

**American Bar Association
Section of Legal Education and Admissions to the Bar**

REPORT

In 2009, the Chair of the Section of Legal Education and Admissions to the Bar, Professor Randy Hertz, appointed the Special Committee on International Issues to undertake a comprehensive review of the Section Council's role in discussions relating to international trade in legal services and in other international legal education issues. In addition to the general initiatives relating to the globalization of the practice of law and legal education, two specific developments impacted that decision. One was the anticipated request from a non-US law school to seek ABA accreditation. The other was a Resolution (attached) adopted by the Conference of Chief Justices urging the Section of Legal Education and Admissions to the Bar to consider implementing a program that would certify the quality of the legal education of foreign trained common law educated applicants seeking permission to take a bar examination and qualify for admission to the bar.

That Committee provided the Council of the Section with a "Report of the Special Committee on International Issues." The report addressed the following areas with respect to accreditation: accreditation of foreign law schools that seek to meet ABA standards; working with jurisdictions that seek assistance in developing a local or regional accreditation system to insure that the process is rigorous and reliable; and developing a range of criteria that would allow the ABA to advise state supreme courts and bar administrators that a graduate meeting the criteria was sufficiently educated in U.S. law that he or she could be allowed to apply to take the state bar exam even though the primary law degree was from another country.

The Report also suggested that the Section establish a permanent committee to address the recommendations in the Committee Report. In Fall 2009, consistent with the Committee's recommendation, the Council created a new standing committee on International Legal Education. Included in the Committee's initial charge was a request that it undertake two tasks on behalf of the Council. The first task was to draft a proposed Model Rule that would establish criteria for an LL.M. program designed to qualify a foreign lawyer from civil or common law jurisdictions to take a bar examination and to prepare the foreign lawyer for the practice of law in the United States. The second task was to explore additional options for admission for foreign lawyers who studied and practiced law in common law jurisdictions to qualify to take a bar examination and to seek admission in a United States jurisdiction without completing a degree program at an ABA accredited law school. The proposed Model Rule on Admission of Foreign Educated Lawyers addresses the first task. The Committee is still discussing the contents and procedures of a Model Rule that would address the second task.

Proposed Model Rule

The purpose of the attached Model Rule is to aid state courts and bar examiners in identifying LL.M. programs that meet specific criteria designed to prepare graduates of foreign law schools to take the bar examination and to practice law in the United States. Those state courts that already have established criteria with respect to LL.M. programs that qualify a foreign lawyer to take a bar examination may wish to continue to rely on that state's established criteria. The

primary goal is to provide a Model Rule for those state courts that have not adopted requirements governing the admission of foreign lawyers.

The proposed Model Rule, and not the Criteria, could be adopted by a State Supreme Court. The court would then rely on the law school to certify to the court that the applicant has completed an LL.M. Degree for the Practice of Law in the United States and that the LL.M. degree program is certified by the Council of the Section as satisfying the Criteria. The Criteria are not a part of the Model Rule just as the specific Standards for ABA accreditation of law schools are not a part of a state's rule governing who is eligible to seek admission to a state bar.

The Model Rule is designed to be brief and easy for states to administer. The requirement governing the lawyer's foreign legal education tracks the language of Section I.C. of the Council's "Criteria for Student Study at a Foreign Institution." Section I.C. deals with the requirements a Foreign Institution must satisfy for a U.S. law student to receive credit for studying at the Foreign Institution.

The Model Rule includes a requirement that the applicant be "authorized" to practice law in a foreign jurisdiction. The meaning of "authorized" is discussed in the Comment to the Model Rule. The comment does not resolve the issue of exactly what it means that an "applicant can, in his or her own country, engage in the activities which are generally considered to be the practice of law in the United States". The Proposed Model Rule relies on the appropriate authority of the jurisdiction where the applicant applies to make that decision based on the documents presented by the applicant. The Committee decided against adding a specific number of years of legal practice as a requirement in addition to the applicant being "authorized" to practice.

Proposed Criteria

Under the proposal, the Section's role is limited to "certifying" that a school's LL.M. program meets the Criteria. The Comments to the Model Rule and the discussion of the certification process in the Criteria make it clear that the Council does not intend to establish standards or engage in the oversight of other LL.M. programs for foreign students or domestic students beyond what is currently required by Standard 308.

