19TH JUDICIAL DISTRICT COURT PARISH OF EAST BATON ROUGE STATE OF LOUISIANA	*	
IN THE MATTER OF:	*	DOCKET NO: 492,277 DIVISION "I"
WASTE MANAGEMENT OF LOUISIANA, L.L.C. WOODSIDE LANDFILL, TYPE I AND II SOLID WASTE LANDFILL	*	
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT	*	

PETITIONERS' MEMORANDUM IN OPPOSITION TO WASTE MANAGEMENT OF LOUISIANA, L.L.C.'s MOTION TO DISMISS

Petitioners Mr. O'Neil Couvillion, Mr. Harold Wayne Breaud, Louisiana Environmental Action Network ("LEAN") and Concerned Citizens of Livingston Parish ("CCLP") respectfully submit their opposition to Waste Management of Louisiana, L.L.C.'s ("Waste's") Motion to Dismiss.

Introduction

Waste wholly misinterprets Louisiana Supreme Court Rule XX. Waste argues nonsensically that Rule XX (which authorizes and limits appearances by unlicensed law students) somehow prevents licensed bar members from representing non-indigent clients even when there is no law student appearance on behalf of those clients. Waste ignores Chief Justice Pascal F. Calogero's careful clarification that it is "permissible" for law school clinics to "work for non-indigent clients in any situation where it is legal and ethical" to do so.[1] Waste also ignores the U.S. Fifth Circuit's clear holding 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 v. Supreme Court of State of La., 252 F.3d 781, 784 (5th Cir.), *cert. denied* 122 S. Ct. 464 (2001).

The Louisiana Supreme Court enacted and revised Rule XX to allow student practice on behalf of indigent clients – not to protect defendants such as Waste from lawsuits. Waste has no legitimate interest in Rule XX and therefore has no legal standing to enforce Rule XX. This is

[1] Resolution Amending and Reenacting Rule XX, (Calogero, J. concurring) (1999) at 3 (available at http://www.lasc.org/rules/html/xxpfc.pdf) (Exhibit A).

because violations of Rule XX would not injure Waste. 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").[2]

It is of vital interest to ***all*** members of the bar that Louisiana law students acquire clinical experience that reflects the highest standards of professional conduct, including - but not limited to - compliance with all applicable rules. Rule XX should therefore be administered in a way that reflects that shared interest – which has nothing to do with disputes between clients in the underlying litigation. Rule XX should ***not*** be used as a vehicle for securing a litigation advantage, because that is not what it is about. Instead, as is the case with other rules regulating the profession, concerns about Rule XX compliance should be resolved between counsel, as officers of this Court, and the judiciary, as supervisor of the Bar.

Waste complains without merit that the plaintiffs must "demonstrate" indigence in their petition. But other than the specific certifications that Rule XX § 3(e) requires be filed in the record, Rule XX creates ***no*** such pleading requirements. This is because neither Rule XX nor indigence are part of the plaintiffs' cause. Thus, Waste is not entitled to information about Mr. Couvillion and Mr. Breaud's income, since that information is wholly irrelevant to the issues between the litigants. The Louisiana Chief Justice has 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***." Letter of Chief Justice Pascal F. Calogero to Tulane Law School's Dean Edward Sherman, dated April 7, 1999 (Exhibit B).

Rule XX compliance is an obligation of the Clinic staff, who are licensed attorneys subject to supervision discipline by Louisiana Courts.[3] Louisiana lawyers have many similar

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[2] 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).

[3] The Clinic first announced its interpretation in a letter provided to other litigants in a case before this Court. See Letter of Tulane Environmental Law Clinic to Ms. Nicole Martin (November 14, 2000) (Exhibit C). The dispute in that case ended with the attached letter. In the instant case, however, Waste has seen fit to proceed directly to a contested motion before this

obligations under the rules. They must maintain up-to-date information on the roll of attorneys. Louisiana Supreme Court Rule XVIII. They must attend a minimum number of approved continuing legal courses. Id., Rule XXX. They must restrict their practice to cases they are competent to handle. Louisiana Rules of Professional Conduct, Rule 1.1. They must keep their clients informed, id., Rule 1.4, charge reasonable fees, id., Rule 1.5, and must maintain client funds in separate accounts. Id., Rule 1.15. These are important obligations, but they are not pled in complaints and are not part of the dispute between clients in the underlying litigation. Rule XX is works in the same way. It exists to facilitate the training of ethical advocates, not to create pleading hurdles for plaintiffs. The Plaintiffs were no more required to "demonstrate" indigence in their Petition than Waste's lawyers are required to demonstrate proper handling of client funds in a trust account. When the Louisiana Supreme Court has developed concerns about Rule XX compliance, it has investigated Louisiana clinics to resolve those concerns.[4] The prospect of such investigations provides ample incentive for clinic staff to maintain careful compliance.

Clinic staff and student attorneys appear "pursuant to Rule XX" ***only*** with respect to entry and supervision of student appearances. When Clinic staff appear on behalf of non-Rule XX clients, such as CCLP and LEAN, they appear as members of the bar and officers of the Court. Such appearances are not "pursuant to Rule XX" and are not limited by Rule XX. As the Louisiana Supreme Court has noted: "[Client] groups are and always have been, free to present their claims in Louisiana courts through licensed attorneys, ***including the clinic's lawyers.***"[5] If Waste or its attorney were to convince this Court or the clinic's staff that a student appearance was not appropriate on behalf of a particular client, the remedy would ***not*** be dismissal of the client's case. (Waste has failed to cite a single case in which dismissal is a remedy for disqualification of counsel.) Instead, a licensed member of the bar would appear on behalf of the client. Such a result would not benefit Waste in the slightest. To the contrary, if an attorney's experience is worth anything, Waste would be better off arguing its case against law

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Court, without discussing its concerns with clinic attorneys or considering the authorities set forth in the attached letter and in this memoranda.

[4] Resolution Amending and Reenacting Rule XX, (Johnson, J. Dissenting) (1999) at 1 (available at http://www.lasc.org/rules/html/xxpfc.pdf) (Exhibit D) ("An exhaustive review of all Louisiana law clinics failed to uncover any violations of the Law Student Practice Rule")

[5] Louisiana Supreme Court's Appellee's Brief at 27, Southern Christian Leadership Conference v. Supreme Court of State of La., 252 F.3d 781 (5th Cir. 2001) (No. 99-30895)

students.[6]

Argument

I. Waste Has No Standing to Challenge Rule XX Compliance.

To have standing to raise an alleged legal violation, the complaining party must suffer an injury to a legally protected interest that can be traced to the injury. La. C.C.P. 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"); Guidry v. Dufrene, 96 0194 at 4 (La. App. 1 Cir. 11/8/96), 687 So.2d 1044, 1046 ("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").[7] Waste has no legally protected interest in the plaintiffs' choice of counsel. Moreover, Waste does 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. 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").[8] Waste therefore has no real or actual interest in Rule XX compliance, but is only using Rule XX to seek a litigation advantage, such as delay of this litigation.

