

**GETTING TO CENTER STAGE: PROPOSED NEW  
RULES FOR BAR ADMISSION ELIGIBILITY SEEK  
TO PLACE TEXAS ON THE A-LIST OF DESIRED  
DESTINATIONS FOR FOREIGN LAWYERS**

Comment\*

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### I. SETTING THE SCENE

Prior to the 1990s, United States law firms had little need for the expertise of foreign lawyers and their knowledge of the laws of foreign jurisdictions, much less the benefits associated with such lawyers obtaining a United States law license.<sup>1</sup> Foreign lawyers traveled to the United States, if at all, on an as-needed, temporary basis.<sup>2</sup> But the exponential globalization that has taken place since the 1990s increasingly outdated the notion that foreign-educated lawyers play solely a secondary role in the United States legal market.<sup>3</sup> Continued technological advances make information infinitely more available and the laws of significant jurisdictions are accessible online today with the click of a button.<sup>4</sup> The idea that the practice of law in the United States is local—that a majority of the legal issues arising across the country are purely domestic in nature—is fading as the legal world becomes more interconnected.<sup>5</sup> City and state lines no longer limit the area where a lawyer practices, nor do they limit a lawyer's client and competitor base.<sup>6</sup> Today, that client and competitor base is constantly transcending American borders and becoming more global.<sup>7</sup> As a result, the mounting importance of readily available foreign

1. Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT'L L.J. 1039, 1041 (2002) [hereinafter Silver, *The Case of the Foreign Lawyer*]; see generally Morton Moskin, *As the World Shrinks Don't Let Globalization Leave You Behind*, 9 BUS. L. TODAY, no. 3, 1999–2000, at 39 (discussing when the era of globalization began).

2. Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 IND. J. GLOBAL LEGAL STUD. 67, 74 (2007) [hereinafter Silver, *Local Matters*].

3. Silver, *The Case of the Foreign Lawyer*, *supra* note 1, at 1039; Edward Poll, *Is Your World Flat?*, ABA L. PRAC. MGMT. SEC. L. PRAC. TODAY (Nov. 2007), <http://www.apps.americanbar.org/lpm/lpt/articles/mtt11071.shtml>.

4. TASK FORCE ON INTERNATIONAL LAW PRACTICE IN TEXAS, FINAL REPORT TO TEXAS SUPREME COURT 25 (Dec. 2012), available at <http://www.supreme.courts.state.tx.us/ilptf/pdf/finalreport.pdf> [hereinafter FINAL REPORT].

5. Silver, *Local Matters*, *supra* note 2, at 67; see Moskin, *supra* note 1, at 42; Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW J. INT'L L. & BUS. 527, 548 (2008).

6. Terry, *supra* note 5, at 559; see Moskin, *supra* note 1, at 39.

7. Terry, *supra* note 5, at 559; see Moskin, *supra* note 1, at 39.

attorneys in the United States legal market—educated in both the laws of foreign jurisdictions and American law—is unmistakable:

The practice of law is increasingly international as law firms regularly expand across national boundaries . . . . There is more mixing between national legal systems than ever before, and whether through convergence or harmonization, legal rules and practices that once were local or national are being challenged through contact with foreign systems.<sup>8</sup>

Some states, such as New York, responded to the transformation by crafting flexible rules more conducive to foreign attorneys practicing law within their borders, while other states, such as Texas, still lag behind in their licensing schemes.<sup>9</sup> In particular, because New York responded effectively to the changing demand for foreign legal expertise in the United States, it now enjoys a wealth of foreign-educated attorneys licensed to practice law within the state.<sup>10</sup> In 2011 alone, 4,427 foreign-educated lawyers sat for the New York bar exam, while only twenty-two sat for the Texas bar exam, comprising less than 1% of all foreign-educated lawyers sitting for bar exams in the United States for that year.<sup>11</sup>

In the era of the not-so-new phenomenon of globalization, Texas remains one of the hardest states to become licensed in as a foreign lawyer.<sup>12</sup> To that end, this Comment seeks to explain why the Supreme Court of Texas should adopt the Task Force on International Law Practice's (Task Force) proposed changes to Texas's current rules governing admission to the state bar and LL.M. curriculum requirements.<sup>13</sup> Part I introduces the issue of globalization by discussing its effects on the American legal market over the past two decades.<sup>14</sup> Part II explores Texas's overall economic growth—particularly in the areas of international trade and exports—relative to the rest of the country.<sup>15</sup> Part II then goes on to explain how this growth has translated into deficiencies in the Texas legal market, specifically in the form of concerns regarding competent and ethical representation issues and the need to seek foreign legal expertise outside of the United States to solve such issues.<sup>16</sup> Part III addresses

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8. Silver, *The Case of the Foreign Lawyer*, *supra* note 1, at 1039.

9. See FINAL REPORT, *supra* note 4, at 9. While not the only state to respond to the need for foreign legal expertise within the United States, New York has made changes multiple times within the last decade alone to attract foreign lawyers to the state. Moskin, *supra* note 1, at 39–40.

10. FINAL REPORT, *supra* note 4, at 9.

11. *Id.*

12. Poll, *supra* note 3; *Trade & Export*, TEX. WIDE OPEN FOR BUS., <http://www.texaswideopenforbusiness.com/small-business/trade.php> (last visited Oct. 30, 2013); see FINAL REPORT, *supra* note 4, at 9.

13. See *infra* Part V. The Task Force on International Law Practice is a committee that the Supreme Court of Texas created in 2009 to propose—among other things—possible revisions to the current Texas rules governing the admission of foreign-educated attorneys to the Texas bar and to the current LL.M. curriculum requirements. See *infra* Part III.B.

14. See *infra* Part I.

15. See *infra* Part II.A.

16. See *infra* Part II.B–C.

Texas's first attempt at restructuring its licensing scheme, the initiation and goals of the Task Force, and how foreign lawyers can currently obtain a Texas law license.<sup>17</sup> Part IV looks at New York's current rules governing admission to the state bar and LL.M. curriculum requirements, and specifically to how those rules and requirements were used as a model for the changes that the Task Force ultimately proposed for Texas.<sup>18</sup> Part V underscores the benefits that Texas will enjoy if the Task Force's proposals are adopted and argues why the structure of the proposed changes will make Texas a more attractive location for foreign lawyers to pursue a United States law license.<sup>19</sup> Finally, Part VI concludes with the recommendation that the Supreme Court of Texas should not overlook the importance of adopting the Task Force's proposal to update Texas's licensing scheme, while highlighting what Texas will miss out on if this opportunity is forgone.<sup>20</sup>

With one of the largest and fastest growing economies in the entire nation, people from all over the country—and the world—are moving to the Lone Star State.<sup>21</sup> Because of its economic strength, size, and overall appeal, Texas has everyone's attention and there is a tremendous growth opportunity available in updating the state's current licensing scheme.<sup>22</sup>

## II. HOUSTON, WE HAVE A PROBLEM: TEXAS'S DISPROPORTIONATE RELATIONSHIP BETWEEN INTERNATIONAL BUSINESS AND FOREIGN LEGAL EXPERTISE

The presence and frequency of international business and trade has increased substantially in the United States as travel, communication, and the transfer of money between countries has become infinitely faster and easier.<sup>23</sup> This transformation—from a national to an international arena of commerce—has been even more dramatic in Texas.<sup>24</sup> The surge of foreign commerce in Texas is extremely beneficial for the state's overall economy, which, in and of itself, has grown exponentially in recent years.<sup>25</sup> This same surge, however, has also created deficiencies in the Texas legal market.<sup>26</sup> There is a great pressure on Texas lawyers to advise their clients competently on foreign legal matters,

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17. See *infra* Part III.

18. See *infra* Part IV.

19. See *infra* Part V.

20. See *infra* Part VI.

21. Michael B. Sauter & Alexander E.M. Hess, *States with the Fastest Growing Economies*, 247WALLST.COM (June 12, 2013, 6:50 AM), <http://www.247wallst.com/special-report/2013/06/12/states-with-the-fastest-growing-economies/3/>.

22. See *infra* Parts V–VI; see generally Tyler Cowen, *Why Texas Is Our Future*, TIME, Oct. 28, 2013, at 30 (discussing the strength of the Texas economy and why so many people from across the nation are moving to the state).

23. See FINAL REPORT, *supra* note 4, at 24.

24. *Id.* at 26, 33; see *infra* Part II.A.

25. See *infra* Part II.A.

26. See *infra* Part II.B–C.

and without a readily available knowledge of foreign law, those lawyers are seeking that advice for their clients internationally.<sup>27</sup> Lawyers educated in the laws of foreign jurisdictions play an important role in international legal transactions today and their knowledge is necessary to help American lawyers continue to adeptly represent their clients on cross-border legal issues.<sup>28</sup> Rather than attracting these foreign lawyers to Texas—where their expertise would be readily available—the current licensing scheme oftentimes requires Texas lawyers to associate with foreign counsel outside of the United States, either putting them in direct competition with international firms or exposing them to potential liability or professional responsibility violations.<sup>29</sup>

*A. In the Spotlight: Texas Emerges as a Pillar of Economic Strength in the Union*

Texas has the rest of the country in awe as its business steadily booms despite the 2008 recession, earning names such as “‘America’s America,’ the place where Americans go when they need a fresh start.”<sup>30</sup> The state has more job opportunities, markedly lower living expenses, and a deeper cultural and ethnic diversity than many other states.<sup>31</sup> People from all over the country are moving to Texas as fast as they can.<sup>32</sup> In 2012 alone, 106,000 people relocated to Texas from other states in the Union.<sup>33</sup> They are not only coming from states where major industries completely collapsed, such as Michigan, but also from more prosperous states like New York.<sup>34</sup> This migration is, in part, attributed to features such as an unemployment rate of 5.5%—over a full percentage point lower than the national average.<sup>35</sup> Further, “Texas has the third highest average income [in the nation], while New York ranks 36th.”<sup>36</sup> In addition to an overall robust economy, a particular sect of the Texas economy is also topping the charts: international trade and foreign commerce.<sup>37</sup>

Texas is the country’s leader in a number of categories under the umbrella of international business: the longest railroad, the most United States entry

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27. FINAL REPORT, *supra* note 4, at 30; *see infra* Part II.B–C.

28. *See infra* Part II.B.

29. *See infra* Part II.B–C.

30. Cowen, *supra* note 22, at 32.

31. *Id.* at 32–34. From October 2012 to October 2013, Texas created 274,700 jobs in the state, accounting for 12% of all jobs nationwide. *Id.* at 34.

