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How the Tulane Environmental Law Clinic Survived the Shintech Controversy and Rule XX Revisions: Some Questions and Answers

by Adam Babich

In late 1996, the Tulane Environmental Law Clinic (the Clinic) took on representation of a community group called St. James Citizens for Jobs and the Environment in a controversial challenge to Shintech Inc.'s proposed construction of a polyvinyl chloride plant in Convent, Louisiana. After the U.S. Environmental Protection Agency (EPA) granted a petition to veto the Louisiana Department of Environmental Quality's issuance of an air permit to Shintech,[1] Shintech changed its plans and located a downsized facility elsewhere in Louisiana.[2]

The Shintech dispute sparked a national controversy, featured on national television news shows and, ultimately, in a cable-television movie called "Taking Back Our Town."[3] A common postscript to retellings of the Shintech story is a statement that the Clinic essentially paid for its contribution to St. James Citizens' success with its life—suffering retaliatory restrictions that supposedly would prevent it from ever representing a group like St. James Citizens again.[4] In fact, the Clinic has continued to represent St. James Citizens and similar clients and continues to enjoy its fair share of successes and to weather its share of defeats.[5] The following questions and answers are intended to explain the Clinic's survival as a viable member of Louisiana's legal community and as a place where law students continue to represent clients on the cutting-edge of environmental law.

Questions and Answers

Wasn't the Clinic Shut Down or Crippled After the Shintech Controversy?

No. The Clinic is alive, well, and open for business. Here's what happened: after the Clinic's successful representation of St. James Citizens for Jobs and the Environment in the Shintech case, various members of the business community complained about the Clinic to the Louisiana Supreme Court. The court performed an "exhaustive review of all Louisiana law clinics [which] failed to uncover any violations."[6] Nonetheless, in 1998, the court adopted controversial revisions to Rule XX—the rule that allows the Clinic's "student attorneys" to appear in court before completing law school.[7] As further modified in 1999, the rule differs in three important respects from its pre-Shintech incarnation. Those three changes are reviewed below along with a brief explanation of the effect of each change on the Clinic.

The Definition of Indigence

The rule now prevents student attorneys from appearing in state forums on behalf of individual clients who earn an income greater than 200% of the federal poverty level.[8] Al-

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1. *See* U.S. EPA, Order Partially Granting and Partially Denying Petitions for Objections to Permits, *In the Matter of Shintech Inc. and Its Affiliates' Polyvinyl Chloride Production Facility, Permit Nos. 2466-VO, 2467-VO, 2468-VO* (Sept. 10, 1997), *at* http://www.epa.gov/Region7/programs/artd/air/title5/ t5memos/shin1997.pdf.
2. *See* In re Shintech, Inc., 2000-1984 (La. App. 1 Cir. 2/15/02) (upholding issuance of a permit for the new facility).
3. *Taking Back Our Town* (Lifetime television broadcast, Dec. 10, 2001). The television news shows are cited in Robert R. Kuehn, *A Taxonomy of Environmental Justice*, 30 ELR 10681, 10692 n.106 (2000).
4. *See, e.g.*, Giancarlo Panagia, *A Man, His Dream, and His Final Banishment: A Marxian Interpretation of Amended Louisiana Student Practice Rule*, 17 J. Envtl. L. & Litig. 1, 44 (2002) (asserting that a former Clinic director and his students were "martyred purists"); *see also* David Luban, *Silence! Four Ways the Law Keeps Poor People From Getting Heard in Court*, Legal Aff., May/June 2002 at 54, 57.
5. The Clinic's docket appears on its web page, *available at* http://www.tulane.edu/~telc.
6. La. Sup. Ct., Resolution Amending and Reenacting Rule XX (Johnson, J. Dissenting) at 1 (1999), *available at* http://www.lasc.org/rules/html/xxpfc.pdf.
7. La. Sup. Ct. R. XX, *available at* http://www.lasc.org/rules/html/xx499.htm.
8. *See id.* §4. Sections 4 and 5 of Rule XX address: "Law school clinical program *staff* and student practitioners who appear in a representative capacity *pursuant to this rule*" (emphasis added). Clinic staff, however, appear "pursuant to Rule XX" *only* with respect to supervision of student appearances. When Clinic staff appear on behalf of non-Rule XX clients, they appear on the same basis as would any member of the bar. Consistent with the Louisiana Supreme Court's explanation that "no law professor is limited in any way by Rule XX

