

GEORGIA'S SYSTEM OF ADMISSION TO THE BAR BY EXAMINATION

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This article deals with the subject of bar examinations in the State of Georgia.

INTRODUCTION

For many years there was general neglect of the science and techniques involved in the examination of applicants to determine their qualification to practice law, but for the past decade there has been a national awakening to the tremendous importance of this subject to both the public and the legal profession. A searching study has been made into every phase of the subject as a part of the survey of the legal profession, resulting in the gathering of statistics on a nationwide basis and the preparation of analyses and articles by the best qualified experts in the profession. This work is now incorporated into a book¹ that answers substantially every need of the applicants, the bar, the examiners and the law schools for a scientific approach to the bar examination problem.

SCOPE AND PURPOSE OF THIS ARTICLE

Even so, the author has agreed that a non-technical discussion of the present system of administering bar examinations in Georgia is desirable and consented to prepare this article in the hope that it may prove helpful to interested Georgians.

At the outset it should be pointed out that this article does not undertake to speak officially for the State Board of Bar Examiners. Nor does it constitute a critique of the Georgia system. It is rather to discuss the Georgia system as it is and to explain in part the procedure for administering bar examinations under that system.

ADMISSION TO THE BAR BY EXAMINATION

Admission to the bar in Georgia pursuant to examination is unrelated to admission and licensing to practice law via other procedures.²

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1. Survey of the Legal Profession, *Bar Examinations and Requirements for Admission to the Bar* (1952).
2. Ga. Laws 1955, p. 307, amending G.A. CODE § 9-201 (1933).

The legal authority for admissions by examination involves the exercise of legislative and judicial authority, carefully balanced and interwoven to avoid conflict between the constitutional authority of the legislature and of the courts. The legislature has prescribed general qualifications for applicants³ and has required that they shall be examined in the general fields of the law before being licensed to serve the public as lawyers.⁴ The statute creates the State Board of Bar Examiners⁵ and provides that such examinations shall be administered by the Board under rules to be promulgated by the Georgia Supreme Court.⁶ Power of selection and appointment of members to serve on the Board is vested in the Georgia Supreme Court,⁷ and supervision and authority are placed in this court or the superior courts with respect to each phase of admission by examination involving functions judicial in nature.

This system of admissions follows in substance the tradition of the earliest American practice, which originated in England where probably for some years before America existed the power of admission was vested in the courts but exercised pursuant to the equivalent of examination by the Inns of Court.

The State Board of Bar Examiners in Georgia consists of five examiners.⁸ Regular terms of examiners are for six years; vacancies are filled for the unexpired term.⁹ Administrative functions are made the responsibility of the chairman, with administrative assistance rendered by a clerk selected by the Board. Contrary to the practice in many states, the examiners in Georgia prepare and conduct the examination and grade the papers. There is no staff to do this work under their direction. The judges and the clerks of the superior courts and their deputies work closely with the examiners in determining and certifying eligibility of applicants for the examination and later in admitting the successful applicants to the practice. A significant contribution to the procedure is made by many fine members of the bar who, as officers of the court, perform as a public service the duties of monitors during the actual giving of the examination.

The Board and its members have the delicate task of determining whether applicants on the basis of their examinations shall be permitted to practice law in Georgia. No task is so difficult as sitting in

3. Ga. Laws 1952, p. 150, GA. CODE ANN. § 9-103 (1954 Supp.).

4. *Ibid.*

5. Ga. Laws 1952, p. 262, GA. CODE ANN. § 9-105 (1954 Supp.).

6. Ga. Laws, 1945, p. 151, GA. CODE ANN. § 9-116 (1951 Supp.).

7. Ga. Laws, 1952, p. 262, GA. CODE ANN. § 9-105 (1954 Supp.).

8. *Ibid.*

9. GA. CODE § 9-106 (1933).

judgment upon a fellow man in any matter, particularly where the consequences may prove severe and disappointing. It is natural at times in passing judgment on the examiners when a number of applicants are unsuccessful to feel they have been too willing to apply harsh grading. It should be remembered at such times that the primary duty of the Board is to protect the public, and that the standard of that duty is fixed by law, not by the examiners. It is also sometimes mistakenly thought that the Board has a part in the fixing of qualifications for eligibility of applicants.

