

Memorandum

TO: State Supreme Courts and State and Local Bar Associations

FROM: American Bar Association Task Force on International Trade in Legal Services

DATE: February 4, 2012

RE: International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience¹

“From Main Street to Wall Street, lawyers of every practice area, every size of firm, and every jurisdiction are affected by globalization. It may involve a dispute between a foreign supplier and a local grocery store; it may be a testator's ownership of foreign real estate; it may be a company's efforts to sell its products in an emerging market like China. The list could go on and on, but the message is clear: this is not the legal profession we inherited from our parents.”²

I. INTRODUCTION

This memorandum recounts the experience of the State Bar of Georgia and the Georgia Supreme Court in adopting a regulatory regime to confront issues arising from globalization, cross-border practice and lawyer mobility. Georgia has assumed a leadership position in adopting rules that specifically address and regulate some of the various means by which lawyers from foreign countries may seek to perform services in that state. The Georgia experience provides lessons on how other state bars can generate a consensus to move forward on these issues.

II. WHAT PROMPTED GEORGIA TO ACT?

The Georgia experience is explained by the recognition across a broad cross-section of the bar that Georgia clients (and their Georgia lawyers) had business dealings across the globe. State Bar regulators thought it sensible to consider these developments before a regulatory crisis occurred, not after the fact. They wanted to consider proactively what regulations, if any, were necessary to protect the public (and also position the state to preempt potentially more intrusive national-level regulation at some point down the road). They also recognized that a sound

¹ Unless otherwise indicated, the views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Gary A. Munneke, *Managing and Marketing a Practice in a Globalized Marketplace for Professional Services*, 80 N.Y. ST. B. J. 39 (Sept. 2008).

regulatory system that addresses the challenges posed by globalization can enhance the state's business climate and attractiveness for foreign trade and investment.

A. Background: “Clients Travel and Lawyers Follow those Clients.”

Notwithstanding our current economic issues, the United States continues to be the world's largest national economy, both in terms of nominal gross domestic product (GDP) and purchasing power parity. The United States' economy represents approximately one-quarter of the former and one-fifth of the latter. It is also the largest trading nation in the world. Forty nine states and the District of Columbia have foreign exports in the billions. In the month of September 2011 alone, the United States exported approximately \$180 billion in goods.

This magnitude of cross-border commerce inevitably involves significant interaction with lawyers admitted outside the United States. Much of that interaction occurs long-distance via telephone, email, courier service and travel by U.S. lawyers abroad. Indeed, according to 2009 data (which are the most recent available), the United States exports approximately \$7.3 billion in legal services annually, and these exports contribute to a reduction in our trade deficit by approximately \$5.5 billion.³ Likewise, albeit to a much lesser extent, foreign lawyers also travel to the United States and increasingly have a physical and virtual presence in this country. Whether one sees the presence of foreign lawyers as a positive or a negative, it is a reality, and wherever global commerce is most robust, the number of visiting foreign lawyers will increase.

Like every other jurisdiction in the United States, Georgia is enmeshed with the global economy. Over 3600 foreign businesses from more than 60 countries have established operations in Georgia, including the U.S. headquarters of such notable names as Porsche Cars North America, Siemens, ING Americas, Philips Consumer Electronics, Ciba Vision, Intercontinental Hotels Group, Novelis, Munich Re and Mizuno. These companies directly employ approximately 194,000 Georgians and, by virtue of the ripple effect, indirectly generate jobs for many thousands more. Indeed, according to the Metro Atlanta Chamber of Commerce, foreign companies accounted for 20% of the metro area's new business activity in the last decade. Georgia's annual exports exceed \$29 billion, and the port of Savannah is the nation's fastest growing and fourth largest container port. The state actively recruits foreign international business, with the Georgia Department of Economic Development maintaining international offices in Brazil, Canada, Chile, China, Germany, Japan, Korea, Mexico, Israel, and the United Kingdom. At least 66 countries are represented in Atlanta by a consulate, trade office or bi-national chamber of commerce.

Lawyers are in the middle of all this activity, creating both regulatory challenges and economic opportunities. As observed by one legal commentator, “[c]lients travel, lawyers follow those clients, and this has an impact on legal practice and legal regulation.”⁴

B. An Alignment of Interests Between Regulators and Practitioners

Georgia was fortunate to have forward-thinking judges and bar leaders willing to tackle the issues arising from cross-border practice and lawyer mobility, as well as private practitioners

³ U.S. Int'l Trade Commission, *2011 Annual Report on Trends Tends in U.S. Services Trade*, Pub. 424, at 7-13 (Jul. 2011).

