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PRELIMINARY REPORT OF THE GEORGIA LAWYER COMPETENCY TASK FORCE

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INTRODUCTION

The Lawyer Competency Task Force is pleased to present this preliminary Report to the Supreme Court of Georgia. In this Report, we set forth our preliminary findings and recommendations on the regulations, standards, and procedures that have been adopted by the Supreme Court for the admission of lawyers to the practice of law by examination, the admission of lawyers to practice without examination, provisional and limited admissions, and mandatory continuing legal education. In our consideration of these matters, we not only examined the existing regulatory framework in Georgia, but we also considered alternatives that have been adopted in other jurisdictions in terms of both effectiveness and administrability. In some instances, we concluded that the existing framework strikes a reasonable balance between the public interest in maintaining an independent and well-functioning judicial system characterized by competence and integrity, on the one hand, and the interests of prospective and admitted lawyers in practicing their chosen profession without unnecessary constraint, on the other. In other instances, however, we recommend that the Court consider significant changes to the existing regulatory framework. In all of our recommendations, we have been guided by the principle that the Supreme Court has not only the authority, but also a responsibility, to adopt reasonable regulations of the practice of law for the protection of the public interest.

Our Report is the product of a 21-month review process, one in which the Task Force had the benefit of thoughtful counsel and able assistance offered by the leadership and senior staff of the State Bar

of Georgia, the Board of Bar Examiners, the Office of Bar Admissions, the Administrative Office of the Courts, and a host of prominent and seasoned Georgia lawyers. Although significant work and careful thought has gone into our Report—including the solicitation and consideration of commentary provided by key stakeholders and the public—the reader should understand that it is only a *preliminary* report. This Report will be published by the Supreme Court for additional public comment, and judges, lawyers, law students, law professors, and citizens throughout the state will be afforded an opportunity to comment on our findings and recommendations. After a sufficient time for public comment has passed, we will revisit our findings and recommendations in light of the commentary and only then issue our final report.

This Report has five parts. As background, Part One discusses the authority of the Supreme Court to regulate the practice of law, the creation of the Task Force, and how we have gone about the work of examining the existing regulatory framework. Part Two concerns admissions to the practice of law by examination, including the need for an examination, possible alternatives to examination, and some of the particulars of admission by examination. Part Three concerns admissions without examination of lawyers already admitted to practice in another jurisdiction. Part Four concerns provisional admission of prospective lawyers pending admission by examination, provisional admission of military-spouse lawyers already admitted to practice in another jurisdiction, and whether inactive members of the State Bar should be authorized to assist in the provision of legal aid to underserved populations in Georgia. Finally, Part Five concerns mandatory continuing legal education requirements for lawyers already admitted to practice in Georgia.

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PART ONE

BACKGROUND

THE AUTHORITY AND RESPONSIBILITY OF THE SUPREME COURT TO REGULATE THE PRACTICE OF LAW

As the court of last resort, and as the institution of highest rank in the state judicial department,[1] the Supreme Court has the inherent authority—and a corresponding responsibility—to regulate the practice of law to promote the public interest in the maintenance of an independent and well-functioning judicial system characterized by integrity and competence.[2] As the Court explained more than fifty years ago:

> The practice of law is so intimately connected with the exercise of judicial power in the administration of justice that the right to define and regulate the practice naturally and logically belongs to the judicial department of the state government. Indeed,

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[1] *See* Ga. Const. of 1983, Art. VI, Sec. I, Para. I.

[2] *See Lovett v. Sandersville R.R. Co.,* 199 Ga. 238, 239 (33 SE2d 905) (1945) ("[W]hen the Constitution declares that the legislative, judicial and executive powers shall forever remain separate and distinct, it thereby invests those officials charged with the duty of administering justice according to law with all necessary authority to efficiently and completely discharge those duties the performance of which is by the Constitution committed to the judiciary, and to maintain the dignity and independence of the courts.") (citation omitted). *See also Sons of Confederate Veterans v. Henry County Bd. of Commrs.,* ___ Ga. ___ (Case No. S22G0039, slip op. at 30-31 n.10) (Oct. 25, 2022) ("[T]he Constitution vests in *us* as an incident of the judicial power the exclusive power to regulate the practice of law and to promulgate the Code of Judicial Conduct." (emphasis added)); *In re Oliver,* 261 Ga. 850, 851 (413 SE2d 435) (1992) ("This inherent power of the judicial branch of government to regulate the practice of law does not depend on any express constitutional grant or on the legislative will; rather, it exists because of the intimate connection between the practice of law and the exercise of judicial power in the administration of justice."); *Attwell v. Nichols,* 466 F. Supp. 206, 209 (N.D. Ga. 1979) (explaining that power to regulate the practice of law "flows from the inherent powers of the Supreme Court of Georgia as the highest court of this state").

> it has been said that the courts have an inherent power to regulate the conduct of attorneys as officers of the court and to control and supervise the practice of law generally, whether in or out of court.[3]

This inherent authority to regulate the practice of law is broad, and it includes the power to regulate admissions to practice to assure that lawyers "meet a minimum level of legal competence."[4] It also includes the power to regulate lawyers admitted to practice to "maintain[] high standards of conduct in the legal profession."[5]

This inherent power is not, however, an unlimited one. Indeed, although it cannot be limited by legislation,[6] it is limited by its very nature and purposes, as well as by the Constitution.[7] Among other limits, the constitutional guarantee of due process protects a "right to work in one's chosen profession free from unreasonable government interference,"[8] and when the Supreme Court exercises

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[3] *Wallace v. Wallace,* 225 Ga. 102, 109 (166 SE2d 718) (1969) (cleaned up).

[4] *Pace v. Smith,* 248 Ga. 728, 730 (286 SE2d 18) (1982). *See also In re Batterson,* 286 Ga. 352, 352 (687 SE2d 477) (2009) ("This Court has the inherent and exclusive power to prescribe educational requirements for admission to the practice of law in order to promote the State's fundamental interest in ensuring that members of the legal profession are competent.").

[5] *Sams v. Olah,* 225 Ga. 497, 504 (169 SE2d 790) (1969).

[6] *See Wallace,* 225 Ga. at 112 ("[T]he judiciary cannot be circumscribed or restricted [by legislation] in the performance of its power and duty to regulate the practice of law . . . ."). *See also Sams,* 225 Ga. at 501-02 (holding that provisions of the State Bar Act "attempting to limit this court in the exercise of its judicial function in creating the State Bar, and adopting and amending rules and regulations for its government," are unconstitutional and void); *Attwell,* 466 F. Supp. at 209 (holding that certain statutes governing admissions to practice law "were rendered null and void" when the Supreme Court promulgated rules on the same subjects).

[7] *See Pace,* 248 Ga. at 730-32 (acknowledging that inherent power to regulate practice of law is limited by constitutional guarantees of due process and equal protection); *Webster v. Wofford,* 321 F. Supp. 1259, 1262 (N.D. Ga. 1970) (holding that residency requirements in rules governing admissions to practice violated the constitutional guarantee of equal protection).

[8] *Jackson v. Raffensperger,* 308 Ga. 736, 737 (843 SE2d 576) (2020). *See also Bramley v. State,* 187 Ga. 826, 834 (2 SE2d 647) (1939) (recognizing "the common inherent right of every

its authority to regulate the practice of law, it must balance regulatory measures to protect the public interest against the constitutionally-protected interests of prospective and admitted lawyers in pursuing a livelihood in the profession of their choosing. As the Court has explained, "regulations are not presumptively reasonable, but must be demonstrably reasonable after the affected interests are balanced. We must weigh the protective value the regulation affords to the public against the oppressiveness it imposes on the rights of individuals."[9]

To assure that lawyers practicing in Georgia are reasonably competent, the Supreme Court has exercised its inherent power by adopting regulatory measures concerning competence both for persons applying for admission to practice and for lawyers already admitted. Although the Court historically has been mindful of the limits of its inherent power, it does not appear that the Court previously has undertaken a comprehensive review of its regulatory programs to ensure that they are effective, efficient, and strike a reasonable balance between the protection of the public interest and the right of lawyers to earn a livelihood in the profession of their choosing. This Report is the culmination of an effort to undertake such a review.[10]

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citizen to engage in any honest employment he may choose, subject only to such restrictions as are necessary for the public good").

[9] *Porter v. City of Atlanta,* 259 Ga. 526, 528 (384 SE2d 631) (1989). *See also Webster,* 321 F. Supp. at 1262 (holding, with respect to regulation of admission to practice law, that "[t]he State clearly has a legitimate interest in this area and may adopt reasonable requirements to further that interest. Such requirements, however, should be imposed only to the extent that they are necessary to protect the State's interest.").

[10] The Supreme Court also has exercised its inherent power to adopt regulations to ensure the integrity of the legal profession, including fitness requirements for persons applying for admission to the practice of law, as well as ethics rules and professionalism guidance for practicing lawyers. Although integrity and competence are interrelated in some respects, regulations directed to integrity alone are beyond the scope of this Report.

ESTABLISHMENT OF THE LAWYER COMPETENCY TASK FORCE

On March 24, 2021, the Supreme Court established the Lawyer Competency Task Force.[11] The Court appointed Keith R. Blackwell[12] as the chair of the Task Force, Sarah B. "Sally" Akins[13] as vice chair, and Sherry Boston,[14] Brandon L. Peak,[15] Victoria C. Powell,[16] Peter B. "Bo" Rutledge,[17] and Sterling A. Spainhour[18] as members. In its order, the Court instructed the Task Force to:

> (1) Consider and evaluate existing requirements for admission to practice law, including but not limited to the bar exam;
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> (2) Consider and evaluate existing requirements imposed on admitted Georgia lawyers, including but not limited to continuing legal education;

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[11] *See* Order of March 24, 2021, at 1.

[12] Former Justice Blackwell is senior counsel with Alston & Bird LLP in Atlanta. From July 2012 until November 2020, he was a member of the Supreme Court, where he served as liaison to the State Bar of Georgia, the Office of Bar Admissions, the Board of Bar Examiners, and the Board to Determine the Fitness of Bar Applicants.

[13] Ms. Akins is a partner with Ellis, Painter, Ratterree & Adams in Savannah, and she is a principal with Miles Mediation & Arbitration. She previously served as chair of the Board of Bar Examiners, and she now serves as president of the State Bar of Georgia.

[14] Ms. Boston is the district attorney for the Stone Mountain Judicial Circuit in Decatur. She currently serves on the Board of Governors of the State Bar of Georgia.

[15] Mr. Peak is a partner with Peak Wooten McDaniel & Colwell LLP in Columbus. He previously served on the executive committee of the Georgia Trial Lawyers Association, and he now serves on the Board of Governors of the State Bar of Georgia.

[16] Ms. Powell is an associate with the Jones Day firm in Atlanta. She previously practiced in the Office of the Solicitor General in the state Department of Law.

[17] Dean Rutledge is the dean of the School of Law at the University of Georgia in Athens.

[18] Mr. Spainhour is senior vice president and general counsel of the Georgia Power Company in Atlanta. He serves on the executive committee of the Corporate Counsel Section of the State Bar of Georgia.

(3) Consider and evaluate alternative options for ensuring initial and continuing lawyer competency; and

(4) Make initial recommendations to the Supreme Court of Georgia on each of these points not later than July 1, 2022.[19]

The Court authorized the Task Force to "create committees and appoint other stakeholders to serve on such committees," and it directed the Administrative Office of the Courts to provide staff support to the Task Force as necessary.[20]

PROCEEDINGS OF THE TASK FORCE

The Task Force met initially in April 2021, and soon thereafter, we established and appointed three study committees to advise the Task Force and assist with its work. Each committee was comprised of preeminent lawyers, all among the leading lights of the legal profession in Georgia. In appointing members of these committees, we took care to ensure that each committee would reflect—as well as any small group of individuals can reflect—the diversity of our profession, not only in a demographic sense, but also in terms of geography, practice experience, professional background, and subject-matter expertise. We also tried to include representatives of key stakeholders among the membership of these committees. Ultimately, the members of these committees included retired and sitting judges, district attorneys, a former Deputy Attorney General of the United States, former United States Attorneys, the Solicitor General of Georgia, current and former bar examiners, law school deans and faculty, past and present officers of the State Bar, general

[19] Order of March 24, 2021, at 1.

[20] Order of March 24, 2021, at 2.

counsel of some of Georgia's most prominent business organizations, "tall building lawyers" at large law firms, lawyers in small firms, solo practitioners, and lawyers practicing in a wide range of areas, including corporate law, criminal defense, domestic relations law, personal injury litigation, professional ethics and malpractice, and trusts and estates. Each member of the Task Force served on one or more of these committees.[21]

Chaired by Dean Rutledge, the *Committee on Admission to the Practice of Law by Examination* studied and made recommendations to the Task Force about the fundamental and essential elements of lawyer competence, the need to individually assess the competence of prospective lawyers applying for admission, the effectiveness of the bar examination as an assessment of competence, the feasibility and effectiveness of alternatives to the bar examination, and the desirable format and scope of the bar examination, especially in light of forthcoming changes to the components of the bar examination prepared by the National Conference of Bar Examiners. Ms. Powell served as the vice chair of this committee, and ten Georgia lawyers served as members.[22] Office of Bar Admissions director John Earles acted as an advisor to the committee.

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[21] As chair and vice chair of the Task Force, Justice Blackwell and Ms. Akins served as nonvoting members of all three study committees.

[22] The members of the Committee on Admission to the Practice of Law by Examination were Henry Bowden, member of the Bowden Law Firm, LLC and then-chair of the Board of Bar Examiners; Dean Cathy Cox, then-dean of the School of Law at Mercer University; Elissa Haynes, a partner with Freeman Mathis & Gary LLP and then-president of the Young Lawyers Division of the State Bar of Georgia; Nancy Ingram Jordan, counsel with Kessler & Solomiany; Aasia Mustakeem, general counsel of Atlanta BeltLine, Inc. and a former chair of the Board of Bar Examiners; Charles Peeler, partner with the Troutman Pepper firm and a former United States Attorney; Judge Emily Richardson with the Superior Court for the Atlanta Judicial Circuit; Larry D. Thompson, counsel with Finch McCranie LLP, former general counsel of PepsiCo, Inc., and former Deputy Attorney General of the United States; Audrey Boone Tillman, executive vice president and general counsel of Aflac Inc.; and Christopher P. Twyman, managing partner of Cox Byington Twyman LLP. Maggie Mathis, an associate with the Troutman Pepper firm, served as staff counsel to this committee.

Chaired by Ms. Boston and Jason Alloy,[23] the *Committee on Admission to the Practice of Law by Motion* studied and made recommendations to the Task Force about standards and procedures for the admission in Georgia of lawyers already admitted to practice in another jurisdiction. This committee also studied the provisional admission of prospective lawyers to practice under supervision pending admission by examination, the provisional admission of lawyers who are married to a member of the United States Armed Services assigned to a duty station in Georgia, and whether inactive members of the State Bar should be authorized to engage in a limited practice to provide legal aid to underserved populations in Georgia. Mr. Spainhour and ten other lawyers served as members of this committee,[24] and Mr. Earles and State Bar of Georgia general counsel Paula Frederick advised the committee.

Chaired by Mr. Peak and Fredric J. "Rick" Bold, Jr.,[25] the *Committee on Maintaining the Competency of Admitted Lawyers* studied and made recommendations to the Task Force about the effectiveness of mandatory continuing legal education, as well as the particulars of the requirements in Georgia for mandatory continuing legal education. Eleven Georgia lawyers served as members of this

[23] Mr. Alloy is a partner with Robbins Alloy Belinfante Littlefield LLC in Atlanta.

[24] The other members of the Committee on Admission to the Practice of Law by Motion were Norman Brothers, the general counsel of UPS; former Judge J. Antonio DelCampo, a partner with DelCampo, Grayson & Lopez and secretary of the State Bar of Georgia; Andrew S. Fleischman, an attorney with Ross & Pines; John Jett, a partner with Kilpatrick Townsend & Stockton LLP; former state Senator Zahra Karinshak, a partner with Krevolin & Horst; Judge Ellen McElyea, chief judge of the Superior Court for the Blue Ridge Judicial Circuit; Audrey Tolson, member of the Tolson Firm LLC; Darrell Sutton, member of the Sutton Law Group and former president of the State Bar of Georgia; Robert Waddell, chief counsel for banking at NCR; and Susan Wilson, a member of the Board of Bar Examiners. Josh Combs, an associate with the Troutman Pepper firm, served as staff counsel to this committee.

[25] Mr. Bold is a partner with Bondurant Mixson & Elmore LLP in Atlanta.

committee,[26] and State Bar of Georgia executive director Damon Elmore acted as an advisor to the committee.

Each of the study committees met and worked throughout 2021, and each committee made a report to the Task Force in December 2021. Since that time, the Task Force has undertaken an independent consideration of the issues within the scope of our charge, giving due consideration to the helpful work of the study committees. As a part of that independent consideration, Justice Blackwell and Dean Rutledge met in March 2022 with members of the Board of Bar Examiners to solicit additional information and guidance about issues related principally to the bar examination. We also thought it important to solicit public comment on these issues, and so, the Task Force held a public meeting on April 1, 2022, at the spring meeting of the Board of Governors of the State Bar of Georgia in Athens. At that public meeting, a number of practicing Georgia lawyers appeared and offered comments on a range of issues, from the timing of the bar examination and provisional admission to mandatory continuing legal education requirements. Throughout the spring and summer, the Task Force continued to work on its preliminary findings and recommendations. In view of the direction to make an initial report to the Supreme Court no later than July 1, 2022, Justice Blackwell met with the Court on June 30

[26] The members of the Committee on Maintaining the Competency of Admitted Lawyers were Virgil Adams, partner with Adams Jordan & Herrington; Bobby Christine, district attorney for the Columbia Judicial Circuit and former United States Attorney; Susan W. Cox, partner with Edenfield Cox Bruce & Edenfield; Julie Elgar, chief counsel for labor and employment with Georgia-Pacific LLC; Greg Heller, chief legal officer for the Atlanta Braves baseball club; Amy V. Howell, senior counsel with Chick-fil-A and former commissioner of the Department of Juvenile Justice; David Lefkowitz, member of the Lefkowitz Firm, LLC; Esther Slater McDonald, partner with Seyfarth Shaw LLP; former Judge Rizza O'Connor, partner with Bryant & O'Connor and former chief magistrate judge for Toombs County; former Solicitor General and Appeals Judge, now-Justice Andrew Pinson; and Carlos Rodriguez, partner with Kilgore & Rodriguez. Megan Taylor, an associate with Hunton Andrews Kurth LLP, served as staff counsel to this committee.

and delivered an oral report to summarize the preliminary findings and recommendations. This written Report now follows.[27]

[27] Two former law clerks for the Supreme Court of Georgia—Kurtis G. Anderson, an associate with Kilpatrick Townsend & Stockton LLP, and John Lex Kenerly, an associate with Alston & Bird LLP—rendered uncommonly valuable assistance to the Task Force in its research and in the preparation of this Report. The Task Force expresses its gratitude to both, as well as to their law firms.

PART TWO

ADMISSION BY EXAMINATION

OVERVIEW

In Part Two, we address admission by examination, the most common way in which lawyers are admitted to the practice of law in Georgia. Our discussion begins with some background, including the history of admission by examination in Georgia and a review of the standards and procedures for admission by examination today. We next consider whether individualized assessments of competence for lawyers not already admitted to practice in another jurisdiction are necessary, and if so, whether a bar examination is a suitable means of assessing competence. We find that individualized assessments are essential to the protection of the public interest, and although the bar examination is far from perfect, it strikes us as reasonably effective and reliable, especially when compared to the alternatives, which are not feasible as substitute pathways to admission for most Georgia lawyers.

Finally, we turn to the standards and procedures for admission by examination in Georgia, including the content and format of the bar examination itself. We recommend that these standards and procedures be revised in several respects, including:

- That third-year law students should again be permitted to sit for the bar examination during their last semester of study, although they should not be admitted to practice until after graduation;
- That trusts and estates and secured transactions should be omitted from the areas of law that are tested on the Georgia bar examination;

- That the bar examination should test on certain principles of Georgia constitutional law and administrative law;
- Following the anticipated discontinuation of the Multistate Bar Examination and the Multistate Practice Test, that the Supreme Court should adopt the "NextGen" integrated bar examination to be prepared by the National Conference of Bar Examiners as a component of the Georgia bar examination; and
- That the Court and Board of Bar Examiners should revisit the format of the Board-prepared portion of the bar examination after a better understanding of the format of the "NextGen" bar examination is available.

HISTORY OF ADMISSION BY EXAMINATION IN GEORGIA

In Georgia, the admission of lawyers by examination has a long history. At the end of the colonial period, lawyers were admitted to practice by the general court,[1] and a lawyer was required to complete a period of apprenticeship prior to his admission.[2] Following the outbreak of the War for American Independence, the authority to admit lawyers was transferred from the general court to the state legislature,[3] which maintained the requirement of an apprenticeship.[4] After the war, the apprenticeship requirement was

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[1] Seated at Savannah, the general court—known more formally as the General Court and Court of Session of Oyer and Terminer and General Gaol Delivery—was the court of general jurisdiction during the colonial period. *See* Albert B. Saye, A CONSTITUTIONAL HISTORY OF GEORGIA (1948) at 63-65.

[2] *See* E. Freeman Leverett, *Higher Standards for the Bar in Georgia, Part One,* 21 Ga. B.J. 371 (1959).

[3] *See* Ga. Const. of 1777, Art. LVIII ("No person shall be allowed to plead in the courts of law in this State, except those who are authorized to do so by the house of assembly . . . .").

[4] *See* Leverett, note 2 *supra,* at 371.

eliminated, and beginning in 1786, applicants for admission instead were required to submit to an examination by a judge in open court.[5] The Constitution of 1789 did not specify how lawyers were to be admitted to practice, and after its adoption, the legislature enacted a statute vesting the superior courts with authority to admit lawyers upon examination in open court.[6]

Throughout the Nineteenth Century, the superior courts continued to admit lawyers upon examination in open court. These examinations were to intended to assess whether a lawyer was sufficiently knowledgeable about the United States Constitution, the Georgia Constitution, the statutory law of Georgia, the common law, principles of equity, the laws of pleading and evidence, and the rules of practice in the superior courts.[7] In the administration of these examinations, the superior courts by law were "required to be strict" and "to reject any applicant who does not undergo a full and satisfactory examination."[8] To qualify to stand for an examination

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[5] *See* Leverett, note 2 *supra,* at 371. During this time, it appears that lawyers still were admitted to practice by the legislature, but only after an examination by a judge in open court.

[6] *See* Leverett, note 2 *supra,* at 372. *See also* Robert Watkins & George Watkins, A DIGEST OF THE LAWS OF GEORGIA (1800) at 406.

[7] The subjects of the oral examinations were prescribed by statute. For instance, Section 393 of Irwin's Code of 1873 provided:

> The applicant must also be examined in open Court, touching his knowledge—
>
> 1. Of the principles of the common and statute law of England of force in this State.
>
> 2. Of the law of pleading and evidence.
>
> 3. The principles of equity, and equity pleading and practice.
>
> 4. The Revised Code of this State, the Constitution of the United States and of this State, and the rules of practice in the Superior Courts.

Accord Code of 1861, § 367; Code of 1895, § 4402.

[8] Irwin's Code of 1873, § 395. *Accord* Code of 1895, § 4404. Whether the superior courts actually were "strict" in the administration of these examinations is unclear from the historical record. Although not with respect to Georgia specifically, it has been observed more

in open court, an applicant had to be a "male citizen, of good moral character, who has read law,"[9] and he had to present a certificate by two admitted lawyers to confirm that he had prepared for the examination by reading law.[10]

Although reading law was the most common form of legal education for most of the Nineteenth Century,[11] a school of law was established in 1859 at the University of Georgia.[12] That same year, the General Assembly afforded a diploma privilege to graduates of the law school at the University of Georgia, who were eligible for admission to practice without examination.[13] Subsequent legislation extended this diploma privilege to graduates of the law school at

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generally about this era of oral examinations that, "[w]here local courts each passed on admission to their bar, they usually gave oral exams—exams so cursory as to be almost a joke. Recommendations from well-known lawyers weighed more heavily than actual answers to questions." Lawrence M. Friedman, A HISTORY OF AMERICAN LAW (3rd ed. 2007) at 498-99. *See also* Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives,* 45 CASE. W. RES. L. REV. 1191, 1200 (1995) ("[T]hese oral exams varied greatly in seriousness depending on which judge or court-appointed examiner gave them, and the exams were often laughable.").

