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## Inclusivity with Reciprocity: Permitting Law Teachers outside of ABA-Accredited Law Schools Bar Admission through Admission on Motion Rules

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# INCLUSIVITY WITH RECIPROCITY: PERMITTING LAW TEACHERS OUTSIDE OF ABA-ACCREDITED LAW SCHOOLS BAR ADMISSION THROUGH ADMISSION ON MOTION RULES

*Chad G. Marzen<sup>1</sup>*

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## I. INTRODUCTION

Consider the following hypothetical: a business law professor at a nationally-ranked university has received national and international recognition for his or her work on the law of corporations. The professor has served on the faculty of the business school for twenty years. During that time, the professor has also routinely engaged with practitioners in the state where the university is located, served as an expert witness on a number of cases, presented at continuing legal education (“CLE”) events posted by the state and local bar associations, and has been published in law reviews and journals located within that state. Prior to obtaining a faculty position in the business

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school, the professor practiced corporate law in another state for seven years, attaining the rank of partner in an AV-rated law firm. Despite all of these credentials, the professor is not a member of the state bar where the university is located. The question arises – can the business law professor, with all of his or her credentials, be admitted to the state bar on motion?

In nearly all jurisdictions, the answer is a surprising “no.” The business law professor has not been in the active practice of law for approximately twenty years, so under the rules of most jurisdictions the professor would not qualify for bar admission through the admission on motion rules through practice. In addition, the business law professor would not qualify through the rules of some jurisdictions which allow admission to the bar for certain full-time law faculty of American Bar Association (“ABA”) accredited law schools<sup>2</sup> as the professor is not a full-time member of a law faculty accredited by the ABA.

Despite a general movement toward the recognition of admission on motion in state bar admissions,<sup>3</sup> the business law professor would not be eligible for admission through this process. Reciprocity, the ability of an attorney to be admitted to the bar of another state through membership in a state bar,<sup>4</sup> has been adopted by around 40 states.<sup>5</sup> There are a number of arguments for reciprocity: ranging from the argument that attorneys can be more free to move their practice from one state to another with reciprocity;<sup>6</sup> that experience practicing law in one state as an attorney makes an attorney capable to practice in another state;<sup>7</sup> and that extending reciprocity may allow more individuals who would otherwise have no access to an attorney (especially indigent clients) to have access to legal services.<sup>8</sup> One of the primary arguments against reciprocity is that out-of-state attorneys may not

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<sup>2</sup> See John Dodig, *In an Era of Declining Law School Aspirations, Does ABA Accreditation Matter?*, NOODLE (Nov. 11, 2015), <https://www.noodle.com/articles/what-aba-accreditation-means-to-law-school-students163> (“In order for a law school to earn – and maintain – its ABA accreditation, it must meet the standards set by the organization’s Council and Accreditation Committee of the Section of Legal Education and Admissions to the Bar. When the ABA grants accreditation to a law school, it is essentially telling the world that that the institution offers a ‘sound program of legal education,’ one that meets the high professional standards of the association.”) (internal citations omitted)).

<sup>3</sup> See Patricia Jimenez, *Florida’s Take on Reciprocity*, FIU LAW (Oct. 27, 2015), <https://law.fiu.edu/floridas-take-reciprocity/>.

<sup>4</sup> See generally David L. Hudson, Jr., *Lawsuits Fail to Loosen Bar Admission Rules, But Issue Isn’t Going Away*, ABA JOURNAL (Oct. 2016), [http://www.abajournal.com/magazine/article/ethics\\_bar\\_admission\\_lawsuits](http://www.abajournal.com/magazine/article/ethics_bar_admission_lawsuits).

<sup>5</sup> See *Some Florida Lawyers Raise Ruckus Over Proposal to Waive Bar Exam*, ORLANDO SENTINEL (Aug. 4, 2015), <http://www.orlandosentinel.com/news/politics/os-florida-bar-exam-waiver-20150804-story.html>.

<sup>6</sup> See Andrew M. Perlman, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS §§135, 166 (2004).

<sup>7</sup> See Pamela A. McManus, *Have Law License; Will Travel*, 15 GEO. J. LEGAL ETHICS §§ 527, 546–47 (2002).

<sup>8</sup> See Perlman, *supra* note 6, at 148–49 (“States frequently admit lawyers on motion when the lawyers do not compete with the in-state bar for private clients, such as local law professors, legal services attorneys (who serve indigent clients), in-house counsel (who serve a single client), and law students working in clinics (who primarily serve indigent clients).”).

be familiar with the nuances of state laws and would harm the quality of legal representation for clients in the state.<sup>9</sup>

A number of academic commentators have comprehensively analyzed admission on motion rules within the past decade, including: analyzing the effects of a prior criminal conviction on bar admission,<sup>10</sup> the admission of foreign-educated lawyers,<sup>11</sup> uniform license reciprocity for military attorney spouses,<sup>12</sup> the granting of reciprocity for former JAG attorneys,<sup>13</sup> and admission on motion rules and transactional practice.<sup>14</sup> However, there is a gap in the scholarship on reciprocity and admission on motion rules with regard to the bar admission for teachers of law outside of ABA-accredited law schools.

This Article argues for inclusivity for state admission on motion rules for teachers of law outside of ABA-accredited law schools if those teachers, by a “greater weight of the evidence” standard, demonstrate to a state bar practical contributions to the legal profession.<sup>15</sup> The first part of this Article explains the current rules for admission on motion for law professors at ABA-accredited law schools. Part II of the Article discusses the contributions of law professors outside of ABA-accredited law schools, particularly in business schools throughout the United States. Part III, the final part of this Article, argues for inclusion in the admission on motion rules for law professors outside of ABA-accredited law schools who demonstrate by the “greater weight of the evidence” practical contributions to the legal profession.

<sup>9</sup> See *Some Florida Lawyers Raise Ruckus*, *supra* note 5.

<sup>10</sup> See Anthony J. Granieri & Hilary McHugh, Note, *Are You In or Are You Out? The Effect of a Prior Criminal Conviction on Bar Admission & a Proposed National Uniform Standard*, 26 HOFSTRA LAB. & EMP. L.J. 223 (2008).

<sup>11</sup> See Brendan K. Smith, Note, *Protecting the Home Turf: National Bar Associations and the Foreign Lawyer*, 21 IND. J. GLOBAL LEGAL STUD. 667 (2014); Jeffrey A. Van Detta, *Transnational Legal Services in Globalized Economies: American Leadership, Not Mere Compliance with GATS, Through Qualifying LL.M. Degree Programs for Foreign-Educated Lawyers Seeking State Bar Admissions*, 13 J. INT'L BUS. & L. 1 (2014); Michael J. Churgin, *Our Federalism: The United States and the Regulation of Lawyers*, 48 SAN DIEGO L. REV. 111 (2011).

<sup>12</sup> See Jacquelyn Loyd, Comment, *Barred from Service: Support our Troops By Supporting Their Attorney Spouses With License Portability*, 46 MCGEORGE L. REV. 573, 578 (2014).

<sup>13</sup> See Michael G. Swansburg, Jr., Note, *A Soldier's Heart and a Lawyer's Mind: An Argument for Granting Reciprocity to America's Former JAG Attorneys*, 48 U. LOUISVILLE L. REV. 613, 615 (2010).

<sup>14</sup> See Shannon “A.J.” Singleton, *Should Borders Matter to the Transactional Lawyer?*, 40 N. KY. L. REV. 295, 296 (2013).

<sup>15</sup> The “greater weight of the evidence” standard is the standard traditionally used in tort cases. See Barbara Ruth Mouly, *Intelligent Design and Tort Law: Partners in a Unified Theory of Causation*, 3 LIBERTY U. L. REV. 543, 545 (2009) (“Tort cause-in-fact theory, a significant and essential element of the determination of liability for negligent and intentional acts, is a theory of causation in the law. Its basic method permits an inference that an act produced an injury, provided that there is sufficient evidence to allow a trier of fact to conclude that, more likely than not, the injury would not have happened without the act. The phrase “more likely than not” or “more probable than not” is a requirement of evidentiary proof, known as the “preponderance” (greater weight of the evidence) standard. Essentially, the method of analysis of cause-in-fact tort law also employs a form of probability theory.” (internal citations omitted)).



## II. STATE RULES WITH ADMISSION ON MOTION FOR LAW PROFESSORS AT ABA-ACCREDITED LAW SCHOOLS

As Table 1 indicates, thirty-five states permit full-time law faculty at ABA-accredited law schools admission to their state bar through admission on motion rules.<sup>16</sup> The over two-hundred ABA-accredited law schools prepare future attorneys to sit for the bar exam of every state,<sup>17</sup> and thus, prepare graduates for the practice of law.<sup>18</sup> A number of law school faculty and deans work closely with state bar associations; for example, law school deans often assist state bar associations with the character and fitness requirements for attorneys.<sup>19</sup> Many ABA-accredited law schools also offer clinical programs where students can obtain experience working with real clients as they are supervised.<sup>20</sup> Faculty at law schools present at state and local bar association conferences as well as author publications and treatises on state law.<sup>21</sup> Finally, even the law journals of a law school may have a close connection to the law school in state. As one example, the *North Dakota Law Review* is not only the law journal of the University of North Dakota School of Law, but also is the journal of the State Bar Association of North Dakota.<sup>22</sup>

<sup>16</sup> See *infra* Table 1.

<sup>17</sup> See Dodig, *supra* note 2 ("In addition, every jurisdiction in the United States automatically allows graduates of any ABA-accredited law schools to sit for their bar exams.").

<sup>18</sup> See Jessica Dopierala, Note, *Bridging the Gap Between Theory and Practice: Why are Students Falling Off the Bridge and What are Law Schools Doing to Catch Them?*, 85 U. DET. MERCY L. REV. 429, 448 (2008) ("American legal education needs a revolution equivalent to what the case study method provided in the nineteenth century. Legal education has become outdated and no longer accomplishes what it had set out to do, which is adequately prepare its students to practice law. The case method should serve as an introduction to the law and theory, but cannot be the only means by which a student learns the law. As the legal profession changes and the role of the lawyer becomes increasingly complex, law schools must be the first to respond to these changes by investigating what they can do to prepare their students to meet these challenges and implementing programs to allow students to tackle these legal issues before they encounter them for the first time in practice.").

