

IN THE SUPREME COURT OF ARIZONA

PETITION FOR AMENDMENT TO SUPREME COURT RULES PURSUANT TO
A.R.S., SUP. CT. RULES, RULE 28

**Petition for Amendment to A.R.S. Sup.Ct.Rules, Rule 34 Regarding Applicant
Requirements and Qualifications for Admission to the Bar**

CONCORD LAW SCHOOL AT KAPLAN UNIVERSITY
Martin Pritikin (California SBN 210845)
Dean and Vice President
10100 Santa Monica Blvd. Suite 365
Los Angeles, CA 90067
Telephone: (323) 533-0002
martin.pritikin@kaplan.edu
www.concordlawschool.edu

I. Introduction

Concord Law School at Kaplan University (“CLS”) requests that this Court amend ARS Sup.Ct. Rules, Rule 34, to permit application to the bar not only by those who graduate with a juris doctor (JD) degree from a law school accredited by the American Bar Association (ABA), but also by those who graduate from an online law school approved by one of the six regional accreditors federally recognized by the Department of Education.

ABA rules limit schools to providing one-third of their program of legal education online. To date, only one of the 200-plus ABA schools has obtained a variance (to offer up to half of their program online). CLS is a fully online law school, and as such, is not eligible for ABA accreditation. But it is registered with the State Bar of California as a distance learning law school, and is regionally accredited by the Higher Learning Commission, a federally recognized regional accreditor, through Kaplan University.

When CLS opened its doors in 1998, it planned to focus on California, but discovered an unmet demand for accessible legal education nationwide. Today, nearly two thirds of CLS's JD students reside out of state, yet California's remains the only bar exam they may take. CLS seeks to broaden opportunities for its graduates and the clients they would serve.

CLS recognizes that many within the legal profession may be unfamiliar with online legal education and skeptical of its quality. CLS respectfully submits that the information contained herein will demonstrate that graduates of an online school can be as suited to sit for the Arizona bar exam as graduates of many ABA schools.

CLS admits a lower percentage of its applicants than nearly half of ABA schools. During the most recent administration of the California bar exam (by many accounts the most difficult in the nation) for which data is currently available, CLS graduates' first-time pass rates were within nearly one point of those of California ABA schools, and were a point *higher* than those of out-of-state ABA schools.

CLS's flexible online format makes law school accessible to those whose geography, work or family responsibilities, military service, or other circumstances prevent them from attending traditional campus-based institutions. Allowing CLS graduates to sit for Arizona's bar exam would create new opportunities for the state's citizens, as well as expand access to legal services in underrepresented areas. This is particularly important for Native Americans living on reservations within the state's borders, who are in great need of, but will have little access to, legal education--and thus legal services--without a fully online option.

To CLS's knowledge, there is only one other online law school approved by a federally recognized regional accreditor. The rule change should provide the state's residents with a needed online option without opening the floodgates to a myriad of applicants.

II. Factual Background

A. Arizona's Bar Admission Rules and Law Schools

Arizona's Rules Governing Admission to the Bar require that an applicant for bar admission, whether by examination or upon motion, be a graduate of an ABA law school. See ARS Sup.Ct.Rules, Rule 34 subsections (b)(1)(D) and (f)(1)(B)NMRA 15-103(B)(2).

Arizona is the sixth largest state by size but has only three ABA law schools--the University of Arizona James E. Rogers College of Law, Arizona State University Sandra Day O'Connor College of Law, and the Arizona Summit Law School. Only Arizona Summit has a part-time program. So for Arizona residents who, due to work or family commitments, cannot attend law school full time, Arizona Summit is their only option. And for any residents for whom Arizona Summit is too far to commute, they have no ABA option at all.

These circumstances create significant geographical disparities in access to legal education within Arizona. Over 1.6 million of Arizona's 6.7 million residents, or nearly a quarter, live in one of the 13 counties that does not contain a law school, and another million (16 percent) do not live in Maricopa County, where the only part-time law school program is

based.¹ Residents may live over 200 miles from any of the state’s law schools, and so would be forced to relocate if they wanted to have any chance of attending law school in-state.

These geographical limitations present barriers not only for potential law students but also for the clients they would represent. Arizona has a below-average number of lawyers to begin with: 1 for every 417 people, as compared to 1 for every 247 people nationwide.² But lawyers are not distributed evenly throughout the state. Remote areas without access to law schools tend to be the very areas that have an under-representation of lawyers. As in many states, Arizona’s law schools are located in its largest metropolitan areas (Phoenix and Tucson), which are also the most likely to have more lucrative employment opportunities. When students move near these campuses to attend law school, they are likely to remain there after graduation, or move to out-of-state economic hubs.

This disparity is particularly pressing for the roughly 300,000 Native Americans living on reservations in Arizona. Arizona’s largest reservations, and most of its Native American population, are well over an hour’s drive from the nearest law school. These communities suffer from higher rates of poverty and unemployment, and lower levels of educational attainment.³ They are less likely to become lawyers or have access to lawyers. As noted by a GWU Law School professor on the ABA’s Human Rights page:

[R]ural poverty intersects with race, reflected in even higher poverty rates in counties where Native Americans make up much of the population....A lack of

¹ See U.S. Census Bureau, <http://www.census.gov/quickfacts/table/PST045215/00> (visited Nov. 7, 2016). CLS is not providing supporting documentation to comply with the 20-page limit (not including proposed rule text) of ARS Sup.Ct.Rules, Rule 28, but has documentation of all statistics cited herein and will gladly provide it upon request.

