

49 Duq. L. Rev. 477

Duquesne Law Review

Summer, 2011

The Centennial Issue Celebrating 100 Years of Duquesne University School of Law: Past, Present, and Future

Article

Essay

Maureen E. Lally-Green, Judge (retired)^{al}

Copyright © 2011 Duquesne University; **Maureen E. Lally-Green**, Judge (retired)

AN IDEA WHOSE TIME HAS COME: CERTIFIED LEGAL INTERNS AS ORAL ADVOCATES IN THE PENNSYLVANIA APPELLATE COURTS

I.	Background: The Relevant Rules in Pennsylvania Concerning the Appearance of Certified Legal Interns in the Trial and Appellate Courts of Pennsylvania	480
II.	Appellate Oral Advocacy in other States and in the Federal Arena	484
A.	The Research Process	484
B.	Data Analysis	486
1.	States and Federal Circuit Courts that Authorize Law Students to Appear Before the Appellate Courts	486
2.	Certification Requirements	487
a.	Client Consent	487
i.	The States	487
ii.	The Federal Arena	487
b.	Supervision of the Law Student Intern by a Lawyer/Law Professor	488
i.	The States	488
ii.	The Federal Arena	491
c.	Specific Requirements for Law Students	492
i.	The States	492
ii.	The Federal Arena	495
III.	The Pennsylvania Approach: 204 Pa. Code Rules 321 and 322	497
IV.	Observations and Suggestions	502
V.	Final Comments	503
	Appendix (Tables 1 and 2)	505

*478 Appellate practice is one area of the law that many lawyers do everything in their power to avoid. It may be that the lawyer is a “trial lawyer” or a “transactional lawyer” and thus has had little opportunity to develop the skills needed to be an effective appellate litigator. It may also

be that appellate practice is, frankly, a mystery best left to those who “love the law,” excelled at appellate moot court, are “geeks” or managed to “make law review” in law school.

To these positions, one might respond: “Don't worry practice makes perfect” or “roll up your sleeves and get to work!” Translated, these idioms reasonably mean that the more one practices in the appellate arena, the better one becomes. This is all well and good, at least to an extent. Many of us know through personal experience that no matter how much we aging adults practice at something, sometimes we just do not get better. Oh! To be young again when one could easily develop a skill, without over-thinking each detail inherent in the skill. Think of that ephemeral perfect golf swing. We aging adults can practice all we want, but we will not ever have the finesse of our local hero, Arnold Palmer.

The same is true of the appellate arena. “Practice” is but one of the essential factors. A few more of the crucial factors include an appreciation and understanding of the appellate rules and appellate procedure, the substance of the relevant law, a refined ability to craft a well-written brief, a skill with effective oral argument in the context of an appellate court, and an understanding of the ***479** body of work of the justices and the appellate judges. So, excellence comes not with practice alone, but with practice plus appropriate skill refinement and critique.

Where better to start with gaining the experience but in law school, where many skills are born and nurtured with the guidance of skilled full-time and adjunct professors and in a context of appropriate and helpful critique? Trial court skills are developed in many arenas in law schools, whether in courses such as trial tactics, in moot court competitions or because of actual certification to serve as the lawyer in certain cases.

Yet, as focused as law schools in Pennsylvania are on the trial court arena, the focus becomes a bit ephemeral when the backdrop is the appellate arena. Of course, a bright spotlight shines on the usual first-year appellate moot court program where a law student writes an appellate brief and presents an oral argument. For many a student, this is the last law school experience (thankfully, they might say) in the appellate world. While upper-level law students may have opportunities to develop appellate skills through appellate court procedure courses, appellate moot court competitions or clinical experiences with members of the appellate judiciary, there is one glaring difference in Pennsylvania between the opportunities for law students in the trial court arenas, as opposed to appellate practice.

That difference focuses on the ability of the law student to be certified by the Pennsylvania Supreme Court to appear as a certified legal intern during law school to argue in the appellate courts of Pennsylvania. If a student wishes to appear in a trial court and represent a criminal defendant, that student has the opportunity to be certified by the Disciplinary Board of the Pennsylvania Supreme Court to do so as long as the student is under the supervision of a lawyer and meets other qualifications.¹ The opportunity to advocate orally in Pennsylvania's appellate courts does not exist for a student desiring to do so, albeit under the supervision of a lawyer.

The certification rules simply preclude such oral argument even though written argument is permitted.² This is so even though the Third Circuit Court of Appeals and virtually all of the other Circuit Courts of Appeal permit such appearances and argument.³ This is so even though almost all of law students in other states *480 can be certified to appear in the appellate courts of those states.⁴ This is so even though law students can be certified in Pennsylvania to appear and argue in the civil and criminal trial court settings.⁵

I suggest that law students be given the opportunity to appear and argue in the appellate courts of Pennsylvania. Of course, certain standards and certifications should, and must, be met. If law students have this opportunity to develop and improve appellate oral skills under the supervisions of a skilled appellate lawyer, then the law student can begin to learn the appropriate skills and customs of the appellate arena in an educational setting. In other words, if law students can be certified to appear and argue in the appellate courts of Pennsylvania, then law students can learn, through the skillful mentoring of professors and seasoned appellate advocates, and in an actual experience and interaction with appellate justices and judges, to do the “right thing, right, the first time”⁶ in the appellate arena.

I. Background: The Relevant Rules in Pennsylvania Concerning the Appearance of Certified Legal Interns in the Trial and Appellate Courts of Pennsylvania

The Disciplinary Board of the Pennsylvania Supreme Court authorizes, in Rule 322, certain activities for law students who are “certified legal interns” as that term is used in Rule 321. Rule 321 defines the term “certified legal interns” and Rule 322 addresses the permitted activities as follows:

Rule 321. Requirements for formal participation in legal matters by law students and law school graduates.

(a) General rule. The requirements for eligibility for formal participation in legal matters by a law student or law school graduate pursuant to Rule 322 (relating to authorized activities of certified legal interns) are:

(1) Enrollment in or graduation from an accredited law school or a law school that has been approved by the Board *481 which has filed and is actively pursuing an application for accreditation with the American Bar Association; provided that students who attend or graduated from a law school that is located in a jurisdiction that has a program permitting law students to participate in legal matters which does not afford students attending law school in Pennsylvania the same privilege or opportunity to formally participate in legal matters as a law student in the jurisdiction as is granted to students attending law school in the jurisdiction, shall not be eligible to participate in legal matters pursuant to Rule 322.

(2) Completion of legal studies amounting to at least three semesters, or the equivalent if the law school is on a basis other than the semester basis.

(3) Existence and maintenance of certification as prescribed in Subdivision (b) of this rule.

(4) Introduction to the judge or magisterial district judge before whom the law student or law school graduate is appearing by a member of the bar of this Commonwealth.

(5) Absence of a request for or receipt by the law student or law school graduate of compensation or remuneration of any kind for his or her services from the person on whose behalf the law student or law school graduate renders services. This paragraph shall not prevent:

(i) An attorney or a law school, legal services program, defender association, or government unit from paying compensation to the law student or law school graduate.

