

# Proposed Amended Supreme Judicial Court Rule 3:03: Legal Assistance by Law Students and Recent Law School Graduates

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# Proposed Amended Supreme Judicial Court Rule 3:03: Legal Assistance by Law Students and Recent Law School Graduates

## Section 1. Purpose

To cultivate knowledge and competency in the practice of law and promote public service and access to justice, certain qualified and supervised law students and recent law school graduates may appear **without compensation** to represent a client as **student practitioners** before courts and administrative agencies in the Commonwealth of Massachusetts. Subject to the provisions of this rule and upon **being certified** by the **Clerk** of the Supreme Judicial Court for the county of Suffolk, student practitioners may appear on behalf of the Commonwealth; any subdivision, municipality, or agency of the Commonwealth; indigent criminal defendants; and indigent parties in civil proceedings. Student practitioners must be supervised by an attorney as described in Section 5 of this rule. Rule 3:03 does not require that a law student be certified in order to participate in litigation lawfully conducted by another, when the participation consists of such activities as interviewing parties or witnesses, investigating facts or law, or writing briefs or memoranda.

## Section 2. Definitions

**“Attorney(s) affiliated”** with certain entities shall mean members of the Massachusetts bar or lawyers who have been permitted to appear as attorneys in Massachusetts and are at all times qualified to appear before the court or other forum in which the student practitioner will appear. Such attorneys must be employed by that entity or work under the auspices or authority of that entity, including assistant district attorneys, assistant attorneys general, attorneys assigned to represent indigent criminal defendants through the Committee for Public Counsel Services, attorneys providing free civil legal aid to indigent persons through a legal aid organization or law firm, or attorneys representing other Commonwealth entities.

**“Certification”** or **“being certified”** is the determination by the Clerk that a student practitioner is generally eligible to appear before a court, tribunal, or agency, subject to the further requirements of this rule for the respective courts, tribunals, or agencies.

**“Clerk”** shall refer to the Clerk of the Supreme Judicial Court for the county of Suffolk.

**“Clinical programs”** are law school programs for credit in which law students gain practical experience with clients and legal matters under the supervision of a member of the Massachusetts bar, or by a person who has been permitted to appear as an attorney in Massachusetts, and who is otherwise qualified to appear in the court or forum where the student practitioner will appear. Clinical programs shall include practice and classroom

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components that provide experiential learning opportunities for students to develop and practice the professional skills being taught.

**“Commonwealth entity”** shall mean public organizations such as county district attorneys and the office of the attorney general, as well any subdivision or municipality or agency of the Commonwealth of Massachusetts.

**“Completed successfully”** shall mean that the student has completed required coursework and has obtained credit or a passing grade for a class or program.

**“Dean”** shall mean the dean of the law school or a designee who is authorized to act on behalf of the dean.

**“Direct supervision”** or **“directly supervised”** shall be construed to require the attendance of the supervising attorney with the student practitioner in a court, tribunal, or agency. Notwithstanding the provisions of this rule, a student practitioner may appear without direct supervision for ministerial tasks, such as the filing of paperwork or the selection of a further date.

**“General supervision”** or **“generally supervised”** shall be construed to require that the supervising attorney be available within a reasonable period of time telephonically or otherwise if needed but shall not require that the supervising attorney be present with the student practitioner in the court, tribunal, or agency.

**“Student practitioner”** is a currently enrolled law student or law school graduate who has been authorized and certified under the conditions set forth in this rule.

**“Trial practice”** is a law school class for credit in which a law student is taught procedural and substantive principles of law that enable the law student to advocate and present evidence effectively and ethically before a court or tribunal.

**“Without compensation”** shall be construed to prohibit the receipt of a fee by a student practitioner from a client for work on a particular matter and shall not be construed to prohibit the receipt of a fixed compensation paid regularly by a law school, Commonwealth entity, legal aid organization, or law firm as the employer of a student practitioner.

