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Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs

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GUIDELINES FOR THE SELF EVALUATION OF LEGAL EDUCATION CLINICS AND CLINICAL PROGRAMS

*J.P. “Sandy” Ogilvy**

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1.0 INTRODUCTION

These Guidelines grew out of previous work on guidelines for clinical legal education. They are the direct descendant of the work of clinical educators between 1995 and 1998 under the auspices of the Clinical Legal Education Association (CLEA) and the Association of American Law Schools (AALS) Section on Clinical Legal Education. These guidelines also have been influenced by the work of several other bodies: the Committee on the Future of the In-House Clinic, a committee of the AALS Section that was active between 1986 and 1991 and produced the *Report of the Committee on the Future of the In-House Clinic*; the AALS–American Bar Association (ABA) Committee on Guidelines for Clinical Legal Education, which published the *Report of the Association of American Law Schools–*

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American Bar Association Committee on Guidelines for Clinical Legal Education (1980); and the ABA Standing Committee on Legal Aid and Indigent Defendants, *Standards for the Provision of Civil Legal Aid* (2006). References to many other sources for the guidelines presented here are included within the document itself.

1.1. History of the Project

The CLEA–AALS Clinical Section Joint Task Force on Clinical Standards was initiated in 1995 by the President of CLEA, Jane H. Aiken, then teaching at South Carolina University School of Law. Professor Aiken created a committee to consider the feasibility of creating clinical standards and asked Professor Roy Stuckey, also at South Carolina, to draft some standards for clinical programs that might serve as a starting point for the newly appointed committee. Professor Stuckey delivered his “rough draft” on May 18, 1995. The document was titled “Indicia of Quality Project” (Also known as: guidelines/suggestions/criteria/standards for professional skills programs in law schools). Professor Mark Heyrman (Chicago) volunteered to facilitate the work of the new committee.

Using Professor Stuckey’s “Indicia of Quality Project” paper as a foundation, Professor Heyrman and Professor Robert Seibel (then at Cornell Law School) prepared a discussion paper that was distributed at a luncheon meeting sponsored by CLEA, October 13, 1995, at the Midwest Clinical Teachers Conference held at William Mitchell College of Law in St. Paul, Minnesota. More than 50 clinicians participated in the meeting that ended with a list of nine points around which there was a general consensus. On the evening of October 14, 1995, a smaller working group met and agreed to work toward creating guidelines, if not standards, with the principal (if unstated) goal being “to get more resources for clinical education.” The group also sought to create a vision for what clinical education would be like in five years and resolved that the committee would meet again in San Antonio, Texas, at the 1996 AALS Annual Meeting.

In January 1996, about a dozen members of the committee met in San Antonio and agreed to prepare a preliminary outline/draft of guidelines in time for the 1996 AALS Conference on Clinical Legal

Education in Miami, Florida, in May 1996. The working group decided to divide the project into five areas: faculty, program of instruction, evaluation/self-study, administration/resources, and role of the clinic in the community. Each area was to be the responsibility of one or more participants present in San Antonio who volunteered for the area and others, from the larger Working Group membership, who were to be assigned to an area. Outlines were due to Professor Heyrman by January 19, 1996. Only three documents were ever produced and the project languished until May 1997, when Professor Vanessa Merton (Pace University Law School), who had volunteered to revive the project, sent a memorandum to a list of persons “who have previously indicated some interest in the CLEA Standards Project.” Professor Merton proposed an organizational scheme for restarting the project that called for each subgroup to produce a draft of at least one substantive standard before the 1998 AALS Annual Meeting. The memorandum also proposed a meeting of the Working Group at the June 1997 AALS Workshop on Clinical Legal Education in Dallas, Texas. Between April and July of 1998, two subgroups of the Working Group submitted drafts to Professor Merton.

The project then again fell quiet. In early 1999, I proposed to Professor Merton that I try to resuscitate the project, not as a committee project, but as an individual project. My idea was that it might be easier to get a draft prepared for comment with one person working on it than with trying to manage the project as a committee endeavor. Once a draft was prepared, the entire clinical community and other interested persons could build on the draft and, ultimately, arrive at a consensus as to guidelines. I presented my first draft of Guidelines for the Evaluation of Clinical Legal Education Programs to groups of clinicians in 2000 at the Mid-Atlantic Clinical Theory Workshop at American University Washington College of Law and later that fall at the Clinical Theory Workshop at New York Law School. Since those presentations, I made revisions, incorporating the comments I received and the results of additional analysis.

Between 2008 and 2012, I added additional sections, commentary, and resource references to the draft. The draft is now available to the clinical legal education community for comment and revision prior to being posted as a Wiki document that will be available to everyone

interested in clinical legal education. As a Wiki document, it will be capable of being edited, revised, and updated as the need arises.

Sandy Ogilvy
September 2014

2.0 ORGANIZATION AND ADMINISTRATION OF CLINICAL LEGAL EDUCATION

This section is concerned with the relationship of the program of clinical instruction within the law school to the rest of the curriculum. It also discusses topics such as the award of academic credit for clinical education; grading of clinical courses; the internal process for approval of clinical courses; the administration of the clinical program; the evaluation of the clinical program; and the questions of qualifications, appointment, retention, promotion, and status of clinical faculty.

2.1. Does the Law School Have a Coherent Agenda for Instruction in the Fundamental Lawyering Skills and Values?

2.1.1. Does every graduate of the law school enter practice with a fundamental grounding in lawyering skills and values such that, upon admission to the bar, the graduate will be able to serve adequately those for whom the graduate provides legal services?

2.1.2. Is instruction in professional skills and values integrated throughout the curriculum in a pervasive way?

2.1.3. Does the law school inform students adequately about the fundamental lawyering skills and values so that students can make informed course selection decisions and so that

students will understand which skills and values in which they need further development before they assume primary responsibility for the representation of clients?

2.1.4. Does the law school provide students with course descriptions that detail the skills and values content of each course?

2.1.5. Does the law school consider the appropriate mix of instruction in substantive law and fundamental skills and values when new courses are approved?

Commentary

Since a law school's primary mission should be to prepare graduates for the practice of law, the law school's curriculum should be designed with this mission in mind. This means that the curriculum should be integrated both vertically, allowing students to deal with increasing complexity, and horizontally, allowing students to have the breadth of experiences necessary to train them for the practice of law. No modern law school places upon the clinical program the sole responsibility for all of a student's legal education; thus, the clinical program must be well integrated into the law school curriculum so that the clinical program functions well within the total curriculum to achieve the desired educational outcomes.

Historically, clinical programs began as co-curricular activities. Often the programs were student initiated and student run, with little or no faculty supervision or direction. Beginning in the early 1970s, clinical programs tended to be engrafted onto the curriculum of law schools, often with little sense of how clinical instruction fits with the rest of the curriculum. With the growing emphasis by the ABA's Council of the Section of Legal Education and Admissions to the Bar on asking law schools to focus more on developing professional skills and values, clinical programs have begun to be seen as the primary source for teaching professional skills and values in the curriculum. Relatively few law schools, however, integrate, in any meaningful

way, instruction in professional skills and values with doctrinal instruction.

Of course, clinical legal education is more than simply instruction in professional skills and values. It is a methodology of legal instruction and it is, or can be, a force for the active pursuit of equal justice. First, as a methodology, we can define clinical legal education as Gary Bellow did in 1973 as having three main features, “1) the student’s assumption and performance of a recognized role within the legal system; 2) the teacher’s reliance on this experience as the focal point for intellectual inquiry and speculation; and 3) a number of identifiable tensions which arise out of ordering the teaching-learning process in this way.” Bellow asserts, “[w]hat is envisioned is a mode of education which involves the systematic interaction of pedagogical technique and the psychological dynamics involved in role adjustment and definition.” Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as a Methodology*, in *Clinical Education for the Law Student* 374 (1973). Second, clinical legal education historically has had a significant social justice dimension, which the law school should accord equal importance with skills development. Stephen Wizner, *Beyond Skills Training*, 7 *Clin. L. Rev.* 327, 327 (2001). According to Jon Dubin, clinical legal education furthers social justice imperatives in three primary ways: 1) through providing services and pursuing legal and social reform on behalf of individual and group clients lacking meaningful access to political power and institutions of justice; 2) by “exposing law students to an ethos of public service or *pro bono* responsibility in order to expand access to justice through law graduates’ pursuit of *pro bono* activities or public service careers;” and 3) “facilitating transformative experiential opportunities for exploring the meaning of justice and developing a personal sense of justice, through exposure to the impact of the legal system on subordinated persons and groups and through the deconstruction of power and privilege in the law.” Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 *SMU L. Rev.* 1461, 1475–77 (1998).

Resources

ABA, *Standards for Approval of Law Schools* Stds 301(a), 302(a)–(d) (2014–15); Roy Stuckey et al., *Best Practices for Legal Education* 97–104 (2007); Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in *Clinical Education for the Law Student* 374, 379 (1973); Stephen Wizner, *Beyond Skills Training*, 7 *Clin. L. Rev.* 327 (2001); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 *SMU L. Rev.* 1461, 1475–77 (1998).

2.2. Relationship of the Clinical Legal Studies Curriculum to Overall Instructional Goals.

2.2.1. Is the clinical legal studies curriculum organized in such a manner as to allow curricular objectives to be identified and for students' and teachers' attention to be focused on an appropriately prescribed set of goals and objectives?

2.2.2. Are there prerequisite or concurrent course requirements for participation in the clinical program such that students participating in clinical legal education courses have sufficient grounding in the doctrine, procedure, and skills needed to participate effectively in clinical studies?

2.2.3. Is the clinical legal studies curriculum organized to provide logically sequenced instruction in professional skills and values, which become increasingly rigorous and complex?

2.2.4. Does the law school provide those students, who want it, an opportunity to acquire more advanced instruction in those professional skills and values they will need upon graduation?

2.2.5. Does the law school provide those students, who want them, opportunities for actual client representation either

through an in-house clinic or through a closely supervised fieldwork placement?

2.2.6. Does the law school offer a broad array of different clinical experiences for its students – different substantive foci, non-litigation offerings, appellate as well as trial, etc.?

Commentary

Clearly articulated, written, pedagogical and lawyering goals statements for each clinic, and the program as a whole, are necessary to facilitate evaluation of the clinic/program, and to apprise students of what they are likely to learn in the clinic/program and the nature of the lawyering experience that they are likely to encounter in the clinic/program.

The goals and objectives should be consistent with the mission of the law school and university, if any, of which the clinic/program is a part, including the mission to prepare students to participate effectively in the legal profession upon graduation from law school.

Each clinic/program must decide for itself what goals and objectives to articulate and the best way in which to communicate these goals and objectives to the appropriate audiences.

While recognizing the need to foster creativity and experimentation in clinical design, good practice requires that a clinical program offer all students a client-based, representational experience that is closely supervised to provide high-quality legal services and to achieve a set of defined pedagogical goals.

Provision of legal services requires interpersonal contact between the lawyer and the client or representative of the client as well as many others, such as opposing lawyers, cooperating lawyers, judicial and agency personnel, and support staff, to name a few. Just as it seems unthinkable to graduate medical doctors who have never seen a patient, it should be regarded as similarly unthinkable to graduate lawyers who have never interviewed or counseled actual clients under the guidance and supervision of a qualified legal educator.

A program of legal study should introduce basic concepts of doctrine and practice early, and then add depth and complexity. To accomplish the goal of graduating persons prepared to practice law upon graduation, the law school must incorporate the teaching of doctrine, skills, and values into each course in the curriculum. Attention must be paid to the sequencing of courses and skills. For example, before students begin to see clients, they should have been given basic instruction in the theory and practice of client interviewing and counseling and have a basic understanding of the law that is likely to be the subject of the interview. This will enable student attorneys to interact appropriately with the client and to enable the students to build skills from the interaction with a client.

The clinical legal studies curriculum is part of the larger curriculum of the institution. The faculty should have designed carefully the overall curriculum and assigned specific goals and objectives to the clinical legal studies curriculum. The goals assigned may include both responsibility to develop unique contributions to the students' legal education and responsibility to reinforce knowledge, skills, and values already introduced in the curriculum. Because legal education is limited to three years of full-time study or four years of part-time study, time and other resource constraints limit the amount and extent of instruction that may be given students prior to graduation. This fact requires that law schools identify and provide sufficient instruction to enable graduates to perform adequately on a set of core outcomes recognized as appropriate for novice attorneys upon their licensing to practice law. Some of these outcomes will be knowledge, skills, and values for which the clinical legal studies curriculum should be primarily responsible.

A well-designed curriculum guides the student from simple to complex understanding and from breadth of understanding to depth of understanding. This guided development requires a building-block approach to curricular design that includes particular attention to pre-requisites and co-requisites. Thus, for example, in a one-semester, limited-credit, representation clinic, student participation may be enhanced by coming to clinic with background in the substantive law of the clinic and some foundational lawyering skills, such as interviewing, counseling, and negotiating, and a simulated trial

practice course. A model program would introduce lawyering theory and practice through readings and simulated lawyering exercises prior to guided practice in the client-based clinic.

Assuming the clinical legal studies curriculum is properly designed to provide students with knowledge, skills, and values insufficiently developed in the traditional curriculum and that the information, skills, and values developed in the clinical curriculum are necessary, if not sufficient, to the practice of law, then every student should have the opportunity to participate in the clinical legal studies curriculum. Therefore, a significant measure of quality of the clinical legal studies curriculum is the percentage of students who are afforded the opportunity to participate fully in clinical legal studies. A model program would assure that all students have been provided with the fundamental skills and values necessary to render adequate representation to clients and have been given the opportunity to practice those skills under the close, direct supervision of qualified faculty in an authentic practice environment. At a minimum, each student, before graduation, should have an authentic lawyering experience in a setting where the student performs tasks required of lawyers, under the guidance and supervision of qualified lawyers who provide regular feedback and require reflection by the student on the student's performance of the lawyering tasks.

An institution may choose to measure its skills curriculum by the list of fundamental skills and values developed by the MacCrate Task Force, the joint ABA/ALI Skills and Ethics for the Practice of Law, or to develop its own set of outcome measures, but whatever the source, it should be public and inform the institution and individual faculty when decisions with respect to curriculum and assessment are made.

Where resources are available, the clinical legal studies program should allow for specialization within the clinical curriculum to enable students with established career plans to go beyond the fundamental skills and values of general practice to experience practice in a more specialized setting.

Most courses within the clinical legal studies curriculum could be designed to be capstone courses that provide an opportunity for students to consider the relationship among theory, practice, and doctrine. The course design should demonstrate conscious attention to

this idea. Similarly, many courses within the clinical legal studies curriculum could be designed to require students to engage in systemic analysis of the legal system or culture in which the student practices. Course design should demonstrate conscious attention to this goal.

Resources

Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 562 (1992); ABA Section of Legal Education and Admissions to the Bar, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (McCrack Report) (1992); ABA/ALI, *Skills and Ethics in the Practice of Law* (2d ed. 2000).

2.2.7. Academic Credit

2.2.7.1. Does the law school provide students enrolled in clinical courses with course credit that is commensurate to the credit given in the rest of the curriculum for comparable expenditures of student time and effort?

2.2.7.2. In allotting academic credit for course work done in the clinical legal studies curriculum are each of the following factors considered: the number of regularly scheduled class hours; the number of regularly scheduled meeting hours between student and instructor; the average number of unscheduled hours of meetings between the student and instructor; the writing requirements that form part of each student's fieldwork responsibilities; and the investigation, counseling, negotiation, and proceedings activities required as part of each student's fieldwork.

2.2.7.3. Are students explicitly prohibited from receiving both academic credit and compensation for clinical experiences?

Commentary

Regardless of whether the institution assesses students enrolled in the clinical legal studies curriculum on a pass/fail basis or assigns numerical or letter grades, courses within the clinical legal studies curriculum should be offered for academic credit on the same basis as the academic credit given in the rest of the curriculum.

Georgetown University Law Center (GULC) has determined that academic credit for clinic courses should be determined by reference to “structured interaction time,” which is defined as “all planned activities that require development of professional skills,” such as seminars, seminar preparation, weekly supervision meetings, research and investigation, writing, performance at hearings or meetings, participation in meetings, etc. GULC then allots clinic credit equal to the number of weekly student hours spent on structured interaction time divided by 3.5. So for clinics where the average weekly structured interaction time is 20 hours, 5.7 (rounded to 6) credit hours would be awarded.

Consistent with Interpretation 305-2 of ABA Accreditation Standard 305, an institution should not grant academic credit to a student for participation in a law school field-placement program for which the student receives compensation, other than the reimbursement of reasonable, out-of-pocket expenses, such as parking costs, related to the field placement.

Resources

ABA Accreditation Standard 310 (2014–15).

- (a) A law school shall adopt, publish, and adhere to written policies and procedures for determining the credit hours that it awards for coursework.
- (b) A “credit hour” is an amount of work that reasonably approximates:
 - (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per

week for fifteen weeks, or the equivalent amount of work over a different amount of time; or

(2) at least an equivalent amount of work as required in subparagraph (1) of this definition for other academic activities as established by the institution, including simulation, field placement, clinical, co-curricular, and other academic work leading to the award of credit hours.

Georgetown University Law Center, *Clinics Committee Report on Allocating Credit to Clinical Programs*, approved by the faculty, (Oct. 13, 1999); ABA Accreditation Standard 305 (2014–15) (Study Outside the Classroom); *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 508, 568 (1992); AALS-ABA Guidelines for Clinical Legal Education, *Report of the AALS-ABA Committee on Guidelines for Clinical Legal Education* (1980).

2.3. Approval of the Clinical Legal Studies Curriculum

2.3.1. Is the approval of new courses and the evaluation of existing courses within the clinical legal studies curriculum done by the decision-making body that performs these responsibilities for the rest of the curriculum?

2.3.2. Is the clinical program design based on comprehensive faculty analysis and discussion?

2.3.3. When making revisions to the clinical legal studies curriculum, does the decision-making body fully consult with the faculty and professional teaching staff in the clinical legal studies curriculum?

Resources

AALS-ABA Guidelines for Clinical Legal Education, *Report of the AALS-ABA Committee on Guidelines for Clinical Legal Education* (1980).

2.4. Administration of the Clinical Legal Studies Program

2.4.1. Has the law school assigned responsibility for the coordination of its clinical legal studies program and related extra- and co-curricular activities to a specific person or committee?

2.4.2. Are the resources allocated to the clinical legal studies program adequate to achieve the stated pedagogical goals of the program?

2.4.3. Are the resources allocated to the clinical legal studies program adequate to achieve the stated lawyering goals of the program?

2.4.4. Is funding of the clinical legal studies program sufficient to assure continuity of the program at current or increased levels of service to students and clients?

2.4.5. If resources allocated to the clinical legal studies program are not adequate to achieve the stated goals of the program, is there a realistic plan in place to increase them?

2.4.6. Are all full-time faculty teaching in the clinical legal studies curriculum fully funded with permanent law school funds?

Commentary

In order for the clinical program to provide a high level of service to each of the several constituencies served by the program, including students, clients, faculty, staff, and the broader communities that include the parent institution, neighboring community, and legal

community, significant attention must be paid to the administration of the program, including the coordination of the constituent parts.

There is no single administrative model that would best serve the needs of every institution. Each institution needs to explore the options and to decide for itself how best to structure the administration of its clinical program. Historical structures, expertise, and temperament of the members of the clinical faculty, and other factors each can play an important role.

One common model of administration has a single person who is given overall responsibility for the administration and coordination of clinical programs. The person may carry the title of Director, Coordinator, or Associate Dean of Experiential Education or of Clinical Programs. The director may have the primary responsibility for 1) program leadership and developing new clinical initiatives, 2) professional development of clinic faculty, 3) administration, management, and supervision of clinical staff, 4) clinic budget and fund-raising, 5) representation of the clinical program to the legal community, 6) communication about clinical affairs with the law faculty and administration, 7) communication with prospective and current clinic students and clinic alumni, 8) communication with other clinical educators, and 9) communication with adjunct faculty and placement supervisors.

To the extent that other models are employed, the institution should assure that the benefits inherent in a single administrator model, most notably, coordination of efforts, reduction of duplication, and focused accountability, are retained.

The institution must assure that the resources devoted to the clinical legal studies curriculum are adequate to achieve both the pedagogical goals and the lawyering goals of the program. Where funds currently are not adequate to achieve both sets of goals, the institution should design and implement, within a reasonable time, a comprehensive plan that will enable it to develop and deploy adequate resources.

2.5. Summative Evaluation/Grading

2.5.1. Does the program provide explicit, written information to students at the beginning of each course in the clinical legal studies curriculum of the methods of evaluation to be used, the factors to be evaluated and graded, and the standards to measure each factor?

2.5.1.1. Are student grades in courses of the clinical legal studies curriculum based on what students are expected to learn in a particular course, and are these expectations communicated clearly to students before they enroll?

2.5.1.2. Has the program adopted a policy that grades are not based on in-role performance of skills, unless students previously have been able to practice the skills and gain an understanding of how their performances measured up to explicit criteria and models that have been provided to students?

2.5.2. Has the law school developed evaluation methods for course-work performed in the clinical legal studies curriculum that permit comparison with grades earned in the law school's traditional courses?

2.5.3. Are grades awarded by the faculty supervisor responsible for the course?

2.5.4. Do fieldwork supervisors have appropriate input into grading judgments?

2.5.5. Is the decision to grade fieldwork experiences based on whether each student in the clinic will have similar experiences to provide a basis for comparison, and whether the faculty supervisor will have sufficiently observed each student's performance to provide a basis for grading each student?

Commentary

Grades are the currency in law school. Grades in clinical courses signal to students and other faculty that the course has, at least, the same value as other courses and seminars. Grades provide a source of external motivation to the student to stimulate a high quality of work. Grades can reward the time commitment that students frequently make in clinical courses. In addition, although there may be cogent reasons for institutions to eschew grades in clinical courses, pressures outside of the institution, such as comparisons with peer institutions and the expectations of employers, may tilt the balance toward grades. Grades may be reflected on a Pass/Fail (Credit/No Credit) scale, or on a numerical (e.g., 50–100) scale, or alphabetical (F - A) scale. Where the Pass/Fail option is selected, it is worth considering a Fail, Pass, High Pass system that has the capacity to reward better than merely adequate performance and provides some external incentive to students to perform at a high level.

When numerical or letter grades are used, the grades earned in clinic should be based on measures and evaluation methods that permit comparison with grades earned in other courses in the law school. Where grades are based on in-role performance of skills, evaluation may be of preparation and performance, but students must have been given reasonable opportunities to practice the skills being evaluated after the skills have been introduced or modeled to the student and after explicit evaluation criteria has been provided.

Regardless of whether or not a student receives a grade for clinical course, each student is entitled to feedback and evaluation on his or her performance in the course. Additionally, each is entitled to know, prior to enrollment, the methods of evaluation to be used, the factors to be evaluated, and the standards to measure each factor. It is good practice to provide the evaluation criteria to students in writing.

Resources

Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 Clin. L. Rev. 299 (1997). *See generally* Roy Stuckey et al., *Best Practices for Legal Education* 125–26; 235–63 (2007).

2.6. Evaluation of the Clinical Legal Studies Curriculum

2.6.1. Does the law school have in place an ongoing curriculum planning and evaluation process to assess the clinical legal studies program as part of the overall curriculum?

2.6.2. Is there a rigorous periodic review of the clinical program and each of its component parts?

2.6.2.1. Does the periodic review include an evaluation of educational outcomes and student achievement, satisfaction of program goals and objectives, satisfaction of other stakeholders (such as externship placement sites and externship supervisors) goals and objectives, appropriateness and functioning of internal systems and procedures, and quality of representation and client satisfaction, as appropriate?

2.6.3. Does the law school employ a variety of evaluation methods such as student evaluations, peer evaluations, student satisfaction surveys, alumni surveys, and client satisfaction surveys to assess the success of the clinical legal studies program?

2.6.3.1. Has each method of evaluation been demonstrated to be a valid and reliable measure of the items each is designed to evaluate?

2.6.4. Does the program regularly report the results of its self-evaluation to all stakeholders?

2.6.4.1. Is the report comprehensive, detailed, and accurate?

2.6.5. Is there evidence that the stakeholders have responded in a meaningful way to the evaluation reports created by the clinical legal studies program?

Commentary

If the process within the law school for approval and evaluation of curricular changes is functional and reflects appropriate allocation of governance responsibilities between the faculty and administration, the approval and evaluation of clinical courses should be done by the same decision-making body that performs these responsibilities for the rest of the curriculum.

At least as frequently as every seven years (the period of ABA reaccreditation visits), but more properly on a three to five year cycle, the clinical program as a whole should engage in periodic review of its goals, objectives, and outcomes, and each clinic should conduct a thorough self-evaluation of its operations. The self-evaluation should cover both the curricular and service goals of the clinic and address each of the areas covered by the standards in this document. Each clinic should perform a less rigorous review of its operations on a more frequent basis, at least annually, but as often as each semester for one-semester clinics. The purpose of the more frequent review of operations is to be able to react to input from current students, clients, and others and make immediate changes in response to suggestions for improvement.

The evaluation of the clinical program should include both pedagogical inputs and outcomes and lawyering activities. Evaluation of the pedagogical aspects of the clinical program should include a thorough review of the goals, objectives, and outcomes of the program to ascertain that the goals and objectives of the program are

coherent and appropriate when considered in connection with the curriculum as a whole. Since most clinical programs provide both education and legal services, the evaluation of the clinics and the program must include an evaluation of the lawyering activities as well as the educational ones. Because a representational clinic is a working law office, the methods of evaluation must take into account the need to protect legitimate confidences and secrets of clients.

Each clinic involved in client representation should also periodically assess the success of its service. To measure this, the clinic should gather information regarding the extent to which the results achieved meet the *client's* objectives in the individual case, as well as the extent to which the overall objectives identified in the planning process have been achieved, and the extent to which the conditions confronting clients have been improved. For example, do clients have increased access to decision-making forums that affect their lives? Is there evidence of positive change in the practices, policies, and procedures of institutions that interact with clients? Are clients better able to assist themselves individually in resolving problems they encounter? Is there an increase in resources available to the clinic to meet the needs of clients?

The program or clinic needs to develop a similar list to measure the extent to which the program or clinic is meeting its goals and objectives with respect to educating students. These may include the extent to which each student's self-selected learning goals have been met, the extent to which the program's or clinic's teaching goals have been met, the increase or decrease in reputation among the faculty, students, and staff of the law school, the increase or decrease in reputation among other practitioners, judges, and agency personnel, and the personal and the professional satisfaction of the faculty and staff.

The process of evaluation should be sufficiently varied and robust to achieve the desired review. Several evaluation techniques should be employed together to provide a detailed and comprehensive picture of the program and clinic and to ensure that one source does not inaccurately distort the evaluation. Evaluation techniques may range from the review of records to the use of interviews and surveys, including student surveys, client satisfaction surveys, alumni

satisfaction surveys, surveys of opposing counsel, judges, and other persons who interact with program/clinic students and faculty and, in some cases, the employment of independent outside evaluators.

