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CLEA is the nation's largest association of law teachers, representing over 900 dues-paying faculty at over 180 law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in their role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.

July 15, 2011

Hulett H. Askew

by email: Bucky.Askew@americanbar.org

Consultant on Legal Education

Section of Legal Education and Admissions to the Bar

American Bar Association

Re: Proposed Model Rule on Admission of Foreign-Educated Lawyers

Dear Mr. Askew:

The Clinical Legal Education Association (CLEA) writes to comment on the Proposed Model Rule on Admission of Foreign Educated Lawyers and Proposed Criteria for ABA Certification of an LL.M. Degree for the Practice of Law in the United States. CLEA is the nation's largest association of law teachers and is deeply invested in ensuring that LL.M. students who complete an ABA-certified program of education are well-prepared for the practice of law in the United States. Like J.D. students, LL.M. graduates who sit for a bar exam and become part of this country's legal profession should be trained as knowledgeable, skilled and ethical practitioners. The Council should therefore add a professional skills graduation requirement to the criteria for certifying LL.M. programs.

Once a rarity, there has been a recent and dramatic expansion in the number of foreign-educated candidates admitted to the bar. Twenty-seven states and the District of Columbia now allow foreign-educated lawyers to sit for the bar and obtain a license to practice law in their jurisdiction. Over the period from 1992 to 2010, the number of foreign-educated applicants taking a bar examination grew from 1,080 to 5,761, more than a 400% increase.¹ With the pass rate of these candidates hovering around 30%, the number of foreign-educated lawyers admitted to practice law in the United States grew from 504 in 1996 to 1,777 in 2010, an over three-fold increase. These numbers have

¹ ABA, Section of Legal Education and Admissions to the Bar, *Report of the Special Committee on International Issues* App. B (July 15, 2009); *Persons Taking and Passing the 2010 Bar Examination by Source of Legal Education*, THE BAR EXAMINER 10 (Mar. 2011).

increased sharply in recent years. For example, in the two-year period from 2007 to 2009 alone, the number of foreign-educated lawyers licensed to practice law in the United States rose 14%.

Licenses awarded to foreign-educated lawyers do not restrict the types of clients they may represent, the kinds of cases they can handle, or the types of proceedings in which they may appear. With their new law licenses, foreign-educated lawyers are expected to provide the same caliber of representation as U.S.-educated law graduates. Yet these LL.M. candidates come from widely disparate legal cultures – some common law, some civil law, some autocratic, and others strictly administrative in nature. Because these foreign-educated lawyers are less grounded in the historical, social, and political contexts that undergird the shared values of our American legal system, foreign-educated lawyers in the United States face special challenges in learning to provide the competent, ethical representation that all clients deserve.

It is for these reasons that CLEA agrees with the Council’s proposed Model Rule’s requirement that an approved curriculum for an LL.M. Degree for the Practice of Law in the United States must include instruction in constitutional law, civil procedure, professional responsibility, and legal analysis, reasoning, research and communication. Accreditation Standard 302(a) requires substantial instruction in these areas for J.D. students, and foreign-educated LL.M. students are equally in need of these courses.

However, the Council has failed in this Model Rule to recognize the importance of professional skills instruction prior to bar admission. The criteria for ABA certification of LL.M. programs should also include a minimum of 1400 minutes of instruction in professional skills with the insertion of criterion 3(e):

(e) A minimum of 1400 minutes in other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.

Substantial instruction in professional skills is one of only three specific areas of instruction (together with professional responsibility and legal writing) already required of all J.D. students in Accreditation Standard 302(a)(4). Yet, it is the sole subject area in Standard 302(a)(1)-(5) that the Council has omitted from the proposed criteria for LL.M. students.

