

PROPOSED RULE 11 JANUARY 21, 2003

CHAPTER 11. RULES GOVERNING THE LAW SCHOOL PRACTICE PROGRAM

11-1. GENERALLY

RULE 11-1.1 PURPOSE

The bench and the bar are primarily 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, state attorneys, state officers and governmental agencies within the State of Florida; to public defenders, capital collateral regional counsels and legal aid organizations, who represent clients unable to pay for such services; and to encourage law schools to provide clinical instruction in trial work litigation of varying kinds, the following rules are adopted:

RULE 11-1.2 ACTIVITIES

(a) **Definition.** A law school practice program is a credit-bearing clinical program coordinated by a law school in which students directly provide representation to clients in litigation under the supervision of a lawyer in the office of the attorney general, a public defender, capital collateral regional counsel, state attorney, state officer, approved legal aid organization or a governmental agency of within the State of Florida.

(b) **Appearance in Court or Administrative Proceedings.** 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 the student is appearing has indicated in writing consent to that appearance, and the supervising lawyer has also indicated in writing approval of that appearance. In those cases in which the indigent person has a right to appointed counsel, the supervising attorney shall be personally present at all critical stages of the proceeding. In all cases, the supervising attorney shall be personally present when required by the court or administrative tribunal, ~~who~~ which shall determine the extent of the eligible law student's participation in the proceeding.

(c) **Appearance for the State in Criminal Proceedings.** An eligible law student may also appear in any criminal matter, on behalf of the state, with the written approval of the state attorney or the

attorney general and of the supervising lawyer. In such cases the supervising attorney shall be personally present when required by the court, who shall determine the extent of the law student's participation in the proceeding.

(d) Appearance on Behalf of Governmental Officers or Entities. An eligible law student may also appear in any court or before any administrative tribunal in any civil matter on behalf of the state, state officers, ~~or state agencies~~ or on behalf of a municipality or county, provided that ~~the municipality or county~~ any such supervising agency has a full-time legal staff, with the written approval of the attorney representing the state, state officer, state agency, municipality, or county. ~~The~~ An attorney representing the state, state officer, state agency, municipality, or county shall supervise the law student and shall be personally present when required by the court or administrative tribunal, which shall determine the extent of the law student's participation in the proceeding.

(e) Filing of Consent and Approval. 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 in which the law student is practicing. If the client is the state attorney, state officer, or governmental entity, it shall be sufficient to file the written consent and approval with the clerk and each presiding judge once for the term of the student's participation.

~~(f) Fixing of Standards of Indigence.~~ The board of governors shall fix the standards by which indigence is determined under this chapter ~~chapter~~, upon the recommendation of the largest voluntary bar association located in the circuit in which a program is implemented hereunder.

RULE 11-1.3 REQUIREMENTS AND LIMITATIONS

In order to make an appearance pursuant to this chapter, the law student must:

~~be provide evidence to the supervising agency that he or she is duly enrolled in a law school located~~ in the United States or one of its territories, and appearing as part of a law school practice program of a law school ~~approved~~ accredited by the American Bar Association;

~~have provide evidence to the supervising agency that he or she has~~ completed legal studies amounting to at least 4 semesters or 6 quarters for which the student has received not less than 48 semester hours or 72 quarter hours of academic credit or the equivalent if the school is on some other basis;

~~be certified by~~ provide a certificate from the dean of the student's law school stating that the student as being is of good character and competent legal ability and is adequately trained to perform as a legal intern in a law school practice program;

submit to the supervising agency a notarized affidavit, in a form approved by the court, in which the student, under oath, states that there is nothing in his or her background that would reflect negatively on his or her good character and competent legal ability; or, if there is such information, the student must reveal it.

after submitting the affidavit, notify the supervising agency of any change of circumstances and provide any information that would reflect negatively on his or her good character and competent legal ability.

deliver a copy of the affidavit, as well as any supplemental information provided by the student, must be provided to the dean of the law school, the Florida Board of Bar Examiners and the clerk of this court.

~~(d)~~ (g) be introduced to the court in which the student is appearing by an attorney admitted to practice in that court;

~~(e)~~ (h) neither ask for nor receive any compensation or remuneration of any kind for the student's services from the person on whose behalf the student renders services; but this shall not prevent a state attorney, public defender, legal aid organization, or state officer or governmental entity from paying compensation to the eligible law student (nor shall it prevent any of the foregoing from making such charge for its services as it may otherwise require); and

~~(f)~~ (i) certify in writing that the student has read and is familiar with the Rules of Professional Conduct as adopted by this court and will abide by the provisions thereof.