Client satisfaction surveys should include information about the following issues: whether clients perceive that they are being treated with appropriate dignity and respect, whether clients generally perceive their relationship with the clinic to be positive, whether clients are kept informed about their cases and whether they are properly consulted regarding the conduct of the representation, whether clients are satisfied with the outcomes in specific cases, and whether clients who were referred to other service providers were satisfied with the referral process. Caution must be used in evaluating data from client satisfaction surveys. They may have a low reliability when used to evaluate the performance of an individual student or student team, because one or two surveys is an insufficient sample from which conclusions about many performance measures may be reliably drawn. However, client satisfaction surveys in sufficient numbers may provide valuable and reliable information about the clinic or program itself.

Traditional methods of evaluation of classroom teachers, while helpful, are not sufficient for evaluating clinical pedagogy. Since much of clinical teaching occurs in one-on-one sessions between teacher and student, or in small group interactions, and involve confidential client information, the methods used to evaluate teaching and pedagogy must be carefully designed to provide insights into these settings and to protect the confidences and secrets of the clients. The best practice in multi-faculty clinics is for another member of the clinic “firm” to observe and evaluate the teaching of the clinician under review, which for reasons of client confidentiality cannot be observed otherwise.

Resources

The Legal Services Corporation has developed program performance criteria that may be useful for law school clinical programs seeking to design and implement performance evaluations.

See Performance Criteria, Legal Service Corp. (2007) <http://lri.lsc.gov/sites/default/files/LRI/LSCPerformanceCriteriaReferencingABAStandards.pdf> (2007); Sally L. Bond et al., *Taking Stock: A Practical Guide to Evaluating Your Own Programs*, Horizon Research, Inc. (1997), <http://www.horizon-research.com/publications/stock.pdf> (showing a more general guide for program evaluation). *See generally* Nat'l Inst. of Standards and Tech., Baldrige Performance Excellence Program, www.nist.gov/baldrige (last visited Sept. 14, 2014) (showing performance evaluations of educational institutions). For guidance in developing clinical faculty evaluation methods, *see* Kimberly E. O'Leary, *Evaluating Clinical Law Teaching – Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. Ky. L. Rev. 419 (2002).

2.7. Clinical Faculty

2.7.1. Does the law school have a core of full-time faculty for whom instruction in professional skills and values is a primary career interest and responsibility?

2.7.2. Does the law school accord clinical faculty status sufficient to assure continued improvement, development, and growth of the program? *See infra* § 2.7.8.

2.7.3. Does the law school have, in addition to a core of full-time faculty for whom instruction in professional skills and values is a primary career interest and responsibility, enough additional full-time and part-time faculty to accomplish the pedagogical and lawyering goals of its program?

2.7.4. Are clinical faculty well integrated into the governance structure of the law school?

2.7.4.1. Do clinical faculty have the opportunity to serve as full voting members on all law school committees?

2.7.4.2. Do clinical faculty have the opportunity to chair all law school committees?

2.7.4.3. Do clinical faculty have full voting participation in all appointment, promotion, and tenure determinations?

2.7.4.4. Does the law school adjust the governance requirements on clinical faculty to take account of the time required for individualized supervision of students, client responsibilities, and requirements for scholarship?

2.7.5. Are clinical faculty involved in teaching in the non-clinical curriculum?

2.7.5.1. To the extent practicable, do individuals teaching primarily in the clinical legal studies curriculum contribute to the traditional curriculum?

2.7.5.1.1. Are clinical faculty required, encouraged, or permitted to teach non-clinical courses as part of their teaching load?

2.7.5.1.2. Do clinical faculty teams teach courses or components of courses in the traditional curriculum?

2.7.6. Does the clinical legal studies program have some mechanism for training new clinicians in clinical pedagogy?

Commentary

The law school can demonstrate its commitment to high quality clinical legal education by employing a core of full-time faculty for whom instruction in professional skills and values is a primary career interest and responsibility. Although it may be necessary to employ other full-time and part-time faculty to meet the educational goals of the institution and the student demands for experiential education,

full-time faculty who are committed to clinical legal education are most likely to be readily available and have the opportunity to observe student performance, model good lawyering behavior, and critique student performance more frequently and consistently than other full-time or part-time instructors.

Although no one type of faculty status can guarantee a high quality clinical program, the same factors and prerequisites thought necessary to hire, develop, and retain non-clinical faculty should be available at the law school to hire, develop, and retain clinical faculty. It is not the availability of tenure that is in itself important, but the unjustified distinctions between tenured or tenure-track appointments and contract appointments. Where one class of faculty is tenured and another class of faculty, who are doing equally important and demanding work, is not, this state of affairs can lead to unhealthy tensions and divisions among those within the institution who should be working together for the benefit of the students. Since tenured appointments are generally the standard within American legal education, tenured appointment of clinical faculty should be the standard against which clinical programs are measured.

Similarly, clinical faculty should have the same opportunities as non-clinical faculty to participate fully in faculty governance, such as serving as full voting members on all law school committees, including the committees charged with appointment, tenure, and promotion of faculty and serving as chairperson of all faculty committees. However, the institution should recognize that clinical faculty may need to defer full participation in governance from time-to-time in order to meet their responsibilities to clients. This may mean excusing a clinical faculty member from some committee assignments that would otherwise require too much of the faculty member's time in the face of client service demands.

Clinical faculty members who have a full-time responsibility for clinical teaching should neither be required to teach nor excluded from teaching in the traditional curriculum. If clinical teachers are expected to teach non-clinical courses as part of their teaching load, contact hours in the clinic must be limited appropriately by decreasing the number of students per faculty member, decreasing the number of credit hours taught in the clinic, or both. Similarly, when

clinical faculty teach components of traditional courses, or team-teach traditional courses, in order to inject clinical methodology into the courses, appropriate diminution of clinic responsibilities should take place to assure that both students and clients are well served. When clinical faculty have full-time responsibility for clinical teaching, and teach another course as well, the institution should assure that students, clients, and faculty members are all well served by the arrangement.

Resources

Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 570–72 (1992).

2.7.7. Are Clinical Faculty Required or Expected to Produce Scholarship?

2.7.7.1. Are clinicians provided with adequate resources (research assistants, research leaves, summers off, writing grants, etc.) that allow them to produce high-quality scholarship?

2.7.7.2. Is the scholarship produced by the clinical faculty of high quality?

2.7.7.3. Is some of the scholarship produced by the clinical faculty related to clinical issues, including clinical pedagogy, lawyering theory, and substantive law?

Commentary

Research and scholarship should be part of the job description of clinical faculty. The law school should require the clinical faculty to participate in the creation of intellectual property through research and scholarship. However, the law school should adjust the nature and extent of research and scholarship required of clinical faculty

with full-time responsibility for clinical teaching to account for the large and often non-scheduled blocks of time necessary for student supervision and client service.

The law school must provide clinical faculty with an atmosphere and resources to grow professionally and intellectually and to conduct research and produce scholarship. Access to sabbatical and other leaves, research assistants, teaching assistants, technology, research grants, and travel funds equal to those afforded other faculty is the base. The history of the development of clinical legal education demonstrates the institutional synergies and individual growth created by the clinical conferences, workshops, clinical research, and scholarship. Therefore, the institution should encourage and facilitate attendance by clinical faculty at clinical teaching conferences and workshops. Adequate resources may be necessary to provide for professional and intellectual growth, but resources alone are not sufficient. The law school also must foster an atmosphere of respect and intellectual challenge within which all faculty, including clinical faculty, feel secure, valued, and encouraged.

Resources

With reference to student-faculty ratios in In-House Clinics, *see Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 508, 565–68 (1992). With respect to scholarship by clinical faculty, *see generally* Richard A. Boswell, *Keeping the Practice in Clinical Education and Scholarship*, 43 Hastings L.J. 1187 (1992); Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. Legal Educ. 540 (2002); Clark D. Cunningham, *Hearing Voices: Why the Academy Needs Clinical Scholarship*, 76 Wash. U.L.Q. 85 (1998); Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 Clin. L. Rev. 385 (1996); Steven H. Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. Legal Educ. 149 (1979–1980).

2.7.8. Status for Individuals Teaching in the Clinical Legal Studies Curriculum

2.7.8.1. Does the law school fully comply with ABA Accreditation Standard 405(c) with regard to the status of faculty teaching in the clinical legal studies program?

2.7.8.2. Where the law school has clinical faculty who are neither tenured nor on a tenure-track, has the law school made a careful, principled decision to differentiate between positions that are tenure-track and those that are not?

2.7.8.3. Do persons hired with the expectation of teaching in the clinical legal studies curriculum other than on a tenure-track, as a visitor, or in a short-term contract position, have long-term contracts that are presumptively renewable?

2.7.8.3.1. Is the process for review of renewable, long-term contracts comparable to the system used for other, non-clinical faculty with long-term appointments?

2.7.8.3.2. Is the basis for review of renewable, long-term contracts the evaluation of the teaching and lawyering abilities of the individuals?

2.7.8.4. What proportion of the clinical faculty is tenured, tenure-track, on long-term contracts, or on short-term contracts? How do these proportions compare with non-clinical faculty at the law school?

2.7.8.5. Are the demands of achieving tenure and promotion reasonable in light of the demands on the clinician's time for supervision of students, responsibilities for clients, and other administrative, and non-teaching demands of the job?

2.7.8.6. Do the means of achieving tenure comport with the job of the clinical faculty?

2.7.8.6.1. Do scholarship requirements of tenure and promotion properly value non-traditional scholarship?

2.7.9. Qualifications of Clinical Faculty

2.7.9.1. Are the clinical faculty well prepared to teach in the clinical legal studies curriculum?

2.7.9.1.1. Is the clinical faculty well-read and familiar with elements of clinical methodology and lawyering theory?

2.7.9.1.2. Do clinical faculty have prior legal experience in performing the lawyering tasks about which they will be expected to teach?

2.7.9.1.3. Does at least one clinician in a client clinic have prior legal experience with the types of cases and problems the client clinic handles?

2.7.9.1.4. Is each clinician knowledgeable about the substantive and procedural law for the types of cases typically handled by the clinic?

2.7.9.1.5. Does each clinician demonstrate the ability to relate to students on a one-to-one basis?

2.7.9.1.6. Does each clinician demonstrate the ability and willingness to accept criticism from lawyers and students regarding the clinician's performance as a lawyer?

2.7.9.1.7. Does each clinician demonstrate the ability to evaluate student performance?

2.7.9.1.8. Does each clinician demonstrate an intellectual understanding of the theoretical and empirical knowledge related to the issues and problems to be considered in the clinical legal studies curriculum?

2.7.9.1.9. Does each clinician demonstrate an interest in doing research related to the educational issues existing in clinical legal studies and the legal problems raised within the clinical legal studies curriculum?

2.7.9.1.10. Does each clinician demonstrate the ability to train and supervise the teaching of other professors, clinical professors, supervising attorneys, and cooperating attorneys?

Commentary

Newly hired clinical faculty should possess skills and knowledge necessary to enable them, after a short orientation, to supervise students effectively and, where client representation is involved, to assure that clients are fully and appropriately represented by the program.

Experienced clinical faculty should demonstrate continued development of teaching and practice skills. As clinical faculty mature, they should demonstrate knowledge and facilitate the theory and practice of experiential education in a legal context. They should demonstrate an increasingly sophisticated understanding of the substantive and procedural law for the types of cases and problems typically handled by the clinic in which they teach. They should demonstrate an increasing ability to engage in one-on-one supervision and to teach effectively in small groups, including offering constructive critique and feedback to student attorneys, as well as fairly and fully evaluating student performance of lawyering tasks. Experienced clinicians should also demonstrate an increasingly sophisticated research and scholarly agenda. They should have the

ability to train and supervise the teaching and practice activities of less experienced faculty.

When hiring and promoting clinical faculty, the institution should consider a number of relevant factors including prior relevant teaching experience; prior relevant practice experience; prior relevant community service; length of service and the nature of service on the faculty; relevant education and training, including in-house training and participation in professional conferences, workshops and meetings; and the quality and relevance of scholarship produced.

Resources

Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 569–72 (1992).

2.7.10 Appointment, Retention, and Promotion of Faculty Within the Clinical Legal Studies Curriculum

2.7.10.1. Is decision making related to the appointment, retention, and promotion of faculty teaching in the clinical legal studies curriculum done by the same decision-making body that performs these responsibilities for other full-time faculty?

2.7.10.1.1 In appointment decisions of the clinical faculty, are the opinions of the existing clinical faculty given appropriate weight as to the candidate's qualifications and potential for collegiality within the clinic?

2.7.10.1.2 Does the law school conduct a search for new clinical faculty that is substantially similar in scope as searches for other full-time faculty?

2.7.10.1.3. Do all full-time faculty who teach in the clinical legal studies curriculum participate in decisions

about hiring additional faculty who will teach in the clinical legal studies curriculum?

2.7.10.1.4. Does the law school have a non-discrimination policy in effect for hiring, continuation, promotion, and tenure that includes race, color, sex, age, national origin, handicap or disability, religion, and sexual orientation?

2.7.10.2. Does the law school maintain conditions of employment adequate to attract and retain highly qualified full-time clinical faculty?

2.7.10.2.1. Is a copy of the written promotion, tenure, and retention policies given to each clinician when he or she joins the faculty or, in the case of a clinician hired without faculty status, begins work?

2.7.10.2.2. Does the law school make available to each new hire a written statement of the school's description of the job for which the person was hired?

2.7.10.2.3. Does the law school provide training to new and visiting clinical teachers?

2.7.10.2.4. Does the law school have in place a system of peer support for the early development of teaching skills necessary for successful clinical supervision?

2.7.10.2.5. Does the law school provide sufficient resources to facilitate the professional development of the clinical legal studies faculty?

2.7.10.2.6. Are clinical faculty encouraged, and provided with the necessary resources, to attend professional development workshops, conferences, and meetings sponsored by professional organizations?

2.7.10.2.7. Does the law school have clear, written criteria and procedures for the evaluation and retention of everyone who teaches in the clinical legal studies curriculum?

Commentary

Hiring, retention, and promotion of clinical faculty should be carried out by the same decision-making body that performs the responsibility for other full-time faculty. However, because of the cooperative and collegial nature of most clinical teaching, appropriate consultation and weight must be given to the opinions of the other clinical faculty at the law school before a decision to hire or retain a clinical faculty member is made.

Ordinarily, a national search should be conducted before hiring new clinical faculty. This makes the search for clinical faculty similar to the hiring of non-clinical faculty in terms of scope of search. Naturally, because of requirements for admission to the bar of the jurisdiction and, to a lesser extent, the need to be familiar with local, formal and informal, procedural rules and practices, preference may necessarily be given to local candidates. Once hired, each faculty member should be given a copy, in writing, of all retention, promotion, and tenure policies of the law school and parent university, if any. In addition to these policy documents, the clinical faculty member should be given a written job description that sets forth expectations of such things as teaching load, committee assignments, and other responsibilities along with teaching and client service expectations. The law school should have a fully developed program for the development and support of all faculty, including clinical faculty. It is good practice to assign each new faculty member a more senior faculty mentor who can help the new faculty negotiate the formal and informal practices of the law school. Clinical faculty should be encouraged and provided with necessary resources to attend professional development workshops, conferences, and meetings sponsored by professional organizations.

Resources

ABA, *Standards & Rules of Procedure for Approval of Law Schools* Std. 405(c) (2014–15), Interpretation 405-3 (written criteria & procedures for evaluating candidates for promotion and tenure or other forms of security of position), Interpretation 405-6 (form of security of position reasonably similar to tenure), Interpretation 405-7 (law school should develop criteria for retention, promotion, and security of employment of all full-time clinical faculty).

3.0 LIVE-CLIENT CLINICS

Because live-client clinics are the central feature of clinical legal education in most law schools and because of the variety of clinics and variability of pedagogical approaches, this section is, perhaps, the most extensive section of the Guidelines and the section most in need of expansion and development. Editors are strongly encouraged to propose additional subsections (and flesh them out), to comment on or revise any of the existing subsections, and to suggest better ways to organize the section. This section draws heavily on the previous guidelines (ABA/AALS 1980) as well as the *ABA Standards for the Provision of Civil Legal Aid* (2006), as modified for clinical legal education.

3.1. Admission and Selection of Students

3.1.1. Does the program serve all students who wish to take a live-client clinic?

3.1.2. If not, does the program have a clearly articulated plan for expanding its coverage in order to serve all those who wish to enroll?

3.1.3. Are the criteria for participation in each clinic easily accessible to students?

3.1.4. In the event of over subscription, does the program or clinic have written criteria for determining selection of students into individual clinics?

3.1.4.1. Are the criteria published to the students?

3.1.4.2. Is the selection process fair and transparent?

3.1.4.2.1. Are diversity issues addressed by the criteria?

3.1.4.2.2. Is there a process for appeal by a student dissatisfied with the selection process?

Commentary

Until the law school provides a live-client clinic experience to every student, it will be necessary to ration that scarce educational resource. At a minimum, the law school should provide sufficient client-based clinic spaces to accommodate all students who desire a live-client experience. Client-based clinics provide the best opportunity within the law school for students to experience solving the real, ill-defined legal problems that they will face in practice after graduation. In all other settings, problems are well-defined, with the variables known to the designer and with limited opportunities for unplanned events.

The law school should publish eligibility criteria for participation in the clinical program and make the criteria easily accessible to students in multiple forums and formats, including the clinical program webpages, course bulletins, and other periodicals. Where the

law school does not presently have sufficient client-based clinic spaces to accommodate all students who desire a live-client experience, the law school should have developed a plan to expand resources sufficiently to provide the needed spaces.

Where the program cannot guarantee each student placement in the clinic of his or her first choice, the program should have in place a process by which clinic spaces are allocated on a fair basis taking into consideration the needs of individual clinics. For example, the program should consider the need for a core of students who are qualified under the jurisdiction's student practice rule, the pedagogical goals of the clinics, and the desirability of diversity.

The director of clinical programs and faculty teaching in the clinics has the primary responsibility for devising a fair selection process. Some programs rely on an application process by which each student indicates his or her preferences among the clinics available to the student. Selection is then made by the faculty of each clinic using established criteria. The selection process may be done by a pure lottery system, i.e., where all students selecting a particular clinic have an equal chance of being selected for the limited number of spaces, or by a modified lottery, where priority is given to students based on some criteria such as anticipated year of graduation (preference is given to graduating seniors who have not had a prior live-client clinic experience), the need or desirability for one or more students with foreign language abilities, or the need for one or more students with eligibility under the local student practice rule. Other programs make selections based on an application process that includes an essay, statement of interest, or a personal interview. Since selection based on an essay or personal interview is more subjective, the faculty should clearly articulate the factors it considers in making the selection to give each student a fair and equal opportunity to compete for the limited spaces.

The program should have in place a specific, articulated, and published process by which a student dissatisfied with the clinic selection and allocation process may appeal the selection decision to the director of clinical programs or other appropriate individual within the law school.

Resources

AALS-ABA Comm. on Guidelines for Clinical Legal Educ., *Guidelines for Clinical Legal Education* pt. II. F. (1980).

3.2. Syllabus, Office Manual, and Practice Guides

3.2.1. Is there a written, published syllabus for each clinical course?

3.2.2. Does the program publish an office manual for each clinical course?

3.2.2.1. Does each office manual explain the nature of the clinical course for which it was written, define the responsibilities of the participants, and detail the grading and evaluation criteria used in the course?

3.2.3. Does the program publish practice guides to assist students in performing new and routine legal tasks in the specific practice setting in which they are working? *See also infra* § 3.8.3.

Commentary

Each clinic should develop and publish a detailed course syllabus. At a minimum, the syllabus should explain the goals, objectives, and anticipated learning outcomes for the course; define the responsibilities of the participants (faculty, students, and staff); set out a schedule of assignments and class meetings for any seminar component; and detail the process and criteria for evaluation of student performance in the course.

Absent a well-developed pedagogical basis for not publishing a detailed office procedures manual for each clinic within the program,

students should be provided with an office manual at the commencement of their enrollment in the clinic. A clinic may decide for sound pedagogical reasons that the students should create their own office procedures. The clinic faculty can use the process of having the students prepare the manual to teach about the costs and benefits of standardized practice and to provide for learning opportunities that might be missed if students could follow the directions of a prepared procedures manual. *See* Sample Office Manual Table of Contents, app. A.

3.3. Client Eligibility Guidelines

3.3.1. When the clinic conducts its own intake, does the program or each clinic have a written policy governing eligibility for services?

3.3.2. Is sufficient information gathered during the intake interview to permit fair and thoughtful application of established eligibility guidelines?

3.3.3. Is intake data obtained in a manner that protects confidentiality, demonstrates respect for the client, and encourages trust in the clinic?

3.3.4. Is intake data recorded in sufficient detail to document compliance with the guidelines and to provide a record for review in the event that the decision regarding eligibility is challenged?

3.3.5. Are decisions regarding the applicant's eligibility made as quickly as circumstances permit to allow those who are denied service adequate time to take other steps to protect their interests? *See also infra* § 3.4.6.

Commentary

Except when client eligibility and selection is done by an outside agency that refers appropriate matters to a clinic, each program or clinic within a program should develop and publish a policy that specifies the criteria it will use for selection of clients. There is no single set of eligibility criteria that every program or clinic must use since such variables as mission, pedagogical goals, and supervisor expertise, among others, should influence client selection criteria. For most clinics within a law school, service to clients unable to afford legal services should be a primary criteria for client selection as well as matter selection. Other factors that may be considered include limitations imposed by court rules pertaining to student practice, a desire not to compete with the local bar, the educational value of the client's matter, and requirements of a funding source.

If financial eligibility is an important criterion, the program needs to be explicit about what sources of income and assets to count. The program may decide to use established financial criteria such as that established by the Legal Services Corporation for its grantees, or it may develop its own set of financial criteria. The protocol for determining financial or other eligibility for services should include specific and detailed statements regarding how such information is to be verified. The protocol should also include a statement of under what circumstances verification of information given by the prospective client is required, such as when there is substantial reason to doubt the accuracy of the information supplied by the prospective client. The protocol should also contain a statement of an applicant's rights to know of the program's attempt to verify eligibility and an opportunity to explain or rebut the disqualifying information.

Eligibility screening may be conducted by supervisors, student attorneys, clinic staff, or outside agencies. Regardless of who does the eligibility screening, the intake screener must be properly trained in both the criteria for client eligibility and interpersonal skills required for the task. The program should have a process in place for supervision and review of eligibility determinations.

Resources

ABA, *Standards for the Provision of Civil Legal Aid* §5.1 (2006); see also Philip G. Schrag, *Constructing a Clinic*, 3 Clin. L. Rev. 175, 231–33 (1996) (discussing whether to set a means test).

3.4. Matter Acceptance Policy

3.4.1. Does each clinic have a written policy and procedures for determining which matters it will accept?

3.4.2. Is the program or clinic limited, except by statute, regulation having the effect of law, court rule, code of professional responsibility, or a reasonable institutional policy (such as income), established prior to the application for service, in its ability to represent any party, person, organization or unit of government?

3.4.3. Do faculty and students conduct conflicts checks before accepting any matter, including new matters for existing clients?

3.4.4. Are matters evaluated anew for potential conflicts of interest whenever new information is obtained that may implicate a possible conflict?

3.4.5. Are applicants informed of acceptance or rejection of their cases in a professional and timely manner?

3.4.6. Are rejected clients given appropriate and timely referral to other service providers?

Commentary

In addition to written client eligibility guidelines, each program or clinic should have a written policy and procedures for determining which cases it will accept. Criteria can include institutional mission; educational merit; funding source constraints; resource constraints, such as monetary, physical, and time resources available to the program or clinic or program; potential benefit to client if case is undertaken, potential consequences if it is not; likelihood of success; and other resources available to the client.

The program must ensure that actual and potential conflicts of interest are identified before the acceptance of a new client matter and that appropriate procedures for handling actual or potential conflicts are used. The procedures should require that a conflicts review occurs each time that additional information is obtained regarding the matter that raises new possible conflicts. The program should conduct training in the identification and resolution of conflicts for all persons who are in a position to make case acceptance decisions.

The director of clinical programs or clinic director should review policies and procedures for identification and resolution of conflicts on a periodic basis and determine, at least once during each cycle of clinic students, that the policies and procedures are being followed.

The program should have a procedure that specifies what information is given to a prospective client who is deemed ineligible for services, how quickly the eligibility determination is made, the person responsible for assuring that eligibility determinations and notifications are made in a timely fashion, and how a referral or referral information is given to a prospective client who is denied services.

Resources

See Paul Tremblay, *Acting a Very Moral Type of God: Triage Among Poor Clients*, 67 *Fordham L. Rev.* 2475 (1999); see also ABA Standing Comm. on Legal Aid & Indigent Defendants, *Standards for the Provision of Civil Legal Aid* § 5.1 (2006); ALI/ABA Comm. on Continuing Prof'l Educ., *Achieving Excellence in the Practice of*

Law: The Lawyer's Guide § 1.1(a), at 24–36 (2d ed. 2000) (conflicts policies).

3.5. Central Record Keeping

3.5.1. Does the clinic's system for opening case files produce an accurate, current, and easily accessible record of all client matters?

3.5.1.1 Does the clinic have a file-opening checklist?

3.5.2. Does the storage system for case files allow faculty, students, and staff quick access to case files pertinent to specific clients?

3.5.3. Is the storage system for open, closed, and dead (dead case files are closed files on which no further work is contemplated that are retained on-site for a period of time) case files adequate to assure that confidentiality is not breached and that the files are likely to survive damage by fire, water, or other potential disaster?

3.5.3.1. Does the clinic have a procedure for checking out files?

3.5.4. When case files are closed, are they reviewed and evaluated, duplicate and extraneous materials deleted, and a closing memorandum prepared that summarizes succinctly the outcome of the legal matter and identifies information to be entered in appropriate cross-reference files?

3.5.5. When case files are closed, are clients' personal documents returned to them?

3.5.6. Are closed files reasonably accessible if an inquiry about them is raised?

3.5.7. Does the clinic have a policy that comports with the law in its jurisdiction regarding the disposition of closed files in the event of the discontinuance of the clinic's program?

3.5.8. Does the clinic have a policy on retention and destruction of dead files?

3.5.8.1. Does the clinic routinely notify clients of its file retention policy in its retainer letter or otherwise?

Commentary

Each clinic or the clinical program should have a comprehensive file management system that permits members of the clinic and its clients to have timely access to information contained in client files satisfies regulatory and legal requirements and conforms to applicable rules of professional responsibility. The file management system should be communicated to all members of the clinic and compliance with the protocols developed under the system should be monitored on a regular basis.

