

Washington Law Review

Volume 73 | Number 3

7-1-1998

Law Student Advocates and Conflicts of Interest

Adrienne Thomas McCoy

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlr>



Part of the [Legal Education Commons](#)

Recommended Citation

Adrienne T. McCoy, Notes and Comments, *Law Student Advocates and Conflicts of Interest*, 73 Wash. L. Rev. 731 (1998).

Available at: <https://digitalcommons.law.uw.edu/wlr/vol73/iss3/9>

This Notes and Comments is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review by an authorized editor of UW Law Digital Commons. For more information, please contact cnyberg@uw.edu.

LAW STUDENT ADVOCATES AND CONFLICTS OF INTEREST

Adrienne Thomas McCoy

Abstract: Law students who represent clients under attorney supervision are subject to no clear conflict of interest rules. Whether they are considered lawyers or nonlawyers for purposes of each state's ethics rules is uncertain. Available rules governing lawyer and nonlawyer conflicts of interest ignore the competing interests of legal education, law student employment, clients, and public service. This Comment proposes a student conflict of interest rule that balances these interests by (1) holding student advocates to high ethical standards and (2) allowing screening to cure most conflicts that occur within student representation and that would otherwise handicap students in future employment.

*"A lawyer's good faith, although essential in all his professional activity, is, nevertheless, an inadequate safeguard when standing alone."*¹

Susan is a law student who participates in her school's unemployment compensation clinic and seeks post-graduation employment. At the clinic she represents a client challenging a denial of unemployment benefits from Large Local Employer (LLE). LLE's counsel is Large Defense Firm (LDF) with which Susan is seeking post-graduation employment. Susan accepts LDF's employment offer.

Student advocates are attorney-supervised law students who represent clients after admission to limited practice or appointment as authorized representatives.² The increasingly common scenario set forth above raises questions for students, clinical law programs, and law schools about what conflict of interest rules should apply to student advocates.³ The answer to this question has far-reaching implications for students, clinical education, and the availability of student advocates to clients.

For example, because Susan is representing a client and acting like a lawyer, she may have ethical obligations to uphold duties of loyalty and vigorous representation to her client. Thus, her acceptance of LDF's

1. *Emle Indus. v. Patentex, Inc.*, 478 F.2d 562, 571 (2d Cir. 1973).

2. *See infra* Part I.

3. A conflict of interest results when a party to a social relationship has an interest that conflicts with the interests of the other party. *See* Geoffrey C. Hazard, Jr. & Susan P. Koniak, *The Law and Ethics of Lawyering* 580-81 (1990).

offer of employment may disqualify her and the entire clinic—through imputed disqualification—from representing the client.⁴

When Susan graduates and begins work at LDF, a former unemployment clinic client's interest may disqualify LDF from representing LLE in other matters.⁵ These results may discourage students like Susan from participating in student practice, thus harming clinical education and decreasing the availability of representation for indigent and administrative litigants.⁶

A further conflict arises if the clinic acquires a second client whose interests become adverse to Susan's client. If student advocates are treated as lawyers under the ethics rules, then the clinic may be treated as a firm. If so, the second client must be turned away because, unlike a government agency, a firm may not simultaneously represent two clients with adverse interests.⁷ To prevent losing representation, the client may "waive" the conflict under the constructive duress of having no other options for legal representation.⁸

Other problems arise if clinics and legal services treat Susan as a nonlawyer assistant and require only that level of ethical responsibility.⁹ Susan will miss the ethical training that student practice provides and may even give her client substandard assistance as a result of her limited ethical duties.

Ethical standards for student lawyers lack both clarity and uniformity. State student practice rules, which allow qualified students to engage in limited practice and representation of clients, differ in their application of ethics rules to students.¹⁰ Furthermore, even in states where the rules apply, student advocates' status as lawyers or nonlawyers for purposes of the rules is uncertain. Student advocates fall between these two standards, neither of which is appropriate.

4. See Model Rules of Professional Conduct Rule 1.7(b), 1.10(a) (amended 1995).

5. See *id.* at 1.9(a) & 1.10(a).

6. See *infra* Part II.B.4.b.

7. Model Rules of Professional Conduct Rules 1.10(a) & 1.11(amended 1995).

8. See *infra* Part II.B.4.b.

9. See *infra* Part II.A.; Model Rules of Professional Conduct Rule 5.3 (amended 1995) (requiring attorney supervising nonlawyer to ensure nonlawyer's conduct is compatible with professional obligations of lawyer, and stating that lawyer is responsible for conduct of nonlawyer that would violate rules of professional conduct if lawyer: (1) orders or ratifies conduct, or (2) is partner or supervisor of nonlawyer, knows of conduct, and fails to take remedial action).

10. See Appendix, *infra*.

This Comment argues that alternative student conflict of interest rules that would allow screening to cure imputed disqualification should govern law student advocates. The rules protect clients, ensure the success of legal education through student practice, and develop students' own ethical framework. This argument applies only to student advocates who represent clients under the supervision of an attorney in law school-sponsored clinical programs, non-profit legal services agencies, and pro bono representations by private practitioners, whether or not the student is admitted to limited practice under a state student practice rule.¹¹ The standard proposed may be inappropriate for students whose work does not involve direct client representation.

This Comment focuses on conflict of interest rules for three reasons. First, students will be affected immediately, and often adversely, by the rules' application. Thus, the rules require students to learn to make difficult choices that will protect the clients' interests over the students' own interests. Second, because of student mobility, ongoing employment searches, and short-term affiliation with clinics and agencies, conflict of interest rules will affect students more often than other rules.¹² Thus, application of the conflicts rules to students impacts established norms of student practice and legal education and may affect students more than attorneys. Finally, as clinical legal education and public service in law schools increase, these issues are likely to become more prominent.¹³

Part I of this Comment discusses student practice and its underlying policies, particularly the encouragement of legal ethics education. Part II examines the existing ethical codes that may govern students who represent clients and explains why rules for private lawyers and nonlawyer assistants are inadequate for student advocates. Part III discusses alternative rules for students and concludes by proposing a

11. Students in these positions are identified as "student advocates" throughout the Comment.

12. Conflict of interest rules also affect clinics and legal services agencies more drastically than firms because of the volume of turnover and multiple interests of law students.

13. Although many state student practice rules require that students abide by rules governing lawyers, in only one reported case has a party sought to disqualify a clinical law program as counsel because of a student's conflict of interest. *See* *Bechtold v. Gomez*, No. S-96-775, 1998 Neb. LEXIS 78 (Neb. Mar. 27, 1998) (discussing disqualification of clinical law program because former clinic student subsequently worked as law clerk on unrelated matter for opposing firm). Most clinics and legal services either turn away clients when conflicts arise or obtain client consent to cure the conflicts. However, as more students represent clients, conflicts are likely to arise. *See* Ted Gest, *Doing Good is Doing Well*, U.S. News & World Rep., Mar. 22, 1993, at 60 (noting increase of clinical student work); Ted Gest, *Realism on the Docket*, U.S. News & World Rep., Mar. 23, 1992, at 70, 73 (same).

Model Rule for Student Practice, modeled after the rules for government lawyers,¹⁴ with broad allowances for screening conflicts of interest.

I. STUDENT PRACTICE PROVIDES OPPORTUNITY FOR ETHICAL TRAINING AND CONFLICTS OF INTEREST

A. *Law Student Responsibilities*

Law students have many opportunities to perform legal work while in law school.¹⁵ The most traditional student positions are clerkships for law firms or externships for judges. The major responsibilities of these positions include research, writing legal memoranda and briefs, drafting motions, and performing important background functions.¹⁶ As such, law clerks and judicial externs neither advocate on behalf of nor develop attorney-client relationships with litigants.

Clinical legal education enables students to represent litigants in some state and federal administrative proceedings that allow claimants to appoint "authorized advocates" of their choice who need not be attorneys.¹⁷ Although regulations do not always require that attorneys supervise law students acting as authorized advocates, these representations may occur within the context of law school legal clinics where attorneys supervise students.¹⁸ Similarly, state student practice rules grant qualified law students limited bar admission to perform enumerated functions as legal interns such as representing clients in trials

14. Model Rules of Professional Conduct Rule 1.11 (amended 1995) (stating former government lawyer may not represent private client in matters in which lawyer participated while government employee and that former government lawyer may be screened to prevent imputed disqualification of other lawyers in office); *see also* Model Code of Professional Responsibility DR 9-101(B) (1983) (prohibiting lawyer from accepting private employment in matter in which lawyer had substantial responsibility while public employee).

15. Susan D. Kovac, *Part-Time Employment of Full-Time Law Students: A Problem or an Opportunity*, 58 Tenn. L. Rev. 669 (1991).

16. *Id.* at 698-700.

17. *See, e.g.*, Wash. Rev. Code § 50.32.110 (1996) (allowing non-attorney advocates in Washington Unemployment Compensation proceeding); 8 C.F.R. § 292.1(a)(2) (1998) (permitting qualified law student to appear at immigration hearings); 20 C.F.R. § 416.1505(b) (1997) (allowing for non-attorney advocates in Supplemental Security Income proceedings); Wash. Admin. Code § 263.120.20 (1997).