⁴ Laurel S. Terry, *Foreword, 2008 Global Legal Practice Symposium*, 27 PENN ST. INT'L L. REV. 269, 272 (2008).

willing to actively engage with them. The latter were Georgia lawyers who had observed cross-border mobility issues arise in their practices. Some of those issues were “outbound,” when representing Georgia companies abroad. But there were also “inbound” issues: foreign lawyers flying into (and promptly back out of) Georgia to negotiate deals or assist their clients with arbitrations seated in Georgia, foreign lawyers seeking to provide advice in Georgia on the laws of their home jurisdictions (but not Georgia law), Georgia-based multinational companies and foreign-invested companies seeking to employ foreign lawyers as in-house counsel to advise them on issues arising in connection with their global operations, and talented foreign lawyers seeking guidance on becoming qualified to practice law in Georgia and work with Georgia law firms. Georgia lawyers and their firms saw an opportunity to make their state a more attractive environment for international business by addressing these issues head-on.

At the State Bar, there was a strong sentiment that any foreign lawyers present in Georgia should be subject to the state’s regulatory systems. The regulators also saw regulatory gaps that needed to be filled.

They also recognized that many of the international trade agreements to which the United States is a party⁵ including the General Agreement on Trade in Services (GATS),⁶ contemplate increased scrutiny of restrictive regulations applied to providers of professional services. The agreement texts may pose serious challenges for the bodies charged with supervision and regulation of legal professionals worldwide.⁷ For instance, the GATS has obligated all World Trade Organization (WTO) member states, including the United States, to avoid regulation of professional services providers “more burdensome than necessary to ensure the quality of the service.”⁸ However, because no national regulatory regime of lawyer regulation now exists in the United States, this obligation is implemented at the state level. The application of these agreements to the offer and performance of legal services by foreign lawyers has proven to be challenging in this country because no national regulatory regime exists. Although the federal government could

⁵ The United States is currently party to free trade agreements with Australia, Bahrain, Chile, Columbia, Israel, Jordan, Korea, Morocco, Oman, Panama, Peru and Singapore, as well as the North American Free Trade Agreement (NAFTA), and the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). See <http://www.ustr.gov/trade-agreements/free-trade-agreements>. The NAFTA stipulates that the measures adopted or maintained by a party relating to cross-border trade in services of another Party should be given treatment not less favorable than its own service providers. North American Trade Agreement, Chapter 12, Part Five. (See <http://www.nafta-sec-alena.org/en/view.aspx?conID=590&mtpiID=143#A1202>).

⁶ The General Agreement on Trade in Services (GATS) is an addition to the agreement that created the World Trade Organization (WTO) and applies to cross-border services. The United States, including forty-four other countries, placed legal services on their Schedule of Specific Commitments in 1994, and therefore obligated themselves to further liberalize trade in services and reduce or eliminate existing limitations on market access or national treatment for those services to ensure domestic regulation measures do not create unnecessary barriers to trade. See Laurel Terry et al., *Transnational Legal Practice*, 42 INT’L LAWYER 833-61 (2008).

⁷ The trade agreements are directed to government action. But for limited areas, that means actions of the federal government. No agreements give foreign lawyers a private right of action against state bar regulators. Nevertheless, some foreign lawyers and officials have suggested existing “American” lawyer regulations are violative of these trade agreements and they may seek to address the violation through the dispute settlement provisions of the agreements or the WTO. To the extent that a state’s current rules do not recognize the reality of globalization or the legitimate need for clients and the public to have access to foreign lawyers and the rights of foreign lawyers from our trading partners to offer their services here, the state rules, are vulnerable to the complaints that they are inconsistent with the spirit, if not the text, of our trade agreements.

⁸ GATS Art. VI, §4.(b).

conceivably assert its treaty power to require state conformity to GATS rules,⁹ there is no political will to attempt such pre-emption at this time.

