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THIRD-YEAR PRACTICE RULES IN VIRGINIA: NOTES FOR THE PRACTITIONER

George K. Walker*

FOREWORD

by

The Honorable Clement F. Haynsworth, Jr.†

It is pleasing to know that all courts sitting in Virginia have provided for student participation in the processing of cases. Within the boundaries of the Commonwealth, there is a uniform recognition of the need and appropriateness of judicial cooperation in the process of educating young men and women in the law.

The reason for the rules, as Professor Walker clearly states below, is the education of the participating students and not the economic prosperity of the practicing bar. Indeed, the rule in the Fourth Circuit Court of Appeals limits student participation to cases in which the client is an indigent, the United States or a state. Therefore, lawyers representing private parties other than indigents have no access to the program. Moreover, in actual practice under the Fourth Circuit rule, student representation of indigents is substantially limited to cases in which the supervising attorney is a law professor. The rationale is that the educational benefits from the student's experience are much less likely to be slighted when the supervisor is himself primarily engaged in the teaching of students. Additionally, a supervising teacher, knowing that the reputation and image of his law school may be implicated, will probably be careful to limit the experience to exceptionally well-qualified students, and will take unusual care to make certain that the students' performance is exceptionally good. Undoubtedly, many private practitioners would do as well as their academic brethren, but the client's interest demands that all reasonable steps be taken to give advance assurance that there will be close and enlightened

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supervision and that the participating students be only those with very high potential for skilled advocacy.

For the student, something of the same experience can be had through moot court work, but the necessary simulation in moot courts is all too evident. A real case in the real world seems to provide a student with a more exciting and meaningful experience. From the point of view of my brothers and me, the program generally has worked well. Because of the selection of able students and the close supervision and instruction they have received, most have performed excellently, student and professor together providing representation superior to that afforded to most indigents through appointed counsel. Some among the superior performers have been students of Professor Walker, who has the court's appreciation for his contribution to the success of our program.

C.F.H., Jr.

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INTRODUCTION

With the promulgation of the Virginia Supreme Court's Third-Year Student Practice Rule,¹ all courts sitting in the Commonwealth have published rules for senior law student assistance with litigation and other matters.

This article examines the third-year practice rules of the Virginia Supreme Court, the United States Court of Appeals for the Fourth Circuit² and the United States District Courts for the Eastern³ and Western⁴ Districts of Virginia, and offers some suggestions for the practitioner who wishes to cooperate in legal education programs pursuant to these rules. As stated by Chief Judge Haynsworth and detailed below, these rules were promulgated for the education and training of law students, and not as a framework for supplying low-cost law clerks or apprentices to assist the practitioner in court.

³. E.D. VA. LOCAL R. 7(N) (June 1, 1974).
⁴. W.D. VA. THIRD YEAR PRACTICE RULE, adopting PLAN FOR THIRD YEAR PRACTICE RULE (July 12, 1974) [hereinafter cited as W.D. VA. STUDENT PRACTICE R.], is identical with E.D. VA. LOCAL R. 7(N).
The Virginia Supreme Court's rule, applying to "any court or . . . administrative tribunal in this Commonwealth," is the most far-reaching in that it permits senior student advocacy in "any civil, criminal or administrative matter on behalf of any person [or] . . . the Commonwealth . . . ." The Fourth Circuit has broadened its student practice provisions to include work for state attorneys-general in addition to allowing assistance with indigents' appeals and appearances with the United States attorney "in any case." The federal district courts in Virginia also have broad student practice rules, allowing appearances in civil and criminal cases "on behalf of any person" or the United States Government. The Supreme Court of the United States has not published rules for student practice, and is not likely to do so in the near future.

The student advocacy rules promulgated by the Virginia Supreme Court, the Fourth Circuit and the Virginia federal district courts follow the American Bar Association's model student practice rule, adopted in 1969, with important exceptions.

Third-Year Student Practice Under the Rules

The rules' prerequisites for appearances by law students are similar. In all cases the student must be duly enrolled and in good standing in a law school approved by the American Bar Association. The student must have completed satisfactorily at least four

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7. E.D. Va. Local Rule 7(N)(I)(A), (B); W.D. Va. Student Practice R. I (A), (B).

8. Since U.S. Sup. Ct. R. 5(1) requires that an advocate be admitted to practice before a state's highest court three years before admission to the bar of the Supreme Court of the United States, it would follow that prospects for a student practice rule are dim at present. The Court's reports note occasional pro hac vice appearances, however.