It is clear that the Louisiana Supreme Court expected Rule XX compliance to be an issue between the judiciary and officers of the Court. Thus, Chief Justice Calogero assured the Dean of the Tulane Law School that:

> The Court considers the information and documents which are given to law clinics, or generated by law clinics, concerning the

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(Excerpted in Exhibit E)

[6] 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.

[7] See also Martin v. Department of Public Safety, 97 0272 at 4 (La. App. 1 Cir. 2/20/98), 708 So.2d 1182, 1184. In Meredith v. Ieyoub, 96-1110 (La. 9/9/97), 700 So.2d 478, 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 4, 700 So.2d at 480 (emphasis added). Tulane University is a private school and the Tulane Environmental Law Clinic is not a public body.

[8] To the extent only that it approved immediate appeals of denials of disqualification motions (not an issue in this case), the Yarn Processing case was disavowed by Duncan v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 646 F.2d 1020, 1025 (5th Cir. 1981), which itself was overruled on other grounds by Gibbs v. Paluk, 742 F.2d 181 (5th Cir. 1984).

financial eligibility of clinic clients, to be confidential and not subject to public scrutiny or disclosure.

Letter of Chief Justice Pascal F. Calogero to Tulane Law School's Dean Edward Sherman, dated April 7, 1999 (Exhibit B). The reason why the Court could consider such compliance information confidential is clear: Rule XX compliance is an issue only between the Court and its officers. It is wholly irrelevant to the underlying litigation and, thus, litigants have no standing to move for dismissal on Rule XX grounds.

II. Rule XX Should Be Enforced By the Courts and its Officers, not Litigants.

Rather than serving as a vehicle for posturing and delay by defendants, Rule XX should be implemented like other regulations on the profession, and enforced by the Courts either on their own motion or in response to reasonably grounded complaints by bar members (in their capacity as officer of the court, not as litigants' advocates). See In re Yarn Processing Patent Validity Litig., 530 F.2d 83, 89 (5th Cir. 1976) (declining to enforce conflict rules on the motion of a party whose right has not been invaded by an alleged conflict).

The Louisiana Supreme Court has shown its willingness to enforce these requirements, having recently conducted an "exhaustive review" of Louisiana law school clinics. Resolution Amending and Reenacting Rule XX, (Johnson, J. Dissenting) (1999) at 1(available at http://www.lasc.org/rules/html/xxpfc.pdf) (Exhibit D) ("An exhaustive review of all Louisiana law clinics failed to uncover any violations of the Law Student Practice Rule"). The Supreme Court could obviously conduct another such investigation at any time, on its own motion, and – even aside from their duties as officers of the Court – the clinic's staff have every incentive to comply fully with Rule XX.

At this Court's request, undersigned counsel is prepared to provide the Court with details about its clients' indigence. Such information, however, is no business of Waste's, is not relevant to this case, and thus should not be shared with Waste or opposing counsel. Further, Waste has alleged no basis for any suspicion that Mr. Couvillion or Mr. Breaud fail to quality under Rule XX's definition of indigence. Rather, Waste has attempted simply to erect pleading hurdles, despite its utter lack of any good faith basis for an allegation that Rule XX has been violated. The clinic should no more be required to demonstrate Rule XX compliance on Waste's Motion than Waste's lawyers should be required to plead and prove that they are charging Waste

a reasonable fee[9] on Mr. Couvillion or Mr. Breaud's Motion.

III. Rule XX Does Not Limit Representation by Licensed Bar Members.

It is crystal clear that Rule XX is designed to authorize and limit student practice, not practice by licensed bar members – whether those bar members are employed by a law school clinic or any other organization. Thus, the Fifth Circuit ruled: 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 v. Supreme Court of State of La., 252 F.3d 781, 784 (5th Cir. 1999), *cert. denied* 122 S. Ct. 464 (2001).

In a brief that it formally filed with the U.S. Court of Appeals for the Fifth Circuit, the Louisiana Supreme Court (represented by Louisiana Bar Association President Michael H. Rubin) stressed 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.***" Louisiana Supreme Court's Appellee's Brief at 11, Southern Christian Leadership Conference v. Supreme Court of State of La., 252 F.3d 781 (5th Cir. 2001) (No. 99-30895) (Excerpted in Exhibit E) (emphasis added). The Supreme Court explained: "[Client] groups are and always have been, free to present their claims in Louisiana courts through licensed attorneys, ***including the clinic's lawyers***. Rule XX impacts ***only*** the groups' ability to present their claims through non-lawyer students." Id. at 27 (emphasis added). Further, the Court stated: "Nothing prohibits a licensed lawyer from freely assisting any organization or individual in any action, whether *pro bono* or not. ***All Rule XX does*** is create rules ***for non-lawyers*** who wish to act as attorneys for third parties in court." Id. at 36-37 (emphasis added). The Court further explained:

> Under Rule XX, all lawyers (whether they are law professors associated with a law clinic or not) ***may handle any case***, speak to any group, and engage in informational activities as long as those actions do not violate the other rules applicable to all lawyers. . . . Law Professors may use students in the capacity that any lawyer may use law students – as research assistants and as law clerks.

Id. at 44 (emphasis added). Indeed, before there was any litigation challenging Rule XX, Louisiana Supreme Court Chief Justice Calogero had already explained:

> We specifically do ***not*** say that a lawyer associated with a clinic cannot

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[9] See Louisiana Rule of Professional Conduct 1.5.

> 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.

Resolution Amending and Reenacting Rule XX, (Calogero, J. concurring)(emphasis added) (1999) at 3 (available at http://www.lasc.org/rules/html/xxpfc.pdf) (Exhibit A). Similarly, following the adoption of 1998 amendments to Rule XX, Hugh Collins, Judicial Administrator of the Louisiana Supreme Court, wrote an article for the New Orleans Times Picayune in response to what he described as "inaccurate" media coverage of the amendments. Mr. Collins, noting that this article was written on behalf of Chief Justice Pascal Calogero, stated that 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." High Court Explains Student-Lawyer Rule Change, New Orleans Times-Picayune at B6 (June 25, 1998) (Exhibit F).