though the rule previously limited student attorney appearances to those on behalf of indigent clients, the court had not previously defined "indigent." This change was controversial because someone who fails to qualify as indigent under the revised rule may still be unable to afford to hire a private lawyer. There is, however, no shortage of potential clients who meet the new Rule XX test for indigence. This aspect of the rule, therefore, does not have a major effect on the Clinic's operations.

The Fifty-One Percent Rule

As revised, Rule XX provides that student attorneys may only appear in state forums on behalf of community organizations if over one-half of the organization's members meet the rule's definition of indigence.[9] This aspect of the rule renders it impractical for the Clinic's student attorneys to appear on behalf of citizen organizations in state forums.[10] This is because confirming eligibility would, as a practical matter, involve asking *each* of the organization's members about their private financial affairs. How many organizations would you join if you had to provide an income statement to gain admission?

The limitations imposed by this aspect of the revised rule, however, are far from devastating. The Clinic can still represent citizen organizations, but our licensed attorneys—rather than student attorneys—make all appearances before state forums on behalf of these organizations.[11] Student attorneys may *still* argue in court on these cases, however, as long as an individual who qualifies under Rule XX is also named as a plaintiff. When a case merits use of the Clinic's resources, organizational clients have had few apparent problems in identifying qualifying members who are willing to participate as named plaintiffs (on whose behalf student attorneys may appear). The bottomline, therefore, is that the Clinic still represents the same types of organizations in the same types of cases as before the rule change, with no sacrifice to the educational opportunities available to Clinic students.

The First Contact Rule

If a law school clinic contacts a potential client for the purpose of representing that person, the revised rule precludes student attorney appearances in state forums on behalf of that client.[12] The apparent purpose of this rule is to discourage law professors from "soliciting" potential clients for their clinics, rather than waiting for clients to make the first contact. The controversy surrounding this change arises from an argument that the rule interferes with Clinic attorneys' freedom of speech. This concern, however, is somewhat theoretical in light of the way the Clinic actually operates. The Clinic is a well-known institution that does not charge its clients for representing them. Not surprisingly, therefore, the Clinic does not face the same challenge a private law firm might in "marketing" its services and in ensuring there is enough work for each student attorney. Indeed, there is more demand for the Clinic's services than we can meet with current resources. Clinic personnel have no need, therefore, and no particular desire, to solicit clients.

Thus, although each of the three major changes the Court made to Rule XX raise significant issues, none of the changes threaten the Clinic's ability to continue to discharge its core mission of (1) training competent and ethical lawyers by providing real-world litigation experience to students, and (2) providing environmental legal services to those who could not otherwise afford them.

But When Rule XX Revisions Were Announced, Didn't Clinic Personnel Argue That the New Rule Would Destroy the Clinic?

Well . . . . It is not unusual for lawyers faced with new restrictions to err on the side of a worst-case analysis. In this case,

in acting as counsel for anyone, regardless of the activities of his students," Louisiana Supreme Court's Appellee's Brief at 11, Southern Christian Leadership Conference v. Supreme Court of La., 252 F.3d 781 (5th Cir. 2001) (No. 99-30895), such appearances are not "pursuant to Rule XX" and thus are not limited by Rule XX. *See id.* at 37 ("All Rule XX does is create rules for non-lawyers who wish to act as attorneys for third parties in court."). U.S. District Court Judge Fallon found: "Rule XX does not prohibit the professor-plaintiffs from representing or soliciting whomever they wish, or from employing students in any non representative capacity they desire . . . ." Southern Christian Leadership Conference v. Supreme Court of La., 61 F. Supp. 2d 499, 510 (E.D. La. 1999), *aff'd*, 252 F.3d 781 (5th Cir.), *cert. denied*, 122 S. Ct. 464 (2001). The U.S. Court of Appeals for the Fifth Circuit held that Rule XX "operates only to set forth the limited circumstances under which unlicensed law students may engage in the practice of law in Louisiana; *it has no other reach*." *Southern Christian Leadership Conference*, 252 F.3d at 784, *cert. denied*, 122 S. Ct. at 464 (emphasis added).