[9] Irwin's Code of 1873, § 389. *Accord* Code of 1895, § 4398. "Aliens who have been two years resident in the State, and have declared their intention to become citizens, pursuant to the Act of Congress," also were eligible for admission by examination. Irwin's Code of 1873, § 390.

[10] Irwin's Code of 1873, § 392. Inasmuch as prospective lawyers typically read law in the office of a practicing attorney, the reading-law prerequisite to admission resembled the earlier, colonial-era apprenticeship requirements.

[11] As late as 1891, only twenty percent of American lawyers had attended a school of law. Milan Markovic, *Protecting the Guild or Protecting the Public? Bar Exams and the Diploma Privilege,* 35 GEO. J. L. ETHICS 163, 170 (Spring 2022). That quickly changed, however, around the turn of the century, and by the early 1900s, most American lawyers had attended law school. *Id.* at 171.

[12] *See* About the School of Law, University of Georgia (available at http://law.uga.edu/about, visited July 31, 2022).

[13] Ga. L. 1859, p. 84. Seventeen years earlier, Virginia had adopted the first diploma privilege for graduates of the law schools at William and Mary and the University of Virginia. As law schools were established in other jurisdictions, the diploma privilege proliferated as a means of promoting formal legal education. *See* Markovic, note 11 *supra,* at 171.

Mercer College,[14] the law school at Emory College,[15] and finally, the Atlanta Law School.[16]

Examinations in open court came to an end in 1897, when the General Assembly enacted a statute providing for a uniform, written bar examination, which was to be prepared and graded by the Supreme Court but administered locally by the superior courts in their respective circuits.[17] The responsibility for preparing and grading a bar examination, however, proved to be too much for an already overworked Supreme Court.[18] The very next year, the General Assembly established a board of bar examiners, consisting of three members appointed by the Court, to prepare and grade the bar examination.[19] The uniform, written bar examination was required to cover the same subjects as the earlier examinations in open court,[20] and the qualifications to sit for the bar examination were the same.[21]

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[14] Ga. L. 1875, p. 38.

[15] Ga. L. 1888, p. 44.

[16] Ga. L. 1893, p. 136.

[17] Ga. L. 1897, p. 85.

[18] *See* John B. Harris, A HISTORY OF THE SUPREME COURT OF GEORGIA: A CENTENNIAL VOLUME (1948) at 171-76.

[19] Ga. L. 1898, p. 83.

[20] *See* Code of 1910, § 4935.

[21] *See* Code of 1910, § 4932.

The General Assembly abolished diploma privilege in 1933,[22] generally requiring all applicants to be admitted by examination.[23] For a time, lawyers still could qualify for admission by examination by reading law,[24] but that changed in 1966, when the General Assembly enacted a statute to require all applicants for admission to have successfully completed "the requirements of a law school for a professional degree in law (LL.B. or its equivalent) involving regular classroom attendance over a period of not less than three school years."[25]

Soon thereafter, the General Assembly provided that law students in their final semester of study could sit for the bar

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[22] Ga. L. 1933, p. 224. Throughout the United States, diploma privileges were repealed, following extensive criticism by the organized bar, the American Bar Association, and the Association of American Law Schools. *See* Markovic, note 11 *supra,* at 172. Some scholars have attributed this turn against the diploma privilege to the proliferation of law schools in the early part of the Twentieth Century, which "had the unintended consequence of democratizing the legal profession," and a concern that the diploma privilege would spread to graduates of the newest generation of law schools. *Id.* at 171-72. In 1921, the American Bar Association criticized the diploma privilege on the ground that "every candidate [for admission to the bar] should be subjected to an exam by public authority to determine his fitness." *Id.* at 174-75.

[23] Ga. L. 1933, p. 224. This legislation made an exception for "licensed attorneys from other states," who were eligible for admission without examination upon a showing "that the applicant has been for the last five years . . . actively engaged in the practice of law [in another jurisdiction] and that he is of good private and professional character." *Id.*

[24] *See* Ga. L. 1950, p. 173 (applicant for admission by examination shall "have either successfully completed two years of legal study in a law school, or have read law for a period of two years, in the office of one or more practicing members of the bar in Georgia or under such practitioner's tutelage").

[25] Ga. L. 1966, p. 275. This legislation also required an undergraduate college education, consisting of:

> Two years of college study, with credits sufficient to qualify for admission to the junior class of the University of Georgia at Athens or of one of the senior colleges of the University System of Georgia, or the substantial equivalent of such college study in point of intellectual competency and achievement as demonstrated by examination in the following subjects: English composition, American and English history and social sciences, and basic mathematics.

examination, although they could be admitted only after graduation.[26] When the Supreme Court adopted its Rules Governing Admission to the Practice of Law, it similarly required graduation from a qualified law school as a prerequisite to admission,[27] but it provided that "any applicant enrolled in a law school shall be eligible to stand [for] the Bar examination administered immediately prior to the applicant's scheduled completion of the requirements of such law school for graduation."[28] The eligibility of third-year law students to sit for the bar examination was repealed in 1998 by the Supreme Court,[29] apparently in response to a request from one or more Georgia law schools, which expressed a concern that third-year law students were distracted from their academic studies by preparations for the bar examination.[30]

CONTEMPORARY ADMISSION BY EXAMINATION IN GEORGIA

Bar Examination. Lawyers generally are admitted to practice in Georgia today by examination under Part B of the Rules Governing Admission to the Practice of Law, which requires an applicant to achieve a passing score on a bar examination administered by the Board of Bar Examiners.[31] The bar examination

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[26] Ga. L. 1974, p. 4 (authorizing students "enrolled in the last two quarters or the last semester of legal study at nationally accredited law schools" to sit for the bar examination).

[27] Rules Governing Admission to the Practice of Law (1978), Section 5 (b). A law school was qualified for purposes of these Rules if it was approved by the American Bar Association, approved by the Board of Bar Examiners, or a member of the Association of American Law Schools.

[28] Rules Governing Admission to the Practice of Law (1978), Section 5 (d).

[29] *See* Rules Governing Admission to the Practice of Law (2004), Part B, Section 4 (b) (1).

[30] *See Public Interest in Legal Education: Evaluating Arizona's Early Bar Initiative,* 55 ARIZ. L. REV. 253, 255 n.10 (2013) ("Georgia had an early bar provision that allowed law students to take the bar in February of their third year, but Georgia later removed this rule because the law schools reported that it was interfering with their program of study.").

[31] The Board is composed of six lawyers, each appointed by the Supreme Court for a term of six years. The terms are staggered, and one new examiner is appointed each year. The

is administered twice each year, traditionally in February and July, in Atlanta or another location designated by the Board, and each examination typically is administered over two consecutive days.[32] To qualify to sit for the bar examination, an applicant must file a timely application with the Office of Bar Admissions,[33] pay an examination fee,[34] have obtained a certification of fitness to practice law from the Board to Determine the Fitness of Bar Applicants,[35]

Court designates the chair of the Board, traditionally the examiner most senior in service. The examiners are required by rule to be "learned and experienced and of generally recognized ability and integrity." *See* Rules Governing Admission to the Practice of Law, Part B, Section 1 (a). The examiners, in fact, are among the most prominent and well-regarded lawyers in Georgia, and appointment as an examiner is perhaps the most prestigious honor that the Court may confer upon a practicing lawyer.

[32] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (a) ("The Board of Bar Examiners shall conduct two examinations each year, each of which shall be held in Atlanta or such other location as the Board may designate at least 60 days in advance of the examination. Each shall be conducted on any two or three consecutive days and may be scheduled so as to coincide with the administration of multistate examinations prepared by the National Conference of Bar Examiners (NCBE)."). Some applicants receive accommodations under Title III of the Americans with Disabilities Act, 42 USC § 12189, that involve the administration of the examination in a separate location or over one or more additional days. This Report, however, is concerned only with the general requirements for the bar examination and does not address accommodations under Title III.

[33] Applications to sit for the February examination generally must be filed by the first Wednesday of January, and applications to sit for the July examination generally must be filed by the first Wednesday of June. *See* Rules Governing Admission to the Practice of Law, Part B, Section 2 (a). Applications filed within 30 days after the general deadline are accepted upon payment of a $200 late fee. *See* Rules Governing Admission to the Practice of Law, Part B, Section 2 (e). In addition, any person who takes and fails an examination is entitled, within ten business days of the announcement of results, to apply to sit for the next examination. *See* Rules Governing Admission to the Practice of Law, Part B, Section 2 (a).

[34] The current examination fee is $442, which includes charges assessed both by the Board and the National Conference of Bar Examiners. *See* Office of Bar Admissions, Deadlines and Fees for Fitness Application and Bar Exam Application (available at http://gabaradmissions.org/deadlines-and-fees, visited on July 28, 2022).

[35] *See* Rules Governing Admission to the Practice of Law, Part B, Section 2 (b). The requirements and procedures governing certification of fitness are set forth in Part A of the Rules. For the most part, these requirements and procedures are beyond the scope of our work, and they are not, therefore, addressed at length in this Report.

have been awarded an undergraduate degree by a qualifying institution of higher learning,[36] and have been awarded the first professional degree in law by a qualifying institution.[37]

The bar examination is composed of three distinct parts: (1) the Multistate Bar Examination (MBE); (2) the Multistate Performance Test (MPT); and four essay questions. The MBE and MPT are prepared by the National Conference of Bar Examiners (NCBE), and the essay questions are prepared by the Board. The MBE is graded by the NCBE, and the MPT and essay questions are graded by the Board.[38]

The MBE consists of 200 multiple-choice questions—175 scored questions and 25 unscored questions—administered in two testing sessions of three hours each.[39] The scored questions are

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[36] A qualifying institution is an institution accredited by an accrediting body recognized by the Council for Higher Education Accreditation (CHEA). *See* Rules Governing Admission to the Practice of Law, Part B, Section 4 (a) (1). When an applicant has been awarded an undergraduate degree by an institution not accredited by a CHEA-recognized accrediting body, the applicant may nonetheless satisfy the undergraduate-degree requirement by meeting the alternative requirements set forth in Part B, Section 4 (a) (2).

[37] Law schools approved by the American Bar Association are qualifying institutions, as are law schools approved by the Board with respect to degrees conferred prior to January 1, 1998. *See* Rules Governing Admission to the Practice of Law, Part B, Section 4 (b). Applicants who were awarded degrees at law schools outside the United States may satisfy the law-degree requirement by meeting the alternate requirements set forth in Part B, Section 4 (c).

[38] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (b). The Board chair and the examiner most junior in service traditionally grade the MPT performance items, and the essay questions traditionally are prepared and graded by the other four examiners. Although there is no formal validation process for essay questions, after an examiner has prepared an essay question, it typically is reviewed closely by another examiner, the director of the Office of Bar Admissions, and one or more Justices. With respect to grading, the Supreme Court traditionally appoints several graders to assist each examiner at each administration of the bar examination.

[39] *See* Multistate Bar Examination: Preparing for the MBE, National Conference of Bar Examiners (available at https://ncbex.org/exams/mbe/preparing/, visited on May 30, 2022). The unscored questions are used by NCBE to validate questions for use as scored questions on future examinations.

drawn equally from the following seven subjects: (1) civil procedure; (2) constitutional law; (3) contracts; (4) criminal law; (5) evidence; (6) real property; and (7) torts.[40] The MBE is not directed to any particular jurisdiction, but rather, is intended to test knowledge of "fundamental legal principles" widely accepted in American law generally.[41] The MBE is a part of the bar examinations in all United States jurisdictions, except Louisiana and Puerto Rico.[42]

The MPT consists of two performance items, and applicants are allowed 90 minutes for each performance item.[43] The MPT is intended as an assessment of practical lawyering skills, rather than substantive legal knowledge.[44] For each performance item, applicants are assigned a practical test, such as drafting a letter, memorandum, brief, contract, will, or settlement proposal. To assist the applicants in completing the assignment, they are provided certain resource materials, including both evidentiary materials and pertinent statutes, regulations, and decisional law.[45] The MPT is administered in all United States jurisdictions, except California, Florida, Louisiana, Michigan, Nevada, Virginia, and Puerto Rico.[46]

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[40] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (d). *See also* Multistate Bar Examination: Preparing for the MBE, note 29 *supra.* The constitutional law tested on the MBE is *federal* constitutional law only.

[41] *See* Multistate Bar Examination: Preparing for the MBE, note 39 *supra.*

[42] *See* Jurisdictions Administering the MBE, National Conference of Bar Examiners (available at https://ncbex.org/exams/mbe/, visited on May 30, 2022).

[43] *See* Multistate Performance Test: Preparing for the MPT, National Conference of Bar Examiners (available at https://ncbex.org/exams/mpt/preparing/, visited on May 30, 2022).

[44] *See* Multistate Performance Test: Preparing for the MPT, note 43 *supra.* Because the MPT is not intended to test substantive legal knowledge, the MPT performance items may pertain to any subject.

[45] *See* Multistate Performance Test: Preparing for the MPT, note 43 *supra.*

[46] *See* Jurisdictions Administering the MPT, National Conference of Bar Examiners (available at https://nbex.org/exams/mpt/, visited on May 30, 2022).

For each of the four essay questions, applicants are allowed 45 minutes to answer.[47] The essay questions are intended to test writing ability, analytical ability, and substantive knowledge of federal and state law commonly encountered by practicing lawyers in Georgia.[48] The essay questions are drawn from 14 subject areas: (1) business organizations; (2) constitutional law; (3) contracts; (4) criminal law and procedure; (5) evidence; (6) family law; (7) federal civil practice and procedure; (8) Georgia civil practice and procedure; (9) non-monetary remedies; (10) professional ethics; (11) property; (12) torts; (13) trusts, wills, and estates; and (14) the Uniform Commercial Code (Articles 2, 3, and 9).[49]

To pass the bar examination, an applicant must achieve a total scaled score of 270 or more. The total scaled score is the sum of the scaled MBE score, the scaled MPT score, and the scaled essay score.[50] If initial grading indicates than an applicant has achieved a total scaled score between 265 and 269, the Board regrades the MPT and essay questions for that applicant.[51] After any regrades are complete, the Board announces the results of the examination, usually three to four months after the administration of the examination.[52] If an applicant achieves a passing score on the bar examination, she must fulfill any other, outstanding requirements

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[47] *See* Preparing for the Georgia Bar Examination, Office of Bar Admissions (available at http://gabaradmissions.org/message-on-preparing-for-the-ga-bar-exam, visited on May 30, 2022).

[48] *See* Preparing for the Georgia Bar Examination, note 47 *supra.*

[49] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (c). The constitutional law that may be tested by essay questions is *federal* constitutional law only.

[50] *See* Rules Governing Admission to the Practice of Law, Part B, Section 8 (a).

[51] *See* Rules Governing Admission to the Practice of Law, Part B, Section 8 (a).

[52] *See* Rules Governing Admission to the Practice of Law, Part B, Section 8 (c).

for admission by examination and become admitted to practice within three years of the announcement of results.[53]

Attorneys' Examination. Lawyers admitted by examination to practice in another jurisdiction—but not yet eligible for admission without examination in Georgia—may apply for admission by a truncated version of the bar examination, known as the "attorneys' examination."[54] To be eligible for the attorneys' examination, a lawyer must timely file an application with the Office of Bar Admissions to sit for the attorneys' examination, pay the required examination fee,[55] have obtained a certification of fitness to practice law from the Board to Determine the Fitness of Bar Applicants,[56] have earned an undergraduate degree from a qualified institution,[57] have been awarded the first professional degree in law by a qualified law school,[58] have never taken and failed the bar examination or attorneys' examination in Georgia,[59] and have been admitted by examination to practice in another United States jurisdiction in

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[53] *See* Rules Governing Admission to the Practice of Law, Part B, Section 8 (d-e). Passing scores lapse after three years, and if an applicant has failed to fulfill other requirements for admission and become admitted within three years, she must take and pass another bar examination.

[54] Admission by attorneys' examination is governed by Part D of the Rules Governing Admission to the Practice of Law.

[55] *See* Rules Governing Admission to the Practice of Law, Part D, Section 5 (b). The schedule for filing the application and paying the fee are the same as for the full bar examination. The current attorneys' examination fee is $378. *See* Office of Bar Admissions, Deadlines and Fees for Fitness Application and Bar Exam Application (available at http://gabaradmissions.org/deadlines-and-fees, visited on July 28, 2022).

[56] *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (c). The applicant also must never have been denied certification of fitness to practice law in Georgia. *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (d).

[57] *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (a). A qualified institution is a college or university accredited by an accrediting body recognized by Council for Higher Education Accreditation.

[58] *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (a). A qualified law school is one approved by the American Bar Association.

[59] *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (e).

which the lawyer remains in good standing.[60] The attorneys' examination consists of the MPT and essay-question portions of the bar examination,[61] and it typically is administered by the Board at the same time and in the same location as the bar examination. To pass the attorneys' examination, a lawyer must achieve a total score of 135.[62]

Multistate Professional Responsibility Examination. All applicants for admission by examination under Part B of the Rules Governing Admission to the Practice of Law also must take and pass the Multistate Professional Responsibility Examination (MPRE).[63] The MPRE is administered separately from the bar examination, and applicants may take it before or after sitting for the bar examination.[64] Prepared, administered, and graded by the NCBE, the MPRE consists of 60 multiple-choice questions—50 scored questions and 10 unscored questions—administered over a two-hour testing period.[65] The MPRE is intended to test knowledge of the general principles of American law governing the professional conduct and discipline of lawyers and judges, including as those principles are set forth in the ABA Model Rules of Professional Conduct.[66] The MPRE is used by all United States jurisdictions,

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[60] *See* Rules Governing Admission to the Practice of Law, Part D, Section 2 (b).

[61] *See* Rules Governing Admission to the Practice of Law, Part D, Section 3.

[62] *See* Rules Governing Admission to the Practice of Law, Part D, Section 4.

[63] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (f).

[64] The MPRE may be taken at any time, including before an applicant graduates from law school. Accordingly, by the time they sit for the bar examination, many applicants already have taken the MPRE.

[65] *See* Multistate Professional Responsibility Examination: Preparing for the MPRE, National Conference of Bar Examiners (available at https://ncbex.org/exams/mpre/preparing/, visited on May 30, 2022).

[66] *See* Multistate Professional Responsibility Examination: Preparing for the MPRE, note 65 *supra.* Many provisions—but not all—of the Georgia Rules of Professional Conduct are based substantially on the ABA Model Rules of Professional Conduct. *See In re Formal Advisory Op. 20-1,* 313 Ga. 803 (872 SE2d 745) (2022).

except Wisconsin and Puerto Rico.[67] In Georgia, an applicant is required to achieve a scaled score of 75 or higher to pass the MPRE.[68]

THE NECESSITY OF A BAR EXAMINATION

To begin, we considered the extent to which an individualized assessment of legal competence is necessary for prospective lawyers applying for admission to the practice of law and whether a bar examination is a reasonably effective means of assessing competence. In our consideration of these questions, we compared the bar examination and other means by which competence might reasonably be assessed, both in terms of reliability of assessment and feasibility of administration. Although the bar examination is not a perfect means of assessing competence, we see no reliable and feasible alternative to it. Accordingly, we recommend that the Court retain admission by examination as the principal pathway to admission in Georgia for lawyers not already admitted to practice in another jurisdiction.

Consistent with its obligation to regulate the practice of law to protect the public interest in an independent and well-functioning judicial system characterized by competence and integrity, the Supreme Court has a responsibility to ensure that applicants for admission to the practice of law are reasonably competent.[69] A legal education is an important component of competence, but completion of the requirements for a professional degree in law is not, without more, a sufficient guarantee of competence. Admissions standards,

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[67] *See* Jurisdictions Requiring the MPRE, National Conference of Bar Examiners (available at https://ncbex.org/exams/mpre/, visited on May 30, 2022).

[68] *See* Rules Governing Admission to the Practice of Law, Part B, Section 6 (f).

[69] As we see it, the public interest in the regulation of the practice of law is mostly about protecting the independence, integrity, and effectiveness of the judicial system and maintaining public confidence in the system as a whole. Incompetent lawyers not only harm their own clients, but they pose a threat to the system as a whole.

curricular requirements, the quality of instruction, and the rigor of academic assessments vary significantly from one law school to another. No law school is under the supervision of the Court and the Board, and absent significant supervision of admissions, curricula, instruction, and assessment in the law schools, we think it would be a mistake to defer entirely to the law schools with respect to the competence of prospective lawyers applying for admission to practice. Individualized assessments of competence are, we think, essential to the protection of the public interest.[70]

Before considering the means for individual assessments of competence, it is useful to explain what we mean by "competence." As we see it, a competent lawyer should have an adequate understanding of fundamental legal processes and principles and sources of law, strong analytical, writing, and problem-solving

[70] For this reason, the Task Force rejects diploma privilege as a pathway to admission to practice. In our view, a diploma privilege would be a viable alternative to the bar examination only to the extent the Court and the Board regularly and assiduously scrutinized admissions standards, curricula, the quality and nature of academic and experiential instruction, and the quality and nature of academic assessment at a law school, so as to ensure that graduation from the law school was a reasonable proxy for competence to practice law in Georgia. That sort of oversight would be both inadvisable and unrealistic. Such scrutiny could stifle academic innovation and impair the independence of the law schools—perhaps even to the point of implicating constitutional separation-of-powers concerns with respect to the public law schools, *see* Ga. Const. of 1983, Art. VIII, Sec. IV, Para. I (b)—and it would require substantially more resources than are currently available to the Board in any event. It is noteworthy as well that a diploma privilege based on continuing oversight of a law school surely could not extend feasibly to every law school from which graduates apply for admission to practice in Georgia, and for that reason, the Board still would have to administer a bar examination or maintain some other means of assessing competence for graduates of those law schools not regularly scrutinized by the Court and the Board, only compounding the resource problem. A diploma privilege without careful law-school scrutiny is inadvisable, and a diploma privilege based on law-school oversight is simply not feasible in a jurisdiction with as many lawyers as Georgia. Moreover, we note that a diploma privilege limited to law schools in Georgia may raise constitutional concerns, including under the so-called dormant Commerce Clause. *See generally* Claudia Angelos *et al., Diploma Privilege and the Constitution,* 73 S.M.U. L. Rev. 168 (2020). Notably, there was *no* support for a diploma privilege among the members of the Committee on Admission to the Practice of Law by Examination, which carefully and thoughtfully considered diploma privilege and other alternatives to a bar examination.

skills, the ability to perceive client matters in the context of the "big picture," and the ability to interact with clients effectively. Accordingly, competence has both academic and practical components.

A written bar examination strikes us as a reasonably effective means of individually assessing the competence of prospective lawyers. A written examination permits an assessment of the extent to which a prospective lawyer adequately understands fundamental legal processes and principles and sources of law, and a written examination that includes essay questions facilitates an assessment of analytical and writing skills. Problem-solving skills and the ability to contextualize legal problems are also assessed by way of a written examination that includes practical components, such as the MPT. And at least some studies have found that performance on the bar examination is inversely correlated with the likelihood that a lawyer later will be disciplined for professional misconduct, especially with respect to misconduct that reflects on competence and diligence.[71]

To be sure, a written examination is not a perfect means of assessing competence. For instance, it is difficult to assess effective interactions with clients—aside from the assessment of writing skills—in the context of a written examination. With respect to

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[71] *See, e.g.,* Robert Anderson and Derek Muller, *The High Cost of Lowering the Bar,* 32 Geo. J. Legal Ethics 307, 310 (2019) ("Using a large dataset drawn from publicly available California State Bar records, our analysis shows that bar exam score is significantly related to likelihood of State Bar discipline throughout a lawyer's career. . . . We find support for the assertion that attorneys with lower bar examination performance are more likely to be disciplined and disbarred than those with higher performance."); Jeffrey S. Kinsler, *Is Bar Exam Failure a Harbinger of Professional Discipline,* 91 St. John's L. Rev. 883, 885 (2017) ("Using bar exam and disciplinary data from Tennessee, this Article substantiates the following theses: (1) The more times it takes a lawyer to pass the bar exam the more likely that lawyer will be disciplined for ethical violations, particularly early in the lawyer's career; and (2) The more times it takes a lawyer to pass the bar exam the more likely that lawyer will be disciplined for lack of diligence—including non-communication—and/or incompetence.").

assessing a prospective lawyer's knowledge and understanding of fundamental legal processes and principles and sources of law, a closed-book examination tends, in our view, to put a premium on rote memorization of legal rules, which seems less important to the practice of law than the more general understanding of law that enables lawyers to identify issues and resolve those issues with additional inquiry and research. Moreover, standardized tests in general are widely regarded as an imperfect measure of ability, and we are well aware of fair concerns about equity and systemic bias in standardized testing regimes. Despite these shortcomings of the bar examination, we nonetheless believe it is a reasonably effective means of assessing competence among lawyers seeking admission to practice, and in light of its prevalence and long history in our state and elsewhere, it is sufficiently feasible and administrable.

