# EXECUTIVE SUMMARY OF PROPOSED STUDENT PRACTICE RULE APPROVED BY GEORGIA BOARD OF BAR EXAMINERS

# December 12, 2014

**GENERAL BACKGROUND:**

In 1969 the American Bar Association recommended that states authorize law students to appear in court on behalf of indigent persons under appropriate supervision and proposed a Model Student Practice Rule that would authorize such practice for students who had completed four semesters of law school. Georgia had already pioneered this approach to address the crisis of access to justice for indigents by enacting a "law school legal aid agency act" in 1967. In 1970, Georgia enacted further legislation allowing law students to assist prosecutors. Pursuant to its authority under the Georgia Constitution to regulate the practice of law, the Supreme Court of Georgia adopted Supreme Court Rule XV in 1992 authorizing practice by third-year law students; this Rule is now renumbered as Supreme Court Rules 91-96.

During her term as Chair of the Chief Justice's Commission on Professionalism, then- Chief Justice Carol Hunstein formed a Committee on Access to Justice and charged it with proposing innovative approaches that did not require the expenditure of additional state tax dollars. One of the committee’s recommendations was that the Student Practice Rule be amended so that second-year students, as well as third-year students, be eligible to assist in representing persons otherwise unable to obtain access to justice. The recommendation was approved by the full Commission on Professionalism and referred to the Board of Bar Examiners.

The Board of Bar Examiners committed to developing a comprehensive new student practice rule that was informed by the best of current policies around the country and designed in light of important trends in legal education, the practice of law, and the need for legal services. The then-chair of the Board of Bar Examiners, Ralph Simpson, agreed to serve after his term expired on a newly-formed Student Practice Rule Committee; the other committee members have been John Sammon, committee chair, and Thomas Cauthorn, both currently serving members of the Board. Ralph Simpson and Thomas Cauthorn also brought to the committee their experiences as former Superior Court judges.

The goals of the committee and the Board of Bar Examiners have been:

1. To support our law schools in their efforts to be creative and to experiment with experiential learning experiences. However, the proposed changes in the Student Practice Rule would not require law schools to make any changes in their existing programs; for example, a law school that limits enrollment in a particular litigation-based clinic to third-year students could decide to continue to do so and a law school could continue to represent only indigent clients and not extend eligibility to moderate income persons unable to afford legal services.
2. To help meet the legal needs of low-to-moderate income Georgians who are unable to afford legal services, which needs are well-documented by the Georgia Supreme Court's 2009 Legal Needs Study.
3. To keep the changes in the rules revenue neutral.
4. To allow student practice to be coterminous with all activities that are otherwise limited to licensed attorneys.
5. To have a simple rule that is easily understood and administered.
6. To provide additional options for law schools to integrate experiential learning with their doctrinal teaching in the second year.
7. To provide adequate safeguards for the public.
8. To leave in place current advisory opinions, regulations, or statutes regarding permitted or prohibited activities of a person not admitted to the practice of law.

Because the ABA Model Rule was never updated, the rules of the various states have evolved somewhat independently over the last 45 years. In the fall of 2013, the National Institute for Teaching Ethics and Professionalism assisted the Board of Bar Examiners by providing an updated set of student practice rules from every state and the District of Columbia. The committee studied each of these rules and was also guided by reviewing scholarly publications on the subject, as well as recent reports from the American Bar Association Task Force on the Future of Legal Education, the Standards Review Committee of the ABA Section on Legal Education and Admission to the Bar, and the New York City Bar Association's Task Force on New Lawyers in a Changing Profession, among others.

Effective August 2014, the ABA Section of Legal Education and Admissions to the Bar changed law school accreditation standards to add a new requirement that all students complete one or more experiential courses totaling at least six credit hours. The proposed revisions to the Georgia Student Practice Rule would allow our law schools to develop creative ways to fulfill this new ABA requirement.

