

**RULE XX. LIMITED PARTICIPATION
OF LAW STUDENTS IN TRIAL WORK**

Effective Date of Amendments: July 1, 1998

Section 1. The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted.

Section 2. All activities provided for and allowed to an eligible law student herein shall be limited to law school sponsored and supervised programs on an individually selected case basis approved, assigned, and controlled by the law school.

Section 3. Under such law school sponsored clinical instruction plan an eligible law student may appear in any court or before any administrative tribunal in this state on behalf of the state, any political subdivision thereof, or any indigent person or indigent community organization that is not affiliated with a national organization if the person on whose behalf the student is appearing has indicated in writing [] consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

(a) Any civil matter where the law student does not charge a client for his/her services; however, the supervising attorney is entitled to be awarded attorney's fees and costs for the services rendered by the student attorney and supervising attorney in those cases where the awarding of attorney's fees and costs is provided by statute.

(b) Any criminal matter in which an indigent defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the lawyer's absence.

(c) Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

(d) An eligible law student may also appear in any criminal matter on behalf of the state with the written approval of the prosecuting attorney or his/her authorized representative and of the supervising lawyer. ~~Insofar as practicable, the legal services of law students in criminal practice shall be divided equally between the prosecution and defense.~~

(e) In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(f) The procurement and filing of written consent shall not be required when the indigent client is court appointed and unable to provide written consent or approval.

Section 4. Standard for Determining Indigency. In determining indigency, law school clinical program staff and student practitioners who appear in a representative capacity pursuant to this rule shall follow the guidelines promulgated by the Legal Services Corporation for determining eligibility for legal assistance under the Legal Services Corporation Act. 42 USC §2996 *et seq.*; 45 CFR Part 1611. These guidelines need not be applied when the client is court appointed or referred and the appointing or referring court has reviewed the economic condition of the client and has determined that the client is indigent.

Section 5. Representation of Indigent Community Organizations. Any indigent community organization that wishes to obtain representation pursuant to this rule must certify in writing to the inability to pay for legal services. The written certification shall be subject to public inspection.

Law school clinical program staff and student practitioners who appear in a representative capacity pursuant to this rule may represent any indigent community organization that is not affiliated with a national organization provided at least 75% of the organization's members are eligible for legal assistance pursuant to the Legal Services Corporation guidelines. The indigent community organization shall also provide financial information to clinic staff which shows that the organization lacks, and has no practical means of obtaining, funds to retain private counsel.

Section 6. In order to make an appearance pursuant to this rule, the law student must:

(a) Be duly enrolled in this state in a law school approved by the American Bar Association;

(b) Have completed legal studies amounting to at least four fulltime semesters, or the equivalent if the school is on some basis other than a semester basis.

(c) Have completed the required law school coursework in legal ethics.

(d) Be certified by the dean of the student's law school as being of good moral character and competent legal ability, and as being adequately trained to perform as a legal intern.

(e) Be introduced to the court in which the student is appearing by an attorney admitted to practice in that court.

(f) Neither ask for nor receive any compensation or remuneration of any kind for his/her services; except that the supervising attorney may be awarded fees and costs as provided by Section 3(a); and any funds so generated shall be deposited into a special litigation expense account maintained by the clinical program for that purpose.

(g) Certify in writing that the law student has read and will abide by the Rules of Professional Conduct, will faithfully perform the duties of a law student practitioner, and will not place his/her personal interests or clinic interests ahead of the interests of the client. The written certification shall be filed with the clerk of this court.

(h) Shall take the following oath:

I, _____, do solemnly swear that I will support the Constitution of the United States and of the State of Louisiana and have read and am familiar with the Rules of Professional Conduct of the Louisiana State Bar Association; I understand that I am bound by the precepts therein contained as fully as if I were admitted to the practice of law in Louisiana; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my client; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged; I further accept the privileges granted to me as well as the responsibilities which will devolve upon me, so that I may be more useful through my clinical education in the service of justice.

Section 7. The certification of a student by the law school dean:

(a) Shall be filed with the clerk of this court and unless it is sooner withdrawn it shall remain in effect until the expiration of twelve months after it is filed or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date the student is admitted to the bar.

(b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of this court. It is not necessary that the notice state the cause for withdrawal.

(c) May be terminated by this court at any time without notice or hearing and without any showing of cause. Notice of the termination may be filed with the clerk of this court.

Section 8. In addition, an eligible law student may engage in other activities under the said law school program under the general supervision of a member of the bar of this court but outside the personal presence of that lawyer, including:

(a) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

(b) Preparation of briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer.