## Section 3. Certification of Eligibility

### 3.1. Clerk’s Certification

The **dean** of a law school that has been accredited by the American Bar Association or authorized by statute of the Commonwealth to grant the degree of Bachelor of Laws,

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Juris Doctor, or Master of Laws may apply to the Clerk to certify currently enrolled law students as student practitioners. To obtain this certification, the dean shall file such forms as the Clerk may prescribe, setting forth the following information:

- (a) the student's current year in law school and expected date of graduation;
- (b) the name of the 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 through which the student will be appearing;
- (c) the beginning and expected end dates of the student's enrollment in the clinical program or association with the Commonwealth entity or organization or law firm;
- (d) the name and Board of Bar Overseers registration number of the student's **supervising attorney(s)**; and
- (e) the dean's attestation:
  - (i) to the student's character, legal ability, and training;
  - (ii) that the student has completed successfully the requirements of the first year of law school study at a three-year program or its equivalent;
  - (iii) that the student has **completed successfully** a course in legal research and writing, and has completed successfully or is enrolled in courses for credit in (a) evidence or **trial practice** and (b) legal ethics or professional responsibility; and
  - (iv) that the student has affirmed to the dean in writing that the student is familiar with the Massachusetts Rules of Professional Conduct, the Massachusetts Rules of Civil Procedure, the Massachusetts Rules of Criminal Procedure, and the provisions of this rule.

### 3.2. Expiration of Certification

A student practitioner's certification shall expire immediately when a student practitioner:

- (a) is no longer enrolled in or associated with the law school clinical program, or with the Commonwealth entity or organization providing civil legal aid or criminal defense to indigent persons, or with a law firm providing pro bono civil legal aid or criminal defense to indigent persons through which the

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student practitioner was certified to appear pursuant to Sections 3.1 or 3.3 of this rule; or

- (b) graduates from law school, except a graduate may continue to appear as a student practitioner if the graduate meets the requirements of Section 3.4 of this rule; or
- (c) has been placed on academic probation or otherwise has separated from the law school without having graduated.

### 3.3. New Certification

A student practitioner whose certification has expired or ended pursuant to Section 3.2 may reapply for certification by complying with the requirements of Section 3.1.

### 3.4. Law School Graduate Student Practitioner Certification

- (a) **Certification for a law school graduate continuing work in the same placement.**

A law school graduate who is certified at the time of graduation in accordance with this rule may continue to appear as a student practitioner after graduation until expiration of their certification pursuant to Section 3.4(d) provided that the graduate has otherwise complied with all the requirements of this rule, notifies the Clerk in writing, and makes a timely application to sit for the first bar examination following graduation.

- (b) **Certification for a law school graduate working in a new placement.**

A law school graduate who was previously certified during law school in accordance with this rule may apply for a new certification to appear as a student practitioner after graduation. To obtain this certification, the graduate shall file such forms as the Clerk may prescribe, setting forth the following information:

- (i) a statement that the graduate was previously certified pursuant to this rule and the name of the 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 through which the student previously appeared;
- (ii) the name of the 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 through which the student will be appearing after graduation;

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- (iii) a statement confirming the date that the law degree was conferred;
- (iv) a statement that the graduate is scheduled to sit for the first bar examination following graduation;
- (v) the name and Board of Bar Overseers registration number of the student's supervising attorney(s).

(c) **Reciprocal certification for a law school graduate previously certified in another jurisdiction.**

A law school graduate who has graduated from an accredited law school in another jurisdiction within the United States outside of Massachusetts and has been certified in another jurisdiction under an equivalent student practice rule may seek certification to appear as a student practitioner after graduation under this rule provided that the graduate:

- (i) complies with the requirements of Section 3.4(b)(ii)-(v); and
- (ii) files with the Clerk a verification that they were certified to appear as a student practitioner in another state with a copy of that state's student practice rule; and
- (iii) a statement affirming in writing that the graduate is familiar with the Massachusetts Rules of Professional Conduct, the Massachusetts Rules of Civil Procedure, the Massachusetts Rules of Criminal Procedure, and the provisions of this rule.

(d) **Effective period for all graduate certifications.**

The law school graduate's certification shall expire if the graduate did not sit for or pass the first available bar examination following graduation from law school. Any graduate who continued to appear as a student practitioner must notify the Clerk within seven (7) days from:

- (i) the first date of the bar examination if the student practitioner did not sit for the first available bar examination following graduation from law school; and
- (ii) the announcement of bar results if the student practitioner did not pass the first available bar examination following graduation from law school.

