

The Director of the Tulane Environmental Law Clinic debunks common myths about the motivation and purpose of law school environmental clinics, tells why it is essential to clinic effectiveness that client selection and case strategy remain immune from university politics and business connections, and underscores law school clinics' unique capacity to impart experiential learning to students.

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## Twenty Questions (and Answers) About Environmental Law School Clinics

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### Introduction

Environmental law school clinics are simultaneously battling headwinds and riding the breeze. The wind at our backs is the widespread—albeit belated—recognition that law schools should prepare students to practice law.<sup>1</sup> Because environmental law clinics focus on complex regulations, administrative law, and disputes involving lots of documents, these clinics fill an important niche in the world of experiential learning.<sup>2</sup> They provide training that is directly relevant to many law students' future practices.<sup>3</sup>

But environmental law school clinics also face headwinds, as politicians and industry groups condemn efforts to protect the environment as “job killing.”<sup>4</sup> With law schools and universities looking to government and corporations for money, it can seem out of step with institutional priorities for clinics to represent ordinary citizens suing government or corporations to protect the environment. In addition, educational institutions' constituents and administrators can find it difficult to wrap their minds around the fact that law school clinics' duty of loyalty is to clients, not to the institutions that employ the clinicians.<sup>5</sup>

In this context, it may be useful to review some common questions about environmental law school clinics, and corresponding answers.

### Questions and Answers

#### Q 1: What is the purpose of an environmental law school clinic?

**A:** Environmental law clinics 1) train effective and ethical lawyers by guiding law students through actual client representation, and 2) expand access to the legal system, especially for those who could not otherwise afford legal help on environmental issues.<sup>6</sup> These clinics offer training in complex litigation and administrative law, providing a foundation for students wishing to practice in highly regulated areas.

#### Q 2: Why do law schools and universities—through environmental law clinics—sue corporations and government agencies?

**A:** They don't. Clinics merely provide legal representation in the cases they handle. The lawsuits are the *clients'* cases—not the clinics' and not the law schools' or universities'. To illustrate: When reporting on litigation between Apple Inc. and Samsung Electronics Co., the media generally does not focus on the law firms that represent these companies.<sup>7</sup> In fact, it is doubtful that many readers

of the business news know or care which law firms are involved. That is the case because the dispute is not between law firms. They only provide professional services to clients, just as law school clinics do for their own clients. Decisions to sue, negotiate, settle, or go to trial are all *client* decisions. A lawyer's provision of legal services to his or her client does not "constitute an endorsement" of client decisions.<sup>8</sup>

### **Q 3: Why do environmental law clinics sometimes represent clients whose views are out of step with public opinion or government policies?**

**A:** People with lawful claims are entitled to legal representation even when others do not agree with them.<sup>9</sup> In fact, among "the highest services the lawyer can render to society is to appear in court on behalf of clients whose causes are in disfavor with the general public."<sup>10</sup> This is true even when "the unfavorable public opinion of the client's cause is in fact justified."<sup>11</sup> According to the ABA's ethics committee, law school clinic guidelines should "encourage, not restrict, acceptance of controversial clients and cases."<sup>12</sup> Founding father John Adams set an example for all lawyers when he stepped up to ensure that even British soldiers who participated in the Boston massacre received competent legal representation.<sup>13</sup> The Wall Street Journal has editorialized, "To drop a case under political pressure is especially unethical."<sup>14</sup>

### **Q 4: Are law schools and universities responsible for their clinics' litigation and case-selection decisions?**

**A:** No. Law schools and universities cannot control "the manner in which clinical professors and their students practice law."<sup>15</sup> Further, ethical rulings preclude administrative or faculty boards from exercising case-by-case approval authority over clinics' decisions to represent clients.<sup>16</sup> The U.S. Supreme Court explored the core obligation of attorneys to exercise *independent* judgment in the context of a state public-defender office. The Court explained that a "public defender is not amenable to administrative direction in the same sense as other state employees."<sup>17</sup> He or she "is not, and by the nature of his [or her] function cannot be, the servant of an administrative superior" because lawyers work "under canons of professional responsibility that mandate ... independent judgment on behalf of the client."<sup>18</sup> A law school clinic's lawyers and student-attorneys work under these same mandates.<sup>19</sup> The ethics code instructs lawyers to "not permit a person who ... employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."<sup>20</sup>

### **Q 5: Are law schools and universities responsible for their clinics' media communications?**

**A:** No. Media communications—when they occur—are usually part of a lawyer's representation of clients.<sup>21</sup> Thus, lawyers exercise independent professional judgment on their clients' behalf when communicating with the press.<sup>22</sup> Media communications that are not undertaken on behalf of clients, however, are subject to law school or university control to the same extent as communications by other faculty members, consistent with principles of academic freedom.

