SUPREME COURT OF LOUISIANA

Amendment to Rule XX

CALOGERO, C.J. Concurs in the Court's Action Amending Rule XX
And Assigns the Following Reasons

I submit this special concurrence, in a matter in which I am in full accord with the action of the Court majority, to respond to comments in dissents and/or concurrences by certain of my colleagues.

My brother, Justice Lemmon, who concurs in today's changes to Rule XX, has it right when he says that the purpose of the Student Practice Rule is to train law students in trial work, and secondarily to furnish legal services to indigent persons. This purpose did not change with our 1988 amendment to the rule. Our intent in making that rule change, at the request of the law schools, was to allow for the representation of organizations primarily composed of indigent persons or indigent community organizations. We did not intend to allow the representation of non-profit organizations composed primarily of moderate, middle, and high income persons. And indeed the amendment today increases the Student Practice Rule's threshold level for representation to 200 percent of the federal poverty guidelines. It is worth noting, however, that this is not a substantial change from what the Court did this past June. In that 1998 rule change, we adopted the federal Legal Services Corporation guidelines for determining eligibility for representation. The LSC regulations allow persons to be represented if their income does not exceed 125 percent of federal poverty guidelines, and in special circumstances, 150 percent of that number, which comes to 187.5 percent of the poverty level. All we did today is remove the required special circumstances and for ease of administration increase the maximum income level for representation to 200 percent of the federal poverty guidelines, which for a family of four is $33,400, for a family of seven is $50,320, and for a family of eight $55,960 (as Justice Victory recites in his partial dissent).

Justice Victory says that's too high and may work to the advantage of those making larger incomes, for a family of eight will qualify if their income does not exceed $55,960 and some whose income is substantially less than that may go unrepresented. Justice Lemmon concurs in the latter concern, noting that many of the poorest may go unrepresented. As I noted previously, however, the change we have made today is minimal, and continues to allow for the representation of persons whose income levels qualify them as being poor and who have need for the legal services offered by law clinics, should the clinics be able and disposed to provide it.

Indeed the great majority of the poor may well go without free legal service in our society for a long time to come, as has been the case very likely throughout history. And that is unfortunate. A great deal of improvement in that regard is necessary at the federal and state levels if we are to increase access to justice for all citizens, as we should. But the narrow focus on the fact that some not quite so poor will get free legal representation while many others even less fortunate will not is hardly relevant in this examination. This Court's only business in this area is governing the practice of law, in addition to applying the constitution and laws of this state and nation. The Court is not charged by the Louisiana Constitution with instituting social programs, nor may the Court take executive or legislative positions either in favor of or against legal partisans. The purposes of the Student Practice Rule are advanced if we place uniform, objective financial standards for representation in the rule, while allowing clinics the discretion to handle those cases which serve as good teaching tools for law students. The suggestion that the minimal increase we adopted in the maximum income levels required for representation, coupled with the available resources of law clinics, should prompt us to reduce that threshold (Justice Victory's view) or possibly result in an increase in that level in time (Justice Lemmon's view) misses the point. Law clinics already are without sufficient resources to serve all of the poor. So the marginally wider financial range serves simply to increase the potential pool of deserving clients who can benefit from law clinic services, while giving some latitude to law clinics to pick and choose pedagogically suitable cases.

Justice Lemmon would repeal Section 10's prohibition against students appearing in court in cases where the client has been solicited by anyone associated with the clinic. That prohibition, made last June, which the majority today has decided not to repeal, was left in the rule because of the Court's policy against solicitation of clients generally, the ethical prohibitions against attorney solicitation, and the Court's view that law students should not be encouraged to engage in the solicitation of cases.

We specifically do not say that a lawyer associated with a clinic cannot solicit, or that such a lawyer cannot represent solicited clients, or that a law school and/or its clinics cannot work for non-indigent clients in any situation where it is legal and ethical, or that a clinic lawyer cannot use as assistants law clerks, paralegals, other laypersons, or law students at any stage of their training. In fact, all of this is permissible. We simply state that students who are not lawyers and who appear in court only through a court-sanctioned exception to the universally recognized postulate that only licensed lawyers can appear in a representative capacity in state courts cannot appear in court on solicited cases.

Justice Lemmon questions the wisdom and fairness of this provision. He says that since lawyers can legally and ethically solicit and then represent solicited clients in certain situations that do not involve the derivation of financial gain, they are entitled to have licensed student lawyers work with them in court, lest those lawyers be indirectly penalized for doing what they can legally do by denying them the use of these student lawyers.