(ii) Any person other than the law student or law school graduate from making such charges for services as such person may otherwise properly require.

(b) Certification. Only those law students or law school graduates shall be eligible for the benefits of Rule 322 who have been certified by the dean of their law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern. The certification shall be made by filing one copy thereof with the Prothonotary. The certification:

***482** (1) Shall be in writing on a form prescribed by the Board and shall remain in effect until the expiration of 24 months after it is filed, or until the announcement of the results of the first bar examination following the completion of the study of law by the student or law school graduate, whichever is earlier. In the case of a student or law school graduate who passes that examination, the certification shall continue in effect until the student or law school graduate is admitted to the bar.

(2) May be withdrawn at any time by the dean by filing a notice to that effect with the Prothonotary. It is not necessary that the notice state the cause for withdrawal.

(3) May be terminated by the Court at any time without notice or hearing and without any showing of cause.⁷

Rule 322. Authorized activities of certified legal interns.

(a) General rule. Subject to the restrictions of this subdivision, a certified legal intern may with the approval of a supervising attorney:

(1) Appear before any government unit (other than the Supreme, Superior or Commonwealth Courts) in any civil or criminal matter on behalf of any indigent, if the person on whose behalf the legal intern is appearing consents to such appearance. The supervising attorney must be personally present throughout the proceedings where the legal intern is appearing on behalf of the defendant in a criminal matter where the defendant has the right to counsel under any provision of law.

(2) Appear in any civil or criminal matter on behalf of the Commonwealth, if the Attorney General (or the prosecuting attorney in the case of a criminal matter) or his or her authorized representative consents to such appearance. The approval of the supervising attorney and the consent of the party represented required by this subdivision shall be in writing and filed of record in the matter and shall be brought to the attention of the judge or magisterial district judge or the presiding officer of the other government unit.

***483** (b) Preparation of papers. A certified legal intern may engage in other activities, under the general supervision of a member of the bar of this Commonwealth, but outside the personal presence of the attorney, including:

(1) Preparation of pleadings and other documents to be filed in any matter in which the legal intern is eligible to appear and in any appeals therefrom in the Supreme, Superior or Commonwealth Courts.

(2) Except when the assignment of counsel is required under any provision of law, assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post conviction relief. If there is an attorney of record in the matter, all such assistance shall be supervised by the attorney of record. Each pleading or other document shall contain the name of the legal intern who has participated in drafting it. If the legal intern participated in drafting only a portion of it, that fact may be stated. All pleadings or other documents shall be signed by the supervising attorney.

(c) Supervising attorney. The attorney under whose supervision a certified legal intern performs any of the services permitted by this rule shall:

(1) Be approved in writing as a supervising attorney for the purposes of this rule by the dean of the law school in which the legal intern is or was enrolled.

(2) Assume personal professional responsibility for the guidance of the legal intern in any work undertaken and for supervising the quality of the work of the legal intern.

(3) Assist the legal intern in his or her preparation to the extent the supervising attorney considers necessary.⁸

The critical provision addressed in this essay is Rule 322(a)(1), which precludes certified legal interns from appearing as oral advocates before the appellate courts of Pennsylvania—the Supreme Court, the Superior Court and the Commonwealth Court.

***484 II. Appellate Oral Advocacy in other States and in the Federal Arena**

As the following reflects, appellate oral advocacy by law student interns is well-received in almost all of the states and in the federal arena. In order to come to this conclusion, research on the rules or laws in the fifty states, the District of Columbia and in the federal appellate circuits was conducted.

A. The Research Process

The following research process occurred. First, the law student certification rules of each of the fifty states and the federal courts of appeal, to the extent the rules existed, were collected. A listing of the states and federal circuit courts of appeal, and each one's applicable statutes or rules is found at Table I in the Appendix.⁹

Second, these rules were examined, state-by-state and circuit-by-circuit, as reflected on Table II in the Appendix.¹⁰ The questions addressed were as follows:

- (1) Is the law student or law school graduate permitted to appear before any court at all in the jurisdiction?
- (2) Is the law student or law school graduate to appear on behalf of the state or the commonwealth in criminal matters?
- (3) Is the law student permitted to appear only through law school clinical programs?
- (4) Do clients have to give written approval or consent to have the law student or law school graduate represent the client?
- (5) Does the supervising attorney have to give written approval for the law student to appear with the lawyer?
- *485** (6) Does the supervising attorney have to certify to the court that the attorney agrees to supervise and assume professional responsibility for the student?
- (7) Does the supervising attorney have to meet requirements to qualify as a supervising attorney, (e.g., a clinical law school professor, member of the state bar, certification by the Dean of the law school, trial/appellate practice experience, approval by the presiding judge, etc.)?
- (8) Must the supervising attorney be present (or immediately available) during the law student's appearance?
- (9) If the supervising attorney is not present (or immediately available) during the law student's appearance, are there additional requirements of the supervising attorney?
- (10) How is the law student introduced to the court, (e.g, through an entry of appearance, pursuant to a special rule, by oral introduction, etc.)?
- (11) Is court approval of the appearance by the law student required?

- (12) Must the student be attending a law school accredited by the American Bar Association? Are there different requirements if the student attends a law school outside of the jurisdiction of the state in which the student wishes to appear in court?
- (13) Does the student have to have completed a required number of semesters/credit hours in law school before seeking to appear in court?
- (14) Does the Dean of the law school have to certify that the student is in good standing?
- (15) Does the student have to take an oath or certify in writing to abide by rules of professional conduct and/or to uphold the constitution?
- (16) Is the law student prohibited from soliciting or receiving remuneration from the client?
- *486 (17) Is the law student or law school graduate permitted to receive a salary or an hourly wage and/or to be reimbursed for actual expenses?
- (18) Does the supervising attorney have to provide malpractice insurance that covers the law student unless the student's work is protected by governmental immunity or the student is covered by the law school's clinical program insurance?

B. Data Analysis ¹¹

The research reflects that the great majority of the states and virtually all of the federal courts of appeal permit law students, subject to certain conditions, to appear and to argue orally in the appellate courts. This data analysis portion of the essay is divided into three parts: (1) states and federal courts that authorize law students to appear before the appellate courts; (2) certification requirements; and (3) special requirements of the law student and/or supervising attorney.

1. States and Federal Circuit Courts that Authorize Law Students to Appear Before the Appellate Courts

Eighty-six percent of the state courts (as well the District of Columbia), or forty-two of fifty states, permit law students to appear and argue before their appellate or supreme courts.¹² Additionally, ninety-two percent, or eleven out of twelve, of the United States Courts of Appeal also permit law students to appear and argue before them.¹³ Indeed, the one circuit court, the Fifth Circuit, simply has no rules regarding law student participation in oral argument.