10. Va. R. 15(b)(i); 4th Cir. Supplem. R. 13(a); E.D. Va. Local R. 7(N)(II)(A); W.D. Va. Student Practice R. II(A). No federal rule specifically requires that the student be in good standing, but all rules require certification from the dean. No law school dean will certify a student who is merely "enrolled" but not in good standing. This is particularly so since all rules require that the dean state that the student advocate is of "competent ability," and good character. The federal district court rules add that the dean must certify that the student is "adequately trained to perform as a legal intern." Va. R. 15(b)(iii); 4th Cir.
semesters, or the equivalent, of legal education.\textsuperscript{11} He must be certified by the dean of his law school as being of good character and competent ability.\textsuperscript{12} The Virginia Supreme Court rule further requires that the student have completed courses in criminal law, professional ethics, evidence and procedure.\textsuperscript{13} The student must be

\textsuperscript{11} See VA. R. 15(b)(ii); 4TH CIR. SUPPLEM. R. 13(b); E.D. VA. LOCAL R. 7(N)(II)(B); W.D. VA. STUDENT PRACTICE R. 11(B).

\textsuperscript{12} VA. R. 15(b)(i) contains a reciprocity provision, allowing foreign state student practice if the foreign state law or rule matches the Virginia rule. While the Fourth Circuit permits students from any law school approved by the ABA to practice, the federal district court rules limit such practice to students “enrolled in this State in [an ABA-approved] law school.” This limitation seems unduly restrictive, particularly when the geographic proximity of the District of Columbia and North Carolina law schools is considered. E.D. VA. LOCAL R. 7(N)(II)(A); W.D. VA. STUDENT PRACTICE R. (II)(A). A reciprocity provision along the lines of the Virginia Supreme Court model would be a logical alternative.

All Virginia law schools have been certified by the ABA for years and are also listed by the American Association of Law Schools, which has not approved all institutions on the ABA list.

\textsuperscript{13} VA. R. 15(b)(iii). “Procedure” is not explained or qualified but should be under the broad scope of the Virginia rule. It probably means “civil procedure,” since most law schools include some criminal procedure in the basic criminal law or evidence courses. Other schools cover aspects of criminal procedure in constitutional law or criminal procedure courses, neither of which are required by the rule. An argument can be made for adding administrative law in the list of required courses if the student is to appear before administrative tribunals. Moot court experience might be considered as a prerequisite if assistance with appeals is contemplated. Inclusion of a required course in professional ethics, instead of the student’s certification as required under the federal rules, may cause problems for students in law schools in which ethics is a senior course which the student may be able to take only with, or after, his clinical experience. See note 15 infra. The court’s waiver, if possible, could reduce this problem, but the best solution is to amend the rule to eliminate specific course requirements altogether. While the United States Court of Appeals for the Second Circuit and other jurisdictions have considered course requirements as a prerequisite for admission to practice, lawyers, legal educators and judges have criticized adoption of such strictures. See, e.g., PEDRICK & Frank, Trial Incompetence: Questioning the Clare Cure, 17 TRIAL 47 (March, 1976); Wellington, Legal Rights and Resources, YALE L. REP. 4, 5 (Spring, 1976). Some

\textsuperscript{11} Supplem. R. 13(c); E.D. VA. Local R. 7(N)(II)(C); W.D. VA. Student Practice R. II(C). While “good standing” is an express requirement under the Virginia rule, it is not defined. One would presume it means that the law student has at least passing marks and the reasonable expectation of graduating within the next academic year. Since the Virginia Supreme Court rule also requires a dean’s certification that the student is of “competent ability,” and since no student who is considered competent by his dean would lack good standing, the result is a redundant “good standing” requirement. See VA. R. 15(b)(i).

\textsuperscript{12} VA. R. 15(b)(i) does not specifically say that the dean shall certify as to “legal ability,” but courses taken, grades and good character are about all to which a professional school dean can attest. See also 4TH CIR. SUPPLEM. R. 13(c); E.D. VA. LOCAL R. 7(N)(II)(C); W.D. VA. STUDENT PRACTICE R. II(C). The federal district court rules require the dean to certify the student as “adequately trained to perform as a legal intern.” See also note 10 supra.

