

Robert Kuehn

From: Robert R Kuehn [rkuehn@mailhost.tcs.tulane.edu]
Sent: Wednesday, September 23, 1998 7:41 AM
To: rkuehn@law.tulane.edu
Subject: Proposed AALS Position Statements on LA rule (fwd)

----- Forwarded message -----

Date: Tue, 22 Sep 1998 16:22:13 -0500
From: Randy Hertz <HERTZR@turing.law.nyu.edu>
To: levittsj@centum.utulsa.edu, barry@law.cua.edu,
cweissel@mail.law.berkeley.edu, rkuehn@mailhost.tcs.tulane.edu,
joy@wulaw.wustl.edu
Subject: Proposed AALS Position Statements on LA rule

Dear Margaret, Peter, Bob, Suzanne, and Chuck: At the meeting of the AALS Standing Committee on Clinical Legal Education on September 11, 1998, the Committee decided to submit to the AALS Executive Committee a proposed position statement on the Louisiana student practice rule and a proposed position statement on student practice generally. I am setting out, below, the Committee's drafts of the two proposed position statements and a cover memo to the Executive Committee to explain our reasons for recommending the issuance of these position statements. I would be very grateful if you would look over these drafts and give me any comments you may have. Unfortunately, the Committee is under severe time constraints because we have to get our proposals to the Executive Committee very soon. If you could get back to me in the near future, I would greatly appreciate it. Suzanne, the Committee would like to provide CLEA with a courtesy copy of the draft once it's finalized; would you please let me know, at your convenience, the person to whom I should send the courtesy copy? Many thanks to all of you for your assistance. All the best. -- Randy

D R A F T

TO: Executive Committee
Association of American Law Schools
FROM: Standing Committee on Clinical Legal Education
RE: Proposed Position Statements on Louisiana Supreme Court
Rule XX and on Student Practice Orders Generally
DATE: []

As you may know, the Louisiana State Bar Association's Board of Governors has passed a resolution stating that the Louisiana Student Practice Rule amendments "have a substantial impact on the administration of justice in the State of Louisiana, the promotion of which is central to the [Bar] Association's mission," and requesting that the Louisiana Supreme Court stay implementation of the amendments until the Bar's House of Delegates meets in January to discuss the amendments and submit comments to the court.

The Standing Committee on Clinical Legal Education believes that the chances of a positive outcome at the State Bar Association's meeting in January would be considerably advanced if the AALS Executive Committee were to adopt a position statement on the issue prior to that meeting. From what we have been able to gather of the situation in Louisiana, Executive Director Carl Monk's statements on the issue have played an important role in prompting bar leaders and

others to recognize the profoundly detrimental consequences that the rule amendments are likely to have on clinical legal education. We believe that the Executive Committee's taking the additional step of adopting a formal position on the issue may provide a tangible demonstration of the seriousness of the issue and the degree of concern felt by legal educators.

Attached is a proposed position statement, which we have modeled after the letter that Executive Director Monk submitted to Louisiana Governor Foster on August 21, 1998. We believe that that letter conveys the requisite information and sets precisely the right tone. We have modified the letter slightly to fit the somewhat different context and purposes of the position statement.

Following this document is a proposed position statement on student practice orders generally, which we are also proposing that the Executive Committee adopt. The latter position statement would be reserved for any future situations in which there are similar threats to academic freedom in clinical legal programs. We believe that it would be useful for the AALS to have a general policy statement of this sort which could be quoted, if necessary, in such situations. The statement is modeled after portions of the submissions of the AALS and the Clinical Legal Education Association (CLEA) to the Louisiana Supreme Court regarding the then-pending proposal to amend the student practice rule.

POSITION STATEMENT REGARDING LOUISIANA SUPREME COURT RULE XX

Each of the fifty states has a student practice rule. The states have promulgated these rules because leaders of the bench, bar and academia have concluded that "real-client" clinics are important components of a modern legal education.

Louisiana Supreme Court Rule XX, as recently amended by the Louisiana Supreme Court, is the most restrictive student practice rule in the nation. Specifically:

No other student practice rule limits the representation of organizations to community organizations and prohibits the representation of organizations that have any affiliation with national organizations.

No other student practice rule requires members of an organization to reveal their incomes, nor does any other state require that a majority of the organization's members meet some income or poverty restriction.

No other student practice rule requires individual law clinic clients to meet federal poverty standards. Indeed, none of Louisiana's neighboring states even limits their clinics to representing only indigent clients. See Tx. Stud. Prac. R., R. IV(A); Ar. R. XV(B)(1); Ms. St. # 73-2-207; Al. Stud. Prac. R. # II(A).

No other student practice rule seeks to restrict or prohibit clinic students from providing information or free legal assistance, since it is well established that solicitation of clients or cases is protected by the First Amendment provided the solicitation is not motivated by the law student's or lawyer's pecuniary gain.

No other state prohibits the representation of community organizations where a clinical program has provided legal assistance in forming, creating, or incorporating the organization.

No other state prohibits law students from appearing in a representative capacity before the legislature.

The federal poverty guidelines adopted for use by the federally-funded Legal Services Corporation are extremely low, in part because they involve the use of scarce taxpayer funds. In our experience, limiting students to representing only the poorest of the poor means that the working poor will generally be unable to obtain legal help. Low-income working families might be able to hire a lawyer for the simplest of matters, such as drafting a will, but as a practical matter the amendments to Rule XX will mean that many citizens will be unable to afford counsel, especially in cases that take more than an hour or two of a lawyer's time.

Further, the prohibition on students working for local community organizations with national organization affiliations ignores the reality that most such community organizations still lack sufficient funds to hire a private attorney, as do community organizations without national organization affiliations. This prohibition also will mean that students will lose the opportunity to participate in some of the most pressing and important issues of the day.

Moreover, the invasive inquiry into the family incomes of persons who are members of purely local community organizations will chill the members of these organizations from seeking representation from law school clinics. This inquiry into members' incomes also ignores the fact that the organization or nonprofit corporation has its own separate legal identity, and any income eligibility requirement should look to the income of the organization or nonprofit corporation and not the persons affiliated with it.

It is the view of the Association of American Law Schools that amended Rule XX unduly interferes with the ability of law schools in the State of Louisiana to provide a first-rate legal education, and will effectively deny law students the opportunity to provide access to justice for the working poor and for many poor community organizations in Louisiana.

needed

POSITION STATEMENT
REGARDING LAW STUDENT PRACTICE
IN CLINICAL LEGAL EDUCATION PROGRAMS

In 1969, the American Bar Association adopted a Model Student Practice Rule, pursuant to which law students would be authorized to practice under the supervision of licensed practitioners. This Model Rule recognized the importance of clinical legal education as an integral part of a meaningful legal education. More recently, in 1992, the ABA's Task Force on the Law Schools and the Profession issued a statement # generally known as the "MacCrate Report" # which similarly recognized the valuable role that real-life practice experience can play in helping law students learn the skills and values with which all new members of the profession must become familiar.

Student practice rules have been adopted in all fifty states, the District of Columbia and Puerto Rico. In this manner, the leaders of the bench, bar and academia have demonstrated their appreciation of the need for law students to have opportunities to apply lawyering skills and professional values in real-life settings under the supervision of experienced practitioners.

The AALS is committed to ensuring the continuation of student practice in clinical legal education programs administered by law schools. In the view of the AALS, clinical practice of this sort is an important component of the overall education of our nation's future lawyers. The AALS is strongly opposed to any restrictions upon student practice that may have the effect of undermining the quality or efficacy of clinical legal education programs or that may in any way abridge academic freedom.