Pennsylvania is one of eight states that do not permit law students to appear before its appellate courts. A specific rule precludes law students from appearing before its Supreme Court or its two intermediate appellate courts, the Superior Court and the Commonwealth Court.¹⁴

***487 2. Certification Requirements**

Although the procedural requirements of each state vary slightly, there are many common requirements among the jurisdictions, dealing with, among other things, client consent to the services of the law student, supervision of the law student by a lawyer, and accreditation status of the law school.

a. Client Consent

i. The States

Thirty-five of the fifty states, as well as the District of Columbia, or seventy-percent of the states, specifically require some form of client consent before a law student may appear on the client's behalf in any judicial forum.¹⁵ Thirty-one of those thirty-five states, as well as the District of Columbia, or eighty-eight percent of these thirty-five states, require actual written consent from the client.¹⁶

ii. The Federal Arena

Ten of the eleven federal courts of appeal and the United States Court of Appeals for the District of Columbia require client consent before a student may appear.¹⁷ Additionally, eight of those ten circuits and the District of Columbia require the client's written consent.¹⁸

***488 b. Supervision of the Law Student Intern by a Lawyer/Law Professor**

i. The States

All fifty states, as well as the District of Columbia, require a law student to be under the supervision of some type of attorney or clinical law professor. A majority of the states share similar requirements with regard to these “supervisory” attorneys. For instance, thirty-one of the fifty states, as well as the District of Columbia, require approval by the supervisory attorney before the law student may appear before the court.¹⁹ Of those thirty-one jurisdictions, twenty states require written approval from the supervising attorney anytime a law student is to appear, while nine states require written approval, but only in certain situations.²⁰

Forty of the fifty states, as well as the District of Columbia, require the supervising attorney to formally agree to fulfill monitoring duties.²¹ In addition, thirty-three states, as well as the District *489 of Columbia, require the attorney to assume professional responsibility or liability for the student.²²

Many jurisdictions also list specific requirements of a supervisory attorney. The supervisory attorney has to be a member of the state bar or admitted to practice in the state.²³ The supervisory attorney has to be actively engaged in the practice of law for a specific period of time or otherwise qualify for an exemption from that requirement.²⁴ The supervisory attorney must also be an active practitioner of the court in which the student is to appear before. *490²⁵ The supervisory attorney has to be approved by the Dean of the law school.²⁶ Additionally, many states also restrict the number of law students a supervising attorney can monitor at any one time.²⁷

When a law student appears before any court or tribunal, thirteen states require a supervising attorney to be present at all times.²⁸ Fifteen states specifically require an attorney to be present when appearing before the supreme courts or intermediate appellate courts.²⁹ Additionally, thirty-four states, as well as the District of Columbia, articulate specific situations where a law student may appear outside the presence of a supervising attorney.³⁰

***491 ii. The Federal Arena**

Ten of the eleven federal courts of appeal and the United States Court of Appeals for the District of Columbia require a supervising attorney to approve a law student's appearance before the student appears, whether that approval be in writing (or not) or by motion.³¹ Nine of the eleven federal courts of appeal and the United States Court of Appeals for the District of Columbia require the supervising attorney to agree to supervise and assume professional responsibility for the law student's work.³² Ten of the eleven federal courts of appeal and the United States Court of Appeals for the District of Columbia require the supervising attorney to be an active member of its bar.³³

Ten of the eleven federal courts of appeal and the United States Court of Appeals for the District of Columbia require an attorney to be present during oral argument and ready to supplement any written or oral statement made by the student.³⁴

***492 c. Specific Requirements for Law Students**

i. The States

Students who seek to be certified legal interns are required to attend law schools that have been accredited or approved by the American Bar Association (ABA), the state bar or the state supreme court. A clear majority of the states require a student to attend a school approved or accredited by the ABA.³⁵ Other states impose other or additional requirements relative to accreditation or approval.³⁶

***493** Students seeking to be certified legal interns also might have to meet requirements concerning time spent in law school, approval by the Dean of the law school, the taking of an oath, introduction to the court by a licensed attorney, and remuneration and malpractice insurance. Most states impose a requirement that the law student must have attended law school for a certain number of semesters or course credits and, sometimes, must have taken certain courses.³⁷ Likewise, a majority of the states, as well as the ***494** District of Columbia, require certification by the Dean of the law school attesting to the student's good character and competent legal ability.³⁸ A majority of states and the District of Columbia also require a student to take an oath or certify in writing that he or she will abide by the rules of professional conduct and/or uphold the constitution.³⁹ Thirty of the fifty states, as well as the District of Columbia, require the student be introduced to the court before he or she can appear,⁴⁰ while twenty-eight states, and the District of Columbia, specifically grant the presiding court discretion in relation to the law student appearing before it.⁴¹ The rules in a majority of states specifically forbid a law student from asking for or receiving compensation or remuneration of any kind from the client on whose behalf the law student intern is representing.⁴² A ***495** minority of states also requires some type of malpractice insurance.⁴³

ii. The Federal Arena

The federal circuit courts of appeal have requirements concerning the student's law school accreditation and the student's completion of certain course work. Eight circuits and the United States Court of Appeals for the District of Columbia require a law student to attend an ABA approved school.⁴⁴ Nine of the eleven circuits, including the United States Court of Appeals for the District ***496** of Columbia, require the completion of the equivalent of a specific number of semesters and some add course requirements.⁴⁵

The federal circuit courts of appeal also have requirements concerning certification by the law school Dean of the student's character and competency, the student's oath or certification, specific introduction to the court of the law student intern, and remuneration. The Dean of the law school is required to certify that the student is of good character and competent legal ability in nine circuits and the United States Court of Appeals for the District of Columbia.⁴⁶ Seven of the eleven circuits and the Court of Appeals for the District of Columbia require a law student to take an oath or to certify in writing that he or she is familiar with and will abide by the rules of professional conduct and the rules of the particular court.⁴⁷ Four federal circuits require that the law student be introduced to the court before appearing,⁴⁸ while six federal circuits specifically grant the court discretion in relation to a student's appearance.⁴⁹ A majority of the circuits also specifically forbid a law student from asking for or receiving compensation or *497 remuneration of any kind from the client on whose behalf the student is representing.⁵⁰

III. The Pennsylvania Approach: 204 Pa. Code Rules 321 and 322

Pennsylvania Code Rules 321 and 322 are well thought-out, address the relevant issues, and are among the best in the nation, in my view, regarding requirements of fair disclosure and competency, oversight by the law school and the supervising attorneys, and elimination of potential problems through clear and unambiguous language in the rules. Missing, of course, is a rule authorizing certified legal interns to appear and advocate in the intermediate appellate courts and the Supreme Court. The following addresses the Pennsylvania rules vis-à-vis the identified research questions discussed above.

- 1) Is the law student and law school graduate permitted to appear before any court at all in the jurisdiction?
- 2) Is the law student or law school graduate permitted to appear on behalf of the state or the commonwealth in criminal matters?
- 3) Do clients have to give written approval or consent to have the law student or law school graduate represent the client?

