

Update on Issues Raised by Cross Border Legal Practice July 2015

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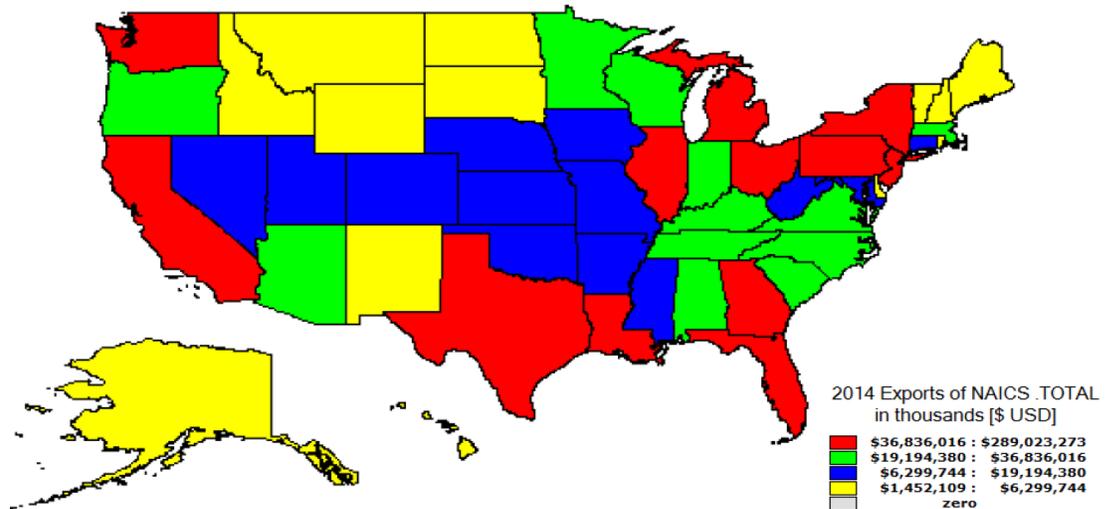
In contrast to the domestic gap civil legal aid to poorer populations, the provision of legal services across national boundaries is mushrooming. The expansion of this commerce also creates many challenges for state supreme courts in their exercise of lawyer regulation. Recent meetings of the International Conference of Legal Regulators have informed several of the issues described in this updater. In each International Conference meeting there were delegates from dozens of countries, every continent, and NCSC. Attendees examined the causes of change in legal markets and started to identify issues that must be addressed by responsible bar regulators. The meetings confirmed that international free trade negotiations, business commerce, and ongoing adjustments in lawyer regulations (especially in Australia, Canada, and the UK) require improved coordination and information sharing among legal communities in order to avoid policy confusion in global legal services markets. The CCJ has established important communication lines with key stakeholders in the cross border legal practice arena. The fruits of those networks inform this statement of regulatory issues facing state supreme courts.

A. Big-Picture Context

The principal drivers of legal market transformation derive from: socio-political demands, the globalization of legal organizations, technology's gravitational pull, bold changes in lawyer regulation in some developed countries, and high energy efforts by many nations to enter into agreements promoting commercial investments and trade in services.

