

Conference of Chief Justices 2011 Midyear Meeting

International Practice of Law and Regulation of Attorney Practice

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Jan. 23, 2011
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Introduction

- State courts regulate US lawyers....**BUT**....
- Federal & international lawyer regulation exists
- Both “hard law” and “soft law” can be influential
- This talk will be a “whirlwind” tour of global lawyer regulatory initiatives
- To begin... some data:



Why Clients May Want Foreign Lawyers

U.S. Trade in Legal Services

	1992	2009
Exports	\$1.36 billion	\$7.26 billion
Imports	\$311 million	\$1.7 billion

U.S. International Trade in Goods and Services

	1992	2009
Exports	\$617 billion	\$1.57 trillion
Imports	\$656 billion	\$1.9 trillion

2006 Foreign Direct Investment <u>IN US</u>	2006 Foreign Direct Investment <u>BY US</u>
\$1.789 trillion	\$2.384 trillion

State	2009 State Exports (NAICS)
Texas	\$163 billion (1 st in U.S.)
Hawaii	\$563 million (50 th)

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Reasons for Foreign Lawyers: #2

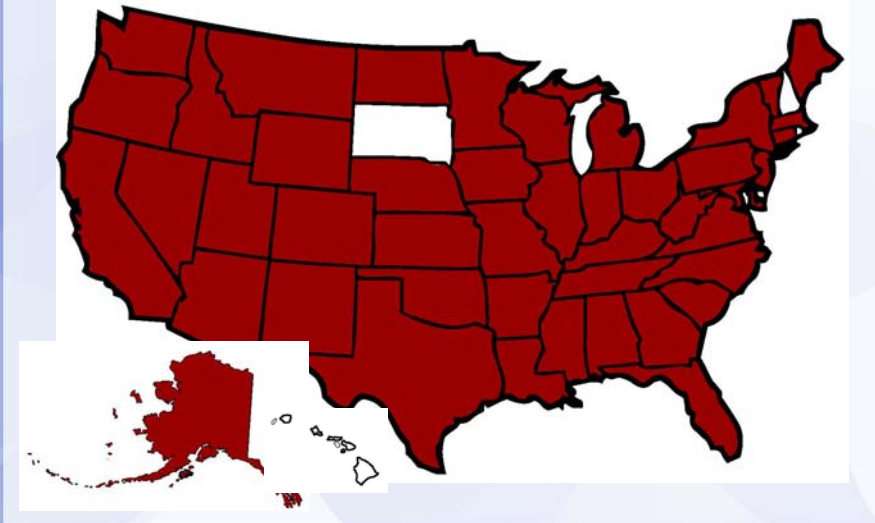
2000 U.S. Census - Foreign Born Residents

State and Rank	Number of FB Residents	% increase since 1990	State Rank in % increase
California (1st)	8.9 Million	37.2%	37 th
Missouri (27th)	151,000	80.8%	26 th
Wyoming (51st)	11,205	46.5%	35 th
Entire U.S.	31.1 million	57.4%	---

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Slide by Jim Jones at the May 2009 CCJ-Globalization Conference

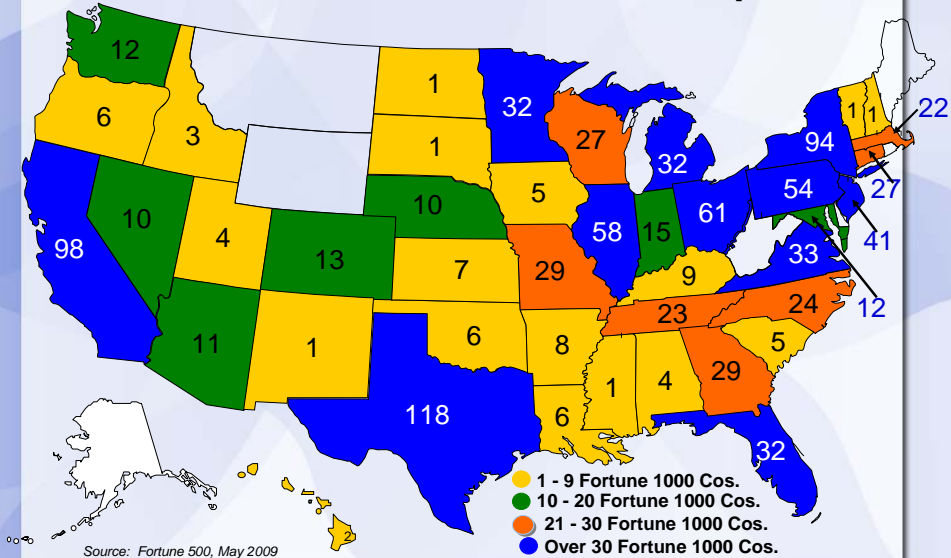
States in Which NLJ 250 Firms Have Offices