Nevertheless, critics of the state-based regulatory system claim “[t]here is no question that, in the long run, the American profession will be more and more at a competitive disadvantage answering clients’ global and international needs because of the Byzantine patchwork of regulations locally ... The solution is to replace our existing regulatory patchwork with a single national regulator and uniform rules of professional conduct.”¹⁰ This is already occurring in other countries with a federal system of government. For instance, the legal profession in Australia was traditionally regulated at the local level, but is now moving to a system of national regulation.¹¹ (It bears emphasizing that this is *not* the policy or view of the ABA, which is committed to the proven virtues of state-based judicial regulation). The State Bar of Georgia was determined to demonstrate that the critics of state-based regulation were wrong by taking steps to proactively address the regulatory issues arising from globalization, including the consideration of rules that govern the appropriate realm and conditions of practice by foreign lawyers.

We will turn to how Georgia organized a constituency to effect change later in this memorandum, but first it is helpful to briefly examine how globalization is affecting your own state.

III. Globalization and Your State

Georgia’s experience is not unique. Globalization – for better or worse – is a fact of life in *every* state in the U.S. Exports are now a vital part of every state’s economy. The enclosed **Appendix B** shows where each state was ranked in 2010 in terms of exports. As reflected in this Appendix, virtually every state in the U.S. exported more than \$1 billion of goods in 2010. Indeed, each state received even more money from exports than indicated in the enclosed chart because it focuses only on exports of goods and does not include services. We know that the U.S. exports more services than goods, but unfortunately, we do not have state-by-state figures that measure these services exports. Nor do these charts address the significant foreign investment activity in each state or matters involving our immigrant population.

There are many citizens in every state who are doing business with individuals and companies in other countries. Some of your citizens who are exporting goods and services are undoubtedly large corporations. But most of the exporting companies in your state will be mid-size and small businesses, which are the backbone of the U.S. economy.

In short, many clients in your state are going to need the services of foreign lawyers, and many lawyers licensed in your state will have occasions where, in the course of serving their clients, they will need to work with a foreign lawyer. One cannot assume that if a state has no policies on foreign lawyers, foreign lawyers will not come into that state. It is better for each state to consider the issues and adopt a policy so that foreign lawyers and their clients know what to expect and to ensure a system of accountability.

⁹ *Missouri v. Holland*, 252 U.S. 416 (1920).

¹⁰ Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, ABA J. 34, 39 (Nov. 2011) (quoting a New York practitioner).

¹¹ See Department of Attorney General and Justice, New South Wales, Australia, *National Legal Profession Reform – Background Information*, http://www.ipc.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/lpr_background_info.

IV. The “Foreign Lawyer Cluster”

There are at least five different ways in which foreign lawyers might physically want to practice in your state.¹² They are as follows:

1. **Temporary Transactional Practice** (sometimes known as “fly in-fly out” or FIFO): An example of FIFO practice would be an instance in which a foreign lawyer flies into your state for negotiations to buy products or services from one of the companies operating in your state, but without establishing a systematic or continuous presence in your state or holding themselves out as being admitted to practice in your state.
2. **Foreign-licensed In-House Counsel**: A client might want to bring one of its in-house counsel lawyers who is not licensed in a U.S. jurisdiction to the U.S. for a rotation, or perhaps a more extended stay, or simply for a single matter. For example, a company with extensive overseas sales might seek to have foreign lawyers on staff to ensure compliance with laws in their customers’ jurisdictions, or to protect its intellectual property, or simply to aid in communicating with counsel for prospective clients abroad.
3. **Permanent Practice as Foreign Legal Consultant**: A foreign lawyer might seek to practice in the U.S. as a foreign legal consultant (FLC). This individual would not (indeed could not) provide advice on the law of any U.S. jurisdiction (except on the basis of advice from a member of your state bar); or hold themselves out as a fully-licensed member of your bar. Rather, an FLC is entitled only to render legal advice regarding matters which are governed by international or non-U.S. law.¹³ Indeed, a law firm in your state might want to have an FLC among its lawyers. That way, clients in your state would not have to travel to a foreign country or pay a foreign lawyer to come to the U.S. in order to learn about their rights and obligations under foreign law.
4. **Temporary In-Court Appearance – i.e., Pro Hac Vice Admission**: A client might want its foreign-licensed counsel to appear as co-counsel in a case using the *pro hac vice* process. Such instances will be rare, but when they arise, they may be critical to a foreign company doing (or considering doing) business in your state. Examples may involve the enforcement of a foreign judgment or arbitral award or a dispute that turns on a point of foreign law incorporated into the parties’ contract. Of course, the foreign lawyer would have to associate with a member of the local bar and otherwise meet the requirements of *pro hac vice* admission.