32. *Id.* at 33.

33. *Id.*

34. *Id.* at 34.

35. *Local Area Unemployment Statistics: Unemployment Rates for States*, U.S. DEPARTMENT OF LAB.: BUREAU OF LAB. STAT., <http://www.bls.gov/web/laus/laumstrk.htm> (last updated Apr. 18, 2014); *see generally* Cowen, *supra* note 22, at 34 (explaining how a low unemployment rate is one of the factors that has attracted people to Texas). According to the latest United States Bureau of Labor statistics, other populous states such as New York and California have unemployment rates of 6.9% and 8.1%, respectively. *Local Area Unemployment Statistics: Unemployment Rates for States*, *supra*.

36. Cowen, *supra* note 22, at 34.

37. *See Trade & Export*, *supra* note 12.

ports, and the highest percentage of a state's workforce that is multilingual.<sup>38</sup> Texas is also the country's leader in exports—a position held for an impressive eleven consecutive years.<sup>39</sup> In 2012, as the number one state in export revenue, Texas boasted figures in excess of \$251 billion.<sup>40</sup> This amount symbolizes over a 21% increase in export revenue from 2011 to 2012 alone.<sup>41</sup> Further, Texas has a unique geographic location—it is Central and Latin America's next-door neighbor.<sup>42</sup> This location creates limitless and convenient opportunities for international trade.<sup>43</sup> For example, as of 2011, Mexico was Texas's leading destination for international exports, independently contributing over \$87 billion to the state's annual export revenue.<sup>44</sup> Because of Texas's prominent role in the energy market, the state is also seen as a gateway for businesses to enter the abundant natural resource market in many Latin American countries.<sup>45</sup> Compared to the rest of the United States, Texas has “extensive global ties . . . and [is] a major global exporter of high value-added services, including accounting, communications, consulting, engineering, financial, legal, medical, and transportation services.”<sup>46</sup> Not only is Texas a major global exporter, but it also receives a high volume of foreign direct investments, with a number of foreign companies consistently launching business ventures in the state.<sup>47</sup> By 2010, nearly 1,500 foreign companies established themselves in the Lone Star State.<sup>48</sup>

The “world . . . is becoming more and more integrated every day” and Texas has certainly risen to the occasion by making the state both a desirable international trade partner and a premier destination for foreign businesses.<sup>49</sup> Texas is one of—if not the most—international business-friendly states in the country, especially when considering the number of foreign companies that have permanently relocated within the state's borders.<sup>50</sup> Texas continues to zealously take advantage of the growth opportunities that globalization provides, with no indication that the increase of foreign commerce within the state is going to slow down any time soon.<sup>51</sup> So what does Texas's position as one of the nation's leaders in international business and foreign commerce

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38. *Id.*

39. *Id.*

40. FINAL REPORT, *supra* note 4, at 29.

41. *Id.*

42. See Luis Torres, *Texas' Stake in International Trade Through Its Exports and Some Foreign Direct Investment*, in 2022 TECHNICAL REP., Apr. 2013, at 1, 1, available at <http://recenter.tamu.edu/pdf/2022.pdf>; *Trade & Export*, *supra* note 12.

43. See FINAL REPORT, *supra* note 4, at 30.

44. *Id.*

45. *Id.* at 37.

46. *Trade & Export*, *supra* note 12.

47. Torres, *supra* note 42, at 1.

48. *Id.* at 6.

49. See *id.* at 7.

50. See *id.*

51. See *id.*

mean for practitioners in the state? On the legal side, international business and trade means an increased likelihood for international arbitration, litigation, and transactions, among other situations.<sup>52</sup> The problem these cross-border scenarios create is that to competently represent and advise clients on international legal issues, American lawyers often need to associate with foreign counsel familiar with both a particular foreign jurisdiction's law *and* United States law.<sup>53</sup>

*B. The Show Must Go On: The Pressure on Texas Lawyers to Meet the Competency Requirement in an Increasingly Globalized Legal Market*

When American lawyers venture to advise clients on foreign matters, who this advice ultimately comes from can raise professional responsibility concerns.<sup>54</sup> Once international issues arise, lawyers in the United States are obliged to either render competent legal advice themselves or, if they are not familiar enough with a particular country's or jurisdiction's laws, associate with competent foreign counsel.<sup>55</sup> This competency standard is also applicable to Texas lawyers.<sup>56</sup> Texas attorneys choosing to advise clients on international legal matters—without the aid of foreign legal expertise—must sufficiently familiarize themselves with the laws of the jurisdictions involved in order to represent those clients competently and effectively.<sup>57</sup> This competent representation requirement comes from both the Model Rules of Professional Conduct (Model Rules) and the Texas Disciplinary Rules of Professional Conduct (Texas Rules).<sup>58</sup>

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52. Mark Curriden, *Texas Supreme Court May Open Doors to Foreign Lawyers*, DALL. NEWS: BUS. (Jan. 10, 2013, 10:37 PM), <http://www.dallasnews.com/business/headlines/20130110-texas-supreme-court-may-open-doors-to-foreign-lawyers.ece>; Telephone Interview with Larry B. Pascal, Chairman, Task Force on International Law Practice in Texas & Partner, Haynes & Boone, LLP (Jan. 15, 2014). Any comments made by Larry Pascal during the telephone interview and referenced in this Comment were made by Mr. Pascal in his individual capacity, not in any official capacity, and reflect only his personal views and opinions. He is not a spokesperson for the Supreme Court of Texas, the Texas Board of Law Examiners, the Texas Unauthorized Practice of Law Committee, Haynes & Boone, LLP, or any other body, entity, law firm, or organization in connection with this Comment or the Task Force on International Law Practice.

53. See *infra* Part II.B.

54. See Robert E. Lutz, *Ethics and International Practice: A Guide to the Professional Responsibilities of Practitioners*, 16 FORDHAM INT'L L.J. 53, 56 (1992–1993).

55. *Id.* at 56–57. If an American lawyer “undertakes a transaction that involves or requires knowledge of foreign law, that lawyer is obligated not only to inform himself of the applicable law, but also to acquire that foreign law knowledge.” *Id.* at 59–60.

56. See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A (West 2013) (TEX. STATE BAR R. art. X, § 9); MODEL RULES OF PROF'L CONDUCT R. 1.1 (2011).

57. See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01. If a Texas lawyer “cannot discharge the duty of competence because the lawyer is not qualified to advise on the foreign law,” she may seek the advice of counsel in that foreign jurisdiction. Lutz, *supra* note 54, at 68–69.

58. See TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01; MODEL RULES OF PROF'L CONDUCT R. 1.1.

The Model Rule on competency explains that for representation to be sufficiently “competent,” a lawyer must possess “the legal knowledge, skill, thoroughness[,] and preparation reasonably necessary for the representation.”<sup>59</sup> A comment to the rule discusses the actions a lawyer must take when confronted with a particular area on which she is unqualified to advise: “[c]ompetence includes the ability to discern when an undertaking requires specialized knowledge or experience that the lawyer does not have, and requires that the lawyer acquire the expertise, associate with a specialist, or decline the undertaking and refer it to a competent specialist.”<sup>60</sup> Likewise, the Texas Rule provides that a lawyer shall not represent a client in an area of law that is beyond her competence unless she associates with a lawyer who is competent in that area of law.<sup>61</sup> Similar to the Model Rule, a comment to the Texas Rule states that a lawyer should continuously work to remain capable in the practice of law, highlighting that the act of providing competent representation is an ongoing process subject to changing circumstances.<sup>62</sup>

The competence rules and their respective comments place certain expectations on attorneys that are important to the present discussion of the interaction between American and foreign lawyers.<sup>63</sup> In a market in which the laws of different countries frequently collide, many lawyers choose another route to meet the requirement: associate with outside counsel.<sup>64</sup> In this scenario, American lawyers collaborate with foreign lawyers versed in the laws and regulations of the foreign countries with which they are transacting to continue to provide not only competent, but better representation.<sup>65</sup> Furthermore, to prosper in a globalized economy, lawyers must be able to provide efficient legal services.<sup>66</sup> As put by Mortin Moskin, a New York attorney, “many business lawyers who never left home have been transformed into international lawyers, representing foreign businesses in their [United

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59. MODEL RULES OF PROF'L CONDUCT R. 1.1.

60. ANNOTATED MODEL RULES OF PROF'L CONDUCT R. 1.1 at 25 (6th ed. 2007) (citing Attorney Grievance Comm'n v. Brown, 517 A.2d 1111, 1118–19 (Md. 1986)).

61. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

62. *Id.* at 1.01 cmt. 8.

63. See Telephone Interview with Larry B. Pascal, *supra* note 52.

64. See MODEL RULES OF PROF'L CONDUCT R. 1.1 cmt. (citing *Attorney Grievance Comm'n*, 517 A.2d at 1118–19); *infra* Part V.B.

65. Telephone Interview with Leland C. de la Garza, Vice-Chairman, Task Force on International Law Practice in Texas & Partner, Shackelford, Melton & McKinley (Jan. 8, 2014). Any comments made by Leland de la Garza during the telephone interview and referenced in this Comment were made by Mr. de la Garza in his individual capacity, not in any official capacity, and reflect only his personal views and opinions. He is not a spokesperson for the Supreme Court of Texas, the Texas Board of Law Examiners, the Texas Unauthorized Practice of Law Committee, Shackelford, Melton & McKinley, or any other body, entity, law firm, or organization in connection with this Comment or the Task Force on International Law Practice.

66. See Chris Wolfe & April A. Strahan, *An Overview of the History of Foreign Legal Consultants Between the United States and Mexico*, 47 S. TEX. L. REV. 557, 559 (2006).