The Louisiana Supreme Court simply does not concern itself with who licensed attorneys at law school clinics represent. Nor does it concern itself with whether law students or other non-lawyers such as paralegals assist licensed attorneys in representing any person that attorney chooses to represent. Such activities are governed by the Rules of Professional Conduct, which do not change when lawyers are employed by law clinics. It would be problematic at best for the Court to single out law clinic lawyers for special limitations as to the scope of their law licenses, and the Court has specifically disavowed any intention to do so. As U.S. District Court Judge Fallon noted that: "Rule XX does not prohibit the professor-plaintiffs from representing or soliciting whomever they wish[.]" Southern Christian Leadership Conference, Louisiana Chapter, et al vs. Supreme Court of the State of Louisiana, 61 F. Supp. 2d 499 (E.D. La. 2000), aff'd 252 F.3d 781, 784 (5th Cir.), *cert. denied* 122 S. Ct. 464 (2001).

The Louisiana Supreme Court does, however, require that when an unlicensed law student makes an appearance, he or she must does so on behalf of an indigent client. The Louisiana Supreme Court is under no obligation to allow such appearances at all – law students who sign pleadings and argue or present witnesses in court are practicing law without a license. The Court has chosen to allow this unlicensed practice, but has limited the circumstances under which it may occur.

In this case, student attorney Rebecca Davis appears *only* on behalf of Plaintiffs Couvillion and Breaud. Undersigned counsel certifies that the clinic has conducted all appropriate inquiry and has concluded that these plaintiffs meet the Rule XX indigence requirement. Waste's attempt to argue that other clients cannot be represented by licensed attorneys in this case has no legal basis.

Clinic staff attorneys appear before this court pursuant to the Rules of Professional Conduct. To the extent only that a student attorney is appearing pursuant to Rule XX, Clinic staff attorneys also appear pursuant to Rule XX as supervisors of that student. But nothing in the rules limits the appearances of licensed attorneys to supervisory appearances pursuant to Rule XX.

IV. Rule XX Does Not Require That Pleadings "Demonstrate" Indigence.

Rule XX is very clear about its requirements. Student attorneys must be "certified by the dean of the student's law school as being of good moral character and competent legal ability, and as being adequately trained to perform as a legal intern." Rule XX, § 6(d). That has occurred in this case; the certification is on file with the Louisiana Supreme Court. The student attorney must be "introduced to the court in which the student is appearing by an attorney admitted to practice in that court." Rule XX, § 6(e). An introduction will occur when the student gets up to argue before this Court. The student attorney must file a written certification with the Louisiana Supreme Court that she "has read and will abide by the Rules of Professional Conduct, will faithfully perform the duties of a law student practitioner, and will not place his/her personal interests or clinic interests ahead of the interests of the client." Rule XX, § 6(g). That certification has indeed been filed with the Supreme Court. The student must take an oath. Rule XX, § 6(h). On September 7, 2002, Chief Justice Pascal F. Calogero came to Tulane Law School and swore in the Tulane Environmental Law Clinic's student attorneys, including Rebecca Davis, who took the required oath.

In terms of filings before this Court, Rule XX requires the following: "the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance." Rule XX, § 3. Further, "[i]n each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding

officer of the administrative tribunal." Id., § 3(e). Those consents have been filed.[10]

Waste's argument that Rule XX requires other "demonstrations" is without basis. Indeed, Waste provides no explanation of how it selected the "demonstrations" it thinks it is entitled to. For example, does Waste think it is entitled to a "demonstration" that "the student attorney is duly enrolled in this state in a law school approved by the American Bar Association?" Or that the student has "completed legal studies amounting to at least four full time semesters?" Or that the student has "completed the required law school course work in legal ethics?" See Rule XX § 6. Presumably, Waste realizes how silly it would sound if it really attempted to argue that each aspect of Rule XX must be "demonstrated" in the Plaintiff's petition or proven at trial. Instead it is obvious that the Louisiana Supreme Court expected the clinic's staff to administer the clinic and implement these requirements. They are not pleading or litigation requirements, but obligations owed to the Court by its officers.

Where Rule XX does require a demonstration of indigence (only with respect to community organizations), that demonstration is not required to be plead or made public. Instead, the rule requires that "indigent community organization[s]" (not individuals) "provide information ***to clinic staff*** which shows that the organization lacks, and has no practical means of obtaining, funds to retain private counsel." Rule XX, § 5. There is no requirement that any such information be plead or provided to defendants.

V. LEAN And CCLP Are Corporations With Procedural Capacity To Appeal.

Waste's final argument for dismissal is that the two community organizations appealing this DEQ decision "lack procedural capacity to appeal." Waste cites only Louisiana Code of Civil Procedure art. 689, regarding unincorporated associations, in making this claim. However, both LEAN and CCLP are non-profit domestic corporations, duly incorporated in 1987 and 1999, respectively, and registered with the Louisiana Secretary of State. (Exhibits G and H). As domestic corporations, both organizations have the procedural capacity to sue to enforce their rights in their corporate names. *See* Code of Civil Procedure art. 690. Thus, Waste's argument in this respect is without merit.

[10] The written consent and approval of both Mr. Couvillion and Mr. Breaud were filed on February 12, 2002. The written consent and approval of the supervising lawyer was filed on April 1, 2002, after Waste accurately pointed out in their Motion to Dismiss that it was missing from the record of

Conclusion

As has been true since the filing of the original petition in this matter, all Petitioners are represented by a licensed attorney, Elizabeth E. Teel. With this pleading, licensed attorney Adam Babich also enters an appearance on behalf of all Petitioners. Moreover, student attorney Rebecca Davis appears only on behalf of Mr. Couvillion and Mr. Breaud, pursuant to Rule XX. With respect to Mr. Couvillion and Mr. Breaud, Elizabeth E. Teel appears pursuant to Rule XX as Rebecca Davis' supervising attorney. All of these appearances are proper under the applicable rules. Waste has no standing to bring its Rule XX arguments which are, in any event, without merit. Waste's Motion must therefore be denied.

Respectfully submitted on April 2, 2002.

Elizabeth E. Teel (#21389)
Adam Babich (#27177)
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Telephone (504) 865-5789

Counsel for Mr. O'Neil Couvillion, Mr. Harold Wayne Breaud, LEAN and CCLP

CERTIFICATE

I hereby certify that a copy of the above has this day been mailed, postage prepaid, to all parties of record.

New Orleans, Louisiana this 2nd day of April, 2002.

Elizabeth E. Teel

the case. Undersigned counsel regrets the delay in filing the supervising attorney's consent form into the record of the case.

SUPREME COURT OF LOUISIANA

Amendment to Rule XX

CALOGERO, C.J. Concurs in the Court's Action Amending Rule XX And Assigns the Following Reasons

I submit this special concurrence, in a matter in which I am in full accord with the action of the Court majority, to respond to comments in dissents and/or concurrences by certain of my colleagues.

