

September 4, 2003

MEMORANDUM

To: Mr. Dalton B. Floyd, Jr., Chairman, and Members, Commission on Higher Education

From: Dr. Vermelle J. Johnson, Chairman, and Members, Committee on Academic Affairs and Licensing

Consideration of Request for Initial License
The Charleston School of Law, J.D.

Summary

The Charleston School of Law (CSOL) <http://www.charlestonlaw.org> requests approval of an initial license to offer a program leading to the Juris Doctor degree. This initial request is for approval to advertise and enroll students beginning in September 2003 for classes beginning in September 2004.

On May 12, 2003, the South Carolina Secretary of State issued a Certificate of Existence to The Charleston School of Law, LLC. Ralph C. McCullough, II, Alex M. Sanders, Jr., and Edward J. Westbrook are the managers listed on the Articles of Organization Limited Liability Company. By letter dated August 15, 2003, Mark C. Tanenbaum, president of the Charleston County Bar Association, wrote to the Commission endorsing the CSOL. By letter dated August 19, 2003, City of Charleston Mayor Joseph P. Riley, Jr., also wrote to the Commission endorsing the CSOL, saying in part, "It will become an important part of the Charleston Digital Corridor, an economic development initiative focused on attracting knowledge-based companies to Charleston and diversifying the City's employment base with additional job opportunities for our citizens."

Upon receipt of the Application for Initial License, the staff contracted with a team of expert examiners. The staff provided to the team members a copy of the application and exhibits. The team was asked to review the proposal for conceptual compliance with the

licensing requirements and to arrive at a consensus as to whether the founders of CSOL are developing and implementing a plan to establish the law school in compliance with the licensing requirements and to position the school to apply for American Bar Association accreditation so that students who enroll will be able to accomplish the objectives of the program. A copy of the team report is attached (**Attachment 1**). It includes descriptions of the education program, finances, facilities, library, student services, organization, administration, and faculty.

The principal goals of the Charleston School of Law are to teach the practice of law as a profession having as its chief aim preparing lawyers for public service; to teach moral character and personal integrity through its program of study; to teach the law as a means of making possible the continued processes of manufacture and commerce; to institute and coordinate legal outreach programs to the South Carolina and American Bars, local, state, and federal governments, and to the general population; and to encourage and foster legal reforms.

To be eligible to take the Bar exam and for admission to the South Carolina Bar Association, attorneys must have graduated from a law school that is accredited by the American Bar Association (ABA). A school in its second year of operation may apply for accreditation. Students who enroll at CSOL will be eligible to take the Bar exam after CSOL attains ABA accreditation. The ABA requires that an unaccredited school must publish the following statement:

The Dean is fully informed as to the Standards and Rules of Procedure for the Approval of Law Schools by the American Bar Association. The Administration and the Dean are determined to devote all necessary resources and in other respects to take all necessary steps to present a program of legal education that will qualify for approval by the American Bar Association. The Law School makes no representation to any applicant that it will be approved by the American Bar Association prior to the graduation of any matriculating student. (August 1997)

As the following table shows, the American Bar Association reported that South Carolina had 7,571 active resident attorneys as of December 31, 2002, or 1.84 for every 1,000 residents, the second lowest in the SREB region. Of the 16 states in the SREB region, South Carolina ranks sixth in the number of law schools per 100,000 residents. The following data is extracted from the American Bar Association, National Lawyer Population by State and the Population Division and from U.S. Census Bureau, Table ST-EST2002-01 - State Population Estimates: April 1, 2000 to July 1, 2002.

