

# The World Needs More Lawyers

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“If there's one thing this world needs, it's more lawyers.  
Could you imagine a world without lawyers?”

-Lionel Hutz, The Simpsons

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## Executive Summary

The American legal profession, as well as those it serves, would benefit from lowering the barriers to entry to the practice of law. Several licensing barriers unnecessarily contribute to the high cost of legal services, which inhibit access to justice for ordinary Americans. In some respects, legal licensure is categorically distinct from the licensure of other highly regulated professions. This suggests that a particular focus on legal licensure may be appropriate. We therefore explore the implications of modest reforms that would advance the public interest, with an eye to the encouragement of competitive markets in legal services, and the protection and preservation of the fiduciary nature of legal services.

### I. Introduction

Everyone knows lawyers are expensive. The hard truth is that individuals of modest means often cannot afford counsel. Even small businesses may be hard-pressed to seek out counsel when needed.

Of course, there are good reasons why legal counsel is costly. Practicing law is difficult. Representation in any given matter may require an extraordinary expenditure of time and energy. Yet if we believe that it is important to provide ordinary individuals access to the justice system, it is worth asking whether there are ways we could encourage more competitive legal markets that might lower costs to consumers.

One answer may be to pursue modest reforms of existing legal licensure regimes that operate as barriers to entry into the profession. As detailed in [Occupational Licensing Run Wild](#), there is now broad cross-ideological consensus that occupational licensing barriers generally raise costs for consumers with only marginal benefits to the public. Often the perceived benefits of licensing can be achieved through more tailored regulatory measures that would ultimately benefit consumers. Those lessons may be applied even to the legal profession.

We do not propose the elimination of legal licensure requirements. But consumers would benefit if we could eliminate duplicative or unnecessary restrictions on the practice of law. Accordingly, this paper examines the nature of existing licensing requirements and considers the relative merits of several potential reforms—while emphasizing that the practice of law requires particularized standards that will safeguard the interests of clients.

On their face, licensing requirements exist to protect the vulnerable. That remains an important goal. But it is essential that all licensing requirements have appropriate effect and are supported by evidence. As we shall see, some licensure restrictions impose burdens without commensurate benefits to society.

## II. The Value of Reconsidering Existing Legal Licensure Requirements and Their Potential Tradeoffs

Today, there is a wide cross-ideological consensus in favor of occupational licensing reform.<sup>1</sup> Over-extensive occupational licensing blocks providers from entering labor markets, thereby reducing supply of their services and pushing prices higher for consumers. And the alleged benefits of stricter licensing requirements are often oversold or illusory.<sup>2</sup>

There is growing support for occupational licensing reform for historically low-paid professions like florists, health care paraprofessionals, childcare workers, and tradesmen. But occupational licensing is especially entrenched for higher-status professionals. That is especially true for the inherently conservative legal profession.<sup>3</sup>

Even if we accept licensure as a permanent fixture of the legal profession, there are opportunities to improve the system. For example, one could conceivably allow competent individuals to practice law on specific matters for which they have been well trained. This is starkly different from the universal scope of practice that is contemplated by our existing legal licensure regime. But the idea of allowing varying levels of legal licenses is not without precedent.

Consider the medical field. A doctor with a medical license is granted a universal scope of practice to provide any medical care that may be needed. But other medical professionals are only authorized to provide a narrow band of services. For example, nurses can diagnose and treat certain conditions and ailments; order, perform, and interpret diagnostic tests; and (in some cases) prescribe medications and certain treatments. These regimes ensure adequate care, partly because a licensed nurse must typically work under the supervision of a fully licensed doctor. And a nurse's license demonstrates only that its holder has been deemed competent to provide a limited set of medical services.

Of course, there are tradeoffs. The benefit of allowing nurses to provide more medical services is that they can provide needed services more rapidly, and at lower costs, than if those services were performed exclusively by licensed doctors. The potential cost is that services provided by nurses

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<sup>1</sup> Notably, every recent presidential administration has encouraged occupational licensing reform. The Obama Administration issued a report arguing that the growing costs of occupational licensing rules functioned as a tax on consumers. The Trump Administration devoted resources to helping state governments design and implement occupational licensing reforms. And on July 9, 2021, the Biden Administration, through executive order, encouraged “the FTC to ban unnecessary occupational licensing restrictions that impede economic mobility.”

