

27 N.C.A.C. 1C, Section .0200, Rules Governing the Practical Training of Law Students

.0201 Purpose

The rules in this subchapter are adopted for the following purposes: to support the development of clinical legal education programs at North Carolina's law schools in order that the law schools may provide their students with supervised practical training of varying kinds during the period of their formal legal education; to enable law students to obtain supervised practical training while serving as legal interns for government agencies; and to assist law schools in providing substantial opportunities for student participation in *pro bono* service.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2008; September 25, 2019

.0202 Definitions

The following definitions shall apply to the terms used in this section:

- (a) Clinical legal education program – Experiential educational program that engages students in “real world” legal matters through supervised practice experience. Under the supervision of a faculty member or site supervisor who is accountable to the law school, students assume the role of a lawyer either as a protégé, lead counsel, or a member of a lawyer team.
- (b) Eligible persons - Persons who are unable financially to pay for legal advice or services as determined by a standard established by a judge of the General Court of Justice, a legal services organization, government entity, or a clinical legal education program. “Eligible persons” may include minors who are not financially independent; students enrolled in secondary and higher education schools who are not financially independent; non-profit organizations serving low-income communities; and other organizations financially unable to pay for legal advice or services.
- (c) Field placement – Practical training opportunities within a law school's clinical legal education program that place students in legal practice settings external to the law school. Students in a field placement represent clients or perform other lawyering roles under the supervision of practicing lawyers or other qualified legal professionals. Faculty have overall responsibility for assuring the educational value of the learning in the field. Supervising attorneys provide direct feedback and guidance to the students. Site supervisors have administrative responsibility for the legal intern program at the field placement. Such practical training opportunities may be referred to as “externships.”
- (d) Government agencies - The federal or state government, any local government, or any agency, department, unit, or other entity of federal, state, or local government, specifically including a public defenders office or a district attorney's office.
- (e) Law school - An ABA accredited law school or a law school actively seeking accreditation from the ABA and licensed by the Board of Governors of the University of North Carolina. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, legal interns may not practice, pursuant to these rules, with any legal aid clinic of the law school.
- (f) Law school clinic - Courses within a law school's clinical legal education program that place students in a legal practice setting operated by the law school. Students in a law school clinic assume the role of a lawyer representing actual clients or performing other lawyering roles. Supervision of students is provided by faculty employed by the law school (full-time, part-time, adjunct) who are active members of the North Carolina State Bar or another bar as appropriate for the legal matters undertaken.
- (g) Legal intern - A law student who is certified to provide supervised representation to clients under the provisions of the rules of this subchapter.

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(h) Legal services organization - A nonprofit North Carolina organization organized to operate in accordance with N.C. Gen. Stat. §84-5.1.

(i) *Pro bono* activity – An opportunity while in law school for students to provide legal services to those unable to pay, or otherwise under a disability or disadvantage, consistent with the objectives of Rule 6.1 of the Rules of Professional Conduct.

(j) Rules of Professional Conduct – The Rules of Professional Conduct adopted by the Council of the North Carolina State Bar, approved by the North Carolina Supreme Court, and in effect at the time of application of the rules in this subchapter.

(k) Site supervisor – The attorney at a field placement who assumes administrative responsibility for the legal intern program at the field placement and provides the notices to the State Bar required by Rule .0205(b) of this subchapter. A site supervisor may also be a supervising attorney at a field placement.

(l) Supervising attorney - An active member of the North Carolina State Bar, or an attorney who is licensed in another jurisdiction as appropriate for the legal work to be undertaken, who has practiced law as a full-time occupation for at least two years, and who supervises one or more legal interns pursuant to the requirements of the rules in this subchapter.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008; September 25, 2019

.0203 Eligibility

To engage in activities permitted by these rules, a law student must satisfy the following requirements:

(a) be enrolled as a J.D. or LL.M. student in a law school approved by the Council of the North Carolina State Bar;

(b) be certified in writing by a representative of his or her law school, authorized by the dean of the law school to provide such certification, as being of good character with requisite legal ability and legal education to perform as a legal intern, which education shall include satisfaction of the prerequisites for participation in the clinic or field placement;

(c) be introduced by an attorney admitted to practice in the tribunal or agency to every judicial official who will preside over a matter in which the student will appear, and, pursuant to Rule .0206(c) of this subchapter, obtain the tribunal's or agency's consent to appear subject to any limitations imposed by the presiding judicial official; such introductions do not have to occur in open court and the consent of the judicial official may be oral or written;

(d) neither ask for nor receive any compensation or remuneration of any kind from any eligible person to whom he or she renders services, but this shall not prevent an attorney, legal services organization, law school, or government agency from paying compensation to the law student or charging or collecting a fee for legal services performed by such law student; and

(e) certify in writing that he or she has read the North Carolina Rules of Professional Conduct and is familiar with the opinions interpretive thereof.