Certified legal interns are permitted, subject to applicable restrictions, to appear in the following judicial venues or cases, with the approval of a supervising attorney: Before any government unit (other than the Supreme, Superior or Commonwealth Courts)⁵¹ (a) in any civil or criminal matter; (b) on behalf of any indigent; and (c) if the indigent person on whose behalf the legal intern is appearing consents to such appearance.⁵² Next, the supervising attorney: (a) must be personally present; (b) throughout the proceedings; (c) where the legal intern is appearing on behalf of the defendant in a criminal matter where the defendant has the *498 right to counsel under any provision of law.⁵³ Additionally, in any civil or criminal matter on behalf of the

Commonwealth,⁵⁴ (a) if the Attorney General (or the prosecuting attorney in the case of a criminal matter) or his or her authorized representative consents to such appearance, the approval of the supervising attorney and the consent of the party represented required by this subdivision: (a) shall be in writing; (b) filed of record in the matter; and (c) shall be brought to the attention of the judge or magisterial district judge or the presiding officer of the other government unit.⁵⁵

4) Is the law student permitted to appear only through law school clinical programs?

There is no express limitation.

5) Does the supervising attorney have to give written approval for the law student to appear with the lawyer?

There is no express requirement for the supervising attorney to give written approval for the law student to appear with the lawyer. The supervising lawyer is required to place on each pleading or other document the name of the legal intern who participated in drafting it.⁵⁶ Where the legal intern participates in drafting only a portion of the pleading or document, that fact may be stated; however, all pleadings or other documents are to be signed by the supervising attorney.⁵⁷

6) Does the supervising attorney have to certify to the court that the attorney agrees to supervise and assume professional responsibility for the student?

While there is no specific certification requirement, the supervising attorney is required by the rule to “[a]ssume personal professional responsibility for the guidance of the legal intern in any work undertaken, and for supervising the quality of the work of the legal intern” and to “[a]ssist the legal intern in his or her preparation to the extent the supervising attorney considers necessary.”⁵⁸

***499** 7) Does the supervising attorney have to meet requirements to qualify as a supervising attorney, (e.g., a clinical law school professor, member of the state bar, certification by the Dean of the law school, trial/appellate practice experience, approval by the presiding judge, etc.)?

The Dean of the law school in which the student is enrolled must approve the supervising attorney in writing for the purpose of Rule 322.⁵⁹

8) Must the supervising attorney be present (or immediately available) during the law student's appearance?

9) If the supervising attorney is not present (or immediately available) during the law student's appearance, are there additional requirements of the supervising attorney?

The supervising attorney must be personally present in court or before another governmental unit in which the legal intern is appearing on behalf of the defendant in a criminal matter where the defendant has a right to counsel under a provision of the law.⁶⁰ The rules do not require personal presence in other matters; however, if there is an attorney of record in the matter, the attorney of record is to supervise the work of the legal intern.⁶¹

Personal presence of the supervising attorney is not required (even though general supervision by a member of the bar is required) when the law student intern engages in “other” activities,⁶² such as the preparation of pleadings and other documents to be filed in any matter in which the legal intern is eligible to appear, and in any appeals from that matter in the Supreme, Superior or Commonwealth Courts.⁶³ Also, “the intern may provide assistance, except when the assignment of counsel is required under any provision of law,” to “indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post conviction relief.”⁶⁴

***500** 10) How is the law student introduced to the court, (e.g., through an entry of appearance, pursuant to a special rule, by oral introduction, etc.)?

11) Is court approval of the appearance by the law student required?

A member of the bar of the Commonwealth of Pennsylvania must introduce the student or law graduate to the judge or magisterial district judge before whom the law student or law school graduate is appearing.⁶⁵ Specific court approval of the appearance is not required by the rules.

12) Must the student be attending a law school accredited by the American Bar Association? Are there different requirements if the student attends a law school outside of the jurisdiction of the state in which the student wishes to appear in court?

In Pennsylvania, the law student must be enrolled in or have graduated from an accredited law school or a law school that has been approved by the Disciplinary Board and/or which has filed and is actively pursuing an application for accreditation with the ABA.⁶⁶

A reciprocity requirement appears to exist. In Pennsylvania, a law student or law school graduate may not be eligible to participate in legal matters in accord with Rule 322 if the student seeking certified legal intern status attends or has graduated from a law school in a jurisdiction with legal programs that allow law student participation, but do not permit students attending Pennsylvania law schools the same privilege or opportunity to formally participate in legal matters as given to law students in that jurisdiction.⁶⁷

13) Does the student have to have completed a required number of semesters/credit hours in law school before seeking to appear in court?

In Pennsylvania, eligible students must have completed the equivalent of at least three semesters of legal studies.⁶⁸

***501** 14) Does the Dean of the law school have to certify that the student is in good standing?

The Dean of the student's or law school graduate's law school is to certify such individual as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.⁶⁹ The Dean's written certification, made by filing one copy of it with the Prothonotary, is to be on a form prescribed by the Disciplinary Board.⁷⁰ The certification remains in effect for a period of twenty-four months after the filing of the certification or the announcement of the results of the first bar examination following the completion of the study of law by the student or law school graduate, whichever is earlier. In the case of a student or law school graduate who passes that examination, the certification shall continue in effect until the student or law school graduate is admitted to the bar.⁷¹

The Dean may withdraw certification by filing a notice with the Prothonotary "to that effect."⁷² The court may terminate the certification at any time without notice or hearing and without any showing of cause.⁷³

The students and law school graduates have to both be certified and maintain certification in accord with Rule 322.⁷⁴

15) Does the student have to take an oath or certify in writing to abide by rules of professional conduct and/or to uphold the constitution?

No express requirements exist in the rules.

16) Is the law student prohibited from soliciting or receiving remuneration from the client?

17) Was the law student permitted to receive a salary or an hourly wage and/or to be reimbursed for actual expenses?

***502** The focus is on who pays the student. The student or law school graduate is not permitted to request or receive compensation or remuneration of any kind from the person for whom the services were performed.⁷⁵ Yet, an attorney, a law school, legal services program, defender association, or government unit all may pay compensation to the law student or law school graduate.⁷⁶ Furthermore, any person other than the law student or law school graduate may charge appropriately for his or her legal.⁷⁷

18) Does the supervising attorney have to provide malpractice insurance that covers the law student unless the student's work is protected by governmental immunity or the student is covered by the law school's clinical program insurance?

No such requirement is expressly stated in the rules. The Rules of Professional Conduct in Pennsylvania, however, require attorneys to notify clients in writing if they have less than \$100,000 in malpractice insurance. There appears to be no specific rule requiring all attorneys to maintain insurance.⁷⁸

IV. Observations and Suggestions

While Pennsylvania's rules receive very high marks in terms of completeness and careful articulation, one “substantive” piece is missing: a disciplinary rule authorizing certified legal interns to appear and advocate in the intermediate appellate courts and the Supreme Court. Indeed, I argue that effective skills training of law students in the appellate arena is impeded by the absence of this missing piece. I recommend that, under certain clearly defined circumstances, law students be permitted to appear and to argue orally in the appellate courts of Pennsylvania.

