



WILLIAM B. RANDALL, COUNTY ATTORNEY • RAMSEY COUNTY, STATE OF MINNESOTA

Ramsey County Court House • Saint Paul, Minnesota 55102

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CRIMINAL DEPT.

June 7, 1974

The Honorable Robert J. Sheran
Chief Justice of the Supreme Court
525 Federal Building
316 North Robert Street
St. Paul, Minnesota 55101

Dear Chief Justice:

I am enclosing herewith a petition dealing with the rule allowing limited practice by senior law students. This past year we have had five interns functioning in this office and based upon that experience I feel that an amendment such as is suggested would be appropriate. There is attached a memorandum in support of the petition. I would be honored to be given the opportunity of discussing the matter further with the Court if it meets with the Court's convenience.

It should be noted that I am not recommending in this petition any change allowing limited practice in behalf of an individual. In such a situation, an error by the student could adversely affect the rights of a person charged with a crime. This, I think, all would consider to be a risk too great to countenance. Under the suggested provision, the only person who could be adversely affected is the County Attorney upon whose recommendation the senior law student was appearing in court. That seems to me to be a risk which is permissible in order to obtain the benefits of broader participation by the students and consequently a better learning experience.

Yours very truly,

William B. Randall
WILLIAM B. RANDALL
County Attorney

WBR:au
Enc.

**RULES OF THE SUPREME COURT
FOR
SENIOR LAW STUDENTS**

Effective June 27, 1967

**RULE I. LIMITED PRACTICE BY SENIOR
LAW STUDENTS**

Any senior law student in a law school in this state accredited by The American Bar Association, may, with the written approval of the Supreme Court of Minnesota, interview, advise, negotiate, and appear in any municipal or trial court on behalf of any indigent person accused of crime, or on behalf of the prosecution, or may represent any indigent person in a civil action; provided, however, that the conduct of the case is under the supervision of a member of the State Bar of Minnesota.

Before any student shall be eligible to appear in court for or on behalf of any indigent person accused of crime, or on behalf of the prosecution, or represent any indigent person in a civil action, the Dean of the accredited law school of which he is a student shall file with the Supreme Court a list of names of the enrolled students who have been selected by the faculty to participate in the program. Upon written approval by the Supreme Court of a student so certified, and the filing of such written approval, or a certified copy thereof, with the district court wherein the law school is located, such approved student shall be, and is hereby, authorized to appear in any court of the State of Minnesota when under the supervision of a member of the State Bar of Minnesota, on behalf of such indigent persons accused of crime, or on behalf of the prosecution, or to represent indigent persons in any civil action as may be assigned to them. The expression "supervision" shall be construed to require the personal attendance of the supervising member of the bar during any trial, plea and sentence, or any other critical stage of any proceeding in or out of the court room. In all events representation afforded pursuant to this rule must comply with minimal standards required by the State and Federal Constitutions.

The written approval of each student by the Supreme Court of Minnesota shall remain in force and effect for a period of twelve months from the date of filing unless withdrawn earlier.

No. 45163

STATE OF MINNESOTA

IN SUPREME COURT

In Re: Petition for
Amendment of Rule
I of the Rules of
the Supreme Court
for Senior Law
Students

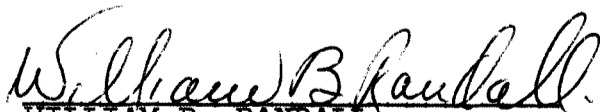
PETITION

To the Supreme Court, State of Minnesota:

The undersigned, William B. Randall, hereby petitions the Honorable Justices of the Supreme Court of the State of Minnesota to amend Rule I. (Limited Practice by Senior Law Students) of the Rules of the Supreme Court for Senior Law Students as effective June 27, 1967 in the following manner:

by changing the period in the second to the last sentence in the second paragraph to a semi-colon and adding the language as underlined below:

The expression "supervision" shall be construed to require the personal attendance of the supervising member of the bar during any trial, plea and sentence, or any other critical stage of any proceeding in or out of the courtroom; provided, however, that the supervising member of the bar may, in writing, authorize a student to appear alone on behalf of the State in proceedings in respect of felony and gross misdemeanor prosecutions in municipal or county courts and in behalf of the petitioner in juvenile court proceedings, whenever the supervising member deems his personal attendance unnecessary to proper supervision.