The alternatives do not seem feasible or administrable on the scale required for a jurisdiction with as many lawyers as Georgia. In addition to a diploma privilege,[72] we looked at several alternatives to a standard written bar examination, including New Hampshire's Daniel Webster Scholar Honors Program,[73] as well as Oregon's

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[72] *See* note 70 *supra.*

[73] The Daniel Webster Scholar Honors Program is a program at the University of New Hampshire School of Law, which is "designed to prepare law school graduates for practice through 'practice courses' and evaluations designed to develop and test fundamental skills of legal practice, including communication, negotiation, organization, work management and legal ethics." Participants "are required to undergo evaluations periodically throughout the two-year program, and before graduating, are required to undergo a two-day assessment process, consisting of interviews, testing and simulations." Admission by Successful Completion of DWS Program, N.H. Judicial Branch (available at http://courts.nh.gov/nh-bar-admissions/admission-successful-completion-dws-program, visited August 1, 2022). *See also* N.H. Supreme Court Rule 42 (XII) (admission of individuals who, "within one year of the date upon which the application for admission is filed, have successfully completed, to the satisfaction of the board, the Daniel Webster Scholar Honors Program, after successfully completing taking and passing a variant of the New Hampshire bar examination to consist of rigorous, repeated and comprehensive evaluation of legal skills and abilities, the criteria for which will be established by this court, and which will amount to more than the twelve hours of testing required for the conventional bar examination").

Experiential and Supervised Practice Pathways.[74] Conceptually, these programs seem promising,[75] and in particular, an alternative pathway substantially along the lines of the Daniel Webster Scholar Honors Program may be deserving of further consideration and study. The Committee on Admission to the Practice of Law by Examination endorsed the idea of a "Georgia Scholar" program as an alternative pathway to admission for some applicants,[76] and we encourage the Court to consider appointing a study committee to further examine the feasibility of such a program.[77] But any such program would not be intended to displace the bar examination as the principal pathway to admission to practice. Indeed, none of these promising alternative pathways appears at this time to be feasibly scalable to the extent that would be necessary to amount to a

[74] In 2021, the Oregon Alternatives to the Bar Exam Task Force recommended that the Oregon Supreme Court adopt these two alternative pathways to admission. *See* Recommendation of the Alternatives to the Bar Exam Task Force (June 2021) at 1 (available at http://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf, visited August 1, 2022). The Experiential Pathway involves a defined law-school curriculum that emphasizes experiential learning, "culminating in a capstone portfolio or examination" assessed by the Oregon board of bar examiners. *Id.* at 7-8. The Oregon task force acknowledged that the Experiential Pathway "could prove to be resource intensive." *Id.* at 10. The Supervised Practice Pathway involves a prospective lawyer practicing under the supervision of an experienced practicing lawyer for a minimum of 1,000 to 1,500 hours, followed by a review of "non-privileged work product" by the Oregon board of bar examiners to "assure that the applicant is developing the skills necessary for admission." *Id.* at 14. The Oregon task force likewise acknowledged that the resource investment required to make the Supervised Practice Pathway successful would involve, among other things, "a great deal of volunteerism on the part of bar membership." *Id.* at 24 n.15.

[75] Indeed, programs like these may assess competence more fully and reliably than a standard written bar examination, and they conceivably could address longstanding concerns about equity and fairness in standardized testing.

[76] A description of what a "Georgia Scholar" program might look like is attached as an Appendix to this Report.

[77] We note that the successful launch of a "Georgia Scholar" program would require substantial collaboration between the Court and the Board, on the one hand, and law schools and practicing attorneys, on the other, with respect to both operational details and oversight.

meaningful alternative for most applicants for admission to practice in Georgia.[78]

QUALIFICATIONS FOR ADMISSION BY EXAMINATION

We have considered the general qualifications for admission by examination—the undergraduate and legal education requirements, as well as the requirement that applicants take and achieve passing scores on both the MPRE and the bar examination—and we recommend that the Court retain these general qualifications without any change.[79] We recommend, however, that the eligibility requirements to sit for the bar examination be reconsidered in one respect. More specifically, from 1974 until 1998, law students were permitted to sit for the bar examination in their final semester of law school. We suggest that the Court revisit the eligibility of third-year law students to sit for examination.

The Task Force sees no compelling reason to require students in their last semester of law school to complete their studies before *sitting for the bar examination*, so long as a student completes the

[78] About scalability, we note that the Daniel Webster Scholar Honors Program graduated only 124 students over a ten-year period. *See Study Lauds UNH Law Program That Allows Students To Bypass Traditional Bar Exam,* N.H. Public Radio (transcript available at http://nhpr.org/education/2015-04-08/study-lauds-unh-law-program-that-allows-students-to-bypass-traditional-bar-exam, visited August 1, 2022).

[79] The educational qualifications generally require that an applicant have been awarded an undergraduate degree by an institution accredited by an accrediting body recognized by the Council for Higher Education Accreditation, *see* Rules Governing Admission to the Practice of Law, Part B, Section 4 (a) (1), and a professional degree in law by a law school approved by the American Bar Association. *See* Rules Governing Admission to the Practice of Law, Part B, Section 4 (b). In light of the proliferation of post-secondary educational programs in the last 50 years, requiring degrees from institutions that meet the standards of a CHEA-recognized accrediting body or the American Bar Association is a reasonable means of ensuring that educational credentials are meaningful and reflect the completion of a significant course of studies at a legitimate institution of higher learning. We express no opinion, however, about the extent to which alternative means of ensuring that educational credentials are meaningful might be equally reasonable.

requirements for the first professional degree in law before *being admitted to practice*. To begin, we observe that the requirement that applicants receive their first professional degree in law before sitting for the bar examination works a financial hardship for many applicants. Indeed, under the current Rules, an applicant who graduates from law school in May cannot sit for the bar examination until July and cannot expect to learn of the results until October or November. Although some large law firms may be able to employ recent graduates during the six months following graduation, many small law firms and government law offices cannot. Especially considering the high costs of legal education today, recent graduates of law schools ought not be unemployable as lawyers for longer than is necessary to protect the public interest in ensuring that those admitted to the practice of law are reasonably competent.

Requiring third-year law students to wait until after graduation to sit for the bar examination does not strike us as essential to the protection of this public interest.[80] By February of the third year of law school, most students will have acquired most of the analytical skills and legal knowledge pertinent to the bar examination that they reasonably might expect to acquire by academic study. And although it is conceivable that preparations for the bar examination could interfere with academic studies in the weeks preceding the bar examination, it is equally conceivable that

[80] In addition to the historical practice in Georgia, we note that several other jurisdictions permit certain law students to sit for the bar examination prior to the award of the first professional degree in law. *See, e.g.,* Ariz. Rules for Admission of Applicants to the Practice of Law, Rule 34 (b) (2); Ind. Rules for Admission to the Bar and the Discipline of Attorneys, Rule 13 (5); Iowa Court Rule 31.8 (2); Kan. Supreme Court Rule 706 (d); Miss. Rules Governing Admission to the Bar, Rule IV, Section 5 (C); N.Y. Court of Appeals Rule 520.17; Tex. Rules Governing Admission to the Bar, Rule 3 (a) (3). And recently, Virginia authorized third-year law students who have "satisfactorily completed legal studies amounting to at least five semesters . . . of full-time study" at a law school approved by the American Bar Association or the Virginia Board of Bar Examiners to sit for its February bar examination, beginning in February 2023. *See* Va. Bd. of Bar Examiners Rules, Section II (A) (2) (revised July 2022).

law schools could adjust their third-year curricula to accommodate the bar examination.[81] We recognize that a rule allowing third-year law students to sit for the bar examination would require each law school to carefully consider the impact on its third-year curriculum, and whether to make academic accommodations for a third-year bar examination is ultimately a question of preference for each school. The Task Force believes, however, that permitting third-year law students to sit for the bar examination in their final semester of study is consistent with the obligation of the Court to ensure the competency of persons admitted to the practice of law, and the Task Force is confident that the strong partnership that exists between the Court, the practicing bar, and the law schools in Georgia can collaboratively address any difficulties that may arise from allowing third-year law students to sit for the bar examination.

CONTENT OF EXAMINATION

The Task Force recommends that the Court continue to require a bar examination to assess knowledge of *both* common principles of American law generally *and* principles of Georgia law that are regularly encountered by practicing attorneys in Georgia. We have carefully considered the subjects within the current coverage of the bar examination, as well as the areas of law most commonly encountered by lawyers practicing in Georgia.[82] We recommend that

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[81] For instance, when Georgia permitted third-year law students to sit for the February bar examination, it appears that the law school at Mercer University developed an "innovative" curriculum for its third-year students to accommodate the examination. *See* Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment,* 24 U. Tol. L. Rev. 1, 30 (1992). Today, with improved technological resources, more emphasis on experiential learning, and a more pronounced interest in assuring the success of their students in becoming admitted to practice, the Task Force believes that the ability and willingness of law schools to accommodate third-year students sitting for the bar examination likely is greater now than thirty years ago.

[82] On this point, we acknowledge that many Georgia lawyers do not regularly deal with all of these subjects. But after a lawyer is admitted to practice, the lawyer has a license to

the bar examination continue to cover general principles of the law governing:

- Business organizations, including corporations, limited liability companies, partnerships, and principles of agency;
- Contracts;
- Criminal law;
- Criminal practice and procedure;
- Evidence;
- Family law, including divorce, parental rights and obligations, and the custody and support of children;
- Federal constitutional law, including the separation of powers, federalism and the limits of national power, the jurisdiction of the federal courts, the Bill of Rights, and the Fourteenth Amendment;
- Federal civil practice and procedure;
- Georgia civil practice and procedure;
- Nonmonetary remedies;
- Professional ethics;
- Property;

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practice law of any sort, subject only to the ethical obligation of every lawyer to limit her practice to matters in which she is competent. *See* Ga. R. Prof. Conduct 1.1 ("A lawyer shall provide competent representation to a client. Competent representation as used in this rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."). For this reason, we believe it is essential for all lawyers admitted to practice in Georgia to have demonstrated a reasonable familiarity with, and understanding of, the fundamental principles of law in all areas that are regularly encountered by a substantial number of practicing lawyers in Georgia. To put it another way, there are some concepts so fundamental to the practice of law that *every* lawyer ought to be generally familiar with them.

- Torts; and
- the Uniform Commercial Code, Articles 2 and 3.

In our view, the general principles in each of these areas of law remain sufficiently fundamental to the practice of law to justify a requirement that each lawyer admitted by examination to practice demonstrate a general understanding of them.

We nonetheless recommend a couple of changes with respect to the content of the bar examination. In light of increased specialization in the practice of law, we recommend that the bar examination no longer cover trusts and estates or Article 9 of the Uniform Commercial Code, which concerns secured transactions.[83] We recommend, on the other hand, the addition of two subjects to the bar examination:

- *Georgia constitutional law,* including Georgia constitutional history, the separation of powers among the departments of state government, the respective jurisdictions of the Georgia courts, counties and municipalities, and certain of the rights guaranteed in Article I, Section I;[84] and

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[83] We note that the NCBE's NextGen bar examination, which is discussed in greater detail in the following section of this Part, will not cover secured transactions or trusts and estates, pursuant to a recommendation of the national Testing Task Force. *See* FAQs about Recommendations, National Conference of Bar Examiners (available at https://nextgenbarexam.ncbex.org/faqs/, visited July 31, 2022). The national Testing Task Force also recommended the omission of family law from the NextGen bar examination. In light of these recommendations, we carefully considered whether family law should remain a part of the Georgia bar examination. Although the practice of family law also has become highly specialized, Georgia lawyers who practice in many other areas of law nonetheless frequently encounter issues that have family-law implications. Accordingly, we recommend at this time that family law remain among the topics tested on the bar examination.

[84] In light of the unique constitutional history of Georgia, and inasmuch as "Georgia constitutional provisions may confer greater, fewer, or the same rights as similar provisions of the United States Constitution," *Elliott v. State,* 305 Ga. 179, 187 (824 SE2d 265) (2019), the Task Force believes that it is important for lawyers admitted to practice in Georgia to appreciate the distinct significance of state constitutional law, separate and apart from federal constitutional law. *See* Jeffrey S. Sutton, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW (2018) at 8 ("American constitutional law

- *Administrative law,* including general principles of agency rulemaking, agency adjudication, and judicial review.[85]

To give prospective applicants a fair opportunity to prepare for a bar examination on these additional subjects—and to give law schools and bar preparation course providers sufficient time to prepare coursework or instructional materials on these subjects—we suggest that the Court announce the addition of new subjects to the bar examination no later than two years before the examination begins to test on those new subjects.

FORMAT OF EXAMINATION

The Task Force has studied the format of the examination as it is administered today, and although we perceive no deficiencies in this format, we recognize that the format likely will have to change in the next few years. In January 2021, the NCBE board of trustees approved a recommendation to develop a next generation, integrated bar examination.[86] The NCBE has indicated that the development of this "NextGen" bar examination will require four or

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creates two potential opportunities, not one, to invalidate a state or local law. Individuals who wish to challenge the validity of a state or local law thus usually have two opportunities to strike the law—one premised on the first-in-time state constitutional guarantee and one premised on a counterpart founded in the U.S. Constitution. Yet most lawyers take one shot rather than two, and usually raise the federal claim rather than the state one."). *See also Black Voters Matter Fund v. Kemp,* 313 Ga. 375, 393-94 (870 SE2d 430) (2022) (Peterson, J., concurring) (noting that "litigants frequently rely on federal precedent without any attempt to explain why Georgia courts should apply such decisions").

[85] Considering the extent to which law today consists of agency-made regulations and guidance, the Task Force believes it is essential for all lawyers admitted to practice in Georgia to have a general understanding of the fundamental principles of administrative law. Even lawyers who do not practice regularly before agencies will routinely encounter issues driven largely by administrative law, from immigration to healthcare, business licensing to drivers licensing, and environmental regulation to zoning.

[86] *See* Next Generation of the Bar Exam, National Conference of Bar Examiners (available at https://ncbex.org/about/nextgen-bar-exam, visited July 31, 2022).

five years.[87] At some point after the development of the NextGen examination, we anticipate that the NCBE will cease to provide the MBE and MPT to Georgia and other jurisdictions. And although the NCBE has indicated an openness to working with jurisdictions like Georgia—which use some, but not all, testing products offered by the NCBE as components of their bar examinations[88]—the NCBE has acknowledged that it does not currently understand the extent to which the integrated NextGen examination could be disintegrated into distinct parts.[89] For the purposes of this Report, we assume that NCBE will no longer offer discrete testing components resembling the MBE and MPT at some point in the near future.

At that point, the Court would have several options. *First,* the Court could decline the NextGen bar examination altogether and instead direct the Board to prepare the entirety of the Georgia bar examination. This would permit the Court to retain the existing format of the bar examination—multiple-choice questions on core subject areas, a test of practical legal analytical and writing skills, and essays on a broader range of subject areas specific to Georgia law. This option, however, does not strike us as feasible. If the Board were charged with preparing the entirety of the bar examination, and assuming that the Court would wish to ensure that multiple-

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[87] *See* Next Generation of the Bar Exam, note 86 *supra.*

[88] Although Georgia uses the MBE and MPT, it does not use the Multistate Essay Examination (MEE) prepared by NCBE, which consists of six essay questions on fundamental and widely accepted principles of American law generally. *See* Multistate Essay Examination: Preparing for the MEE, National Conference of Bar Examiners (available at https://ncbex.org/exams/mee/preparing/, visited on July 31, 2022). As discussed earlier, the Board prepares its own essay questions, which enables the Board to test applicants on principles of Georgia law specifically.

[89] *See* FAQs about Recommendations, National Conference of Bar Examiners (available at https://nextgenbarexam.ncbex.org/faqs/, visited July 31, 2022) ("We do not know at this time whether or how an exam that is designed to be used as an integrated assessment could be 'disintegrated' to create distinct components. However, we are committed to engaging with jurisdictions to discuss their needs and evaluate options for meeting those needs if feasible.").

choice questions are properly validated for accuracy and reliability as a measure of competence, the Board would require substantially more personnel and resources than it currently has available for exam preparation. We have not attempted to estimate the costs of these additional personnel and resources, but we surmise that the costs would be prohibitive.[90]

Second, the Court could adopt the NextGen bar examination as its own bar examination and forego any additional testing that is specific to Georgia law. This approach would be straightforward in implementation, but it would require giving up an assessment of competence that the Task Force regards as essential. Although Georgia law is consistent in many respects with the laws of other American jurisdictions, it has significant elements that are peculiar to Georgia. To ensure the competence of lawyers admitted to practice in Georgia, we think it is vital that the bar examination cover these distinctive elements of Georgia law. To be sure, only a handful of these distinctive elements are actually tested in each bar examination. But to prepare for the bar examination, applicants must commit to a study of these distinctive elements across a broad range of subjects. We understand that many applicants will not long retain all of the details of these distinctions after their examination. But in our experience, lawyers may well recall years later that Georgia *has* some peculiar rule on a particular subject, and in that sense, requiring Georgia lawyers to prepare for an examination on the distinctive elements of Georgia law has long-term value in helping lawyers spot issues requiring closer attention and additional research. Moreover, requiring a demonstration of competence specific to Georgia law provides an incentive for law schools that tend to graduate a significant number of prospective lawyers

[90] It is conceivable that, if a sufficient number of sizeable jurisdictions were dissatisfied with the NextGen bar examination, those jurisdictions could combine resources to collectively produce testing components that resemble the MBE and MPT. We are not aware, however, that any jurisdiction has expressed such dissatisfaction.

seeking admission in Georgia to continue to emphasize Georgia law in their curricula and academic instruction. In addition, we think that some examination specific to Georgia law is critical for public confidence in the competence of the legal profession. (Lay people would be astonished to learn, we think, that admission by examination to practice in Georgia does not require any examination about Georgia law.) For these reasons, we do not recommend any approach to the bar examination that fails to test the distinctive elements of Georgia law.

Finally, the Court could adopt the NextGen bar examination as *a* component of the Georgia bar examination, but also require applicants to sit for a portion of the bar examination directed toward Georgia law and prepared by the Board. Given the practical difficulties of the first approach and the inadvisability of the second, this third approach is our recommendation. We acknowledge that, if the NextGen bar examination is administered over two full days, this third approach would require that the bar examination in Georgia extend into a third day. That obviously would be less desirable for applicants, and it would require a modest increase in the resources allocated to the Board for administration of the examination. We nonetheless recommend that the Court adopt this approach to the bar examination after the NCBE ceases to offer the MBE and MPT.

At the same time, we recommend that the Court consider modifying the format of the portion of the bar examination prepared by the Board after the Court has a better understanding of the format of the NextGen bar examination than is currently available.[91] In particular, depending on the ultimate format of the

[91] According to the Final Report of the national Testing Task Force, the NextGen bar examination will use "an integrated exam structure," consisting of both stand-alone questions and sets of related "questions based on a single scenario or stimulus," and including "selected-response, short-answer, and extended constructed-response items." Final Report of the Testing Task Force, National Conference of Bar Examiners (available at

NextGen bar examination, it may be desirable for the portion of the examination prepared by the Board to consist of short-answer questions or a combination of essay and short-answer questions, rather than essay questions alone. Depending on the length of the NextGen bar examination, it may also be necessary to reconsider whether the portion of the bar examination prepared by the Board would require an additional day of testing and, if so, whether it should be administered separately from the NextGen bar examination. These issues are better addressed, however, with a full understanding of the format of the NextGen bar examination.

https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf, visited August 1, 2022). The NCBE has also indicated that the NextGen bar examination may require less time to administer than the current bar examination. *See* FAQs about Recommendations, note 86 *supra* ("We do not expect the NextGen bar exam to be longer than the current 12-hour, two-day exam. If possible, the length of the NextGen exam will be reduced, but this will be done only if the necessary validity and score reliability can be maintained. We are hopeful that the integrated design and computer-based delivery might create efficiencies in test administration that will support a shorter bar exam.").

PART THREE

ADMISSION WITHOUT EXAMINATION

OVERVIEW

With respect to admission to practice without examination, the Task Force concludes that the standards and procedures set forth in Part C of the Rules Governing Admission to the Practice of Law are reasonable, and we recommend that they be retained without modification.

HISTORY OF ADMISSION WITHOUT EXAMINATION IN GEORGIA

The custom of admitting lawyers to practice in Georgia without examination based on their admission to practice in another jurisdiction goes back nearly 200 years. In 1823, the General Assembly adopted a law providing that a lawyer should be "forthwith admitted to plead and practice" in Georgia upon a sufficient showing that he had practiced for the preceding three years in South Carolina, so long as South Carolina extended a like courtesy to Georgia lawyers.[1] Six years later, the General Assembly extended this courtesy to lawyers admitted in "any of the adjoining States or Territories," but without the three-year practice and reciprocity requirements.[2]

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[1] Thomas R.R. Cobb, A DIGEST OF THE STATUTE LAWS OF THE STATE OF GEORGIA (1851) at 89-90.

[2] Cobb, note 1 *supra,* at 90. In pertinent part, the 1829 law provided:

> From and after the passage of this Act, it shall and may be lawful for any Judge of the Superior Courts in this State, in term time of any of said Superior Courts, upon application being made and filed in writing, to cause a license to be issued by the Clerk of said Court to any attorney or solicitor from any of the adjoining

The courtesy was retained in the Code of 1861,[3] although the reciprocity requirement was resurrected.[4] The courtesy thereafter was retained in subsequent publications of the Code,[5] although in the late Nineteenth Century, the law was changed to vest the superior courts with discretion in appropriate cases to require an examination of a lawyer.[6] In 1933, the General Assembly added a requirement that the lawyer "has been for the last five years, and is at the time the application is made, actively engaged in the practice of law as a member of the bar of [another jurisdiction],"[7] and the provision that a superior court had discretion to nonetheless require an examination was dropped from the Code.

> States or Territories, to plead and practise in any of the Courts of Law and Equity in this State, as fully as if such applicant were a citizen of Georgia; *Provided,* said applicant shall, before the granting of such license, produce to the Judge aforesaid a certificate from some one of the Judges of the Superior, Circuit or District Courts of the State or Territory of which he is a citizen, under the seal of said Court, stating that he is of good moral character, and that he has been regularly admitted to plead and practise law in such State or Territory, and is at the date of such certificate a practising attorney of such State or Territory.

[3] *See* Code of 1861, §§ 373, 376.

[4] Code of 1861, § 375 ("Such Attorneys at Law of any State adjoining this, are not thus permitted to practice law herein, unless those of this State are not likewise permitted to practice law in their Courts.").

[5] *See, e.g.,* Irwin's Code of 1873, § 399 *et seq.*

[6] *See* Code of 1895, § 4408 ("Attorneys at law residing in other States of the Union, having license to practice law in a circuit court therein, where by law the attorneys of this State are permitted to practice law, may practice in the superior courts of this State, and by submitting to and undergoing such examination as to the laws of this State, as the judge of the superior court where such application is made may require . . . ."). *Accord* Code of 1910, § 4946.

[7] Code of 1933, § 9-201.

Georgia continued to extend this courtesy to lawyers admitted in another jurisdiction through the early 1970s,[8] but in December 1974, the Supreme Court abolished the courtesy by rule.[9] The Court did so at the request of the State Bar of Georgia, ostensibly based on perceptions that applicants for admission without examination too often "were absolutely unprepared to practice law in Georgia."[10] Within a few years, however, the restoration of the courtesy became a subject of recurring discussion and debate among the State Bar leadership.[11] Resistance to restoration of the courtesy appears to

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[8] *See, e.g., State Bar of Ga. v. Haas,* 133 Ga. App. 311 (211 SE2d 161) (1974).