18. *See, e.g.*, Wash. Rev. Code § 50.32.110 (1996); 20 C.F.R. § 416.1505(b) (1997) (allowing non-attorney advocates); Wash. Admin. Code § 263.120.20 (1997).

and *ex parte* proceedings.¹⁹ Each state's rules contain unique requirements, privileges and responsibilities.²⁰

B. Student Practice Is an Important Vehicle for Ethical Training of Law Students

Student practice provides important lessons in the ethics of lawyering. Ethical standards for student advocates should be considered in light of the reasons students represent clients: to perform public service,²¹ gain advocacy experience, and develop other legal skills. Although an early focus of clinical legal education was to provide representation to indigent clients and to advance social and legal reform, a major goal of modern clinical education is to instruct students in professional responsibility.²²

Many legal educators herald clinical education as the best way to teach students ethical skills, recognizing that "a student comes to understand 'ethics' by acting like an ethical lawyer."²³ Other legal educators have noted that studying ethics through hypothetical problems is inferior to making ethical decisions in response to a particular set of uncontrolled facts.²⁴ Student practice provides a unique and invaluable method of teaching students ethical behavior.²⁵

19. See Appendix, *infra* (listing student practice rules by state).

20. For a detailed chart of student practice rules requirements and privileges, see Joan Wallum Kuruc & Rachael A. Brown, *Student Practice Rules in the United States*, Bar Examiner, Aug. 1994, at 40, 48-55.

21. Many law schools require public service credits for a law degree. See, e.g., University of Washington School of Law Bulletin, at 24-25 (1997-98) (requiring 60 hours of public service).

22. Robert Condlin, *The Moral Failure of Clinical Legal Education* 21 (1981); see also *Report of the Committee on the Future of the In-House Clinic*, 42 J. Legal Educ. 508, 514 (1992) (concluding that goal of clinical programs is to teach students to "respond in role to ethical dilemmas, with real life consequences attached to their decisions").

23. Lorie M. Graham, *Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Education*, 20 J. Legal Prof. 5, 49 (1995).

24. See, e.g., Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 Minn. L. Rev. 1599, 1662 (1991) (comparing activist teaching of ethics to hypothetical teaching of ethics).

25. David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. Legal Educ. 67, 73 (1979) (proposing that purpose of clinical education is "to assist the law student in developing a coherent and personalized system of professional responsibility").

II. CURRENT ETHICAL STANDARDS ARE UNCLEAR AND INADEQUATE

Courts have applied various conflict of interest standards to student advocates depending upon whether the court classifies the student advocates as lawyers or nonlawyers. One court classified a student law clerk as a nonlawyer and applied to his conduct the codified and common law rules governing the conduct of nonlawyer assistants.²⁶ Other courts have held student advocates to the standard of attorneys.²⁷ Under this classification, the Model Rules of Professional Conduct (Model Rules)²⁸ may apply. Many state student practice rules require that legal interns abide by the Model Rules, but none specify whether the students should be treated as lawyers or nonlawyers.²⁹ Thus, it is difficult to know which provisions of the Model Rules or the Model Code of Professional Responsibility (Model Code) apply to student advocates.³⁰ For students who are not admitted to practice, less authority exists regarding the

26. See *Actel Corp. v. Quicklogic Corp.*, 1996 U.S. Dist. LEXIS 11816 (N.D. Cal. May 29, 1996) (applying nonlawyer conflicts standard to lawyer who, while law student, worked as clerk for opposing counsel on same litigation).

27. See *Pisa v. Streeter*, 491 F. Supp. 530, 532 (D. Mass. 1980) (finding that law student clerk, working under supervision of licensed attorney, had attorney-client relationship with attorney's client because student was privy to confidential information that client shared with attorney); see also *People v. Williams*, 454 N.E.2d 220, 240 (Ill. 1983) (holding that attorney-client privilege extends to law student authorized under student practice rule to appear in court and act as client's legal representative).

28. Legal ethics are governed by the widely-adopted American Bar Association's Model Rules of Professional Conduct [hereinafter Model Rules]. In 1983, these rules supplanted the Model Code of Professional Responsibility [hereinafter Model Code], an earlier effort of the ABA to help lawyers regulate themselves. This Code still governs in some states, but most states have adopted the Model Rules with substantial variation in minimum standards. See Stephen Gillers & Roy D. Simon, Jr., *Regulation of Lawyers: Statutes and Standards* xvii (1996 ed.); Appendix, *infra*.

29. Some states require legal interns to complete a professional responsibility course either in lieu of or in addition to requiring their compliance with the ethical rules for lawyers. See Okla. Stat. Ann. tit. 59, ch. 1 app. 6 (West 1997 & Supp. 1998); Va. Code Ann. pt. 6, § IV, para. 15 (Michie 1950 & Supp. 1997); Ill. S. Ct. R. 711 (West 1997).

30. If students are regarded as nonlawyers, they may be subject only to Model Rule 5.3, whereas if students are considered to be lawyers, all the Model Rules apply. Most student practice rules increase confusion by requiring students to abide by the Model Rules in addition to requiring the supervising attorney to accept personal professional responsibility for the student's conduct. See, e.g., Ala. Code app. A.VLE (1996 & Supp. 1997); Del. S. Ct. R. 56(d)(3) (1998); Nev. S. Ct. R. 49.5(3)(b) (1997); Wash. S. Ct. Admin. Practice R. 9(d)(1) (1998).

extent of their ethical duties, and the state bar's jurisdiction over these students is uncertain.³¹

A further complication results from the lack of uniformity among the states.³² Students often perform summer work outside their law school state, and often leave the state after graduation. If a student once represented a client against a large corporation, conflicts may arise that are governed by different standards than those applicable in a student's home state. This same problem exists for lawyers,³³ but the problem for students is magnified by the frequency of student relocation and scope of their job searches.

Under the current standards, clients cannot know what ethical standards to expect from student advocates and may have justifiably uncertain expectations of their student representatives' ethical duty. Clients often must provide written consent to representation by law students and acknowledge that they understand students are not attorneys.³⁴ Clients thus may waive all rights to loyalty and vigorous representation by agreeing to be represented by a law student who is subject to no clearly defined standards of ethical conduct.

A. Rules Governing Nonlawyer Assistants May Apply Because Student Advocates Are Not Members of the Bar

Courts may classify student advocates who are not admitted to limited practice, or who are admitted to practice in a state whose practice rules are silent regarding ethical rules, as nonlawyers by default.³⁵ Even states that apply the Model Rules to legal interns are silent as to whether student advocates are lawyers or nonlawyers under the Model Rules.³⁶

31. Students acting as authorized representatives in administrative proceedings may have statutory ethical obligations. *See, e.g.*, Wash. Admin. Code § 263-120-20(5) (stating lay advocates are subject to ethical rules governing lawyers). The bar's jurisdiction over student advocates who are not admitted to practice and not governed by statute is beyond the scope of this Comment.

32. *See supra* note 20 and accompanying text.

33. *See* Susanna Felleman, Note, *Ethical Dilemmas and the Multistate Lawyer: A Proposed Amendment to the Choice of Law Rule in the Model Rules of Professional Conduct*, 95 Colum. L. Rev. 1500 (1995).

34. *See, e.g.*, D.C. Ct. App. R. 48(a)(1) (1998); Pa. R. Ct. 322(a)(2) (West 1998).

35. *See Actel Corp. v. Quicklogic Corp.*, 1996 U.S. Dist. LEXIS 11816 (N.D. Cal. May 29, 1996).

36. Ethical guidelines for lay advocates in administrative proceedings also lack uniformity among states and agencies. Many of the concerns expressed in this Comment are common to lay representation, but are beyond the scope of this Comment. Although law students function as lay

Thus, the nonlawyer standard might apply to student advocates in many, if not all, jurisdictions. However, it is inaccurate and inadequate to classify student advocates as nonlawyers because of their activities and educational needs.

1. *By Default, Students Are Probably Nonlawyers*

Students performing the traditional role of law clerk are nonlawyer assistants under the Model Rules.³⁷ When students represent clients, however, their roles differ from those of law clerks. Nevertheless, students' default classification is probably "nonlawyers" because students work under attorney supervision, are not members of the bar, and case law and state practice rules do not classify students otherwise.³⁸

2. *The Nonlawyer Standard*

Nonlawyers, such as paralegals, secretaries, and law clerks, are agents of attorneys, who are in turn personally responsible for nonlawyers' conduct.³⁹ The ethical rules for nonlawyers assume that nonlawyers lack both legal training and independent professional responsibility, and the attorney must supervise them accordingly.⁴⁰

The extent of nonlawyers' ethical responsibilities is unclear. Attorneys must ensure that nonlawyers preserve the confidences of the attorneys' clients.⁴¹ However, no case or rule indicates whether nonlawyers directly owe clients a duty of loyalty.⁴² Because nonlawyers do not develop attorney-client relationships, courts may have no opportunity to apply conflict of interest rules, which enforce loyalty and vigorous

advocates in administrative proceedings, they should be held to the standards of lawyers because they are training to become lawyers and are supervised by lawyers.

37. See Model Rules of Professional of Conduct Rule 5.3 cmt. (amended 1995).

38. See *supra* note 9.

39. Model Rule of Professional Conduct Rule 5.3.

40. Model Rules of Professional Conduct Rule 5.3 cmt. (amended 1995) ("The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.").

41. See, e.g., *Smart Indus. Corp. v. Superior Court*, 876 P.2d 1176, 1181 (Ariz. Ct. App. 1994) (finding lawyers have duty to ensure nonlawyers keep client confidences).

42. Lawyer's duties to client include competence, confidentiality, agency, fiduciary, loyalty, diligence, and to inform and advise. Stephen Gillers, *Regulation of Lawyers: Problems of Law and Ethics* 1516 (4th ed. 1995).

representation, to nonlawyers.⁴³ In fact, some courts have held that the rules for lawyers do not apply to nonlawyer personnel.⁴⁴

3. *The Standard Applied to Susan*

To see how this standard applies to a student advocate, consider again Susan from the hypothetical posed in the introduction. If Susan is a nonlawyer assistant, her loyalty is to her supervising attorney, and she is required only to keep the confidences of her supervisor's client, not to provide loyal and vigorous representation. Although Susan probably cannot be employed by two sides of litigation at once because of the potential for breached confidences, her negotiations with LDF do not disqualify her from representing her client. Furthermore, Susan has no personal professional responsibility for her conduct as an advocate. Her supervisor is responsible for her conduct and can simply dictate ethical protocol to her.