Rules 321 and 322 already provide an excellent construct for certification in the appellate arena. Rule 322(a)(1) should be amended to delete the prohibition against law student oral advocacy in the Supreme, Superior and Commonwealth Courts. Furthermore, Rules 321 and 322 should also be augmented to provide that the supervising attorney have at least three years of experience of advocacy in the state appellate courts (or complimentary experience) and be required to be present when the law student ***503** advocates in court and be prepared to supplement or augment an argument, if necessary or advisable. Finally, the law student intern should be required to have experience with the state appellate courts, whether that experience be two or three credits worth of clinical clerking with an appellate court judge, taking a law school course in appellate courts practice and procedure, or other relevant experience yielding sufficient familiarity with state appellate court practice and procedure. I urge the Supreme Court of Pennsylvania to consider, as a minimum, permitting oral advocacy in the two intermediate appellate courts of Pennsylvania, even if it determines not to permit such advocacy in the Supreme Court.

V. Final Comments

“Nothing else in the world not all the armies is so powerful as an idea whose time has come.”⁷⁹ Victor Hugo's sage words could describe many life-changing events in our financial, political, professional, personal or spiritual lives. One thing, though, is certain: an idea's impact is a function of the times in which it is born.

Law schools across the country have been challenged for the past two decades to develop and implement skills training for law students. Virtually all law schools presently have skills training courses that involve legal internships with members of the judiciary, governmental offices, clinics and the like. These internships are subject to rules or laws in each of the fifty states, the District of Columbia and/or the federal judicial arena.

One rule that impedes the effective skills training of law students in Pennsylvania is the rule that precludes the law student from arguing orally before the **Pennsylvania Supreme Court, Superior Court** and Commonwealth Court.⁸⁰ Law students in Pennsylvania, therefore, do not have the opportunity to develop oral advocacy skills in Pennsylvania's appellate courts under the direction of a supervising attorney before starting law practice. The time has come for the opening of the Pennsylvania appellate court doors to certified legal interns as oral advocates.

When a student has the opportunity to engage in well-supervised appellate oral advocacy in the Pennsylvania appellate courts, it is an experience that could be the keystone to not only a ***504** quality educational experience, but to the framework of an exceptional lawyer. Appellate argument skills are different from those of the trial court arena. Lawyers must dig deeply into statutory analysis, legal precedent, and the magnum opus of a particular jurist. Yet, a skilled oral advocate can give life to an argument in a way that the written word cannot. Oral advocacy skills are, in my view, like the golf swing—best developed when one is young and one's muscles remember the correct posture and swing without conscious thinking. Let us give our law students the opportunity to develop those skills in law school where law students have supervision designed to develop the very skills that appellate judges greatly appreciate. To me, this is “win-win” both for law students in Pennsylvania and for the Pennsylvania legal system.

***505 Appendix**

Table 1—Rules and Regulations

JURISDICTION	RULE OR REGULATION
FIRST CIR.	1st Cir. R. 46.0(f)
SECOND CIR.	2nd Cir. R. 46.1(e)
THIRD CIR.	3rd Cir. R. 46.3
FOURTH CIR.	4th Cir. R. 46(a)
FIFTH CIR.	
SIXTH CIR.	6th Cir. R. 46(c)
SEVENTH CIR.	7th Cir. R. 34(h)
EIGHTH CIR.	8th Cir. R. 46(B)
NINTH CIR.	9th Cir. R. 46-4
TENTH CIR.	10th Cir. R. 45.7
ELEVENTH CIR.	11th Cir. R. 46-11
DISTRICT OF COLUMBIA	D.C. Cir. R. 48
ALABAMA	Ala. Ct. R. III.
ALASKA	Alaska. Bar R. 44.
ARIZONA	17 Ariz. Rev. Stat. Sup. Ct. R. 38.
ARKANSAS	Ark. Bar R. XV.
CALIFORNIA	Cal. Bar R. 9.42.

COLORADO	Colo. C.P.R. 226.
CONNECTICUT	Conn. Practice Book Sec. 3.14.
DELAWARE	Del. Sup. Ct. R. 56.
DISTRICT OF COLUMBIA	DC. Super. Ct. C.P.R. 101(e) and DC. Super. Ct. Crim. P.R. 44-1(f).
FLORIDA	Fla. Bar R. 11-1.2.
GEORGIA	Ga. Sup. Ct. R. 91 and Ga. Code Ann. § 17-12-41 (West 2010).
HAWAII	Haw. Sup. Ct. R. 7.2.
IDAHO	Idaho Bar Comm'n R. 221.
ILLINOIS	Ill. Sup. Ct. R. 711.
INDIANA	Ind. Bar R. 2.1.
IOWA	Iowa Ct. R. 31.15.
KANSAS	Kan. Sup. Ct. R. 719.
KENTUCKY	Ky. Sup. Ct. R. 2.540.
LOUISIANA	La. Sup. Ct. R. XX.
MAINE	Me. C.P.R. 90 and Me. Crim.P.R. 56.
MARYLAND	Md. Bar R. 16.
MASSACHUSETTS	Mass. Sup. Ct. R. 3:03.
MICHIGAN	Mich. Ct. R. 8.120.
MINNESOTA	Minn. Student Practice R. 1-2.
MISSISSIPPI	Miss. Code Ann. § 73-3-207 (2010).
MISSOURI	Mo. Sup. Ct. R. 13.01.
MONTANA	Mont. Student Practice R. II.
NEBRASKA	Neb. Ct. R. 3-702.
NEVADA	Neb. Sup. Ct. R. 49.5.
NEW HAMPSHIRE	N.H. Sup. Ct. R. 36.
NEW JERSEY	N.J. Ct. R. 1:21-3.
NEW MEXICO	N.M. Ct. C.P.R. 1-094.
NEW YORK	N.Y. Ct. R. 805.5.
NORTH CAROLINA	N.C. Bar R. Ch. 1, Sub-Ch. C, § .0206.
NORTH DAKOTA	N.D. Sup. Ct. R. II.
OHIO	Ohio Sup. Ct. R. II.
OKLAHOMA	Okla. Sup. Ct. Ch. 1 Appx. 6 R. 7.1.
OREGON	Or. Sup. Ct. R. 13.10.
PENNSYLVANIA	204 Pa. Code § 322 (2011).
RHODE ISLAND	R.I. Sup. Ct. Art. II, R. 9.
SOUTH CAROLINA	S.C. Student Practice R. 401.
SOUTH DAKOTA	S.D. Codified Laws § 16-18-2.1 (2010) and S.D. Codified Laws § 16-18-2.10 (2010).
STENNESSEE	Tenn. Sup. Ct. R. 10.03.
STEXAS	Tex. Bar R. Req. on Temp. Trial Cards § IV.
SUTAH	Utah Ct. R. 14-807.
SVERMONT	Vt. Ct. Adm. To Bar R. § 13.
SVIRGINIA	Va. Bar R. Part 6, § 4, Paragraph. 15.
SWASHINGTON	Wash. Admission to Practice R. 9.
SWEST VIRGINIA	W. Va. Admission to the Practice of Law R. 10.
SWISCONSIN	Wis. Sup. Ct. R. Ch. 50.
S@WYOMING	Wyo. Bar R. 12.

