STATE OF MINNESOTA

IN SUPREME COURT

A-7
(Old File 46727)

HEARING ON PROPOSED STUDENT PRACTICE RULES

O R D E R

WHEREAS, it is proposed that, the Supreme Court adopt the attached Proposed Student Practice Rules,

WHEREAS, the Supreme Court wishes to hold a public hearing on this proposal,

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing on said proposal to adopt the attached Proposed Student Practice Rules be held before this Court in the Supreme Court, State Capitol Building, Saint Paul, Minnesota, on Friday, April 9, 1982, at 9 a.m.

IT IS FURTHER ORDERED that advance notice of the hearing be given by publication of this Order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that interested persons show cause, if any they have, why the proposed rules should or should not be adopted. All persons desiring to be heard shall file briefs or petitions setting forth their views and shall also notify the Clerk of the Supreme Court in writing on or before April 2, 1982, of their desire to be heard on the proposed rules. Ten copies of each brief, petition or letter should be supplied to the Clerk.

DATED: February 17 1982.

BY THE COURT

Chief Justice

PROPOSED RULE

Rule 1. - General Student Practice

1.01 Representation:

An eligible law student not enrolled in a law school clinical program may, under the supervision of a member of the bar, perform all functions that an attorney may perform in representing and appearing on behalf of any state, local, or other government unit or agency, or any indigent person in a civil action or who is accused of a crime, or a petty misdemeanor.

1.02 Eligible Law Students:

An eligible law student is one who:

(1) is duly enrolled at the time of original certification in a school of law in Minnesota approved by the American Bar Association;

(2) has completed at the time of original certification legal studies equivalent to at least two semesters of full-time study;

(3) has been certified by the state, local, or other government unit or agency, or organization or persons representing indigents as being a paid or unpaid intern working for said unit, agency, organization, or persons;

(4) has been certified by the dean or designee of the law school as being of good academic standing; and

(5) has been identified to and accepted by the client.

1.03 Certification:

The state, local, or other government unit or agency or organization or persons representing indigent clients shall submit in writing to the student's law school the student's name and a statement that

the student will be properly supervised under the provisions of this practice rule. The student's law school shall then certify the student's academic standing and file this certification with the Supreme Court for approval. Written notification of approval shall be provided to the law school. The certification shall remain in effect for twelve (12) months after the date filed. Law students may be recertified for additional twelve-month periods. Certification shall terminate sooner than twelve (12) months upon the occurrence of the following events:

(1) Certification is withdrawn by the unit, agency, organization, or person by mailing notice to that effect to the law student, the law school, and the Supreme Court along with the reason(s) for such withdrawal;

(2) Certification is terminated by the Supreme Court by mailing notice to that effect to the law student, the law school, and the unit, agency, organization or person along with the reason(s) for such termination;

(3) Certification shall terminate upon the student being placed on academic probation;

(4) The student does not take the first bar examination following his or her graduation, upon which the certification will terminate on the first day of the exam;

(5) The student takes but fails the bar examination, upon which the certification will terminate upon notice to the dean and the law student of such failure; or

(6) The student takes and passes the bar examination and is admitted to the bar of the court.

1.04 Supervisory Attorney:

The attorney who supervises a student shall:

(1) be a member of the bar of this court;

(2) assume personal professional responsibility and supervision for the student's work;

(3) assist the student to the extent necessary;

(4) sign all pleadings;

(5) appear with the student in all trials;

(6) appear with the student at all other proceedings unless the attorney deems his or her personal appearance unnecessary to assure proper supervision. This authorization shall be made in writing and shall be available to the judge or other official conducting the proceedings upon request.

1.05 Miscellaneous:

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

PROPOSED RULE

Rule 2. - Clinical Student Practice

2.01 Representation:

An eligible law student may, under the supervision of a member of the bar, perform all functions that an attorney may perform in representing and appearing on behalf of a client.

2.02 Eligible Law Students:

An eligible law student is one who:

(1) is duly enrolled at the time of original certification in a school of law in Minnesota approved by the American Bar Association;

(2) has completed at the time of original certification legal studies equivalent to at least two semesters of full-time study;

(3) is enrolled at the time of original certification in a law school clinical program;

(4) has been certified by the dean or designee of the law school as being of good academic standing; and

(5) has been identified to and accepted by the client.

2.03 Certification:

Certification of a student by the law school shall be filed with the Supreme Court for approval. Written notification of approval shall be provided the law school. The certification shall remain in effect for twelve (12) months after the date filed. Law students may be recertified for additional twelve-month periods. Certification shall terminate sooner than twelve (12) months upon the occurrence of the following events:

(1) Certification is withdrawn by the dean by mailing notice to that effect to the law student and the Supreme Court along with the reason(s) for such withdrawal:

(2) Certification is terminated by the Supreme Court by mailing a notice to that effect to the law student and to the dean along with the reason(s) for such termination;

(3) The student does not take the first bar examination following his or her graduation, upon which the certification will terminate on the first day of the exam;

(4) The student takes but fails in the bar examination, upon which the certification will terminate upon notice to the dean and the law student of such failure; or

(5) The student takes and passes the bar examination and is admitted to the bar of this court.

2.04 Supervisory Attorney:

The attorney who supervises a student shall:

(1) be a member of the bar of this court;

(2) assume personal professional responsibility and supervision for the student's work;

(3) assist the student to the extent necessary;

(4) sign all pleadings;

(5) appear with the student in all trials;

(6) appear with the student at all proceedings unless the attorney deems his or her personal appearance unncecessary to assure proper supervision. This authorization shall be made in writing and shall be available to the judge or other official conducting the proceeding upon request.