<sup>2</sup> Licensing regimes are often predicated on an assumption that excluding relatively weak or low-quality providers will benefit consumers. But as detailed [in Occupational Licensing Run Wild](#), there are usually regulatory alternatives that facilitate more competitive markets, decrease costs for consumers, and safeguard the public interest more effectively.

<sup>3</sup> See, e.g., <https://news.bloomberglaw.com/us-law-week/california-bar-swamped-by-comments-opposing-ethics-rule-changes>

might not always provide the same quality of care that a doctor would.<sup>4</sup> In many cases, policymakers have dealt with these tradeoffs by deciding that the pressing need for providing health care calls for a more flexible system.

Likewise, one must question whether the tradeoffs are worth accepting as we contemplate reforms to existing legal licensure regimes. Legal licensure reform is complicated because any reforms must ensure that the providers maintain fiduciary responsibilities and a high level of care to safeguard client interests. However, the state can often address those compelling concerns by enforcing codes of professional conduct as opposed to denying licensure.

These potential tradeoffs inform our analysis of limited scope of practice licensure and other liberalizing reforms. At the root of each of the following proposals is the idea that there is value in lowering the barriers to entry into the legal profession, so long as we ensure an adequate level of protection for consumers of legal services. The overarching question is: what system would most benefit those in need of legal services, especially those whom are currently priced out of the market?

### III. Avenues for Legal Licensure Reform

#### A. Interstate Recognition and Remote Work

The legal profession has been fundamentally and irrevocably changed by the revolution in remote work. Lawyering is uniquely suited to remote work, given how much of the job involves quiet moments of research and writing that can take place from any location.

Lawyers already drafted documents on the computer, rather than by hand. They already researched online—not in libraries. In the digital era, lawyers can interview clients and witnesses virtually—and with lower cost and more convenience.<sup>5</sup> So now more than ever, lawyers can work from wherever, whenever—and they are just as effective as ever. Moreover, remote work arrangements can also benefit law firms by reducing overhead expenses, which could help lower the costs of legal services.

Yet unfortunately, remote practice of law is sometimes unlawful. One might reasonably think that a lawyer licensed in a specific state should be free to move and work wherever as long as the lawyer limits his or her work to matters pertaining to the state where he or she is licensed. And that is true in some states.<sup>6</sup> Some states expressly require attorneys to be licensed wherever they physically

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<sup>4</sup> In any event, [empirical evidence shows](#) nurse practitioners provide care equal to that of physicians.

<sup>5</sup> According to Clio’s 2020 Legal Trends report, 56% of consumers would prefer videoconferencing over a phone call and 69% prefer working with a lawyer who can share documents electronically through a web page, app, or online portal. 2020 Legal Trends Report (Clio), available at <https://www.clio.com/resources/legal-trends/2020-report/>.

<sup>6</sup> For example, in 2022, the [Virginia Supreme Court clarified](#) that: “[A] foreign lawyer may work remotely in Virginia (from home or otherwise), for any length of time, with or without an emergency justification to do so, as long as the work done involves the practice of the law of the foreign lawyer’s licensing jurisdiction or exclusively federal law that does not require Virginia licensure.”

perform legal work—regardless of what state their clients are in or what matters they are working on.<sup>7</sup> And the issue is unsettled or unclear in other states—which means lawyers must seek admittance to avoid risk of sanction.<sup>8</sup>

Meanwhile, a related issue has long plagued attorneys seeking to [practice law across different jurisdictions](#). Generally, if an attorney seeks to handle legal matters pertaining to different states he or she must be licensed within each jurisdiction. This means that to avoid professional and criminal sanction, an attorney must seek admittance to multiple state bars—with all the attendant costs, administrative burdens and energy that entails. For one, no attorney relishes having to take the bar exam—even if they have already passed their own state’s bar with flying colors (perhaps decades ago).

All of this means that attorneys are discouraged from expanding services to clients who might benefit from their assistance. In so limiting the availability of competent attorneys, these licensing regimes, in turn, drive up costs for legal services. And so one must question whether the benefits of requiring an attorney to go through these hoops is really worth it.

