attorney examination are members of a state bar, became members of that state bar by passing a written bar examination and have the required practice experience.⁶⁷ Rule 13(b) requires that the applicant have full-time practice experience as a lawyer, a judge, or a law professor at an ABA-approved school. Rule 13(c) requires the practice experience to have been authorized within a state as a principal means of livelihood. This experience and responsibilities

61. *In re Hale*, 433 So. 2d 969, 971 (Fla. 1983) (citing as an example of the nine times a waiver was granted).

62. *Teare*, 566 A.2d at 31 ("[A]ny case by case consideration of waivers invites the risk of disparate treatment of similar cases, and thus carries its own potential for unfairness.").

63. *Hale*, *supra* note 61.

64. *Id.* at 972.

65. Michael A. DiSabatino, Annotation, *Validity, Construction, and Effect of Reciprocity Provisions for Admission to Bar of Attorney Admitted to Practice in Another Jurisdiction*, 14 A.L.R. 4th 7, 12 (1972).

66. Admission Rules R. 13.

67. Admission Rules R. 13(a); MD. CODE ANN., BUS. OCC. & PROF. § 10-210(a)(1)-(2) (LexisNexis 2004). The applicant must have practiced at least five years or is not eligible to waive in. *In re Lohmeyer*, 218 Md. 575, 147 A.2d 703 (1959).

will satisfy the Maryland Board of Law Examiners that the applicant should be admitted. The standard in this Rule recognizes that the applicant's practice experience demonstrates the applicant's understanding of the US legal system, its rules and values and shows minimum competence.⁶⁸ Under Rule 13(d), the applicant must have practiced for ten years or five of the ten years immediately preceding the application.

In Maryland, the attorney must demonstrate that he or she has practiced in the US⁶⁹ and must show knowledge of the US legal system.⁷⁰ Some states have actually evaluated foreign practice. In *Shaikh v. Appellate Division of the Supreme Court, Third Judicial Department*, the Court of Appeals of New York held that a Pakistani lawyer who had practiced in a legal system based on English common law could be admitted to the New York bar under a statute permitting admission by motion on the proof of practice.⁷¹

V. LIMITED ADMISSION OF FOREIGN EDUCATED ATTORNEYS: ADMISSION RULE 14

Although very limited, another way that a foreign educated attorney can practice in Maryland is through Rule 14, a special admission of out-of-state attorneys, usually referred to as admission *pro hac vice*.⁷² Rule 14 only requires that the attorney be a member in good standing of the Bar of another state.⁷³ Again, the reliance of the Court of Appeals of Maryland is on the effectiveness of other states to be sure the individuals admitted to their bar associations are competent. Further, the Court of Appeals of Maryland is relying on the Maryland attorney who moves the out-of-state attorney's admission. The Maryland attorney of record vouches for the out-of-state attorney to assure that the out-of-state attorney will meet Maryland standards.⁷⁴

68. The Court of Appeals of Maryland has primary authority for admission and has set a different experience requirement. See Admission Rules R. 13(b)-(e); Attorney Grievance Comm'n v. Keehan, 311 Md. 161, 167, 533 A.2d 278, 281 (1987).

69. See Admission Rules R. 13(a)(1) (stating the out-of-state attorney must be a member of the bar of a state).

70. MCKINNEY'S N.Y. R. CT. APP., § 520.10.

71. 350 N.E.2d 902 (N.Y. 1976).

72. Admission Rules R. 14(a); see, e.g., Kennedy v. Bar Ass'n of Montgomery County, 316 Md. 646, 653-54, 561 A.2d 200, 204 (1989).

73. Admission Rules R. 14(a).

74. *Id.*

VI. NO ADMISSION OF FOREIGN EDUCATED ATTORNEYS FOR LEGAL SERVICES: ADMISSION RULE 15

The barrier of a foreign legal education arises again under Rule 15(a).⁷⁵ Rule 15 permits the practice of out-of-state attorneys in Maryland for legal service programs.⁷⁶ This permission is not an admission to the Maryland Bar⁷⁷ but is an authorization to practice here to meet the need of legal service organizations to represent the underserved. Although the attorney admitted under this rule practices under the supervision of a member of the Maryland Bar, like Rule 14,⁷⁸ the Rule still requires that the attorney have graduated from an ABA-approved school located in the US.⁷⁹

VII. MULTIJURISDICTIONAL PRACTICE: MRPC R. 5.5

Another way a Maryland attorney may deal with a foreign educated attorney is through multijurisdictional practice.⁸⁰ Ordinarily, practice in Maryland by an attorney who is not licensed in Maryland, or admitted under one of the special rules, is not permitted.⁸¹ The penalty for engaging in such unauthorized practice of law is conviction of a misdemeanor resulting in a fine not exceeding \$1000, or imprisonment not exceeding a year, or both.⁸² The Court of Appeals of Maryland determines what is the practice of law.⁸³ Within the MPRC, the Court of Appeals of Maryland has provided exceptions beyond the means of admission discussed up to this point.⁸⁴ The recent modification of the multijurisdictional practice rules has expanded or, others might say,

75. Admission Rules R. 15(a) (“[T]he individual is a graduate of a law school meeting the requirements of Rule 4(a)(2).”).

