

# Supreme Court of Georgia Dramatically Expands Student Practice

## Supporting Experiential Education and Broadening Access to Justice

by Clark D. Cunningham

“I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the State Bar of Georgia.” On Sept. 16, 2015, the Chief Judge’s Courtroom of the Superior Court of Cobb County resounded with these words as Supreme Court of Georgia Presiding Justice P. Harris Hines completed administration of Georgia’s new law student practice oath for 15 second-year law students. Justice Hines then gave these students a solemn charge: “What a wonderful opportunity this is for you all! As the first group of students to practice law your second year, you have a great responsibility. The success of this program is dependent on you. I know you will do well and will conduct yourselves personally and professionally in the highest accordance of the law.”<sup>1</sup>

On March 12, 2015, the Supreme Court of Georgia replaced a student practice rule that dated back to



Photo by Timothy Cole

Justice P. Harris Hines administers the new student practice oath of office on Sept. 16, 2015.

1992 with an entirely new rule with the purpose “to support experiential learning opportunities . . . and . . . expand access to justice.”<sup>2</sup> The most far-reaching effect of the new rule is that law students are now eligible for student practice after the first year of law school; the old rule limited student practice to students who had completed two-thirds of their legal education. Other significant changes include: (1) an expanded definition of eligible client; (2) allowing any member of the State Bar of Georgia to supervise student practice; (3) specific requirements for supervising student attorneys; and (4) clear authority for student attorneys supervised pursuant to these require-



Photo by John Amis

Participating students stand with Justice P. Harris Hines after reciting the new law student practice oath. (First row, left to right) Phenisha Bresnock, Chae Mims, Serreen Meki, Jamila Watts, Lacey Wheeler, Sydney Hill, Karyn Pagnotta, Marie Wilcox; (second row, left to right) Mariya Davis, Geoffrey Hafer, Gregory Mullin, Ivy Oxendine, Stephen Kaplan, Karen Lowell, Daniel Lee, Christian Blayne May; and (third row) Justice P. Harris Hines.

ments to engage in all aspects of a lawyer’s work “as if admitted and licensed to practice law.”<sup>3</sup>

### History of the New Student Practice Rule

The new rule was the product of five years of work by the Chief Justice’s Commission on Professionalism (CJCP) and the Board of Bar Examiners (Bar Examiners). In 2010, then-Chief Justice Carol W. Hunstein established a new Access to Justice Committee of the CJCP and charged it with developing innovative ways to improve access to justice. That committee, noting that many states had updated their rules to allow second year practice, including our neighboring states of Tennessee and North Carolina, proposed amending the existing student practice rule to allow students to practice after completing three semesters.<sup>4</sup> In 2012 CJCP approved the committee’s recommendation and Chief Justice Hunstein referred the proposed amendments to the Bar Examiners for consideration.<sup>5</sup>

Former Superior Court Judge Ralph Simpson, then-chair of the Board of Bar Examiners, appointed a Student Practice Committee comprised of himself, former Superior Court Judge Thomas Cauthorn and former State Bar President John Sammon as chair.

As a result of a comprehensive review of national resources and models, the Bar Examiners’ committee decided, instead of just amending the existing rule, to draft “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.”<sup>6</sup>

By recommending that student practice be allowed as early as the completion of the first year and expanding the scope of student practice, the Bar Examiners’ committee wanted to create opportunities for Georgia’s law schools to expand experiential education and integrate it more deeply into the entire curriculum.<sup>7</sup> Many of the sources consulted by the Bar

Examiners’ committee called for the improvement of legal education to achieve the kind of “coordinated curriculum aimed at deep understanding, complex technical competence, and deeply internalized moral responsibility”<sup>8</sup> exemplified by medical and other types of professional education. Consistent with such calls for legal education to lay the foundation for developing a professional identity informed by the deep values of the profession, the Bar Examiners’ committee saw the proposed rule as not only expanding opportunities for students to receive practical experience, but also as promoting “a culture of service to meet unmet legal needs for future lawyers that will hopefully continue during their entire legal career.”<sup>9</sup>

During 2014, the Bar Examiners’ committee as well as the full Board of Bar Examiners met repeatedly with representatives of Georgia’s five law schools to finalize the draft of the new rule.<sup>10</sup> The final version was approved by the Bar Examiners and submitted to the

Court, which approved it effective Aug. 15, 2015.<sup>11</sup>

## Implementation of the New Rule and its Impact on Legal Education

As of Jan. 12, 2016, 488 law students had been registered for student practice under the rule, including 162 second-year students.<sup>12</sup> For example, the 15 second-year students sworn in by Justice Hines on Sept. 16 were then able under the new rule to appear in Cobb County Superior Court on behalf of domestic violence victims as part of a new course at the Georgia State University College of Law (GSU) operated in partnership with Legal Aid of Cobb County.<sup>13</sup> This six-credit course, entitled Transition to Practice, was specifically designed to take advantage of the new rule to teach professional responsibility and the fundamentals of law practice by immersing students right after the first year in the world of real practice through a combination of actual client representation, fieldwork with a solo or small firm lawyer and intensive simulation of law firm practice. By the end of the fall semester the GSU students had represented 16 domestic violence victims and obtained orders of protection for all clients seeking such orders, either through winning court orders in an adversarial evidentiary hearing or through negotiation on the day of hearing.