\textsuperscript{13} VA. R. 15(b)(iii). "Procedure" is not explained or qualified but should be under the broad scope of the Virginia rule. It probably means "civil procedure," since most law schools include some criminal procedure in the basic criminal law or evidence courses. Other schools cover aspects of criminal procedure in constitutional law or criminal procedure courses, neither of which are required by the rule. An argument can be made for adding administrative law in the list of required courses if the student is to appear before administrative tribunals. Moot court experience might be considered as a prerequisite if assistance with appeals is contemplated. Inclusion of a required course in professional ethics, instead of the student's certification as required under the federal rules, may cause problems for students in law schools in which ethics is a senior course which the student may be able to take only with, or after, his clinical experience. See note 15 infra. The court's waiver, if possible, could reduce this problem, but the best solution is to amend the rule to eliminate specific course requirements altogether. While the United States Court of Appeals for the Second Circuit and other jurisdictions have considered course requirements as a prerequisite for admission to practice, lawyers, legal educators and judges have criticized adoption of such strictures. See, e.g., PEDRICK & Frank, Trial Incompetence: Questioning the Clare Cure, 17 TRIAL 47 (March, 1976); Wellington, Legal Rights and Resources, YALE L. REP. 4, 5 (Spring, 1976). Some
introduced by an attorney who has already been admitted to practice before the tribunal in which the student is to appear. The federal rules require that the student "certify in writing that he has read and is familiar with the Canons of Professional Ethics of the American Bar Association." The Virginia rule has no such provision, but instead requires completion of a course in professional ethics. All rules require that the student "neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services." However, this does not prevent an attorney, law firm, legal aid bureau, public defender office or governmental office from compensating the student, nor does it prevent such agencies from charging for services if charges are proper.

The submission of the dean's certification varies with each jurisdiction. The Virginia Supreme Court rule requires that the certificate be filed with the Executive Director of the Virginia State Bar, and that it remain in effect eighteen months or until the announcement of the results of the first bar examination given by the Virginia Board of Bar Examiners after the student graduates, whichever is earlier. If the student passes the bar exam, the certificate continues in effect until admission to the bar. The federal district courts have

educators have risen to the defense of such rules. See, e.g., McLaughlin, Trial Incompetence: In Defense of the Clare Cure, 12 TRAIL 62 (June, 1976).

14. VA. R. 15(b)(iv); 4TH CIR. SUPPLEM. R. 13(d); E.D. VA. LOCAL R. 7(N)(II)(D); W.D. VA. STUDENT PRACTICE R. II(D).


17. VA. R. 15(b)(v); 4TH CIR. SUPPLEM. R. 13(e); E.D. VA. LOCAL R. 7(N)(II)(E); W.D. VA. STUDENT PRACTICE R. II(E). The specific language in these sections varies, particularly with respect to the governmental agencies involved.

18. See notes 12-13 supra and accompanying text.

19. VA. R. 16(c)(i). This rule does not cover the situation of the student who is admitted by reciprocity. See note 10 supra. Presumably admission to the "bar" means admission to
a similar provision, except that the student apparently may pass any bar examination for continuation of certification. The certificate is filed with the clerk of the federal district court. The Fourth Circuit rule also requires filing the certificate with the clerk, but contains no time limit or continuation provisions. This last rule apparently contemplates student assistance only on a case-by-case basis.

All rules allow the court to terminate certification, and therefore end the student's practice, "without notice of hearing and without any showing of cause." The dean of the student's law school may also terminate his certification. The supervising lawyer retains complete control in that he may refuse to introduce the student, refuse his consent for student assistance, refuse to give his approval for student assistance, refuse to assume personal professional responsibility or refuse to assist the student in the preparation of cases. Termination of student assistance with Fourth Circuit cases also occurs when the appellate aspects of the litigation

the Virginia Supreme Court Bar or the bar of the court(s) before which the student has been appearing pursuant to the rule.

21. 4th Cir. Supp. R. 13(c).
27. Va. R. 15(d)(ii),(iii); 4th Cir. Supp. R. 13; E.D. Va. Local R. 7(N)(V)(B),(C); W.D. Va. student practice R. V(B),(C). The district courts also require supervising counsel to report students to their dean if they do not "abide by the letter and spirit of this order [promulgating the rule]." E.D. Va. Local R. 7(N)(V)(D); W.D. Va. student practice R. V(D). As indicated at notes 24-27 supra and accompanying text, the attorney's options are often cumulative. The supervising attorney's primary responsibility remains, as always, to the court and the client. There is no positive disciplinary control over student behavior in the sense of disbarment. The only controls are those provided by the statutes, the court's contempt power, the law school's power to prevent the student from graduating and the sanction of withdrawal of certification. This last sanction "[undoubtedly . . . would be sufficient for almost all instances of misconduct." Such a record "would surely raise grave doubts when the student subsequently applied for admission to a bar." S. Fleisher, The Practice of Law by Law Students, in Krich, supra note 9, at 125, 135; accord, Comment, Student Practice—Limited Appearances in Court by Third Year Law Students, 6 U. Rich. L. REV. 152, 162 (1971).
have been completed (i.e., by reversal and remand or denial of certiorari). Although the Virginia and federal district court rules clearly contemplate student assistance in several cases in the same court, the procedure is analogous to the usual practice of lawyers and students working through legal aid bureaus. That is, the student works on a case-by-case basis, but since his name is filed on the approved list, he need not reapply for approval of the court.