States] operations and businesses based here in their overseas dealings.”<sup>67</sup> These transformed international business lawyers will increasingly need to associate with foreign lawyers to deliver effective legal services and to be able to meet the competency standards placed on them.<sup>68</sup>

In a formal opinion in 2001, the American Bar Association’s Committee on Ethics and Professional Responsibility addressed the necessity for United States lawyers to associate with international counsel in order to provide competent legal representation to their clients.<sup>69</sup> The opinion highlighted the primary concern resulting from a globalized economy as it relates to the legal market: consumers of American legal services increasingly need to be represented by lawyers knowledgeable in the laws of the foreign jurisdictions with which they transact.<sup>70</sup>

Law firms in the United States, recognizing the changing standards for representation of their now-international clients, seek out international legal expertise in different ways.<sup>71</sup> For instance, some law firms look overseas to help bridge the gap between the laws of different jurisdictions.<sup>72</sup> While this approach may achieve the immediate need to associate with foreign counsel, it simultaneously opens the door to new challenges at home.<sup>73</sup> By looking to international firms and lawyers for help, many American law firms put themselves in direct competition with the rest of the world and potentially expose themselves to certain liability issues.<sup>74</sup>

### *C. Not a One-Man Act: Seeking International Legal Expertise Across the Pond*

Even at the front-end of the globalization era, scholars began to anticipate certain ethical complications that may arise in the legal sphere.<sup>75</sup> As predicted, a great challenge is now upon many American lawyers to either be versed in the laws of multinational jurisdictions or to associate with foreign counsel within the confines of longstanding ethical restrictions.<sup>76</sup> It is now a reality that

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67. Moskin, *supra* note 1, at 38; see TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.01; MODEL RULES OF PROF’L CONDUCT R. 1.1 (2011). Morton Moskin practiced law at the law firm of White & Case in New York from 1962 until 1994. Moskin, *supra* note 1, at 38.

68. Moskin, *supra* note 1, at 39; see TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.01; MODEL RULES OF PROF’L CONDUCT R. 1.1.

69. ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 01-423 (2001).

70. *See id.*

71. *Id.*

72. *Id.*

73. *See infra* Part II.D.

74. FINAL REPORT, *supra* note 4, at 24–25; *see infra* Part II.C.; *cf.* Terry, *supra* note 5, at 535–36 (discussing the effects of outsourcing legal work in today’s legal market).

75. *See generally* Lutz, *supra* note 54 (discussing the potential ethical and professional implications of a globalized legal market).

76. Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshore Legal and Law-Related Services*, 38 GEO. J. INT’L L. 401, 425 (2007) (“[T]he

lawyers and law firms are seeking legal expertise in foreign countries.<sup>77</sup> These efforts can help solve the competency problem, but they also may expose United States lawyers and law firms to potential liability.<sup>78</sup> Additionally, seeking legal expertise in foreign countries forces American law firms to compete with foreign law firms for lawyers and for clients.<sup>79</sup>

When American lawyers choose to associate with foreign counsel, one avenue of liability is through the unauthorized practice of law.<sup>80</sup> For instance, associating with a foreign lawyer not licensed in the United States may implicate that lawyer as having been engaged in the unauthorized practice of law.<sup>81</sup> In the case of *Bluestein v. State Bar of California*, the Supreme Court of California held that advising clients on foreign legal issues in the United States without a United States law license constituted the unauthorized practice of law.<sup>82</sup> At the very least, when associating with foreign counsel, the United States-based counsel must act to ensure that the foreign counsel “has a thorough understanding of applicable U.S. law[s]” and practices.<sup>83</sup> Even when a foreign lawyer is licensed in the United States, a client relying on an American lawyer’s advice may still sue that American lawyer for negligence if the advice is ultimately unsatisfactory.<sup>84</sup> Whatever the scenario, the American lawyer must take adequate measures to ensure the competence of the foreign lawyer and the thoroughness of the advice.<sup>85</sup>

In addition to the above risks, relying on foreign lawyers for legal expertise can put American firms at risk of losing their edge.<sup>86</sup> The ability to give effective legal advice to clients is now country-specific, and United States law firms generally do not hire large quantities of foreign-educated attorneys in

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principles of professional ethics and tort liability that constrain a lawyer’s decision to send . . . legal services to foreign lawyers . . . are long standing.” (footnote omitted)); Lutz, *supra* note 54, at 85.

77. *Cf.* Terry, *supra* note 5, at 536 (discussing the dramatic increase in the outsourcing of legal services since 2007).

78. *See* Lutz, *supra* note 54, at 69.

79. Carole Silver, *What We Don’t Know Can Hurt Us: The Need for Empirical Research in Regulating Lawyers and Legal Services in the Global Economy*, 43 AKRON L. REV. 1009, 1060 (2010) [hereinafter *What We Don’t Know Can Hurt Us*]; *see supra* text accompanying note 74; *cf.* Terry, *supra* note 5, at 538 (discussing how outsourcing legal work can place American lawyers in either direct or indirect competition with offshore lawyers).

80. *See* Daly & Silver, *supra* note 76, at 427.

81. *Id.*; *see* Lutz, *supra* note 54, at 69–70. Enforcement of unauthorized practice of law violations is state-specific and the states vary in defining what activities fall under this category. *See* Daly & Silver, *supra* note 76, at 428. To date, law firms tend to face few challenges regarding the unauthorized practice of law, but this may change as the legal market becomes more globalized. *See id.*

82. *Bluestein v. State Bar of Cal.*, 529 P.2d 599, 606 (Cal. 1974) (“Giving legal advice regarding the law of a foreign country thus constitutes the practice of law . . .”).

83. HAYWARD D. FISK & H. WARD CLASSEN, COUNSEL FOR INTERNATIONAL LEGAL WORK, SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL § 22:2 (2013) [hereinafter SUCCESSFUL PARTNERING].

84. *See* Lutz, *supra* note 54, at 69.

85. *See* SUCCESSFUL PARTNERING, *supra* note 83, § 22:2; Lutz, *supra* note 54, at 69.

86. *See* Silver, *Local Matters*, *supra* note 2, at 82.

their United States offices.<sup>87</sup> Conversely, firms in other countries are hiring lawyers that have both a law degree from the country in which the foreign firms sit and an LL.M. degree from the United States.<sup>88</sup> By having lawyers in house who are familiar with both the laws of their foreign country and the laws of the United States, those firms have a tremendous advantage.<sup>89</sup> Why go to the American middleman when you can go straight to a foreign firm already equipped with lawyers versed in both countries' laws? Law firms armed with these lawyers have a direct competitive advantage over American firms that are not so armed because they essentially eliminate the American middleman.<sup>90</sup> Globalization made the idea of hiring lawyers from other countries possible with relative ease, so consumers of legal services around the world are now able to hire the best firm for the job—whether that firm is in Houston or London.<sup>91</sup> To stay relevant, United States law firms lacking the availability of expertise unique to these dually educated attorneys must maintain their roles as the go-to intermediary between national and international clients and counsel.<sup>92</sup> Certainly a small percentage of United States law firms have the financial resources to “buy[] out the competition” or “bring[] local counsel in-house” to international branch offices of the same firm.<sup>93</sup> The same approach may not necessarily be available, though, to the mid-sized and smaller firms that are still faced with an increasingly international legal marketplace.<sup>94</sup> Even for those larger firms with pockets deep enough to buy out the competition, the question remains how these actions will keep business flowing into the United States, rather than chasing it out.<sup>95</sup>

In terms of the Texas legal market, the issues that increased globalization presents include, but are not limited to, a state economy growing more international by the minute; not enough lawyers prepared to meet the state's demand for readily available foreign legal expertise; the resulting pressure on Texas lawyers and law firms to be familiar with the laws of multiple countries; and many lawyers and firms reaching out to foreign lawyers and firms to help solve international legal issues.<sup>96</sup> These problems evidence the reality that globalization *is* affecting the Texas legal market, and in 2005, this issue finally got the attention of the Supreme Court of Texas.<sup>97</sup>

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87. *Id.* at 83.

88. *Id.* at 83–84.

89. *Id.*

90. *Id.*

91. See FINAL REPORT, *supra* note 4, at 25.

92. See Silver, *Local Matters*, *supra* note 2, at 84.

93. *Id.* at 84–85.

94. *Cf. id.* (discussing an approach that is more conducive to large firms because, unlike small and mid-sized firms, these firms have ample resources to buy out their competition).

95. *Id.* at 90.

96. See discussion *supra* Part II.

97. Larry B. Pascal, *The Texas Supreme Court Task Force on International Law Practice: Making Texas More Competitive in International Law*, 63 THE ADVOC. 51, 51 (2013) [hereinafter *The Texas Supreme Court Task Force on International Law Practice*].

### III. CLIMBING THE CHARTS: TEXAS'S FIRST STRIDES TOWARD UPDATING ITS RULES

Prior to 2005, the era of globalization and its effect on the Texas legal market gave rise to the first discussions about transforming Texas into a friendlier location for foreign-educated lawyers to pursue a United States law license.<sup>98</sup> Some of the motivations for this discussion included access to more affordable foreign legal services, the ability to competently advise Texas clients on foreign legal issues, easier regulation of foreign lawyers in Texas, and the generation of more business from foreign lawyers' presence in Texas.<sup>99</sup> The overarching conclusion from these considerations was the realization that increased globalization equated to an increased need for foreign attorneys licensed in some capacity to practice law in Texas.<sup>100</sup> This realization ultimately led to the first generation of reforms regarding foreign lawyers' ability to practice law in Texas.<sup>101</sup> As one author suggested, going "forward into the 21st century, . . . lawyers who do not keep pace with the dynamic changes wrought by the era of globalization will be left behind," and Texas did not want to be left behind.<sup>102</sup>

#### A. *The Texas Supreme Court's 2005 Reforms to the Foreign Legal Consultant Requirements*

Amidst the need for available foreign legal expertise, the Supreme Court of Texas took its first steps towards easing foreign-educated lawyers' ability to practice law within the state by reforming the admission requirements for Texas Foreign Legal Consultants.<sup>103</sup> Foreign Legal Consultants (FLCs) are attorneys licensed and educated in a country other than the United States who are permitted to practice law in the United States on a limited, temporary basis.<sup>104</sup> After the 2005 reforms, FLC-hopefuls must meet five requirements to practice the law of their foreign jurisdiction in Texas.<sup>105</sup> An applicant must be at least twenty-six years old, meet a character and fitness requirement, have been substantially engaged in the practice of law for at least three of the last five

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98. Larry B. Pascal, *Modernizing the Texas Foreign Legal Consultant Rule in Texas*, 67 TEX. B.J. 792, 794–95 (2004) [hereinafter *Modernizing the Texas Foreign Legal Consultant Rule*].

99. *See id.*

100. *See id.*; cf. Wolfe & Strahan, *supra* note 66, at 576 (discussing the development of foreign legal consultant status across the nation).

101. *See infra* Part III.A.

102. Moskin, *supra* note 1, at 45.

103. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97.