My brother, Justice Lemmon, who concurs in today's changes to Rule XX, has it right when he says that the purpose of the Student Practice Rule is to train law students in trial work, and secondarily to furnish legal services to indigent persons. This purpose did not change with our 1988 amendment to the rule. Our intent in making that rule change, at the request of the law schools, was to allow for the representation of organizations primarily composed of indigent persons or indigent community organizations. We did not intend to allow the representation of non-profit organizations composed primarily of moderate, middle, and high income persons. And indeed the amendment today increases the Student Practice Rule's threshold level for representation to 200 percent of the federal poverty guidelines. It is worth noting, however, that this is not a substantial change from what the Court did this past June. In that 1998 rule change, we adopted the federal Legal Services Corporation guidelines for determining eligibility for representation. The LSC regulations allow persons to be represented if their income does not exceed 125 percent of federal poverty guidelines, and in special circumstances, 150 percent of that number, which comes to 187.5 percent of the poverty level. All we did today is remove the required special circumstances and for ease of administration increase the maximum income level for representation to 200 percent of the federal poverty guidelines, which for a family of four is $33,400, for a family of seven is $50,320, and for a family of eight $55,960 (as Justice Victory recites in his partial dissent).

Justice Victory says that's too high and may work to the advantage of those making larger incomes, for a family of eight will qualify if their income does not exceed $55,960 and some whose income is substantially less than that may go unrepresented. Justice Lemmon concurs in the latter concern, noting that many of the poorest may go unrepresented. As I noted previously, however, the change we have made today is minimal, and continues to allow for the representation of persons whose income levels qualify them as being poor and who have need for the legal services offered by law clinics, should the clinics be able and disposed to provide it.

Indeed the great majority of the poor may well go without free legal service in our society for a long time to come, as has been the case very likely throughout history. And that is unfortunate. A great deal of improvement in that regard is necessary at the federal and state levels if we are to increase access to justice for all citizens, as we should. But the narrow focus on the fact that some not quite so poor will get free legal representation while many others even less fortunate will not is hardly relevant in this examination. This Court's only business in this area is governing the practice of law, in addition to applying the constitution and laws of this state and nation. The Court is not charged by the Louisiana Constitution with instituting social programs, nor may the Court take executive or legislative positions either in favor of or against legal partisans. The purposes of the Student Practice Rule are advanced if we place uniform, objective financial standards for representation in the rule, while allowing clinics the discretion to handle those cases which serve as good teaching tools for law students. The suggestion that the minimal increase we adopted in the maximum income levels required for representation, coupled with the available resources of law clinics, should prompt us to reduce that threshold (Justice Victory's view) or possibly result in an increase in that level in time (Justice Lemmon's view) misses the point. Law clinics already are without sufficient resources to serve all of the poor. So the marginally wider financial range serves simply to increase the potential pool of deserving clients who can benefit from law clinic services, while giving some latitude to law clinics to pick and choose pedagogically suitable cases.

Justice Lemmon would repeal Section 10's prohibition against students appearing in court in cases where the client has been solicited by anyone associated with the clinic. That prohibition, made last June, which the majority today has decided not to repeal, was left in the rule because of the Court's policy against solicitation of clients generally, the ethical prohibitions against attorney solicitation, and the Court's view that law students should not be encouraged to engage in the solicitation of cases.

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. We simply state that students who are not lawyers and who appear in court only through a court-sanctioned exception to the universally recognized postulate that only licensed lawyers can appear in a representative capacity in state courts cannot appear in court on solicited cases.

Justice Lemmon questions the wisdom and fairness of this provision. He says that since lawyers can legally and ethically solicit and then represent solicited clients in certain situations that do not involve the derivation of financial gain, they are entitled to have licensed student lawyers work with them in court, lest those lawyers be indirectly penalized for doing what they can legally do by denying them the use of these student lawyers.

That argument is a bit convoluted. Lawyers are not penalized at all by this singular prohibition on appearances by law students in solicited cases. In order to be "penalized," one must be deprived of a right to which he/she is entitled. The Law Student Practice Rule was not written to, and does not, penalize or benefit supervising lawyers. A lawyer's right to ethically represent and appear on behalf of solicited clients in non-fee-generating cases is unaffected by not

allowing student practitioners to represent solicited clients in court. The emphasis on the licensed lawyer's right in this regard is misplaced.

Law students, who are not lawyers, do not have a right, constitutional or otherwise, to practice law. In fact, absent the limited exception allowed by our Student Practice Rule, the practice of law by law students would be illegal. R.S. 37:213. This singular prohibition we have added with these amendments is but one additional restriction, among others, which we have placed on law students who wish to engage in the "limited" practice of law, under restrictions which are generally not placed on licensed lawyers.

Justice Johnson has three principal complaints regarding the Law Student Practice Rule as amended today: 1) requiring organizations to provide information to the clinics impinges upon their rights to privacy and may result in reprisals; 2) our prohibition on the representation of solicited clients by certified student practitioners is improperly being directed toward legitimate efforts to educate and provide valuable information to the public through the use of an Outreach Coordinator (employed by Tulane's Environmental Law Clinic); and 3) law students should not be prohibited from appearing in a representative capacity before the Legislature.

These positions are not valid criticisms of what this Court has done. Justice Johnson first contends that requiring community organizations to satisfy the clinic with information which establishes that 51% of their membership fit the financial eligibility guidelines, and that they are unable to pay counsel, will compel disclosure of sensitive membership information from organizations engaged in the advocacy of unpopular causes which could expose members to the possibility of reprisals. I fail to see how this is a realistic fear, where all that is being required is that organizations voluntarily seeking free clinic legal assistance satisfy the clinic that they meet the eligibility requirements for group representation. Her probable frame of reference is the case of *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This case is clearly distinguishable, as it involved a court-ordered disclosure to the state

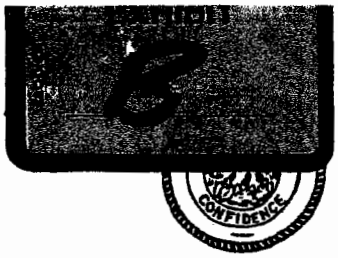
of the NAACP's Alabama membership lists, including the names and addresses of those members. In contesting the state court order, the NAACP made a showing that the production of such information in the past had exposed members to economic reprisals, loss of employment, and threats of physical coercion. Finally, the United States Supreme Court found lacking in *NAACP v. Alabama* an adequate justification for requiring disclosure of the membership lists.

Even before we placed more specific indigency requirements in the rule in June of 1998, all clients of law clinics, both individual and group, were presumably required to provide some information to law clinics in order to prove their indigency and/or inability to pay for legal services. All that is now required by way of information under our rules is that a community organization **voluntarily** seeking free clinic legal assistance satisfy the law clinic, by providing a reasonable amount of information, that 51% of its membership has income levels below the indigency standard we recited in the Rule, and by showing that the group lacks, and has no practical means of obtaining, funds to retain private counsel. Furthermore, our requirements here (requiring the disclosure of a reasonable amount of information to the clinics in order to allow the clinics to determine whether a community organization is eligible for representation pursuant to the Student Practice Rule) are precisely what the federal Legal Services Corporation (LSC) requires by way of qualification for group legal representation. The LSC regulations allow group representation if the group is "primarily" composed of persons who are financially eligible for representation, and if the group "provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel." 45 CFR Part 1611.5. In fact, this latter requirement, that information be provided to show a group's inability to pay for legal services, has been amended today in Section 5 of our rule to delete the word "financial," so as to more closely parallel the LSC group representation requirement.