	US Census Bureau estimated population, 2002	ABA # Attys residing & active by state, 2002	# ABA law schools		# Attys residing & active per 1,000 population		# Law schools per 100,000 population
AL	4,486,508	9,697	2	AR	0.94273698	TX	0.00459139

AR	5,456,453	5,144	2	SC	1.84335590	NC	0.01201902
DE	807,385	2,118	1	NC	1.98722474	MD	0.01832127
FL	16,713,149	52,967	8	MS	2.14222389	GA	0.03504546
GA	8,560,310	23,698	4	AL	2.16136915	AR	0.03665385
KY	4,092,891	10,722	3	WV	2.31703344	SC	0.04869518
LA	4,482,646	16,357	4	TN	2.33091709	FL	0.05384982
MD	5,458,137	20,855	8	KY	2.61966419	VA	0.06855380
MS	2,871,782	6,152	2	DE	2.62328381	TN	0.06899777
NC	8,320,146	16,534	5	VA	2.71404484	OK	0.08586851
OK	3,493,714	10,633	3	GA	2.76835769	AL	0.08915620
SC	4,107,183	7,571	1	TX	2.96571705	LA	0.15615777
TN	5,797,289	13,513	3	OK	3.04346607	WV	0.16649342
TX	21,779,893	64,593	9	FL	3.16918134	KY	0.19546086
VA	7,293,542	19,795	7	LA	3.64896090	DE	0.24771330
WV	1,801,873	4,175	1	MD	3.82090079	MS	0.27857268

The following information, extracted from the Occupational Outlook Handbook published by the United States Bureau of Labor Statistics, describes the current employment environment for lawyers:

Employment of lawyers is expected to grow about as fast as average through 2010. Continuing demand will result primarily from growth in the population and in the general level of business activities. Demand also will be spurred by growth of legal action in such areas as healthcare, intellectual property, international law, elder law, environmental law, and sexual harassment. In addition, the wider availability and affordability of legal clinics and prepaid legal service programs should result in increased use of legal services by middle-income people.

Demand will be somewhat mitigated because, in an effort to reduce the money spent on legal fees, many businesses increasingly are using large accounting firms and paralegals to perform some of the same functions that lawyers perform. For example, accounting firms may provide employee-benefit counseling, process documents, or handle various other services previously performed by the law firm. Also, mediation and dispute resolution increasingly are used as alternatives to litigation.

Competition for job openings should continue to be keen because of the large number of students graduating from law school each year. Graduates with superior academic records from well-regarded law schools will have the best job opportunities. Perhaps as a result of job competition for attorney positions, lawyers are increasingly finding work in nontraditional areas for which legal training is an asset, but not normally a requirement—for example, administrative, managerial, and business positions in banks, insurance firms, real estate companies, government agencies, and other organizations. Employment opportunities are expected to continue to arise in these organizations at a growing rate.

As in the past, some graduates may have to accept positions in areas outside of their field of interest or for which they feel overqualified. Some recent law school graduates who have been unable to find permanent positions are turning to the growing number of temporary staffing firms that place attorneys in short-term jobs until they are able to secure full-time

positions. This service allows companies to hire lawyers on an "as needed" basis and permits beginning lawyers to develop practical skills while looking for permanent positions.

Due to the competition for jobs, a law graduate's geographic mobility and work experience assume greater importance. The willingness to relocate may be an advantage in getting a job but, to be licensed in another State, a lawyer may have to take an additional State bar examination. In addition, employers increasingly seek graduates who have advanced law degrees and experience in a specialty such as tax, patent, or admiralty law.

Employment growth for lawyers will continue to be concentrated in salaried jobs, as businesses and all levels of government employ a growing number of staff attorneys, and as employment in the legal services industry grows in larger law firms. Most salaried positions are in urban areas where government agencies, law firms, and big corporations are concentrated. The number of self-employed lawyers is expected to decrease slowly, reflecting the difficulty of establishing a profitable new practice in the face of competition from larger, established law firms. Moreover, the growing complexity of law, which encourages specialization, along with the cost of maintaining up-to-date legal research materials, favors larger firms.

For lawyers who wish to work independently, establishing a new practice will probably be easiest in small towns and expanding suburban areas. In such communities, competition from larger established law firms is likely to be less keen than in big cities, and new lawyers may find it easier to become known to potential clients.