Her classification as a nonlawyer may affect whether she will disqualify her future employer from representing the client because of confidential information she learned at the clinic. Depending on where she lives, it may be possible to screen Susan to avoid imputed disqualification of LDF.⁴⁵ However, Susan's classification as a nonlawyer will not enable the clinic to represent two adverse clients at the same time. If student advocates are nonlawyers, then the attorney-client relationship must be between the client and the supervising lawyer.

4. *A Critique of the Standard: Nonlawyer Rules Fail to Protect Clients Adequately and Provide Students Ethical Training*

To protect clients, student advocates must be held to higher ethical standards than nonlawyers. If, as the case law indicates, nonlawyer rules

43. *Cf.* *Guillen v. City of Chicago*, 956 F. Supp. 1416, 1428 (N.D. Ill. 1997) (holding rules 1.7 and 1.9 are not implicated unless party seeking disqualification shows attorney-client relationship exists); *accord* *Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1384 (10th Cir. 1994).

44. *Herron v. Jones*, 637 S.W.2d 569, 571 (Ark. 1982) (holding that Canon 4 "preserving confidences" applies to employees of lawyers, but Canon 9 "appearance of impropriety" applies only to lawyers); *see also* N.C. Op. 176 (1994) (concluding imputed disqualification rules are inapplicable to nonlawyers). *But see* *United States v. Bailey*, 498 F.2d 677 (D.C. Cir. 1974) (holding federal employee who is part-time law student may not appear under student practice rule on behalf of litigants in proceeding to which United States is party and student is agent of supervising attorney).

45. *See infra* Section III.A.3.

are aimed primarily at protecting confidential information,⁴⁶ they fail to ensure loyalty and vigorous representation. Model Rule 5.3, which requires supervising lawyers to ensure a nonlawyer's conduct "is compatible with the professional obligations of the lawyer,"⁴⁷ is an inadequate standard for students because it requires no personal responsibility for abiding by Rules of Professional Conduct. Thus, Susan has the unfortunate opportunity to undermine consciously or unconsciously her client's case because of her interest in LDF.

Accepting personal professional responsibility, a requirement that is absent from the nonlawyer rules, is a crucial element of student advocates' ethical training.⁴⁸ Unless students are required to abide by conflict of interest rules and make the difficult decisions about representation and association that result from applying the rules, they are not likely to develop an internalized system of ethics.⁴⁹

Supervising attorneys should teach students how to apply ethics rules rather than resolve conflicts without involving students.⁵⁰ Applying conflict of interests rules directly to students increases, rather than decreases, the supervisors' responsibilities.⁵¹ Supervisors should remain involved in the attorney-client relationship.⁵² If students bear personal responsibility, supervisors must walk students through the rules and teach them how to make decisions.⁵³

46. See *infra* notes 97–98.

47. Model Rules of Professional Conduct Rule 5.3 (amended 1995).

48. Goldfarb, *supra* note 24, at 1663 (making students personally responsible "engages [them] at a more intense, purposeful, and consequential level"); see also Barnhizer, *supra* note 25, at 71–72.

49. Barnhizer, *supra* note 25, at 74–75.

50. James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing the Lost Benefits of the Apprentices System in the Academic Atmosphere*, 60 U. Cin. L. Rev. 83, 114 (1991) (taking on role of lawyer gives meaning to ethical standards); see also Robert J. Condlin, "Tastes Great, Less Filling:" *The Law School Clinic and Political Critique*, 36 J. Legal Educ. 45, 67 (1986) ("Until they are involved in [direct experience], students do not take seriously the possibility that the events could happen, or become aware of all the factors involved in understanding and dealing with them.").

51. Cf. Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 Vand. L. Rev. 321, 339 (1982) (arguing that relationship of supervising to subordinate lawyer is appropriate for clinical teachers and law students).

52. George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher's Duty to Intervene*, 26 Gonz. L. Rev. 415, 429 (discussing when clinical teachers should intervene in student representation).

53. William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 Akron L. Rev. 463, 485 (1994) (discussing balance between allowing student to take maximum control of case and maintaining ethical responsibility of teacher to client).

B. Ethical Rules Governing Lawyers May Apply to Students Because of Their Activities and Relationship with Clients

Although student advocates are not members of the bar, they act like lawyers and should abide by lawyer conflict of interest rules. Furthermore, it is possible that courts may apply attorney conflict of interest rules to student advocates because their activities suggest that they develop attorney-client relationships with their clients.⁵⁴ However, a strict application of imputed disqualification would restrict students' employment possibilities more than necessary. This would have the practical effect of harming clients of clinics and legal service agencies by making it necessary for legal clinics either to seek coerced client waivers of conflicts of interest or turn away clients because of conflicts.

1. Student Advocates Act Like Lawyers and May Be Subject to Attorney Conflict of Interest Rules

Student advocates have very different duties and ethical obligations to clients than do secretaries, paralegals, or law clerks. Courts prohibit nonlawyers from performing many of the functions that student advocates perform.⁵⁵ While nonlawyers perform important background functions and have access to confidential client information, they do not maintain the primary relationship with the client or direct their loyalty to their attorney-employer, rather than their client.⁵⁶

Like lawyers, and unlike nonlawyers, student advocates make decisions regarding representation. Supervising attorneys assist in these decisions, but the extent of interference in the representation varies

54. See Appendix, *infra* (listing state rules governing attorney-client relationships between student advocates and their clients). See also *Pisa v. Streeter*, 491 F. Supp. 530, 532 (Dist. Mass. 1980); *People v. Williams*, 454 N.E.2d 220 (Ill. 1983). But see *Dabney v. Investment Corp. of Am.*, 82 F.R.D. 464 (E.D. Pa. 1979) (holding attorney-client privilege did not apply to law student representing and advising client because he was not working under supervision of licensed attorney).

55. See, e.g., Virginia Model Code of Professional Responsibility DR 3-104(A)(1)-(2) (Michie 1997) (forbidding nonlawyer assistants from counseling clients about legal matters or appearing as counsel in judicial proceedings); Gillers & Simon, *supra* note 28, at 287 (stating that National Association of Legal Assistants' guidelines for legal assistants prohibit legal assistants from forming attorney-client relationships, giving legal opinions, or representing clients in court).

56. In *Application of Christianson*, 215 N.W.2d 920 (N.D. 1974) (concluding that disbarred attorney may work as law clerk and noting that "[t]he basic distinction between the activities of a law clerk and those of a lawyer is that a law clerk works for an employing attorney, while an attorney engages in professional activities for a client").

among supervisors.⁵⁷ The client views the student, not the supervisor, as his attorney.⁵⁸ The student, not the supervisor, becomes invested in the case, advocates for the client in motions, briefs, and oratory, researches and analyzes the law supporting the client's claim, and communicates with the client.⁵⁹ Thus, student advocates have the primary relationship with the client and, as a result, a direct duty of loyalty. Duties of loyalty and vigorous representation are beyond the scope of the nonlawyer rules.

2. *The Standard*

If courts regard student advocates as attorneys, attorney conflict of interest rules may apply.⁶⁰ These rules seek to uphold loyalty to present and former clients and the obligation to preserve client confidences.⁶¹

Model Rule 1.7 prohibits a lawyer from representing two clients concurrently when they have interests adverse to one another.⁶² Lawyers also may not represent clients where representation may be materially limited by an interest personal to the lawyer.⁶³

Model Rule 1.9 prohibits a lawyer from subsequently representing clients in same or substantially related matters where the current client's interests are materially adverse to the former client's.⁶⁴ Representation is likewise proscribed where a danger exists that the lawyer might use

57. See Critchlow, *supra* note 52, at 427–29.

58. *Id.* at 428 (suggesting that client-student-supervisor relationship may confuse clients).

59. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 316 (1967) (stating that lawyer “may employ nonlawyers to do about any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings as part of the judicial process”).

60. See, e.g., Model Rules of Professional Conduct Rule 1.7 (1987); Model Rules of Professional Responsibility Rule 1.9 (1989); Model Rules of Professional Responsibility Rule 1.11; Model Code of Professional Responsibility DR 5-101 (1983). Model Rules of Professional Conduct Rule 1.8 is not discussed in this Comment.

61. See Model Rules of Professional Conduct Rule 1.9 cmt. Because these rules are among the most difficult for attorneys to master, an enormous amount of litigation occurs alleging their violation. Gillers, *supra* note 42, at 197; see also Lee A. Pizzimenti, *Screen Verite: Do Rules About Ethical Screens Reflect the Truth About Real Life Law Firm Practice?*, 52 U. Miami L. Rev. 305, 306–24 (1997); Polly Faltin, Note, “Agonizing” Over Disqualification Decisions: Fractionalizing the Nebraska “Bright Line” Rule in State *ex rel.* Wal-Mart Stores, Inc. v. Kortum, 31 Creighton L. Rev. 279, 288–310 (1997).

62. Model Rules of Professional Conduct Rule 1.7(a).

63. Model Rules of Professional Conduct Rule 1.7(b). Most states have adopted Model Rule 1.7 verbatim. Some states have added additional restrictions. See Appendix, *infra*.

64. Model Rules of Professional Conduct Rule 1.9(a).

confidential information obtained in one representation in a second representation to the disadvantage of the first client.⁶⁵ Using confidential information learned about a client, or about any client of the attorney's former firm,⁶⁶ to that client's detriment unless the confidential information has become public, is similarly prohibited.

