Rite of Professional Passage: A Case for the Liberalization of Student Practice Rules

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RITE OF PROFESSIONAL PASSAGE: A CASE FOR THE LIBERALIZATION OF STUDENT PRACTICE RULES

I. INTRODUCTION

American legal education experienced a rebirth with the dawn of the clinical education movement in the late 1960s. One of the movement’s key goals was to encourage law schools to construct educational programs that better prepared students to handle the demands of practice immediately following graduation. Clinical programs stress the

1. The clinical education approach permits students to handle real or simulated legal problems under the supervision of an attorney or an instructor. This approach focuses on the practical aspects of representation and client relations by teaching advocacy skills through actual experience. This important educational reform movement developed in response to the concerns of lawyers, judges, and educators that students leaving American law schools were not adequately prepared to handle many of the practical aspects of legal work. Many expressed concern that “the exclusive use of the case method fail[ed] to achieve the primary goal of legal education - the preparation of lawyers for practice.” See Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study, 15 WM. & MARY L. REV. 353, 367 (1973) [hereinafter Empirical Study] (citing John R. Peden, Goals for Legal Education, 24 J. LEGAL ED. 379 (1972)).

Former Chief Justice Warren Burger, a leading critic of the exclusive use of traditional teaching methods in the 1970s, remarked, “[The] modern law school is not fulfilling its basic duty to provide society with people oriented and problem oriented counselors and advocates to meet the broad social needs of our changing world.” Warren Burger, The Future of Legal Education, STUDENT L.J., Jan. 1970, at 19 (italics omitted). Burger went on to note: “The shortcoming of today’s law graduate lies not in a deficient knowledge of law but that he has little, if any, training in dealing with facts or people - the stuff of which cases are made. Most of the graduates of this system became fine lawyers after several years of supervision by seasoned lawyers or alternatively by the trial-and-error method at the expense of hapless clients.” Id. at 20-21.

2. Clinical reformers have been among the harshest critics of the exclusive use of the case law method to train lawyers. For early criticism of the case law method, see Jerome Frank, What Constitutes a Good Legal Education?, 19 A.B.A. J. 723 (1933). “Judge Frank . . . advocated the abolition of the Langdell case method because of its ‘exclusion from consideration of the all-too-human clashes of personalities in the law office and courtroom.’” Empirical Study, supra note 1, at 366 (citation omitted).

For contemporary criticism of the use of the case law method, see Myron Moskovitz, Beyond the Case Method: It’s Time to Teach with Problems, 42 J. LEGAL EDUC. 241 (1992) (suggesting that if the goal of law school is to “train lawyers,” rather than to examine what the author labels “the science of law,” then law schools should adopt the problem method as the primary instruction method in all courses. Id. at 241-42.); Russell L. Weaver, Langdell’s Legacy: Living with the Case Method, 36 VILL. L. REV. 517, 518-20 (1991) (arguing that most law students are dissatisfied with the case law method because of its perceived ineffi-
development of such skills as "fact gathering, client interviewing, negotiation, document preparation, and the planning of case strategy."\(^3\)

By holding that the Sixth Amendment gives criminal defendants a right to counsel in state and federal prosecutions,\(^4\) the Supreme Court provided an excellent context in which students could develop practical advocacy skills. Hence, the early clinical education movement joined forces with groups championing the rights of indigent defendants in an effort to implement the Supreme Court's mandate. As a direct result of this collaborative effort, many states adopted student practice rules.\(^5\) The early rules permitted students to represent indigent criminal defendants in a law school clinic or public defender's office under the direct supervision of an attorney.\(^6\)

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For a response to Langdell's critics, see Ruta K. Stropus, *Mend-It, Bend-It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996) (arguing that critics of the case law method have failed to focus enough attention on "the important academic virtues of this traditional law school methodology [the case law method] and the role it plays as the bridge between modern undergraduate training and the modern legal profession.").

Stropus makes the valid point that although an important function of the law school is to train students in the practical art of lawyering, it is not the sole function. Our educational institutions must also foster intellectual growth and refine critical legal reasoning skills. The complete displacement of the case law method, absent an equally rigorous and viable alternative approach, potentially jeopardizes our status as a learned profession. This Comment does not advocate the abolition of the case law method; rather, this Comment argues that the case law method is an important first step in the educational process. It would be imprudent to completely replace traditional methods with clinical programs. The success of any clinical opportunity is dependent upon the viability of the classroom approach. Student practice cannot work if the students engaged in it are not well steeped in critical methods of legal analysis. In fact, the overwhelming success of limited experiments in student practice thus far is a tribute to the quality of instruction that takes place during the first and second years of law school.

3. See *Empirical Study, supra* note 1, at 367 (citation omitted).


5. "Today, every state, as well as the District of Columbia and Puerto Rico, has adopted [a rule] providing for the limited practice of law by students." Joan Wallman Kuruc & Rachel A. Brown, *Student Practice Rules in the United States*, B. EXAMINER, Aug. 1994, at 40-41. See Appendix I of the Kuruc & Brown article for a summary of the key provisions of student practice rules in the fifty states, the District of Columbia, and Puerto Rico. The Rules cited are the rules that were in force in each jurisdiction in March, 1994. *Id.* at 46 n.10. Kuruc and Brown do an excellent job assembling and analyzing data on the scope and purpose of current student practice rules. The comparative analysis Kuruc and Brown provide served as a springboard for this Comment and I am much indebted to their careful research and thoughtful commentary.

6. See generally *id.* (discussing briefly the development of early student practice rules in the United States).
Some states have expanded the scope of their student practice rules to permit the representation of non-indigent clients.⁷ A few rules permit students to practice under the supervision of an attorney not directly affiliated with a law school clinical program, but a significant number of rules still limit student practice to the representation of indigent criminal defendants and the government.⁸

Student practice has been a partial success. Student lawyers are critical because they enable the profession to fulfill its constitutional obligation⁹ to provide indigent defendants with competent representation.¹⁰ Students benefit professionally and personally from working directly with disadvantaged clients.¹¹ However, student practice rules that only permit the representation of indigents do not adequately serve the

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7. See id. at 48-55 (providing a detailed graphic comparison of state student practice rules).
8. See id.
9. See Gideon, 372 U.S. at 335.
10. Courts have concluded that student representation is not unconstitutional per se. Student representation is presumed to be constitutional absent some showing of incompetence, so long as the student practitioner complies with the student practice rules. See Kuruc & Brown, supra note 5, at 44-45 (citing People v. Schlaiss, 528 N.E.2d 334 (Ill. App. Ct. 1988) (holding that a student could not be considered counsel for constitutional purposes if he or she did not strictly comply with the student practice rule in his or her jurisdiction)); In re Moore, 380 N.E.2d 917 (Ill. App. Ct. 1978) (reversing the involuntary commitment of a mentally ill prisoner because he had not been informed that his court appointed advisor was a law student). Student representation is not always per se ineffective even if the student does not comply with the governing student practice rule. See In re Moore, 380 N.E.2d 917 (Ill. App. Ct. 1978) (citing People v. Truly, 595 N.E.2d 1230 (Ill. App. Ct. 1992) (upholding criminal conviction in which a defendant's written consent to student representation was not obtained and in which the court determined that the student had provided effective counsel even though he failed to comply with the student practice rule)); State v. Edwards, 351 So. 2d 500 (La. 1977) (holding that the student's failure to obtain the defendant's written consent to representation was neither prejudicial to the defendant nor reversible error).
11. For early scholarly discussion of student representation of the indigent see Empirical Study, supra note 1 (summarizing a national study which "was undertaken to collect and analyze data to aid the profession in identifying specific problems associated with student practice." Id. at 363.); CLINICAL EDUCATION FOR THE LAW STUDENT: LEGAL EDUCATION IN A SERVICE SETTING (Council on Legal Education for Professional Responsibility, 1973) (A compilation of papers presented at a 1973 CLEPR conference and other commentary discussing the status of student practice and clinical education in America's law schools.) [hereinafter CLEPR Conference]; CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE (Edmund W. Kitch ed., 1970) (A compilation of resource papers from a conference held at the University of Chicago Law School in 1969 discussing the practice of law by students as an educational method) [hereinafter Kitch]. For current debate on the role of clinical education in the law school see THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM (Joan S. Howland & William H. Lindberg eds., 1994) (A recent compilation of legal education conference papers) [hereinafter MACCRATE REPORT].
rules' stated educational goals. Moreover, restrictive rules prohibit the development of innovative clinical opportunities for students in other areas of the law.

A truly comprehensive clinical program must include actual practice opportunities in civil litigation and transactional work. Moreover, a liberalized student practice rule that permits practice in an unlimited number of areas under an unlimited number of certified supervising practitioners would revolutionize American legal education by permitting schools, clinics, and private employers to help students develop client advocacy skills through the supervised exercise of their own professional legal judgment.

The purpose of this Comment is to identify and address the inadequacies of current student practice rules and propose an alternative.

12. Several state student practice rules and the ABA Model Student Practice Rule include statements of purpose. See Kuruc & Brown, supra note 5, at 48-55 (graphic comparing student practice rules). The stated dual purpose of the ABA Model Student Practice Rule is as follows: "The bench and the bar are responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds the following [student practice] rule is adopted." MODEL STUDENT PRACTICE RULE, reprinted in Empirical Study, supra note 1, at 476-79 [hereinafter MODEL RULE].

13. The stated purpose of the ABA Model Student Practice Rule, for example, appears to limit clinical instruction through student practice to trial work only. See Empirical Study, supra note 1, at 476-77 (citations omitted).