9. *See* La. Sup. Ct. R. XX §5.

10. As "nearly a century of Supreme Court precedent makes clear, practice before federal courts is not governed by state court rules." In re Poole, 222 F.3d 618, 622 (9th Cir. 2000); *see* Sperry v. Florida, 373 U.S. 379 (1963) (practice before federal forums is governed by federal rules); Ellis v. Weasler Eng'g Inc., 258 F.3d 326, 337 (5th Cir. 2001) (With respect to "matters covered by the Federal Rules of Civil Procedure . . . [i]t is settled that if the Rule on point is consonant with the Rules Enabling Act, 28 U.S.C. §§2072, and the Constitution, the Federal Rule applies regardless of contrary state law.") (quoting an explanation of the Erie Doctrine in Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 428 & n.7 (1996)); Hugh Collins, *High Court Explains Student-Lawyer Rule Change*, New Orleans Times-Picayune, June 25, 1998, at B6 (noting that Rule XX does not concern practice before federal courts or courts of other states). Instead, student appearances before federal district courts for the Eastern, Western, and Middle Districts of Louisiana are governed by a federal rule, Local Rule 83.2.13.

11. Rule XX "only addresses appearances by law students as litigators" and "does not regulate the activities of law schools or licensed attorneys on the staffs of law school clinics." Collins, *supra* note 10, at B6. Indeed, Justice Calogero stressed, in an opinion concurring in the 1999 amendments, that the rule does not regulate licensed clinical attorneys or limit the clients whom any licensed attorney may represent:

> We specifically do not say that a lawyer associated with a clinic cannot solicit, or that such a lawyer cannot represent solicited clients, or that a law school and/or its clinics cannot work for non-indigent clients in any situation where it is legal and ethical, or that a clinic lawyer cannot use as assistants law clerks, paralegals, other laypersons, or law students at any stage of their training. In fact, all of this is permissible.

La. Sup. Ct., Resolution Amending and Reenacting Rule XX (Calogero, J. concurring) (1999) at 3 *available at* http://www.lasc.org/rules/html/xxpfc.pdf*; see also* Louisiana Supreme Court's Appellee's Brief at 27, Southern Christian Leadership Conference v. Supreme Court of La., 252 F.3d 781 (5th Cir. 2001) (No. 99-30895) ("[Client] groups are, and always have been, free to present their claims in Louisiana courts through licensed attorneys, including the clinic's lawyers"); *see also id.* at 44 (where Rule XX does not authorize student practice "[l]aw Professors may use students in the capacity that any lawyer may use law students—as research assistants and as law clerks"). *See also* the authorities cited in note 8, *supra*.

12. *See* La. Sup. Ct. R. XX, §10.

Clinic personnel may have underestimated the number of Louisiana residents who meet the Supreme Court's new definition of indigence. We may also have underestimated the willingness of individual clients to step forward as "named" plaintiffs, rather than limiting their participation to serving as members of plaintiff citizen organizations.

In 1999, the Louisiana Supreme Court modified its 1988 revisions to Rule XX, softening the revisions' impact on law school clinics. Also, the court's implementation of the final revisions may have headed off one significant potential problem with the rule. Specifically, to address the concern that Rule XX could be used to harass or embarrass clients by demanding private financial information, Chief Justice Pascal F. Calogero provided an April 7, 1999, letter to Tulane Law School's Dean. The Chief Justice explained: "The Court considers the information and documents which are given to law clinics, or generated by law clinics, concerning the financial eligibility of clinic clients, to be confidential and not subject to public scrutiny or disclosure."[13]

In sum, compliance with Rule XX has turned out to be far less disruptive than Clinic personnel feared at the time the court announced its revisions. From our current perspective, with a full case load and more potential clients than we can assist, we have no doubt but that we can comply fully with Rule XX, provide our student attorneys with a first-rate educational experience, and continue to serve our traditional client base.