² See *id.*; ABA National Lawyer Population Survey: Lawyers by State 2016, http://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2016.authcheckdam.pdf (visited Sep. 8, 2016) (2015 data). U.S.: 1,300,705 lawyers/321,418,820 population. Arizona: 16,155 lawyers/6,731,484.

³ See, e.g. Katherine Peralta, “Native Americans Left Behind in the Economic Recovery,” U.S. News & World Report, (Nov. 27, 2014), available at <http://www.usnews.com/news/articles/2014/11/27/native-americans-left-behind-in-the-economic-recovery> (visited Nov. 7, 2016).

legal resources more negatively impacts individuals living in poverty in rural communities because they do not have the resources to travel to larger communities and pay private attorneys employed by large law firms.⁴

An online law school can help level the playing field, so that someone's opportunity to become a lawyer--or have access to one--does not depend upon where they live.

Because CLS is only in possession of detailed information regarding its own program, CLS uses that data herein as an illustration of how a regionally accredited online law school can improve access while standing up to ABA law schools in terms of quality.

B. CLS History and Accreditation

Founded in 1998 as Concord University School of Law, CLS was the first wholly online law school in the country. CLS's mission statement is as follows:

Concord Law School at Kaplan University delivers an unrivaled legal education. Our intellectually rigorous programs prepare students to effectively advocate, making a positive impact. Our online curriculum allows students the opportunity to attend law school while staying in their communities and balancing work and family schedules.

CLS has graduated over 1,300 students from its four-year part-time Juris Doctor (JD) program, which enables graduates to become licensed in California upon passing the bar exam; and 800 students from its three-year non-licensure Executive Juris Doctor program.

CLS is registered with the State Bar of California and has its degree granting authority from that registration. When CLS first registered with the State Bar in 1998, it was designated as a correspondence law school (the only category then available besides fixed-facility). In 2008, when the State Bar assumed oversight for all law schools in California, it created--in recognition of the development of online learning--a new "distance learning" category. CLS was the first law school to apply to be registered in this category and has been so registered since 2008. California state accreditation is not yet available to online schools.

⁴ See Robin Runge, "Address the Access to Justice Crisis in Rural America," Human Rights Magazine Vo. 40 No. 3, available at http://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america.html (visited Oct. 30, 2016).

In 2007, CLS formally merged into Kaplan University (KU), which offers online and campus-based degree, diploma, and certificate programs. KU is accredited by the Higher Learning Commission (HLC), one of six federally recognized regional accreditors in the United States.⁵ The merger of CLS into KU made CLS the first online law school to be part of a regionally accredited institution of higher education. HLC accredits over 1,300 institutions, including prestigious schools like the University of Michigan and University of Notre Dame, as well as two ABA-accredited standalone law schools (Western Michigan University Thomas M. Cooley School of Law and John Marshall Law School in Chicago).⁶ To CLS's knowledge, there are four other online law schools, all in California, but only one of them is part of an institution accredited by a federally recognized regional accreditor--St. Francis School of Law, which is part of Baker College, accredited by the HLC.

HLC recently concluded its site visit report of KU and determined that it should remain accredited through 2026 and be permitted to select the "open" pathway for future reaccreditation⁷--an option reserved for institutions demonstrating the highest levels of quality and compliance and a notable achievement for a primarily online institution.

C. Accessibility

CLS's flexible online format expands access to law school for those whose work or family responsibilities, geography, or other circumstances preclude moving or commuting to attend at a traditional campus-based institution. Students can access CLS's online learning platform from their home or office and, with limited exception, can conduct their studies on

⁵ The HLC is an independent corporation founded in 1895 as one of six regional institutional accreditors in the United States. HLC accredits degree-granting post-secondary educational institutions in 19 states, including KU's home state of Iowa. It is recognized by both the U.S. Department of Education and the CHEA. HLC accredits approximately one-third of U.S. regionally accredited institutions. See <https://hlcommission.org/About-the-Commission/about-hlc.html> (visited Aug. 14, 2016).

⁶ See <https://www.hlcommission.org/Directory-of-HLC-Institutions.html> (visited Aug. 16, 2016).

⁷ See Letter from Higher Learning Commission, August 19, 2016 (on file with author).

weekends, evenings, or whenever time is available. Several recent CLS graduates completed a portion of their law studies while on active duty in Afghanistan and Iraq.

Because of the benefits of this flexible format for working adults, the paradigmatic CLS student is not a 22-year-old recent college graduate, but rather a mid-career professional with a spouse and/or children seeking to switch careers or advance in an existing one. The median CLS JD student is 43 years old, a majority are female, and 43 percent are racially or ethnically diverse.⁸ The typical CLS student is not someone who tried but could not get admitted to an ABA law school. Rather, he or she is someone who never would have gone to law school if ABA schools were the only option.