76. Admission Rules R. 15(a).

77. Admission Rules R. 15(f).

78. Admission Rules R. 15(a)(3).

79. Admission Rules R. 4(a)(2).

80. MRPC R. 5.5 (“Unauthorized Practice of Law; Multijurisdictional Practice of Law”). Multijurisdictional practice refers to a lawyer admitted in one jurisdiction being permitted to practice temporarily in other jurisdictions. As comment 5 of MRPC R. 5.5 explains: “There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public, or the courts.”

81. MD. CODE ANN., BUS. OCC. & PROF. § 10-601 (LexisNexis 2004).

82. § 10-606(c) (LexisNexis 2004).

83. See, e.g., *Hahn*, 253 Md. 571, 253 A.2d 845 (1969); *Ginn v. Farley*, 43 Md. App. 229, 403 A.2d 858, cert. denied, 286 Md. 747 (1979).

84. MRPC R. 5.5(c)-(d).

recognized the work permitted to be done in Maryland by non-Maryland lawyers who can be foreign educated.⁸⁵

Under Rule 5.5(c), a lawyer who is a member in good standing of the bar of another jurisdiction may practice in Maryland on a temporary basis⁸⁶ in four situations: 1. where the lawyer is associated⁸⁷ with a Maryland lawyer;⁸⁸ 2. where the work is in connection with a proceeding in which the lawyer expects to be authorized to appear;⁸⁹ 3. where the work is related to an alternative dispute resolution of a matter arising in the jurisdiction where the lawyer is admitted;⁹⁰ and 4. where work arises out of practice in jurisdiction where admitted.⁹¹ Also, under Rule 5.5(d), a lawyer admitted anywhere in the US, may provide legal services to their employer in Maryland as long as the legal services do not require pro hac vice admission in Maryland.⁹² This provision authorizes the work of corporate in-house counsel in Maryland, although the lawyer is not admitted in Maryland. Corporate in-house counsel's communications with their client, the corporation, are protected under attorney-client privilege, and additionally their work product is privileged, and both are protected from discovery.⁹³

VIII. AN EXAMPLE OF PROBLEMS

As a result of the admission rules and the continuing globalization of all legal practice including Maryland's, a lawyer needs to be aware of potential differences. The legal position of in-house counsel is an

85. The issue of multijurisdictional practice took center stage after *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 949 P.2d 1 (Cal. 1998) (stating that out-of-state attorneys were denied a fee for legal work done on an arbitration in California because they were not licensed in California).

86. MRPC R. 5.5(c) cmts. [5-7] (discussing "temporary" and "admitted").

87. MRPC R. 5.5(c)(1) cmt. [8] ("[P]aragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.").

88. MRPC R. 5.5(c)(1) cmt. [8] (emphasizing the obligation of the Maryland lawyer to actively participate).

89. MRPC R. 5.5(c)(2) cmts. [9-11] (linking this section to Admission Rule 14 and stating it includes all the litigation support activities like depositions and meetings with witnesses).

90. MRPC R. 5.5(c)(3) cmts. [12, 14] (emphasizing this permission is based on the close linkage between the attorney's practice in another jurisdiction and the alternative dispute resolution procedure. However, if the alternative dispute resolution procedure is court supervised, admission under Admission Rules, Rule 14 is required).

91. MRPC R. 5.5(c)(4) cmts. [13-14] (recognizing clients may move and request the lawyer with whom they are familiar to assess a situation in another jurisdiction).

92. MRPC R. 5.5(d).

93. *Id.* cmts. [7, 15, 16, 18].

example of the kind of conflict of which a lawyer needs to be aware. In the US, corporate in-house counsel's communications with their client, the corporation, are protected from discovery under attorney-client privilege, and similarly their work-product is protected from discovery.⁹⁴ However, both are discoverable in Europe because no attorney-client privilege or work product privilege exists for in-house counsel under EU law.⁹⁵ In-house counsel are employees of the corporation and are not sufficiently independent to have their conversations and work product covered by confidentiality.⁹⁶

The problem this creates is seen in the European Commission's investigation in *John Deere*.⁹⁷ No penalty would have been assessed except for the information disclosed by in-house counsel's communications and documents. All in-house counsel documents were discoverable, and as a result of obtaining the documents and communications generated by in-house counsel, the European Court assessed John Deere a penalty of 2 million euros.⁹⁸ Here, the US lawyers were involved in a foreign transaction, but the result, favoring a European interpretation against in-house counsel privilege, points out the types of assumptions about which Maryland lawyers need to be cautious.