(c) Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If the student participated in drafting only a portion of it, that fact may be mentioned.

An eligible law student may participate in oral argument in any appellate court of this state, but only in the presence of the supervising lawyer.

Section 9. The member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall:

(a) Be a lawyer admitted to practice before this court whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled.

(b) Assume personal professional responsibility and liability for the student's guidance in any work undertaken and for supervising the quality of the student's work.

(c) Assist the student in his/her preparation to the extent the supervising lawyer considers it necessary.

(d) Counsel and assist the law student who practices law pursuant to this rule, and provide professional guidance in every phase of such practice, with special attention to matters of professional responsibility and legal ethics.

Section 10. Lawyer staffpersons of law school clinical programs and certified student practitioners shall adhere to the Rules of Professional Conduct, including the rules prohibiting solicitation of cases or clients. In addition, no supervising lawyer or student practitioner shall appear in a representative capacity pursuant to this rule if any clinical program supervising lawyer, staffperson, or student practitioner initiated in-person contact, or contact by mail, telephone or other communications medium, with an indigent person or indigent community organization for the purpose of representing the contacted person or organization.

No law school clinical program, no staffpersons of a law school clinical program who assist or work with certified student practitioners, and no certified student practitioners shall represent an indigent community organization pursuant to this rule if the clinical program, any staffperson, or any student practitioner provided legal assistance in forming, creating, or incorporating the organization.

Section 11. The authority conferred by this rule shall not be deemed to constitute authority to practice before courts and agencies of the federal government, and courts and agencies of other states. The authority conferred by this rule shall also not be deemed to constitute authority for student practitioners who act pursuant to this rule to make

appearances in a representative capacity before regular or special sessions of state or federal legislatures.

Section 12. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that he/she might lawfully do prior to the adoption of this rule.

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SUPREME COURT OF LOUISIANA

RESOLUTION

WHEREAS, the Court is aware of concerns regarding the interpretation and use of Louisiana Supreme Court Rule XX, entitled "Limited Participation of Law Students in Trial Work," (hereinafter referred to as the "Student Practice Rule"); and

WHEREAS, the Court decided to review the Student Practice Rule, as well as the practices and procedures of law school clinical programs that utilize student practitioners; and

WHEREAS, a series of inquiries were forwarded to the three Louisiana law schools that operate clinical programs; and

WHEREAS, written responses were received from the law schools; and

WHEREAS, Court staff subsequently visited the law schools and interviewed law school clinical faculty, supervising lawyers, and student practitioners; and


WHEREAS, after a comprehensive review of the Student Practice Rule, the Court has decided that the promulgation of certain amendments to the Student Practice Rule will effect advisable changes, as well as clarify ambiguities concerning the proper interpretation, scope, and use of the rule.

NOW, THEREFORE, BE IT RESOLVED, that the Court hereby amends and reenacts Rule XX of the Rules of the Supreme Court of Louisiana. The amendments have been promulgated pursuant to Article V, Sections 1 and 5 of the 1974 Louisiana Constitution, and the inherent power of this Court.

The amendments shall become effective on July 1, 1998, with one exception. Rule XX, Section 6(c) shall become effective on September 1, 2000. The amendments shall not impact or apply to any cases, and/or the representation of any clients, in which the representation commenced prior to the effective date of the amendments.

New Orleans, Louisiana, this 17th day of June, 1998.

FOR THE COURT:


Pascal F. Calogero, Jr., Chief Justice

MARCUS, VICTORY, and TRAYLOR, JJ., Concurring

We vote for the changes to Rule XX made by the Court, although we are concerned that the Court has not gone far enough to insure that organizations represented by the student law clinics are truly indigent. Thus, we favored the elimination of representation of organizations altogether, leaving only indigent individuals as clients for the clinics, as our rule originally intended. Nonetheless, with the assurance from the Court that this issue will be revisited if specific complaints are received by the Court, we are willing at this time to vote for the rule changes made today.

LEMMON, J., Concurring

I concur in the amendments to Rule XX, but with reservations about prohibiting student practitioners from providing legal assistance in forming, creating or incorporating community organizations composed primarily of indigent persons. While the amendments properly limit student practitioners' solicitation of the representation of indigent persons or community organizations, it is inconsistent to allow student practitioners to represent community organizations of indigent persons, but to require the indigent persons to seek paid legal assistance in the formation of a legal entity before a student practitioner can represent the organization. The Court may see fit to reconsider this prohibition at a later date.

SUPREME COURT OF LOUISIANA
A TRUE COPY


John Tarleton Olivier
Clerk of Court