[9] *See Burger v. Burgess,* 234 Ga. 388, 389 (216 SE2d 294) (1975) ("Although admission to the Bar of this State by comity has been abolished by Rule 2-101 of the State Bar of Georgia as amended December 17, 1974, a court retains the inherent, discretionary power to permit and authorize a nonresident attorney licensed to practice law in another state to practice [*pro hac vice*] before the authorizing court in isolated cases."). *See also* E.R. Lanier, *Georgia's New Reciprocity Admissions Rule: A Short History and Brief Introduction,* 8 GA. B.J. 26, 26 (2003) ("On Dec. 17, 1974, the Court passed an Order amending its rules respecting admission to the Bar, determining with remarkable simplicity that '[n]o person may be admitted to the Bar or licensed as an attorney to practice law in this state without examination. There shall be no admission to the Bar of Georgia by comity.'").

[10] Chief Justice H.E. Nichols, *Address to the Annual Meeting of the State Bar of Georgia*, 12 GA. STATE B.J. 23, 25 (1975). A few years later, the president of the State Bar described the concerns that led to the abolition of the courtesy somewhat differently:

> The reason for the abolition of comity in 1974 was the real or imagined fear (1) that Georgia would become a dumping ground for lawyers who wish to end their careers in a sublime spot like Georgia maintaining such a part time practice as he or she desired, thus taking practice away from other lawyers in the state; and (2) that lawyers who were subjected to discipline by the Bar of a foreign state and were offered exile in place of disbarment would flee to Georgia.

J. Douglas Stewart, *Address to the Annual Meeting of the State Bar of Georgia*, 19 GA. STATE B.J. 26, 28 (1982).

[11] *See, e.g.,* Stewart, note 10 *supra,* at 27 ("I believe we should continue to study the issue of lawyers being admitted to practice in this state who have been practicing in other states as members of Bars of those states."); Richard Y. Bradley, *Annual Report to the Membership of the State Bar of Georgia*, 21 GA. STATE B.J. 38, 39 (1984) ("For several years, the issue of whether to admit members in good standing of the bars of other states without requiring them to stand the Georgia Bar examination has been debated."); Duross Fitzpatrick, *Annual Report to the Membership of the State Bar of Georgia*, 22 GA. STATE B.J. 38, 42 (1985) ("One issue which seems determined not to go away is that of Comity or its first Cousin, the admission of certain lawyers to the State Bar of Georgia who have not passed the Georgia

have been driven in significant part by a desire to limit competition by out-of-state lawyers.[12] But that resistance waned over time,[13] and beginning in 1996, there was a renewed push to restore the courtesy, led by former Chief Justice Harold G. Clarke and a host of prominent corporate counsel, among others.[14] In December 2002, the Court by order restored the courtesy of admission without examination.[15]

CONTEMPORARY ADMISSION WITHOUT EXAMINATION IN GEORGIA

The Board of Bar Examiners today has authority to admit lawyers to practice in Georgia without examination under Part C of the Rules Governing Admission to the Practice of Law. To be eligible for admission without examination, the lawyer must have been "admitted by examination to membership in the bar of the highest court of another United States jurisdiction which has reciprocity for bar admissions purposes with the State of Georgia"[16] and "primarily

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Bar exam."). As early as 1981, the Young Lawyers Division of the State Bar—"a group understandably concerned over the loss of potential employment out-of-state because of Georgia's self-inflicted lack of reciprocal comity with other jurisdictions"—formally proposed restoration of the courtesy, but the Board of Governors at that time rejected this proposal. Lanier, note 9 *supra,* at 27.

[12] *See* Bradley, note 11 *supra,* at 39 ("One the other hand, are the concerns of lawyers in areas of our state which border neighboring states as to encroachment by out of state practitioners.").

[13] In 1996, the State Bar and Board of Bar Examiners informed the Court that "they were essentially neutral on the question." Lanier, note 9 *supra,* at 28.

[14] *See* Lanier, note 9 *supra,* at 28-30.

[15] *See* Lanier, note 9 *supra,* at 30.

[16] Rules Governing Admission to the Practice of Law, Part C, Section 2 (b). This section further provides that, if the other jurisdiction

> permits the admission of Georgia judges and lawyers upon motion but that jurisdiction's rules are more stringent and exacting and contain other limitations, restrictions and conditions, the admission of the applicant from that jurisdiction shall be governed by the same rules that would apply to an applicant from Georgia seeking admission to the bar in the [other] jurisdiction.

engaged in the practice of law for five of the seven years immediately preceding the date upon which the application is filed."[17] In addition, the lawyer must demonstrate that she:

- Meets all educational requirements for admission to practice, including that she has been awarded a law degree by a law school approved by the American Bar Association;[18]
- Has never taken and failed the Georgia bar examination;[19]
- Has been certified by the Board to Determine Fitness of Bar Applicants as fit to practice law,[20] and has never been denied certification of fitness in any jurisdiction;[21]
- Is in good standing in every jurisdiction in which she has been admitted to practice or resigned while in good standing;[22]
- Has not engaged in the unauthorized practice of law in Georgia;[23] and
- Intends to engage in the practice of law in Georgia.[24]

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[17] Rules Governing Admission to the Practice of Law, Part C, Section 2 (e). The Rules define "active practice of law" to include "representation of one or more clients in the practice of law," "service as a lawyer with a local, state or federal agency, including military service," "teaching law at a law school approved by the American Bar Association," "service as a judge in a federal, state or local court of record," "service as a judicial law clerk," and "service as in-house counsel provided to the lawyer's employer or its organizational affiliates." Rules Governing Admission to the Practice of Law, Part C, Section 3 (a).

[18] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (a). The educational requirements are set forth more fully in Part B, Section 4, of the Rules. *See In re Carothers,* 312 Ga. 393, 399 (863 SE2d 35) (2021) (discussing incorporation of Part B educational requirements in Part C of the Rules).

[19] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (d).

[20] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (g).

[21] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (c).

[22] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (f).

[23] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (i).

[24] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (h).

For "good cause shown by clear and convincing evidence," the Board may waive any of these requirements.[25] According to the Office of Bar Admissions, 41 other jurisdictions currently have reciprocity for bar admissions purposes with Georgia, including Alabama, the District of Columbia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, and Virginia.[26]

STANDARDS AND PROCEDURES FOR ADMISSION WITHOUT EXAMINATION

After a careful examination of the standards and procedures for admission to practice without examination, we recommend that these standards and procedures be retained without change.[27] Although we examined all of these standards and procedures, we specifically considered the reciprocity requirement, as well as the

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[25] Rules Governing Admission to the Practice of Law, Part F, Section 5. The Board has adopted a formal policy with respect to waivers of the educational eligibility requirements, which was approved by the Supreme Court in 2008. *See* Waiver Process & Policy (available at http://gabaradmissions.org/waiver-process) (visited Sept. 1, 2022). An applicant seeking waiver of any of the eligibility requirements bears the burden of establishing good cause for the waiver. *See In re Andrews,* 312 Ga. 875, 878 (866 SE2d 397) (2021).

[26] *See* Office of Bar Admissions, Information on Admission on Motion without Examination (available at http://gabaradmissions.org/appinfor.action?id=3) (visited Sept. 1, 2022). Notably, Georgia does not have reciprocity with California, Florida, or South Carolina.

[27] We do recommend one change that is related to admission without examination, specifically with respect to lawyers admitted in another jurisdiction and married to a member of the Armed Forces assigned to a duty station in Georgia. To the extent such lawyers meet the eligibility requirements for admission without examination, they may be admitted under the existing standards and procedures. But if such lawyers do not meet those eligibility requirements—most commonly because they have not yet been engaged in the active practice of law for the required five years—they currently must seek a waiver of the eligibility requirements or apply for admission by examination. *See generally In re O'Neal,* 304 Ga. 449 (819 SE2d 1) (2018) (discussing waiver of eligibility requirements for admission without examination for military spouse). Instead of dealing with these issues through a waiver process, we propose instead that the Supreme Court adopt a rule authorizing the provisional admission of these lawyers, at least until they can fulfill the eligibility requirements for full admission without examination. This proposal is discussed in Part 4 of this Report.

requirement that a lawyer have been primarily engaged in the active practice of law for five of the seven years immediately preceding her application for admission.

In recommending the retention of the reciprocity requirement, we note that it has been a part of our law for more than 160 years, and still today, this requirement fits comfortably within the mainstream of American law.[28] With respect to the five-year, active practice of law requirement, we likewise note that it has an extensive pedigree in Georgia and is no outlier nationally.[29] In

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[28] Indeed, many other American jurisdictions similarly require reciprocity for admission without examination. *See, e.g.,* Ala. Rules Governing Admission to the Bar, Rule III (A) (1) (d); Alaska Bar Rule 2, Section 2 (a) (2); Ariz. Supreme Court Rule 34 (f) (1) (A); Ark. Rules Governing Admission to the Bar, Rule XVI (1) (d); Idaho Bar Comm. Rule 206 (a) (2); Ky. Supreme Court Rule 2.110 (3); Miss. Rules Governing Admission to Bar, Rule VI, Section 1 (A); N.H. Supreme Court Rule 42 (XI) (a) (2); N.M. Rules Governing Admission to the Bar, Rule 15-107 (A) (1); N.Y. C.L.S. Jud. § 90 (a) (b); N.C. Rules Governing Admission to Practice Law, Rule .0502; Ore. Bar Admission Rule 15.05 (2); Pa. Bar Admission Rule 204 (2); Utah Rules Governing State Bar, Rule 14-705 (a) (6); Va. Supreme Court Rule 1A:1 (a); W. Va. Rules for Admission to the Practice of Law, Rule 4.0 (b). We note as well that, in the context of admissions to the practice of law, such reciprocity requirements have been "upheld time and again" by the courts over constitutional objections. *Morrison v. Board of Law Examiners,* 453 F3d 190, 193 (4th Cir. 2006) (rejecting challenge to North Carolina reciprocity requirement under the Privileges and Immunities Clause and the Equal Protection Clause).

[29] *See, e.g.,* Ala. Rules Governing Admission to the Bar, Rule III (A) (1) (c) (applicant must "have been primarily engaged in the active practice of law . . . for five of the six years immediately preceding"); Alaska Bar Rule 2, Section 2 (a) (2) (applicant must have "engaged in the active practice of law . . . for five of the seven years immediately preceding"); Ariz. Supreme Court Rule 34 (f) (1) (A) (applicant must have been "primarily engaged in the active practice of law . . . for three of the five years immediately preceding"); Ark. Rules Governing Admission to the Bar, Rule XVI (1) (c) (applicant must "have been primarily engaged in the practice of law . . . for three of the five years immediately preceding the date upon which the application is filed"); Col. Rule of Civ. P. 203.2 (1) (c) (applicant must have been "primarily engaged in the active practice of law . . . for three of the five years immediately preceding"); Idaho Bar Comm. Rule 206 (a) (3) (applicant must have been "substantially engaged in the Active Practice of Law . . . for no less than three of the five years immediately preceding the Application"); Ill. Supreme Court Rule 705 (e) (applicant must have been "engaged in the active, continuous, and lawful practice of law" for "at least three of the five years immediately preceding the application"); Ky. Supreme Court Rule 2.110 (1) (applicant must have "been engaged in the active practice of law . . . for five of the seven years next preceding the filing of an application"); Miss. Rules Governing Admission to Bar, Rule VI, Section 1 (A) (applicant

addition, we note that we are aware of no significant problems that have arisen in the application and administration of these standards.

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must have "practiced not less than five (5) years"); N.H. Supreme Court Rule 42 (XI) (a) (1) (B) (applicant must "have been primarily engaged in the active practice of law . . . for five of the seven years immediately preceding"); N.M. Rules Governing Admission to the Bar, Rule 15-107 (A) (1) (applicant must have been "engaged in the active practice of law . . . for at least five (5) of the past seven (7) years preceding application"); N.C. Rules Governing Admission to Practice Law, Rule .0502 (3) (requiring that "the applicant has been, for at least four out of the six years immediately preceding the filing of this application . . . actively and substantially engaged in the practice of law"); Ore. Bar Admission Rule 15.05 (1) (applicant must have been "lawfully engaged in the active, substantial and continuous practice of law for no less than five of the seven years immediately preceding their application"); Pa. Bar Admission Rule 204 (4) (applicant must have "for a period of five years of the last seven years . . . devoted a major portion of time and energy to the practice of law"); Tenn. Supreme Court Rule 7, Section 5.01 (a) (3) (applicant must have been "primarily engaged in the active practice of law . . . for five of the seven years immediately preceding"); Utah Rules Governing State Bar, Rule 14-705 (a) (7) (applicant must have been "engaged in the Full-time Practice of Law . . . for 36 of the 60 months immediately preceding"); Vt. Bar Admission Rule 15 (a) (applicant must have been "Actively Engaged in the Practice of Law for 5 of the preceding 10 years"); Va. Supreme Court Rule 1A:1 (c) (3) (applicant must have "practiced law for at least three of the immediately preceding five years"); W. Va. Rules for Admission to the Practice of Law, Rule 4.0 (b) ("applicant must have been lawfully engaged in the active practice of law for five (5) of the seven (7) years next preceding his or her application").

PART FOUR

PROVISIONAL ADMISSION

OVERVIEW

Part Four concerns provisional admission to practice, that is, admission to practice that is limited in time, circumstance, or scope. For years, the Supreme Court has authorized provisional admission in a variety of contexts, and here, we consider provisional admission in three particular circumstances.[1] *First,* we consider prospective lawyers eligible to apply for admission by examination, and we recommend that the Court provisionally authorize certain of these prospective lawyers to practice for a limited time under the supervision of an experienced and admitted Georgia lawyer, pending the results of the bar examination. *Second,* we consider lawyers who are admitted to practice in another jurisdiction and married to a

[1] Although the Court has not always used the term "provisional admission" to refer to its limited authorizations to practice in a variety of contexts, these authorizations are less than general admissions to the practice of law and instead are limited in time, circumstance, or scope of authorized practice. We think it is accurate to characterize these authorizations as "provisional admission." We exclude from our consideration of "provisional admission," however, the provisions of Rule of Professional Conduct 5.5 that authorize lawyers admitted in another jurisdiction to provide certain legal services in Georgia—mostly services related to proceedings or matters pending in another jurisdiction, *see* Rule 5.5 (c) (2-4), and services provided by in-house counsel to their organizational clients, *see* Rule 5.5 (d) (1)—as well as the several rules and laws that permit certain law students to participate in proceedings or otherwise engage in practice under supervision. *See, e.g.,* Supreme Court Rule 91 *et seq.* ("An eligible law student registered for student practice pursuant to this Rule, when under the supervision of a member of the State Bar of Georgia, may, as if admitted and licensed to practice law in Georgia, prepare legal instruments, appear before courts and administrative agencies, and otherwise take action on behalf of: (1) any state, local, or other government unit or agency; (2) any person who is unable financially to pay for the legal services of an attorney; or (3) any nonprofit organization the purpose of which is to assist low or moderate income persons."); OCGA § 15-20-1 *et seq.* (Law School Legal Aid Agency Act of 1967, Ga. L. 1967, p. 153, as amended); OCGA § 15-18-22 (Law School Public Prosecutor Act of 1970, Ga. L. 1970, p. 336, as amended); OCGA § 17-12-40 *et seq.* (Law School Public Defender Act of 2003, Ga. L. 2003, p. 191).

member of the United States Armed Services assigned to a duty station in Georgia, and we recommend that the Court provisionally authorize these lawyers to practice in Georgia for as long as their spouse is stationed here and for a reasonable time thereafter. *Finally,* we consider inactive members of the State Bar of Georgia, and we recommend that the Court authorize these lawyers to provide *pro bono* representation to clients of limited means under the auspices of legal aid programs through approved legal aid organizations.

PROVISIONAL ADMISSION PENDING ADMISSION BY EXAMINATION

Provisional Admission under Supreme Court Rules, Part XVI. Originally enacted in 1997,[2] Part XVI of the Supreme Court Rules authorizes the provisional admission of certain law school graduates to practice under supervision in several public interest contexts, pending the results of the bar examination. Eligibility under Part XVI is limited to "recent graduate[s]" of law schools in Georgia and accredited law schools elsewhere who have "not yet received the results of [their] first taking of any bar examination,"[3] and who have not been denied a certification of fitness to practice law in Georgia or any other jurisdiction.[4] Upon provisional admission under Part XVI, a graduate may "assist in proceedings within this state as if admitted and licensed to practice law" under the supervision of the Attorney General, a district attorney, a solicitor general of a state court, a solicitor of a municipal court, a public defender, or "a

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[2] *See* Supreme Court Rule 98 *et seq.* (1998). Part XVI was renumbered in 2001 and now appears at Supreme Court Rule 97 *et seq.*

[3] Supreme Court Rule 99.

[4] *See* Supreme Court Rule 99. "Application for a certificate of fitness to take the bar examination is not a prerequisite to eligibility to practice as a graduate." *Id.* If, however, certification of fitness is denied in Georgia or elsewhere after a graduate has begun to practice under supervision pursuant to Part XVI, the provisional admission "shall terminate and be revoked." Supreme Court Rule 102.

licensed practicing attorney who works or volunteers for a court or for a not-for-profit organization which provides free legal representation to indigent persons or children."[5] The supervising attorney must sign any pleadings or other documents filed by the provisionally admitted graduate, and if the graduate appears for any proceeding, the supervising attorney must be physically present.[6] Provisional admission under Part XVI is temporary and expires at "the end of the month (October or May) in which the results of the first Georgia Bar examination for which the [graduate] is eligible will be published."[7] Part XVI is administered by the Clerk of the Supreme Court,[8] and graduates are not required to register their provisional admission with the State Bar of Georgia, Office of Bar Admissions, Board of Bar Examiners, or Board to Determine the Fitness of Bar Applicants.[9]

Provisional Admission under the COVID-19 Emergency Order. In response to the COVID-19 pandemic, the Supreme Court issued an emergency order on April 17, 2020, which supersedes Part XVI of

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[5] Supreme Court Rule 97. When a graduate is provisionally admitted under Part XVI to practice under the supervision of an admitted lawyer who works for a court or nonprofit organization to provide free legal representation to indigent persons or children, the supervising attorney must "ensure that at all times the graduate is covered by an adequate amount of malpractice insurance." Supreme Court Rule 103.

[6] *See* Supreme Court Rule 98.

[7] Supreme Court Rule 100.

[8] To be provisionally admitted under Part XVI, a law school graduate must file a petition with the Clerk of the Supreme Court, showing her eligibility for provisional admission and bearing the signature of the supervising attorney with whom she intends to practice. *See* Supreme Court Rule 99. Upon this showing, the Clerk registers the graduate and issues "a certificate to the graduate setting out the petitioner's status as a graduate and the duration of [her] eligibility to practice under these rules." Supreme Court Rule 100.

[9] Upon appearing in a trial court, a provisionally admitted graduate must present the certificate of provisional admission issued by the Clerk of the Supreme Court to the presiding judge. The judge then must enter an order authorizing the provisionally admitted graduate to participate in proceedings in that court "in such form and manner" as the judge may prescribe. The certificate and order must be filed with the clerk of the trial court. *See* Supreme Court Rule 101.

the Supreme Court Rules and provides for the provisional admission of law school graduates in additional contexts.[10] This order expands the scope of practice under supervision in three respects. First, unlike provisional admission under Part XVI, provisional admission under the emergency order is not limited to participation in proceedings. Rather, a graduate provisionally admitted under the order

> may engage in the practice of law, including by, but not limited to, appearing in courts of record, arbitration proceedings, and other judicial and quasi-judicial proceedings, drafting pleadings and other legal documents and instruments, representing clients in settlement discussions and other negotiations, and providing counsel to clients consistent with the practice of law in Georgia.[11]

Second, the supervising lawyer is not absolutely required in all instances to be "physically present" when a provisionally admitted graduate appears in proceedings. Nonetheless, when a graduate appears in a court, "the judge may exercise discretion to require the personal attendance of the supervising lawyer."[12] Third, a graduate

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[10] In light of public health concerns arising in connection with the pandemic, this order postponed the July 2020 administration of the bar examination, and the Court then explained its reasons for expanding the scope of provisional admissions:

> The Court recognizes that the postponement of the bar examination may limit the employment prospects and impair the livelihoods of persons who recently have graduated from law school, as well as persons admitted to the practice of law in other jurisdictions who recently have moved to Georgia and are not eligible at this time for admission here without examination. The Court seeks to mitigate these economic hardships while fulfilling its responsibility to protect the public by ensuring that persons engaged in the practice of law are competent to do so.

In re Provisional Admission to the Practice of Law in Georgia (In re Provisional Admission), Order at 1 (Apr. 17, 2020).

[11] *In re Provisional Admission,* Order at 5, § 3-1.

[12] *In re Provisional Admission,* Order at 6, § 3-2 (d).

provisionally admitted under the order is not limited to practicing under the supervision of government lawyers, public defenders, or lawyers providing *pro bono* legal services to indigent persons. The emergency order authorizes a provisionally admitted graduate to practice under the supervision of any qualified supervising attorney.[13]

But in other respects, the emergency order is more restrictive—or at least more specific in its terms—than Part XVI. Eligibility for provisional admission under the order is limited to graduates of law schools accredited by the American Bar Association who "graduated in the 18 months immediately preceding his or her application for provisional admission."[14] Eligible graduates must be certified as fit to practice law by the Board to Determine Fitness of Bar Applicants,[15] and they cannot have failed a bar examination in any jurisdiction.[16] And to further protect the public interest against incompetence in the practice of law, eligibility under the order also requires that a graduate be "certified by the dean or a member of the faculty of the law school from which he or she graduated as competent to practice law under supervision."[17]

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[13] *In re Provisional Admission,* Order at 5, § 3-2 (a).

[14] *In re Provisional Admission,* Order at 2, § 1-1 (a).

[15] *In re Provisional Admission,* Order at 2, § 1-1 (b).

[16] *In re Provisional Admission,* Order at 2, § 1-1 (d).

[17] *In re Provisional Admission,* Order at 2, § 1-1 (c). In addition to recent graduates, the emergency order also authorized the provisional admission of lawyers already admitted in another jurisdiction. *See id.* at 2, § 1-2. This authorization was intended to ameliorate the impact of the postponement of the bar examination on lawyers moving to Georgia for personal reasons during the pandemic. *See id.* at 1. As COVID-19 becomes endemic, the Task Force is not convinced that lawyers admitted in other jurisdictions generally require special accommodation pending the Georgia bar examination, and other than military-spouse lawyers—who are discussed below—we do not recommend continuation of provisional admission to practice under supervision pending the results of the bar examination for lawyers admitted in other jurisdictions.

Moreover, the emergency order is more restrictive than Part XVI not just in terms of eligibility. The order specifies that a supervising lawyer must have been admitted to practice in Georgia for no less than five years and must never have been the subject of public discipline.[18] And the order requires graduates to apply for provisional admission through the Office of Bar Admissions and to register their provisional admission with the State Bar of Georgia, to ensure that both have notice that the graduate is authorized to practice under supervision.[19] The emergency order expressly recognizes the concurrent jurisdiction of the Board of Bar Examiners and the State Bar to petition the Supreme Court to revoke or suspend a provisional admission for good cause, including for a violation of the order itself or a violation of "any of the Georgia Rules of Professional Conduct for which a fully admitted lawyer could be disciplined by disbarment."[20]

Like Part XVI, provisional admission under the emergency order is temporary. More specifically, it expires "30 days after the release of the results of the second Georgia bar examination for

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[18] *See In re Provisional Admission,* Order at 5, § 3-2 (a). The emergency order also specifies the obligations of supervising lawyers, including that the lawyer must supervise the graduate consistent with Rule of Professional Conduct 5.1, must "be prepared to assume personal responsibility for the representation of clients of the [graduate] in the event that the provisional admission expires or is suspended by any event other than the full admission of such person to the practice of law," and must notify the State Bar of Georgia and the Board of Bar Examiners in the event that the supervising lawyer determines that the graduate "is not competent to practice law," has violated any provision of the emergency order, or has violated any of the Rules of Professional Conduct. *Id.* at 7-8, § 5-1 (a).

[19] *See In re Provisional Admission,* Order at 3-4, §§ 2-1, 2-4. When a provisionally admitted graduate registers with the State Bar, she must submit the declaration of a supervising lawyer, "attesting that the lawyer is eligible, willing, and able to supervise such [graduate] and acknowledging the obligations of a supervising lawyer under [the order]." *Id.* at 4, § 2-4 (b). To cover the costs associated with registering and exercising disciplinary jurisdiction over provisionally admitted graduates, the State Bar is authorized impose a fee not to exceed "the amount of annual membership dues for inactive members of the State Bar." *Id.* at 4, § 2-4 (a).