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.0204 Form and Duration of Certification

Upon receipt of the written materials required by Rule .0203(b) and (e) and Rule .0205(b), the North Carolina State Bar shall certify that the law student may serve as a legal intern. The certification shall be subject to the following limitations:

(a) Duration. The certification shall be effective for 18 months or until the announcement of the results of the first bar examination following the legal intern's graduation whichever is earlier. If the legal intern passes the bar examination, the certification shall remain in effect until the legal intern is sworn-in by a court and admitted to the bar.

(b) Withdrawal of Certification. The certification shall be withdrawn by the State Bar, without hearing or a showing of cause, upon receipt of

(1) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern has not graduated but is no longer enrolled;

(2) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern is no longer in good standing at the law school;

(3) notice from a supervising attorney that the supervising attorney is no longer supervising the legal intern and that no other qualified attorney has assumed the supervision of the legal intern; or

(4) notice from a judge before whom the legal intern has appeared that the certification should be withdrawn.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amendments Approved by the Supreme Court: June 7, 2001; September 25, 2019

.0205 Supervision

(a) Supervision Requirements. A supervising attorney shall

(1) for a law school clinic, concurrently supervise an unlimited number of legal interns if the supervising attorney is a full-time, part-time, or adjunct member of a law school's faculty or staff whose primary responsibility is supervising legal interns in a law school clinic and, further provided, the number of legal interns concurrently supervised is not so large as to compromise the effective and beneficial practical training of the legal interns or the competent representation of;

(2) for a field placement, concurrently supervise no more than two legal interns; however, a greater number of legal interns may be concurrently supervised by a single supervising attorney if the appropriate faculty supervisor determines, in his or her reasoned discretion, that the effective and beneficial practical training of the legal interns and the competent representation of clients will not be compromised;

(3) assume personal professional responsibility for any work undertaken by a legal intern while under his or her supervision;

(4) assist and counsel with a legal intern in the activities permitted by these rules and review such activities with the legal intern, all to the extent required for the proper practical training of the legal intern and the competent representation of the client; and

(5) read, approve and personally sign any pleadings or other papers prepared by a legal intern prior to the filing thereof, and read and approve any documents prepared by a legal intern for execution by a client or third party prior to the execution thereof.;

(b) Filing Requirements.

(1) Prior to commencing supervision, a supervising attorney in a law school clinic shall provide a signed statement to the North Carolina State Bar (i) assuming responsibility for the supervision of identified legal interns, (ii) stating the period during which the supervising attorney expects to supervise the activities of the

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identified legal interns, and (iii) certifying that the supervising attorney will adequately supervise the legal interns in accordance with these rules.

(2) Prior to the commencement of a field placement for a legal intern(s), the site supervisor shall provide a signed statement to the North Carolina State Bar (i) assuming responsibility for the administration of the field placement in compliance with these rules, (ii) identifying the participating legal intern(s) and stating the period during which the legal intern(s) is expected to participate in the program at the field placement, (iii) identifying the supervising attorney(s) at the field placement, and (iv) certifying that the supervising attorney(s) will adequately supervise the legal intern(s) in accordance with these rules.

(3) A supervising attorney in a law school clinic and a site supervisor for a legal intern program at a field placement shall notify the North Carolina State Bar in writing promptly whenever the supervision of a legal intern concludes prior to the designated period of supervision.

(c) Responsibilities of Law School Clinic in Absence of Legal Intern. During any period when a legal intern is not available to provide representation due to law school seasonal breaks, graduation, or other reason, the supervising attorney shall maintain the status quo of a client matter and shall take action as necessary to protect the interests of the client until the legal intern is available or a new legal intern is assigned to the matter. During law school seasonal breaks, or other periods when a legal intern is not available, if a law school clinic or a supervising attorney is presented with an inquiry from an eligible person or a legal matter that may be appropriate for representation by a legal intern, the representation may be undertaken by a supervising attorney to preserve the matter for subsequent representation by a legal intern. Communications by a supervising attorney with a prospective client to determine whether the prospective client is eligible for clinic representation may include providing immediate legal advice or information even if it is subsequently determined that the matter is not appropriate for clinic representation.

(d) Independent Legal Practice. Nothing in these rules prohibits a supervising attorney in a law school clinic from providing legal services to third parties outside of the scope of the supervising attorney's employment by the law school operating the clinic.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

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.0206 Activities

(a) A properly certified legal intern may engage in the activities provided in this rule under the supervision of an attorney qualified and acting in accordance with the provisions of Rule .0205 of this subchapter.

