The Implications of Changes to Louisiana's Law Clinic Student Practice Rule

ADAM GLASER*

INTRODUCTION

A whirlwind of controversy has surrounded the Louisiana Supreme Court's amendment of the State's Student Practice Rule to limit clinical representation of both individuals and community organizations. Rule XX of the Supreme Court Rules purported to allow clinics to represent clients who could not afford legal representation.[1] The changes further restrict clinical representation of both individuals and organizations, substantially limiting clinical practice.[2]

The proposed changes came in response to business lobbying efforts in an election year. In Louisiana, Supreme Court Justices are not immune from the political process as they are elected and re-elected to serve on the bench for a fixed term.[3] In 1997, Chief Justice Pascal F. Calogero, Jr., who had been unpopular with business groups, was up for re-election.[4] Thus, the timing was right for business concerns to be addressed. A series of letters to the Court were the vehicle for voicing business dissatisfaction with, and proposing changes to, the current state of the law. However, these lobbying efforts came in response to a system that, in the view of businesspeople, "was spinning out of control and threatening billions of dollars in economic development." A result that was not due to any actual professional or ethical misconduct on the part of law school clinics.[5] Therefore, the question of why these changes were needed is a perplexing one when examined from the perspective of the clinics and their supporters, and one for which no truly satisfactory answer can be found.

The Louisiana Association of Business and Industry (LABI) and Governor Mike Foster insisted that Tulane's Environmental Law Clinic exceeded its mandate when the clinic represented local residents opposed to the construction

---

* J.D., Georgetown University Law Center (expected) May 2000. I would like to insert a thank you to Professor Robert R. Kuehn of the Tulane Law School for his help and guidance in the preparation of this Note.

1. LA. SUP. CT. R. XX § 1 (1971).

2. *Compare* LA. SUP. CT. R. XX, *with* LA. SUP. CT. R. XX, (1971) (repealed 1998).

3. *See* Pamela Coyle and Susan Finch, *Supreme Court Race Nasty to Bitter End*, NEW ORLEANS TIMES-PICAYUNE, Oct. 2, 1998, at A3 (discussing the 1998 race for the Louisiana Supreme Court).

4. *Id.*

5. Mark Schleifstein, *Foster, Clinics Face Off On Rules Legal Debate Goes Beyond Shintech*, NEW ORLEANS TIMES-PICAYUNE, Aug. 2, 1998, at A1.

of a $700 million chemical plant to be built in St. James Parish, Louisiana.[6] LABI felt that Rule XX, while expressly providing for representation of those who cannot afford an attorney, did not allow clinics to generally engage in activities designed to thwart business.[7] However, this complaint focused on economics rather than any misconduct by the clinics. Business interests argued that the success of a clinic in opposing business activities not only results in lost revenue for Louisiana, but that such opposition has nationwide effect as well.[8] Business supporters claimed that clinical opposition serves as a deterrent to international companies locating in the United States because such opposition renders the move cost ineffective.[9]

This Note will explore the events that transpired in the wake of the Tulane Environmental Law Clinic's success in St. James Parish as they pertain to Louisiana's Student Practice Rule (Rule XX). Part I will describe the Rule's purposes. Part II will set forth the business arguments that resulted in significant changes to the Rule, as well as an examination of the counter-arguments made by the clinics and their supporters. Part III explores the amendments and examines their departure from the previous Rule. In Part IV, the Court's justifications for the changes is analyzed and evaluated in light of recent commentary. The Note concludes with an examination of the amendments in light of the controversy surrounding them and offers a prediction for the future of Rule XX.

I. RULE XX AND ITS PURPOSE

Louisiana Supreme Court Rule XX, entitled "Limited Participation of Law Students in Trial Work," has dual purposes. Section one of the Rule states that it was adopted 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 . . . ."[10] Thus, the Rule is intended to help ensure that all people receive adequate legal representation, including those unable to pay for it, and to provide future attorneys with the benefits of a clinical education.

The controversy surrounds the remaining sections of Rule XX which regulate the student attorney's role.[11] Student clinical activities are closely regulated by Rule XX which holds student practitioners to standards similar to those of

---

6. Mark Ballard, *LA. High Court Reins in Legal Clinic: Is It Revenge For Tulane's Win in the Shintech Case?*, NAT'L. L.J., July 6, 1998, at A11.