Consider the [case](#) of Violaine Panasci.<sup>9</sup> She graduated law school from the University of Ottawa in Canada, and received her LLM from Pace University in New York where she graduated *summa cum laude*. She scored in the 90th percentile on the Uniform Bar Exam (UBE) and passed the New York Bar Exam—which is notoriously one of the toughest in the country. But after being admitted to the New York Bar she relocated to Nashville during the pandemic.

Unsurprisingly, she had no trouble getting hired in Tennessee. Her trouble came from the state of Tennessee, which denied her application to practice law because the State Bar concluded her “academic path [was] not equivalent to that of a traditional U.S. graduate.”

That was surprising. Given that Tennessee uses the same UBE as New York, and the fact that she remained in good standing in New York, there should be no doubt as to her professional competence. And given the need for good, affordable lawyers, in a rural state like Tennessee, one would think her admission would serve the public interest.<sup>10</sup>

Why wasn’t it good enough that Violaine was admitted in another state? Why doesn’t Tennessee want as many competent lawyers as it can find to drive down the cost of legal services that many find prohibitively high? Why did Violaine have to apply in the first place, only to be rejected?

The bottom line is that restrictive Tennessee practices appear to dampen competition in the market for legal services by benefiting incumbents at the expense of new market entrants and consumers.

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<sup>7</sup> For example, Missouri Bar Advisory Opinion No. 970098 provides: “It would constitute the unauthorized practice of law for an Attorney to provide legal advice or counseling on any area of law from an office which is located physically within the state of Missouri.”

<sup>8</sup> See *E.g.*, Tex. Rules Disc. Prof’l. Cond. Rule 5.05; Ala. Rules of Prof’l. Cond. Rule 5.5(d); Colo. of Prof’l. Cond. Rule R.5.5; Nev. Rules of Prof’l. Cond. Rule 5.5.

<sup>9</sup> Available at <https://www.tennessean.com/story/opinion/2022/08/22/tennessee-board-of-law-examiners-denied-application-supreme-court-challenge/7867974001/>.

<sup>10</sup> See Conference of State Court Administrators, *Courts Need to Enhance Access to Justice in Rural America*, pp. 1-3 (2018).

But if the only justification is to protect already licensed attorneys from competition, it really is time for policymakers to consider reform. Thankfully, on September 16, 2022, the Supreme Court of Tennessee issued a per curiam order that recognized that Violaine’s legal education “should not preclude” her from being admitted to practice law in Tennessee.<sup>11</sup>

The good news is that there is a model rule that would both clarify that remote work is lawful and enable competent attorneys to engage in multijurisdictional practice without seeking admittance to numerous state bars. The Association of Professional Responsibility Lawyers has presented a Proposed Rule revising the American Bar Association Model Rule 5.5 governing multi-jurisdictional practice of law. Regardless of whether the ABA endorses the rule, state policy makers should consider adopting the following:

#### **RULE 5.5: Multijurisdictional Practice of Law**

- (a) A lawyer admitted and authorized to practice law in any United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction, subject to the other provisions of this rule.
- (b) Only a lawyer who is admitted to practice in this jurisdiction may hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer who provides legal services in this jurisdiction shall:
  - (1) Disclose where the lawyer is admitted to practice law;
  - (2) Comply with this jurisdiction’s rules of professional conduct, including but not limited to Rule 1.1 (Competence), and with the admission requirements of courts of this jurisdiction;
  - (3) Be subject to Rule 8.5 regarding the disciplinary authority and choice of law rules of this jurisdiction; and
  - (4) Not assist another person in the unauthorized practice of law in this, or any other, jurisdiction.
- (d) A lawyer admitted and authorized to practice law in a foreign jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, may provide legal services in this jurisdiction that:
  - (1) are provided to the lawyer's employer or its organizational affiliates;
  - (2) are not services for which the forum requires pro hac vice admission; and
  - (3) do not arise under the law of any U.S. jurisdiction, unless the services are provided after consultation with a lawyer authorized to practice law in this jurisdiction.

#### **B. Enabling Trained Professionals to Do More Without a Law License**

One way to reduce legal costs for ordinary individuals is to give them more options for pursuing legal services. Currently, consumers are limited to working with fully-licensed lawyers if they want any sort of legal representation. Even something as simple as filling out a form that will be filed in court may constitute the practice of law, which usually precludes non-lawyers from giving assistance.