### **Q 6: Should law school and university administrators have access to non-public information about their clinics' activities on behalf of clients?**

**A:** No. Protection of client confidences is a "fundamental principle in the lawyer-client relationship ...."<sup>23</sup> The ABA Committee on Ethics and Professional Responsibility has noted, "[i]t is difficult to see how the preservation of confidences and secrets of a client can be held inviolate prior to filing an action when the proposed action is described to those outside of the legal services office."<sup>24</sup>

### **Q 7: Is it a "conflict" for a clinic to represent a client opposed to an alumnus, donor, or friend of the clinic's law school or university?**

**A:** No, at least not because of the opponent's status as the parent institution's alumnus, donor, or friend. A conflict occurs when "representation of one client will be directly adverse to another client" or there is "a significant risk" that the lawyer's responsibilities to another person or the lawyer's "personal interest" will materially limit representation of the clients.<sup>25</sup> Also, lawyers cannot represent clients against former clients on "the same or a substantially related matter."<sup>26</sup> Law school or university constituents probably are not the clinics' clients or former clients. Cultivation of donors and

other constituents is not a responsibility or personal interest of the clinics' lawyers or students;<sup>27</sup> it is an institutional responsibility and interest of the law school or university. Under the rules that govern lawyers, such institutional concerns do not affect a clinic's representation of clients.<sup>28</sup>

**Q 8: Does it create an “appearance of impropriety”<sup>29</sup> for a clinic to represent clients in disputes with the clinic’s home institution’s alumni, donors, or friends?**

**A:** No. First, standing alone, “appearance of professional impropriety” is “too vague a phrase to be useful” in the context of attorney disqualification.<sup>30</sup> Disqualification must be “linked to an actual, real conflict rather than an imaginary one.”<sup>31</sup> In other words, there must be a “reasonable possibility that some specifically identifiable impropriety did in fact occur.”<sup>32</sup> Attempting to eliminate the subjective suspicions of even “the most cynical members of the public”<sup>33</sup> would enable use of the rules for “harassment,”<sup>34</sup> and risk “the social interests . . . served by a lawyer’s continued participation in a particular case.”<sup>35</sup> Further, for a clinic to decline all cases against law school or university supporters would tend more to inflame, rather than allay, suspicions.<sup>36</sup>

**Q 9: Should clinics turn down cases that might offend law school or university constituents?**

**A:** No. A law professor’s job is to instill in students the legal profession’s values. Clinicians cannot do that effectively unless they respect professional values in their own case-selection decisions. Among those values is the principle that lawyers “not decline representation because . . . community reaction is adverse.”<sup>37</sup> The desire to avoid opposing influential people “does not justify [a lawyer’s] rejection of tendered employment.”<sup>38</sup> By law, a clinic’s lawyers must employ *independent* legal judgment.<sup>39</sup> Turning away clients to please constituents would offend “every conceivable traditional ideal of [the legal profession’s] independence.”<sup>40</sup>

**Q 10: Why not weigh educational benefits for clinic students against the risk of upsetting law school or university constituents and only take controversial cases when the inconvenience to parent institutions is outweighed by extraordinary educational benefits?**

**A:** That would be flatly inconsistent with a clinic’s duty to not establish policies that “restrict acceptance of controversial clients and cases.”<sup>41</sup> Such a policy would also conflict with the lawyer’s duty to avoid basing case-selection decisions on a desire to avoid alignment against influential people.<sup>42</sup> Finally, it would be inconsistent with the principle that lawyers’ judgment in delivering legal services is independent of the preferences of employers who are not clients.<sup>43</sup>