[20] *In re Provisional Admission,* Order at 7, § 4-3.

which such person could have sat after such person submitted his or her application for provisional admission."[21] And a provisional admission under the order is "suspended automatically and immediately" if the graduate fails to register to sit for either of the next two bar examinations or fails the bar examination, or if the Board to Determine the Fitness of Bar Applicants revokes or suspends her certification of fitness.[22]

Task Force Recommendation. Having considered Part XVI and the emergency order, we recommend that the Court terminate the emergency order,[23] reinstate Part XVI, but revise Part XVI to track more closely the provisions of the order. In several respects, we think the emergency order was more certain than Part XVI and better struck the balance between the protection of the public interest, on the one hand, and allowing graduates to earn a livelihood in the provisional practice of law pending full admission by examination, on the other. In particular, we suggest that Part XVI be amended to reflect the emergency order in the following respects:

- Part XVI should clarify that eligible "recent" graduates are persons who graduated from a qualified law school within the 18 months immediately preceding their application for

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[21] *In re Provisional Admission,* Order at 6, § 4-1 (a). Part XVI required a provisionally admitted graduate to sit for the first bar examination for which she is eligible. The emergency order recognizes that conflicting personal obligations, medical conditions, or other circumstances beyond the control of a graduate may keep her from sitting for the first bar examination for which she is eligible, and it gives a graduate two opportunities to sit for the bar examination. Importantly, however, if the graduate sits for the first available examination and fails it, her provisional admission is terminated immediately. *See id.* at 6-7, § 4-2 (a).

[22] *In re Provisional Admission,* Order at 6-7, § 4-2.

[23] The emergency order recites that it is "a temporary emergency measure intended to mitigate economic hardships arising in connection with the postponement of the July 2020 Georgia bar examination in the light of the ongoing national COVID-19 outbreak." *In re Provisional Admission,* Order at 8, § 5-2. As COVID-19 becomes endemic, and because the regular schedule for the administration of the bar examination has resumed, there is no need to continue to administer provisional admission under an emergency order.

provisional admission, have never failed any bar examination, and have been certified as fit to practice law by the Board to Determine the Fitness of Bar Applicants;[24]

- Part XVI should expressly provide that provisionally admitted graduates must abide not only by the provisions of Part XVI, but also by the Rules of Professional Conduct, and that they are subject to the concurrent jurisdiction of the Board of Bar Examiners, the Board to Determine the Fitness of Bar Applicants, the State Bar of Georgia, and ultimately, the Supreme Court;[25]
- The Office of Bar Admissions should administer provisional admission under Part XVI, not the Clerk of the Supreme Court, and a provisionally admitted graduate should be required to register with the State Bar of Georgia;[26]

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[24] The principle behind provisional admission is that graduates of qualified law schools are presumptively competent and may be permitted to practice under supervision, pending a bar examination at which the graduate may demonstrate her competence at the earliest practicable opportunity. A graduate who finished law school years ago but failed to sit for a bar examination should not be presumed competent to practice under supervision, nor is any graduate who has taken and failed a bar examination entitled to a presumption of competence. About fitness to practice law, we think Part XVI falls short of protecting the public interest by failing to require certification of fitness as a prerequisite to provisional admission. Law students may apply for certification of fitness prior to graduation. *See* Rules Governing Admission to the Practice of Law, Part A, Section 5 (a).

[25] In our view, Part XVI is deficient in its failure to make clear that a provisionally admitted graduate must abide by the Rules of Professional Conduct as if she were fully admitted to practice, and also in its failure to specify disciplinary jurisdiction over provisionally admitted persons.

[26] Although the Clerk of the Supreme Court has administered Part XVI well for many years, we think it desirable for the Office of Bar Admissions to screen applications for provisional admission—screening applications for admission, after all, is a core competency of that office—and for the State Bar of Georgia to know the identity of persons practicing law in Georgia, whether generally or only provisionally. It is important for the entities having jurisdiction over provisionally admitted graduates to know which graduates are practicing under supervision. We also encourage the Court to authorize the Office of Bar Admissions and the State Bar to recoup the expense of administering provisional admission by charging a modest and reasonable fee.

- Graduates provisionally admitted under Part XVI should be afforded two opportunities to sit for the bar examination, although they should be required to pass the bar examination on their first attempt;[27]
- Part XVI should require supervising lawyers to have been admitted to practice for some minimum period,[28] it should expressly and clearly state the obligations of supervising lawyers, and it should require that a supervising lawyer acknowledge those obligations in writing and register her supervision of a graduate with the State Bar;[29]
- Part XVI should not limit the scope of practice for provisionally admitted graduates to participation in proceedings, but rather, should authorize such graduates to practice under supervision generally, including by advising clients, participating in negotiations on behalf of clients, and drawing transactional and other legal instruments; and
- Part XVI itself should not always require the personal attendance of the supervising lawyer when a provisionally admitted graduate appears at a proceeding, and the physical presence of the supervising lawyer instead should be left to the

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[27] As noted earlier, *see* note 21 *supra,* affording recent graduates two opportunities to sit for the bar examination acknowledges that conflicting personal obligations, medical conditions, and other circumstances beyond the control of an applicant may require her to forego the first opportunity to sit for the bar examination.

[28] The requirement in the emergency order that a supervising lawyer must have been admitted to practice for no less than five years seems reasonable, but a lesser period may also be reasonable. The point is that a lawyer herself admitted to practice only for a short time should not be put in a position of supervising graduates provisionally admitted to practice; such a circumstance, we think, would not serve well the supervising lawyer or the graduate.

[29] To the extent that the Court modifies Part XVI to more closely track Section 5-1 (a) of the emergency order on the obligations of supervising lawyers, we would suggest that the Court also adopt Section 5-1 (b) and (c), which allow for withdrawal of supervision and make provision for shared supervision among eligible supervising attorneys in the same firm or office, respectively.

discretion of the supervising lawyer, the graduate, and any officer presiding over such a proceeding.[30]

After careful consideration, we also have concluded that the scope of practice should not be as limited as it is under the existing provisions of Part XVI, which limits provisionally admitted graduates to practice under the supervision of certain government lawyers, public defenders, or lawyers providing *pro bono* legal services to indigent persons.[31] To begin, we note that this limitation may have sprang in part from the separate limitation in Part XVI that graduates can only "assist in proceedings," and we recommend doing away with that separate limitation.[32]

More important, provisional admission to practice under supervision is based conceptually on the idea that a graduate of a qualified law school is presumptively competent and should be permitted to practice under supervision, pending a determination of competence by examination. If a graduate is presumptively competent enough to represent the interests of the government,

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[30] Some proceedings, for instance, may be so routine that, after a provisionally admitted graduate has handled a few such proceedings, the graduate could be permitted to conduct those proceedings without the physical presence of the supervising lawyer. This is especially true when the proceedings occur before a judge, who may require the personal attendance of the supervising lawyer if the judge perceives that the graduate is out of her depth. Whether a graduate should be permitted to handle a particular proceeding without the personal attendance of the supervising lawyer depends on a number of factors, including the complexity of the proceeding, the stakes of the proceeding, and the unique experience of the graduate. Making that determination, we think, is best left to the supervising lawyer and presiding officer.

[31] The Committee on Admission to the Practice of Law by Motion recommended that Part XVI be revised to track the emergency order in other respects, but that committee recommended retention of Supreme Court Rule 97 to the extent that it limits provisionally admitted graduates to practicing under the supervision of the Attorney General, a district attorney, a solicitor general of a state court, a solicitor of a municipal court, a public defender, or a licensed practicing attorney providing *pro bono* legal services to indigent persons.

[32] In this respect, we note that Supreme Court Rule 97 authorizes provisionally admitted graduates to practice under the supervision of *prosecuting attorneys*, but not other sorts of government lawyers. That distinction in particular seems to be justifiable only to the extent that provisionally admitted graduates are limited to participating in proceedings.

persons charged with crimes, and indigent persons under supervision, we think it cannot be said at the same time that they are not presumptively competent enough to represent the interests of other, paying clients. Indeed, paying clients are not entitled to more competent representation than the People and the poor. Anyone sufficiently competent to represent one class of clients ought to be competent enough to represent them all, and we are unwilling to relegate the People and the poor to a lower standard of care.

PROVISIONAL ADMISSION OF MILITARY-SPOUSE LAWYERS ADMITTED IN ANOTHER JURISDICTION

The Task Force believes that lawyers admitted to practice in another jurisdiction, and who are married to members of the United States Uniformed Services assigned to a duty station in Georgia, warrant special consideration with respect to admission to the practice of law.[33] "Military spouses play a crucial role in military readiness,"[34] and deployments and frequent reassignments to new posts "make it difficult for [military spouses] to maintain or advance a career."[35] In particular, military spouses are disproportionately affected by state occupational licensing laws, "both because they are more likely to move across [s]tate lines and because they are

[33] The United States Uniformed Services are the Armed Forces—the Army, Navy, Air Force, Marine Corps, Space Force, and Coast Guard—as well as the commissioned corps of the Public Health Service and National Oceanic and Atmospheric Administration. *See* 10 USC § 101 (a) (5).

[34] C. Dunham, *It Takes A Family: How Military Spousal Laws and Policies Impact National Security,* 11 J. Nat. Sec. L. & Pol. 291, 292 (2021).

[35] U.S. Chamber of Commerce Foundation, MILITARY SPOUSES IN THE WORKPLACE at 2 (June 2017). Unemployment rates among military spouses have ranged from 20 to 25 percent in recent years, and underemployment rates among military spouses may be as high as 35 to 40 percent. *Id.*

disproportionately employed in occupations that require a license."[36] Because Georgia enjoys the privilege of hosting several large military installations, Georgia has a special obligation to accommodate the needs of military personnel and their families.

In some cases, lawyers married to military personnel assigned to a post in Georgia qualify for admission without examination. But other military-spouse lawyers cannot satisfy all of the requirements for admission without examination, especially the requirement that a lawyer have been engaged in the active practice of law for five of the last seven years.[37] In the event that their spouses are assigned to a duty station in Georgia, these lawyers are faced with the choice of seeking a waiver of the requirements for admission without examination from the Board of Bar Examiners or instead applying for admission by examination. Although the Board has issued guidance for military-spouse lawyers about the information that should be submitted in support of a request for a waiver,[38] requests by military-spouse lawyers for waivers remain subject to the "good cause shown by clear and convincing evidence" standard for waivers generally.[39] As the Supreme Court has recognized, "good cause" "is not susceptible of rigid definition,"[40] and as a result, there is a great deal of uncertainty for persons seeking waivers.[41] Although that uncertainty may be justifiable and even necessary in some contexts,

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[36] Council of Economic Advisors, MILITARY SPOUSES IN THE LABOR MARKET at 4 (May 2018).

[37] *See* Rules Governing Admission to the Practice of Law, Part C, Section 2 (e).

[38] *See* Instructions and Checklist for Filing Petition for Waiver of Admission on Motion Requirements for a Military Spouse Attorney, Office of Bar Admissions (available at http://gabaradmissions.org/military-spouse-jds-waiver-process-and-policy, visited on August 8, 2022).

[39] *See* Rules Governing Admission to the Practice of Law, Part F, Section 5.

[40] *In re G.E.C.,* 269 Ga. 744, 745 (506 SE2d 843) (1998).

[41] *See In re O'Neal,* 304 Ga. 449, 452 (819 SE2d 1) (2018) ("The benchmarks employed by the Board to assess the waiver request of a military spouse are uncertain.").

we think the process for military-spouse lawyers should be more predictable.

Rather than requiring military-spouse lawyers ineligible under the general standard for admission without examination to request a waiver, we recommend that the Court adopt a rule to authorize the provisional admission of certain military-spouse lawyers for so long as their spouses are assigned to a duty station in Georgia and for a reasonable time thereafter. Some military-spouse lawyers may not need or wish to be admitted permanently to the practice of law in Georgia, although they have a temporary need to practice here. And even those who do wish to practice in Georgia beyond the current posting of their spouses may benefit from a provisional admission that allows them to accrue additional time in the active practice of law, putting them in a position after a sufficient time to seek full admission without examination under the general standard. Based in part on the model rule proposed by the Military Spouse J.D. Network Foundation, we suggest that the Court adopt a rule along the following lines.[42]

To be eligible for provisional admission as a military spouse, a lawyer would have to reside in Georgia as the spouse of an active-duty member of the United States Uniformed Services currently assigned to a post in Georgia, or if currently assigned to a post outside the United States, to have been assigned most recently in the United States to a post in Georgia. In addition, military-spouse lawyers would have to show that they were awarded a first professional degree in law by a law school approved by the American Bar Association, that they have been admitted by examination to practice in one or more other jurisdictions, and that they either

[42] We note that a number of other jurisdictions accommodate military-spouse lawyers by provisional admission. *See, e.g.,* Cal. Rule of Court 9.41.1; Fla. Bar Regulations, Rule 21-1.1 *et seq.*; Ill. Supreme Court Rule 719; N.J. Court Rule 1:27-4; Ohio Rules for Government of the Bar, Rule I, Section 18; Pa. Bar Admissions Rule 304; S.C. Appellate Court Rule 430; Tex. Rules Governing Bar Admissions, Rule 23; Va. Supreme Court Rule 1A:8.

remain in good standing, or resigned from the bar while in good standing, in each of the other jurisdictions to which they have been admitted. Before a military-spouse lawyer could be provisionally admitted, the lawyer would have to be certified as fit by the Board to Determine the Fitness of Bar Applicants. And notwithstanding the fulfillment of these eligibility requirements, a lawyer who had been denied admission in Georgia or was the subject of ongoing disciplinary sanctions or proceedings in another jurisdiction would be ineligible for provisional admission.

A military-spouse lawyer would apply to the Board of Bar Examiners for provisional admission under this rule, and the Board would be charged with responsibility to assess the eligibility of the lawyer. Lawyers provisionally admitted to practice under the rule would be authorized to practice in Georgia without supervision and without any limitation on the scope of their practices.[43] The lawyers would be "entitled to all the privileges, rights, and benefits of, and subject to all duties, obligations, and responsibilities of, active members of the State Bar of Georgia, including all ethical, legal, and continuing legal education obligations." And like lawyers generally admitted to practice in Georgia, provisionally admitted military-spouse lawyers would be subject to the disciplinary jurisdiction of the State Bar of Georgia.

A provisional admission under this rule would terminate 180 days after the occurrence of any of the following events:

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[43] Although we do not recommend that military-spouse lawyers qualifying for provisional admission under this proposed rule be required to practice under supervision, the Court certainly could impose a supervision requirement for some of these lawyers, depending on the extent of their experience in the practice of law. *Cf.* Va. Supreme Court Rule 1A:8 (4) (requiring provisionally admitted military-spouse lawyers admitted to practice in another jurisdiction for less than five years or with fewer than three years in the active practice of law to practice only under supervision). *See also* Cal. Rule of Court 9.41.1 (requiring military-spouse lawyers provisionally admitted to practice under supervision).

- The lawyer's spouse retires or otherwise separates from the Uniformed Services or is reassigned on military orders to a permanent duty station in the United States but outside Georgia;
- The lawyer ceases to be the spouse of an active-duty member of the Uniformed Services;
- The lawyer relocates permanently to another jurisdiction for reasons other than the spouse's reassignment on military orders;
- The lawyer takes and fails the bar examination in Georgia;
- The lawyer fails to meet any of the annual licensing requirements for Georgia lawyers; or
- The lawyer requests termination of the provisional admission.

Notwithstanding the occurrence of a terminating event, a military-spouse lawyer provisionally admitted under this rule could qualify to sit for the next administration of the Georgia bar examination and thereby extend the provisional admission until the release of scores for that examination. Moreover, time in active practice under a provisional admission would count toward the five-year, active-practice requirement under Part C of the Rules Governing Admission to the Practice of Law, enabling many provisionally-admitted military-spouse lawyers to qualify for full admission without examination prior to the termination of their provisional admissions.

PRO BONO REPRESENTATION BY INACTIVE MEMBERS OF THE STATE BAR OF GEORGIA

For many years, the Court has been a leader in efforts to ensure that Georgia citizens have meaningful access to legal services, but still, there remain too many Georgians who—mostly for geographic

or financial reasons—cannot hire a lawyer. With respect to this continuing problem, the inactive membership of the State Bar of Georgia strikes us as a vast, but as yet untapped, resource. There are approximately 8,300 inactive members of the State Bar—more than 2,800 of whom reside in Georgia—all lawyers who previously were admitted to the practice of law in Georgia and deemed fit and competent to practice at the time of their admission, but who have elected to take inactive status.[44] For most of these lawyers, the reason for assuming inactive status was financial, insofar as inactive lawyers pay reduced bar membership dues and are relieved of the obligation to fulfill mandatory continuing legal education requirements.[45] Inactive lawyers are prohibited without exception from engaging in the practice of law for so long as they maintain their inactive status.[46] But nothing about inactive status suggests that inactive lawyers have ceased to be competent and fit to practice. Indeed, an inactive lawyer is entitled as a matter of right to reassume active status—and thereby regain immediately the privilege to practice law—simply by notifying the State Bar of her election and paying full bar membership dues for the year in which the election is made.[47]

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[44] *See* About the Bar, State Bar of Georgia (available at http://gabar.org/aboutthebar/index.cfm, visited on Aug. 18, 2022).

[45] *See* State Bar of Georgia Rule 1-502 ("The annual license fees for inactive members shall be in an amount not to exceed one-half of those set for active members."); State Bar of Georgia Bylaws, Article I, Section 3 (a) (2) (inactive members relieved of mandatory continuing education obligations).

[46] *See* State Bar of Georgia Rule 1-202 (a) ("Any member of the State Bar of Georgia may contact the Membership Department and elect to be transferred to Inactive Status membership provided that the member: (1) is not engaged in the practice of law; (2) does not hold himself or herself out as a practicing lawyer or attorney; (3) does not occupy any public or private position in which the member may be called upon to give legal advice or counsel; and (4) does not examine the law or pass upon the legal effect of any act, document, or law for the benefit of another person, company, or corporation.").

[47] *See* State Bar of Georgia Bylaws, Art. I, Sec. 3 (b). Upon reassuming active status, the lawyer is required to "complete all unfulfilled continuing legal education requirements owed during the Bar year of being returned to Active Member Status." *Id.*

In many respects, emeritus members of the State Bar are like inactive lawyers.[48] Emeritus lawyers assume that status by choice,[49] they are not required to pay bar membership dues,[50] and they are not required to fulfill mandatory continuing legal education requirements.[51] Emeritus lawyers may be reinstated to active status by applying to the State Bar for reinstatement and paying the bar membership dues owed for the year in which active status is reassumed.[52] And emeritus lawyers are generally prohibited to practice law, but with one notable exception: "[A]n Emeritus Status member may handle *pro bono* cases referred by either an organized *pro bono* program recognized by the Pro Bono Project of the State Bar of Georgia or a nonprofit corporation that delivers legal services to the poor."[53]

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[48] To qualify for emeritus status, a lawyer must be 70 years of age and have been admitted to the practice of law for no less than 25 years, five years of which must have been as a member in good standing with the State Bar of Georgia. *See* State Bar of Georgia Rule 1-202 (d).

[49] *See* State Bar of Georgia Bylaws, Art. I, Sec. 7. In the absence of an election by a member to assume emeritus status, the State Bar has the discretion to transfer an eligible active member to emeritus status only to the extent that "the Membership Department is unable to locate or contact the qualifying member." *Id.*

[50] *See* State Bar of Georgia Rule 1-202 (d).

[51] By their own terms, the mandatory continuing legal education requirements apply only to active members of the State Bar of Georgia, and it appears that they do not apply at all to emeritus members. *See* State Bar of Georgia Rule 8-104 (A) (providing minimum continuing legal education requirements for "[e]ach active member"). *See also* State Bar of Georgia Rule 8-102 (defining "active member"). To be sure, even to the extent that emeritus members are treated as active members for some purposes, *see* State Bar of Georgia Rule 1-202 (d), they are exempt by definition from the mandatory continuing legal education requirements. *See* State Bar of Georgia Rule 8-104 (C) (3) ("Any active member over the age of seventy (70) shall be exempt from the continuing legal education requirements of this rule, including the reporting requirements, unless the member notifies the Commission [on Continuing Legal Education] in writing that the member wishes to continue to be covered by the continuing legal education requirements of this rule.").

[52] *See* State Bar of Georgia Rule 1-202 (d).

[53] State Bar of Georgia Rule 1-202 (d). Although the rule for emeritus lawyers does not currently require that the Court or the State Bar have approved a "nonprofit corporation that

We see no reason to think that inactive members of the State Bar are any less competent or fit to provide *pro bono* legal services than emeritus members. And although it is equitable to forbid inactive lawyers—who do not bear the full financial burden of active membership in the State Bar—to practice law for remuneration, *pro bono* practice is a different matter altogether. There are many inactive lawyers in Georgia, and even if only a small percentage of that population were willing to do *pro bono* work, we believe that they could make a meaningful contribution to the continuing efforts to ensure that all Georgia citizens have reasonable access to legal services. Accordingly, we recommend that the Court authorize inactive members of the State Bar to provide *pro bono* legal services on the same terms as emeritus lawyers now are permitted to engage in *pro bono* practice.[54] Although not currently required of emeritus members, it may be preferable to require any emeritus or inactive lawyer who intends to engage in *pro bono* practice to notify the State

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delivers legal services to the poor" for purposes of *pro bono* practice, we note that such a requirement may be desirable.

[54] A number of other jurisdictions permit inactive lawyers to provide *pro bono* legal services. *See, e.g.,* Ala. Rule of Prof. Conduct 6.6 (authorizing inactive members of state bar to register as special members authorized to provide *pro bono* legal services through legal aid organizations); Ark. Supreme Court Admin. Order No. 15.3 (authorizing inactive members of state bar to provide *pro bono* legal services under the auspices of recognized legal aid organizations); Col. Rules Governing Admission to Practice of Law, Rule 204.6 (authorizing inactive members of state bar to apply to Supreme Court for certification to provide *pro bono* legal services); Ill. Supreme Court Rule 756 (k) (authorizing inactive members of state bar to provide *pro bono* legal services under auspices of legal aid organization); Ind. Rules for Admission to Bar and Discipline of Attorneys, Rule 6.2 (authorizing Supreme Court to provisionally admit inactive members of state bar to engage in *pro bono* practice through recognized legal aid organizations); Kan. Supreme Court Rule 1404 (authorizing inactive members of state bar to provide *pro bono* legal services through recognized legal aid organizations); S.C. Appellate Court Rule 410 (q) (authorizing inactive members of state bar to provide *pro bono* legal services under supervision of active lawyer and in connection with recognized legal aid organizations); Utah Rules Governing the State Bar, Rule 14-803 (authorizing inactive members of state bar to provide *pro bono* legal services under the auspices of recognized legal aid organizations); Wisc. Supreme Court Rule 10.03 (3) (a) (2) (authorizing inactive members of state bar to provide *pro bono* legal services through qualified *pro bono* programs).

Bar of their intent. We make no firm recommendation, however, about the extent to which such notice should be required.

PART FIVE

MANDATORY CONTINUING LEGAL EDUCATION

OVERVIEW

In Part Five, we address continuing legal education (CLE). Although compulsory CLE is ubiquitous, its effectiveness is disputed. Based on their own subjective experiences, many lawyers—including some members of this Task Force—have favorable impressions of CLE generally, and it seems to be widely accepted among lawyers that, if CLE provides value for so many lawyers, perhaps it should be required of all lawyers. On the other hand, we have found no scientific study or empirical evidence to support the claim that compulsory CLE is an effective means of maintaining and enhancing lawyer competence, and after 40 years of mandatory CLE in Georgia and elsewhere, the absence of such support is striking. And yet, mandatory CLE requirements impose real costs upon lawyers, year after year.

In light of its ubiquity, and in respect of the prevailing wisdom in the profession, we do not recommend that the Supreme Court abolish mandatory CLE altogether. We do, however, recommend that the Court reconsider its existing mandatory CLE requirements in several respects. Among other things, we suggest that:

- If any CLE is required, the Court should prioritize CLE in the area of professional ethics;
- To the extent any additional CLE is required, the Court should require a lawyer to complete CLE in areas in which that lawyer actually practices or intends to practice, with special attention

to recent developments in the law that governs those areas of practice;

- In light of the absence of empirical evidence demonstrating that compulsory CLE is effective, and considering its costs for the profession, the Court should consider reducing the overall burden imposed upon lawyers by CLE requirements;
- The Court should continue to permit lawyers to earn unlimited credit hours through in-house and remote CLE programs; and
- To reduce the administrative costs of mandatory CLE, the Court should consider adopting a biennial or triennial compliance period.

