



RESIDENCY-IN-PRACTICE COURSE FACULTY SUPERVISOR HANDBOOK

Second Edition



**ELON LAW RESIDENCY-IN-PRACTICE COURSE
FACULTY HANDBOOK**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	TEACHING LAW STUDENTS IN THE FIELD	1
III.	EXPERIENTIAL LEARNING PEDAGOGY APPLIED IN THE RESIDENCY- IN-PRACTICE COURSE	5
	<i>A. Stage One: Planning for Success</i>	<i>5</i>
	<i>B. Stage Two: Doing . . . With Effective Supervision and Feedback</i>	<i>10</i>
	<i>C. Stage Three: Reflection</i>	<i>17</i>
	<i>D. Stage Four: Integration</i>	<i>19</i>
IV.	CONCLUSION	19

APPENDICES

I. INTRODUCTION

Elon Law Faculty rotate responsibility to “co-teach” the required Residency-in-Practice Course with attorneys and judges in the field. Professors step into the role of Faculty Supervisor, while the attorneys and judges step into the role of Field Supervisor. Collaboratively, both Supervisors teach lawyering skills and values through offering substantial lawyering experiences, reflective exercises, feedback, coaching, and assessment.

The Elon Law Residency-in-Practice is an experiential education course. Specifically, in the legal academy, the Residency is a type of “field placement” course, with law clinics and simulation courses being the other types of experiential education courses.¹ Field Placement courses are highly regulated by the ABA, most notably through ABA Standard 304, which aims to protect law students who pay tuition for the experience.² The regulations currently set forth in Standard 304 have evolved over the years and now align with best practices in teaching field courses.

This Handbook was written to help Residency Faculty not only meet the expectations set forth in the ABA Standards, and related regulations, but to excel in their role as a Faculty Supervisor. It is organized as a walk through Standard 304, which provides useful scaffolding for examining how the Residency Course is structured to meet the standards and what is expected of the Faculty Supervisor. The Director of Residencies is available to answer any questions you have along the way.

II. TEACHING LAW STUDENTS IN THE FIELD

Before getting to the nuts-and-bolts of the Residency Course, an introduction to field placement teaching, and why the Residency Course is structured as it is, might be helpful. As an experiential education course, field placements differ from paid or unpaid internships because with academic credit comes a focus on the student’s learning.

¹ Elon Law Residents are not allowed to be paid, though they may be reimbursed for expenses, and therefore are also protected by employment law as unpaid interns.

² Additional employment-related standards, such as the Fair Labor Standards Act and Elon’s Non-Discrimination Policy, are available for your information in Appendix A.

To develop expertise in any profession, including sports (something most students can relate to), one must identify the necessary skills for success, practice those skills, reflect on the performance of those skills, make adjustments, and repeat. This cycle of experiential learning is illustrated on the cover of this handbook, as well as by this spiral of learning, included in the Residency Student Handbook:



You have been given a copy of *Learning from Practice: A Text for Experiential Legal Education (3d edition)* and its Teacher's Manual. The book supports student learning through content and exercises on a wide array of experiential learning topics. The editors of the book and many of its authors are experienced Field Placement (typically called Externship) teachers. Thus, Residency Faculty are encouraged to use the book to educate themselves about the unique lessons to be drawn from field experience. Students must purchase three chapters of *Learning from Practice*, which are available online for only \$6 apiece, because the reading will be the basis of reflective writing assignments, as explained further below.

A review of the table of contents of the book reveals topics important to field placement teaching. As explained in the "Preface—For Teachers," the topics are organized into five sections:

- General Topics – Topics common to all field placement courses such as goal-setting, supervision and reflective practice.
- Professionalism and Ethics
- Lawyering and Skill Development
- Practice Contexts
- Your Future as a Lawyer – Topics such as professional identity, work and well-being, and career planning.

The themes and values of field placement teaching pervade the book. As pointed out in the Teacher's Manual, these are:

- Student exercise of **autonomy** and **self-direction**
- Development of the capacity for **reflection** and **reflective practice**
- A stress on dialogue, **communication**, and collaboration
- The importance of **cultural competence** and the awareness of **bias** in the legal system
- Promotion of student capacity for **critical assessment** of law practice
- An emphasis on **professionalism** in all its dimensions
- Encouragement of student understanding of **well-being** in law practice.

These themes and values are consistent with the learning outcomes identified by the Elon Law Faculty when it made Residencies mandatory -- that students would gain experience and improve in the following competencies:

- **Problem Solving** – Handle basic legal problems arising from novel facts in a structured environment
- **Judgment** – Think strategically to respond to a legal problem in a structured environment, and prospectively build and manage your professional reputation
- **Lawyering Tasks** – Complete basic lawyering tasks in a timely fashion and in the context of a professional environment
- **Communication** – Expand and refine written and oral communication skills in the context of a professional environment
- **Ethics** – Demonstrate understanding of ethical obligation in the representation of clients
- **Professionalism** – Develop professional and ethical relationship with colleagues, clients and supervisors

The influence of experiential learning educators can be seen in the requirements of ABA Standard 304, which provides a useful scaffolding for understanding the structure of the Residency-in-Practice course. In pertinent part, ABA Standard 304 states:

- (a) Experiential courses satisfying Standard 303(a)³ are simulation courses, law clinics, and field placements that must be primarily experiential in nature and must:

³ ABA Standard 303(a) mandates that law schools “offer a curriculum that requires each student to satisfactorily complete . . . (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, as defined in Standard 304.”