7. Letter from Daniel L. Juneau, President, Louisiana Association of Business and Industry, to Pascal F. Calogero, Chief Justice, Louisiana Supreme Court (Sept. 9, 1997) and attached "Proposal to Amend and Enforce Rule XX" (both on file with author) [hereinafter *LABI Letter and LABI Proposal*].

8. *See* Marcia Coyle, *Governor v. Students in $700M Plant Case: Tulane Law School Clinic Threatens Construction of a Chemical Complex*, NAT'L L.J., Sept. 8, 1997, at A1 (discussing the State's obligation to pursue economic development).

9. *Id.*

10. LA. SUP. CT. R. XX § 1.

11. *See generally*, LA. SUP. CT. R. XX, (1971) (repealed 1998).

licensed attorneys.[12] Business interests sought greater regulation of clinics and student attorneys, whereas the clinics and their supporters saw no need for increased safeguards.[13] The Rule provides that law student activities "shall be limited to law school sponsored and supervised programs," that case delegation shall be "approved, assigned and controlled" by the law school on an individual case-by-case basis, and that a supervising attorney must assume professional responsibility for the student's work.[14]

II. THE GREAT DEBATE

A. SETTING A PRECEDENT: BUSINESS ARGUMENTS IN FAVOR OF CHANGES TO RULE XX

While critics of Rule XX have not attacked the purposes of the Rule, pro-business representatives have questioned the Rule's regulation of clinical representation and student attorneys. The Louisiana Supreme Court received three letters that caused it to re-examine the status quo.[15] The most striking and influential of those letters was composed by LABI. Its letter proposed ten changes to the Rule and provided a rationale for each one, arguing that the Rule, either as written or interpreted, violated its dual purposes.[16] LABI asserted that the Tulane Environmental Law Clinic violated "the spirit and the letter" of the Rule because it "repeatedly exceeded the bounds" of the Rule.[17]

First, LABI requested an amendment to the Rule restricting clinical representa-

---

12. LA. SUP. CT. R. XX § 1.

13. *See generally*, Peter A. Joy and Charles Weisselberg, *Access to Justice Academic Freedom and Political Interference: A Clinical Program Under Siege*, 4 CLINICAL L. REV. 531 (1998) (discussing long history of interference with clinical operations); Jorge deNeve et al., *Submission of the Association of American Law Schools to the Supreme Court of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 539 (1998) (writing in opposition to LABI's proposed changes); Suzanne J. Levitt, *Submission of the Clinical Legal Education Association to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court's Student Practice Rule*, 4 CLINICAL L. REV. 571 (1998) (opposing amendment to Rule XX); Letter from John Makdisi, Dean, Loyola Law School, and Edward F. Sherman, Dean, Tulane Law School, to Timothy Averill, Deputy Judicial Administrator of Louisiana Supreme Court (Dec. 31, 1997) (on file with author) [hereinafter *December Letter*] (refuting LABI's assertions and proposed changes). There have been multiple letters written on behalf of Tulane and Loyola Law Schools by their Deans. Citation is made to *December Letter* where an argument is made therein and repeated in other letters.

14. LA. SUP. CT. R. XX §§ 2, 3.

15. Letter from Pascal F. Calogero, Chief Justice, Louisiana Supreme Court, to Edward F. Sherman, Dean, Tulane Law School (Sept. 25, 1997) (on file with author). The three letters that resulted in the re-examination were: Letter from Robert H. Gayle, Jr., President and Chief Executive Officer, Chamber of the New Orleans and River Region, to Pascal F. Calogero, Chief Justice, Louisiana Supreme Court (July 8, 1997); Letter from Erik F. Johnsen, Chairman, Business Council of New Orleans and the River Region, to Pascal F. Calogero, Chief Justice, Louisiana Supreme Court (July 16, 1997); Letter from Daniel L. Juneau, President, Louisiana Association of Business and Industry, to Pascal F. Calogero, Chief Justice, Louisiana Supreme Court (Sept. 9, 1997).

16. *See LABI Letter*, *supra* note 7, at 1; *LABI Proposal*, *supra* note 7, at 4.

17. *LABI Letter*, *supra* note 7, at 1.

tion to individuals who satisfy an *in forma pauperis* standard (federal poverty line).[18] Although Louisiana law school clinics have represented individuals who are *in forma pauperis*, such economic status has never been a requirement.[19] Thus, individuals who were unable to afford counsel, but who were not below the federal poverty level, were represented in situations where they otherwise would not have been.[20] LABI was requesting a major change from existing policy under Rule XX.

