



# NEWS

**SUPREME COURT — STATE OF LOUISIANA**  
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**The Louisiana Supreme Court today issued this statement:**

On Monday, March 22nd, the Justices of the Louisiana Supreme Court adopted several revisions to Supreme Court Rule XX, entitled "Limited Participation of Law Students In Trial Work" and more commonly known as the "Student Practice Rule."

By way of background information, the stated purpose of Rule XX is to provide clinical instruction in trial work to law students and secondarily, to furnish legal services to indigent persons. Rule XX was not designed to provide free legal assistance to non-indigent persons or organizations or to private non-profit corporations, irrespective of the merits of the cause advanced.

The Louisiana Supreme Court has the constitutional authority to regulate all facets of the practice of law in Louisiana, including the admission of attorneys to the bar, and the professional responsibility and conduct of lawyers. In 1971, pursuant to this authority and following the adoption of an ABA Model Rule governing law student practitioners, the Louisiana Supreme Court promulgated Rule XX, permitting law students to appear in state

- More -

courts on behalf of indigent persons and creating a limited court-sanctioned exception to the general proposition that only licensed lawyers, generally those who have graduated from law school and who have passed the Louisiana Bar Exam, may appear representing a client in state courts.

In 1988, in response to a request by the deans of Tulane and Loyola Law Schools that Rule XX be amended to address the eligibility of community organizations for representation by student-attorneys, and in the words of the deans, specifically those community organizations "which cannot afford or retain private counsel" and which "consist of members who are primarily indigent," the Louisiana Supreme Court amended Rule XX to provide that law students could appear in state courts on behalf of "any indigent person or community organization."

In 1997, the Louisiana Supreme Court received complaints from several business organizations regarding the activities of the Tulane Environmental Law Clinic. These were the first complaints the Court had received regarding the general activities of the law clinics and whether those activities were in conformity with Rule XX's provisions relative to the representation of indigent clients.

The Louisiana Supreme Court, recognizing that Rule XX had not been comprehensively reviewed since its adoption in 1971, conducted a review of Rule XX and requested information and comment from the law clinics operating at Tulane, Loyola and Southern Law Schools. LSU Law Center has no law clinic.

Responding to inquiries as part of the Court's review, Loyola Law School stated that its law clinic representations were limited "to indigent people, and that the general

guidelines used for determining indigency were those used by the federal legal services corporation pegged to the federal poverty threshold." Tulane Law School stated that "in representing indigent persons, the clinics rely on the court's determination of indigency or on poverty guidelines." When asked about standards of indigency, Southern University Law School noted, "[t]he same qualification guidelines uses by the Legal Services Corporation are used by the clinic to determine eligibility."

On June 17, 1998, taking into consideration (1) the law clinics' responses regarding their application of federal legal services corporation and poverty guidelines in determining indigency; (2) the outset Intent of the Student Practice Rule to provide assistance to indigent persons and to provide clinical instruction in trial work to law students; and (3) the need for uniform and definitive standards to be used by the law clinics in determining the indigency eligibility of persons and community organizations seeking legal assistance, the Louisiana Supreme Court amended Rule XX as follows:

- to define indigency standards more precisely by directing the law clinics to follow Legal Services Corporation<sup>1</sup> guidelines for determining an individual's

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<sup>1</sup>The Legal Services Corporation has created eligibility guidelines to ensure that any federal, state or local governmental program that provides legal benefits to persons whose eligibility is determined on the basis of financial need gives preference to the legal needs of those least able to obtain legal assistance. While law school clinic programs involving student practitioners are motivated by considerations not entirely the same as federally funded legal services corporations, both are providing legal assistance to those who are unable to pay for such services. As such, establishing uniform eligibility standards which invoke in part Legal Services Corporation guidelines and Federal Poverty Income guidelines is a reasonable way to assure that those most in need receive legal representation from the law clinics. The Legal Services Corporation guidelines establish a maximum annual income of 125% of the current Federal Poverty Income guidelines, with exceptions up to 150% of the 125% maximum, or 187.5%, of the Federal Poverty Income guidelines. Factors used in the determining the eligibility of clients over the maximum income level include: current income prospects, taking into account seasonal variations in income; medical expenses (with even higher income exceptions if gross income is primarily committed to medical or nursing home expenses); fixed debts and obligations including unpaid Federal, state and local taxes from prior years; child care, transportation and other expenses necessary for employment; expenses associated with age or physical infirmity of resident family members; child care, transportation and other expenses necessary for employment; and other significant factors related to a financial inability

eligibility for law student representation on the grounds of indigency, specifically, 125% of the Federal Poverty Income guidelines and allowing for eligibility up to 187.5% of the Federal Poverty Income guidelines upon a showing of exceptional financial circumstances;