WILLIAM B. RANDALL
Ramsey County Attorney
328 Court House
St. Paul, Minnesota 55102

No. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re: Petition for
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the Supreme Court }
for Senior Law }
Students }

MEMORANDUM
IN SUPPORT
OF PETITION

Facts:

1. There are presently five law students employed by Petitioner as interns.
2. Two of these interns are seniors at William Mitchell College of Law and three are seniors at the University of Minnesota.
3. All are certified to practice under Rule I of the Rules of the Supreme Court for Senior Law Students effective June 27, 1967 captioned Limited Practice by Senior Law Students (hereinafter the "Senior Practice Rule").
4. The two William Mitchell College of Law students are employed full time (40 hours per week) and the University of Minnesota students are employed part time (10 to 15 hours per week).
5. The interns are paid \$4.00 per hour under a grant of the Governor's Crime Commission of the State of Minnesota, which commenced September 10, 1973 and terminates August 31, 1974, funded by the Law Enforcement Assistance Administration of the federal government.
6. All of the interns commenced employment under the Law Enforcement Assistance Administration grant in September of 1973.
7. The full-time intern responsible for juvenile matters has tried or otherwise handled an average of five (5) cases per week, or approximately one hundred and sixty (160) cases through April 15, 1974; the full-time intern responsible principally

for preliminary hearings in felony matters has conducted or otherwise handled an average of six (6) cases per week or one hundred and ninety-two (192) cases through April 15, 1974; the part-time University of Minnesota intern responsible for juvenile matters has tried or otherwise handled an average of three (3) cases per week, or approximately ninety-six (96) cases through April 15, 1974; the two part-time University of Minnesota interns responsible for preliminary hearings have conducted or otherwise handled an average of four (4) cases per week or one hundred and twenty-eight (128) through April 15, 1974.

8. Under the present "Senior Practice Rule", the practicalities of scheduling and the availability of the supervising attorney dictate that, at least in Ramsey County, the student interns are limited with regard to felony matters to handling virtually only preliminary hearings; and then only with the personal attendance of an assistant county attorney, whether the difficulty of the case or the experience of the intern in the opinion of the supervising attorney warrants such attendance. The student interns are effectively precluded from appearing for the prosecution at initial appearances where counsel is appointed, bail is set, and preliminary hearings are demanded or waived.

9. The Petitioner intends to seek a renewal of the grant and wishes to make the employment of the interns more productive and meaningful, both for themselves and the state and federal governments.

Discussion:

The proposed amendment is in accord with the majority of the other states with a senior practice rule and with the A.B.A. Model Rule. "Forty of the forty-four states in which a law school is located have authorized law student practice. More than half of these states have adopted their provision since 1967.

Instrumental in guiding this development was the adoption by the A.B.A. of its model student practice rule. Most states and federal courts acting since 1969 borrow heavily from it."

Footnotes omitted State Rules Permitting The Student Practice

of Law: Comparisons and Comments, 2d Ed. p. 3 (1973) (herewith). A.B.A. Model Rule as adopted does not require the presence of a supervising attorney when a student represents the prosecution at any stage of criminal proceedings. State Rules Permitting The Student Practice of Law: Comparisons and Comments, 2d Ed. p. 4 (1973). The specific provision of the A.B.A. Model Rule II.B. reads:

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 authorized representative and of the supervising lawyer. Id., pg. 447

The majority of those states which have adopted rules in accordance with the A.B.A. Model Rule permitting student practice do not absolutely condition that practice on the personal attendance or presence of the supervising attorney or another duly licensed attorney when the student appears on behalf of the prosecution. Of those jurisdictions which have adopted rules authorizing student practice, relating to the requirement of personal attendance, presence or supervision in criminal matters:

1. Five (5) states do not condition the appearance in any way;

2. Eleven (11) states and the District of Columbia do not condition the appearance upon the in-court presence of a supervising attorney upon written approval by such attorney per the A.B.A. Model Rule;

3. Five (5) states do not condition the appearance upon the in-court presence of a supervising attorney where the presiding judge and in some instances the opposing counsel or defendant consents.

4. Seven (7) states do not condition the appearance upon the in-court presence of a supervising attorney where the student appears in misdemeanor cases and courts in other than the district court.

5. Twelve (12) states, including Minnesota, absolutely require the in-court presence of a supervising attorney. See Appendix I.

The proposed amendment in no way eliminates the reasonable requirement of the "Senior Practice Rule" for proper supervision. Unquestionably there should be, as there presently is, sufficient supervision prior to any proceeding to insure the competent handling of all matters entrusted to the certified student. The mere fact that an attorney is present in the courtroom where he sits and listens to a preliminary hearing, being presented by a student intern, who has prepared the matter to the attorney's prior satisfaction that he will competently handle it, benefits neither the student's interest in assuming responsibility and gaining experience nor the state's interest in an orderly criminal justice system. This may be significantly different where the proceeding is a trial or plea and sentence where unanticipated issues and problems can arise instantaneously or where the student is appearing on behalf of the defendant and each stage is critical. Therefore, the proposed amendment does not purport to create an exception in municipal or county court for misdemeanor cases or in district court proceedings on behalf of the prosecution or for the defense of any criminal matter whatsoever.