2.05 Miscellaneous:

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

STATE OF MINNESOTA

IN SUPREME COURT

File A-7
(Old File 46727)

In Re:

Hearing on Proposed
Student Practice Rules

Petition for
Amendment to
Proposed Rules

The undersigned, for the reasons stated in the accompanying letter, petitions the Court to amend the proposed rules as follows:

"1.04 Supervisory Attorney:

The attorney who supervises a student shall ...

(5) Appear with the student in all trials~~/~~, hearings and other court appearances;"

"2.04 Supervisory Attorney:

The attorney who supervises a student shall ...

(5) Appear with the student in all trials~~/~~, hearings and other court appearances;"

WIESE AND COX, LTD.

By Joanne Thatcher Swanson
Joanne Thatcher Swanson

2022 IDS Center
Minneapolis, MN 55402
Telephone: (612) 339-7531

WIESE AND COX, LTD.

ATTORNEYS AT LAW
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PAUL G. NEIMANN
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RICHARD J. JOHNSON
ROBERT J. LUKES
LOUIS L. AINSWORTH
DAVID P. JENDRZEJEK
ROBERT B. FERING
CURTIS D. SMITH
DIANE O. STOCKMAN
THOMAS P. MALONE
DAVE F. SENGER
CAROL A. SEELIG
GREGORY T. SANGALIS
JAMES N. VOELLER
JOANNE T. SWANSON
ROBERT C. KIEFFER
BETTY A. MORNINGSTAR

SUITE 235
5701 KENTUCKY AVENUE NORTH
CRYSTAL, MINNESOTA 55428
(612) 533-0147

SUITE 219
223 EAST LITTLE CANADA ROAD
ST. PAUL, MINNESOTA 55117
(612) 483-5613

March 15, 1982

The Honorable Justices
of the Supreme Court
State of Minnesota
State Capitol Building
St. Paul, MN 55101

Re: Proposed Student Practice Rules

Dear Chief Justice Amdahl and Associate Justices:

There are a number of justifications for the Student Practice Rule, chief among which, I believe, is to train attorneys to practice competently in the courts. The proposed changes in the rules would require the supervising attorney to be present at all court proceedings, however denominated, not only to "bail out" the student if he gets into trouble, but to critique the student's performance and assist the student in future appearances. This further would ensure full representation of the client, whether individual or agency.

As you are aware, many court proceedings are not called trials but are termed as "hearings". Several counties have taken the position that student attorneys may appear at "hearings" unsupervised even though, as in child support or paternity proceedings, the opposing party may ultimately be confined to prison based on the effects of the hearing. The awesome impact of the court plus the power of the county in an unsupervised student's hands, particularly where the opposing party is not represented, does not comport with my sense of justice.

This position and the proposed amendments to the Proposed Student Practice Rules have the unanimous endorsement of the Governing Council of the Family Law Section of the Hennepin County Bar Association.

Thank you for your consideration.

Respectfully Submitted,

Joanne Thatcher Swanson

Joanne Thatcher Swanson

/ik

JOSEPH L. ABRAHAMSON
ATTORNEY AT LAW
SHELARD PLAZA, SUITE 460
MINNEAPOLIS, MINNESOTA 55426

(612) 544-1521

JOSEPH L. ABRAHAMSON
A. CRAIG ABRAHAMSON

March 16, 1982

1209-III-C

Mr. John McCarthy
Clerk, Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55155

Re: Proposed Student Practice Rules
Court File A-7

Dear Mr. McCarthy:

The undersigned is an attorney, licensed to practice in the Courts of the State of Minnesota. It is my honor to address the above-referenced matter.

I believe the proposed Rule 1.02 defining "Eligible Student" is deficient in failing to require that the student have successfully completed a professional responsibility course in an approved law school. I believe such a requirement essential to the protection of clients who may be represented and to the integrity of our Courts. Further, such a requirement will enhance the willingness of licensed attorneys to undertake the responsibilities to be imposed under proposed Rule 1.04(a).

I believe it would also be beneficial to require eligible students to have completed a course on civil practice and procedure. I also note that some other states require student interns to pass a brief oral examination.

Thank you for considering my remarks. I believe a student intern program will greatly benefit our Court system. Law school alone, without hands-on experience, is insufficient in these times to prepare the new lawyers coming into our profession.

Sincerely,

A. Craig Abrahamson

ACA:ss

RESPOND TO:

☒ *DULUTH OFFICE*
302 ORDEAN BUILDING
DULUTH, MINNESOTA 55802
(218) 722-5390

☐ *WEST DULUTH OFFICE*
5601 RAMSEY STREET
DULUTH, MINNESOTA 55807
(218) 628-1055

☐ *IRON RANGE OFFICE*
204 CHESTNUT STREET
VIRGINIA, MINNESOTA 55792
(218) 749-3270

☐ *BRAINERD OFFICE*
2027 SOUTH SIXTH
BRAINERD, MINNESOTA 56401
(218) 829-1701

☐ *GRAND RAPIDS OFFICE*
5 NORTHEAST FIFTH STREET
GRAND RAPIDS, MINNESOTA 55744
(218) 326-6290

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Clara H. Kalscheur
Kent A. Carlson

March 8, 1982

John McCarthy
Clerk of the Minnesota
Supreme Court
State Capitol Building
St. Paul, MN 55155

A-7
(Old File 46727)

Re: Proposed Student Practice Rule

Dear Mr. McCarthy:

The proposed student practice rule continues the limitation of eligible law students to those who are enrolled in a school of law in Minnesota. During the past several years I have practiced with Legal Aid offices in Little Falls and Duluth, Minnesota. Despite efforts to obtain student interns from Minnesota law schools, we have been unsuccessful. Apparently most students wish to conduct any clinical program in the Twin Cities area. I have, however, had several law students from out-of-state schools approved by the ABA who have been interested in student practice but have been unable to do so because of the limitation to Minnesota law schools. I ask that the Court consider amending the proposed rule to provide that any student duly enrolled in a school of law approved by the American Bar Association can be eligible for this program.