Model Rule 1.10 creates imputed disqualification,⁶⁷ whereby a lawyer's personal disqualification is imputed to every member of the firm.⁶⁸ All states prohibit attorneys currently affiliated with other attorneys⁶⁹ or a firm from representing any client that any one of them could not individually represent.⁷⁰ If a lawyer has an interest adverse to his client, no other lawyer in the firm may represent that client.⁷¹

A lawyer may seek a client's consent to a concurrent adverse representation only if the lawyer reasonably believes she can adequately represent the client's interests while maintaining the adverse interest.⁷² If an attorney honestly believes such dual representation is impossible, neither she nor any member of the firm may accept the client.⁷³ The same is true if two clients of a firm subsequently become adverse—the firm must release them both to other attorneys.⁷⁴

65. Model Rules of Professional Conduct Rule 1.9(c).

66. Model Rules of Professional Conduct Rule 1.9(a)–(b); *see also* Gillers & Simon, *supra* note 28, at 115–16, 124.

67. Model Rules of Professional Conduct Rule 1.10 (1989); *see also* Model Code of Professional Responsibility DR 5-105(D) (1983) (stating that if lawyer is required to decline employment or to withdraw from employment under Disciplinary Rule, no partner, associate, or other lawyer affiliated with him or his firm may accept or continue such employment).

68. All Model Rule states have adopted either Rule 1.9(b) or Rule 1.10(b), which note that if any member of a firm has acquired confidential information about a client of that lawyer's former firm, no other lawyer in the firm may represent an interest adverse to that former client in a same or substantially related matter.

69. *See* Restatement of the Law Governing Lawyers, Proposed Final Draft, § 203 (Mar. 29, 1996) (stating “affiliated” includes lawyers who “share office facilities without reasonable adequate measures to protect confidential information so that it will not be available to other lawyers in the shared office”).

70. *See* Appendix, *infra*; Model Rules of Professional Conduct Rule 1.10(a); Model Code of Professional Responsibility DR 5-105(D).

71. The Model Rules and some states have not imputed disqualification based on spousal conflicts of interest to firms; *see also* ABA Comm. on Ethics and Professional Responsibility, Op. 400 (1996) [hereinafter ABA Formal Op. 400] (requiring each associated lawyer to analyze independently whether lawyer's employment negotiations affect him).

72. Model Rules of Professional Conduct Rule 1.7(a)(1), (b)(1).

73. Model Rules of Professional Conduct Rule 1.10(a).

74. Model Rules of Professional Conduct Rule 1.7 cmt. 2.

3. *The Standard Applied to Susan*

Consider Susan from the opening hypothetical to see the effect of applying lawyer conflict of interest rules to student advocates. Model Rule 1.7(a) will disqualify Susan from representing her client as soon as she negotiates for employment with LDF. Model Rule 1.10(a) will disqualify the entire clinic from representing the client. As with the nonlawyer rules, Model Rule 1.7 prohibits the clinic from representing two adverse clients at once. Under Model Rules 1.9 and 1.10, once Susan begins working at LDF, she will disqualify the firm if any litigation arises about which she possesses relevant confidential information from her affiliation with the clinic, including, but not limited to, her representation of the unemployment compensation client.

4. *Lawyer Conflict of Interest Rules Have the Practical Effect of Limiting Student Representation of Under-Served Clients*

a. *Lawyer Conflict of Interest Rules Threaten Students and Clinics*

Imputed disqualification impedes law students' mobility, just as it increasingly has impeded lawyers' ability to change employment at will.⁷⁵ This concern is particularly strong for law students who may have future employment and present participation in legal internships restricted beyond the extent necessary to protect client interests. In addition, student practice presents opportunities for ethical violations that potentially could affect the student's subsequent bar admission.⁷⁶ Students may be unaware of the potential for conflicts of interest, particularly if they have not taken a professional responsibility course and if the supervising attorneys remain unclear about how the rules uniquely affect students. The uncertainty regarding whether an attorney-client relationship exists also raises the risk of an unknowing violation.

Students may forgo taking law school clinics because the association may create conflicts of interest possibly precluding future employment.

75. ABA Formal Op. 400, *supra* note 71 (stating that lawyers seeking employment with interests adverse to current clients must obtain informed client consent or withdraw); *see also* Restatement, The Law Governing Lawyers, Proposed Final Draft, § 206 cmt. (d) (Mar. 29, 1996) (observing that when possibility of employment becomes concrete and mutual, lawyer must get effective client consent, terminate employment discussions, or withdraw from representation).

76. *But see* Ariz. Sup. Ct. R. 38(f)(3)(C) (West 1997) (declaring termination of law student certification based on violation of student practice rules "shall in no way be considered [a] . . . disadvantage to the . . . student in an application for admission to the state bar").

Without wide participation by law students in student practice, many agencies serving indigent litigants would be forced to reduce the number of clients they serve.

b. Strict Application of Lawyer Rules Disserves Clients of Student Advocates

Clients are also harmed if rules for attorneys apply to student advocates. Under imputed disqualification principles, if one student is disqualified, the entire organization can no longer serve that client absent the client's waiver.⁷⁷ Such consent is likely to be forced, particularly in administrative proceedings involving low fees, because such clients usually lack other options for representation.⁷⁸ A waiver is insufficient, and organizations that routinely seek conflicts waivers as the only solution to the problem are avoiding confronting the real conflicts issues. This may ultimately harm their clients, who are often less sophisticated than lawyers' clients.⁷⁹

III. SOLUTION: SPECIFIC CONFLICT OF INTEREST RULE FOR STUDENTS

In order for students to learn how to “respond in role to real life situations with real life consequences,”⁸⁰ a specific conflict of interest rule, centered on fulfilling the purposes of student practice and protecting client interests, should apply to students. A rule applying attorney conflict of interest rules to student advocates, yet allowing screening to

77. Under Model Rule 1.7, waiver is only permitted if the lawyer (student) reasonably believes the conflict of interest will not materially adversely affect his representation of the client; thus, waiver will not always cure the conflict. *But see* New Jersey Rules of Professional Conduct Rule 1.7(c) (West 1998) (observing that in certain cases consent is immaterial and multiple representations are prohibited); North Dakota Rules of Professional Conduct Rule 1.7 (Michie 1997).

78. *See* Robert Aronson, *Conflicts of Interest*, 52 Wash. L. Rev. 807, 855–58 (1977) (discussing need for broader screening within legal services offices to protect availability of counsel for indigent litigants).

79. Association of the Bar of the City of New York Committee on Professional Ethics, Op. 79-37 (requiring special care in disclosure to clients who may lack education and sophistication when student in law school criminal defense clinic has accepted employment with prosecutor's office and student must get consent from client after full disclosure or recuse herself); *see also* Association of the Bar of the City of New York Committee on Professional Ethics, Op. 1991-1.

80. Conclin, *supra* note 22, at 511–17.

cure imputed disqualification, will encourage student practice, ensure that students develop ethical frameworks, and protect clients.

A. *Creating a Middle Ground: Screening to Cure Imputed Disqualification for Lawyers and Nonlawyers*

1. *Definition of Screening.*

“Screening” is a method of preventing imputed disqualification in which a law office insulates a lawyer who possesses confidential information from contact with a party adverse to the lawyer’s former client or a client of the lawyer’s former firm.⁸¹ Screening mitigates the harsh effects that result from strict application of the rules. However, neither the Model Rules nor Model Code provide for screening, and only a few jurisdictions recognize it as a viable method of preventing imputed disqualification.⁸²

2. *Screening Attorneys to Prevent Imputed Disqualification*

Nonlawyer screening cases and bar opinions focus on protecting confidential information. Like government attorneys and law student advocates, nonlawyers have less financial interest in the outcome of a case and less incentive to skew the outcome.⁸³

Some jurisdictions allow screening to rebut the presumption that all lawyers within a firm share information.⁸⁴ If proper⁸⁵ and timely,⁸⁶

81. See, e.g., Pizzimenti, *supra* note 61.

82. See Appendix, *infra*.

83. *Smart Indus. v. Superior Court*, 876 P.2d 1176, 1184 (Ariz. Ct. App. 1994).

84. Rebutting the presumption that the lawyer obtained relevant confidential information at the first firm is widely accepted, but few states allow lawyers actually possessing relevant confidential information to be screened at the second firm.

Washington Rules of Professional Conduct Rule 1.10(b) states that when a lawyer becomes associated with firm, the firm may not knowingly represent Y in a same or substantially related matter in which the lawyer, or firm with which the lawyer was associated, had previously represented X, whose interests are materially adverse to Y and about whom the lawyer has acquired confidential information or secrets material to Y’s case. Washington Rules of Professional Conduct Rule 1.10(b) (West 1998). However, the firm may represent Y if (1) the disqualified lawyer is screened from participating in Y’s case and apportioned no fee therefrom, (2) X receives notice of the conflict and screening mechanism, and (3) the firm is able to demonstrate that X’s material confidences were not transmitted by the disqualified lawyer before implementation of the screen. *Id.*; see also Illinois Rules of Professional Conduct Rule 1.10 (West 1997); Michigan Rules of Professional Conduct Rule 1.10 (West 1998); Oregon Disciplinary Rule 5-105(g) (West 1998); Pennsylvania Rules of Professional Conduct Rule 1.10 (West 1998).

screening may prevent a firm's disqualification. A proper screening mechanism must address the size and structure of the law firm to which the disqualified attorney has moved and the likelihood of contact between the disqualified attorney and attorneys working with the adverse case.⁸⁷ In addition to these considerations, the firm must demonstrate that it has effectively prevented the disqualified attorney's access to all relevant files,⁸⁸ the screen was erected before any information could possibly have been exchanged,⁸⁹ and the disqualified attorney will not share fees from the case.⁹⁰

Screening within private law firms remains controversial among both attorneys and academicians.⁹¹ Critics disapprove of screening in private law firms because the method is impractical⁹² and because lawyer self-regulation provides no independent oversight to ensure the screen's effectiveness.⁹³ Conversely, proponents reason that clients should trust the integrity of the bar.⁹⁴ Although states remain divided on this issue, a majority retain the Model Rule approach and prohibit screening private lawyers who actually possess relevant confidential information from their former firms or clients.⁹⁵

85. See, e.g., *Schiessle v. Stephens*, 717 F.2d 417 (7th Cir. 1983).

86. See *LaSalle Nat'l Bank v. Lake County*, 703 F.2d 252, 259 (7th Cir. 1983) (screening implemented months after conflict discovered is insufficient to rebut presumption of shared information).

