

JAN 09 2019

Joint Committee on Attorney Standards

North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E Boulevard Ave
Bismarck, ND 58505-0530
Phone: (701) 328-2689
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STATE OF NORTH DAKOTA

Professor Michael S. McGinniss, Chair
UND School of Law
215 Centennial Drive, Stop 9003
Grand Forks ND 58202-9003
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September 14, 2018

Honorable Gerald W. VandeWalle
Chief Justice
North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E. Boulevard Ave
Bismarck, ND 58505-0530

Re: October 2017 referral to Joint Committee on Attorney Standards regarding petition for amendment to Limited Practice of Law by Law Students Rule

Dear Chief Justice VandeWalle:

The Joint Committee on Attorney Standards has completed its consideration of the October 2017 referral from the Supreme Court requesting consideration of a petition by UND Law student Angelo Mondragon to amend the Limited Practice of Law by Law Students Rule to allow eligibility for student practice after the first year of law school.

The Committee heard from Mr. Mondragon at the June 12, 2018 meeting of the Joint Committee and considered comments in opposition to and in support of the proposal. Comments in opposition to the proposal centered on concerns with (1) the lack of foundational knowledge for a first-year student, specifically in evidence, constitutional law, and professional responsibility, which are not typically offered until the second year of law school; (2) the risk to supervising lawyers; and (3) the pressure lawyers may feel to take on first-year students if they are allowed to practice under the rule. The comments in support of the proposal related to (1) the great importance of experiential learning, (2) the advantage to the students and future employers when a law student leaves school with practical knowledge, and (3) the continued ability of the supervising lawyer to exercise discretion to determine whether an individual student is capable and prepared to appear in a matter. Ultimately, the Committee voted to recommend the adoption of the enclosed proposal to the North Dakota Supreme Court, contingent on review and comment by the SBAND Board of Governors.

On August 24, 2018, the Board voted to support the amendment as adopted by the Joint Committee. The Board concurred with the Joint Committee's concerns, but expressed "confidence in the supervising attorney's decisions regarding the law student's abilities, especially considering the other safeguards contained within the entire Rule."

Based on these considerations, the Joint Committee on Attorney Standards recommends amendment of Rule III(B), N.D.R. Ltd. Practice of Law by Law Students as set forth in the enclosed petition.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael S. McGinniss", with a horizontal line extending to the right.

Michael S. McGinniss, Chair
Joint Committee on Attorney Standards

MSM/ln

cc: Penny Miller, Clerk of the ND Supreme Court
Zachary Pelham, SBAND Board of Governors
Sara Behrens, Staff Attorney

LIMITED PRACTICE OF LAW BY LAW STUDENTS

I. PURPOSE

The bench and the bar are responsible for providing competent legal services for all persons, including persons unable to pay for those services. As one means of providing assistance to lawyers who represent clients unable to pay for legal 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 person if the person represented has consented in writing to the appearance, the supervising lawyer has approved of the appearance in writing and the judge or administrative tribunal before whom the appearance is to be made and other counsel of record have been given notice of the appearance, in the following matters:

1. Any civil matter. In a civil matter, 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 those 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 those 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 who must be personally present throughout the proceeding and is fully responsible for the manner in which they are conducted.

24 C. In each case, the written consent and approval referred to the above must be filed in the record
25 of the case and be brought to the attention of the judge of the court or the presiding officer of the
26 administrative tribunal.

27 III. ELIGIBILITY REQUIREMENTS

28 In order to make an appearance pursuant to this Rule, a law student must:

29 A. Be duly enrolled in the University of North Dakota School of Law - or any other law school
30 approved by the American Bar Association.

31 B. Have completed legal studies amounting to at least ~~four~~ two semesters, or the equivalent if the
32 school is on other than a semester basis; ~~or, if the student is currently enrolled in the Clinical
33 Education Program at the University of North Dakota School of Law, must have completed legal
34 studies amounting to at least three semesters.~~

35 C. Be certified by the Dean of the University of North Dakota School of Law, or any other law
36 school approved by the American Bar Association, and a member of the North Dakota Bar
37 Association, as being of good character and competent legal ability, and as being adequately trained
38 to perform as a legal intern.

39 D. Be introduced to the court in which the student is appearing by an attorney admitted to practice
40 in that court.

41 E. Neither ask for nor receive any compensation or remuneration of any kind from the person on
42 whose behalf services are rendered; but a lawyer, legal aid bureau, law school, public defender
43 agency, or the state may pay compensation to an eligible law student.