**Q 11: Can’t there be some policy to immunize friends and constituents of the law school or university from lawsuits filed on behalf of clinics’ clients?**

**A:** No. Such a policy would not be principled or workable. Where would clinics draw the line? If a donor could achieve immunity by contributing thousands of dollars to the law school or university, should donors who contribute tens of dollars also be immune? How about potential donors, or donors’ friends, relatives, and corporate affiliates? Any clinic policy to abandon clients in exchange for money, friendship, or other favors would be inconsistent with law schools and universities’ identities as public-interest institutions<sup>44</sup> and with basic principles of the legal profession.<sup>45</sup> A better approach is to help law school and university constituents understand the principles that require clinics to preserve loyalty to clients and function independently from their law school or university’s day-to-day preferences. When a law school or university decides to offer a clinic to provide legal services to actual clients, that institution is obliged to respect and honor the legal profession’s principles. Any university or law school unwilling to live by those principles would not be fit to operate a law clinic.<sup>46</sup>

**Q 12: Does this mean that a clinic can never turn down a case, regardless of the consequences?**

**A:** No. Court appointments aside, lawyers are not required to represent any particular client.<sup>47</sup> A clinic’s discretion to turn down cases does not, however, alter the profession’s general principles that

inform case selection and does not abrogate the clinic's duty not to establish policies to "restrict acceptance of controversial clients and cases."<sup>48</sup>

**Q 13: Is the law school or university's well-being entirely irrelevant to clinic case selection?**

**A:** No. A clinic should not accept a case that the clinic director believes poses genuinely toxic consequences to the law school or university.<sup>49</sup> But the parent institution's fund-raising strategies have no place in clinic case-selection decisions. Where to draw the line? Recognizing that such "difficult issues of professional discretion" arise in the legal profession, the Model Rules suggest that some "must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules."<sup>50</sup> In other words, there is no bright line. Clinicians should make case-selection decisions that they would be proud to share with their colleagues and their students.

**Q 14: Is it somehow improper for a law school or university to both accept state funding and operate a clinic that represents clients who sue state agencies?**

**A:** No. States provide money to many companies and organizations that do not lose their rights to participate in the legal system as a result. Further, any law that forbade litigation by private recipients of state funds could run afoul of U.S. Supreme Court holdings that government may not grant or deny benefits in a way that infringes on constitutional rights.<sup>51</sup>

**Q 15: Does clinics' advocacy on behalf of clients harm the states' or nation's economic health?**

**A:** No. Of course, any effort to ensure that people and projects comply with the law creates some possibility of delay and added expense. But as former U.S. Solicitor General Theodore B. Olson explained: "[A] robust and productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law."<sup>52</sup>

**Q 16: What if some environmental laws are too stringent?**

**A:** Neither clinics nor their clients enact the laws. People who oppose a law or regulation should seek to change it, not to undermine people's ability to protect rights that the law currently grants them. The U.S. Supreme Court has explained that this ability to protect legal rights in court is "one of the highest and most essential privileges of citizenship" and is the "right conservative of all other rights." As the alternative to force and violence, the right of access to the legal system "lies at the foundation of orderly government."<sup>53</sup>

**Q 17: What if critics believe that clinics file frivolous lawsuits?**

**A:** State and federal laws empower courts to sanction attorneys who abuse the litigation process.<sup>54</sup>

**Q 18: Is it wrong for a law school clinic to represent non-indigent community organizations?**

**A:** No. The model rules define *pro bono publico* (i.e., public service) representation to include work on behalf of community organizations, especially on matters "designed primarily to address the needs of persons of limited means."<sup>55</sup> A clinic therefore operates within a zone that the legal profession recognizes as public service as long as it represents low-income individuals, government, or most public-interest organizations. Indeed, before joining the U.S. Supreme Court, Justice David Souter wrote an opinion for the New Hampshire Supreme Court blocking enforcement of a state law that would have barred a non-profit from providing "legal services to the non-indigent."<sup>56</sup> The court found that the state lacked a compelling justification to restrict the non-profit's first-amendment right to engage in advocacy.<sup>57</sup>