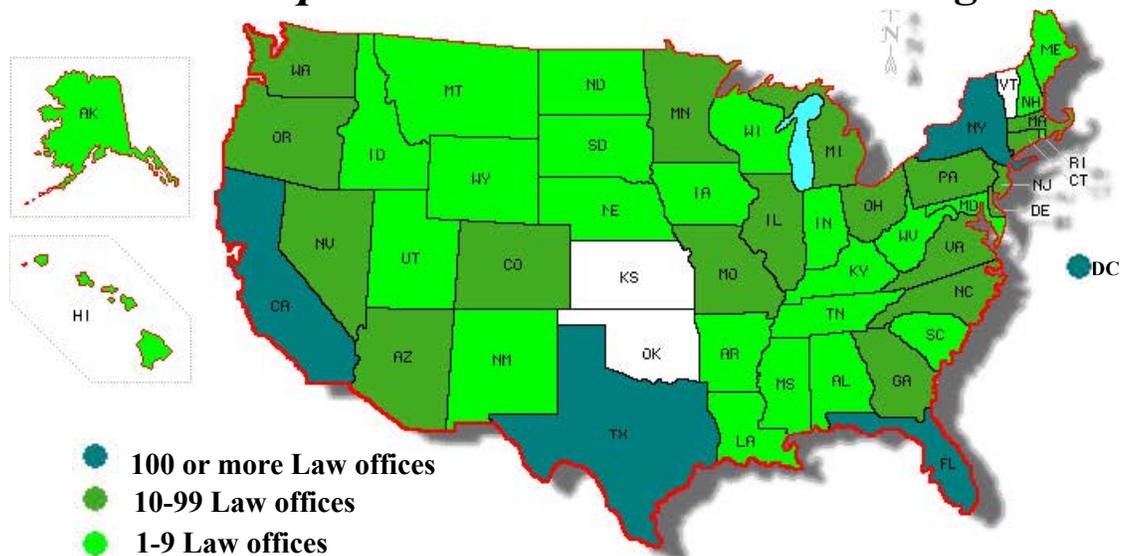
- **Socio-Political.** Social trends around the world have intensified disputes with respect to product consumption, the environment, business competition, and human rights. In addition, during severe economic downturns within nations and global regions, there are pressures coming from the International Monetary Fund and the European Central Bank to induce some debtor countries to liberalize their labor markets and make structural changes in their professions including lawyers, courts, and civil codes.
- **Globalization.** As shown by the first map below, cross-border trade in all goods and services has huge monetary value for all states. Not one state has less than a billion dollars worth of annual foreign exports. That volume of commerce means lawyers, foreign and domestic, are involved. Hence international law firms and their corporate clients are growing in number and size. The second map portrays the number of law firms in each state that have foreign offices. In the interest of improving their market position, some may want to exert influence on lawyer regulation policies.

Why This Issue Matters to your State



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Law Offices *per* State That Also Have Foreign Offices



Map prepared by Prof. Laurel Terry (Lterry@psu.edu), [Penn State's Dickinson Law](#), based on data provided by [General Counsel Metrics, LLC](#) based on the websites of law firms with approximately 37 lawyers or more.

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- **Technology.** Online legal services are changing the market for both the personal and corporate sectors. Legal processing (for example with regard to discovery production) is outsourced and in-sourced in large volume across continents. Online dispute resolution is also widely available. As a consequence some commentators are asking: Could technology lead to the de-skilling of the legal profession as trained non-lawyers render specialty services? Will the barriers between the producers and consumers of legal knowledge disintegrate in ways comparable to how many citizens currently use the Internet as an aid to obtain medical services?
- **Regulation.** The UK, Australia, and a number of Canadian provinces have taken steps to license the provision of “legal services” in new ways.¹ First, in 2007 the UK adopted the Legal Services Act that shifted the lawyer regulatory scheme from a traditional rules violation approach (like the United States) to an “outcomes-focused regulation” (OFR) paradigm. OFR emphasizes high-level principles and a concomitant articulation of indicators to determine whether outcomes are being achieved.² In addition the UK and Australia permit legal service providers to be funded by external equity investments also known as alternative business structures (ABS). Consequently it was permissible in 2007 for Slater & Gordon, a large Australian personal injury law firm, to raise investment capital on the Australian stock market and purchase a UK law firm for £58 million. More recently two other Australian law firms³ raised millions of dollars in capital on the Australian stock market. In Hong Kong, law firms are now listing on the Hong Kong Stock Exchange. England’s largest mutual business, The Co-operative Group, is authorized to add legal services to its menu of consumer products that already include food retailing, insurance, financial services, funeral services and much more. Its Co-operative Legal Services component offers will-writing services and advice regarding property conveyancing, probate, personal injury claims, and more at its many street outlets and online.

In this dynamic atmosphere, an increasing number of lawyer regulators are reflecting upon fundamental questions.

- **What is a lawyer? What are legal services? What is a law firm? Should regulators set standards for lawyers (service providers)**

¹ The Canadian Bar Association’s Legal Futures Initiative report suggests that Canada may largely follow the regulatory models in Australia and the UK. It is available at: www.cbafutures.org/The-Reports/Futures-Transforming-the-Delivery-of-Legal-Service.

² The principles are: Protecting and promoting the public interest; Supporting the constitutional principles of the rule of law; Improving access to justice; Protecting and promoting the interest of consumers; Promoting competition in the provision of services; Encouraging an independent, strong, diverse and effective legal profession; Increasing public understanding of the citizen’s legal rights and duties; Promoting and maintaining adherence to the professional principles. Legal Services Act 2007, c. 29, § 1 (U.K), *available at* http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1.