Continuing funding cutbacks in Legal Aid programs forces us to look for help from whatever source possible. Such a change would provide us assistance in obtaining much needed help for indigent persons with civil problems.

I do not wish to be heard orally on this matter. Thank you for considering this suggestion.

Sincerely,

David L. Ramp

David L. Ramp
Attorney at Law

DLR:st

Enclosures (10 copies)

UNIVERSITY OF MINNESOTA
TWIN CITIES

Legal Aid Clinic
Law School
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-9980

March 12, 1982

A-7
(Old File 46727)

John McCarthy, Clerk
Minnesota Supreme Court
State Capitol Building
St. Paul, MN 55155

RE: Hearing on Proposed Student Practice Rules

Dear Mr. McCarthy:

I respectfully request the opportunity to speak at the hearing scheduled for April 9, 1982, on the proposed student practice rule. I will submit my written statement on behalf of the law school later this month.

If there is anything else I should know or need to submit, would you please be so kind as to call me? I have tried to reach you by phone unsuccessfully several times to assure myself that all the appropriate steps are being taken.

Finally, has anyone else requested to speak at the hearing? I would like to know so we can plan our presentation properly.

Thank you very much for your assistance in this matter.

Sincerely yours,

Kathryn J. Sedo

Kathryn J. Sedo
Clinical Professor

KJS/MJP

UNIVERSITY OF MINNESOTA
TWIN CITIES

Legal Aid Clinic
Law School
190 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-9980

April 2, 1982

The Supreme Court
State of Minnesota
State Capitol Building
St. Paul, Minnesota 55155

RE: Proposed Student Practice Rules

A-7

Dear Sirs and Madam:

Attached is my statement in support of the Proposed Student Practice Rules. I look forward to answering any questions you might have at the hearing on April 9, 1982.

Sincerely,

Kathryn J. Sedo
Clinical Professor

KJS/sjr

cc: Dean Robert A. Stein

STATEMENT IN SUPPORT OF
PROPOSED STUDENT PRACTICE RULES

I. Introduction

The University of Minnesota Law School clinical program strongly urges the adoption of the proposed Student Practice Rules. We believe that the proposed Student Practice Rules embody important changes which will enable us to offer a more complete range of clinical experiences for our students and therefore improve the quality of their education. This in turn will improve the level of competence of our graduates.

II. University of Minnesota Clinical Program

In 1967, the Minnesota Supreme Court first adopted a Student Practice Rule for eligible law students. In 1969, the first clinical course with student representation of clients was offered at the University of Minnesota Law School. Since that time, the number and variety of this type of course has grown consistently. The present clinical courses offered at the law school are as follows:

1. Environmental Law;
2. Federal Income Tax;
3. Juvenile Law;
4. Legal Aid Clinic;
5. Legal Assistance to Minnesota Prisoners (LAMP);
6. Misdemeanor Defense;
7. Misdemeanor Prosecution;
8. Welfare Law.

The law school presently employs five full-time instructors who provide direct supervision to the students enrolled in these clinical courses. Two adjunct professors provide additional supervision in the Welfare and Environmental Clinics. Several

other faculty members devote a portion of their time to clinical duties. Also, two instructors who are part of the public defender's office supervise students in the LAMP Program. One wing of the law school on the first floor is completely devoted to the clinical program. Offices for the instructors and student participants are provided. Support staff and office supplies are also provided by the law school. In the past four years the average enrollment for all the clinics listed has been approximately 145 students (there is some duplication of enrollment). With a student body of approximately 750 students, this comprises a large proportion of all students enrolled at the University.

III. Rationale for Proposed Changes in the Student Practice Rule

The main changes that would occur as a result of the adoption of these proposed rules are as follows:

1. The adoption of two rules would separate out the clinical student practice from other student representation;
2. In both rules, students would now be allowed to practice at the appellate level;
3. For clinical students only, the indigency requirement would be removed; and,
4. The new rules would make clearer student eligibility and the certification process.

We support all these changes for the following reasons:

1. The type of training and supervision that a student receives in a clinical program is vastly different than that received while working in a prosecutor's office or public defender's office. The main focus of the clinical program is education, while in a prosecutor or public defender's office providing service is the primary goal. Therefore, we believe it is important that a distinction be made between the two types of student practice and feel that the separation of the one present rule into two rules is appropriate.

The need for this distinction was also necessitated by the desire to remove the indigency requirement for clinical programs but not in other instances. The rationale for this change is discussed below.

2. The proposed rules would allow students to appear at the appellate court level. It is our understanding that a new intermediate appellate court has been proposed and will be on the ballot this fall. It would be most appropriate for students to be able to practice at that level, and would certainly further their education. Once a student has invested a substantial amount of time and energy on a case, it seems appropriate, if he or she is properly supervised and prepared, to allow him or her to handle the case until its completion. Our experience is that students are very concientious in their preparation, partly because they have fewer cases to work on than practicing attorneys, and partly because they are graded for their effort. Certainly, a student at the University who is unprepared or unskilled would not be permitted to appear at the appellate level.

3. Probably the most important change, from the clinical program's point of view, is the removal of the indigency requirement for students practicing in a clinical setting. We believe strongly that this would improve the educational quality of our program. The reasons for this belief are as follows:

a. In the past several years, much attention has been directed to the training of law students to be advocates. Within the judiciary, comments by Chief Justice Warren E. Burger and other jurists led to the creation of a Committee to Consider Standards for Admission to Practice in the Federal Courts, chaired by Chief Judge Devitt. (The King Committee is now implementing their recommendations.) Within the ranks of the organized bar, the American Bar Association Section of Legal Education and Admissions to the Bar created a Special Committee for the Study of Legal Education which published the so called Cramton Report and recommendations based on the report.