All rules require the consent of the person on whose behalf the student appears. Such a provision carries with it the power of withdrawal. Nevertheless, neither provision for withdrawal of the client's consent is spelled out in the rules. The burden of notifying the court of withdrawal of consent necessarily lies with the supervising lawyer, who should handle the withdrawal in the same manner as he would if a client wished to discharge him as counsel. The formal supervision requirements for student advocates differ considerably for each jurisdiction. Under the Virginia rule, the supervising attorney must be "an active member of the Virginia State Bar who practices before, or whose service as a supervising lawyer for [the student practice] program is approved by, each court or administrative body in which the [otherwise] eligible law student engages in limited practice." The supervising attorney must "assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work." Furthermore, he must "assist the student in his preparation to the extent the supervising lawyer considers it necessary." Although the Virginia rule does not specifically require the presence of the attorney in court, prudence and ethics, in addition to the constitutions and statutes or rules in a particular case,

30. In only one case where I was appointed counsel did the client decline the services of student advocates. Most clients have been enthusiastic about such assistance.
32. VA. R. 15(d)(ii).
33. VA. R. 15(d)(iii).
require his presence in most instances. "Personal professional responsibility" and the adequate supervision required under the Virginia rule would also necessitate the presence of the supervising attorney to assure quality representation at all times. The federal district court formulas require that the supervising attorney must "[b]e a lawyer whose service as a supervising lawyer for this program is approved by a judge" of the district court, and that such approval may be given upon application by the attorney who is a member of the bar of the court.\textsuperscript{35} Unless supervisory counsel has been admitted to the Virginia Supreme Court Bar, he cannot practice before the Virginia federal district courts,\textsuperscript{36} except on a \textit{pro hac vice} basis, and then only together with Virginia counsel.\textsuperscript{37} As a practical matter, all attorneys supervising students should be members of the Virginia Supreme Court Bar and therefore should be members of the Virginia State Bar after admission by examination or comity.\textsuperscript{38} Admission to the Fourth Circuit Bar is more flexible. Attorneys are eligible if they have been admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States circuit court or any district court.\textsuperscript{39}

In any case, however, the student's dean must grant his approval before the district courts will approve counsel as supervisor.\textsuperscript{40} As in state litigation, the lawyer must assume "personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work."\textsuperscript{41} "[T]o the extent the supervising lawyer considers it necessary," he must

\textsuperscript{35} E.D. VA. LOCAL R. 7(N)(V)(A); W.D. VA. STUDENT PRACTICE R. V(A).
\textsuperscript{36} E.D. VA. LOCAL R. 7(B). W.D. VA. RULE OF COURT GOVERNING THE ADMISSION OF ATTORNEYS TO PRACTICE AND OTHER MATTERS RELATING TO APPEARANCES IN THE COURT, ¶ 1, allows lawyers to practice in the district court if "admitted to practice in the state courts."
\textsuperscript{37} E.D. VA. LOCAL R. 7(D); W.D. VA. RULE OF COURT GOVERNING THE ADMISSION OF ATTORNEYS TO PRACTICE AND OTHER MATTERS RELATING TO APPEARANCES IN THE COURT, ¶¶ 3, 4.
\textsuperscript{38} Provisions for admission to the bar by examination or comity are set forth in VA. CODE ANN. §§ 54-60 to -68 (Repl. Vol. 1974). Admission to the Virginia Supreme Court Bar is accomplished by motion after successful completion of the bar examination or admission by comity.
\textsuperscript{39} FED. R. APP. P. 46 (a); see also 4TH CIR. SUPPLEM. R. 6.
\textsuperscript{40} E.D. VA. LOCAL R. 7(N)(V)(A); W.D. VA. STUDENT PRACTICE R. V(A). 4TH CIR. SUPPLEM. R. 13(C) allows student appearances after the dean's certificate has been filed. While there is no requirement for approval of the supervising lawyer, the lawyer is an appointee of the court and the clerk's office knows which cases are being handled under rule 13.
\textsuperscript{41} E.D. VA. LOCAL R. 7 (N)(V)(B); W.D. VA. STUDENT PRACTICE R. V(B).
"[a]ssist the student in his preparation."\textsuperscript{42} The federal district court rules also permit other activities "under the general supervision of a member of the bar of [the] Court, but outside the personal presence of that lawyer."\textsuperscript{43} These include preparation of pleadings, briefs, abstracts or documents to be filed in any matter in which the student is to appear. However, the supervising counsel must sign all such papers.\textsuperscript{44} A student may, without supervising counsel, assist indigent inmates of correctional institutions "or other persons who request such assistance" in preparing applications and supporting documents for post-conviction relief, unless assignment of counsel is specifically required.\textsuperscript{45} However, if an attorney has been appointed, he must supervise the student and sign all documents submitted to the court. Each document must bear the student’s name, whether or not there is a supervising attorney.\textsuperscript{46} In no case may a student take depositions in the absence of his supervising lawyer.\textsuperscript{47} Finally, the supervising counsel must "notify the dean of the appropriate law school of any alleged failure . . . [by] the student to abide by the letter and spirit of [the rule]."\textsuperscript{48} Thus, under the federal district court rules, just as under the Virginia rule, the supervising lawyer bears the ultimate burden of assuring quality representation. He also carries a negative responsibility for the student's legal education in that he must report deficiencies in the student's work to the law school dean. As noted above, in all jurisdictions both the dean and the court have ultimate control in any case since either may withdraw a student’s certification at any time without cause.\textsuperscript{49}