<sup>19</sup> See Timothy P. Chinaris, *We Are Who We Admit: The Need to Harmonize Law School Admission and Professionalism Processes With Bar Admission Standards*, 31 MISS. C.L. REV. 43, 74 (2012) ("Law schools are called upon to assess the character and fitness of applicants when making admissions decisions. After those applicants are accepted and matriculate, law schools have opportunities to strengthen students' professionalism through teaching and programs. The schools also have the responsibility to address breaches of professionalism that occur when students violate behavior codes. But law schools also have an important, indeed indispensable, role that goes beyond assessment and instruction – they provide bar admission authorities with an evaluation of the character and fitness of their graduates. To fulfill this evaluative role, state bar examiners typically ask law school deans to certify their graduates' character and fitness for admission to the state bar.").

<sup>20</sup> See Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 36 N.Y.L. SCH. L. REV. 203, 204 (2011/2012) ("While it continues to be possible for students to graduate without exposure to more than one lawyering skills course, (thanks to curricula that are largely elective after the first year), law students today have the opportunity at most schools to take a wide variety of skills courses, including clinical courses that permit them to represent actual clients. Today, a substantial majority of law schools offer at least one course that requires students to draft and respond to interrogatories.").

<sup>21</sup> For example, consider the credentials of the faculty of the Creighton University School of Law in Omaha, Nebraska. Following a review by the author, professors have spoken at state and local bar association meetings, published treatises on Nebraska law, and also published articles in *The Nebraska Lawyer*, the state bar magazine. See *Faculty*, CREIGHTON UNIVERSITY SCHOOL OF LAW (2018), available at <https://law.creighton.edu/faculty>.

<sup>22</sup> See generally *North Dakota Law Review* UND SCHOOL OF LAW, (2018), available at <https://law.und.edu/law-review/>.

With the connections between ABA-accredited law schools and their faculty to many state bar associations, it is not surprising that thirty-five states have a provision which allow for admission on motion for full-time faculty of ABA-accredited law schools.

**Table 1: State Admission on Motion Rules and Faculty of ABA-Accredited Law Schools**

State	Does the state allow admission on motion for faculty of ABA-accredited law schools without taking an additional bar exam?
Alabama	Yes. The rule applies for faculty who have taught for at least five of the previous six years. <sup>23</sup> The rule also allows for admission of full-time faculty in an Alabama law school (University of Alabama School of Law; Samford University Cumberland School of Law; and Faulkner University Thomas Goode Jones School of Law) who have been on the faculty for not less than three years. <sup>24</sup>
Alaska	Yes. The rule applies for faculty who have taught for at least five of the previous seven years. <sup>25</sup>
Arizona	Yes. The rule applies for faculty who have taught full-time for at least three of the five previous years. <sup>26</sup>
Arkansas	Yes. The rule applies for faculty

<sup>23</sup> See SUPREME COURT OF ALABAMA, RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR, RULE III(A)(2)(C) (2018), available at <https://admissions.alabar.org/rule-3> [hereinafter “Supreme Court of Alabama”].

<sup>24</sup> See *id.* at Rule III(A)(4).

<sup>25</sup> See SUPREME COURT OF ALASKA, ALASKA BAR RULES, RULE 2, SECTION 2(A)(2); RULE 2, SECTION 2(C) (2018), available at <http://www.courtrecords.alaska.gov/webdocs/rules/docs/bar.pdf>.

<sup>26</sup> See ARIZONA SUPREME COURT, RULES OF THE SUPREME COURT OF ARIZONA SUPREME COURT, REGULATION OF THE PRACTICE OF LAW, RULE 34(F)(1)(C); RULE 34(F)(2)(C) (2018), available at [http://www.azcourts.gov/Portals/26/AOM/Rule34\\_EffectiveJanuary2016.pdf](http://www.azcourts.gov/Portals/26/AOM/Rule34_EffectiveJanuary2016.pdf).

	who have taught for at least five of the seven previous years. <sup>27</sup>
<b>California</b>	No.
<b>Colorado</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least three of the five previous years. <sup>28</sup>
<b>Connecticut</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the ten previous years. <sup>29</sup>
<b>Delaware</b>	No.
<b>Florida</b>	No.
<b>Georgia</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the seven previous years. <sup>30</sup>
<b>Hawaii</b>	No – however, members of the faculty of the University of Hawaii Law School are eligible to become <i>pro tem</i> members of the state bar for a period of three years. <sup>31</sup> Following the three year <i>pro tem</i> membership, a faculty member can become a member of the bar without limitation of time. <sup>32</sup>

<sup>27</sup> See ARKANSAS JUDICIARY, RULES GOVERNING ADMISSION TO THE BAR, RULE XVI (2018), available at <https://courts.arkansas.gov/rules-and-administrative-orders/rules-governing-admission-to-the-bar>.

<sup>28</sup> See SUPREME COURT OF COLORADO, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN COLORADO, RULE 203.2(1)(C); RULE 203.2(2)(C) (2018), available at [https://www.courts.state.co.us/userfiles/file/Court\\_Probation/Supreme\\_Court/Rule\\_Changes/2014/2014\(09\)%20clean.PDF](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2014/2014(09)%20clean.PDF).

<sup>29</sup> See CONNECTICUT JUDICIAL BRANCH, PRACTICE BOOK, SECTION 2-13(A)(1)(2)(A); SECTION 2-13(B)(3) (2018), available at <https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf>.

<sup>30</sup> See SUPREME COURT OF GEORGIA, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW, PART C, SECTION 2(E); PART C, SECTION 3(A)(3) (2018), available at <https://www.gabaradmissions.org/rules-governing-admission>.

<sup>31</sup> See SUPREME COURT OF HAWAII, RULES OF THE SUPREME COURT OF THE STATE OF HAWAII, RULE 1.8(A) (2018), available at [http://www.courts.state.hi.us/docs/court\\_rules/rules/rsch.htm#Rule\\_1.8](http://www.courts.state.hi.us/docs/court_rules/rules/rsch.htm#Rule_1.8).

<sup>32</sup> See SUPREME COURT OF HAWAII, RULES OF THE SUPREME COURT OF THE STATE OF HAWAII, RULE 1.8(B) (2018), available at [http://www.courts.state.hi.us/docs/court\\_rules/rules/rsch.htm#Rule\\_1.8](http://www.courts.state.hi.us/docs/court_rules/rules/rsch.htm#Rule_1.8) [hereinafter "Supreme Court of Hawaii"].

<b>Idaho</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least three of the five previous years. <sup>33</sup>
<b>Illinois</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least three of the five previous years. <sup>34</sup>
<b>Indiana</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>35</sup>
<b>Iowa</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>36</sup>
<b>Kansas</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous seven years. <sup>37</sup>
<b>Kentucky</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>38</sup>
<b>Louisiana</b>	No.
<b>Maine</b>	<b>Yes.</b> The rule applies for faculty

<sup>33</sup> See BOARD OF COMMISSIONERS OF THE IDAHO STATE BAR, IDAHO BAR COMMISSION RULES GOVERNING ADMISSION TO PRACTICE AND MEMBERSHIP IN THE IDAHO STATE BAR, RULE 206(A)(3); RULE 206(A)(3)(C) (2018), available at <https://isb.idaho.gov/wp-content/uploads/ibcr.pdf>.

<sup>34</sup> See ILLINOIS SUPREME COURT, RULES ON ADMISSION AND DISCIPLINE OF ATTORNEYS, RULE 705(E); RULE 705(G)(7) (2018), available at [http://www.illinoiscourts.gov/SupremeCourt/Rules/Art\\_VII/artVII.htm#Rule705](http://www.illinoiscourts.gov/SupremeCourt/Rules/Art_VII/artVII.htm#Rule705).

<sup>35</sup> See INDIANA RULES OF COURT, RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATTORNEYS, RULE 6, SECTION 1(A); RULE 6, SECTION 1(A)(III) (2018), available at [http://www.in.gov/judiciary/rules/ad\\_dis/#\\_Toc477259897](http://www.in.gov/judiciary/rules/ad_dis/#_Toc477259897).

<sup>36</sup> See IOWA SUPREME COURT, IOWA COURT RULES, RULE 31.12(3)(A); RULE 31.12(6)(C) (2018), available at <https://www.legis.iowa.gov/docs/ACO/CR/LINC/12-26-2017.chapter.31.pdf>.

<sup>37</sup> See KANSAS SUPREME COURT, RULES RELATING TO ADMISSION OF ATTORNEYS, RULE 708(A)(7); RULE 708(A)(7)(IV) (2018), available at <http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Admission+of+Attorneys&r2=425> [hereinafter "Kansas Supreme Court"].

<sup>38</sup> See KENTUCKY SUPREME COURT, RULES OF THE SUPREME COURT, RULE 2.110(1) (2018), available at [https://govt.westlaw.com/kyrules/Document/NC3237430A91C11DA8F5EE32367A250AE?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=\(sc.Default\)](https://govt.westlaw.com/kyrules/Document/NC3237430A91C11DA8F5EE32367A250AE?viewType=FullText&originationContext=documenttoc&transitionType=DocumentItem&contextData=(sc.Default)).



	who have taught for at least five of the previous seven years. <sup>39</sup> For faculty of the University of New Hampshire School of Law or the Vermont Law School, the rule is three years. <sup>40</sup>
<b>Maryland</b>	No.
<b>Massachusetts</b>	No.
<b>Michigan</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least three of the previous five years. <sup>41</sup>
<b>Minnesota</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>42</sup>
<b>Mississippi</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five years. <sup>43</sup>
<b>Missouri</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous ten years. <sup>44</sup>
<b>Montana</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five

<sup>39</sup> See SUPREME JUDICIAL COURT OF MAINE, MAINE BAR ADMISSION RULES, RULE 11A(A)(2)(C); RULE 11A(A)(2)(C)(III) (2018), *available at* <http://www.mainebarexaminers.org/pages/PDF/MBarAdmissR0112.pdf>.

<sup>40</sup> *Id.* at Rule 11A(a)(2)(A); Rule 11A(a)(2)(B).

<sup>41</sup> See MICHIGAN SUPREME COURT, BOARD OF LAW EXAMINERS, RULES, STATUTES AND POLICY STATEMENTS, RULE 5(A)(5); RULE 5(A)(5)(B) (2018), *available at* [http://courts.mi.gov/Courts/MichiganSupremeCourt/BLE/Documents/BLE\\_Rules\\_Statutes\\_Policy\\_Statements\\_October2017.pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/BLE/Documents/BLE_Rules_Statutes_Policy_Statements_October2017.pdf).