TABLE 2 to Follow

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Footnotes

a1 **Maureen E. Lally-Green**, Judge of **Superior Court** of **Pennsylvania** (retired). Judge Lally-Green served as Judge of the Superior Court from 1998-2009. Since 1983, she has been both a full-time and adjunct Professor of Law at Duquesne University School of Law. During her time at the Law School as a full-time professor, she was also a consultant to two members of the Supreme Court of Pennsylvania.

Judge Lally-Green currently serves the Law School as an adjunct Professor of Law and is a consultant to the Law School on its appellate practice outreach. She teaches a course at the Law School entitled Appellate Courts Practice and Procedure, which she created and has taught since 2001.

The Judge also is the Chair of the Pennsylvania Supreme Court's Appellate Courts Procedural Rules Committee and has served on that committee for the past six years, serving as Chair for three years. Before joining the Law School's faculty in 1983, she was counsel to Westinghouse Electric Corporation and to the Commodity Futures Trading Commission and, for a year, practiced with a law firm.

The Judge thanks Curtis Schaffner very much for his superb assistance as a research assistant. I particularly thank him for his excellent research that was presented in a timely, creative and careful manner.

1 204 PA. CODE §§ 321-322 (2007).

2 § 322 (b).

3 See *infra* at note 17.

4 See *infra* at note 12.

5 Rule § 322 (a)(1)-(2).

6 This is a phrase coined by John C. Marous, Jr., whom I first met in my Westinghouse Electric Corporation days and with whom I have had the privilege of serving on a board and on committees in the not-for-profit world.

7 § 321.

8 § 322.

9 See Appendix Table I. The information contained within Table I of the Appendix, was researched, compiled and organized by the author and her research assistant. The information in Table I is a list of each state and federal circuit court's respective applicable rule or statute pertaining to law student certification.

- 10 See Appendix Table II. The information contained within Table II of the Appendix, was researched, compiled and organized by the author and her research assistant. The information in Table II organizes law student certification rules and statutes state-by-state and circuit-by-circuit.
- 11 In this section, the data is analyzed and some findings and conclusions respecting the responses to above-stated questions are set out.
- 12 The eight states that do not authorize law students to appear in the appellate courts are: Alaska, Colorado, Delaware, Illinois, Michigan, New Jersey, Pennsylvania and South Carolina. See the information contained within the Appendix.
- 13 See the information contained in Table I of the Appendix.
- 14 § 322(a)(1).
- 15 Some form of client consent is required in these states: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, West Virginia, Wisconsin and Wyoming. Indiana and Washington require the law student intern to inform the client of his or her status as an intern, but do not specifically require consent.
- 16 Written consent is required in these states: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Kansas, Louisiana, Maine, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
Two states require written consent in certain situations. Idaho only requires written consent when the law student intern is arguing before a court of limited jurisdiction and the supervising attorney is not present. South Dakota only requires written client consent if the case involves a criminal or quasi-criminal matter.
- 17 Only one circuit court of appeal has no published rules, one way or the other, with regard to appearance of law students: the United States Court of Appeals for the Fifth Circuit.
- 18 A client's written consent is required by the First, Third, Fourth, Sixth, Seventh, Eighth Circuit, Ninth, and Eleventh Circuits and the District of Columbia. The Second Circuit requires "sufficient consent" and the Tenth Circuit requires the party to file some type of "statement of consent."
- 19 A supervisory attorney must exist in these states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii,

Idaho, Kansas, Louisiana, Maine, Maryland, Missouri, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, and West Virginia.

20 The written approval of a supervisory attorney is needed only when a student is to appear outside the presence of the supervising attorney in these states: Alabama, Alaska, Arizona, Arkansas, Connecticut, Florida, Hawaii, Indiana, Kansas, Louisiana, Maine, Missouri, Montana, New Hampshire, New York, North Dakota, Utah, Vermont, West Virginia, and Wisconsin.

A number of states require written approval of the supervisory attorney in certain situations. Minnesota only requires written approval by the supervising attorney if the student is representing a client outside of a law school clinic and the lawyer will not be appearing with the law student. California, Idaho, and Ohio require written approval only when a student is to appear outside the presence of the supervising attorney. Oregon, Pennsylvania, South Carolina, Texas, and Virginia require written approval only when the student is representing the state. South Dakota only requires written consent of the attorney if the student is to appear in a criminal or quasi-criminal matter.

21 Most states require the supervising attorney to certify to the court or agree to fulfill monitoring responsibilities. Such states include: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

On the other hand, while Colorado, Illinois, Indiana, Iowa, Maryland, Massachusetts, Mississippi, Rhode Island, Texas, and Utah require a law student to work under a supervisory attorney, they list no specific requirements of monitoring or assumption of responsibility.

22 The supervising attorney is required to accept professional responsibility for the law student intern in these states: Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Idaho, Kansas, Louisiana, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

23 The supervising attorney must be a member of the bar or admitted to practice in the jurisdiction of these states: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

Exemptions from state bar membership may exist in a number of the states for law school professors or for clinical law professors, provided certain other requirements are met. An exemption exists in Arizona, Idaho, Missouri, and Wisconsin for clinical law school professors. Tennessee implies law school professors may not need to be members of the state bar. Nevada requires any attorney, not employed by the law school, to be a resident member of the state bar. Utah requires the supervisor to be a resident. Ohio also has an exception to being a member of the Ohio Bar pursuant to Bar Rule IX.

24 In a number of the states, the supervisory attorney must have practiced law for a certain number of years. In Arkansas and North Carolina, the supervising attorney is to have practiced for at least two years in any jurisdiction. California also requires the supervisory attorney to have practiced for at least two years or to be a full time law school professor in California. New York requires the supervisory attorney to have practiced for at least two years in New York.

A longer period of practice time of three years exists in a few states. Connecticut, Texas, Vermont and Washington require the supervising attorney to have practiced for at least three years. However, Connecticut also permits an attorney to be a supervisor if the attorney is employed by another attorney of five years standing, is an employee of an accredited Connecticut law school, or is approved by the presiding judge. Mississippi requires the supervising attorney to either be a current public official or to have practiced for more than three years in a public office, agency, or departments, district attorney office, or nonprofit or publicly funded legal services or agencies.

Five years of practice is required in a few states. Idaho requires the supervisor to have practiced in Idaho for at least five continuous years. Nevada requires the supervisor to be a resident member, engaged in practice in Nevada for at least five years. New Mexico requires the supervising attorney to have practiced for at least five years if the student being certified is an out-of-state law student. Oklahoma requires the supervising attorney to be engaged in practice for at least five years, or one year, if a member of district attorney, municipal attorney, attorney general, public defender, or other state office, or no minimum years requirement if part of approved law school internship program.

25 In some states, the supervising attorney is required to be an active practitioner before the specific court the law student is to appear. These states include the District of Columbia, Hawaii, Louisiana, Montana, and Vermont.

26 The Dean of the law school is specifically required to approve the supervising attorney in Arizona, the District of Columbia, Florida, Hawaii, Kansas, Louisiana, Maryland, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Texas (if part of a clinic) Utah, and Wisconsin.