Justice Johnson's second complaint is that Section 10, as amended, improperly impinges upon the clinics' right to provide information and education to the public. This is not so. Our amendments to Section 10 do not bar efforts to educate and provide vital information to

community members, for as the commentary notes, "this singular prohibition regarding the representation of solicited clients by student practitioners does not in any way restrict or prohibit law school clinical activities which are intended to provide education or information to Louisiana citizens."

Finally, Justice Johnson's suggestion that our rule prohibits law students from appearing before the Legislature in a representative capacity is not correct. We do not bar any persons from appearing before the Legislature, either by themselves or on behalf of others, irrespective of whether or not they are law students. We have simply said that our Rule XX does not provide the authorization for persons to appear before the Legislature. One does not need to be a lawyer to make legislative appearances. Our rule speaks to court appearances by non-lawyer student practitioners in order to foster their legal education, and simply does not address legislative appearances. Thus, when students appear before the Legislature, as they can, our rule simply states that when they do, they are not doing so as Rule XX student practitioners/quasi-lawyers, whose status is conferred by the Louisiana Supreme Court.



Supreme Court
STATE OF LOUISIANA
New Orleans

301 LOYOLA AVENUE
NEW ORLEANS, LA 70112

TELEPHONE (504) 568-5707
HOME PAGE http://www.lasc.org

April 7, 1999

Dean Edward F. Sherman
Tulane Law School
6329 Freret Street
New Orleans, LA 70118-5670

RE: Law Student Practice Rule

Dear Dean Sherman:

Since its inception in 1971, the Law Student Practice Rule has contained an indigency component. Insofar as the Court is aware, no clinic opponent or in-court adversary has ever formally or informally demanded or requested financial documents and information in the possession of law clinics which were generated or received in support of a client's indigency and/or inability to pay for legal services. It has now come to the attention of the Court, through newspaper publicity and otherwise, that pre-trial challenges to the financial eligibility of clinic clients are being anticipated by some. The purpose of this correspondence is to inform you that 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.

The Court is confident the law clinics will satisfy themselves, through the procurement of sufficient and appropriate information, that potential clients meet the financial eligibility requirements for student representation contained in Sections 4 and 5 of the Law Student Practice Rule. 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. Such action may include a confidential review by Supreme Court staff of the documents and information which were produced or received by the clinic to ascertain the financial eligibility of a clinic client.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me or the Court's Judicial Administrator.

Yours very truly,

Pascal F. Calogero, Jr.

PFCJr/ebg
RULEXX\LETTERS\SHERMAN.008

ne Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118-6231
(504) 865-5789
FAX (504) 862-8721

November 14, 2000

By Fax (584-9142) and United States Mail
Ms. Nicole Martin
Lemle & Kelleher, L.L.P.
601 Poydras St.
2100 Pan American Life Center
New Orleans, LA 70130

RE: *Bogue Lusa Waterworks District, et al vs. the Louisiana Department of Environmental Quality*, No. 474-677 (19th JDC), Our file # 125-001.

Dear Ms. Martin:

This is a followup to our telephone conversation of November 8, 2000 regarding a stipulation as to the status of the Washington Parish Resource Network ("Resource Network") under Rule XX. As we discussed, and as is clear from the signature blocks in the appellants' brief in this case, I represent both the Resource Network and the Bogue Lusa Waterworks District ("Waterworks"); the student attorney represents *only* the Waterworks in this matter.

As I am sure you are aware, Rule XX authorizes, under limited circumstances, law students to act and appear as litigators before Louisiana state courts and administrative tribunals. Because licensed attorneys obviously do not rely on Rule XX for authority to appear, the Rule has no effect on whom a licensed attorney may represent. The Rule also has no effect on the matters on which law students (including clinic students, law clerks, or summer associates, etc.) and other non-lawyers may assist licensed attorneys, since such assistance does not rely on Rule XX authority.

The Student Attorney's Representation of the Waterworks

Rule XX specifically provides that "an eligible law student may appear . . . on behalf of the state [or] any political subdivision thereof . . . ." Rule XX, § 3. The Waterworks is a political subdivision of the state. Therefore, the student attorney's representation of the Waterworks is pursuant to and fully in accordance with Rule XX.

The Clinic's Representation of the Resources Network

As noted above, Rule XX authorizes and regulates appearances by law students before Louisiana state courts and administrative tribunals. It does *not* regulate the clients that a licensed clinical attorney or the clinic may represent. The Rule therefore clearly does not limit my right, or the Clinic's right, to represent the Resources Network.

Following the adoption of the 1998 amendments to Rule XX, Hugh Collins, Judicial Administrator of the Louisiana Supreme Court, wrote an article to the New Orleans Times Picayune in response to what he described as "inaccurate" media coverage of the amendments. Mr. Collins, noting that this article was written on behalf of Chief Justice Pascal Calogero, stated that 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." *High Court Explains Student-Lawyer Rule Change*, New Orleans Times-Picayune at B6 (June 25, 1998) (emphasis added).

Rule XX was amended again in 1999. The commentary to the 1999 amendments states that: "[Rule XX] places no restrictions on the pro bono representation of solicited clients by attorneys employed or retained by law schools or law clinics." Moreover, in a concurring opinion on the 1999 amendments, Justice Calogero stated that Rule XX does not regulate the activities of licensed clinical attorneys or limit the clients whom a licensed clinical 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. (Justice Calogero concurring) (Emphasis added).

As you may be aware, the 1998 and 1999 amendments to Rule XX have been the subject of a lawsuit. In rejecting a claim that the Rule XX amendments violate the constitutional rights of licensed clinical attorneys, District Court Judge Fallon noted that: "Rule XX does not prohibit the professor-plaintiffs from representing or soliciting whomever they wish[.]" Southern Christian Leadership Conference, Louisiana Chapter, et al vs. Supreme Court of the State of Louisiana, 61 F. Supp. 2d 499 (E.D. La. 2000), appeal docketed, No. 99-30895 (5th Cir. 2000).