<sup>42</sup> See MINNESOTA BOARD OF LAW EXAMINERS, RULES FOR ADMISSION TO THE BAR, RULE 7(A)(1); RULE 7(A)(1)(C)(VII) (2018), *available at* <https://www.ble.mn.gov/rules/>.

<sup>43</sup> See MISSISSIPPI SUPREME COURT, RULES GOVERNING ADMISSION TO THE MISSISSIPPI BAR, RULE VI, SECTION I(A); RULE VI, SECTION 7 (2018), *available at* [https://courts.ms.gov/newsite2/research/rules/msrulesofcourt/rules\\_admission\\_msbar.pdf](https://courts.ms.gov/newsite2/research/rules/msrulesofcourt/rules_admission_msbar.pdf).

<sup>44</sup> See MISSOURI SUPREME COURT, RULES GOVERNING THE MISSOURI BAR AND THE JUDICIARY, RULE 8.10(A)(4); RULE 8.10(A)(4)(C) (2018), *available at* <https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/e285509a05a88d9686256db4007268b7?OpenDocument>.

	of the previous seven years. <sup>45</sup>
<b>Nebraska</b>	No – however, it is arguable that Nebraska would consider law teaching in its “practice of law” definition. If so, the faculty member must have taught for at least three of the previous five years. <sup>46</sup>
<b>Nevada</b>	No – however, there is a limited practice rule which is limited only to “clinical law” faculty members of the University of Nevada Las Vegas Boyd School of Law. <sup>47</sup>
<b>New Hampshire</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous seven years. <sup>48</sup>
<b>New Jersey</b>	No.
<b>New Mexico</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous seven years. <sup>49</sup>
<b>New York</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous seven years and the faculty member must have attained either the rank of Associate Professor or Professor

<sup>45</sup> See MONTANA SUPREME COURT, RULES FOR ADMISSION TO THE BAR OF MONTANA, RULE V, SECTION A(2); RULE V, SECTION D(1)(C) (2018), available at [https://c.ymcdn.com/sites/montanabar.site-ym.com/resource/resmgr/Admissions/Rules\\_for\\_Admission\\_to\\_the\\_S.pdf](https://c.ymcdn.com/sites/montanabar.site-ym.com/resource/resmgr/Admissions/Rules_for_Admission_to_the_S.pdf).

<sup>46</sup> See NEBRASKA SUPREME COURT, NEBRASKA COURT RULES, SECTION 3-119(B) (2018), available at <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-1-admission-requirements-20>.

<sup>47</sup> See SUPREME COURT OF NEVADA, RULES REGULATING ADMISSION TO THE PRACTICE OF LAW, RULE 49.1 (2018), <https://www.nvbar.org/wp-content/uploads/2016-Supreme-Court-Rules-Regulating-Admission.pdf> [hereinafter “Supreme Court of Nevada”].

<sup>48</sup> See SUPREME COURT OF NEW HAMPSHIRE, RULES OF THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE, RULE 42(XI)(A)(1)(B); RULE 42(XI)(D)(3) (2018), available at <https://www.courts.state.nh.us/rules/scr/scr-42.htm>.

<sup>49</sup> See NEW MEXICO SUPREME COURT, NEW MEXICO RULES, RULE 15-107(A)(1); RULE 15-107(D)(1)(C) (2018), available at [http://www.nmcompcomm.us/nmrules/NMRules/15-107\\_11-1-2014.pdf](http://www.nmcompcomm.us/nmrules/NMRules/15-107_11-1-2014.pdf).

	at the law school. <sup>50</sup>
<b>North Carolina</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least four of the previous six years. <sup>51</sup>
<b>North Dakota</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least four of the previous five years and have been a member of a bar for at least five years. <sup>52</sup>
<b>Ohio</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous ten years. <sup>53</sup>
<b>Oklahoma</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>54</sup>
<b>Oregon</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least five of the previous seven years. <sup>55</sup> Members of the faculty of Lewis & Clark Law School, the University of Oregon School of Law, and Willamette University School of Law are eligible for a

<sup>50</sup> See NEW YORK STATE COURT OF APPEALS, RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW, RULE 520.10(A)(2)(i); RULE 520.10(A)(2)(i)(C)(iii) (2018), available at <https://www.nybarexam.org/Rules/Rules.htm#520.10> [hereinafter "New York State Court of Appeals"].

<sup>51</sup> See BOARD OF LAW EXAMINERS OF THE STATE OF NORTH CAROLINA, RULES GOVERNING THE ADMISSION TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, RULE .0502(3); RULE .0502(3)(F) (2018), available at <http://ncble.org/wp-content/uploads/2015/09/rules.pdf>.

<sup>52</sup> See NORTH DAKOTA SUPREME COURT, NORTH DAKOTA SUPREME COURT RULES ADMISSION TO PRACTICE, RULE 7(A)(1)(B); RULE 7(A)(1)(C); RULE 7(A)(1)(C)(3) (2018), available at <https://www.ndcourts.gov/court/rules/Admission/rule7.htm> [hereinafter "North Dakota Supreme Court"].

<sup>53</sup> See SUPREME COURT OF OHIO, SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO, RULE I, SECTION 9(A)(2)(B); RULE I, SECTION 9(B)(5) (2018), available at <https://www.supremecourt.ohio.gov/LegalResources/Rules/govbar/govbar.pdf#Rule1>.

<sup>54</sup> See SUPREME COURT OF OKLAHOMA, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF OKLAHOMA, RULE 2, SECTION 1; RULE 2, SECTION 1(E) (2018), available at <http://www.okbbe.com/Resources/Docs/CURRENT%20Rules%2005.16.2017.pdf>.

<sup>55</sup> See SUPREME COURT OF THE STATE OF OREGON, RULES FOR ADMISSION OF ATTORNEYS, RULE 15.05(1); RULE 1.05(1)(A)(iii) (2018), available at [https://www.osbar.org/\\_docs/rulesregs/admissions.pdf](https://www.osbar.org/_docs/rulesregs/admissions.pdf).

	law teacher admission after service of one year on the law faculty. <sup>56</sup>
<b>Pennsylvania</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>57</sup>
<b>Rhode Island</b>	No – however, a law faculty member of an ABA-accredited law school “may be admitted to practice law in this state solely for the purpose of supervising clinical law students in a clinical law program providing legal services to indigent clients.” <sup>58</sup>
<b>South Carolina</b>	No – however, tenured members of the law faculty of the University of South Carolina School of Law or the Charleston School of Law, who have been admitted to the bar of another state or the District of Columbia for at least five years and have served on the law faculty for at least 3 academic years, can be admitted. <sup>59</sup>
<b>South Dakota</b>	No – however, members of the faculty of the University of South Dakota School of Law are eligible

<sup>56</sup> See SUPREME COURT OF THE STATE OF OREGON, RULES FOR ADMISSION OF ATTORNEYS, RULE 11.05(1) (2018), available at [https://www.osbar.org/\\_docs/rulesregs/admissions.pdf](https://www.osbar.org/_docs/rulesregs/admissions.pdf) [hereinafter “Supreme Court of the State of Oregon”].

<sup>57</sup> See PENNSYLVANIA BOARD OF LAW EXAMINERS, BAR ADMISSION RULES, RULE 204(4); RULE 204(III) (2018), available at [http://www.pabarexam.org/bar\\_admission\\_rules/204.htm](http://www.pabarexam.org/bar_admission_rules/204.htm).

<sup>58</sup> See RHODE ISLAND SUPREME COURT, RHODE ISLAND SUPREME COURT RULES, ARTICLE II, RULE 2E (2018), available at <https://www.courts.ri.gov/Courts/SupremeCourt/Supreme%20Court%20Rules/AdmissionBar-ArticleII.pdf> [hereinafter “Rhode Island Supreme Court”].

<sup>59</sup> See SUPREME COURT OF SOUTH CAROLINA, SOUTH CAROLINA APPELLATE COURT RULES, RULE 402(j)(1); RULE 402(j)(2) (2018), available at <http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=402.0&subRuleID=&ruleType=APP> [hereinafter “Supreme Court of South Carolina”].



	for admission. <sup>60</sup>
<b>Tennessee</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>61</sup>
<b>Texas</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>62</sup>
<b>Utah</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>63</sup>
<b>Vermont</b>	No.
<b>Virginia</b>	No.
<b>Washington</b>	<b>Yes.</b> The rule applies for faculty who have taught for at least three of the previous five years. <sup>64</sup>
<b>West Virginia</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>65</sup>
<b>Wisconsin</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at

<sup>60</sup> See SOUTH DAKOTA BOARD OF BAR EXAMINERS, RULES AND REGULATIONS FOR ADMISSION TO PRACTICE LAW IN SOUTH DAKOTA, RULE 16-16-7.6 (2018), available at <http://ujs.sd.gov/uploads/barexaminers/RReg.pdf> [hereinafter "South Dakota Board of Bar Examiners"].

<sup>61</sup> See TENNESSEE SUPREME COURT, TENNESSEE SUPREME COURT RULES, ARTICLE V, SECTION 5.01(A)(3); ARTICLE V, SECTION 5.01(C)(1)(B) (2018), available at [http://www.tnble.org/sites/default/files/rule\\_7\\_eff\\_1.26.18.pdf](http://www.tnble.org/sites/default/files/rule_7_eff_1.26.18.pdf).

<sup>62</sup> See TEXAS BOARD OF LAW EXAMINERS, RULES GOVERNING ADMISSION TO THE BAR OF TEXAS, RULE 13, SECTION 1(A); RULE 1(A)(11)(E) (2018), available at <https://ble.texas.gov/rules>.

<sup>63</sup> See UTAH SUPREME COURT, RULES GOVERNING THE UTAH STATE BAR, RULE 14-705(A)(7); RULE 14-701(B)(7) (2018), available at <https://www.utcourts.gov/resources/rules/ucja/index.htm>.

<sup>64</sup> See WASHINGTON SUPREME COURT, WASHINGTON STATE COURT RULES: ADMISSION AND PRACTICE RULES, RULE 3(C)(2); RULE 1(E)(1)(A) (2018), available at [http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=ga&set=APR](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=APR).