³ Shine Corporation (a plaintiff litigation firm) did so in 2013, and IPH, Ltd. (an intellectual property firm) did so last year.

that differ in degrees from the standards for legal services (products)?

- How should legal regulation occur? Should it vary depending on the size or sophistication of the client? Should it be rules based or outcomes based?
- What are the optimum ways to regulate lawyers and law firms across national borders? How can legal ethics standards become compatible across national borders and different legal cultures?
- With the advent of many virtual legal services (not limited by geography), where should legal regulation occur?
- What is the role and shape of legal education in the new legal services market?
- Will economic crises inspire or force changes in lawyer admission standards, conflict of interest standards, etc.?

State supreme courts and bar leaders are asking some of these same questions and beginning to formulate responses.

B. Issues for State Supreme Courts and the Bar

There are at least seven issues that are likely to challenge state supreme courts over the next five to ten years:

1. Whether it is advisable to create bar admission and practice requirements that are similar in each state: Some American lawyers who practice across international borders advocate for more unified procedures in the US, at least for foreign lawyers, in order to make other countries more willing to allow American lawyers and law firms to establish an outbound practice. Given that the authority to regulate bar admissions is vested in the state courts, the adoption of one universal procedure is unlikely. However, a significant development in lawyer licensing that could have a favorable impact on cross-border admissions is the Uniform Bar Examination (UBE). The UBE is intended to eliminate redundant licensing tests. With action taken in New York State in May, the UBE is now being used in sixteen jurisdictions. That total number may soon grow with the Iowa and Vermont supreme courts having received positive recommendations regarding UBE usage from their respective boards of bar examiners.
2. Need for a more consistent and effective process for admitting non-US trained lawyers: Foreign law graduates will continue to seek admission to practice in the US. Past efforts to discern a way to certify the quality of foreign legal education programs have been unsuccessful.⁴ New law schools based on the American

⁴ In 2009 a special ABA committee recommended development of a model rule that required foreign law graduates to complete a specially designed L.L.M. program in the United States, but concluded that:

model are being established in other countries. The evaluation of those schools by state supreme courts and bar admissions officials remains difficult. On this point, Erica Moeser, President of the National Conference of Bar Examiners, opines, “It is hard to imagine that we will not see change all around us over the next five years. The question that bar examiners and courts must ask and answer is how the legitimate purpose of consumer protection must adjust to new realities, whatever they turn out to be.”⁵

3. Calls for Smart Rules Governing Association by US Lawyers With Multi-Disciplinary and Non-Lawyer Owned Law Firms in Other Countries: As noted above, changes in the regulation of law firms in the UK and Australia and some provinces in Canada are creating a conundrum for US lawyers and law firms engaged in transnational practice. In some contexts they may be required to forego otherwise logical alliances with firms of comparable quality or face ethics sanctions for splitting fees or otherwise associating with a multidisciplinary or non-lawyer owned firm. Consequently some US lawyer groups may increase calls for some regulatory adjustments.
4. Efforts to Establish Separate Regulatory Systems for Law Firms and Lawyers: The UK and the Australian bar regulator systems focus on the management practices of law firms in order to ensure ethical practice by individual lawyers – a compliance-based approach that complements a complaint-based approach. Several Canadian law societies (Alberta, British Columbia, Manitoba, Ontario, and Saskatchewan) are studying or moving toward some form of entity regulation.⁶ One noted legal profession analyst suggests that: (1) large American law firms and their large corporate clients, concerned that they will be at a competitive disadvantage in the global marketplace, are likely to press state supreme courts, and perhaps state legislatures or even Congress, to establish a similar differentiation based on the premise that “more regulation is needed for individual clients who have a one-time matter than for sophisticated repeat-player clients better able to protect themselves”; and (2) large legal enterprises will seek to have this new regulatory system apply nationally so that a firm with multiple offices around the United States will not be hamstrung by differing regulatory schemes between commercial hubs and smaller jurisdictions.⁷

[T]he Council should not expand into accreditation of [foreign law school] . . . [because of] the sheer number of foreign law schools, coupled with the complexity and diversity of foreign law programs, the limited expertise that currently exists to devise appropriate standards, and the staff resources that would be required among other factors.

Following review of the special committee’s recommendations, the CCJ concluded that the proposed approach might undercut legal education requirements for American students and could encourage a challenge by non-accredited US law schools on equal protection grounds.