(b) Without the presence of the supervising attorney, a legal intern may give advice to a client, including a government agency, on legal matters provided that the legal intern gives a clear prior explanation that the legal intern is not an attorney and the supervising attorney has given the legal intern permission to render legal advice in the subject area involved.

(c) A legal intern may represent an eligible person, the state in criminal prosecutions, a criminal defendant who is represented by the public defender, or a government agency in any proceeding before a federal, state, or local tribunal, including an administrative agency, if prior consent is obtained from the tribunal or agency upon application of the supervising attorney. Each appearance before the tribunal or agency shall be subject to any limitations imposed by the tribunal or agency including, but not limited to, the requirement that the supervising attorney physically accompany the legal intern.

(d) In all cases under this rule in which a legal intern makes an appearance before a tribunal or agency on behalf of a client who is an individual, the legal intern shall have the written consent in advance of the client. The client

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shall be given a clear explanation, prior to the giving of his or her consent, that the legal intern is not an attorney. This consent shall be filed with the tribunal and made a part of the record in the case. In all cases in which a legal intern makes an appearance before a tribunal or agency on behalf a government agency, the consent of the government agency shall be presumed if the legal intern is participating in an internship program of the government agency. A statement advising the court of the legal intern's participation in an internship program of the government agency shall be filed with the tribunal and made a part of the record in the case.

(e) In all cases under this rule in which a legal intern is permitted to make an appearance before a tribunal or agency, subject to any limitations imposed by the tribunal, the legal intern may engage in all activities appropriate to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

Amendments Approved by the Supreme Court: June 7, 2001; March 6, 2002; March 6, 2008

.0207 Use of Student's Name

(a) A legal intern's name may properly

(1) be printed or typed on briefs, pleadings, and other similar documents on which the legal intern has worked with or under the direction of the supervising attorney, provided the legal intern is clearly identified as a legal intern certified under these rules, and provided further that the legal intern shall not sign his or her name to such briefs, pleadings, or other similar documents;

(2) be signed to letters written on the letterhead of the supervising attorney, legal aid clinic, or government agency, provided there appears below the legal intern's signature a clear identification that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]", and

(3) be printed on a business card, provided the name of the supervising attorney also appears on the business card and there appears below the legal intern's name a clear statement that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]."

(b) A student's name may not appear on the letterhead of a supervising attorney, legal aid clinic, or government agency.

History Note: Statutory Authority G.S. 84-23

Readopted Effective December 8, 1994

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.0208 Field Placements

(a) A law student enrolled in a field placement at an organization, entity, agency, or law firm shall be certified as a legal intern if the law student will (i) provide legal advice or services in matters governed by North Carolina law to eligible persons or government agencies outside the organization, entity, agency, or law firm or (ii) appear before any North Carolina tribunal or agency on behalf of an eligible person or a government agency.

(b) Supervision of a legal intern enrolled in a field placement may be shared by two or more attorneys employed by the organization, entity, agency, or law firm, provided one attorney acts as site supervisor, assuming administrative responsibility for the legal intern program at the field placement and providing the notices to the State Bar required by Rule .0205(b) of this subchapter. All supervising attorneys at a field placement shall comply with the requirements of Rule .0205(a).

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.0209 Relationship of Law School and Clinics; Responsibility Upon Departure of Supervising Attorney or Closure of Clinic

(a) Relationship to Other Clinics. The clinics that are a part of a clinical legal education program at a law school may each operate as an independent entity (the “independent clinic model”) or they may operate collectively as one entity with each clinic acting as a department or division of the entity (the “unified clinic model”). In the independent clinic model, clinics function independently of each other, including the maintenance of separate offices and separate conflicts-checking and case management systems. In the unified clinic model, clinics may share offices as well as conflicts-checking and case management systems.

(b) Application of the Rules of Professional Conduct. For the purposes of applying the Rules of Professional Conduct, each law school clinic operated pursuant to the independent clinic model shall be considered one law firm and clinics operated pursuant to the unified clinic model shall collectively be considered one law firm.

(c) Relationship with Law School. The relationship between law school clinics and the law school in which they operate shall be managed in a manner consistent with the requirements of the Rules of Professional Conduct. Procedures shall be established by both the clinics and the law school that are reasonably adequate to protect confidential client information from disclosure including disclosure to the law school administration, non-participating law school faculty and staff, and non-participating students of the law school. The rule of imputed disqualification, as stated in Rule 1.10(a) of the Rules of Professional Conduct, shall not apply to the law school administrators, non-participating law school faculty and staff, and non-participating law school students if reasonable efforts are made to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of clients. *See* Rule 1.6(c) of the Rules of Professional Conduct.

(d) Responsibility for Maintenance of Client Files. Client files shall be maintained and safeguarded by a law school clinic in accordance with the Rules of Professional Conduct and the ethics opinions interpretative thereof. Closed client files shall be returned to the client or shall be safeguarded and maintained by a law school clinic until disposal is permitted under the Rules of Professional Conduct. *See* RPC 209.