The Demand for Private Financial Information

Our conversation arose in the context of your November 2, 2000, Notice of Deposition and Request for Production, which is geared toward the question of whether the Resource Network qualifies for student appearances under Rule XX. [1]

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[1] Frankly, I am surprised that you consider it in your client's best interest to challenge a party's Rule XX eligibility for a student appearance. In theory, the appearance of a licensed clinical supervising attorney should pose a greater threat to your client's chances of success than an appearance by a less experienced student attorney. I recognize, however, that all members of the bar share the Clinic's interest in ensuring that law students conduct themselves in full compliance with all Court rules. Therefore, I am happy to provide this explanation and proposed stipulation to help clarify that the Clinic continues to comply fully with Rule XX.

Your Notice and Request for Documents demands tax returns and other private information from individual members of the Resources Network. I have enclosed for your files a copy of Chief Justice Pascal F. Calogero's April 7, 1999 letter on this subject. 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. (Emphasis added.)

As I have mentioned, I am happy to avoid any dispute about disclosure of private financial data by entering into a reasonable stipulation. I do, however, want to ensure that you are aware of Louisiana Supreme Court's policy on such disclosure in the Rule XX context.

The Proposed Stipulation

Accordingly, I propose we stipulate as follows:

1. The Washington Parish Resource Network does not qualify as an indigent community organization under Rule XX of the Rules of the Louisiana Supreme Court.
2. No student practitioner of the Tulane Environmental Law Clinic has appeared or will appear in this matter on behalf of the Washington Parish Resource Network.

Conclusion

In sum, it is clear that Rule XX does not limit the clients that licensed clinical attorneys or the clinic may represent. Instead, Rule XX only governs appearances by non-licensed law students. My representation of the Resource Network and the Waterworks and the student practitioner's representation of the Waterworks are fully in accordance with the provisions of Rule XX. I hope that this satisfies any concerns that you have regarding the Clinic's compliance with Rule XX in this matter. If you have any remaining concerns about this or any other matter, please feel free to give me a call.

Sincerely yours,
For the Tulane Environmental Law Clinic

Thomas W. Milliner, Supervising Attorney
Counsel for Appellants

SUPREME COURT OF LOUISIANA

Amendment to Rule XX

JOHNSON, J., Dissenting

This court received complaints from the Chamber of Commerce/New Orleans and the River Region and from the Business Council of New Orleans and the River Region in July, 1997, and a complaint from the Louisiana Association of Business and Industry in September, 1997 requesting that we investigate the Tulane Environmental Law Clinic. The complaints suggested that the environmental law student practitioners should be regulated more closely because business in the state was being negatively impacted by their misguided challenges to environmental permits and other practices.

When the complaints were received, these business entities and the Tulane Environmental Law Clinic were embroiled in a legal controversy over whether a Shintech chemical plant should be licensed in St. James Parish (Convent, La.). The law clinic represented individuals and organizations in the community that opposed the issuance of the permit.

Generally, my view was that we should not curtail a program that teaches advocacy while giving previously unrepresented groups and individuals access to the judicial system in order to satisfy critics who are discomforted by successful advocacy.

Even though the complaints from business interests were directed specifically at Tulane Environmental Law Clinic, we decided to do a survey of law clinics at Tulane, Loyola, and Southern University law schools.[1] An exhaustive review of all Louisiana law clinics failed to uncover any violations of the Law Student Practice Rule. My preference was to maintain Rule XX as written. I would be more receptive to action from this court if we were to receive any complaints of unethical conduct or practices by these law students from the courts or agencies they practice before.

Section 4. Representation of Indigent Individuals

The law schools have stated that, in the past, they considered several factors in determining client eligibility, including court referrals, poverty guidelines, and the client's ability to retain private counsel. The majority is concerned that law clinic resources will be compromised by those who have

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[1] Louisiana State University Law Center does not have a clinic.

the ability to pay for legal services. My experience has been to the contrary. Those with the ability to do so, hire the best legal talent available. Those without the ability to pay for private counsel use law clinics.

Section 5. Representation of Indigent Community Organizations

As amended, this section would allow representation of any indigent community organization provided at least 51% of the organization's members are eligible for legal assistance. The amendment does not make clear the type of scrutiny which will be allowed to satisfy or challenge the 51% requirement. I am opposed to any rule that may be used to compel information of the identity of rank and file member information of an organization.

Compelled disclosure of membership in an organization engaged in the advocacy of an unpopular cause would expose members to the possibility of economic reprisals, loss of employment, threats of physical coercion, and other manifestations of public hostility. When the members who hold official positions in a community organization satisfy eligibility requirements, I believe the rank and file membership has a right to privacy with regard to their identity, numbers, and indigency.

Section 10

I would repeal Section 10 in its entirety. The complaints from business interests allege that the Tulane Environmental Law Clinic outreach coordinators are engaged in solicitation. In my view, their charges of solicitation are directed at legitimate activity by the clinic to educate and to provide valuable information to the public about substantive rights and remedies. There should be no prohibition of representation of clients to whom information has been provided. Public interest lawyers may provide not only information about substantive rights and remedies, but also about their availability to provide legal services.

Section 11

Section 11 prohibits law students from appearing in a "representative capacity" before sessions of the state legislature. According to the Honorable Melvin "Kip" Holden, State Representative, District 63, student practitioners from the Tulane Law Clinic have, in the past, provided valuable information and testimony on environmental issues. There is a need for balance since business interests routinely employ advocates to represent their interests during legislative sessions, and the interests of the poor often go unrepresented.

For the foregoing reasons, I respectfully dissent.

No. 99-30895

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, LOUISIANA CHAPTER; ST. JAMES CITIZENS FOR JOBS AND THE ENVIRONMENT; CALCASIEU LEAGUE FOR ENVIRONMENTAL ACTION NOW; HOLY CROSS NEIGHBORHOOD ASSOCIATION; FISHERMEN'S AND CONCERNED CITIZENS' ASSOCIATION OF PLAQUEMINES PARISH; ST. THOMAS RESIDENTS COUNCIL; LOUISIANA ENVIRONMENTAL ACTION NETWORK; LOUISIANA ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW; NORTH BATON ROUGE ENVIRONMENTAL ASSOCIATION; ROBERT KUEHN; CHRISTOPHER GOBERT; ELIZABETH E. TEEL; JANE JOHNSON; WILLIAM P. QUIGLEY; TULANE ENVIRONMENTAL LAW SOCIETY; TULANE UNIVERSITY GRADUATE AND PROFESSIONAL STUDENT ASSOCIATION; INGA HAAGENSON CAUSEY, CAROLYN DELIZIA, AND DANA HANAMAN

Plaintiff-Appellants,

versus

THE SUPREME COURT OF THE STATE OF LOUISIANA

Defendant-Appellee

On Appeal from the United States District Court
for the Eastern District of Louisiana
Civ. A. 99-1205, Section L

BRIEF OF LOUISIANA SUPREME COURT, APPELLEE

MICHAEL H. RUBIN (La. 10833)
Appellate Counsel
Donald R. Cravins, Jr.
Ashley B. Lowe
McGLINCHEY STAFFORD
9th Floor, One American Place
Baton Rouge, LA 70825
225-383-9000
Fax: 225-343-3076

Thomas A. Roberts
Stephanie Sisson
McGLINCHEY STAFFORD
643 Magazine Street
New Orleans, Louisiana 70130-0643
Phone 504-586-1200
Fax 504-596-2800

Christina B. Peck
ROEDEL, PARSONS, KOCH, FROST, BALHOFF & McCOLLISTER
8440 Jefferson Highway, Suite 301
Baton Rouge, Louisiana 70809
Phone:225-929-7033
Fax 225-928-4925

ARGUMENT

2. INTRODUCTION

The plaintiffs' brief implicitly assumes two remarkable propositions for which there is absolutely no legal basis. First, it assumes that non-lawyers have a "right" to represent others in litigation. Second, it assumes that individuals and organizations have a "right" to insist upon free legal representation by non-lawyers. Neither proposition can be sustained.