¹² This memorandum focuses only on the ways in which persons offering or providing legal services while physically present in a state for any length of time can be identified and subjected to appropriate regulation. It does not seek to address what is perhaps an even larger and more difficult issue, namely, monitoring and regulating the provision of legal services without physical presence. In today’s “wired” world, it is likely that most cross-border legal services are performed through what are described as “Mode 1” under the GATS. Described from a U.S. perspective, GATS Mode 1 deals with legal products (such as a faxed or emailed legal opinion) inbound to the U.S. that crosses an international border.

¹³ Thirty-two jurisdictions in the United States provide for FLCs. Most allow FLCs to give advice on the law of the country in which he or she is licensed; however, ten jurisdictions – including Georgia – allow FLCs to provide legal advice regarding third-country law and international law, in addition to the law of the country in which they are licensed. See Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379 387-89 (2011).

5. **Full Licensure as a U.S. Lawyer:** Some foreign lawyers want the ability to become fully-licensed U.S. lawyers. Although California and New York have, by far, the most foreign lawyers who apply for admission and sit for a bar exam, more than 25 states annually have at least one foreign applicant, and often more, sit for a bar examination (and the identity of the states varies). The total number of persons educated outside the United States who applied to take a bar exam in all U.S. jurisdictions other than California and New York increased from about 100 per year -- an average of 111 applicants -- from 1992 through 1995, to 255 applicants per year from 2005 through 2007.¹⁴ It is very time-consuming for states to consider such applications on an ad hoc basis, and thus it is useful for a state to develop policies establishing the conditions under which it would allow a foreign-trained applicant to sit for a bar examination.

The foregoing list is sometimes described as the “foreign lawyer cluster.” The ABA has developed model rules on Items 1 and 3 above and is developing proposals on Items 2, 4, and 5.¹⁵ Four of the five elements in the foreign lawyer cluster are in place in Georgia. The fifth -- Foreign Licensed In-House Counsel -- is covered by proposed rules approved by the State Bar’s Board of Governors and presently pending before the Georgia Supreme Court.¹⁶ Other states have policies on some, but not all of these issues.¹⁷

¹⁴ *Id.* at 392.

¹⁵ The ABA Commission on Ethics 20/20 has been studying the impact of technology and globalization on professional conduct rules for lawyers in the United States. The Commission has already disseminated several draft recommendations relating to foreign lawyers that would: (1) extend the ABA Model Rule for Registration of In-House Counsel (which is separate from the Model Rules of Professional Conduct) to lawyers from foreign countries as well as other U.S. jurisdictions; (2) extend the ABA Model Rule on Pro Hac Vice Admission to lawyers from foreign jurisdictions; and (3) revise Rule 5.5 of the Model Rules of Professional Conduct to allow foreign lawyers to engage in temporary practice in U.S. jurisdictions, but with tighter restrictions than apply to lawyers licensed in other U.S. jurisdictions. See Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379, 380 (2011); Anna Stolley Persky, *Despite Globalization, Lawyers Find New Barriers to Practicing Abroad*, ABA J. 34, 39 (Nov. 2011). The ABA has also issued a Formal Ethics Opinion indicating that it is not a violation of Model Rule of Professional Conduct 5.4 for a U.S. lawyer to be a partner with, or share legal fees with, a lawyer licensed in a non-U.S. jurisdiction. See ABA Comm. on Ethics and Professional Responsibility, Formal Op. 01-423 (2001) (“Forming Partnerships with Foreign Lawyers”).

¹⁶ On foreign legal consultants, see Supreme Court of Georgia, Rules Governing Admission to the Practice of Law, Part E, Section 1 – 7 (<http://www.gabaradmissions.org/pdf/admissionrules.pdf>). With respect to admission of foreign lawyers to practice, see State of Georgia Board of Bar Examiners, Board to Determine Fitness of Bar Applicants, *Waiver Process & Policy Admission to Practice* (<http://www.gabaradmissions.org/pdf/waiverprocess.pdf>). On *pro hac vice* admission of foreign lawyers, see Uniform Rules, Superior Courts of the State of Georgia, Rule 4.4 ([http://georgiacourts.gov/files/UNIFORM%20SUPERIOR%20COURT%20RULES_Updated_09_29_11\(1\).pdf](http://georgiacourts.gov/files/UNIFORM%20SUPERIOR%20COURT%20RULES_Updated_09_29_11(1).pdf)). On temporary practice, see Georgia Rules of Professional Conduct, Rule 5.5(e) (http://www.gabar.org/handbook/part_iv_after_january_1_2001_-_georgia_rules_of_professional_conduct/rule_55_unauthorized_practice_of_law_multijurisdictional_practice_of_law/). A rule authorizing foreign-licensed in-house counsel has been approved by the Georgia State Bar’s Board of Governors and awaits approval by the Georgia Supreme Court.