104. AMERICAN BAR ASSOCIATION, ABA MODEL RULE FOR THE LICENSING AND PRACTICE OF FOREIGN LEGAL CONSULTANTS (2006), available at [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/professional\\_responsibility/model\\_rule\\_licensing\\_foreign.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/model_rule_licensing_foreign.authcheckdam.pdf); *see also* Wolfe & Strahan, *supra* note 66, at 561 ("Foreign legal consultants are attorneys who are temporarily admitted for limited practice in a host country, subject to that country's rules on foreign attorney practice.").

105. *See* TEX. R. GOVERN. BAR ADM'N R. XIV (West 2013).

years preceding application, be in good standing in her home jurisdiction, and finally, must intend to practice as an FLC in Texas.<sup>106</sup> After a foreign-educated lawyer meets these requirements, FLC status lasts for a short, one-year period.<sup>107</sup>

While the FLC reforms were certainly a step in the right direction, Texas currently has only twenty-eight FLCs licensed in the state.<sup>108</sup> The Texas FLC admission requirements, as they stand today, lack the persuasiveness to effectively attract more foreign-educated attorneys to the state.<sup>109</sup> In particular, FLC status only offers a temporary solution for foreign attorneys, not enabling them to achieve their ultimate goal: to obtain a United States law license.<sup>110</sup>

### *B. The Task Force on International Law Practice in Texas*

In addition to having a low number of FLCs, Texas also has few foreign attorneys permanently licensed to practice in the state.<sup>111</sup> While the 2005 FLC admission reforms “rais[ed] awareness in the state . . . [about] cross-border licensing issues, and the number of registered FLCs increased to some degree,” the changes made admittedly did not address the issue of foreign lawyers’ ability to sit for the Texas bar exam.<sup>112</sup>

Only nine foreign-educated attorneys sat for the February 2012 Texas bar exam out of 1,056 total people.<sup>113</sup> These numbers have been consistent since 2003, with an average of nine candidates sitting for each exam in Texas annually.<sup>114</sup> When compared with states such as New York, which claimed an

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106. *Id.* The substantial engagement in the practice of law requirement must be completed in the jurisdiction where the applicant is licensed to practice law. *Id.*

107. *Id.*

108. *Download a List of Fully Qualified Foreign Legal Consultants in the State of Texas*, ST. BAR OF TEX., [http://www.texasbar.com/AM/Template.cfm?Section=Foreign\\_Legal\\_Consultants](http://www.texasbar.com/AM/Template.cfm?Section=Foreign_Legal_Consultants) (last visited Apr. 24, 2014) (listing the current twenty-eight FLCs registered in the state); *see* FINAL REPORT, *supra* note 4, at 12. To compare Texas’s numbers with other states’, California had fifty-five registered FLCs from twenty-seven different countries in March 2013, and by April 2014, sixty-one registered FLCs from nearly thirty different countries. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 54 n.15; *see List of Foreign Legal Consultants*, ST. BAR OF CAL., <http://admissions.calbar.ca.gov/Requirements/ForeignLegalConsultantsFLC.aspx> (last visited Apr. 24, 2014). *Compare Download a List of Fully Qualified Foreign Legal Consultants in the State of Texas*, *supra* (last visited Apr. 24, 2014) (listing the current twenty-eight FLCs licensed in the state), with *Download a List of Fully Qualified Foreign Legal Consultants in the State of Texas*, *supra* (visited on Sept. 26, 2013, 1:50 AM) (demonstrating that as of September 2013, the list that currently reflects twenty-eight FLCs in Texas only included seventeen registered FLCs—four down from the twenty-one listed as of December 2012).

109. Wolfe & Strahan, *supra* note 66, at 561 (Texas “has yet [to] achieve[] the goal of a compatible foreign legal consultant licensing system” functioning to attract a significant number of foreign attorneys to the state); *see supra* note 108 and accompanying text.

110. Telephone Interview with Larry B. Pascal, *supra* note 52.

111. FINAL REPORT, *supra* note 4, at 4.

112. *Id.* at 12.

113. *Id.* at 4; Nat’l Conference of Bar Examiners, *2012 Statistics*, 82 BAR EXAMINER, no. 1, Mar. 2013, at 9, available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2013/8201132012statistics.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/8201132012statistics.pdf).

114. FINAL REPORT, *supra* note 4, at 4.

astounding 1,677 foreign-educated attorneys who sat for the February 2012 New York bar exam, the need for further reforms in Texas is evident.<sup>115</sup> This need is bolstered by the fact that foreign lawyers would rather be permanently licensed than temporarily licensed with FLC status.<sup>116</sup> With this preference in mind, the arduous licensing schemes in states like Texas cause many foreign lawyers to pursue United States law licenses in states with a less restrictive application process and eligibility requirements.<sup>117</sup>

Recognizing the continued need for rule revisions, the Supreme Court of Texas instated the Task Force in 2009.<sup>118</sup> The Supreme Court of Texas charged the Task Force “with reviewing relevant issues and recommending possible revisions to the licensing rules necessary to reflect recent developments in the law related to foreign-trained lawyers and to modernize existing criteria to meet the needs of international law practice in Texas.”<sup>119</sup> The Supreme Court of Texas appointed members from a wide range of legal fields and perspectives to the Task Force.<sup>120</sup> Lawyers from the private sector (both firms and in-house counsel), academia, the Texas Board of Law Examiners, and the Texas Unauthorized Practice of Law Committee sat on the Task Force.<sup>121</sup> The Supreme Court of Texas also appointed lawyers dually licensed in foreign countries and the United States to provide more context on the topic from an international perspective.<sup>122</sup> The presence of these dually-licensed lawyers on the Task Force was crucial to ensuring synergy between any proposed rule changes and the laws and rules of various foreign countries.<sup>123</sup>

In December 2012, the Task Force submitted a final proposal to the Supreme Court of Texas with suggested changes to the current FLC admission requirements, bar admission eligibility requirements for foreign-educated lawyers, *pro hac vice* admission of foreign lawyers, and LL.M. curriculum requirements.<sup>124</sup> Of particular importance are the proposed changes made to the state’s current bar admission eligibility requirements for foreign lawyers and LL.M. curriculum requirements.<sup>125</sup> If Texas aims to become a more desirable

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115. *Id.*

116. Telephone Interview with Larry B. Pascal, *supra* note 52; see FINAL REPORT, *supra* note 4, at 12 (discussing how foreign attorneys prefer to be permanently licensed rather than have temporary FLC status in the United States due to the greater prestige associated with having an American law license).

117. See FINAL REPORT, *supra* note 4, at 2. “Texas’ narrow licensing regime currently impedes access to foreign-educated lawyers, sending them primarily to New York for licensing.” *Id.*

118. See *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97.

119. *Task Force on International Law Practice in Texas*, SUP. CT. OF TEX. (Jan. 8, 2013), <http://www.supreme.courts.state.tx.us/ilptf/about.asp>.

120. See FINAL REPORT, *supra* note 4, at 1.

121. *Id.*

122. *Id.*; *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97.

123. See *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97.

124. See Curriden, *supra* note 52; see also FINAL REPORT, *supra* note 4, at 1 (discussing the need to change the rules regarding foreign-educated lawyers).

125. FINAL REPORT, *supra* note 4, at 12. While making FLC and *pro hac vice* admission more easily attainable to foreign-educated lawyers is certainly beneficial, the temporary nature of each of these statuses

destination for foreign lawyers seeking a United States law license, the Task Force's proposal may proffer a viable solution.<sup>126</sup>

*C. How Can Foreign Attorneys Currently Become Eligible for Admission to the Texas Bar?*

The Supreme Court of Texas is the body responsible for adopting the Rules Governing Admission to the State Bar of Texas.<sup>127</sup> If any changes are to be made to the rules, the supreme court must adopt them.<sup>128</sup> This power is a statutory authority afforded to the court in the Texas Government Code.<sup>129</sup> Section 82.022 states that the Supreme Court of Texas “may adopt rules on eligibility for examination for a license to practice law.”<sup>130</sup> The current Rule XIII, adopted in 2005, governs the admission of attorneys from foreign jurisdictions to the Texas bar.<sup>131</sup> Under this rule, the admission process and requirements are different for attorneys from civil law jurisdictions and common law jurisdictions.<sup>132</sup>

In order to sit for the Texas bar exam, foreign attorneys from civil law jurisdictions not holding a J.D. from an approved United States law school must have (1) been substantially engaged in the practice of law in their home jurisdiction (as a principal occupation) for five of the last seven years; (2) been licensed to “practice law in the highest court of the foreign nation” for at least the last five years; (3) received the substantial equivalent of a J.D. degree from a law school accredited in a foreign jurisdiction (at least a three-year program); and (4) either (i) demonstrated that the law of their home jurisdiction is similar enough to Texas law that they will be competent to practice in Texas, or (ii) received an LL.M. degree from an ABA-approved law school.<sup>133</sup>

Conversely, Texas places slightly less strict requirements on attorneys from common law jurisdictions, at least in terms of the practice requirement and licensing period length.<sup>134</sup> Because the United States legal system finds its roots in English common law, applicants from these jurisdictions are thought to be more familiar with and prepared to interact competently within the American

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does not reach the root of the problem this Comment seeks to address: the need for foreign lawyers to choose Texas as the state in which to pursue a United States law license. *Id.*

126. *See id.*

127. *See Rules Governing Admission to the Bar of Texas*, TEX. BOARD OF L. EXAMINERS (Oct. 31, 2013, 8:29 AM), <http://www.ble.state.tx.us/Rules/NewRules/10-28%20rulebook%202013.pdf>.

128. *See id.*

129. *See* TEX. GOV'T CODE ANN. § 82.022 (West 2013).

130. *Id.*

131. *See* TEX. R. GOVERN. BAR ADM'N R. XIII(b) (West 2013).

132. *Id.* Signed on November 22, 2005, and effective on December 1, 2005, the Supreme Court of Texas issued an official order amending the rules governing admission to the Texas bar. *See Order Amending Rule XIII: Rules Governing Admission to the Bar of Texas*, SUP. CT. OF TEX., <http://www.supreme.courts.state.tx.us/miscdocket/05/05919100.pdf> (last updated Mar. 11, 2014).