In addition, LABI asserted that Tulane's Environmental Law Clinic was providing representation to nationally affiliated community organizations that could afford to represent themselves.[21] LABI argued that such representation was inconsistent with the Rule's purpose of providing legal representation to those unable to afford it.[22] As a result, LABI advocated a clear definition of what constitutes a "community group" so that "national or statewide environmental activist groups who are well funded" would not be included.[23] LABI further urged that "community organizations" be limited in scope to those groups functioning to "promote broader interests for the specific community affected."[24]

LABI recommended that Rule XX restrict clinical representation because it viewed clinical activities as "cost-free academic exercises."[25] Since the clinics often represent individuals who do not have clearly defined financial goals, LABI complained that students are free to pursue whatever legal avenues they can contemplate to oppose business.[26] LABI argued that the result is an unrestrained activism by clinical attorneys.[27] The effect of this activism, claimed LABI, is increased time and money expenditures by not only business groups, but by state and federal regulators and courts, in an effort to defend and adjudicate the claims.[28]

Business representatives conceded the importance of clinics in providing representation for those who cannot afford it and in educating future attorneys.[29] LABI proposed that such representation not be curtailed, but shifted, recommending that clinical representation be altered so that clinics represent a more "balanced" clientele.[30] LABI argued that small businesses may also lack the

18. *LABI Letter, supra* note 7, at 1; *LABI Proposal, supra* note 7, at 1.
19. LA. SUP. CT. R. XX, (1971)(repealed 1998).
20. *December Letter* at 1.
21. *LABI Proposal, supra* note 7, at 1.
22. *Id.*
23. *Id.*
24. *LABI Letter, supra* note 7, at 1; *LABI Proposal, supra* note 7, at 1, 2.
25. *LABI Proposal, supra* note 7, at 2.
26. *Id.* at 4.
27. *Id.* at 4.
28. *Id.* at 2.
29. *Id.*
30. *Id.*

funds necessary to obtain legal representation, and that therefore, their interests should also be addressed under Rule XX.[31]

LABI also proposed preventing clinics from "soliciting" clients, in violation of Rule 7.2 of the *Louisiana Rules of Professional Conduct*.[32] LABI recommended that "solicitation" of clients by the clinic and/or outreach coordinators be prohibited.[33] Although outreach coordinators function to help facilitate representation, LABI asserted that often the coordinators were members of the environmental organization that the clinic was representing.[34] Therefore, self-interest and lack of objectivity were said to impair the outreach coordinator's goal of identifying individuals in need of representation.[35]

LABI's fifth recommendation sought to ensure regular communication between the client and the student attorney and representation of the client's interests rather than the clinic's.[36] LABI viewed clinics as being on a general crusade to thwart business interests.[37] As a result, the client's interests could be subjugated to the larger campaign. Thus, LABI argued that there was a need to protect the client's interest from being subverted as a result of the clinic pursuing student or faculty ideology.[38] Business representatives further contended that the environmental organizations represented by the clinic were often nothing more than a "front" for the clinic to wage war against business.[39] Therefore, there was no "real" client, and thus, these organizations should not have been represented by the clinics.[40]

As a result of such complaints, another request by LABI called for screening of matters undertaken by clinics on both an initial and on-going basis.[41] Such screening was proposed to be undertaken by either the university itself or a panel of practitioners with knowledge of the interests affected in order to determine whether a legal basis for the action existed.[42] Business interests argued that clinical opposition to business was misguided and that such screening could prevent runaway activism in the future.[43] LABI noted that screening on both an

---

31. *Id.*

32. *Id*; LA. RULES OF PROFESSIONAL CONDUCT Rule 7.2 (West 1998). It is unclear how the clinics "solicited" clients pursuant to Rule 7.2, because "solicitation" cannot occur in the absence of pecuniary gain. Clinics do not receive any financial remuneration for their services and thus, cannot solicit under the Rule.

33. *LABI Letter*, *supra* note 7, at 1; *LABI Proposal*, *supra* note 7, at 2.

34. *LABI Proposal*, *supra* note 7, at 2.

35. *Id.*

36. *LABI Letter*, *supra* note 7, at 1; *LABI Proposal*, *supra* note 7, at 3.

37. *LABI Proposal*, *supra* note 7, at 1, 4.

38. *Id.* at 3.

39. *Id.*

40. *Id.*

41. *LABI Letter*, *supra* note 7, at 2.