The program, or each clinic, should develop a client file retention and disposal policy that conforms to the applicable laws and professional responsibility rules in the jurisdiction. A sound file retention policy ensures the safe return of client property, provides for safe storage of closed and inactive files, and guides disposal of files at the close of representation. Apart from state and federal legislation with respect to retention of certain types of records, Raymond P. Micklewright, *Understanding File Retention: Developing an Ethical Policy and Plan - Part I*, Colo. Law. 147, 147 (Oct. 2001) (stating that the "Code of Federal Regulations ("C.F.R.") contains more than 1,200 separate sections relating to records that may affect when and how a document or property may be stored or destroyed" and references, specifically, 41 C.F.R. §§ 60-1.12, 101-45.306 and 17 C.F.R. § 257.1 n.5); *see also* Cal. State Bar Ass'n Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 2001-157 (citing

examples), the rules of professional responsibility in force in all jurisdictions define at least three ethical duties that are relevant to the issue of retaining and destroying client files: a duty to protect client property, a duty to protect clients' interests when representation terminates, and a duty to protect confidential information. Sherry L. Neal, *File Retention and Disposal in the Immigration Practice: It's More Than an Open and Shut Case*, 79 Interpreter Releases, July 2002, at 1001.

ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1384 (1977) (available on Westlaw in the ABA-ETHOP database), although recognizing that "[a] lawyer does not have a general duty to preserve all of his files permanently," sets forth eight guidelines on the subject of file retention and disposal:

1. Unless the client consents, the lawyer should not destroy items that belong to the client.
2. A lawyer should not discard information that may be useful in the assertion or defense of the client's position.
3. A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client, and which the client may reasonably expect to be preserved by the lawyer.
4. In determining the length of time for retention or disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for a longer retention period.
5. A lawyer should take special care to preserve, indefinitely, accurate and complete records of the lawyer's receipt and disbursement of trust funds.
6. In disposing of a file, a lawyer should protect the confidentiality of the contents.

7. A lawyer should not destroy or dispose of a file without screening it to determine that consideration has been given to the matters discussed above.

8. A lawyer should preserve, perhaps for an extended time, an index of the files that the lawyer has destroyed.

Similarly, the Colorado Bar Association's ("CBA") Ethics Committee has issued advice on the subject of records retention, which is summarized in Truhlar & Raismes, *Coping with the Avalanche: A Survey on the Disposition of Client Files*, Colo. Law. 1787 (Oct. 1987):

1. Determine whether the retention of client material is regulated by federal or state statute or applicable court rules.
2. Do not destroy or discard original documents or other items the client might reasonably expect to be returned, without the client's express consent.
3. Do not destroy or discard information that the lawyer knows or should know may be necessary or useful in asserting or defending the client's position in matters for which the applicable statute of limitations period has not run.
4. Do not destroy or discard information that a client may reasonably expect the lawyer to preserve. This includes information that: (1) the client may need in the future; (2) the lawyer has not previously given to the client; or (3) that is not otherwise readily available to the client.
5. Use discretion and common sense in determining the length of time for retention or disposition of a file. The nature and contents of some files may require a longer retention period than others, based on their relevance and materiality to matters that can reasonably be expected to arise in the future.
6. Take special care to preserve accurate and complete records of the lawyer's receipt and disbursement of trust funds.

7. Take reasonable steps to protect the confidentiality of a closed file's contents when discarding or destroying it.
8. Carefully screen the contents of each file to ensure that its destruction will not adversely affect the interests of the client.
9. Keep a written index of files that have been discarded or destroyed.
10. Establish uniform procedures for discarding or destroying closed client files when client consent cannot be obtained. (quoting Raymond P. Mickelwright, *Understanding File Retention: Developing an Ethical Policy and Plan -- Part I*, Colo. Law 147, 148–49 (Oct. 2001)).

Elements of the Plan:

Originals. The policy should make clear that the clinic will not retain original client documents, unless those documents are necessary in the matter for which the legal services are provided. If the documents are needed only for reference, they should be copied and the originals returned immediately.

Establishing When to Close the File:

The policy should identify when a file is deemed closed and placed on inactive status. The guidelines on file closure should recognize that specific types of legal issues involved will determine, in part, when a file may be closed. Any closing dates articulated in a file retention policy should be flexible and allow for the independent judgment of the lawyer(s) actually handling the matter. The following list provides some guidance in determining when to close a file:

- Contract Actions: The file should not be closed until satisfaction of judgment or dismissal of the action.

- Bankruptcy Claims and Filings: The file should not be closed until discharge of the debtor, payment of claim, or the trustee or receiver is discharged.
- Dissolution of Marriage Actions: The file should not be closed until final orders; dismissal of the action; or date upon which marital settlement agreement is no longer effective, except when child custody is involved, in which event the date the last minor child reaches majority should control.
- Probate Claims and Filings: The file should not be closed until acceptance of a final accounting.
- Tort Claims: The file should not be closed until final judgment or dismissal of the action, except when a minor is involved, in which event the date the minor child reaches majority controls.
- Real Estate Transactions: The file should not be closed until settlement date, judgment, foreclosure, or other completion of the matter.
- Lease Matters: The file should not be closed until termination of the lease.
- Criminal Actions: The file should not be closed until the date of acquittal or until all post-conviction remedy deadlines have expired.

See Raymond P. Mickelwright, *Understanding File Retention: Developing an Ethical Policy and Plan-Part II*, Colo. Law. 77, 78 (Nov. 2001); *see also* Cal. State Bar Standing Comm. on Prof'l Responsibility & Conduct, Formal Op. 2001-157 (2001); Los Angeles Cnty. Bar Ass'n Prof'l Responsibility & Ethics Comm., Formal Op. 420 (1983); N.J. Sup. Court Advisory Comm. on Prof'l Ethics, Op. 692 (Supp.) (Oct. 2002) (requires that client documents related to criminal matters must be retained by the attorney until the client dies or provides express consent to their destruction).

The policy should provide guidance for what can and cannot be destroyed after the matter is closed and before the file is transferred to inactive status. Unnecessary documents may be immediately destroyed upon closure. Mickelwright suggests the following documents qualify as unnecessary: duplicate copies of documents; copies of published material that could be located again (e.g., court opinions); draft versions of memoranda, briefs, and pleadings, except when highly significant or contested changes were made between the original and final versions; informal notes; depositions; and purely extraneous material. The question of which materials in the client file constitute “client property” and must be returned to the client, absent express permission to retain or destroy, is determined by the law of the jurisdiction. *Compare* San Francisco Bar Ass’n Legal Ethics Comm., Formal Ops. 1990-1 (1990); San Francisco Bar Ass’n Legal Ethics Comm., Formal Op.1997-1 (1997), *and* Los Angeles Bar Ass’n Formal Op. 330 (1972) (work product for which client can be billed belongs to client); Los Angeles Bar Ass’n Formal Op. 405 (1982) (‘virtually everything’ in client file is client property), *with* San Diego Bar Ass’n Legal Ethics Comm., Formal Op. 1977–73 (1977) (attorney’s informal personal notes containing mental impressions, etc. are not client property).

The policy should provide that drafts of pleadings, actual pleadings, and other legal memoranda be transferred to a brief bank for re-use, with due regard for protecting the confidentiality of the clients.

A brief summary of the file retention policy should be included in the written retainer/fee agreement when the clinic and the client agree to the clinic’s representation of the client. Where a file retention policy is adopted after the representation of a client has commenced, the clinic may send a follow-up letter to the client informing the client of the adoption of the file retention policy. The letter can invite the client to raise any concerns about the policy with the student attorney or faculty supervisor providing representation.

If a former client cannot be located or fails to respond, the clinic has the burden of showing that reasonable efforts were made to reach the client and that destruction of the client’s property did not prejudice the former client’s interests. Depending upon the property

held, the clinic may need to retain the property indefinitely, despite reasonable efforts to contact the client. *See* Marcia L. Proctor, *Record Retention Overview*, 74 Mich. B.J. 1196 (1995).

A file retention policy should describe the proper methods of disposing of documents when the retention period has expired. If the document to be disposed of contains information that is confidential, secret, or privileged, it must be disposed of by shredding or incineration.

Opinion 692 of the New Jersey Supreme Court Advisory Committee on Professional Ethics makes clear that an agreement to destroy property of the client should be executed only after the property is in the attorney's possession and should specifically describe the property intended to be destroyed or otherwise disposed. A retainer agreement that would allow for the destruction of property would be insufficient to permit destruction of property obtained from the client after the execution of the retainer agreement.

The file retention policy should specify that when a decision to destroy a file is made, not only is the physical file destroyed, but also any electronic materials are purged of the client's file. The file retention policy should require the creation and maintenance of an index system that records files that have been destroyed. The policy should describe a system for monitoring compliance with the policy.

For samples of a File Retention Policy, *see* Raymond P. Mickelwright, *Understanding File Retention: Developing an Ethical Policy and Plan-Part II*, Colo. Law. 77, 79–81 (Nov. 2001); J.R. Phelps & Terri Olson, *When May I Destroy My Old Files?*, Fla. B.J. 58, 63 (1994). For samples of retainer agreement retention language, *see* Mickelwright, *supra*, at 78; Paul S. Smith et al., *Engagement Letters (Including Written Corporate Policies and Procedures)* § 9:22, in *Successful Partnering Between Inside and Outside Counsel*, (Robert L. Haig, Editor-in-Chief., Oct. 2003).

Resources

Raymond P. Mickelwright, *Understanding File Retention: Developing an Ethical Policy and Plan -Part I*, Colo. Law. 147,148–

49 (Oct. 2001); Raymond P. Mickelwright, *Understanding File Retention: Developing an Ethical Policy and Plan-Part II*, Colo. Law. 77, 78 (Nov. 2001); George C. Cunningham & John C. Montana, *The Lawyer's Guide to Records Management and Retention* 109–15 (2006); Lee R. Nemchek, *Records Retention in the Private Legal Environment: Annotated Bibliography and Program Implementation Tools*, 93 Law Libr. J. 7 (2001).

3.5.9. Conflicts Checking, Calendaring, Trust Accounts.

3.5.9.1. Does the clinic have and maintain a system for conducting conflicts checks? *See also supra* § 3.4.3.

3.5.9.2. Does the clinic maintain an adversary cross-reference file?

3.5.9.3. Does the clinic maintain any other cross-reference files or indexing systems regarding substantive legal issues, attorneys, clients, expert witnesses, and social service providers that serve its clients?

3.5.9.4. Does the clinic and its faculty and students maintain a calendar and tickler system for recording, updating, and noting completion of necessary actions on case matters?

3.5.9.4.1. Is the calendar system a “double entry” system by which critical dates are recorded on a master calendar available to all clinic faculty, students, and staff, and on the personal calendars of the supervisor(s) and student attorney(s) responsible for the matters?

3.5.9.5. Does the clinic have a separate trust fund for all money received from or on behalf of clients?

3.5.9.6. Does the clinic have an accounting system for trust funds that provides immediate and accurate information on the amount held and expenditures made on behalf of each client?

3.5.9.7. Does the system for deposit and accounting for client trust funds comply with the reporting and certification requirements of the jurisdiction including the Interest on Lawyers' Trust Account (IOLTA) program, if any?

3.5.9.8. Are all client funds held by the clinic and due to the client returned to the client at the appropriate time?

3.5.9.9. Are systems used regularly and properly by all faculty, students, and support staff?

Commentary

The internal systems and procedures of each clinic within a program should be designed to model good record production, maintenance, and safekeeping. The system should be tailored to size of caseload and nature of cases, but should be more robust than is necessary because of the pedagogical goals of the program with respect to record keeping. Even within relatively small clinical programs, it is important to be able to locate case files quickly. Each clinic should develop and use a checkout system that enables all faculty, students, and staff to locate quickly any client file.

Client files should be stored in a safe and secure location that minimizes the risk of unauthorized access to confidential client information and maximizes the survivability of client files in the event of damage to the clinic space by fire, water, or other disaster.

When client files are closed, they should be reviewed and evaluated. Unnecessary materials, such as duplicate copies of documents and extraneous materials should be deleted and materials belonging to the client should be returned. A closing memorandum

should be prepared by someone familiar with the file that summarizes the outcome of the legal matter. Prior to storage of the closed file, someone should confirm that all information that should be in the appropriate cross-reference files has been extracted and entered.

Closed files should be stored in such a manner as to permit reasonable access to them should an inquiry about them be raised. Closed files also should be stored in a safe and secure location to preserve the confidentiality and survivability of their contents.

The clinic should have a policy in place that comports with the law in its jurisdiction regarding the disposition of closed files in the event of the discontinuance of the clinic's program. *See, e.g.*, D.C. Bar Ass'n Legal Ethics Comm., Ethics Op. 206 (1989); D.C. Bar Ass'n Legal Ethics Comm., Ethics Op. 283 (1998); D.C. Bar Ass'n Legal Ethics Comm., Ethics Op. 294 (1999); ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1384 (1977).

The program or each clinic must have in place a system for conducting conflicts of interest checks. Where the program operates as a single "law firm," the same conflicts-checking procedures must be used by all clinics within the program. Where each clinic is considered to be a "law firm" separate from other clinics in the same program, each clinic must establish adequate procedures for conflicts checking.

A conflicts check should be made before the program or clinic accepts any new matter, including new matters for existing clients. The program or clinic should expressly condition representation upon completion of the conflicts check and should limit receipt of confidential information from the prospective client. Each time additional information is elicited from the client that raises new conflicts possibilities, further conflicts checking should be done.

For most clinics, a manual system for conflicts checking will be adequate. However, the program or clinic may wish to employ an automated system to familiarize students with such programs. Am. Law Inst.-ABA Comm. on Continuing Prof'l Educ., *Achieving Excellence in the Practice of Law: The Lawyer's Guide*, § 1.1(a) cmt. at 29 (2d ed. 2000).

The program or clinic should maintain other cross-reference files or indexing systems that are appropriate to the nature of the practice

and the pedagogical goals of the program. Such systems may include indexes or files that cross-reference substantive legal issues, attorneys, clients, expert witnesses, and social service providers that serve the clinic's clients.

The program or clinic should have a calendar system to assure that its faculty and students meet all deadlines, appointments, and scheduled appearances. The system must provide that basic deadline information is entered into the system whenever a new matter is opened or whenever pleadings or other mail comes into the clinic. The system should require double-checking of entries and notification to ensure that more than one person is responsible for the administration of the system. Critical deadlines and other information should be communicated both to student attorneys responsible for the matter and to their faculty supervisors. The system should provide notification sufficiently in advance of the deadline to permit thorough performance of the relevant task and should provide for adequate follow-up to ensure that the task has been performed.

As with conflicts-checking systems, manual calendar and docketing systems are adequate for most clinical programs. However, the program may wish to use an electronic system to familiarize students with the software.

All new attorneys, students, and staff must be trained in the use of the calendaring system and the program director or a designee should monitor the system to assure that it is being used appropriately.

The program or clinic that handles client funds should maintain a separate trust fund account or accounts in which to deposit all funds received from or on behalf of clients. The program must comply with all applicable rules of the jurisdiction in which it operates governing trust fund accounts. *See, e.g.*, D.C. Rules of Prof'l Conduct R. 1.15 (Safekeeping Property). Where appropriate, the program should participate in the IOLTA program if there is one in the jurisdiction. The system for accounting for client trust funds must provide for immediate and accurate information on the amount held and the expenditures made on behalf of each client. The program must insure that all client funds held by it and due to the client are returned to the client at the appropriate time.

The program director or a designee should assure that all internal, centrally maintained systems are used regularly and properly by all faculty, students, and staff. There should be a periodic, thorough review of each system to assure that the system is operating properly and to uncover any need to revise the system.

Resources

ABA Standing Comm. on Legal Aid & Indigent Defendants, *Standards for the Provision of Civil Legal Aid* § 5.3 (2006); ALI/ABA Comm. on Continuing Prof'l Educ., *Achieving Excellence in the Practice of Law: The Lawyer's Guide* §§ 1.1(a) (conflicts), 3.2(c) (safekeeping client funds and property), 5.1(a) (calendar and docket control), 5.1(e) (recording and retrieving client information) (2d ed. 2000).

3.6. Case Files

3.6.1. Does the clinic maintain standard case files that facilitate transfer of cases among faculty and students and encourage good lawyering habits?

3.6.2. Does each case file organize critical elements of the case in a logical and coherent fashion?

3.6.3. Does each case file contain the following essential information: a full chronological record of client interviews; adversary contacts; witness interviews, field investigations and records searches, including dates, names of persons contacted, important facts ascertained, and important statements, concessions, and allegations made; an indication of the options available to and selected by the client, and a statement of the client's objective; copies of all correspondence, pleadings, legal memoranda, legal research and other documents representing work done on a legal matter, organized

systematically for ready reference; consistent with the complexity of the matter, a specific case plan with a clear delineation of tasks and a timetable with deadlines for completion of each task; and a record of time spent on the matter adequate to support any request for attorney's fees, if appropriate, and to meet the clinic's management needs? *See Schrag, supra*, § 3.3.5.

3.6.4. Are all new faculty and students fully instructed in the established procedures to assure uniform file maintenance?

3.6.5. Does the clinic have procedures for case transfers that are designed to minimize the impact of the transfer on the quality of the work?

3.6.5.1. Do case transfer procedures require that the person who previously handled the case prepare a succinct transfer memorandum analyzing the case and directing attention to the next steps to be taken and target dates to be met?

3.6.5.2. Are clients notified immediately of transfer of their cases and assured that their interests are fully protected?

3.6.5.3. Upon transfer of a case, is the client told the name of the new faculty member or student with whom they should communicate about the case and is the client given an opportunity to meet with the responsible person as soon as possible?

3.6.6. Does the clinic have a plan that specifically assigns responsibility for case coverage during periods of academic interruption such as periods between semesters and breaks during semesters?

3.6.7. Does the clinic have written policies and procedures for closure of case files? *See supra* §§ 3.5.4–3.5.7.

Commentary

Although some clinicians believe that the learning opportunities inherent in allowing students to experiment with file maintenance issues outweigh the need for uniform case file procedures, best practice suggests that both students and clients are better served when case files are organized in a uniformly logical and coherent fashion, and students are then encouraged to criticize current practices. Clinical teachers need to prioritize “skills” instruction and moderate discovery learning with modeling best practices and encouraging critique. Critical to effective case management is knowing where files are at all times (multiple students and supervisors may need to have access) and being able to access information quickly within the file (to respond to requests for information from clients, opposing parties, agents, etc.). These criteria suggest that uniform case file procedures should be imposed.

In many clinical programs, case files are transferred from one student attorney or team to another at the end of the semester or academic year. The program should have policies and procedures to guide students and supervisors in the process of case file transfer. Transfer procedures should be designed to minimize the impact of the transfer on the quality of the work by requiring, for example, that the transferor organize the file according to the established standards and prepare a succinct transfer memorandum analyzing the case and directing attention to the next steps to be taken and target dates to be met.

Clients should be notified immediately of the transfer of their cases and assured that their interests are fully protected. The client should be told the name of the new supervisor or student attorney with whom he or she should communicate about the case and given an opportunity to meet with the new responsible person as soon as possible.

The program should have a plan for coverage of client matters during school breaks. winter, spring, and summer. For shorter periods, like spring break, procedures could be similar to procedures used by law firms for case coverage during attorney vacations, but

more extended periods such as those between semesters may require more explicit procedures.

Resources

ABA Standing Comm. on Legal Aid & Indigent Defendants, *Standards for the Provision of Civil Legal Aid* § 5.4 (2006); David Chavkin, *Am I My Client's Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. Rev. 1507 (1998); Philip G. Schrag, *Constructing a Clinic*, 3 Clin. L. Rev. 175 (1996); Naomi R. Cahn & Norman G. Schneider, *The Next Best Thing: Transferred Clients in a Legal Clinic*, 36 Cath. U. L. Rev. 367 (1987).

3.7. Policy Regarding Costs of Representation and Attorney Fees

3.7.1. Has the program established a clear policy and criteria for expenditure of funds for representation costs?

3.7.2. Does the program have an adequate budget for routine costs of representation including discovery and the use of expert witnesses?

3.7.3. Does the program have a plan for early identification of legal matters that may result in extraordinary costs?

3.7.4. Does the program have a directory of high quality, low cost providers of services to its clients, such as expert witnesses, court reporters, investigators, and other service providers specific to the practice area of each clinic within the program?

3.7.5. Is there an explicit, written memorandum of understanding among the University, the Law School, and the Clinical Program (Clinics), consistent with applicable law in

the jurisdiction, about who will retain attorney fees in the event fees are obtained from an opposing party?

Commentary

When new clinical programs are created, the design parameters with respect to type of cases to be accepted by the clinic must account for prospective costs of representation and how the costs will be borne. In most instances, the clinic's client will be indigent and unable to bear the cost of representation. Therefore, the law school must be in a position to provide the necessary financial support to the clinic to enable the attorneys to use all of the tools necessary for effective representation. It may be necessary for the clinic to take into account the prospective costs of representation when case or client selection decisions are made. Cases or clients for whom the program cannot afford to provide the full measure of representation should be referred to other providers. The program or clinic should not undertake cases when the likely costs of representation cannot reasonably be met by the institution. ABA Model Rule of Professional Responsibility 1.16(b)(5) provides that a lawyer may withdraw from representation if the withdrawal can be accomplished without material adverse effect on the interests of the client, or if the representation will result in an unreasonable, financial burden on the lawyer. Model Rules of Prof'l Conduct R. 1.16(b)(5) (2014).

The program should have a procedure for early identification of legal matters that may result in extraordinary costs. The program director or a designee should monitor total expenditures for costs of representation so that timely steps can be taken to adjust the budget, seek new resources, restrict commitments to new cases, or otherwise accommodate those matters.

Resources

See ABA Standing Comm. on Legal Aid & Indigent Defendants, *Standards for the Provision of Civil Legal Aid* §§ 5.4, 5.5 cmt at 190–91 (2006).

3.8. Forms Files, Institutional Memory, and Routine Case Protocols

3.8.1. Does the clinic maintain a centralized forms file?

3.8.2. Does the clinic have policies and procedures in place that facilitate the collection, dissemination, and use of institutional memory?

3.8.2.1. Does the clinic maintain updated brief banks with easily retrievable research products of its attorneys?

3.8.3. Does the program or clinic utilize case protocols to guide faculty and students in handling repetitive, simple legal problems?

3.8.3.1. Are case protocols used appropriately?

Commentary

Best legal practice suggests that a law firm develop, maintain, and use systems for handling substantive transactions or proceedings in areas of practice regularly handled by lawyers in the firm. In a law school clinic, the program must weigh the benefits of developing substantive law systems against the pedagogical costs of doing so. If the use of forms files, other forms of institutional memory, and case protocols creates an unreflective, routine practice, the clinic justifiably may minimize student access to such practice aids. The program may even decide to review its program goals and case

selection criteria. The program must decide whether clients are well served by students continually reinventing or re-doing basic research or document production. The program must be able to justify a pedagogical basis for not maintaining forms files or other practice aids that are common in law firm practice and show that clients are not harmed. Lack of harm to clients may be demonstrated by client satisfaction surveys and comparative rates of success for clients compared with other providers of similar services.

3.9. Insurance

3.9.1. Does the law school maintain adequate malpractice insurance coverage for all students, faculty, and volunteers working in the clinical program?

3.9.2. Does the law school have adequate insurance coverage for other potential losses that may be suffered by clinic personnel, including general liability insurance for the clinic, worker's compensation, automobile liability, coverage for non-owned autos and non-owned assets, file replacement and valuable papers coverage, an electronic data processing loss and recovery policy, fire and theft coverage, and a notary bond?

Commentary

The law school or parent university, if any, usually provides insurance coverage for most potential losses suffered by the clinic or clinic personnel other than professional malpractice insurance. However, the director of the clinical program should confirm that all necessary insurance is in place by doing an annual audit of policies of insurance purporting to cover the clinical program.

Even in jurisdictions where a professional malpractice policy is not required, best practice dictates that the clinical program have a current policy in place. Commercial professional malpractice policies

typically are one of two types: a policy that covers either “claims” or “occurrences.” Generally, most policies currently being written are claims policies. A “claims” policy provides coverage only for claims made during the period that the policy is in effect. An “occurrence” policy provides coverage only if the event giving rise to the claim occurred during the period that the policy is in effect. Most clinical programs, legal services providers, and public defender offices purchase the Lawyers Professional Liability Policy (NLADA Edition) from The Continental Casualty Company or from Compete Equity Markets, Inc. The NLADA policy is a “claims made and reported policy.” It covers “any person who was, is, or hereafter during the policy period becomes a lawyer, employee, member or volunteer of the Named Insured while rendering Professional Services for or on behalf of clients of the Named Insured.”

Where the parent institution (school or university) is a self-insurer for malpractice coverage, the clinical program should be aware of the terms of the coverage and seek permission to purchase a supplemental (Excess Liability) policy if the self-insurance may not adequately protect the faculty, students, and volunteers associated with the clinical program.

Some issues to consider when contemplating an excess liability policy include the per-claim and per-incident dollar limits; whether there is coverage for legal advice not directly related to clinic client representation, such as individual *pro bono* activities of faculty and students; and who decides whether the faculty member or student attorney will be defended and indemnified by the institution in the event of a claim.

Resources

See Jay G. Foonberg, *How to Start & Build a Law Practice* 366–73 (5th ed. 2004).

3.10. Facilities

3.10.1. Is the physical space – its size, layout, and location – adequate for faculty, students, staff, and clients?

3.10.1.1. Are the clinic facilities accessible to persons with handicaps?

3.10.2. Are the faculty, staff, and student workspaces designed to maximize the types of interpersonal interchanges sought by each clinic?

3.10.3. Does each clinic have an appropriate reception area for clients?

3.10.4. Does each clinic have sufficient confidential interviewing space to allow faculty, students, and professional staff to interview clients?

3.10.5. Does each clinic have appropriate office space to allow faculty and professional staff to meet with students in private?

3.10.6. Does the program have a written plan for obtaining the additional space and support needed for any anticipated expansion of the clinical studies curriculum?

3.10.7. Does each clinic have adequate support services, including secretarial assistance for faculty, students, and professional staff?

3.10.8. Does each clinic have adequate, readily accessible library resources?

3.10.9. Does the program have adequate classrooms and audio-visual equipment?

3.10.10. Does each clinic have a secure computer network and sufficient hardware and software for all faculty and students?

3.10.11. Does each clinic have sufficient telephone lines and telephones?

3.10.12. Does the program have sufficient facsimile capacity?

3.10.13. Does the program have adequate Internet access?

3.10.14. Does the program encourage the appropriate use of standard law office technology software?

3.10.14.1. Does the program have a technology-use policy that clearly informs all technology users in the clinical program of what they can do and cannot do while using e-mail, surfing the WWW, and using other law office systems?

3.10.15. Does the program attempt to integrate the latest ideas and techniques from law practice into its office systems?

3.10.16. Does the clinical program have a plan and protocols in place to insure prompt receipt and delivery of time-sensitive mail?

Commentary

Each clinic must have adequate, secure space for files and adequate, private space for client and faculty–student meetings. All spaces within the clinic should be accessible to persons with handicaps. Both clients and students have an expectation and right to privacy when conducting conversations with student attorneys and supervisors. Where possible, the physical layout of clinic facilities should be conducive to types of interpersonal interchanges sought by the program/clinic.

