

Background and Description of Proposed Amended SJC Rule 3:03

Background. In June 2022, the Justices of the Supreme Judicial Court (SJC) appointed a Committee to Study SJC Rule 3:03, which governs law student practice before the Massachusetts courts. The Committee consists of judges or legal counsel from the Appeals Court and each of the Trial Court departments, as well as the Clerk of the Supreme Judicial Court for Suffolk County, who is responsible for administering Rule 3:03. The Justices asked the Committee to solicit and consider suggestions for improvements to Rule 3:03 and to make recommendations for amendments to the Rule or other changes in its operation and administration.

The Committee studied the current Rule 3:03 and its history, reviewed similar law student practice rules from other jurisdictions across the United States, and considered scholarly articles addressing the evolution of these rules and the benefits and effects associated with law student practice. The Committee also took note of the increased emphasis on experiential learning in legal education, as reflected in the American Bar Association's Standards 303 and 304 for Approval of Law Schools.

Most importantly, the Committee solicited input from and conducted surveys of Massachusetts law schools, judges from each of the Trial Court departments and the Appeals Court, public service agencies, legal aid organizations, prosecutors' offices, and the Committee for Public Counsel Services. In many instances, the proposed changes to Rule 3:03 are drawn directly from suggestions submitted in these surveys.

Summary Description. The Committee's proposed revision of SJC Rule 3:03 increases opportunities for law student practice. First, this proposal allows student practitioners, with appropriate supervision, to appear in criminal matters during the second year of law school (or its equivalent), whereas the current Rule does not permit appearances in criminal matters until their third year. Second, this proposal also permits second-year law students to appear in matters not only during enrollment in a clinical program, but also after they have completed a clinical program, subject to appropriate supervision, whereas the current rule permits second-year law students to appear only while they are enrolled in a clinical program.

The Committee's proposed revision continues to provide opportunities for qualified law students to appear in every department of the Trial Court as well as the Appeals Court and the SJC, and also authorizes appearances before other administrative agencies where permitted by those agencies. The proposed revised Rule also continues to support opportunities for student practitioners to practice under the supervision of attorneys at a wide range of organizations, including law school clinical programs, the Office of the Attorney General, district attorneys' offices, other state agencies and municipalities, legal aid organizations, the Committee for Public Counsel Services and other entities providing criminal defense, and, additionally, law firms providing pro bono civil legal aid or criminal defense for indigent persons.

Further, the proposed revision continues to make it possible for certain recent law school graduates to provide supervised legal representation if they have been certified before graduation

and take the first bar examination after they graduate. Those graduates may also continue to appear as student practitioners if they pass the bar examination until they are sworn in or for six months after the bar examination, whichever is sooner.

At the same time, the proposed revision asks student practitioners to take on some additional responsibilities. For example, currently student practitioners are only required to have taken or be enrolled in a class on evidence or trial practice as a prerequisite. The proposed revision would also require student practitioners to have taken or be enrolled in a class on legal ethics or professional responsibility, and that they have taken or be enrolled in a class in civil procedure or criminal procedure to appear in civil or criminal matters, respectively.

When student practitioners end their affiliation with a clinical program or other organization, they must notify the Clerk of the SJC for Suffolk County and, if they are continuing to practice with a different clinical program or organization, reapply for certification. This requirement is akin to practicing attorneys being required to notify the Board of Bar Overseers when they change addresses or positions. This change in notification and requiring further certification is important to assist the Clerk of the SJC for Suffolk County in administering the program and keeping track of where student practitioners are working.

Finally, the proposed revision provides that judges shall presumptively permit qualifying student practitioners to appear, but that in individual cases a judge may prescribe certain limitations on the form or manner of student practice in the interest of the orderly administration of justice, for good cause, or for the protection of a witness or litigant.

Section-by-Section Description. The Committee has substantially rewritten and reorganized SJC Rule 3:03. The following is a section-by-section description of the proposed amended Rule.

Section 1 sets out the purpose of the Rule: to cultivate knowledge and competency in the practice of law and promote public service and access to justice by permitting law students and recent law school graduates who have been certified by the Clerk of the SJC for Suffolk County (Clerk) to appear without compensation on behalf of clients before courts and administrative agencies in the Commonwealth. Specifically, Section 1 permits student practitioners to appear on behalf of the Commonwealth, or any subdivision, municipality, or agency thereof; indigent criminal defendants; and indigent parties in civil cases. Section 1 also clarifies that law students need not meet the requirements of the Rule to participate in litigation conducted by another, when the participation consists of activities such as interviewing parties or witnesses, investigating facts or law, or writing briefs or memoranda.

Section 2 defines certain terms used in Rule 3:03. Among other terms, "direct supervision" is defined as requiring the attendance of the supervising attorney with the student practitioner in court, while "general supervision" is defined as requiring the supervising attorney to be available telephonically or otherwise within a reasonable period time, but does not require the supervising attorney to be with the student practitioner in court.

Section 3 sets out the requirements for law students and recent law school graduates to obtain the Clerk's certification to appear as student practitioners.