<sup>65</sup> See WEST VIRGINIA SUPREME COURT, RULES FOR ADMISSION TO THE PRACTICE OF LAW, RULE 4.0(B), (C) (2018), available at <http://www.courtswv.gov/legal-community/rules-for-admission.html#rule4>.

	least three of the previous five years. <sup>66</sup>
<b>Wyoming</b>	<b>Yes.</b> The rule applies for faculty who have taught full-time for at least five of the previous seven years. <sup>67</sup>

The states which allow faculty of ABA-accredited law schools the ability to be admitted on motion to the state bar include the teaching of law on a law faculty of an ABA-accredited law school within the definition of “active practice of law” for purposes of admission on motion.<sup>68</sup> Of the thirty-five states which allow for admission of motion by faculty of ABA-accredited law schools, twenty-one require the “active practice of law” to have occurred in at least five of the preceding seven years prior to applying for admission on motion.<sup>69</sup> Seven states require the “active practice of law” to occur in at least three of the prior five years.<sup>70</sup>

Several states have particular rules for law faculty of law schools within the state. Alabama and Oregon, for example, have rules which allow faculty of law schools within the state to be admitted earlier than faculty from law schools outside of the state.<sup>71</sup> Nevada and Rhode Island limit membership to the bar only to faculty who provide clinical legal services within the state.<sup>72</sup> New York allows only professors at the Associate Professor or Professor level to apply for admission through the law faculty rule.<sup>73</sup> Finally, Hawaii,

<sup>66</sup> See WISCONSIN SUPREME COURT, SUPREME COURT RULES, RULE 40.05(1)(B); RULE 40.05(3)(D) (2018), available at <https://www.wicourts.gov/sc/rules/chap40.pdf>.

<sup>67</sup> See WYOMING SUPREME COURT, RULES AND PROCEDURES GOVERNING ADMISSION TO THE PRACTICE OF LAW, RULE 302(F); RULE 303(A)(3) (2018), available at [https://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES\\_AND\\_PROCEDURES\\_GOVERNING\\_ADMISSION\\_TO\\_THE\\_PRACTICE\\_OF\\_LAW.pdf](https://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES_AND_PROCEDURES_GOVERNING_ADMISSION_TO_THE_PRACTICE_OF_LAW.pdf).

<sup>68</sup> See, e.g., Kansas Supreme Court, *supra* note 37, Rule 708(a)(7). The Supreme Court of Kansas has defined the “active practice of law” to include the following activities:

(i) Representation of one or more clients in the practice of law; (ii) Service as a lawyer with a local, state or federal agency, including military service, with the primary duties of furnishing legal counsel, drafting legal documents and pleadings, interpreting and giving advice regarding the law or preparing, trying or presenting cases before courts, departments of government or administrative agencies; (iii) Service as corporate counsel with the same primary duties as described in subsection 7(ii) above; (iv) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant’s employment; (v) Service as a judge in a federal, state or local court, provided that such employment is available only to licensed attorneys; (vi) Service as a judicial law clerk; or (vii) Any combination of the above.

<sup>69</sup> See *infra*, Table 1.

<sup>70</sup> *Id.*

<sup>71</sup> See Supreme Court of Alabama, *supra* note 23; Supreme Court of the State of Oregon, *supra* note 56.

<sup>72</sup> See Supreme Court of Nevada, *supra* note 47; Rhode Island Supreme Court, *supra* note 58.

<sup>73</sup> See New York State Court of Appeals, *supra* note 50.

South Carolina, and South Dakota have rules allowing for only in-state law school faculty to be admitted to the state bar through a special rule.<sup>74</sup>

### III. LAW TEACHERS OUTSIDE OF ABA-ACCREDITED LAW SCHOOLS

In addition to law professors who teach at ABA-accredited law schools, there are a number of full-time law faculty who contribute to the profession in other academic departments at colleges and universities throughout the country. Law faculty serve in a number of disciplines at many universities, including criminology,<sup>75</sup> agriculture and natural resources,<sup>76</sup> and, in particular, business.<sup>77</sup> Many of these faculty have made notable contributions to the legal profession but these faculty are excluded from the current admission on motion rules for law faculty.

#### 1. Law Faculty in Colleges of Business

For a number of years, law faculty have served in a number of business schools throughout the country. The study of law is an indispensable part of the business school curriculum.<sup>78</sup> In fact, the teaching of law in business schools is specifically provided for within Association to Advance

<sup>74</sup> See Supreme Court of Hawaii, *supra* note 32; Supreme Court of South Carolina, *supra* note 59; South Dakota Board of Bar Examiners, *supra* note 60.

<sup>75</sup> For example, consider the Florida State University College of Criminology and Criminal Justice. In 2017, the College was named the top college in the world by the Center for World University Rankings (CWUR) for the study of crime and criminal justice. See Kara Irby, *Global Greatness: FSU College of Criminology and Criminal Justice ranked No. 1 in the world*, FLORIDA STATE UNIV. NEWS (Nov. 8, 2017), <http://news.fsu.edu/news/business-law-policy/2017/11/08/global-greatness-fsu-college-criminology-criminal-justice-ranked-no-1-world/>.

Upon review of the author of all faculty biographies, one professor in the College has earned a J.D. See *Faculty & Staff*, FLORIDA STATE UNIV. COLLEGE OF CRIMINOLOGY & CRIMINAL JUSTICE (2018), <http://criminology.fsu.edu/faculty-and-staff/college-faculty/>.

<sup>76</sup> For instance, there is an Agricultural Law professor in the University of Florida Food and Resource Economics Department of the University of Florida, Institute of Food and Agricultural Sciences. See *Faculty Directory by Research Area*, UNIVERSITY OF FLORIDA, FOOD AND AGRICULTURAL SCIENCES DEPARTMENT (2018), <http://fred.ifas.ufl.edu/faculty/research-area/>. In addition, there is an Agricultural Law professor in the University of Georgia Agricultural & Applied Economics Department of the University of Georgia College of Agricultural & Environmental Sciences. See *Agricultural & Applied Economics Faculty*, UNIV. OF GEORGIA, COLLEGE OF AGRICULTURAL & ENVIRONMENTAL SCIENCES, AGRICULTURAL & APPLIED ECONOMICS (2018), <http://www.caes.uga.edu/departments/ag-econ/people/faculty.html>.

<sup>77</sup> For example, the author of this Article is a full-time tenured faculty member in the College of Business at Florida State University.

<sup>78</sup> See George J. Siedel, *Six Forces and the Legal Environment of Business: The Relative Value of Business Law Among Business School Core Courses*, 37 AM. BUS. L.J. 717, 739 (2000) ("Given the high value of law, business schools attempting to develop successful managers in today's global business world should offer at least one core course that enables students to recognize and analyze the legal implications of business decisions – and to understand and implement the advice of legal counsel in situations where the issues are significant enough to justify the costs (both time and financial) associated with seeking professional advice. Unfortunately – for both individuals and their companies – many managers lack even the most rudimentary understanding of law and the law function.").



Collegiate Schools of Business (“AACSB”)<sup>79</sup> accreditation standards.<sup>80</sup>

A number of business schools have several business law professors on their faculty or have a specific department dedicated to business law. For example, the Kelley School of Business of Indiana University has a Business Law & Ethics Department with approximately fourteen tenured or tenure-track legal studies faculty;<sup>81</sup> the Wharton School of the University of Pennsylvania has a Legal Studies & Business Ethics Department with approximately twelve tenured or tenure-track legal studies faculty;<sup>82</sup> the Zicklin School of Business of Baruch College of the City University of New York has a Department of Law with approximately thirteen tenured or tenure-track legal studies faculty;<sup>83</sup> the David Nazarian College of Business and Economics of California State University Northridge has a Department of Business Law with approximately eight tenured or tenure-track legal studies faculty;<sup>84</sup> the Fox School of Business at Temple University has a Department of Legal Studies in Business with approximately eight tenured or tenure-track legal studies faculty;<sup>85</sup> and the University of Michigan Ross School of Business has a Business Law Department with approximately six tenured or tenure-track legal studies faculty.<sup>86</sup> A number of other business schools have multiple tenured or tenure-track legal studies faculty housed in other business

<sup>79</sup> See *What We Do*, ASSOCIATION TO ADVANCE COLLEGIATE SCHOOLS OF BUSINESS (2018), <http://www.aacsb.edu/about/mission> (“The mission of AACSB International is to foster engagement, accelerate innovation, and amplify impact in business education. This mission is aligned with AACSB’s accreditation standards for business schools. AACSB strives to continuously improve engagement among business, faculty, institutions, and students so that business education is aligned with the needs business practice. To fulfill this goal, AACSB encourages and accelerates innovation to continuously improve business education. As a result, business schools will have a positive impact on business and society – and AACSB International will amplify that impact.”).

<sup>80</sup> See *Eligibility Procedures and Accreditation Standards for Business Accreditation*, ASSOCIATION TO ADVANCE COLLEGIATE SCHOOLS OF BUSINESS 10 (Sept. 22, 2017), <http://www.aacsb.edu/-/media/aacsb/docs/accreditation/standards/business-accreditation-2017-update.ashx?la=en> (“Normally, bachelor degree programs in which 25 percent or more of the teaching relates to traditional business subjects . . . are considered business degree programs. Traditional business subjects include accounting, business law, decision sciences, economics, entrepreneurship, finance (including insurance, real estate, and banking), human resources, international business, management, management information systems, management science, marketing, operations management, organizational behavior, organizational development, strategic management, supply chain management (including transportation and logistics), and technology management.”).

<sup>81</sup> See *Faculty*, INDIANA UNIV., KELLEY SCHOOL OF BUSINESS, BUSINESS LAW & ETHICS (2018), <https://kelley.iu.edu/faculty-research/departments/business-law-ethics/faculty/index.cshml?department=11&classification=0&searchText=&pageSize=10&page=3>.

<sup>82</sup> See *Faculty*, UNIV. OF PENNSYLVANIA WHARTON SCHOOL, LEGAL STUDIES & BUSINESS ETHICS DEPARTMENT (2018), <https://lgst.wharton.upenn.edu/faculty/>.

<sup>83</sup> See *Faculty*, THE CITY UNIV. OF NEW YORK, BARUCH COLLEGE, ZICKLIN SCHOOL OF BUSINESS, DEPARTMENT OF LAW (2018), <https://zicklin.baruch.cuny.edu/faculty-research/academic-departments/law/faculty/>.