⁵ *The Bar Examiner*, Vol. 82, No. 1, 5. (2013).

⁶ For example, the Law Society of Upper Canada (Ontario) recently approved a report establishing a Task Force to explore entity regulation. See:

http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-june-2015-treasurer.pdf.

⁷ Anthony E. Davis. “Regulation of the Legal Profession in the United States and the Future of Global Law Practice.” *The Professional Lawyer*, Vol. 19, No. 2, 8-11. (2009).

5. Whether Re-formulating the Regulation of Some Legal Services Can Reduce Our Country's Current Deficits in Access to Justice and Legal Services to Disadvantaged Citizens: As noted above, lawyer regulators in Australia and the UK have authorized alternative business structures and private capitalization of legal service enterprises. Advocates of these developments assert that ABS and equity investments can improve service provider infrastructures, like digital and information technologies, and thereby make legal services available to a wider community at reduced cost. Publicly listed law firms in Australia assert they can now fund major class actions and bear overheads associated with novel, cutting edge litigation. In order to close the justice gap in America, would it be prudent for U.S. lawyer regulators to monitor, evaluate and, to some degree, follow the Aussie/UK models?

6. Whether Ongoing Free Trade Negotiations Will Influence Cross-border Lawyer Regulation: Numerous proposed international trade agreements include "services." These include General Agreement on Trade in Services (GATS - the grandparent of such proposals), the Trans-Pacific Partnership (TPP) agreement (with respect to Pacific Rim countries), the Trade in International Services Agreement (TISA) (involving 20 assorted US trading partners who are impatient with the GATS process), and the more recently proposed Transatlantic Trade and Investment Partnership (commonly called T-TIP or the US-EU trade agreement). The Obama Administration hopes to obtain requisite approval of the negotiated TPP agreement during the current Session of the 114th Congress. The Office of the U.S. Trade Representative (USTR) has taken the position in the TPP and T-TIP negotiations that there should be a "mutual recognition" approach to the regulation of professions such as accounting, architecture, and the law. Hence, it is incumbent upon state supreme courts to engage in regular and substantive dialogue with their regulatory counterparts in trade-partner countries.

7. Whether Investor-State Dispute Settlement ("ISDS") Systems Arising From Investment Treaties or Trade Agreements Circumvent Traditional State and Federal Court Authority: The ISDS process is a long established mechanism used in many international investment agreements to protect investors from expropriations or other unfair treatment by a host country. In regional free trade negotiations, the inclusion of ISDS clauses is invariably discussed. ISDS clauses enable foreign investors who believe a host country has taken action that directly or indirectly expropriates the value of their investment, to present their claims against the host government to arbitration panels instead of going through established courts of that treaty partner. An investor's home country prosecutes the claims against the host government. By terms in the agreements, decisions of arbitral panels normally cannot be challenged in a party's governmental courts.

The U.S. entered into its first ISDS clause in 1959. Since then hundreds of ISDS clauses have been agreed to by countries across the globe. Recently, with the Trans-Pacific Partnership reaching its final stages, ISDS clauses have become

increasingly controversial. For example, *The Economist* characterizes the ISDS process this way: “[T]he proceedings are not open to the public and the arbitrators making politically and fiscally important decisions are often moonlighting corporate lawyers. It is no surprise that many people believe ISDS stacks the rules of globalization in favor of big firms.”⁸

The UN Conference on Trade and Development (UNCTAD)⁹ released a report on recent trends in the use of international investment agreements (IIAs) and new ISDS case filings. Key findings in the report include:

- *Countries continue to use IIAs as a tool for international investment policy making. The year 2014 saw the conclusion of 27 IIAs, that is one every other week. This brings the total number of agreements to 3,268.*
- *At least 45 countries and four regional integration organizations are currently revising or have recently revised their model agreement.*
- *Investors continue to use the ISDS mechanism. In 2014, claimants initiated 42 known treaty-based ISDS cases. With 40 per cent of new cases initiated against developed countries, the relative share of cases against developed countries has been on the rise (compared to the historical average of 28 per cent).*
- *ISDS tribunals rendered at least 42 decisions in 2014. This includes an award of USD 50 billion in three closely related cases, the highest known award by far in the history of investment arbitration. The overall number of concluded cases has reached 356, with 37 per cent decided in favor of the State, 25 per cent in favor of the investor and 28 per cent of cases settled.*
- *The year saw important multilateral developments geared towards increased transparency in ISDS. These include the coming into effect of the United Nations Commission on International Trade Law Rules on Transparency and the adoption of the Convention on Transparency in Treaty-based Investor-State Arbitration, which will be opened for signature later in 2015.*
- *Concerns about IIAs and ISDS have prompted a debate about their challenges and opportunities in multiple forums. Today, a broad consensus is emerging that the regime of IIAs and the related dispute settlement mechanism need to be reformed to make them work better for sustainable development. Such reform would need to be undertaken in a comprehensive and gradual way, taking into account the interests of all stakeholders.*