The reception area should be appropriate to the needs of the clients. The reception area should be large enough to accommodate comfortably the number of clients expected to use the area at once.

The furnishings, seating, tables, magazines, toys, and decorations should be appropriate for the clientele. Appropriate concern for security of clients and staff should be evidenced. The reception area should be in close proximity to restrooms and clinic offices.

The number of support personnel necessary for the efficient operation of the each clinic depends on the nature of the practice and the level of traditional support-staff activities students and faculty are expected to do for themselves. Where students and faculty perform tasks usually done by support staff, the program should have made an explicit pedagogical decision for them to undertake the tasks. Each clinic should have sufficient support staff to permit the students and supervisors to produce high quality legal work within a reasonable time frame. In addition, staffing should be sufficient to enable clients to communicate with someone within the clinic during regular business hours.

Where the clinic is located within or close to the law school library, the clinic's own library can consist only of those materials for which frequent reference is made and materials needed by the clinic but which cannot be loaned by the main law school library. For clinics in locations remote from the law school library, a more substantial library will be necessary. Students and faculty should have ready access to electronic legal resources generally appropriate to the nature of the practice.

The clinical program should have access to adequate classroom space for its pedagogy. Where simulations form a significant part of the teaching methodology, sufficient breakout rooms to support the pedagogy should be available. Since most clinical programs use audiotape and videotape recording of student performances for pedagogical purposes, the clinical program should have adequate audio-visual resources to support its pedagogy.

Each clinic should have sufficient law office technology to support its representational and instructional goals. Each clinic should have a sufficient number of telephone lines and instruments so that students do not have to wait long to make or receive telephone calls with respect to the matters they are handling. Clients should be able to reach the clinic by telephone within a reasonable time.

Facsimile technology remains a fact of life in modern legal practice. Each clinical program, or clinic, should have access to a secure facsimile machine with which to send and receive confidential client material.

Most law schools now have networked computers. The clinical program should have Internet access, adequate word processing, spreadsheet, and database capacity, and each clinic should have sufficient workstations for students, faculty, and staff use. The network for the clinics should include a separate, secure file server, or other network design, so that confidential information cannot be accessed by others on the law school network or other unauthorized users.

The law school should address explicitly the issue of technology training/literacy of its graduates and assign appropriate responsibility to the program or clinics for teaching about law office technology. It is expected that most law graduates will be able to use word processing software and conduct electronic legal research. Other technology-related skills that seem properly within the responsibility of a legal education include the use of presentation and scanning software, use of spreadsheet and relational database software, and use of, calendaring, file management, document assembly, case management, and litigation support software.

Because of closures of the university during certain times of the year (e.g., winter break) and early closures of the central mail room at other times (e.g., Fridays during summer), any clinical program with client representation responsibilities should create a plan and develop protocols to ensure prompt receipt and delivery of time-sensitive mail. The plan may require, where possible, that the clinical program (or individual clinic) arrange for separate delivery by USPS to the clinic address or establish a post office box that may be accessed during regular business hours.

The protocol should generally provide that time-sensitive mail that must be post-marked on the day it is sent be taken directly to a USPS facility for mailing.

Resources

Dan Pinnington, *Managing the Security and Privacy of Electronic Data in a Law Office*, Practice Pro (2005), <http://www.practicepro.ca/practice/ElectronicDataSecurity.asp> (last visited Sept. 12, 2014); *Legal Services National Technology Assistance Project, Technologies that Should be in Place in a Legal Aid Office*, http://lsntap.org/NTAP_Baseline_Directory (last visited Sept. 12, 2014).

3.11. Student Attorney Caseloads

3.11.1. Does each clinic have a written plan for making casework assignments to individual or teams of student attorneys?

3.11.2. Are student caseloads appropriately limited quantitatively in accordance with the pedagogical goals of the clinic and the demands that justifiably can be made on student time?

3.11.3. Are student attorney caseloads sufficient in number to assure that the student attorneys are fully engaged throughout the term of the clinic?

3.11.4. Are the student attorney caseloads restricted sufficiently to allow time for critical reflection on the role and tasks of lawyering?

3.11.5. Do case assignments to student attorneys permit the students to engage in a variety of experiences?

3.11.6. Do case assignments permit the students to get repetitive experiences sufficient to meet several major learning goals of each student and the clinic?

3.11.7. Do case assignments permit student attorneys to explore solutions to client problems beyond litigation strategies?

3.11.8. Do case assignments include cases and problems that offer students insight into how the legal system works and how it could meet society's needs?

3.11.9. Do case assignments include clients from a variety of backgrounds and opportunities to explore issues of diversity, service, and justice?

3.11.10. Do students have primary lawyering responsibility for the legal matters they handle?

3.11.11. Are students guided in how to use the insights gained from their clinical work in their non-clinical courses and in practice after law school?

3.11.12. Does the clinic have a policy and procedures for monitoring open caseloads of all attorneys to assure that both the clinic and the attorneys meet their ethical responsibilities to clients?

Commentary

In its 1980 publication, the ABA/ALI Guidelines committee concluded that student caseloads should be “carefully limited . . . to assure that students are able to devote the needed time to properly fulfill their responsibilities and allow for review and evaluation of [their work].” The Committee decided it could not recommend a specific number of cases per student, “since student caseloads can vary with such factors as the amount of academic credit being awarded, the stages of the cases, whether the cases are active or inactive, the difficulty of the cases, and the nature of the work the student is expected to perform.” *Id.* at 84. An additional consideration is the nature and amount of supervision available to each student.

Other factors in determining the nature and amount of legal work a student may handle effectively include the availability of support services, such as secretaries, investigators, subject matter experts; material support, such as telephones, fax machines, word processing, etc.; the distance between the clinic offices and the courts or other adjudicative agencies; forum dockets (time spent in court waiting for the case to be called); and the difficulty or ease of fact investigation.

Students should have a clear expectation, usually formed from a written communication, of the nature and extent of casework assignments. Clinic students, especially those engaged in clinical studies for the first time, often cannot appreciate the time commitment required of them for casework and other clinic activities.

In general, students should be assigned cases in sufficient number and complexity to assure that each student is fully engaged throughout the term of the clinic and has sufficient time for critical reflection on the tasks of lawyering and the lawyer's role. Case assignments should permit students to engage in a variety of lawyering tasks and to have repeated opportunities for performance of core lawyering tasks so that professional growth is possible. Case assignments should permit student attorneys to explore solutions to client problems beyond or in addition to litigation strategies. These assignments should include cases and problems that offer students insight into the legal system's working and to provide opportunity for critique of the legal system. Whenever possible, case assignments should permit students to experience clients from a variety of socio-economic backgrounds and provide opportunities to explore issues of diversity, service, and justice.

Although some clinical models permit only limited personal responsibility by the student attorney for the legal matter the student handles, best practice requires that the student be given some clients or matters for which the student has primary responsibility. Upon graduation and passing a state licensing examination, a student may undertake sole responsibility for the legal problems of another. Every student should have that responsibility prior to graduation under the guidance of an experienced attorney-mentor so that the student can better appreciate the extraordinary responsibility that the role of attorney confers.

The program or clinic should have a mechanism for monitoring student caseloads to assure that each student has cases and other assignments that are sufficient to assure that the student is actively engaged in the lawyer's role throughout the term of the clinic; to permit appropriate time for critical reflection on the role and tasks of lawyering; to assure that the program or clinic and individual student goals are being met through the casework; and to assure that the students, faculty, and program each are meeting their ethical responsibilities to clients.

Resources

Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 565–68 (1992).

3.12. Clients and Cases

3.12.1. If the clinic represents clients charged with crimes, does the clinic's practice comply with the NLADA Performance Guidelines for Criminal Defense Representation (4th Printing, 2006)? www.nlada.org/Defender/Defender_Standards/Performance_Guidelines (Blackletter Edition).

3.12.2. Does the clinic comply with the applicable standards for the provision of civil legal aid (ABA Standing Committee on Legal Aid and Indigent Defendant, *Standards for the Provision of Civil Legal Aid* (Aug. 2006))?

3.12.3. Establishing an Effective Relationship with the Client

3.12.3.1. Does each clinic strive to establish with each client an effective relationship that preserves client dignity and dispels any client fear or mistrust of the legal system?

3.12.3.1.1. Is the intake system designed to foster the trust necessary for an effective relationship between the client and faculty or student attorney?

3.12.3.1.2 Do the intake procedures demonstrate the clinic's respect for prospective clients, assure the confidentiality of the relationship, and encourage active client participation in cases that are accepted?

3.12.3.2. Does the clinic strive to preserve good will among those who are denied service by clearly and promptly explaining the reasons for rejecting a case?

3.12.3.2.1. Does the program or clinic have a procedure for review of decisions to reject cases?

3.12.3.2.2 Does the intake system make efficient referrals to outside sources of assistance in instances where applicants need help that the program or clinic does not provide?

3.12.3.2.2.1. Does the program or clinic monitor its referral process to assure itself of the continued appropriateness of the referral sources to determine whether a referral source should continue to be used?

3.12.3.3. Does the clinic provide training and orientation to each person who has direct contact with clients to reinforce the importance of treating clients with dignity and respect for their values?

Commentary

A client's initial impression of the relationship the client develops with the clinic is through the intake system. Each client is entitled to be treated with dignity and respect. The intake system and personnel should be courteous, empathic, and sensitive to cultural differences. The program should make and communicate decisions regarding acceptance or denial of service in a timely fashion. All members of the clinic should understand and honor the concept of confidentiality of client confidences and secrets.

The clinical program should have established procedures for referral of non-accepted clients. These procedures should include a protocol for explaining to persons denied service the reasons for rejecting a case referral should be made in a timely fashion. It should provide written materials when referrals are made so to provide the non-accepted client with clear instructions that run interference for the denied client to smooth path to referral source. It should make through client surveys, outside observers, and review of files an assessment of appropriateness of time from intake to referral.

Referral should be made to appropriate service providers. The clinical program should monitor its referral process to assure itself of the continued appropriateness of the referral sources to determine whether a referral source should continue to be used by the program.

Resources

ABA, *Standards for the Provision of Civil Legal Aid* Std. 4.1 (2006) (Provider's Intake System).

3.12.4. Establishing a Clear Understanding Regarding the Scope of Representation, the Relationships Among the Client, the Clinic, the Student Attorneys, and the Supervisors.

3.12.4.1. Does the faculty or student attorney determine precisely who the client is?

3.12.4.2. Does the client prepare a retainer agreement or engagement letter for each client matter?

3.12.4.2.1. Does each faculty or student attorney establish a clear mutual understanding regarding the scope of the representation, the relationships among the client, the student attorney and the faculty supervisor, and the responsibilities of each?

3.12.4.2.2. At the outset of the representation, does the clinical program make certain that clients understand any limitations on the scope or nature of representation that will be provided?

3.12.4.2.3. At the outset of the representation, does the clinic assure that each client understands that the client has ready access to the student attorney's faculty supervisor as the person responsible for the oversight of the work of the student attorney?

3.12.4.2.4. At the outset of the representation, does the clinical program obtain from each client a written acknowledgment and consent to be represented by a student attorney?

3.12.4.2.5. Does the retainer or agreement letter contain language describing the clinic's document retention and destruction policy?

3.12.4.2.6 Does the responsible attorney insure that the client understands the terms of the retainer agreement?

3.12.4.3. Does the clinical program assure the client understands that faculty supervisors and student attorneys,

consistent with the attorneys' ethical obligations, will protect the confidentiality of the information the client provides?

3.12.4.4. Does the retainer agreement or engagement letter contain an explicit agreement among the parties about who should pay the filing fees and other costs that may arise in the course of the case?

3.12.4.5. Does the clinical program attempt to ensure that clients, student attorneys, and faculty supervisors understand the client's right to be kept informed of the progress of the case and to participate in key decisions regarding its conduct?

3.12.4.6. Are clients encouraged to initiate contacts with their attorneys and do clients know how to do so?

3.12.4.7. Does the clinic assure that clients recognize the importance of keeping their attorneys informed of changes in circumstances affecting the case and advising the attorney and the clinic of their whereabouts so that the client may be contacted easily when necessary?

3.12.4.8. Does the clinic assure that clients understand their responsibility to assist in preparing the case by locating witnesses, documents, or physical evidence; cooperating with discovery requests; and keeping records?

3.12.4.9. As the case proceeds, does the clinic provide further written statements of understanding, as necessary, to make clear the expectations and obligations of each party?

Commentary

At the outset of representation, the clinic and the client should determine precisely who the client is and define the scope of the representation and the client's rights. Determining the identity of the client for whom the clinic will do work is usually straight forward but can be complicated when legal problems affect several family members (e.g., a special education case wherein the clinic might represent one or both parents, the student, or both) or a group of individuals (e.g., a tenant group). The clinic should use a retainer agreement or engagement letter that identifies with precision the client and other incidents of representation.

In addition to the identity of the client, the clinical program's retainer agreement or engagement letter should address, at a minimum, several other topics, including a detailed description of the matters on which the clinical program will offer representation and any limits on representation with respect to the matters; the date of the initial fact interview; the program's opinion as to whether or not an attorney is needed for the matter as described in the initial interview; a statement that the program does not represent the potential client until the retainer/engagement agreement has been signed and returned and any other prerequisites, such as a conflicts check or payment of fees, are completed; the amount of fee, if any; the work the basic fee covers; what the basic fee does not cover; the charges, if any, for work not included in the basic fee agreement; a minimum fee, if any; what constitutes out-of-pocket expenses and the client's responsibility for payment; a statement informing the potential client of the possibility of the program engaging other lawyers at no additional expense to the client to assist the program's attorneys with the client's matter, if necessary; a payment schedule; a statement notifying the potential client of the program's right to terminate services under certain circumstances; a statement by which the client agrees to cooperate and be truthful; a statement giving an opinion of merits of case at the initial stage and cautioning the client that additional developments can cause the opinion to change; a statement that explains judgments and the fact that getting a judgment is no guarantee of collection on the judgment; a statement that the

program cannot guarantee any particular outcome; a statement warning the potential client not to delay in proceeding with the matter because of the possibility of having it barred by laches or a statute of limitations; a paragraph about signing and returning copy of the agreement; a paragraph outlining trust account rules – including IOLTA; a description of the clinic’s document retention and destruction policy, and a paragraph setting a date for return of engagement letter and noting failure to return the agreement allows the program to assume that the potential client has obtained other counsel.

The program also should be certain to include all other provisions that may be required by the jurisdiction in which the program practices. For instance, some jurisdictions require a paragraph regarding the existence or nonexistence of malpractice insurance. The program also may want to include special provisions for potential conflict waivers; special provisions for multiple client representation; an understanding regarding who does or does not get copies of correspondence; where and how communications can be sent; a statement about rules that fee disputes be arbitrated, if allowed or required by local rules; and the relationship to third parties who guarantee or pay fees.

The retainer agreement or engagement letter should mention and get the client’s explicit assent to the involvement of the student attorney, notify the client that the case may be transferred to other students or attorneys to ensure that the client understands that some delay in proceeding with the case may occur during summer months and school breaks. The clinical program may, as appropriate, prepare a separate request that client agree to videotaped recordings of some or all interviews for pedagogical purposes.

The clinical program should prepare and distribute to all clients a statement of client rights, including that they have a right to be informed of the proceedings in their cases, a right to participate in the case, a right to approve any settlement of the case, a right to the return of all documents provided to the clinic by the client, and the right to confidentiality. The statement also may outline how the client can assist in the preparation of the client’s case, including notifying the program of any changes in contact information, changes in

circumstances, or occurrences that relate to the case; providing information and documents requested by the program; and responding to communications from the program. The clinic or the clinical program should ensure, to the extent practicable, that the potential client understands the terms of the retainer agreement.

Resources

Jay G. Foonberg, *How to Start & Build a Law Practice* 219 et seq (5th ed. 2004); ABA, *Standards for the Provision of Civil Legal Aid* Stds. 4.2 – 4.5 (2006) and accompanying Commentary.

3.12.5. Protecting Client Confidences and Secrets

3.12.5.1. Does the clinic program ensure that all clinic personnel understand the ethical obligation to protect client confidences and secrets?

3.12.5.1.1. Are the student attorneys, faculty supervisors, and other clinic staff familiar with applicable ethical rules and state law relating to disclosure of information about clients to third parties, including funding sources and persons within the law school but outside of the clinic?

3.12.5.1.2. Is the identity of each applicant and confidential information supplied in support of the potential client's application for service protected from improper disclosure?

3.12.5.2. Is each client guaranteed a private interview?

3.12.5.3. Does the clinical program have a protocol or policy that addresses disclosure of client information to the

dean, other administrators, and other, non-clinical faculty that may impinge on client confidentiality?

Commentary

It is the responsibility of the program director to ensure that all persons working within the program are familiar with applicable ethical rules and the laws in the jurisdiction relating to the disclosure of information about clients. The program should undertake to caution students to be particularly careful not to disclose client names or talk about case specific information outside of the clinic, or in the public areas of the clinic where other clients or office visitors may overhear them.

Students also should be reminded to return all case files and all case-related documents to the appropriate filing cabinets when not in use. Such materials should not be on the student attorney's desk where they can be viewed by individuals passing by the desk. Students also should be reminded never to write a law school paper or provide any professor with case file documents with the client's name or other identifying information on it.

All meetings with clients and discussion of cases must be in private. If a client insists on having a friend or other third party present, it should be the policy of the clinical program that the risks to confidentiality involved should be explained to the client. The student attorney should be required to consult with a faculty supervisor before proceeding with any interview in which a third party is present.

The clinical program should have policies that limit access to non-public space within the clinic in order to ensure client confidentiality. Client files should remain in the clinic. If a student attorney needs to remove a file from the clinic, the student should be required to get approval from a faculty supervisor.

State and federal law sometimes contains special confidentiality protections for specified classes of persons (e.g., persons with HIV or persons who have undergone drug or alcohol treatment). If the clinical program serves clients who are entitled to special confidentiality protections, the program must ensure that all personnel

understand and honor those extraordinary confidentiality requirements.

In most jurisdictions, the obligation to preserve a client's confidences and secrets extends to clients and *prospective* clients who are seeking legal advice. Clinic personnel also should understand that the obligation to maintain client confidentiality does not end when they leave the Clinic, but continues indefinitely.

In some situations, it may be necessary to seek the client's consent to disclose information that was gathered by the clinic under the obligation to protect it from disclosure. When disclosure is necessary to the effective and efficient handling of the client's case and consent to disclose is necessary, a faculty supervisor may authorize seeking the client's consent. Where the requested need for information is unrelated to the client's case, such as a request by a funding source, only the clinic director or program director should be authorized to seek the client's consent to release information.

Certainly, unless the client directs otherwise, the obligation of confidentiality does not prevent the disclosure of confidential information to others in the law firm. The clinical program should define explicitly which persons are within the definition of the "law firm." A law school is not an association authorized to practice law, nor is it a legal services organization. As with any organization with a legal department, the whole organization is not a law firm for purposes of complying with the rules of professional responsibility, rather only the department engaged in law practice (the clinic).

Similarly, each school may organize its clinical program such that all clinics are part of the same firm, or each clinic is an autonomous law firm for the purposes of compliance with the rules of professional responsibility.

The law school, clinical program, and individual clinics must be aware of the organizational scheme that defines the limits of the law firm and zealously guard against divulging client confidences and secrets beyond the "law firm" unit. The definition of law firm within the clinical program also may define the scope of conflicts considerations.

Generally, through the interplay of the ethical rules governing the preservation of client confidentiality and the law of attorney-client

privilege, the definition of law firm in this context should be limited to the persons within the clinic responsible for assisting the lawyer rendering legal services to the client. Thus, the law school dean, associate dean, and other faculty not assisting in the representation of the client would not be persons under the law firm umbrella.

In some instances, clinic personnel may consult with non-clinic faculty or administrators using non-client-identifying information or consult with non-clinic members of the law school by bringing them into a particular case as associated counsel with the client's consent and a signed association agreement.

However, because the clinical program does not operate completely independently of the law school, there are often good reasons for keeping the dean, other administrators, and non-clinical faculty aware of the activities of the clinical program, so long as the information shared is done so consistent with applicable rules of professional responsibility. Therefore, each clinical program should develop a protocol for handling complaints from the Bar and requests for information about clinic cases and activities from the dean, other administrators, and non-clinical faculty that may impinge on client confidentiality, attorney autonomy, and academic freedom. The protocol should also address relationships within the clinical program where the entire program is not operating as a single "law firm" for the purposes of compliance with applicable rules of professional responsibility.

Resources

ABA, *Standards for the Provision of Civil Legal Aid* Std. 4.3 (2006) and accompanying Commentary.

3.12.6. Client Participation in the Conduct of Representation

3.12.6.1. Are clients informed immediately of any major developments involving their cases, particularly if the

developments require decisions about new or revised strategies?

3.12.6.1.1. Are clients provided with copies of major correspondence and pleadings?

3.12.6.1.2. When a case is inactive for a long time, does the attorney maintain contact with the client to ease the client's anxiety and to maintain confidence and trust in the attorney?

3.13.6.1.3. Does the clinical program have a policy that requires particular efforts to communicate meaningfully with clients whose special circumstances, such as mental or physical disability, make communication more difficult?

3.12.6.1.4. Is the policy with respect to communication with clients with special circumstances complied with in practice?

Commentary

Best practices require that clients be provided with meaningful opportunities to participate actively in the conduct of their representation. To assure meaningful participation, clients must be kept fully informed of developments in their cases, particularly major developments that require client input into decisions about new or revised strategies. The clinical program should have policies in place that require clients be provided with copies of major correspondence and all pleadings. The program also should have a policy in place that requires communication with clients about cases on a regular basis. Even when a case is inactive for a significant period, the program should require that regular contact is maintained with the client to ease the client's anxiety and to maintain confidence and trust in the representation.

Specific policies should be in place that requires particular efforts to communicate meaningfully with clients whose special circumstances such as mental or physical disability make communication more difficult. The clinical program should monitor these policies to assure that all clinic personnel understand and comply with them.

Resources

See Model Rules of Prof'l Conduct R. 1.14 (2012); ABA, *Standards for the Provision of Civil Legal Aid* Std. 4.5 (2006).

3.12.6.2. Client Access to Clinic Services

3.12.6.2.1. Does the program comply with all federal and state laws regarding access to its facilities?

3.12.6.2.2. Does the clinic provide a professional atmosphere that reflects respect for clients? *See also supra* § 3.10.

3.12.6.2.2.1. Is the client service office clean, pleasant, and physically comfortable?

3.12.6.2.2.2. Is the client service office arranged to provide privacy for clients and easy access to personnel?

3.12.6.2.2.3. Is there a comfortable waiting space with accommodations for children who accompany clients to the office?

3.12.6.2.2.4. Is signage appropriate to the circumstances in terms of size, placement, and readability?

3.12.6.2.2.5. Are intake and office hours established for the convenience of clients?

3.12.6.2.2.6. Does the clinical program encourage “home visits” by student attorneys and faculty supervisors where it is difficult for clients to travel to the clinic offices?

3.12.6.2.2.7. To the extent practicable, does the clinic have the capacity to communicate with clients directly in their primary language?

3.13. Client Satisfaction Surveys

3.13.1. Does the clinical program use client satisfaction surveys to evaluate its provision of legal services?

3.13.2. Does each clinic and the clinical program have a protocol for reviewing all relevant client-satisfaction surveys and discussing the results to guide program performance?

Commentary

A well-designed and administered client-satisfaction survey can be a useful tool for the clinical program to evaluate a number of aspects of the program including the client’s overall satisfaction with the clinic’s provision of legal services; evaluation of student attorney, supervisor, and support-staff performance; and evaluation of program design and implementation.

To be effective, a client-satisfaction survey must be easy to understand, easy to complete, easy to return to the clinic, and it must assure the client that the answers are given in complete confidence.

A client-satisfaction survey should be given to every client who is provided a service by the clinic, except for very brief advice and referral encounters.

When providing the survey to the client, the student attorney or other clinic staff member should emphasize the importance of the client's responses to the clinic and should emphasize that the client's answers are anonymous and confidential. If the completed survey is not left with the clinic, the client should be given a stamped, self-addressed envelope within which to return the survey.

Each clinic and the clinical program as a whole should have a protocol for reviewing all returned client-satisfaction surveys and discussing the responses with a view of improving individual and program performance.

3.14. Supervision of Students

3.14.1. Does the program have a model of supervision that assures the competent representation of its clients?

3.14.1.1. Does the model of supervision include oversight of faculty attorneys as well as student attorneys?

3.14.2. Does the program have a written, clearly articulated statement of expectations, theories, and techniques that students are expected to use in their clinic work?

3.14.3. Does the program have a written, clearly articulated statement of the supervisory behavior that will be utilized by faculty in a supervisory relationship with students?

3.14.3.1. Does the supervisory statement address faculty and student roles and expectations for decision making, information sharing, task allocation, and task performance?

3.14.4. Do clinical faculty understand and appropriately apply theories and models of supervision?

3.14.5. Do clinical faculty supervisors evaluate student competence and emotional maturity during supervision of lawyering activities by students?

3.14.6. Do clinical faculty provide to students appropriate models of practice and critique as part of the supervisory process?

3.14.7. Do clinical faculty regularly encourage students to critically assess models of practice and critique, as part of the supervisory process?

3.14.8. In each proceeding in which the effects of actions taken by a student attorney may be irreversible, does the person having direct and immediate supervisory responsibility for the student accompany the student to the proceeding? Is the supervisor prepared to intervene appropriately, if required?

3.14.9. Does the program have a clearly articulated policy that prescribes instances requiring supervisory review of student action that may affect a client's interests before the action is undertaken?

Commentary

Supervision is the most distinctive component of client-based clinical legal education. According to Krieling, the adequacy of supervision is the primary determinant of the quality of a clinical course. Kenneth R. Krieling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 Md. L. Rev. 284, 288 (1981); accord Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 Ariz. St. L. J. 277, 280; Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 Neb. L. Rev. 537, 576 (1990).

But Tony Amsterdam has cautioned against overemphasis on supervision as the primary clinical teaching methodology. Maher, *supra*, at n. 105, p. 570 (citing Tony Amsterdam, *Keynote Speech at 1986 AALS National Clinical Teacher's Conference, Boulder, Colorado, AALS Sec. in Clin. L. Educ. Newsl.* 27–28 (Sept. 1986)).