27 States are diverse regarding how many law student interns a supervisor can supervise. California provides that a supervising attorney can supervise five students unless supervision of law students is a full-time job and, if so, the maximum number of law students is twenty-five.

The District of Columbia provides that a supervising attorney cannot schedule more than three trials a day with law students.

Idaho only permits one student per supervisor, unless the attorney is the clinical supervisor. Kansas restricts the number of students to two, unless the attorney is a full time member of legal aid society, county attorney, district attorney, municipal attorney, attorney general, public defender, or clinical supervisor.

Nevada permits one student per attorney unless it is part of law school externship.

North Carolina restricts the number of students to two per attorney, five if part of an externship, or no maximum if a full-time faculty member.

Oklahoma restricts the number of students to three unless part of public office or law school program.

Texas restricts the number of students to four, unless part of a clinic.

Washington restricts the number of students to one per attorney, two if part of a public office, or ten if the attorney is a full-time supervisor of a clinical program.

West Virginia restricts the number of students to two unless the supervising attorney is a faculty member of an ABA approved law school and student is enrolled for academic credit.

Wisconsin restricts the number of students to five, unless the attorney devotes more than twenty hours per week to supervision and education.

Wyoming restricts the number of students to three unless the attorney is a law professor.

- 28 A supervising attorney must be present at all times when a law student appears in any tribunal in Arkansas, Connecticut, Indiana, Kentucky, Maryland, Mississippi, Nevada, New Mexico, South Carolina, Tennessee, Utah, Virginia, and West Virginia.
- 29 A supervising attorney must be present when a law student appears before the supreme courts or intermediate appellate courts of Arizona, Iowa, Louisiana, Maine, Montana (Supreme Court), Nebraska, New Hampshire (Supreme Court), New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Washington, and West Virginia.
- 30 A supervising attorney need not be present when a law student appears in certain judicial arenas in Alabama, Alaska, Arizona, California, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Illinois, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, Wisconsin, and Wyoming.
- 31 The United States Courts of Appeal for the First, Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits, and the District of Columbia all require written approval by the supervising attorney. The Tenth Circuit simply states “certification by attorney.” The Seventh Circuit requires an attorney to make a motion to permit a law student to appear at least fourteen days before oral argument is scheduled.
- On the other hand, the Ninth Circuit does not have a specific requirement of consent on behalf of the supervising attorney. Again, the United States Court of Appeals for the Fifth Circuit currently has no published rules with regard to law student appearances.

- 32 The United States Courts of Appeal for the First, Second, and Tenth Circuits require the supervising attorney to file written consent to supervise and assume responsibility over the law student's work. The United States Court of Appeals for the Fifth Circuit currently has no published rules with regard to law student appearances, while the United States Court of Appeals for the Seventh Circuit requires law students to practice under a supervisory attorney, but lists no requirements on the part of the attorney to assume supervisory duties or professional responsibility.
- 33 All the federal circuit courts, except for the Fifth Circuit (because there are currently no published rules), require the supervising attorney to be admitted to practice before it. Additionally, the Ninth Circuit requires the supervisor to be admitted to practice before the highest court of any state for three years or longer and to have participated in at least three appellate arguments before a federal or state appellate court before being a supervisor.
- 34 Only the Fifth Circuit does not have this specific requirement because it does not have any currently published rules governing law student appearances.
- 35 Law students are required to attend ABA accredited law schools in Alabama, Alaska, Arkansas, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Arizona, Connecticut, Pennsylvania and Virginia all require a student to attend an ABA approved law school but also list additional requirements if a student attends an out-of-state school.
- 36 Other states have requirements that either substitute for, or supplement, the ABA accreditation requirement as follows:
- California requires the law school to either be ABA approved or approved by the California State Bar.
 - The District of Columbia requires ABA approval as well as approval by the admission committee of the court.
 - Georgia requires ABA approval or that the student attends any in-state law school.
 - Massachusetts requires ABA approval or that the school be approved by Massachusetts Bar.
 - North Carolina requires ABA approval as well as approval by North Carolina Bar or that the school be seeking ABA accreditation and be approved by Board of Governors.
 - Tennessee requires ABA approval or that the student attends a board approved Tennessee law school.
 - Connecticut permits a law student to attend a non-ABA accredited school approved by the Connecticut state bar.
 - Pennsylvania permits a law student to attend a school that is presently seeking ABA approval and has been approved by the Disciplinary Board.
- Some states require law student interns to attend one of that state's law schools.
- Colorado requires attendance at an accredited in-state law school.

- Hawaii requires interns to attend the University of Hawaii School of Law.
- Minnesota requires law students to be enrolled in an ABA approved Minnesota law school.
- Mississippi and Oklahoma both require student enrollment in an in-state law school.
- South Carolina requires enrollment at the University of South Carolina School of Law or the Charleston School of Law.

Finally, Kentucky requires “an approved law school,” while Texas requires that the law school be approved by the Supreme Court of Texas.

New York and Utah state no specific requirements in their rules as to the type of law school a student must attend.

37

Students are required to have completed a certain amount of time in law school and, also, certain coursework. The rules in the following states use the words or phrases “two-thirds,” “attain senior status,” “completed four semesters,” or “be in his or her third year of law school.” The states are: Alabama, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana (a course on ethics is also specifically required), Maine, Montana (or be within 5 credit hours of meeting this requirement), Nebraska, New Jersey, Ohio, Oregon, South Carolina, South Dakota, Utah, Vermont (evidence is also specifically required), Virginia (criminal law, professional responsibilities, evidence, and process is also specifically required), Washington, West Virginia, and Wyoming.

A law student has to have completed at least one-half of the academic requirements for graduation, or three semesters in: Alaska, Arizona, Indiana (professional responsibilities is also specifically required), Missouri, North Carolina, Pennsylvania, Rhode Island (must also be enrolled or have completed evidence or trial practice), Tennessee, and Wisconsin.

Law students in the following states need only to have completed at least one-third of the academic requirements for graduation, or two semesters: California (must also be enrolled or completed evidence and civil procedure), Connecticut, Hawaii, Maryland (must also have read and be familiar with rules of procedure and professional conduct), Michigan, Minnesota, and New York.

The number of semesters in law school required that a student must complete varies as a function of the type of the student's work (internship with a judge or agency, clinic), course work or special approvals in these states:

- Iowa requires a law student to have completed three semesters to appear before a trial or appellate court or two semesters to appear before any administrative agencies.
- Massachusetts requires that a law student complete four semesters and evidence or trial practice or two semesters if approved by the court.
- Mississippi requires a law student to complete two-thirds of the requirement for graduation if in an internship program or one-half of the requirements if in a clinical program.
- New Hampshire requires a law student to complete four semesters or two semesters if the student is enrolled in a clinic.
- North Dakota requires a law student to complete four semesters or three semesters if the student is in a clinic.
- Texas requires a law student to complete two-thirds of the requirements for graduation or one-half of the requirements if participation is in a clinic.

