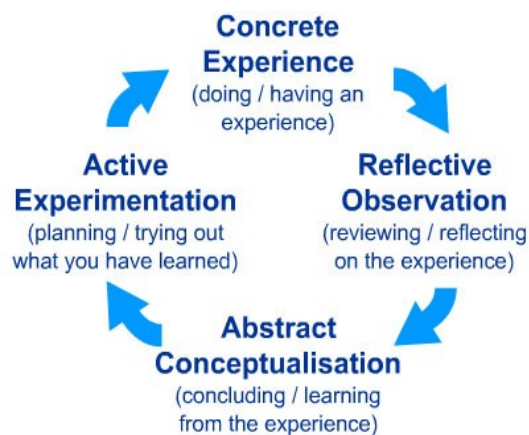




## **RESIDENCY-IN-PRACTICE AND EXTERNSHIP PROGRAMS**

### **SITE SUPERVISOR HANDBOOK**



**February 2018**

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## **Welcome to Elon Law's Residency-in-Practice and Externship Programs!**

If you are reading this message you are either 1) an attorney or judge serving as a Site Supervisor in the Elon Law Residency-in-Practice or Externship Program or 2) an attorney or judge considering becoming a part of these programs as a Site Supervisor. If you are the former, we hope that the information within gives you the information you need to meet all expectations for success. If you are the later, we hope the information convinces you to join us.

Both the Residency-in-Practice and the Externship Program (aka Field Placement Programs) are designed to be academically rigorous and to provide law students the opportunity to step into the role of a lawyer under the supervision of an experienced judge or attorney who serves as "teacher-in-the-field." By learning "in role," Residents and Externs deepen their legal knowledge acquired in substantive courses, sharpen skills needed to be a successful lawyer, and make the professional connections and observations important to career development.

Because credit-bearing field placement programs lie at the intersection of the legal academy and the workplace, there are numerous regulations that govern the programs to ensure a quality experience for the law student. Knowledge of these regulations -- along with related rules and best practices -- on the part of the Site Supervisor, the Faculty Supervisor, and the Student, is important for a successful field placement experience. This handbook seeks to provide you with this information.

Thank you for your support of our students and our experiential education program. We could not accomplish our goals without you. Field Placement Site Supervisors play a crucial role in helping students not only have an experience but learn from it. As a consortium of field placement faculty put it:

In [a field placement], the ability of the student to achieve the [stated] goals . . . depends in large measure on the quality of the student's relationship to his or her supervising attorney and the supervisory methods employed by the supervisor. The success of field placement programs depends on the willingness and ability of the supervising attorneys to serve as available role models and teachers.<sup>1</sup>

Your questions, concerns, and suggestions may be addressed to our Director of Residencies: Prof. Cindy Adcock, [cadcock3@elon.edu](mailto:cadcock3@elon.edu), 336-279-9311.

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<sup>1</sup> Barbara A. Blanco & Sande L. Buhai, Externship Field Supervision: Effective Techniques for Training Supervisors and Students, 10 Clinical L. Rev. 611, 651 (2004).

## **I. SOME SPECIFICS ABOUT ELON LAW SCHOOL'S FIELD PLACEMENT PROGRAMS**

Effective August 2015, Elon Law School moved to a 7-trimester, 2.5-year curriculum. At the center of this groundbreaking curriculum is the Residency-in-Practice. The Residency, like Elon Law's Externships, is a field placement for academic credit. As such, Residencies and Externships are governed by the same regulations, rules, and best practices. Before getting to these regulations, this section highlights key distinctions of the programs:

- All students are required to do a Residency; students may elect to do an externship.
- Residencies are full-time field placements (32 or 36 hours a week depending on accompanying course for 10 weeks); Externships are part-time field experiences (135 or 170 hours over the course of a trimester or summer).
- With Residencies, students are "placed" through a matching process run by the Director of Residencies, though students may arrange their own distance residencies; with Externships, students arrange their own placements.
- Residencies can be taken only during a student's fifth or sixth trimester; Externships can be taken any summer or term after a student's third trimester, except for their residency term.
- All Residents are eligible to be certified for the limited supervised practice of law, pursuant to the Rules Governing Practical Training of Law Students;<sup>2</sup> only externs who have completed four trimesters are eligible to be certified.

### **Information Specific to Residencies-In-Practice**

For their Residency-in-Practice, students are matched with participating law offices and judicial chambers based on the requirements and needs of the supervising attorney or judge and on the strengths and interests of the student. The matching process begins in the spring for some placements and continues into the fall, when many placement sites are more able to make commitments. Students go out on Residency in either the Winter or Spring term.

Matches are made by the Director of Residencies, in consultation with the staff of the Student Development and Career Office, who because of their substantial student contact, often have informed perspectives on the types of placements that would be a good fit for a particular student. Armed with this information, along with the students' academic record and resume, the Director of Residencies makes presumptive matches and reaches out to the presumptive Site Supervisor.

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<sup>2</sup> Certification allows students to represent indigent clients and the Government, under the supervision of an attorney. Students working with private law firms are also eligible for certification; however, their certification extends only to representation of non-paying indigent clients. See Appendix A for Standards.

Because of the complexity of placing every student, placement sites are encouraged to make decisions as quickly as possible when sent information about a prospective student resident. Partner sites are those that are willing to accept students based on resumes, absent obvious concerns or conflicts. Other participating sites prefer to interview the candidate before making a decision.