14. Virtually every state student practice rule permits students to handle civil matters. Because most of those rules only permit students to represent indigents, however, as a practical matter, the student practitioner is limited to criminal cases because relatively few indigents come to a clinic seeking civil representation. See Empirical Study, supra note 1, at 399-400. Additionally, most rules limit student practice to litigation and activities in preparation of litigation, and few expressly permit students to engage in transactional work or negotiation. See Kuruc & Brown, supra note 5, at 48-55 (graphic comparing provisions in each state student practice rule). Alaska has one of the most liberal student practice rules in the country. It permits students to handle any type of matter and provides no specified limitation on the nature of the client. See id. at 48.

15. See discussion of clinical education reform efforts enabled by the proposed liberalized student practice rule infra Part V.

16. This Comment is concerned primarily with student practice rules that have been adopted by state supreme courts and legislatures. However, student practice rules can take several forms. They can be adopted by courts, legislatures, and bar associations. While supreme court rules tend to govern student practice in all state courts, individual federal courts may adopt their own student practice rules that only bind those students and supervisors who appear before them. See George K. Walker, A Model Rule for Student Practice in the United States Courts, 37 WASH. & LEE L. REV. 1101 (1980) (comparing a proposal from the Judicial Conference of the United States for a liberalized model student practice rule that would govern student practice before federal courts with the current ABA Model Rule).
method of regulation that is more educationally beneficial. This Comment presupposes certain facts. First, it assumes that most students leave their first year of law school armed with the critical legal reasoning skills necessary to effectively analyze a legal problem under the supervision of an attorney. Second, this Comment assumes that supervised practice is an optimal educational experience because it provides a real world context in which the student can apply his or her recently acquired skills. Student practice opportunities bring together three central themes in legal education: (1) the development, refinement, and application of critical legal reasoning skills; (2) the development of effective legal communication and advocacy skills; and (3) the internalization of the ethical standards governing lawyer conduct.

This Comment argues that restrictive student practice rules have failed to keep pace with innovations in clinical legal education. To their credit, several states have revised their student practice rules and now permit students to engage in a much wider variety of activities. The American Bar Association (ABA), however, has failed to consider and respond to these advances. In fact, the ABA has never substantially revised its Model Student Practice Rule. Today the Model Rule looks much the same way it did when it was adopted in 1969. Moreover, the ABA Model Student Practice Rule is no longer the most effective method of regulation.

Thus, this Comment urges the ABA to adopt a new Model Student Practice Rule. The rule this Comment proposes will permit certified second and third year law students to practice freely under the supervision of a certified practitioner or instructor. The proposed rule will widen the scope of representation, permitting student practice coterminous with that of a licensed attorney. Members of the profession speak in a unified voice when they adopt an ABA Model Rule; therefore, adoption of a new Rule is an important first step in an effort to persuade the states to liberalize their own student practice rules in accordance with a national standard.

This Comment opens with critical discussion of the history of stu-

17. Twenty-three jurisdictions now permit students to represent any individual regardless of economic status. See Kuruc & Brown supra note 5, at 48-55 for a list of these jurisdictions.

18. See MODEL RULE, supra note 12. The current ABA Model Student Practice Rule requires four semesters of law school and limits students to indigent and governmental clients. See also the discussion of the Model Rule infra Part IV.
dent practice in the United States, followed by an evaluation of current approaches. It ends with a proposal for a new ABA Model Student Practice Rule—one that enables and encourages the development of highly innovative and cost-effective clinical programs.

For analytical purposes this Comment divides the evolution of American student practice into three distinct phases, with adoption of the current ABA Model Rule ushering in the first phase. This early phase is characterized by the dawn of the clinical education movement, an unprecedented growth in the number of campus-sponsored legal aid clinics, and the development of student internship programs in the offices of public defenders and district attorneys. Early student practice rules and the programs they govern attempt to serve two distinct but competing goals: to better educate students and to provide necessary legal services to the poor. The ABA Model Rule and its progeny were a moderate success. Many of the clinical programs they spawned remain with us today.

In student practice, educators saw the opportunity to help students

19. See infra Part II.
20. See infra Parts III and IV.
21. See infra Part V.
23. For an excellent discussion of student internships with offices of the public defender see C. Paul Jones, Law School Clinical Programs: The View from the Defender's Office, in CLEPR Conference, supra note 11, at 181.
24. For a discussion of student internships with the prosecutor's office see Robert D. Barbell, Clinical Legal Education and the Delivery of Legal Services: The View From the Prosecutor's Office, in CLEPR Conference, supra note 11, at 190.
25. See Earl Johnson, Jr., Education Versus Service: Three Variations on the Theme, in CLEPR Conference, supra note 11, at 414 (suggesting that programs that seek to serve the greatest number of indigents at the lowest cost are not as educationally valuable as smaller programs that provide more intensive supervision by experienced practitioners).
26. The following state student practice rules substantially follow the Model Rule approach: Arkansas, Colorado, Delaware, D.C., Florida, Georgia, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia. See Kuruc & Brown, supra note 5, at 48-55.
27. See supra notes 22, 23, 24 and accompanying text for articles discussing early student practice programs.
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develop effective client relation, legal communication, and case management skills. As time went on, however, these same educators began to question the value of traditional approaches that placed students in under-supervised legal aid clinics and limited their practical experience to the "repetitive [legal] problems of the poor."

Thus, state innovation characterizes the second phase in the evolution of American student practice. Some states responded to the concerns of educators by liberalizing their student practice rules to permit students to represent non-indigent clients. With early liberalization, however, came further restriction. In an effort to improve the quality of the educational experience, many state courts imposed additional eligibility requirements on supervising attorneys. In fact, many states amended their rules to limit student practice to those working under the direct supervision of a law school clinical instructor. Other rules restricted the number of students an eligible lawyer could supervise at any given time.

Some of these amendments truly improve the quality of clinical in-

29. See Johnson, supra note 25, at 418 (noting that clinical programs which operate with “maximum caseloads and minimum supervision” do not provide high quality services to indigent clients and do not provide students with educationally valuable practical experience. Id.).
31. Twenty-three jurisdictions now permit students to represent any individual regardless of economic status. See Kuruc & Brown, supra note 5, at 48-55.
32. See id. (providing a graphic comparison of state student practice rules by provision). According to Kuruc and Brown’s chart, Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kansas, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming each impose specific eligibility requirements on supervising attorneys. Approval by a law school dean is a common requirement, however, some states require affiliation with a law school clinical program. Id.
34. See Kuruc & Brown, supra note 5, at 48-55 (only Arizona and Georgia permit law school clinical instructors to supervise student practitioners).
35. See id.
struction in American law schools; however, rules that require direct law school supervision can place unnecessary economic burdens on law school clinical programs. The amended rules do relatively little to expand student practice opportunities. Thus, rules of the second phase have been successful only to the extent that they improve the quality of supervision under existing clinical programs. By contrast, a rule that permits student practice, coterminous with that of a licensed attorney, under the supervision of a private employer, would significantly expand the number and quality of practice opportunities in transactional work and civil litigation. Nevertheless, American courts, bar associations, and law schools have been reluctant to permit student practice for compensation under the supervision of private employers, despite the educational and economic benefits. An approach that permits private student practice would directly involve employers in the educational process. This arrangement is good for students, law schools, and employers, because it expands the scope of student practice opportunities,


38. All student practice rules prohibit direct compensation from clients, but a few permit some form of indirect compensation. See Kuruc & Brown, supra note 5, at 42-43. For example, some "rules allow students to accept wages or fellowships from a law school, legal aid clinic, or public agency. These rules do not affect the ability of agencies or legal aid clinics to charge clients for the institution's legal services. [E]ight jurisdictions have determined that it is inappropriate for student lawyers to be paid for their legal services under any circumstances, regardless of the source of compensation. Students in Arkansas, Louisiana, Maryland, Mississippi, New York, Puerto Rico, South Carolina, and Wyoming are forbidden to accept any financial compensation for their services. Alaska, Georgia, Michigan, New Jersey, New Mexico, and Tennessee are the only states that do not address the issue of payment to student counsel in their student practice rules." Id. at 42-43 & n.24. Some clinical educators have expressed concern about compensation. There is a concern that supervising attorneys will be "less concerned with an intern's education and more concerned with tending to the business of the office" if compensation is permitted in an off-campus setting. See Avellone, supra note 37, at 32.
liberalizes some of the financial burden off of already overextended and underfunded clinical programs, and permits firms and other private employers to begin grooming potential associates for specialized practice at an earlier date.

Moreover, the adoption of a new ABA Model Student Practice Rule would mark the dawn of a third phase in the evolution of American student practice programs. A liberalized Model Rule that permits and encourages private employers to develop their own student practice programs would permanently change the face of American legal education. Under a liberalized rule, the clinical education of our nation's second and third year law students would be the product of a mutually beneficial collaborative effort on the part of educators and practitioners. Such a collaborative effort has the potential to improve the quality of practical legal education by holding the profession as a whole accountable for the training of its successors.

II. STUDENT PRACTICE: HISTORICAL DEVELOPMENT & EARLY CRITICISM

"Law students," Supreme Court Justice William Brennan once wrote, "can be expected to make a significant contribution, quantitatively and qualitatively, to the representation of the poor in many ... cases..." In his concurrence in Argersinger v. Hamlin, the landmark case which extended the right to counsel to any defendant accused of a crime for which there might be a prison sentence, Justice Brennan addressed the potential role students could play in the administration of legal services to the poor, and presaged the growth of student practice in the United States.