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302⁴;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor;
- (5) provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
- (6) provide direct supervision of the student's performance by the faculty member; or, for a field placement, provide direct supervision of the student's performance by a faculty member or a site supervisor.

....

- (d) 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) 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;
 - (ii) 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;
 - (iii) evaluation of each student's educational achievement by a faculty member; and
 - (iv) 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(d)(i).

⁴ ABA Standard 302 mandates that law schools establish learning outcomes that include competency in the "[k]nowledge and understanding of substantive and procedural law" as well as the following skills: "(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."

- (e) 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.
- (f) 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.

Elon Residency Faculty begin with a common syllabus and course TWEN site that have been shaped by the best practices of field placement teaching, but you can amend the lesson plan to suit your teaching goals.⁵ Note that we teach Residents in a manner very similar to how we teach Externs. There are, however, some distinctions in the two courses that may inform your teaching. Residents must work either 315 or 360 hours over a ten-week term (31.5 – 36 hours a week). Externs must work only 135 or 160 hours over the same ten weeks (and in the summer the term may be as short as six weeks). In addition, externships are voluntarily arranged by the student. Residencies are required, and though every effort is made to match a student with a placement that aligns with the student's interests and abilities, there are often surprises. For these reasons, teaching Residents brings challenges not presented typically with Externs, such as ensuring the student gets sufficient work that continues to challenge the student and helping the student improve relational skills in workplaces that may not meet the student's expectations. Faculty are never alone, however. The Director of Residencies is available to assist, and *Learning from Practice* addresses many of the common "teachable moments" that arise in field placement teaching.

III. EXPERIENTIAL LEARNING PEDAGOGY APPLIED IN THE RESIDENCY-IN-PRACTICE COURSE

A. *Stage One: Planning for Success*

From the student learning perspective, and ABA Standard 304, the minimal measurement of student success in Residency is that he or she engages in "substantial lawyering" experiences that are "reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks" and has multiple "opportunities for performance, feedback

⁵ Residency Faculty are able to amend their syllabi to include additional learning opportunities for students.

and self-evaluation.” Returning to the experiential education cycle of learning, we begin by planning for this success.

1. Before Faculty Supervisor Involvement

The first step in helping a student succeed in Residency is to place him or her well. Before a Residency is approved, the field placement site has been vetted to the best of the Director of Residency’s ability to ensure that the student will be engaged in substantial lawyering experiences throughout the academic term. Most Elon Law students in field placements are working at sites that have a history of supervising law students for academic credit. These students secured these opportunities either through our Residency match processes or through contacting the site directly.

The Residency placement process begins in the Spring Trimester of students’ 1L year and has three rounds: 1) The Judicial Residency May Match, 2) The Independently Arranged Residency Application, and 3) The Fall Residency Match.⁶ Through one of these avenues, students obtain either the placement they most want or one that they are otherwise willing to accept because of the experiential learning opportunity it provides. Not every match is a perfect fit, but what matters from an academic perspective is whether the placement provides a suitable learning environment.

Students who go through one of the Residency Matches confirm their willingness to accept a Residency placement before the match is finalized. A few weeks before the start of their Residency term, the Director of Residencies will send out an email introducing the Field Supervisor and the Faculty Supervisor.

2. Student Planning in Week One of Residency

In the first week of Residency, as set forth in the Residency Syllabus, students are required to meet with their Field Supervisor 1) to review and sign the **Residency Trimester Agreement**,⁷

⁶ Details of these processes are provided in Appendix B.

⁷ Note that students may enroll in a daytime accompanying course with the permission of their Field Supervisor. To do so, the student will use a **Residency Trimester Agreement** designated for such purpose,

a document required by ABA Standard 304(d)(i) and available on your TWEN site, and 2) to discuss the student's educational goals for the term and possible strategies for achieving those goals (objectives).

The Trimester Agreement sets forth the roles and responsibilities of three parties: the Field Supervisor, the Student, and the Faculty Supervisor. Students upload it to TWEN after they and their Field Supervisor has signed it. Once it is uploaded, the Faculty Supervisor must sign it and pass along to it to the Residency Administrative Assistant for retention.⁸

In addition to the roles and responsibilities of all parties, **the Trimester Agreement** records the agreed upon schedule of the student and any times that the Field Supervisor will not be available. The Field Supervisor is responsible for setting the student's schedule to ensure that the student will be engaged in substantial lawyering experiences throughout the term and accomplish their learning goals. There may be some flexibility allowing the student to have input into the schedule. Students who commute long distances and work on portable projects MAY telecommute one day a week, with the permission of their Field Supervisor. Students who miss work during the term due to weather, illness or an extraordinary event must make up the time and may be required to work into the exam period.