CLS also expands access to law school by making it affordable. CLS tuition is \$9,984 per year, or \$39,936 total for its four-year part-time JD program.⁹ The average cost of a three-year full-time program is \$125,955 (215% higher) at ABA private schools, \$110,577 (177% higher) for non-resident tuition at ABA public schools, and \$71,637 (79% higher) for resident tuition at ABA public schools.¹⁰ Even within Arizona, the average resident program tuition is \$98,982 (148% higher), and non-resident tuition is \$119,202 (198% higher).¹¹

CLS fills a niche the ABA currently does not. The ABA guidelines dictate that no more than 15 units can be earned via distance learning, and then only after students have completed a full year of law school.¹² To date, only one ABA law school-- Mitchell-Hamline in Minnesota--has obtained a variance to offer a JD program that is 50 percent

⁸ See CLS 2016 Survey of Student Demographics (on file with author).

⁹ See <http://www.concordlawschool.edu/Tuition.aspx> (visited Sep. 29, 2016).

¹⁰ See <http://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> (visited Aug. 14, 2016).

¹¹ See <http://www.abarequireddisclosures.org/> (visited Sep. 8, 2016). For Arizona Summit, which has separate part- and full-time tuition, part-time tuition for 4 years was utilized.

¹² See ABA 2016-2017 Standards and Rules of Procedure for Approval of Law Schools, Standard 306(e)-(f), http://www.americanbar.org/groups/legal_education/resources/standards.html (visited Aug. 15, 2016).

online.¹³ However, even the Mitchell-Hamline hybrid program requires students to incur the time and expense of travelling to their campus for the first and/or last week of each semester,¹⁴ limiting its utility to students with geographical or work restrictions. The cost of Mitchell-Hamline's hybrid online program is the same as its traditional campus-based part-time program--\$14,154 per term,¹⁵ or \$113,320 in total, nearly three times the cost of CLS.

As with the increased accessibility resulting from the online format, CLS's lower tuition benefits not only students but the clients they would serve. Because CLS students tend to graduate with less debt, they have more flexibility to take lower-paying public interest jobs or integrate more pro bono or low bono representation into their practices. Affordable legal education promotes affordable legal services, a notable public benefit.

D. Admissions Standards

Contrary to the popular image of online institutions that will accept anyone who applies, CLS has a selective admissions process. Before even submitting an application, potential applicants are interviewed by admissions advisers who help determine if the demanding online format may be a good fit for the individual applicant based on their learning style and circumstances. CLS generally requires a 3.00 undergraduate GPA, although exceptions are sometimes made based upon a holistic review of the applicant's file by the CLS Admissions Committee, particularly where the applicant has post-graduate study.¹⁶ The following comparative data shows that Arizona's only in-state school with a part-time program (Arizona Summit) has lower UGPA statistics than CLS:

¹³ See Mitchell-Hamline website, <http://mitchellhamline.edu/academics/juris-doctor-program/> (visited Aug. 14, 2016).

¹⁴ Id.

¹⁵ Id.

¹⁶ See http://www.concordlawschool.edu/Admissions_Requirements.aspx (visited Aug. 15, 2016).

Entering Student Undergraduate GPA 2015¹⁷				
School	U. of Arizona (FT)	ASU (FT)	Az. Summit (FT/PT)	CLS (PT)
75th percentile	3.68	3.80	3.34 / 3.36	3.57
50th percentile	3.51	3.63	2.88 / 2.85	3.14
25th percentile	3.22	3.39	2.54 / 2.46	2.78

Although CLS does not require students to take the Law School Admissions Test (LSAT) as a condition to admission,¹⁸ CLS does require every applicant to take a 40-question online admissions test that mimics the substance and format of the LSAT.¹⁹ Between mid-2013 and mid-2016, 1,282 out of 3,016 applications failed to meet this minimum score, allowing just 57.5 percent of CLS applicants to move forward to a final review by the Admissions Committee. According to 2015 data, 88 ABA law schools--43 percent of the total--admitted a higher percentage of applicants.²⁰ This total includes Arizona Summit, which in 2015 admitted 73 percent of its applicants.

E. Program Rigor and Requirements

CLS's online program is a far cry from the correspondence schools of old. It is rigorous and dynamic, providing many benefits formerly thought possible only on a campus.

CLS's program requires students to complete 92 credit hours, whereas the ABA requires only 83.²¹ California rules mandate that CLS students complete at least 864 hours of

¹⁷ For ABA data, see

http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_fall_aq_matriculant_applicant_and_credential_information.xlsx (visited Nov. 7, 2016).

¹⁸ Earlier this year, University of Arizona made headlines when the Law School Admissions Council indicated it might expel the school for accepting students who took the GRE rather than the LSAT, but relented after nearly 150 law school deans wrote a letter in support of Arizona's experimentation. See <https://bol.bna.com/arizona-law-school-dean-on-accepting-gre-applicants/> (visited Aug. 16, 2016).

¹⁹ See http://www.concordlawschool.edu/Admissions_Requirements.aspx (Aug. 15, 2016).

²⁰ See note 17, *supra*.

