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# FORUM

## STUDENT PRACTICE AND THE OKLAHOMA LEGAL INTERNSHIP PROGRAM

Philip H. Viles, Jr.

The purpose of this article is to describe student practice in the United States and to focus on Oklahoma's Legal Internship Program. Oklahoma University's program and that of the University of Tulsa will be contrasted and a summary of work being done by TU Interns will be given. The article includes personal experiences of the author and other TU students for purposes of illustration.

### I. STUDENT PRACTICE IN GENERAL

The American Bar Association adopted the A.B.A. Model Student Practice Rule in 1969. It is printed in full in the appendix to this article. Basically, it authorizes law *students* to: (1) make courtroom appearances, (2) prepare pleadings and other documents for trial courts, (3) prepare briefs and other documents for appellate courts, and (4) assist indigent persons in need of post-conviction relief.

The Model Rule sets out two purposes: (1) providing competent legal services to all persons and (2) encouraging law schools to provide clinical instruction in trial work. The Rule has served as the basis for many of the state statutes or state court rules on student practice. Forty-two states have student practice rules; more than half of these have been adopted since 1967.<sup>1</sup> Federal courts have been slow to authorize student practice; such authorization is the exception, not the rule.

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1. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, INC. [hereinafter CLEPR], SURVEY OF CLINICAL LEGAL EDUCATION 1973-1974, 152 (May 1, 1974).

As one might expect, state rules covering the subject vary widely from one state to the next. As an example, consider the clients who may be represented by a law student. Almost all states permit the student to represent the state and, in Idaho, the student can represent *only* the state. Representation of private parties is limited to indigents in twenty-seven states. Only eight states permit the student to represent "any individual."<sup>2</sup>

## II. STUDENT PRACTICE IN OKLAHOMA

Oklahoma has a fine Internship program, offering the best features of the A.B.A. Model Rule and the rules of other jurisdictions. This exemplary program was achieved without the benefit of these rules since Oklahoma was a pioneer in the field. Before 1967, when the Oklahoma rules were adopted, only seven states had student practice rules. It was not until 1969 that the A.B.A. Model Rule was adopted.

The Oklahoma Rules governing eligibility for the Program are similar to those of other states except that Oklahoma requires "approval by a panel of practicing attorneys after an oral examination."<sup>3</sup> This requirement appears to be unique among student practice rules; the other forty-one states do not call for such a procedure.<sup>4</sup> My oral "examination" was just an interview where the attorneys tested my familiarity with the Internship Rules by asking two or three questions. There was also one question on ethical conduct. Although the interview was scheduled in Tulsa, instead of in Oklahoma City as in prior years, it took place the week before final exams when spare time was least available. In any event, the perfunctory nature of the interview and the fact that the school grapevine did not carry word of any failures caused some students to view the "examination" as a mere irritating formality.

An administrator of OU's program takes issue with my analysis of the interview. After reviewing a draft of this article, he wrote: "I would hate to have students read your paper and determine that the exam is simply a formality which they must go through in receiving

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2. CLEPR, STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS 28 (2d ed. 1973).

3. RULES OF THE SUPREME COURT OF OKLAHOMA ON LEGAL INTERNSHIP, Section I(B) [hereinafter cited as RULES].

4. CLEPR, STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS 28 (2d ed. 1973).

their limited license. There could be nothing further from the truth.”<sup>5</sup>

The examination also touches on the name of the “supervising attorney.” He is the person responsible for the Intern’s actions. The application for the Intern Program must show that the applicant has secured employment under the supervision of a practicing attorney and must give his name.<sup>6</sup> This added requirement means that the applicant must have a job lined up well in advance of the time when he hopes to be sworn in as an Intern and be available for employment.