87. *Schiessle*, 717 F.2d 417, 421.

88. *Id.*

89. *LaSalle Nat'l Bank*, 703 F.2d at 259.

90. *Schiessle*, 717 F.2d at 421.

91. See, e.g., Susan R. Martyn, *Conflict About Conflicts: The Controversy Concerning Law Firm Screens*, 46 Okla. L. Rev. 53 (1993).

92. Robert E. O' Malley et al., *Preventing Legal Malpractice in Large Law Firms*, 20 U. Tol. L. Rev. 325, 358 (1989); Pizzimenti, *supra* note 61, at 315 (stating that screening is impractical in small firms).

93. Charles W. Wolfram, *Modern Legal Ethics* § 7.6.4, at 402 (1986) ("In the end there is little but the self-serving assurance of the screening-lawyer foxes that they will carefully guard the screened-lawyer chickens.").

94. Cf. Geoffrey C. Hazard, Jr. & William Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* § 1.10:207, at 34 (2d ed. 1990) (observing that to impose rule of vicarious disqualification assumes lawyers will violate ethics codes).

95. Model Rules of Professional Conduct Rule 1.9(b).

3. *Screening Nonlawyers*

Many courts allow screening of nonlawyers who possess confidential information to prevent a firm's disqualification.⁹⁶ Some jurisdictions that prohibit screening for private attorneys and firms have observed obvious differences between attorney and nonlawyer employee access to confidential information and approved screening for nonlawyers.⁹⁷ At the other extreme, some states refuse to allow screening of nonlawyers to cure imputed disqualification.⁹⁸ The ABA suggests that law firms and employers screen nonlawyers to protect confidential information from passing through them.⁹⁹

4. *Imputed Disqualification Models*

Lawyer and nonlawyer imputed disqualification cases produce three models. The strictest approach, "Double Imputed Disqualification," imputes confidential information on both sides of the lawyer's move from one firm to another. Thus, a lawyer at Firm A is deemed to possess all confidential information contained within Firm A and presumed to share that information with every attorney at Firm B. Both presumptions

96. See, e.g., *Kapco v. C & O Enter.*, 637 F. Supp. 1231 (N.D. Ill. 1985) (denying disqualification because secretary's information was neither disclosed nor used); *King v. King*, 1989 Tenn. App. LEXIS 675 (Tenn. Ct. App. Oct. 18, 1989) (allowing screening of nonlawyers, including law clerks).

97. See, e.g., *In re Complex Asbestos Litig.*, 283 Cal. Rptr. 732 (Cal. App. 1991) (holding that firm seeking disqualification must show nonlawyer possesses confidential information relevant to pending litigation between former and present firm, mere proof of access to confidential information is insufficient, screening rebuts presumption that nonlawyer shared confidences with present firm); *accord Smart Indus. v. Superior Court*, 876 P.2d 1176 (Ariz. Ct. App. 1994) (applying ABA Informal Op. 1526, *infra* note 99); *Herron v. Jones*, 637 S.W.2d 569 (Ark. 1982) (holding that precautions preventing disclosure by nonlawyer were sufficient to prevent disqualification); *Esquire Care, Inc. v. Maguire*, 532 So. 2d 740 (Fla. Dist. Ct. App. 1988); *Phoenix Founders, Inc. v. McLellan*, 887 S.W.2d 831 (Tex. 1994) (applying ABA Informal Op. 1526, *infra* note 99).

98. See, e.g., *Lacklow v. Heller*, 466 So. 2d 1120 (Fla. Dist. Ct. App. 1985) (finding proof that secretary had access to confidential information sufficient to disqualify counsel and actual disclosure unnecessary); *Nebraska v. Hickman*, 512 N.W.2d 374 (Neb. 1994) (disqualifying entire law firm when it unknowingly hired paralegal who had worked as lawyer on same case for other side before being disbarred, finding actual disclosure of confidences unnecessary, and stating nonlawyers' conduct must avoid appearance of impropriety); *Ciaffone v. Eighth Judicial District Court*, 945 P.2d 950 (Nev. 1997) (disqualifying entire firm for nonlawyer's conflict); see also Appendix, *infra*.

99. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1526 (1988) (stating that to preserve mobility of nonlawyers, firms should caution nonlawyer personnel not to disclose confidential information, to warn subsequent firm about nonlawyer's former projects, and to screen nonlawyers from matters which are same or substantially related to former projects).

are irrebuttable and screening at neither Firm A nor Firm B will defeat the presumption.¹⁰⁰

“No Screening,” the approach under the Model Rules and in most jurisdictions, disapproves screening Firm A confidences from Firm B and automatically disqualifies firms when a lawyer or nonlawyer actually possessing Firm A confidential information joins Firm B.¹⁰¹ However, the original receipt of confidences at Firm A is rebuttable.¹⁰² Thus, lawyers or nonlawyers who show that they learned no disqualifying confidential information at Firm A need not be screened from Firm B because they possess nothing to infect and disqualify Firm B.

“Broad Screening” jurisdictions allow Firm B to rebut the presumption of shared confidences at Firm B. The firm must show that attorneys or nonlawyers possessing Firm A confidential information are adequately and timely screened to prevent any transmission of disqualifying Firm A confidences to Firm B.¹⁰³ If the firm can meet this burden, it will not be disqualified.¹⁰⁴

5. *Currently Available Screening Models Applied to Susan*

A variation on the student advocate hypothetical demonstrates how the available screening models apply to student advocates. Assume that after graduation, Susan begins working at LDF, which is defending LLE against a suit brought by a former clinic client. Further assume that Susan did not represent this client, but that Susan knows confidential information about his case. In such a situation, she has confidential information about a client of her former “firm” and is disqualified from representing LLE.¹⁰⁵

100. This is the ABA Model Code rule. Although only Nebraska has case law that maintains this rule, it may be the default rule in states retaining Model Code Canon 9 (avoiding appearance of impropriety) and have no case law regarding imputed disqualification. *See State ex rel. Wal-Mart Stores v. Kortum*, 559 N.W.2d 496, 501 (Neb. 1997) (defining “substantially-related” to include likely receipt of confidential information); Faltin, *supra* note 61, at 288–310 (arguing that *Wal-Mart* opens door to rebuttable presumption of receipt of confidential information); Appendix, *infra*.

101. *See* Appendix, *infra*.

102. *See supra* note 84 and accompanying text.

103. Very few states have approved screening lawyers with confidential information. *See* Appendix, *infra*.

104. The requirements for rebuttal vary among the jurisdictions. *See* Appendix, *infra*.

105. *See* Model Rules of Professional Conduct Rule 1.9(b).

In a jurisdiction that accepts broad screening, Susan can be screened to prevent her personal disqualification from infecting the rest of LDF. The former client will be protected, the firm's client will not be forced to obtain new counsel, and the firm will not lose business due to Susan's past associations.

In no-screening and double imputed confidential information states, Susan will disqualify her new firm. Susan has moved from the clinic to the law firm, carrying confidential information with her that disqualifies the entire office. The clinic's former client has little incentive to waive the conflict—having his adversary's counsel disqualified is advantageous to his cause.

Now suppose Susan did not actually possess any confidential information about her firm's adversary. In broad and no-screening states, she will not disqualify her firm.¹⁰⁶ However, in a double imputed confidential information state, the presumption that Susan and her clinic fellows shared all confidential information is irrebuttable.¹⁰⁷ Susan is deemed to possess any information that her clinic fellow who actually represented the client possessed. This information has "infected" LDF now, and Susan may not be screened to cure LDF's disqualification. Again, the clinic's former client has little incentive to waive the conflict.

B. Special Screening Rules for Student Advocates Ensure Adherence to Conflict of Interest Rules

I. Curing Imputed Disqualification for Student Advocates in Order to Encourage Student Practice

Student conflict rules should permit screening in more situations than any jurisdiction allows for private lawyers.¹⁰⁸ As with government attorneys,¹⁰⁹ screening should be allowed while student advocates remain associated in a firm, office or clinic,¹¹⁰ as well as when students possessing confidential information move to a new firm.¹¹¹

106. *Id.*

107. See *supra* note 100 and accompanying text; State *ex rel.* FirstTier Bank v. Buckley, 503 N.W.2d 838 (Neb. 1993); Nebraska Ethics Op. 944 (1994).

108. See Me. Bar R. 3.4(b)(3)(ii) (West 1997) (permitting screening to prevent imputed disqualification resulting from law school clinical work).