## **II. SITE SUPERVISOR RESPONSIBILITIES, SCHEDULE, AND RELATED FORMS**

### **A. The Structure of the Residency or Externship Experience**

Residents and Externs benefit from two differently situated teachers: you, the Site Supervisor, and a Faculty Supervisor. You are directly responsible in the field for ensuring opportunities for substantial lawyering experiences and for constructive feedback and evaluation. The Faculty Supervisor is responsible for maximizing the student's educational experience by promoting reflective lawyering through written assignments and affinity group meetings with other students in the program, and by providing individual coaching.

In the Externship Program, the Faculty Supervisor is the Director of Residencies. In the Residency-in-Practice Program, multiple professors serve as Faculty Supervisors. Communication between Faculty Supervisors and Site Supervisors is largely accomplished through the exchange of forms and email. However, the Site and Faculty Supervisors do talk -- either in person, on the phone, or through Skype -- mid-term to discuss the student's progress, the plan for the rest of the term, and any problem areas.

The shared focus of the Site Supervisor and the Faculty Supervisor is the learning goals of the student. How this focus differs from the focus of a law clerk who is not getting academic credit is illustrated in the following chart,<sup>3</sup> with "intern" standing in for "resident" and "extern."

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<sup>3</sup> From the California Western School of Law Clinical Internship Supervising Attorney Handbook (2010) at 7 <https://www.cwsl.edu/academics/academic-initiatives/clinical-internship-program/for-supervising-attorneys>.

	<b>Law Clerk</b>	<b>Intern</b>
Relationship with attorney	Employer/employee	Mentor/student
Purpose	Produce	Learn
Tasks and work	Production	Deliberate
Expectations	Efficiency and speed	Understanding and learning
Exposure	Work assigned	Opportunity to engage in a variety of lawyering activities
Feedback	Not primary focus	Work reviewed and redone until correct
Compensation	Money & experience	Experience with supervision and academic credit

This distinction is based on the fact that for a student to earn academic credit for fieldwork, the fieldwork must meet the requirements of the ABA Standards and Rules of Procedure for Approval of Law Schools. Pursuant to Standard 304(c), the fieldwork must provide a “substantial lawyering experience that [] is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks.” In addition, according to Standard 303(a)(3), the fieldwork must

- (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (ii) develop the concepts underlying the professional skills being taught;
- (iii) provide multiple opportunities for performance; and
- (iv) provide opportunities for self-evaluation.

The skills listed in Standard 302 are

- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Examples of the types of activities that meet these standards are:

<i><b>Trial-Level Litigation</b></i>	<i><b>Transactional Work &amp; Appellate Litigation</b></i>
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Case planning & strategizing; Memo drafting	Planning and strategizing
Legal drafting: complaints, answers, motions	Formulation of arguments
Filing documents with court	Document drafting: briefs, contracts, reports
Discovery: interrogatories, requests for production of documents, etc.	Governmental filings
Depositions: prepare, observe, participate	Observation: client meetings, board meetings, appellate arguments
Trial preparation: trial strategy; preparation of documents; client/witness preparation; motions	Presentations; oral argument
Negotiation: preparation & observation; strategy	<b><i>General</i></b>
Mediation and Arbitration: preparation, observation, preparation of documents, client/witness preparation	Meeting with clients: interviews; follow-up correspondence; fact investigation; fees and retainer discussions
Settlement Conference: preparation, observation	Legal Research
Trial Observation and Participation	Exploration of ethical issues
Preparation of court orders	Practice Management: staff meetings; billing (how it is done in the office); conflict of interest management
Meeting with judge	Networking: bar meetings; colleague lunches; office social gatherings

## B. Getting Started: Week One

The presumptive start date for Residents and Externs is the first day of the term. While the specific dates change, a rough approximation of the calendar for upper-class students is:

August term – required course

Fall trimester: the Monday after Labor Day – Thanksgiving

Winter trimester: January 3 – end of March

Spring trimester: April 2 – mid-June

Summer: mid-June – early August

With input from the student, the Site Supervisor sets the student's work schedule. Residents must take an accompanying course of 2-3 credits. If this course conflicts with the Student's work schedule, the Student must get advance, written permission from the Site Supervisor, using the Field Placement Memorandum of Understanding (discussed below).

During the first few days of a residency or externship, Supervising Attorneys and Judges should meet formally with their student. There are three important objectives of this meeting:

- a) to review and sign the Field Placement Memorandum of Understanding (if not done so already);
- b) to discuss the student's educational goals, possible strategies for achieving those goals (objectives, and benchmarks for knowing when goals have been met; and
- c) to stress professional obligations such as confidentiality with regard to office clients, cases, projects, and work product, and the continuing obligation to identify conflicts of interest.

Your Resident will present you with the **Field Placement Memorandum of Understanding**, which sets forth not only the responsibilities of the Site Supervisor, but also the responsibilities of the Student and the Faculty Supervisor. (A current version is included in Appendix B.) These responsibilities are shaped by the best practices in experiential education, by the requirements of the ABA for a field placement course (see Appendix C), and by the Fair Labor Standards Act (see Appendix D). Once signed by you and your student, the MOU should be uploaded by the student onto the Faculty Supervisor's TWEN site, for him or her to sign.