HISTORY OF MANDATORY CONTINUING LEGAL EDUCATION

CLE emerged in the early part of the Twentieth Century.[1] In the beginning, CLE was both voluntary and local.[2] In 1933, the Practicing Law Institute (PLI) was established in New York City to promote efforts to "bridge the gap between law school theory and practical experience," and within four years, its continuing education program offered nine courses to recent graduates of law schools.[3] Beginning in 1937, the American Bar Association (ABA) established its own program to promote CLE and to assist both state and local bar associations in the provision of continuing education.[4] Around the conclusion of the Second World War, the ABA and PLI collaborated to provide CLE to lawyers returning to the practice from military service, many of whom needed to "refresh their skills"

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[1] *See* Herschel H. Friday, *Continuing Legal Education: Historical Background, Recent Developments, and the Future,* 50 ST. JOHN'S L. REV. 502, 502-03 (1976).

[2] *See* Friday, note 1 *supra,* at 502.

[3] Friday, note 1 *supra,* at 503.

[4] *See* Friday, note 1 *supra,* at 503.

and to learn about developments in the law during the wartime interruption of their law practices.[5] And in 1947, the ABA combined its CLE program with the American Law Institute (ALI), and over the next thirty years, CLE programs proliferated throughout the country, often as a result of the efforts of the joint ABA-ALI program.[6]

CLE evolved in similar ways in Georgia. Before the early 1960s, CLE programs were "sporadic."[7] The Georgia Bar Association established a program in 1962 to provide CLE on a regular basis across the state.[8] Over the next few years, CLE became more commonly available to lawyers around the state, and CLE programs themselves became more elaborate.[9] In 1965, the State Bar of Georgia[10] and the law schools at the University of Georgia, Mercer University, and Emory University jointly established the Institute for Continuing Legal Education (ICLE) to promote the availability

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[5] Friday, note 1 *supra,* at 504. By the middle of 1945, the PLI already had organized courses for returning veterans in 24 states, and it had planned programs in ten additional states. *See id. See also* Cheri A. Harris, *MCLE: The Perils, Pitfalls, and Promise of Regulation,* 40 VAL. U. L. REV. 359, 360 (2006) (tracing the origin of modern CLE to the "voluntary scheme to assist attorneys returning from World War II in resuming practice after a lengthy military absence").

[6] *See* Friday, note 1 *supra,* at 504-05.

[7] A.G. Cleveland, Jr., *On the Tenth Anniversary of the Institute of Continuing Legal Education in Georgia,* 12 GA. STATE B.J. 86 (1975). *See also* Barney L. Brannen, Jr., *Twenty Five Years of Quality Continuing Legal Education,* 27 GA. STATE B.J. 96 (1990).

[8] *See* Cleveland, note 7 *supra,* at 86. The first Georgia Bar Association CLE program was held in Cartersville in November 1962. It was followed shortly by programs in Macon, Albany, Augusta, Gainesville, Waycross, and Griffin. *See id.*

[9] *See* Cleveland, note 7 *supra,* at 86. For instance, in 1963, the Georgia Bar Association and the University of Georgia School of Law put on a four-day CLE program in Athens to cover the Uniform Commercial Code, which recently had been adopted in Georgia. "This was the most comprehensive program held in Georgia up to that time." *Id.*

[10] The Georgia Bar Association was a statewide, voluntary bar association. The State Bar of Georgia, a unified bar association, was established by order of the Supreme Court on December 6, 1963. *See Wallace v. Wallace,* 225 Ga. 102, 107-08 (166 SE2d 718) (1969).

of CLE to lawyers throughout the state.[11] Although the State Bar of Georgia leadership encouraged lawyers to participate in CLE, participation at that time remained voluntary.

Mandatory CLE emerged in the 1970s. In November 1973, Chief Justice Warren E. Burger delivered an address at Fordham Law School about a perceived crisis in "the quality of advocacy in our courts," characterizing it as "a problem of large scope and profound importance."[12] Although the Chief Justice did not once mention CLE in his address—his remarks instead were focused on the ideas that skillful advocacy requires a degree of specialization and the legal profession should embrace, facilitate, regulate, and even promote specialization in the practice of law[13]—some proponents of CLE seized on his remarks about lawyer competence in an "increasingly complex society and increasingly complex legal system" as a rationale for mandatory CLE.[14] Two years later, Minnesota adopted mandatory CLE requirements for its lawyers, and by 1980, eight other states had done the same.[15] Over the next ten years, 24 additional states embraced mandatory CLE, including Georgia. None of these states did so, however, based on "any

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[11] *See* Cleveland, note 7 *supra,* at 87.

[12] Chief Justice Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice,* 42 FORDHAM L. REV. 227, 227 (1973). Not everyone shared the Chief Justice's view of lawyer competency, and indeed, several surveys of federal and state trial judges in the 1970s found that most were reasonably satisfied with the quality of trial advocacy. *See* Deborah L. Rhode & Lucy Buford Ricca, *Revisiting MCLE: Is Compulsory Passive Learning Building Better Lawyers?,* 22 (No. 2) PROF. LAW. 2, 3-4 (2014).

[13] Drawing from the English tradition that separates barristers and other lawyers, the Chief Justice proposed that the legal profession take steps to certify lawyers as specialists in particular areas of practice, beginning with trial advocacy. He called on the legal profession to "[f]ace up to and reject the notion that every law graduate and every lawyer is qualified, simply by virtue of admission to the bar, to be an advocate in trial courts in matters of serious consequence." Burger, note 12 *supra,* at 240.

[14] *See* Harris, note 5 *supra,* at 361. *See also* Burger, note 12 *supra,* at 229.

[15] *See* Harris, note 5 *supra,* at 362.

empirical demonstration of a particular relationship between [mandatory] CLE and improvements in attorney competence."[16]

Mandatory CLE came to Georgia, however, only after an unsuccessful attempt to establish a program that was intended in part to provide an incentive for lawyers to voluntarily participate in CLE. As early as 1974, the State Bar of Georgia began to consider how it might better promote CLE, accommodate specialization in the practice of law, and in light of the increasing prevalence of lawyer advertising,[17] regulate the extent to which lawyers advertised, especially with respect to advertising areas of specialization.[18] The State Bar eventually proposed a voluntary "Designation Plan," by which a lawyer could apply for permission to publicly designate certain areas of practice as areas in which the lawyer had special expertise and experience, and within three years of the designation, the lawyer would be required to complete 30 hours of approved continuing legal education in each designated area.[19] The Supreme Court approved this designation program, and it was implemented in November 1979. Within a year, the State Bar of Georgia offered designations in 29 areas of practice, and more than 1,200 lawyers had enrolled in the program.[20] But interest in the designation program ultimately proved to be limited, and in April 1982, the

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[16] Task Force on Mandatory Continuing Legal Education, REPORT TO THE BOARD OF GOVERNORS OF THE DISTRICT OF COLUMBIA BAR (1995) at 59.

[17] Lawyer advertising was highly regulated—and in many respects, prohibited—for much of the Twentieth Century. *See* Terry Calvani *et al.*, *Attorney Advertising and Competition at the Bar,* 41 VAND. L. REV. 761, 763 (1988). Resistance to the extent of this regulation, however, intensified in the 1970s, leading to a series of decisions by the United States Supreme Court in the late 1970s and early 1980s that afforded constitutional protection to lawyer advertising as commercial speech under the First Amendment. *See, e.g., Bates v. State Bar of Ariz.,* 433 U.S. 350 (97 SCt 2691, 53 LE2d 810) (1977); *In re R.M.J.,* 455 U.S. 191 (102 SCt 929, 71 LE2d 64) (1982).

[18] *See* Robert Reinhardt, *Designation—A Year of Progress,* 17 GA. STATE B.J. 53, 53 (1980).

[19] *See* J. Douglas Stewart, *Continuing Legal Education—Whither?*, 18 GA. STATE B.J. 149 (1982). *See also* Reinhardt, note 18 *supra,* at 53.

[20] *See* Reinhardt, note 18 *supra,* at 55.

State Bar suspended the program indefinitely "due to insufficient lawyer participation."[21]

With the abandonment of the voluntary designation program, the leadership of the State Bar of Georgia warmed immediately to the idea of mandatory continuing legal education for all Georgia lawyers.[22] Prominent proponents of mandatory CLE identified a need for lawyers to keep up with changes in the law as its principal justification:

> People who were once competent may not be so any longer because of changes and developments in the law. A mandatory program forces much needed exposure to the constant changes which influence the way lawyers should be practicing. . . . [M]ost experts feel that a compulsory program is necessary if bar members are to keep up with their most common shortcoming—rapidly moving legal developments.[23]

The State Bar leadership commissioned a "study of mandatory legal education" in April 1982,[24] promising that "[n]o plan will be implemented until it has been thoroughly studied by the Board of

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[21] McChesney H. Jeffries, *What CLE Plan for Georgia?,* 19 GA. STATE B.J. 18 (1982). *See also* Frank Love, Jr., *Address of the President to the Annual Meeting of the State Bar of Georgia,* 20 GA. STATE B.J. 28, 29 (1983). The limited interest in the designation program may have been driven in part by *R.M.J.,* see note 17 *supra*, which "apparently greatly decreased the power of the organized bar to regulate lawyer advertising." Stewart, note 19 *supra,* at 149. In 1984, the Supreme Court repealed its authorization of the designation program. *See In re Motion of the State Bar of Georgia to Amend the Rules and Regulations for its Organization and Government,* Order (Oct. 2, 1984).

[22] *See* Love, note 21 *supra,* at 29. *See also* Stewart, note 19 *supra,* at 149 ("A good alternative, and one which is very feasible, given the strength of the Institute of Continuing Legal Education efforts in Georgia, is mandatory continuing legal education. . . . The program would require, for instance, that every lawyer in Georgia, to maintain his standing with the Bar, take a minimum number of hours of continuing legal education each year. Most diligent lawyers do this, anyway.").

[23] Jeffries, note 21 *supra,* at 20 (punctuation omitted).

[24] Jeffries, note 21 *supra,* at 18.

Governors [and] supported by lawyers throughout Georgia."[25] The president of the State Bar offered assurances that "the members of the State Bar will be polled on this issue."[26] It appears, however, that the State Bar never undertook any poll of its membership about mandatory continuing legal education.[27] The following year, a proposal to adopt mandatory CLE was approved "overwhelmingly" by the Board of Governors.[28]

In June 1983, the State Bar filed a motion in the Supreme Court to revise its rules to adopt mandatory CLE. Although the record of this motion is incomplete,[29] it is clear that the motion drew opposition on several grounds, including that mandatory CLE would be ineffective without a testing component to ensure that lawyers compelled to attend educational programs actually were learning something.[30] Another notable ground of opposition was the failure of the State Bar to conduct any survey of its membership. In briefs filed with the Supreme Court, the State Bar pushed back against the idea that its members should be polled about their views of mandatory CLE. The State Bar noted that its proposal to adopt mandatory CLE had been approved by its executive committee and Board of Governors, and that the proposal had been endorsed by a majority of those lawyers in attendance at the June 1983 annual meeting of the State Bar, as well as a bare majority of Atlanta lawyers

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[25] Jeffries, note 21 *supra,* at 21.

[26] Stewart, note 19 *supra,* at 149.

[27] *See* notes 31-32 *infra* and accompanying text.

[28] Love, note 21 *supra,* at 29.

[29] The Task Force is grateful to the Clerk of the Supreme Court for helping us reconstruct as much of the record as now is possible from materials contained in the administrative minutes of the Court.

[30] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Harold L. Russell, Motion for Reconsideration (filed Nov. 14, 1983) at 1 ("A significant degree of criticism of the efficacy of compulsory CLE plans similar to the program adopted by this Court stems from the lack of mechanisms to insure student attentiveness.").

responding to a poll conducted by the Atlanta Bar Association.[31] In any event, the State Bar said:

> [I]t is unrealistic to believe that the entire membership, now in excess of 15,000 lawyers, could make an orderly, well-reasoned judgment as to the details of a Mandatory CLE plan in response to a poll. To submit the details of mandatory [continuing legal education] to the membership would be like submitting the details of a tax bill to the public in the form of a referendum. To submit simply the question of whether or not Mandatory CLE should be adopted would be like submitting to the public the question of whether or not taxes should be levied. . . . Finally, the question is not altogether what the lawyers in the State may prefer.[32]

In November 1983, the Supreme Court adopted mandatory CLE over the dissent of Justice George T. Smith. More specifically, the Court enacted rules to require each Georgia lawyer to annually complete no less than 12 hours of "actual instruction in an approved continuing legal education activity."[33] In addition, each lawyer was required every three years to complete no less than 6 hours of "continuing legal education activity . . . in the area of legal ethics."[34]

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[31] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* State Bar of Georgia, Supplemental Brief in Support of Motion to Amend Rules (filed Sept. 8, 1983) at 2.

[32] *In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* State Bar of Georgia, Reply Brief in Support of Motion to Amend (filed Sept. 14, 1983) at 3.

[33] *In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 31 (Rule 8-104 (a)). In its motion, the State Bar had proposed that lawyers be required annually to complete no less than 18 hours of CLE, but the Supreme Court reduced the requirement to 12 hours. *See* Richard Y. Bradley, *Annual Report to the Membership of the State Bar of Georgia,* 21 GA. STATE B.J. 38 (1984).

[34] *In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 32 (Rule 8-104 (b) (2)).

Judges and inactive members of the State Bar of Georgia were exempted from these requirements,[35] lawyers aged 70 years or more would be exempted upon request,[36] and other lawyers could seek an exemption based on "special circumstances unique to that member constituting undue hardship."[37] The Court established a Commission on Continuing Lawyer Competency (CCLC) to administer the mandatory CLE program.[38] The Court added a sunset provision to end mandatory CLE after 1986 unless the requirements were continued by order of the Court,[39] and in connection with this sunset provision, it also established an "Overview Committee" to "monitor the administration of compulsory continuing legal education in Georgia, to evaluate its effectiveness and to report its findings to the Supreme Court at least annually."[40] Whether the Overview Committee made any report to the Court is unclear—no such report has been found in the Court's administrative minutes—but in any event, the Court entered an order in September 1986, which continued indefinitely the mandatory CLE requirements.

In October 1984, the Supreme Court amended the mandatory CLE requirements in two respects. First, the Court recognized

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[35] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 28 (Rule 8-102 (b) (judges)) and 32 (Rule 8-104 (c) (1) (inactive members)).

[36] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 32 (Rule 8-104 (c) (3)).

[37] *In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 32 (Rule 8-104 (c) (2)).

[38] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 28-31 (Rule 8-103).

[39] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 36 (Rule 8-110).

[40] *In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Nov. 4, 1983) at 36-37 (Rule 8-111). The sunset provision, see note 39 *supra,* and Overview Committee were not a part of the State Bar's proposal and instead were added by the Supreme Court. *See* Bradley, note 33 *supra,* at 38.

additional exemptions for lawyers serving in certain high public offices[41] and lawyers admitted to practice in Georgia but residing outside Georgia and without any practice or clients in Georgia.[42] Second, the Court changed the ethics education requirement from a triennial to an annual one, requiring each lawyer to annually complete two hours of CLE in the area of legal ethics.[43] Three years later, the Court added a new requirement for any lawyer "who appears as sole or lead counsel . . . in any contested civil case or in the trial of a criminal case," directing such lawyers to annually complete no less than three hours of CLE in evidence, civil practice and procedure, criminal practice and procedure, ethics in litigation, or trial advocacy.[44] Soon thereafter, the Court added a requirement that every lawyer annually complete one hour of CLE in the area of professionalism, and it reduced the annual requirement of CLE in the area of ethics from two hours to one.[45]

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[41] In particular, the Court adopted automatic exemptions for the Governor, Lieutenant Governor, Speaker of the House of Representatives, constitutional executive officers elected statewide, United States Senators, and United States Representatives. *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Oct. 2, 1984) at 7 (amending Rule 8-102 (b)).

[42] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Oct. 2, 1984) at 8 (amending Rule 8-104 (c)). These out-of-state lawyers did not receive an automatic exemption but would be exempted from mandatory continuing legal education requirements upon request.

[43] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order (Oct. 2, 1984) at 7-8 (amending Rule 8-104 (b) (2)). The two ethics hours were included in—and not in addition to—the 12 total hours required.

[44] *See In re Rules and Regulations for the Organization and Government of the State Bar of Georgia,* Order, 257 Ga. 949, 973-74 (1987) (amending Rule 8-104). The three "trial practice" hours were included in—and not in addition to—the 12 total hours required.

[45] *See* GA. RULES OF COURT ANN. (Michie Aug. 1991 Supp.) at 272-73 (Rule 8-104 (B)). Like the ethics requirement, the professionalism hour was included in—and not in addition to—the 12 total hours required.

MANDATORY CONTINUING LEGAL EDUCATION IN GEORGIA TODAY

Today, Part VII of the Rules and Regulations of the State Bar of Georgia provides for mandatory CLE. With a few exceptions, each active member of the State Bar is required to annually complete twelve hours of approved CLE,[46] including:

- One hour in the area of legal ethics;[47]
- One hour in the area of professionalism;[48] and
- For lawyers who appear in the superior or state courts as lead or sole counsel in litigation, three hours in the area of trial practice, which is defined as "evidence, civil practice and procedure, criminal practice and procedure, ethics and professionalism in litigation, or trial advocacy."[49]

Excepted from these requirements are the elected, executive officers of the state government, members of Congress, members of the General Assembly, and judges prohibited from engaging in the practice of law.[50] Also excepted are members of the Board of Bar Examiners,[51] any lawyer "residing outside Georgia who neither practices in Georgia nor represents Georgia clients,"[52] any lawyer more than 70 years of age,[53] and any lawyer exempted by the CCLC

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[46] *See* State Bar Rule 8-104 (A). There are different requirements for lawyers in the first year of their admission to practice, who must complete the Transition into Law Practice Program (TLPP). *See* State Bar Rule 8-104 (B) (1). After an initial review, the Task Force concluded that the TLPP did not warrant further consideration, and for that reason, we do not discuss it further in this preliminary Report.

[47] *See* State Bar Rule 8-104 (B) (2).

[48] *See* State Bar Rule 8-104 (B) (3).

[49] *See* State Bar Rule 8-104 (D) (2).

[50] *See* State Bar Rule 8-102 (b).

[51] *See* State Bar Rule 8-104 (C) (5).

[52] State Bar Rule 8-104 (C) (4). Lawyers outside Georgia are exempt only upon written application to the CCLC.

[53] *See* State Bar Rule 8-104 (C) (3).

for "special circumstances unique to that [lawyer] constituting undue hardship."[54]

Lawyers are supposed to fulfill their annual CLE requirements within the calendar year, but lawyers who fall behind are "entitled to an automatic grace period until March 31 of the succeeding year to make up their deficiency."[55] If a lawyer fails to make up the deficiency by the end of the grace period, the lawyer is assessed a $100 late fee,[56] and a notice of noncompliance is sent to the lawyer.[57] If the lawyer fails to make up the deficiency within 60 days of the notice, the lawyer may be suspended from the practice of law by the Supreme Court.[58] A lawyer suspended for noncompliance with CLE requirements may be reinstated upon a "showing that the delinquency has been corrected" and the payment of a reinstatement fee.[59]

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[54] State Bar Rule 8-104 (C) (2). A hardship exemption is limited in duration to a period of one year, although the rule does not appear to prohibit the renewal of a hardship exemption.

[55] State Bar Rule 8-107 (A) (1).

[56] *See* State Bar Rule 8-107 (A) (2). *See also* Commission on Continuing Lawyer Competency Regulation 8-107 (1). An additional $150 late fee is assessed if a lawyer fails to make up a deficiency by September 30 of the succeeding year.

[57] *See* State Bar Rule 8-107 (B) (1).

[58] *See* State Bar Rule 8-107 (B) (3-4). During this 60-day period, a noncompliant lawyer may request a hearing before the CCLC to contest the notice of noncompliance. The CCLC must hear the contest at its next meeting, and no action will be taken against the lawyer while a hearing is pending. *See* State Bar Rule 8-107 (B) (2).

[59] State Bar Rule 8-108. *See also* Commission on Continuing Lawyer Competency Regulation 8-108 (1). The reinstatement fee is $500 for the first reinstatement, $1,000 for a second reinstatement, and $2,000 for any subsequent reinstatement.

The CCLC administers mandatory CLE under Part VII,[60] including by approving programs for CLE credit.[61] To qualify for approval, a program must "have significant intellectual or practical content" that is designed to "increase the participant's professional competence as a lawyer";[62] "constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, or ethical obligations of lawyers";[63] be conducted by "an individual or group qualified by practical or academic experience";[64] and involve the distribution of "[t]horough, high quality, and carefully prepared written materials" to all participants.[65] In-house and remote-learning programs are eligible for approval.[66] In addition to attending an approved CLE program, a lawyer may earn credit for certain other activities, including

[60] *See* State Bar Rule 8-103. The CCLC consists of six members appointed by the Supreme Court, six appointed by the Board of Governors of the State Bar of Georgia, one designated by the executive committee of the State Bar, one designated by the president of the Young Lawyers Division of the State Bar, one designated by the Chief Justice's Commission on Professionalism, and one designated by the chair of the board of trustees of the Institute of Continuing Legal Education. *See* State Bar Rule 8-103 (A).

[61] *See* State Bar Rule 8-103 (B) (2) (a).

[62] State Bar Rule 8-106 (B) (1).

[63] State Bar Rule 8-106 (B) (2).

[64] State Bar Rule 8-106 (B) (4).

[65] State Bar Rule 8-106 (B) (5).

[66] *See* Commission on Continuing Lawyer Competency Regulation 8-106 (B) (8). Prior to the COVID-19 pandemic, a lawyer could earn no more than six hours of credit annually through in-house or remote-learning programs. At the outset of the pandemic, the Supreme Court suspended that limitation by emergency order, and more recently, the CCLC has revised its regulations to remove the limit.

teaching,[67] writing legal articles,[68] organizing a CLE program,[69] and observing a trial.[70] The CCLC is funded by fees paid by the sponsors of approved CLE programs.[71]

MANDATORY CONTINUING LEGAL EDUCATION IN OTHER JURISDICTIONS

Including Georgia, 46 states have mandatory CLE. The District of Columbia, Maryland, Massachusetts, Michigan, and South Dakota do not.[72] Among the jurisdictions with mandatory CLE, the requirements vary considerably from state to state. With respect to the time in which lawyers must fulfill their CLE obligations, 29 states—including Georgia—require lawyers to complete and report their fulfillment of the requirements

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[67] *See* Commission on Continuing Lawyer Competency Regulation 8-106 (A) (3) ("For their contribution to the legal profession, attorneys may earn credit for non-paid teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three (3) credits for each hour of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation.").

[68] *See* Commission on Continuing Lawyer Competency Regulation 8-106 (A) (4) ("The CCLC may award up to a maximum of six (6) hours of CLE credit for the authoring of legal articles . . . .").

[69] *See* Commission on Continuing Lawyer Competency Regulation 8-106 (A) (5) ("The chairperson who organizes an approved CLE activity and who does not make a formal oral presentation therein shall qualify for CLE credit as if he or she had made a one hour presentation.").

[70] *See* Commission on Continuing Lawyer Competency Regulation 8-106 (A) (7).

[71] *See* State Bar Rule 8-103 (C) (2) (a). The rule authorizes CCLC to set the amount of these fees, and currently, the CCLC requires a sponsor to pay $4 per credit hour for each participant. *See* Commission on Continuing Lawyer Competency Regulation 8-103 (C) (1).