That argument is a bit convoluted. Lawyers are not penalized at all by this singular prohibition on appearances by law students in solicited cases. In order to be "penalized," one must be deprived of a right to which he/she is entitled. The Law Student Practice Rule was not written to, and does not, penalize or benefit supervising lawyers. A lawyer's right to ethically represent and appear on behalf of solicited clients in non-fee-generating cases is unaffected by not

allowing student practitioners to represent solicited clients in court. The emphasis on the licensed lawyer's right in this regard is misplaced.

Law students, who are not lawyers, do not have a right, constitutional or otherwise, to practice law. In fact, absent the limited exception allowed by our Student Practice Rule, the practice of law by law students would be illegal. R.S. 37:213. This singular prohibition we have added with these amendments is but one additional restriction, among others, which we have placed on law students who wish to engage in the "limited" practice of law, under restrictions which are generally not placed on licensed lawyers.

Justice Johnson has three principal complaints regarding the Law Student Practice Rule as amended today: 1) requiring organizations to provide information to the clinics impinges upon their rights to privacy and may result in reprisals; 2) our prohibition on the representation of solicited clients by certified student practitioners is improperly being directed toward legitimate efforts to educate and provide valuable information to the public through the use of an Outreach Coordinator (employed by Tulane's Environmental Law Clinic); and 3) law students should not be prohibited from appearing in a representative capacity before the Legislature.

These positions are not valid criticisms of what this Court has done. Justice Johnson first contends that requiring community organizations to satisfy the clinic with information which establishes that 51% of their membership fit the financial eligibility guidelines, and that they are unable to pay counsel, will compel disclosure of sensitive membership information from organizations engaged in the advocacy of unpopular causes which could expose members to the possibility of reprisals. I fail to see how this is a realistic fear, where all that is being required is that organizations voluntarily seeking free clinic legal assistance satisfy the clinic that they meet the eligibility requirements for group representation. Her probable frame of reference is the case of *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). This case is clearly distinguishable, as it involved a court-ordered disclosure to the state

of the NAACP's Alabama membership lists, including the names and addresses of those members. In contesting the state court order, the NAACP made a showing that the production of such information in the past had exposed members to economic reprisals, loss of employment, and threats of physical coercion. Finally, the United States Supreme Court found lacking in *NAACP v. Alabama* an adequate justification for requiring disclosure of the membership lists.

Even before we placed more specific indigency requirements in the rule in June of 1998, all clients of law clinics, both individual and group, were presumably required to provide some information to law clinics in order to prove their indigency and/or inability to pay for legal services. All that is now required by way of information under our rules is that a community organization **voluntarily** seeking free clinic legal assistance satisfy the law clinic, by providing a reasonable amount of information, that 51% of its membership has income levels below the indigency standard we recited in the Rule, and by showing that the group lacks, and has no practical means of obtaining, funds to retain private counsel. Furthermore, our requirements here (requiring the disclosure of a reasonable amount of information to the clinics in order to allow the clinics to determine whether a community organization is eligible for representation pursuant to the Student Practice Rule) are precisely what the federal Legal Services Corporation (LSC) requires by way of qualification for group legal representation. The LSC regulations allow group representation if the group is "primarily" composed of persons who are financially eligible for representation, and if the group "provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel." 45 CFR Part 1611.5. In fact, this latter requirement, that information be provided to show a group's inability to pay for legal services, has been amended today in Section 5 of our rule to delete the word "financial," so as to more closely parallel the LSC group representation requirement.

Justice Johnson's second complaint is that Section 10, as amended, improperly impinges upon the clinics' right to provide information and education to the public. This is not so. Our amendments to Section 10 do not bar efforts to educate and provide vital information to

community members, for as the commentary notes, "this singular prohibition regarding the representation of solicited clients by student practitioners does not in any way restrict or prohibit law school clinical activities which are intended to provide education or information to Louisiana citizens."

Finally, Justice Johnson's suggestion that our rule prohibits law students from appearing before the Legislature in a representative capacity is not correct. We do not bar any persons from appearing before the Legislature, either by themselves or on behalf of others, irrespective of whether or not they are law students. We have simply said that our Rule XX does not provide the authorization for persons to appear before the Legislature. One does not need to be a lawyer to make legislative appearances. Our rule speaks to court appearances by non-lawyer student practitioners in order to foster their legal education, and simply does not address legislative appearances. Thus, when students appear before the Legislature, as they can, our rule simply states that when they do, they are not doing so as Rule XX student practitioners/quasi-lawyers, whose status is conferred by the Louisiana Supreme Court.