**The Learning Goals and Plan** is a form provided to the student to help him or her in the process of setting goals and objectives for the term. This exercise serves multiple purposes. First, formulating a learning plan draws attention to the fact that the Field placement is an academic endeavor for which the student is getting credit. Second, the plan emphasizes the self-directive nature of the Field placement: it pushes the student to think proactively about what he or she wants to learn and to accomplish. Third, the learning plan serves as a communication tool with you the supervisor. Discussing what should go into the plan gives you and the student a chance to communicate specific hopes and expectations. Discussion can stimulate ideas about learning opportunities and tasks. Finally, the plan can serve as a checklist of "things to do," a very helpful tool not only throughout the term but at assessment time.

After you first discuss the student's learning goals and plan, the student will share a draft with the Faculty Supervisor. This step not only gives the Faculty Supervisor important information about what the student will be doing during the term, it gives the student the opportunity for additional advice aimed at helping the student maximize learning through the field experience. The student then finalizes the learning goals and plan and uploads to TWEN.



The Site Supervisor should emphasize relevant ethics rules and policies throughout the term. Initially, the most important ones are the obligations around **confidentiality** and **conflicts of interest**. In order to avoid actual and potential conflicts of interest in placements, all students are required to complete a conflict survey before they begin their field placement. The survey asks students to list past and current employment, as well as to identify family members or personal interests that may conflict with a prospective placement. The information provided by the student is not accessed by the Faculty Supervisor but, rather, is intended to be used by the student in identifying any possible conflicts.

For guidance, students are provided the applicable text of the NC Rules of Professional Conduct, which addresses how to handle potential conflicts with new employees. As Rule 1.6(b)(8) provides:

A lawyer may reveal information protected from disclosure by paragraph (a) to the extent the lawyer reasonably believes necessary . . . to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Comment 17 to the Rule explains further that:

Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent.

If there are additional ethical rules or policies that govern your office, please share them with your Extern as well. For example, if your office uses a confidentiality agreement with employees, discuss it with your student and have him or her sign it. In particular, you may want to discuss the degree to which personal computers can be used to work on client matters or other confidential work product. The Field placement offers an ideal opportunity for students to discuss professional responsibility in practice and to apply the Rules to real situations.

## C. Making Assignments

Key to a successful field placement experience is the ability of a supervising attorney or judge to give meaningful assignments. Students should be assigned challenging, varied, and increasingly complex legal projects over the course of the term. The assignments should be designed to expose students to the variety of legal tasks and issues that a lawyer in the practice regularly encounters in the context of actual cases and projects. Although every office has a different emphasis, stressing different subject matters and skills, assignments should require the students to apply and develop legal skills and judgment. Students should not ordinarily be assigned to perform routine or repetitive work, or clerical tasks such as filing, photocopying, or library updating.

Where more than one attorney will give assignments, we recommend that the Site Supervisor serve as a "clearinghouse" through which all assignments must pass. With this model, the Site Supervisor can ensure that the assigning attorney has provided an adequate description of the work required and has equipped the student with enough background information to get the work done. In addition, the Site Supervisor can make sure that the student has neither too much nor too little work, and that the assignment is not too burdensome or has only marginal educational value.

Best practices for giving work assignments to law students include:

**1. Defining the task with the relative inexperience of the student in mind.** Clearly explain what the task involves, putting the specific task into the context of the entire case or project on which the office is working. Details of the assignment should be provided in writing, or the student should take written notes while receiving the assignment. These details include:

- Format, style, and length of the work product to be delivered by the student;
- How much time the student should spend on the project;
- How the work product will ultimately be used; and
- Deadlines.

**2. Discussing methods and tools.** Provide suggestions for how the student should perform the task, including where to find specialized legal research materials, how to organize and review case files, and how to communicate with any parties involved. Take the time to strategize with the student about how to approach the task, giving the student an opportunity to develop his or her own plan, but vetting that plan before the student gets started. You should also give the student an opportunity to ask questions about the assignment. If possible, provide appropriate examples or models of work product or documents similar to what you expect the student to produce.

**3. Reviewing progress.** Set a time for interim review of the student's progress on an assignment to re-direct or fine-tune the project as necessary. You cannot always anticipate all the nuances and tangents that may tempt the student off the main course. When a student is engaged in a lengthy assignment, periodic meetings to check progress and handle problems are particularly useful to both the student and the Supervisor. Once a student submits a draft of written work, prompt review is essential since a student usually is unable to proceed without some feedback.

## **D. The Importance of Feedback**

The importance of giving feedback to Residents and Externs cannot be emphasized enough. In order for students to progress in their placements, meet their educational goals, and develop as attorneys, it is essential that they receive detailed and constructive feedback on their work—both written and oral. Feedback is so essential that the ABA, in its accreditation standards, requires that for students to earn academic credit for fieldwork, the experience must provide multiple opportunities for performance, feedback, and self-evaluation.

Review all work produced by the student to maximize the educational benefit of the student's experience, and to provide a basis for fair evaluation at the end of the Field placement. While a busy law practice may sometimes require delaying review of student work, or missing an opportunity to observe student performance of a lawyering activity, the Supervisor should always find time to circle back to the student about each assignment. Even if the need for an assignment changes, or becomes obsolete as when a case settles, the Supervisor should always review and comment on work performed by a student.