133. TEX. R. GOVERN. BAR ADM'N R. XIII(b)(1).

134. TEX. R. GOVERN. BAR ADM'N R. XIII(c)(2); *see infra* note 136 and accompanying text.

legal system.<sup>135</sup> To sit for the Texas bar, common law jurisdiction applicants not holding an approved United States J.D. must have been substantially engaged in the practice of law in their home jurisdiction as a principal occupation for the last three of five years; been licensed to “practice law in the highest court of the foreign nation” for at least the last three years; received the substantial equivalent to a United States J.D. from a law school accredited in their home jurisdiction (at least a three-year program); demonstrated that the law of their home jurisdiction is similar enough to Texas law that they will be competent to practice law in Texas; and finally, received an LL.M. degree from an ABA-approved law school.<sup>136</sup> Any combination of the following categories may satisfy the engagement in the practice of law requirement: working in private practice; the public sector; a corporation; for local, state, or federal government; or as a law professor.<sup>137</sup>

#### D. Current LL.M. Program Requirements in Texas

For foreign lawyers wishing to become more educated about the United States legal system, the LL.M. program is an available option.<sup>138</sup> In Texas, five of the nine total law schools currently offer LL.M. programs, with annual enrollment of around 130 students per program.<sup>139</sup> Comparatively, thirteen of New York’s fifteen total law schools offer LL.M. programs, each of which typically has a larger annual enrollment than the Texas programs.<sup>140</sup> All schools in Texas offering LL.M. programs require twenty-four hours of credit for completion.<sup>141</sup> In addition to twenty-four credit hours, each school’s course requirements vary to some degree, but generally, Texas LL.M. program curricula are elective-heavy, usually with one required introductory course on the United States legal system or some variation thereof.<sup>142</sup>

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135. See Neil Nissenbaum, *Constitution, U.S. Law Not Based on the Bible*, JDNEWS.COM (June 7, 2013, 8:18 PM), <http://www.jdnews.com/opinion/letters/constitution-u-s-law-not-based-on-the-bible-1.155707>.

136. TEX. R. GOVERN. BAR ADM’N R. XIII(b)(2).

137. See TEX. R. GOVERN. BAR ADM’N R. XIII(c)(2).

138. See *Master of Laws (LL.M.) Degree in United States Legal Studies*, TEX. TECH U. SCH. L. (Oct. 14, 2013), <http://www.law.ttu.edu/acp/academics/llm/>. There is an incentive for foreign lawyers to pursue LL.M. degrees because in some states, like New York, this educational combination will suffice to meet the eligibility requirements to sit for the bar exam. See *supra* Part IV.A.

139. See *State Law Schools*, ALLLAW.COM, [http://www.alllaw.com/state\\_resources/texas/law\\_schools/](http://www.alllaw.com/state_resources/texas/law_schools/) (last visited Jan. 31, 2014); see also FINAL REPORT, *supra* note 4, at 21–22 (listing the Texas law schools that currently offer LL.M. programs). These schools are the University of Houston; Southern Methodist University; St. Mary’s University; the University of Texas at Austin; and most recently, Texas Tech University. *Id.* Interestingly enough, the American Bar Association does not recognize the independent accreditation of LL.M. programs in United States law schools. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 54 n.17.

140. See FINAL REPORT, *supra* note 4, at 22; *State Law Schools*, *supra* note 139. For example, Columbia University has an annual enrollment of around 225 students in its LL.M. program and New York University has an annual enrollment of about 425 students in its LL.M. program. FINAL REPORT, *supra* note 4, at 22.

141. FINAL REPORT, *supra* note 4, at 22.

142. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53.



For example, the University of Texas School of Law's LL.M. program is a twenty-four hour program designed to span over the course of one calendar year.<sup>143</sup> The only required course in the program is a two-credit "Introduction to U.S. Law" course, which can be waived for students who hold either an ABA-approved J.D. or a foreign law degree from a common law jurisdiction.<sup>144</sup> This course comprises two of the twenty-four total credit hours required for the program and the remaining twenty-two hours are all elective credits.<sup>145</sup> Also, LL.M. students are generally not able to apply for clinic opportunities, and not all Texas programs require students to complete a thesis or dissertation in order to graduate.<sup>146</sup>

Current LL.M. program structures in Texas, such as that of the University of Texas School of Law, will give its students an introduction to the United States legal system and perhaps a closer look at specific areas of Texas law.<sup>147</sup> Unlike Texas, though, states such as New York have LL.M. programs structured to prepare students to sit for the bar exam in that state.<sup>148</sup> Ultimately, preparing LL.M. students for material tested on a particular state's bar exam will make those students more likely to sit for the bar exam in that state.<sup>149</sup>

#### IV. TAKING A CUE: LOOKING TO A STATE AHEAD OF THE CURVE

The Task Force's proposal recommended that Texas revise the current Rule XIII governing admission to the bar and Texas's current LL.M. program structure to be more in line with New York's rules and requirements, albeit with some differences.<sup>150</sup> The reason for this recommendation is largely due to the fact that New York is currently the premier location for attracting foreign-educated attorneys: "[I]ts long-standing status as a world center of finance, the capital of capital, no doubt explains why, coincident with the new era of globalization, the New York Court of Appeals has twice in the last decade taken action to encourage foreign lawyers to take up residence there."<sup>151</sup> New York has not relied on its strong economy—specifically its international

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143. See *The Master of Laws Program: LL.M. Degree Requirements*, U. TEX. AUSTIN SCH. L., [http://www.utexas.edu/law/academics/degrees/llm/degree\\_requirements.php](http://www.utexas.edu/law/academics/degrees/llm/degree_requirements.php) (last visited Jan. 31, 2014).

144. See *id.* (internal quotation marks omitted). This class is only available to students in the school's LL.M. program. *Id.*

145. See *id.* The University of Texas School of Law offers elective courses specifically geared towards LL.M. students, such as legal research and writing for foreign lawyers, professional responsibility for foreign lawyers, and contracts for foreign lawyers. *Id.*

146. But see *id.* Students enrolled in The University of Texas's LL.M. program must complete a faculty-supervised research paper. *Id.* Students mostly satisfy this requirement by taking a writing seminar or by completing a directed research project. See *id.* The directed research project requires students to complete a thirty-page research paper. *Id.*

147. See *supra* notes 144–45 and accompanying text.

148. See *infra* Part IV.B.

149. See discussion *infra* Part V.C.

150. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6 (2014); FINAL REPORT, *supra* note 4, at 45.

151. Moskin, *supra* note 1, at 38–40.

economic strength—to attract foreign lawyers to the state; it has adapted to changing circumstances, continually ensuring that its rules are foreign-attorney friendly.<sup>152</sup> This approach has paid off, as evidenced by the number of foreign lawyers sitting for the New York bar exam each year.<sup>153</sup> The state’s proactive approach draws attorneys from all over the world because New York makes the goal of becoming a foreign attorney with a United States law license attainable.<sup>154</sup>

*A. How Can Foreign Attorneys Currently Become Eligible for Admission to the New York Bar?*

The Court of Appeals for the State of New York is the judicial body responsible for creating and adopting New York’s rules for admission to the bar.<sup>155</sup> New York’s Rule 520.6 addresses candidates wishing to sit for the New York bar who received their legal education in a foreign jurisdiction.<sup>156</sup> The New York rule, like the current Texas rule, offers two different categories of eligibility.<sup>157</sup> The first applies only to applicants from common law jurisdictions, although civil law jurisdiction applicants can apply in this category under certain exceptions.<sup>158</sup> Under the second category, a distinction is drawn between applicants from civil law jurisdictions and common law jurisdictions, and there are slightly different requirements placed on applicants from each respective type of jurisdiction also like the current Texas rule.<sup>159</sup>

Most foreign-educated applicants in New York apply under the rule’s first category, which has four major eligibility requirements: (1) applicants must have a qualifying law degree from their home jurisdiction sufficient for admission to practice law in that jurisdiction; (2) the law degree must be “recognized by a competent accrediting agency of the government” of the foreign jurisdiction; (3) the duration to complete the law degree must be substantially equivalent to the duration required to complete a law degree from an . . . American Bar Association-approved law school in the United States; and (4) the law of the foreign jurisdiction must be based on English common law and have substantial substantive equivalence to the “legal education provided

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152. *See id.*

153. *See supra* Parts I, III.B.

154. *See generally* Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL’Y INT’L BUS. 1093, 1108, 1149 (2000) (discussing New York law firms’ consistent focus on the international legal market).

155. *Part 520. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, CT. APPEALS, ST. N.Y., <http://www.nycourts.gov/ctapps/520rules10.htm> (last visited Nov. 1, 2013).

156. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6 (2014).

157. *Id.*; *see supra* note 127 and accompanying text.

158. N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3(c)(1)(i)–(ii), (d)(2) (2014), 520.6(b)(1) (2014); *Foreign Legal Education*, N.Y. ST. BOARD OF L. EXAMINERS, <http://www.nybarexam.org/Foreign/ForeignLegalEducation.htm> (last visited Sept. 26, 2013).

159. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6; *see supra* note 127 and accompanying text.

by an ABA-approved law school in the United States.”<sup>160</sup> Unlike Texas’s Rule, this category places no requirement on the length of time one has been either engaged in the practice of law or licensed to practice law.<sup>161</sup> Applicants lacking the credentials to fulfill the “substantial equivalen[ce]” or “durational” requirement—usually from civil law jurisdictions—may satisfy either element, but not both, by holding an LL.M. degree from an approved United States law school.<sup>162</sup> Essentially, candidates must meet all four elements but may substitute an LL.M. degree for either the third or fourth element.<sup>163</sup>

Under the rule’s second category, there are three routes for common law applicants and one route for civil law applicants.<sup>164</sup> Common law applicants will be eligible to sit for the New York bar exam if they meet the substantial equivalence and durational requirements; if they meet the substantial equivalence requirement only but also have an approved LL.M. degree; or finally, if they meet the durational requirement only but also have an approved LL.M. degree.<sup>165</sup> Civil law applicants who meet the durational requirement and hold an approved LL.M. degree from a United States law school will be eligible to sit for the New York bar exam.<sup>166</sup>

### B. Current LL.M. Program Requirements in New York

In 2011, the New York State Court of Appeals amended the portion of Rule 520.6 addressing LL.M. program requirements.<sup>167</sup> These amended requirements are different than the LL.M. program requirements in Texas in that New York’s requirements have more required course material and fewer elective course options.<sup>168</sup> The required course material focuses heavily on what is tested on the New York bar exam.<sup>169</sup> After these amendments, LL.M.

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160. N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3(c)(1)(i)–(ii), (d)(2), 520.6(b)(1); *Foreign Legal Education*, *supra* note 158.

161. See N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3(c)(1)(i)–(ii), (d)(2), 520.6(b)(1); *Foreign Legal Education*, *supra* note 158; *supra* notes 133, 136 and accompanying text.

162. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6(b)(1)(ii); *Foreign Legal Education*, *supra* note 158.

163. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6(b)(1)(ii); *Foreign Legal Education*, *supra* note 158. The Texas Rule does not permit the substitution of an LL.M. degree for the substantial and durational equivalent requirement of a J.D. See *supra* notes 133, 136 and accompanying text.

164. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6(b); see FINAL REPORT, *supra* note 4, at 14. Conversely, the Texas Rule requires a minimum length of time that one has been both engaged in the practice of law and licensed to practice law for both civil and common law applicants. See *supra* notes 133, 136 and accompanying text.

165. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6(b); FINAL REPORT, *supra* note 4, at 14–15.

166. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6(b); FINAL REPORT, *supra* note 4, at 14–15.

167. *Order for the Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, ST. N.Y., CT. APPEALS (Apr. 27, 2011), [http://www.nybarexam.org/Docs/Amended\\_Rule.pdf](http://www.nybarexam.org/Docs/Amended_Rule.pdf).

168. *Id.*; see *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53; *supra* Part III.D.

169. See *Order for the Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, *supra* note 167; see *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53.

program completion requires twenty-four total credit hours: two hours of professional responsibility, two hours of legal research and writing, two hours of American legal studies, a minimum of six hours of subjects tested on the New York bar exam, and twelve hours of elective credits.<sup>170</sup> The Task Force proposed bringing Texas's LL.M. program requirements more in line with New York's (as amended in 2011), mainly to encourage Texas LL.M. students to sit for the Texas bar exam.<sup>171</sup>

*C. The Task Force's Proposed Changes to Rule XIII: The Eligibility of Foreign Applicants to Sit for the Texas Bar Exam*

While Texas is the nation's leader in many areas of international trade—outperforming states like New York in a number of different arenas—New York has one thing right: it is the nation's leader in attracting foreign-educated attorneys to sit for its bar exam.<sup>172</sup> For many years, New York has “epitomize[d] the importance of the United States to the international legal services market.”<sup>173</sup> For this reason, the Task Force borrowed much of New York's Rule 520.6 governing foreign-educated attorneys' eligibility to sit for the New York bar exam when it drafted the proposed changes to Texas's Rule XIII.<sup>174</sup>

The Task Force's proposed revisions to the current Rule XIII governing the admission eligibility of foreign applicants are arguably the most crucial revisions suggested by the committee.<sup>175</sup> This proposed rule is meant to pick up where the 2005 FLC reforms left off.<sup>176</sup> Texas could greatly benefit from the adoption of less stringent eligibility requirements, which would offer foreign attorneys an easier route to obtain a Texas law license.<sup>177</sup> In seeking to address the state's international economic growth and enable effective international

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170. *Order for the Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, *supra* note 167.

171. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 52; *see infra* Part IV.D.

172. *See Silver, Local Matters*, *supra* note 2, at 72–73; *Trade & Export*, *supra* note 12; *supra* note 117 and accompanying text.

173. *Silver, Local Matters*, *supra* note 2, at 72. Not only has New York successfully attracted individual foreign attorneys to its state, but it has also attracted foreign law firms to open New York offices. *Id.* at 73. International law firms see New York as the hub of the American international legal market. *Id.* *Silver's* article was based on a study of sixty-three law firms considered to be the largest United States-based international law firms in the country. *Id.* Of the sixty-three firms studied, only two did not have a New York office as of 2007. *Id.*

174. FINAL REPORT, *supra* note 4, at 45. Although the Task Force borrowed many provisions from the structure of New York's rules, the proposed changes to Texas's rules are less liberal overall than New York's. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 54 n.7. Unlike New York's rules, Texas's proposed rules place more of an emphasis on foreign licensing than foreign education. *Id.*

175. *See* FINAL REPORT, *supra* note 4, at 45.

176. *Id.* at 12; *see supra* Part III.A–B.

177. *See* FINAL REPORT, *supra* note 4, at 12; discussion *supra* Part V.

legal representation, looking to the structure of New York's rules is a great starting point.<sup>178</sup>

Proposed Rule XIII would still draw a distinction between applicants from civil and common law jurisdictions, as does the current Rule XIII and New York's Rule 520.6.<sup>179</sup> The main differences between the current Rule XIII and the proposed Rule XIII are the reduction of the current practice requirements and the establishment of a foreign legal education in combination with a United States LL.M. degree as sufficient to sit for the Texas bar exam.<sup>180</sup> Specifically, under proposed Rule XIII, applicants who received their legal education in civil law jurisdictions must have completed a three-year legal education program accredited in the foreign jurisdiction and hold an LL.M. degree from an approved United States law school.<sup>181</sup> Applicants who received their legal education in common law jurisdictions would be able to elect one of three routes for eligibility under the proposed Rule XIII.<sup>182</sup> Under the first option, applicants must have completed a three-year legal education program accredited in the foreign jurisdiction, obtained a license to practice law in a jurisdiction other than Texas, and been substantially engaged in the practice of law for three of the last five years.<sup>183</sup> The next two options incorporate the sufficiency of the LL.M. degree for eligibility.<sup>184</sup> Under the second option, applicants must have completed a two-year legal education program accredited in the foreign jurisdiction and have an LL.M. degree from an approved United States law school.<sup>185</sup> Under the third and final option for common law jurisdiction applicants, the candidate must be licensed to practice law in a jurisdiction other than Texas and have an LL.M. degree from an approved United States law school.<sup>186</sup>

#### *D. The Task Force's Proposed Changes to the Current LL.M. Curriculum Requirements in Texas*

As discussed above, while New York's LL.M. curriculum requirements have more required course material centered on subjects tested on the New

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178. See FINAL REPORT, *supra* note 4, at 12–13.

179. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.6 (2014); FINAL REPORT, *supra* note 4, at 45; see discussion *supra* Parts III.C, IV.A.

180. FINAL REPORT, *supra* note 4, at 45. The current practice requirements placed on foreign-educated attorneys wishing to sit for the Texas bar exam can present a sometimes insurmountable barrier to eligibility due to the burdensome documentation requirements in place. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 54 n.7. Every position of employment held during the practice requirement period must be properly documented in accordance with specific guidelines, which can take up a substantial amount of time. *Id.*

181. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 52.

182. *Id.*

183. *Id.*

184. See *infra* notes 185–86 and accompanying text.

185. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 52.

186. *Id.*

York bar exam and fewer elective course options, Texas's current LL.M. curriculum requirements are elective-heavy.<sup>187</sup> This current structure is based on the idea that LL.M. students already have a legal education from their home jurisdiction and are most likely looking to specialize in a particular area of law.<sup>188</sup> The Task Force proposed bringing Texas's LL.M. curriculum requirements more in line with New York's—an important step to take in conjunction with the adoption of proposed Rule XIII.<sup>189</sup> This step is important because proposed Rule XIII allows for the combination of a United States LL.M. degree and a foreign law degree (or, in some circumstances, a foreign law license) to make applicants eligible to sit for the Texas bar.<sup>190</sup> The next logical step is to require that the course material within Texas LL.M. programs be more geared toward what is tested on the Texas bar exam—establishing a symbiotic relationship between the two proposed changes.<sup>191</sup>

The Task Force's proposed LL.M. program requirements would consist of two credit hours of professional responsibility; two credit hours of American legal studies; two credit hours of legal research, writing, and analysis; and six credit hours in courses tested on the Texas bar exam.<sup>192</sup> Assuming that foreign-educated attorneys would take advantage of these less burdensome eligibility requirements, Texas has a vested interest in making sure that the education qualifying these applicants to sit for the bar is also preparing them for the actual exam.<sup>193</sup>

#### V. IF YOU BUILD IT, THEY WILL COME: WHY TEXAS SHOULD ADOPT THE TASK FORCE'S PROPOSED RULE REVISIONS

The State of Texas certainly has enough lawyers within its borders today to effectively apply Texas law to any domestic civil litigation or transactions.<sup>194</sup> It could, however, benefit from more lawyers who are ready and able to apply Texas law *and* the laws of foreign jurisdictions simultaneously to international civil litigation and transactions.<sup>195</sup> While once upon a time there was not a large niche for such dually educated lawyers in Texas, there is today.<sup>196</sup>

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187. *Order for the Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, *supra* note 167; see *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53; *supra* Parts III.D, IV.B.

188. See *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53.

189. See *Order for the Amendment of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, *supra* note 167; *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53.

190. See *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 52.

191. See *id.* at 53.

192. *Id.* The proposal also includes the stipulation that at least twenty-four credit hours be completed in the United States. *Id.*

193. See *id.*

194. See Telephone Interview with Leland C. de la Garza, *supra* note 65.

195. See *supra* Part II.A–B.

196. See *supra* Parts I, II.A–B.

Because Texas offers one of the more demanding avenues in the country through which foreign-educated attorneys can pursue a United States law license, foreign lawyers potentially eligible to sit for the Texas bar exam are oftentimes attracted to greener pastures due to the difficulty of the process.<sup>197</sup> Very few foreign lawyers seeking a United States law license do so in Texas, and they end up sitting for bar exams in states like New York, motivated by a more streamlined and less daunting application process.<sup>198</sup>

A tremendous growth opportunity is available to Texas in taking strides to ameliorate the requirements it imposes on foreign-educated lawyers wishing to pursue a Texas law license.<sup>199</sup> Not only may those strides result in increased opportunities for international business, but lawyers within the state will also experience less pressure to be versed in the laws of foreign jurisdictions, seeking foreign legal expertise outside of the United States with less frequency, or at least with foreign attorneys also licensed in Texas.<sup>200</sup> What Texas law firms are missing out on today is the benefit of attorneys educated in a foreign jurisdiction who choose to pursue a United States law license in Texas instead of other states, whether these attorneys remain in Texas permanently or not.<sup>201</sup>

#### A. Bringing Business to Texas

If foreign attorneys were simply not pursuing United States law licenses in any other states, then there would be no pressure on Texas to update its rules governing admission to the Texas bar.<sup>202</sup> The reality, however, is that foreign attorneys are *readily* and *actively* pursuing law licenses in the United States, and “Texas may be placed at a competitive disadvantage vis-à-vis [the actions of] its peer states” that make the licensing process easier.<sup>203</sup>

To understand the benefits that foreign lawyers with Texas law licenses can bring to the state, it is important to put those benefits in the context of these foreign lawyers’ typical career paths.<sup>204</sup> After attaining a law degree in their home countries, foreign lawyers will typically work in those countries for a short period of time (maybe two to three years) before coming to the United States to pursue an LL.M. degree.<sup>205</sup> After receiving their LL.M. degrees, these lawyers will oftentimes sit for the New York bar exam, work in a United States

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197. FINAL REPORT, *supra* note 4, at 30–31; Telephone Interview with Leland C. de la Garza, *supra* note 65.