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Slide by Jim Jones at the May 2009 CCJ-Globalization Conference

Concentration of Fortune 1000 Companies



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International Regulatory Developments

1. Global trade agreements
2. UK and Global Regulatory Reform Initiatives
3. Global antitrust (competition) initiatives
4. Alternative Business Structure (ABS) Developments
5. Global money laundering & anti-terrorism laws
6. Global legal education initiatives
7. Global MJP, recognition & lawyer admission
8. Global lawyer accountability initiatives
9. Market forces: (e.g. outsourcing, litigation financing)



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More on these Regulatory Developments



Laurel S. Terry, Professor of Law (l.terry@psu.edu), [Return to Homepage](#)

Penn State Dickinson School of Law

Selected Presentations

SELECTED PRESENTATIONS – BY TOPIC (Note: the Chronological Listing includes links to related articles)

- > Global Developments in general (See [11-08](#))
- > the WTO's GATS agreement and legal services (including presentations on skills transfer provisions, "classification" and domestic regulation disciplines) (See [5-03](#) for a GATS overview and [5-05](#), [4-05](#), [10-04](#), and [3-04](#) for presentations on specialized GATS-legal services issues)
- > Foreign lawyer "recognition" issues (See [4-02](#))
- > Legal outsourcing (See [4-05](#))
- > Arbitration initiatives directed towards the legal profession, including the EU's Professional Services Competition Initiative (See [5-05](#), [4-05](#))
- > Alternative Business Structure (ABS) developments (including the UK's Legal Services Act 2007, Australia's publicly traded law firms, and OECD developments) (See [2-09](#), [10-05](#), and [5-09](#))
- > Using ABA Model Rule 5.1 More Proactively (with a nod towards Australia's current practice) (See [8-05](#); see also [5-02](#) at slide 15)
- > Bologna Process (See [3-06](#), [1-05](#))
- > EU lawyer regulation (See [1-05](#); see also [4-05](#))
- > Double deontology & ABA Model Rule 8.5 Choice of Law issues (See [5-08](#))
- > Global and comparative legal ethics (See [11-04](#), [5-05](#), [3-02](#))
- > U.S. multijurisdictional practice initiatives (MJP) (See [8-06](#), [10-05](#), [5-05](#); see also [1-07](#))
- > U.S. and German multidisciplinary partnership initiatives (MDPs) (See [7-2000](#))
- > Pennsylvania implementation of Ethics 2000 (See [12-04](#))

<http://www.personal.psu.edu/faculty/l/s/1st3/presentations.htm>

9/14/2009

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For additional info:
See the urls at the end of this talk plus my topic-specific talks

Trade Agreements



Office of the United States Trade Representative



Trade Agreements

- | Regional | Bilateral |
|--|---|
| <ul style="list-style-type: none"> • FTAA • ASEAN Initiative • NAFTA • MEFTA • APEC • CAFTA-DR | <ul style="list-style-type: none"> • Australia FTA • Bahrain FTA • Chile FTA • Colombia FTA • Israel FTA • Jordan FTA • KORUS FTA • Malaysia FTA • Morocco FTA • Oman FTA • Panama TPA • Peru TPA • Malaysia FTA • Singapore FTA • SACU FTA • Bilateral Investment Treaties (BITs) • Trade and Investment Framework Agreements (TIFAs) |

Trade agreements usually have sections on: transparency, mutual recognition, MFN, market access, national treatment, domestic regulation disciplines, standstill provisions. There are many bilateral agreements as well as GATS and regional agreements.