Both giving and receiving feedback can be uncomfortable. You may be reluctant to critique a student's work, but students need, deserve, and actually *want* honest feedback. Without feedback, students may assume that "no news is good news," and will continue to repeat the same errors. Students should be able to reflect on their performance, get a sense of what they did well and why, and develop strategies for improvement.

Providing feedback is a skill that requires patience and practice. One feedback model that you might find useful is called **FAST**<sup>4</sup>:

**Frequent**—weekly meetings work well to assure the frequency of feedback.

**Accurate**—address actions or behaviors that need correction, not the person.

**Specific**—give specific examples of things a student should replicate or improve upon.

**Timely**—if too much time passes, externs are likely to repeat their mistakes.

Providing feedback does not mean that the attorney should offer suggestions and the student should sit passively and accept those suggestions. Students will get far more out of a

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<sup>4</sup> Mentor Handbook, Brooklyn Law School Externship Programs (2017) at 10.

discussion when they are actively involved in evaluating their own performance.<sup>5</sup> To this end, consider a two-step process:

**a. Student Self-Evaluation:** Ask students first to evaluate their own performance on a lawyering task. Students often realize when their work product misses the mark, or their performance is less than effective. Before you offer critique to students, allow them the opportunity to first give their assessment; otherwise, students may modify their impressions in response to yours. Ideally, while a student is offering self-critique, you would simply listen, neither agreeing nor disagreeing. Then ask what changes the student would make the next time. This type of exchange encourages a student to move through the learning process from doing a task through analyzing it and developing a plan for improved performance.

**b. Attorney Evaluation of Student Performance:** Deliver honest and constructive feedback that is detailed in terms of both substance and process by following these guidelines:

- **Plan your critique** in terms of content and format; don't wing it.
- **Lead with the positive.** Highlight something done well so the student knows to replicate it, and is motivated to improve in other areas.
- **Be selective.** Select one or two points on which to offer correction and fully develop those points, without rambling on.
- **Check for understanding** by posing a question or comment that allows the student to show s/he can incorporate your suggestions going forward. For example: "What alternative approaches might you try next time?"
- **Remain open** to the possibility of improvement. If an extern's work does not measure up, you may be inclined to assign less demanding work. Instead, aid the educational mission by giving the extern a chance to learn and improve.<sup>6</sup>

Provide your students with feedback on the broad range of legal and professional skills:

- **Research ability:** Is the student familiar not just with Westlaw and Lexis research but also with library tools, treatises, etc.? Is her research careful and accurate? Does she produce practical and useful results?
- **Legal analysis:** Is she able to identify the relevant issues? Does she integrate legal concepts with facts in a coherent and logical progression?
- **Creativity:** Is she able to develop alternative arguments and pursue analogous extensions where the law is nebulous? Does she display curiosity and imagination?

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<sup>5</sup> See generally, A. Alexander and J. Smith, *A Practical Guide to Cooperative Supervision for Law Students and Legal Employers*, 29 *Law Office Economics and Management* 207 (1988).

<sup>6</sup> Mentor Handbook, Brooklyn Law School Externship Programs (2017) at 10.

- **Writing skills:** Are her drafts focused and well-organized? Does she write clearly, and persuasively? Does she use excessive legalese? Does she write for the appropriate audience? Does she cite accurately?
- **Oral advocacy:** Does she communicate effectively with you, her colleagues, and the clients?
- **Professionalism:** Does she ask questions when needed? Is she dependable? Does she manage her time well? Does she work independently? Does she accept criticism? Does she take initiative? Was she reflective of her work on the matter?
- **Client relations/communication:** Is she diplomatic? Does she make clients feel comfortable? Is she persistent?<sup>7</sup>

As a Site Supervisor, you will give more formal assessments of your student's progress a few weeks in, as a baseline, and at the end-of-term. Forms will be sent to you directly from the Director of Residencies. The forms are tools to use in dialogue with your student about the areas of lawyering skills, knowledge, and values in which he or she has excelled and the areas in which he or she can improve. The forms are to be signed by you and your student; then, your student should upload the forms onto TWEN.

## E. Addressing Concerns

In the vast majority of cases, externships proceed smoothly, with both students and supervising attorneys reaping the benefits of the mentor/student relationship. However, there are occasional surprises. Examples might be the student's failure to appear timely, the student's inability to accomplish tasks assigned, or an uncomfortable relationship between the intern and yourself or other members of the office.

When students raise such issues, we ask that they first contact you in order to discuss them. We will intervene only where the student is unable to discuss them with you, for one reason or another, or where such discussion proves fruitless. Similarly, should you perceive any problems, we ask that you raise them with the student first. If they are not immediately rectified, we ask that you inform us as soon as possible.

If the issues relate to the student's performance, we ask that you contact your student's Faculty Supervisor for the term, the professor who signed the three-way agreement. If the issues relate to a problem with the fit of the student or some significant change affecting the placement, we ask that you contact the Director of Residencies, Prof. Cindy Adcock at [cadcock3@elon.edu](mailto:cadcock3@elon.edu).

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<sup>7</sup> List from Capital Area Consortium on Externships, Manual for Externship Advisors at 4, available at [http://www.law.howard.edu/dictator/media/104/CACE\\_Manual\\_for\\_Extern\\_Supervisors.pdf](http://www.law.howard.edu/dictator/media/104/CACE_Manual_for_Extern_Supervisors.pdf).