These Committee Reports all request more practical training of students in advocacy while in law schools. It seems clear that both the bar and the judiciary are concerned with the competency of the lawyers that are graduated from American law schools, and in particular their competency as advocates. The clinical programs at the various law schools contribute importantly to the training of students to be competent advocates during their law school education. It is our belief that the limitation to representing only indigent clients hampers our ability to provide the broadest possible range of practical training for our students. Particularly in the civil area, our students are allowed to practice in only one substantive area, that of poverty law. While this is by no means an unimportant area of law, many other areas are equally important. The proposed change would enable us to provide a broader range of educational experiences for our students, thereby increasing their skills. Also, a larger number of students would be attracted to the clinical program if its substantive areas were broadened. Many students are not interested in practicing poverty law, and therefore they do not enroll in the available clinical programs.

b. At the present time our law school offers an Environmental Law Clinic. It is the first public law clinic which we have offered. In the Environmental Law Clinic the most appropriate clients, given the public law nature of the clinic, would be environmental groups and citizen organizations rather than private persons. However, this is not possible under the present rule. Representation of government agencies is now being done. The selection of cases and the participation of the student is restricted because of this limitation. The proposed change would allow our public law clinic to represent public interest groups, thereby vastly improving the quality of our students' education and experience.

c. The proposed rule would bring the clinical student practice rule into alignment with the present Federal and Bankruptcy Court Rules in Minnesota. Both of them allow representation of non-indigent clients as long as the other criteria of the rules are met. This would allow us a more uniform selection of cases without regard to forum.

d. As mentioned earlier, it is important to keep in mind that the main focus in a clinical program is that of education. Although service to clients is an important component of our mission, it is not our primary purpose. Given the teaching nature of our program, it is impossible for us to handle very many cases in any event. This has two implications as far as this rule is concerned. The first is that it is unlikely that the change in the rule would have any significant impact on the private bar in Minneosta. We do not handle enough cases to harm their business. Second, it is also unlikely that the change in the rule would have any significant impact on the service we now provide to indigent clients. However, it may well be true that our service to the so-called "working poor" would be increased. These are the people who make too much money to qualify for legal services, but are too poor to afford the services of most attorneys. They would be eligible for our services under this new rule.

4. Finally, the new proposed rules set forth clearly the certification process, who is eligible, and the time frame for certification. This clarification of the language of the old rule will remove any doubts and confusions as to the applicability of the rule.

IV. Conclusion

For all of the reasons set forth above, we in the clinical program at the University of Minnesota Law School respectfully request that the Court adopt the proposed Student Practice Rules. We believe it would be in the best interests of the students, as well as the practicing bar and judiciary, to support these changes. This rule will enable us to improve our program and provide much needed skills training for our students.

Dated: April 2, 1982

Respectfully submitted,

Kathryn J. Sedo
Clinical Professor
University of Minnesota Law School
229-19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-9980

WILLIAM MITCHELL
College of Law

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MELVIN B. GOLDBERG, Associate Dean
ROBERT E. OLIPHANT, Associate Dean
MICHAEL A. CARLSON, Controller
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RUSSEL T. LUND
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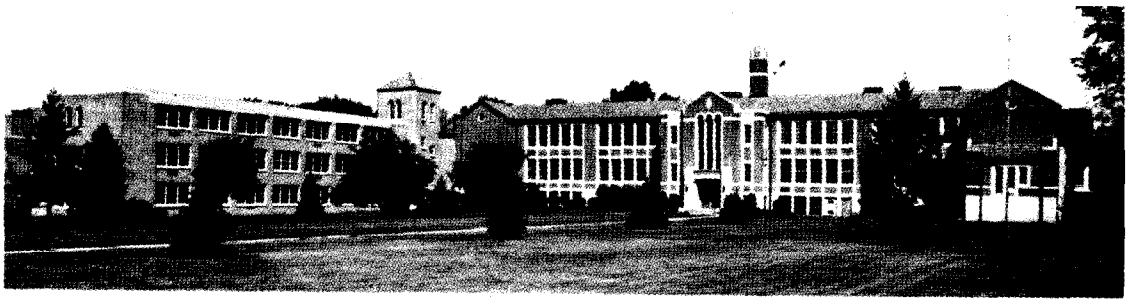

875 SUMMIT AVENUE □ ST. PAUL, MINNESOTA 55105 □ (612) 227-9171

April 6, 1982

John McCarthy
Clerk of the Supreme Court
Minnesota State Capitol
St. Paul, MN 55155

A-7

Dear John:

Enclosed please find ten copies of the statement in support of the Proposed Student Practice Rules. I would appreciate your distributing them to the Court in preparation for the hearing on Friday. I will be present with Dean Geoffrey Peters and perhaps Dean Melvin Goldberg as well. I would request a few minutes for one of us to be heard.

Thank you very much.

Sincerely,

Phebe Haugen

Phebe S. Haugen
Professor of Law

Acting Director-
William Mitchell Law Clinic

PSH:ad
Encls.: As stated above.