One alternative which Oklahoma should consider is to allow the applicant to be interviewed without having “secured employment.” If the student later gets a job and wishes to use his limited license, let him then submit the name of his supervising attorney for O.B.A. approval. Since the interviews are scheduled only four times a year, this system would permit the student maximum flexibility in job-hunting. However, this idea met with disapproval when suggested to the Dean of the Oklahoma University School of Law, an ardent supporter of the Intern Program: “If it were proposed, I would personally oppose it and so would many attorneys who have been active in this program.” In a later letter, he explained:

I am certain from discussions which have ensued in the Legal Internship Committee that a number of other attorneys would be opposed to a proposal whereby the student could later submit the name of his supervising attorney for approval. One of the principal problems this presents is that it would place an undue amount of pressure on the Committee for approval of a supervising attorney and would probably have the effect of shifting the selection process (as far as the supervising attorney is concerned) from the Oklahoma Bar Association to the student intern.<sup>7</sup>

This line of reasoning makes me wonder what the Committee’s action would be, under current rules, if it liked the Intern but thought his sponsor was unfit. Would they approve the Intern on the condition that he get a new supervisor or would they reject his application altogether? What happens when an Intern changes supervisors and the Committee doesn’t like the new one? As far as I know, there is no approval required in this case.

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5. Letter from Ted Roberts, Assistant Director of the University of Oklahoma Legal Internship Program, March 20, 1974, in files of author.

6. RULES, Section I(A)(4).

7. Letter from Dean Robert R. Wright, College of Law, the University of Oklahoma, March 13, 1974, in files of author.

There is also a one-year time limit on the limited license, although this can be extended up to one additional year by action of the Internship Committee. Now that a student is eligible to be an Intern after only fifty hours of law school, the Committee should consider extending the term to eighteen months to avoid having to deal with many routine applications for extensions.

The Committee should also consider extending, by rule or statute, the attorney-client privilege to communications of the client to the student representing him. As of 1971, only Arizona and Ohio had taken this step.<sup>8</sup>

### III. COMPARISON OF THE OU AND TU PROGRAMS

The Oklahoma Rules provide for two types of Intern Programs: one type is *directly* supervised by the law school faculty; the other is directly supervised by practicing attorneys with *indirect* supervision from the law school faculty.<sup>9</sup> The italicized terms will be used to differentiate them. The University of Oklahoma has had experience with both types; Tulsa University uses only the latter.

#### *Oklahoma University*

The University of Oklahoma started its Legal Internship Program by establishing the Cleveland County Legal Aid Society. The University's Legal Internship Office, in conjunction with the Cleveland County Bar Association, handles all legal aid cases in the county.

The first course which Oklahoma set up was Internship I. They still have it, but most people call it "Legal Aid," since that is where the students do their work. Two hours' credit is allowed for the one-semester course and it can be repeated with the instructor's permission. Students are able to stay with their own cases from start to finish. This practical experience is supplemented by a special classroom course in pertinent subjects such as evidence and procedure. OU's theory seems to be that the Intern will be more valuable to his employer if he knows his way around the courthouse before he seeks an outside job.

The Internship I course is a prerequisite to Internship II, which is also a one-semester course. Here, the Intern becomes a full-time employee of an attorney—either an attorney in private practice or one

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8. CLEPR, STATE RULES PERMITTING THE STUDENT PRACTICE OF LAW: COMPARISONS AND COMMENTS 6 (2d ed. 1973).

9. RULES, Section X.

employed by some public agency. For the first four days of the week, the Intern works for him and has no classes scheduled. In fact, he does not even need to be in the Norman area until Friday and Saturday. Classes on those two days are all "practical skills" courses taught by practicing attorneys. The Intern also has a meeting with the Program Director on one of the two days.

He receives six hours credit for the classes and four hours for the work experience. This reduced load means that the Intern must take a summer session to graduate with his class. This is a source of some student complaints.

After student pressure to change the program, OU developed Internship III. Here, Internship I is *not* a prerequisite and the student can immediately start work with a practicing attorney or legal agency under the indirect supervision of the school. The work time, however, must fit into the student's class schedule; there is no thirty-two hour block set aside for him. Students can either arrange their own employment or the school will assist in placement.