### **III. CONCLUSION**

Thank you again for your interest in Elon Law School's Residency and Externship Programs and for your support of our students. We hope you have found this Handbook informative and useful. Please feel free to circulate it to others in your office who are supervising students. And, as always, please contact us with any questions, concerns, or ideas for improvement.

# APPENDIX

# A. Elon University Law School Document

## Field Placement Program Memorandum of Understanding

Name of Student: \_\_\_\_\_ Start Date: \_\_\_\_\_

Field Placement Site: \_\_\_\_\_

Supervising Attorney Name: \_\_\_\_\_

Total Hours of Work Required: \_\_\_\_\_

### I. Parties

This agreement is made by and between the above-named student, who is currently enrolled at Elon Law School; the Site Supervisor, named below, who has the authority to ensure a quality educational experience for the student at the field placement site; and the Faculty Supervisor, named below, who is a member of the Elon Law faculty and who will ensure that all field placement academic requirements are met. The information in this agreement supplements that previously provided by the Student and by the Site Supervisor.

### II. Purpose

The general purpose of the Residency and Externship Program (Program) is to provide participating law students with substantial lawyering experience reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks under direct attorney or judicial supervision at the field placement. Desired Program outcomes include that students will:

- transfer knowledge from the study of law to the practice of law through the application of doctrine in practice, and bring back new knowledge and skills to the classroom;
- increase their knowledge of the legal profession, enhancing their development as legal professionals and deepening their understanding of their professional responsibilities; and
- increase their ability to learn from experience during and after law school through regular feedback from attorneys, self-evaluation, and regular reflection on the lessons of



practice under the faculty guidance.

All parties understand this purpose and that the Student is the primary beneficiary of the Program. For Residency students, successful completion of the residency is a requirement of graduation.

### **III. Site Supervisor Responsibilities:**

- A. The Site Supervisor accepts primary responsibility for overseeing the Student experience at the placement throughout the term and monitoring the progress of all Student work including any work assigned by other attorneys.
- B. The Site Supervisor agrees to assign tasks to the Student that are representative of the placement and Site Supervisor's work. Where appropriate, the Student will be certified to appear in court or personally represent a client under attorney supervision.
- C. The Site Supervisor agrees that as appropriate, the Student will be offered opportunities to participate in all aspects of placement cases or projects, such as client interviewing, counseling, case planning, negotiation, fact investigation, trial preparation and trial, meetings, policy development, legal research, drafting, legal writing, and guided observation of these or other lawyering activities.
- D. The Site Supervisor will ensure that the Student is not assigned clerical tasks, e.g., filing, photocopying, library updating, indexing, unless such tasks are specifically related to an educational activity.
- E. The Site Supervisor agrees to meet with the Student at the start of the term to review and discuss the Student's educational goals and strategies for achieving goals. The Site Supervisor will approve and sign the Learning Goals and Plan form.
- F. The Site Supervisor agrees to meet with the Student as often as necessary to provide timely and meaningful feedback on assignments and lawyering tasks, and to ensure Student is getting substantial lawyering experience.
- G. The Site Supervisor agrees to arrange substantive work for the Student to do when the Site Supervisor plans on being unavailable during regular office hours for a significant period of time.

PLANNED DATES SITE SUPERVISOR WILL BE UNAVAILABLE: \_\_\_\_\_

- H. The Site Supervisor agrees to complete a written evaluation of the Student's performance midway and at the end of term and to submit the evaluations to the Faculty Supervisor in such form and at such time or times as required.

- I. The Site Supervisor recognizes the educational nature of the Student's field placement and agrees not to bill for the student's work.

#### **IV. Student Responsibilities:**

- A. The Student agrees to perform work assigned by the Site Supervisor in connection with the field placement, to seek work when idle, and to seek feedback on all assignments.

- B. The Student agrees to the following work schedule:

PLANNED WORK SCHEDULE (DAYS/TIMES): \_\_\_\_\_

- C. The Student agrees to seek permission from the Site Supervisor for any changes or modifications in the placement work schedule. If sick, the Student agrees to notify the Site Supervisor, or his or her designee, as soon as feasible. The dates below are requested at this time:

IMPORTANT DATES/EVENTS/REQUESTED TIME OFF: \_\_\_\_\_

- D. The Student agrees to comply with the Rules of Professional Conduct and other rules, guidelines, or policies applicable to the particular field placement.
- E. The Student agrees to identify specific individual educational goals and strategies for achieving goals, review and discuss the goals and strategies with the Site Supervisor, and submit a copy of the Learning Goals and Plan to the Faculty Supervisor.
- F. The Student agrees to contemporaneously record time that truthfully describes the Student's activities in the field placement and the time devoted to each activity, as instructed by the Faculty Supervisor.
- G. The Student agrees to record the Student's thoughts, reflections and observations about his/her activities in a Learning Journal, as instructed by the Faculty Supervisor.
- H. The Student agrees to complete a mid-term and an end-of-term self-evaluation, as well as a Site Evaluation.

#### **V. Faculty Supervisor Responsibilities:**

- A. The Faculty Supervisor, with assistance from other Elon faculty, agrees to interact with the Student and the Site Supervisor to ensure a quality educational experience at the Student's field placement. One conference with the Site Supervisor shall be at mid-term, in person or via Skype/phone, and may involve the Student.