A-7

STATEMENT IN SUPPORT OF THE
PROPOSED STUDENT PRACTICE RULES

This Court's adoption in 1967 of the first Student Practice Rule enabled law schools in Minnesota to begin providing their students with clinical experience. In the spring of 1973, the first clinical course was taught at William Mitchell College of Law by Professor Robert E. Oliphant, who is now an associate dean at the College. Dean Oliphant supervised students in the representation of indigent clients with general civil and criminal law problems. With considerable faculty support, a full clinical program at William Mitchell was implemented for the next year. Dean Douglas R. Heidenreich appointed Professor Roger S. Haydock as clinical director and hired Rosalie E. Wahl as the second full-time clinical professor. That first year the William Mitchell Law Clinic consisted of four courses: a general civil clinic, a misdemeanor clinic, a criminal appeals clinic, and a consumer law clinic. The following spring, with the addition of the first adjunct clinical professors, clinics were added in the felony law, civil rights, and welfare areas. In following semesters the clinical program was further expanded and refined. At present, there are 14 separate clinics taught at William Mitchell, with a staff consisting of four full-time faculty members who spend at least half their teaching time teaching clinic courses; another five full-time faculty members who assist with clinic courses; eight adjunct clinical professors teaching other clinics; ten instructors who either teach or assist with parts of various clinic courses; and 18 practicing attorneys who help supervise law students and assist the professors, adjuncts, and instructors with the fieldwork. All of the 45 members of the professional instructional staff are compensated by William Mitchell.

The clinic has proved to be a vital and exciting component in the education of approximately 300 students each year at William Mitchell. At a time when the Chief Justice of the United States Supreme Court and others have called into serious question the competence of lawyers to practice in the courts of our country, clinical education provides a critical service both in educating law students to ensure their competence to practice in court, and in providing legal services for many who would otherwise not have them. While this Court's foresight in adopting the original Student Practice Rule enabled clinical education to begin in Minnesota law schools, we respectfully urge that the new proposed rules be adopted in order for us to fully meet the increasing challenges to legal education.

While most of the changes in the proposed rules are designed to clarify and simplify the procedures by which certification of students is accomplished, there is one significant change which we are requesting. That change appears in Rule 2.01 of the Clinical Student Practice proposed rule. That rule

permits eligible law students, under the supervision of a member of the bar, to perform all functions that an attorney may perform in representing and appearing on behalf of a client. The effect of this rule of course is to permit the law school clinics to represent fee-paying clients. It should be noted that only students enrolled in a law school clinical program could represent fee-paying clients under the proposed rules. It is our strong belief that to adequately train law students we must allow them to do all that private lawyers do. While representing indigent clients is an invaluable learning experience for students, it nonetheless limits them to representation of clients only in certain areas with certain kinds of problems. By adopting the proposed Clinical Student Practice Rule, which in effect removes the indigency requirement, this Court would allow us to develop clinics in a broader range of areas, thereby helping students learn to deal competently with many more of the kinds of legal problems facing practitioners today.

Two specific concerns have been raised with respect to the implementation of this rule. The first is the fear that such programs would take clients away from the practicing bar. There are essentially two responses to this concern. Firstly, inasmuch as students must devote considerable time and attention to each clinic case, the number of clients that can be handled in such clinical courses is very small. Secondly, the majority of clients who would be served by the anticipated new clinic offerings would be paying reduced fees. They are those who are not poor enough to qualify for legal assistance but not affluent enough to hire private lawyers. The argument was made when legal services programs were first implemented that those programs would take clients away from the private bar, and that has not proved true. We feel strongly that it would not prove true in this instance either. The second major area of concern that has been expressed about this rule is the fear that it would result in a reduction in our services to indigent clients. William Mitchell considers it a strong part of its responsibility to the community to continue active representation of indigent members of that community.

An additional, highly practical reason why we strongly urge the adoption by this Court of the proposed rules with the provision contained in Rule 2.01 is that we are losing sources of important funding for our clinical program. While we intend to continue to seek other sources of funding, we are convinced that it is going to be much more difficult to obtain funds under present economic conditions than it has been in the past. Clinical education is very expensive. In order to maintain the high quality of supervision William Mitchell has always maintained in the past, we will either have to find other sources of funds or we will be forced to curtail valuable clinical programs. For this reason we strongly support a rule which allows us to charge fees to help defray these costs.

It is our belief that clinical education is critically needed and invaluable to every law student. New clinic offerings in a broader range of areas will draw and educate more students. We strongly urge this Court to continue to assist us in this venture by adopting the proposed Student Practice Rules.

Respectfully submitted,

Geoffrey W. Peters
Dean

Phebe S. Haugen
Professor of Law

PSH:ad

A-7

Statement of
Stephen B. Young, Dean
Hamline University School of Law

regarding

Proposed Student Practice Rules

As a new dean committed to achieving excellence in legal education I respectfully urge adoption of the proposed student practice rules.

The rules will place Minnesota in the van of efforts to improve legal education. Even the most passing exposure to current debates over legal education reveals a worry among the bench and bar and within the ranks of law teachers that the Langdellian model of university based legal education has become too divorced from the needs of the community. While law is more than a trade, it is still less than philosophy and must be always rooted in prudential reasoning and practical considerations. This aspect of legal education can best be achieved through skills training.

We need only recall the wisdom of O.W. Holmes, Jr. that the life spirit of the law was the coherence given by experience, not the first principles of an abstract logic.

Therefore, lawyers must be given experience as well as trained in analytic skills. Law schools need to add to the second and third years of their curriculums opportunites for students to learn through doing, through use of the integrative faculities of the mind which come to play when practical results are demanded.

In recent years the incorporation of clinical approaches into legal education has made some progress but less than its proponents have desired. Judges and lawyers concerned over the competence of the trial bar still feel that more skills training is desirable in law school curricula.

The growth of skills training has been hampered by two primary factors: one, clinical programs have focused on the legal needs of the indigent and on the narrow tasks of criminal defense. The more sophisticated problems of commercial law, taxation, public interst disputes, or administrative regulation have been largely off-limits to student practitioners. Our Public Interest Advocacy Clinic has been limited in its work for this reason. Two, skills training is expensive because of the low student-teacher ratios needed in this form of instruction.