It was interesting to learn that when the students made their proposal for Internship III to school officials, they requested a maximum of twenty hours of employment per week and a strict absence rule—one cut for each hour of class, half the usual number. Only one hour credit is allowed for Internship III and classes are held to discuss hypothetical problems which have been distributed in advance.

The administration still recommends that students take Internship I before III, but this advice has been widely ignored. Enrollment in I and II has fallen off sharply while the number of students taking III has mushroomed. OU's Dean says that their program was intended to respond to the Oklahoma Bar Association Internship Committee's determination that more academic supervision of Interns was needed. In his words, "OU is the only school which responded; the others have what largely amounts to 'placement programs.'"<sup>10</sup>

#### *Tulsa University*

"Legal Intern" is the University of Tulsa's name for the course. It is described in the 1973-75 Bulletin as "an implementation of the Oklahoma Legal Intern Program. . . . The program is designed to permit students . . . to gain practical experience in a law office." Up

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10. Letter from Dean Robert R. Wright, College of Law, the University of Oklahoma, March 13, 1974, in files of author.

to two hours credit per semester may be earned for a maximum of four hours. Incidentally, 86% of American law schools limit the amount of student practice academic credit which will be given; eleven semester hours is the average maximum.<sup>11</sup>

TU's Intern program is directly supervised by practicing attorneys, whether they are in private practice or working with a public agency. A member of the faculty provides "indirect supervision" by receiving students' monthly reports and by monitoring the program. Several faculty members are in touch with local attorneys and are usually able to match job openings with job applicants.

Students work mainly in Tulsa. The law school was formerly downtown, but the new building is about four miles from the downtown firms. Although the school is on record as trying to schedule classes so that students who want to work can have blocks of non-classroom time, this is not always achieved.

The fact that TU has an evening division offers another chance for the Intern to structure his schedule so that he can take the necessary classroom courses. An Intern can take all evening courses, leaving the day free for his work. He soon has a problem though, since evening students average only ten hours per semester. Renewal of his limited license is usually necessary if he wishes to use it until graduation.

The school's supervision of the Legal Intern Program is currently in the hands of one of the architects of the Oklahoma Program. Professor Ralph C. Thomas, in addition to his teaching load and his service on the O.B.A.'s Legal Internship Committee, is in charge of the TU Program. Harold Sullivan, Executive Director of the O.B.A., called him "one of the three people most responsible for our Program."<sup>12</sup> In 1969, Professor Thomas took a leave of absence from TU and commuted between offices in Oklahoma City and Tulsa to co-ordinate the Program. He stayed on to receive reports from both Interns and supervising attorneys and to compile them. His duties also included extensive travel to publicize and explain the Program. His presentation about Oklahoma's Legal Internship Program to the American Bar Association in 1970 won the Oklahoma Bar Association the award for activities conducted by the larger bar associations. Professor Thomas has long been an active and vocal supporter of the Program. He has been

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11. CLEPR, SURVEY OF CLINICAL LEGAL EDUCATION 1973-1974, v (May 1, 1974).

12. Interview with Harold Sullivan, Executive Director of the Oklahoma Bar Association, October 17, 1973.

called upon frequently to defend and explain the Program to attorneys, students, law faculty, and judges.

Professor Thomas is firmly convinced that the program of "indirect supervision" at TU has been more than 80% successful. While admitting that this judgment is quite subjective, he says that his reports indicate that the diversity, depth, and quality of training which the Interns are receiving are quite satisfactory to the large majority of them. When students gain a sense of familiarity and confidence in new surroundings and among new responsibilities, they are bound to be pleased, he theorizes.

#### IV. TULSA UNIVERSITY STUDENTS

Sixty-six students were enrolled in the TU Legal Intern course in the Spring term of 1974. Interviews with twenty-three of these people produced the following information and comments.