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## (e) **Continuation of graduate certification until admission to the bar.**

Unless otherwise ordered by the Supreme Judicial Court, the certification of any post-graduate who passes the first available bar examination following graduation from law school shall continue in effect until the sooner of:

- (i) six months after the date of the bar examination; or
- (ii) the date of the graduate's admission to the bar.

## **Section 4. Court Requirements, Scope of Practice, Limitations, and Privileges**

### **4.1. Notice of Appearance of Student Practitioner**

A student practitioner shall file a "Notice of Appearance of Student Practitioner" in each case in which the student practitioner intends to appear. The notice of appearance must include:

- (a) the student practitioner's name;
- (b) the name and board of bar overseers number of the student practitioner's supervising attorney;
- (c) the expected end date of the student's enrollment in the clinical program or association with the Commonwealth entity, or organization or law firm, as disclosed in Section 3.1(c) or the date applicable in Section 3.4;
- (d) a statement signed by the student practitioner and their supervising attorney, attesting that the student practitioner is currently certified under this rule and meets the requirements to appear before the court as set forth in the following subsections of Section 4 of this rule; and
- (e) if applicable, the client consent documentation required by Section 5.2(b) and (c).

### **4.2. Boston Municipal Court, District Court, Housing Court, Juvenile Court, Land Court, and Probate and Family Court**

A student practitioner certified under this rule who has filed the Notice of Appearance required by Section 4.1 with the clerk of the respective court may appear before the Boston Municipal Court, the District Court, the Housing Court, the Juvenile Court, the Land Court, and the Probate and Family Court under the following circumstances:

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(a) *Criminal Matters.*

- (i) A student practitioner may appear on criminal matters with **general supervision** if they have completed successfully (1) two-thirds of the requirements of law school and (2) a course for credit in criminal procedure.
- (ii) A student practitioner may appear on criminal matters with **direct supervision** if they are enrolled in or have completed successfully (1) a law school criminal clinical program and (2) a course for credit in criminal procedure.

(b) *Civil Matters.*

- (i) A student practitioner may appear on civil matters with general supervision if they have completed successfully (1) two-thirds of the requirements of law school and (2) a course for credit in civil procedure.
- (ii) A student practitioner may appear on civil matters with direct supervision if they are enrolled in or have completed successfully (1) a law school civil clinical program and (2) a course for credit in civil procedure.

### 4.3. Superior Court

A student practitioner who is directly supervised, has completed successfully two-thirds of the requirements for law school, and has filed the Notice of Appearance required by Section 4.1 in a case may appear before the Superior Court in that case under the following circumstances:

- (a) *Criminal Matters.* A student practitioner who is enrolled in or has completed successfully a course in criminal procedure may appear on the following criminal matters:
  - (i) arraignment in a matter where the maximum sentence is less than imprisonment for life;
  - (ii) initial probation revocation hearings;
  - (iii) non-evidentiary pretrial hearings for motions to dismiss and motions to suppress search warrants in a matter where the maximum sentence is less than imprisonment for life;



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- (iv) non-evidentiary pre-trial hearings for motions *in limine* subject to preservation of rights at trial in a matter where the maximum sentence is less than imprisonment for life;
  - (v) as second seat at any trial or pre-trial hearings, except that the student practitioner may not argue motions, examine witnesses, or make arguments during the proceeding unless permission to do so is requested and granted by the presiding judge after a colloquy on the record confirming the client's knowing and voluntary approval of the student practitioner's proposed role; and
  - (vi) hearings on motions for a new trial seeking post-conviction relief after the time for direct appeal has expired or direct appellate rights have been exhausted.
- (b) *Civil Matters.* A student practitioner who has completed successfully a course in civil procedure may appear in any civil matter.

### 4.4. Appeals Court

A student practitioner may appear before the Appeals Court provided that, at any time and no later than fourteen (14) days prior to oral argument, the student practitioner and supervising attorney file in each case in which the student practitioner intends to appear the Notice of Appearance required by Section 4.1, including attestations that:

- (a) the student is familiar with the Massachusetts Rules of Appellate Procedure; and
- (b) the supervising attorney will be present at any oral argument and be prepared to answer any questions the student practitioner cannot.

