

A STUDENT PRACTICE RULE FOR VIRGINIA

In July of 1970 the Virginia State Bar Association meeting in a convention at the Greenbriar accepted a report of the committee on Legal Education and Admission to the Bar which recommended to the Virginia Supreme Court of Appeals that the American Bar Association Model Rule for student practice be adopted in Virginia with some modifications. The suggested changes are, first, that the supervising attorney be present for all court hearings, which would increase the amount of in-person supervision of the students under the rule, and second, in the area of clarification of the rule, the VSBA suggest that it be stated that the program is understood to be voluntary, and that the supervisors must themselves be practicing attorneys.

The acceptance of the VSBA report is another step toward the establishment in Virginia of a program which would permit third-year law students a practical introduction to the problems and challenges of actual practice. The Virginia State Bar Association is not the official state Bar, but a voluntary association of attorneys. The Virginia State Bar, the official organization, has at this time a committee which is studying the ABA model rule. That committee will also report its recommendations to the Virginia Supreme Court of Appeals.

The question of student practice or internship has been a cause for much debate in the profession. The rules and statutes which authorize law students to engage in at least some phase of legal practice are so varied that they almost defy categorization. They include general provisions which authorize limited lay practice, imprecise and obscure exceptions to statutes prohibiting lay practice, and one court opinion, in addition to the detailed administrative schemes so in vogue recently. In 1969 alone, at least five states and the ABA have adopted rules with surprisingly varied terms. Probably more student court appearances have been made subject to a

1935 Massachusetts opinion which states that "the gratuitous furnishing of legal aid to the poor . . . in the pursuit of any civil remedy . . . do(es) not constitute the practice of law" than under any other rule or statute.

The purpose of the ABA model rule (the text of which follows this article) is social: to provide "competent legal services for all persons, including those unable to pay for those services." This jurisdiction is reflected in the text which, though allowing students to take part in a broad range of legal problems, limits students to representing indigents, ONLY four states do not limit students to indigents or legal aid clients; Iowa, Nebraska, Oklahoma and Wyoming. The primary objective of these rules is educational.

It is important to note the dual purpose and effect of all student practice rules, and the philosophies behind their adoption. On the one hand the exposure of students to the practicalities of the working law makes an important contribution to the preparation of members of the bar. This goal in itself is rightfully a weighty consideration in the adoption of court rules permitting student practice. On the other hand, student practice can be used to extend legal services to those who now find it difficult or impossible to reach the law's advantages. It is this facet of the programs that places consideration of them within the scope of this issue of the Colonial Lawyer. Where the rule adopted is thoughtfully administered, both benefits can be achieved.

The approaches are discernable in the rules in deciding which students are to participate in any program. The ABA rule is representative of the group which concentrates on determining each student's qualifications and grants certification on an individual basis. Students must have completed their second year, be enrolled in an ABA approved law school of the state in which they intend to appear, be certified by the Dean of their law school and

be introduced to the court in which they are appearing. Certification may be revoked at any time by the Dean or court without showing cause. Many rules go further than just introduction. Oklahoma has a somewhat unusual method of certification in that it requires a student's application to be approved by a panel of practicing attorneys appointed by the State Supreme Court. The ABA's standards of supervision are also typical. The supervisor must be a member of the bar, approved by the Dean of the student's and must assume professional responsibility for the student's work. Kansas and Oklahoma limit private attorneys to two and three student interns respectively. Florida requires that the supervision be provided by the Public Defender or an assistant.

The Indiana, Iowa and New Jersey rules are representative of the second group. Rather than concentrating on certification of individuals, they require students to be participants in an approved program. New Jersey requires the program to be approved by the State Supreme Court; and in Iowa, the program must be approved by the school's faculty and not disapproved by the State Supreme Court; and in Indiana the programs must meet guidelines jointly developed by all schools offering them. Georgia's statute straddles the fence in that it requires both the program and its participants to be certified by the Dean and approved by a judge. It also requires the program to have a full time faculty supervisor and it is the only state which requires the applying agency to have malpractice insurance.

The final form of Virginia's decision on a court rule involving student practice is still ahead. The development of such a rule will continue to be of interest to both law students and attorneys of Virginia. It is to be hoped that the form of that rule will emerge to serve both the needs of those being educated in the law, and those who can benefit in legal advice from that process of education.



NOTE: The Student Bar Association of Marshall-Wythe School of Law, College of William and Mary, has available a chart comparing the various state rules with the ABA model rule. It will be mailed to interested persons upon request.

Editor