As proposed, the amendment would require the written approval of the supervising attorney authorizing the student to appear without his presence in the same manner as the A.B.A. Model Rule. This would ensure the court that the state felt that it was being adequately and competently represented. It places the burden and responsibility for the performance of the student squarely upon the prosecuting attorney and not upon the court. It leaves the court free to treat the matter in the same manner as it would if it were being handled by a licensed attorney.

The proposed amendment does not extend the rule as an exception to the prohibition of the unauthorized practice of law. Rather, it permits eligible students to do nothing more than they are presently authorized to do.

As a practical matter personal supervision in court at a preliminary hearing adds little, if anything, to the state's presentation of its case at that stage of the proceedings. The student intern has prepared the file for the hearing; he has subpoenaed the witnesses; he has sought the advice and counsel of one or more attorneys in the office if a problem which he does not know how to handle presents itself; he has, in all likelihood, researched the applicable law and is prepared to cite case authority to the court, rather than relying upon the court's own general knowledge of the law and he is usually quite prepared to argue on the basis of specific authority the issues of concern or compellingly to argue that the issue should be reserved for the so-called "Rasmussen Hearing," if there be one.

The amendment is in accord with the intent and importance of the "Senior Practice Rule". Clearly the purposes of the "Senior Practice Rule" are:

1. To permit law students to make a significant contribution, quantitatively and qualitatively, to the civil and criminal justice system;
2. To provide the extra dimension of practical experience to the student's classroom theory;
3. To afford students as comprehensively as possible, the opportunity to function fully as an attorney assuming the responsibilities and confronting the issues as such;
4. To permit students to employ a whole range of abilities not previously called upon in law school;
5. To allow students to experience the fundamental components of the lawyer's role;
6. To afford students the opportunity of facing actual problems in fact development and organization;
7. To aid the student to become knowledgeable about the myriad of governmental, social welfare and legal agencies which can either hinder or help efforts to solve or at least ease root problems;

8. To provide a base upon which to prepare lawyers to represent the individual in society; and

9. To provide added governmental resources in delivering representation to all citizens within the rule of law.

The purpose and intent of the proposed amendment is to allow students appearing on behalf of the state in respect of felony and gross misdemeanor prosecutions to more fully achieve the intent of the rule without jeopardizing the state's interests or prejudicing any rights of any defendant or juvenile respondent.


The proposed amendment would permit eligible students to appear on behalf of the prosecution in municipal or county court without the in-court presence of the supervising attorney for the state after written approval has been given by the supervising attorney in order to handle not only preliminary hearings but also initial appearances and motions such as bail motions and motions challenging the jurisdiction of the court. This would increase the intern's exposure to the broad range of cases charged by the county attorney, experience with the bail setting process, exposure to the myriad of governmental, social welfare and legal agencies affecting a particular defendant, observation of the initial interaction between defense attorney and client, and experience of appearing in court in a different context than trial or preliminary hearing.

The amendment would also expressly permit eligible students to appear on behalf of the prosecution in all juvenile proceedings.

The theory of juvenile court is that the dispositive provisions in the juvenile code are rehabilitative rather than punitive. Coupling the rehabilitative concept with the more informal procedure of the juvenile court makes it an excellent place for a student intern to gain the complete trial experience not obtainable when handling felony matters for the prosecution. It is again important that the student assume full and complete

responsibility and that he be permitted to try the case upon written approval of the prosecuting attorney or his delegate.

Finally, while clarifying the role of students participating in felony, gross misdemeanor or juvenile prosecutions, the proposed amendment does not alter the present participation of students in defense clinical programs or misdemeanor prosecutions.


WILLIAM B. RANDALL
Ramsey County Attorney

APPENDIX I

CHART OF STATE STUDENT PRACTICE RULES
RE IN-COURT SUPERVISION

	I ^{3/}	II	III	IV	V
Arizona				R. II.3 ^{1/} p. 47 ^{2/}	
Arkansas		R. 2.B p. 51			
California					R. VI p. 56
Colorado	p. 58				
Connecticut			R. 42A(2)(d) p. 59		
Delaware				R. 2(b) (2)(c) p. 63	
Dist. Columbia		R. I(a) p. 63			
" "		R. I(b) p. 66/67			
Florida		R. II.B. p. 69			
Georgia					R. 9-401-2(c) p. 75
Idaho			R. D.3 p. 78		
Illinois					R. c(2)(ii) p. 81
Indiana			R. 3(b) p. 83		
Iowa					R. (1) p. 84
Kansas		R. II(c) p. 85			
Kentucky				R. (c) p. 89	

APPENDIX I - cont.