- B. The Faculty Supervisor agrees to review and give feedback on Student's Learning Goals and Plan, and to use this document throughout the term to help the Student make progress on stated goals.
- C. The Faculty Supervisor agrees to conference with the student at least twice times over the term and to be available to talk with the Student at other times as needed to assure educational progress.
- D. The Faculty Supervisor agrees to review and comment on Student's Learning Journal as part of on-going, contemporaneous, faculty-guided reflection.
- E. The Faculty Supervisor agrees to convene Student's Practice Affinity Group at least twice during the term to deepen inquiry into lessons from the field experience.
- F. The Faculty Supervisor agrees to be available to assist the Student and Site Supervisor should any questions or concerns arise during the semester.
- G. The Faculty Supervisor agrees to evaluate the student's academic performance at the end of the term on a pass/fail basis. This evaluation will consider whether the number of required hours were completed, whether written assignments were completed, including Learning Journals and Time Logs, and whether the Student performed professionally and competently at Field Placement.

## VI. **Agreement**

I, the undersigned, have read this document and agree to perform the duties specified.

_____	_____	_____
Name of Student	Signature	Date
_____	_____	_____
Name of Field Supervisor	Signature	Date
_____	_____	_____
Name of Faculty Supervisor	Signature	Date



## B. Relevant NC State Bar Rules

### **Administrative Rules of the North Carolina State Bar, Subchapter C, Section .0200: Rules Governing Practical Training of Law Students**

#### **.0201 Purpose**

The following rules are adopted to encourage law schools to provide their students with supervised practical training of varying kinds during the period of their formal legal education and to enable law students to obtain supervised practical training while serving as legal interns for government agencies

#### **.0202 Definitions**

The following definitions shall apply to the terms used in this section: (1) Eligible persons - Persons who are unable financially to pay for the legal services of an attorney, as determined by a standard established by a judge of the General Court of Justice, a legal services corporation, or a law school legal aid clinic providing representation. "Eligible persons" includes non-profit organizations serving low-income communities.

(2) Government agencies - The federal or state government, any local government, or any agency, department, unit, or other entity of federal, state, or local government, specifically including a public defenders office or a district attorney's office.

(3) Law school - An ABA accredited law school or a law school actively seeking accreditation from the ABA and licensed by the Board of Governors of the University of North Carolina. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, legal interns may not practice, pursuant to these rules, with any legal aid clinic of the law school.

(4) Legal aid clinic - A department, division, program, or course in a law school that operates under the supervision of an active member of the State Bar and renders legal services to eligible persons.

(5) Legal intern - A law student who is certified to provide supervised representation to clients under the provisions of the rules of this Subchapter.

(6) Legal services corporation - A nonprofit North Carolina corporation organized exclusively to provide representation to eligible persons.

(7) Supervising attorney - An active member of the North Carolina State Bar who satisfies the requirements of Rule .0205 of this Subchapter and who supervises one or more legal interns.

### **.0203 Eligibility**

To engage in activities permitted by these rules, a law student must satisfy the following requirements:

- (1) be enrolled in a law school approved by the Council of the North Carolina State Bar;
- (2) have completed at least three semesters of the requirements for a professional degree in law (J.D. or its equivalent);
- (3) be certified in writing by a representative of his or her law school, authorized by the dean of the law school to provide such certification, as being of good character with requisite legal ability and training to perform as a legal intern;
- (4) be introduced to the court in which he or she is appearing by an attorney admitted to practice in that court;
- (5) neither ask for nor receive any compensation or remuneration of any kind from any client for whom he or she renders services, but this shall not prevent an attorney, legal services corporation, law school, or government agency from paying compensation to the law student or charging or collecting a fee for legal services performed by such law student;
- (6) certify in writing that he or she has read and is familiar with the North Carolina Revised Rules of Professional Conduct and the opinions interpretive thereof.

### **.0204 Certification as Legal Intern**

Upon receipt of the written materials required by Rule .0203(3) and (6) and Rule .0205(6), the North Carolina State Bar shall certify that the law student may serve as a legal intern. The certification shall be subject to the following limitations:

- (a) Duration. The certification shall be effective for 18 months or until the announcement of the results of the first bar examination following the legal intern's graduation whichever is earlier. If the legal intern passes the bar examination, the certification shall remain in effect until the legal intern is sworn-in by a court and admitted to the bar.
- (b) Withdrawal of Certification. The certification shall be withdrawn by the State Bar, without hearing or a showing of cause, upon receipt of (1) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern has not graduated but is no longer enrolled; (2) notice from a representative of the legal intern's law school, authorized to act by the dean of the law school, that the legal intern is no longer in good standing at the law school; (3) notice from a supervising attorney that the supervising attorney is no longer supervising the legal intern and that no other qualified attorney has assumed the supervision of the legal intern; or (4) notice from a judge before whom the legal intern has appeared that the certification should be withdrawn.