In the context of a client-based legal clinic in a law school, the concept of supervision contemplates a number of interrelated components, including oversight by the supervisor of the production of discrete work product by law students; instruction that is a necessary accompaniment of such task completion; help in assimilating the professional role; fostering personal and professional growth and development over time; and assistance in acquisition of lawyering skills. See Michael Meltsner et al., *The Bike Tour Leader's Dilemma* (1985) in Philip G. Schrag & Michael Meltsner, *Reflections on Clinical Legal Education* 204–05 (1998). Thus, at some point(s) during a supervisory relationship, the supervisor may be called upon to impart information to a student, engage in discussion with a student, collaborate, demonstrate or model a skill or behavior, provide feedback and critique, and evaluate student performance. See Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 *Antioch L. J.* 301, 302 (1986). Each of these is part of the teaching aspect of supervision. The other aspect of supervision in the law school clinic is oversight of the work of the student lawyers. This aspect seeks, at a minimum, to protect the supervisor from malpractice liability and to protect the law school and parent university from embarrassment and liability because of the actions of the student lawyers.

Although supervision may take place in a variety of settings, including during a group discussion, grand rounds, and a simulation debriefing, this section is concerned with the mode of interaction between a supervising attorney and a single student attorney or team of student attorneys who are working jointly on one or more client matters.

In many ways, the teaching aspect of the supervisory relationship may be viewed as isomorphic to the lawyer-client relationship, with each displaying similar structure, communication, and patterns. See Meltsner, *supra*, at 210. Viewed from this perspective, the successful

supervisory relationship, like the attorney-client relationship, requires developing a shared set of goals and objectives, establishing rapport and a good working relationship, engaging in open and frank communications, and agreeing on mutual responsibilities for achieving desired outcomes. *Id.* at 213.

Effective supervision requires the supervisor to make an initial determination of the appropriate topics for supervision. The supervisor has the primary responsibility in identifying general topics for supervision. That is, given the teaching goals and objectives of the clinic course, the supervisor should make an initial assessment of what matters are to be explored principally in group discussions, during grand rounds, as part of simulation exercises, and during supervision sessions. The selection of topics for discussion in supervision sessions depends in large part on the selection of topics that most clearly benefit from an individual dialog with the student attorney, such as case planning, case theory, and strategic action. *See* Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. Rev. L. & Soc. Change 109, 146–47 (1993–94). With respect to specific topics for supervision, the supervisor and student attorney more equally share responsibility for identifying topics. The supervisor, as an experienced expert, has an ability to see topics and issues for supervision that will promote learning in the student that may escape the student’s view. *See* Kreiling, *supra*, at 314.

The student should be encouraged to identify and prioritize issues for which the student desires a dialog with the supervisor in the course of casework and reflection on broader topics such as institutional critique. Where the student attorney is developing competence adequately throughout the term of the clinic, it may be appropriate to shift greater responsibility to the student attorney for identifying and initiating specific topics for supervision as the student’s confidence and competence builds. Initially, however, the supervisor will retain greater responsibility for identifying specific topics for supervision in light of the teaching and learning goals of the clinic. Even where the supervisor has selected general and specific topics for supervision, the supervisor’s agenda must remain flexible

to respond to unanticipated events and needs of the student. *See Shalleck, supra*, at 151.

Shalleck argues that revealing to the student the supervisor's understanding of the supervisory process is an important part of effective supervision. *See id.* at 180. Being transparent about the process permits the student to understand better the supervisor's purposes and gives the student the information necessary to question the agenda and to negotiate changes to the agenda or process. As Kreiling says, "[t]he ability to benefit for experience is contingent upon valid feedback – accurate, objective information from the environment that helps the student determine whether his actual behavior is moving him towards his goals effectively." Kreiling, *supra*, at 297. Kreiling also asserts that "[t]he success of the feedback process will depend primarily upon two variables the quality of the feedback provided and the receptiveness of the student to the feedback." *Id.* at 297.

According to Kreiling, valid feedback has several characteristics: the focus of the feedback should be objective and drawn from directly observed data; good feedback is honest and not unilaterally controlling; the data provided is specific; the feedback process should be checked to ensure the student understands what the supervisor is trying to convey; feedback should be given as soon after the behavior as possible; feedback should be solicited or at least desired; and it should not overload the receiver. *Id.* at 298–99. The supervisor should be concerned with the quality of the relationship between the student and himself. *Id.* at 300. Drawing on the work of Carl Rogers, Kreiling suggests that several factors contribute to a maximally effective interpersonal supervisory relationship: the ability of the supervisor to be himself with the student; empathetic understanding of the student; the ability to convey a warm, positive, and accepting attitude toward the student; the ability to be nonjudgmental. It is important not only that the supervisor be aware of his own attitudes but that he also is aware of how the student perceives these attitudes. *Id.* at 302–04.

The supervisor must encourage the student to utilize a critical and reflective approach in evaluating his standard of practice." *Id.* at 305. Since, in the initial stage of his lawyering experience, a student often lacks a sound 'theory of action' derived from a sophisticated model of

lawyering, “the supervisor should provide students with basic models that appropriately match the experiences they will encounter in their” clinical work. *Id.* at 308.

“The supervisor should choose materials that will familiarize the students with basic governing variables and will provide the background information necessary to develop tentative, provisional ‘theories of action.’” *Id.* at 309. The student then must be encouraged to assess critically the models. *Id.* at 310.

The supervisor should be attentive to the supervision cycle, not as a prescriptive, but as a “device to emphasize important aspects of and insights into the supervision process.” *Id.* at 318. Kreiling identifies the six stages of the supervision cycle as (1) the initial conference, (2) pre-performance conference, (3) observations, (4) preconference analysis and strategy, (5) post-performance conference, and (6) final evaluation and termination. *Id.* at 318–19.

The initial conference “provides an opportunity for initial assessment of the supervisee and ascertainment of his goals, can be used for initial case assignments, and sets the stage for the supervisory relationship.” *Id.* at 319.

“The supervisor should meet with the student to discuss each significant activity that the student plans to undertake on his cases.” *Id.* at 322.

During observation, the supervisor captures the elements of student performance necessary for valid feedback including what the student says, the characteristics of the delivery and the physical conduct of the performance. *Id.* at 325.

During analysis and strategy, the supervisor should organize the data from observations to raise a discrete number of issues for discussion. Positive reinforcement should be used whenever possible. “In any event, the supervisor must conceive a balanced approach to the analysis of the student’s performance.” *Id.* at 328–29.

During the post-performance conference, “the student reflects upon and learns from his experience” *Id.* at 330. The supervisor must encourage student participation and keep the focus of the conference on important issues. The supervisor should assist the student in accurately viewing his own performance, undertake with the student an analysis leading to an understanding of the dilemmas and patterns

of ineffective behavior, help the student formulate plans to improve performance in the future, and help the student learn how to learn from experience and to utilize valid feedback. *Id.* at 330–32.

The formal “evaluation sessions should compare the student’s work and progress with the evaluation criteria derived from course goals and the student’s own fieldwork goals.” *Id.* at 335. “The supervisor should prepare a written final evaluation and should give a copy of the written evaluation to the student prior to the termination conference. The supervisor should then alter his evaluation based upon the discussion with the student, giving credit to the student’s ideas where appropriate.” *Id.* at 335.

Resources

Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 Ariz. St. L. J. 277, 280; Kenneth R. Krieling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 Md. L. Rev. 284, 288 (1981); Michael Meltsner et al., *The Bike Tour Leader’s Dilemma* (1985) in Philip G. Schrag & Michael Meltsner, *Reflections on Clinical Legal Education* 204–05 (1998); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. Rev. L. & Soc. Change 109 (1993–1994).

3.15. Evaluation of Students

3.15.1. Formative Evaluation

3.15.1.1. To the extent practicable, are formative evaluations separated from summative evaluations?

3.15.1.2. Are the policy and procedures for critique and evaluation provided to students well in advance of performance?

3.15.1.3. Does each student meet individually with a supervisor on a regular basis to discuss the student's performance and progress within the clinic?

3.15.1.3.1. Is there an explicit agenda for each meeting?

3.15.1.3.2. Is the agenda established jointly by the student and the supervisor to assure that the goals of both are accommodated?

3.15.1.4. Do students perform a self-evaluation after each task?

3.15.1.5. Is evaluation provided on several levels, including goals, performance, effect on others, and learning?

3.15.1.6. Do students both receive and provide one-to-one feedback and evaluation on lawyering, teaching, and learning?

3.15.1.7. Does the evaluation include review of the student's case files and written work product?

3.15.1.8. Is feedback given both orally and in writing?

3.15.1.9. Does the program employ both periodic formal and other less formal review, critique, and evaluation of student performance and learning?

3.15.1.10. Is teaching about critique, feedback, and evaluation an explicit program goal?

3.15.2. Summative Evaluation (*see* Grading, *supra*, § 2.5)

Commentary

Students should receive both formative and summative evaluations on their representational and learning activities in the clinic. Formative evaluations are provided to assist the student in improving performance and are given frequently throughout the term of enrollment. Summative evaluations are provided to students at the end of the term of enrollment. Although summative evaluations may also assist the student in improving performance in the future, summative evaluations principally are used to evaluate the student's overall performance during the term of enrollment. The evaluations are frequently expressed in terms of a course grade.

To the extent practicable, formative evaluation should be separated from summative evaluation. Formative evaluation is intended to be proactive. It provides feedback to a student at a time when it is still possible for the student to correct performance that falls below defined standards. The formative evaluation is aimed at ascertaining the extent to which the student's performance on tasks meets, exceeds, or falls short of the standard for performance set by the supervisor. The goal is to communicate that standard to the student and guide the student to internalize the findings supporting the judgment so that subsequent performance on a similar task is improved.

Summative evaluation is intended to be retrospective. It comes at the end of the student's educational experience in the clinic. The evaluator looks back over a longer period of student performance and synthesizes a greater breadth and depth of student performances. The evaluator then compares the synthesis against program standards for the award of course credit to award a final grade for work done in course.

To benefit most from evaluation, students need to be aware of the procedures by which they will be evaluated and the standards against which their performances are measured. The clinical program should provide information to students with respect to procedures for critique and standards of performance well in advance of performance so that students can prepare performances with the standards in mind and can

engage in self-evaluation using the standards of performance as measures.

Students should be given individualized feedback on their performance by faculty supervisors within a reasonable time after any significant lawyering activity. In addition, students should receive regular feedback on a broader range of performances within the clinic. A formal, mid-term evaluation should be conducted as well. When formal evaluation meetings are held, there should be a jointly developed agenda for the meeting to ensure that the goals of both student and supervisor are discussed.

Students should be given instruction in self-evaluation and be encouraged to do self-evaluations after each significant task performance. From time to time, each student should be asked to write a self-evaluation and provide it to the faculty supervisor for review and comment.

See supra § 2.5 for discussion of summative evaluation.

Resources

See generally AALS-ABA, *Guidelines for Clinical Legal Education* Guideline XI, pp. 101–04 (1980).

3.15.3. Student/Faculty Ratio

3.15.3.1. Is the student/faculty ratio appropriately limited to ensure the effective supervision of students?

3.15.3.2. If the student/faculty ratio is greater than 10/1, has the program a clearly articulated and reasonable explanation of how the goals of the program or individual clinic can be achieved satisfactorily?

3.15.3.3. If clinical faculty also have responsibilities for scholarship, governance, classroom teaching, and other

non-supervisory activities, are student/faculty ratios appropriately adjusted downward from 10/1?

Commentary

The appropriate student/faculty ratio in a given clinic is a product of several factors that include the number of cases assigned to each student, the nature and complexity of the cases, the respective roles and responsibilities of the faculty and students with respect to each case, the teaching and learning goals of each participant in the clinic, the number of credit (contact) hours, other responsibilities of the supervisor, such as other teaching responsibilities, research and scholarship, governance and committee work, and other duties.

Previous reports have suggested a student-faculty ratio ranging from 12:1 to 8:1. The Project Director's Notes in the Report of the AALS-ABA Committee on Guidelines for clinical Legal Education (p. 82) reads: "[a]s reported by most law schools, *individuals engaged in full-time supervision* can usually supervise eight to ten students who are devoting twenty to twenty-five hours per week to field work *which includes trial work.*" AALS-ABA, Guidelines for Clinical Legal Education 82 (1980) (emphasis added). In the same volume, a Consultant's Report by Peter del Swords and Frank K. Walwer, *Cost Aspects of Clinical Education*, pp. 133–190, states, "[w]ith respect to law school-supervised clinics the per-course-student-faculty-ratio factors are between 14 and 24, namely, the equivalent of one full-time clinical teacher 'handling between 7 and 12 students per term (14 to 24 per year)." *Id.* at 146. The *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Ed. 508, 538–40, presents statistics on student-teacher ratios in in-house clinics and explains that "54 percent of clinics have a teacher/student ratio between 1/8 and 1/10" and that the "probable average ratio for all reporting schools" is 1 to 8.41. *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Ed. 508, 538 (1992). The MacCrate Report states, based on the Task Force's own survey of law schools, that "live client clinics have an average ratio of eight students to one full time faculty member (8:1)." ABA Section of Legal Education and

Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) 250 (1992).

Professor David Chavkin has observed that when the AALS–ABA Guidelines were published in 1980, most teachers in law school clinics were devoting substantially all of their time to clinical supervision. In the decades since, clinical teachers are now also required to participate in law school governance and committee work. Additionally they are expected to provide additional service to the bar and to the community, and like other members of the faculty, to conduct research and produce scholarship. Along with increased expectations for teaching other courses, the responsibility for committee work, governance activities, and scholarship, often merit a student–faculty ratio below 8:1. *See* David A. Chavkin, emails to the LawClinic Listserv (LawClinic@lists.washlaw.edu), re: student–faculty ratio, Thursday, April 11, 2002 4:54 PM. and Friday, April 12, 2002, 11:38 AM.

Professor Michael W. Mullane has argued that the appropriate student–faculty ratio is one that “provides a reasonable balance between the economic concerns [of the law school] and the ability of the faculty member to provide acceptable educational and professional supervision.” Michael W. Mullane, email to LawClinic Listserv (LawClinic@lists.washlaw.edu), re: student–faculty ratio, Friday, April 12, 2002 11:21 AM. He argues that “[t]his limit is a function of the kind and number of cases or matters for which the faculty member has supervisory responsibility” and that “is largely a function of the number of credit hours offered, because the credit load determines how much time can be reasonably expected to devote to the cases.” *Id.* Professor Mullane suggests a Full-Time Equivalent (FTE) of 36 credit hours per semester per supervisor is a reasonable faculty load. For example, if the clinic is a 3-credit clinic, then 12 students (36 FTE) is reasonable; if the clinic is offered for 6 credits, then 6 students is the correct number. Professor Mullane assumes that, in both scenarios, it would be expected that the students would average about 3–4 hours per credit on clinic work, that is, 10–12 hours a week in a 3-credit format and 20–24 hours a week in a 6-credit format. Even this calculus would be adjusted in light of

extraordinary demands of supervisor time, such as in “a clinic handling high impact cases with multiple students assigned to a single case.” *Id.*

Local Rule LcvR 83.4(b)(3) of the U.S. District Court for the District of Columbia specifies that a “person under whose supervision an eligible law student does any of the things permitted by this Rule shall: . . . (vi) Supervise concurrently no more than 10 students carrying clinical practice as their entire academic program, with a proportionate increase in the number of students as their percentage of time devoted to clinical practice may be less”

A low student/faculty ratio is necessary because much of clinical teaching is done in one-to-one meetings between the student and faculty supervisor in a triad of two, student case-team members and a faculty supervisor. Very little clinical teaching involves the delivery of information to a classroom full of students.

The student/faculty ratio must be lower in settings where clinical teachers have significant institutional responsibilities in addition to clinical teaching and case supervision. But the student/faculty ratio may be somewhat higher in some settings that do not involve litigation or other activities where students and faculty are engaged in concentrated, intense lawyering activities.

Resources

See generally AALS-ABA, *Guidelines for Clinical Legal Education* Guideline VII.D. (1980), Project Director’s Notes, pp. 82–83; *Report of the Committee on the Future of the In-House Clinic of the AALS Section on Clinical Legal Education*, 42 J. Legal Educ. 508 (1992).

3.15.4. Caseloads

3.15.4.1. Are caseloads for faculty and student attorneys sufficient to provide all students with enough work to justify the amount of course credit given?

3.15.4.2. Are caseloads for faculty and student attorneys appropriately limited to allow clinical faculty to devote sufficient time to the supervision and instruction of each student so that, to the extent possible, the nature and amount of such supervision and instruction is related to the student's individual learning needs?

3.15.4.3. Are caseloads for faculty and student attorneys appropriately limited to assure the ability of the faculty and student attorneys to devote necessary effort on behalf of each client?

Commentary

The maintenance of caseloads is an art, not a science. Because it is not possible to predict with complete accuracy how rich in learning or how difficult to lawyer any case will be, the clinic should have a method for constantly monitoring cases to assure, to the extent possible, that each student's learning goals are being met by the cases to which he or she is assigned. Students should not have too many cases that they do not have either sufficient opportunities for engaging in reflective practice or the time to devote sufficient personal resources to each client's matter. *See* Model Rules of Prof'l Conduct R. 1.1, 1.3. Similarly, students should not have too few cases that they are unengaged for significant periods of time. Students should have repetition and novelty. Repetition comes from having a caseload that presents similar problems in different case settings or a single case with multiple opportunities to experience a similar problem. Novelty is achieved by a caseload that does not repeatedly present only the same problems or issues.

The clinical program should have a procedure by which caseloads for students are monitored and adjusted as necessary to assure adequate representation of clients and optimal educational value to the students. The ABA's *Standards for Providers of Civil Legal*

Services to the Poor suggests one method of monitoring. It recommends periodic written reports prepared by each attorney that:

- [1] outline numbers and types of legal matters being handled;
- [2] identify cases in litigation, those requiring extensive discovery, those set for bench or jury trial, and those on appeal;
- [3] identify cases involving non-litigation strategies and the steps necessary to complete representation; and
- [4] predict dates for completion of each major step in more complex matters.

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 3.2 (2002). The *Standards* conclude that “[p]reparation of such reports should give each practitioner an awareness of future time commitments and the capacity to accept new assignments. In addition, they enable supervisors to identify patterns that require adjustments in case assignments to evaluate the progress on open cases.” *Id.* at 54. In a clinical setting, the supervisor must be concerned not only with the time commitments necessary by students to service the caseload, but by the educational value of the assigned cases as well. Therefore, in addition to the monitoring criteria suggested by the ABA Standards, the clinical program also should develop criteria for monitoring the educational value of the caseload and mechanisms for making appropriate adjustments to insure that the course goals, and to the extent possible, the students’ personal goals are met.

3.15.5. Staff Training

3.15.5.1. Does the program have a clear policy with regard to staff training and development?

3.15.5.2. Does the program have a staff development plan?

3.15.5.3. Does the program provide orientation for new staff and ongoing training for existing staff?

3.15.5.4. Does the program have written orientation and training materials?

Commentary

Staff training is important for morale and retention of qualified support staff as well as for provision of high quality legal services to clients and education for students. Support staff should be fully integrated into the pedagogical and legal services models. Staff members can be important informal members of the teaching faculty. Students can learn a great deal about supervision of staff and other lessons in interpersonal relations from interacting with staff. Learning can be enhanced if staff members are trained explicitly to provide students with feedback and critique in these skills.

The sophistication and memorialization of orientation and training programs can vary depending upon the number of staff and the complexity of their roles. For a program with only one or two employees, a checklist of orientation topics to be covered whenever new support staff is hired may be sufficient. For larger organizations with more frequent staff turnover, a more formal orientation program, with supporting materials, may be desirable.

The program or clinic should have a clear understanding of the roles and attendant skill requirements of each staff member. There should be a method for evaluating skills needed for job performance and development of a training program to improve weaker necessary skills or to train in new skills needed for the developing practice or to enable the staff member to gain promotions to higher skilled positions within the clinic, clinical program, law school, or university.

The program should use the periodic staff performance evaluation process to monitor the need for training and staff development. In addition, the program should respond appropriately to specific requests for training from individual staff members.

Resources

See ABA, Standards for Providers of Civil Legal Services to the Poor Std. 3.5 (2002).

The following Standards, 3.16 through 3.23, closely parallel Standards for Generally Applicable Representation Functions (Standards 4.1 – 4.5) and Standards for Specific Representation Functions (Standards 5.1 – 5.8) of the ABA *Standards for Providers of Civil Legal Services to the Poor* (2002). For users of these Guidelines wishing more detail, you are directed to those documents.

3.16. Generally Applicable Representation Functions

3.16.1. Initial Exploration of the Matter

3.16.1.1. Prior to conducting a client interview, was the interviewer introduced to the basic skills required to be a good interviewer and listener?

3.16.1.2. Are the facts elicited in each client contact recorded and made available at subsequent contacts so that clients are not required to repeat fact gathering at different stages?

3.16.1.3. Is a case opening memo produced setting forth the relevant facts, including those needing investigation?

3.16.1.4. Does the client receive a clear explanation in lay terms of the legal matters presented, of tentatively identified steps the lawyer may take regarding the matter, and of steps the client should take or avoid?

Commentary

The initial exploration of the matter with the client can be effective only if the interviewer has learned and properly applies basic skills required to elicit information from a client. Students should have some training in interviewing and counseling before being permitted to interview clients.

Good practice requires that the results of all factual and legal investigations be recorded in a clear, concise manner and preserved in the client file for subsequent use. The records of client and witness interviews should be accurate and complete to obviate the need for repeated interviews of the client or witness to ask for the same information.

At the close of the initial client interview, the client should be provided with a summary of the information given to the interviewer: a preliminary assessment of the matter, a clear understanding of the next steps that the attorney plans to take in the matter, and complete instructions for actions that the client should take and should avoid taking. This information also should be recorded accurately and completely in the client's case file.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 4.1 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.4 (2006).

3.16.2. Information Gathering

3.16.2.1. Does the attorney begin gathering information promptly upon undertaking a matter?

3.16.2.2. Does the attorney investigate all potentially relevant sources of information and record the results of the

investigation in written memoranda for the case file while the facts are fresh?

3.16.2.3. Does the program or clinic budget contain adequate resources to permit the use of expert outside investigators when necessary for effective representation?

Commentary

Upon undertaking a matter, the student attorney should promptly begin gathering information needed to counsel and otherwise represent the client. Undue delay may be detrimental to the interests of the client and may limit the opportunities for the student attorney to secure the greatest educational benefit from working on the matter.

A preliminary case theory should be developed as soon as practicable to guide subsequent investigations and presentation of the matter. The case theory should be adjusted as new information is received and analyzed. It should be the role of the faculty supervisor to look for evidence that the student is modifying the case theory as circumstances change and to guide the student's analysis of the data to facilitate representation.

Absent explicitly articulated strategic reasons for not doing so, all relevant information and investigative paths should be memorialized in a written memorandum to the file as soon as practicable after the information is obtained.

Where the matter requires the use of expert investigators in addition to the student attorney and faculty responsible for the matter, resources should reasonably be available in the clinic budget or through a special fund made available, as needed, from the law school budget.

Because of attorney-client privilege, it is difficult for outside evaluators to assess the extent to which the students and faculty in the program or clinic comply with these standards. However, programs may include these criteria in their self-evaluations and evaluation of student work. Summaries of these evaluations may be made available to outside evaluators.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 4.2 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.5 (2006).

3.16.3. Legal Research and Analysis

3.16.3.1. Does the case file contain evidence that the attorney has analyzed each matter and researched pertinent issues to determine the relationship between the client's problem and existing law and whether there is a good faith basis to seek an extension, modification, or reversal of existing law that is unfavorable to the client?

Commentary

The case file should contain evidence of adequate legal research. Even in seemingly routine cases, it is important to perform adequate legal research and analysis to avoid overlooking significant legal issues and creative responses to the client's problem.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 4.3 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.6 (2006).

3.16.4. Case Planning

3.16.4.1. Is there evidence in the file that the student attorney developed a course of action for handling each matter that relates material facts to legal issues raised by the client's problem, identifies applicable law and available remedies, and enables the client and attorney to make knowledgeable decisions about the means to pursue the client's objectives at each stage of the representation, with full consideration of available resources and of the risks and benefits of each option?

3.16.4.2. Did the student attorney take all the necessary steps to implement the case plan? *See infra* § 3.17 et seq.

3.16.4.3. Was the client's problem considered in relation to other similar problems for assessment of whether a class action would be an appropriate strategy?

Commentary

Evidence of case planning should include memoranda of facts and law in the case file, copies or summaries of communications to the client, investigators, and experts that presents the legal and factual theories of the case at various stages of preparation. Chronology logs and "to do" lists may also evidence case planning.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 4.4 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.7 (2006).

3.16.5. Counseling

3.16.5.1. Did the student attorney effectively counsel and advise the client throughout the representation?

3.16.5.1.1. Did the attorney reach a common understanding with the client of the nature of the legal problem and the client's objective in seeking legal assistance?

3.16.5.1.2. Did the attorney recognize the decision points on which client input and decisions were needed?

3.16.5.1.3. Did the attorney identify and evaluate the means available for achieving the client's objective?

3.16.5.1.4. Did the attorney assure that the client understood the advantages, disadvantages, and potential risks of each option and effectively participated in determining the means by which the client's objective was pursued?

3.16.5.1.5. Predicting legal consequences.

3.16.5.1.5.1. Were the attorney's predictions of consequences appropriately tentative and contingent?

3.16.5.1.5.2. Where the attorney lacked sufficient experience to make accurate predictions of legal consequences, did the attorney gather additional data and/or consult with more experienced colleagues and/or faculty supervisors before communicating with the client?

3.16.5.1.5.3. Does the program or clinic collect and use available data (such as percentage of guilty

pleas before a certain judge resulting in probation)
to inform predictions of outcomes?

3.16.5.1.5.4. Does the program/clinic have access to
and use, when appropriate, software that provides a
framework for making predictions in cases with
several independent variables?

3.16.5.1.6. Was the counseling appropriate in terms of
scope and depth with respect to the needs, abilities, and
desires of the client?

3.16.5.1.7. Was the client offered a collaborative model
of counseling?

3.16.5.1.8. Did the attorney prepare written materials
such as charts, tables, or fact/law summary letters,
where appropriate, to help the client understand the
range of issues, alternatives, and consequences?

3.16.5.2. Did the attorney adequately record any
disagreements between the client and the attorney during
the course of the representation?

Commentary

There should be evidence in the case file that the lawyer helped the client to identify and clarify his or her interests, values, and priorities, to identify alternative courses of action, to consider legal and non-legal considerations, such as the economic, social, and psychological consequences, and the interests of third parties, that may follow a course of action needed make decisions.

Sophisticated clients may require little assistance in reviewing options and making decisions. Most clients who come to law school clinics may have little experience with legal institutions and may require more information and counseling.

Keeping a record of disagreements between the attorney and the client can be helpful in defending against disciplinary and malpractice claims brought by a client dissatisfied with the outcome of the matter who claims that the attorney acted inappropriately or contrary to the client's wishes. Where the client has ceded broad decision making to the attorney during representation, the lawyer is advised to put this delegation of authority in writing, preferably in a document that is signed by the client.

The case file should contain evidence that the attorney prepared a summary of the various alternatives and their respective consequences, before, during, or after the counseling session with the client but before the client is asked to make a final decision. A summary document is more appropriate when the decision is more complex, has more variables, and when the client can benefit from a graphic representation of the information needed to make a final decision.