For current law students, the dean of the student's law school, or the dean's designee, must file forms with the Clerk attesting to the student's character, successful completion of the first year of law school or its equivalent, and fulfillment of certain other requirements. The forms must also identify the law school clinical program or other organization with which the student will be practicing and the attorney(s) responsible for supervising the student. Once obtained from the Clerk, the student's certification as a student practitioner expires if the student ceases to be associated with the law school clinical program or organization through which the student was certified to practice; if the student has graduated from the law school (subject to the provisions for recent graduates discussed below); or if the student has been placed on academic probation or has separated from the law school without having graduated. Certification to practice with a different clinical program or organization may be obtained by repeating the certification process.

Graduating law students who were certified during law school may continue to work in the same placement or a different placement after graduation, provided that they file the requisite papers with the Clerk and are scheduled to sit for the first bar examination after graduation. A graduate's certification will expire if the graduate fails to sit for or pass the first available bar examination. If the graduate passes the first available bar examination, the graduate's certification remains in force until the sooner of the graduate's admission to the bar or six months after the date of the bar examination.

Section 4 sets out the requirements for student practitioners to appear in the courts of the Commonwealth and administrative agencies.

Student practitioners must file certain required information with the court in which they are appearing through a notice of appearance or, in the SJC, through a motion for leave to appear. The required information includes the name and Board of Bar Overseers number of the student practitioner's attorney supervisor; the expected end date of the student practitioner's association with the clinical program or other organization through which they are appearing; a statement signed by the student practitioner and attorney supervisor attesting that the student practitioner is certified and meets the Rule's requirements; and, where the student practitioner is representing an individual client, documentation of the client's consent to the representation.

In the Boston Municipal Court, District Court, Housing Court, Juvenile Court, Land Court, and Probate and Family Court, student practitioners may appear on criminal matters with general supervision if they have successfully completed two-thirds of their law school requirements and a course for credit in criminal procedure, or with direct supervision if they are enrolled in or have successfully completed a law school criminal clinical program and a course for credit in criminal procedure. Student practitioners may appear on civil matters with general supervision if they have successfully completed two-thirds of their law school requirements and a course for credit in civil procedure, or with direct supervision if they are enrolled in or have successfully completed a law school clinical program and a course for credit in civil procedure.

In the Superior Court, students who have successfully completed two-thirds of their law school requirements may appear with direct supervision in certain specified criminal matters provided that they are enrolled in or have successfully completed a course in criminal procedure, and with direct supervision in all civil matters provided that they are enrolled in or have successfully completed a course in civil procedure.

In the Appeals Court, student practitioners may appear in any matter provided that, no later than fourteen days before oral argument, they file a notice of appearance that includes attestations that they are familiar with the Massachusetts Rules of Appellate Procedure and their attorney supervisor will be present at oral argument and be prepared to answer any questions that the student practitioner cannot answer.

In the SJC, no later than thirty days before oral argument, student practitioners must file a motion for leave to appear that contains the same information and attestations as required for the notice of appearance in the Appeals Court.

In administrative agencies of the Commonwealth, student practitioners may appear if the agency allows it, consistent with the rules, requirements, and guidelines of that agency.

Section 4 also provides that justices, judges, and presiding officers shall presumptively permit student practitioners to appear pursuant to the Rule. Justices, judges, and presiding officers may, however, prescribe the form and manner of the student practitioner's participation and may limit the student practitioner's appearance in the interest of the orderly administration of justice, for good cause, or for the protection of a witness or litigant.

Finally, Section 4 provides that the rules of law and evidence relating to privileged communications between attorneys and clients shall govern communications between student practitioners and their clients.

Section 5 sets out the responsibilities of supervising attorneys and student practitioners.

Supervising attorneys must be affiliated with a law school clinical program, Commonwealth entity, organization providing civil legal aid or criminal defense to indigent persons, or law firm providing pro bono civil legal aid or criminal defense to indigent persons. Supervising attorneys must ensure that student practitioners are sufficiently prepared and competent to appear and familiar with relevant rules and regulations. Supervising attorneys must also review and sign all pleadings, motions and memoranda before they are submitted by a student practitioner.

Student practitioners must disclose to clients their status as law students, obtain from clients a signed document acknowledging that status and authorizing the student practitioner to appear on their behalf, and obtain the signature of their supervising attorney acknowledging that the attorney will supervise them. This documentation must be filed with the student practitioner's notice of appearance. Student practitioners must also comply with the standards of professional conduct set forth in the Rule and in SJC Rule 3:07.

Section 6 sets out certain notification requirements.

Supervising attorneys must notify the Clerk and the court or agency in which the student practitioner is appearing within seven days if the attorney will no longer be regularly supervising the student practitioner prior to the anticipated end date of the student practitioner's placement. The name of a replacement supervising attorney must also be disclosed. Supervising attorneys are also responsible for providing notification if the student ceases to be associated with an organization prior to the anticipated end date of the placement.

Student practitioners must notify the Clerk and the court or agency in which the student practitioner is appearing, and file a notice of withdrawal, within seven days if the student practitioner ceases to be affiliated with an organization prior to the anticipated end date of the placement.

Law school deans must notify the Clerk when a student practitioner ceases to be enrolled in or associated with a law school prior to graduation, or when a student practitioner's enrollment or association with the clinical program through which the student was certified ends before the anticipated end date.