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<sup>11</sup> <https://www.goldwaterinstitute.org/wp-content/uploads/2022/09/Violaine-Panasci-Supreme-Court-of-Tennessee.pdf>

But some states have begun experimenting with reforms that enable paralegals (or other trained professionals) to handle basic issues.

For example, in 2020, the Utah Supreme Court voted unanimously to establish a “[pathbreaking](#)” pilot program that allows qualified non-lawyers to provide services that were previously permitted only for Utah-licensed attorneys. The so-called “[Regulatory Sandbox Program](#)” may serve as an innovative model for other states to emulate. As the [Supreme Court explained](#), the program would “explore creative ways to safely allow lawyers and non-lawyers to practice law and to reduce constraints on how lawyers market and promote their services.”

Businesses had to apply to participate in the Regulatory Sandbox Program. There were restrictions: [for example](#), the Sandbox would not allow for out-of-state attorneys to circumvent Utah’s licensure requirements, or for disbarred attorneys to control a business providing legal services. There were disclosure requirements. Participants also had to affirm their compliance with Utah’s Rules of Professional Conduct. Any request for waiver of those rules had to be clearly stated in the application, and it had to explain why waiver would not cause consumer harm.

Once approved, participating entities could engage in [activities](#) otherwise restricted to licensed Utah lawyers. This was not a universal license to practice law. But the Regulatory Sandbox Program allowed limited legal services in certain approved areas. And this opened up opportunities both for business innovation and for expanded services in the non-profit sector.

For example, Holy Cross Ministries joined the sandbox to train “two community health workers to serve as bilingual medical-debt legal advocates” so they could provide limited legal advice about medical debt and related problems. In the [first nine months](#), the Regulatory Sandbox enabled non-lawyers to assist more than 2,500 individuals with “housing, immigration, healthcare, discrimination, employment, and a gamut of other issues.” Program participants have also assisted victims of domestic violence and stalking with limited legal issues, while providing emotional support that they would not otherwise receive.

Although many low-income individuals may be priced out of the legal market altogether, there is reason to believe that limited authorized legal services from non-lawyers could reduce costs and expand access to justice. For example, some firms [use](#) both artificial intelligence software and nonlawyer providers to aid in the process of record expungement for Utahns. And the cost of such services is generally [significantly cheaper](#) than that charged by a traditional lawyer.

Some members of the established legal community are likely to resist such reforms. For example, “access to justice” advocates encountered [fierce opposition](#) in California when proposing reforms that would authorize non-lawyers to provide limited services. Some argued that these reforms would “completely destroy the practice of law as we know it,” and argued that allowing non-lawyers to offer limited services would “erode the quality of legal services.”

To be sure, the State has a legitimate interest in ensuring that those who provide legal services are appropriately regulated to safeguard the public. But as noted above, the medical field already has embraced the idea of allowing qualified individuals to provide limited medical services—while limiting the universal practice of medicine only to licensed doctors. Of course, those in need of legal help are in a vulnerable position and need assurance that those authorized to provide legal services

are competent. But the stakes are even higher in the field of medicine, where the quality of the service literally could be the difference between life and death.

In the medical field, policymakers have judged that the value of enabling greater access to health care is worth the risk of allowing trained individuals to provide limited medical care—even if they haven’t gone to medical school. So it is not unreasonable to think that the legal profession could allow for limited licensure for trained individuals. When weighing the respective costs and benefits of the status quo, one must consider the likelihood that some people will go without legal help altogether if limited to working with more costly fully-licensed attorneys, in just the same way we know that staggering costs discourage some people from seeking health care.

While mindful of the risks, a growing number of states are experimenting with these sort of reforms—especially for paralegals who already have requisite training to help with [limited matters](#) in “[c]ases involving temporary separation, divorce, parentage, cohabitant abuse, civil stalking, custody and support, and name change,” “forcible entry and detainer,” and smaller debt collection issues. [For example](#), licensed paralegals can now fill out forms that, previously, only lawyers were authorized to execute.