<sup>84</sup> See *Faculty Directory*, CALIFORNIA STATE UNIV. NORTHRIDGE, DAVID NAZARIAN COLLEGE OF BUSINESS AND ECONOMICS, DEPARTMENT OF BUSINESS LAW (2018), <https://www.csun.edu/blaw/faculty-directory>.

<sup>85</sup> See *Faculty*, TEMPLE UNIVERSITY, FOX SCHOOL OF BUSINESS, DEPARTMENT OF LEGAL STUDIES IN BUSINESS (2018), <https://www.fox.temple.edu/departments/legal-studies-in-business/faculty/>.

<sup>86</sup> See *Faculty Directory*, UNIV. OF MICHIGAN, ROSS SCHOOL OF BUSINESS, BUSINESS LAW DEPARTMENT, (2018), [https://michiganross.umich.edu/faculty-research/directory?status=All&department=22&name=&last=&sort\\_by=field\\_sort\\_name\\_value](https://michiganross.umich.edu/faculty-research/directory?status=All&department=22&name=&last=&sort_by=field_sort_name_value).



school departments, including the University of Georgia Terry College of Business;<sup>87</sup> the Georgia Institute of Technology Scheller College of Business;<sup>88</sup> the University of Connecticut School of Business;<sup>89</sup> the University of Florida Warrington College of Business;<sup>90</sup> the Texas State University McCoy College of Business Administration;<sup>91</sup> and the University of Oklahoma Price College of Business.<sup>92</sup> Some business schools may have only one tenured or tenure-track legal studies faculty member.<sup>93</sup>

## *2. The Academy of Legal Studies in Business and Contributions of its Members*

Law faculty in business schools generally provide many contributions to the legal profession. The Academy of Legal Studies in Business International (“ALSB”) is an organization of nearly 1,000 professors who primarily teach business law courses at the graduate and undergraduate levels.<sup>94</sup> The ALSB is the primary support organization for law faculty in business schools. The ALSB holds an annual conference each August with academic research presentations on a variety of business law topics as well as presentations on the latest techniques in pedagogy.<sup>95</sup> There are also twelve regional associations of business law faculty in various regions throughout the United States and Canada which generally hold an annual research conference.<sup>96</sup> The ALSB also publishes two journals: the American Business Law Journal (“ABLJ”), which is a premier journal which focuses on academic scholarship in the business law area,<sup>97</sup> and the Journal of Legal Studies

<sup>87</sup> See *Legal Studies Program*, UNIVERSITY OF GEORGIA, TERRY COLLEGE OF BUSINESS (2018), <http://www.terry.uga.edu/directory/dept/21/>.

<sup>88</sup> See *Law & Ethics*, GEORGIA INSTITUTE OF TECHNOLOGY, SCHELLER COLLEGE OF BUSINESS (2018), <https://www.scheller.gatech.edu/academics/law-ethics.html>.

<sup>89</sup> See *Business Law Faculty & Staff*, UNIV. OF CONNECTICUT SCHOOL OF BUSINESS (2018), <https://www.business.uconn.edu/contact/business-law/>.

<sup>90</sup> See *Endowed Faculty*, UNIV. OF FLORIDA WARRINGTON COLLEGE OF BUSINESS (2018), <http://warrington.ufl.edu/faculty/endowed.asp>.

<sup>91</sup> See *Department Directory*, TEXAS STATE UNIV., MCCOY COLLEGE OF BUSINESS ADMINISTRATION, DEPARTMENT OF FINANCE AND ECONOMICS, (2018), <http://fin-eco.mccoy.txstate.edu/about/department-directory-new-page.html>.

<sup>92</sup> See *Management & International Business People*, UNIVERSITY OF OKLAHOMA, PRICE COLLEGE OF BUSINESS, MANAGEMENT AND INTERNATIONAL BUSINESS (2018), [http://www.ou.edu/content/price/management\\_ib/faculty.html](http://www.ou.edu/content/price/management_ib/faculty.html).

<sup>93</sup> See *Faculty & Staff, Marketing & Management* CREIGHTON UNIV., HEIDER COLLEGE OF BUSINESS, (2018), <https://business.creighton.edu/academics/faculty/marketing-management> (last visited Aug. 9, 2018).

<sup>94</sup> See *About the ALSB*, ACADEMY OF LEGAL STUDIES IN BUSINESS (2018), <http://www.alsb.org/about-the-alsb>.

<sup>95</sup> See *Annual Conference*, ACADEMY OF LEGAL STUDIES IN BUSINESS, (2018), <http://www.alsb.org/annual-conference>.

<sup>96</sup> See *Regional Associations*, ACADEMY OF LEGAL STUDIES IN BUSINESS (2018), <http://www.alsb.org/regional-associations>.

<sup>97</sup> The latest issue of the *American Business Law Journal*, VOLUME 55, NUMBER 1 (2018), featured the following articles: Janine S. Hiller & Scott J. Shackelford, *The Firm and Common Pool Resource Theory: Understanding the Rise of Benefit Corporations*, 55 AM. BUS. L.J. 5 (2018); Robert C. Bird & Liz Brown, *The United Kingdom Right to Request as a Model for Flexible Work in the European Union*, 55 AM. BUS. L.J. 53 (2018); W. Michael Schuster & Jack Wroldsen, *Entrepreneurship and Legal Uncertainty*:

Education (“JLSE”), a journal with a more pedagogical focus.<sup>98</sup>

Importantly, law faculty in business schools have authored many law review journals and articles which add to the understanding of complex areas of law. For example, law faculty in business schools have published articles in the fields of employee benefits,<sup>99</sup> insurance law,<sup>100</sup> tort liability,<sup>101</sup> international business law,<sup>102</sup> environmental law,<sup>103</sup> patent law,<sup>104</sup> contract law,<sup>105</sup> employment law,<sup>106</sup> as well as the uniform commercial code.<sup>107</sup>

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*Unexpected Federal Trademark Registrations for Marijuana Derivatives*, 55 AM. BUS. L.J. 117 (2018); Gerlinde Berger-Walliser & Inara Scott, *Redefining Corporate Social Responsibility in an Era of Globalization and Regulatory Hardening*, 55 AM. BUS. L.J. 167 (2018), available at <https://onlinelibrary.wiley.com/journal/17441714>.

<sup>98</sup> The latest issue of the *Journal of Legal Studies Education*, VOLUME 35, NUMBER 1 (2018), featured the following articles: Debra D. Burke & Kenneth J. Sanney, *Applying the Fraud Triangle to Higher Education: Ethical Implications*, 35 LEGAL STUD. EDUC. 5 (2018); Michael R. Koval, *How Shorebilly Brewing Company Won the Trademark Battle, but Lost the War: A Cautionary Tale for Entrepreneurs*, 35 J. LEGAL STUD. EDUC. 45 (2018); Debbie Kaminer, *The Meaning of “Sex”*; *Using Title VII’s Definition of Sex to Teach About the Legal Regulation of Business*, 35 J. LEGAL STUD. EDUC. 83 (2018); Jason Gordon & Vlad Bursuc, *Law and Entrepreneurship Education: A Proposed Model for Curriculum Development*, 35 J. LEGAL STUD. EDUC. 123 (2018); Ursula Ramsey, *Americans with Disabilities Act Scavenger Hunt*, 35 J. LEGAL STUD. EDUC. 143 (2018); Caryn L. Beck-Dudley, *The Future of Work, Business Education, and the Role of AACSB*, 35 J. LEGAL STUD. 165 (2018); Christine Neylon O’Brien, Richard E. Powers, & Thomas L. Wesner, *Benchmarking and Accreditation Goals Support the Value of an Undergraduate Business Law Core Course*, 35 J. LEGAL STUD. 171 (2018), available at <https://onlinelibrary.wiley.com/journal/17441722>.

<sup>99</sup> See, e.g., Jack E. Karns, *Deferred Compensation Planning, the “Exclusive Benefit” Rule, and the Hughes Aircraft Case: Has the Employer Benefit Restriction Been Altered with Respect to ERISA Qualified Pension Plans?*, 33 CREIGHTON L. REV. 507 (2000); Dana M. Muir, *Choice Architecture and the Locus of Fiduciary Obligation in Defined Contribution Plans*, 99 IOWA L. REV. 1 (2013).

<sup>100</sup> See, e.g., Susan Lorde Martin, *Corporate-Owned Life Insurance: Another Financial Scheme That Takes Advantage of Employees and Shareholders*, 58 U. MIAMI L. REV. 653 (2004); Lucien J. Dhooze, *A Previously Unimaginable Risk Potential: September 11 and the Insurance Industry*, 40 AM. BUS. L.J. 687 (2003).

<sup>101</sup> See, e.g., Robert J. Aalberts, *“To Sue or Not to Sue”: The Past, Present and Future of Construction Defect Litigation in Nevada*, 5 NEV. L.J. 684 (2005); Richard J. Hunter, Jr., *HIV: Fear of AIDS or Medical Malpractice?*, 80 N.D. L. REV. 385 (2004).

<sup>102</sup> See, e.g., Stephen Kim Park & Tim R. Samples, *Towards Sovereign Equity*, 21 STAN. J.L. BUS. & FIN. 240 (2016); Stephen Kim Park, *Guarding the Guardians: The Case for Regulating State-Owned Financial Entities in Global Finance*, 16 U. PA. J. BUS. L. 739 (2014); Marisa Anne Pagnattaro, *U.S. Trade Policy: Increased Emphasis on Worker Rights*, 40 GA. J. INT’L. & COMP. L. 663 (2012).

<sup>103</sup> See, e.g., Darren A. Prum & Kathryn Kisska-Schulze, *The Environmentally Conscious Skies: Did the European Union’s Game of Brinkmanship Lead to a Viable Global Plan for Emissions Trading in Aviation?*, 14 WASH. U. GLOBAL STUD. L. REV. 1 (2015); Lucien J. Dhooze, *Aguinda v. Chevron-Texaco: Discretionary Grounds for the Non-Recognition of Foreign Judgments for Environmental Injury in the United States*, 28 VA. ENVTL. L.J. 241 (2010); Paulette L. Stenzel, *Why and How the World Trade Organization Must Promote Environmental Protection*, 13 DUKE ENVTL. L. & POL’Y F. 1 (2002).