UK Regulatory Reform Initiatives

Many are watching these initiatives with interest



Review of the Regulation of Corporate Legal Work
Nick Smedley

31 March 2009



Other Regulatory Reform Initiatives

ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Regulatory Reform



Asia-Pacific
Economic Cooperation



Bureau de la concurrence
Canada

Competition Bureau
Canada

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Global Antitrust Initiatives – Part 1

	Accountants	Legal	Architects	Engineers	Pharmacists
Austria	6.2	7.2	5.1	0	7.3
Belgium	6.3	4.6	3.9	1.2	5.4
Denmark	2.8	3.9	0	0	5.9
Finland	5.5	3.3	1.4	1.3	7.6
France	5.9	6.6	3.1	0	7.5
Germany	6.1	6.5	4.5	7.4	5.7
Greece	5.1	8.5	n.a.	n.a.	6.9
Ireland	3.0	6.5	0	0	2.7
Italy	5.7	6.4	6.2	5.4	5.4
Luxembourg	5	6.6	5.3	5.3	7.9
Netherlands	4.5	3.9	0	1.5	3.0
Portugal	n.a.	5.7	2.8	n.a.	8
Spain	3.4	6.5	6.6	3.2	7.5
Sweden	3.3	2.4	0	0	12
UK	3.8	4.8	0	0	4.1

Antitrust authorities have targeted rules on: fees, advertising, entry requirements, UPL, alternative business structures, & regulatory structure



Institut für Höhere Studien | *Institute for Advanced Studies*



Directorate General for Competition

UK

OFFICE OF FAIR TRADING

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Global Antitrust Initiatives – Part 2



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



Bureau de la concurrence
Canada

Competition Bureau
Canada



Federal Trade Commission
Protecting America's Consumers



ASSOCIATION INTERNATIONALE DE L'ASSURANCE DE PROTECTION JURIDIQUE
INTERNATIONALE VEREINIGUNG DER RECHTSSCHUTZ-VERSICHERUNG
INTERNATIONAL ASSOCIATION OF LEGAL EXPENSES INSURANCE



International Institute of
Law Association Chief Executives

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Alternative Business Structures (ABS)



INTEGRATED LEGAL HOLDINGS
LIMITED



Solicitors Regulation Authority

[UK] Legal Services Act 2007



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Terrorism-Money Laundering Initiatives

The intergovernmental FATF *Gatekeeper Initiative* is relevant to lawyer confidentiality and other rules; the FATF recently adopted a KYC- risk-based approach guidance for legal professionals. Several countries have changed their lawyer rules; expect more.



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Global Legal Education Initiatives

Global legal education initiatives address recognition, curriculum, quality assurance, etc.



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MJP, Recognition & Lawyer Admission



Because of globalization, countries face issues of foreign lawyer MJP, temporary and limited (FLC) admission, and recognition.



Représentant les avocats d'Europe
Representing Europe's lawyers



ABA MJP Resolutions 8 & 9



Resolutions 4 (2006) & 6 (2008)



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Lawyer Accountability Initiatives

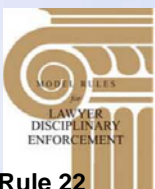
Accountability concerns are one reason for recent lawyer discipline cooperation initiatives



Resolution 2 (Jan. 2009) In Support of Cooperation Among U.S. and European Disciplinary Bodies



Représentant les avocats d'Europe
Representing Europe's lawyers



Rule 22

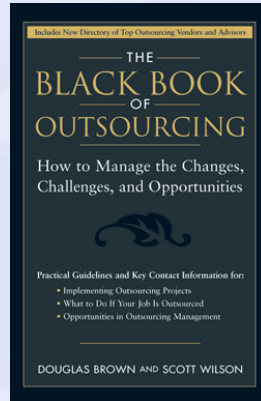
India: See SSRN
Abstract 1371098

CCBE Standing Committee
Resolution (February 2009)



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Market Forces



OMNI BRIDGEWAY



Recent market forces include ABS, legal process outsourcing, [international] third party litigation financing, lawyer-client power shifts (e.g., regarding fees and risk)

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Some Observations about Regulation

- Changes in lawyer regulation in one country may affect lawyers in other countries. They may do so
- **Directly:**
 - Sarbanes-Oxley and non US lawyers;
 - the 2010 ECJ Akzo Nobel decision denied the attorney-client privilege to corporate [and by extension US] counsel
- **Indirectly:**
 - The FATF's soft-law "recommendations" have dramatically changed lawyer regulation in many countries. The US Treasury's FATF approach is softer, but still exists.
- **By suggesting You or Others Adopt a New Approach:**
 - Clients, counsel, or gov'ts may cite regulations elsewhere
 - The new paradigm is "Lawyers as *Service Providers*"