(e) Engagement Letter. In addition to the consent agreement required by Rule .0206(d) of this section for any representation of an individual client in a matter before a tribunal, a written engagement letter or memorandum of understanding with each client is recommended. The writing should state the general nature of the legal services to be provided and explain the roles and responsibilities of the clinic, the supervising attorney, and the legal intern. *See* Rule 1.5, cmt. [2] of the Rules of Professional Conduct (“A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.”)

(f) Responsibility upon Departure of Supervising Attorney. Upon the departure of a supervising attorney from a law school clinic, the administration of the law school and of the clinic shall promptly identify a replacement supervising attorney for any active case in which no other supervising attorney is participating. In such cases, the departing attorney and the clinic administration shall protect the interests of all affected clients by taking appropriate steps to preserve the status quo of the legal matters of affected clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. If the departing attorney will not continue the representation after departure from the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation. Affected clients shall be notified and advised that (i) they have the right to counsel of choice (which may include the departing attorney if the departing attorney intends to engage in legal practice outside of the law school clinic); (ii) their file will be transferred to the new supervising attorney in the absence of other instructions from the client; and (iii) they

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may instruct the clinic to mail or deliver the file to the client or to transfer the file to legal counsel outside of the clinic. If instructed by a client, a file shall be promptly returned to the client or transferred to authorized legal counsel outside of the clinic.

(g) Responsibility upon Closure of a Law School Clinic. If a law school clinic is closed for any reason, the supervising attorney, with support from the law school, shall take appropriate steps to preserve the status quo of the legal matters of clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. The administration of the law school and of the clinic shall promptly notify all affected clients that (i) they have the right to counsel of choice (which may include the supervising attorney if the supervising attorney will engage in legal practice after closure of the clinic); (ii) the file will be mailed to or delivered to the client and the supervising attorney will withdraw from representation in the absence of other instructions from the client; and (iii) they may instruct the clinic to transfer the file to authorized legal counsel outside of the clinic (which may include the supervising attorney). If the supervising attorney will not continue the representation after closure of the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation.

History Note: Statutory Authority G.S. 84-23

Adopted by the Supreme Court September 25, 2019

.0210 Pro Bono Activities

(a) *Pro Bono* Activities for Law Students. *Pro bono* activities for law students may be facilitated by a law school acting under the auspices of a clinical legal education program or another program or department of the law school. As used in this rule, “auspices” means administrative or programmatic support or supervision.

(b) Student Certification Not Required. Regardless of whether the *pro bono* activity is provided under the auspices of a clinical legal education program or another program or department of a law school, a law student participating in a *pro bono* activity made available by a law school is not required to be certified as a legal intern if

(1) the law student will not perform any legal service; or

(2) all of the following conditions are satisfied: (i) the student will perform specifically delegated substantive legal services for third parties (clients) under the direct supervision of an attorney who is an active member of the North Carolina State Bar or licensed in another jurisdiction as appropriate to the legal services to be undertaken (the responsible attorney); (ii) the legal services shall not include representation of clients before a tribunal or agency; (iii) the responsible attorney is personally and professionally responsible for the representation of the clients and for the law student’s work product; and (iv) the role of the law student as an assistant to the responsible attorney is clearly explained to each client in advance of the performance of any legal service for the client by the law student.

(c) Law School Faculty and Staff Providing *Pro Bono* Services Under Auspices of a Clinical Legal Education Program. Any member of the law school’s faculty or staff who is an active member of the North Carolina State Bar or licensed in another jurisdiction as appropriate to the legal work to be undertaken may serve as the responsible attorney for a *pro bono* activity if the activity is provided to eligible persons under the auspices of the law school’s clinical legal education program and the responsible attorney complies with the relevant supervision requirements set forth in Rule .0205(a)(2)-(5) of this subchapter.

(d) Responsibility for Client File. Unless otherwise specified in this rule, if a client file is generated by a *pro bono* activity, it shall be maintained and safeguarded by the responsible attorney in compliance with the Rules of Professional Conduct and the ethics opinions interpretative thereof. If the *pro bono* activity is provided under the auspices of a clinical legal education program and the responsible attorney is a member of the law school’s faculty or staff, the client file shall be maintained and safeguarded by the clinical legal education program in

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compliance with the Rules of Professional Conduct and the Rule .0209(d). If the *pro bono* activity is sponsored by a legal services organization or government agency, the legal services organization or government agency shall maintain and safeguard the client file. If the *pro bono* activity is sponsored by more than one legal services organization or government agency, the co-sponsors shall determine which entity shall maintain and safeguard the client file and shall so inform the client.

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