109. See ABA Formal Op. 342, *infra* note 116.

110. See Flores v. Flores, 598 P.2d 893, 896-97 (Alaska 1979) (hypothesizing that legal services office may have been able to represent husband and wife in child custody case if regulations had

Special screening for student advocates would permit students to participate fully in student practice and pursue postgraduation employment free from conflicts arising from past experience as student advocates.¹¹² This would also allow students to develop personal systems of professional responsibility by making difficult choices under wise supervision.¹¹³ Because student advocates, clinics, and agencies lack pecuniary interest in the litigation, student screening is reasonable and adequately protects clients without unnecessarily restricting students' opportunities for future employment.¹¹⁴

Liberal screening is appropriate for student advocates because it permits the application of lawyer rules to students without overly restricting their opportunity to practice. Students have no pecuniary interest in the outcome of their cases and provide no-cost representation to litigants who otherwise may not be represented. It is unwise to penalize students by limiting their employment mobility because of their public service. These same policies led courts and the ABA to more often accept screening for nonlawyers,¹¹⁵ for former government lawyers who enter private practice,¹¹⁶ and within government law offices.¹¹⁷

been in place to separate files, and if attorneys had been physically separated within office to ensure undivided loyalty and independent professional judgment to opposing parties).

111. See, e.g., Washington Rules of Professional Conduct Rule 1.10(b) (1998).

112. See ABA Formal Op. 342, *infra* note 116.

113. Barnhizer, *supra* note 25, at 71–75.

114. This element of financial interest is key to the allowance of broad screening in government law offices, a similar rule to this proposed student rule. *But see* Borden v. Borden, 277 A.2d 89, 91–93 (D.C. App. 1971) (refusing to approve different ethical standards between legal services office and private firm and accepting that lack of pecuniary interest removed conflict of interest). This case was decided before ABA Formal Op. 342 and enactment of Model Rules of Professional Conduct Rule 1.11. See also Aronson, *supra* note 78, at 855–58.

115. See *supra* note 99 and accompanying text.

116. See *supra* note 14; ABA Comm. on Ethics and Professional Responsibility, Formal Op. 342 (1975) (recommending screening former government lawyers moving into private practice); see also Sherman v. State, 128 Wash. 2d 164, 905 P.2d 355 (1995); accord Washington Med. Disciplinary Bd. v. Johnston, 99 Wash. 2d 466, 663 P.2d 457 (1985); Amoss v. Univ. of Wash., 40 Wash. App. 666, 700 P.2d 350 (1983).

117. Model Rules of Professional Conduct Rule 1.11 cmt. 9 (“Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.”); see, e.g., State v. Klattenhoff, 801 P.2d 548 (Haw. 1990) (holding that prohibition on representing concurrent conflicts of interest does not apply to Attorney General); accord EPA v. Pollution Control Bd., 372 N.E.2d 50 (Ill. 1977); Superintendent of Ins. v. Attorney Gen., 558 A.2d 1197 (Me. 1989) (holding that Attorney General’s office has different conflict of interest standards than private lawyers); Humphrey *ex rel.* State v. McLaren, 402 N.W.2d 535 (Minn. 1987) (outlining evidence for rebuttal of presumption of shared confidences in Attorney General’s office); State *ex rel.* Allain v. Mississippi Pub. Serv. Comm’n, 418 So. 2d 779 (Miss. 1982) (holding that role of Attorney

2. *Screening Students Prevents Forced Consent to Conflicts*

Student screening will solve the problem of client waiver under constructive duress. Currently, only a client's waiver of the conflict will cure imputed disqualification within a clinic while the students remain associated.¹¹⁸ Waiver is often the client's only choice.¹¹⁹ Thus, students are less likely to examine the conflict honestly, decide it will not interfere with the vigorous representation, and give their clients the opportunity to waive, a problem exacerbated by the client's propensity to waive under any circumstance.¹²⁰ If screening among the clinic students were allowed, students could perform honest conflict analyses, screen the adverse cases from each other (including appointment of separate supervisors for each student), and reassign disqualified students.

C. *A Proposed Model Conflict of Interest Rule for Student Advocates*

The rule should apply lawyer conflict of interest rules to student advocates, but allow screening to cure most concurrent and subsequent conflicts that arise out of pro bono representations. The following is one example.

1. *Proposed Rule 1.18: Law Students Representing Clients*

- (A) Law Students shall be governed by Model Rules 1.7 and 1.9 for lawyers when representing clients under the supervision of an attorney.
- (B) If a law student who is:
 - (1) representing clients in a law school-sponsored legal clinic;
 - (2) representing clients in a nonprofit legal services agency; or

General's office requires representation of adverse interests and that staff may be assigned to afford independent legal counsel and representation to adverse clients).

118. Model Rules of Professional Conduct Rule 1.7(b) and Model Rules of Professional Conduct Rule 1.10(a), (c).

119. New York City Bar Op. 79-37, *supra* note 79 (requiring that when seeking waiver from indigent clients, clinic must give client viable options for alternative representation).

120. This need to provide honest analysis and options to clients is particularly important in allowing clinic and legal services clients to maintain some power and autonomy. See Robert Condlin, *Clinical Education in the Seventies: An Appraisal of the Decade*, 33 J. Legal Educ. 604, 605 (1983) (discussing danger of students in clinics learning to "manipulate and dominate others as a matter of habit").

- (3) representing a pro bono client of a private law firm is disqualified from representing a client because of a conflict of interest under Model Rule 1.7 or Model Rule 1.9, the other students and lawyers in the association may not represent that client *unless*:
 - (a) the law student disqualified in (B) is screened from any participation in the matter and neither gives nor receives any confidential information regarding the matter; and
 - (b) written notice is given to the client and all other parties whose interests may be affected by the conflict of interest.

Comments

[1] This proposed rule applies only to law students who represent clients. It includes students representing clients in administrative proceedings and applies whether or not the students are acting under state practice rules. Attorney supervision ensures that an attorney-client relationship, which is necessary to apply conflict of interest rules, exists between the student and the client.

[2] Screening should include: appointing separate supervisors for the disqualified student and the student to whom the case has been reassigned, excluding the screened student from collaborative meetings about the case, separating files, and notifying all clinic students, staff, and attorneys of the screen. The viability of screening students within clinical programs may vary depending on availability of supervising attorneys or other particular restrictions.

[3] Written notice rather than consent prevents obtaining client consent under duress. Full disclosure to all parties of the conflict and measures taken to screen the disqualified student is essential. Notice to the tribunal is another option.

2. *Proposed Rule 1.19: Lawyers Who Represented Clients While Students*

- (A) A Lawyer who, while a law student:
 - (1) represented clients in a law school-sponsored legal clinic;
 - (2) represented clients in a nonprofit legal services agency,
 - (3) represented a pro bono client of a law firm and received no compensation therefor, may not represent a client whose interests are adverse to:

- (a) a client he previously represented while a law student in a same or substantially-related matter; or
 - (b) a client about whom he learned confidential information, relevant to the current matter, during his affiliation with the organization(s) listed above in a same or substantially-related matter.
- (B) The other lawyers associated with a lawyer disqualified by reason of (A) are likewise prohibited from representing the client unless the lawyer disqualified in (A):
- (1) is screened from participation in the matter;
 - (2) neither gives nor receives any confidential information pertaining to the matter;
 - (3) receives no part of any fee from the representation; and
 - (4) gives prompt notice to the former client or association from which the lawyer obtained the confidential information.

Comments

[1] This rule operates on the premise that a former law student representative ought not be impeded by conflicts arising from public service performed during law school. This rationale is borrowed from Model Rule 1.11 for government attorneys. Enacting this rule will make rules that are applicable to students more reasonable and prevent discouraging law students from public service as student advocates.

[2] Student advocates should keep complete records of all cases and clients about whom they learned confidential information (or, in imputed confidential information jurisdictions, all cases in the agency or clinic while they worked there). This information will allow the students-turned-lawyers to act before they have any contact with the adverse case.

IV. CONCLUSION: THE PROPOSED RULE HELPS SUSAN, HER CLIENT, AND HER LAW SCHOOL CLINIC

Suppose Susan lives in a jurisdiction that has a conflict of interest rule for student advocates. She works at the law school clinic and accepts a job from LDF. Susan decides that she cannot continue to represent her client suing LLE because opposing counsel LDF is now her employer. The client may be reassigned to a different clinic student (who should have a different supervising attorney if possible) and Susan can be screened from participating in the case, including case conferences. All

parties should be notified of the conflict and the screening mechanisms should be in place. The clinic will not need to turn the client away or force him to consent to the conflict.

When Susan arrives at LDF and discovers she possesses confidential information relevant to a matter LDF is pursuing against a former clinic client, she can be screened from disqualifying LDF if all parties receive notice of the screen. Susan will not be penalized for what she learned during student practice.

Under the proposed student rule, Susan, while a law student, is personally responsible for her ethical conduct. Her ethics training transcends musing about hypothetical situations and requires her to make decisions and live with their consequences. She learns to analyze conflict of interest problems and ensure loyalty to her client. She learns to put her client's interest in vigorous and untainted representation above her interest in continuing that representation for her own educational benefit.

Student advocates should be subject to clear ethical guidelines governing conflicts of interest but should not be penalized for public service performed during law school by unreasonable imputed disqualification. Enacting student conflict of interest rules, which hold student advocates to ethical standards of attorneys while permitting special student screening, serves the best interests of students, clients, legal education, and the legal system by teaching students to be ethical lawyers.