44 *[Amended effective September 16, 1987; September 1, 2007.]*

45 **IV. CERTIFICATION**

46 The certification of a student:

47 **A.** Must be filed with the Clerk of this Court and, unless it is earlier withdrawn, remains in effect
48 until the expiration of eighteen (18) months after it is filed, or until the date of the student's
49 graduation, whichever is earlier.

50 **B.** May be withdrawn at any time by the Dean by mailing a notice to that effect to the Clerk of this
51 Court. The notice need not state the cause for withdrawal.

52 **C.** May be terminated by this Court at any time without notice or hearing and without cause.

53 **V. OTHER ACTIVITIES**

54 **A.** In addition, an eligible law student may engage in other activities, under the general supervision
55 of a member of the bar of this Court, but outside the personal presence of the lawyer, including:

56 1. Preparation of pleadings and other documents to be filed in any matter in which the student
57 is eligible to appear, but those pleadings or documents must be signed by the supervising
58 attorney.

59 2. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this
60 state, but those documents must be signed by the supervising lawyer.

61 3. Except when the assignment of counsel in the matter is required by any constitutional
62 provision, statute, or rule of this Court, assistance to indigent inmates of correctional
63 institutions or other persons who request assistance in preparing applications for and
64 supporting documents for post-conviction relief. If there is an attorney of record in the
65 matter, the assistance must be supervised by the attorney of record, and all documents
66 submitted to the Court on behalf of the client must be signed by the attorney of record.
67

68 4. Each document or pleading must contain the name of the eligible law student who has
69 participated in drafting it. If the student participated in drafting only a portion of it, that fact
70 may be mentioned.
71

72 **B.** An eligible law student may participate in oral argument in appellate courts, but only in the
73 presence of the supervising lawyer.
74

75 **VI. SUPERVISION**

76 A member of the North Dakota Bar under whose supervision an eligible law student does any of the
77 things permitted by this rule:

78 A. Must be a lawyer who is admitted to practice law in North Dakota and whose services as a
79 supervising lawyer for this program is approved by the Dean of the law school in which the student
80 is enrolled.

81 B. Shall assume personal professional responsibility for the student's guidance in any work
82 undertaken and for supervising the quality of the student's work.

83 C. Assist the student in preparation to the extent the supervising lawyer considers it necessary.

84 **VII. TEMPORARY PRACTICE OF LAW SCHOOL**
85 **GRADUATES APPLYING FOR ADMISSION**

86 A graduate of any American law school approved by the American Bar Association, who has made
87 application for the first North Dakota bar examination scheduled to be given following his or her
88 graduation, may perform, under the supervision of a member of the State Bar Association of North
89 Dakota, all acts authorized to be performed by senior law students under this Rule, provided a
90 supervising attorney has certified to the State Board of Law Examiners that the graduate is of good
91 character and competent legal ability. The authorization terminates on the day of the first admission
92 to the bar ceremony before the Supreme Court after the North Dakota bar examination for which
93 application is made or 10 months following graduation from law school, whichever occurs first.

94 *[Amended effective September 11, 1996, subject to comment. Amended October 23, 1996 on a final*
95 *basis.]*

96

VIII. MISCELLANEOUS

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This rule does not affect the right of any person who is not admitted to practice law to do anything

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lawfully permitted before the adoption of this Rule.

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IX. EFFECTIVE DATE

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This Rule, as amended, ~~November 12, 1986, shall become~~ is effective ~~January 1, 1987~~ _____.

101

X. TITLE AND CITATION

102

These rules are title “Rule on Limited Practice of Law by Law Students,” and may be cited as “R.

103

Ltd. Practice of Law by Law Students.”

104

[Adopted effective August 1, 1998.]

From: (SUP) Clerk of Court Office
To: Miller, Penny
Subject: FW: Petition for Rule Change for Law Students
Date: Tuesday, October 03, 2017 8:30:52 AM
Attachments: Student Practice Papers.docx

Heather Keller

Deputy Clerk | North Dakota Supreme Court
600 E Boulevard Ave. | Judicial Wing, First Floor
Bismarck, ND 58505-0530
Phone: 701.328.4202

This email and any transmitted files attached are intended solely for the use of the individual or entity to which they are addressed, and may be confidential under the law. If you have received this email in error please notify the originator of the message.

From: Angelo Mondragon [mailto:semitavitae@gmail.com]
Sent: Tuesday, October 3, 2017 12:29 AM
To: (SUP) Clerk of Court Office <SupClerkofCourt@ndcourts.gov>
Subject: Petition for Rule Change for Law Students

Dear Mrs. Miller,

It was a pleasure meeting you.