RULE 11-1.4 CERTIFICATION ~~OF STUDENT~~

The certification ~~of a student by the law school dean~~ supervising agency:
shall be filed in an approved format with the clerk of this court; and, unless it is sooner withdrawn, it shall remain in effect until the expiration of 18 months after it is filed. Upon receipt by this court of the

certification, this court will add the name of the person certified to a list of those qualified to practice within the limitations established by this rule. This court will publish the list periodically and will, by letter, notify the supervising agency that the person's name has been added to the list.

may be withdrawn by the dean supervising agency at any time by mailing a notice to that effect to the student and to the clerk of this court. It is not necessary that the notice state the cause for withdrawal.

may be terminated by the supervising agency, the dean of the law school or by this court at any time without notice or hearing and without any showing of cause. Notice of the termination may shall be filed with the clerk of the court and copies shall be provided to the student, the agency, the dean of the law school and to the Florida Board of Bar Examiners.

RULE 11-1.5 APPROVAL OF LEGAL AID ORGANIZATION

~~Legal aid organizations that use law student interns pursuant to this chapter must be approved by the supreme court. A legal aid organization seeking approval shall file a petition with the clerk of the court supervising that it is a nonprofit organization and reciting with specificity:~~

~~the structure of the organization and whether it accepts funds from its clients;~~

~~the major sources of funds used by the organization;~~

~~the criteria used to determine potential clients' eligibility for legal services performed by the organization;~~

~~the types of legal and nonlegal services performed by the organization; and~~

~~the names of all members of The Florida Bar who are employed by the organization or who regularly perform legal work for the organization.~~

~~Legal aid organizations approved on the effective date of this chapter need not reapply for approval, but all such organizations are under a continuing duty to notify the court promptly of any significant modification to their structure or sources of funds.~~

Legal aid organizations that desire to utilize the services of eligible law students pursuant to this chapter must be approved by the Supreme Court. To be approved by the Court a legal aid organization shall file an application on a form approved by the Court certifying:

(a) that the organization is a law school practice program, as defined in section 11-1.2(a) of this rule, that provides legal services to the indigent, or is a corporation not for profit as defined in Section 617.01401, Florida Statutes, or is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code of 1986, as amended;

(b) that the organization has as a purpose the provision of legal services to persons or groups who meet the eligibility standards adopted by the Legal Assistance for the Poor Grant Program established by the Florida Bar Foundation under the Florida Supreme Court IOTA Program set forth in rule 5-1.1(e); and

(c) that the organization employs attorneys licensed to practice law in Florida who will be responsible for supervision of eligible law students.

Documents substantiating that the organization meets the criteria in (a) through (c) above shall be provided with the application. Legal aid organizations shall remain under a continuing duty to notify the Court if they fail to meet any of the criteria set forth in (a) through (c) above.

RULE 11-1.6 OTHER ACTIVITIES

Preparation of Documents; Assistance of Indigents. In addition, an eligible law student may engage in other activities, under the general supervision of a member of the bar of this court, but outside the personal presence of that lawyer, including:

preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer;

preparation of briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer;

except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court, assistance to indigent inmates or correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for postconviction relief. If there is an attorney of record in the matter, all such assistance must be supervised by the attorney of record, and all documents submitted to the court on behalf of such a client must be signed by the attorney of record.

Identification of Student in Documents and Pleadings. Each document or pleading must

contain the name of the eligible law student who has participated in drafting it. If the student participated in drafting only a portion of it, that fact may be mentioned.

Participation in Oral Argument. An eligible law student may participate in oral argument in appellate courts but only in the presence of the supervising lawyer.

RULE 11-1.7 SUPERVISION SUPERVISING ATTORNEY; DUTIES

The attorney general, public defender, capital collateral regional counsel, state attorney, senior or managing attorney of an approved legal aid organization, state officer, or senior or managing attorney of the legal department of a government agency shall be considered by this court as the attorney responsible for the supervision of a student authorized to participate in the law school practice program. The direct supervision of the student may be delegated to an attorney within the office, organization or agency who is a member in good standing of The Florida Bar.