Likewise, Arizona, Minnesota, New Mexico, and Oregon have experimented with similar reforms. And other jurisdictions—like [New York](#), [Maryland](#), [District of Columbia](#), and [New Mexico](#)—have experimented with “court navigators” who can assist people going through the court system with knowing what the processes look like, which office to contact next, what the necessary forms are, etc.

Ultimately, states contemplating reform should look to data from states that have pioneered regulatory innovation in this arena. If the data shows that there are no greater complaints from individuals assisted with these sort of limited legal services, it would make sense for other states to follow suit. And at least so far, the [initial results from Utah are positive](#).

### **C. Allowing Non-Lawyers to Invest in Legal Service Companies**

The American Bar Association’s Model Rule 5.4 provides that lawyers are generally prohibited from sharing legal fees with non-lawyers; furthermore, the Rule flatly prohibits lawyers from forming partnerships with non-lawyers.<sup>12</sup> Today, almost every state has adopted this rule in some form. Such restrictions are meant to protect legal consumers. The assumption that drives the rule is that, without it, non-lawyers may pursue profit at the expense of client interests. But is this assumption correct?

One state is now experimenting with an alternative model that sheds light on this question by encouraging innovation in the legal services market. In 2020, the Arizona Supreme Court eliminated

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[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_4\\_professional\\_independence\\_of\\_a\\_lawyer/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer/).



its non-lawyer ownership prohibition.<sup>13</sup> The rule change allows non-lawyers to own, manage, and profit from law firms.<sup>14</sup>

Since Arizona adopted this measure, several firms have participated in this new business model, known as an Alternative Business Structure (“ABS”). The results have been promising. In addition to price and technological innovations in the practice of law,<sup>15</sup> ABS has proven to be convenient for clients looking for one-stop shops for legal and business needs.

For example, the ABS model allows attorneys to couple their services with those of other advisors in such fields as tax planning, real estate, and business formation, among others. According to Andy Kvesic, the CEO and Managing Partner of ABS firm Radix Law, many firms in Arizona have been providing these comprehensive services to clients: “Estate planning attorneys have combined with wealth planners under one roof. Tax attorneys are now working side by side with accountants... Personal injury firms are teaming up with litigation finance companies to tap a new source of capital.”<sup>16</sup>

Simply put, legal consumers now have more options. And if this sort of innovation is serving client interests and potentially lowering the costs for consumers, then Arizona’s approach should be heralded as a model for the rest of the country. But what about the objection that non-lawyers’ investment may create profit-motive incentives that are adverse to client interests?

Only time will tell whether there is merit to these sort of concerns. But Arizona now provides a helpful case study. So far, there is no evidence to suggest that ABS firms are less protective of client interests than traditional attorney-only firms. Notably, there were no recorded complaints for ABS firms in the first 22 months of the program. If over time it remains true that there is no higher number of complaints for ABS firms, that might justify liberalization in other states.<sup>17</sup>

In any event, concerns about non-attorneys pursuing profit motives over client interests can hardly be confined to these new business models: after all, attorney-owned firms are not without profit

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<sup>13</sup> Joel Truett, “Goodbye Rule 5.4: Legal Ethics Change in Arizona,” *Arizona State Law Journal*, available at <https://arizonastatelawjournal.org/2021/04/19/goodbye-rule-5-4-legal-ethics-change-in-arizona/>.

<sup>14</sup> Utah also adopted a “regulatory sandbox” pilot program in 2020 that loosened non-lawyer ownership prohibitions in that state. See Ricca & Ambrose, note 8, at 1.

<sup>15</sup> Lucy Ricca & Graham Ambrose, “The high highs and low lows of legal regulatory reform,” *Legal Evolution*, Oct. 16, 2020, available at [https://us01.l.antigena.com/l/GyaaAbimrrpUadkPPnye0KxF47rl6e3gjrVXCO~qumIGHih50DgIeDu~lO5cFBBRhJIP\\_q6SSWvbgCKHYpbnsC\\_JQgVEHhR-SRQzhliFl\\_R9cRfzYGe19UbJEnGguTwCIOAOOe8K72GFm6eR8ZtfoeeIhwgi9VYdCCDaHYOfw7s7YbXXbieFE4Kjur4s1FBrOC2JicXQ2kdYtglVwtau6mZm](https://us01.l.antigena.com/l/GyaaAbimrrpUadkPPnye0KxF47rl6e3gjrVXCO~qumIGHih50DgIeDu~lO5cFBBRhJIP_q6SSWvbgCKHYpbnsC_JQgVEHhR-SRQzhliFl_R9cRfzYGe19UbJEnGguTwCIOAOOe8K72GFm6eR8ZtfoeeIhwgi9VYdCCDaHYOfw7s7YbXXbieFE4Kjur4s1FBrOC2JicXQ2kdYtglVwtau6mZm), note 8 at 4 (“[M]ost entities across Utah and Arizona are implementing both technological and other innovations – including price innovations – to deliver legal services in new ways.”).