²¹ See ABA Standards, Interpretation 304-4, available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_standards_chapter3.authcheckdam.pdf (visited Sep. 28, 2016).

preparation and study a year for four years, or 3,456 hours total.²² In practice, CLS students complete about 20 percent more than that.²³ The ABA, by comparison, requires that students engage in at least 58,000 minutes, or about 967 hours, of instruction time.²⁴ Even assuming two hours of study for every hour of class, that is still only 2,901 hours in total.

The required curriculum at CLS includes all of the MBE-tested subjects and other subjects tested on the California bar exam.²⁵ Much like traditional law schools, CLS requires its JD students to take a skills course in the first year, as well as courses in legal research, legal writing, and professional responsibility in the upper division; makes for-credit externship opportunities available so that students can gain real-world practical experience; facilitates student participation in writing competitions; and even enables students to travel to compete in moot court competitions against ABA schools.²⁶ Over two dozen electives are offered, including experiential courses such as Contract Drafting, Oral Argumentation and Advocacy, ADR and Technology, and Patent Litigation.²⁷ Students can also earn credit for participating in a campus-based Advanced Advocacy course offered through Mitchell-Hamline in Minnesota. And CLS expects to announce a new clinic and incubator program in early 2017.

²² See Guidelines for Unaccredited Law School Rules, 5.3.(C)(1), available at http://r.search.yahoo.com/_ylt=A86.J7ufsbFXVHAAZjonnIIQ;_ylu=X3oDMTEyYXVnaXM3BGNvbG8DZ3ExBHBvcwMyBHZ0aWQDQjI0MjdfMQRzZWMDc3I-/RV=2/RE=1471291936/RO=10/RU=https%3a%2f%2fadmissions.calbar.ca.gov%2fPortals%2f4%2fdocuments%2fEducation%2fUnaccredited_Law_School_Guidelines.pdf/RK=0/RS=BsAcB9aERF75j9PCNi3DEqv9hTE- (visited Aug. 15, 2016).

²³ CLS internally requires that coursework involve 45 hours of study and preparation per credit, which is equivalent to 4,140 hours over the course of the 92-credit program.

²⁴ See ABA Standard 304(b), http://www.americanbar.org/groups/legal_education/resources/standards.html (visited Aug. 15, 2016). The Standard assumes that students will spend roughly two hours of out-of-class study for every hour of instruction time.

²⁵ See http://www.concordlawschool.edu/Juris_Doctor_Curriculum.aspx (visited Aug. 15, 2016).

²⁶ See *id.*

²⁷ *Id.*

The live online classes, which enable two-way real-time discussions, accommodate what is effectively Socratic dialogue, with professors posing questions via audio or video to students who respond via audio or text chat; discussion of assigned cases; problem solving; simulated oral arguments; or student presentations. CLS requires that students attend at least 80 percent of live classes, which generally occur once or twice a week, or watch archives for those in which they cannot participate synchronously.²⁸

Unlike professors at ABA law schools, who often make themselves available outside of class only for several fixed office hours per week, CLS professors respond to student questions essentially around the clock via instant message, email, or telephone. Some even conduct videoconferences. Standard email response time is less than 24 hours.

Doctrinal courses at CLS generally utilize the same casebooks used in ABA schools. The reading load is substantial, and students are frequently tested on their understanding of the material, in both multiple choice quiz and classic law school “issue spotter” essay formats. Students brief cases and are trained in legal analysis. Professors grade and provide written feedback on student work, as much as (or likely more often than) at ABA schools. The standard turnaround time for grading and feedback on student essays is under five days. Sections sizes are generally capped at 60 students per doctrinal course, 45 students per first-year skills course, and 30 students per upper-division writing courses and electives.

Unlike many ABA law schools that grade students on a “curve,” CLS grades each student based on their absolute, not relative, performance. As stated on its website, CLS “generally grades examinations using standards similar to those employed by the Committee of Bar Examiners of the State Bar of California.”²⁹ CLS faculty engage in grading calibration sessions bimonthly to help ensure that their grading reflects those standards, and attend bar exam grading calibration sessions conducted by the State Bar of California itself.

²⁸ See

http://catalog.kaplanuniversity.edu/Juris_Doctor_Grade_Scale_Exams_and_Retakes.aspx (visited Aug. 15, 2016).

²⁹ Id.

CLS's grading standards are stringent. In the first year, students must achieve at least a “C” (2.0), which denotes proficiency, in each class. If students earn even a single C-, they will not have satisfactorily completed enough credit hours to be certified to sit for the required First Year Law Students’ Exam (FYLSE) and move on with their studies.³⁰

F. Faculty

Throughout its history, CLS has featured distinguished leaders. Its second dean, Barry Currier, is now the Managing Director of the ABA’s Section on Legal Education and Admissions to the Bar. Its current dean is a *magna cum laude* graduate of Harvard Law School, who previously spent 12 years as a professor and senior administrator at an ABA school. Its Associate Dean for Administration is a graduate of UC Berkeley School of Law.

All CLS faculty--including those teaching for well over a decade--participate in a Peer Evaluation System (PES), in which other professors assess their teaching, grading, and quality and timeliness of responses to student questions. Students also have an opportunity to provide feedback regarding their professors and courses. Professors are encouraged to, and do, publish scholarly articles and textbooks and speak at and attend conferences.