¹⁷ See Carol A. Needham, *Globalization and Eligibility to Deliver Legal Advice: Inbound Legal Services Provided by Corporate Counsel Licensed Only in a Country Outside the United States*, 48 SAN DIEGO L. REV. 379, 399 (2011) (noting that “[k]ey reforms that at this point are gaining traction include the following: allowing lawyers licensed outside the United States to qualify for limited licenses as in-house counsel; broadening the scope of practice so that all foreign legal consultants are allowed to give legal advice related to third-country and international law; and allowing fly in, fly out practice while temporarily present in the host state”).

V. THE GEORGIA EXPERIENCE

The American Bar Association has long had policies in place to address the regulatory issues that arise from globalization and continues to adapt those policies to address the challenges of the 21st century.¹⁸ Nevertheless, as often said, “all politics are local.” Only the state supreme courts and state bars can effect change by adopting those policies (or adapting them to the needs of their own jurisdiction). As a practical matter, having a local constituency of practicing lawyers, law firm leaders, in-house counsel, and regulators to monitor developments and, where appropriate, advocate for change, is the most effective way to make it happen. Because the steps below worked well for Georgia, you might want to consider using a similar process in your state to address the impact of globalization and issues related to regulation of foreign lawyers.

Step 1 – Establishing a Supervisory Committee

In Georgia, the process began with the creation of a committee specially tasked with conducting a review and evaluation of the existing regulatory system for foreign lawyers. The makeup of this committee is critical. It must consist not only of lawyers from large multinational or multistate law firms who are routinely engaged in international business transactions and disputes, but also practitioners who might not be regularly involved in cross-border legal practice. They should all be interested in international matters and the world at large, however. Every segment of the State Bar that might have concerns about any proposed changes should be represented in order to give the ultimate product legitimacy.

In Georgia, this Committee is called “The Committee on International Trade in Legal Services” (ITLS). It consists of twenty members – a mix of lawyers from multistate firms, mid-size local firms, small firms (including a number of solo practices), non-urban areas, and corporate legal departments.¹⁹ Many past members of the committee remain active in a non-voting capacity as “advisors.” The State Bar’s Ethics Counsel serves as a staff liaison to the ITLS Committee, and a member of the State Bar’s Executive Committee serves as a direct liaison to the State Bar’s leadership.

Step 2 – Considering the Mission

The Committee should have a clear mission. For instance, the Georgia ITLS Committee has the following mission statement:

This special committee shall monitor the impact of international developments on the legal profession, including, but not be limited to the effect of, the General Agreement on Trade in Services (GATS), the North American Free Trade Agreement (NAFTA), other free trade agreements having an impact on delivery of legal services, changes

¹⁸ The American Bar Association has urged states to adopt rules allowing foreign lawyers to practice as foreign legal consultants (FLCs) without taking a U.S. qualification examination as well as allowing foreign lawyers to engage in temporary practice based on terms similar to the multijurisdictional rules in place for domestic lawyers. Thirty-one states have rules regarding FLCs, and six states have adopted provisions which permit foreign corporate counsels to work in-house within the U.S. A few states also allow foreign lawyers the right to admission *pro hac vice* to represent their clients in court or to waive in based on their expertise of their home country law.

¹⁹ The current roster of the Georgia International Trade in Legal Services Committee can be found at: <https://www.members.gabar.org/Custom/committees/default.aspx?g=SPEC>.

in the regulation of the legal profession in foreign countries that may have local impact, and all other events affecting the delivery of legal services across international borders. It shall consider these matters from both the perspective of outbound legal services delivered in foreign countries by member lawyers and inbound delivery of legal services in this State by foreign lawyers. The committee shall also consider any international issues as requested by, and make reports and recommendations concerning its activities to, the Executive Committee and the Board of Governors.