198. FINAL REPORT, *supra* note 4, at 30–31; Telephone Interview with Leland C. de la Garza, *supra* note 65.

199. *See infra* Parts V–VI.

200. Moskin, *supra* note 1, at 43; *see* Telephone Interview with Leland C. de la Garza, *supra* note 65; discussion *supra* Part II.B–C.

201. Telephone Interview with Leland C. de la Garza, *supra* note 65.

202. *See infra* text accompanying note 203.

203. *Modernizing the Texas Foreign Legal Consultant Rule*, *supra* note 98, at 795; *see* discussion *supra* Parts III.B, IV.A–B.

204. *See infra* notes 205–08 and accompanying text.

205. Telephone Interview with Larry B. Pascal, *supra* note 52.

law firm for a period of usually one year, and ultimately return to their home countries to continue practicing law.<sup>206</sup> This sequence of events is the “classic career path” for most foreign lawyers, essentially a two-year track once they reach the United States.<sup>207</sup> Even in states such as New York—which has enjoyed a consistent influx of foreign attorneys over the past few decades—of the thousands of foreign attorneys sitting for the New York bar exam annually, most leave within a few years to return to their home countries.<sup>208</sup> The draw for this particular trend is that many foreign countries and law firms consider their attorneys to be more prestigious in a professional capacity if they are also licensed to practice law in the United States.<sup>209</sup>

There will, of course, be exceptions; those foreign attorneys obtaining a law license in Texas who choose to remain there long-term will be of great benefit to the Texas legal market, generating additional legal work and trade “between Texas and [the rest of] the world by virtue of [their permanent] presence” within the state.<sup>210</sup> Admittedly, though, these types of lawyers will likely comprise a small percentage of the foreign attorneys sitting for the Texas bar exam overall.<sup>211</sup> So why make it easier for foreign attorneys to receive a Texas law license if the vast majority of them are just going to leave? Because the state that initially attracts them to study, and ultimately become licensed within its borders, wins.<sup>212</sup>

If this state is Texas, Texas will win for a few reasons.<sup>213</sup> First, during the years spent pursuing an LL.M. degree, these foreign students will make a big investment in the Texas economy: paying tuition; investing in the local community; and if they enjoy their experience, advertising the State of Texas to others in their home countries.<sup>214</sup> Second, if the LL.M. degree they receive in Texas makes them eligible for the Texas bar exam, they will be more likely to sit for the bar exam in Texas over other states, if for no other reason than

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206. *Id.*

207. *Id.*

208. Telephone Interview with Leland C. de la Garza, *supra* note 65; *see supra* Part III.B.

209. Telephone Interview with Larry B. Pascal, *supra* note 52; FINAL REPORT, *supra* note 4, at 12. Obtaining a United States law license is “almost like a stepping stone, or a requisite [in a foreign lawyer’s] career path” to becoming a partner in a major law firm. Telephone Interview with Larry B. Pascal, *supra* note 52.

210. *Modernizing the Texas Foreign Legal Consultant Rule*, *supra* note 98, at 795. If a majority of lawyers sitting for bar exams in the United States became permanent residents, Texas lawyers may fear that adopting a less stringent licensing scheme would result in increased competition for Texas legal jobs. Telephone Interview with Larry B. Pascal, *supra* note 52; Telephone Interview with Leland C. de la Garza, *supra* note 65; *see supra* text accompanying notes 205–09. But as the trends in New York have proven, because a vast majority of these foreign lawyers will eventually return home, the jobs of Texas lawyers will not be at risk. Telephone Interview with Larry B. Pascal, *supra* note 52; Telephone Interview with Leland C. de la Garza, *supra* note 65; *see supra* text accompanying notes 205–09.

211. *See* discussion *supra* notes 205–09.

212. Telephone Interview with Larry B. Pascal, *supra* note 52; *see* discussion *infra* notes 214–21.

213. *See* discussion *infra* notes 214–21.

214. *See* Telephone Interview with Larry B. Pascal, *supra* note 52.



convenience.<sup>215</sup> Following the typical career path, if these lawyers receive a Texas law license, they will likely work in Texas for a period of time before they return to their home countries.<sup>216</sup> Before these foreign attorneys eventually relocate outside of the United States, they will not only establish a network during their studies, but will also undoubtedly build a rapport with American lawyers and law firms during their working years.<sup>217</sup> When these foreign attorneys eventually leave, they will continue to generate business opportunities for the state and local bar.<sup>218</sup> When representing a client abroad who hopes to conduct business in the United States, foreign attorneys with a Texas law license will likely encourage their client to conduct his business in Texas—the jurisdiction where the foreign attorneys are familiar with the law.<sup>219</sup> Those foreign attorneys will have a closer relationship with Texas than other states and this relationship will translate into a “cache” of international business opportunities for the Texas legal market.<sup>220</sup> Simply put, when a foreign attorney chooses a Texas law license over a law license from another state, that means more international business for Texas.<sup>221</sup>

States like New York are savvy in acknowledging that the presence of foreign lawyers—not only during their LL.M. programs and short working tenures in the United States, but also when they leave—creates an incredible source of business opportunities for the state where those attorneys sit for the bar exam.<sup>222</sup> Virtually all foreign-educated attorneys pursuing a United States law license today sit for the New York bar exam.<sup>223</sup> Through the structure of its rules regarding the admission of foreign lawyers to the New York bar, the state not only attracts foreign lawyers to become licensed in New York instead of other states, but also “encourages [foreign law] firms to situate their international practices in New York, where foreign law graduates may participate more easily in the work.”<sup>224</sup> Further, because most of the foreign lawyers sitting for the New York bar exam will leave the state within a few years, jobs are not being taken away from New York lawyers.<sup>225</sup> For both those foreign attorneys who become licensed in New York and then return to their home country and those attorneys working in foreign law firms seeking to do business or permanently work in the United States, New York’s admission

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215. See discussion *supra* Part IV.B, D; *infra* Part V.C.

216. See *supra* text accompanying note 206.

217. Telephone Interview with Leland C. de la Garza, *supra* note 65. During this time, these lawyers will “develop a network that will serve [them] . . . throughout the course of their [legal] career[s].” Telephone Interview with Larry B. Pascal, *supra* note 52.

218. Telephone Interview with Larry B. Pascal, *supra* note 52.

219. Telephone Interview with Leland C. de la Garza, *supra* note 65.

220. Telephone Interview with Larry B. Pascal, *supra* note 52.

221. See Telephone Interview with Leland C. de la Garza, *supra* note 65.

222. Telephone Interview with Larry B. Pascal, *supra* note 52.

223. *Id.*; see *supra* Part IV.A–B.

224. *What We Don’t Know Can Hurt Us*, *supra* note 79, at 1063.

225. See Telephone Interview with Larry B. Pascal, *supra* note 52; see *supra* note 210 and accompanying text.

system makes the state the premier destination for foreign firms and lawyers.<sup>226</sup> What this equates to is increased international business opportunities for New York at the expense of states like Texas.<sup>227</sup>

*B. Keeping Texas Lawyers and Law Firms Competitive*

If the Task Force's proposed rule changes are adopted, foreign attorneys who subsequently choose to pursue Texas LL.M. degrees and then law licenses will provide benefits beyond generating business via their educational investments and rapport with the state.<sup>228</sup> Foreign attorneys with a Texas law license will help Texas lawyers and law firms provide better, more competent representation to their domestic and international clients throughout the stages of their typical career paths.<sup>229</sup> After obtaining a Texas law license, foreign attorneys working on a short-term basis in Texas law firms provide an important skill: their ability to apply the laws and regulations of their foreign country to the litigation or transaction at issue in a more time-efficient and effective manner than lawyers solely with an understanding of American law.<sup>230</sup> The learning process also cuts both ways when foreign attorneys are working and interacting with Texas attorneys.<sup>231</sup> Foreign lawyers are able to help Texas lawyers better understand the laws of foreign countries and Texas lawyers are able to help foreign lawyers better understand Texas law.<sup>232</sup> Texas lawyers benefit from this relationship tremendously.<sup>233</sup> Although they may not plan to become a Chinese or Brazilian lawyer, for example, they gain a degree of sophistication via the foreign lawyers' assistance in the likely nuanced laws of other countries that can come into play in international transactions or litigation.<sup>234</sup> In this way, the knowledge that foreign attorneys bring to the table while working in Texas law firms will help to solve the issue of providing competent representation on foreign legal matters.<sup>235</sup> As discussed above, today's consumers of legal services have a growing need to be represented by lawyers versed in the laws of various jurisdictions.<sup>236</sup> With foreign lawyers present in Texas law firms, Texas lawyers will have foreign legal expertise readily available—expertise they can trust.<sup>237</sup> Texas lawyers will not need to concern themselves with whether the foreign lawyers are competent to advise

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226. *What We Don't Know Can Hurt Us*, *supra* note 79, at 1063; Telephone Interview with Leland C. de la Garza, *supra* note 65.