Some lawyers are adversely affected by cyclical swings in the economy. During recessions, the demand declines for some discretionary legal services, such as planning estates, drafting wills, and handling real estate transactions. Also, corporations are less likely to litigate cases when declining sales and profits result in budgetary restrictions. Some corporations and law firms will not hire new attorneys until business improves and may even cut staff to contain costs. Several factors, however, mitigate the overall impact of recessions on lawyers. During recessions, for example, individuals and corporations face other legal problems, such as bankruptcies, foreclosures, and divorces requiring legal action.

Median salaries of lawyers 6 months after graduation, 2000	
All graduates	\$51,900
<i>Type of work</i>	
Private practice	80,000
Business/industry	60,000
Academe	40,000
Judicial clerkship and government	40,000
Public interest	34,000
SOURCE: National Association for Law Placement	

The following table shows the number of applications selected law schools accepted and of those who applied, the number who matriculated. It also shows the percentages of Bar exam pass rates. Students who aspire to go to law school apply to more than one school. The upper

tier schools probably get a lot of wishful-thinking applicants, and those applicants are more likely to matriculate if accepted. The lower-tier schools get “safe applicants” who clearly meet the lesser requirements and would matriculate at the lower-tier schools only if not accepted at upper-tier institutions. Lower-tiered schools probably admit more students in order to reach their target enrollments.

Selected Law Schools											
Applicants, Accepted, Matriculated, Bar Pass Rates											
Academic Year 2002-2003											
		<u>Public</u>	<u>Year</u>	<u>#</u>	<u>%</u>	<u>#</u>	<u>% of</u>	<u>% of</u>	<u>School</u>	<u>State's</u>	
		<u>Private</u>	<u>ABA</u>	<u>Aplcnrs</u>	<u>Acptd</u>	<u>Mtrcltd</u>	<u>Acptd</u>	<u>Mtrcltd</u>	<u>Grads</u>	<u>Bar</u>	<u>Pass</u>
			<u>Aprvd</u>						<u>Bar Pass</u>	<u>Pass</u>	
Chicago	IL	Private	1923	4,491	735	16%	194	26%	4%	IL 98%	83%;
Columbia	NY	Private	1923	8,072	1,174	15%	377	32%	5%	NY 95%	76%
Duke	NC	Private	1931	4,093	839	20%	201	24%	5%	93%	76%
Emory	GA	Private	1923	3,597	1,033	29%	259	25%	7%	GA 94%;	86%;
George Washington	DC	Private	1923	10,774	2,061	19%	458	22%	4%	NY 96%	76%
Georgetown	DC	Private	1924	11,512	2,188	19%	578	26%	5%	NY 90%	76%,
Harvard	MA	Private	1923	6,924	871	13%	557	64%	8%	NY 95%;	76%,
New York	NY	Private	1930	8,123	1,497	18%	408	27%	5%	95%	76%
Stanford	CA	Private	1923	4,653	423	9%	170	40%	4%	92%	66%
Tulane	LA	Private	1925	3,827	1,194	31%	358	30%	9%	NY 88%;	76%;
Vanderbilt	TN	Private	1925	3,123	697	22%	194	28%	6%	LA 80%;	71%
Yale	CT	Private	1923	3,610	256	7%	191	75%	5%	TN 87%;	80%;
										NY 93%	76%
										NY 98%	76%
Totals											
Private				72,799	12,968	18%	3,945	30%	5%		
North Carolina	NC	Public	1923	2,954	534	18%	233	44%	8%	NC 87%;	79%;7
South Carolina	SC	Public	1925	1,501	448	30%	240	54%	16%	NY 100%	6%
Virginia William & Mary	VA	Public	1923	4,417	985	22%	350	36%	8%	92%	85%
	VA	Public	1932	3,383	686	20%	189	28%	6%	VA 88%;	73%,
										NY 93%	76%
										82%	73%
Totals											
Public				12,255	2,653	22%	1,012	38%	8%		

The team of examiners and the staff are concerned about future employment opportunities for graduates of the CSOL and about the earning potential for graduates employed

as attorneys in public service positions, especially in an environment in which students incur substantial debt. Charleston School of Law officials have drafted a catalog that thoroughly describes the program and includes appropriate disclosures. Students will be able to make informed decisions based on the status of the school and the objectives of the curriculum. They will also receive debt counseling.