Then, other states require a number of credit hours of legal studies and, at times, combine that with mandatory course work:

- Arkansas requires a law student to have completed forty-eight semester credit hours including civil procedure, evidence, criminal process, and professional responsibilities.
- The District of Columbia requires a law student to complete forty-one semester hours and evidence, criminal process, and civil procedure.
- Illinois requires a law student to have completed three-fifths of the total hourly credits for graduation.
- Kansas requires a law student to complete sixty hours of legal study.
- Nevada requires a law student to complete thirty credit hours for certain activities or forty-five for other activities.
- New Mexico requires a law student to complete thirty credit hours and if the applicant is an out-of-state law student he or she must also read and be familiar with rules of professional conduct.
- Oklahoma requires a law student to complete forty-five semester hours and have taken or currently be enrolled in professional responsibilities, evidence, and two courses in civil procedure.

38 The following states all require some type of certification or approval by the Dean of the student's law school: Alabama, Alaska, Arizona, Arkansas, California (law school declaration), Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York (certified by the organization at which the law student is interning) North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee (or director of clinic) Texas, Virginia, Washington (or approval by someone certified by dean) West Virginia, Wisconsin, and Wyoming.

39 The law student is required to take an oath or execute a writing in these states: Alabama, Arizona, Arkansas, Delaware, District of Columbia, Florida, Georgia (an oath similar to that taken by a district attorney, public defender, etc. is required only if the student is representing a district attorney, public defender, etc.), Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma (law student must take an oath and pass an oral or written legal internship exam), Oregon, South Carolina, South Dakota, Texas, Vermont, Washington, and West Virginia.

40 The law student is to be introduced to the judicial authority before whom the student is appearing in: Alabama, Alaska, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia, and West Virginia.

41 The presiding judge has the discretion in these states to define how the student may proceed in a case: Alabama, Alaska, California, Colorado, Connecticut, District of Columbia,

Florida, Georgia, Idaho, Massachusetts, Michigan, Montana, Nebraska, New Mexico, North Carolina, Oregon, Texas, Utah, Vermont, Virginia, and Washington.

A judge's discretion is limited to certain situations in these states: Iowa, Kansas, Louisiana, Ohio, Rhode Island, South Dakota, Wisconsin, and Wyoming.

42

Although a law student may receive compensation, remuneration, or a salary from his or her employer, but that law student is not permitted to be compensated or to receive remuneration from the client the student is representing in these states: Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

Other states have different approaches to this issue:

- The District of Columbia states that no fee shall be paid to a supervising attorney or law student, except costs and penalties prescribed by law to the clinical programs.
- Indiana simply states in no event may a person be charged for the services of a legal intern acting in a representative capacity.
- Kentucky permits compensation in the form of a fellowship or scholarship only.
- Louisiana permits the supervising attorney to receive fees and costs when appropriate.
- Maryland states no personal compensation of any kind for services rendered.
- Massachusetts simply states “without compensation.”
- Mississippi permits students to be reimbursed actual expenses.
- New York states, “no compensation or remuneration from the party on whose behalf the services were rendered.”
- South Carolina only permits the student to receive course credits.
- Utah simply states the student cannot receive “any compensation or remuneration of any kind from the client on whose behalf the services are rendered.”
- Wyoming states neither the student nor supervising attorney “shall ask for or receive any compensation or remuneration of any kind from the person they represent, except supervising attorney may receive” his or her regular salary.

43

The issue of malpractice insurance is addressed as follows in these states:

- Georgia requires an attorney who is supervising a law student to “ensure the student is covered by an adequate amount of malpractice insurance.”
- New Hampshire requires the supervising attorney to consider purchasing malpractice insurance to include such law student.
- Ohio requires any entity supervising a legal intern to provide professional liability insurance coverage for the legal intern.
- Texas requires the supervising attorney to maintain malpractice insurance to cover the law student unless the law student would fall under governmental immunity.
- Vermont requires a supervising attorney to file a certificate that he or she has, in force, professional liability insurance that will cover the actions of the intern.

- 44 The First, Second, Third, Fourth, Sixth, Eighth, Tenth, and Eleventh Circuits, and District of Columbia all require a law student to attend an ABA-accredited school. The Seventh Circuit requires the law student to be a part of a program of an “accredited law school.” The Ninth Circuit requires the law student attend an ABA or state-accredited law school.
- 45 The following circuits have requirements concerning completion of the equivalent of a certain number of semesters and some also require certain course work:
- The First Circuit requires the law student to have taken or be currently enrolled in an appellate advocacy or clinical program.
 - In addition to completing the equivalent of four semesters in law school, the law student in the Second, Third, Fourth, Sixth, and Tenth Circuits is required to be familiar with the rules of civil procedure, criminal process, appellate procedure, evidence, professional responsibilities, and the rules of its court.
 - In addition to completing two-thirds of the requirements for law school graduation, the law student in the Ninth Circuit is to be familiar with rules of civil procedure, criminal procedure, appellate procedure, evidence, and professional responsibilities and rules of its court.
 - The Eighth Circuit requires a law student to complete three semesters or its equivalent.
 - The Eleventh Circuit requires a law student to complete forty-eight semester hours or seventy-two quarter hours or its equivalent.
 - The United States Court of Appeals for the District of Columbia requires a law student to complete forty-one semester hours or its equivalent and to have taken evidence, criminal procedure, and civil procedure.
- 46 The First, Second (law school certification), Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits, and the District of Columbia all require a Dean's certification.
- 47 A law student is to do so in the First, Second, Third, Fourth, Sixth, Eighth, and Eleventh Circuits, and the United States Court of Appeals for the District of Columbia.
- 48 Specific introduction to the court is required in the Second, Third, Seventh, and Eighth Circuits.
- 49 Discretion of the court regarding introductions of the law students exists in the First Circuit, Second Circuit, Fourth Circuit, Sixth Circuit, Seventh Circuit, and Ninth Circuit.
- 50 While remuneration from the represented client is forbidden, remuneration by the agency for which the student is working is permitted in the First, Second, Third, Fourth, Sixth, Eighth, and Eleventh Circuits, and the Court of Appeals for the District of Columbia. The Ninth Circuit simply states a student cannot receive compensation directly from client.
- 51 § 322 (a)(1).
- 52 Id.

53 Id.

54 § 322 (a)(2).

55 Id.

56 § 322 (b)(2).

57 Id.

58 § 322 (c)(2)-(3).

59 § 322 (c)(1).

60 § 322 (a)(1).

61 § 322 (b)(2).

62 § 322 (b).

63 Id.

64 Id.

65 § 321 (a)(4).

66 § 321 (a)(1).

67 Id.

68 § 321 (a)(2).

69 § 321 (b).

70 § 321 (b)(1).

71 § 321 (b)(1).

72 § 321 (b)(2).

73 § 321 (b)(3).

74 § 321 (a)(3); § 321 (b).

75 § 321 (a)(5).

76 Id.

77 Id.

78 PA ST RPC Rule 1.4 (c).

79 FAMOUS QUOTES AND POETS, [http:// www.famouspoetsandpoems.com/poets/victor_hugo/quotes](http://www.famouspoetsandpoems.com/poets/victor_hugo/quotes) (last visited May 23, 2011).

80 § 322 (a)(1).

49 DUQLR 477

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.