Two scholars have aptly summarized the importance of developing a conflict of interest rule for law student advocates:

Questions of loyalty and trust speak both to the quality of the lawyer-client *relationship* and to the quality of the *representation*. If the client does not see the conflict as a betrayal, i.e., fails to appreciate the conflict or chooses to disregard it, the representation might nevertheless suffer. That is, there is a good chance that the lawyer with a serious conflict will shortchange her client, even if inadvertently. This aspect of conflict of interest rules reinforces competency in representation.¹²¹

121. Hazard & Koniak, *supra* note 3, at 581.

APPENDIX

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
AL	Model Rules	Students must abide by attorney conduct standards adopted by the State. Ala. R. Jud. Admin. app. A, IV(E) (Michie 1997).	No screening	Roberts v. Hutchins, 572 So. 2d 1231 (Ala. 1990) (holding screening will not rebut the presumption of shared confidences when attorney worked on or was familiar with matter).
AK	Model Rules Rule 1.7 requires that attorneys act diligently to prevent conflicts of interest.	Student practice rule silent about ethics standards for students Alaska Bar R. 44 (1997-1998).	No screening	Aleut Corp. v. McGarvey, 573 P.2d 473 (Alaska 1978) (holding that screening will not prevent imputed disqualification).
AZ	Model Rules	Students need only read and be familiar with ethics rules; termination of student practice due to violation of practice rules shall not prejudice student's future admission to bar. Ariz. S. Ct. R. 38 (West 1997).	No screening for lawyers Broad screening for nonlawyers	Smart Indus. v. Superior Court, 876 P.2d 1176 (Ariz. App. 1994) (applying ABA Informal Op. 1526); Towne Dev. of Chandler v. Superior Court, 842 P.2d 1377 (Ariz. App. 1992) (holding that when attorney switches firms during litigation of matter and has confidential information, consent is only cure and screening is insufficient).
AR	Model Rules	Students must comply with Rule. Ark. Bar Admin. R. XV (Michie 1998).	No screening for lawyers Broad screening for nonlawyers	Burnette v. Morgan, 794 S.W.2d 145 (Ark. 1990) (holding that no screening necessary even if attorney has confidential information about same matter litigation); Herron v. Jones, 637 S.W.2d 569 (Ark. 1982) (holding that precautions preventing disclosure by nonlawyer were sufficient to prevent disqualification).

Law Student Conflicts of Interest

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
CA	Neither Model Code nor Model Rules Cal. R. Prof'l Conduct 3-310 (C) (no representation of interest adverse to lawyer's personal, business, or other relationship).	Student practice rule is silent about ethical obligations for students Cal. Ct. R. 983.2 (West 1998).	No screening for lawyers Broad screening for nonlawyers	Henricksen v. Great Am. Sav. & Loan, 14 Cal. Rptr. 2d 184 (Cal. App. 1992) (ruling that no screening needed of attorney who has confidential information about same matter); <i>In re Complex Asbestos Litig.</i> , 283 Cal. Rptr. 732 (Cal. App. 1991) (holding that nonlawyers may be screened); Klein v. Superior Court, 244 Cal. Rptr. 226 (Cal. App. 1988) (holding that no screening is required of attorney who possesses confidential information about substantially related matters).
CO	Model Rules	Students admitted to limited practice are governed by code of professional responsibility adopted by Supreme Court. Colo. Rev. Stat. Ann. § 12-5-116 (West 1997).	No screening	People <i>ex rel.</i> Peters v. District Court, 951 P.2d 926 (Colo. 1998) (creating "ethical wall" of silence between attorneys will not necessarily prevent disqualification of firm if circumstances fall within mandate of rule); McCall v. District Court, 783 P.2d 1223 (Colo. 1989) (disallowing screening).
CT	Model Rules	Student practice rule silent as to ethical guidelines for students admitted to limited practice. Conn. S. Ct. R. § 7CC-GG (West 1998).	No screening for lawyers Nonlawyers may be screened	Conn. Informal Op. 95-21 (1995) (imputing attorney's disqualification to all members of firm); Rivera v. Chicago Pneumatic Tool Co., 4 Conn. L. Rptr. 394 (1991) (holding that nonlawyers may be screened).
DE	Model Rules	Students admitted to limited practice must abide by code of professional responsibility. Del. S. Ct. R. Part V, R. 56 (Michie 1998).	No screening	Emerald Partners v. Berlin, 564 A.2d 670 (Del. 1989) (holding that one lawyer's disqualification disqualifies all other lawyers in firm).

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
D.C.	Model Rules <i>But see</i> D.C. Rule 1.10 cmt. 21 (imputed disqualification does not apply to person who obtained confidential information before joining bar, e.g., a summer associate).	Students admitted to limited practice must read and be familiar with attorney conduct standards. D.C. Ct. App. R. 48 (Michie 1998).	No screening	None
FL	Model Rules	Students admitted to limited practice must abide by Rules. Fla. Bar R. 11-1.3 (West 1994 & Supp. 1998).	No screening for lawyers Screening allowed for nonlawyers	Esquire Care, Inc. v. Maguire, 532 So. 2d 740 (Fla. Dist. Ct App. 1988) (allowing screening for nonlawyers); Edward J. DeBartolo Corp. v. Petrin, 516 So. 2d 6 (Fla. Dist. Ct. App. 1987) (prohibiting screening when lawyer possesses relevant confidential information obtained from former client).
GA	Model Code	Students admitted to limited practice must take oath similar to district attorney; silent as to whether governed by Rule. Ga. S. Ct. R. 92-97 (West 1998).	No screening	Frazier v. State, 362 S.E.2d 351 (Ga. 1987) (allowing screening only for government law offices); Summerlin v. Johnson, 335 S.E.2d 879 (Ga. 1985) (disqualifying partner of disqualified attorney).
HI	Model Rules Haw. Rule 1.10(d) (imputed disqualification does not apply to government lawyers).	Students admitted to limited practice must abide by attorney conduct standards. Rule 7.6 directs supervisors to pay special attention to matters of legal ethics. Haw. S. Ct. R. 7 (Michie 1998).	No screening	Otaka, Inc. v. Klein, 791 P.2d 713 (Haw. 1990) (holding that to disqualify lawyer and his firm, former client need not show actual confidences are relevant to lawyer's current representation, but only that matters are substantially related).
ID	Model Rules	Dist. Ct. Idaho Local R. 83.5 (1997)	No screening	None

Law Student Conflicts of Interest

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
IL	Model Rules	Student practice rule silent about ethical guidelines. Ill. S. Ct. R.711 (West 1998).	Broad screening Ill. Rule 1.10(e) allows screening for private law firms if rule's requirements strictly followed.	SK Handtool Corp. v. Dresser Indus., Inc., 619 N.E.2d 1282 (Ill. App. 1993) (holding that untimely screening will not prevent disqualification).
IN	Model Rules	Students must have taken or be taking course in Professional Responsibility for admission, but rule silent about ethical standards. Ind. R. Admin. Bar 2.1 (Michie 1998).	No screening	None
IA	Model Code	Student practice rule silent about ethical guidelines for students admitted to practice. Iowa Ct. R. 114 (West 1997).	No screening	Hoffman v. Internal Med., P.C., 533 N.W.2d 834 (Iowa Ct. App. 1995) (holding that to disqualify lawyer and his firm, former client need only show substantial relationship between prior representation and current matter; confidential information will be presumed; no screening). <i>See also</i> Iowa Ethics Op. 91-47 (1992) and 87-33 (1988).
KS	Model Rules	Student practice rule requires legal interns to abide by attorney conduct standards. Kan. S. Ct. R. 709 (1998).	No screening	Chripsens v. Coastal Ref. & Mktg., 897 P.2d 104 (Kan. 1995) (holding that to disqualify firm under 1.10 former client must prove attorney actually possesses confidences); Lansing-Delaware Water Dist. v. Oak Lane Park, Inc., 808 P.2d 1369 (Kan. 1991) (prohibiting screening of confidential information to prevent firm disqualification).

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
KY	Model Rules	Students admitted to practice must abide by state attorney conduct standards. Ky. S. Ct. R. 2.540 (Banks-Baldwin 1993).	No screening	Oliver v. Board of Gov. Kan. Bar Assoc., 779 S.W.2d 212 (Ky. 1989) (allowing firms to screen temporary lawyers to prevent them from acquiring confidential information that may later disqualify them under Rule 1.9 or 1.10).
LA	Model Rules	Students admitted to practice must abide by state attorney conduct standards. La. S. Ct. R. XX (West 1997).	No screening under the rules, but broad screening under case law.	Petrovich v. Petrovich, 556 So. 2d 281 (La. Ct. App. 1990) (preventing disqualification of firm when there is cone of silence around disqualified attorney).
ME	Model Rules	Students admitted to limited practice must read and be familiar with state attorney conduct standards. Me. Ct. R. 90 (West 1997).	No screening, but 3.4(b)(3) allows screening to prevent imputed disqualification of law students and lawyers involved in both clinical and private client representation.	Adam v. Macdonald Page & Co., 644 A.2d 461 (Me. 1994) (disqualifying firm if lawyer is disqualified for possessing confidential information from prior representation, or because of former client).
MD	Model Rules	Students admitted to limited practice must read and be familiar with state attorney conduct standards. Md. Bar. Admin. R. 16 (Michie 1997).	No screening	None
MA	Model Rules	Students admitted to limited practice must comply with rules for lawyers. Mass. S. Jud. Ct. R. 3:03 (West 1998).	Broad screening; Rule 1.10 explicitly allows private law firms to screen to prevent imputed disqualification of firm.	None