### Q 19: Do student-practice rules prevent clinics from representing community organizations that are not indigent?

**A:** In general, no. Student practice rules differ, but their purpose is usually “to set forth the limited circumstances under which unlicensed law students may engage in the practice of law,” not to deny clinic representation to particular classes of clients.<sup>58</sup> For example, the Louisiana Supreme Court explained that nothing in the state’s student practice rule “affects in any way the right of [a clinic’s] licensed attorneys to represent anyone . . . in any matter in any court.”<sup>59</sup> That court’s former chief justice stressed that the rule “specifically do[es] not say that . . . clinics cannot work for non-indigent clients in any situation where it is legal and ethical [to do so].”<sup>60</sup> Even when a clinic does not have a single client who qualifies for student representation in a particular case, students generally may “perform a wide variety of legal related work or research, so long as it [is] reviewed and any formal documents (such as pleadings, motions, agreements or the like) [are] actually submitted by a licensed supervising attorney.”<sup>61</sup>

### Q 20: Is it wrong for a law school clinic to recover attorney fees from violators of environmental laws?

**A:** No. The law provides specifically for such recoveries.<sup>62</sup> People who disagree with these types of legal provisions are free to campaign to have them changed. But in the meantime, it is appropriate for clinics to follow the laws on the books. The occasional award of statutory attorneys’ fees does not change the *pro bono* nature of a law school clinic’s work.<sup>63</sup>

## Conclusion

So how are environmental law clinics faring in these difficult times? Every clinic, of course, faces its own challenges, and it is not unusual to read press reports of clinics under fire.<sup>64</sup>

Nonetheless, the overall trend has been one of expansion. Almost every law school with a significant environmental program now runs an environmental law clinic.<sup>65</sup> The list includes: Harvard, Yale, Stanford, Georgetown, the University of Chicago, the University of Texas, Washington University, the University of Maryland, Duke, Tulane, Lewis & Clark, Pace, Vermont, and many others. For those fortunate enough to participate, it remains a privilege to help law students find their voices as advocates under the stressful—but exhilarating—conditions of complex litigation.

## Endnotes

<sup>1</sup> See Jennifer Smith, *Legal Education on Trial: Is the Third Year Necessary?*, WALL ST. J., Aug. 26, 2013, at B1, B6 (noting that “clients of big law firms increasingly have been reluctant to pay for junior lawyers who are still learning the ropes.”); Ronald J. Scalise Jr., *Legal Education in the 21<sup>st</sup> Century: Looking Backwards to the Future*, FED. LAW., Aug. 2013, at 38, 39 (“Law schools have heard the call for change and are responding.”).

<sup>2</sup> See Christine Cerniglia Brown, *Is Experiential Education Simply a Trend in Law School or Is It Time for Legal Education to Take Flight?*, FED. LAW., Aug. 2013, at 43, 45 (“[C]linical education remains the gold standard for practical training [in legal education].”).

<sup>3</sup> For example, the focus on complex regulations, administrative law, and large numbers of documents is shared by lawyers practicing in the fields of financial regulation, tax, energy, insurance, employment, health care, and antitrust, among others.

<sup>4</sup> Ruth Marcus, *Editorial, Sledgehammer Politics*, WASH. POST, April 25, 2012, at A19 (quoting Rep. Michele Bachmann (R-Minn.) to the effect that the U.S. Environmental Protection Agency (EPA) “should be renamed the ‘Job-Killing Organization of America.’”); Kristi E. Swartz, *Environment*, ATLANTA J. & CONST., Aug. 22, 2012, at A11 (reporting that new environmental rules placed EPA “at the center of attacks by utility and industry groups for what they call job-killing regulations”).