The requirements for an ABA accredited law school to obtain certification of an LL.M. program are self-explanatory. The Criteria track the current Standards for accreditation by specifying minimum "minutes" of study rather than a specific number of credits. The minutes are set at a level that gives the schools flexibility in the way the school integrates the LL.M. program with the school's normal curriculum. The only required courses are Constitutional Law, Civil Procedure, Professional Responsibility and Legal Writing and Research. A waiver option is available if the foreign lawyer has taken a substantially equivalent course. The Criteria do not include a "skills" requirement. Many schools may choose to make a "skills" offering a part of the school's required program for the LL.M. degree. The Council determined that this issue is better left to schools and the foreign-educated lawyers to decide in light of a foreign lawyer's prior legal experience and education rather than a requirement.

The question of whether a law school should be required to publish the bar pass rate for the graduates of a "certified" LL.M. program did divide the Committee. Consistent with the spirit of Standard 509, the Criteria include a requirement that the pass rate be made public on a school's web page.

The procedure the school must follow to obtain “certification” was stated in general terms in order to permit the Consultant’s office to decide the best method of processing the requests from schools. However, the Rule does specify that final action on the “Certification” of the LL.M. program will be taken by the Council. This requirement is parallel to Section’s procedures for the approval (accreditation) of law schools. The belief is that these procedures will be important to state supreme courts in their decision whether to adopt the Model Rule.

After a foreign lawyer completes the LL.M. program and applies to take a bar examination, the proposal requires the law school to certify to the state court that the applicant has completed the “certified” LL.M. degree and that the applicant’s foreign law degree was granted by a foreign law school that satisfies the requirements of the Model Rule. Placing the burden on the schools encourages schools to consider whether the applicant’s foreign degree satisfies the Model Rule requirements when making a school’s admission decision. If a school does that, the school will have the appropriate documentation in the applicant’s file. Schools currently have resources available to aid them in this determination. LSAC, for example, offers an LL.M Credential Assembly Service for International Applicants which schools can require or recommend that foreign applicants use.

The Model Rule also requires that applicants provide the documentation that proves the applicant is authorized to practice law in a foreign jurisdiction.

If the Section eventually identifies an entity or process for evaluating foreign authorization to practice law, law schools and state courts could rely on that entity rather than the school. The ABA is continuing to investigate whether the ABA or others could provide useful information to states and law schools that are evaluating foreign law credentials.

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**Proposed Model Rule on Admission
of Foreign Educated Lawyers**

A lawyer educated at a law school located outside the United States and its territories (a “foreign-educated lawyer”) is qualified to take the bar examination in this jurisdiction if the foreign-educated lawyer:

- (1) received his or her legal education and graduated from a foreign law school that :
 - (a) is government sanctioned or recognized, if educational institutions are state regulated within the country; or
 - (b) is recognized or approved by an evaluation body, if such agency exists within the country; or
 - (c) is chartered to award first degrees in law by the appropriate authority within the country;
- (2) is authorized to practice law in a foreign jurisdiction; and
- (3) has been awarded, by a law school fully approved by the Council, an LLM Degree for the Practice of Law in the United States which has been certified by the Council as meeting the criteria established by the Council to qualify a foreign-educated lawyer to sit for the bar examination in a United States jurisdiction.

COMMENT

A. Meaning of “authorized” to practice Law

As used in (2) of this rule, the word “authorized” is intended to mean that the applicant has achieved the ability to engage in activities which would be recognized in the United States as the practice of law. Foreign jurisdictions vary in the ways persons acquire the ability to engage in these activities and the labels attached to such authorization. For example some countries in Central and South America, do not issue specific certificates or licenses to practice law. Only the completion of law degree program, at a law school approved by the Ministry of Education to grant the degree, is required. Other South American Countries require the graduate to register with the appropriate Bar Association by presenting the diploma and a police certificate that the law school graduate does not have a criminal record. In general countries assign different labels to approval by the government to practice law. Whatever the label or requirement, a United States jurisdiction considering an application under this rule should insure that the applicant can, in his or her own country, engage in the activities which are generally considered the practice of law in the United States.