Laurel Terry, *The Impact of Treating the Legal Profession as "Service Providers,"*
2008 J. Prof. Lawyer 189, http://www.personal.psu.edu/faculty/l/s/lst3/terry_service_providers.pdf

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Conclusion

- Global lawyer regulatory initiatives have the potential to be very significant
- Given the globalization of the economy, no jurisdiction is immune from these developments
- You or others may be asked to explain why US lawyer regulation differs from other regulation
 - This may be asked cross-culturally or across-professions
- Consider adopting “regulatory objectives”
- There is not [yet] an international organization of lawyer regulators. It may be important to create one.

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To Read More About....

My Introductory Lawyer Regulation Comments

Terry, *A “How To” Guide [for including global perspectives in the legal profession course]*, 51 St. Louis U. L. J. 1135 (2007)
[short version]

Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 Wash. U. Global Studies L. Rev. 463 (2005)[long version]

Terry, *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 Northwestern J. Int’l L. & Bus. 527 (2008)

Terry, *The Impact of Treating the Legal Profession as “Service Providers*, 2008 J. Prof. Lawyer 189

All articles (and selected powerpoints) located here:

<http://www.personal.psu.edu/faculty/l/s/lst3/>



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To Read More About

Global Trade Agreements



**Office of the US Trade Representative (USTR),
Trade Agreements Page (with many links),**

http://www.ustr.gov/Trade_Agreements/Section_Index.html

World Trade Organization, <http://www.wto.org/>

NAFTA Secretariat, <http://www.nafta-sec-alena.org/>

**Asia Pacific Economic Cooperation (APEC),
<http://www.apec.org/>**

**ABA GATS-Legal Services Webpage,
<http://www.abanet.org/cpr/gats/home.html>**

**Terry et al, *Transnational Legal Practice [2006-07]*,
42 Int'l L. 833 (2008), 2008, 43 Int'l L. 943 (2009) and 2009,
44 Int'l L. 563 (2010), all of which are available at:**

<http://www.personal.psu.edu/faculty/l/s/lst3/>

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To Read More About ...

UK Regulatory Reform Initiatives

UK Legal Services Board, <http://www.legalservicesboard.org.uk/index.htm>

**Solicitors Regulation Authority Consultations on the Legal Services Act,
<http://www.sra.org.uk/sra/consultations.page>**

**Law Society of England and Wales (includes links to the Hunt and
Smedley reports), <http://www.lawsociety.org.uk/influencinglaw/policyinresponse.law>**

**5-09 Conference of Chief Justices Conference Webpage,
<http://www.law.georgetown.edu/news/documents/CCJ-2009-WebMaterials-final.doc>**

**NSW Office of the Legal Commissioner, Speeches and Papers & menu
links,
http://www.lawlink.nsw.gov.au/lawlink/olsc/l_olsc.nsf/pages/OLSC_speeches**

**Georgetown Symposium, The Future of the Global Law Firm (4-08),
<http://www.law.georgetown.edu/LegalProfession/GlobalLawFirm.html>**

**Selected Articles in the ABA Canons Centennial Symposium,
<http://www.abanet.org/cpr/pubs/symposium.html>**

**Laurel Terry "Presentations" Page (includes UK, EU & 5.1 developments),
<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>**



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To Read More About ...

Global Regulatory Reform



OECD Regulatory Reform Project,

http://www.oecd.org/topic/0,3373,en_2649_37421_1_1_1_1_37421,00.html

OECD Guiding Principles for Regulatory Quality & Performance,

<http://www.oecd.org/dataoecd/19/51/37318586.pdf>

OECD, Homepage: Indicators of Regulatory Conditions in Professional Services Sectors,

http://www.oecd.org/document/24/0,3343,en_2649_34833_35858776_1_1_1_37463,00.html

APEC-OECD Regulatory Reform,

http://www.oecd.org/document/25/0,3343,en_2649_34141_2397017_1_1_1_37421,00.html

Regulatory Reform section in Canada's 2007 Self-Regulated Professions Report, pp. 39-41

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

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To Read More About ...