Each full-time faculty member is a graduate of an ABA-accredited law school and is licensed to practice law, and some hold distinguished positions in law and government. For example, Professor James Dodge is the head of the Illinois Legislative Reference Bureau. The ranks of adjunct faculty include not only professors from ABA-accredited schools, but also experienced practitioners, some of whom hold multiple advanced degrees. For example, Terry Watt, who teaches several intellectual property electives, holds not only a JD but an MBA in finance, a PhD in geophysics, and a Master’s in statistics from Princeton.

G. Student Life

CLS's “campus” is its learning management system (“LMS”), developed by a technology company called eStream in partnership specifically for CLS. The platform has since been utilized by other schools as well, including Loyola University of Chicago for its

³⁰ See *id.*

LL.M in Health Law. It allows students to access all course materials (other than textbooks), video lectures, quizzes, interactive exercises, and live lectures. Students also use the platform to upload essay assignments for grading, participate in discussion boards, and track their course progress and view posted grades. Professors use the LMS to access and grade student written work, and faculty and administrators use it to track student performance. CLS offers electronic access to Westlaw, HeinOnline, and Kaplan University’s extensive library, without having to pass through the cost of an expensive physical facility to students, and a full time faculty member serves as Associate Dean of Information Services.

CLS students have participated in the nationwide Law School Survey of Student Engagement (LSSSE) biannually since 2005. With the exception of CLS and a few Canadian schools, the 25,000-plus participants are all from ABA schools. Per the most recently available data (2015), on important metrics--including ones that would seemingly favor traditional schools--CLS students responded more favorably than those in designated “top tier” schools, “peer” schools (by size), and the overall survey pool:

2015 Law School Survey of Student Engagement³¹ (a 1-4 scale unless indicated)

Metric		CLS	“Top Tier”	Peer Schools	All Schools
Asked questions in class or contributed to class discussions	1L	2.98	2.79	2.75	2.81
	2L	3.02	2.88	2.85	2.88
	3L	3.19	2.81	2.83	2.88
	4L	2.89		2.97	3.00
Received prompt feedback (written or oral) from faculty on your academic performance	1L	2.94	2.53	2.56	2.60
	2L	3.12	2.47	1.45	2.48
	3L	3.33	2.44	2.44	2.49
	4L	3.14		2.36	2.40
Satisfied with academic advising and planning	1L	3.35	3.03	2.88	2.93
	2L	3.28	2.87	2.70	2.74
	3L	3.33	2.72	2.65	2.68
	4L	2.92		2.65	2.66
Quality of relationships with faculty members (1=unavailable, unhelpful, unsympathetic; 7=Available, helpful, sympathetic)	1L	5.69	5.62	5.51	5.55
	2L	5.45	5.48	5.41	5.44
	3L	6.00	5.49	5.34	5.43
	4L	5.64		5.32	5.31

³¹ See 2015 Law School Survey of Student Engagement Data (on file with author).

Law school experience contributed to thinking critically and analytically	1L	3.55	3.50	3.45	3.46
	2L	3.67	3.44	3.38	3.38
	3L	3.81	3.38	3.35	3.36
	4L	3.59		3.35	3.34
Law school experience contributed to writing clearly and effectively	1L	3.28	3.37	3.25	3.26
	2L	3.34	3.16	3.15	3.14
	3L	3.74	3.16	3.13	3.15
	4L	3.47		3.17	3.13
Law school experience contributed to developing legal research skills	1L	2.88	3.38	3.32	3.33
	2L	3.17	3.07	3.16	3.15
	3L	3.74	3.10	3.17	3.17
	4L	3.72		3.17	3.11
Law school emphasized encouraging the ethical practice of law	1L	3.14	3.20	3.24	3.28
	2L	3.39	3.11	3.15	3.20
	3L	3.56	3.09	3.10	3.16
	4L	3.52		3.23	3.18
Evaluation of entire law school experience	1L	3.34	3.33	3.29	3.28
	2L	3.43	3.26	3.18	3.17
	3L	3.56	3.19	3.12	3.13
	4L	3.30		3.08	3.08
If you could start over again, would you go to the same law school you are now attending?	1L	3.45	3.39	3.34	3.32
	2L	3.53	3.29	3.19	3.16
	3L	3.56	3.18	3.09	3.07
	4L	3.24		3.09	3.07

H. Student Outcomes

Because CLS operates as a registered law school with the State Bar of California, its JD students are required to take and pass the California FYLSE within three administrations in order to receive credit for coursework taken after the first year. This helps ensure students do not spend an inordinate amount of time and money pursuing the JD degree if they cannot demonstrate a reasonable likelihood of passing the California bar exam.³² At ABA schools, by contrast, marginally qualified students may spend three or four years and incur well over \$100,000 in debt before they face their first regulatory hurdle via the bar exam itself.