[72] *See* Mandatory CLE, American Bar Association (available at http://americanbar.org/events-cle/mcle/, visited on September 1, 2022). The information about mandatory CLE requirements in other jurisdictions presented in this section and notes 73-83 *infra* is taken from the ABA. A table summarizing the CLE requirements in other states is attached to this Report as an Appendix.

annually.[73] Eight states have a biennial compliance period,[74] and nine states have a triennial period.[75] As for the total number of credit hours required—annualizing that figure for the states with biennial and triennial compliance periods—Georgia and 21 other states require lawyers to complete 12 credit hours.[76] Seven states require fewer hours,[77] and 17 states require more.[78]

The greatest variation appears in requirements that lawyers complete CLE in particular areas. Georgia requires one hour in ethics and one hour in professionalism each year. Georgia is somewhat peculiar in its treatment of ethics and professionalism as distinct requirements,[79] and other states more commonly conflate

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[73] The following states have an annual compliance period for mandatory CLE: Alabama, Alaska, Arizona, Arkansas, Connecticut, Georgia, Hawaii, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming.

[74] Delaware, Illinois, New Jersey, New York, Ohio, Vermont, West Virginia, and Wyoming have a biennial compliance period.

[75] California, Colorado, Florida, Idaho, Indiana, Minnesota, North Dakota, Oregon, and Washington have a triennial compliance period.

[76] Alabama, Arkansas, Connecticut, Georgia, Kansas, Kentucky, Maine, Mississippi, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, Utah, and Virginia require lawyers to annually complete 12 hours of CLE. Delaware, New Jersey, New York, Ohio, Vermont, and West Virginia require lawyers to biennially complete 24 hours. And Indiana requires 36 hours of CLE triennially.

[77] Alaska and Hawaii require lawyers to annually complete only 3 hours of CLE. California requires 25 hours triennially, approximately 8.3 hours per year. Nebraska and Rhode Island require 10 hours annually. Idaho requires 30 hours triennially, and Florida requires 33 hours triennially.

[78] Louisiana requires lawyers to complete 12.5 hours of CLE each year. Nevada requires 13 hours annually, and South Carolina requires 14 hours annually. Arizona, Iowa, Missouri, Montana, Tennessee, Texas, and Wyoming require 15 hours annually. Illinois and Wisconsin require 30 hours biennially, and Colorado, Minnesota, North Dakota, Oregon, and Washington require 45 hours triennially.

[79] Louisiana and Utah also require 1 hour in ethics and 1 hour in professionalism annually.

these subjects,[80] treat them interchangeably,[81] or require CLE only in ethics.[82] Even so, several of the states that do not require CLE in professionalism generally have specific requirements that touch on subjects—such as wellness, mental health and substance abuse, and diversity, equity, and inclusion—that often are treated in Georgia as aspects of "professionalism."[83]

In addition, Georgia requires certain litigation lawyers—more specifically, those who appear as lead or sole counsel in the superior and state courts—to annually complete three hours of CLE in trial practice. This requirement is unique among all the states with mandatory CLE. Indeed, no other state requires "any lawyers to fulfill the required hours with practice-relevant courses."[84]

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[80] Alabama, for instance, requires 1 hour of ethics and professionalism annually, Connecticut, Kansas, Missouri, North Carolina, and Wyoming require 2 hours annually, and Tennessee requires 3 hours annually. West Virginia requires 3 hours of ethics or professionalism biennially. Florida requires 5 hours of ethics and professionalism triennially. Illinois and Nebraska appear to conflate ethics and professionalism as "professional responsibility," respectively requiring 4 hours in professional responsibility biennially and 2 hours annually. Ohio similarly requires 2.5 hours in "professional conduct" biennially.

[81] Pennsylvania and Virginia require 2 hours of ethics or professionalism annually, and West Virginia requires 3 hours in either of these subjects biennially.

[82] Arkansas, Hawaii, Iowa, and Maine require 1 hour in ethics annually. Kentucky, Montana, Nevada, New Hampshire, Oklahoma, and Rhode Island require 2 hours annually. Alaska, Arizona, and Texas require 3 hours annually. Vermont requires 2 hours biennially, Wisconsin requires 3 hours biennially, and Delaware requires 4 hours biennially. Among the states with triennial compliance periods, Indiana, Minnesota, and North Dakota require 3 hours in ethics alone, California requires 4 hours, Colorado and Oregon require 5 hours, and Washington requires 6 hours.

[83] For instance, California requires 1 hour in competency issues and 2 hours in elimination of bias triennially. Colorado requires 2 hours in diversity, equity, and inclusion triennially. Illinois requires 1 hour in diversity and inclusion and 1 hour in mental illness and addiction biennially. Nevada requires 1 hour in substance abuse annually. And Vermont requires 1 hour in wellness and 1 hour in diversity, equity, and inclusion biennially.

[84] Rima Sirota, *Can Continuing Legal Education Pass the Test? Empirical Lessons from the Medical World,* 36 NOTRE DAME J. L., ETHICS & PUB. POLICY 1, 5 (2022). "Some lawyers apply to specialty certification programs that require ongoing CLE relevant to the specialty area, but only a tiny percentage of American lawyers participate in such programs." *Id.*

THE JUSTIFICATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION

As an effective means of enhancing and maintaining lawyer competence. The principal purpose of mandatory CLE is to assure that "attorneys maintain their professional competence throughout their active practice of law."[85] The notion that mandatory CLE is an effective means of enhancing or maintaining lawyer competence is widely accepted in the legal community.[86] "[M]any in the profession seem to take for granted that [mandatory] CLE is key to maintaining attorney competence."[87] Among proponents of mandatory CLE, the belief that it is effective appears to be nearly universal.[88] Even so, this widespread belief is based mostly—if not entirely—on intuition and the subjective, personal experiences of individual lawyers who share a favorable view of CLE.[89]

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[85] State Bar Rule 8-101.

[86] *See* Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE,* 8 GEO. J. LEGAL ETHICS 1145, 1153 (1995) ("[T]he legal community at large believes that CLE courses are of some importance in promoting competence, even if that view is wholly subjective."); Jake W. Lawson, *Mandatory Continuing Legal Education and the Indiana Practicing Attorney* ("Studies from other states have shown the vast majority of practicing attorneys agree that continuing legal education should be mandatory.").

[87] Harris, note 5 *supra,* at 370-71. *See also* Rhode & Ricca, note 12 *supra,* at 3 ("[T]he assumption that sitting passively in a few continuing legal education (CLE) classes will prevent lawyer incompetence is now conventional wisdom.").

[88] *See* Harris, note 5 *supra,* at 365.

[89] Some of us—and several members of the Committee on Maintaining the Competency of Admitted Lawyers—share this intuitive and subjective belief. To the extent that we are trafficking in intuition and subjective impressions, we should mention our suspicion that the sorts of lawyers who tend to be leaders in the profession—the sorts of lawyers who populate the Task Force and its study committees—are mostly the sorts of lawyers who would choose voluntarily to attend CLE programs, even in the absence of any regulation requiring CLE. And it would be unsurprising to find that lawyers who choose to attend programs voluntarily are more likely to attend programs that are meaningful to their own practices, are more attentive to the content of those programs, and have a greater willingness to incorporate

We have found no scientific study or empirical evidence that validates this intuitive and subjective belief that compulsory CLE is effective in enhancing and assuring lawyer competence.[90] Indeed, scholars and experts who have studied mandatory CLE have found "no evidence-based reason . . . to support the conclusion that CLE bears *any* relationship—much less a causal one—to better lawyering."[91] The absence of such evidence is striking—especially after nearly 40 years of mandatory CLE in Georgia and many other jurisdictions—and stands in stark contrast to the existence of data suggesting that a bar examination may, in fact, provide some assurance about the competence of lawyers admitted to practice.

Although *voluntary* CLE may well be an effective means of promoting lawyer competence, it does not follow that *mandatory* CLE is equally or even comparably effective. Based principally on our own subjective, personal experiences, we accept that voluntary CLE—that is, CLE in which participation is not driven by regulatory mandates—may enhance lawyer competence. But scholarship on adult learning suggests that compelled participation in professional continuing education programs is simply not "conducive to learning."[92]

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lessons learned from the programs into their practices. For these reasons, it also would be unsurprising to find that such lawyers have more favorable views of CLE generally.

[90] *See* Rhode & Ricca, note 12 *supra,* at 8 ("There is no research 'demonstrating that lawyers who participate in CLE deliver better services than lawyers who do not.'").

[91] Sirota, note 84 *supra*, at 2 (emphasis in original).

[92] Paul A. Wolkin, *On Improving the Quality of Lawyering,* 50 ST. JOHN'S L. REV. 523, 545 (1976). *See also* Barbara A. Bichelmeyer, *Best Practices in Adult Education and E-Learning: Leverage Points for Quality and Impact of CLE,* 40 VALPARAISO U. L. REV. 509, 514 (2006) (noting that adult learners and young learners are different, and "adult learning experiences should be more self-directed"); Marvin E. Frankel, *Curing Lawyers' Incompetence: Primum Non Nocere,* 10 CREIGHTON L. REV. 613, 630 (1977) ("All agree that competent professionals don't need the compulsion; the thought that incompetents will benefit is so improbable on its face as to make the across-the-board command [of mandatory CLE] a fantastic species of overkill.").

Skepticism about mandatory CLE is especially warranted in the light of the format in which most CLE is provided. Many CLE programs consist principally of lectures or discussions among panelists, and the participation of lawyers in attendance—whether they attend in person or remotely—is entirely or mostly passive. "[E]ven after decades of mandatory CLE, there is no empirical evidence that attending or listening to such presentations is an effective way for practitioners to learn."[93] "The mandatory CLE system is oriented toward attendance, not learning."[94] But "[p]resence is not evidence of learning,"[95] and the science of education suggests that "[w]hat is heard in the classroom, without advance preparation, classroom participation, review, and application, is unlikely to be retained."[96] Indeed, "the format of most CLE courses is inconsistent with adult learning principles."[97] As two experts on CLE have written:

> Almost never do CLE programs provide that kind of environment that experts find conducive to adult learning, which involves preparation, participation, evaluation, accountability, and opportunities to apply new information in a practice setting. As studies on continuing education in medicine make clear, lectures are a particularly inadequate tool. Effective training is a

[93] H. Lalla Shishkevish, *Continuing Legal Education: The Future is Now,* 96 MICH. B.J. 36 (June 2017).

[94] Sirota, note 84 *supra,* at 4.

[95] Wolkin, note 92 *supra,* at 529.

[96] Wolkin, note 92 *supra,* at 529.

[97] Rhode & Ricca, note 12 *supra,* at 8.

> process, and the one shot lectures and panels that are common in MCLE fall short.[98]

And although surveys of lawyers in attendance at CLE programs often reflect that many lawyers report a subjective impression that the programs are worthwhile and beneficial, these surveys provide "scant evidence that . . . minimum continuing legal education standards have promoted competence or professional development in a meaningful way."[99]

Moreover, to the extent that some regulation to promote and assure continuing competence among admitted lawyers may be justified by a perception that too many admitted lawyers are not competent enough, mandatory CLE does not appear to be a solution that is targeted specifically to the nature of the perceived problem. Most CLE programs do not "address the root causes of most client grievances, which involve not lack of technical knowledge,"[100] but arise instead from a variety of other problems, ranging from lawyer inattention, inadequate preparation, and failures to communicate to conflicts of interest and issues involving mental health or substance abuse.[101] Consistent with this reality, a recent analysis of studies

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[98] Rhode & Ricca, note 12 *supra,* at 8. Professor Rhode was director of the Center on the Legal Profession at Stanford University, and Lucy Ricca is the director of policy and programs at the Center.

[99] Wolkin, note 92 *supra,* at 525. Professor Wolkin, who led the ALI-ABA Committee on Continuing Professional Education for nearly thirty years, examined an Indiana survey, in which most lawyers in attendance favorably "reported that the training sessions provided useful information and techniques." *Id.* Even so, the lawyers generally did not retain the knowledge that they acquired in the CLE programs and "seldom appl[ied] the newly acquired knowledge in their work." *Id.* "Almost half of those surveyed reported that they seldom practice what they learn at CLE programs and twenty percent reported that they did not know whether they ever practice what they learned." *Id.*

[100] Rhode & Ricca, note 12 *supra,* at 8.

[101] *See* Rhode & Ricca, note 12 *supra,* at 8. *See also* Herbert Kritzer & Neil Vidmar, *When the Lawyer Screws Up: A Portrait of Legal Malpractice Claims and Their Resolution,* DUKE L. SCH. PUB. L. & LEGAL THEORY SERIES No. 2015-9 (2015) at 25 (noting that most legal malpractice claims involve "bad clients" and other non-fault issues, not incompetent legal work).

and data on attorney discipline and malpractice claims concluded that mandatory CLE "has had no impact on the number of attorneys who have been disciplined by their respective state bars,"[102] and it likewise "has no impact on reducing malpractice claims."[103]

When mandatory CLE was originally adopted in Georgia, its justification was couched largely in terms of a perceived need to promote a particular sort of competence: to assure that lawyers sufficiently are kept abreast of recent developments in the law in their respective areas of practice. Even assuming that this would justify the compulsion of some CLE, the general requirements in Georgia do not require lawyers to attend programs that specifically cover recent developments in the law.[104] Moreover, aside from the requirement that lawyers appearing the superior or state courts as lead or sole litigation counsel complete three hours of CLE in trial practice specifically, Georgia does not require lawyers to pursue CLE in areas that are relevant to their practices, and the absence of such requirements makes it difficult to justify mandatory CLE as a necessary or reasonable means of assuring lawyer competence.[105] And although many lawyers would only choose to attend CLE

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[102] David D. Schein, *Mandatory Continuing Legal Education: Productive or Just PR?,* 33 GEO. J. LEGAL ETHICS 301, 312 (2020). Indeed, "comparing states with [mandatory] CLE and states that do not require [mandatory] CLE, the states that do not require MCLE actually have on average a lower percentage of lawyers with complaints against them." *Id.* at 315.

[103] Schein, note 102 *supra,* at 315.

[104] Moreover, to the extent that mandatory CLE is concerned mostly with recent developments in the law, it seems difficult to justify a one-size-fits-all approach that applies comprehensively to all lawyers. Some lawyers practice in areas in which the governing law changes substantially from year to year. But many others practice in areas in which the governing law is mostly settled and changes irregularly.

[105] By way of example, a Georgia lawyer whose practice is limited to advising and assisting clients with trademark registrations could fulfill her continuing legal education obligations by attending a program in admiralty law, the antitrust exemption for professional baseball, or the defense of organized crime prosecutions. The idea that attending such programs would somehow enhance or maintain the competence of the trademark lawyer strikes us as utterly silly.

programs that are relevant to their practices, the scholarship indicates that many do not.[106]

The ubiquity of mandatory continuing legal education. Another possible justification for mandatory CLE is its ubiquity. To be sure, 46 states require lawyers to regularly complete CLE programs as a condition of their licenses to practice law. But "everybody else does it" does not seem like a sound reason to continue a regulatory regime that imposes a not-insubstantial burden on the regulated. Moreover, in adopting mandatory CLE, none of those states pointed to empirical evidence to show that mandatory CLE is an effective means of enhancing or maintaining lawyer competence.[107] And more significantly, considering that mandatory CLE has been widespread for nearly 40 years, one would think that, if it were effective, there now should be no dearth of empirical evidence to demonstrate its efficacy. But we have found no such evidence.[108] The absence of evidence justifying mandatory CLE as an effective means of enhancing and assuring lawyer competence is striking in the light

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[106] *See* Sirota, note 84 *supra,* at 6. As Professor Sirota explains:

> One might think that mandatory CLE jurisdictions would not need to require lawyers to take practice-relevant CLE courses because lawyers, presumably, would choose to do so on their own. Time pressures, however, often dictate otherwise as the clock winds down on busy lawyers who must meet the CLE reporting deadline. The high cost of certain courses may also push lawyers to choose less relevant options. Indeed, a 1987 survey showed that lawyers in mandatory CLE jurisdictions took more courses outside their practice areas than lawyers in non-mandatory CLE jurisdictions, suggesting that the mandatory CLE model "skews lawyers' continuing education priorities."

Id. at 6-7.

[107] *See* note 16 *supra* and accompanying text.

[108] *See* Rima Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case,* 78 LA. L. REV. 547, 554 (2017) ("The 46 states that have adopted mandatory CLE measures since 1975 provide a ready-made source of empirical data to test the proposition that attorneys in these states have a competence advantage over attorneys in non-mandatory states. [A 1997 study] found no statistics indicating a reduction in complaints, disciplinary measures or malpractice insurance premiums since mandatory CLE's implementation, and none have materialized since." (Cleaned up)).

of its ubiquity. In addition, we are aware of no reason to think lawyers in the five American jurisdictions that have *not* adopted mandatory CLE—the District of Columbia, Maryland, Massachusetts, Michigan, and South Dakota—are categorically less competent than other American lawyers. For these reasons, the mere pervasiveness of mandatory CLE is not a strong justification for maintaining it.

As a means of signaling the importance of certain values. Even if mandatory CLE does not enhance or assure lawyer competence in any demonstrable way, some have suggested that it is an effective means of signaling the importance of certain values to the legal profession and the public. That the Supreme Court has adopted compulsory CLE may suggest, for instance, that the Court is serious about assuring that all practicing lawyers are, in fact, minimally competent. And specific requirements for CLE in ethics and professionalism likewise may signal to the public that the Court is committed to integrity, professional conduct, and civility in the legal system. We have no doubt that promoting public confidence in the judiciary is a legitimate purpose of the regulation of the practice of law.

But whether the promotion of public confidence alone would be enough to justify mandatory CLE is questionable, especially to the extent that such public confidence may be misplaced in the absence of empirical evidence suggesting that mandatory CLE actually is effective in enhancing and assuring lawyer competence, ethics, and professionalism. And in any event, the idea that the public pays much attention to mandatory CLE is questionable.[109] Moreover, the

[109] *See* Rhode & Ricca, note 12 *supra,* at 8-9. ("It is equally doubtful that mandatory continuing education is an effective public relations strategy. There is no evidence that the public pays attention to our CLE endeavors. After more than 20 years of mandatory CLE, people still love to hate all lawyers except their own. A search of newspaper archives from a decade ago showed that this issue makes nary a blip on the public radar. If the mandate dies, civic grief counseling will not be necessary." (Cleaned up)). *See also* David A. Thomas, *Why Mandatory CLE is a Mistake,* 6 UTAH B.J. 14 (1993) ("Public relations value seems to be an

Court regularly sends other, far more visible signals of its commitments to integrity and competence in the legal system, including in judicial and lawyer disciplines, some of which garner substantial public attention. For these reasons, the signaling value of mandatory CLE is not a strong justification for the CLE requirements.

As a means of promoting professional cohesion. Finally, some proponents of mandatory CLE have suggested that it benefits the legal profession by requiring lawyers to come together for CLE programs. These lawyers might not otherwise have occasion to become acquainted with one another—indeed, a CLE program could bring together lawyers who practice in different areas and different geographic locations—and in coming together, they may form professional and social bonds. And in general, it is a good idea for lawyers to share professional and social bonds with other lawyers. We do not question the truth of these propositions or that promoting the cohesion of the legal profession is a worthwhile endeavor, generally speaking.[110]

But it is not clear to us that the desirability of professional and social bonds among lawyers alone is enough to justify regulation of the practice of law. And more important, it seems doubtful that mandatory CLE does much to promote the formation of such ties. Lawyers may fulfill their CLE requirements—and busy lawyers

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especially flimsy hook on which to hang *mandatory* CLE."). Moreover, as Professors Rhode and Ricca explain, even if the public were aware of CLE requirements, "it is unclear how much their confidence would be enhanced by seeing the tax-deductible and employer-reimbursed boondoggles that can qualify for CLE credit." Rhode & Ricca, note 12 *supra,* at 9.

[110] Among other things, lawyers with more extensive networks more readily can seek counsel and assistance from those with greater expertise in particular matters, and they can better direct persons in need to legal services to lawyers with relevant experience. Moreover, greater familiarity among lawyers who may represent adverse clients undoubtedly promotes civility. Greater socialization among lawyers may enhance in some instances the ability of the profession to deal with mental health and substance abuse issues that are too common among lawyers. And greater cohesion in the legal profession enables the profession as a whole to better respond to political challenges to the independence of the judiciary.

increasingly do fulfill these requirements—by participating in in-house and remote programs. In-house CLE programs, however, commonly bring together lawyers already acquainted with one another, and remote CLE programs do nothing to promote the formation of professional and social bonds among the lawyers who participate in those programs.[111] Even with respect to CLE programs that lawyers attend in person, it is unclear whether the format of such programs—which typically consist of lectures or panel discussions—does much to promote interaction among the participants. For these reasons, promoting greater professional cohesion alone does not strike us a strong justification for mandatory CLE.

THE COSTS OF MANDATORY CONTINUING LEGAL EDUCATION

Although we have not undertaken a quantitative analysis of the costs of mandatory CLE, we know that its costs are not insubstantial. The out-of-pocket expense varies from program to program, of course, and although the average direct cost per credit hour is not insignificant, our impression is that CLE in Georgia is reasonably affordable.[112] Even so, opportunity costs for lawyers

[111] No one should misunderstand this observation as a criticism of the rule allowing lawyers to obtain CLE credit by participating in in-house and remote CLE programs. Indeed, we endorse that rule without reservation. An in-house CLE is more likely to be relevant to the specific areas of practice in which a lawyer is engaged. And the availability of remote CLE programs—in which any lawyer may participate at a time and in a place of her choosing—facilitates lawyers obtaining CLE in areas relevant to their practices. To the extent that it reasonably can be supposed that mandatory CLE enhances lawyer competence in some way—and enhancing competence is, of course, the *primary* justification for mandatory CLE—it can only be supposed reasonably if the CLE is relevant to a lawyer's practice.

[112] Some experts have estimated that typical lawyers may spend as much as $1,500 annually in out-of-pocket expenses for mandatory CLE. *See* Schein, note 103 *supra,* at 304. Although we have no comprehensive data for the costs of CLE in Georgia, a quick survey of programs available through ICLE suggests that Georgia lawyers may fulfill their mandatory CLE requirements for substantially less. *See* Upcoming ICLE Programs, Institute of Continuing Legal Education (available at http://icle.gabar.org, last visited on September 20,

participating in CLE are substantially greater than the out-of-pocket expense.[113] For instance, assuming a modest billing rate of $200 per hour, a lawyer would forego no less than $2,400 in revenue to attend 12 hours of CLE. Some lawyers—those who work for government, corporations, or large law firms—may not personally bear those costs, but for many lawyers, the direct and indirect costs of CLE come out of their bottom lines.[114]

VIEWS OF THE COMMITTEE ON MAINTAINING THE COMPETENCY OF ADMITTED LAWYERS

To assist us, the Committee on Maintaining the Competency of Admitted Lawyers thoughtfully examined mandatory CLE, its justifications, and its costs. Although the committee did not produce a singular, unified recommendation on mandatory CLE, it reported several recommendations that garnered consensus or substantial support, including:

- Consensus among the members of the committee that the Court should *not* increase the total number of CLE hours that Georgia lawyers must complete annually;
- Strong support for a substantial reduction of the total number of CLE credits that Georgia lawyers must earn annually;[115]

2022). Still, our impression is that most Georgia lawyers spend more on CLE than on membership dues to the State Bar of Georgia.

[113] *See* Schein, note 103 *supra,* at 304.

[114] Although the costs of CLE may not be borne in all instances by individual lawyers, the opportunity costs to taxpayers, companies, and law firms are also not insubstantial. For instance, in a district attorney's office with the elected district attorney and 24 assistant district attorneys, no less than 300 hours are devoted annually to CLE, 300 hours that otherwise could be used to investigate and prosecute criminal activity. Or consider a large law firm—100 lawyers with an average billable rate of $350 per hour—which would forego more than $400,000 annually in billable revenue as a result of mandatory CLE.

[115] About this, the committee reported:

> At least one Committee member favored abolishing all mandatory CLE, and at least one Committee member strongly opposed abolishing any mandatory CLE.

- Consensus that, if any CLE is mandatory, CLE should be required in the area of ethics;[116]
- Consensus that, if any CLE beyond the area of ethics is mandatory, a lawyer should be required to complete CLE in a subject relevant to an area in which the lawyer practices or intends to practice;[117]
- Substantial support for changing from an annual compliance period to a biennial or triennial compliance period;[118] and

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> . . . The approach that gained the greatest plurality of support was to eliminate mandatory CLE *except for* ethics. Or, alternatively, to eliminate mandatory CLE *except for* ethics and professional[ism].