The Fourth Circuit rule has similar supervisory requirements. Counsel of record must "assume personal professional responsibility for the law student's work and for supervising the quality of his work."\textsuperscript{50} The attorney of record must sign all documents and briefs filed. Although the student may argue the case, he may do so only in the presence of the counsel of record, who "should be familiar

\textsuperscript{42} E.D. Va. Local R. 7(N)(V)(C); W.D. Va. Student Practice R. V(C).
\textsuperscript{43} E.D. Va. Local R. 7(N)(IV)(A); W.D. Va. Student Practice R. IV(A).
\textsuperscript{46} Id.
\textsuperscript{47} E.D. Va. Local R. 7(N)(IV); W.D. Va. Student Practice R. IV.
\textsuperscript{48} E.D. Va. Local R. 7(N)(V)(D); W.D. Va. Student Practice R. V(D).
\textsuperscript{49} E.D. Va. Local H. 7(N)(III)(B),(G); W.D. Va. Student Practice R. III(B),(C).
\textsuperscript{50} 4th Cir. Supplem. R. 13.
with the case and [be] prepared to supplement or correct any written or oral statement made by the student." As in the Virginia state practice, the supervising lawyer should be alert to applicable constitutional, statutory, regulatory or ethical standards that require his personal appearance with the student to assure quality representation at the district or circuit court of appeals level.

Both the federal district court rules and the Virginia Supreme Court rule permit non-lawyers to continue "to do anything [they] might lawfully do prior to the adoption of this rule." This means that law students may handle their own personal claims in the federal or Virginia trial courts if they so choose, as may any other citizen. There is little pro se practice in the appellate courts; nevertheless, citizens have a constitutional right to practice pro se if they so desire. Nor are students prevented from continuing to work as before in law offices, performing research and other similar tasks, but they cannot render advice or perform other services amounting to the practice of law.

**Educational and Practical Aspects of the Student Practice Rules**

Unquestionably, free or low-cost student assistance can result in greater profits, or less loss, for the lawyer in a compensated case. Overburdened attorneys, particularly those saddled with a growing and seemingly disproportionate load of low-paying court-appointed cases, might see the student practice rules as a real opportunity

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51. *Id.*

52. Va. R. 15(e); E.D. Va. Local R. 7(VI); W.D. Va. Student Practice R. VI.


54. Early studies have indicated that while more time may be spent in preparing and trying a case with student advocates, the net cost to the lawyer is less than if he handled the case alone, since the students receive no monetary compensation. Limiting law clerks to the library to do legal research and drafting or burying them in the title vault has been an all too frequent practice. See, e.g., Bartels, Clinical Legal Education and the Delivery of Legal Services: The View from the Prosecutor's Office, in CLEPR, Clinical Education for the Law Student 190, 203-11 (1973).

55. Compensation for appointed counsel in Virginia is low. Maximum fees range from $75 for cases in courts not of record, to $400 for felony defenses in circuit courts where the potential penalty is death or more than twenty years' penitentiary confinement, plus reasonable expenses. Va. Code Ann. § 19.2-163 (Cum. Supp. 1976). A "reasonable" fee plus expenses
to minimize possible financial losses. With inexpensive and often enthusiastic student assistance, lawyers cannot help but do better under the student practice rules, but a financial bonanza for the practicing bar was not the purpose of these rules. Abuse of the student practice rules, and therefore abuse of students' legal educations, could lead to the abrogation of the rules or refusal by law deans or the courts to certify students. The income the bar should receive from proper implementation of these rules is the return on a long-term investment in better legal education, and not the immediate financial returns from low-cost assistance on the particular case or the momentary victory for the eager student who may well neglect his academic studies for the practical matter of the day. If a practitioner is only interested in the short-term gain of a cleaner docket or a more solvent firm balance sheet, he should hire a part-time clerk.