Justice Brennan's vision soon became a professional reality. The Supreme Court's decisions in Gideon v. Wainwright and Argersinger strained the criminal defense bar. The profession was not adequately prepared to handle the newly created demand for free legal services, and students were enlisted to help alleviate this burden. State courts and legislatures responded with the enactment of special student prac-

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40. See id.
42. 407 U.S. 25 (1972).
43. See Empirical Study, supra note 1, at 369-71 (discussing the impact of the expansion of the right to counsel on the legal profession).
44. See, e.g., Empirical Study, supra note 1, at 389-92.
tice rules that permitted students to engage in the limited and supervised practice of law on behalf of indigent and governmental clients.\textsuperscript{45}

Educators and practitioners hailed the use of student lawyers as an educational breakthrough. The benefits of early student practice were arguably threefold because students not only learned the practical art of lawyering, but also gained a greater respect for ethical considerations governing the profession, all while serving their communities.\textsuperscript{46} Early student practice was lauded as a way to "instil[...] in the student an awareness of the effects of his actions."\textsuperscript{47} Early advocates of the use of student practice supported it on normative as well as educational grounds. Student practice took over where law school left off. "[P]ersonal involvement with clients introduces [students] to the human aspects of the practice of law."\textsuperscript{48} Moreover, working with the poor sensitized students to the unique legal needs of the underprivileged, making them acutely aware of "deficiencies in the legal system."\textsuperscript{49}

Additionally, clinical educators learned an important lesson from early experiments in student practice: students working under the supervision of attorneys were capable of providing quality legal services to clients.\textsuperscript{50} Courts have consistently held that student representation passes constitutional muster.\textsuperscript{51} In fact, courts have suggested that supervised student practitioners actually provide better representation than inexperienced attorneys. In \textit{People v. Perez},\textsuperscript{52} the California Supreme Court concluded that a criminal defendant’s constitutional rights were not violated when a law student, under the active supervision of a licensed attorney, represented him at trial. The Supreme Court of Washington, in \textit{Seattle v. Ratliff}, went so far as to say that representation by a supervised student intern would "most likely result in a higher caliber representation than that provided by a novice attorney sitting alone. There is no constitutional infirmity in such representation."\textsuperscript{53}

With the strong endorsement of courts, legal aid advocates sought to

\textsuperscript{45} Today every state plus the District of Columbia and Puerto Rico have adopted a student practice rule. \textit{See} Kuruc & Brown, \textit{supra} note 5, at 56 (listing citations for each rule).
\textsuperscript{46} \textit{See generally} Empirical Study, \textit{supra} note 1, at 381-89.
\textsuperscript{47} \textit{Id.} at 387.
\textsuperscript{48} \textit{Id.}
\textsuperscript{49} \textit{Id.} at 387-88.
\textsuperscript{50} \textit{See id.} at 392-404 (discussing the adequacy of student representation).
\textsuperscript{51} \textit{See supra} note 10 and accompanying text.
\textsuperscript{52} 594 P.2d 1 (Cal. 1979).
\textsuperscript{53} 667 P.2d 630, 633 (Wash. 1983).
enlist the services of students to help an even greater number of indi-gents. However, a lingering question remained: At what educational cost? Specifically, could underfunded, over-worked and understaffed legal aid clinics and public defender offices provide student lawyers with adequate supervision? Because the educational value of any practice opportunity is directly related to the amount of supervision received, any program that short-changes the student in this manner may fail to achieve its stated educational goal.

Scholars and practitioners alike have tried to come to grips with the service versus education dilemma by rephrasing the key terms of the debate. Earl Johnson, Jr., an important voice in the early debate over student practice, suggests that the problem is not that the desire for service necessarily sacrifices educational standards, but rather that legal services programs and the profession as a whole have an ethical duty to provide quality legal services to every client, regardless of ability to pay. Thus, the issue is really one of "quality versus quantity." Because quality service is in the best interest of both students and indigent clients, Johnson argues, "the traditional 'service-education' issue is rather readily resolved." According to Johnson,

[i]n the typical clinical setting, the very program characteristics that further a valuable educational experience simultaneously contribute to high quality service. ... [A] modest caseload and close day-to-day supervision make possible the guidance and evaluation essential if students are to learn from the perform-

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54. For discussion of early clinical programs that enlisted the help of student practitioners to provide legal services to the poor see supra notes 22, 23, 24 and accompanying text.

55. Legal aid programs have historically been underfunded. Although greater attention has been paid to the legal needs of the indigent since the Supreme Court's decisions in Gideon and Argersinger, these programs still struggle to provide adequate representation. For a discussion of funding problems faced by early student practice programs serving the poor see supra note 36 and accompanying text.

56. See Empirical Study, supra note 1, at 380 ("The perceived educational value of student practice thus varies directly with the time devoted to supervision of the student." Id.).

57. The ABA Model Student Practice Rule and some state student practice rules provide explicit statements of purpose. The Model Rule's stated purpose is to permit students to help licensed attorneys provide legal services to the poor and to encourage law schools to provide clinical instruction in trial advocacy skills. See Empirical Study, supra note 1, at 476-79.

58. For a discussion of the service versus education dilemma see supra note 25 and accompanying text.

59. See Johnson, supra note 25, at 417.

60. Id.
ance of lawyer tasks. Because of the inexperience of law stu-
dents, clinical programs also are incapable of delivering quality
service unless caseloads are modest and student performance is
closely supervised.61

Thus, early clinical programs and public service internships that
developed under the authority of the first student practice rules62 con-
fronted two sets of criticisms. First, as Professor Johnson discussed,
some educators were concerned that adequate supervision would not be
available in an exclusively service oriented setting.63 Second, that the
nature and scope of practical experience available under these rules and
programs was limited.64 Specifically, critics of the traditional student
practice model,65 arguing that limits student lawyers to the “repetitive
problems”66 of indigent criminal defendants, raised concerns about
whether this type of practical experience was adequate to help prepare
a vast segment of the future bar for work in other highly differentiated
areas of the law.67

III. STUDENT PRACTICE DURING THE FIRST PHASE: THE RULES AND
PROGRAMS

The following section will explore the concerns of these critics68 by
analyzing both the provisions of the original Model Student Practice
Rule and the three types of student practice programs that flourished in
its wake.

A. Rules of the First Phase: The ABA Model Rule Approach

The American Bar Association established the contours of student

61. Id.

62. The “first student practice rules” refers to those rules that were adopted shortly after
the Model Student Practice Rule and limit student practice to the representation of indigent
clients or the state. Many states still only permit students to represent indigents or govern-
mental clients. See supra note 5 for a list of these jurisdictions.

63. See Johnson, supra note 25, at 417.

64. See id.

65. See, e.g., Gerald V. May, Jr., Note, The Student Practice Rule: A Proposal for Ex-
pansion, 6 SUFFOLK U.L. Rev. 1006 (1972); Avellone, supra note 37, at 13.

66. See Ridberg, supra note 30, at 224.

67. See Empirical Study, supra note 1, at 471-73; Ridberg, supra note 30, at 224; May,
supra note 65, at 1016; Avellone, supra note 37, at 16-18 (criticizing traditional rules that
limit student practice to serving the needs of the indigent).

68. See Avellone, supra note 37, at 16-18.
practice when it adopted the Model Student Practice Rule in 1969. The Model Rule was the bar’s response to Justice Brennan’s call for increased student involvement in the legal problems of the poor.\textsuperscript{69} The Model Rule’s statement of purpose acknowledges that “[t]he bench and bar are responsible for providing competent legal services for all persons, including those unable to pay for [such] services.”\textsuperscript{70} It goes on to state that the Model Rule is adopted “[a]s one means of providing assistance to lawyers who represent clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of many kinds.”\textsuperscript{71}

The statement of purpose itself is problematic. The authors’ primary goal appears to be the provision of much needed legal services to the poor. In order to fulfill this objective, however, the Rule encourages law schools to develop clinical programs in litigation.\textsuperscript{72} The way the authors state their purpose strongly suggests that the first goal cannot be realized unless law schools provide effective clinical instruction in trial practice.\textsuperscript{73} Moreover, the stated purpose reveals the authors’ intent to place the bulk of supervisory responsibility on law school clinical programs.\textsuperscript{74} Thus, the Model Rule appears to issue a type of “unfunded mandate” to American law schools that has less to do with legal education than it does with the provision of affordable legal services. Accordingly, the purpose section of the Model Rule sets up the service versus education dilemma of which Professor Johnson spoke.\textsuperscript{75}

Thus, the question remains: To what extent does the Model Rule encourage or perhaps even require the development of clinical approaches that are specifically designed to efficiently deliver legal services to the poor? In other words, the rule may be less concerned with education than it is with service. Specifically, the language of the purpose section encourages schools to provide “clinical instruction in trial work of many kinds”\textsuperscript{76} so that clinics and offices staffed with student practitioners can competently and efficiently deliver legal services. Moreover, the provision of competent legal services to the poor dictates

\textsuperscript{70} MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
\textsuperscript{71} Id.
\textsuperscript{72} See id.
\textsuperscript{73} See id.
\textsuperscript{74} See id.
\textsuperscript{75} See id.; Johnson, supra note 25, at 418.
\textsuperscript{76} See MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
the nature and scope of supervised student practice under the Rule. Because these clinical programs are structured solely to address the special needs of a unique group of clients, they are arguably of less overall educational value than programs designed to instruct students in a greater number of practical settings through exposure to a greater variety of legal issues and clients. The Model Rule prioritizes service over education in its statement of purpose and in doing so it discourages the development of innovative student practice programs that are not specifically tailored to meet the needs of indigent clients.  

The second section of the Model Student Practice Rule lists the type of activities an eligible law student may perform under the direct supervision of a licensed attorney.  

An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any indigent person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters: (1) Any civil matter. In such cases the supervising lawyer is not required to be personally present in court. (2) Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising attorney is not required to be personally present in court. (3) Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings.  

The activities section imposes some realistic restrictions on student practice. Virtually every state has adopted some form of the provision requiring supervisor presence in the courtroom during certain types of criminal proceedings. Supervision and consent provisions like those contained in Part A of the Model Rule’s activities section are essential safeguards that help ensure that students are capable of providing con-

77. See id.
78. See id.
79. Id.
80. See Kuruc & Brown, supra note 5, at 46 (graphic comparing the provisions of the various state student practice rules).
These are mutually beneficial protections that serve the needs of both clients and students at once. They serve the needs of the client because they help ensure that the client receives effective representation, regardless of his ability to pay, and they serve the educational interests of the student practitioner because they require a minimum level of supervisory involvement.