There, the US lawyers were involved in a foreign transaction. Foreign lawyers may create different types of problems for US lawyers when coming to the US. An example is seen in *Dalena*⁹⁹ where a New Jersey lawyer was charged with the unauthorized practice of law for associating with a foreign lawyer who was not admitted to the New Jersey Bar¹⁰⁰ and having misleading letterhead.¹⁰¹ The New Jersey attorney, Dalena, had a law partnership, Dalena & Maccallini, in Italy with an Italian attorney, Maccallini.¹⁰² About twice a year the Italian lawyer came to New Jersey to interview clients of the Italian partnership where he used Dalena's New Jersey office at

94. See Case IV/30.809, *Re John Deere v. Cofabel NV*, 2 C.M.L.R. 554 (1984).

95. See Case 155/79, *Austl. Mining & Smelting Europe Ltd. v. Comm'n of the European Cmty.* 2 C.M.L.R. 264 (1982) (defining confidentiality under EU law).

96. The EU is reconsidering this issue. See *Joined Cases T-125 & T-253/03, Azko Nobel Chems., Ltd. v. Comm'n of the European Cmty.*, 2003 E.C.R. II-4771.

97. *Re John Deere*, *supra* note 94.

98. *Id.* at 565.

99. *In re Dalena*, 723 A.2d 970 (N.J. 1999).

100. *Id.* at 971.

101. *Id.* at 973. New Jersey has provisions for foreign legal consultants, but Maccallini did not apply to the Supreme Court for certification as a foreign legal consultant. Such certification would permit him to give advice in New Jersey on Italian law.

102. *Id.* at 971 (noting that these partnerships were permitted).

Dalena, Dalena & DeStefano.¹⁰³ They used the name of the Italian partnership, Dalena & Maccallini, on letterhead with the New Jersey address of Dalena, Dalena & DeStefano.¹⁰⁴ This practice continued for fourteen years before it came to the attention of the Office of Attorney Ethics.¹⁰⁵

Ultimately, the New Jersey Supreme Court dismissed the case because it was one of first impression requiring the interpretation of the rule on certification of foreign legal consultants and the Court preferred that a committee be appointed to study all the issues surrounding the question of certification of foreign legal consultants.¹⁰⁶ However, the New Jersey attorney, Dalena, not the Italian attorney, Maccallini, was the one forced to go through the discipline process.¹⁰⁷ Dalena was the one who had to provide all evidence¹⁰⁸ and Dalena was the one facing public reprimand¹⁰⁹ after practicing since 1959 without any history of discipline.¹¹⁰

IX. CONCLUSION

Maryland lawyers have a very good chance of encountering foreign educated lawyers in their practice. Even though the Court of Appeals of Maryland has been very protective of the standards of pre-legal education and legal education necessary for admission, preferring to rely on graduation from an ABA-approved law school after an ABA-approved pre-legal education, rather than performing individual evaluations of each foreign applicant's credentials, this practice does not mean that foreign educated attorneys may not practice in Maryland. The exposure of Maryland practitioners may actually be increasing.

The world, including the US, is becoming much more interconnected under globalization. States are no longer single practice areas. Instead, there are multiple ways for lawyers not admitted to practice in a state to carry on legal practice in that state. Further, there is a move to allow legal service professionals to move

103. *Id.* at 972.

104. *Id.* at 971.

105. *Id.* at 972. As often happens, the matter was brought to the attention of the disciplinary board because one of the clients of Dalena & Maccallini disputed a fee.

106. *Id.* at 975.

107. *Id.* at 972.

108. *Id.* at 971-72.

109. *Id.* at 974.

110. *Id.* at 971.

between countries. This movement is a result of the General Agreement on Trade and Services (“GATS”), which is part of the United Nations World Trade Organization (“WTO”).¹¹¹ Under GATS, once an agreement has been worked out, certain types of professionals can move freely between the member countries of the WTO without additional licensing.¹¹² Maryland practitioners will deal with foreign educated lawyers.

111. Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN. ST. INT'L L. REV. 695, 702 n.16 (2004). Terry is closely following this issue and maintains a website to track what is occurring under GATS, available at http://www.personal.psu.edu/faculty/l/s/lst3/GATS_WTO%20consultation_iba_resolutions_history.pdf (last visited Nov. 15, 2006). The impact of GATS is also being followed by the ABA, available at <http://www.abanet.org/cpt/gats/home.html> (last visited Nov. 15, 2006).

112. *See id.* at 697 n.1.