The proposed rules will help Minnesota's law schools overcome these two difficulties. First, students can be given a variety of practical experience under the new rules. In this way law schools and the bar can grow closer together as both participate in legal education. Second, clinics will be able to represent non-indigents and thus can be compensated for the cost of providing legal services, opening up new sources of finance for legal education.

With law school tuitions growing ever higher in private schools and with federal loan programs for professional education becoming increasingly problematic, new ways to pay for good legal training must be found. Those responsible for the quality of justice in our state have a special obligation to assist law

schools in insuring continued financial support for legal education.

If there be too many lawyers, the market will work an attrition in their numbers but our form of free society demands that we continually well train a cadre of lawyers able and ready to provide leadership and serve community purposes. The proposed rules will help us at Hamline do just that.

mjd

4/5/82

The conclusion of the attached article in The Hennepin Lawyer shows how clinical work can contribute as well to the ethical component of legal education.

ETHICS IN LEGA

BY DEAN STEPHEN B. YOUNG

Since the national scandal of Watergate wherein so many lawyers were found keeping the public from a truthful understanding of the caliber and quality of our national leadership, concern for ethical conduct in the legal profession has become pronounced. Courses on professional responsibility are now required and a separate examination has been devised to test those who would practice law on their sensitivities to the duties and obligations inherent in rendering legal services.

However, increased concern with ethics in the law also reflects a deeper worry over the profession's vulnerability. Although lawyers are more numerous than before and even perhaps better trained than ever, one senses in bar leadership and in the ranks of law teachers a certain loss of vision about the profession. Growth in the bar has not brought increased respect for the legal profession. A narrow, careerist professionalism has triumphed over the notion of the lawyer as someone bound to a special obligation for elevating the civic tone of the society in which we live. We thus find Harvard Law School, the historic model for American law schools, sharply criticized for training more corporate attorneys than persons seeking non-traditional careers. President Carter attacked lawyers as a quintessential "special interest", selfish and out of touch with the public good. The increased concern for ethics is perhaps an inchoate way for the profession to redefine the office it should perform in our system of rule by private right and public adjustment of those rights.

Relying on ethics in the legal profession to win increased statute for lawyers calls for more than compliance with the code of professional responsibility. The word "ethics" is a cognate of the word "ethos" which denotes the environment in which an individual finds himself and the environment shaping the individual's way of looking at the world. Aristotle wrote (*Ethics*, 1103 a-14, b1) that moral goodness is the result of habit which arises from character and custom. Both character and custom are derived from the same Greek word - *eth-*. Thus, Aristotle advised us to become just by performing just acts, temperate by performing temperate ones and brave by performing brave ones. The question of ethics becomes the question of making moral choices and living by them. Ethics is something more than the trite stipulations contained in a moral code; it is a vision of the connecting tissue with which the community surrounds the individual and ties that individual to a sense of purposive movement in human affairs. The ethical person is one capable of making moral choices with a view towards ends larger than his or her immediate pleasures or infatuations.

O. W. Holmes, Jr. frequently argued that lawyers should have a larger sense of calling than acceptable service of clients. The lawyer of stature, said Holmes "... has learned that he cannot set himself over against the universe as a rival god, to criticize it, or to shake his fists at the skies, but that his meaning is its meaning, his only worth is as a part of it, as a humble instrument of the universal power." One who has learned to accept a place in the whole is an ethical person.

On another occasion Holmes asked rhetorically "How can the laborious study of a dry and technical system, the greedy watch for clients and practise of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?" Holmes then throws the answer back on us: "If a man has the soul of Sancho Panza, the world to him will be Sancho Panza's world; but if he has the soul of an idealist, he will make, I do not say find, his world ideal." The key to professional pride for Holmes was to accept on faith one's meaningful place in the cosmic scheme and so to be " ... not merely a necessary but a willing instrument in working out the inscrutable end."

A Place for Vocation

The ethical lawyer, therefore, is one who has transcended his or her selfish desires and acquired a sense of vocation. Vocation is an appropriate word to use for lawyers because, on one hand, it embraces the concept of a skill which can be mastered, a trade which can be applied, in order to bring benefit to others, and, on the other, it evokes a theological conception that one's calling is not merely a job but part of a larger scheme of benefit for a greater number, a conception fitting the lawyer's role as an officer of the court.

The notion of vocation urges us to think of each undertaking as an office or a station, a role in society to which we must be faithful, at times overcoming deeply felt personal prejudices in order to do so. Under this notion, the self becomes subsumed within a larger whole, a submission adding personal meaning to one's life because the experience of vocation merges something concrete - the reality of our own strivings and abilities - with something abstract - a set of moral principles. One who feels called to a vocation gains an inner power to experience personal integrity, to sense mastery over circumstances and to avoid hypocrisy. Should lawyers feel this way about themselves, the profession would be more than a trade.

I think the experience of vocation comes from looking into the full intensity of one's loneliness and one's complete self and then, only after that, finding a conviction that one's willfulness is part of the whole and not its enemy. Holmes described this process of discovery as the source of mastery in life. "Only when you have worked alone, when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will then only will you have achieved."

The experience of vocation also permits one to avoid both a cynical

resignation in the face of a corrupt world and the hostile and intolerant demand that the world conform to one's principles. The acknowledgement of vocation is reformatory rather than revolutionary, an attitude respectful of the rule of law.

One's engagement to a vocation cannot be pro forma adherence to a limited set of rules. Nor is the experience of vocation one where superficial compliance with technicalities is enough to provide a feeling that one has acted in good conscience. Transcendence and the achievement of character require more than obedience to the letter of the rules.