The substantive nature of the activities the Model Rule permits is difficult to discern from the plain language of the provision. It clearly permits students to appear in court in both civil and criminal matters on behalf of indigent clients. Thus, although it is not explicitly stated, the activities section can be read to "authorize student preparation of pleadings, briefs, and other documents relative to litigation," so long as "the attorney of record assumes complete responsibility for these documents." What the Model Rule does not specifically do is "authorize a student to advise a client as to a recommended course of action, nor does it deal with the process of negotiation or settlement." Thus, the Model Rule fails to make provision for activities that prepare for or even avoid litigation. The Rule does both students and clients a disservice by restricting the permitted activities to only those directly related to litigation. A liberal and more educationally beneficial rule would permit supervised student representation that is coterminous with that of a licensed attorney. Such a rule would expressly permit counseling, advising, negotiation, investigation, interviewing and alternative dispute resolution techniques such as mediation and arbitration. Moreover, the Model Rule would actually better serve its stated goal of client service if it permitted students to explore alternatives to litigation on their clients' behalf. Even though it restricts student practice in a number of areas, Part A of the Model Rule's Activities section is liberal is one key regard: It permits an eligible student to appear in any state court on behalf of an indigent client so long as the consent and supervision requirements are met.

81. See supra note 10 and accompanying text for cases discussing the constitutionality of student representation.
82. See MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
83. See id.
84. Empirical Study, supra note 1, at 472.
85. Id.
86. Id.
87. See infra Part V.
88. See MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
Additionally, Part B of the Model Rule's Activities section permits "an eligible law student [to] 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." This provision expressly permits the establishment of prosecutor clinics and is the only exception to the indigent client requirement in the current Model Rule. Thus, a duly authorized student may appear in court and submit written work in preparation of prosecution on behalf of the state if he or she complies with the appropriate consent and supervision requirements.

The final part of the Activities section, Part C, states that "in each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal." This provision ensures that the consent and supervision safeguards are complied with in order to protect clients and ensure that every person appearing before the court is represented by constitutionally competent counsel. Therefore, Part C, in conjunction with Parts A's and B's consent and supervision requirements, has proven to be an effective way to protect clients, courts, and students. For these reasons, the consent and supervision requirements in the Activities section are perhaps the least controversial aspects of the Model Student Practice Rule's regulatory scheme.

The final section of the Model Student Practice Rule sets out a series of "requirements and limitations" on potential student practitioners. "In order to make an appearance pursuant to this rule," the provision states, the law student must:

(A) Be duly enrolled in this state in a law school approved by the American Bar Association. (B) Have completed legal studies amounting to at least four semesters, or the equivalent, if the law school is on some basis other than a semester basis. (C) Be certified by the Dean of his law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern. (D) Be introduced to the court in

89. Id.
90. See id.; supra note 24 and accompanying text (discussing internships with the prosecutor's office).
91. MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
92. Id.
which he is appearing by an attorney admitted to practice in that court.\textsuperscript{93}

These requirements and limitations can also be characterized as student certification requirements or standards for admission to student practice. These, like the consent and supervision requirements, exist to protect the client and the system from the incompetent student lawyer. The requirement that the student be enrolled in an ABA accredited law school is one way in which the profession ensures that every student admitted to supervised practice has received legal instruction that meets established national standards. Virtually every state has included this provision in its own student practice rule.\textsuperscript{94} Only New York, Oklahoma, and Utah will admit students who attend non-ABA accredited schools to supervised practice.\textsuperscript{95}

Requiring prospective student lawyers to attend an in-state law school, however, seems to have much less to do with protecting clients than it does with achieving administrative efficiency. This requirement can create problems for students who would like to spend their summer practicing in a different state. For example, it appears to forbid students from joining clinical programs at out-of-state law schools for a semester. Additionally, the in-state requirement unduly burdens those students who would like to practice in a different state upon graduation. Under the Model Rule, for instance, a student who would like to work for a district attorney's office in state \textit{A} upon graduation, but who attends law school in state \textit{B}, would be prohibited from working as a student intern in the district attorney's office in state \textit{A} because of the in-state restriction.\textsuperscript{96}

A plausible rationale for the Model Rule's in-state requirement directly relates to language contained in the Rule's stated purpose. Specifically, because a purpose of the Rule is to "encourage [law schools to provide] clinical instruction in trial work of all kinds,"\textsuperscript{97} the Rule appears to implicitly require an amount of law school oversight. Moreover, the more law school involvement the better: if students were permitted to practice in other states it would be difficult for law school clinical instructors to maintain close supervision over a student's activi-

\textsuperscript{93} Id.
\textsuperscript{94} See Kuruc & Brown, supra note 5, at 48-56.
\textsuperscript{95} See id.
\textsuperscript{96} See id.
\textsuperscript{97} MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
ties with a licensed attorney in another state.

However, an effective certification system for supervising lawyers would eliminate the need for intense law school oversight of each student practitioner. A certification system is a viable alternative to the Model Rule approach that lifts some of the burden off of students and law schools by permitting practitioners and other prospective employers to take greater responsibility for the practical education of student lawyers.

The four semester requirement is also problematic. It limits supervised practice opportunities to third year students even though that many second year students may be otherwise qualified. There is consensus among educators as well as members of the bar and bench that most students acquire the requisite legal reasoning skills necessary to engage in supervised practice during their first year in law school. Moreover, there does not seem to be anything magical about the four semester requirement. Thus, because the four semester requirement does not distinguish individual students based on a standardized and objective evaluation of their skill and merit, the requirement appears on its face to make an arbitrary distinction between second and third year students.

The last two pieces of the Model Rule's regulatory scheme are less controversial and represent sound policy. Because a key part of the student practice mission is to instill in each student a sense of professional responsibility, the Dean's certification for character and fitness

98. See infra Part V.

99. Note, however, that several state student practice rules now permit second year students to practice under the supervision of a licensed attorney. See Kuruc & Brown, supra note 5, at 48-56.

100. This Comment argues that some first and second year students may already have the skills necessary to practice under the supervision of a licensed attorney. Thus, the best way to determine whether a student is prepared to enter a clinical program is to administer a student practice certification examination. This exam would look a lot like the bar exam and a passing score coupled with a Dean's character and fitness certification would qualify a student under the proposed student practice rule. A standardized exam would eliminate the need for arbitrary academic distinctions. For an in depth discussion of this proposal see infra Part V.

101. See Empirical Study, supra note 1, at 373-76 (according to the results of this study, program directors, supervising attorneys, and students all favored practice by second year students).

102. See MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.

103. See Empirical Study, supra note 1, at 381; see generally Charles H. Miller, Living Professional Responsibility: Clinical Approach, in CLEPR Conference, supra note 11, at 99; Marvin S. Kayne, Cases Illustrating Ethical Problems, CLINICAL EDUCATION FOR THE LAW
is an essential step in the certification process that protects clients by holding students to the same professional standards as attorneys seeking admission to the bar. Finally, requiring supervising counsel to formally introduce the student practitioner to the court is another safeguard that protects clients and the courts by putting them on notice that someone other than a licensed attorney is about to appear.

There are several other important issues that the Model Rule fails to explicitly address. For example, the Rule does not expressly deal with the issue of accountability. Specifically, the Rule does not appear to hold student practitioners accountable under the rules of professional conduct and it does not address the issue of malpractice insur-

104. Every state student practice rule, with the exception of California, requires certification by the Dean. In addition, "the majority of state rules [also] permit law school deans to revoke student certification at any time without stating a cause for revocation." See Kuruc & Brown, supra note 5, at 41. "Most rules also permit state courts to terminate student certification for any reason." Id. "A court terminating student certification is not required to give the student notice or an opportunity for a hearing. In these states both law school deans and the courts have absolute discretion to terminate the practice of any student who fails to perform adequately." Id. at 41-42.

105. According to Kuruc and Brown:

Many [state] student practice rules require students to certify in writing that they have read and are familiar with the state rules of professional responsibility. Several states require student practitioners to file a written oath with the court stating that the student will uphold both the federal and state constitutions and adhere to rules governing professional conduct. Oklahoma requires students to pass an oral or written examination on professional responsibility and the Oklahoma Legal Internship Rules.

In general, student practice rules do not provide for students to be disciplined if they violate any rules of professional conduct. Rather, the penalty for unprofessional conduct is revocation of certification and termination of the student's limited privilege to practice law. Arizona expressly states that attorney disciplinary rules may not be applied to students and that student certification, if terminated, will be
for student lawyers. Model Rule of Professional Conduct 5.3 holds supervising attorneys professionally and ethically accountable for the actions of their non-lawyer assistants. Moreover, supervising attorneys are subject to professional discipline for the rules violations of their student practitioners. This is a good policy because it holds supervisors accountable; however, it only goes half way. If a student is terminated without prejudice.

Nevada and Washington, however, subject students to discipline for violation of any rules of professional responsibility. Any offending conduct by the student which would subject a licensed attorney to suspension or disbarment will cause the student to forfeit the privilege of sitting for the state bar examination and obtaining a license to practice law. South Carolina and Texas subject offending students to state grievance procedures, but do not mention denial of admission to the bar as a possible penalty for infractions of the rules of professional conduct. Rather than discipline the student, Idaho and Massachusetts discipline the student's supervising attorney for failure to provide adequate supervision. The Washington student practice rule provides for discipline of both the student and the supervisor.

Kuruc & Brown, supra note 5, at 42 (citations omitted).