It is only by ignoring these two unassailable rules (no non-lawyer has a right to represent others, and no individual or organization has a right to be represented by a non-lawyer or to have a free lawyer in civil litigation) do the plaintiffs leap into their claims that somehow the rights of law professors who are lawyers are harmed by Rule XX, or that students or plaintiff organizations or non-law-student-organizations have any legal claim upon which relief can be granted.

It is important initially to note four facts that are not in dispute.

o First, no law professor is limited in any way by Rule XX in acting as counsel for anyone, regardless of the activities of his students.

o Second, no truly indigent individual who seeks legal representation from any law student clinic or law professor is affected by Rule XX's indigency standards, for Rule XX's criterion of indigency is almost twice that of the federal definition. Since

The "free speech" that the plaintiffs assert is at issue because of alleged "viewpoint discrimination" rests entirely upon their unusual theory that there is a right to have lay persons act as lawyers for others in litigation. The law professors claim that their "free speech" is impinged because they cannot, acting unilaterally, decide when and how to use their students as advocates for others in the courtroom.[41] The students claim that their right of speech is impaired because they cannot act as lawyers.[42] The plaintiff-client-organizations claim that their speech is impaired because they cannot utilize lay students as attorneys.[43]

Rule XX does not implicate the free speech or associational rights of the client-plaintiffs. These groups are, and always have been, free to present their claims in Louisiana courts through licensed attorneys, including clinic lawyers. Rule XX impacts only the groups' ability to present their claims through non-lawyer students. This limitation affects the groups' preferred *method* of presenting their claims in court, not their right to present those claims, a limitation that is no more burdensome on the groups' speech or associational rights than the federal court rule requiring

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[41]Appellants Br. p. 39.

[42]Appellants Br., p. 51.

[43]Appellants Br., p. 34.

Likewise, while *Button* held that it is neither improper nor criminal for an organization to refer its members to lawyers, nothing in *Button* intimates that an organization may refer its members to non-lawyers for legal representation.[60]

Patterson involved the compelled production of the NAACP's membership list as a precondition to conducting activities in the state. Rule XX does not compel disclosure of members' identities at all, nor, as the next section of this brief demonstrates, does it compel disclosure of financial information as a precondition to informing the organizations' members of their legal rights, or to encouraging them to exercise those rights, or to bringing actions in the individual's own name.

The official Louisiana Supreme Court commentary to Rule XX explicitly states it "places no restrictions on the pro bono representation of solicited clients by attorneys employed or retained by law schools or law clinics."[61] Nothing in Rule XX prohibits any organization, any law professor, or any student from encouraging *pro bono* legal outreach, and the official commentary clearly permits activities "intended to provide education or information to Louisiana citizens." *Id.* Nothing prohibits a licensed lawyer from freely assisting any organization or individual in any action,

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[60]The plaintiffs also cite *In Re New Hampshire Disabilities Law Clinic,* 130 N.H. 328, 336, 339, 541 A.2d 208, 213, 215 (1988); that case relies directly on *Button* and only holds that corporations may use their "staff lawyers" (not lay-persons) to represent clients.

[61]Commentary following Rule XX(10).

whether *pro bono* or not. All Rule XX does is to create rules for non-lawyers who wish to act as attorneys for third parties in court.

6.03 Rule XX's Indigency Requirements Do Not Invoke Heightened Scrutiny

The claim that "viewpoint" discrimination or other heightened scrutiny is triggered because of the indigency standards in Rule XX is without any basis. Classifications based on wealth alone are not subject to strict scrutiny. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 28-29, 93 S.Ct. 1278, 1294, (1973). Louisiana has a high proportion of those below the poverty level; 25.8% of the entire state's population is below 125% of the federal poverty level.[62] Rule XX sets the indigency level for law clinic representation at a higher number than even that used by the Legal Services Corporation;[63] under Rule XX, the indigency standard is set at 200% of the federal poverty income guidelines, and the number automatically

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[62] 1991 STAT. ABST. OF THE U.S. (tbl. 61). One of the plaintiffs/appellants, William P. Quigley, published a law review article entitled *The Unmet Civil Legal Needs of the Poor in Louisiana*, found at 19 S.U. L. REV. 273 (1992). The article claims that large numbers of indigent persons must go without legal representation each year in Louisiana and asserts that steps must be taken to provide greater access to those in need of legal services. The Supreme Court's amendments to Rule XX do just that. By expanding the indigency threshold to 200% of the poverty line, the Rule provides access to the judicial system for a vastly larger number of individuals.

[63] 45 C.F.R. § 1611.3

Contrary to the assertions of the Law Professors, Rule XX contains absolutely no restriction on them that is not applicable to all other lawyers in the State of Louisiana. Under Rule XX, all lawyers (whether they are law professors associated with a law clinic or not) may handle any case, speak to any group, and engage in informational activities as long as those actions do not violate the other rules applicable to all lawyers.[75] Law Professors may use students in the capacity that any lawyer may use law students — as research assistants and as law clerks.

What the Law Professors seek, however, is a brand new right, one drawn out of whole cloth and not found in any jurisprudence — they want the unilateral right to determine when their students can represent others in court, and they claim that any restriction on that "right" is constitutionally impermissible. Such a contention is without merit. As this Court noted in *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978), "[L]aw school attendance does not convert an individual into an attorney."

The plaintiffs' theory is particularly pernicious in two respects. First under their concept of academic freedom, any lawyer who is a teacher could apply this same rationale to undergraduates or even high school students. Under their concept, if they unilaterally decide that it is important to teach these non-law-students about how to

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[75]The first sentence of Rule XX(10) merely restates the general rule that all licensed lawyers must follow. The remaining portion of Rule XX(10) applies only to students and has no applicability to licensed attorneys.

