
**In the Matter of the Petition to Amend
Supreme Court Rule (SCR) Chapter 50,
Regarding the Practical Training of
Law Students**

**SUPPORTING MEMORANDUM
20-__**

**Section I
Concise Statement of Requested Relief**

The Access to Justice Commission respectfully petitions the Court to repeal and recreate Supreme Court Rule Chapter 50 (SCR Chapter 50) relating to the practical training of law students. This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

**Section II
Current Context in Brief**

The Access to Justice Commission was created by this Court in order to improve the administration of justice. SCR Ch. 14. The mission of the Commission is to develop and encourage means of expanding access to the civil justice system for unrepresented low-income Wisconsin residents. The Commission's proposed revision to SCR Chapter 50 furthers this goal. The proposed revision of SCR Chapter 50 expands and enriches experiential learning opportunities for law students, supports a more equitable and more diverse membership in the Wisconsin Bar, and increases access to justice for those in need. Beyond that, the proposed rule furthers administrative efficiency, and modernizes and clarifies the out-of-date and at times confusing current Student Practice Rule.

**Section III
Historical Context**

Since the late 1960s, student practice rules have been an integral part of the modern legal experience. Wallace H. Mlyniec & Haley D. Etchison, *Conceptualizing Student Practice for the 21st Century: Educational and Ethical Considerations in Modernizing the District of Columbia Student Practice Rules*, 28 Geo. J.L. & Ethics 207, 209 (2015). Students desire the practical and personal education that experiential learning opportunities provide. *Id.* Bar associations prefer their new members to have clinical, hands-on experience. *Id.* Student practice "bridges the gap between theory and practice and increases students' abilities to practice early in their careers." *Id.* at 208. Additionally, student practice facilitates the formation of strong ethical and professional foundations and protects the norms and values of the profession by introducing them to new lawyers while they are still under close supervision. *Id.* This should start sooner rather than later. Both the University of Wisconsin Law School and Marquette University Law School have robust experiential learning programs, showing that the State of Wisconsin and its legal scholars value the opportunity for hands-on legal education and practice. Wisconsin's student practice rule should be revised to allow for the long-revered and desired experiential learning programs to begin earlier in a student's legal educational

experience and continue on after graduation so that students, professionals, courts, and clients can reap the benefits of the practical training of law students sooner and more fully. Many states have student practice rules allowing students to practice under supervision after completing one year of studies. See *infra* at Section IX of this Memorandum. Wisconsin should join this growing movement and revise its Student Practice Rule to reflect the attitudes and desires of the State and the country as a whole.

Section IV Relief Requested

The Access to Justice Commission requests that the Court repeal and replace the current SCR Chapter 50 with the text proposed in the Petition filed with this Supporting Memorandum.

Section V Impact on Experiential Learning Opportunities

The new SCR Chapter 50 expands and enriches experiential learning opportunities for law students. It allows for the possible creation of more experiential learning opportunities by allowing students to practice under the supervision of a licensed attorney after completing one year of law school, as opposed to one and a half years under the current rule. This will also make current opportunities more meaningful for students, most of whom are unable to practice law for two of the three semesters they spend in our existing clinical programs.

Section VI Impact on Equitable and Diverse Membership in the Wisconsin Bar

The new SCR Chapter 50 supports a more equitable and diverse membership in the Wisconsin Bar. It allows law school graduates from all states to practice in Wisconsin at government, nonprofit, or *pro bono* entities, under supervision for up to 12 months after their graduation while studying for the bar. Wisconsin's diverse population is not reflected in the Wisconsin Bar, particularly in the government and public interest law sections. Allowing a more diverse pool of graduates to practice in Wisconsin after graduation for government, nonprofit, and *pro bono* entities supports a more equitable and diverse bar membership.

Section VII Impact on Access of Justice

The SCR Chapter 50 increases access to justice for those in need. It provides additional opportunities for law students and graduates to provide desperately needed legal services to the people of Wisconsin. The more students and graduates permitted to practice, the more people who can be helped by legal aid-type organizations and agencies. The proposed rule will not fill the well-documented justice gap, but it does provide—at no-cost—a step in the right direction.

Section VII Other Impacts

In addition to these main objectives, the new SCR Chapter 50 also:

- Streamlines the certification duties of law schools.

The current rule requires that the law school where a student is enrolled certify every supervising lawyer's fitness to practice, which is redundant because the

Wisconsin Board of Bar Examiners certifies all lawyer's fitness to practice, and the Office of Lawyer Regulation ensures that the supervising lawyer adhere to the rules of professional conduct.. The new SCR Chapter eliminates this burden on Wisconsin's two law schools, and places it where it belongs: with the supervising lawyer, who are already required under SCR 20:5.3 to ensure that nonlawyer assistants in their law offices adhere to rules of professional conduct.