106. "Only three states address the issue of the necessity for professional liability insurance covering student practice. Texas requires the supervising attorney to purchase sufficient malpractice insurance to cover the student. In Georgia and New Hampshire, where student practitioners must be enrolled in an approved clinical education program, the student practice rules require the program to purchase sufficient professional liability insurance." Kuruc & Brown, supra note 5, at 42.

107. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.3 (1996) (outlining lawyers' responsibilities regarding non-lawyer assistants). Rule 5.3 states:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be in violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in a law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Id.

108. Most states do not hold student practitioners accountable under the Rules of Professional Conduct. However, as Kuruc and Brown point out, a few states do hold their stu-
liberalizing student practice rules

tified to represent clients under the supervision of a licensed attorney,\footnote{109}{Those who oppose holding students accountable under the Rules of Professional Conduct believe that it is not fair to penalize a student who is still learning. Others cite to Model Rule of Professional Conduct 5.3 as support for their contention that Rules of Professional Conduct were meant to apply only to licensed attorneys. Opponents of professional accountability for student practitioners fail to recognize that students are a unique group of non-lawyer assistants because they engage in the limited practice of law. In other words, students are given much more responsibility under the guise of student practice than their paralegal and secretarial non-lawyer counterparts. Moreover, student lawyers should be held accountable under the rules because they engage in precisely the type of "lawyering" conduct that the rules were designed to govern. Thus, student lawyers should already be intimately familiar with the rules of conduct before they enter limited practice. This is an important safeguard that is necessary to maintain the integrity of the profession. See MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.3 (1996).} there is no reason why that student should not be held to the same professional standards as a practicing attorney. This is especially true in a jurisdiction that permits student practice coterminous with that of licensed attorneys. Holding students professionally accountable for their actions earlier instead of later encourages greater understanding of and respect for the ethical norms that govern the profession.\footnote{110}{See supra note 103 and accompanying text (for articles discussing how students can internalize and gain a greater respect for the standards of professional conduct through supervised practice).} Thus, students who internalize the standards of professional conduct during their clinical experience are at a great educational and experiential advantage when they enter practice upon admission to the bar.\footnote{111}{See supra note 103 and accompanying text (for articles discussing how students can internalize and gain a greater respect for the standards of professional conduct through supervised practice).}

Moreover, the Model Rule scheme is not the most educationally beneficial approach because it limits the type of client a student may represent and the nature of practice in which a student may engage.\footnote{112}{See id.} Additionally, the current Model Rule scheme is not comprehensive. It fails to address explicitly important administrative concerns, such as to what extent, if any, student practitioners will be held accountable under state rules of professional conduct and whether malpractice insurance coverage is an essential prerequisite to the establishment of a student practice program.\footnote{113}{See id.}
B. The Programs of the First Phase: The Harvard Neighborhood Office Model and Internships with the Prosecutor and the Office of the Public Defender

1. The Harvard Neighborhood Office: CLAO

The Model Rule approach encouraged the development of three different kinds of student practice programs: the on-campus legal aid clinic, the internship at the public defender's office, and the internship with the district attorney's office. All three of these types of practice opportunities continue to be an integral part of most law school clinical education programs today.

These are precisely the programs of which Justice Brennan spoke in *Argersinger*. Most of them are a tribute to the relative success of the marriage of service and education, because they enable talented students to engage in the limited practice of law on behalf of indigent clients and the state.

The first type of student practice program, which is thought to be the hallmark of service oriented American student practice, brings law schools together with social and legal reformers to create campus run clinics that serve the needs of indigent clients in a host of legal matters. Most contemporary on-campus legal aid clinics were modeled after Harvard Law School's Community Legal Assistance Office (CLAO).

Harvard's "neighborhood law office" was born in October of 1966 thanks primarily to "a grant from the Office of Economic Opportunity with a 10% contribution from the law school to permit representation of [indigent] criminal defendants."

The CLAO clinic was staffed with several "non-faculty members of

114. For articles discussing these three types of programs, see supra notes 22, 23, and 24.
115. See id; MACCRATE REPORT, supra note 11.
117. See Johnson, supra note 25, at 414 (discussing the service versus education dilemma, which he rephrases in terms of "quality" versus "quantity").
118. For articles discussing this type of program, see supra note 22 and accompanying text.
120. *Id.* at 188.
121. *Id.*
the law school staff." 122  "[This] staff includes a Director, who devotes the majority of his or her time to administration and has an office at the law school, and a Chief Attorney who supervises the daily operations of the office." 123 Although a faculty committee had primary responsibility for policy decisions regarding the operation of the clinic, 124 a student steering committee and an organized group of interested local residents also had great input in the decision making process that governed the operation of the clinic. 125

Eligible students were selected for participation in the clinic on "the basis of a written application and oral interview." 126 Students selected for CLAO were given an intensive training session at the beginning of the academic year, including the following topics: special problems of the Cambridge community; office procedure; interviewing (including aggressive interviewing to reveal significant issues); family law (both substantive and procedural, including a mock trial); landlord-tenant law; criminal law; consumer law, including bankruptcy; economic development; and professional responsibility. 127

New students were also briefly introduced to every possible aspect of the law they may encounter while volunteering for the clinic. 128 Even though this brief presentation could in no way exhaust every aspect of each specialized area of law that a student might encounter, it at least gave them a substantive introduction to the kinds of legal matters that were of particular concern to the clinic's unique client base. 129

The CLAO clinic handled a variety of matters on behalf of indigent clients. The majority of the clinic's services, however, were dedicated to the representation of indigent criminal defendants. 130 The CLAO clinic worked tirelessly to promote the rights of indigents in civil matters. 131 Shortly after opening its doors in 1966, for example, "the CLAO clinic

122. Id. at 189.
123. Id.
124. See id.
125. Id. at 189-90.
126. Id. at 190.
127. Id.
128. See id.
129. See id. at 190-91.
130. See id. at 190-94.
131. See id. at 191-94. See also Lanckton, supra note 119 and accompanying text.
successfully attacked in federal court, the one year residence eligibility requirement of the Massachusetts Public Welfare Department."\(^{132}\) CLAO lawyers and students also "appeared on behalf of public housing residents in attempts to have the public housing project inspected by the city code enforcers for alleged violations of the sanitary code."\(^{133}\)

Although CLAO's chief mission was to provide competent legal representation to individual indigent clients,\(^{134}\) it also represented several community groups that worked to advance the causes of racial minorities and the economically disadvantaged.\(^{135}\) Moreover, the clinic was a zealous advocate of social and legal reform to help the plight of the disadvantaged in the Cambridge community.\(^{136}\)

The CLAO program's directors did their best to ensure that every student lawyer received a variety of different types of cases.\(^{137}\) Thus, the "mix" of cases assigned to each student "fairly represents the mix of cases handled in the office,"\(^{138}\) as a whole. New students were given four cases to begin work on immediately, after these were handled additional cases were assigned to the student practitioner.\(^{139}\) Each student was also assigned to do initial interviews of prospective clients for one and a half hours per week.\(^{140}\) Students in the Harvard program interviewed "all applicants and [were] responsible for their cases from initial interview to final disposition."\(^{141}\) This was possible because of Massachusetts's slightly more liberal student practice rule.\(^{142}\) Although the Massachusetts rule resembles the Model Rule approach in most respects, it appears to permit a greater degree of student responsibility for legal matters by expressly permitting students to interview and advise clients.\(^{143}\)

The Harvard clinic was an example of a highly successful student

\(^{132}\) Lanckton, supra note 119, at 188-89.
\(^{133}\) Id. at 189.
\(^{134}\) Id. at 188.
\(^{135}\) See Lanckton, supra note 119, at 189.
\(^{136}\) See generally id. at 188-94.
\(^{137}\) See id. at 191.
\(^{138}\) Id.
\(^{139}\) See id.
\(^{140}\) See id.
\(^{141}\) Id. at 191.
\(^{142}\) See id.
practice initiative in the service-oriented spirit of the Model Rule. The Harvard approach represents the very best of the traditional student practice model because it provides students with relatively diverse case loads despite the unique and limited nature of its client base. However, a good deal of CLAO's success can be traced to its community outreach efforts. Because most indigents lack the sophistication to recognize when they could benefit from seeking the advice of a legal aid clinic in a civil matter, clinics that seek to vindicate the rights of indigents by initiating civil litigation must take affirmative steps to reach out to their clients. The broad based financial support the clinic enjoys from both the community and the law school enables it to do just that. As a result of its well-funded community outreach efforts, CLAO was at an advantage over clinics at smaller law schools and in poorer communities. Moreover, the support CLAO received permitted it to better serve its clients while providing its students with a richer and more diverse educational experience.

Even though the Harvard clinic and others modeled after it purport to provide students with practice experience in civil litigation, the indigence requirement nonetheless substantially limits the scope of student representation. Thus, these programs fail to live up to their true educational potential because the students are only permitted to handle the narrow set of legal problems that almost exclusively afflict the poor. Many of the basic skills students learn from representing indigent clients, such as preparation of court documents and legal communication skills will arguably carry over into other areas of practice, however, the experience may be of limited long term benefit for those who would like to practice in a dramatically different area of the law, such as tax or corporate.