Max Weber, in defending a regime of competitive politics to replace imperial autocracy in Germany, argued that a sense of vocation was needed in those who held power. Those to be trusted with steering the wheel of history, said Weber, needed passion, a feeling of responsibility and a sense of proportion. They needed emotion to embrace a cause and detachment to let realities work upon them while retaining inner concentration and calmness in reflecting upon the purposes of that cause.

A focus upon vocation is appropriate for lawyers because they are empowered to act for others. At least in the common law tradition, the lawyer must think in structural terms of how this or that act will relate to a set of policy issues and human interests in the surrounding society.

The final draft report of the ABA Commission on Evaluation of Professional Standards, which contains new model rules for professional conduct, recognizes this presentation of the lawyering function as vocational. Robert Kutak, Chairman of the Commission, in his introduction to the draft goes so far as to refer to lawyers as "... daily ministers of the judicial process." The draft then gives lawyers 5 roles to play: advisor, advocate, negotiator, intermediary and evaluator. In each instance the lawyer is placed in a position to influence for better or worse the lives of others. Experiencing a sense of vocation in the sense used here would permit the lawyer to meet the responsibilities of these different lawyering functions with assurance and without inner anxiety.

At the same time the proposed model rules propose that a lawyer should be more than the cynical agent of whoever chooses to pay for his or her services. Again, the notion of a vocation can provide a guide to professional behavior. One without a sense of vocation will do what is necessary to achieve personal ends and will, through rationalization or tolerance of cognitive dissidence, place out of mind the consequences of his or her other activities. Such a professional will easily fall into unethical conduct out of an inability to distance self-interest and the seeking of mean ends properly from the task at hand.

But to work with full appreciation of one's selfishness *and* with a transcendent end in view at the same time permits a joyful affirmance of one's self in one's work.

Developing a Capacity for Vocation

Those able to respond to a calling and experience vocation have character. They can become the leaders and heroes Weber feared would be swept away by the bureaucracy and rational conformity demanded by industrial society. Aristotle, in the *Poetics*, defined character as the ability to perceive and make moral choices. In drama, character is that which reveals moral purpose, showing what kind of things a man chooses or avoids. The issue for legal educators, then, is how are we to develop the character of our students so that they may experience the law as a vocation.

First, it is necessary intellectually to elaborate in the law school curriculum a scheme of things within which the law is found. We may again usefully recall the advice of Holmes that "... the remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable purpose, a hint of the universal law." Holmes felt that theory was the most important part of the dogma of the law, as "... the architect is the most important man who takes part in the building of a house." Holmes argued that the study of law led inexorably to anthropology, economics, political science, ethics, "... and thus by several paths to your final view of life."

This approach to legal education is difficult to achieve under the notions of positive law jurisprudence which has shaped the modern law school. Beginning in Harvard in 1870 with Christopher Columbus Langdell, James Barr Ames and John Chipman Gray, a curriculum was assembled to train students primarily in the deductive analysis known as "thinking like a lawyer" which involved the application of known rules to facts and the discrimination between patterns of facts and different possible rules. Law was isolated from society and studied as a science. The focus of scholarship was increasingly on the fineness and the sophistication of the distinctions to be drawn. The vision of Holmes was ignored. Since then the notion of what a law school might be has been inward, circling evermore rapidly within a fixed circumference of rational meaning.

In recent years, the demand that legal education become more socially and morally relevant has been heard. Courses have been proposed as Holmes once advocated linking law to other disciplines. However, a great danger is run by these proposals which arise out of frustration with traditional legal education in that reinvigorating legal education by providing a wider range of topics to study may lose the intellectual rigor of traditional legal analysis. Therefore, it is important to find a guiding jurisprudence which tolerates traditional positive law analysis while it encourages law students to understand that the rules of positive law as established by a sovereign are designed to achieve some end and that those ends too are fair game for critical reflection by lawyers. We are now attempting to do this at the Hamline University School of Law.

(continued on page 27)

STEPHEN B. YOUNG received his B.A. degree from Harvard College and his J.D. degree, cum laude, from Harvard University School of Law. After four years in the private practice of law with the New York City law firm of Simpson, Thacher and Bartlett, Young was named assistant dean for student affairs at Harvard University School of Law. He is currently Dean of Hamline University School of Law.

LEGAL EDUCATION (CONTINUED)

Second, law schools must make use of rules. Rule formalism plays an important role in shaping character because the existence of rules creates the opportunity of forcing moral choice. Once notice is given of a rule we may fairly expect that individuals can be left to their own will to obey the rule or not, and so to develop the self-discipline necessary for adherence to the rules set by others. In that development lies the emergence of character. During the last two decades of progressive reform in education, the importance of rule formalism for the shaping of personal character has been ignored. Many in authority have instead sought substantive justice where the "right" outcome is created for people found to be deserving. For example, our conception of property has moved from a rights concept to one of fluid entitlements determined by the aspirations of those to be entitled. A fascination with substantive justice and with the equity of outcomes may for some jurists provide a closer approximation of a fixed scheme of justice than does a structure of formal rules and individual responsibility. But placing emphasis on substantive justice minimizes both the role to be played in society by free moral agents and the responsibilities of individuals who in the last analysis must achieve justice. The posture taken by those who stress substantive justice above all else is more one of telling people what they must do in particular cases rather than of leaving any outcome to the result of their own deliberations.

Third, in order to equip students with the ability to accept rule formalism, the self-images which students have of themselves must be validated. Individuals open to vocation must possess the courage to accept the obligations inherent in responsibility. Rules assign functions and create responsibility. People need courage to live by rules and to recognize that rules, though they may be awkward or an imposition, are not in any sense a necessary denigration of one's worth as an individual. However, this may happen in some instances. Out of psychological necessity and lack of self-esteem a weak person can become so completely enthralled by the ends of another that autonomous moral judgment has been abandoned and the individual has become nothing but the mechanical extension of that other. Here the sense of vocation has been lost and we have returned to an arena where mechanical achievement is valued alone. The individual has lost both ethics and vocation. It is only the strong person who can become the agent of a higher purpose and internalize that higher purpose into a reflective and critical mind.