I	II	III	IV	V
Louisiana	R. 2(d) p. 91			
Maine	R. a(4) p. 97			
Maryland				R. (c)(ii) p. 98
Massachusetts	R. (3) p. 99			
Michigan			R. (2) p. 101	
Minnesota				p. 103
Mississippi				R. 8684-04 p. 104
Missouri		R. 13.01(b) p. 106		
Montana	NA			
Nebraska		R. II A.(1) p. 110		
New Hampshire	R. 23 p. 113			
New Jersey	p. 113			
New Mexico			R. 2 p. 114	
New York				R. (6)(b) p. 117
North Dakota		R. II.B p. 119		
Ohio		R. (B) p. 123		
Oklahoma			R. (c) p. 127	

APPENDIX I - cont.

	I	II	III	IV	V
Oregon		R. II.B p. 131			
Pennsylvania		R. A.(2) p. 134			
South Carolina		R. II.B p. 136			
South Dakota	R. 16-18- 25 p. 141				
Tennessee					R. 19.01 p. 142
Texas					R. II.A 1 p. 145
Washington				R. (3) p. 150	
West Virginia					R. II.B p. 152
Wisconsin					R. VI p. 157
Wyoming		R. II.B p. 159			

1/ R. stands for Rule provision with controlling language.

2/ p. stands for page in State Rules Permitting The Student Practice of Law: Comparisons and Comments, 2d Ed. (1973).

3/ I. Five (5) states do not condition the appearance in any way.

II. Eleven (11) states and the District of Columbia do not condition the appearance upon the in-court presence of a supervising attorney upon written approval by such attorney per the A.B.A. Model Rule.

III. Five (5) states do not condition the appearance upon the in-court presence of a supervising attorney where the presiding judge and in some instances the opposing counsel or defendant consents.

IV. Seven (7) states do not condition the appearance upon the in-court presence of a supervising attorney where the student appears in Misdemeanor cases and courts in other than the district court.

V. Twelve (12) states, including Minnesota, absolutely require the in-court presence of a supervising attorney.

STATE OF MINNESOTA

IN SUPREME COURT

COURT RULES ON CERTIFIED LAW STUDENTS

SUPREME COURT
FILED

SEP 5 1974

JOHN McCARTHY
CLERK

RULE 1. Limited Practice by Certified Law Students

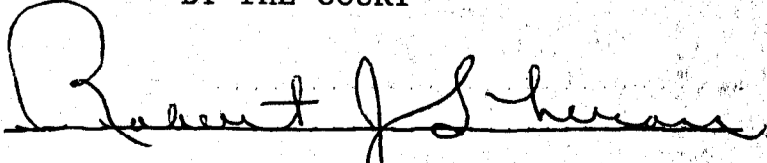
Any, eligible law student in a law school in this state accredited by The American Bar Association, may, upon written approval of the Supreme Court of Minnesota, interview, advise, negotiate, and appear in any court on behalf of any indigent person accused of crime, or on behalf of the prosecution, or may represent any indigent person in a civil action; provided, however, that the conduct of the case is under the supervision of a member of the State Bar of Minnesota. For purposes of this rule, an "eligible" law student is one who has completed, or is completing, the final two years of the law school curriculum, and who is identified as such during all proceedings.

Before any student shall be eligible to appear in court for or on behalf of any indigent person accused of crime, or on behalf of the prosecution, or represent any indigent person in a civil action, the Dean of the accredited law school of which he is a student shall file with the Supreme Court a list of names of the enrolled students who have been selected by the faculty to participate in the program. Upon written approval by the Supreme Court of a student so certified, and the filing of such written approval, or a certified copy thereof, with the district court wherein the law school is located, such approved student shall be, and is hereby, authorized to appear in any court of the State of Minnesota when under the direct supervision of a member of the State Bar of Minnesota, on behalf of such indigent persons accused of crime, or on behalf of the prosecution, or to represent indigent persons in any civil action as may be assigned to them. The expression "direct supervision" shall be construed to require the personal attendance of the supervising member of the bar during any trial, plea and sentence, or any other critical stage of any proceeding in or out of the court room; provided, however, that the supervising attorney may authorize a student to appear alone in all such proceedings other than the actual trial whenever the supervising attorney shall deem his personal presence unnecessary to insure proper supervision. Such authorization shall be made in writing and shall be available to the court upon request. In all events representation afforded pursuant to this rule must comply with minimal standards required by the State and Federal Constitutions.

The written approval of each student by the Supreme Court of Minnesota shall remain in force and effect for a period of twelve months from the date of filing unless withdrawn earlier. Upon application by the certified student, the Supreme Court may extend the privilege.

Dated: September 3, 1974.

BY THE COURT


Chief Justice

(This rule supersedes the rule dated June 27, 1967)