Global Antitrust Initiatives

EU DG Competition, *Professional Services Sector,*

http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html

OECD, *Competition in Professional Services,* DAF/CLP(2000)2,

<http://www.oecd.org/dataoecd/35/4/1920231.pdf>

OECD, *Competitive Restrictions in Legal Professions,* DAF/COMP (2007)39,

<http://www.oecd.org/dataoecd/12/38/40080343.pdf>

Competition Bureau Canada, *Self-Regulated Professions - Balancing Competition and Regulation* (Dec. 2007),

<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

CCBE Competition Committee,

http://www.ccbe.eu/index.php?id=94&id_comite=4&L=0

US Federal Trade Commission Letters regarding the Practice of Law,

http://www.ftc.gov/opp/advocacy_subject.shtm

See Laurel Terry articles and presentations:

<http://www.personal.psu.edu/faculty/l/s/lt3/presentations.htm>



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To Read More About...

ABS

New South Wales, Australia, Incorporated Legal Practices,

http://www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_ilp

UK Legal Services Reform (and the Oct. 2007 UK Legal Services Act), <http://www.justice.gov.uk/whatwedo/legalservicesreform.htm>
and <http://www.dca.gov.uk/legalsys/lrreform.htm>

EU DG Competition, *Professional Services Sector*,
http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html

***The Future of the Global Law Firm*, Georgetown Law Center
(April 2008)** <http://www.law.georgetown.edu/LegalProfession/Papers.html>

And the items listed on the previous slide entitled: “To Read More About UK Regulatory Reform Initiatives”



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To Read More About....

Money Laundering & Anti-Terrorism Initiatives

Financial Action Task Force (FATF),

<http://www.fatf-gafi.org>

FATF Risk-Based Approach Guidance for Legal Professionals (Oct. 23, 2008), <http://www.fatf-gafi.org/dataoecd/5/58/41584211.pdf>

Fed. Law. Soc. Canada, Model “Know Your Client” Rule,
http://www.flsc.ca/en/pdf/Federation_Model_Rule_080327.pdf

UK Money Laundering and “Know Your Client” Rules,
<http://www.lawsociety.org.uk/productsandservices/practicenotes/aml/453.article>

Asia-Pacific Group on Moneylaundering, <http://www.apgml.org/>

ABA Task Force on Gatekeeper Regulation and the Profession,
<http://www.abanet.org/crimjust/taskforce/home.html>

EU Money Laundering Directives,
http://www.ccbe.eu/index.php?id=94&id_comite=20&L=0

Law Council of Australia, Anti-Money Laundering Reforms,
<http://www.lawcouncil.asn.au/initiatives/aml-counter-terrorism-reforms.cfm>



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To Read More About...

Global Legal Education

International Association of Law Schools, <http://www.ialsnet.org/>

The Law School Admissions Council and the National Organization of Bar Counsel now include Canadian and Australian members, <http://www.nobc.org/> and <http://www.lsac.org/>

ABA Section of Legal Education and Admissions to the Bar, <http://www.abanet.org/legaled/> and <http://www.abanet.org/legaled/committees/International%20Issues%20Report%20Final%20Draft%2011.DOC> (final)

Bologna-Benelux Secretariat Webpage (with many links)

<http://www.ond.vlaanderen.be/hogeronderwijs/bologna/>

CCBE Training Committee Webpage,

http://www.ccbe.org/index.php?id=94&id_comite=13&L=0

ELFA QUAACAS Committee, <http://elixir.bham.ac.uk/quaacas/>

Prof. Lonbay's EU Recognition website, <http://elixir.bham.ac.uk/menu/country/default.htm>

Jindal Global Law School, <http://www.jgls.org/>

Peking University School of Transnational Law, <http://www.law.pku.edu.cn/>



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To Read More About ...

Global MJP, Recognition, Lawyer Admission: Part 1

Comprehensive Guide to Bar Admission Requirements, <http://www.ncbex.org/comprehensive-guide-to-bar-admissions/>

ABA Multijurisdictional Practice Recommendations 8 and 9, <http://www.abanet.org/cpr/mjp/home.html>

Implementation of MJP Recommendations 8 and 9, http://www.abanet.org/cpr/mjp/8_and_9_status_chart.pdf

Conference of Chief Justices MJP Resolutions, <http://ccj.ncsc.dni.us/MultijurisdictionalPracResols.html>

EU MJP Directives, http://www.ccbe.eu/index.php?id=94&id_comite=8&L=0

EU Morgenbesser Case, http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/morgenbesser_guidanc1_1183976940.pdf

CCBE Free Movement of Lawyers Committee, http://www.ccbe.eu/index.php?id=94&id_comite=8&L=0

UK Qualified Lawyers Transfer Test (QLTT), <http://www.sra.org.uk/solicitors/qltt.page> and <http://www.sra.org.uk/sra/consultations/1454.article> (Nov. 2008 consultation)



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To Read More About...