Law Student Conflicts of Interest

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
MI	Model Rules	Student practice rule silent as to ethical guidelines for students admitted to limited practice. Mich. Admin. R. Ct. 8.120 (West 1998).	Broad screening; Rule 1.10 allows screening for private law firms; notice of screening procedures must be given to the tribunal.	None
MN	Model Rules	Student practice rule silent as to ethical guidelines for students admitted to limited practice. Minn. Student Prac. R. 1.01-2.05 (West 1998).	Broad screening	Jenson v. Touche Ross & Co., 335 N.W.2d 720 (Minn. 1983) (allowing screening to prevent disclosure of confidential information to rest of firm; case decided under Model Code then in place).
MS	Model Rules	Law students admitted to limited practice are subject to same standards and rules of ethics and of discipline as are licensed attorneys. Miss. Code. Ann. § 73-3-201 (1972 & Supp. 1997).	No screening	None
MO	Model Rules	Law students admitted to limited practice must abide by attorney conduct standards. Mo. S. Ct. R. 13 (West 1995 & Supp. 1998).	No screening. <i>But see</i> case law dicta.	Hallmark Cards, Inc. v. Hallmark Dodge, Inc., 616 F. Supp. 516 (W.D. Mo. 1985) (applying Mo. Code Prof'l Conduct, court held in dicta that new firm could have built "Chinese Wall" between attorney who had "switched sides" and all further matters dealing with that client's litigation).
MT	Neither Model Code nor Model Rules Mont. Code Ann. § 37-61-412-415	Students admitted to limited practice must abide by Montana Code of Professional Responsibility. U.S. Dist. Ct. Mont. R. 110-10 (1997).	No screening	None

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
NE	Model Code	Student practice rule silent as to ethical guidelines for students admitted to limited practice. Neb. S. Ct. R. Legal Prac. by Approved Senior Law Students (West 1998).	Imputed confidential information	State <i>ex rel.</i> FirstTier Bank v. Buckley, 503 N.W.2d 838 (Neb. 1993) (disallowing rebuttal of presumption that attorney has all confidential information held within her former firm and forbidding screening of disqualified lawyer); <i>see also</i> State <i>ex rel.</i> Wal-Mart Stores, Inc. v. Kortum, 559 N.W.2d 496 (Neb. 1997).
NV	Model Rules	Law students admitted to limited practice must abide by attorney conduct standards. Nev. S. Ct. R. 49.5 (1997).	No screening	Ciaffone v. District Court, 945 P.2d 950 (Nev. 1997) (disqualifying entire firm for nonlawyer's conflict).
NH	Model Rules	Law students admitted to limited practice are bound by and must comply with attorney conduct standards. N.H. S. Ct. R. 36 (Michie 1990).	No screening	None
NJ	Model Rules Prohibits appearance of impropriety. Some conflicts are not cured by consent (e.g., government cannot consent to some conflicts).	Student practice rule is silent as to which ethical guidelines govern students admitted to limited practice. N.J. R. Gen. Application 1:21-3 (West 1998).	No screening	Lawler v. Isaac, 592 A.2d 1 (N. J. Super. Ct. App. Div. 1991) (disqualifying firm even if associate who switched sides disclosed no previously acquired knowledge; appearance of conflict mandates disqualification); <i>see also</i> N.J. Supreme Court Advisory Comm. on Prof'l Ethics, Op. 667.
NM	Model Rules	Student practice rule silent about students ethical guidelines. N.M. Stat. Ann. 36-3-4 (Michie 1998).	No screening	None

Law Student Conflicts of Interest

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
NY	Model Code Adds subsection § 1200.27(e) (mandating firm check for conflicts of interest).	Student practice rule is silent as to which ethical guidelines govern student admitted to limited practice. N.Y. Ct. R. Pamph. § 805-5 (1998).	No screening	Trustco Bank New York v. Melino, 625 N.Y.S.2d 803 (N.Y. Sup. Ct. 1995) (holding that screening will not prevent imputed disqualification); <i>accord</i> Shrader v. Monforte, 622 N.Y.S.2d 363 (N.Y. App. Div. 1995).
NC	Model Rules	Students admitted to limited practice must read and be familiar with state attorney conduct standards. N.C. Bar R. § .0200-0209 (Michie 1997).	No screening	None
ND	Model Rules Client cannot consent to lawyer's representation of interest likely to become adverse to client.	Student practice rule is silent as to which ethical guidelines govern students admitted to limited practice. N.D. R. Ann. (Michie 1997).	No screening	None
OH	Model Code	Law students admitted to limited practice must comply with Rule. Ohio Gov. Bar R. II § 1-7 (Anderson 1997).	Broad screening	Kala v. Aluminum Smelting & Ref. Co., 688 N.E.2d 258 (Ohio 1998) (finding that screens were insufficient to overcome impropriety under these facts and expressly adopting disqualification test allowing screens to rebut presumption of shared confidences at new firm).
OK	Model Rules	Student must have completed course in Professional Responsibility to be admitted; must take "oath;" content of oath not in rules. Okla. Stat. tit. 5, Ch. 1, app. 6 (West 1997 & Supp. 1998).	No screening	None

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
OR	Model Code	Or. S. Ct. R. 13.05-13.30 (West 1998).	Broad screening Model Code DR 5-105(F), (H).	None
PA	Model Rule	Student practice rule is silent as to what ethical standards apply to law students. Pa. Bar Admis. R. 321-322 (West 1998).	Broad screening Rule 1.10(b)(1)-(2) Notice of conflict and screening measures must be given to client.	<i>Maritrans GP, Inc. v. Pepper, Hamilton & Scheetz</i> , 602 A.2d 1277 (Pa. 1992) (majority finding that screen had been broken and dissent discussing state screening rules).
PR	Canons (neither Model Rules nor Model Codes) Prohibits acceptance of clients who present potential conflicts of interest. Client cannot consent to representation	Law students admitted to limited practice must read and be familiar with state ethics rules for lawyers. P.R. Laws Ann. tit. 4, app. I-A, R. 11 (1994).	No screening	<i>In re Carreras Rovira y Suarez Zayas</i> , 115 P.R.R. 172 (D.P.R. 1984) (creating nonrebuttable presumption that attorney will use information gained in previous representation).
RI	Model Rule	Student practice rules silent as to which ethical standards govern students admitted to limited practice. R.I. S. Ct. R. Art. II, R. 9 (a)-(e) (Michie 1998).	No screening	None
SC	Model Rules	Law students admitted to limited practice must abide by rules governing lawyers. S.C. Regs. App. Ct. R. 401 (1976 & Supp. 1997).	No screening	None

Law Student Conflicts of Interest

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
SD	Model Rules	Law students admitted to limited practice bound by rules governing lawyers. S.D. Codified Laws Ann. §§ 16-18-2.1 to 16-18-2.2 (Michie 1995 & Supp. 1997).	No screening	None
TN	Model Code	Student practice rules silent as to which ethical guidelines govern students admitted to limited practice. Tenn. Ct. R. Ann. S. Ct. R. 7 § 10.03 (Michie 1997-1998).	Broad screening	Board of Professional Responsibility of the Supreme Court of Tennessee Formal Ethics, Op. 89-F-118 (endorsing screening as viable method of avoiding imputed disqualification and adopting Scheissle v. Stephens, 717 F.2d 417 (7th Cir. 1983)).
TX	Model Rules	Students admitted to limited practice are bound by the rules governing lawyers. Tex. R. & Reg. Governing Participation Qualified Law Students & Qualified Unlicensed Law Sch. Graduates in Trial Cases I-X (West 1998).	No screening for lawyers Broad screening for nonlawyers	National Med. Enters., Inc. v. Godbey, 924 S.W.2d 123 (Tex. 1996) (holding that screening will not prevent imputed disqualification); Phoenix Founders, Inc. v. Marshall, 887 S.W.2d 831 (Tex. 1994) (applying ABA Informal Op. 1526).
UT	Model Rules	Student practice rules silent as to which ethical guidelines govern students admitted to limited practice. Utah Code Jud. Admin. Art. 3, R. 11-301 (Michie 1998).	Broad screening	SLC Ltd. V v. Bradford Group W., Inc., 147 Bankr. 586 (D. Utah 1992), <i>rev'd on other grounds</i> , 999 F.2d 464 (10th Cir. 1993) (holding that although untimely in present case, timely screening may prevent disqualification).
VT	Model Code	Student practice rule silent as to ethical guidelines for student advocates. U.S. Dist. Ct. (Vt.) Local R. 83.2(e).	May be imputed confidential information under case law found and this is rule under the Code (appearance of impropriety).	None

State	Model Code, Model Rules, and State Rules	Student Practice Rule	Private Practice Screening Model	Case Law/Ethics Opinion Regarding Screening in Private Firms
VA	Model Code	Students must have taken course in professional responsibility; silent about ethical standards. Va. S. Ct. R. Pt. 6 § IV, para. 15 (Michie 1997).	No screening	Richmond Redevelopment and Hous. Auth. v. Joseph S. Terrell, Inc., 1987 Va. Cir. LEXIS 74 (Cir. Ct. Va. Sept. 24, 1987) (holding that only full disclosure and consent of clients may prevent imputed disqualification).
WA	Model Rules	Students admitted to limited practice must abide by attorney conduct standards. Wash. S. Ct. Admin. Prac. R. 9 (West 1997).	Broad screening for lawyers explicitly authorized by Rule 1.10 (b).	None
WV	Model Rules	Students admitted to limited practice must have read attorney conduct standards. W. Va. L. R. Gen. Prac. 2.04 (Michie 1998).	No screening	State <i>ex rel.</i> Tyler v. MacQueen, 447 S.E.2d 289 (W. Va. 1994) (allowing prosecuting attorneys' office to screen to avoid disqualification but not private firms).
WI	Model Rules	Student practice rule silent as to which ethical guidelines apply to students admitted to limited practice. Wis. S. Ct. R. 50.01-08 (West 1998).	No screening	Berg v. Marine Trust Co., 416 N.W.2d 643 (Wis. Ct. App. 1987) (entitling client to insist that all members of firm, not just individual lawyers, avoid any actions adverse to client's interest).
WY	Model Rules	Students admitted to limited practice must comply with attorney conduct standards. Wyo. Ct. R.; S. Ct. R. Providing for Org. & Gov't of Bar Ass'n & Att'ys 12 (Michie 1997-1998).	No screening	None