After studying the issues and trends among student practice rules and contemplating the general substantive provisions for the proposed new student practice rule, in the late winter of 2014 the Board and the committee sought the assistance of a volunteer reporter to assist in drafting the proposed comprehensive new rule. This position has been most ably filled by Professor Clark Cunningham, the Director of the National Institute for Teaching Ethics and Professionalism, who has given the Board untold hours of expert assistance in this role.

In early April of this year, the Committee distributed a preliminary discussion draft of the proposed rule to the deans of the five law schools in Georgia to seek the input of the

academic community. The committee requested and received comments regarding the discussion draft in April and May and made several changes in the discussion draft as a result.

The revised rule was then circulated again to the deans and placed on the agenda for the Board of Bar Examiners meeting on June 5, 2014, as a matter of first impression. At that meeting the representatives of a majority of Georgia law schools urged adoption of the proposed student practice rule as circulated prior to that meeting.

Following the June 5 meeting, the rule was modified based on the discussion at that meeting and was circulated again to the law schools, requesting comment. After these comments were received in early July of this year, the rule was further revised and circulated.

At its meeting in conjunction with the July Bar examination, the Board of Bar Examiners approved further changes to the proposed rule and recommended another meeting with the law schools and their clinical representatives. Following this meeting, which was held on July 30th, there was one final round of comments. As a result of these comments, the committee made its final revision of the rule on September 25, 2014. On November 4, 2014, the rule was unanimously approved by the Board of Bar Examiners.

# SUMMARY OF THE RULES:

The board has been able to retain the rule numbers of the current Third Year Practice Rule. The content of the individual rules has been changed as noted below.

**¶ 91 Purpose.** The current rule does not have a purpose section. The new purpose section emphasizes that the proposed rule addresses the need for improved access to justice, acknowledges existing experiential learning programs, and acknowledges the broadened scope of student practice under the proposed rule.

# ¶ 92 Activities Permitted by a Registered Law Student.

* + The current rule only refers to a law student assisting in “proceedings within this state as if admitted and licensed to practice law.” The proposed rule makes it clear that the scope of permitted student practice includes all forms of representation, such as transactional work, not just court proceedings.
  + The current rule limits student practice to prosecutors, public defenders and attorneys representing indigent persons. Consistent with the purpose of expanding access to justice, including persons of low and moderate income, the proposed rule would expand student practice to assisting attorneys who are representing "any person who is unable financially to pay for the legal services of an attorney" or representing "any nonprofit organization, the purpose of which is to assist low or moderate income persons." Thus, for example, the proposed rule will allow the pro bono department of a private law firm to use registered law students.
  + The proposed rule makes it clear that while a student attorney may not ask for direct compensation from a client, the student attorney is permitted to receive compensation from a law school, such as a scholarship, or compensation from a government entity or non-profit agency, such as a summer employment at a prosecutor's office or legal aid agency. The proposed rule also makes clear that an attorney assisted by a student attorney is not prohibited from applying for or collecting an otherwise lawful fee, such as a motion for attorney fees permitted in certain types of cases.
  + The proposed rule adds new language making clear that clients remain protected by attorney-client privilege and the duty of confidentiality.
  + The last sentence of this section makes clear that activities currently not considered to be unauthorized practice of law would not be affected; for example, traditional use of students as law clerks would not require that those law clerks be registered for student practice under this rule.

**¶ 93 Requirements for Registration** The current rule limits student practice to those who have completed the first two years of law school; the proposed rule would permit student practice after completion of the first year.

# ¶94 Procedure of Registration.

* + The proposed rule adds the requirement that registered law students certify they have read the Georgia Rules of Professional Conduct and will comply with all provisions applicable to student practice.
  + The proposed rule requires that students take an oath for all forms of student practice.
  + The current rule requires that student practice under the rule be authorized by the judge where the student is practicing. Because student practice under the proposed rule can include representation in situations where no litigation is involved, the registration is shifted to the Office of Bar Admission to allow centralized filing for student practice which may take place in various practice settings and different locations in Georgia over the span of the second and third years of law school. (Section 92 does specify, however, that when a student appears before a court or agency, the judge or presiding officer has authority to prescribe the form and manner by which the student may participate in proceedings.)
  + The current rule provides that authority for student practice lasts no longer than one year, but does not mention any way to terminate that authority. The proposed rule provides that the student registration remains in effect until graduation, but also states that the Director of the Office of Bar Admissions may terminate registration at any time without any showing of cause and also shall terminate registration upon receiving notice from the law school dean.