Step 3 – Educating Members of the Committee and Reviewing the Existing Regulatory Framework

In the short-term, the Georgia ITLS Committee worked to:

1. educate its own members to understand the issues and vocabulary surrounding globalization, cross-border practice and lawyer mobility;
2. review the state’s existing bar rules with respect to the five policy areas noted above (the “foreign lawyer cluster”); and
3. generally review the state’s existing regulatory system to ensure that it is responding to global realities while also serving to protect the public.

Step 4 – Communicating Recommendations to the Bar, Recognizing the Need for Education, and Locating Sources of Support

After the review process has been completed, rule changes that are the product of an informed and deliberative process and supported by a broad cross-section of the Bar can be recommended to bodies with rule-making authority, such as the state supreme courts. These rule changes should ideally start with addressing one or more elements of the “foreign lawyer cluster”: (1) temporary transactional “fly-in, fly-out” practice, (2) temporary litigation practice via *pro hac vice* admission, (3) practice as in-house counsel, (4) practice as a foreign law consultant, and (5) full admission as a licensed lawyer.

The Georgia ITLS Committee learned through experience that unless members of the bar are educated about the issues set forth in this memorandum, their initial response may be unfavorable. Here, education is key. In fact, most services performed by foreign lawyers in the United States relate wholly or in significant part to foreign law or interaction with a foreign jurisdiction. It is work that would otherwise be performed abroad, or worse, poorly by a lawyer who is not experienced in the foreign law or jurisdiction, or not at all. Moreover, foreign lawyers engaged in facilitating trade and investment or in resolving disputes arising from such activity are already present in every jurisdiction, temporarily if not permanently, whether or not they are acknowledged by regulatory authorities.²⁰ As cross-border legal practice continues to grow, foreign lawyer accountability and cooperation in lawyer discipline must be addressed.

²⁰ Furthermore, a jurisdiction’s hostility towards foreign lawyers might be seen as hostility towards foreign investment, and thus the business might simply move to another state.

Step 5 – Staying Ahead of the Regulatory Curve

Over the longer term, the ITLS Committee monitors global developments to ensure that state bar leaders know what is coming down the pike in this area. Instead of having every committee member master every topic, volunteers on the Georgia ITLS Committee tackle the learning curve on certain topics and “brief” fellow committee members on those issues.

There are powerful forces of change in the world of lawyer regulation and many developments in this country and abroad that should be monitored. To cite just one, in North Carolina legislation has been introduced that would permit non-lawyer ownership of law firms, as in Australia and the United Kingdom. The ITLS Committee can protect the State Bar and its leadership from being surprised by the appearance in this country of regulatory changes that first emerged overseas. Because many of the issues are complex, changes are being made with relatively little input from state regulators, bar association officials or lawyers. It is in everyone’s best interest that as many voices as possible are involved in the discussions and debates.

Step 6 – Providing a Voice for State Bars at the National Level

The free trade agreements, NAFTA, CAFTA-DR and GATS listed in footnote 4 of this memorandum impact the regulation of foreign lawyers when delivering legal services in this country, and yet they were negotiated with little input from the various state bars. A local ITLS Committee that is well-versed on issues relating to international trade in legal services can serve as an advocate for the interests of state bars as these treaties are implemented and in future treaty negotiations. For instance, in 2008, the Georgia State Bar President relied upon the Georgia ITLS Committee to prepare comments on a draft WTO document addressing certain principles of domestic regulation of professional services. Among other comments, the Georgia ITLS Committee stressed to the Office of the United States Trade Representative that “in considering the applicability of GATS disciplines to the States under our Federal system, the unique relationship of, and the distribution of powers between, the States and Federal Government should be taken into account in connection with the formulation of any GATS discipline intended to have general application.”²¹ Yet a single ITLS Committee, such as Georgia’s, is only a single voice; the message would be more powerful if local ITLS committees formed by several states were to join together and seek meaningful participation at the national level.

VI. RESOURCES

In order to ensure that the members of your ITLS Committee have a better understanding of the issues it is recommended that, at the outset, they be provided with a number of basic reference materials. These are included in **Appendix A**.

²¹ Letter from Georgia State Bar President Gerald M. Edenfeld to Ambassador Susan C. Schwab.

VII. CONCLUSION

Each state should consider establishing its own ITLS Committee to proactively address the challenges of globalization, cross-border legal practice, lawyer mobility, and bilateral and multilateral trade agreements affecting the regulation of legal services. If you would find it useful to hear directly from a state that has been tackling these issues head-on, please get in touch with the Georgia ITLS Committee. Its chair is Ben Greer (ben.greer@alston.com) and its staff liaison is William P. Smith III (bill@gabar.org). They would be happy to come to your group (virtually if not in person) and share their experience.