## **.0205 Supervision**

(a) A supervising attorney shall (1) be an active member of the North Carolina State Bar who has practiced law as a full-time occupation for at least two years; (2) supervise no more than two legal interns concurrently, provided, however, there is no limit on the number of legal interns who may be supervised concurrently by an attorney who is a full-time member of a law school's faculty or staff whose primary responsibility is supervising legal interns in a legal aid clinic and, further provided, that an attorney who supervises legal interns through an field placement or out-placement program of a law school legal aid clinic may supervise up to five legal interns; (3) assume personal professional responsibility for any work undertaken by a legal intern while under his or her supervision; (4) assist and counsel with a legal intern in the activities permitted by these rules and review such activities with the legal intern, all to the extent required for the proper practical training of the legal intern and the protection of the client; (5) read, approve and personally sign any pleadings or other papers prepared by a legal intern prior to the filing thereof, and read and approve any documents prepared by a legal intern for execution by a client or third party prior to the execution thereof; (6) prior to commencing the supervision, assume responsibility for supervising a legal intern by filing with the North Carolina State Bar a signed notice setting forth the period during which supervising attorney expects to supervise the activities of an identified legal intern, and that the supervising attorney will adequately supervise the legal intern in accordance with these rules; and (7) notify the North Carolina State Bar in writing promptly whenever the supervision of a legal intern ceases.

## **.0206 Activities**

(a) A properly certified legal intern may engage in the activities provided in this rule under the supervision of an attorney qualified and acting in accordance with the provisions of Rule .0205 of this subchapter. (b) Without the presence of the supervising attorney, a legal intern may give advice to a client, including a government agency, on legal matters provided that the legal intern gives a clear prior explanation that the legal intern is not an attorney and the supervising attorney has given the legal intern permission to render legal advice in the subject area involved.

(c) A legal intern may represent an eligible person, the state in criminal prosecutions, a criminal defendant who is represented by the public defender, or a government agency in any proceeding before a federal, state, or local tribunal, including an administrative agency, if prior consent is obtained from the tribunal or agency upon application of the supervising attorney. Each appearance before the tribunal or agency shall be subject to any limitations imposed by the tribunal or agency including, but not limited to, the requirement that the supervising attorney physically accompany the legal intern.

(d) In all cases under this rule in which a legal intern makes an appearance before a tribunal or agency on behalf of a client who is an individual, the legal intern shall have the written consent in advance of the client. The client shall be given a clear explanation, prior to the giving of his or her consent, that the legal intern is not an attorney. This consent shall be filed with the tribunal and made a part of the record in the case. In all cases in which a legal intern makes an

appearance before a tribunal or agency on behalf a government agency, the consent of the government agency shall be presumed if the legal intern is participating in an internship program of the government agency. A statement advising the court of the legal intern's participation in an internship program of the government agency shall be filed with the tribunal and made a part of the record in the case. (e) In all cases under this rule in which a legal intern is permitted to make an appearance before a tribunal or agency, subject to any limitations imposed by the tribunal, the legal intern may engage in all activities appropriate to the representation of the client, including, without limitation, selection of and argument to the jury, examination and cross-examination of witnesses, motions and arguments thereon, and giving notice of appeal.

#### **.0207 Use of Student's Name**

(a) A legal intern's name may properly (1) be printed or typed on briefs, pleadings, and other similar documents on which the legal intern has worked with or under the direction of the supervising attorney, provided the legal intern is clearly identified as a legal intern certified under these rules, and provided further that the legal intern shall not sign his or her name to such briefs, pleadings, or other similar documents; (2) be signed to letters written on the letterhead of the supervising attorney, legal aid clinic, or government agency, provided there appears below the legal intern's signature a clear identification that the legal intern is certified under these rules. An appropriate designation is "Certified Legal Intern under the Supervision of [supervising attorney]."

(b) A student's name may not appear

(1) on the letterhead of a supervising attorney, legal aid clinic, or government agency;

(2) on a business card bearing the name of a supervising attorney, legal aid clinic, or government agency; or

(3) on a business card identifying the legal intern as certified under these rules

## **CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR**

### **27 NCAC 02 RULE 5.1: RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority, shall make reasonable efforts to ensure that the firm or the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:



- (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

## **27 NCAC 02 RULE 5.2: RESPONSIBILITIES OF A SUBORDINATE LAWYER**

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

## **27 NCAC 02 RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm or organization shall make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;
- (2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and
- (3) a lawyer shall be responsible for conduct of such a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (A) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (B) the lawyer is a partner or has comparable managerial authority in the law firm or organization in which the person is employed, or has direct supervisory authority over the nonlawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action to avoid the consequences.

### **Comment**

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. 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.

# C. ABA Standards for Approval of Law Schools 2017-2018

## **Standard 303. CURRICULUM**

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
  - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;
  - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
  - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:
    - (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
    - (ii) develop the concepts underlying the professional skills being taught;
    - (iii) provide multiple opportunities for performance; and
    - (iv) provide opportunities for self-evaluation.
- (b) A law school shall provide substantial opportunities to students for:
  - (1) law clinics or field placement(s); and
  - (2) student participation in pro bono legal services, including law-related public service activities.

## **Standard 304. SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS**

- (c) A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:
  - (i) direct supervision of the student's performance by a faculty member or site supervisor;
  - (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;

- (iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;
  - (iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;
  - (v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
  - (vi) evaluation of each student's educational achievement by a faculty member.; and
  - (vii) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).
- (d) Credit granted for such a simulation, law clinic, or field placement course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.
  - (e) Each student in such a simulation, law clinic, or field placement course shall have successfully completed sufficient prerequisites or shall receive sufficient contemporaneous training to assure the quality of the student educational experience.

