SUPREME COURT OF LOUISIANA

Amendment to Rule XX

LEMMON, J., Concurring in Part and Dissenting in Part

My main point of contention with the law schools is that some of the law clinics have unilaterally expanded Rule XX to provide legal services to public interest non-profit organizations composed primarily of middle income persons, although Rule XX by its literal language and clear intent was designed to provide legal services only for indigents. See La.S.Ct.R. XX, §3.

Purpose of the Student Practice Rule

Rule XX was adopted for two primary purposes: (1) to provide training to approved law students, during their last year of school, in the practice of law, and (2) to provide legal services to indigent persons in the community. Rule XX has served both purposes in an excellent manner since it was adopted in 1971.

Rule XX was amended in 1988 to change "indigent persons" to "indigent persons and community organizations." The 1988 amendment simply clarified the purpose of law clinics to serve both indigent individuals and organizations primarily composed of indigent persons. The 1998 amendment further clarified this purpose.

Definition of "Indigent"

This court's 1998 study of the operation of Rule XX suggested that the word "indigent" should be defined, because rules and regulations should define words that have an indefinite meaning. Of course, there are many levels of indigency. The court decided to define indigency using the federal rules for providing legal services, which

are based on a percentage of the federal poverty level. The amendment adopted today increases the threshold for indigency to 200% of the federal poverty level. Even then, I would be willing to consider a higher threshold upon request if the law schools could show the availability of law students, staff and other resources to handle services for a larger number of indigent persons and organizations of indigent persons. At the same time, I share Justice Victory's concern that increasing the threshold for indigency might result in loss of services for those most in need. Perhaps this court should consider mandating a preference to provide services to lower income families in times of shortages of revenues.

Representation of Non-profit Organizations

As stated above, the main complaint about the 1998 amendments was the denial of services to public interest non-profit organizations that are not composed primarily of indigent persons. The providing of services to such organizations, although apparently allowed in other states, was never authorized or contemplated by the Louisiana rule.

The law clinics unilaterally, without consulting this court, extended their operations beyond the service of indigent persons and organizations composed of indigent persons. Their proper recourse, assuming the law clinics had the law students, staff and other resources to do so without curtailing services to indigents, would have been to request this court to consider amending Rule XX to authorize, for the first time, the providing of services to non-profit organizations. No such request was ever made.[1]

[1]I perceive some benefits from such an amendment, but also many corresponding problems. There are obvious public benefits to providing legal services to non-profit organizations that truly serve the public interest, but do not have available funding to participate in complex litigation, particularly against extremely well-funded opponents. On the other hand, there may not be enough student practitioners or law clinic staff and funding available to provide legal services to more than a few non-profit organizations,

Prohibition Against Student Representation of Validly Solicited Clients

I favor repealing Section 10's prohibition against representation by student lawyers of clients validly solicited by clinic faculty, staff or students. The prohibition, in effect, penalizes valid solicitation by precluding the law clinic from providing student lawyers for the solicited clients.

I question the wisdom and fairness of this prohibition. This court, under decisions of the United States Supreme Court (some of which I do not agree with), could not prohibit lawyers admitted to practice from certain types of solicitation, and this includes lawyers who are employed by law clinics. Since we could not prohibit certain types of solicitation directly, I question whether we should prohibit these types of solicitation indirectly by imposing penalties on the lawyers admitted to practice in the form of a prohibition against their use of student lawyers to represent the validly solicited clients.

Accordingly, I concur in the present amendments, but dissent from failing to repeal Section 10 in its entirety.

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since the law schools have represented to the court that their resources are already strained just to provide the necessary services to truly indigent individuals and organizations of indigent persons. (Law clinics are probably the most expensive per-student operation in law schools, because of the high faculty and staff/student ratio.) Obviously, not all non-profit organizations could be served, and some method would have to be set up for determining which non-profit organizations might be selected for assistance. Moreover, such an amendment would also require a provision that priority should be given to serving indigent persons and organizations of indigent persons, which is the original purpose of Rule XX, in preference to providing services to non-profit organizations.