Nevertheless, CLAO has some valuable lessons to teach. Primarily, it teaches that practical experience benefits law students because it supplements their classroom learning with a realistic dose of actual law-

144. See Lanckton, supra note 119, at 189.
145. See generally Empirical Study, supra note 1, at 398.
146. See Lanckton, supra note 119, at 188.
147. See id.
148. See id.
149. See supra note 119 and accompanying text.
150. See generally Empirical Study, supra note 1, at 398; May, supra note 65, at 1016; Ridberg, supra note 30, at 224.
151. See May, supra note 65, at 1016.
yering, and it demonstrates that helping the disadvantaged is both personally fulfilling and necessary for the fair administration of justice.\textsuperscript{152} Thus, lawyers leaving programs like CLAO enter practice with a greater respect for the system and those it is there to serve.\textsuperscript{153} However, limiting student practitioners to a narrow set of clients and issues does them an educational disservice.\textsuperscript{154} A liberal student practice rule that permits student representation coterminous with that of a licensed attorney would permit schools, employers, and public agencies to go that step beyond CLAO and develop internship opportunities in virtually every area of the law, significantly widening the breadth and quality of practice experience.\textsuperscript{155}

2. Internships with the Public Defender and the Prosecutor

The Model Rule approach also permits and encourages the creation of two important off-campus clinical opportunities for students: the internship with the public defender's office and the internship with the prosecutor's office.\textsuperscript{156} Initially, internships with the public defender's office were created to help the profession implement the Supreme Court's mandate in \textit{Gideon}, giving every defendant the constitutional right to counsel in state and federal prosecutions. For almost thirty years now student interns have played an important role at the public defender's office,\textsuperscript{157} and have been instrumental in the effort to secure counsel for every defendant regardless of his ability to pay.\textsuperscript{158} There are two ways in which a student may be appointed to represent an indigent defendant in a criminal proceeding: either indirectly by assignment to a client through a law school legal aid clinic,\textsuperscript{159} or directly through participation in an internship with the public defender.\textsuperscript{160}

\begin{itemize}
\item \textsuperscript{152} For articles discussing the benefits of student practice in on-campus legal aid clinics, see \textit{supra} note 22 and accompanying text.
\item \textsuperscript{153} See \textit{supra} note 22 and accompanying text; \textit{Empirical Study, supra} note 1, at 387.
\item \textsuperscript{154} See May, \textit{supra} note 65, at 1016.
\item \textsuperscript{155} See \textit{infra} Part V.
\item \textsuperscript{156} For articles discussing student practice opportunities in the public defender's office and the prosecutor's office, see \textit{supra} notes 23 and 24 and accompanying text.
\item \textsuperscript{157} See generally Jones, \textit{supra} note 23, at 181-89.
\item \textsuperscript{158} See \textit{Empirical Study, supra} note 1, at 369; Kuruc & Brown, \textit{supra} note 5, at 40-41; Jones, \textit{supra} note 23, at 181-83 (discussing the impact of the \textit{Gideon} decision on student practice).
\item \textsuperscript{159} For articles discussing on-campus clinical programs, see \textit{supra} note 22 and accompanying text.
\item \textsuperscript{160} See \textit{supra} note 23 and accompanying text (discussing internships with the office of the Public Defender).
\end{itemize}
Participation in an internship is an excellent opportunity for students who are interested in learning more about criminal law and procedure through supervised practice. Internship with the Public Defender may be more appealing to students that have a decided interest in criminal law, because they provide a very realistic taste of what it is like to work as a criminal defense attorney. The experience a student has in an internship is in many ways more authentic than the experience a student has in an on-campus clinical program. Moreover, relative independence from the law school is an attractive feature of the internship for some students who would like a practice experience as realistic as possible.

Interns at the Public Defender's office defend clients against both misdemeanor and felony charges; however, students tend to handle more misdemeanors than felonies because most student practice rules require closer supervision in cases involving felony charges. Sometimes student interns will be involved in criminal appeals, but this is not as common as other types of representation. If a case reaches the appellate level, the student lawyer may be asked to assist in the defense or serve as second chair. It is thought that the risk of student representation is too great at this level to permit a student to proceed without very close supervision by an experienced criminal defense attorney.

Law school clinical instructors often oversee the placement of students in internships and track the students' progress. The law school's ongoing involvement reflects the goal of the Model Rule's stated purpose, "to encourage law schools to provide clinical instruction in trial work of varying kinds." Thus, the law school maintains supervisory authority over the student and the program. Clinical directors assume

161. See Jones, supra note 23, at 183-89 (discussing the activities student interns perform in the public defender's office).
162. See id.
163. See id.
164. See id.
165. See id. at 183-86; Kuruc & Brown, supra note 5, at 48-55 (graphic comparing the provisions of the various state student practice rules discussing extent of practice permitted and nature of personal supervision required).
166. See Jones, supra note 23, at 183-89.
167. See id.
168. See id.
169. See id. at 183-89. For articles discussing innovative clinical supervisory techniques, see supra note 33 and accompanying text.
170. See MODEL RULE, reprinted in Empirical Study, supra note 1, at 477.
responsible for evaluating off-campus programs to ensure that they meet the institution's high academic standards.\footnote{171}

However, a key criticism of defender internships is that there is no effective way for the law school to ensure that students receive an adequate amount of supervision.\footnote{172} Some educators have expressed concern that supervising attorneys may be more concerned with office procedure and case load management than with education, and therefore students may not receive the type of high quality supervision that an on-campus clinical program provides.\footnote{173} This criticism unfairly presumes that the practitioner has substantially less interest in education than the law school clinical instructor. What critics of off-campus programs often forget is that the off-campus office has a vested interest in training future lawyers because these students may very well become their associates in the near future. Thus, off-campus practice opportunities can help smooth the transition between law school and employment by enabling employers to introduce students to the practical aspects of lawyering in that office at an earlier stage.\footnote{174}

Clinical instructors do have a legitimate concern when understaffed off-campus programs exploit student help in a manner that is inconsistent with the stated educational goals of the student practice rule or the clinical program's mission. Early public defender internships may have suffered many of these deficiencies because the newly created demand for counsel so overburdened an already strained segment of the bar.\footnote{175} In this context, students taken on board to help alleviate the burden on defense attorneys may very well have been put at an educational disadvantage.\footnote{176}

However, there are ways in which law school clinical supervisors can keep tabs on off-campus internships to ensure that students are receiving adequate supervision and challenging practical opportunities. For instance, clinical instructors can schedule regular conferences with students and supervising attorneys to discuss the scope of the students' re-
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sponsibilities and the nature of students’ progress. Regular conferences are one key way in which clinical instructors can exert educational oversight and control over off-campus student practice programs. In addition, because students are active participants in their own learning, they should be encouraged to voice any concerns they may have about the quality of instruction and supervision they receive in an off-campus internship. Moreover, if students are uncomfortable with the level of responsibility the internship has given them or if they do not believe that they are receiving enough constructive guidance from their assigned supervising attorney, they should have the right to call an emergency conference with the law school clinical advisor and the supervising attorney in order to rectify the problem. The lines of communication must remain open at all times, so that students are empowered to take the necessary steps to ensure that their practice experience is a success.

Internships with the prosecutor function much the same manner as internships with the public defender. Like any off-campus clinical program, prosecutor internships are subject to law school oversight and must provide an educational experience that is consistent with the mission of the law school clinical program and the student practice rule’s statement of purpose. Prosecutor internships developed as an alternative to indigent defense work. Because students in the prosecutor’s office work on behalf of the state, it is believed that these programs are consistent with the service orientation of most traditional student practice rules.

Like defender internships, prosecutor internships arguably provide students with practical opportunities in a variety of clinical arrangements. Moreover, there are several kinds of prosecutor offices with which a student may be placed. These offices can be “divided into three main categories: local prosecutors; state attorneys general; and United States attorneys.” Because “most Attorney General offices

177. See id.
178. For articles discussing internships with the prosecutor’s office, see supra note 24 and accompanying text.
179. For articles discussing innovative supervisory techniques, see supra note 30 and accompanying text.
180. For articles discussing internships with the prosecutor’s office, see supra note 24 and accompanying text.
181. See id.
182. Id.
are located in state capitals and most law schools are not," the majority of clinical programs "place students in local prosecuting offices."\(^{183}\)

Additionally, because local offices offered students more experience in trial work\(^{184}\) than the other two types of offices, they fast became the placement of choice for students attending law schools in states that have adopted the Model Rule approach. Moreover, internships with the local prosecutor are preferred under the Model Rule because they enable law schools to provide clinical instruction in trial skills of varying kinds.\(^{185}\) Thus, one drawback to the Model Rule approach is that students are discouraged or perhaps forbidden from seeking practice experience in an office that does not do a significant amount of trial work. This restriction implicitly limits the types of lawyering skills a student can develop in a sanctioned student practice program. It is precisely this focus on trial skills in the criminal context that, arguably, puts students in states that have adopted the Model Rule approach at an educational disadvantage.

Moreover, under the Model Rule approach, practice opportunities available to students in on-campus legal aid clinics, and through internships with local public defender and prosecutor offices, have for the most part been a resounding—but nonetheless qualified—success.\(^{186}\) Their success is qualified because these three programs do not adequately expose students to the reality of transactional practice nor do they adequately train prospective lawyers in the strategic art of civil litigation.\(^{187}\) Additionally, these programs do little if anything to help students develop negotiation skills, and they do not train students in forms of alternative dispute resolution, such as mediation and arbitration.\(^{188}\)

Thus, a liberalized student practice rule should be adopted that would enable law schools and employers to significantly expand the variety of student practice options.