<sup>104</sup> See, e.g., Nathaniel Grow, *Joint Patent Infringement Following Akamai*, 51 AM. BUS. L.J. 71 (2014); David Orozco, *Administrative Patent Levers*, 117 PENN ST. L. REV. 1 (2012).

<sup>105</sup> See, e.g., Larry A. DiMatteo, *Contract Stories: Importance of the Contextual Approach to Law*, 88 WASH. L. REV. 1287 (2013); Robert W. Emerson, *Franchise Contract Interpretation: A Two-Standard Approach*, 2013 MICH. ST. L. REV. 641 (2013).

<sup>106</sup> See, e.g., Alex Reed, *Redressing LGBT Employment Discrimination Via Executive Order*, 29 NOTRE DAME J.L. ETHICS & PUB. POL’Y 133 (2015); Charlotte S. Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 IND. L.J. 1069 (2014); Robert Sprague, *No Surfing Allowed: A Review & Analysis of Legislation Prohibiting Employers from Demanding Access to Employees’ & Job Applicants’ Social Media Accounts*, 24 ALB. L.J. SCI. & TECH. 481 (2014); Marisa Anne Pagnattaro, *What Do You When You Are Not at Work?: Limiting the Use of Off-Duty Conduct as the Basis for Adverse Employment Decisions*, 6 U. PA. J. LAB. & EMP. L. 625 (2004).

<sup>107</sup> See, e.g., Richard J. Hunter, Jr., *A Statutory Override of an “As Is” Sale: A Historical Appraisal and Analysis of the UCC, Magnuson-Moss, and State Lemon Laws*, 11 U. MASS. L. REV. 44 (2016); Richard



Law faculty in business schools also have an impact to the practice of law through scholarship. These professors have had their articles cited by federal courts,<sup>108</sup> state courts,<sup>109</sup> in federal and state statutes and regulations,<sup>110</sup> and in trial and appellate briefs in both state and federal courts.<sup>111</sup> It is undeniable that law faculty in business schools have made an impact both in theoretical legal scholarship as well as the practical applications of legal scholarship.

Within ABA-accredited law schools, law faculty generally teach either doctrinal or clinical courses which have a focus on a particular area of law. For example, a second or third-year law school course may focus on administrative law, international law, remedies, or banking law.<sup>112</sup> Law students typically face an array of substantive courses in the first year of law school.<sup>113</sup> For example, students at the University of Dayton School of Law are required to take Civil Procedure Doctrine & Skills I and II, Legal Profession I and II, Real Property Doctrine & Skills, Contracts I, Torts Doctrine & Skills I and II, Torts I Lab, Criminal Law Doctrine & Skills,

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A. Mann & Barry S. Roberts, *The Applicability of Tort Law to Commercial Buyers*, 79 NEB. L. REV. 215 (2000).

<sup>108</sup> See, e.g., *Berger v. National Collegiate Athletic Association*, 843 F.3d 285, 291-292 (7th Cir. 2016), citing Adam Epstein & Paul M. Anderson, *The Relationship Between a Collegiate Student-Athlete and the University: An Historical and Legal Perspective*, 26 MARQ. SPORTS L. REV. 287 (2016); *Spolum v. Clark Equipment Company*, No. A3-98-95, 2000 WL 33339624, at \*1 (D.N.D. Apr. 21, 2000) (citing Jack E. Karns & Jerry G. Hunt, *Corporate Executive Deferred Compensation: Should the Exercise of Stock Appreciation Rights (SARS) Trigger Securities Law Liability?*, 75 N.D. L. REV. 535 (1999)).

<sup>109</sup> See *SSHI LLC v. City of Olympia*, 176 Wash. App. 1039, No. 433300-1-II, 2013 WL 5436406, at \*1 (Wash. Ct. App. Sept. 24, 2013) (citing Darren A. Prum & Sarah L. Catz, *Greenhouse Gas Emission Targets and Mass Transit: Can the Government Successfully Accomplish Both Without a Conflict?*, 51 SANTA CLARA L. REV. 935 (2011)); *Layton v. Florida Department of Highway Safety & Motor Vehicles*, 676 So.2d 1038, 1040 (Fla. Dist. Ct. App. 1st Dist. 1996) (citing Virginia G. Maurer, *Common Law Defamation and the Fair Credit Reporting Act*, 72 GEO. L.J. 95 (1983)).

<sup>110</sup> See, e.g., 18 U.S.C. § 1831, citing David Orozco, *Amending the Economic Espionage Act to Require the Disclosure of National Security-Related Technology Thefts*, 62 CATH. U. L. REV. 877 (2013) & Or. Rev. Stat. § 315.354 (West 2018) (citing Darren A. Prum, Robert J. Aalberts & Stephen Del Percio, *In Third Parties We Trust? The Growing Antitrust Impact of Third-Party Green Building Certification Systems for State and Local Governments*, 27 J. ENVTL. L. & LITIG. 191 (2012)).

<sup>111</sup> See Brief for Defendants-Appellees, *Energy Education of Montana, Inc. v. Texas Comptroller of Public Accounts*, No. 03-10-00644-CV, 2011 WL 1505197, at \*14, (Tex. Ct. App. Mar. 25, 2011) (citing Kathryn Kisska-Schulze & Christopher M. Reimer, *Non-Commercial Aircraft Sales – Planning Strategies to Ensure FAA Compliance and Minimize Taxes*, 10 WYO. L. REV. 175 (2010)); Defendants' Corrected Notice of Motion and Motion for Summary Judgment on the Remaining Federal Law Claims, *Bowoto v. Chevron Corporation*, No. 399CV02506, 2008 WL 1909910, at \*22 n.25 (N.D. Cal. Jan. 16, 2008) (citing Lucien J. Dhooge, *Lohengrin Revealed: The Implications of Sosa v. Alvarez-Machain for Human Rights Litigation Pursuant to the Alien Tort Claims Act*, 28 LOY. L.A. INT'L. & COMP. L. REV. 393 (2006)).

<sup>112</sup> See *Course Descriptions*, UNIV. OF DAYTON SCHOOL OF LAW (2018), [https://udayton.edu/law/registrar/course\\_descriptions.php](https://udayton.edu/law/registrar/course_descriptions.php).

<sup>113</sup> See James J. Brudney, *Legislation and Regulation in the Core Curriculum: A Virtue or a Necessity?*, 65 J. LEGAL EDUC. 3 (2015) ("The first-year curriculum at American law schools has been remarkably stable for more than 100 years. Many would say ossified. At Harvard, the First-Year Course of Instruction in 1879-80 consisted of Real Property, Contracts, Torts, Criminal Law and Criminal Procedure, and Civil Procedure. These five courses – focused heavily on judge-made common law – dominated Harvard's 1L curriculum from the law school's founding into the 21<sup>st</sup> century. The same five subjects have long commanded the primary attention of first-year students at Fordham, founded in 1905, and at virtually every other U.S. law school throughout the 20th century.")

Criminal Law Lab I, and take part in a Learning Community.<sup>114</sup>

Full-time law faculty at ABA-accredited law schools generally teach one or two substantive subjects and the entire class will be focused generally on that topic. In essence, the law professor must focus on that particular topic throughout the semester and emphasize specialized knowledge in that area. With law faculty in business schools, the primary law class at many business schools is the “Legal Environment of Business” course.<sup>115</sup> The course often includes topics as varied as law and ethics, contracts, torts, and the legal system.<sup>116</sup> While law professors at ABA-accredited law schools must become specialists in the one or two substantive subjects they teach, by contrast, a law faculty member in a business school legal environment must cover a diverse range of topics. Many of the topics covered in an undergraduate legal environment course are those taken in substantive law courses by law students during their first year.

Considering the contributions to the profession of law faculty in business schools (and of law faculty in other schools within colleges and universities throughout the United States), there is a strong argument for state bar associations to include the eligibility of certain law teachers outside of ABA-accredited law schools for admission on motion rules.

#### IV. PROPOSAL – INCLUSION OF LAW TEACHERS OUTSIDE OF ABA-ACCREDITED LAW SCHOOLS IN ADMISSION ON MOTION RULES

To better diversify the membership of a state bar association and to offer for attorneys who are law teachers the opportunity to provide greater contributions to the profession, states can offer admission on motion to law faculty outside of ABA-accredited law schools who demonstrate by the “greater weight of the evidence” practical contributions to the profession. The “greater weight of the evidence” standard has been defined as “more persuasive and convincing force and effect of the entire evidence in the case.”<sup>117</sup> What activities could states examine to determine whether an applicant for admission on motion who teaches law outside of an ABA-accredited law school has met the standard of proof for practical contributions to the legal profession? There are a number of activities that advance the profession that can be considered to meet the standard of proof, including: (1) publishing in law reviews and journals as well as state bar journals; (2) presenting at state bar CLE programs; (3) service as an expert witness or consultant; (4) authoring amicus briefs; (5) service as an arbitrator or mediator;

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<sup>114</sup> See *Degree Requirements*, UNIV. OF DAYTON SCHOOL OF LAW (2018), [https://udayton.edu/law/registrar/degree\\_requirements.php](https://udayton.edu/law/registrar/degree_requirements.php).

<sup>115</sup> See generally Carol J. Miller & Susan J. Crain, *Legal Environment v. Business Law Courses: A Distinction Without a Difference?*, 28 J. LEGAL STUD. EDUC. 149 (2011).

<sup>116</sup> *Id.*

<sup>117</sup> See *In re Standard Jury Instructions In Civil Cases*-Report No. 09-01 (Reorganization of the Civil Jury Instructions), 35 So.3d 666, 684–85 (Fla. 2010).



and (6) service on academic honor policy committees.

### *1. Publishing in Law Reviews and Journals / State Bar Journals*

Publishing a law review article in a general or specialty law journal can greatly benefit the practicing bar and can stand as a solid contribution to the legal profession by a law faculty member outside of an ABA-accredited law school.<sup>118</sup> The publishing of a law review article often requires countless hours of researching, writing, and revising of the article.<sup>119</sup> While there is a longstanding discussion concerning whether law reviews should be dedicated primarily to theoretical or doctrinal scholarship – which is beyond the scope of this particular Article<sup>120</sup> – it is undeniable that general and secondary law review articles assist practitioners as well as the courts. As noted before, law review articles are cited in briefs and cited by state and federal courts.<sup>121</sup> For example, the *University of Dayton Law Review* has been cited by the Ohio Court of Appeals.<sup>122</sup> In an inquiry on whether a law faculty member outside of an ABA-accredited law school has made contributions to the profession, the regular publishing of law review articles can serve as substantial evidence of contributions. If those articles have been cited in briefs, statutes or regulations, or the courts, this would provide even more concrete evidence of practical contributions to the profession.