- Modernizes and clarifies the rule.

The current law allows students without direct supervision to do work that was "customarily performed by law clerks in law offices before January 1, 1979." The new SCR Chapter 50 clarifies this confusion provision, setting out precisely what type of work is permitted.

Section X

Comparison Between Current Student Practice Rule and the Student Practice Rule Proposed by the Commission

Distinctive Features of Current Student Practice Rule (SCR Chapter 50)

- A student is not eligible to practice until having "completed legal studies amounting to at least one-half of the requirements for a law degree."
- The dean of the law school is required to "certify" that the student has completed half of the requirements for a law degree.
- The dean of the law school is required to certify that the student has the "ability, training and character" to practice under the supervision of a lawyer.
- The rule requires certification on a "form furnished by the clerk of the supreme court" and filed with "the supreme court and the state bar."¹
- The dean of the law school where the student is enrolled is required to "approve" the lawyer who supervises the student.
- Supervising lawyers are required to:
 - "file with the state bar a notice . . . stating the name of the student [and] the period or periods during which he or she expects to supervise" the student;
 - "[n]otify the state bar . . . promptly if his or her supervision of the student ceases;" and
 - "[f]ile with the dean of the student's law school at least semiannually a statement of the types of activities engaged in by the student."
- The rule allows students to practice in courts and before agencies and to counsel clients, but only as "part of the clinical program of the law school."

¹ Although the form exists, and although many students practice in our courts every year, the Office of the Director of State Courts reports that only a handful of forms ever get filed.

Distinctive Improvements SCR Chapter 50 Proposed by the Commission

- A student may practice upon completing one-third of the requirements for a law degree.
- Students who have graduated also may practice under this rule, for up to 12 months after graduation, or until the student is admitted to practice before any federal or state court, whichever comes first.
- The law school certifies only whether the student “is regularly enrolled, is in good standing, and has completed legal studies amounting to at least one-third of the requirements,” or whether the student has graduated.
- By and large, no paperwork is filed with the supreme court or the State Bar.
 - The student obtains a form from the Director of State Courts and submits it to the law school for certification. Then the law student retains a copy of the form and shows it if requested by a court, agency, or client.
 - If a student’s certification is invalidated by a supervising lawyer, or if they cease to be enrolled without graduating, the supervising lawyer notifies the Director of State Court.
- In addition to practicing as part of the clinical program of the law school, a student may practice under the auspices of:
 - a qualified *pro bono* program, as defined in SCR 31.01(12);
 - a nonprofit legal services organization that receives funding from the Wisconsin Trust Account Foundation or the Legal Services Corporation; and
 - a government agency which employs the supervising lawyer (for example, a district attorney’s office or an office of the State Public Defender).
- The rule limits the number of students that can be supervised at any one time.
 - Lawyers who are law school clinical faculty members may supervise a larger number of students than may be supervised in *pro bono* programs, nonprofits, and government agencies, thus recognizing the different primary focus and resources of supervisors.

SECTION XI Comparison to Other States’ Practice Rules

Currently, approximately 15 other states have student practice rules which are similar to proposed SCR Chapter 50 including Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Maryland, Michigan, Minnesota, New Mexico, New York, North Dakota, Oklahoma, Utah, and Wyoming. Consider for example, Wisconsin’s neighboring state, Minnesota, which implemented student practice rules resembling the new SCR Chapter 50 in 1982.

Clinical faculty at Mitchell Hamline School of Law express that for as long as the new rules have been in place, the Law School has experienced no issues with certified student attorneys. The Law School's goal is to teach people how to be lawyers, and allowing students to actually practice is the best way to do that. It is important for students to be able to combine both theoretical (course work) and practical (experiential learning) experiences during their law school education. Mitchell Hamline's clinical faculty believe that the summer after the first year of law school is the perfect time for students to become certified, and if students wait too long to become certified, they miss out on valuable opportunities to prepare themselves for post-graduate opportunities.

Further, clinical faculty at the University of Minnesota Law School believe that the State's liberal student practice rule contributes to the strength of the school's clinical program, and enhances the educational experience and exposure to the practice of law of students. Students are allowed to participate in clinical programs, government offices, and legal aids after completing just one year of study. Many county attorney and public defender offices hire a significant number of rising 2L students for summer employment, which both expands and enriches experiential learning opportunities for law students as well as increases access to justice.

Both law schools assert that Minnesota's student practice rules expand the breadth of whom the schools, and the State can help. Because the rules provide students more opportunities to practice, students are able to help more people who may not otherwise be able to obtain legal services. As illustrated by Minnesota's experience, an updated student practice rule will similarly help Wisconsin enrich and expand experiential learning opportunities for law students and increase access to justice.

The Wisconsin Access to Justice Commission respectfully petitions the court to adopt the above recommendation. Respectfully submitted this ____ day of _____, 2020.

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