The attorney must use his or her best judgment with each individual client and in each instance where decision making by the client is called for whether to use written aids, but if a review of a number of case files in the program or clinic fails to yield any evidence that such aids are used, it must be presumed that attorneys are not encouraged to use writings in this way.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 4.5 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.8 (2006); ABA/ALI, *Achieving Excellence in the Practice of Law* §6.5 (2d ed. 2000).

3.17. Specific Representation Functions

3.17.1. Nonadversarial Representation and Negotiation

3.17.1.1. Did the attorney pursue nonadversarial, informal representation to the extent that it was determined to be likely to accomplish the client's objectives?

3.17.1.2. Did the attorney adequately consider all strategic options, including mediation, conciliation, arbitration, and other ADR techniques?

3.17.1.3. Did the attorney and client agree on a settlement authority approach that was most appropriate given the particular representation?

3.17.1.4. Did the attorney plan and conduct all negotiations on behalf of clients according to a thorough analysis of the facts and law related to the matter?

3.17.1.5. Did the attorney conduct all negotiations on behalf of clients to further the accomplishment of the client's objectives?

3.17.1.6. Did the attorney enter into a formal agreement with the adversary only after the agreement was specifically authorized by the client?

Commentary

There should be evidence in the case file of an effort by the attorney to resolve the client's problem in the most expeditious, efficient, and effective manner possible, including the conscious use of nonadversarial, informal means. Typically, a well-maintained chronology log, together with memoranda to the file, will be the best source for this information.

There should be evidence in the file that indicates the attorney carefully evaluated the appropriateness and timing of negotiation. The attorney must consider whether circumstances are present that argue against negotiation such as when "notification of a potential lawsuit

may subject a client to physical abuse or other retaliation from the adversary, when premature notification of the intent to sue may cause a defendant to leave the jurisdiction or to transfer assets in anticipation of an adverse ruling from the court, when an immediate court order is necessary to protect the client's right or interest, and when a client is seeking relief which cannot be legally obtained through compromise with the adversary." ABA, *Standards for Provision of Civil Legal Services to the Poor* 77-78 (2002) A reviewer also should look for evidence that the attorney substituted negotiation when more forceful representation was warranted by the circumstances and the client's interests or objectives.

There should be evidence in the case file that demonstrates the attorney considered appropriate alternative dispute resolution techniques to resolve the client's problem. Increasingly, jurisdictions are requiring attorneys to counsel clients regarding ADR; therefore, it is good practice for the attorney to record in the case file how this obligation was met in the client's case.

In a clinical setting, the program, through the faculty supervisors, is often in a good position to evaluate the scope, nature, and level of planning for negotiations engaged in by student attorneys. As part of the evaluation or feedback process the supervisor may seek to ascertain how effectively the student attorney: (1) analyzed and defined a bargaining range including the target point and bottom line or best alternative to a negotiated agreement, (2) attempted to predict the bargaining range of the opposing party, (3) has identified the interests, needs, and positions of each party, (4) developed an opening offer strategy (including the decision whether to make an opening offer), (5) developed a plan for informational bargaining, including identifying information to reveal, information not to reveal, and information wanted from the opposing party, (6) and developed persuasive rationales and objective criteria for results sought on each issue. In addition, the supervisor should assess how completely the student attorney understands the factual and legal theories of the case and the relative strengths and weaknesses of each party's theories.

The attorney and client should determine which settlement authority approach is most appropriate given the particular representation. One approach has the client identify a range of options

that the attorney is authorized to accept. Another approach has the client withhold authorization until there is an opportunity to review each offer. *See* Model Rules of Prof'l Conduct R. 1.2(a) (regarding specific client approval of settlement offers).

When a matter is resolved through settlement, there should be evidence in the file that the final agreement was reduced to a clear formal written statement that covers all material issues and enforcement problems. Where appropriate, the agreement should be self-executing or should provide for formal enforcement in the event of non-compliance.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Stds. 5.1–5.2 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Stds. 7.9–7.10 (2006); ABA/ALI, *Achieving Excellence in the Practice of Law* §§ 6.6–6.10 (2d ed. 2000).

3.18. Litigation and Appeal

3.18.1. Did the student attorney develop a clear, long-range strategy for prosecution or defense of the client's claim? Long-range strategy planning should include the following:

3.18.1.1. identification of facts that must be obtained through discovery and other means,

3.18.1.2. identification of the legal issues involved to be researched, if necessary,

3.18.1.3. assessment of the adversary's probable response to the client's claim and how it may be countered,

3.18.1.4. an estimate of resources necessary and available to pursue the client's objective,

3.18.1.5. an estimate of the costs to the adversary and their possible impact on the willingness to compromise in favor of the client, and

3.18.1.6. thorough analysis of the case from the opponent's point of view so that the practitioner can anticipate the adversary's tactics and plan to counter them.

3.18.2. Did the student attorney prepare as if the client's claim or defense has to be established in a full hearing?

3.18.3. Did the student attorney make major strategic decisions only after consultation with the client?

3.18.4. Did the student attorney periodically review the long-range strategy in light of new developments in the case and in the governing law?

3.18.5. Did the student attorney draft pleadings to preserve and advance the client's claim in accord with the requirements of applicable law? Did the attorney consider the following?:

3.18.5.1. the choice of parties,

3.18.5.2. the choice of forum,

3.18.5.3. the choices of causes of action or defenses, considering their import to overall strategy; potential impact on the court at trial, in negotiations, and on appeal; problems of proof; and areas of discovery open both for the client and the adversary, and

3.18.5.4. the choice of remedies.

3.18.6. Do the pleadings clearly set forth all necessary elements of the case required by applicable law?

3.18.7. Are pleadings prepared neatly and correctly in compliance with pertinent court rules?

3.18.8. Are pleadings filed in a timely manner?

3.18.9. Did the student attorney require the client to review and approve the pleadings before they are filed?

3.18.10. Did the attorney appropriately use motions practice to promote the successful, expeditious, and efficient resolution of the litigation in the client's favor?

3.18.10.1. Are all motions and responses well researched and cogently argued?

3.18.10.2. Is the strategic purpose of each motion clear?

3.18.11. Did the student attorney prepare a discovery plan that identifies facts and information and their probable sources?

3.18.11.1. Did the attorney establish a tentative time frame for pursuing discovery?

3.18.12. Did the student attorney appropriately use formal discovery?

3.18.12.1. Did the attorney use the least costly effective method to obtain the needed facts?

3.18.12.2. Was formal discovery effectively used in concert with informal investigation?

3.18.13. Was formal discovery thoroughly prepared?

3.18.13.1. Did the attorney consult with the client with respect to discovery, especially in situations where potential

discovery was likely to cause discomfort or inconvenience to third parties?

3.18.13.2. Did the answers to discovery requests yield unambiguous responses?

3.18.13.3. Did the attorney adhere to the rules of procedure and their application in the locale in which the litigation took place?

3.18.13.4. Were responses to an adversary's discovery efforts prompt, responsive, and honest without making inadvertent, damaging disclosures and admissions?

3.18.14. Did formal discovery seek to obtain necessary information in a timely manner and in a useful format?

3.18.15. Does the program/clinic utilize model interrogatories and requests for admission to provide guidance for discovery in cases with recurring issues?

3.18.16. Did the student attorney prepare adequately to present the client's case to the tribunal? Did trial preparation include the following?:

3.18.16.1. Command of the factual and legal theories;

3.18.16.2. Selection and preparation of witnesses;

3.18.16.3. Development of visual aids;

3.18.16.4. Planning the sequence of evidence;

3.18.16.5. Preparation for cross-examination;

3.18.16.6. Anticipation of potential objections;

3.18.16.7. Preparation for jury selection;

3.18.16.7.1. Did the attorney consult with the client with respect to selection of prospective jurors?

3.18.16.8. Preparation of opening statement and closing argument;

3.18.16.9. Preparation of jury instructions;

3.18.16.10. Preparation of a trial notebook;

3.18.16.11. Preparation to preserve issues for appeal;

3.18.16.12. Familiarity with the environment in which the trial was to take place;

3.18.16.13. Use of pre-trial motions, such as motions *in limine*.

3.18.17. Did the student attorney present to the tribunal all matters in a manner that was appropriate to the rules, procedures, and practices of the tribunal and that reflected thorough and current preparation in the facts and the law?

3.18.18. Did the student attorney effectively use objections during trial?

3.18.19. When a favorable judgment, settlement, or order was obtained, did the student attorney take necessary steps to ensure that the client received the benefit conferred?

3.18.20. Did the student attorney remain aware of possible factual and legal bases for appeal from an adverse judgment or ruling, and did the attorney make a deliberate decision, with appropriate client participation, as to the need to preserve such issues for appeal in light of the overall litigation strategy?

3.18.21. If there was an adverse appealable judgment or order, was a deliberate decision made whether an appeal was warranted?

3.18.22. Did the student attorney make the decision to appeal an adverse judgment or order based on the client's desire to proceed, the merits of the client's appeal, the potential benefits and risks of pursuing the matter, and established criteria that reflect identified priorities and available resources of the clinic or the willingness and ability of another legal services provider to undertake the appeal?

3.18.23. Did the clinic advise the client at the outset of the representation that prosecution or defense of an appeal by the clinic is not automatic? *See also supra* § 3.12.4.

3.18.24. If an appeal was pursued was it prosecuted or defended with all due diligence?

Commentary

Litigation strategy

Good practice requires that the attorney prepare each case that involves dispute resolution as if the client's claim or defense has to be established in a full hearing before the appropriate tribunal. This posture does not preclude a negotiated settlement or the use of alternative dispute resolution techniques, but it does insure that the client's interests are not compromised by inadequate preparation should negotiation or ADR fail to resolve the dispute and a trial become necessary.

Good practice requires careful and thorough attention to trial preparation. Trial preparation begins from the moment that the client reveals a dispute that may be resolved through litigation and

continues through post-trial motions and appeal. The litigation strategy must be monitored constantly and revised as necessary to account for new developments and thinking as the case progresses. The program/clinic should assure that student attorneys understand the importance of careful and thorough trial preparation and are guided through the process of preparation to assure that the client is provided with the best representation possible under all the circumstances.

While certain tactical decisions in litigation practice require the attorney's use of professional judgment, "major strategic decisions should be made in consultation with the client and the client should be informed of progress at each stage of the litigation." See Model Rules of Prof'l Conduct R. 1.2(a), R. 1.4.; ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 5.3-1 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.2 (2006).

Pleadings

For most routine legal problems, senior law students should be able without much guidance to use their substantive and procedural legal knowledge and forms to draft adequate pleadings. However, the program/clinic should not be satisfied with this level of practice but should ensure that student attorneys carefully consider the various choices of parties, forum, claims, and remedies that are presented by each legal problem. Before a pleading is filed with the court, the supervisors should not only have reviewed the document for accuracy and style but also should have reviewed with the student attorney who prepared the document his or her decision-making process. In addition to review by the supervising attorney, good practice requires that the client review and approve the pleadings, if possible, before they are filed. ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 5.3-2 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.11-2 (2006).

Motions practice

Student attorneys should understand the strategic functions of motions practice. They should be able properly to use motions to resolve substantive issues in their cases, to control the pace and direction of litigation, and to protect the client's interests or to put the case in a posture that is more favorable to the client's cause. ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 5.15 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.11-3 (2006).

Student attorneys should anticipate an adversary's motions and responses to the client's motions, and prepare appropriate responses to advance the client's claims.

Motions and accompanying documents should be well researched, clearly and concisely written, and vigorously argued. In most situations, the attorney generally should seek oral argument on all motions.

Discovery practice

Good practice requires that the attorney prepare a discovery plan that identifies facts, information, evidence, and their probable sources. The discovery plan should establish a tentative time frame for pursuing discovery so that the client's cause is pursued in an efficient and effective manner. The plan should include a strategy for using both informal and formal, where appropriate, discovery processes.

Supervising attorneys should review discovery plans with student attorneys to assure that the students understand the appropriate use and sequencing of various discovery devices, in terms of costs and effectiveness, and that they appreciate the various alternatives for obtaining the facts, information, and evidence needed to prosecute or defend the client's cause.

When formal discovery devices are used, the supervising attorney should assure that the student attorney's work is thoroughly prepared. Does the discovery adhere to the rules of procedure and

local practice norms, if appropriate? Is the discovery artfully crafted to have the best chance of obtaining unambiguous responses to the requests made?

When responding to an adversary's discovery requests, the supervising attorney should assure that the student attorney prepares the response promptly, honestly, and accurately without making inadvertent, damaging disclosures, or admissions.

In situations where requests for discovery are likely to cause discomfort or inconvenience to third parties, it is good practice for the attorney to consult with the client with respect to the planned discovery before it is sought to apprise the client of the likely consequences of the discovery request on third parties, and to gain explicit permission to engage in the discovery, if appropriate.

While discovery practice is in part an art, it is appropriate to use model interrogatories and requests for admission in some cases as guides to student attorneys as they craft discovery requests. The program/clinic should maintain, and instruct students in the proper use of, model interrogatories and requests for admission. ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 5.3-4 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.11-4 (2006).

Trial practice

For all cases tried to a tribunal by student attorneys, the supervising attorney should assure that the student fully understands the rules of evidence, procedure, and local practice relevant to the matter. The supervising attorney should assure that the student attorney is fully familiar with all relevant facts and legal issues in the case.

“Witnesses should be thoroughly prepared to assure they can recall important facts about which they will testify and to reduce an anxiety they may feel about the trial.” ABA, *Standards for Providers of Civil Legal Services to the Poor* Stds. 5.3-5 (2002); ABA *Standards for the Provision of Civil Legal Aid* Stds. 7.11-5 (2006).

The supervising attorney is responsible for assuring that the student attorney is prepared as completely as possible to anticipate factors that will affect the outcome of the trial. Likely disputes regarding the admissibility of evidence should be anticipated, and arguments for admission or exclusion should be rehearsed, or motions *in limine* used to resolve the disputes before trial. Pre-trial motions should be anticipated and responses prepared. Possible impeachment evidence should be prepared.

The supervising attorney should assure that the student attorney is fully prepared to *voir dire* the jury according to the rules of the tribunal, deliver a well-crafted opening statement, conduct direct- and cross-examination of witnesses, present and object to evidence, move for appropriate relief during trial, prepare appropriate jury instructions, and deliver a well-crafted closing argument.

Where judgment has been given for the client after trial, dispositive motions, or settlement, the supervising attorney should assure that the student attorney has taken the necessary steps to ensure that the client receives the benefit conferred by moving for judgment, where appropriate, and doing what is necessary to collect on any judgment.

Post-trial motions and appeal

In a jury trial with a verdict adverse to the client, the attorney should poll the jury regarding its verdict to be assured that the verdict is an accurate reflection of the jury's decision.

Where permitted by the jurisdiction, the supervising attorney and student attorneys should speak with the jurors after they have been discharged by the judge, to explore their reactions and criticisms of the trial and the performance of counsel.

The supervising attorney should prepare the student attorney adequately to make all appropriate post-trial motions on behalf of the client.

The supervising attorney should prepare the student from initial case planning through trial preparation to preserve factual and legal issues for appeal. Preparation should enable the student attorney at

the trial or hearing to create a trial record that will sustain positions taken on appeal. Students must be prepared to make timely objections and offers of proof during trial when necessary to assure the reviewability of issues that may affect the outcome of the appeal.

If no appeal is undertaken, either because the client decided not to authorize an appeal, or because the program/clinic, after notifying the client and protecting the client's right to appeal, decides not to represent the client further, a document signed by the client acknowledging the decision not to appeal should be obtained and placed in the case file.

If an appeal is undertaken, the supervising attorney should assure that all documents are prepared completely, accurately, and in a timely manner so that the client's interests are fully and vigorously represented.

Where student attorneys appear on behalf of the client at the appellate argument, the supervising attorney should ensure that the student is fully prepared on the facts and the law to present the case to the panel in the best possible light for the client. The attorney conducting the oral argument should be rehearsed repeatedly until a high state of readiness and confidence is obtained. ABA, *Standards for Providers of Civil Legal Services to the Poor* Stds. 5.3-7-8 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.11-7 (2006).

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Stds. 5.3 et seq. (2002), ABA, *Standards for the Provision of Civil Legal Aid* Stds. 7.1 et seq. (2006).

3.19. Administrative Hearings

3.19.1. Where the clinic represents clients in adjudicatory administrative hearings, is the representation effectively carried

out in a manner appropriate to the procedures and practices of the hearing tribunal?

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor* Std. 5.4 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Std. 7.12 (2006).

3.20. Legislative Representation

3.20.1. Where the clinic represents clients before a legislative body, is the representation appropriate to achieve client objectives?

Commentary

Some programs or clinics will focus their activities on advocacy before administrative agencies or tribunals, or in representing clients' interests in legislative forums. Others will make appearances only where the interests of a specific client require it to best pursue the client's claim. In either case, the program or clinic must provide adequate instruction in the procedures of the forum for student attorneys to represent a client's interests competently and confidently. For programs and clinics that routinely appear before administrative agencies or tribunals, or before legislative bodies, the instruction should be pervasive and continual. For others, it is the responsibility of the supervising attorney to assure that the student attorneys are well prepared to conduct themselves in a competent manner before the body. Where the requisite level of skill and knowledge cannot be achieved within the time-frame necessary to adequately represent the client's interests, the program/clinic should refer the matter to other counsel, or retain expert assistance.

The program/clinic, especially when it is not separately incorporated as a tax-exempt organization, must ensure that it complies with the requirements and limitations on legislative advocacy set forth in the Internal Revenue Code and accompanying regulations. I.R.C. §501(h); 26 C.F.R. §1.501(c)(3) (limitations on lobbying) The program/clinic also must be careful to comply with the laws pertaining to the registration and regulation of lobbyists, where applicable to the practice of the program/clinic. *See, e.g.*, 2 U.S.C. § 1601 *et seq.*

Effective representation of clients before legislative bodies involves the same lawyering skills as representation in judicial forums, but each legislative body will have its own set of procedures and informal processes. Therefore, programs/clinics will want to assess the student attorneys' prior knowledge of practice and procedure before the administrative or legislative bodies, and tailor instruction to bring each student's knowledge and skills to a level sufficient to adequately represent a client before the body.

Resources

ABA, *Standards for Providers of Civil Legal Services to the Poor*, Std. 5.6 (2002); ABA, *Standards for the Provision of Civil Legal Aid*, Std. 7.13 (2006).

3.21. Community Legal Education

3.21.1. When appropriate, does the program integrate community legal education into the service delivery scheme of some or all clinics to complement the direct representation of clients in priority areas?

3.21.2. Are the objectives of the community legal education effort clear and reasonable?

3.21.3. Is the approach designed to educate its target population effectively?

3.21.4. Does the program appropriately use written material, videos, computers, other audiovisual technology, and in-person presentations?

3.21.5. Does the program evaluate the effectiveness of its community legal education in terms of numbers of clients benefitted, the actual learning, and the accomplishment of client or community service objectives?

3.21.6. To the extent that the program facilitates self-help or *pro se* efforts, does it have in place adequate capacity and resources to carry out such work?

3.21.6.1. Does it compile available relevant information on the strengths and weaknesses of such *pro se*, self-help efforts?

3.21.6.2. Does the program effectively inform and assist its intended audience?

3.21.6.3. Does the program regularly assess the effectiveness of such efforts, evaluating whether the potential dangers and weaknesses of *pro se* approaches have been overcome, and whether program and client objectives are in fact being met effectively, consistent with applicable rules and decisions of professional responsibility?

Commentary

A program/clinic may choose to engage in community legal education to achieve pedagogical goals, service goals, or both. Before engaging in community legal education, the program/clinic should

establish clear goals and objectives, and criteria for evaluating the achievement of each goal or objective.

The program/clinic should monitor its community legal education efforts and adjust the goals, objectives, and practices in light of experience. Monitoring may be done through self-evaluation, use of outside evaluators, client-satisfaction surveys, student-satisfaction surveys, focus groups, and interviews with persons with whom the target audience interacts before and after training. Monitoring should be an ongoing part of the community legal education program, but the program/clinic should engage in a more extensive, assumption-questioning review on a regular basis, such as every two or three years.

Effective community legal education requires close attention to the literacy and sophistication of the target audience, predominant language or languages spoken by the target audience, the time and economic resources available to the target audience, and the skills or information being conveyed. Each of these factors must be considered both individually and collectively when designing effective community legal education programs.

Resources

ABA, *Standards for Providers of Legal Services to the Poor* Std. 5.7(2002); see Kamina A. Pinder, *Street Law: Twenty-Five Years and Counting*, 27 J.L. & Educ. 211 (1998).

3.22. Community and Economic Development

3.22.1. Does the program have adequate expertise in pertinent substantive law and the requisite skills and resources to achieve client objectives in the creation and operation of economic development entities?

Resources

ABA, *Standards for Providers of Legal Services to the Poor* Std. 5.8 (2002); ABA, *Standards for the Provision of Civil Legal Aid* Stds. 7.15–7.16 (2006).

3.23. Law Reform

3.23.1. Does the program have a law reform agenda?

3.23.1.1. If so, how effective is the program in promoting this agenda?

3.23.1.2. Is it an outgrowth of the needs of the client population served by the clinic?

Resources

ABA, *Standards for Providers of Legal Services to the Poor* Std. 5.8 (2002).

3.24. Other Program Activities

3.24.1. Consistent with its goals and priorities, and within the limits of available resources, does the program pursue other activities on behalf of its eligible client community that have a beneficial effect on systemic legal problems of the eligible client population?

3.24.2. Does the program maintain communications with the judiciary, organized bar, government agencies, other academic programs, research centers, state and national legal services programs and support centers, and other organizations working on behalf of the client population?

Commentary

Each program/clinic activity should contribute to the overall program/clinic goals. Each activity should be monitored and evaluated regularly to assure that it is cost effective and achieving the outcomes that it is designed to effect.

Regardless of the nature of program/clinic activities, it is good practice to promote and maintain open communications with the judiciary, organized bar, government agencies, other academic programs, research centers, state and national legal services programs and support centers, and other organizations working on behalf of low-income people. Each program/clinic should decide how best to promote and maintain communication. The program/clinic should seek to achieve open, frank, and mutually beneficial relationships. Among other things, the program/clinic may regularly solicit comments from the organizations with whom it works or is allied regarding the working relationships and the effectiveness of its work. Members of the program may participate as members, officers, or board members of other organizations. Members and staff from other organizations may be invited to participate in the educational activities of the program/clinic or in the life of the law school or university generally. The program/clinic may offer its expertise to train or educate the members and staff of other organizations in areas needed by those entities.

3.25. Results of Representation

3.25.1. In every matter undertaken by the clinic, are the results of representation achieved consistent, to the extent possible, with the client's objectives?

3.25.2. Were the results achieved as much as were reasonably attainable for the client, given all of the circumstances of the case? Also, consistent with applicable rules and decisions governing professional responsibility, have the results achieved

as much as reasonably possible for other low-income people similarly situated?

3.25.3. Quantity of service provided.

3.25.3.1. After accounting for the pedagogical goals of the program, are the number of cases closed reasonable in relation to the program's expenditures on direct legal representation, the numbers of staff allocated to direct legal representation, and the program's strategic mix of "brief representation" cases versus extended representation" cases?

3.25.3.2. After accounting for the pedagogical goals of the program, is the number of people served via non-representation strategies reasonable in relation to resources devoted to them?

3.25.4. Quality of services provided.

3.25.4.1. Are clients served with dignity and sensitivity?

3.25.4.2. Does the program take steps to assure confidentiality?

3.25.4.3. Are clients served in a timely manner?

3.25.4.4. Does the program take steps to assure full, zealous representation?

3.25.4.4.1. Do the program's clients express a high level of satisfaction with the services they have received and the manner in which they have been treated by the program?

3.25.4.5. Does the program evaluate its quality of representation by measuring the benefits that clients receive

from legal assistance during and after the provision of service?

3.25.4.6. Does the program have systems in place to monitor service quality and intervene, if necessary, when problems arise, including methods for case and/or work assignment, procedures for reviewing and supervising work of staff, procedures for reviewing and supervising work of volunteers involved in serving program clients and training and development for program staff?

3.25.4.7. Does the program evaluate its quality of representation by measuring the benefits it achieves from direct representation of groups by maintaining a breakdown of numbers of active cases and program hours expended by major benefits achieved, e.g., “Obtained incorporation/tax exempt status” and type of group represented, e.g., “Affordable housing group”?

3.25.4.8. Does the program evaluate its quality of representation by measuring the dollar benefits achieved by maintaining a breakdown of dollar benefits awarded to clients by type of benefits – e.g., SSI disability, child support and by nature of award, e.g., back awards versus monthly benefits going forward?

3.25.4.9. Does the clinic systematically canvass client opinion regarding the quality of representation? *See also supra* Commentary to § 2.6.3.

Commentary

The effectiveness of a clinical program must be measured in terms of pedagogical and representational outcomes. Is the program meeting its educational goals and objectives? Is the program “providing representation that responds to the identified legal needs of its clients

and accomplishes results that reflect their objectives?” ABA, *Standards for Provider of Civil Legal Services to the Poor, Stds. for Provider Effectiveness* p.99 (2002). Neither set of outcomes is easily measured. However, programs should endeavor to make their best efforts by collecting and analyzing relevant data on an ongoing basis and by adjusting their collection efforts and methods of analyses based on experience.

Most clinical programs/clinics do not have volume of client service as one of their program goals. Therefore, measures of program effectiveness typical of legal services programs such as numbers of cases closed in relation to program resources and number of people served via non-representation strategies usually are not appropriate for clinical programs/clinics. Of course, if the clinical program sees itself as a typical legal services provider, then these measures would be appropriate.

Typically, more important measures of effectiveness in terms of client service in clinical programs are whether clients are served in a timely manner, and with dignity and sensitivity, and whether the outcomes achieved for clients are consistent with high-quality representation.

Programs may evaluate whether clients are treated with dignity and sensitivity by asking clients for their perceptions of the program’s representation of them upon closure of their cases. Other sources of information of this measure can be surveys of judges, hearing officers, judicial and agency staff, and others who have the opportunity to observe the program’s faculty and student attorneys interacting with program clients.

Measuring whether outcomes obtained for clients are consistent with high-quality representation may be more problematic. Quality of representation outcomes may be expressed in terms of substantive outcomes typical for each type of case or representation and tied to high benchmarks for success set by the clinic for its representation.

For example, a clinic engaged in tenant representation may set as benchmarks for successful representation that:

1. No one represented by the clinic should lose possession involuntarily;

2. The client should get compensatory damages for conditions;
and
3. The dwelling unit should be in better condition after the client is represented, or the client should be in better housing that the tenant moved into voluntarily.

The benchmarks should be set based on experience over time and be realistic to achieve with appropriate resources and effort. If the benchmarks are set too low to satisfy diminished expectations of service, the effort may work to the detriment of clients. However, setting benchmarks unrealistically high may discourage the student and faculty attorneys and staff, and send a negative message to the law school administration about the worth and viability of the clinic. Benchmarks should be reviewed and revised periodically.