Similarly, publishing articles in state bar journals provides excellent evidence of practical contributions. Articles in state bar journals tend to be focused on legal issues encountered by judges and practitioners within that particular state.<sup>123</sup> Lawyers and judges from that state generally comprise the

<sup>118</sup> See The Hon. Harry T. Edwards, *Another Look at Professor Rodell's Goodbye to Law Reviews*, 100 VA. L. REV. 1483, 1499 (2014) (contending that “great scholarship is inclusive. It addresses procedure, practice, theory, doctrine, legislation, regulation, and enforcement.”).

<sup>119</sup> See generally Richard Delgado, *How to Write a Law Review Article*, 20 U.S.F. L. REV. 445 (1986).

<sup>120</sup> See, e.g., Richard A. Wise, et. al., *Do Law Reviews Need Reform? A Survey of Law Professors, Student Editors, Attorneys, and Judges*, 59 LOY. L. REV. 1 (2013); Brent E. Newton, *Law Review Scholarship in the Eyes of the Twenty-First-Century Supreme Court Justices: An Empirical Analysis*, 4 DREXEL L. REV. 399 (2012); The Hon. Stephen G. Breyer, *Response of Justice Stephen G. Breyer*, 64 N.Y.U. ANN. SURV. AM. L. 33 (2008) (“I believe the profession functions best when large numbers of law professors see part of their job as familiarizing themselves with judicial opinions as well as statutes, organizing that mass of legal materials, and criticizing the legal material with an eye towards reform.”); The Hon. Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1136 (1995) (“Doctrinal scholarship has declined relatively to non-doctrinal, but it remains the largest field of legal scholarship and one of great importance to practitioners and judges – as well as to most law professors, if fewer (relatively) than in times of yore. There would be nothing dishonorable or archaic in the law reviews’ rededicating themselves to the production and publication of such scholarship. I acknowledge the educational mission of the law review but I think it would be enhanced rather than impaired if the members of the review wrote and edited within the sphere of their competence and the orbit of the professional writing that they will do when they graduate from law school and become (as the vast majority, even at the most exclusive law schools, will) practicing lawyers.”).

<sup>121</sup> See *infra*, Section II(B).

<sup>122</sup> See *State of Ohio v. Gordon*, No. 1410, 1989 Ohio App. LEXIS 1142, 25–26 (Ohio Ct. App. 11th Dist. Mar. 31, 1989) (citing The Hon. Robert P. Ringland, *Child Sex Abuse Evidence Problems*, 12 U. DAYTON L. REV. 27 (1986)).

<sup>123</sup> See generally Douglas E. Abrams, *Writing in Law Reviews, Bar Association Journals, and Blogs (Part 2)*, 72 J. MO. B. 88 (March-April 2016) (“Because most bar journal authors are practicing lawyers,

readership of the state bar journal.<sup>124</sup>

## 2. Presenting at State Bar CLE Programs

Similar to writing a state bar journal article, a law faculty member can provide significant practical contributions and give back to the profession by presenting at CLE programs.<sup>125</sup> Many states require attorneys to receive a specific number of hours of continuing education credits in order to maintain an active license in good standing.<sup>126</sup> Presenting at CLE programs will not only improve the relationship between law faculty members and the practicing bar in a state, but law faculty engaged in research can update practitioners on overall doctrinal trends in the law during presentations.

## 3. Service as an Expert Witness / Consultant

Law faculty members also often serve as expert witnesses and consultants in litigated cases.<sup>127</sup> Although it is not an activity where one is actively representing a client, it is still a contribution to the profession and is active, rather than analytical, involvement in actual litigated matters. Assuming the expert witness meets the *Daubert* requirements for expert witness testimony,<sup>128</sup> the expert can assist the trier of fact to better understand matters that fall within their expertise.<sup>129</sup> Significantly, expert witnesses are often referred to as “friends of the court,” who are “professionals who willingly take time to serve the cause of justice.”<sup>130</sup> Accordingly, a law faculty member from outside of an ABA-accredited law school who takes the time out of an academic schedule to engage in service as an outside consultant and/or expert witness assists in the administration of justice and also makes a definite contribution to the overall profession.

## 4. Authoring Amicus Briefs

Law faculty who are outside of ABA-accredited law schools can also

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articles tend to combine scholarship (including recommendations for law reform where appropriate) with practical perspectives on substantive or procedural matters.”).

<sup>124</sup> *Id.*

<sup>125</sup> For an extensive discussion of continuing legal education requirements, see generally Cheri A. Harris, *MCLE: The Perils, Pitfalls, and Promise of Regulation*, 40 VAL. U. L. REV. 359 (2006).

<sup>126</sup> *Id.*

<sup>127</sup> See generally Jeff Hanna, *Moonlighting Law Professors: Identifying and Minimizing Professional Liability Risk*, 42 S. TEX. L. REV. 421 (2001).

<sup>128</sup> See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

<sup>129</sup> See G. Michael Fenner, *The Daubert Handbook: The Case, its Essential Dilemma, and its Progeny*, 29 CREIGHTON L. REV. 939, 942 (1996). As Professor Fenner notes, test for the reliability of expert witness testimony today “is whether the evidence is ‘scientific knowledge,’ whether it will assist the trier of fact, and whether its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.”

<sup>130</sup> See *Expert Witness Services*, THE AIA (March 2005), <http://faculty.washington.edu/bconbear/cm500/class/aiap016670.pdf>.

contribute to the profession through the authoring of amicus briefs.<sup>131</sup> As Professor Richard Fallon of Harvard Law School has generally observed, there is an increasing practice of law faculty submitting amici curie briefs to courts on pending cases.<sup>132</sup> Responses by United States Supreme Court, United States Court of Appeals, and United States District Court judges to a survey on the role of *amicus curiae* briefs by Professor Linda Simard indicated that “judges at all three levels of the federal bench find amici curiae helpful in offering new legal arguments that are absent from the parties’ briefs.”<sup>133</sup>

### 5. Service as an Arbitrator or Mediator

Service as an arbitrator or mediator can also greatly benefit the legal profession. Arbitration clauses are common in many contracts today<sup>134</sup> and arbitral awards are generally legally binding on the parties to the arbitration.<sup>135</sup> Service as an arbitrator requires extensive qualifications and credentials. The American Arbitration Association (“AAA”), founded in 1926,<sup>136</sup> is a leader in the field and handles approximately 200,000 arbitration claims a year.<sup>137</sup> For an arbitrator to make it on to the AAA roster of arbitrators, the arbitrator not only has to have training in arbitration, but also a “minimum of 15 years of senior level legal, business or professional experience[.]”<sup>138</sup>

Mediation is also a popular form of alternative dispute resolution today.<sup>139</sup> In some states, judges may even have the authority to refer certain civil cases to mediation.<sup>140</sup> In many cases, the mediator is not even required

<sup>131</sup> For an extensive discussion of the value of amicus briefs, see generally Ruben J. Garcia, *A Democratic Theory of Amicus Advocacy*, 35 FLA. ST. U. L. REV. 315 (2008).

<sup>132</sup> See generally Richard H. Fallon, Jr., *Scholars’ Briefs and the Vocation of a Law Professor*, 4 J. LEGAL ANALYSIS 223 (2012).

<sup>133</sup> See Linda Sandstrom Simard, *An Empirical Study of Amici Curiae in Federal Court: A Fine Balance of Access, Efficiency, and Adversarialism*, 27 REV. LITIG. 669, 690 (2008).

<sup>134</sup> See Christopher R. Leslie, *The Arbitration Bootstrap*, 94 TEX. L. REV. 265, 270-271 (2015) (“Arbitration clauses are increasingly found in both consumer and employment contracts because firms insert the clauses into contracts of adhesion. Buyers are unable to preserve their right to sue in court because firms refuse to sell goods or services unless such rights are relinquished. Similarly, many workers – indeed, all workers in some industries – must waive their right to litigate violations of employment law, including illegal discrimination.” (internal citations omitted)).

<sup>135</sup> See FRANK B. CROSS & ROGER LEROY MILLER, *THE LEGAL ENVIRONMENT OF BUSINESS: TEXT AND CASES* 42 (10th ed., 2018).

<sup>136</sup> See *AAA Mission & Principles*, AMERICAN ARBITRATION ASSOC. (2018), available at <https://www.adr.org/MissionPrinciples>

<sup>137</sup> See Cross & Miller, *supra* note 135, at 44.

<sup>138</sup> See *Application Process for Admittance to the AAA National Roster of Arbitrators*, AMERICAN ARBITRATION ASSOC. (2018), [https://www.adr.org/sites/default/files/documentrepository/application\\_process\\_for\\_admittance\\_to\\_the\\_aaa\\_national\\_roster\\_of\\_arbitrators.pdf](https://www.adr.org/sites/default/files/documentrepository/application_process_for_admittance_to_the_aaa_national_roster_of_arbitrators.pdf).

<sup>139</sup> See Cross & Miller, *supra* note 135, at 41.

<sup>140</sup> See, e.g., Neb. Rev. Stat. § 25-2943 (West 2018). The statute states the following:  
A court may refer a civil case, including a contested guardianship or contested conservatorship proceeding, to mediation or another form of alternative dispute resolution and, unless otherwise ordered following a hearing upon a motion to object to such referral, may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants



to be an attorney.<sup>141</sup> For example, in Florida the minimum educational requirement of a county court mediator is for an individual to have either a high school diploma or GED and family mediators, circuit court mediators, and dependency mediators are only required to have a bachelor's degree.<sup>142</sup> In general, serving as an arbitrator or mediator is a notable contribution to the court system and greatly assists the amicable resolution of legal disputes.