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183. \textit{Id.}
184. See Barbell, \textit{supra} note 24, at 192.
185. \textit{See id.} (emphasis added).
186. See \textit{supra} notes 22, 23, 24 and accompanying text (for articles discussing student practice opportunities in on-campus legal aid clinics, public defender's offices, and prosecutor's offices).
188. \textit{See id.}
IV. STUDENT PRACTICE DURING THE SECOND PHASE: THE RULES AND PROGRAMS

Because student practice has been an educational success in these three contexts, some state courts and legislatures have amended their student practice rules to permit schools and, in some rare instances, employers to expand the scope of available supervised practice opportunities.\(^9\)

One of the most significant ways in which states have departed from the Model Rule approach is by permitting students to represent non-indigent clients. Twenty-three states now permit students to represent any client regardless of his economic status.\(^9\) "[B]y allow[ing] students to represent any individual in need of legal services," these rules give "law students an opportunity to gain practical experience in areas of the law beyond poverty and criminal law."\(^9\) This represents a significant departure from one of the "original objectives" of student practice, "to provide legal services to the poor," and reflects the desires of many state courts and legislatures to expand student practice opportunities in the interest of improving the overall quality of legal education in the state.\(^9\)

Not every state that has abolished the indigence requirement, however, has substantially liberalized its rule in other respects.\(^9\) Several state rules still limit the nature of activities in which a student may engage, and some limit the class of eligible supervising attorneys to only those instructors that are directly affiliated with a law school clinical program.\(^9\) Moreover, for practical purposes, students in many of the states that have expanded the pool of eligible clients are still limited by the nature of the programs that are available through their law schools and the shortage of eligible supervisors who are directly affiliated with their law school's clinical programs.\(^9\) Even though on-campus clinics and internships with public agencies and offices continue to thrive in

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190. See *id.* at 48-55.
191. See *id.* at 43.
192. See generally *id.* at 43-45.
193. See *id.* at 48-55 (comparing the provision of each state student practice rule).
194. See *id.*
195. See *id.*
these states, as well as in those states that have kept the indigence requirement, there still has not been significant development of practice opportunities in areas of the law, like transactional work, negotiation, and alternative dispute resolution.

This lack of innovation, even in states that have adopted relatively liberal student practice rules, can at least in part be attributed to resistance in the academic community. Clinical educators have opposed the expansion of student practice to include privately run clinics. These educators fear that private attorneys, being primarily practitioners and not educators, would not be able to provide law students with the appropriate amount of instructive supervision, something that supervisors affiliated with law school clinical programs are arguably better equipped to do. Institutional resistance to private internships is surprising given the success of off-campus internships with public agencies, like the public defender's office and the district attorney.

Because many law schools have resisted the opportunity to collaborate with private employers to create off-campus internship opportunities for students in areas of the law that on-campus programs have historically neglected, there has been a small movement afoot to create on-campus transactional, mediation, and negotiation clinics. This second wave of on-campus clinical opportunities is quite promising, but funding concerns prevent most schools from developing them. Additionally, the practice experience gained from an on-campus transactional or mediation clinic is not entirely authentic. The types of clients and legal issues dealt with in an on-campus clinic do not mirror the types of issues a student is likely to encounter in practice. This is because student

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196. For articles discussing clinical opportunities in on-campus clinics, public defender offices, and prosecutor offices, see supra notes 22, 23, 24 and accompanying text.
197. See supra note 5 for a list of the states that maintain the indigence requirement.
198. See generally Kuruc & Brown, supra note 5, at 40-55.
199. See Avellone, supra note 37, at 29-33.
200. See id. at 32.
201. See id.
202. See supra notes 22, 23, 24 and accompanying text.
203. For articles discussing transactional, mediation, and arbitration clinics on-campus, see supra note 22 and accompanying text.
204. See supra note 36 and accompanying text (discussing impact of funding on clinical programs and supervision).
205. For articles discussing transactional, mediation, and arbitration clinics on-campus, see supra note 22 and accompanying text.
206. See supra note 216.
staffed clinics, for the most part, attract economically disadvantaged clients, even in states that have lifted the indigence requirement. Thus, students practicing in these clinics probably will not have the opportunity to help represent organizational clients, such as corporations or labor organizations, precisely the type of client they are likely to encounter in private practice. For these reasons, the new wave of on-campus clinical programs is not the most educationally or economically sound alternative.

However, some states have taken steps to encourage schools and employers to further increase the types of clinical opportunities available to students. To this end, and to their credit, many state rules have expressly increased the "variety of legal activities in which a student may participate." Unlike the Model Rule, which emphasizes learning litigation skills and confines student activities to the preparation of court documents and court appearances, several student practice rules allow students to participate in activities related to non-litigation skills. California allows students to give advice to clients, negotiate on their behalf, and participate in arbitration. In Nevada, student lawyers can interview and advise clients and take part in client counseling. Washington has added advising clients and negotiation to its list of permitted activities. Georgia, Maryland, and Minnesota allow students to participate in any legal activity without limitation. Students in these states have an opportunity to learn the skills required for effective client counseling, arbitration, and negotiation in addition to the traditional trial advocacy skills.

Moreover, several states have made key strides toward the complete liberalization of their student practice rules. These states are on the brink of a true revolution in clinical legal education. They have taken the necessary first step in the direction of incorporating student practice internships into the core law school curriculum. Such rules permit the development of a vast number of practice opportunities through a diverse group of clinics, agencies, and private employers. The reforms these states have made in their student practice rules send a clear message to the American Bar Association: Update the Model Student

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207. See id.
208. See id.
209. See Kuruc & Brown, supra note 5, at 43.
210. Id.
211. See id.
212. See id.
Practice Rule to make the liberal approach the accepted national standard.  

V. THE FINAL PHASE: THE PROPOSED ABA MODEL STUDENT PRACTICE RULE  

Now, some twenty-nine years after the ABA adopted its original Model Student Practice Rule, the profession is embarking on a new era in legal education. Recent advances in clinical programs have led to the development of a variety of student practice clinics that focus on skills and ethics training in such diverse areas as litigation, negotiation, mediation, arbitration, and transactional preparation. In an effort to keep pace with these innovations, a significant number of states have abandoned the Model Rule's approach, in favor of less restrictive rules that encourage skills development—in a host of areas—that the Model Rule does not even contemplate. Because the Model Rule has outlived its usefulness as a national standard, the time has come for the American Bar Association to go back to the drawing board and draft a new Model Student Practice Rule that better reflects the changing landscape of clinical legal education in America.

The following is a proposal for a new Model Rule. This proposal borrows the best aspects of current state approaches to create a new Rule that will better serve the needs of the profession in the 21st century. This proposed Model Rule has six primary sections: (1) statement of purpose; (2) scope of permitted practice; (3) student certification requirements; (4) procedure for revocation of student certification; (5) supervising attorney certification requirements; and (6) restrictions on certified supervising attorneys.

A student practice rule is somewhat difficult to draft because it requires the drafter to strike an appropriate balance between serving the educational needs of the student, on the one hand, and protecting the client's rights and the integrity of the legal profession, on the other. Unlike most other rules, this Rule attempts to strike the proper balance by adopting rigorous student and supervising attorney certification requirements. Moreover, the following requirements are designed to ensure that students enter limited practice with the requisite analytical

213. See id.
215. For articles discussing transactional, mediation, and arbitration clinics on campus, see supra note 22 and accompanying text.
skill and legal knowledge to competently represent a client, in any matter, under the supervision of a certified licensed attorney.

Thus, unlike the current Model Rule, the proposed Rule does not adopt an arbitrary limitation on the scope of student representation. Instead it permits supervised practice that is coterminous with that of a licensed attorney. By lifting the indigence requirement and expanding the scope of permitted activity, the proposed Rule opens a number of new doors to student practitioners that had previously been closed.

A. The Statement of Purpose

The bench and the bar have a vested interest in the education of their respective future members. As a means of improving the quality and scope of clinical opportunities in legal education, and to encourage students to perform legal services on behalf of the indigent, the following Rule is adopted.

Much like the original Model Rule, the proposed Rule opens with a statement of purpose. However, the revised statement of purpose looks somewhat different. Instead of focusing on service in the first sentence, the revised purpose focuses on education. This alerts the reader to the fact that the key motivating factor underlying the Rule is the desire for expanded clinical opportunities and not the provision of legal services to the poor. The second sentence states how the Rule is intended to improve education and concludes by encouraging students to expand their educational horizons by dedicating a portion of their student practice experience to the needs of indigent clients. Thus, the revised statement of purpose makes quality educational opportunity the primary focus, with service as a secondary goal.

This statement of purpose better reflects the goals of clinical education, while maintaining some of the service oriented character of the original Rule. The proposed language is a substantial improvement over the Model Rule because it does not inherently limit the substance of potential clinical programs by including qualifying terms, such as "trial skills." Additionally, the proposed statement of purpose reflects the desire of many states to encourage the use of student practice as a method of substantive educational reform.

216. See MODEL RULE, reprinted in Empirical Study, supra note 1, at 476-79.
B. The Scope of Permitted Student Practice

This Rule permits supervised student practice that is coterminous with that of a licensed attorney. Pursuant to this Rule, and subject to any reasonable limitation a local court may deem necessary, any duly certified student, working under the direct supervision of a certified licensed attorney, may represent any client in any matter and appear before any court in this state.

The next section of the proposed Model Rule outlines the scope of permitted practice. This section serves the same purpose as the activities section of the original Model Rule. However, because the proposed Rule does not define the extent of permitted practice in terms of individual activities, but rather permits supervised student practice that is coterminous with that of a licensed attorney, an “activities” section is not appropriate.

Moreover, the scope section of the proposed Rule states, in unambiguous terms, that permitted student practice is of an unlimited nature and scope. Unlike the activities section of the current Model Rule, the scope section of the proposed Rule does not impose minimum supervisory requirements for court appearances in specific kinds of cases. Instead, by stating that the scope of student practice is subject to “any reasonable limitation a local court may deem necessary,” the Rule encourages individual courts to establish local rules governing student appearances. This enables judges to exert more control over the operation of their courtrooms. By giving the courts discretion, the proposed Rule entrusts individual judges to establish reasonable limitations on student appearances in order to safeguard the rights of clients. This gives the courts the flexibility to require personal supervision depending on the nature of the case and the level of experience of the student practitioner. Moreover, local rules are preferable to a state standard because individual judges have better knowledge of those who appear before them than members of the state supreme court. Thus, customized local rules are better for clients, students, and supervisors because they permit the courts to determine the need for increased supervision on an individual basis.