It is critical that foreign LL.M. bar admission candidates successfully complete one professional skills course. The purpose of the accreditation standards governing the required curriculum for the J.D. degree is to prepare graduates for “effective and responsible participation in the legal profession.” Similarly, the stated purpose of the ABA’s new certification of an LL.M. degree is “to prepare the foreign lawyer for the practice of law in the United States.” To be prepared, foreign-educated lawyers should learn the professional skills necessary for the effective and ethical practice of law in the United States.

Many foreign-educated lawyers come to LL.M. programs with what amounts to an undergraduate degree in this country and with little or no prior legal practice experience in any setting, including their own country. Even those foreign-educated LL.M. students who have some practice experience in another country often have little familiarity with, for example, trial

and appellate advocacy in the dual-sovereign system of United States, use of alternative methods of dispute resolution, basic fact investigation obligations, how to counsel and interview a U.S. resident, or how to draft effective legal instruments and pleadings.²

CLEA members who work with foreign-educated students in law clinics and field placement programs find that even students with prior practice experience in other countries are in need of basic instruction in the professional skills necessary for the practice of law in the United States. The Council's regulatory objective of "protecting clients and the public"³ simply cannot be met by certifying LL.M. graduates with no experience in the professional skills necessary for the practice of law in the United States.

We do not agree that the decision whether to require a skills course is better left to the individual choices of schools or the foreign-educated lawyer candidate. The Council wisely does not leave it to schools to decide if, for example, professional responsibility and other basic courses should be required. The reality is that law schools, pressed to compete for LL.M. applicants and pressured by LL.M. students to avoid required courses that do not provide bar examination preparation, have little motivation to protect the public from foreign-educated lawyers who lack instruction in professional skills. Without a compelling justification for treating professional skills differently, the Council should require that LL.M. students meet the basic skills requirements expected of all other law graduates permitted to practice law in the United States.

The professional skills requirement should not be subject to a waiver because, as noted, practice ability in the United States should be expected of all admittees to the bar, including foreign graduates of LL.M. programs.⁴ Similarly, a law school LL.M. program should not be allowed to waive the requirement for a course in legal analysis, reasoning, research and communication as provided in the proposed Model Rule. Among the most valued skills that U.S.-trained law graduates possess in the global marketplace are the legal research, reasoning and communication skills that are required in all J.D. programs. Most foreign-educated lawyers in LL.M. programs are not native speakers of English and often struggle to research, analyze and communicate about legal issues in writing consistent with American drafting standards. Indeed, this deficit is likely one of the primary reasons for the consistently low bar passage rates of foreign-educated lawyers. As with professional skills, it is unlikely that there is a "substantially similar course" that a foreign-educated lawyer could previously have taken that would substitute for a well-taught course in an American law school on legal research and writing.

CLEA again expresses its appreciation to the Council for addressing the important issue of the quality of foreign-trained lawyers admitted to practice in the United States. We hope this

² ABA Accreditation Interpretation 302-2 identifies some of the professional skills lawyers in the United States, whether educated at a U.S. law school or in a foreign country, should have in order to meet their responsibilities to clients.

³ *Report of the Special Committee on International Issues*, *supra* note 1, at 32.

⁴ If the Council concludes that it is necessary to provide some flexibility for schools and candidates on the professional skills requirement, it might consider allowing individual bar candidates to seek waivers of the required instruction only when they have had a minimum of five years of active practice experience involving the professional skills identified in Accreditation Interpretation 302-2. This standard mirrors the period of active practice of law required by the ABA's Model Rule on Admission by Motion.

submission will be of use to the Council as it considers the full range of requirements needed to qualify these lawyers for practice in the United States. Instruction and experience in professional skills should be a mandatory component of their preparation.⁵

Sincerely,



Ian Weinstein, President *by RRLK*
Clinical Legal Education Association

⁵ We note an apparent typo in the title of the proposed model rule. Although the memorandum announcing the comment period on the model rule describes the title of the proposed rule as “Proposed Model Rule on Admission of Foreign Educated Lawyers,” the actual rule put out for comment appears to be mistakenly titled “Proposed Model Rule on Admission of Foreign Education Lawyers.”