The historical background of clinical legal education is tangled in the political and academic conflicts and struggles between the practicing bar, the courts, the state legislatures and higher education over practical training. Apprenticeship programs failed in early experiments. "[T]he simple truth [emerged in this century] that law schools could educate a lawyer better than even the best apprenticeship." Distinguished members of the judiciary, such as Justice Lewis F. Powell, Jr., and educators of the caliber of Profes-

is also allowed for appeals. Id. § 19.2-326 (Repl. Vol. 1975). The federal system provides better compensation, but fees often scarcely pay overhead. The 1970 amendments to the Criminal Justice Act of 1964 increased compensation for felony cases from a maximum of $500 at $15 per hour for time in court and $10 per hour for out of court time, to a maximum of $1000 at $30 an hour for time in the courtroom and $20 an hour for research and other investigation. Maximum compensation for post-conviction cases is $250 regardless of where time is spent. Misdemeanor cases once paid up to $300, and now carry a $400 maximum. 18 U.S.C. § 3006A(d) (1970). None of these classes of cases was designed to enrich the practicing bar. See H.R. REP. No. 1546, 91st Cong., 2d Sess. (1970) particularly the section-by-section analysis.

56. The law schools attempt to regulate clerking or work during the academic year. Most discourage outside employment of any kind during the first year and limit student work to twenty hours a week thereafter.

57. STOLZ, Clinical Experience in American Legal Education: Why Has It Failed?, in KITCH, supra note 9, at 54-76; STEVENS, Legal Education: Historical Perspectives, in CLEPR, CLINICAL EDUCATION FOR THE LAW STUDENT 43 (1973), offer the best summaries of the confluence of these currents in the history of legal education.

58. STOLZ, Clinical Experience in American Legal Education: Why has it Failed?, in KITCH, supra note 9, at 59.

59. Powell, Clinical Education in Law School, 26 S.C.L. Rev. 389, 393 (1974); Powell, Legal
sor Charles L. Black, Jr., have praised the value of the law school “where, to the highest degree possible in our culture, carefully chosen men think, write and teach about the rational governance of our polity. . . .” Even so, a former practitioner, now a professor of law, might truthfully believe that “[t]here is not a single lawyer I know with whom I went to law school who feels that his legal education adequately prepared him for the practice of law . . . .” Nevertheless, full preparation for practicing law, which comes only after considerable time in day-to-day experience, has never been solely a function of legal education. One actual function of legal education is teaching a way of thinking; another is learning basic theoretical concepts and doctrines of broad application. “Clinical legal education programs can provide the experience of law practice around which the law schools can weave doctrinal and theoretical material.” The new clinical practice rules therefore represent a compromise in the controversy between the practitioners of the last generation who insisted that the law schools were not teaching students how to practice law and the legal educators who felt it was up to the practicing bar to provide skills training after graduation from law school.


60. Black, Some Notes on Law Schools in the Present Day, 79 Yale L.J. 505, 510 (1970). Professor Black made this statement in the context of his opposition to changing the law schools from traditional academic institutions “into agencies of social action.” Id. In an interview he has said that a distortion in the direction of a clinically-oriented law school devoid of the traditional academic discipline that has been “a national asset,” would be a grave mistake. Id. Professor Black, Sterling Professor of Law at Yale University, co-author of G. Gilmore & C. Black, The Law of Admiralty (2d ed. 1975), has written numerous professional articles and is an authority on constitutional law. See also Lasswell & McDougal, Legal Education and Public Policy: Professional Training in the Public Interest, 52 Yale L.J. 203 (1943).

61. Savoy, Toward a New Politics of Legal Education, 79 Yale L.J. 444, 446 (1970)(emphasis added). From the context of the article, it is clear that Professor Savoy defined “practice” as the practical aspect of the profession.