If You're Backing Off From the Charge That the Rule Change Was a Disaster, Do You Still Claim the Louisiana Supreme Court Was Wrong to Revise Rule XX?

Much of the controversy surrounding the changes to Rule XX arose from the role of lobbying and campaign contributions in the process.[14] A coalition of clients, some law students, and some law professors challenged the revised version of Rule XX and presented those concerns to the federal courts in a lawsuit. Ultimately, a federal trial court and the U.S. Court of Appeals for the Fifth Circuit upheld the Louisiana Supreme Court's actions.[15] The U.S. Supreme Court declined to consider the case. From a legal perspective, that is the end of the matter.

Lawsuits are not always correctly decided, of course, and the fact that the revised rule passed legal muster does not mean the revisions were a good idea. But the practical effect of the revisions has not been, as some had feared, to deny legal representation to the Clinic's clients. Moreover, if the new rule increases the judiciary's confidence in the Clinic's activities, it could even turn out to help the Clinic's clients.

Did the Louisiana Supreme Court intend its revision to harm the Clinic or de-lawyer the Clinic's clients? No such intent is apparent from the rule's text, which grants unlicensed students the privilege of appearing, arguing, and presenting evidence before the state's courts and administrative agencies. Rule XX greatly enhances the Clinic's ability to provide students with real-world litigation experience and to serve people who could not otherwise afford competent environmental representation. Regardless of whether we agree with every aspect of the rule as revised, we are grateful for the privileges it affords the Clinic and its student attorneys. And as the highest court in this jurisdiction, the Louisiana Supreme Court is entitled to—and continues to receive—our respect and obedience.

So the Clinic Dodged a Bullet. Now Will You Keep Your Head Down and Avoid Stirring Things Up Again?

No. We do not seek out controversy, but we also will not turn down cases to avoid it. No self-respecting law school could train its students to shy away from controversy. A basic tenant of the legal profession is that "legal representation should not be denied to people . . . whose cause is controversial or the subject of popular disapproval."[16]

Is the Clinic an Environmentalist Organization?

It is not. The Clinic has no political agenda whatsoever. It is an educational institution. Its mission is to train effective and ethical lawyers by guiding students through actual representation of clients and to serve the public by making legal representation available to those who could not otherwise afford it.

Then Shouldn't the Clinic Teach Its Student Attorneys to Encourage Economic Growth, Instead of Always Complaining About Pollution?

The Clinic's litigators are students who are learning to represent clients as professional lawyers. A professional lawyer zealously advocates the position of his or her client, as long as that position has a good-faith basis in law and fact.[17] The legal system operates from the premise that if all sides to a dispute are well represented, justice will prevail in settlement or trial.[18]

Under the rules governing the legal profession, lawyers do not push their own philosophies in their clients' cases, but "abide by the client's decisions concerning the objectives of representation . . . ."[19] For this reason, a "lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities."[20]

The Louisiana Supreme Court requires Clinic student attorneys to certify that they "will not place [their] personal interests or clinic interests ahead of the interests of the client."[21] Student attorneys, therefore, are ethically bound to

13. Letter from Chief Justice Calogero, Supreme Court of Louisiana, to Dean of Tulane Law School (Apr. 7, 1999), *available at* http://www.tulane.edu/~telc/CJ%20Calogero%20Ltr,%204.7.99.pdf.

14. The district court ruled that "in Louisiana, where state judges are elected, one cannot claim complete surprise when political pressure somehow manifests itself within the judiciary." *Southern Christian Leadership Conference*, 61 F. Supp. 2d at 513, *aff'd*, 252 F.3d at 781, *cert. denied*, 122 S. Ct. at 464.