The clinic should collect outcomes data in specific cases and use the data to assess the extent to which the benchmarks set for each substantive area have been met. Data may be collected by use of paper forms or case management software at case closing. For example, in eviction cases, the data would include the following: Cal. Legal Advocates, *Guidelines for Using Client Case Outcomes*, available at www.calegaladvocates.org/library/attachment.75419 (last visited Sept. 16, 2014).

In some matters, such as representation in domestic violence cases, it is appropriate to monitor outcomes after representation has ended. For example, if a benchmark set by the clinic is to help its clients escape permanently from a battering situation, the clinic may decide to conduct a follow-up interview with the client after a period (e.g., six months) to determine if the client, for whom a civil protection order was obtained and a safety plan developed, is still in a safe environment.

3.26. Institutional Stature and Credibility

3.26.1. Does the program have an institutional stature and credibility that enhances its capacity to achieve pedagogical and client objectives?

3.26.1.1. What is the program's reputation in the community for quality of legal work?

3.26.1.1.1. What is the basis of this reputation?

3.26.1.2. What has the program's legal work accomplished? What are the long-term results for the client community?

3.26.1.3. Are staff members respected by other members of the bar in general?

3.26.1.4. Are staff members considered to be vigorous advocates for their clients? Are staff members considered to be worthy opponents by other members of the bar when they litigate a case or negotiate on behalf of a client?

3.26.2. Is the program held in high regard by the relevant academic community?

3.26.3. Are the faculty of the clinical legal studies curriculum well regarded in their relevant academic community?

3.26.4. Do the clinical legal studies faculty participate actively in professional organizations relevant to clinical legal education?

3.26.5. Are the clinical legal studies faculty in leadership positions in professional organizations relevant to clinical legal education?

3.26.6. Do the clinical legal studies faculty contribute to the reputation of the program and the law school by producing high-quality scholarship?

Commentary

Most clinical programs and their parent law schools and universities value institutional stature and credibility. Clinical programs will have a reputation for the quality of legal work in the relevant client community and within the legal community. Clinical programs also will have a reputation for quality of legal education within the academic community.

With respect to reputation within the client community, programs can gauge that reputation somewhat based upon the number of new clients referred to the program by current and former clients. Other sources of information about reputation in the client community can come from surveys and interviews with community and religious leaders who interact with the client community on a day-to-day basis.

The program's reputation among the legal community can be determined through surveys and interviews with opposing counsel, local bar leaders, including leaders of the legal services community, judges and hearing officers before whom the program's attorneys appear.

A program's reputation in the academic community generally follows the participation of the program's faculty in professional organizations relevant to clinical legal education. To have a reputation, the program must be known to the academic community. This is achieved through leadership roles in the AALS Section on Clinical Legal Education, the Clinical Legal Education Association, and through participation as a presenter at conferences and workshops that cater to clinical legal educators.

APPENDICES

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4.0 EXTERNSHIPS

The guidelines on externships are derived from a variety of sources including, principally, my own experiences in coordinating a large externship program at Columbus School of Law, The Catholic University of America, for fifteen years. I identify other sources that suggest the same or similar guidelines in the Resources section.

Most American lawyers were trained by reading the law in the offices of other lawyers through the first few decades of the 19th century. Legal education involved years of apprentice-like training in a law office. Although the first American law school was founded in the 1780s, it was designed to provide apprenticeship experience to groups rather than to teach law to individuals in a university setting.

By 1830, university training of lawyers was beginning to push aside the apprenticeship model. In the university, legal training consisted of the study of treatises and lectures until the 1870s, when Dean Langdell at Harvard introduced the method of analyzing appellate case decisions. The case method of instruction became and remains the dominant method of instruction in American law schools. It was not until the late 1960s and early 1970s that many law schools began to create clinical legal education programs, which put practical training for law students back into the educational model. Spurred by grants from the Ford Foundation, law schools began to create legal aid and defender clinics and other in-house, live-client clinics to provide practical training to law students and service to indigent clients.

The *Report of the Committee on the Future of the In-House Clinic* described the method of teaching this way: “students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problem in role; the students are required to interact with others in attempts to identify and solve the problem; and . . . the student performance is subjected to intensive critical review.”

In live-client, in-house clinics, the “problem” may involve real situations rather than simulated ones, and the supervision and review

of the students' work is undertaken by clinical teachers rather than by practitioners outside of the law school. In-house, live-client clinics, to a greater or lesser degree, tend to pursue several teaching goals. These include the following: (1) developing modes of planning and analysis for dealing with unstructured situations; (2) providing professional skills instruction; (3) teaching means of learning from experience; (4) instructing students in professional responsibility; (5) exposing students to the demands and methods of acting in role; (6) providing opportunities for collaborative learning; (7) imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people; (8) providing the opportunity for examining the impact of legal doctrine in real life and providing a laboratory in which students and faculty study particular areas of law; and (9) critiquing the capacities and limitations of lawyers and the legal system.

As the student demand for relevant, practical legal training grew, additional resources were diverted from traditional legal education to in-house, live-client clinics. Because clinical teaching requires a higher teacher to student ratio, law school administrators felt the squeeze of responding to increased demand with limited resources. Many schools responded by increasing the opportunities for students to gain some form of clinical experience through externships.

Externships also allow students to confront problem situations of the sort that lawyers confront in practice, and students may deal with some of these problems in role. Where student performance is subject to intensive critical review, the critique usually is performed by the fieldwork supervisor on particular projects. The faculty supervisor, rather than acting as a coach on discrete tasks performed at the externship, is more likely to guide the student through the process of reflecting on the fieldwork experience.

Externships share many of the teaching goals of in-house, live-client clinics. Some high credit-hour, closely supervised externships resemble in-house, live-client clinics. In most externship programs, however, students are given far less responsibility for client representation than is available through an in-house clinic. On the other hand, externships may provide students with unparalleled

opportunities to define and pursue learning goals, to explore career interests in a variety of legal jobs, and to build a professional network.

Through the externship program, the innovative teaching methodology of clinical education helps to reclaim the benefits of the apprenticeship programs of the last century and assists the student in learning how to apply the knowledge acquired in the classroom.

4.1. Does the Externship Program Have Articulated Curricular Goals, Policies, and Procedures That are Clear and Consistent With the Law School’s Mission, Location, Curriculum, the Students’ Perceived Interests and Needs, and the Placement Sites’ Requirements?

4.1.1. Are the program goals translated into measurable outcomes?

4.1.2. Does the program disseminate to all potential students and placements the goals, benefits, eligibility criteria, application procedures, and other policies for the program?

Commentary

Externships, also called internships or fieldwork placements, involve law students receiving academic credit for work typically done outside of the law school, where the work is supervised by someone at the placement site who is not a member of the law school faculty. Some programs place limits on the nature of the placement or the work. For example, a program may limit externships to government or public interest placements or to *pro bono* work, if the placement is at a private law office. Other programs permit placements at a wide range of workplaces. These decisions should be made by the individual law school, taking into account the law school’s specific mission, location, and curricular needs.

Although the primary objective of most externship programs is the enhancement of the student's learning through experience, the program also may have other institutional goals. For instance, the law school may want the externship program to: (1) forge partnerships with individuals and organizations that are potential employers of the school's graduates; (2) it may conceive of the externship program as one means of providing legal services to the community in which it is located; and (3) it may see the externship program as an aspect of the curriculum to feature in recruiting prospective students. With respect to general student learning goals, the program may identify, as goals of the program, helping students to learn from experience, fostering professionalism, and encouraging reflection on the students' future careers.

The institutional goals must take account of the reasonable expectations of the placement sites. In small or targeted externship programs, the placement site may be asked to participate in articulating the goals.

The program goals selected by the institution should be translated into measurable outcomes so that the students can determine whether, and to what extent, they are making progress toward achieving the goals and so that the program can evaluate whether the program design is satisfactory. Each outcome defines the criteria that students are to demonstrate in order to meet the intent of the stated outcome. For example, if one general goal for students in the program is to demonstrate professional responsibility, the student may be asked to identify and describe the professional expectations within the placement organization and act accordingly. The student may be asked to describe the relationship between the organizational expectations and the relevant professional standards, such as the Rules of Professional Conduct adopted by the jurisdiction in which the organization is located. The student may be asked to provide evidence that he or she recognized the broader implications and meaning of the work he or she has done at the externship placement.

There are three pillars to a successful externship experience. First, the student must be prepared and motivated to benefit from the experience. Second, the law school must provide support and educational value to the student and support to the fieldwork

supervisor. Third, the fieldwork placement must be willing and able to provide the student with the appropriate range and depth of lawyering tasks and with high quality guidance, critique, and feedback through a supervisor motivated to provide these.

For an externship program to benefit the most students, the program goals, objectives, benefits, eligibility criteria, and application procedures must be widely and frequently disseminated to all potential students and placements. In addition, the program should articulate and communicate the respective responsibilities of the student extern, faculty supervisor, and the placement and fieldwork supervisor. There must be regular and meaningful communication among the parties to ensure that the goals of each party are met.

4.2. Are the Program's Design, Structure, and Resources Congruent with the Program's Goals?

4.2.1. Does the structure and implementation of the program add substantial value to the student's educational experience beyond what the students would gain in the same placements if the law school did not participate?

4.2.2. Does the program clearly articulate and communicate to each student, faculty supervisor, and placement and fieldwork supervisor each party's respective responsibilities in the externship relationship?

4.2.3. Does the program promote regular communication among the student, faculty supervisor, and fieldwork supervisor sufficient to facilitate the goals of each party?

4.2.4. Does the program have an effective method of assuring that the placement decision, whether made by the program, the student, or jointly, is made after appropriate consideration of relevant factors such as the student's individual learning goals, previous fieldwork experiences, work environment at the placement, nature of tasks available, etc.?

4.2.5. Does the program prepare each student for effective task performance and learning at the placement prior to beginning the externship through a pre-placement workshop, seminar, or equivalent device?

4.2.6. Does the program require each placement site to conduct an orientation to the culture, structure, environment, policies, available resources, and other relevant information about the placement that will help the student acclimate to the experience?

4.2.7. Does the program require each student to show proof of adequate health and accident insurance as appropriate to the placement?

4.2.8. Does the law school or placement site provide professional malpractice insurance to the student as necessary?

4.2.9. Does the program or student extern communicate to the placement and fieldwork supervisor the student extern's learning goals, skills, and need for accommodation, if any, before the student begins work at the placement?

4.2.10. Does the program include structured opportunities for students to reflect critically on their placement experiences through, for example, a contemporaneous seminar or system of faculty tutorials within which faculty and students explore topics related to the educational goals of the program and the students, and the fieldwork experiences of the student?

4.2.10.1. Does the program maintain a student-to-faculty ratio of 16:1 or lower in the seminar component?

4.2.10.2. Does the program maintain a student-to-faculty ratio of 10:1 or lower when faculty supervision is done by tutorial meetings?

4.2.10.3. Does the program publish to the students the criteria on which their performance in the seminar or tutorial will be evaluated for awarding course credit?

4.2.11. Does the program have adequate human and financial resources to accomplish its goals?

4.2.11.1. Does the program have sufficient administrative support given its size and mission?

4.2.11.2. Is the program's budget adequate to support its mission?

Commentary

To justify tuition charges and the award of course credit for an externship placement experience, the law school is obligated to provide value added to the student's experience at the placement. The value is commonly supplied by providing structured preparation for the placement experience and structured reflection on the placement experience through discussion, writing, reading, and guided observation.

The law school must have an effective method for assuring that the placement decision, whether made by the program, the student, or jointly, is made after careful consideration of all relevant factors. These factors include: the student's individual learning goals, the program's goals, the student's previous fieldwork experiences, and the general level of preparation for the experience. Additionally, careful consideration should be given to the work environment at the placement, including the presence of a qualified fieldwork supervisor, the nature and appropriateness of the tasks available to the student, the nature and appropriateness of the supervision, and logistical considerations such as the time available to the student for work at the placement in light of other academic and personal commitments, safety concerns, and travel considerations.

If the program makes the placement assignment or makes it in consultation with the student, it needs a mechanism by which to collect and analyze the data about the student and the prospective placement, so that the program is confident that the placement will achieve most of the articulated program and student goals.

If the student makes the placement decision on his or her own, the program needs a mechanism in place for reviewing the appropriateness of the decision, both at the outset of the placement and, periodically, throughout the term of placement.

To benefit most from a placement experience, each student should be prepared, prior to beginning the placement, to work effectively at the placement and to learn from the experience. Prior to approving a placement, the program should assess the student's motivation and other factors such as prior experience and prior course work to ensure that the student has the tools necessary to succeed at the placement. Depending upon the student's level of sophistication and the nature of the tasks the student will be asked to perform at the placement, some form of pre-placement orientation is usually advisable. At a minimum, the law school should ensure that each student is given an orientation to the placement, either by the placement or by the program itself, that provides fundamental knowledge the student needs to negotiate the placement. The student should be provided with information on the culture, structure, work environment, policies, and available resources of the placement site.

In addition, the student should be given some instruction on how best to learn from the experiences he or she is likely to have at the placement. Frequently, instruction of this sort is provided in a seminar that is offered contemporaneously with the fieldwork experience; but a better practice would be to ensure that the student already has self-directed learning skills or is given some instruction in self-directed learning before he or she begins the fieldwork. The remainder of the seminar can then be used to reinforce these skills, and can be used for other purposes.

Good practice dictates that the student's learning goals and objectives and his or her skill levels be communicated to the placement prior to acceptance of the student as an extern, or as soon thereafter as is practicable. This information may be shared with the

placement through a pre-engagement interview between the prospective extern and the placement. Students should be encouraged to have such an interview with the prospective placement even when it is not required by the placement. In the absence of a pre-placement interview or other communication, such as an application letter and résumé, the program can require the student to share with the fieldwork supervisor a copy of a written individualized learning plan (ILP) developed by the student with the guidance of the faculty supervisor. Even where a pre-engagement interview or other communication between the student and the placement took place, sharing with the fieldwork supervisor a copy of the written, individualized learning plan can facilitate the student's learning and obviate misunderstandings about the opportunities available at the placement to assist the student in fulfilling his or her externship goals and objectives.

Although a great deal of learning is possible, and likely, from the fieldwork experiences alone, a seminar or faculty tutorial should be offered contemporaneously with the fieldwork experience. This is because the reflective component of the externship experience is most useful when it is purposeful and continuous throughout the experience and when an opportunity for feedback from an instructor outside of the placement relationship is provided. In the seminar or tutorial meetings, students and faculty can explore a range of topics related to the educational goals of the program and the student. The seminar or tutorial offers an opportunity for the student to step back from and reflect on the fieldwork experiences and to process them cognitively and emotionally. When students are asked to think about their own goals and progress in an externship experience, they have the opportunity to improve self-assessment skills that can assist them in learning better from experience. Also, they can acquire insights that assist them in building on their strengths, setting goals in areas where further improvement is needed, and refining their career goals.

The appropriate student-faculty ratio for seminars and tutorials depends on a number of factors, including the nature and complexity of instruction and the other work-load responsibilities of the instructor. Because seminars and tutorials often are designed as opportunities for students to reflect publicly on their externship

experiences, the number of students assigned to each section of the externship program must be limited to allow sufficient time within the seminar or tutorial for each student to be heard on a regular basis. As with most other skills courses, a student-faculty ratio of 16:1 in seminars and 10:1 in tutorials is usually a reasonable number.

Although most externship programs grade the fieldwork component of the externship course on a pass/fail or credit/no credit basis, many programs assign a letter or number grade to the contemporaneous seminar or tutorial. Regardless of whether the seminar or tutorial is evaluated on a pass/fail or graded basis, the students should be given notice, prior to enrollment in the externship, of the criteria by which their performance in the seminar or tutorial will be evaluated.

Where the seminar or tutorial is evaluated on a pass/fail basis, some programs have created a grading matrix that assigns points for each journal, time sheet, evaluation form, learning agenda, or other required submission. Points may be deducted for each day the submission is late. Students must receive a percentage (i.e., 70%) of the available points to earn a passing grade. Another program provides that failure to submit more than one required journal entry, any timesheet, or the end-of-semester evaluation form will result in a failure under its pass/fail system. Other programs use a Satisfactory Plus, Satisfactory, Satisfactory Minus, Fail, or similar scale (i.e., Exceptional, Satisfactory, Unsatisfactory; or Pass, C-, or Fail).

Where the seminar or tutorial grade is a letter or number grade, programs have adopted various criteria for evaluation. Common components of the evaluation of performance in the seminar or tutorial are the quality of assignments such as journals, time reports, and presentations; class participation; and attendance. Ideally, the seminar or tutorial grade should be based on an assessment of student learning gained through participation in the seminar or tutorial.

The externship program must be funded adequately to fulfill its mission within the curriculum. A part-time or full-time administrative assistant may be necessary to perform the many administrative tasks associated with the operation of an externship program, including contact with prospective students and placement sites; preparation of correspondence between faculty and students, faculty or program

administrator, and placement or fieldwork supervisors; maintenance of informational materials and databases; and maintenance of externship records, to name a few. There must be adequate office space, file storage, computing equipment, and budget for supplies.

4.3. Does the Program Provide Students With Course Credit that is Commensurate With the Credit Given in the Rest of the Curriculum for Comparable Expenditures of Student Effort?

Commentary

In order to justify the award of course credit and the receipt of tuition for externship credit hours, the law school must assure itself that it is providing value added to the experience of the student externs at the placement. Otherwise, students are being charged for work done outside of the law school, which, although valuable to the student, has no law school input other than to authorize the student to work at the placement. Course credit for externships should be commensurate with credit given in the rest of the curriculum for comparable expenditures of student effort. Credit for fieldwork frequently is awarded at the rate of one credit hour for each fifty or sixty hours of time devoted to assigned tasks at the placement during a semester. Additional credit hours for the seminar or tutorial portion of the externship course should be awarded in a manner consistent with credit determinations in seminars generally. The most recent survey of externship programs found that most programs require between three and five fieldwork hours per week per credit. These figures translate into fifty-two to eighty hours of fieldwork per semester per credit.

4.4. Relationship With Placements.

4.4.1. Does the program provide appropriate oversight of each student's experience at each placement to determine that the student is being exposed to authentic and challenging

experiences, appropriate role models, and instruction about law practice?

4.4.2. Does the program ensure that all fieldwork supervisors have the requisite motivation, training, and support to supervise externs properly?

4.4.2.1. Does the program reasonably compensate or otherwise recognize fieldwork supervisors to ensure commitment to the program goals and the educational needs of the student externs under their supervision?

4.4.2.2. Does the program offer training to new fieldwork supervisors in the methods and theory of supervision?

4.4.2.3. Does the program provide continuing education opportunities for fieldwork supervisors to enable them to improve their supervision of externs?

4.4.3. Does the program provide information, in a timely manner, to the placement site and to each fieldwork supervisor regarding the program's expectations of them and their responsibilities to the program and to the students assigned to the placement?

4.4.3.1. Does the program have explicit, written criteria for approval of new field placement sites?

4.4.3.1.1. Does the criteria include suitability of work provided for students, adequacy of supervision by the fieldwork supervisor, and adequacy of working conditions for the students, including workspace and access to technology and library resources needed to accomplish the assignments?

4.4.4. Does the program guarantee that the number of students assigned to each fieldwork supervisor is appropriate to ensure

close supervision, feedback, and critique of all tasks assigned to each student?

4.4.5. Does the program monitor placements to ensure that each placement site provides each student with the physical space and materials necessary to perform all assigned tasks?

4.4.6. Does the program monitor placements to ensure that the time commitments demanded of the students by the placements are appropriate and that the placements work with the students to help them fit their externship hours into their academic schedule?

4.4.7. Does the program monitor placements to ensure that the work assigned to students is appropriate to meet the goals of the program, the student, and the placement site?

4.4.7.1. Is the work assigned to the extern substantive legal work of the same type done by the permanent legal staff of the placement?

4.4.7.2. Is the work assigned to the extern appropriate to meet the personal learning goals of the student and the institutional goals of the law school?

4.4.7.3. Is the work assigned to the extern of increasing complexity as the student demonstrates capacity for greater intellectual challenges?

4.4.8 Does the program periodically review with fieldwork supervisors the progress of each extern?

4.4.9. Does the program periodically review the performance of each fieldwork supervisor in fulfilling the requirements of the program to the externs and to the program itself?

4.4.10. Does the program have procedures in place to facilitate the resolution of any problems among the student, law school, and placement?

4.4.10.1. Are the procedures written and published to all parties?

Commentary

The appropriate level of law school oversight of placements depends on several factors; the most significant being the nature of student contact with clients. Other factors are also important, including the physical safety of the student externs and the level of instructional responsibility given to the field placement supervisor. Since the level of oversight can be viewed as a continuum, some guidance is appropriate: where a student is permitted to take on client representation responsibilities, the law school should exercise the highest level of oversight with respect to the field placement; where the student work is primarily legal research for the field placement supervisor that is reviewed and independently evaluated before it is used on behalf of clients, a lesser degree of law school oversight is necessary; and where the student is engaged primarily in observation of lawyering activities, the lowest level of oversight is called for. However, even where observation is the primary activity of the student externs, some oversight by the law school is called for to ensure that the externs are not exposed consistently to poor lawyering without a guided reflection and critique of what is being observed.

The program should ensure that all fieldwork supervisors have the requisite training, support, and motivation to supervise students properly. In programs with a limited number of placements, the program may choose to conduct training sessions for their fieldwork supervisors. In programs with a large number of distinct placements, and especially in programs where different placements may be available from semester to semester, it is unlikely that the program can reach all potential fieldwork supervisors with training sessions. Under these circumstances, the best the program can do is to provide

information to the fieldwork supervisors about the program's goals, objectives, and expectations; provide support for the fieldwork supervisors by circulating written materials on the supervisory relationship; and designate a contact person within the program who is available to fieldwork supervisors who desire more information on working effectively with student externs. Written materials can include manuals and tip sheets that highlight the differences between externs and employees, discuss the mentoring role of the fieldwork supervisor, provide tips for selecting projects, highlight the importance of the learning agreement, and review some common problems and solutions in externships.

The program should monitor the fieldwork placements to ensure that the number of externs assigned to any one supervisor is sufficiently low to ensure close supervision, feedback, and critique on all tasks assigned to the student, and that the physical resources in terms of space, computers, telephones, and other materials needed to perform assigned tasks are available to the student. The program also should monitor placements to ensure that the tasks given to each student are assigned, at least in part, with the educational goals of the student in mind. The program should have a mechanism, such as detailed time records filed by the extern with the faculty supervisor, for monitoring the task assignments at each placement to ensure that the tasks given to each extern are appropriate with respect to the skill level of the student and with respect to the goals of the student and the program. Where assignments are found consistently to be inappropriate, the program should have a developed strategy for correcting the problem.

Monitoring of fieldwork placements may be done in a variety of ways. Although the *ABA Standards for the Accreditation of Law Schools* exhibits some preference for on-site visits to monitor externships, this is frequently not necessary or even particularly effective. It is more important that the program administrator impress upon students and fieldwork supervisors alike that the administrator is open to help resolve any problems that arise during the course of the placement experience and to receive and value student evaluations of the placement at the end of each student's involvement.

Where the extern is engaged in client representation as permitted by the jurisdiction's student practice rule, heightened monitoring, including on-site visits, may be called for. Even in these circumstances, the level of scrutiny may vary – more when the extern is placed with an inexperienced sole practitioner and less when the student is working in the office of the state's attorney trying misdemeanor cases under the supervision of an experienced assistant state's attorney. The program administrator should assess the need for monitoring of each placement on an individual basis taking into account the nature of the tasks that the extern is asked to perform, the level of oversight given to the extern by the fieldwork supervisor, the level of experience the fieldwork supervisor possesses with the tasks to be performed by the extern, and the relationship between the program and the fieldwork supervisor.

Each program should develop and use a valid and reliable instrument for the extern to conduct a summative evaluation of the placement and fieldwork supervisor at the conclusion of the placement. Topics included in the instrument should include the extern's assessment of the adequacy of the physical environment; the appropriateness and clarity of assignments (both in terms of relevance to the work of the placement and relevance to the educational goals and objectives of the extern); the nature, extent, and effectiveness of feedback from the fieldwork supervisor; the accessibility of the fieldwork supervisor; unanticipated opportunities for learning; and the appropriateness of the fieldwork supervisor's attitude toward the extern.

Occasionally, substantial changes to a student's placement experience become necessary. The program should have developed policies and procedures that guide the student, faculty supervisor, and fieldwork supervisor when major changes, such as changing placements, are necessary. Students should be made aware of the responsibility and authority of the faculty supervisor to intervene in the relationship between the student and the fieldwork supervisor to preserve the integrity of the program, to safeguard the physical or emotional health of the student, or to ensure the educational value of the experience to the student.

In most programs, the fieldwork supervisors are uncompensated by the program for their supervision of externs. The program should have some mechanism for recognition of the valuable work of the fieldwork supervisors. At a minimum, the program should communicate its appreciation to each fieldwork supervisor at the end of each placement. In small programs, an end-of-year luncheon may be an appropriate way to thank the fieldwork supervisors for their work on behalf of the students and the program.

4.5. Role of the Faculty Supervisor.

4.5.1. Does the faculty supervisor regularly engage each student, throughout the student's term of enrollment, in a critical evaluation of the student's fieldwork experience?

4.5.1.1. Does the program have in place policies, procedures, and schedules to analyze each student's progress toward meeting identified learning and performance goals?

4.5.1.2. Does the program receive descriptive feedback on each student's progress from the fieldwork supervisor at least twice during period of enrollment?

4.5.1.3. Does the program have a mechanism for monitoring task assignments at each placement to ensure that the tasks given to each student are assigned with one purpose being to meet the educational goals of the extern?

4.5.1.4. Does the program specify how substantial changes, including a change of placement site, can be made to the student's placement experience when circumstances require it without sacrificing learning?

4.5.2. Does the program require each student to identify and memorialize, in an individualized learning plan (ILP), realistic goals, objectives, and outcomes for the experience?

4.5.2.1. Does the program require each student to consult with his or her faculty supervisor in drafting the student's learning objectives for the externship?

4.5.2.2. Does the program require each student to consult with his or her fieldwork supervisor in drafting the student's learning objectives for the externship?

4.5.2.3. Does the program require each student to submit to the student's fieldwork supervisor a copy of the final draft ILP?

4.5.2.4. Does the program have policies and procedures for encouraging the student to make changes to the ILP in order to accommodate changing circumstances or changes in expectations by the student or the placement?

4.5.2.5. Does the program have established baselines and benchmarks against which to measure student progress?

4.5.2.6. Does the program employ multiple tools and strategies to obtain the most effective and reliable data on each student's progress toward goals?