The member of the bar under whose direct supervision an eligible law student does any of the things permitted by this chapter shall:

~~— be a lawyer whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled and who is a member of The Florida Bar in good standing;~~

~~— be a lawyer employed by a state attorney, public defender, an approved legal aid organization, a state officer, or a governmental entity enumerated in rule 11-1.2(d);~~

~~— (e)(a) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and~~

~~— (d)(b) assist the student in the student's preparation to the extent the supervising lawyer considers it necessary.~~

RULE 11-1.8 MISCELLANEOUS

Nothing contained in this chapter shall affect the right of any person who is not admitted to the practice of law to do anything that the person might lawfully do prior to the adoption of this chapter.

RULE 11-1.9 CONTINUATION OF PRACTICE PROGRAM AFTER COMPLETION OF LAW SCHOOL PROGRAM OR GRADUATION

Certification. A law student at an American Bar Association ~~approved~~ accredited Florida law

school who has successfully completed a law school practice program, as defined in section 11-1.2(a) of this rule, awarding a minimum of 3 semester credit hours or the equivalent or requiring at least 200 hours of actual participation in the program, ~~and has had certification withdrawn by the law school dean by reason of completion of the program,~~ or has graduated from law school following successful completion of the program, may make appearances for any of the same supervisory authorities under the same circumstances and restrictions that were applicable to students in law school programs pursuant to this program if the supervising attorney agency:

files a certification in the same manner and subject to the same limitations as that required to be filed ~~by the law school dean pursuant to rule 11-1.3(c)~~ and files a separate certificate of the dean stating that the law student has successfully completed the law school practice program. The law school dean must include with the certificate of completion a detailed description of the law school program in a format approved by the Court. This certification may be withdrawn by the supervising agency in the same manner as provided ~~for the law school dean's withdrawal of certification in rule 11-1.4(c)~~. The maximum term of certification for graduates shall be ~~12~~ 18 months from graduation; and

further certifies that ~~the~~ an attorney will assume the duties and responsibilities of the supervising attorney as provided by other provisions of this chapter.

(b) Graduates of Non-Florida Law Schools. A graduate of an American Bar Association ~~approved~~ accredited non-Florida law school may qualify for continuation if the graduate successfully completed a clinical program in law school that met the definition of a law school practice program under rule 11-1.2(a) and that awarded a minimum of 3 semester hours, or the equivalent, or required at least 200 hours of actual participation in the program.

(c) Termination of Certification. Failure to take all parts of the next available Florida bar examination; failure to file a complete bar application with all supporting documentation; failure to vigorously pursue admission to The Florida Bar once a complete application has been filed; or the filing of Specifications by the Florida Board of Bar Examiners ~~or denial of admission to The Florida Bar~~ shall terminate certification hereunder.

RULE 11-1.10 CERTIFICATION OF MEMBERS OF OUT-OF-STATE BARS

Persons Authorized to Appear. Notwithstanding other provisions of this Rule, A a member of an out-of-state bar may practice law in Florida pursuant to this chapter if:

the appearance is made as an employee of the attorney general, a public defender, capital collateral regional counsel, state attorney, senior or managing attorney of an approved legal aid organization, state officer, or senior or managing attorney of the legal department of a government agency; ~~a state attorney, a public defender, an approved legal aid organization or the capital collateral representative;~~ and

the member of an out-of-state bar has made application for admission to The Florida Bar by filing a complete application with all required supporting documentation required to permit the initiation of a background investigation; and

(1)the member of an out-of-state bar submits to the jurisdiction of the Supreme Court of Florida for disciplinary purposes; and

(2)the member of an out-of-state bar is in good standing with that bar and is not currently the subject of disciplinary proceedings before any bar.

Term of Certification. The maximum term of certification under this section shall be ~~12~~ 18 months from the date of certification provided, however, that the certification may extend beyond ~~12~~ 18 months if the certificate holder has passed the Florida bar examination and is awaiting the results of the character and fitness evaluation of the Florida Board of Bar Examiners. Certification may be withdrawn in the same manner as provided for the withdrawal of certification ~~by a law school dean in rule 11-1.4.~~

Termination of Certification. Failure to take all parts of the next available Florida bar examination; failure to file a complete bar application with all supporting documentation, failure to vigorously pursue admission to The Florida Bar once the bar application has been filed; or the filing by the Florida Board of Bar Examiners of Specifications ~~failure of any portion of the Florida bar examination, or denial of admission to The Florida Bar~~ shall terminate certification hereunder.