### 4.5. Supreme Judicial Court

A student practitioner may appear before the Supreme Judicial Court provided that, no later than thirty (30) days prior to oral argument, the student practitioner and supervising attorney shall file a Motion for Leave to Appear in the case in which the student practitioner seeks to appear, and the motion is granted. The Motion for Leave to Appear shall include the information required by Section 4.1, including attestations that:

- (a) the student is familiar with the Massachusetts Rules of Appellate Procedure; and
- (b) the supervising attorney will be present at any oral argument and prepared to answer any questions the student practitioner cannot.

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## 4.6. Administrative Agencies

A student practitioner certified under this rule may appear before any administrative agency of the Commonwealth if such agency allows it, and provided that such appearance is consistent with the rules, requirements, and guidelines of that agency.

## 4.7. Limitations of Student Practice

In keeping with the purposes of Rule 3:03, as delineated in Section 1, justices, judges, and presiding officers shall presumptively permit and encourage student practitioners to appear as set forth in this rule. Accordingly, student practitioners must always be sufficiently prepared, knowledgeable, and competent to appear before a court or agency and their educational experience should not interfere with the orderly administration of justice. Notwithstanding other provisions of this rule, a justice, judge, or presiding officer may prescribe the form and manner by which the student practitioner may participate in a proceeding 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 a litigant. If a limitation is ordered, the justice, judge, or presiding officer must, if requested, grant a reasonable continuance for the matter.

## 4.8. Privileged Communications

The rules of law and evidence relating to privileged communications between attorneys and clients shall govern communications made or received between student practitioners and their clients.

## Section 5. Responsibilities

### 5.1. Supervising Attorney Responsibilities

Student practitioners must be supervised by an **attorney 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. A person serving as a supervising attorney must:

- (a) ensure that the student practitioner is sufficiently prepared and competent to appear and is familiar with the rules, standing orders, and regulations of the court or forum in which the student practitioner will appear; and
- (b) review and sign all pleadings, motions, and memoranda before they are submitted by a student practitioner.

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Failure of an attorney to supervise and provide proper training to a student practitioner may be grounds for disciplinary action or revoking or restricting that attorney's ability to serve as a supervising attorney.

Notwithstanding other sections of this rule, a supervising attorney may seek leave of the relevant court or agency for an appropriate and qualified substitute supervising attorney to appear on a temporary basis if the supervising attorney is not otherwise available on a given date.

## 5.2. Student Practitioner Responsibilities

Before a student practitioner may act or appear on behalf of an individual client under this rule, the student practitioner shall:

- (a) disclose to the client the student practitioner's status as a law student;
- (b) obtain from the client a signed document in which the client acknowledges the student practitioner's status and authorizes the student practitioner to appear and represent the client in the matter identified in said document;
- (c) obtain the signature of the student practitioner's supervising attorney acknowledging that the attorney will serve as the student practitioner's supervising attorney;
- (d) file the Section 5.2(b) and (c) documentation, along with the Section 4.1 Notice of Appearance information, with the court or administrative agency in which the matter is pending; and
- (e) comply with the standards of professional conduct set forth in this rule and Supreme Judicial Court Rule 3:07.

## Section 6. Notification Requirements

### 6.1. Supervising Attorney Notification Requirements

A supervising attorney must notify the Clerk and the respective court or agency before which the student practitioner was appearing in writing within seven (7) days when:

- (a) the supervising attorney will no longer be regularly supervising a currently certified student practitioner if that supervision terminates prior to the date disclosed in Section 3.1(c) or the dates applicable in Section 3.4. If the student practitioner will continue to be enrolled in or affiliated with the program, the name of a replacement supervising attorney must be disclosed in the notification; or

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- (b) a student practitioner ceases to be associated with or employed by the 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, if that association or employment has ended prior to the date disclosed in Section 3.1(c) or the dates applicable in Section 3.4.

### 6.2. Student Practitioner Notification Requirements

A student practitioner must notify the Clerk and the respective court or agency in writing and file a withdrawal of appearance in any matter in which the student practitioner was appearing within seven (7) days when the student practitioner ceases to be affiliated with or employed by the 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, if that association or employment has ended prior to the date disclosed in Section 3.1(c) or the dates applicable in Section 3.4.

### 6.3. Dean Notification Requirements

The law school dean must notify the Clerk in writing within seven (7) days when, before graduation, a student practitioner ceases to be enrolled in or associated with the law school or when the student practitioner's enrollment or association with the clinical program through which the student practitioner was certified to appear ends prior to the date provided in Section 3.1(c) of this rule.