D.C. BAR COURTS, LAWYERS & THE ADMINISTRATION OF JUSTICE SECTION
STATEMENT OF SUPPORT FOR PROPOSED AMENDMENTS TO D.C. COURT OF APPEALS
RULES – No. M-237-10

Rule 48 – Legal Assistance By Law Students

The views expressed herein represent only those of the Courts, Lawyers & the Administration of Justice Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.¹

Comment to be filed with the Clerk, District of Columbia Court of Appeals.

The Section includes among its central missions the advancement of access to justice in the tribunals of the District of Columbia, including by expanding the supply of legal assistance.² With six law schools in the District that together enroll more than 6,000 J.D. students, those motivated and aspiring pre-professionals are an obvious source of help to address unmet legal needs.³ Law school clinical education has grown in scope and sophistication since 1968 when a consortium of D.C. schools began Law Students In Court, a pioneering project at a time when only 13 states allowed students to practice.⁴ The present D.C. rules on student practice go back almost as far, with the last major revision in 1982, and by their restrictive features needlessly limit the opportunity for the District to

¹ The Steering Committee of the Section voted, without dissent (one member not voting, one government member recused), on December 18, 2013, to adopt this public statement.

² The District has about 50,000 practicing attorneys residing here and a 2012 estimated population of about 630,000, so there are about 800 lawyers per 10,000 residents – ten times as many as in the next-ranked state, New York, with 80 per 10,000. Even so, with one fifth of the District’s population living in poverty most legal needs of those with low or modest income remain unmet -- a fraction as high as 80-90 per cent according to the D.C. Access to Justice Commission in its Justice for All? report in 2008. Fewer than 200 full-time attorneys are available in the legal services organizations of the District, and their numbers after rising for a few years from 140 to 170 by 2009, fell back as organizations laid off dozens of staff lawyers during the fiscal stress of the recession, as reported in the Commission’s update, Rationing Justice (2009). The Section will present in 2014 a program on the concept of “limited license legal technician,” a strategy adopted in Washington State and under review in California and elsewhere to expand the supply of qualified non-attorney assistance for those with legal problems.

³ Enrollment is full and part-time, the sum of all J.D. students in the six D.C. law schools in fall 2012. American Bar Association-Law School Admission Council 2014 Official Guide to ABA-Approved Law Schools.

benefit from the capabilities of today’s law students, trained in advanced clinics that are known nationwide as exemplary.

The Section welcomes the Court’s proposed amendment of the rules allowing a far greater scope of practice by students and eliminating detailed procedures in the former rule in favor of allowing the law schools to oversee students’ preparation and practice.

The Court’s proposal includes many notable provisions, including:

- Clarifying the wide range of matters students may take on and the places they may work (including practice before foreign nations’ courts or international bodies) as long as the forum rules permit;
- eliminating the limitation that students represent only the indigent and adding any individuals who because of limited means or the nature of their claim would be unlikely to find representation and also adding nonprofit organizations;
- eliminating specific credit and course requirements and allowing students to practice after they successfully complete their first year and enroll in a clinical course and such other appropriate instruction as the law schools establish to assure students are prepared for their representation;
- eliminating approval by the Court’s Committee on Admissions of each student and shifting to the schools the certification of students’ preparation, character and fitness;
- allowing students to continue to practice on clinic case after they complete a clinical course while they remain in law school or in the summer after graduation;
- allowing students to receive research stipends or other law school support without losing eligibility under the student practice rule;
- clarifying that students may engage in limited practice under the rule in various settings under general supervision but outside the physical presence of the supervising lawyer (with a few exceptions where actual supervision is required such as appearing in a tribunal, unless the tribunal approves);
- eliminating the requirement that clinic papers be signed only by the supervisor and allowing students to sign the pleadings, briefs, or other documents they work on, along with their supervisor;
- modifying the strict D.C. Bar admission requirement for clinic supervisors and allowing new law school faculty admitted elsewhere to supervise students as long as their law school dean approves and they have promptly applied for admission in the District; and allowing visiting faculty admitted elsewhere also to supervise for up to two years if they take the mandatory course.

The Court’s flexibility and its commitment to rules modernized to fit the times are exemplary. The Section hopes that all tribunals and places of dispute resolution in our city will respond in kind, embracing the new help from the clinic student representatives now to be available in greater number and ready to address a wider range of matters.
Because analysis of legal need and available sources of assistance rest on data, we encourage the Court to collect information on the students practicing under the amended rule so that the Access to Justice Commission and the public can appreciate and assess their contribution.

The Section is aware also that other states are recognizing the even greater contribution law students could make to access to justice, and thus allowing broader practice by law students (outside of clinical settings) with appropriate other kinds of supervision.\(^5\) The Section commends these for the court's consideration in coming months, as we understand will be proposed by comments of others on this rule.