Rules can be followed out of character where personal commitment to higher ends remains vital or they can be followed out of more slavish instincts seeking immediate and tangible rewards, to avoid punishment or to curry favor with those in power. Those who take the latter course are the Sancho Panza's of the profession.

Skills courses in law school are an effective tool for building student self-confidence for they allow students to integrate learning with decision-making. In this process, judgment is refined and character molded.

The process of training students to be ethical attorneys is subtle, complex and not clearly understood. But the task to so train the lawyers of the future must be undertaken by law schools all the same. ■

The Hennepin County Bar Association
Invites you to a
Bar Memorial Session
honoring the deceased members of the Bar of this year
at a Special Session of the full Benches
of the Hennepin County District, Municipal and Probate Courts
on Wednesday, the twenty-eighth of April
nineteen hundred and eighty-two
at nine o'clock a.m.
Hennepin County Government Center
County Commissioners Office
24th Floor

Memorial Booklet will be permanently filed in the archives of the Court

Honored Speaker, Justice Rosalie Wahl

Informal coffee hour following

Statement of
David M. Cobin, Professor
Director, Lawyering Skills Program
Hamline University School of Law

regarding

Proposed Student Practice Rules

Hamline University School of Law endorses the proposed Student Practice Rule revisions and strongly urges their adoption.

The proposed revisions make two important changes affecting clinical legal education: Proposed Rule 2.01 broadens the scope of practice to include all clients and eliminates the current rule's restrictive application to trial courts only. These revisions reflect the growing significance of clinical legal education in law school curricula and increasing sophistication of clinical programs and the student training they provide.

SIGNIFICANCE OF CLINICAL LEGAL EDUCATION

In 1967, the time the current Student Practice Rule was adopted, clinical courses involving student representation of actual clients were not available in Minnesota law schools. In 1970, on a national level, only fourteen subjects in the law school curriculum were the subject of clinics. Clinical Legal Education --Report of the Association of American Law Schools-American Bar Association Committee on Guidelines for Clinical Legal Education, at 7 (hereinafter referred to as AALS-ABA Report). By

1979, however, fifty-nine subject areas were involved in clinical fieldwork nationally and nearly every law school in the country provided some clinical fieldwork opportunities. Id.

The tremendous growth in the number and type of clinical legal courses accompanied an increasing appreciation for the value of clinical methods in teaching the basic competencies required by the lawyer-client relationship, the applicability of these competency requirements to virtually all areas of legal study, and the usefulness of clinical courses for integrating subjects generally taught in discreet courses. See ASLS-ABA Report at 6 and 11.

Hamline University School of Law currently provides fieldwork opportunities in our clinical program in a wide-range of practice settings through either an in-house clinic or a field placement with a law firm or government agency. Limitations in the current Student Practice Rule present artificial limitations on the educational value of these clinical opportunities. For example, students enrolled in our Public Interest Advocacy Clinic have represented voluntary associations in hearings before administrative bodies. Should such representation require court action, our students could not provide that required representation unless the voluntary associations were considered "indigent persons" under the current rule. Furthermore, students placed with private

law firms are frequently limited to non-court skills training because they are assigned to non-indigent clients. These limitations are imposed by the Student Practice Rule not the unwillingness of attorney-supervisors to provide trial skills experiences. They run counter to the need that leading jurists, including Chief Justice Burger and Chief Judge Devitt, have perceived for increased trial skills training and they subvert the recognized objective of clinical programs--education. See AALS-ABA Report at 14 and 47-48.

SOPHISTICATION OF CLINICAL PROGRAMS

Great strides have been made since adoption of the current Student Practice Rule in developing a lawyering skills curriculum and in training clinical instructors. Enclosed is a listing of courses in Hamline Law School's Lawyering Skills Program. It includes the availability of eight credits in simulation courses teaching trial skills as well as many other courses in related practice areas. Instructors in these courses include full-time faculty, trial practitioners and judges, all with extensive trial and teaching experience. Many of these instructors have completed National Institute of Trial Advocacy teacher training programs. Furthermore, the field supervisors in our field placement program now average approximately five years of supervisory experience. Moreover, both simulation instructors and field supervisors have the guidelines for instruction and

supervision provided by the American Association of Law Schools and American Bar Association in its report on clinical legal education.

CONCLUSION

The proposed Student Practice Rule revisions would increase the value of clinical legal education in Minnesota law schools, and consequently benefit students' future clientele, the practicing bar, and the judiciary. The proposed changes are justified by developments in clinical legal education since the adoption of the present rules fifteen years ago. We at Hamline University School of Law strongly urge their adoption.

David M. Cobin

DAVID M. COBIN Director,
Lawyering Skills Program

DMC:gs

HAMLINE UNIVERSITY SCHOOL OF LAW

LAWYERING SKILLS PROGRAM

	CREDITS
First Year	
Legal Research & Writing*	3
Appellate Advocacy*	2
Basic Electives	
Evidence	4
Lawyering Process	4
Professional Responsibility*	2
Advanced Electives	
Advanced Trial Practice--Civil	2
Advanced Trial Practice--Criminal	2
Client Counseling	2
Corporate Planning & Drafting Workshop	2
Estate Administration	2
Federal Litigation Workshop	2
Field Placements	2
Moot Court	1 or 2
Public Interest Advocacy Clinic	3

* - denotes a required course for graduation