**¶ 95 Supervision of a Registered Law Student.** The existing rule says very little about how a student should be supervised. This new section addresses some of these issues.

* + It confirms that the supervisor has personal and professional responsibility for the activities of the student registered under the rule.
  + The supervising attorney must personally review and approve any document prepared by the student which would have binding legal effect.
  + A signed consent must be obtained from the represented party acknowledging that the supervising attorney is being assisted by the registered law student.

# CONCLUSION:

The Board of Bar Examiners believes that the proposed rule meets the goals set forth by the Student Practice Committee at the outset of its deliberations. No law school in Georgia is forced to change any of its existing programs under the proposed rule, but every law school is given the opportunity to experiment with new experiential learning programs.

Although the proposed rule does not regulate the unauthorized practice of law (UPL), which is the responsibility of other entities authorized by the Supreme Court and not the Bar Examiners, because the rule authorizes registered students under supervision to “take action” on behalf of clients “as if admitted and licensed to practice law,” the rule does have the effect of providing clear safe-harbor protection to law students registered under the program and gives their supervisors protection from charges of aiding and abetting the unauthorized practice of law under the Georgia Rules of Professional Conduct. Representatives of the Board of Bar Examiners have met with the State Bar's UPL Committee to discuss the impact of the proposed rule and received favorable consideration there.

While there are provisions in the rule that are new to Georgia, there is nothing in the proposed rule that is novel or new to student practice rules of the various jurisdictions. The drafters made an effort to stay in the mainstream of national trends regarding experiential learning and student practice.

Student practice is a privilege granted by the Supreme Court of Georgia to law students to allow limited practice under proper supervision to aid law schools in providing meaningful experiential learning opportunities. Acting in concert with guidance from the law school deans, we have retained from the current rule the requirement of certification by the student's dean that the student is eligible for student practice and that, to the best knowledge of the dean, the student is of good moral character and added a certification requirement that the student has been adequately trained to perform the duties of a registered law student. The rule also allows the dean to terminate the certification.

The proposed rule contains several safeguards not present in the current rule. The current rule makes no mention of the Georgia Rules of Professional Conduct. The proposed rule puts Georgia in line with the majority of jurisdictions which require a certification by students that they have read and will abide by the Rules of Professional Conduct. There is also a provision which requires a signed consent by the represented party acknowledging that the supervising attorney is being assisted by a registered

student. The rule also requires that any document signed by a law student state that the student is acting as a registered law student and requires that the student's supervisor review, approve and personally sign any document prepared by a student which would have binding legal effect.

It is not the expectation of the Board that every second-year law student would be immediately registered for student practice. The Board appreciates that the key component to student practice is proper supervision. New programs will take time to develop. The Board encourages Georgia's law schools to work together to deal with the new authority that the proposed rule gives them. The Board envisions incremental and deliberate forays by law schools as they explore this new authority.

During this process, the Board has become more aware of the good work that all of Georgia's law schools have been doing in their experiential learning programs under the constraints of the current rule for their certified and uncertified students. The Board appreciates the input of all of Georgia's law schools during this process. This dialogue has served the purpose of making the proposed rule a better rule. We expect this comprehensive, yet simple, two-page rule will become a standard for other jurisdictions to look to as they update their own rules.

As programs develop under the rule we also expect that the proposed rule will positively impact the need for access to legal services by low-to-moderate income Georgians who otherwise would be unable to afford it. As we were reminded in Chief Justice Hugh Thompson's State of the Judiciary Address this year, one of the fundamental goals of our justice system is access to liberty and justice for all, not just those who can afford it. The proposed rule allows supervised students to receive practical experience in the real world and promotes a culture of service to meet unmet legal needs for future lawyers that will hopefully continue during their entire legal career.