QUALIFICATION FOR ADMISSION

Qualification prerequisite for an applicant to take the bar examination is fixed by statute as follows:

Any citizen, who has been a bona fide resident of Georgia for 18¹⁰ months or more next preceding his or her application to stand the State bar examination, and of good moral character and at least 21 years of age who has the educational qualifications provided in this section and who has undergone a satisfactory examination as hereinafter prescribed, may practice law. An applicant for such examination shall have either a high school education or its substantial equivalent. An applicant for such examination shall further have either successfully completed two years of legal study in a law school¹¹ or shall 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 practitioners' tutelage.¹²

PROCEDURE IN APPLYING FOR ADMISSION

Rule 4 (a) of the Rules for Admission to the Bar promulgated by the Supreme Court of Georgia¹³ prescribes the form of application and requires the setting forth by the applicant of the information which will establish his qualification under the foregoing statute.

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10. Act. No. 392 of the 1955 General Assembly reduced the period of bona fide residence in Georgia to 12 months upon certification of the facts as to the applicant's residence by a member of the Bar of the Supreme Court of Georgia. This Act was signed by the Governor on March 9, 1955, and is effective for the 1955 examination.
 11. "In a law school" means residence and precludes qualification by taking correspondence courses.
 12. Ga. Laws, 1952, p. 150, GA. CODE ANN. § 9-103 (1954 Supp.)
 13. *Rules for Admission to the Bar*, 209 Ga. 961-969 (Nov. 15, 1952). Rules 4 and 4 (d) were amended by the Supreme Court on February 17, 1955, to conform to Ga. Laws Nov.-Dec. Sess. 1953, p. 368, GA. CODE ANN. § 9-115.1 (1954 Supp.). Amendments in 211 Ga. ff. p. 356 (Adv. Sheet, March 25, 1955).

Rules 4 (b), (c), and (d)¹⁴ provide that the eligibility of the applicant shall be determined by the judge of the superior court with whom the application is filed, and Rule 4 (e)¹⁵ in effect provides that no person may take the examination unless found by the judge to possess the qualifications prescribed by law.

The steps to be taken by the applicant are as follows:

(1) An application to take the bar examination must be filed in writing on the form prescribed therefor by the Supreme Court of Georgia. The application must be accompanied by a written certificate signed by two members of the Georgia bar, certifying to the moral and professional qualification of the applicant.¹⁶

(2) The application must be accompanied¹⁷ by a written receipt of the Chairman of the State Board of Bar Examiners for the fee of \$30.00 as fixed by statute and required to be paid by each applicant.¹⁸

(3) The application (a) must be filed at least 90 days before the first day of the examination,¹⁹ and (b) must be filed with the judge of the superior court of the county of residence of the applicant or of the county in which the applicant has studied law as required by the statute, or with the judge of the county in Georgia where he is stationed in the case of an applicant who is a Georgia citizen and who is serving in the armed services.²⁰

(4) If the applicant is certified as eligible by the judge with whom the application is filed, the applicant must present himself to take the examination at the time and place fixed therefor pursuant to law.

THE EXAMINATION PROCEDURE

Under the law the examination is held once each year on the Wednesday and Thursday following the second Monday in July.²¹

The place is required by the rules to be at the capitol in Atlanta, or elsewhere in Atlanta pursuant to arrangements of the Board of Bar Examiners when the number of applicants necessitates.²² By custom the place for the applicants to report is always fixed as the

14. 209 Ga. 963-4. Rule 4(d) was amended on February 17, 1955. See note 13 *supra*.

15. 209 Ga. 964.

16. Ga. Laws, Nov.-Dec. Sess. 1953, p. 368, 369, GA. CODE ANN. § 9-115.1 (1954 Supp.) See note 13, *supra*.

17. Rule 4, 209 Ga. 962, as amended February 17, 1955. See note 13, *supra*.

18. Ga. Laws 1952, p. 262, GA. CODE ANN. § 9-113 (1954 Supp.).

19. Ga. Laws, Nov.-Dec. Sess. 1953, p. 368, 369, GA. CODE ANN. 9-115.1 (1954 Supp.).

20. Ga. Laws, Nov.-Dec. Sess. 1953, p. 368, 369, GA. CODE ANN. § 9-115.1 (1954 Supp.) Rule 4, 209 Ga. 962, as amended February 17, 1955. See note 13 *supra*.