- <sup>5</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7 cmt. 1 (2009) ("Loyalty and independent judgment are essential elements in the lawyer's relationship to a client."); *id.* R. 1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation ...."); *id.* R. 2.1 ("In representing a client, a lawyer shall exercise independent professional judgment ...."); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 121 cmt. b (2000) ("[T]he law seeks to assure clients that their lawyers will represent them with undivided loyalty. A client is entitled to be represented by a lawyer whom the client can trust."); MODEL RULES OF PROF'L CONDUCT R. 5.4(c) (2009) ("A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.").
- <sup>6</sup> See *id.* R. 1.2 cmt. 5 (2009) ("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."); *id.* Preamble ¶ 6 ("[A] lawyer should seek improvement of ... access to the legal system ....").
- <sup>7</sup> See, e.g., Ashby Jones, *Samsung's War With Apple Back In Spotlight*, WALL ST. J., Aug. 9, 2013, at B3.
- <sup>8</sup> MODEL RULES OF PROF'L CONDUCT R. 1.2(b) (2009).
- <sup>9</sup> ABA & Assoc. of Am. Law Schools, *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A. J. 1159, 1216 (1958).
- <sup>10</sup> *Id.*; MODEL RULES OF PROF'L CONDUCT R. 6.2 cmt. 1 (2009) (lawyers should accept "a fair share of unpopular matters or indigent or unpopular clients").
- <sup>11</sup> ABA & Assoc. of Am. Law Schools, *supra* note 9, at 1216 ("[T]he disfavored cause [should] have its full day in court, which includes, of necessity, representation by competent counsel.").
- <sup>12</sup> ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1208 (1972) (emphasis added).
- <sup>13</sup> See DAVID McCULLOUGH, JOHN ADAMS 66 (2001).
- <sup>14</sup> Editorial, *Knave and Spalding*, WALL ST. J., Apr. 26, 2011, at A16.
- <sup>15</sup> *Sussex Commons Associates v. Rutgers*, 46 A.3d 536, 547 (N.J. 2012).
- <sup>16</sup> See ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1208 (1972); ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 334 (1974).
- <sup>17</sup> *Polk County v. Dodson*, 454 U.S. 312, 321 (1981).
- <sup>18</sup> *Id.*; see also *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 534 (2001) ("An informed, independent judiciary presumes an informed, independent bar.").
- <sup>19</sup> See ABA Res. 100A (Feb. 2011) (reaffirming "support for the ethical independence of law school clinical programs and courses consistent with the ABA Model Rules of Professional Conduct"). The accompanying report explains that to "help law students form an appropriate professional identity," clinical programs "must be free to operate like other lawyers, zealously pursuing their clients' interests and fulfilling their ethical obligations of loyalty, diligence, and confidentiality." The report also finds, "In view of the benefits of clinical legal education and scholarship to the growth and development of the law and the education of future lawyers, the protections of academic freedom are especially applicable to clinical programs and must be respected." ABA Section of Legal Education and Admissions to the Bar, Report to the ABA House of Delegates re: Res. 100A 1-2 (Feb. 2011).
- <sup>20</sup> See MODEL RULES OF PROF'L CONDUCT R. 5.4(c) (2009) and the state rules adopting that rule as binding law.
- <sup>21</sup> See Michele DeStefano Beardslee, *Advocacy in the Court of Public Opinion, Installment Two: How Far Should Corporate Attorneys Go?*, 23 GEO. J. LEGAL ETHICS 1119, 1177 (2010) ("[A]ttorneys should be helping clients manage legal PR in the court of public opinion both before and after litigation ensues...."); Jayashri Srikantiah & Jennifer Lee Koh, *Teaching Individual Representation Alongside Institutional Advocacy: Pedagogical Implications Of A Combined Advocacy Clinic*, 16 CLINICAL L. REV. 451, 470 (2010) (discussing instruction on "a variety of different lawyering skills on advocacy projects, including working with the Media"); see also *Watkins v. Fordice*, 7 F.3d 453 (5th Cir. 1993) (noting that the Ninth Circuit has allowed prevailing parties to recover attorney fees from a defendant for work on "press conferences [that] 'contributed, directly and substantially'" to attaining litigation goals.") (quoting *Davis v. San Francisco*, 976 F.2d 1536, 1545 (9th Cir.1992), *vacated in part on other grounds*, 984 F.2d 345 (9th Cir.1993)).
- <sup>22</sup> See, e.g., MODEL RULES OF PROF'L CONDUCT R. 5.4(c).