During the ongoing negotiations of the US-EU trade agreement, ISDS has been the focus of increased criticism especially from European countries that are not accustomed to agreeing to such provisions. Critics of ISDS within the United States express concern that the jurisdiction of domestic courts can be displaced. Some point

⁸ “Free-Trade Agreements: A Better Way to Arbitrate.” *The Economist*. (2014), available at: <http://www.economist.com/news/leaders/21623674-protections-foreign-investors-are-not-horror-critics-claim-they-could-be-improved?frsc=dg%7Cd>

⁹ “IIA Issue Note No. 1.” UNCTAD. (2015).

to the case described in the October 2014 Report of Public Citizen’s Global Trade Watch.¹⁰ When a Mississippi state court jury ruled against the Loewen Group (a Canadian funeral home conglomerate) in a private contract dispute, Loewen launched an ISDS claim against the U.S. government under the North American Free Trade Agreement (NAFTA). In the underlying court ruling challenged by Loewen, the company was hit with a jury damages award requiring it to pay the local funeral home \$500 million. Loewen sought to appeal. Following both federal and Mississippi state court procedures, Loewen posted a bond as part of the appeal process. After a failed bid to lower the bond, Loewen reached a settlement for approximately \$85 million. But then Loewen launched a NAFTA case for \$725 million, claiming that the bond requirement and the biased communications of the trial judge to the jury violated the company’s investor rights under NAFTA. The arbitral panel explicitly ruled that court decisions, rules and procedures were government “measures” subject to challenge and review under the ISDS regime.¹¹ On the merits and despite opposition from the US government, the tribunal agreed with some of Loewen’s claims and “criticize[d] the Mississippi proceedings in the strongest terms.” Although the ISDS case was subsequently dismissed,¹² some argue that the ruling demonstrated that foreign corporations that lose tort cases in the United States can seek an ISDS tribunal to second-guess the domestic decisions and to shift the cost of damages to U.S. taxpayers.

Earlier this summer, more than 50 members of the National Caucus of Environmental Legislators signed a letter addressed to the House and Senate leadership urging Congress to reject the so-called “Fast Track” version of the trade promotion authority legislation.¹³ The letter asserted that the Fast Track process deprived Congress of needed input from state policy makers especially with respect to the impact that the TPP and TTIP trade agreements will have on state product safety and environmental protection laws. In addition, the letter stated:

The Investor-State Dispute Settlement (ISDS) procedures included in recent and pending trade agreements, including the recently leaked TPP investment chapter, are of particular concern. ISDS allows foreign investors the right to sue governments directly in offshore private investment tribunals, bypassing the courts or allowing a "second bite" if the investors do not like the results of domestic court

¹⁰ “New Report Takes on Obama Administration Defense of Parallel Legal System for Foreign Corporations.” *Public Citizen: Eyes on Trade*, available at: <http://citizen.typepad.com/eyesontrade/2014/10/new-report-takes-on-obama-administration-defense-of-parallel-legal-system-for-foreign-corporations.html>.

¹¹ *See Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB (AF)/98/3, Decision on hearing of Respondent’s objection to competence and jurisdiction (January 5, 2001), at 45, 54. Available at: <http://italaw.com/sites/default/files/case-documents/ita0469.pdf>. And *see Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB (AF)/98/3, Award (June 26, 2003), at 212. Available at: <http://italaw.com/sites/default/files/case-documents/ita0470.pdf>.

¹² *Id.* Loewen’s bankruptcy lawyers filed for reincorporation as a U.S. firm under bankruptcy protection and thereby nullified Loewen’s foreign investor status.