If you would like “benchmarking” data regarding the policies of other states in this area or their experiences with those policies, we encourage you to contact the ABA ITILS Task Force through its chair, Glenn Hendrix (glenn.hendrix@agg.com) or its staff liaison, Kristi Gaines (kristi.gaines@americanbar.org). The Task Force has been serving as a central data collection point and has useful resources it can share with you.

APPENDIX A

- **American Bar Association Commission on Ethics, 20/20 Memorandum Concerning Multijurisdictional Practice**
http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/priorities_policy.html
- **American Bar Association Section of Legal Education and Admission to the Bar: Report of the Special Committee on International Issues**
http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20090715_international_issues_report.pdf
- **ABA Policy**
 - ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants
<http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/FLC.pdf>
 - ABA Model Rule for the Temporary Practice of Foreign Lawyers
<http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/201j.pdf>
- **Foreign Legal Consultants (FLC)**
 - ABA Commission on Multijurisdictional Practice
FLC rules by state
http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.authcheckdam.pdf
 - ABA Policy Implementation Committee
Comparative chart of states with FLC rules and states without
http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/for_legal_consultants.pdf
 - State Implementation of ABA MJP Policies
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf
 - Comparative Analysis of United States Rule Licensing Legal Consultants
http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/silver_flc_chart.pdf
 - National Conference of Bar Examiners
Bar Examination and Admission Statistics for FLC
<http://www.ncbex.org/bar-admissions/bar-examination-and-admission-statistics/>
- **Admission by Motion**
 - National Organization of Bar Counsel
Rules for Admission of Foreign License/ Admission on Motion
http://www.nobc.org/Rules_for_Admission_on_Foreign_License/Admission_on_Motion.aspx

- ABA Policy Implementation Committee
Admission by Motion Rules
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/admission_motion_rules.authcheckdam.pdf
- State Implementation of ABA MJP Policies
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf
- **Temporary Practice - Foreign Lawyer FIFO (fly-in, fly-out) Rules**
 - State Implementation of ABA MJP Policies
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf
 - National Organization of Bar Counsel
Rules for Temporary Admission/ Pro Hac Vice
http://www.nobc.org/Rules_for_Temporary_Admission/Pro_Hac_Vice.aspx
- **Temporary Practice - Corporate Lawyers, Foreign and Domestic; In-House Pro Hac Vice Admission**
 - National Organization of Bar Counsel
Rules for Temporary Admission/ Pro Hac Vice
http://www.nobc.org/Rules_for_Temporary_Admission/Pro_Hac_Vice.aspx
 - ABA Policy Implementation Committee
Comparison of ABA Model Rule for Pro Hac Vice Admission with State Versions and Amendments since 2002
http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_comp.pdf
 - ABA Policy Implementation Committee
Pro Hac Vice Admission Rules by State
http://www.americanbar.org/content/dam/aba/migrated/cpr/mjp/prohac_admin_rules.pdf
 - State Implementation of ABA MJP Policies
http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/recommendations.authcheckdam.pdf
- **Admission Requirements**
 - National Conference of Bar Examiners
Bar Admission Offices
<http://www.ncbex.org/bar-admissions/>
 - National Conference of Bar Examiners
Comprehensive Guide to Bar Admissions
http://www.ncbex.org/assets/media_files/Comp-Guide/2011CompGuide.pdf