The staff, and others, are also concerned that in the future the founders of the CSOL may desire to turn over the private CSOL to the State so that it becomes a public institution. The staff recommendation is not an endorsement of the need for the State to support another publically-funded law school; further, the recommendation below is based on the evaluation of the application material for compliance with the standards for licensure. The recommendation should not be interpreted by the officials of the CSOL, the officials of the public institutions, or the Commission as an endorsement or support for creating a second public law school or having a law school affiliated with an existing public institution.

The Commission received from the Honorable Alex Sanders a letter dated August 20, 2003 (**Attachment 2**). The letter suggests that the Commission license the School with a condition that the School “cannot, under any circumstances, become a part of the College of Charleston or any other public institution in South Carolina, and in the event the School, or its officers or agents, should make an attempt to cause the School to become a part of the College of Charleston or any other public institution, the license granted to the School shall be null and void and immediately revoked.” Judge Sanders further states that the stockholders in the CSOL have entered into a legally binding agreement with each other that the School will not be transferred to the College of Charleston or any other public institution in South Carolina. Finally, he states that he is assured by both the president and the chairman of the Board of Trustees of the College of Charleston that it has no interest in acquiring the CSOL.

Recommendation

The staff suggests that the Committee on Academic Affairs and Licensing recommend to the Commission that it grant to The Charleston School of Law approval to advertise and enroll students for classes to begin in September 2004, provided that 1) no “unique cost” or other special state funding be required or requested; 2) that CSOL submit to the Commission updated material to document compliance with the licensing requirements and the recommendations of the team as enumerated in the Team Report and shown below; 3) that a team visit the Charleston facility in May 2004 to confirm compliance; 4) that the team and the staff provide updated reporting and final recommendations to the Committee and the Commission in summer 2004; 5) that the institution establish a timeline under which it will gain ABA accreditation; report to the CHE staff on each step in the timeline; provide to the CHE staff a copy of correspondence to and from ABA, and discontinue advertising and enrolling students into the program if it becomes apparent that it is unable to meet its timeline to gain ABA accreditation; and 6) in the

event that the school, or its officers or agents, should make an attempt to cause the school to become a part of the College of Charleston or any other public institution, the license granted to the school shall be null and void and immediately revoked.

**Compiled Recommendations from
Licensing Team Evaluation Report
Charleston School of Law
Review conducted July/August 2003**

The team recommends that the officials of CSOL:

1. Develop a more detailed five-year budget. Include in the budget separate line items for: equipment, utility costs, advertising, marketing and promotion, travel, insurance, fringe benefits, maintenance contracts, printing, etc.
2. Provide to CHE a copy of the final building plan and space requirements once a site is selected. The budget should be revised to include the appropriate building, renovation, and lease costs, if any.
3. Detail in the budget more clearly the line item for instructional equipment.
4. Submit a summary of the library collection implementation plan before the next phase of review in the spring of 2004.
5. Determine how many librarian and staff members are expected to be dedicated to the library over the next few years and submit this information to the Commission before the next phase of review in the spring of 2004.
6. Submit an updated document on library and technology budgetary matters before the review in spring of 2004.
7. Continue to review and increase faculty salary budgets to assure recruitment of qualified and experienced teachers.
8. Include in the budget funding for faculty development such as research, support, and travel to conferences.
9. Include in the budget income and expenses for summer offerings.
10. Hire a comptroller or dean of students who understands law school debt issues and knows how to administer financial aid, in particular education loans. Staff should be in place who will fully disclose the financial challenges to applicants and enrolled students and provide students with sound advice and counseling about managing their education debts.

The Committee will make its recommendation to the Commission on September 4.