4.5.2.6.1. Is the data clear, measurable, and related to the tasks and initial or modified goals of the student?

4.5.2.6.2. Does the data include evaluation of non-confidential student work product?

4.5.2.7. Does the evaluation process document and value unanticipated outcomes?

4.5.3. Does the program have policies in place that ensure accuracy, reliability, validity, and fairness in grading if grading is part of the evaluation process?

4.5.4. Does the law school give faculty teaching-load credit for teaching or supervising externships, commensurate with the instructional responsibilities of other full-time faculty, in relation to the number of students served and the number of credit hours granted?

Commentary

To ensure that the externship program is providing educational value to the student, the program should require each student to identify goals, objectives, and realistic outcomes for the student's experience. The program should have developed baselines and benchmarks against which to measure student progress in meeting identified goals and objectives, and the method of assessment of progress should be appropriate to the item being measured. The student should have the primary responsibility for monitoring and assessing progress toward meeting the goals and objectives set forth in the student's ILP. The data used to measure progress toward initial or modified goals should include, as appropriate, review and evaluation of all non-confidential student work product, self-evaluation surveys, and written and oral communications from the fieldwork supervisor to the student and faculty supervisor.

The faculty supervisor should assist each student with drafting the student's ILP to ensure that the goals and objectives identified by the student for his or her externship are appropriate within the context of the course and with respect to the placement. The fieldwork supervisor should be involved with the student extern in drafting the student's ILP because it is the responsibility of the fieldwork supervisor to see that the extern has a reasonable opportunity to fulfill the student's stated objectives. The program may wish to require that the student submit to the faculty supervisor a copy of the completed ILP that has been annotated or initialed by the fieldwork supervisor.

The evaluation process should also be designed to document and value unanticipated outcomes. Because the full range of learning cannot be known or anticipated prior to beginning the field placement, the program's method of assessment of student learning should be able to recognize and value learning that was not included in the student's initial statement of goals and objectives.

Each extern should be engaged, throughout the term of enrollment in an externship placement, by a faculty supervisor in a critical evaluation of the extern's fieldwork experience. The engagement may occur through any combination of seminar, tutorial, and written reflection. Common devices for faculty/student interaction include structured or unstructured academic journals, critical incident reports or logs, reflective papers, progress reports, time records, portfolios, individual conferences, group conferences, telephone conferences, e-mail exchanges, and site visits. The faculty/student ratio must be sufficiently low to ensure that the faculty member has the time and other resources necessary to devote an appropriate amount of attention to each extern that the faculty member supervises.

If a seminar is part of the supervisory mix, enrollment should be limited to no more than 16 students in order to give each student sufficient supervisor attention and opportunity to participate in the seminar, especially where student presentations are part of the course design. Seminars should be designed to advance self-directed learning by the student. The faculty supervisor has the role of facilitator or consultant rather than content transmitter. Where individual tutorial meetings form the principal basis for faculty supervision of externships, a student/faculty ratio of no more than 10:1 is appropriate where externship supervision is only part of the course load of the faculty member.

Evaluation of the content and delivery of the seminar or tutorial portion of the course should be conducted at least as frequently and in the same manner as other courses in the curriculum. Where general course evaluations are not done or are inadequate, programs should develop valid and reliable student evaluations, peer evaluations, and review by expert consultants.

At least twice during the semester, the faculty supervisor should review with the extern the student's progress toward meeting the

program goals and student's individual goals. The program should require and facilitate each extern's reflection on the experiences gained through the placement for the purposes of facilitating learning from experience, improving performance on the type of tasks required at the placement, and thinking about career choices.

Grading externship experiences can be problematic because of the limited ability and authority of the faculty supervisor to observe and evaluate the work of the extern at the placement and because of the disparity of tasks and responsibilities among students, especially those placed in a wide variety of placements. For this reason, if the externship is graded on a numerical or letter system, frequently only the seminar or tutorial portion is graded, using the usual assessment indicia, such as evaluation of written work, oral presentations, attendance, and contribution. The fieldwork portion of the course is commonly graded on a Pass/Fail basis, which is assessed by evaluating whether the extern completed the required number of hours of fieldwork and whether the work was satisfactorily completed. A certificate from the fieldwork supervisor is commonly used to obtain the data regarding hours completed and satisfactory completion of work.

4.6. Role of the Fieldwork Supervisor

4.6.1. Does the program require each fieldwork supervisor to provide each assigned extern with an orientation to the placement, including providing information about the resources and mission of the placement site?

4.6.2. Does the program require each fieldwork supervisor to assist each assigned extern in developing individualized educational objectives that are appropriate to the work of the placement and that take advantage of all the experiences the placement has to offer the extern?

4.6.3. Does the program monitor whether each fieldwork supervisor assigns projects and tasks that are substantive,

authentic, and consistent with the institutional learning goals of the program and the individualized learning goals of the extern?

4.6.4. Does the program require each fieldwork supervisor to regularly engage each assigned extern in constructive, critical evaluation of the extern's fieldwork experience?

4.6.5. Does the program require each fieldwork supervisor to observe or review each assigned extern's performance of lawyering tasks at regular intervals?

4.6.5.1. Does the program require each fieldwork supervisor to provide each assigned extern with constructive feedback of the extern's performance of lawyering tasks designed to improve the extern's skills?

4.6.6. Does the program require each fieldwork supervisor to provide each assigned extern with constructive evaluations about the extern's general professional development?

4.6.7. Does the program require each fieldwork supervisor to communicate regularly with the externship faculty about each assigned extern's performance and progress in the placement?

4.6.8. Does the program communicate to each fieldwork supervisor that it expects the supervisor to model, for each assigned extern, the skills and attributes of a reflective and conscientious practitioner?

4.6.9. Does the program have in place a mechanism for reviewing the performance of each fieldwork supervisor with respect to its expectations for fieldwork supervisors?

4.6.10. Does the program have a protocol for working with fieldwork supervisors who it wishes to retain but whose performance with externs it finds somewhat deficient?

4.6.11. Does the program discontinue the services of any fieldwork supervisor who consistently fails to meet the standards for supervision required by the program?

4.7. Student Extern Responsibilities.

4.7.1. Is the student asked to articulate the specific knowledge that the student intends to demonstrate, apply, or have because of the placement experience?

4.7.2. Is the student asked to justify pursuit of the particular externship placement experience as opposed to another approach to learning the same skills or knowledge?

4.7.3. Is the student required by the program to identify specific objectives, tasks, activities, and other learning activities to be pursued at the placement prior to beginning the fieldwork?

4.7.4. Is the student required to articulate an appreciation for skills, values, and self-awareness necessary to be prepared for the placement experience?

4.7.5. Is there evidence that the student understands the time commitment necessary for successful completion of the externship experience?

4.7.6. Is the student required to articulate standards by which he or she intends to demonstrate achievement of personal learning objectives?

4.7.7. Is the student required to acknowledge the need for and plan for reflection?

4.6.8. Is the student required to share some of his or her reflections with others to enhance the others' effectiveness?

4.7.9. Is the student required to agree to be responsible throughout all stages of the fieldwork experience and to participate actively in his or her own learning?

4.7.10. Does the program ask the student to provide evidence that he or she sought additional learning opportunities, activities, or training to make the fieldwork experience more meaningful or successful?

4.7.11. Does the program ask for evidence that the student sought feedback from the fieldwork supervisor?

4.7.12. Does the program ask for evidence that the student routinely self-monitored his or her activities?

4.7.13. Does the program ask for evidence that the student changed goals, objectives, or tasks as necessary to achieve successful learning from the fieldwork experience?

4.7.14. Does the program require the student to document, in an accessible manner, the learning he or she achieved from the fieldwork experience?

4.7.15. Does the program require the student to submit a plan for further learning that draws on the results of the fieldwork experience?

Commentary

An externship program should require of student participants certain acknowledgments of responsibility for successful completion of the fieldwork placement experience and specific evidence and documentation of learning activities and outcomes.

Before engaging in the externship, a student should consider whether the learning outcomes sought by the fieldwork experience

might be achieved through another approach to learning, such as a classroom or live-client clinic experience, and, if so, the advantages and disadvantages of each approach. In order for the student to evaluate the appropriate learning method or mode, he or she must have a clear and articulated set of learning objectives in mind. The student also should have identified, with some precision, the tasks and other learning activities to be pursued at the placement that are intended to achieve the chosen learning objectives and outcomes.

Before engaging in the fieldwork placement, the student should appreciate the skills, values, self-awareness, and time commitment that are necessary for successful negotiation of the specific placement experience. The program is responsible for guiding the student through this reflective process, documenting the outcome of the process, and where necessary, guiding the student away from an inappropriate placement or preparing the student for the placement by helping him or her to obtain the skills and self-awareness necessary for a successful experience at the chosen placement.

In order for the student and program to document learning outcomes from the fieldwork experience, the program should require the student to articulate standards by which he or she intends to demonstrate achievement of his or her personal learning objectives.

Since reflection on the fieldwork experience is necessary for learning, the program should require the student to acknowledge the need for reflection and to plan for periodic reflection. The student may be guided in using reflection tools such as logs, journals, presentations, and other devices that require articulation of the reflective process. Since some of the results of the student's reflection may benefit not only his or her own learning but also that of others in the program -- such as fellow students, the faculty supervisor, and the fieldwork supervisor -- the program should require the student to share some of his or her reflections in an appropriate forum and manner such as a seminar or in oral or written evaluations.

In every externship experience, learning to learn from experience is a central element. Therefore, the program should ask the student to agree to be responsible throughout all stages of the fieldwork experience, to participate actively in his or her own learning, and routinely self-monitor his or her activities. To encourage the student

to get the most from the experience, the program should ask the student, at the commencement of the fieldwork placement, to provide evidence throughout, or at least at the end of the experience, that the student sought additional learning opportunities, activities, or training to make the fieldwork experience more meaningful or successful. The program should also ask for evidence from the student and from the fieldwork supervisor that the student sought (and was given) appropriate feedback from the fieldwork supervisor.

At times, a student may find that his or her goals and objectives change in the midst of the experience or that the tasks he or she thought were available are no longer available. Under those circumstances, it may be appropriate for the student to revise his or her list of goals and objectives. The program should acknowledge this possibility, explicitly ask the student to identify when he or she made adjustments in response to changes in circumstances, and require evidence of the reflection that occurred when the change of plans was made.

The program should also ask the student to document the learning that he or she achieved from the fieldwork placement. The documentation should be readily understandable to the faculty supervisor and fieldwork supervisor, and it should track the student's original and revised goals, objectives, and standards for evaluation and account for unanticipated learning.

The program should assist the student in extending his or her learning from the fieldwork experience by requiring the student to submit a plan for further learning. The plan should identify a new set of goals, objectives, tasks, and learning environments that build on the learning outcomes achieved in the externship.

4.8. Does the Program have a Mechanism for Self-evaluation?

4.8.1. Does program self-evaluation include the students' evaluation of the program?

4.8.2. Does the law school solicit evaluation of the program from placements and fieldwork supervisors?

4.8.3. Does the law school solicit evaluation of the program from former students?

4.8.4. Does self-evaluation of the program include regular review by the full-time faculty with respect to whether the program is meeting its educational goals?

4.8.5. Does the law school have evidence that demonstrates that the results of programmatic self-evaluation have led to improvements in the program over time?

4.9. Does the Program have a System in Place for Evaluating Placements and Fieldwork Supervisors?

4.9.1. Does the system include a valid and reliable instrument for a summative student evaluation of the placement and fieldwork supervisor?

4.9.2. Does the system use site visits when appropriate?

4.9.3. Does the program conduct regular evaluations of course work done in connection with fieldwork?

4.9.4. Do course evaluations include valid and reliable student evaluations, peer evaluations, and when appropriate, reviews by outside experts?

Commentary

Since all learning programs can benefit from systematic evaluation, the program should have a developed plan for self-evaluation that includes the solicitation of evaluation from students, fieldwork supervisors, former students, and other stakeholders in the externship program. The program should also be reviewed from time to time by the full-time faculty using the same mechanisms that are

used to assess other aspects of the curriculum. The purpose of each type of review is to determine whether the program is meeting its educational goals and whether modifications of the program are called for in light of experience. An assessment should include detailed documentation of program components and processes, the outcomes identified by, and expected of, all participants, and the impact of the program on individual participants. A well-planned evaluation invites students to consider the value of their externship work in the context of their academic pursuits and vocational aspirations. Current students should be asked to comment on such topics as the quality of the program's support for externships, the quality of their preparation for an externship, and the quality of support provided by the placement and fieldwork supervisor. Former students, five years or more after graduation, may offer a different perspective on the program that is informed by their subsequent professional experiences.

Site visits by program personnel may be an appropriate tool for program evaluation. Site visits, properly conducted, may serve as vehicles for monitoring student and fieldwork supervisor performance. In addition, site visits may serve as opportunities for modeling supervision skills, collaborative teaching, and strengthening ties between the law school and the lawyers and judges in the community who participate in the externship program. The decision to conduct site visits necessarily begins with a consideration of the program's goals, need for the visits, and the program's required and available resources.

The program personnel responsible for conducting the site visit should develop a clear plan for a successful site visit. Among the topics for consideration are the following: at what point in the semester will a site visit be most productive? Should the student extern be present during the site visit? What preparation for the site visit should be required of the fieldwork supervisor and other persons at the placement site? What topics should be discussed during the site visit? How can the faculty supervisor use the site visit to enhance the fieldwork supervisor's understanding of the goals and objectives of the externship program? How can the faculty supervisor use the site visit to deepen and broaden the learning that takes place at the

placement site? How can the faculty supervisor enhance the fieldwork supervisor's supervisory skills, if necessary, and ensure that the fieldwork supervisor provides meaningful task assignments, oversight, and feedback to the student extern? How can the faculty supervisor use the site visit to assist students to provide meaningful feedback to the fieldwork supervisors? How can the faculty supervisor use the site visit to identify, and if possible, resolve any problems that may exist at the placement site related to the student's experience? How can the faculty supervisor use the site visit to advance the more general goals of the externship program and the law school?

Site visits should be mandatory in programs where students are responsible for client representation and where the program is unfamiliar with the abilities and conscientiousness of the fieldwork supervisor. In other situations, the program should weigh the costs and benefits of conducting site visits in light of all of the parties' goals. All program reviews conducted after the first instance should look for evidence that the self-evaluation process actually has led to improvements.

Glossary

Employee: A law student who works for an institution for pay. In contrast, a legal extern works for the institution solely for academic credit. Compare Extern and Volunteer.

Extern: A law student who receives academic credit for supervised, practical training in a setting, typically, outside of the law school -- also called an intern. Compare employee and volunteer.

Externship: The program of study in which a law student earns academic credit for engaging in authentic lawyering tasks under the guidance and supervising of an experienced supervisor in an institution outside of the law school -- also called an internship.

Faculty Supervisor: The faculty member responsible for monitoring the externship experience of an extern and for providing the opportunities for the student to reflect on the externship, typically, through a seminar or tutorial meetings. The faculty supervisor also certifies the award of academic credit for the externship experience.

Faculty Tutorial: The method of instruction in which a faculty supervisor meets individually or in very small groups with externs in order to facilitate learning from the externship experience.

Fieldwork Supervisor: The person at the placement site responsible for assigning tasks, monitoring performance, and providing critique and feedback to the extern -- also called a mentor.

Individualized Learning Plan (ILP): A document prepared by the student embarking on an externship that sets out the goals, objectives, and tasks expected to be pursued during the externship. Also called a Learning Agenda or Learning Contract, the individualized learning plan is typically drafted by the student with input from both the faculty supervisor and fieldwork supervisor.

Intern: See Extern.

Internship: See Externship.

Journal: A document in which an extern will record reflections on the externship experience. Journals generally are intended to be read by the faculty supervisor.

Learning Agenda: See Individualized Learning Plan.

Learning Contract: See Individualized Learning Plan.

Log: Contrasted with a journal, a log is less reflective and is often used to record the events from an externship experience for later reflection or to account for time spent on the placement's tasks.

Mentor: See Fieldwork Supervisor.

Placement: The placement site is the location, usually outside of the law school, where the student extern performs the tasks of the externship experience.

Portfolio: A collection of documents produced by an extern during the externship. The contents of the portfolio may form a basis for a portion of the grade for the externship course. The portfolio may contain drafts and final work product, reflective papers, and other writings done at the placement or as course work.

Reflective Paper: An academic exercise that is an extended reflection piece on some aspect of the externship experience.

Seminar: The classroom component of an externship course in which the student externs and the faculty supervisor meet and discuss topics related to the externship experiences of the externs.

Site Visit: A visit, by the faculty supervisor or externship administrator, to the placement site for obtaining in-person knowledge of the work of the extern at the placement, as well as the nature and extent of the supervision and the physical conditions and resources available to the extern.

Summative Evaluation: The evaluation conducted at the conclusion of the externship or a specific period of time. Faculty supervisors and fieldwork supervisors conduct summative evaluations of the student at the conclusion of the extern's placement experience. Students conduct summative evaluations of their placements and of the externship program at the end of their participation. Faculty and other stakeholders conduct summative evaluations of the externship program on a periodic basis.

Unanticipated Outcomes: Learning outcomes not anticipated by the student extern when drafting the individualized learning plan.

Because experiential learning is so context specific, there are likely to be many unanticipated outcomes for the extern over the course of the externship. It is important for the externship program to value and credit these and encourage the student participants to recognize them.

Volunteer: A student who works in an institution without academic credit, pay, or other compensation. Compare Employee and Extern.

Resources

J.P. Ogilvy, Leah Wortham & Lisa G. Lerman, *Learning from Practice: A Professional Development Text for Legal Externs* viii-ix (2d ed. 2007); Jane H. Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. Rev. 1047 (1985); Sue Schechter & Cindy Slane, Presentation at the Conference at Columbus Sch. of Law of The Catholic Univ. of Am.: Making Site Visits Worthwhile: Concurrent Session Outline, (Mar. 7, 1998); Sudeb Basu & J.P. Ogilvy, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 Clinical. L. Rev. 1 (2012); Ellen Porter Honnet & Susan J. Poulsen, *Principles of Good Practice for Combining Service and Learning: A Wingspread Special Report*, Johnson Foundation, Inc., available at <https://www.nationalservicerresources.gov/files/r4174-principles-of-good-practice-for-combining-service-and-learning.pdf> (last visited May 21, 2014); Alliance for Service-Learning in Education Reform, *Standards of Quality for School-Based and Community-Based Service-Learning* (Mar. 1995), available at <http://tncampuscompact.org/files/qsbc.pdf>; National Society for Experiential Education (NSEE), Distributed at the 1998 national conference of the NSEE: Standards Document (discussion draft) (Oct. 1998); National Society for Experiential Education, Distributed at the 1998 national conference of the NSEE: A Checklist for Creating High Quality Education (Oct. 1998); ABA, *Standards and Rules of Procedure for Approval of Law Schools* 24–25 (2012); ABA, *Section of Legal Education and Admission to the Bar*,

http://www.americanbar.org/groups/legal_education/resources/bar_admissions.html (last visited May 21, 2014).

5.0. SIMULATION COURSES

This section deals with courses in which simulated lawyering tasks are the focus of the pedagogy. It does not speak directly to the use of simulation exercises in a traditional doctrinal course, seminar, or clinical seminar. These guidelines initially were drafted after reading commentary on experiential education in law and in other disciplines and based on my (Author) experience in designing and teaching simulation courses.

5.1. Does the law school have explicit goals that are published and widely disseminated for each simulation course in the curriculum?

5.2. Is the content of each course designed to accomplish the articulated educational goals for that course?

5.3. Does the content of each course go beyond matters of technical performance to consider the theoretical underpinnings of skills, strategic considerations, preparation for performance, and the values and ethical constraints inherent in the performance of the skills?

5.4. Does each course incorporate issues of professional responsibility?

5.4.1. What percentage of the instructional time is devoted to issues of professional responsibility? Is that sufficient?

5.5. Does each course have established baselines and benchmarks that are used to evaluate student progress toward meeting performance goals?

5.6. Does each course have a student/faculty ratio of 16:1 or less?

5.7. Opportunities for student performance of skills with critique and feedback.

5.7.1. How frequently does each student perform, in role, the professional skills being taught?

5.7.2. What is the average time of each student performance?

5.7.3. How frequently are student performances subjected to self-critique?

5.7.3.1. What tools are used to facilitate self-critique?

5.7.3.2. Are student performances videotaped for self-review?

5.7.4. How frequently are student performances subjected to peer critique?

5.7.4.1. What tools are used to facilitate peer critique?

5.7.5. How frequently are student performances subjected to faculty critique?

5.7.5.1. Are student performances videotaped for later faculty review and critique?

5.7.6. How frequently are students given written critiques?

5.8. To what extent does each simulation course contain explicit instruction in giving and receiving performance critique?

5.9. Is each course well administered so that students receive clear instructions, in a timely manner, of the roles they will perform?

5.10. Are the facilities adequate for simulation courses?

5.10.1. Are there enough breakout rooms for individualized student performances?

5.10.2. Is the videotape or other recording equipment adequate for the nature of the exercises and the number of students enrolled in simulation courses?

5.10.3. Is the playback equipment adequate to support the design and goals of the simulation courses?

5.10.4. Is the playback viewing space adequate to support the design and goals of the simulation courses?

5.11. Is the administrative support for simulation courses adequate?

5.12. Is the overall design of the simulation curriculum monitored and evaluated by the full-time faculty on a regular basis?

5.13. Are the adjunct faculty who teach simulation courses adequately trained, monitored, evaluated, and supported?

5.13.1. Is there an individual or committee charged with oversight and support of adjunct faculty who teach simulation courses?

5.14. Does the law school have a plan for increasing the level of professional skills instruction?

5.14.1. Do existing course offerings in professional skills satisfy student demand for skills courses?

5.14.2. Do existing course offerings in professional skills encompass the full range of professional skills needed by novice attorneys in their first year of practice?

5.14.3. Does the law school encourage faculty to incorporate professional skills instruction in all courses taught at the law school?

5.14.3.1. Does the law school provide adequate support for such incorporation?

Commentary

Courses in which the primary pedagogical methodology involves simulated lawyering experiences offer significant opportunities for integrating knowledge, theory, performance skills, and values. To maximize the effectiveness of instruction, both faculty and students must be aware of and share a common set of instructional goals and objectives, which should be explicit, published, and widely disseminated. Because each student comes to a course with a unique set of strengths and weaknesses, the course design should be sufficiently flexible to permit each student to receive instruction and practice on individually important goals.

While it is possible to design a simulation course that trains students solely in the performance of discrete lawyering skills, best practice requires that the content of each simulation course go beyond matters of technical performance to consider the theoretical underpinnings of skills, strategic considerations, preparation for performance, the values and ethical constraints inherent in the performance of the skills, the assumptions of the adversary system underlying the application of the skills, and the efficacy of skills being taught.

Among the values that should be included in the instructional design are the lawyer's obligations to truth, honesty, and fair dealing; the lawyer's responsibility to improve the integrity of the legal systems within which the lawyer exercises the skills that are taught;

the obligation to promote justice; and the obligation to provide competent representation. The course design and materials should be sufficiently complex to stimulate strategic thinking and decision making by the students. Case files that provide rich detail and sustained involvement with facts and strive to replicate real client interests and the search for actual truths, are to be preferred over simple, single-issue problem sets that operate in a moral vacuum and cannot provide opportunities for students to develop predictive, probabilistic judgment.

The course design also should include interdisciplinary materials that acknowledge and synthesize the research findings of cognitive science, psychology, and social science in areas such as memory, eyewitness identification, decision making, and persuasion.

In order to benefit from simulated lawyering exercises, each student must be given repeated opportunities to practice the skills and frequent appropriate critique and feedback on performances. Feedback may come from other students in the course as well as the course instructor. In order for the critique and feedback to be most useful to the student, peer evaluators and faculty should receive prior training in giving critique and feedback.

In order for students to become self-directed learners, one goal of each simulation course should be to train each student in self-reflective evaluation. Because the student may not always be able to depend on others to provide critique and feedback on performance after graduation from law school, the student should be taught to value self-evaluation and be taught some techniques for engaging in self-reflective valuation. Students should be given explicit instruction in self-critique and provided opportunities to practice self-critique, which is itself the subject of peer and instructor critique and feedback.

Because visual digital recording is such a powerful tool for critique and evaluation, students should be given repeated opportunities to have their performances recorded. The recordings should be made available to the students for their use in self-evaluation and for use by the faculty in giving further, out-of-class critique and feedback to students. Care should be taken when using recordings that evaluation be comprehensive and not elevate appearance over substance.

Well-designed and operated simulation skills courses must have adequate facilities in order to fulfill their instructional promise. The law school should provide sufficient resources to permit every student to be recorded visually and audibly during every performance. Adequate provision for playback and viewing of recordings is also necessary. Students should be afforded the opportunity to view their performance privately. In addition, facilities should be available to enable a review by the student and faculty member as well as an entire class when appropriate.

Adequate support personnel are also needed in a well-run simulation program. To enable the faculty to concentrate on instruction and feedback, there must be sufficient support personnel to do the tasks necessary to insure that the simulations run smoothly. Support personnel can be responsible for such tasks as preparing and distributing simulation packets, engaging and scheduling actors, and insuring that the rooms used for the exercises are set up properly and have the required audiovisual equipment.

To the extent that the law school uses adjunct or part-time faculty to staff simulation courses, the law school must insure that the part-time faculty are adequately trained, monitored, evaluated, and supported. Appointing a member of the full-time faculty as a liaison to the part-time faculty is a good way to integrate the part-time faculty into the program. Part-time faculty should be informed of the common goals and objectives of the simulation curriculum so that the outcome objectives set by the faculty are met in each course taught by the part-time faculty.

It is unlikely that simulation courses alone can adequately teach every student the full range of lawyering skills required for the practice of law. The law school should have a curriculum design that builds on the fundamental lawyering skills taught in the first-year lawyering process course, and it should incorporate simulated lawyering exercises across the curriculum in order to provide the breadth and depth of instruction necessary to insure that each graduate of the law school is prepared for the practice of law upon graduation.

Resources

John P. Hertel & Barbara J. Millis, *Using Simulations to Promote Learning in Higher Education: An Introduction* (2002); Michael Meltsner & Philip G. Schrag, *Toward Simulation in Legal Education: an Experimental Course in Pre-Trial Litigation* (2d ed. 1979).

FROM THE EDITORS

The Thomas M. Cooley Journal of Practical and Clinical Law is committed to publishing articles that are by definition practical and clinical in nature. To accomplish this mission, the *Journal* publishes articles written by legal scholars, judges, and legal practitioners who offer insight gained through their own personal knowledge and experience.

The editors of *The Thomas M. Cooley Journal of Practical and Clinical Law* extend a special thank you to the authors of this volume. The time and effort spent to create these works will further our pursuit of a practical, legal education now and in years to come.

We also extend our appreciation to Jamie Baker, reference librarian extraordinaire, who tirelessly guides us through the *Bluebook* and remains a friend to the *Journal*, and who continues to develop ways to strengthen and ease our research quest.

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