42. *Id.*

43. *LABI Letter*, *supra* note 7, at 2; *LABI Proposal*, *supra* note 7, at 1.

initial and on-going basis could reduce the costs associated with responding to and adjudicating baseless claims.[44]

LABI also suggested two ethical requirements for student participation in clinics. First, LABI requested that as a prerequisite to client representation, students take an ethics course and pass the Multistate Professional Responsibility Exam (MPRE).[45] Second, LABI suggested that Rule XX bind students to the same ethical standards applicable to practicing attorneys.[46] LABI argued that more express ethical requirements could prevent clinics from engaging in allegedly obstructionist behavior, using the media to propagate misinformation, and generally partaking in ethically "questionable" practices.[47]

In addition, a recommendation was made that Rule XX affirmatively limit representation to Louisiana state courts and administrative agencies.[48] This proposal did not posit any substantive changes to the Rule. Rather, the clarification was sought in order to make explicit that Rule XX does not authorize student attorneys practice before the agencies, legislative bodies, or courts of the federal government or of other states.[49]

The final LABI proposal, which has been the subject of a great deal of continuing controversy, suggested a more limited role for the supervising attorney. The proposal sought to require the student to serve as the primary spokesperson, limiting supervisory attorney representation to exigent situations where the student is unable to attend.[50] LABI claimed that the Tulane Environmental Law Clinic often employs the supervising attorney as the primary legal presenter. LABI argued that this is inconsistent with the Rule's purpose of providing the students with legal experience representing clients. Thus, the proposal would ensure that clients would be represented by students rather than by practicing attorneys.[51]

B. DEFENDERS OF THE STATUS QUO: LAW SCHOOL AND CLINICAL RESPONSES TO LABI'S PROPOSALS

Many groups publicly opposed the proposed changes to the student practice rule, among them the Association of American Law Schools, the Clinical Legal

---

44. *LABI Proposal*, *supra* note 7, at 2.

45. *LABI Letter*, *supra* note 7, at 2; *LABI Proposal*, *supra* note 7, at 3.

46. *LABI Letter*, *supra* note 7, at 2; *LABI Proposal*, *supra* note 7, at 3.

47. *LABI Proposal*, *supra* note 7, at 3–4.

48. *LABI Letter*, *supra* note 7, at 2; *LABI Proposal*, *supra* note 7, at 4.

49. *LABI Proposal*, *supra* note 7, at 4.

50. *Id.* at 2. Later, another letter was written in response to counter-arguments voiced by the law schools and their supporters. Letter from LABI to Pascal F. Calogero, Chief Justice, Louisiana Supreme Court, at 15 (Mar. 12, 1998) (on file with author) [hereinafter *March Letter*]. As a result, this particular LABI proposal was amended to allow the supervising attorney to function where the student attorney is unable to participate. The other nine proposed amendments were unchanged in this letter. *Id.*

51. *LABI Letter*, *supra* note 7, at 15.

Education Association, the Society of American Law Teachers, and the law schools themselves.[52] These groups emphasized the importance of clinical education to future attorneys as well as the role student practice rules have played in facilitating clinical representation.[53] All fifty states had promulgated student practice rules virtually identical to Louisiana's pre-amendment Rule XX.[54] Therefore, examining other states' student practice rules lent no support to LABI's proposals.

Before amendment, clinical representation was reserved for individuals and organizations that could not afford the services of the private bar. Because the individuals and organizations the clinics represented would have otherwise been without representation, no competition existed between practicing attorneys and the clinics.[55] Although some indigent clients were represented, neither individuals nor organizations were required to be indigent nor composed of indigent members as defined by federal standards, but merely unable to afford an attorney.[56] Thus, despite Rule XX's primary purpose of providing legal representation to those who cannot afford it, these potential clients will remain unrepresented under the amendment establishing federal poverty as a prerequisite to clinical representation.[57]

Neither American Bar Association (ABA) standards nor the practice rules of other states mandate that clinic clients be indigent.[58] The ABA standards have declined to impose such a requirement.[59] Similarly, neither the ABA nor the practice rules of any other state limit the representation of community organizations.[60] The suggested changes were not only unprecedented, but also sought to impose a very vague standard, limiting representation to those organizations that promote the "broader interests" of the affected community.[61]

What constitutes a "broader interest," and whose "broader interests" must be represented are potentially conflict-breeding questions, the answers to which will depend upon one's perspective. Addressing an issue from a business perspective will often lead to a different conclusion than approaching the same problem from an environmental perspective. Thus, the resolution of such conflicts could require more time spent justifying clinical action or inaction than in representing clients.