62. Compare Powell, 26 S.C.L. Rev. at 393, with Black, supra note 55, at 510.


64. Id.


66. See, e.g., McClain, Legal Education: The Extent to Which “Know-How” in Practice
The lawyer who participates under these rules is a partner in building and maintaining the national asset that is legal education, and is not a mere guide to show students where the courthouse is, or an employer of cheap professional assistants. In the context of training for interviewing and other skills,

\[t\]he reason for teaching human relations skills in law school is the same as that for teaching any other subject: the academic setting can provide a scholarly perspective which is both broader and deeper than that which can be provided in a task-oriented law firm or other non-academic environment. This means, however, that clinical legal education must occur under the supervision of faculty equipped to provide that perspective. It cannot be relegated, as it so often is, to a do-it-yourself extracurricular status.\(^7\)

Add to the quotation above the words “and cooperating lawyers” after “faculty” and the position of the supervising lawyer in the clinical programs becomes apparent. For the student who does take a position as a law clerk, proceeding with supervised student practice as part of his employment can add much to the student’s legal education, provided the student and the supervising attorney keep in mind the primary purpose of the rules and the importance of the three academic years of law school. Both the student and his supervising attorney should remember that since performance in law school courses forms a permanent record that may be difficult to erase if grades are poor, academic achievement should be the primary goal of the student while he is in law school. Although a mishandled clinical case may result in a low grade for one course, an overburdened student who earns low marks in other courses may limit himself for life. The recommended limit for outside work in law school is 20 hours per week after the first year. Any outside employment is discouraged during the first year.

Other practical and ethical aspects of handling cases under the student practice rules are similar to those encountered by student clerks assisting in legal research and other matters. The lawyer-client privilege includes student advocates.\(^8\) While the students

\(^{67}\) Stone, Legal Education on the Couch, 85 HARV. L. REV. 392, 431 (1971).

may have had courses in legal ethics,\textsuperscript{69} aspects of the \textit{Code of Professional Responsibility} should be reviewed with them in the context of the cases undertaken.\textsuperscript{70} The supervising attorney should have a clear understanding with the law school of the educational, administrative and financial arrangements.\textsuperscript{71} While his competence in the field is presumed, the lawyer might find it useful to consult some of the standard, general works in whatever area of the law the students will be researching. Law students receive a broader, more generalized focus in their education than they encounter in individual cases in practice, and a review of general principles may assist the lawyer in relating these principles to the particular case or problem. The supervising lawyer should become more familiar with the law schools' experience with clinical legal education and with legal education in general.\textsuperscript{72}

\begin{footnotesize}
\item[69] Required by VA. R. 15(b)(iii). See note 13 \textit{supra}.
\item[70] The Eastern District of Virginia still refers to the \textit{Canons of Professional Ethics}. One problem that can arise is that students will be interested in discussing their cases with one another, with a resulting breach of client confidences. Careful explanations by supervising counsel can limit the problem. \textit{Fleisher, The Practice of Law by Law Students}, in \textit{Kitch, supra} note 9, at 135.
\item[71] Law schools stop and start on a semester or quarter basis, and there are often inflexible deadlines for registration and grades, sometimes caused by priorities or reservations for computer time. Failure of a supervising lawyer to coordinate and consult with the law school on credit may result in throwing off the entire academic schedule. This can be critical at graduation time or when grade averages for the student and his class are needed for mailing to prospective employers. At first, frequent consultation with the law school is necessary. The law school should consider naming a liaison faculty member to assure coordination. Other problems include missed classes and inconsistent grading standards, potential problem areas for faculty-lawyer and student-faculty relationships. Cf. \textit{White, The Anatomy of a Clinical Law Course}, in \textit{Kitch, supra} note 9, at 158. Numerical grades for clinical appellate work should be awarded. This is the majority practice among law schools. See \textit{Carr, Grading Clinical Students}, 26 J. Legal Ed. 223 (1974); \textit{contra, White, The Anatomy of a Clinical Law Course}, in \textit{Kitch, supra} note 9, at 158. While most law school libraries are open for free use, demands on photocopying, telephones and other services can raise expenses. If a coordinating professor's time is involved, apportionment of part of the compensation to the law school may be in order. In handling appellate cases it is the author's position that it is improper to accept a salary from the law school for teaching students and extra compensation in fees for cases for the same student work. Fees should go to the law school for such cases. If the supervising lawyer and his coordinating faculty colleague agree with this position, the advantages of Rev. Rul. 581, 1974-2 Cum. Bull. 25, should be considered. See also Rev. Rul. 282, 1965-2 Cum. Bull. 21. For an analysis of the impact of clinical education on law school financing, see \textit{Swords, Including Clinical Education in the Law School Budget}, in \textit{CLEPR, Clinical Education for the Law Student} 309 (1973).
\item[72] Two good collections of essays on the subject are \textit{Kitch, supra} note 9, and \textit{CLEPR},
\end{footnotesize}
Proper management of the students and their caseload is crucial. The supervising lawyer should undertake no more cases than he can reasonably expect to complete on his own without student help. His primary loyalties must be to his client and to the court. There will be occasions during the clinical process when the teacher-lawyer must shoulder the load by himself (due to examination schedules, bar review courses, bar examinations, graduation of students, etc.). The attorney must be prepared to go it alone if circumstances dictate. Proper coordination of cases and the program in general with the law school is important. Law schools have deadlines for registration, grades and graduation, and there should be close consultation with liaison faculty members and definite understandings as to shared responsibilities.