- <sup>23</sup> ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 334 (1974); see also MODEL RULES OF PROF'L CONDUCT R. 1.6(a) (2009) ("A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent...").
- <sup>24</sup> ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 334 (1974).
- <sup>25</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2009).
- <sup>26</sup> *Id.* R. 1.9(a).
- <sup>27</sup> Instead, clinicians' responsibilities to their law schools or universities are to act in an ethical and professional manner, to be role models for their students, and to provide the best educational experience practical for their students. Further, the conflict rule "allows consideration in a given situation of the social value of the lawyer's behavior alleged to constitute the conflict." See RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 121 cmt. c(iv) (2000) [hereinafter RESTATEMENT]; see also MODEL RULES OF PROF'L CONDUCT Preamble ¶ 6 (2009) (stressing the social value of improving "access to the legal system").
- <sup>28</sup> *Id.* R. 5.4(c); see also *Polk County v. Dodson*, 454 U.S. 312, 321 (1981).
- <sup>29</sup> "While 'appearance of impropriety' is not contained in the Rules, it lives on in jurisprudence and in our minds." Robert C. Lowe, 1 LA. PRAC. DIVORCE § 2:3 (2013). The ABA's Model Rules of Professional Conduct (first promulgated in 1983) dropped the older Canon 9 "appearance of professional impropriety" standard (from the 1969 Model Code of Professional Responsibility) as "very general" and "question begging." MODEL RULES OF PROF'L CONDUCT R. 1.9 cmt. 5 (1983). (This comment does not appear in the 2009 edition.)
- <sup>30</sup> ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 342, n.17 (1975).
- <sup>31</sup> *In re Complaint of Cardinal Servs., Inc.*, No. 00-1909, 2006 WL 2089925, at \*3 (W.D. La. July 21, 2006); see also RESTATEMENT, *supra* note 27 (The standard for determining conflicts "is not the 'appearance of impropriety' standard .... [which] could prohibit not only conflicts as defined in this Section, but also situations that might appear improper to an uninformed observer or even an interested party.").
- <sup>32</sup> *Woods v. Covington County Bank*, 537 F.2d 804, 813 (5th Cir. 1976).
- <sup>33</sup> See *Woods*, 537 F.2d at 813.
- <sup>34</sup> See *FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1316 (5th Cir. 1995).
- <sup>35</sup> See *Woods*, *supra* note 32, at n.12.
- <sup>36</sup> A politician once accused Tulane University (with no basis) of using its clinic to extort donations. *Ambulance Chasing on the Bayou ... Legal Extortion*, ALLIANCE, Fall 2010, at 33, 34 (claiming "[a] quick look at the donors list provided by Tulane shows companies that were sued by Tulane and have now magically become financial supporters."). Donations to Tulane University, however, do not buy anybody immunity from lawsuits that its clinic handles on behalf of clients.
- <sup>37</sup> MODEL CODE OF PROF'L RESPONSIBILITY EC 2-27 (1986). Both the ABA's Model Rules of Professional Conduct and the older Model Code of Professional Responsibility reflect "standards generally accepted by the profession." *In re Dresser Industries*, 972 F.2d 540, 544 at n.7 (5th Cir. 1992).
- <sup>38</sup> MODEL CODE OF PROF'L RESPONSIBILITY EC 2-28 (1986).
- <sup>39</sup> MODEL RULES OF PROF'L CONDUCT R. 5.4(c) (2009).
- <sup>40</sup> See Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 61-62 (1988) (discussing so-called business conflicts).
- <sup>41</sup> ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1208 (1972).
- <sup>42</sup> See MODEL CODE OF PROF'L RESPONSIBILITY EC 2-27 & EC 2-28 (1986).
- <sup>43</sup> See MODEL RULES OF PROF'L CONDUCT R. 5.4(c) (2009).
- <sup>44</sup> See *Hearing on S.B. 549 Before the La. S. Comm. on Commerce, Consumer Prot. & Int'l Affairs*, 2010 Leg. Reg. Sess. (May 19, 2010), available at [http://www.youtube.com/watch?v=osTF\\_XITNAE](http://www.youtube.com/watch?v=osTF_XITNAE) (testimony of Tulane University President Scott Cowen that if Tulane were to shut down its clinics to preserve state funding, "we [would] throw under the bus every indigent person in this state ... and say we will not represent you because the money is more important ... [T]hat is what America is not about.").
- <sup>45</sup> See, e.g., MODEL CODE OF PROF'L RESPONSIBILITY EC 2-27 & EC 2-28 (1986).