Most of the Interns worked for private law firms. Public agencies attracted their share and only a very few worked for solo practitioners. Those with public agencies reported that they had no trouble getting their eight hours a month courtroom time. They also worked with their clients on a daily basis.

Most Interns in the private sector said that they had as much client contact as they wanted although the amount varied from firm to firm. These Interns had more difficulty getting the eight hours a month court time (participating or observing a supervising attorney or qualified substitute) which the Rules require. Several said they did not mind this particular rule since it is not rigidly enforced; several more, however, called for its abolition.

Most "private" Interns were paid an hourly wage and spent 20-30 hours per week at their job. The unpaid Legal Aid Interns worked about half that time. Most of the Interns polled had worked as clerks before the Intern interviews. Most reported that they did an "average" amount of research—less than when they were clerking, indicating that their employers made use of their new status.

Almost all Interns made trips to surrounding county seats for filing purposes, but only a few made court appearances outside of Tulsa. All but one reported that they got their jobs done without working at night.

All of the Interns doing civil work appeared in small claims court; many said that collection work was a major part of their experience.

More than half of the "civil" Interns appeared in district court and observed their supervisors in federal court. Only a handful did any work in the state industrial court. Few Interns had any probate experience; their cases concerned contracts, property, and collections.

All the Interns had praise for the Program and enjoyed it. Most complaints aimed at raising the economic benefits and lowering the costs of participation. Many Interns urged raising the hourly wage—\$3 per hour seems to be the standard remuneration; an increase to \$4 or \$5 was suggested to me. At TU Interns pay the standard course fee, \$57 per credit hour, to enroll in the program. Many students felt that that should be reduced or eliminated, pointing out that there is no instruction, no use of school facilities, and "We're doing all the work."

Three people thought that the faculty should increase the academic credit granted from the current four hours to nine or ten. Four people called for more faculty supervision and guidance. There was general agreement that an active placement program for prospective Interns would be desirable.

In summary, the students were pleased with the Program and grateful to the employers and clients who were giving them the opportunity to acquire practical skills under close supervision. All felt that their experience in the Program gave them an advantage over those who did not participate.

## V. CONCLUSION

The Oklahoma Legal Intern Program is an excellent vehicle for law students to participate in the actual workings of the law. Although the mechanics of obtaining approval to participate in the Program could be improved upon by eliminating the oral examination, all groups—students, administrators, and employers—feel that the Program overall is beneficial to the training of attorneys in Oklahoma. Since this is the prime objective of any form of legal education, the Intern Program must be regarded as a success.

## APPENDIX

### A.B.A. Model Rule

#### I. Purpose.

The bench and the bar are responsible for providing competent legal services for all persons, including those unable to pay for these ser-

vices. 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 rule is adopted.

## II. Activities.

- A. 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 lawyer 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.
- B. An eligible law student may also 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.
- C. 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.

## III. Requirements and Limitations.

In order to make an appearance pursuant to this rule, 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 (4) semesters, or the equivalent if the 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 which he is appearing by an attorney admitted to practice in that court.
- E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the State from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.

#### IV. Certification.

The certification of a student by the law school dean:

- A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen (18) months after it is filed, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date he is admitted to the bar.
- B. May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.
- C. May be terminated by this Court at any time without notice or hearing and without any showing of cause.

#### V. Other Activities.

- A. 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:
  - 1. 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.
  - 2. 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.

3. 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 of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction 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.
  4. Each document or pleading must contain the name of the eligible law student who has participated in drafting it. If he participated in drafting only a portion of it, that fact may be mentioned.
- B. An eligible law student may participate in oral argument in appellate courts, but only in the presence of the supervising lawyer.

#### VI. Supervision.

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

- A. 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.
- B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
- C. Assist the student in his preparation to the extent the supervising lawyer considers it necessary.

#### VII. Miscellaneous.

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

Date adopted: 1969

Last amendment: Unchanged