¹³ The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (commonly referred to as Trade Promotion Authority (TPA)) was adopted in June to streamline the Congressional approval process with respect to trade agreements.

decisions. Although the investor-state tribunal has no power to directly nullify U.S. federal, state, and local laws, in practice, when a country loses to an investor, it will change the offending law, or pay damages, or both. Moreover, a country need not even lose an ISDS case for the chilling effect of a case merely being threatened or filed to impact its future policy making deliberations.

Regarding concerns about the ISDS system, it is noteworthy that Thomas Fine, the USTR's Director for Services and Investment and the lead negotiator of the cross-border trade in services chapter of T-TIP has stated that no other case like *Loewen* has ever arisen. Moreover he asserts that, for decades, ISDS has effectively protected the global community against confiscatory governmental actions. Indeed a recent study by the Congressional Research Service¹⁴ demonstrates that the U.S. and its foreign partners have agreed to hundreds of ISDS clauses since 1959. The overwhelming majority of cases where ISDS arbitration has been invoked involve US-based investors making claims against foreign states. In seventeen cases brought by foreign investors against the United States, the government has never lost. Mr. Fine has also informed the CCJ that, although the Office of the US Trade Representative firmly believes in ISDS processes, the USTR is studying proposals to refine the ISDS system and to improve public understanding of it.

C. Responsive Actions

The CCJ. Given the publicity and debates with respect to ISDS provisions in the TPP and TTIP agreements, it is noteworthy that in 2004 the CCJ adopted a resolution urging the United States Trade Representative and the Congress: (1) to negotiate and to approve, respectively, provisions in trade agreements that recognize and support the sovereignty of state judicial systems and the enforcement and finality of state court judgments; and (2) "to clarify that under existing trade agreements, foreign investors shall enjoy no greater substantive and procedural rights than U.S. citizens and businesses."¹⁵

To keep up with the multiplicity of developments in global lawyer regulation and to promote readiness of the full Conference to make timely and appropriate recommendations with respect to domestic lawyer regulation, the CCJ Task Force on Foreign Lawyers & The International Practice of Law now meets four times a year. Two meetings are conducted in person at CCJ annual and midyear meetings. The other two meetings involve international teleconferencing with participants typically calling in from Australia, Europe, and North America.

In view of the quick pace of the Pacific Rim and EU-US trade negotiations, the CCJ devoted several sessions during the 2014 mid-year meeting to the topic of "Lawyer Regulation in the Global Arena." Over the course of two days, state chiefs communicated with USTR's Thomas Fine, the Secretary General of the Council of

¹⁴ "International Investment Agreements (IIAs): Frequently Asked Questions" (April 30, 2015).

¹⁵ CCJ Resolution 26 (July 29, 2004).

Bars & Law Societies of Europe, leaders of the Law Council of Australia, Professor Laurel Terry, and representatives of the ABA Task Force on International Trade in Legal Services of the State Bar of Georgia's Committee on International Trade in Legal Services. It became clear to many CCJ members that a reasonable first step to helping state supreme courts become more ready to address the forces of legal market globalization would be for state courts to learn from any peer court system that has gained success in doing so. It became clear that Georgia was the only state to adopt rules establishing five ways in which foreign lawyers may appropriately perform legal services in Georgia. These rules were the product of several years of study undertaken by the State Bar of Georgia's Committee on International Trade in Legal Services. Indeed the work thus far of the State Bar of Georgia has been published by the ABA as "a tool kit" entitled "[International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience.](#)" By the end of the mid-year meeting, the CCJ adopted a resolution encouraging its members to consider the tool kit "as a worthy guide for their own state endeavors to meet the challenges of ever-changing legal markets and increasing cross-border law practices."

Momentum within the CCJ for finding appropriate policies to govern foreign lawyer practice in the United States picked up speed at its January 2015 meeting. New York Chief Judge Jonathan Lippman reported that the Council of Bars and Law Societies of Europe (CCBE) viewed the current ABA policies on foreign lawyer practice as welcomed steps toward reaching a regulatory harmony between the US and the EU. To promote that harmony, the full CCJ adopted a resolution that "strongly encourages its members to adopt *explicit* (emphasis supplied) 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:

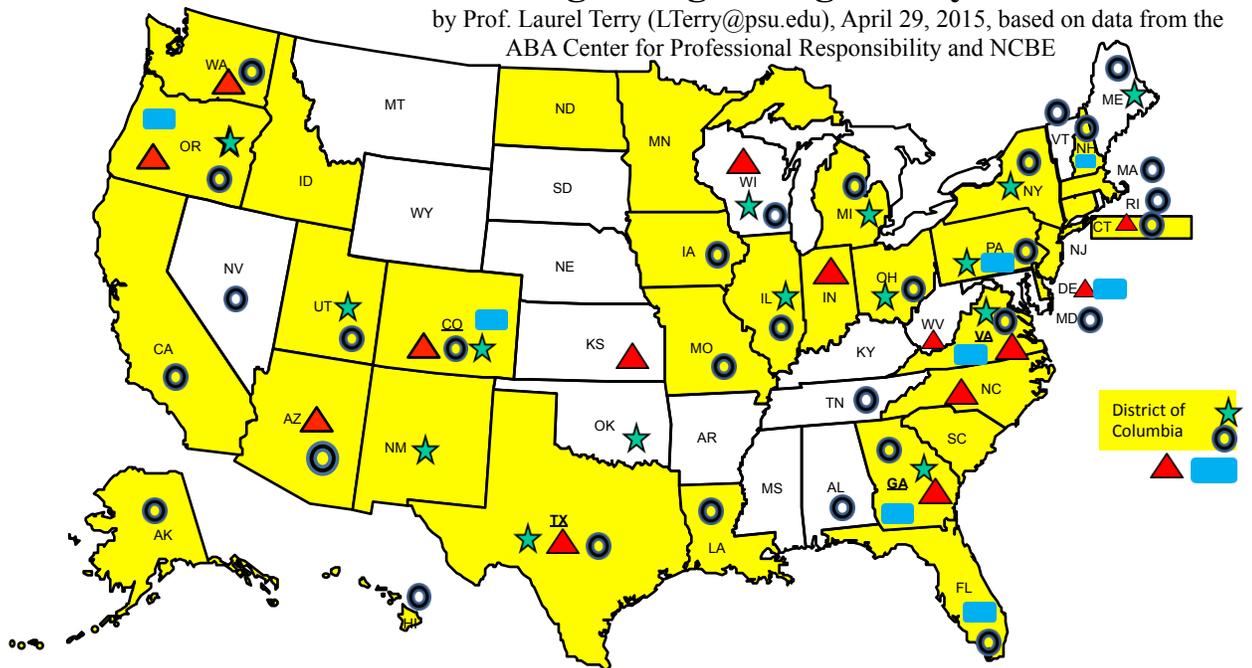
- Temporary practice by foreign lawyers (ABA Model Rule for Temporary Practice by Foreign Lawyers),
- Licensing and practice by foreign legal consultants (ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants),
- Registration of foreign-licensed in-house counsel (ABA Model Rule of Professional Conduct 5.5),
- *Pro hac vice* appearance in pending litigation in a court or agency by licensed foreign lawyers (ABA Model Rule for *Pro Hac Vice* Admission),
- 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),
- 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

- 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)).

The current status of state-by-state action with respect to these foreign practice rules is set forth in the following map. Since the January 2015 issues update, the District of Columbia and Oregon became the latest states to adopt all five of the core limited practice rules for foreign lawyers.

Jurisdictions with Rules Regarding Foreign Lawyer Practice

by Prof. Laurel Terry (LTerry@psu.edu), April 29, 2015, based on data from the ABA Center for Professional Responsibility and NCBE



LEGEND (see back page for additional information)

Yellow shading	= has a foreign legal consultant rule
Blue square	= rule permits temporary practice by foreign lawyers (also known as FIFO or fly-in, fly-out)
Green star	= rule permits foreign pro hac vice admission
Red triangle	= rule permits foreign in-house counsel
Blue circle	= has had at least one foreign-educated applicant sit for a bar exam between 2010 and 2013.

A more detailed chart by Professor Laurel Terry showing all state court policies with respect to in-bound foreign lawyer practice is set forth in **Exhibit A**.

In closing it is noteworthy that Thomas Fine of the USTR regularly attends quarterly meetings of the CCJ Task Force on Foreign Lawyers. At one or more of the meetings, he stated the USTR believes that, with respect to regulated professions such as accountants, architects, engineers, and lawyers, trade agreements should not

directly attempt to regulate these professions. Instead the professions' leadership and duly constituted regulators should work out mutual recognition arrangements that could be supported in trade agreement texts. Toward that end, the USTR promotes trade agreement provisions that encourage the regulated professions and their regulators to form "working groups" as forums to "harvest good ideas under one umbrella." He cited the CCJ Task Force efforts to bring together lawyer regulator stakeholders as a model of meaningful professional collaboration.