Reflective essays completed by Transition to Practice students indicated that the new rule's purpose of launching the development of professional identity early in the law school experience was being accomplished. For example, Geoffrey Hafer wrote: "Our first domestic violence case was incredibly influential in shaping my thinking in terms of the legal profession's core values, professionalism and future career options. Prior to this course, I had no practical experience. Meeting our client for the

first time really opened my eyes to the kind of impact our profession truly has on those in our community . . . . I have had 'jobs' throughout my life in the service industry but this was something entirely different. I wanted to help her, needed to help her . . . . It was incredibly exciting on the one hand as a learning experience but frightening on the other should I somehow miss something, lose her confidence or worse . . . . We were playing a role in a very pivotal moment in her life. Experiencing this struggle helped center again in me the reason why I came to law school . . . . I am not certain yet what I want to do ultimately but this experience has assured me that I have chosen the correct profession."

For the Fall 2015 semester at the University of Georgia School of Law, Prof. Alexander Scherr, director of Civil Clinics, used the new student practice rule to provide statewide information and referral services on landlord-tenant issues in cooperation with the Georgia Legal Services Program. Law students were registered under the new rule to participate in the Public Interest Practicum, a course that does not involve litigation but provides extensive experience with interviewing, case development, counseling, writing to clients and informal negotiation. Quick advice was provided over the phone to many and Scherr ended up opening more than 60 landlord-tenant cases for more extended work.

Scherr reports that registration under the new student practice rule gave both him and the students "greater confidence that they could operate with more autonomy in talking with and advising clients in a non-litigation setting." "The knowledge that the new rule permitted them to act as lawyers under close supervision made for a much more compelling experience for the students," he explained. "It also expanded the number of low-income clients we could serve in an urgent, time-sensitive caseload."

## Frequently Asked Questions About the New Rule

### What are student lawyers allowed to do?

The old rule only referred specifically to assisting with court proceedings. The Bar Examiners' committee wanted the new rule clearly to authorize student practice that was co-extensive with all the work that a licensed attorney can do. Thus the new rule states that a student lawyer, "when under the supervision of a member of the State Bar of Georgia, may, as if admitted and licensed to practice law in Georgia, advise, prepare legal instruments, appear before courts and administrative agencies and otherwise take action on behalf of" an eligible client.<sup>14</sup>

### Who are eligible clients?

The new rule expands the scope of client eligibility from "indigent person" to "any person who is unable financially to pay" for legal services and also includes nonprofit organizations if their purpose "is to assist low or moderate income persons" as well as "any state, local, or other government unit or agency."<sup>15</sup> The new rule is thus intended to "impact the need for access to legal services by low-to-moderate income Georgians who would be unable to afford it."<sup>16</sup>

### Can attorneys in private practice now supervise student practice?

Yes. The old rule only allowed supervision by a prosecutor, public defender or "a 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." The new rule permits supervision by any "member of the State Bar of Georgia," thus opening up the use of student lawyers for law firm pro bono work.<sup>17</sup>

## Is there a new procedure for becoming a student lawyer?

Yes. Under the old rule, law student practice was authorized by an order entered by “the judge of the court” where the student would be “assisting with proceedings”; such orders could not extend more than one year. Authorization for student practice under the new rule is issued by the Office of Bar Admissions through a registration process that requires certifications from a law school dean (or designate) and the law student.<sup>18</sup> Law students then receive a certificate and “student attorney number” that remains in effect until graduation, unless registration is terminated by the director of the Office of Bar Admissions.

## Can registered law students charge fees?

No, but the rule does permit the student to receive compensation, a scholarship, stipend “or other remuneration from a law school, governmental entity or other nonprofit agency” in acknowledgment of the services the student is performing. The rule does not prohibit an attorney “from applying for, charging or collecting a fee relating to activities of the registered law student,” the attorney otherwise may properly apply for, charge or collect, although this language must be read together with the definition of an eligible individual client as a person “unable financially to pay for the legal services of an attorney.”<sup>19</sup>

## What are the responsibilities of attorneys supervising registered law students?

The new rule contains an entire section devoted to the responsibilities of a supervising attorney,<sup>20</sup> which include the following:

- review, approve and personally sign any document prepared by a student that is filed in any court or tribunal;

- review and approve any document prepared by a student that would have binding legal effect on a person or entity receiving student-practice related services;
- require that any document signed by a law student states that the student is acting as a registered law student pursuant to this rule;
- obtain a signed consent from a person or entity being represented acknowledging that the supervising attorney is being assisted by the registered law student; and
- generally counsel and assist the student, and in particular provide guidance in matters of professional responsibility and legal ethics, in order to assure proper practical training of the student as well as effective representation.