10. CONCLUSION

Not a single case supports the plaintiffs' remarkable theory that law students are *entitled* to represent others in court, and that this entitlement is so strong that any regulation of it is invalid on constitutional grounds. Not a single case holds that court rules, which are more expansive for law students than federal regulations governing whom lawyers at the Legal Services Corporation can represent, fail to pass constitutional muster. Not a single case concludes that free speech rights exist for lay persons to file pleadings on behalf of others in courts.

The plaintiffs' complaint was without merit on its face. The district court was correct in ruling that it failed to state a claim upon which relief can be granted. The district court's ruling should be affirmed.

Respectfully Submitted:

Michael H. Rubin (La. Bar 10833), Appellate Counsel
Donald R. Cravins, Jr. (La. Bar 25631)
Ashley B. Lowe (La. Bar 25775)
McGLINCHEY STAFFORD
A Professional Limited Liability Company
9th Floor One American Place
Baton Rouge, LA 70825
Phone: 225-383-9000
Fax: 225-343-3076

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1998 WL 6280227

The New Orleans Times-Picayune

Thursday, June 25, 1998

METRO

HIGH COURT EXPLAINS STUDENT-LAWYER RULE CHANGE

Recent coverage of the Louisiana Supreme Court's amendment to the Louisiana Student Practice Rule, some of it inaccurate, prompts this response, which Chief Justice Pascal F. Calogero Jr. asked me to make on his behalf.

The Supreme Court has the constitutional authority to regulate the practice of law in Louisiana state courts, In 1971 the court created the Law Student Practice Rule, a limited exception to the general proposition that only licensed lawyers may appear in a representative capacity in Louisiana state courts. The purpose of the rule was to provide law students with hands-on experience in legal work and to provide legal assistance to indigent persons.

On June 17, 1998, the court released a resolution making necessary amendments to Rule XX and reaffirming the court's mission and purpose in adopting the rule.

The original Law Student Practice Rule allowed law students to represent indigent persons and made no mention of community organizations. The rule was amended in 1988 to allow student representation of "any indigent person or community organization."

While the amendment was not intended to expand representation to non-indigent persons or community organizations, the provision was arguably ambiguous. The need to clarify this ambiguity and to consider other concerns raised about the rule led to the new amendments, which were enacted only after a nine-month review of the Law Student Practice Rule and study of student activities in each of the law clinics in the state's three law schools.

The new amendments explicitly state that both individuals and community organizations must be indigent to be eligible for representation by student lawyers, a principle that was implicit in the old rule. Moreover, the community organization cannot be a national organization or a local affiliate of a national organization. Neither was ever contemplated as prospective indigent

rsons or community organizations that might benefit from the rule.

Most law school clinics obtain their clients through court referral, usually after the court has determined that the client is indigent. When a court has not determined indigency, law clinics are now to use federal indigency guidelines issued by the National Legal Services Corp. to determine a person's eligibility for Rule XX legal assistance. The standards for determining an organization's indigency are similar to National Legal Services Corp. standards for group representation. These standards assure that law students represent the people who need their services the most.

It is important to note that Rule XX regulates the circumstances in which law students may act and appear as lawyers only in Louisiana state courts and agencies. The state Supreme Court has no power to authorize the appearances of any attorneys or law students in federal courts or other state courts. If Louisiana law students appear in these courts, they do not do so as Rule XX-qualified student lawyers; authorization of the appropriate federal or state authority is required.

The amendments clarify that the rule is not to be used as authority for law students to appear as court-sanctioned lawyers fore state and federal legislatures, where lobbying is more the rule than practicing law. Law students may appear before these bodies just as any non-lawyer.

The rule does not regulate the activities of law schools or licensed attorneys on the staffs of law school clinics. The recent amendments to Rule XX do not prohibit law clinics, law professors and law students from providing information to the public about legal rights and remedies. The rule only addresses appearances by law students as litigators. These appearances may not be made if the indigent client has been the subject of targeted solicitation by a law school clinic or when a law school clinic has provided legal assistance in forming an indigent community organization, activities outside of the scope of traditional "trial work."

Law schools and their clinic faculty may, of course, engage in these activities outside of the scope of the rule. Accordingly, no impingement on constitutional rights has occurred through the adoption of these amendments.

The majority of these amendments will be effective July 1, 1998. However, the court specifically provided that they shall not apply to pending cases or the present representation of any clients.

The amendments provide needed clarification of the rule. It

ıtinues to advance the administration of justice and access to t..e courts by allowing law students to gain much-needed trial court experience through representation of poor clients, while making it explicit that the rule is not to be used for the benefit of nonindigent persons and organizations.

Regarding representation of the poor, the record of the Supreme Court is exemplary - from civil legal services to criminal legal defense and, since 1971, the Law Student Practice Rule with its emphasis on serving indigent clients.

Hugh M. Collins

Judicial Administrator,

Louisiana Supreme Court

New Orleans

---- INDEX REFERENCES ----

NEWS SUBJECT: Local/Regional Section (LCR)

NEWS CATEGORY: LETTER

EDITION: THIRD

Word Count: 791
6/25/98 NOTPCN B6
END OF DOCUMENT

Louisiana Secretary of State
Unofficial Detail Record

Charter/Organization ID: 34227567N

Name: LOUISIANA ENVIRONMENTAL ACTION NETWORK, INC.

Type Entity: Non-Profit Corporation

Status: Active

Annual Report Status: In Good Standing

Domicile Address: 1373 CRESCENT DRIVE, BATON ROUGE, LA 70815

Incorporated: 01/12/1987 | Effective: 01/05/1987

Registered Agent (Appointed 1/12/1987): DORIS FALKENHEINER, 355 NAPOLEON STREET, BATON ROUGE, LA 70802

Registered Agent (Appointed 1/12/1987): MARY LEE ORR, 1373 CRESCENT DRIVE, BATON ROUGE, LA 70815

Officer(s)/Director(s): MARY LEE ORR | PATRICK MAHON (Additional officers may exist on document)

Incorporator(s): MARY LEE ORR

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Louisiana Secretary of State
Unofficial Detail Record

Charter/Organization ID: 34831586N

Name: CONCERNED CITIZENS OF LIVINGSTON, INC.

Type Entity: Non-Profit Corporation

Status: Active

Annual Report Status: In Good Standing

Domicile Address: 29787 S. SATSUMA RD., LIVINGSTON, LA 70754

Incorporated: 08/26/1999 | Effective: 08/20/1999

Registered Agent (Appointed 8/26/1999): IVOR VAN HEERDEN, 29787 S. SATSUMA RD., LIVINGSTON, LA 70754

Officer(s)/Director(s): IVOR VAN HEERDEN | EDMOND ARLEDGE | DEBRA ARLEDGE (Additional officers may exist on document)

Incorporator(s): IVOR VAN HEERDEN

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