B. The Process of Applying for Admission to a United States Jurisdiction

When an applicant seeks to take a bar examination under this Model Rule, the applicant will have to complete the application required by the jurisdiction. The application should include the following:

(1) Certification by the Law School that

(i) the applicant was awarded an LL.M. for the Practice of Law in the United States, and

(ii) that the requirements of the LL.M. were certified by the ABA Council as meeting the criteria established by the Council to qualify the foreign-educated lawyer to sit for a bar examination.

(iii) that the applicant received his or her foreign law degree at a foreign law school that:

(a) is government sanctioned or recognized, if educational institutions are state regulated within the country; or

(b) is recognized or approved by an evaluation body, if such agency exists within the country; or

(c) is chartered to award first degrees in law by the appropriate authority within the country;

(2) Documentation provided by the applicant that the applicant is authorized to practice law in a foreign jurisdiction.

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**Proposed Criteria for ABA Certification of an LL.M Degree
for the Practice of Law in the United States**

The Council of the ABA Section of Legal Education and Admissions to the Bar (the “Council”) will certify that an LL.M degree prepares its graduates for the practice of law in the United States (an “LL.M. for the Practice of Law in the United States”) if the program granting the degree meets the following requirements:

1. The degree program is part of the educational program of a law school that is fully approved by the Council;
2. The degree program prepares students for admission to the bar, and for effective and responsible participation in the United States legal profession;
3. The curriculum includes a minimum of 18,200 minutes of instruction, typically through 26 hours of credit, of which a minimum of 12,000 minutes are in courses that address principles of domestic United States law, and which must include the following:
 - (a) A minimum of 2080 minutes in United States Constitutional Law, including principles of separation of powers and federalism;
 - (b) A minimum of 2080 minutes in the civil procedure of state and federal courts in the United States;
 - (c) A minimum of 1400 minutes in the history, goals, structure, values, rules and responsibilities of the United States legal profession and its members;
 - (d) A minimum of 1400 minutes in legal analysis and reasoning, legal research, problem solving, and oral and written communication.
 - (e) The specific requirements in (a) - (d) may be waived by the law school if a student has previously received instruction in a substantially similar course, so long as the total minutes of instruction in United States law during the degree program is not reduced below 12,000 minutes as a result of that waiver. The specific requirement of 3 (c) may not be waived unless a student has previously taken a course that satisfies this requirement at an ABA approved law school.
 - (f) Eighteen of twenty-six credits, or 12,000 minutes, must be taught during the regular academic year, excluding inter-sessions and summer sessions;
 - (g) Eighteen of twenty-six credits, or a minimum of 12,000 minutes, must be taught by full-time or emeritus faculty at the law school.
4. An LL.M for the Practice of Law in the United States may be completed in a full or part time program. If the program is part time, the

LL.M must be completed within 36 months. All courses must be taught in English and in the United States or its territories.

5. A law school must publicly disclose on its website the first-time bar passage rates by state of its most recent class of graduates of an LL.M program specifically designed to comply with this rule and to prepare its students for the practice of law in the United States.

Process for an ABA approved law school to obtain certification from the Council of the ABA Section of Legal Education and Admissions to the Bar.

A law school that is fully approved by the Council of the ABA Section of Legal Education and Admissions to the Bar which seeks certification that an LL.M. Degree for the Practice of Law in the United States satisfies the specified Criteria must submit a written description of the LL.M. program for review by the Consultant on Legal Education of the American Bar Association and submission to the Council for action. The Consultant's Office will notify the school in writing as to whether the proposed LL.M. program satisfies the Criteria and has been certified by the Council. During subsequent regularly scheduled site visits, site teams will gather the facts necessary to determine if the LL.M. program continues to satisfy the Criteria.

Many ABA approved law schools have LL.M. programs that are designed to meet educational goals other than preparing students for the practice of law in the United States. The Section of Legal Education and Admission to the Bar does not, through this certification program, exercise any oversight or assessment of other LL.M programs beyond the requirements of Standard 308. The limited purpose of the Model Rule and certification process is to 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.