21. July 13 and 14 in 1955.

22. Rule 1, 209 Ga. 961.

chamber of the House of Representatives in the capitol. Later, the actual examination is held in the House and in the Senate chamber and, when the number of applicants exceeds the accommodations of these two chambers, at the Atlanta Division of the University of Georgia. According to custom and cooperation these places have been made available by the Lieutenant-Governor, the Speaker of the House of Representatives and the Director of the Atlanta Division of the University of Georgia, respectively.

All applicants convene in the House chamber of the state capitol at 9:00 in the morning of the first day of the examination. No ceremonial is involved as the weather is hot in July and the time is needed for the examination. Before the examination commences an announcement summarizing the procedures to be followed is made by the Board; specifically attention is called to the oath which the applicants must take at the end of the examination.²³ The rules contemplate that every precaution shall be made to assure that each examination paper shall be anonymous until after graded. Each applicant is required to draw from a container a card on which is printed a number.²⁴ This number is written by the applicant on the outside of a small envelope furnished him on which the letter "A" is printed. Into this "A" envelope is inserted a slip of paper on which the applicant writes his name, his address and the name and address of the judge to whom he presented his application.²⁵ All "A" envelopes are then sealed by the applicants, collected by the examiners and under the procedure now followed are by the Board sealed in a packet and placed in the custody of the Clerk of the Georgia Supreme Court to be deposited with the state Treasurer until after the final grading of the examination papers. It is only in this envelope "A" that the name and number of each individual applicant appears together. Only the number of the applicant appears on his examination.²⁶ The examination is in four parts and printed questions are prepared in four separate parts.²⁷ After the aforesaid announcement, Part One of the examination, covering the first morning session, is given to each applicant together with an envelope, on which appears the letter "B", into which the applicant will place his answers to Part One of the examination at the end of the first session.²⁸ Parts Two, Three and Four are similarly delivered at the beginning of each of the three

23. Rule 6 (b) , 209 Ga. 965.

24. Rule 6, 209 Ga. 964.

25. Rule 6 (a) , 209 Ga. 965.

26. Rule 6 (b) , 209 Ga. 965.

27. Rule 3, 3 (a) , 209 Ga. 961, 962.

28. Rule 6 (c) , 209 Ga. 965.

succeeding sessions of the examination together, in each case, with the "B" envelope into which the answers are to be placed.²⁹ As aforesaid only the applicant's number, not his name, is placed on the "B" envelopes and on his answer sheets. The morning sessions for each of the two days involved lasts from 9:00 until 1:00 P.M. in accordance with the Georgia Supreme Court Rules. The afternoon sessions begin at 2 o'clock and end at the hour fixed by the examiners, usually four hours later or 6:00 P.M.³⁰

The materials to be used by the applicants in answering the questions are white paper, written upon on only one side, using either pen and ink or typewriter.³¹

When the applicant hands in his answers to Part Four, the final part of the examination, he signs an oath to the effect that he had never seen until presented to him by the Board the questions upon which he was examined, that he had not received any information as to the content of the questions and that he did not use or refer to any memorandum or receive any aid whatsoever during the examination.³²

GRADING OF THE EXAMINATION

Sealed envelopes "B" showing the numbers of the applicants and containing the examination answers are collected by the examiners for each of the parts and carefully preserved for grading.³³ The ideal recognized where questions are prepared and graded by the examiners, as in Georgia, is as nearly as possible for the examiner who prepared the question to also grade the answers for such question for all applicants. This produces uniform treatment of all applicants. This would mean that each of the five examiners would both prepare and grade approximately one-fifth of all questions.

It is appropriate to state at this point that great care is exercised in the preparation of the questions. The examiner preparing a question will submit it to the other examiners along with the legal authority deemed to control the answer. These are considered, and later at meetings of the Board are fully discussed, often debated, and agreement is reached before adoption of the question.

