

SUPREME COURT OF LOUISIANA

Amendment to Rule XX

JOHNSON, J., Dissenting

This court received complaints from the Chamber of Commerce/New Orleans and the River Region and from the Business Council of New Orleans and the River Region in July, 1997, and a complaint from the Louisiana Association of Business and Industry in September, 1997 requesting that we investigate the Tulane Environmental Law Clinic. The complaints suggested that the environmental law student practitioners should be regulated more closely because business in the state was being negatively impacted by their misguided challenges to environmental permits and other practices.

When the complaints were received, these business entities and the Tulane Environmental Law Clinic were embroiled in a legal controversy over whether a Shintech chemical plant should be licensed in St. James Parish (Convent, La.). The law clinic represented individuals and organizations in the community that opposed the issuance of the permit.

Generally, my view was that we should not curtail a program that teaches advocacy while giving previously unrepresented groups and individuals access to the judicial system in order to satisfy critics who are discomforted by successful advocacy.

Even though the complaints from business interests were directed specifically at Tulane Environmental Law Clinic, we decided to do a survey of law clinics at Tulane, Loyola, and Southern University law schools.¹ An exhaustive review of all Louisiana law clinics failed to uncover any violations of the Law Student Practice Rule. My preference was to maintain Rule XX as written. I would be more receptive to action from this court if we were to receive any complaints of unethical conduct or practices by these law students from the courts or agencies they practice before.

Section 4. Representation of Indigent Individuals

The law schools have stated that, in the past, they considered several factors in determining client eligibility, including court referrals, poverty guidelines, and the client's ability to retain private counsel. The majority is concerned that law clinic resources will be compromised by those who have

¹ Louisiana State University Law Center does not have a clinic.

the ability to pay for legal services. My experience has been to the contrary. Those with the ability to do so, hire the best legal talent available. Those without the ability to pay for private counsel use law clinics.

Section 5. Representation of Indigent Community Organizations

As amended, this section would allow representation of any indigent community organization provided at least 51% of the organization's members are eligible for legal assistance. The amendment does not make clear the type of scrutiny which will be allowed to satisfy or challenge the 51% requirement. I am opposed to any rule that may be used to compel information of the identity of rank and file member information of an organization.

Compelled disclosure of membership in an organization engaged in the advocacy of an unpopular cause would expose members to the possibility of economic reprisals, loss of employment, threats of physical coercion, and other manifestations of public hostility. When the members who hold official positions in a community organization satisfy eligibility requirements, I believe the rank and file membership has a right to privacy with regard to their identity, numbers, and indigency.

Section 10

I would repeal Section 10 in its entirety. The complaints from business interests allege that the Tulane Environmental Law Clinic outreach coordinators are engaged in solicitation. In my view, their charges of solicitation are directed at legitimate activity by the clinic to educate and to provide valuable information to the public about substantive rights and remedies. There should be no prohibition of representation of clients to whom information has been provided. Public interest lawyers may provide not only information about substantive rights and remedies, but also about their availability to provide legal services.

Section 11

Section 11 prohibits law students from appearing in a "representative capacity" before sessions of the state legislature. According to the Honorable Melvin "Kip" Holden, State Representative, District 63, student practitioners from the Tulane Law Clinic have, in the past, provided valuable information and testimony on environmental issues. There is a need for balance since business interests routinely employ advocates to represent their interests during legislative sessions, and the interests of the poor often go unrepresented.

For the foregoing reasons, I respectfully dissent.