<sup>16</sup> Andy Kvesic, “Firm Ownership Now Open to Non-Lawyers,” *In Business Magazine, Greater Phoenix* (May 2022), available at [https://inbusinessphx.com/legal-regulations/firm-ownership-now-open-to-non-lawyers#.Y\\_U7ruzMIfg](https://inbusinessphx.com/legal-regulations/firm-ownership-now-open-to-non-lawyers#.Y_U7ruzMIfg).

<sup>17</sup> Ricca & Ambrose, note 8 at 5.

motives. That will always be true. Such concerns are currently addressed by existing rules of professional responsibility. If those rules are deemed adequate to regulate lawyers in traditional firms, presumably they should have similar effects for these new business models.

The best case for mixed-function firms rests on a model in which every function is governed by fiduciary duty—just as with traditional law firms. That could be easily addressed through legislation, or by requiring non-lawyers to consent to be bound by rules similar to the professional responsibility standards governing licensed attorneys. For example, a certified public accountant at a one-stop-shop firm would still have to act as a fiduciary and abide by all the same rules as would an attorney.

#### **D. Revisiting Character and Fitness Requirements**

In most states, those who hope to become licensed lawyers must pass a “character and fitness” evaluation. The requirements vary by state. Typically, the applicant must disclose previous addresses, civil and criminal violations, academic history, employment history, mental health and substance abuse issues, court judgments and orders.

In principle, this kind of review makes sense, given the fiduciary nature of the attorney-client relationship. Those offering legal services should have upright moral character. But it may be possible to improve the system of character and fitness evaluations.

First, inquiries about mental health and substance abuse issues may be counterproductive. Survey data suggests that these sort of disclosure requirements may discourage law students from seeking needed counseling—which might actually exacerbate mental health and substance abuse issues in the legal profession.<sup>18</sup> Accordingly, [some have proposed](#) that the focus of character and fitness evaluation should be confined to recent conduct and behavior, rather than over-inclusive inquiries about mental health or inquiries into long-forgotten episodes of the applicant’s youth.

Second, it would make sense to modify the character and fitness process so that aspiring lawyers might have reasonable assurance that their personal history is uncontroversial before they invest three years, and incur many thousands of dollars of debt, to attend law school. The system currently requires aspiring lawyers to endure a character and fitness evaluation late in law school or after completing it. In principle, there is no reason why an applicant could not obtain pre-clearance for their character and fitness before enrolling in law school. Under this reform, bar applicants would still have to account for their conduct through law school; however, this sort of reform would avoid cruel surprises.

#### **E. Apprenticeship as a Path to Licensure**

A few states allow individuals to sit for the bar exam without first graduating from law school. This may be an unconventional path to licensure. But many who have studied under the auspices of a practicing attorney have learned the knowledge and skills necessary to practice law. And if the bar is worth its salt as a measure of one’s competence to practice law, one might ask: Is graduation from a three-year ABA accredited law school truly essential?

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<sup>18</sup> See “Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns,” vol. 66, *J. Legal Education*, no. 1 (2016).

Law school is the preferred route for most aspiring lawyers. But it is probably wrong to assume that an individual who has studied under a dedicated legal mentor for years is unfit to handle legal work of the sort that has been performed under supervision throughout their apprenticeship. If an enterprising apprentice can demonstrate competence by passing a difficult bar exam—that many law school graduates fail—he or she is presumably just as capable as a recent law school graduate.