³² CLS students' historical first-time pass rate on the FYLSE is about 32 percent, and its overall pass rate (including repeat attempts) is about 49 percent. See http://www.concordlawschool.edu/First_Year_Law_Students_Exam.aspx (visited Aug. 15, 2016). For students with a CLS GPA of 3.0 or higher, the pass rate is about 80 percent. *Id.*

During the most recent administration of the California bar exam for which results are available, the average first-time pass rate for in-state ABA schools was 47.5 percent,³³ whereas the CLS rate was 46.4 percent³⁴--just 1.1 points behind. CLS graduates did *better* than graduates of out-of-state ABA law schools as a whole, whose first-time pass rate was only 45.4 percent, as well as all takers, whose overall first-time pass rate was 44.7 percent.³⁵

Some may assume that even if graduates of unaccredited law schools can pass the bar, they will commit ethical violations at a higher rate, and so pose a consumer protection risk. The data regarding CLS does not bear out that assumption. Although precise figures are difficult to come by, utilizing disbarment and suspension data reported in the Annual Discipline Reports published by the State Bar of California for 2002-2015 (the period during which CLS graduates have been licensed), the imputed disbarment rate for California attorneys is 0.77 percent, and the overall discipline rate is 2.71 percent.³⁶ Among the nearly 500 CLS graduates whose profiles are available on the State Bar of California website, zero had reported disbarments; one had a pending case against him, and twelve others had suspensions (all but one of which were administrative actions for CLE or bar dues noncompliance), for an imputed discipline rate of 2.59 percent.³⁷

³³ See “State Bar Announces Results for February 2016 California Bar Examination,” May 13, 2016 [Bar Results],

<http://calbar.ca.gov/AboutUs/News/ThisYearsNewsReleases/201625.aspx> (Aug. 15, 2016).

³⁴ See Letter from State Bar of California re February 2016 Bar Exam Results (on file with author). CLS graduates’ historical first-time pass rate is 35 percent, and their overall pass rate is 52 percent. See http://www.concordlawschool.edu/Bar_Exam.aspx (visited Aug. 15, 2016). California’s bar exam is the most difficult in the nation. See <http://witnesseth.typepad.com/blog/2013/04/the-most-difficult-bar-exams.html> (visited Aug. 14, 2016). If CLS graduates were permitted to take the bar exam in other jurisdictions, where overall pass rates are higher, their pass rates would likely be higher as well.

³⁵ See Bar Results, *supra*. Unaccredited registered online schools outperformed fixed-facility California-accredited law schools by 100 percent--44 percent versus 22 percent. *Id.*

³⁶ See California Attorney Discipline Data 2002-2015 (on file with author) (Out of 165,952 California attorneys in 2015, 1283 had been disbarred and 3216 had been suspended).

³⁷ See Concord Law School Graduate Discipline Data 2002-2015 (on file with author).

In terms of employment outcomes, it is difficult to perform a direct comparison: CLS first began collecting the level of detail required by NALP and the ABA earlier this year, and will not have full data until mid-2017. However, a bi-annual KU alumni survey conducted in 2016 indicated that CLS graduates from 2015-16 reported an overall employment rate of 75 percent.³⁸ According to ABA data from the Class of 2015 (the most recent year available), there were at least 19 schools, or 9 percent of the total, which reported that 75 percent or fewer of their graduates were employed ten months after graduation.³⁹ The overall employment rate for all ABA law schools for 2015--including part-time, short-term, and non-legal work--was 86.7 percent.⁴⁰ The average reported post-program income of CLS's JD graduates was \$97,357, and was \$101,143 for those reporting being in a job related to their program of study.⁴¹ For ABA schools, the national reported median salary for 2015 was \$64,800, and the mean was \$83,797.⁴² CLS graduates do tend to be older and have more work experience, but are burdened by the stigma associated with online learning and regulatory barriers dramatically limiting the number of jurisdictions in which they can practice as licensed attorneys.

Statistics do not always tell the entire story. Below are just a few examples of what CLS alumni have gone on to accomplish (including some who have managed to obtain bar

³⁸Kaplan University Alumni Survey 2016, page 22 (on file with author) (separate employment rate data for JD and EJD students is not available).

³⁹ See ABA Section on Legal Education and Admissions to the Bar, Employment Summary Report (<http://employmentsummary.abaquestionnaire.org/>) (visited Aug. 2015). ABA figures were calculated by dividing the total number of graduates reported as employed "above the line" (i.e., excluding school-funded positions), divided by the total graduates.

⁴⁰ See

<http://www.nalp.org/uploads/Membership/EmploymentfortheClassof2015SelectedFindings.pdf> (visited Aug. 17, 2016).

⁴¹Kaplan University Alumni Survey, page 32.

⁴² See

<http://www.nalp.org/uploads/Membership/EmploymentfortheClassof2015SelectedFindings.pdf> (visited Aug. 17, 2016).

admission in jurisdictions outside California through individual petition or by garnering the requisite number of years in practice):

- Michelle Becker ('11) is a special education attorney with her own practice. She works as a court-appointed special advocate for children in foster care and does pro bono work for the Alliance For Children's Rights.
- Snigdha Ghoshal ('11) has her own immigration law practice in Austin, Texas. She does pro bono work for American Gateways, an organization that provides low-cost legal services and education for immigrants and refugees in central Texas.
- Adrian Longacre ('04) is in private practice with a majority of his work in criminal defense, often for the state public defender in Wisconsin. The Wisconsin Pro Bono Society recently recognized him for his work in the community.
- Dwight Kealy ('12) has his own practice in insurance law and has written several books that have been approved for continuing education credit by the Departments of Insurance in California and Oregon. He received the Wiley W. Manuel Award for Pro Bono Legal Services from the State Bar of California.
- Douglas DiSabato, ('07) serves as the Grand Isle County State's Attorney in Vermont.
- Conan Higgins, ('10) is an attorney who founded TSI Enterprises, an international firm specializing in business law. He has also served as Vice-Chair on three ABA committees.