The scope section is the proposed Rule’s distinguishing feature. By lifting all restrictions on the types of clients and matters a student may handle, the Rule opens the door to a host of potential clinical arrangements. What this Rule expressly permits that very few other rules even
contemplate, is the creation of privately run student practice clinics. Thus, by shifting the focus away from the nature of the particular clinical program to the qualifications of an individual supervisor, the proposed Rule expressly permits qualified attorneys in private practice to establish their own clinical programs. This gives the prospective employer the opportunity to groom a future associate at an even earlier stage. Thus, student practice under the proposed Rule is a 21st century take on the apprenticeship concept. Under the proposed Rule, employers can take their clerkship programs to the next level by establishing court and law school sanctioned student practice programs in every conceivable legal department. These programs would add an extra dimension to student practice that is not available under the current rules. The proposed Rule is the most educationally sound alternative because it encourages the development of many different kinds of practice opportunities in transactional work as well as litigation. Thus, the proposed Rule permits the profession to come one step closer to providing clinical instruction that resembles the residency requirement in medical school.

In addition to dramatically expanding the scope of educational opportunities, the proposed Rule also lifts some of the financial burden off of law school clinical programs by permitting any certified practitioner to take an eligible student under his or her experiential wing. Law school clinical oversight of the newly created off-campus programs would be substantially less expensive than maintaining several on-campus clinics committed to the development of different types of practical skills.

However, encouraging the expansion of practice opportunities to include privately run clinics is in no way meant to degrade the educational and societal importance of on-campus legal aid clinics. In fact, these clinics would remain a vital part of clinical legal education under the proposed Rule, because in keeping with the student practice tradition of service, the student certification mandate of this Rule requires eligible students to commit a minimum of 60 hours of their time to providing legal services for the poor. As discussion of the subsequent section governing student eligibility illustrates, the certification requirement strikes an appropriate balance between the educational and service goals of the proposed rule.
C. Student Certification Requirements

Any student seeking certification to practice under the supervision of a certified licensed attorney is subject to the following procedures and eligibility requirements:

1. Any student seeking certification under the provisions of this Rule must be enrolled in an ABA accredited law school.

2. Any student seeking certification under the provisions of this Rule must receive Dean's certification that he or she possesses the requisite character and fitness to practice law under the supervision of a certified licensed attorney.

3. Any student seeking certification under the provisions of this Rule must have successfully completed his or her first year of law school.

4. Any student seeking certification under the provisions of this Rule must receive a passing score on the Student Practice Certification Exam, to be administered annually at each ABA accredited law school in this state, pursuant to the guidelines established by the Student Practice Committee, which is to be governed and appointed by the highest court in the state, pursuant to this Rule.

5. Any student seeking certification under the provisions of this Rule must submit an application for certification to the Student Practice Committee. This application must include: (1) proof of enrollment; (2) Dean's certification of character and fitness to practice; and (3) proof of passing score on the Student Practice Certification Exam. Students who submit completed certification applications will be certified to practice for a period of three months. In order to remain certified the student practitioner must devote 60 hours of his or her practice experience to providing legal services for indigent clients. If the student has not fulfilled the service requirement upon expiration of the three month period, his or her student practice privilege will be permanently revoked at that time. If the student has fulfilled the service requirement upon expiration of the three month period, his or her student practice certification will extend up to the date of the first bar exam for which he or she is eligible or the date of graduation in states that extend a diploma privilege.

6. Any student seeking certification under the provisions of this Rule will be subject to discipline for violation of the state's rules of professional conduct upon certification.
These student certification requirements are intended to maintain the integrity of student practice by safeguarding the client from the unqualified student practitioner. This section maintains many of the standard eligibility requirements, such as attendance at an ABA accredited law school and Dean certification of character and fitness to practice. However, the proposed Rule does away with the detailed semester scheme or "third year requirement," as well as any specific course prerequisites, in favor of a standardized student practice eligibility examination to be administered annually, to any interested student, who has completed the first year of law school. This exam will look similar to a bar exam, however, the questions will be geared toward students. The exam will test the student's knowledge of the core substantive areas of the law, as well as civil and criminal procedure. In addition, the exam will include a professional responsibility section modeled after the Multi-state Professional Responsibility Exam.

The student certification section of the proposed Rule is different than most current rules because it requires any adopting court to appoint a "Student Practice Committee" composed of educators, lawyers, and judges to oversee administration of the exam, and to approve student and supervisor certification. This committee will also serve as a grievance commission and as such has the authority to revoke student practice privilege without a showing of cause, and hear complaints against student practitioners for alleged violations of the rules of professional conduct.

Thus, the student certification section of the proposed Rule serves three key functions: (1) to establish minimum eligibility requirements for students who seek permission to practice under the supervision of a certified attorney; (2) to mandate the establishment of a state Student Practice Committee; and (3) to set up a procedure by which students are certified to practice under the supervision of a certified attorney.

D. Procedure for Revocation of Student Certification

Student practice certification pursuant to the provisions of this Rule is revocable at the will of the Student Practice Committee subject to the following procedure:

1. Pursuant to the provisions of this Rule, a client, supervising attorney, law school clinical instructor, or law school dean may initiate revocation of a student’s practice certifica-

217. See Model Rule, supra note 12, at 476-79.
tion by petitioning the Student Practice Committee.
2. Pursuant to the provisions of this Rule, the revocation petition must inform the student that his or her certification is being challenged at the time the petition is filed.
3. Pursuant to the provisions of this Rule, any student whose certification is challenged has the opportunity to file a written reply to the petition on his or her own behalf within two weeks of notification.
4. Pursuant to the provisions of this Rule, the Student Practice Committee will enter a decision on the revocation petition once it receives the student’s written response or after the two week period for responding has expired. The decisions of the Committee are final and are therefore not reviewable by any other body.

Unlike the current Model Rule and its progeny, the proposed Rule expressly provides for a formal revocation procedure with the opportunity for student input. This procedure is initiated when a client, supervising attorney, court, law school clinical instructor, or dean petitions the Student Practice Committee for revocation of a student’s practice privileges. The petitioning party is not required to show cause for revocation under the proposed rule, but must nonetheless notify the student of the impending challenge. Once a student is put on notice that his or her certification is being challenged, he or she has two weeks to prepare and submit a statement in his or her defense. Once the Committee receives the student’s statement, or after the two week period has expired, it will issue a determination in the matter. The Committee’s decision to revoke pursuant to the proposed Rule is not appealable, and the Committee is not required to provide an explanation for its decision.

This revocation procedure is a departure from the current Model Rule approach and most state approaches, because it provides students with an element of due process that most rules do not afford. Under the current Model Rule, for example, student practice privileges can be revoked at any time and for any reason or no reason at all. Thus, the proposed Rule’s revocation procedure is more equitable than the current Model Rule’s approach precisely because it permits the student to submit a statement in his or her defense, which may influence the Committee’s final decision.
E. Supervisor Certification Requirements

All licensed attorneys with at least two years of practice experience are eligible to apply for certification as supervising lawyers pursuant to the following provisions:

1. Any eligible attorney wishing to be certified to supervise student practitioners pursuant to the provisions of this Rule must submit an application to the Student Practice Committee. The application must include the following items:
   a. Proof of eligibility (i.e., Proof of two years practice experience); and
   b. A proposed lesson plan that outlines the educational goals of the supervisory relationship.

2. The Committee will carefully review all applications. The Committee will do its best to reach a decision within a month of receiving any application. The applicant will be notified as soon as the Committee makes a decision.

3. All certified supervising attorneys must keep a copy of their certification credentials and lesson plan on file at each law school in the state in which they are licensed to practice and certified to supervise.

4. All certified supervisors are certified for an indefinite period of time, barring a finding of professional misconduct. A finding of professional misconduct warrants immediate revocation of supervisor certification. The Committee may elect to suspend a supervisor’s certification if an excessive number of student complaints are filed against the attorney. The authority of the Committee to suspend certification pursuant to this Rule, on the basis of complaints is completely within its discretion.

The final section of the proposed Model Rule establishes eligibility requirements for supervising attorneys. These requirements exist to safeguard both students and clients. The primary purpose behind supervisory certification requirements and procedures is to attempt to ensure that every student practitioner receives educationally valuable supervision and instruction throughout his or her practice experience.

Thus, unlike the current Model Rule, the proposed Rule imposes additional certification requirements on supervising lawyers. Under the proposed rule only licensed practitioners with a minimum of two years practice experience are eligible to supervise student lawyers. The pro-
posed rule also requires the prospective supervising attorney to apply for certification from the Student Practice Committee. This application must include a detailed lesson plan outlining the proposed educational goals of the supervisory relationship.

Once a supervising attorney is approved and formally certified, the attorney may begin supervising up to five certified student practitioners at any given time. Certified supervising attorneys remain certified indefinitely, barring a finding of professional misconduct. A supervisor who is found to have violated any of the rules of professional conduct will have her certification to supervise immediately revoked.

Additionally, under the provisions of the proposed Rule, law school deans and clinical instructors retain the right to evaluate certified supervisors and may remove their students from any program that does not meet the law school's educational standards. Moreover, the Rule encourages students to voice any concerns they may have over the quality of supervision they receive from a private supervising attorney with their law school. In addition to seeking redress through the law school, however, the student practitioner may file a complaint against a supervising attorney with the Student Practice Committee.

VI. CONCLUSION

The current ABA Model Student Practice Rule has failed to keep pace with innovations in clinical legal education. Its narrow focus on trial skills to the exclusion of all other practical lawyering skills puts students in jurisdictions that have adopted its approach at a significant educational disadvantage. Because the Model Rule has outlived its usefulness as a national standard, this Comment urges the ABA to adopt a new, liberalized, Model Student Practice Rule—one that expressly permits student representation of any client that is coterminous with that of a licensed attorney.

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