Grading is undertaken as aforesaid, except that the entire Board meets for "test" grading of each other in advance of the actual grading task. Then each examiner is assigned his portion of the examina-

29. Rule 6 (c), 209 Ga. 965.

30. Rule 5, 209 Ga. 964.

31. Rule 6 (b), 209 Ga. 965.

32. Rule 8, 209 Ga. 966.

33. Rule 6 (d), 209 Ga. 965; Rule 10, 209 Ga. 966.

tions for grading. After such grading is completed and tabulated (*according to number only*), examinations failing to pass but receiving near-passing grades are re-examined by all examiners as a board and final grades are fixed. The final grades are then tabulated and the envelopes "A" are taken from the vaults of the state Treasurer by the Clerk of the Georgia Supreme Court and delivered to the Board to be used in identifying by name the examination papers graded as aforesaid by numbers.³⁴ Thereupon for the first time the tabulation of results shows the name of each applicant and the grade or appraisal of his or her paper by the Board. The Board is required at this point to credit each applicant entitled thereto a veteran's credit of five points.³⁵ All applicants whose total grade equals the passing grade of 70 fixed by the rules³⁶ are certified for admission to the bar.³⁷

SCOPE OF A BAR EXAMINATION

An understanding of the process of forming the examination is important.

Sections 9-110 and 9-111 of the Georgia Code Annotated, as amended, provide statutory direction concerning the content of the examination. Rule 3³⁸ of the supreme court Rules for Admission to the Bar recognizes these statutory provisions. Section 9-110 requires that "the applicant must be examined touching his knowledge of such subjects *** as may seem advisable to the Board ***" expressly including a knowledge of: common law, pleading and evidence, equity, the Code of Georgia, Georgia and Federal constitutional law and appellate and trial court practice. Section 9-111 contemplates that the examination shall cover "all topics and subjects a knowledge of which is, under existing laws, requisite to admission to the bar."

The foregoing statutory provisions and the rules of the supreme court plainly intend that the Board shall examine applicants on all such subjects pertaining to the practice of law as may seem advisable to the Board of Bar Examiners.

Thus, in preparing an examination, the Board is required to exercise a broad discretion in determining what matters pertaining to the practice of law are fair to the applicants and adequate to demonstrate the necessary knowledge of law. This broad responsibility is in keeping with the duty imposed on examiners in the majority

34. Rule 9, 209 Ga. 966.

35. Rule 10, 209 Ga. 966.

36. *Ibid.*

37. *Ibid.*

38. 209 Ga. 961.

of states. The latitude of the discretion creates serious responsibility to accomplish the stated purpose. The determination is not an exact science. At best it is a matter of seeking the goal of the ideal examination.

On first impression, in a complicated society involving a multiplicity of relations and transactions of many and varied natures, one might think that an applicant should have a knowledge of all phases of the law now regarded as "subjects." On the other hand, if one will pursue the matter carefully it will be found that this becomes unreasonable and largely a matter of impossibility. First of all, no lawyer, however experienced and learned, possesses such knowledge. Again, in the aforesaid study of bar examinations of the nation, it was found that a total of sixty-one subjects had been used in the aggregate in the examinations in all of the states during a particular year of the test period; and it is completely impossible for the very finest of students to complete as many as half that number of subjects in three years in an accredited law school. Stated another way, it is not possible for an applicant by graduation from college and from law school, assuming his work to be as near perfect as possible, to prepare himself for examination upon all subjects or even nearly all of the subjects in the field of law.

What then is the subject matter area that is fair to the applicant and at the same time adequate to establish qualification to practice law? The correct answer to that question is the quest of the bar examiner.

No one will contend that the public will be endangered if applicants are not required to demonstrate knowledge of highly specialized subjects of interest to small segments of the population; and the same is true with respect to subjects local to other states. Illustrative are such subjects as: civil law, community property, mining law, oil and gas and water rights. However important these subjects may be, it would be obviously unfair and unnecessary to require an applicant in the Georgia bar examination to prepare himself for questioning in these fields. To a certain extent the same may be said of such subjects as: carriers, labor law, pledges, public utilities, trade regulation and workmen's compensation.

There are, however, subjects that are as clearly necessary for inclusion as the above are clearly not necessary. There are basic considerations for determining reasonableness and fairness as to the applicant that fully meet the public protection requirements, and common sense as well.