III. Argument

A. Arizona residents would benefit by expanding access to the bar

Allowing graduates of online law schools that are approved by a federally recognized regional accreditor to sit apply for Arizona's bar promotes the public good, both in terms of the graduates who would practice in the state and the clients they would represent.

Unlike a fixed-facility law school, an online school, no matter its quality, cannot achieve ABA accreditation. Yet an online law school like CLS appeals primarily to those who otherwise would not have the opportunity to go to law school at all without a fully online option, even if they were otherwise qualified to attend an ABA school. They often have job or family commitments that preclude them from taking three or four years to attend

law school full-time. For many, even part-time evening school is not an option, not only because most ABA law schools (including two of Arizona's three) don't offer such programs, but because the students don't live within commuting distance of one. For working professionals, homeowners, and those with children with established ties at school and in their community or reservation, picking up and moving to be near a brick-and-mortar school is not a realistic option. By allowing graduates of a regionally accredited online law school like CLS to sit for the bar exam, Arizona is creating more educational opportunities for the millions of residents that don't live near a campus-based part-time law school.

Even more important is the boon that allowing these graduates to practice in Arizona would be for the state's residents. Given that online students will tend to come from less populated regions that are not near fixed-facility law schools (which cluster in metropolitan areas), they are more likely to remain in those areas after graduation and represent the populace there. Students who move to metropolitan areas to be near traditional law schools, by contrast, are less likely to move back after graduation and serve underrepresented populations. Moreover, because online tuition will tend to be lower, its students tend to graduate with less debt, providing more financial flexibility to represent lower income clients or otherwise pursue less lucrative public interest positions.

The need for access to affordable and accessible legal education--and thus affordable and accessible legal services--carries particular force with regard to the state's Native American population, where poverty and geography intersect to impede access. In addition, attending law school online could enable Native Americans to pursue a legal education without the disruption of leaving their reservations or communities.

B. Regional accreditation ensures quality while avoiding "floodgate" concerns

CLS is not proposing that graduates of any non-ABA law school, or any online law school, be permitted to sit for the New Mexico bar exam immediately upon graduation. Rather, CLS proposes that the state still require that an online law school, which cannot be

accredited by the ABA, at least be recognized by or be part of a larger institution recognized by one of the six federally recognized regional accreditors, the best available imprimatur of quality. While these accreditors' rules may not be identical to those of the ABA, they will invariably ensure minimum standards of quality, accountability, and consumer protection.⁴³ Federal recognition of these accreditors means that they are "recognized by the Secretary [of Education] as reliable authorities concerning the quality of education or training offered by the institutions of higher education or higher education programs they accredit."⁴⁴

To CLS' knowledge, there is only one other online law school that is part of an institution approved by a federally recognized regional accreditor--St. Francis School of Law, a California-based non-profit law school that is part of Baker College, accredited by the HLC. Founded in Fall 2011, its first graduates sat for the bar exam in July 2016, and so pass rate data is not yet available. However, St. Francis is clearly a small school: in 2015, only 12 students sat for the FYLSE, eight of whom passed.⁴⁵ Thus, concerns that the proposed rule change would "open the floodgates" to a deluge of bar applications from non-ABA law school graduates should be avoided, as online students located out-of-state are unlikely to flock to Arizona merely because they can take the bar exam there.

Of course, CLS is not asking that graduates of regionally accredited online law schools be given carte blanche to start representing clients in New Mexico the day they graduate. The bar exam itself serves as an important filter, and applicants must still undergo and pass the character and fitness screening and meet all other admission requirements. CLS is merely asking that its graduates and those of any similarly situated schools be permitted to

⁴³ See, e.g., <http://policy.hlcommission.org/Policies/criteria-for-accreditation.html> (visited Nov. 7, 2016).

⁴⁴ See http://www2.ed.gov/admins/finaid/accred/accreditation_pg6.html (visited Nov. 8, 2016). For a list of federally recognized regional accreditors of graduate and post-graduate degree programs, see <http://ope.ed.gov/accreditation/Agencies.aspx> (visited Nov. 8, 2016).

⁴⁵ See <http://admissions.calbar.ca.gov/Examinations/Statistics.aspx#statsFYX> (visited Nov. 8, 2016).

sit for that exam upon graduation, along with the graduates of 200-plus ABA law schools whose graduates can sit for it regardless of their school’s individual characteristics.