In addition, restricting representation to organizations that promote a "broader

---

52. Joy and Weisselberg, *supra* note 13, at 531.

53. *See generally id.* at 531, 532; deNeve et al., *supra* note 13, at 539–42; Levitt, *supra* note 13, at 572–73; *December Letter*, *supra* note 13, at 1.

54. Levitt, *supra* note 13, at 572–73; deNeve et al., *supra* note 13, at 549–50.

55. *December Letter*, *supra* note 13, at 3.

56. *Id.* at 1.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 2.

61. *Id.*

interest" has been deemed a violation of the First Amendment.[62] A requirement that organizations promote broader interests would necessitate an inquiry into the content of the community organization's views.[63] "Content-based restrictions on speech are presumptively invalid."[64] Where a state deems it necessary to restrict public speech, the state regulation must be narrowly defined and serve a compelling state interest.[65] LABI's proposal was not narrowly defined, and only arguably furthered a compelling state interest.

Another proposal that presented a potential conflict of interest for clinics was that for balanced representation. Requiring clinics to represent both sides of an issue can present ethical problems arising from the clinical attorney's duty of loyalty to his client.[66] Louisiana lawyers are prohibited from taking on a new client if a previous or existing client's interests would materially limit the responsibilities owed to the new client.[67] LABI's proposal would also frustrate the educational interests of the clinic, limiting the legal institution's academic freedom to choose its clients.[68] Opponents also argued that a community organization without sufficient funding to support litigation is distinguishable from a small business in like circumstances. The small business has a greater capacity to raise funds for litigation than does the community organization.[69] The clinics therefore argued that they should not be subjected to the potential conflicts of interest inherent in the proposal for balanced representation.[70]

There is a distinction to be drawn between informing individuals of their legal right to bring a lawsuit, and soliciting clients for financial gain. Often, individuals who have a legal claim are unaware of their rights and the available remedies. As a result, clinics sometimes disseminate such information.[71] However, providing education regarding legal redress does not constitute improper solicitation.[72] The *Louisiana Rules of Professional Conduct* define solicitation as contact with a potential client for the lawyer's pecuniary interest.[73] Clinical attorneys do not receive remuneration for their services, and thus, clinical attorneys do not "solicit" by informing potential clients of their legal rights. Nor is it solicitation when an outreach coordinator performs the same functions.[74] Thus, LABI's

62. *Id.*
63. deNeve et al., *supra* note 13, at 560.
64. *Id.* at 562 (citing R.A.V. v. City of St. Paul Minnesota, 505 U.S. 377, 382 (1992)).
65. *Id.* (citing Boos v. Barry, 485 U.S. 312, 321 (1988)).
66. *Id.* at 564.
67. *Id.*; LA. RULES OF PROFESSIONAL CONDUCT Rule 1.7(a), (b) (West 1998).
68. *December Letter*, *supra* note 13, at 3.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.* at 3; LA. RULES OF PROFESSIONAL CONDUCT Rule 7.2 (West 1998).
74. *December Letter*, *supra* note 13, at 3.

proposed "solicitation" rules are not supported by the *Louisiana Rules of Professional Conduct.*

Rule XX requires that the student attorney take an oath that is substantially similar to that taken by practicing attorneys.[75] Contrary to business allegations, the clinics adamantly deny representing any interest in thwarting business, insisting that they are simply serving their clients.[76] In fact, rather than representing their own interests, clinical students more often find themselves acquiescing to the interests of their clients, who take an active role in the litigation process.[77] Therefore, there is no need for increased ethical requirements for clinical attorneys.

The proposal that clinics' clients be screened on both an initial and an on-going basis presents many problems as well. First, court assigned cases cannot be screened prior to acceptance.[78] In other instances, it is unnecessary for any outside screening committee to examine new clients because the schools already screen the cases for merit.[79] Moreover, implementation of an outside panel of screening attorneys would be very costly for all parties involved. Both outside attorneys and clinical attorneys would be faced with expenditures of time and money. More importantly, exposing the client to a panel of outside attorneys could result in a breach of the duty of confidentiality the clinical attorney owes to his client.[80] Louisiana's *Rules of Professional Conduct* clearly set out the attorney's duty to keep confidential any information pertaining to the representation of a client.[81] Therefore, requiring the attorney to divulge information about his client in order to justify representation would run counter to the attorney-client privilege.