# D. The Fair Labor Standards Act and Law Students

Generally, the Fair Labor Standards Acts (FLSA) does not permit individuals to volunteer their services to for-profit business such as law firms. However, the U.S. Department of Labor (DOL) has made it clear that under certain circumstances, law school students who perform unpaid internships with for-profit law firms and corporations for the student's own educational benefit may not be considered employees entitled to wages under the FLSA. The determination of whether an internship meets the exclusion depends on whether six criteria are met:

- the internship, even though it includes actual operation of the facilities of the employer, is similar to training that would be given in an educational environment;
- the internship experience is for the benefit of the intern;
- the intern does not displace regular employers, but works under close supervision of existing staff;
- the employer providing the training derives no immediate advantage from the activities of the intern;
- the intern is not necessarily entitled to a job at the conclusion of the internship; and
- the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

The Elon Law Field Placement Programs are designed to help for-profit employers meet these criteria. Further guidance is contained in the attached letter, dated Sept. 12, 2013, from the DOL to the ABA clarifying work that may be performed by unpaid law student interns. Though the letter specifically addresses the question of whether law students may work as unpaid interns on pro bono matters at for-profit law firms, its author, the Solicitor of Labor, goes much broader.



SEP 12 2013

Laurel G. Bellows  
Immediate Past President  
American Bar Association  
321 North Clark Street  
Chicago, IL 60654-7598

Dear Immediate Past President Bellows:

I am writing in response to the concerns you raised regarding the limitations imposed by the Fair Labor Standards Act (FLSA) on the ability of law students to secure work experience through unpaid internships with private law firms where the work they perform is limited to pro bono activities.

Generally, the FLSA does not permit individuals to volunteer their services to for-profit businesses such as law firms. In most instances, individuals who are suffered or permitted to perform work by a covered for-profit entity are considered employees under the FLSA and entitled to minimum wage and overtime unless they are covered by a specific exemption or exclusion. The FLSA does, however, permit individuals to participate in unpaid internships or training programs conducted by for-profit entities if certain criteria are met.

Under certain circumstances, law school students who perform unpaid internships with for-profit law firms for the student's own educational benefit may not be considered employees entitled to wages under the FLSA. The determination of whether such an internship meets this exclusion depends upon all of the facts and circumstances of each student's case. Where all of the following criteria are met, an employment relationship does not exist under the FLSA<sup>1</sup>:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship;
- and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

While the intern (or trainee) exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of "employ" is very broad, it may be met in some circumstances when law students perform unpaid internships for for-profit law firms. We understand your specific concern with respect to law students involves unpaid internships (whether or not any academic credit is provided) in which the law school places students with for-profit law firms and acts as an intermediary empowered to monitor the progress of the internship, and in which the law firms provide written assurance that the students will receive an educational experience related to the practice of law and that the student will be assigned exclusively to non-fee-generating pro bono matters.

Where the program is designed to provide a law student with professional practice in the furtherance of his or her education and the experience is academically oriented for the benefit of the student, the student may be considered a trainee and not an employee. Accordingly, where a law student works only on pro bono matters that do not involve potential fee-generating activities, and does not participate in a law firm's billable work or free up staff resources for billable work that would otherwise be utilized for pro bono work, the firm will not derive any immediate advantage from the student's activities, although it may derive intangible, long-term benefits such as general reputational benefits associated with pro bono activities. Where law firm internships involve law students participating in or observing substantive legal work, such as drafting or reviewing documents or attending client meetings or hearings, the experience should be consistent with the educational experience the intern would receive in a law school clinical program. Such internships also offer significant benefit to law students because legal representation and licensing requirements necessitate that unlicensed law students receive close and constant supervision from the firm's licensed attorneys. Such supervision both provides an educational benefit to the law student, and reduces the time that firm attorneys may spend on other work, potentially impeding the firm's operations. Thus, where the hiring of unpaid law student interns does not displace regular employees, the law student is not necessarily entitled to a job at the conclusion of the internship, and the law firm and the law student agree that the intern is not entitled to wages, an unpaid internship with a for-profit law firm structured in such a manner as to provide the student with professional experience in furtherance of their education, involving exclusively non-fee generating pro bono matters would not be considered employment subject to the FLSA.<sup>2</sup> In contrast, a law student would be considered an employee subject to the FLSA where he or she works on fee generating matters, performs routine non-substantive work that could be performed by a paralegal, receives minimal supervision and guidance from the firm's licensed attorneys, or displaces regular employees (including support staff).

You also raised concerns that recent law school graduates who have not yet passed any state bar should be able to participate in unpaid internships with law firms working on pro bono matters to the same extent as current law students. But we understand from your communications that the Labor and Employment Law Section leadership has

reviewed this matter and determined that law graduates may not volunteer for private law firms without pay in the same manner. Likewise, we believe that the analysis would be different for law school graduates than for law students as the former have completed their legal education. Additionally, law schools would not have the same ability to act as intermediaries between graduates and the law firms that they do with current students and would not be able to monitor the internship's compliance with these principles.

I hope that this summary is helpful in clarifying the limitations the FLSA places on unpaid work in various situations.

Sincerely,

A handwritten signature in cursive script that reads "M Patricia Smith". The signature is written in dark ink and is positioned below the word "Sincerely,".

M. Patricia Smith  
Solicitor of Labor