As such, state bars should consider apprenticeship as an alternative route to licensure that may enable more socially disadvantaged individuals to break into the legal profession—while furthering the goal of expanding access to justice for all. As ever, the bar must ensure that those licensed to practice law are competent and that they will adequately safeguard client interests. At a minimum, it is worth studying how non-traditional attorneys (i.e., those who did not graduate from law school) perform as compared to law school graduates.<sup>19</sup>

#### **F. Reducing or Eliminating CLE Requirements**

Finally, it may be time to rethink existing Continuing Legal Education (CLE) requirements. At present, all but [five](#) states require some amount of CLE. But [survey data](#) suggests that many lawyers find CLE requirements burdensome in terms of time, energy, and cost. More importantly, there is reason to believe that CLE requirements will not necessarily make for better lawyers.

The theory behind the CLE requirement is that lawyers should continually learn about developments in the law. That makes sense. But any competent lawyer will keep abreast of significant developments affecting his or her practice area—with or without CLE requirements. Those who fail to do so will suffer consequences—including the potential for negligence lawsuits or reprimand by the State Bar.

CLE requirements mandate that an attorney must devote a specified number of hours toward CLE classes; however, there is not usually any requirement that those CLE credits must be relevant to the attorney’s work. Attorneys in relatively niche practice areas may find it difficult to discover relevant CLE classes—which means that they are forced to spend time and money on courses that may be wholly irrelevant to their needs and their clients’ interests. This is undoubtedly a source of frustration for many in the legal profession.

While the idea of continual learning makes sense, the existing CLE system does not (and probably cannot) measure the time attorneys spend learning about issues that are relevant to their practice outside the traditional CLE class. Some jurisdictions appropriately award CLE credit for time spent writing law review articles or teaching CLE courses; however, there is generally no accounting for the time attorneys spend outside of CLE courses. For example, there is no accounting for time spent reading articles (or the Federal Register) to keep abreast of regulatory developments. Nor is there

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<sup>19</sup> It may also be time to consider other reforms. For example, states might consider allowing law school graduates to practice law without taking the bar. Currently only Wisconsin allows for “diploma privilege.” So it would be worth studying Wisconsin to see if there is any measurable difference between Wisconsin licensed lawyers who took the bar and those who did not.

any accounting of time spent reading the latest judicial opinions, or for time spent attending think tank events, Supreme Court term review discussions, or other such continual learning methods.

As such, it might make sense to eliminate existing CLE requirements in favor of a relatively simple requirement: namely, an attorney must attest that he or she is staying on top of relevant developments that may affect their practice. But in so far as we keep existing CLE requirements, we should consider opportunities for improvement. One option might be to reduce the number of CLE hours required, with the expectation that attorneys will focus more on courses relevant to their daily practice. Another might be to loosen CLE requirements to allow attorneys to count time spent learning through novel methods—like presentations from other attorneys or scholars, regardless of whether they are hosted by an “approved” CLE provider.

In any event, there is a dearth of empirical research on the effectiveness of existing CLE requirements.<sup>20</sup> Although CLE requirements are less of a concern than the barriers to entry into the legal profession discussed above, they still deserve research. Indeed, we should ultimately require empirical evidence before we support any regulation that imposes societal burdens.

#### **IV. Conclusion**

Occupational licensure limits opportunities for individuals. Licensure requirements may inhibit individuals from pursuing professions for which they might be well-suited or from pursuing options that might provide for a better life. For example, licensure restrictions impede mobility for individuals who may hesitate to move across state lines simply because they don’t want to deal with the burden of seeking licensure in a second state.

For all these reasons, policymakers are rethinking occupational licensing restrictions for various trades and professions. Lawmakers are entertaining licensing reform for florists, interior decorators, tour guides, estheticians, and beauticians. And reform should be on the table—even for the venerable legal profession.

As detailed above, reform doesn’t have to mean eliminating licensure. There are many modest reform options that would reduce unnecessary barriers to entry into the profession while advancing the interests of consumers who need affordable access to legal services. Given the compelling need to ensure opportunities for access to justice for all, policymakers would be wise—at a minimum—to question whether the status quo is serving the public good.

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<sup>20</sup> Georgetown University Law Professor Rima Sirota [writes](#) in a paper that “no evidence-based reason has emerged to support the conclusion that CLE bears any relationship—much less a causal one—to better lawyering.”