If law schools may be trusted to the extent that we believe, they

have found in their standard courses and curricula for a bachelor's degree the reasonable prerequisite training for becoming a lawyer—it should be reasonable and fair to the applicant to expect him to possess knowledge in the subjects included in standard courses and curricula. Thus it is believed the examiners generally may find safe guidance in their search for subject matter if their examinations are confined substantially to a knowledge of the subjects included in the standard law courses of schools meeting the requirements for accreditation.

The prescribed course at a representative leading law school includes the subjects: agency, contracts, criminal law, property (real and personal), torts, practice and procedure, administrative law, commercial law, constitutional law, corporations, taxation, trusts, conflicts of law, evidence, labor law, international law and about five electives. Advanced courses were required in some of the above subjects. The total number of subjects did not exceed twenty. This is representative and would constitute a fair standard.

On the basis of statistics gathered from all states the following subjects were included in 80% or more of the state bar examinations: contracts, real property, evidence, pleading and practice, torts, equity, criminal law, constitutional law, corporations, agency, negotiable instruments, wills and personal property. The first eleven were included in 90% or more of the examinations. There was a wide variety of subjects to round out the total of sixty-one, but several other subjects were widely used, such as trusts, partnerships, insurance, bailments, sales, conflicts of law, bankruptcy, municipal corporations and domestic relations. Others shown as becoming more frequently included were such subjects as administrative law, labor law and taxation.

The foregoing will illustrate what the law schools are doing to prepare the candidates and what other states have thought should be included in bar examinations. Against this information and the Georgia statutes and rules already discussed it will be interesting to analyze the content of the 1954 Georgia bar examination.

This examination included thirty-four questions. One of these was a multi-part question dealing with legal ethics, propounded pursuant to legislative request.³⁹ The remaining thirty-three questions were on subjects as follows:

39. House Resolution No. 254, Ga. Laws, Nov.-Dec. Sess. 1953, p. 151.

<i>Subjects</i>	<i>Number of Questions</i>	<i>Points Rated for Grading (Total)</i>
Contracts	4	10
Real Property	3	9
Evidence	2	5
Pleading and Practice	2	6
Torts	2	7
Equity	4	13
Domestic Relations	2	4
Trusts	2	6
Criminal Law	1	4
Constitutional Law	1	5
Corporations	1	3
Agency	1	3
Wills	1	4
Taxation	1	3
Bailments	1	2
Insurance	1	3
Sales	2	4
Municipal Corporations	1	3
Partnerships	1	3
	33	97
Add Legal Ethics	1	3
TOTAL	34	100

On the basis of known standards, the subject matter distribution was quite orthodox and contained very little subject matter not required in a standard law course. The subjects are largely those involved in the great majority of legal employments as well as those applicable in all such employments.

The rating according to subject matter may be somewhat misleading. For instance only two questions are indicated on pleading and practice, rated six points; actually pleading, practice and procedure constituted substantial phases of many of the questions principally involving other subjects and classified accordingly. More than one subject was likewise covered in other questions.

The examination utilized largely essay type questions on the theory that they afford the best test of general knowledge of the law involved and require a revealing analysis and coordination of the principles involved.

A single federal income tax question was included. The question was elementary and was inserted in the belief that most business transactions have income tax phases and that most law graduates of the present day are being taught the principles of income tax law. This is a somewhat functional approach, but it seems practical to expect knowledge in legal areas that are almost universal in their effect. For instance, would it be unreasonable or inconsistent with the purposes of bar examinations to require the drafting of a simple document such as might be needed by almost any client—such as a will or a contract?

A study of the above table in the light of this discussion will demonstrate the approach of the examiners and their concept of the proper subject matter for inclusion in the examination. The relative weight accorded the subjects will likewise be apparent. It should be noted in addition that there appears from the questions the purpose to provoke clear analysis and also to require demonstration of a comprehension of the basic substantive law.

CONCLUSION

The foregoing has been largely a non-technical discussion of the Georgia bar examination under existing statutes and rules correlated into a single explanatory statement; in addition, an attempt has been made to outline some of the considerations in the development of subjects pertaining to law upon which applicants should be examined. It is hoped that the net result of this article will be a better understanding, on the part of those interested, of the functions and duties, as well as the problems, of the State Board of Bar Examiners. It should be kept in mind that law is a changing, flexible body of rules adaptable to the needs of a growing and changing society and that bar examinations must likewise reflect not only the changes in the law but changed requirements placed upon the legal profession thereby.