- <sup>46</sup> See ABA Commission on Professionalism, ... *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243, 263 (Aug. 1986) (“Deans and faculties of law schools should keep in mind that the law school experience provides a student's first exposure to the profession, and that professors inevitably serve as important role models for students. Therefore, the highest standards of ethics and professionalism should be adhered to within law schools.”).
- <sup>47</sup> See MODEL RULES OF PROF'L CONDUCT R. 6.2 cmt. 1 (2009) (recognizing lawyers' qualified “freedom to select clients”).
- <sup>48</sup> See ABA Comm. on Ethics & Prof'l Responsibility, Informal Op. 1208 (1972).
- <sup>49</sup> Adam Babich, *Controversy, Conflicts, and Law School Clinics*, 17 CLINICAL L. REV. 469, 510-12 (2011). For example, a domestic violence clinic might appropriately turn down a case in which the potential client's opponent has made credible threats of violence against the potential client's lawyers. Under those circumstances, the representation's risk to the safety of university students might lead the clinic director to consider the representation toxic. *Id.* at 491, 511 nn. 85 & 170.
- <sup>50</sup> See MODEL RULES OF PROF'L CONDUCT Preamble ¶ 9 (2009); *Cf.* Norwegian Evangelical Free Church v. Milhauser, 252 N.Y. 186, 191, 169 N.E. 134, 135 (N.Y. 1929) (Cardozo, J.) (“There is in all such controversies a penumbra where rigid formulas must fail. No test more definite can then be found than the discretion of the [decisionmaker], to be carefully and guardedly exercised ... in furtherance of justice.”) (internal quotation marks and citation omitted).
- <sup>51</sup> See *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *but see Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (“A government entity has broader discretion to restrict speech when it acts in its role as [the speaker's] employer ...”); see also *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 545 (2001) (“An informed, independent judiciary presumes an informed, independent bar.”).
- <sup>52</sup> See Theodore B. Olson, *Lay Off Our Judiciary*, WALL ST. J., Apr. 21, 2005, at A16.
- <sup>53</sup> *Chambers v. Balt. & Ohio R.R.*, 207 U.S. 142, 148 (1907).
- <sup>54</sup> See, e.g., 28 U.S.C. § 1927; Fed. R. Civ. P. 11; MODEL RULES OF PROF'L CONDUCT R. 3.1 (2009).
- <sup>55</sup> MODEL RULES OF PROF'L CONDUCT R. 6.1 (2009).
- <sup>56</sup> *In re N.H. Disabilities Rights Ctr., Inc.*, 541 A.2d 208, 216 (N.H. 1988).
- <sup>57</sup> *Id.* at 215-16.
- <sup>58</sup> *S. Christian Leadership Conf. v. Sup. Court of La.*, 252 F.3d 781, 784 (5th Cir. 2001).
- <sup>59</sup> *La. Sup. Ct., Opp. to Pet. for Writ of Cert., S. Christian Leadership Conf. v. Sup. Ct. of La.*, 534 U.S. 995 (2001) (No. 01-360), 2001 WL 34116823 at \*5 (2001).
- <sup>60</sup> *La. Sup. Ct., Resolution Amending and Reenacting Rule XX*, (Calogero, J. concurring) 3 (1999).
- <sup>61</sup> *S. Christian Leadership Conf.*, *supra* note 58, at 790 n.6.
- <sup>62</sup> See, e.g., 42 U.S.C. § 7604(d).
- <sup>63</sup> See MODEL RULES OF PROF'L CONDUCT R. 6.1 cmt. 4 (2009) (“[T]he award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section.”).
- <sup>64</sup> See, e.g., Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 4, 2010, at A12; Elizabeth Amon, *School Law Clinics Spark Hostility*, NAT'L L.J. (D.C.), Apr. 1, 2002, at A5.
- <sup>65</sup> See Hope M. Babcock, *How Judicial Hostility Toward Environmental Claims and Intimidation Tactics by Lawyers Have Formed The Perfect Storm Against Environmental Clinics: What's the Big Deal About Students and Chickens Anyway?*, 25 J. ENVTL. L. & LITIG. 249, 250 (2010) (“Today, approximately one out of five law schools has an environmental clinic.”).