Please find attached the Petition for Rule Change for Limited Practice of Law by Law Students.

Additionally, below are several references sources:

- Georgetown Law Library maintains a website generally covering Student Practice Rules; including a full listing of the States offering Practice Papers, their respective rules, and several law review articles: <http://guides.ll.georgetown.edu/c.php?g=271042&p=1808941>
- Minnesota Judicial Branch, Student Practice Rules: https://www.revisor.leg.state.mn.us/court_rules/rule.php?name=prstud-toh
- Procedure for Certification Under Rule for Limited Practice of Law By Law Students in North Dakota: https://law.und.edu/_files/docs/academics/2011/limited-practice-form.doc
- Minnesota Instructions for Requesting Law Student Practice Certification: <http://mncourts.gov/mncourtsgov/media/assets/LRO/Instructions-for-Student-Practice.pdf>
- Minnesota State Board of Law Examiners Student Practice Certification: <https://www.ble.mn.gov/student-practice-rules/>

If you would like more information please do not hesitate to ask.

Thank you for you help!

Sincerely,
Angelo Mondragon

October 2, 2017

Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court
Penny Miller, Clerk of the North Dakota Supreme Court
Judicial Wing, First Floor - State Capitol
600 E Boulevard Ave
Bismarck, ND 58505-0530

Petition for Rule Change for Limited Practice of Law by Law Students

My name is Angelo Mondragon, I am a second-year law student at UND School of Law. I am petitioning this Court to change the rule governing Student Practice Papers. Currently, North Dakota allows Practice Papers for students after four semesters of school. I request the rule be changed to two semesters. This change would benefit the people of North Dakota, UND School of Law, current and future students at the school, and the legal system in North Dakota.

The existing rules governing Student Practice Paper eligibility states, in relevant part, that a student must,

[h]ave completed legal studies amounting to at least four semesters, or the equivalent if the school is on other than a semester basis; or, if the student is currently enrolled in the Clinical Education Program at the University of North Dakota School of Law, must have completed legal studies amounting to at least three semesters.”

(N.D.R. Ltd. Practice of Law by Law Students, Rule III(B).)

I propose the Rule be changed to read as follows:

“Have completed legal studies amounting to at least two semesters, or the equivalent if the school is on other than a semester basis.”

The States that currently have two semester minimums are: California, Hawaii, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New Mexico, New York, Oklahoma, and Utah.

The purpose of the Limited Practice of Law by Law Students Program (hereinafter: the Program) is to provide “assistance to lawyers who represent clients unable to pay for legal services and to encourage law schools to provide clinical instruction in trial work of varying kinds...” (N.D.R. Ltd. Practice of Law by Law Students, Rule I.)

Allowing law students to practice in their first summer, and into their second year of law school, would have a direct benefit on the people of North Dakota. Students would be able to help the indigent, elderly, and those in need of an advocacy regarding civil, criminal, family, medical and administrative matters. Expanding the Program would also aid efforts to encourage students to practice in rural communities.

The UND School of Law would have a competitive advantage over surrounding State’s without Practice Papers. It would assist in attracting new students, and the experiential learning opportunity would increase the bar passage rates. Additionally, allowing students to appear in Court sooner, could help the new Innocence Project and local Legal Aid Office. Additionally, the internship/externship program at UND School of Law has grown dramatically in the last few years. Expanding the Program would capitalize on that expansion.

Current and future students would benefit from experience both personally and professionally. My own summer externship at the Pembina County State’s Attorney Office has had a profound impact on my understanding of law and legal interpretation. Without question, I am a better student now because of the hands-on opportunity.

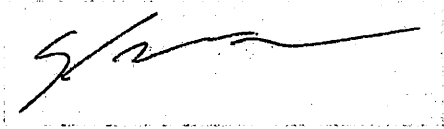
The Court System would benefit from that fact that students, able to represent clients, would reduce the number of Pro Se cases, and increase the number of cases resolved outside of the courtroom. Currently, most of the students interested in this level of experience must go to Minnesota, and those students usually remain practicing there throughout law school. They

number between five and ten students a year. Given the size of the legal community in North Dakota, this number alone would have a noticeable impact on the current lawyer shortage throughout the state, and especially in the rural communities.

Finally, attorney's participating in the program as supervisors could leverage their annual pro bono efforts.

For the above reasons, I request the Program rules be changed.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Mondragon', enclosed within a dashed rectangular border.

Angelo Mondragon
J.D. Candidate, Class of 2019
Student Bar Association, ABA Representative
Rural Practice Association, Vice President