- to direct law clinics also to follow Legal Services Corporation guidelines for determining eligibility for group representation, with the exception that at least 75% of a community organizations' members must be eligible for assistance, as opposed to the groups' being "primarily"<sup>2</sup> composed of persons eligible for legal assistance;
- to provide that students could appear in state courts on behalf of any indigent person or indigent community organization that is not affiliated with a national organization;
- to prohibit law clinic representation of any indigent community organization if the clinic provided legal assistance in forming the organization; and
- to prohibit a student practitioner or supervising clinic lawyer from representing any indigent person or community organization which was the subject of targeted solicitation by any representative of the law clinic.

Following the release of the June 17, 1998 amendments and after considering a request for reconsideration and a stay of the Rule XX revisions filed by two law schools, the Louisiana Supreme Court, on June 30, 1998, amended the rule relative to the representation of indigent community organizations by lowering the 75% membership indigency requirement to 51%, suspended Section 10 regarding the solicitation of and assistance in forming an indigent community organization, and requested briefs on Section

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to afford legal assistance. These guidelines do not apply when a court has referred a client to a law clinic or appointed the law clinic to represent a client upon that court's determination, however reasonably ascertained, that the client is indigent.

<sup>2</sup>The Legal Services Corporation guidelines provide for legal assistance to a group, corporation or association if it is primarily composed of persons eligible for legal assistance under its regulations and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

- More -

10 from all interested entities.

After careful consideration of the positions reflected in the briefs submitted to the Court on both sides of the issue and reconsideration of the June 17th and June 30th amendments to Rule XX, the Court, on March 22, 1999 revised Rule XX in several particulars and desisted from changing the Rule in others. The following is a summary of the changes made to Rule XX:

- For ease of administration by law clinics in determining the indigency eligibility of an individual, Rule XX now provides that law clinic staff and student practitioners may, without a determination that exceptional financial circumstances exist, represent any individual or family unit whose annual income does not exceed 200% of the Federal Poverty Income guidelines.<sup>3</sup>
- Rule XX as amended permits the representation of an indigent community organization, including those affiliated with national organizations, provided that 51% of its members have incomes below 200% of the Federal Poverty Guidelines. The community organization must certify the inability to pay for legal services and must also 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 as amended permits the representation of an indigent community organization, even if the clinic provided assistance in forming the organization. The prior prohibition of clinic representation of organizations that the clinics helped form or create has been repealed.
- In furtherance of the Court's policy against the solicitation of legal clients generally, the ethical prohibitions against attorney solicitation, and the

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<sup>3</sup>Under the June 17<sup>th</sup> amendment and applying the 1999 Federal Poverty Income guidelines, an individual with exceptional financial circumstances would have qualified for representation with a maximum income of \$15,450, but under the current amendments will qualify without the necessity of determining the existence of exceptional financial circumstances with a maximum income of \$16,480. A family of four with exceptional financial circumstances would have qualified for representation with a maximum income of \$31,312.50, but will now qualify without the necessity of determining the existence of exceptional financial circumstances with a maximum income of \$33,400. Similarly, a family of seven with exceptional financial circumstances would have qualified for representation with a maximum income of \$47,175, but will now qualify without the necessity of determining the existence of exceptional financial circumstances with a maximum income of \$50,320.

**Court's view that law students should neither be encouraged nor taught to solicit cases, Rule XX as amended prohibits a student practitioner from representing a client who has been the subject of targeted solicitation by any law clinic representative. This amendment places absolutely no restriction on the pro bono representation of ethically solicited clients in non-fee generating cases by attorneys employed or retained by law schools or law clinics. Furthermore, 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.**

**The amendments shall become effective on April 15, 1999 and shall not impact or apply to any cases, and/or the representation of any clients, in which the representation commenced prior to the effective date of the amendments.**