15. *See id.*

16. Model Rules of Professional Conduct R. 1.2 cmt. 3 (1999) [hereinafter Model Rules].

17. Reasonable people may differ about the merits of the rules that govern U.S. lawyers and about lawyers' appropriate role in society. In the Clinic, however, we are strictly bound by the rules that are on the books.

18. *See* Luban, *supra* note 4, at 54 ("By making each party responsible for presenting its own case, the adversary system arranges incentives so that every point of view gets presented as fully and sympathetically as possible.").

19. Model Rules *supra* note 16, R. 1.2 (a).

20. *Id.* R. 1.2(b); *see also id.* R. 1.2 cmt. 3 ("representing a client does not constitute approval of the client's views or activities").

21. *See* La. Sup. Ct. R. XX, §6(g).

advance their clients' lawful goals—not their own goals or Tulane University's goals, whether in promoting economic growth or environmentalism.[22] (That said, our clients' goals are rarely to stop economic growth, but rather to ensure that growth proceeds in a sustainable way, consistent with protection of public health, welfare, and the environment.)

It Must Be Frustrating to Train Clinic Students to Fight Pollution and Then Watch Them Graduate and Go to Work Representing Polluters

To the contrary: We are pleased to see our graduates working on both sides of environmental (and other) issues. The environmental protection system only works if both sides are represented by competent, ethical lawyers. If all sides do their jobs well—and if we train our students properly—environmental disputes should usually result in negotiated compromises that strike a balance between the various goals that animate our diverse society.

Can Defendants Pressure the Clinic to Drop Cases by Complaining to the University or Law School Administration?

The University and Law School have an obligation to ensure that the Clinic, like every part of Tulane Law School, is run professionally, ethically, and in a pedagogically sound manner. But few sophisticated opponents of the Clinic's clients would expect those administrations to insert themselves into attorney-client relationships. Administrators who are not admitted to the Louisiana Bar could not practically interfere with the handling of Clinic cases, since the Clinic is ethically bound to provide its clients with *independent* professional judgment. Administrators who are admitted to serve as lawyers in Louisiana would become bound by a "duty of loyalty" to the Clinic's clients the minute they took over direction of a case. Therefore, defendants' complaints about cases handled by the Clinic are better addressed to the courts than to the Tulane University or Law School administrations.

Do Defendants Have Legal Standing to Challenge Student Practice in Court?

Probably not. In the context of its Model Rules of Professional Conduct, the American Bar Association has noted: "The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule."[23] This is because the rules "are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons."[24]

Louisiana District Court Judge R. Michael Caldwell held that the issue of compliance with the student practice rule is not one about which the trial court "is called upon to make a determination."[25] Of course attorneys, as officers of the court and "not necessarily [as] representatives" of litigants, "have the right to raise this issue."[26] But at least if "there's no complaint from the clients," allegations of Rule XX violations are "more properly addressed to the Supreme Court and/or to disciplinary counsel for consideration . . . ."[27]

Both the ABA's position and Judge Caldwell's ruling flow from general principles of standing doctrine. To have standing to raise *any* alleged legal violation, the complaining party must suffer an injury to a legally protected interest.[28] Defendants do not suffer any injury by virtue of the fact that a student attorney, rather than a more experienced Clinic staff attorney, signs a brief or conducts oral argument or examines a witness.[29]

The Clinic's staff includes, of course, licensed attorneys who can and do take the lead in appearances on behalf of clients when it is not practical for a student attorney to do so, for example when court hearings occur during school breaks. If a defendant were to succeed in disqualifying a student attorney, therefore, the result would be an appearance by a more experienced staff attorney. And it is difficult to fathom how an attorney could justify billing his or her client for time spent ensuring that the Clinic's clients are represented by experienced attorneys rather than students. If ex-

22. While a lawyer has professional discretion in determining the means by which a matter should be pursued, lawyers may not substitute their goals for those of the clients. *See* Model Rules, *supra* note 16, R 1.2 cmt. 1. The Clinic's student attorneys are thus bound by the rules of professional conduct to put aside their own political views when representing clients.

23. *Id.* Scope ¶18.