The attorney in charge of the case must supervise all phases and cannot allow even the impression that students are conducting the case. One principal concern of the courts is the expedited attention required for criminal and post-conviction cases. Assignment of a case for student practice assistance should never cause delay. Deadlines for briefs, pleadings and motions must be met. The courts will periodically review a supervisor’s effectiveness and thoroughness to assure that the highest caliber of representation is being maintained. Unsatisfactory work by students, poor supervision by the attorney or poor quality of the final product can result in termination of the program by the court.

A helpful rule of thumb in law school-supervised clinical programs is that one professor-lawyer can supervise eight to ten students on a full-time basis. In North Carolina, by rule of court, the

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74. ABA, Code of Professional Responsibility, Canons 6, 7. For a discussion of the problems of overloaded dockets in legal services and clinical education programs see generally Johnson, Education Versus Service: Three Variations on the Theme, in CLEPR, Clinical Education for the Law Student 414 (1973).

75. ABA, Code of Professional Responsibility, Canons 7, 8, and EC 7-19, 7-20, 7-22, 7-23, 7-36, 7-39, 8-3.


77. White, The Anatomy of a Clinical Law Course, in Kitch, supra note 9, at 158; and Shapo, An Internship Seminar for Law Students: A Test of Theory, A Critique of Practice,
number is five. Even the largest law firms employ few clerks. The assisting attorney should strictly limit the number of students he agrees to supervise, particularly in the beginning. While certain law schools, such as Yale, have successfully run clinical programs with student intermediate supervisors, this hierarchy should be instituted only when the attorney has a firm grasp of the program and a thorough understanding of what managerial responsibilities students can handle. He should always remember that he is supervising third-year law students and not seasoned practitioners. If a beginning lawyer is teamed with an experienced clinical teacher, it would be wise to have considerable consultation. As experience is gained, the intensity of assistance should diminish. The program of cases and office projects should be varied for each student, so that he or she might gain maximum perspective from the experience. In a law school-sponsored clinical program "it is difficult, perhaps impossible, to give each student a uniform experience along a carefully charted path." For the specialist practitioner who has an established practice and no control over who comes in the door, the task is even more difficult. Nevertheless, commensurate with proper representation and the availability of cases or problems, an attempt for variety should be made. Every practitioner knows the tedium of the routine matters in his field, but this is not a point that should be driven home during law school.

CONCLUSION

The student practice rules of the courts of the Commonwealth of

46 TEXAS L. REV. 479, 490, 493 (1963). KITCH, Foreword, in KITCH, supra note 9, at 21 says, "Twenty seems to be the upper limit for supervision by a single clinical teacher." The author's own experience in handling six to eight students on appeals cases in addition to a full teaching load indicates that Messrs. Shapo and White have better estimates.

78. N.C. RULES GOVERNING PRACTICAL TRAINING OF LAW STUDENTS, art. V(B). The Virginia Proposed New Rule, supra note 5, at 166, would have limited practitioners to "one eligible law student at any given time."


80. Id. at 158; OLIPHANT, Clinical Education at the University of Minnesota, in KITCH, supra note 9, at 148; MERSON, Denver Law Students in Court: The First Sixty-Five Years, in id., at 138; FERREN, Goals, Models and Prospects for Clinical Legal Education, in id., at 94; LAUCKTON, The Community Legal Assistance Office: Harvard Law School's Neighborhood Law Office, in id., at 188; and SHAPO, An Internship Seminar for Law Students: A Test of Theory, A Critique of Practice, 46 TEXAS L. REV. 479 (1968). All note the variety of experiences for law students in clinical programs across the country.
Virginia and the federal courts within her borders offer an excellent opportunity for a significant contribution to legal education by a cooperative partnership of the courts, the law schools and the practicing bar. The rules are flexible enough to be available for implementation by any Virginia attorney, whatever the emphasis of his practice. The quality of response from counsel who undertake the difficult task of guiding law students through a clinical program will determine the utility of these rules. Properly employed, the student practice rules will be a valuable long-term investment for the bar in developing well-rounded practicing lawyers. Misused, the rules can contribute to dilution and debasement of a great national asset—the legal education that prepares students for active, meaningful roles in the legal profession.