[116] The committee offered several rationales for prioritizing ethics, especially CLE in the area of ethics that emphasizes "the applicable ethics rules rather than more generalized discussions of lawyers needing to do the right thing":

> First, there is widespread agreement that the subject matter of ethics is substantively important for its own sake. Second, ethics is one of the few universally applicable subject areas within the law. Every lawyer, regardless of the nature of his or her practice, must understand and comply with the rules of ethics. Third, as a set of discrete rules subject to practical application, ethics is a field that lends itself well to annual study. And, fourth, maintaining ethics as a mandatory requirement for all lawyers may be a feature that is well received by the public at large and that the [State] Bar can publicly promote.

[117] About this requirement, the committee added:

> The Committee favored an approach that liberally construed the concept of relevance. It is easy to imagine a wide range of topics relevant to the practice of law regardless of one's specific practice area. For example, for commercial litigators, such general topics could include evidence, civil procedure, and tips for brief writing, in addition to any content pertaining to one's specific subject matter expertise. It is also likely that many lawyers, particularly generalists, would have multiple areas of substantive law for which it would be fair to say are relevant to their practice. Further still, there may be areas of law that are relevant for a lawyer's practice because the lawyer needs to know enough about an area to be able to spot issues for his or her clients and know when it is appropriate to refer the client to another lawyer. To that end, it could be relevant to the practice of a litigation generalist to take, for example, a CLE about certain tax issues even if the lawyer did not practice tax law.

[118] With respect to the compliance period, the committee noted that a longer compliance period would encourage lawyers to choose CLE programs of interest and relevant to their practice areas, rather than simply to choose CLE programs based on availability. The committee also indicated that a longer compliance period would "reduce the administrative

- Substantial support for increasing the time for which excess CLE credits may be carried over to a subsequent reporting period.

The committee considered other options, including stepped-down CLE requirements for more seasoned lawyers, but those options garnered only some support.

OUR RECOMMENDATIONS ON MANDATORY CONTINUING LEGAL EDUCATION

Prevailing wisdom in the legal profession is that CLE makes lawyers better, and for that reason, mandatory CLE must surely make all lawyers better. But even after four decades of mandatory CLE, there is no scientific study or empirical evidence to support this prevailing wisdom, which appears to be based principally on the intuition and subjective, personal experiences of those lawyers who tend to be the most outspoken about the perceived value of CLE. The absence of evidence, of course, is not necessarily evidence of absence, and for this reason, we have considered whether we simply should recommend that the Court commission a study of the effectiveness of mandatory CLE. But CLE has been required throughout much of the United States—including in Georgia—for forty years, and there has been more than adequate opportunity for studies. Indeed, some scholars actually have undertaken such studies, yet none has found empirical evidence to support the claim that compulsory CLE is an effective means of maintaining or enhancing lawyer competence. Although it is conceivable that further study someday may turn up such evidence, we have no basis for concluding that it is likely to do so.[119] And in the meantime, a reasonable case can be made that

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cost and burden associated with ensuring that lawyers have completed all the requirements on an annual basis."

[119] To be clear, we do not oppose further study. But because there has been more than sufficient opportunity for scholars to study mandatory CLE and uncover any empirical

proponents of mandatory CLE should bear the burden of establishing an evidence-based justification for it, especially considering that the costs of CLE are not insubstantial.

In the absence of empirical evidence to show that mandatory CLE is an effective means of enhancing or maintaining lawyer competence, it is not easy to justify the existing mandatory CLE requirements. On the other hand, the elimination of mandatory CLE likely would be perceived by the profession—and perhaps, but less likely, by the public too—as a drastic change, one that runs up against the conventional wisdom in the profession and makes Georgia an outlier nationally. For these reasons, we suggest something of a compromise approach—that the Court retain a mandatory CLE program but revise the CLE requirements to require only CLE is that is relevant to the areas in which a lawyer practices, to better reflect the uncertainty about the effectiveness of mandatory CLE, and to reduce the burden that it imposes on lawyers. More specifically, we recommend:

1. Mandatory CLE should prioritize ethics. If any CLE should be required of all lawyers, it is CLE in the area of ethics. The rules and principles of legal ethics are the only law that applies universally to every lawyer admitted to practice, irrespective of their areas of practice. And although these rules and principles apply to all lawyers, few lawyers have practices focused substantively on the law of ethics. That is, although some lawyers represent clients in connection with transactions or controversies that directly implicate the law of legal ethics, most lawyers represent clients in other transactions or controversies and simply must ensure that their representation of those clients comports with the law of ethics. In the light of this reality, we think there may be some value in

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evidence that might support the claim that compulsory CLE is effective, we see no strong reason to table further discussion of mandatory CLE pending yet another study.

requiring lawyers to regularly refresh their familiarity with the rules and principles of ethics, notwithstanding the uncertainty about the effectiveness of mandatory CLE more generally. And to the extent that the public pays any attention to CLE requirements, the particular requirement that lawyers regularly complete CLE in the area of ethics seems the most likely to affect public confidence in the profession. For these reasons, we suggest that the Court retain the requirement that lawyers complete CLE in the area of ethics.[120]

2. Any additional mandatory CLE should focus on matters relevant to areas in which a lawyer practices or intends to practice, with special attention to recent developments in the law that governs those areas of practice. If any CLE is to be required in addition to CLE in the area of ethics, it ought to be CLE that is relevant to areas in which a lawyer practices or intends to practice, and it should prominently feature CLE on recent developments in the law that governs those areas of practice. In Georgia, the stated purpose of CLE is to assure that "attorneys maintain their professional competence throughout their active practice of law."[121] Putting aside the uncertainty about the effectiveness of mandatory CLE generally, no serious person would contend that this purpose of CLE is served

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[120] We express no opinion about the distinct requirement that lawyers complete CLE in the area of professionalism. We note, however, that the adoption of this requirement came at the expense of CLE in the area of ethics; prior to that time, Georgia required lawyers annually to complete *two* hours of ethics CLE. That the addition of a professionalism requirement came at the expense of the ethics requirement is notable in part because professionalism, unlike ethics, consists of principles that are mostly aspirational and not binding and enforceable. In any event, it would not be unreasonable for the Court to require more CLE in the area of ethics, which would reinforce the priority of ethics in the profession, especially if the Court could do so consistent with our separate recommendation that it reduce the overall burden of CLE for lawyers. To accomplish both, the Court could, for instance, eliminate several credit hours required in areas other than ethics and professionalism and concurrently add another required hour in ethics. Or the Court could move to a biennial compliance period, in which lawyers are required to complete *three* hours in ethics and one hour in professionalism. Or the Court could eliminate the professionalism requirement and add back the second hour of ethics.

[121] State Bar Rule 8-101.

by regulation that allows lawyers to discharge their CLE obligations by attending programs that have nothing to do with their practices. Moreover, when the Court originally adopted mandatory CLE, its proponents justified it principally in terms of a perceived need to assure that lawyers kept abreast of recent developments in the law that applies to the areas in which they practice.[122] We recommend that the CLE requirements should be revised to return mandatory CLE to its original purposes. In particular, to whatever extent the Court requires lawyers to regularly complete CLE in areas other than ethics, it should require each lawyer to earn the required credit hours through programs that are relevant to an area of law in which the lawyer practices or intends to practice.[123] Moreover, we suggest that the Court require at least a substantial portion of the compulsory CLE to concern recent developments in the law. To the extent that mandatory CLE ever can be an effective means of enhancing and assuring lawyer competence, requirements along these lines would improve the likelihood that it actually is effective in Georgia.[124]

3. The overall burden imposed upon lawyers by mandatory CLE should be reduced. The preceding recommendations suppose that there may be some truth to the prevailing wisdom that mandatory CLE effectively promotes lawyer competence. But in the absence of any scientific study or empirical evidence to confirm that view, it is difficult to justify the costs—both direct and indirect—that

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[122] *See* note 23 *supra* and accompanying text.

[123] If the Court adopts this recommendation, we suggest that the Court simply require lawyers to certify that their CLE is relevant to an area in which they practice or intend to practice. Given the obligation of all lawyers to be honest in their dealings with the courts, we do not see any need for the creation of a bureaucracy to administer a relevance requirement.

[124] In adopting these recommendations, the Court could retain the existing requirement that lawyers appearing in the courts as sole or lead litigation counsel regularly obtain some CLE in areas that specifically pertain to litigation and trial practice. Indeed, a general "relevance" requirement would be entirely consistent with this existing requirement.

mandatory CLE imposes on lawyers. For this reason, we recommend that the Court consider reducing the overall burden of mandatory CLE. The Court could do so in a variety of ways, and we do not express a preference for any particular approach. But simply by way of illustration, the Court could limit mandatory CLE to the area of professional ethics, as some members of the committee suggested. Or it could require lawyers annually to complete six or eight hours of CLE (rather than 12), consisting of one or two hours in the area of ethics, an hour in the area of professionalism, and the remaining hours in areas in which the lawyer practices or intends to practice, including one or more hours focused on recent developments in the law that governs those areas of practice. Or alternatively, the Court could adhere to the existing 12-hour requirement, but change the compliance period from annual to biennial, effectively cutting the overall burden in half. Again, the possibilities are numerous, but we recommend that the Court consider affording meaningful relief to lawyers who now must bear the burden of annually completing 12 hours of mandatory CLE. And we respectfully suggest that the Court should in no way increase that burden, at least for so long as the effectiveness of mandatory CLE remains unproved.

4. The Court should continue to permit lawyers to earn unlimited credit hours through in-house and remote CLE programs, and it should consider adopting a biennial or triennial compliance period for mandatory CLE. Whether or not mandatory CLE should explicitly require lawyers to earn the necessary credit hours in the areas in which they practice or intend to practice, it cannot be reasonably disputed that it is better for lawyers to take CLE that is relevant to their practices. It is important, therefore, to afford each lawyer a sufficient opportunity to choose CLE programs that pertain to her particular practice. Permitting lawyers to earn their required credit hours through in-house and remote CLE programs without limitation promotes this goal. So would a longer compliance period,

which would alleviate scheduling conflicts that drive many lawyers to select CLE based on its availability prior to the end of the grace period for compliance, rather than its relevance to their practices. We surmise that a biennial or triennial compliance period also would promote lawyers attending out-of-state CLE programs that may fit their practices more closely, especially to the extent that lawyers may be unable to attend such regional or national programs annually. And a longer compliance period would carry the collateral benefit of reducing the costs borne by CCLC in administering the mandatory CLE program.

5. The Court should consider altering the funding mechanism for the administration of mandatory CLE, and relatedly, it should consider requiring the State Bar to make CLE programs on recent developments in certain areas of the law available to lawyers at no cost. The administration of mandatory CLE now is financed by a fee that CLE program sponsors pay to CCLC. The fee is currently fixed at $4 per credit hour for each program participant. It is not obvious to us that this fee corresponds closely to the actual expense of administering mandatory CLE. We encourage the Court to consider instead financing the administration of mandatory CLE by way of an annual assessment of active members of the State Bar, to be paid at the time they pay their annual membership dues. This assessment would be paid to the State Bar, which would appropriate to CCLC an amount sufficient to cover the actual expense of its regulatory functions. Such an assessment would make the actual cost of administration more transparent to the Court and those paying it.

Such an assessment also could be used to fund the annual production of CLE programs on ethics, professionalism, and recent developments in certain areas of law that commonly pertain to the practice of law in Georgia, including, for instance, evidence, civil practice and procedure, criminal practice and procedure, corporate

law, family law, fiduciary law, and constitutional law. To the extent that the annual assessment covered the costs of producing such programs, the Court could require the State Bar to make the programs available to lawyers at no cost. We note that the Kentucky Supreme Court similarly requires its Continuing Legal Education Commission to annually "conduct a continuing legal education seminar of at least 12 credits"—covering, among other subjects, "the latest Kentucky Supreme Court and Court of Appeals decisions, procedural rule changes, Federal Court decisions, legal ethics, professional responsibility and professionalism, [and] Kentucky statutory changes"—and to make this programming available "to all members in good standing" without charge.[125] By making such programming available to lawyers at no cost—especially if the programming were available remotely, and if lawyers could selectively choose portions of the programming that are most relevant to their practices—the Court could at once reduce the financial burden of mandatory CLE for Georgia lawyers *and* promote the accessibility of CLE that is relevant to lawyers' particular practices and focused appropriately on developments in the law.

[125] Ky. Supreme Court R. 3.635.

APPENDIX A

A PROPOSAL FOR A GEORGIA SCHOLARS PROGRAM[1]

The Committee recommends the Supreme Court of Georgia approve a pilot program to test an alternative pathway to licensure in Georgia: the Georgia Scholars Program ("GSP"). The GSP is a curriculum-based program administered by law schools that will focus on experiential and doctrinal coursework during a participant's second and third years of law school. The program will culminate in a capstone project submitted to the Georgia Board of Bar Examiners to measure the participant's minimum competence upon completion of the program.

The GSP will be an alternative to the bar exam; law students who do not participate in the GSP will still be able to sit for the bar exam following graduation. The Committee recommends that the GSP begin with a two-year pilot phase subject to reexamination to allow the Board of Bar Examiners to more easily monitor the efficacy of the program while in its early stages. If the pilot program is successful, the Committee recommends the GSP be expanded.

Subpart 1 provides an overview of the GSP and how it would operate in practice. Subpart 2 discusses the benefits of adopting the GSP as an alternative pathway to licensure in Georgia. Finally, Subpart 3 recommends the creation of a separate committee to focus solely on implementation of the GSP.

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[1] This proposal is excerpted from a December 31, 2021 report to the Task Force by the Committee on Admission to the Practice of Law by Examination. It is not a recommendation of the Task Force. Nonetheless, as explained in our Report, we encourage further study of a program along these lines.

1. Overview of the GSP

The GSP is a curriculum-based program consisting of both doctrinal and experiential coursework. Students would apply in their first year of law school and participate in the program during their second and third years. Students would be selected for the program by a committee composed of both professors and practicing attorneys who would assess each applicant based on the applicant's professional, interpersonal, and academic skills. Admission standards for the GSP should be competitive, as participation in the program is an honor. The Committee envisions that the number of students participating in a particular law school's GSP would be small (for example, 25 students or less) to ensure the academic excellence and rigor of the program.

The GSP will immerse participants in a specified curriculum, both experiential and doctrinal, complemented by ongoing assessment and feedback from law school faculty and a Georgia Board of Bar Examiners representative. Specifically, participants will take certain required courses (to include the subjects [tested on the bar examination]) and complete at least six credit hours of an externship or clinic. In participants' third year of law school, they will take a capstone course, which will integrate the lessons learned throughout the program, with an emphasis on client relationship and management skills.

The GSP participants will be required to submit periodic self-evaluations of their progress in the program. At the end of each year, participants will meet with an assigned bar examiner who will review their cumulative portfolio of work for the past year (e.g., papers, exams, self-evaluations, and legal documents drafted during externships and clinics). To remain eligible for the GSP, participants must achieve at least a B+ in all of their GSP coursework and at least a B cumulative grade point average. Participants must also

remain in good standing with their law school throughout their participation in the program.

Participants who successfully complete the program will still be required to pass the MPRE and receive Certification of Fitness to Practice Law from the Board to Determine Fitness of Bar Applicants. Following Completion of all of these components, the Board of Bar Examiners will issue a Certificate of Eligibility to Practice Law, which is the same document that applicants who pass the Georgia Bar Exam receive. In other words, the GSP fully replaces the existing two-day written bar exam with a two-year curriculum-based pathway with individualized assessment.

2. Benefits of the GSP

The Committee believes there are multiple benefits of the GSP. The GSP goes beyond measuring a participant's minimum competency, and instead evaluates a participant's ability to perform fundamental types of legal work. Participants will be more "practice ready," having benefitted from individualized feedback and assessment throughout the two-year program.

The Committee believes the GSP compliments the recent trend among law schools to move from traditional doctrinal courses to experiential legal education. In 2015, the American Bar Association mandated that every law student complete at least six credit hours of experiential learning prior to graduation. Over the past few years, law schools throughout the State have increased their experiential learning offerings through the additional of new externship and clinic programs. The GSP would align with this shift in the legal education landscape.

The GSP may also serve as a recruiting strategy for Georgia law schools and the Georgia Bar more generally. The program may attract diverse students to study, stay, and practice in the State.

Finally, the Committee recognizes a couple of potential downsides to the GSP. The pass-fail determinations made by law school faculty and the Board of Bar Examiners would be subjective. Additionally, as each law school develops its own curriculum in accordance with the GSP, the program may not be uniform across all law schools. This issue could be addressed if the GSP curriculum is developed on a state-wide basis rather than developed by each law school individually.

3. Implementation of the GSP

The Committee recommends that the GSP begin with a two-year pilot phase at one or more Georgia law schools. The goal of the pilot program is to allow the Georgia Board of Bar Examiners to more easily monitor the efficacy of the program while in its early stages. Depending on the success of the two-year pilot phase, the GSP could later be expanded to all of Georgia's accredited law schools with bar passage rates for first-time takers above 80 percent. This would be evaluated on an annual basis to determine compliance with the 80% threshold.

Because the Committee focused on big-picture questions such as the key aspects of lawyer competency, whether a bar examination is an effective means of assessing lawyer competency, and whether an alternative pathway to licensure should be established, the Committee recommends that the Supreme Court of Georgia establish an implementation committee to solidify the details of the GSP and the process for implementation. The Committee further recommends that the implementation committee include faculty from accredited Georgia law schools.

APPENDIX B

MANDATORY CONTINUING LEGAL EDUCATION REQUIREMENTS IN OTHER JURISDICTIONS[1]

ALABAMA	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	1 hour – Ethics or Professionalism
Compliance Period	Annual
ALASKA	
Mandatory CLE	Yes
General Requirement	3 hours
Special Requirements	3 hours – Ethics
Compliance Period	Annual
ARIZONA	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	3 hours – Ethics
Compliance Period	Annual
ARKANSAS	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	1 hour – Ethics
Compliance Period	Annual

[1] The information in this Appendix is taken from the American Bar Association. *See* Mandatory CLE, American Bar Association (available at http://americanbar.org/events-cle/mcle, visited on December 16, 2022).

CALIFORNIA	
Mandatory CLE	Yes
General Requirement	25 hours
Special Requirements	7 hours • 4 hours – Ethics • 1 hour – Competency Issues • 2 hours – Elimination of Bias
Compliance Period	Triennial
COLORADO	
Mandatory CLE	Yes
General Requirement	45 hours
Special Requirements	7 hours • 5 hours – Ethics • 2 hours – DEI
Compliance Period	Triennial
CONNECTICUT	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics or Professionalism
Compliance Period	Annual
DELAWARE	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	4 hours – Ethics
Compliance Period	Biennial
DISTRICT OF COLUMBIA	
Mandatory CLE	No
General Requirement	
Special Requirements	
Compliance Period	

FLORIDA	
Mandatory CLE	Yes
General Requirement	33 hours
Special Requirements	8 hours • 1 hour – Professionalism • 4 hours – Ethics, Professionalism, Elimination of Bias, Substance Abuse, or Mental Illness Awareness • 3 hours – Technology
Compliance Period	Triennial
HAWAII	
Mandatory CLE	Yes
General Requirement	3 hours
Special Requirements	*1 hour – Ethics – once every three years*
Compliance Period	Annual
IDAHO	
Mandatory CLE	Yes
General Requirement	30 hours
Special Requirements	3 hours – Ethics or Prof. Resp.
Compliance Period	Triennial
ILLINOIS	
Mandatory CLE	Yes
General Requirement	30 hours
Special Requirements	6 hours • 4 hours – Prof. Resp. • 1 hour – DEI • 1 hour – Mental Illness & Addiction
Compliance Period	Biennial
INDIANA	
Mandatory CLE	Yes
General Requirement	36 hours
Special Requirements	3 hours – Ethics
Compliance Period	Triennial

IOWA	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	2 hours • 1 hour – Ethics • 1 hour – DEI or Attorney Wellness
Compliance Period	Annual
KANSAS	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics & Professionalism
Compliance Period	Annual
KENTUCKY	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual
LOUISIANA	
Mandatory CLE	Yes
General Requirement	12.5 hours
Special Requirements	2 hours • 1 hour – Ethics • 1 hour – Professionalism
Compliance Period	Annual
MAINE	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours • 1 hour – Ethics • 1 hour – Harassment & Discrimination
Compliance Period	Annual

MARYLAND	
Mandatory CLE	No
General Requirement	
Special Requirements	
Compliance Period	
MASSACHUSETTS	
Mandatory CLE	No
General Requirement	
Special Requirements	
Compliance Period	
MICHIGAN	
Mandatory CLE	No
General Requirement	
Special Requirements	
Compliance Period	
MINNESOTA	
Mandatory CLE	Yes
General Requirement	45 hours
Special Requirements	5 hours • 3 hours – Ethics • 2 hours – Elimination of Bias
Compliance Period	Triennial
MISSISSIPPI	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	1 hour – Ethics, Prof. Resp., or Malpractice Prevention
Compliance Period	Annual

MISSOURI	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	3 hours • 2 hours – Ethics, Professionalism, Substance Abuse & Mental Health, or Malpractice Prevention • 1 hour – DEI
Compliance Period	Annual
MONTANA	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual
NEBRASKA	
Mandatory CLE	Yes
General Requirement	10 hours
Special Requirements	2 hours – Prof. Resp.
Compliance Period	Annual
NEVADA	
Mandatory CLE	Yes
General Requirement	13 hours
Special Requirements	2 hours – Ethics 1 hour – Substance Abuse
Compliance Period	Annual
NEW HAMPSHIRE	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual

NEW JERSEY	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	5 hours • 3 hours – Ethics & Professionalism • 2 hours – DEI & Elimination of Bias
Compliance Period	Biennial
NEW MEXICO	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics or Professionalism
Compliance Period	Annual
NEW YORK[2]	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	5 hours • 4 hours – Ethics & Professionalism • 1 hour – DEI
Compliance Period	Biennial
NORTH CAROLINA	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	3 hours • 2 hours – Ethics & Professionalism • 1 hour – Technology *1 additional hour – Substance Abuse & Mental Health – once every three years*
Compliance Period	Annual

[2] New York has special requirements for lawyers admitted to practice for two years or less. The requirements set forth in the table are for lawyers admitted to practice for more than two years.

NORTH DAKOTA	
Mandatory CLE	Yes
General Requirement	45 hours
Special Requirements	3 hours – Ethics
Compliance Period	Triennial
OHIO	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	2.5 hours – Prof. Conduct
Compliance Period	Biennial
OKLAHOMA	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual
OREGON	
Mandatory CLE	Yes
General Requirement	45 hours
Special Requirements	7 hours • 5 hours – Ethics • 1 hour – Elder & Child Abuse • 1 hour – Mental Health, Substance Abuse, or Cognitive Impairment *3 additional hours – Elimination of Bias – once every six years*
Compliance Period	Triennial
PENNSYLVANIA	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics, Professionalism, or Substance Abuse
Compliance Period	Annual

RHODE ISLAND	
Mandatory CLE	Yes
General Requirement	10 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual
SOUTH CAROLINA	
Mandatory CLE	Yes
General Requirement	14 hours
Special Requirements	2 hours – Ethics or Prof. Resp. *1 additional hour – Substance Abuse – once every two years*
Compliance Period	Annual
SOUTH DAKOTA	
Mandatory CLE	No
General Requirement	
Special Requirements	
Compliance Period	
TENNESSEE	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	3 hours – Ethics & Professionalism
Compliance Period	Annual
TEXAS	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	3 hours – Ethics
Compliance Period	Annual
UTAH	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours • 1 hour – Ethics • 1 hour – Professionalism
Compliance Period	Annual

VERMONT	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	4 hours • 2 hours – Ethics • 1 hour – Attorney Wellness • 1 hour – DEI
Compliance Period	Biennial
VIRGINIA	
Mandatory CLE	Yes
General Requirement	12 hours
Special Requirements	2 hours – Ethics or Professionalism
Compliance Period	Annual
WASHINGTON	
Mandatory CLE	Yes
General Requirement	45 hours
Special Requirements	6 hours – Ethics
Compliance Period	Triennial
WEST VIRGINIA	
Mandatory CLE	Yes
General Requirement	24 hours
Special Requirements	3 hours – Ethics, Office Management, Substance Abuse, or Elimination of Bias
Compliance Period	Biennial
WISCONSIN	
Mandatory CLE	Yes
General Requirement	30 hours
Special Requirements	3 hours – Ethics
Compliance Period	Biennial
WYOMING	
Mandatory CLE	Yes
General Requirement	15 hours
Special Requirements	2 hours – Ethics
Compliance Period	Annual