C. ABA accreditation is not a sufficient--or sufficiently exclusive--indicia of quality to preclude graduates of online schools from sitting for the bar

By allowing only graduates of ABA law schools to sit for its bar exam, Arizona, like most states, has essentially delegated the determination of a law school’s quality to the ABA. Recent evidence raises doubt that ABA accreditation alone is a sufficient guarantee of a law school’s quality. In June 2016, The National Advisory Committee on Institutional Quality and Integrity (NACIQI) voted to recommend that the U.S. Department of Education suspend the ABA's ability to accredit new members for a year, citing its failure to implement student achievement standards or probationary sanctions and audit process deficiencies.⁴⁶

Due to ABA rules, wholly online school like CLS are ineligible for ABA accreditation, and will likely remain so for the foreseeable future. On the merits, though, CLS's quality is comparable to, if not exceeds, that of a number of ABA law schools whose graduates may already sit for Arizona’s bar exam. As discussed above, CLS's admission criteria are arguably more selective than more two out of five ABA schools on average, including one of Arizona’s three ABA schools. It requires at least as many hours of study if not more than most ABA schools, and includes an array of required courses that is more comprehensive than most. Its method of interactive instructional delivery promotes critical thinking, skills building, and professional development comparable to that available at campus-based institutions. Its good standing and non-curved grading standards are more

⁴⁶ See Paul Fain, “Accreditor on Life Support,” Inside Higher Ed, June 24, 2016, <https://www.insidehighered.com/news/2016/06/24/federal-panel-votes-terminate-acics-and-tightens-screws-other-accreditors> (visited Aug. 12, 2016). In September 2016, the DOE agreed that the ABA was out of compliance with a variety of regulations, but ultimately declined to withdraw its accreditation authority. See Casey C. Sullivan, “ABA Dodges a Bullet, Won't Lose Law School Accreditation Powers,” http://blogs.findlaw.com/greedy_associates/2016/09/aba-dodges-a-bullet-wont-lose-law-school-accreditation-powers.html (visited Sep. 27, 2016).

stringent than most ABA schools. Its faculty have comparable qualifications, and engage in more robust periodic peer evaluation than most ABA schools, where the norm is to have limited if any review of teaching or other indicia of quality or productivity for senior faculty.

CLS's JD students are required to take and pass the FYLSE, which--unlike at ABA schools--filters out seriously underqualified candidates before they have incurred the tuition and time burden associated with several more years of law school. CLS's graduates have passed the most recent administration of the California bar exam at rates that are essentially identical to the entire cohort of ABA-school graduates' takers. They face bar discipline no more often and, if anything, less often than attorneys taken as a whole. And CLS' employment outcomes appear to be comparable to a number of ABA schools.

In short, the ABA has an effective monopoly on access to Arizona's bar exam, but it does not have a monopoly on quality. Distance learning has come a long way in the last two decades, to the point where there is no principled basis to maintain a blanket prohibition on graduates of a regionally accredited online law school like CLS from applying for the bar, while allowing graduates of even the most marginal ABA schools to sit for the bar exam immediately upon graduation. Plus, CLS graduates, who are typically in their mid-40's, possess something that the typical 25-year old graduate of an ABA law school lacks--the maturity that comes with two additional decades of work and life experience.

IV. Conclusion

For the foregoing reasons, CLS requests that this Court amend ARS Sup.Ct.Rules, Rule 34 so as to allow JD graduates of online law schools that are approved by a federally recognized regional accreditor to apply to sit for the Arizona bar exam.

Respectfully submitted,

November 9, 2016

/s/ Martin Pritikin

Martin Pritikin
Dean and Vice President
Concord Law School at Kaplan University

Proposed Amended Text of A.R.S. Sup.Ct.Rules, Rule 34 (additions in *italics*)

(b) Applicant Requirements and Qualifications.

1. No applicant will be recommended for admission to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied that: . . .

D. the applicant is a graduate with a juris doctor from a law school provisionally or fully approved by the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education* at the time of graduation or the applicant is a graduate with a juris doctor and has been actively engaged in the practice of law in some other state or states for at least three of the last five years prior to filing an application for admission to practice in Arizona; and . . .

* * *

2. An applicant may be allowed to sit for the Arizona uniform bar examination prior to the award of a juris doctor degree if the applicant:

A. is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education*; . . .

* * *

(d) Documents Required in Support of Application. The following must accompany every application:

1. subject to the exception made in paragraph (b)(1)(D) of this rule, the applicant's law school diploma, or other evidence satisfactory to the Committee on Character and Fitness showing the applicant is a graduate with a juris doctor degree from a law school provisionally or fully approved by the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education* at the time of graduation; . . .

* * *

(f) Admission on Motion.

1. An applicant who meets the requirements of (A) through (H) of this paragraph (f)(1) may, upon motion, be admitted to the practice of law in this jurisdiction. The applicant shall: . . .

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education* at the time of graduation; . . .

2. For the purposes of this rule, the “active practice of law” shall include...

C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education*;

* * *

(h) Admission by Transfer of Uniform Bar Examination Score.

1. An applicant who has taken the uniform bar examination in another jurisdiction and who meets the requirements of (A) through (G) of this paragraph (h)(1) may be admitted to the practice of law in this jurisdiction. The applicant shall: . . .

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association *or from an online law school approved by or part of an institution approved by a regional accreditor recognized by the U.S. Department of Education* at the time of graduation;