24. *Id.*

25. In re Waste Management of La., No. 492, 277, slip op. at 2 (La. 19th Jud. Dist. Apr. 28, 2002).

26. *Id.*

27. *Id.* Judge Caldwell stated: "I don't believe there has been any violation . . . ." *Id.* In that case, a student attorney appeared only on behalf of a client meeting Rule XX's definition of indigence, while a licensed staff attorney appeared both as the student attorney's supervisor and as the sole representative of a community organization. Consistent with the Louisiana Supreme Court's explanation, noted above in footnote 8, that "no law professor is limited in any way by Rule XX in acting as counsel for anyone, regardless of the activities of his students," *supra* note 8, Judge Caldwell stated that the staff attorney "should make it clear who she is representing in an individual capacity," as opposed to"who she is merely signing" for as the supervisor of a student attorney appearing for indigent individual clients. In re Waste Management of La. at 2.

28. La. Code Civ. Proc. art. 681 ("Except as otherwise provided by law, an action can be brought only by a person having a real and actual interest which he asserts"). In Guidry v. Dufrene, 96-0194 at 4 (La. App. 1 Cir. Nov. 8, 1996), 687 So. 2d 1044, 1046 (1996), the court ruled: "The requirement of standing is satisfied if it can be said that the plaintiff has an interest at stake in the litigation which can be legally protected." *See also* Martin v. Department of Public Safety, No. 97-0272 at 4 (La. App. 1 Cir. Feb. 20, 1998), 708 So. 2d 1182, 1184 (1998). Of course, in Meredith v. Ieyoub, No. 96-1110 (La. Sept. 9, 1997), 700 So. 2d 478 (1997), the court held that potential defendants could challenge a contingent fee agreement between the Louisiana Attorney General and private firms. The potential defendants' standing, however, was premised on a special rule that applies "when a party seeks to restrain a *public body* from alleged unlawful action . . . ." *Id.* at 480 (emphasis added).

29. *See* In re Yarn Processing Patent Validity Litig., 530 F.2d 83, 89 (5th Cir. 1976) (ruling, in context of a motion to disqualify, "[w]e are reluctant to extend [standing] where the party receiving such an advantage has no right of his own [with respect to an alleged conflict of interest] which is invaded"). To the extent only that it approved immediate appeals of denials of disqualification motions, the *Yarn Processing* case was disavowed by Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 646 F.2d 1020, 1025 (5th Cir. 1981), *overruled on other grounds by* Gibbs v. Paluk, 742 F.2d 181 (5th Cir. 1984); *see also* Colyer v. Smith, 50 F. Supp. 2d 966, 971 (C.D. Cal. 1999) (a non-client litigant "must establish a personal stake in the motion to disqualify sufficient to satisfy the 'irreducible constitutional minimum' of Article III"); Douglas R. Richmond, *The Rude Question of Standing in Attorney Disqualification Disputes*, 25 Am. J. Trial Advoc., Summer 2001, at 17.

perience counts for anything, the defendants would probably be better off facing student attorneys in court.

But if Student Appearances Were Precluded, Wouldn't the Clinic Abandon Its Clients?

No. Student practice is a valuable part of the clinical educational process both in terms of providing students a unique opportunity to understand fully what it means to represent a client and in terms of developing litigation skills. But environmental lawyers' most challenging work usually occurs in the library, during the document review process, and during drafting, rather than in the courtroom. Environmental litigation is complex litigation—like antitrust, securities, or tax litigation. An environmental law clinic, therefore, is more than a trial skills clinic; it focuses on strategic thinking, careful investigation and research, and succinct, persuasive writing.

Precluding student practice would be a blow to the Clinic's educational mission and a disservice to Louisiana bar members as a whole. It would not, however, prevent the Clinic from guiding its students through the demanding tasks of strategic thinking, investigation and research, and drafting on behalf of Louisiana residents who otherwise would be unable to afford such legal services. As the Fifth Circuit has recognized, if a matter failed to qualify for student practice, students would be "barred only from serving in an attorney's representative capacity . . . and could perform a wide variety of legal related work or research, so long as it was reviewed and any formal documents (such as pleadings, motions, agreements or the like) were actually submitted by a licensed supervising attorney."[30]

Are You Saying the Clinic Can Violate Rule XX With Impunity and Nobody Can Complain?