## When must a supervising attorney be present when a registered law student engages in student practice?

The rule only requires a supervising attorney to be physically present during the conduct of a grand jury investigation, administrative proceeding, hearing, trial or “other proceeding” and creates an exception if the judge “determines that the physical presence of the supervising attorney is not necessary.”<sup>21</sup> Although still requiring proper supervision, the rule does not require a supervisor’s physical presence for student practice outside these settings.<sup>22</sup> (GB)



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## Endnotes

1. ‘Make Us Proud’ Justice Hines Tells Students, GEORGIA STATE LAW: NEWS & EVENTS (Oct. 2, 2015), <http://law.gsu.edu/2015/10/02/make-us-proud-justice-hines-tells-students/> (last visited Dec. 23, 2015); see also Meredith Hobbs, *Second-Years Practice Law in New GSU Course*, FULTON COUNTY DAILY REPORT, SEPT. 17, 2015.
2. GA Sup. Ct. R. 91 (Student Practice Rule: Purpose). Available at: <http://www.teachinglegalethics.org/georgia-student-practice-rule> (last visited Dec. 23, 2015).
3. See EXECUTIVE SUMMARY OF PROPOSED STUDENT PRACTICE RULE APPROVED BY GEORGIA BOARD OF BAR EXAMINERS (Dec. 12, 2014) (hereinafter EXECUTIVE SUMMARY), available at: <http://www.teachinglegalethics.org/georgia-student-practice-rule> (last visited Dec. 23, 2015).
4. At least 22 states, now including Georgia, authorize student practice in the second year. Student practice rules for all fifty states plus the District of Columbia are available at: <http://www.teachinglegalethics.org/category/lawyer-regulation/student-practice> (last visited Dec. 23, 2015).
5. EXECUTIVE SUMMARY, *supra* note 3, at 1.
6. *Id.* at 1. The Bar Examiners’ committee asked the author to serve pro bono as its Reporter. *Id.* at 2.
7. EXECUTIVE SUMMARY, *supra* note 3, at 5 (also noting that “[n]o law school in Georgia is forced to change any of its existing programs under the proposed rule”).
8. *Id.*
9. EXECUTIVE SUMMARY, *supra* note 3, at 6.
10. EXECUTIVE SUMMARY, *supra* note 3, at 2-3.
11. Order, Ga. S. Ct. (amending Supreme Court Rules Part XV,

Rules 91-95) (March 12, 2015), <http://www.teachinglegalethics.org/georgia-student-practice-rule> (last visited Dec. 23, 2015).

12. STUDENT PRACTICE RULE STATISTICS, Office of Bar Admissions, Supreme Court of Georgia (Dec. 2, 2015).
13. This course was developed by the author and co-taught with two adjunct professors, Tiffany Roberts, Deputy Director of the National Institute for Teaching Ethics & Professionalism, and Kate Gaffney, Staff Attorney, Legal Aid of Cobb County.
14. GA Sup. Ct. R. 92 (Activities Permitted by a Registered Law Student). The new rule does not affect the right of lawyers to use nonlawyer assistants as permitted by the Rules of Professional Conduct, *id.* and GA Sup. Ct. R. 91 (Purpose); however, 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," EXECUTIVE SUMMARY, *supra* note 3, at 5. See Formal Advisory Opinion No. 00-02, (2000) ("Regardless of the task in question, lawyers

should never place nonlawyers in situations in which the nonlawyer is called upon to exercise what would amount to independent professional judgment for the lawyer's client. Nor should a nonlawyer be placed in situations in which decisions must be made for the lawyer's client or advice given to the lawyer's client based on the nonlawyer's legal knowledge, rather than that of the lawyer. Finally, nonlawyers should not be placed in situations in which the nonlawyer, rather than the lawyer, is called upon to argue the client's position.").

15. GA Sup. Ct. R. 92.
16. EXECUTIVE SUMMARY, *supra* note 3, at 6 (citing Chief Justice Hugh Thompson's 2014 State of the Judiciary Address). See *id.* at 3.
17. GA Sup. Ct. R. 92 (Activities Permitted by a Registered Law Student). See *also* EXECUTIVE SUMMARY, *supra* note 3, at 3.
18. GA Sup. Ct. R. 94 (Procedures for Registration). The dean must certify that the student has completed legal studies equivalent to at least two semesters of full-time study, is currently in good academic standing, and, to the best of the knowledge of the dean,

is of good moral character and is prepared to begin the work authorized by the rule. The law student must submit evidence that the student has taken a prescribed oath and certify that the student has read and is familiar with the Georgia Rules of Professional Conduct and will comply with all provisions of the Georgia Rules of Professional Conduct applicable to activities undertaken by the student pursuant to the student practice rule.

19. GA Sup. Ct. R. 92 (Activities Permitted by a Registered Law Student). See *also* EXECUTIVE SUMMARY, *supra* note 3, at 4 ("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.")
20. GA Sup. Ct. R. 95 (Supervision of a Registered Law Student).
21. *Id.*
22. Cf. Formal Advisory Opinion No. 00-03 (2000) (a lawyer must be physically present to supervise the work of a nonlawyer conducting a real estate closing) and generally Formal Advisory Opinion No. 00-02 (2000).



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