227. Telephone Interview with Leland C. de la Garza, *supra* note 65.

228. See discussion *supra* Part V.A.

229. Telephone Interview with Leland C. de la Garza, *supra* note 65.

230. See *id.*

231. Telephone Interview with Larry B. Pascal, *supra* note 52.

232. *Id.*

233. See *infra* text accompanying note 234.

234. Telephone Interview with Larry B. Pascal, *supra* note 52.

235. See discussion *supra* Part II.C.

236. See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 01-423 (2001); *supra* Part II.B.

237. Telephone Interview with Leland C. de la Garza, *supra* note 65.

on the foreign legal matter in the context of Texas law because the foreign lawyers will have a Texas law license.<sup>238</sup>

Even if these foreign attorneys' presence in Texas is temporary, Texas lawyers will benefit from the lasting relationships established with lawyers that eventually return to practice in foreign countries.<sup>239</sup> Having relationships with foreign attorneys abroad continues to help solve competency concerns because if their legal expertise is not available within the United States, it will still be accessible, and most importantly dependable, wherever they ultimately reside.<sup>240</sup>

A main problem arising when American lawyers associate with foreign counsel is whether that foreign counsel can capably advise on the interplay between foreign and American law.<sup>241</sup> If the foreign counsel with whom American lawyers choose to associate is unlicensed in the United States or does not possess sufficient knowledge of the applicable United States law, any inadequate advice flowing from the foreign counsel to a client may implicate the American lawyer in negligent representation or even the unauthorized practice of law.<sup>242</sup> Texas lawyers must take measures to ensure the thoroughness of the foreign counsel's advice and when Texas lawyers are able to call upon Texas-licensed lawyers abroad whom they know personally, professional responsibility and liability issues are alleviated.<sup>243</sup> When international legal issues arise, Texas lawyers, rather than having to fly to Beijing or São Paulo, will be able to contact reliable lawyers abroad—versed in Texas law—to help them competently advise their clients on such matters.<sup>244</sup> The obvious catch is that to provide this benefit to Texas law firms and lawyers—to establish a “team” of lawyers versed in the laws of many jurisdictions and more equipped to handle international legal issues—these foreign lawyers need to have Texas law licenses.<sup>245</sup>

### C. Why These Rules?

If Texas wants to reap the benefits from foreign lawyers that states like New York have enjoyed for years, its rules governing admission to the Texas bar need to be comparable in order to be competitive.<sup>246</sup> Foreign lawyers who pursue United States law licenses inevitably expend enormous amounts of time and money not only in planning their educational and licensing goals, but also

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238. See discussion *infra* notes 239–43.

239. Telephone Interview with Larry B. Pascal, *supra* note 52.

240. See Daly & Silver, *supra* note 76, at 425–28.

241. See SUCCESSFUL PARTNERING, *supra* note 83, § 22:2; Daly & Silver, *supra* note 76, at 427–28; Lutz, *supra* note 54, at 69–70;

242. See Lutz, *supra* note 54, at 69–70; *supra* note 81 and accompanying text.

243. See SUCCESSFUL PARTNERING, *supra* note 83, § 22:2; Lutz, *supra* note 54, at 69–70.

244. See Telephone Interview with Larry B. Pascal, *supra* note 52.

245. Telephone Interview with Leland C. de la Garza, *supra* note 65.

246. Telephone Interview with Larry B. Pascal, *supra* note 52.

carrying out these goals through educational expenses, costs of relocation and living, etc.<sup>247</sup> Consequently, if foreign lawyers are to choose to pursue a law license in Texas, they must be confident that Texas is a state where they can make their goals a reality.<sup>248</sup>

A crucial aspect of the proposed change to Rule XIII—governing admission to the Texas bar—is that the proposal heavily reduces the stringent practice requirements currently placed on foreign attorneys from common law jurisdictions and completely eliminates the practice requirements for attorneys from civil law jurisdictions.<sup>249</sup> This particular change will make Texas a more desirable location to sit for the bar exam because it expedites the entire licensing process.<sup>250</sup> The current practice requirements oblige foreign-educated attorneys to not only be licensed in their foreign jurisdiction, but also to have practiced in that jurisdiction for periods ranging from three to seven years.<sup>251</sup> By reducing, and in some circumstances eliminating, these practice requirements, foreign attorneys will no longer have to remain in their home countries waiting for time to pass before they are eligible to sit for the Texas bar.<sup>252</sup> In the current status of the law, rather than waiting to become eligible in Texas, these foreign attorneys simply sit for the bar exam in states that have less burdensome requirements.<sup>253</sup> If proposed Rule XIII is adopted, foreign attorneys will not have to wait for such long periods of time to become eligible and will, therefore, be more encouraged to sit for the bar in Texas, rather than another state.<sup>254</sup>

Another significant change in the Task Force's proposed rules is that holding an LL.M. degree from an accredited United States law school in combination with a foreign legal education will actually make candidates from both civil and common law jurisdictions eligible to sit for the Texas bar exam.<sup>255</sup> This change will not only make it easier for foreign attorneys to become eligible to take the Texas bar, but it will also encourage them to pursue an LL.M. degree in Texas.<sup>256</sup> If they plan to take the Texas bar exam under the Task Force's proposed bar eligibility requirements, receiving an LL.M. degree

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247. *Id.*; see *supra* Part V.A.

248. See Telephone Interview with Larry B. Pascal, *supra* note 52.

249. See *supra* Part IV.C. The New York rules are even more liberal, placing no practice requirements on any attorney wishing to sit for the New York bar. Telephone Interview with Larry B. Pascal, *supra* note 52; see *supra* Part IV.A.

250. Telephone Interview with Leland C. de la Garza, *supra* note 65.

251. See *supra* Part III.C.

252. See *supra* Part IV.C.

253. Telephone Interview with Larry B. Pascal, *supra* note 52; see *supra* Part IV.A.

254. Telephone Interview with Larry B. Pascal, *supra* note 52; see *supra* Part IV.C.

255. See *supra* Part IV.C–D. Under this option, the foreign legal education program must be a minimum of three years for civil law applicants and two years for common law applicants. See *supra* Part IV.C. For applicants from common law jurisdictions, the foreign legal education component may be substituted for a law license from a foreign jurisdiction, but not for applicants from civil law jurisdictions. See *supra* Part IV.C.

256. See Telephone Interview with Larry B. Pascal, *supra* note 52.

from a Texas law school will likely enable them to learn legal material specific to the state, which in turn would help them to excel on the state's bar exam.<sup>257</sup>

Foreign attorneys will be especially persuaded to elect a Texas law school's LL.M. program if the proposed LL.M. curricular requirement changes are adopted—the third significant change under the Task Force's proposal.<sup>258</sup> As discussed above, the proposed changes would shift Texas LL.M. curricula from emphasizing elective classes to emphasizing required classes in subjects tested on the Texas bar.<sup>259</sup> If the state's LL.M. programs are geared toward these types of bar exam-specific subjects, foreign attorneys will be confident that if they elect to receive an education in Texas, they will be, at a minimum, substantially more prepared to pass the Texas bar exam.<sup>260</sup> If foreign attorneys are confident that Texas's LL.M. curriculum will provide them with the tools needed to pass the Texas bar exam and that the LL.M. degree will make them eligible to sit for the exam, then Texas will undoubtedly become a more desirable destination for foreign lawyers.<sup>261</sup>

## VI. LIGHTS, CAMERA, TEXAS

The Task Force's final proposal still sits before the Supreme Court of Texas with no indication of when a final decision may be rendered.<sup>262</sup> Further, the two justices on the court charged with overseeing and participating in the Task Force's activities are no longer on the bench.<sup>263</sup> The current justices, however, still have a great opportunity in front of them to adopt the proposal and make Texas a preeminent destination for foreign lawyers.<sup>264</sup>

The Task Force has set forth well-reasoned, thoroughly researched propositions for an updated set of rules and legal curriculum that could bring international business and foreign legal expertise to the state, benefitting not only the overall Texas economy, but the Texas legal market and its lawyers as well.<sup>265</sup> If the Supreme Court of Texas does not adopt the Task Force's proposal—specifically the proposal's changes regarding the eligibility of foreign lawyers to sit for the Texas bar exam and Texas LL.M. program

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257. See *supra* Part IV.C–D.

258. FINAL REPORT, *supra* note 4, at 45; see *supra* Part IV.D.

259. *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53. Required classes would include professional responsibility; American legal studies; legal research, writing, and analysis; and six additional credits in subjects tested on the Texas bar exam. See *supra* Part IV.D.

260. See discussion *supra* Part IV.D.

261. See *The Texas Supreme Court Task Force on International Law Practice*, *supra* note 97, at 53.

262. Telephone Interview with Leland C. de la Garza, *supra* note 65.

263. *Id.* Former Chief Justice Wallace Jefferson resigned from the bench on October 1, 2013. *Chief Justice Jefferson Announces His Resignation*, TEX. SUP. CT. ADVISORY (Sept. 3, 2013), [http://www.supreme.courts.state.tx.us/pdf/WBJ\\_090313.pdf](http://www.supreme.courts.state.tx.us/pdf/WBJ_090313.pdf). Former Justice Dale Wainwright's resignation became effective on September 30, 2012. Ross Ramsey, *Wainwright to Resign from Texas Supreme Court*, TEX. TRIB. (Sept. 19, 2012), <http://www.texastribune.org/2012/09/19/wainwright-resigns-texas-supreme-court/>.

264. See discussion *supra* notes 257–62.

265. See *supra* Part V.A–B.

curriculum requirements—everyone loses.<sup>266</sup> Law firms lose because “the best and brightest” from around the globe will choose to pursue their career paths in other states where the licensing process is easier.<sup>267</sup> When these foreign lawyers choose to sit for the bar exam in other states, law firms also lose out on “coveted cross-border [legal] work” when these attorneys ultimately return to their home countries.<sup>268</sup> Law schools lose because they will not attract the number of candidates to their LL.M. programs that they potentially could, forgoing the possibility of more nationally competitive LL.M. programs and prospective students’ personal and financial investments in Texas schools and communities.<sup>269</sup> Consumers of Texas legal services lose because without the presence of foreign attorneys in the state—even on a temporary basis—they may have to travel to Beijing to meet with a Chinese lawyer or São Paulo to meet with a Brazilian lawyer, rather than being able to conveniently meet with these lawyers in Dallas or Houston.<sup>270</sup>

Ultimately, if Texas does not upgrade its current regime, the state will “continue to see a suppression of foreign applicants merely because of the difficulty of the application process,” sending them to states with a more welcoming licensing scheme—states that will reap the benefits of these lawyers’ presence.<sup>271</sup> Not only is the Texas economy growing at a faster rate than most of the country, but the presence of foreign commerce is also growing within its borders.<sup>272</sup> If Texas updates its rules governing admission to the Texas bar and LL.M. curriculum requirements, there is no end in sight for the future strength of the Texas legal market.<sup>273</sup> The Supreme Court of Texas should take action: adopt the Task Force’s proposal and put the Lone Star State “center stage,” yet again.

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266. Telephone Interview with Larry B. Pascal, *supra* note 52.

267. *Id.*; *see supra* Part V.C.

268. Telephone Interview with Larry B. Pascal, *supra* note 52; *see supra* Part V.C.

269. Telephone Interview with Larry B. Pascal, *supra* note 52; *see supra* Part V.A.

270. Telephone Interview with Larry B. Pascal, *supra* note 52.

271. Telephone Interview with Leland C. de la Garza, *supra* note 65.

272. *See supra* Part II.A–B.

273. *See discussion supra* Part V.C.