LABI's assertion that clinical attorneys lack sufficient ethical guidance is erroneous. Clinical attorneys are made aware of their ethical duties to their clients. Students participating in a Louisiana law school clinic are required to pass an ethics course, as well as to take an oath similar to that taken by the private bar.[82] No state requires more of clinical attorneys.[83] Requiring law students to pass the MPRE prior to becoming eligible to work in a clinic places a burden on students in Louisiana not shouldered by students elsewhere.[84] Some states do not

75. LA. SUP. CT. R. XX § 4(f).

76. *December Letter, supra* note 13, at 4.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 5; deNeve et al., *supra* note 13, at 565–68; Levitt, *supra* note 13, at 575–76; LA. RULES OF PROFESSIONAL CONDUCT Rule 1.6 (West 1998).

81. deNeve et al., *supra* note 13, at 566; LA. RULES OF PROFESSIONAL CONDUCT, Rule 1.6 (West 1998).

82. *December Letter, supra* note 13, at 5.

83. *Id.*

84. *Id.* at 6.

even require lawyers to pass the MPRE, while others offer the MPRE only after graduation.[85]

Requiring the passage of the MPRE is unnecessary given the other requirements of the student practice rule. Students are already required, under Rule XX, to take an oath and to maintain ethical standards like those of the state's attorneys.[86] Thus, an affirmative statement in Rule XX that student attorneys are bound by the same standards as practicing attorneys, although unobjectionable, is unnecessary and cumulative.[87] Similarly, explicitly limiting students to practice before state courts and administrative agencies is also unnecessary because it is implicit in the Rule itself.[88]

Finally, limiting the role of the supervising attorney is unwise. However adequately trained and prepared a student attorney is, there remains the possibility of unforeseen circumstances arising that could harm the clients' interests if not addressed by the more seasoned practicing attorney. The supervising attorney's presence is necessary to ensure that the student attorney's need for client interaction and representation is satisfied without adversely affecting the client's interests.[89] In addition, the supervising attorney vouches for the student attorney, certifying that the student has performed ethically and in the interests of his client.[90] Thus, if not allowed to intervene, the supervisor could be unfairly exposed to liability for malpractice if the student does not adequately perform his duties.[91] The supervising attorney, therefore, needs to be able to actively participate in the representation of clients to protect the attorney's professional standing as well as the client's interests.[92]

III. THE LOUISIANA SUPREME COURT'S AMENDMENTS TO RULE XX

Although the Louisiana Supreme Court has issued a number of changes to Rule XX, law clinics and their supporters have not accepted them. Efforts are ongoing to persuade the Court to re-think its amendments, and the Court has expressed its intention to re-examine the rule in the near future.[93] The changes, which have almost all gone into effect (with the exception of that mandating completion of a legal ethics course, which goes into effect September 1, 2000), have addressed many of the issues that were raised by LABI's submission to the

85. *Id.*

86. La. Sup. Ct. R. XX § 4(f) (1971) (repealed 1998).

87. *December Letter*, *supra* note 13, at 6.

88. *Id.*

89. *Id.* at 6–7; Levitt, *supra* note 13, at 574; deNeve et al., *supra* note 13, at 568.

90. LA. SUP. CT. R. XX § 7 (1971) (repealed 1998). As part of the amendments, this section was renamed but remains substantively unchanged.

91. *December Letter, supra* note 13, at 6; Levitt, *supra* note 13, at 573–74.

92. Levitt, *supra* note 13, at 573.

93. Coyle and Finch, *supra* note 3, at A3.

Court.[94] The changes have had a significant effect in reducing the scope of clinical representation.[95]

Under Rule XX as it previously existed, students operating in law school clinics could appear in a variety of forums on behalf of the state, an indigent person, or a community organization, provided only that written approval was obtained from both the client and a supervising attorney.[96] While continuing to allow clinical attorneys to appear on behalf of the state or indigents (based upon the federal poverty standards), representation of community organizations has been seriously hampered. The adopted requirements dictate not only that the community organization consist of members more than half of whom are indigent, but also that the organization not be "affiliated with a national organization."[97]

Changes in Rule XX function to restrict clinical representation of individuals, as well as of community organizations. The amended Rule requires clinics to apply the Legal Services Corporation Act's indigence standard when selecting clients, meaning that represented individuals must fall below the federal poverty level. This standard presents a significant obstacle to clinical representation of individuals, both indigent and non-indigent, who cannot afford representation because anyone seeking clinical representation will have their financial situation closely scrutinized.[98] Only when a court assigns the case to the clinic after first reviewing the client's economic conditions and finding indigence may these guidelines be disregarded.[99] Nevertheless, the requirement that an individual endure close scrutiny of her economic situation as a prerequisite to legal representation can significantly deter access to the judicial system.