Of course not. *All* Louisiana bar members share an interest in ensuring that Tulane law students acquire clinical experience that reflects the highest standards of professional conduct, including—but not limited to—compliance with all applicable rules. A Clinic that taught young lawyers to circumvent court rules would not only disserve its students, but the entire legal system. Accordingly, if a defendant's attorney or any other bar member were to develop genuine concerns about the Clinic's compliance with Rule XX, it would be fully appropriate for that lawyer to raise those concerns before the courts. (Although we would appreciate it if lawyers first raised their concerns with the Clinic director.) Such issues, however, are between officers of the court and the judiciary in its capacity as the bar's supervisor. Disputes over student practice have nothing to do with the rights of the parties to any underlying litigation. Such disputes should not be a means for any party to seek a litigation advantage.[31]

How Does the Clinic Fit Into the Louisiana Legal Community?

Even aside from its role in training young attorneys, the Clinic plays an important role in the Louisiana legal community. As explained below, the Clinic helps fill a significant gap in the services the Louisiana Bar provides. The Clinic should therefore be viewed as a valued member of the community.

The legal profession is responsible for ensuring that the business aspects of law, e.g., high billing rates, do not create a situation in which access to justice is reserved only for the wealthy.[32] The profession, therefore, has a long and proud tradition of offering pro bono services to indigent clients.

Most law firms, however, do not offer significant pro bono services on environmental issues. This is because environmental cases tend to have broad ramifications that could affect the firms' other clients. Offering free environmental services to indigent clients would pose the risk that the firm's paying clients would take their business elsewhere. Moreover, those firms whose clients would be unaffected by the results of pro bono environmental litigation often lack the expertise to offer effective assistance to indigent clients.

The difficulty of offering pro bono environmental services without compromising potentially lucrative relationships with business clients creates a dilemma for the Louisiana Bar. On one hand, lawyers are duty bound to accept "a fair share of unpopular matters or indigent or unpopular clients."[33] On the other hand, lawyers—like everyone else—must pay attention to the bottomline.

Because the Clinic offers competent environmental assistance to indigent clients, it takes some of the pressure off the rest of the Louisiana Bar to see to it that an inability to pay does not deny people the opportunity to enforce their rights under environmental laws and the Louisiana Constitution. After all, legal rights would not be worth the paper they are written on if they could not be enforced. And probably none of us would wish to envision a Louisiana where only the wealthy had the right to a healthful environment, which the Louisiana Constitution provides for us all.[34]

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30. Southern Christian Leadership Conference v. Supreme Court of La., 252 F.3d 781, 790 n.6 (5th Cir. 2001).

31. Chief Justice Calogero, in his April 7, 1999, letter to Tulane Law School's Dean, clearly contemplated that concerns about Rule XX compliance would be handled by the Louisiana Supreme Court, rather than becoming a sideshow in the underlying litigation. The Chief Justice stated:

> In the event the financial eligibility of a clinic client is questioned, either formally or informally, by anyone outside of the clinic, the person or entity who is questioning a client's eligibility should be informed of this correspondence and should be asked to contact this Court. The Court will then review the complaint and make such inquiry of the law clinic as it deems necessary and advisable, and thereafter take whatever action it deems appropriate.

Letter from Chief Justice Calogero, Supreme Court of Louisiana, to Dean of Tulane Law School (Apr. 7, 1999).

32. *See* MODEL RULES, *supra* note 16, R. 1.2 cmt. 3 ("Legal representation should not be denied to people who are unable to afford legal services or whose cause is controversial or the subject of popular disapproval"); LA. SUP. CT. R. XX, §1 ("The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services.").

33. MODEL RULES, *supra* note 16, R. 6.2 cmt. 1.

34. *See* LA. CONST. art. IX, §1.