Global MJP, Recognition, Lawyer Admission: Part 2

Jayanth K. Krishnan, *Globetrotting Law Firms*, 23 Geo. J. Legal Ethics (forthcoming 2009), SSRN #1371098 [U.S./UK firms in India]

Canada National Accreditation Committee,

<http://www.flsc.ca/en/foreignLawyers/foreignLawyers.asp>

Canada's MJP Rules, <http://www.flsc.ca/en/committees/mobility.asp>

Canada's consultation on draft recognition rules (Due 12-08),

http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf

Australia's National Profession Project,

<http://www.lawcouncil.asn.au/initiatives/national-practice.cfm>

Australia's- Foreign Lawyers and the Practice of Foreign Law,

<http://www.lawcouncil.asn.au/information/foreign-lawyers/practice-of-foreign-law.cfm>

Conference of Chief Justices' MJP Resolutions,

<http://ccj.ncsc.dni.us/LegalEducationResols.html>

International Bar Association's 2000 Resolution on "Recognition" of Foreign Lawyers' Qualifications,

[http://www.int-](http://www.int-bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf)

[bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf](http://www.int-bar.org/images/downloads/Standards%20and%20Criteria%20for%20Recognition%20of%20Qualifications%20of%20Lawyers%202001.pdf)

ABA CEELI, Globalization, Legal Education, GATS, and Recognition,

http://www.abanet.org/rol/publications/discussion_paper_legal_ed_globalization_2005.pdf



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To Read More About....



Lawyer Accountability (Discipline) Initiatives

Conference of Chief Justices, Resolution 2, In Support of Cooperation Among U.S. and European Disciplinary Bodies (Jan. 2009),

<http://ccj.ncsc.dni.us/2-ProposedCCBEResolution1-6-09.pdf>

CCBE, Standing Committee Resolution (February 2009)

ABA MODEL RULES FOR LAWYER DISCIPLINE, Rule 22 (2002),

<http://www.abanet.org/cpr/disenf/rule22.html>

Terry et al, *Transnational Legal Practice 2008*, 43 Int'l L. 943, 954-956 (2009),

http://www.personal.psu.edu/faculty/l/s/lst3/transnational_legal_practice_2008.pdf

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To Read More About...

Market Forces Including Outsourcing and Litigation Funding

ABA 20/20 Commission's "Issues Paper:"

<http://www.abanet.org/ethics2020/outsourcing.shtml> and

<http://www.abanet.org/ethics2020/alfposting.pdf>

Mary C. Daly & Carole Silver, Flattening the World of Legal Services? Ethical and Liability Minefields of Offshoring Legal and Law-Related Services, 38 Geo. J. Int'l L. 401 (2007)

Laurel Terry, The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms, 28 Northwestern J. Int'l L. & Bus. 527 (2008),
http://www.personal.psu.edu/faculty/l/s/lst3/terry_legal_world_is_flat.pdf

International Outsourcing of the Legal Profession, UC Berkeley (April 2008),
<http://www.law.berkeley.edu/centers/gcl/outsourcing/resources.html>

Off-Shoring Legal Services, Association of Professional Responsibility Lawyers Conference (May 2008)

Outside investment in litigation, e.g., Juridica, OmniBridgeway, CFI, Burford Advisors,

<http://www.juridica.co.uk/> and <http://www.burfordadvisors.com/index.html> and
<http://www.omnibridgeway.com/>



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To Read More About It...

By Laurel Terry

Global Legal Practice Resources Webpage:

<http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm>

Links to Publications by Topic:

<http://www.personal.psu.edu/faculty/l/s/lst3/>



Presentations Page:

<http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm>

SSRN page: <http://ssrn.com/author=340745>

Presentations and publications address:

the GATS, the impact of globalization on legal services,
ABS, MDPs, competition initiatives, the Bologna
Process, & outsourcing

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