Another amendment further restricts law school clinics from representing indigent community organizations.[100] First, an indigent community organization seeking representation must certify, in writing and subject to court inspection, its inability to pay for such services.[101] Second, the indigent community organization must not be nationally affiliated, and 51% of its members must be eligible for legal assistance pursuant to the Legal Services Corporations Act.[102] Finally, the organization must establish that it lacks sufficient funding to retain a private attorney.[103] Cumulatively, these restrictions effectively eliminate clinical representation of community organizations.

---

94. *See generally*, LA. SUP. CT. R. XX; *LABI Letter*, *supra* note 7, at 1–2; *LABI Proposal*, *supra* note 7, at 1–5.

95. *December Letter*, *supra* note 13, at 1.

96. LA. SUP. CT. R. XX § 3 (1971) (repealed 1998).

97. LA. SUP. CT. R. XX § 3.

98. *Id.* at § 4.

99. *Id.*

100. LA. SUP. CT. R. XX § 5.

101. *Id.*

102. *Id.*

103. *Id.*

The recent amendments also clarify the clinical attorney's ethical duties. These changes compel students to complete an ethics course prior to clinical participation.[104] Additionally, the *Louisiana Rules of Professional Conduct* are explicitly applied to clinics.[105] The oath that the student was previously required to take has been amended to protect against specific perceived abuses, including maintaining an unjust lawsuit and misleading a judge or jury through false statements.[106] Another, less controversial, amendment limits student practice to state courts and administrative agencies.[107]

Clinics had also been prohibited from soliciting clients as part of a newly enacted section of the Rule before the June 30th stay.[108] Client representation was prohibited where "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."[109] In addition, a law school clinic, staff-person, or student practitioner who "provided legal assistance in forming, creating or incorporating the organization" is prohibited from representing such organization.[110] The Court itself was not in complete agreement as to the propriety of this change. In a concurring opinion, Judge Lemmon noted that "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."[111]

IV. THE LOUISIANA SUPREME COURT SPEAKS

In a statement published in the *New Orleans Times-Picayune*[112], the Court explained its recent amendments, stating that the original 1971 Student Practice Rule made no mention of community organizations.[113] Prior to a 1988 amendment authorizing representation of organizations, the Rule had covered only indigent individuals.[114] The 1988 amendment neglected to clearly define the community organizations encompassed by the Rule. The Court undertook the process of amending the Rule after receipt of the business complaints in

104. *Id.* at § 6(c).
105. LA. SUP. CT. R. XX § 10.
106. *Id.* at § 6(h).
107. *Id.* at § 11.
108. *Id.* at § 10.
109. *Id.*
110. *Id.*
111. Concurrence of Judge Lemmon to Rule XX amendments (on file with author).
112. Hugh M. Collins, *High Court Explains Student-Lawyer Rule Change,* NEW ORLEANS TIMES-PICAYUNE, June 25, 1998, at B6.
113. *Id.*
114. *Id.*

September 1997 in order to clarify this ambiguity as well as to address business concerns with student practice.[115]

The Court also stated that the Rule implicitly required that clinics represent indigent clients regardless of whether the client was an individual or a community organization.[116] Thus, according to the Court, the "amendment" was no change at all, but merely a clarification of an ambiguity.[117] Similarly, national organizations and their affiliates were never considered as prospective indigent clients for purposes of Rule XX.[118] The student practice rule was designed to provide legal services to those who need them the most. Nationally affiliated organizations do not satisfy this requirement. Therefore, the indigence standards of the National Legal Services Corporation were implemented to ensure proper application of the Rule.[119]

The Court failed, however, to examine the purpose of the 1988 amendment which had expanded the Rule to include community organizations. The Court acknowledged that in 1988 the Rule's scope was broadened,[120] but this amendment had not been made of the Court's own initiative. Rather, it came in response to a letter written by the dean of the Tulane Law School, John Kramer, on behalf of the law schools of Tulane and Loyola.[121] The Dean's proposal to so expand clinical representation included examples of community organizations that the clinics should be allowed to represent.[122] These examples included "public housing tenant organizations or certain environmental or consumer organizations who consist of members who are primarily indigent or who have no funds available to hire an attorney."[123] Since the changes to Rule XX were made in response to specific suggestions by the law schools, it is difficult to argue that the term "community organization" was left vague as the Court has claimed.