#### 6. Service on Academic Honor Policy Committees

Finally, a law faculty member who is not serving on the faculty of an ABA-approved law school may also make a contribution to not only the college or university, but to the ideals of the profession through service on a university academic honor committee. Academic honor committees in colleges and universities throughout the country often address alleged student violations of academic dishonesty.<sup>143</sup> For example, at Florida State University, a Step Two hearing (which typically hears potentially more serious violations of the academic honor policy) includes a panel of five individuals (two faculty members, two students, and the Vice President for Faculty Advancement or designee) which will conduct a fact-finding hearing to determine whether a violation of the university Academic Honor Policy occurred.<sup>144</sup> Several specific examples of violations are outlined in the policy, ranging from plagiarism to abuse of academic materials.<sup>145</sup> The culpability of the student for an alleged violation is determined by the "preponderance of

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an extension upon request of the parties. Any agreement or resolution made in mediation or another form of alternative dispute resolution shall be voluntarily entered into by the parties. An individual trial court, an appellate court, or the Supreme Court on its own initiative may adopt rules of practice governing the procedures for referral of cases to mediation and other forms of dispute resolution. Such services may be provided by approved centers on a sliding scale of fees under the Dispute Resolution Act.

<sup>141</sup> See Cross & Miller, *supra* note 135 at 41.

<sup>142</sup> See FLORIDA DISPUTE RESOLUTION CENTER, OFFICE OF THE STATE COURTS ADMINISTRATOR FLORIDA RULES FOR CERTIFIED & COURT-APPOINTED MEDIATORS, Rule 10.100 (June 1017), <http://www.flcourts.org/core/fileparse.php/549/urlt/RulesCertifiedCourtAppointedMediators.pdf>.

<sup>143</sup> There are a number of commentators who have addressed legal issues relating to academic honor codes and academic honor committees. See, e.g., Perry A. Zinkel, *Procedural and Substantive Student Challenges to Disciplinary Sanctions at Private – As Compared With Public – Institutions of Higher Education: A Glaring Gap?*, 83 MISS. L.J. 863 (2014); Barbara A. Lee, *Judicial Review of Student Challenges to Academic Misconduct Sanctions*, 39 J.C. & U.L. 511 (2013); Joseph M. Flanders, *Academic Student Dismissals at Public Institutions of Higher Education: When is Academic Deference Not an Issue?*, 34 J.C. U.L. 21 (2007); Jennifer N. Buchanan & Joseph C. Beckman, *A Comprehensive Academic Honor Policy for Students: Ensuring Due Process, Promoting Academic Integrity, and Involving Faculty*, 33 J.C. & U.L. 97 (2006); Fernand N. Dutille, *Disciplinary Versus Academic Sanctions in Higher Education: A Doomed Dichotomy?*, 29 J.C. & U.L. 619 (2003); Larry A. DiMatteo & Don Wiesner, *Academic Honor Codes: A Legal and Ethical Analysis*, 19 S. ILL. U. L.J. 49 (1994).

<sup>144</sup> See *Florida State University Academic Honor Policy*, FLORIDA STATE UNIV., OFFICE OF FACULTY DEVELOPMENT AND ADVANCEMENT 5 (2018), <http://fda.fsu.edu/sites/g/files/imported/storage/original/application/0ab8e9de6a98c1377d68de9717988bda.pdf>.

<sup>145</sup> *Id.* at 1–2. Academic honor violations outlined specifically in the policy include the following: 1) Plagiarism; 2) Cheating; 3) Unauthorized Group Work; 4) Fabrication, Falsification, and Misrepresentation; 5) Multiple Submission; 6) Abuse of Academic Materials; 7) Complicity in Academic Dishonesty; and 8) Attempts to Commit any offense as outlined above.

the evidence" standard.<sup>146</sup> If a student is found culpable of a violation of the policy, an academic and/or disciplinary sanction may be imposed by the Committee.<sup>147</sup> Appeals of the decision may be made to the Academic Honor Policy Appeal Committee, a standing Committee of four members (two faculty members and two students), who reviews the decision for error only on limited grounds.<sup>148</sup>

Although it is a college or university committee and not a judicial institution, academic honor policy committees serve a quasi-judicial function and seek to ensure the due process rights of college and university students are safeguarded and protected within the college or university system.<sup>149</sup> Given the importance of an attorney's obligation to safeguard constitutional rights,<sup>150</sup> service on a college or university academic honor policy committee advances the ideals of the law.

#### A. Model Admission on Motion Rule

Given the practical contributions of many law faculty outside of ABA-accredited law schools to the legal profession, these same law faculty merit consideration of inclusion in the admission on motion rules of states which have adopted admission on motion. The rules can incorporate the law-related activities noted above. Closely tracking the language of the admission on motion rule of North Dakota as an example,<sup>151</sup> state supreme courts can consider adopting the following language:

*Any person who is a licensed member in good standing of the bar of another state or the District of Columbia may apply for admission by motion if that person:*  
*a. meets the requirements outlined in Rule(s) \_\_\_\_\_ relating to graduation from an ABA-accredited law school,*

<sup>146</sup> *Id.* at 5.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.* at 7. The policy only allows the following grounds for an appeal:

1. Due process errors involving violations of a student's rights that substantially affected the outcome of the initial hearing.
2. Demonstrated prejudice against the charged student by any panel member. Such prejudice must be evidenced by a conflict of interest, bias, pressure, or influence that precluded a fair and impartial hearing.
3. New information that was not available at the time of the original hearing.
4. A sanction that is extraordinarily disproportionate to the offense committed.
5. The preponderance of the evidence presented at the hearing does not support a finding of responsible. Appeals based on this consideration will be limited to a review of the record of the initial hearing, and the student will not be invited to appear before the Appeal Committee.

<sup>149</sup> See Marie T. Reilly, *Due Process in Public University Discipline Cases*, 120 PENN ST. L. REV. 1001, 1002 (2016) ("As state actors, public universities' student discipline processes implicate a student's liberty and property interest in an education. Public universities must provide each accused student with due process of law under the Fourteenth Amendment." (internal citations omitted)).

<sup>150</sup> See generally Patrick S. Metzger, *Speaking Truth to Power: The Obligation of the Courts to Enforce the Right to Counsel at Trial*, 45 TEX. TECH L. REV. 163 (2012).

<sup>151</sup> See North Dakota Supreme Court, *supra* note 52.

*being of good moral character, and character and fitness to practice law;*

*b. has for at least five (5) of the previous seven (7) years immediately preceding the application for admission on motion been actively engaged, to an extent deemed by the Board of Law Examiners to demonstrate competency in the practice of law, in one or more of the following:*

*(1) the private practice of law;*

*(2) service as a judge of a court of record;*

*(3) the teaching of law as an instructor in a law school or schools accredited by the American Bar Association;*

*(4) the teaching of law as a full-time instructor in an accredited college or university when the individual has, by the greater weight of the evidence, demonstrated practical contributions to the legal profession in the state. The greater weight of the evidence standard can be met through involvement including, but not limited to, the following activities: a) publishing in law reviews and journals and/or state bar journals; b) being a presenter at a state bar CLE program; c) service as an expert witness and/or consultant on legal matters; d) the authoring of amicus brief(s) before state and/or federal courts; e) service as an arbitrator and/or mediator; f) service on academic honor committees within the college or university; g) any other involvement in activities deemed to constitute a “practical contribution” to the legal profession in the state by the Board of Law Examiners.*

*the performance of legal work in a legal capacity.*

This language incorporates a number of activities undertaken by college or university faculty who teach law outside of ABA-accredited law schools who contribute to the diversity of the profession. In addition, in draft paragraph (b)(4)(g), a “catch all” provision is included to allow for flexibility on the part of the Board of Law Examiners where a faculty member has participated in activities benefiting the profession which are not specifically listed. Overall, the adoption of such a rule promotes the goal of inclusion and also recognizes the contributions that law faculty outside of law schools throughout the country make to promote the legal profession.

## V. CONCLUSION

The membership of a state bar association can be more inclusive by adopting reciprocity rules for bar admission. The movement toward reciprocity is gaining some momentum. For example, approximately two years ago in April 2016, New Jersey adopted admission on motion for



attorneys licensed in other jurisdictions who have previously passed another state's bar exam and have practiced five of the previous seven years in another state.<sup>152</sup> In recent years, even in Florida – a state well known for not having adopted reciprocity – a proposal to adopt reciprocity has been discussed by the state bar association.<sup>153</sup> Although the proposal was not adopted in 2015, it seems likely that the issue will not be tabled forever.<sup>154</sup>

States can make the membership of their respective state bar associations more inclusive by allowing bar admission on motion rules for law teachers outside of ABA-accredited law schools who demonstrate practical contributions to the legal profession in the state by the “greater weight of the evidence” standard. Not only will the membership of a state bar association be more diverse, but it will allow law teachers outside of ABA-accredited law schools the opportunity to provide greater contributions to the profession and the pursuit of justice.

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<sup>152</sup> See NEW JERSEY COURTS, ADMINISTRATIVE DETERMINATIONS BY THE SUPREME COURT ON THE REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE ON ATTORNEY ETHICS AND ADMISSIONS 2-3 (April 14, 2016), <https://www.judiciary.state.nj.us/notices/2016/n160414a.pdf>. The New Jersey Supreme Court decided the following:

[T]he Court has decided to adopt admission by motion, with restrictions. Applicants for admission to the New Jersey bar by motion must hold a juris doctor degree from an ABA-accredited law school; demonstrate fitness and character to practice law (by being reviewed and so certified by the Committee on Character); attain a qualifying score on the Multi-State Professional Responsibility Examination or pass an approved law school ethics course; have practiced for five of the last seven years in another jurisdiction; have previously passed a bar examination in another jurisdiction; be admitted in a jurisdiction that would extend a reciprocal license by motion to New Jersey lawyers; and complete a course on New Jersey ethics and professionalism as a condition precedent to admission.

<sup>153</sup> See Susan Taylor Martin, *Florida Attorneys Call Out-Of-State Lawyer Idea 'Stupid' and 'Dangerous'*, TAMPA BAY TIMES (Sept. 19, 2015), <http://www.tampabay.com/news/business/florida-attorneys-call-out-of-state-lawyer-idea-stupid-and-dangerous/2246186>.

<sup>154</sup> See Debra Cassens Weiss, *Florida Bar Refuses to Ease Admissions For Out-of-State Lawyers*, ABA JOURNAL (Oct. 19, 2015), [http://www.abajournal.com/news/article/florida\\_bar\\_refuses\\_to\\_ease\\_admission\\_of\\_out\\_of\\_state\\_lawyers/](http://www.abajournal.com/news/article/florida_bar_refuses_to_ease_admission_of_out_of_state_lawyers/).