- **Affiliation Restrictions**

- ABA Formal Opinion 01-423

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APPENDIX B

State Export Data

State	2007	2008	2009	2010
United States	1,148,198,722,191	1,287,441,996,730	1,056,042,963,028	1,278,263,225,486
Texas	168,228,620,315	192,221,780,916	162,994,740,450	206,960,767,594
California	134,318,906,761	144,805,748,349	120,079,965,765	143,192,250,991
New York	71,115,801,477	81,385,735,231	58,743,030,056	69,695,634,935
Florida	44,858,050,410	54,238,239,529	46,888,006,761	55,364,760,752
Washington	52,089,477,068	54,498,049,919	51,850,856,743	53,353,413,033
Illinois	48,896,249,905	53,677,477,963	41,626,110,699	50,058,293,734
Michigan	44,555,349,131	45,135,506,345	32,655,333,884	44,768,187,457
Ohio	42,562,233,016	45,627,982,845	34,104,484,238	41,493,512,722
Louisiana	30,318,911,145	41,908,136,496	32,616,451,452	41,355,870,039
Pennsylvania	29,195,435,464	34,648,502,042	28,381,102,168	34,927,694,246
New Jersey	30,836,468,846	35,643,101,080	27,244,246,431	32,153,593,976
Georgia	23,365,865,349	27,513,961,882	23,743,041,911	28,949,552,263
Indiana	25,956,346,037	26,502,291,510	22,907,367,488	28,744,977,002
Massachusetts	25,351,439,596	28,369,195,305	23,593,277,279	26,303,601,826
Tennessee	21,864,789,113	23,237,724,782	20,484,299,844	25,942,724,022
North Carolina	23,355,818,431	25,090,543,442	21,792,953,156	24,905,063,910
Puerto Rico	18,078,284,156	19,961,283,553	20,937,064,690	22,784,088,942
South Carolina	16,575,455,732	19,852,520,521	16,488,111,133	20,328,687,951
Wisconsin	18,825,489,177	20,569,621,721	16,724,996,880	19,789,522,286
Kentucky	19,652,095,856	19,120,585,559	17,649,768,303	19,342,737,535
Minnesota	18,061,826,408	19,186,171,449	15,531,557,833	18,903,725,389
Oregon	16,530,875,039	19,352,130,713	14,907,405,450	17,671,067,072
Virginia	16,864,469,904	18,941,608,711	15,052,091,034	17,163,324,645
Connecticut	13,799,141,842	15,384,102,725	13,978,898,792	16,056,449,947
Arizona	19,227,791,370	19,784,243,422	14,023,462,270	15,635,757,846
Alabama	14,406,676,895	15,879,048,527	12,354,803,017	15,501,508,839

Utah	7,814,523,484	10,305,992,531	10,337,135,031	13,809,376,642
Missouri	13,483,588,154	12,852,324,415	9,522,229,617	12,925,559,774
Iowa	9,655,733,616	12,124,631,240	9,042,125,564	10,880,026,652
Maryland	8,948,636,829	11,383,050,502	9,225,376,423	10,163,267,062
Kansas	10,277,477,026	12,513,976,006	8,916,920,376	9,905,219,429
Mississippi	5,184,420,753	7,323,468,227	6,316,488,807	8,228,851,021
Colorado	7,352,198,821	7,712,606,567	5,867,265,731	6,726,706,628
West Virginia	3,987,020,782	5,643,487,491	4,825,570,207	6,449,180,362
Nevada	5,713,833,904	6,121,087,925	5,672,185,096	5,911,812,450
Nebraska	4,266,141,656	5,412,021,410	4,872,924,899	5,819,949,181
Oklahoma	4,579,067,887	5,076,531,187	4,414,915,717	5,353,190,640
Arkansas	4,886,844,975	5,775,976,750	5,266,978,589	5,218,646,154
Idaho	4,703,433,247	5,005,251,812	3,877,389,493	5,156,919,667
Delaware	4,024,183,349	4,898,437,003	4,311,773,339	4,965,544,823
New Hampshire	2,914,139,835	3,752,476,603	3,060,715,994	4,367,331,611
Vermont	3,684,920,270	3,697,411,932	3,219,270,656	4,277,417,496
Alaska	4,009,894,879	3,541,796,749	3,270,429,748	4,154,626,473
Maine	2,750,326,347	3,016,395,471	2,231,142,502	3,163,991,540
North Dakota	2,046,659,843	2,772,203,944	2,193,011,373	2,536,428,341
Rhode Island	1,648,709,556	1,974,431,973	1,495,522,447	1,949,146,488
Virgin Islands	808,339,747	2,747,339,175	1,217,003,134	1,898,505,274
New Mexico	2,585,121,373	2,782,906,663	1,269,535,234	1,540,970,873
Dist. of Columbia	1,082,135,647	1,195,906,725	1,090,543,044	1,500,660,263
Montana	1,133,672,004	1,394,600,906	1,053,312,395	1,388,777,953
South Dakota	1,509,876,310	1,653,712,654	1,010,960,601	1,259,394,822
Wyoming	802,170,915	1,081,014,094	926,141,589	983,287,911
Hawaii	560,071,275	959,607,734	563,059,688	684,045,484

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