CONCLUSION: A FUTURE PERSPECTIVE

Of the ten amendments posited by LABI, all but four have been adopted, in whole or in part, by the Louisiana Supreme Court's amendments.[124] An *in forma pauperis* prerequisite has been established for representation; students are affirmatively informed that their ethical duties are the same as those of practicing attorneys (which also implies a duty to communicate frequently with and proceed

115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. Letter from John R. Kramer, Dean, Tulane Law School to John A. Dixon, Jr., Chief Justice of the Louisiana Supreme Court (Oct. 21, 1988) (on file with author).
122. *Id.*
123. *Id.*
124. *Compare* LA. SUP. CT. R. XX (1971) (repealed 1998), *with* LA. SUP. CT. R. Rule XX.

in the best interests of the client); and the Rule now affirmatively states that its scope is limited to state administrative agencies and courts.[125] In addition, "community organization" has been narrowly defined, although such organizations have not been required to represent the broader interests of the community in order to receive clinical representation.[126] An ethics course has also been mandated prior to student representation, although passage of the MPRE has not.[127]

Thus, the only business concerns not addressed are those that deal with the manner in which clinics choose clients (provided the clients satisfy the more stringent requirements of the Rule), and the manner in which the clinics operate. Requiring balanced representation and prohibiting "solicitation" of clients infringes on the clinic's autonomy. The clinics must represent individuals they otherwise would not have chosen. Mandating screening initially and on an on-going basis would place the clinics under continuous scrutiny that could limit their ability to operate freely. Furthermore, limiting the supervising attorney's role by requiring that students be the primary spokespeople would place limits upon the guidance the student could receive from the attorney. This also has the potential of resulting in inadequate legal representation of the client.

Louisiana's law school clinics have seen their avenues of representation greatly restricted. Since the amendments, Chief Justice Calogero has been re-elected,[128] and the Court has promised a re-examination of the amendments in the face of much negative feedback.[129] The major question that remains is whether the amendments restricting student representation will withstand the challenges of the legal community, the numerous unrepresented community organizations, and individuals who have seen their prospects for representation diminished. The student practice rule could revert to its prior state, or the Louisiana Supreme Court could create an intermediate solution, bridging the gap between the old Rule XX and its new business friendly version.

Business lobbying efforts were successful in bringing about the restructuring of Rule XX without relying on the ethical or legal misdeeds of any clinic. Rather than force business interests to substantiate their accusations in a lawsuit, the Court took it of its own initiative to restrict clinical representation.[130] As a result of these changes, the Court has been under pressure from a variety of sources ranging from the law schools and their supporters, who opposed the changes initially, to those organizations that are now being denied the clinical representa-

---

125. LA. SUP. CT. R. Rule XX.

126. *Id.* at §§ 3, 4.

127. *Id.* at § 6.

128. Janet McConnaughey, *5th Ckt: Louisiana Supreme Court's Minority Seat Stands*, ASSOC. PRESS NEWSWIRES, Feb. 18, 1999.

129. Coyle and Finch, *supra* note 3.

130. Letter from Carl C. Monk, Executive Director, Assoc. of American Law Schools, to Pascal F. Calogero, Jr., Chief Justice, Louisiana Supreme Court (Apr. 3, 1998) (on file with author).

tion they previously had.[131] These opponents' arguments have persuaded the Court to re-examine the recent amendments. Thus, it is possible that Rule XX, as it now exists, may not have a long life. Amendment of the Rule, in some form, could be imminent. It remains to be seen where along the spectrum, with business interests on one end and clinical interests on the other, the pendulum will swing next.

131. Michael J. Smith, *Ruling on Law Clinics Blasted, Courts Protested; Suit Threatened*, NEW ORLEANS TIMES-PICAYUNE, June 27, 1998, at A4; Kay Mettelka, Letter to the Editor, *League Calls Court Ruling "Chilling,"* NEW ORLEANS TIMES-PICAYUNE, July 2, 1998, at B6.