The International Bar Association (IBA). In 2014, the IBA published its "[Global Cross Border Legal Services Report](#)." The ABA and the CCJ were instrumental in orchestrating the data collection from US bar admissions administrators, bar disciplinary counsel, and state supreme courts. The Report serves as a valuable resource to regulators and to lawyers around the world who practice or seek to practice before multiple jurisdictions and who want a reliable statement of lawyer regulation in a desired host jurisdiction.

Noteworthy too, the IBA has devoted many of its resources to promoting governmental respect for the solemn role that the legal profession has in society. IBA leadership has been concerned that regulators and trade negotiators may not fully appreciate the unique role of lawyers and hence may be tempted to treat lawyers like any other service provider in the market place. Consequently the IBA adopted a [Resolution on the Regulation of the Legal Profession](#), and promulgated a [Statement for the Establishment of General Principles for the Establishment and Regulation of Foreign Lawyers](#). These documents set forth core values common to legal professions in all countries.

In May, a few IBA members launched an initiative to discern the advisability of drafting "mutual recognition principles" for possible application in the legal services component of future free trade agreements. This initiative may eventually actualize the suggestion made by the USTR's negotiator that working groups be formed to harvest good ideas.

Finally, it is noteworthy that the IBA is contributing to the debate regarding the use of ISDS clauses in trade agreements. In April the IBA issued a statement aimed at correcting "misconceptions and inaccurate information" that surround the discussions on ISDS systems. Upon releasing the statement, David W Rivkin, IBA President, said:

The IBA Arbitration Committee and I are concerned that the discussions about ISDS in the Transatlantic Trade and Investment Partnership and the Trans-Pacific Partnership are being compromised because, in some instances, erroneous information is subverting debate. It is imperative that the deliberations be concentrated on facts rather than incorrect assertions. The members of the IBA Arbitration Committee have extensive experience in ISDS cases, in which they have served as counsel for investors and states and as arbitrators. We

have, therefore, issued today a four-page statement [16] comparing various assertions that have been made about ISDS with the actual facts. The Committee has also announced plans to widen the discussion by inviting members of the public with an interest in the matter to participate in a detailed survey. We are hopeful that the corrected inaccuracies contained within the statement will be received by all stakeholders, including the TTIP and the TPP negotiators, as a positive contribution to ensure properly informed judgment.

The UK's Self-evaluation. England's justice gap in legal aid has become more acute due to severe cut backs in public funding. In response, the UK's chief lawyer regulatory authority, the Legal Services Board (LSB)¹⁷ in 2012 issued a comprehensive evaluation of how effectively its outcomes-focused regulations might be delivering the originally identified outcomes, namely: (1) Consumers should experience the values identified in the codes of conduct, (2) The public interest is a key part of the wider justice system, (3) Guidance provided by regulators is clearly discretionary and does not unnecessarily restrict firms in how they deliver the outcomes, (4) Education and training standards (both at entry and on an ongoing basis) ensure that appropriate service standards are achieved and maintained including diversity in the profession, and (5) Effective advisory services are available to regulated entities and individuals.¹⁸ That report contained minimum discussion of access-to-justice metrics. LSB researchers recognize that that evaluation data, like much of the research thus far on this topic, was inconclusive. Consequently the Board in 2014 commissioned a series of "tracker surveys" to quantify what legal services are being purchased and at what cost. This countrywide legal needs survey is scheduled to be published in October. The LSB researchers hope to have empirical data that will indicate the degree to which alternative business structures are narrowing, if at all, the justice gap for lower income consumers. The NCSC is closely monitoring those endeavors.

In sum, the international aspects of law practice are dynamic and complex. Licensing authorities, bar organizations, and researchers will need to continue their ongoing collaborations in order to address many outcropping challenges.

¹⁶ Available at <http://tinyurl.com/l3g5rt9>.

¹⁷ A description of the LSB mission and the UK's regulatory structure is found at: <http://www.legalservicesboard.org.uk>.

¹⁸ The evaluation, entitled "Market Impacts of the Legal Services Act of 2007 - Baseline Report (Final) 2012," is found at:

http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20121023_evaluation_baseline_report_final.pdf.