The primary tool for planning for success in the Residency course is the student's **Learning Goals and Plan**. As with any law school course, Residencies must be undertaken with learning goals and objectives in mind. Without setting goals and a plan for accomplishing those goals, students and supervisors can get off course. By placing students in the role of a lawyer, faculty expect students to 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. To meet this expectation, the experience must be built on the individual goals, strengths and weaknesses of the student.

available on the website of the Office of the Registrar. These students will have already obtained their Field Supervisor's signature on the form.

⁸ The ABA Standards require schools to "maintain records to document the steps taken to ensure compliance with the [Field Placement] Standard."

At the outset of their placement, all Residents must complete a ***Learning Goals and Plan***.⁹ This exercise serves multiple purposes. First, formulating a learning plan draws attention to the fact that the Residency is an academic endeavor for which the student is earning course credit. Second, the plan emphasizes the self-directive nature of the Residency: 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 the Field Supervisor. Discussing what should go into the plan gives students the opportunity to discuss specific hopes and expectations with their supervisor. 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 for the Resident and the Field Supervisor, but also the Faculty Supervisor during individual conferences and the midterm conference with the Field Supervisor.

Students are provided a form in their Student Resident Handbook to use in the process of setting goals and objectives. The process for developing the *Learning Goals and Plan* are as follows:

- 1) Student, during the first week of the term, completes initial draft of this document, with input from Field Supervisor.
- 2) Student uploads this document to TWEN for faculty review.
- 3) Student meets with Faculty Supervisor to discuss what improvements might be made.
- 4) Student revises this document, signs it and obtains Field Supervisor’s signature.
- 5) Student uploads final draft of this document to TWEN.

Students are given the following instructions for setting goals:

- Student should set 3-5 goals. Goals must include one advanced practical legal skill goal and one substantive law goal;
- Each goal should have at 2-6 objectives, specific work assignments and experiences that you think would help in attaining the goal. These should be
 - **Specific**, e.g., “observe jury voir dire,” “draft a complaint;”
 - **Measurable**, e.g., student can say whether or not they observed jury voir dire and how often;
 - **Attainable** in the placement period, e.g., observation of jury voir dire is possible because there are several trials scheduled during term;
 - **Relevant** to the student’s long range goals; and

⁹ Assignments are explained to students in detail in their Student Resident Handbook

- **Time-bound**, i.e., goal will be accomplished by certain date.
- Each goal should have at least 1 benchmark, the measure of whether the goal has been met.

EXAMPLE:

Goal 1 = Learn how to conduct an effective client interview

Objective 1 = Read about client interviews. Ask supervisor for materials to read or watch.

Objective 2 = Observe three client interviews by three different attorneys. Come prepared, having read file or other information beforehand. Take notes, if permissible.

Objective 3 = Obtain assignment to interview client. Write out plan for interview. Review plan with Supervisor.

Objective 4 = Conduct interview, with supervisor present.

Objective 5 = Obtain feedback from supervisor

Objective 6 = Incorporate feedback in additional client interviews. Repeat as often as possible.

Benchmark 1 = Conduct at least three client interviews by April 30

Benchmark 2 = Show effectiveness through feedback from supervisor and, possibly, clients.

The primary purpose of a Faculty Supervisor's first individual meeting with Residents is to review and give feedback on their *Learning Goals and Plan*. Chapter Two of *Learning to Serve*, entitled *Charting Your Path to Success—Professional Development Planning*, addresses goal setting in the legal field placement context. You are encouraged to review the chapter in preparation for your individual meetings in order to give the best advice, since students are not assigned the chapter. You can also consider assigning it.

When coaching students on their goals, keeping in mind the types of tasks that lawyers do in particular settings might prove helpful:

<i>Trial-Level Litigation</i>	<i>Transactional Work & Appellate Litigation</i>
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; pre-trial motions	Presentations; oral argument

Negotiation: preparation & observation; strategy	<i>General</i>
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

Even though the “final” version of the Resident’s *Learning Goals and Plan* is submitted, it should not be viewed as set in stone. It can be updated to reflect new goals that develop as a result of student’s ongoing learning experiences. In fact, students are asked in the mid-term self-assessment whether they should change any of their goals.

B. Stage Two: Doing . . . With Effective Supervision and Feedback

While some lawyers are effective student supervisors, others mean well but struggle. Even good supervisors have lapses, often due to busy schedules. Thus, it is helpful if students and Faculty Supervisors understand what effective supervision looks like and how to seek it. Chapter Three from *Learning to Serve*, entitled *Learning from Supervision* is assigned reading for students and is the basis of one of the reflective writing assignments.

Some tips for effective supervision and feedback are provided to Field Supervisors in their Handbook. In the following two subsections, the same information is shared with you and is organized around the two components of effective supervision: challenging assignments and constructive feedback. The third subsection discusses YOUR role in ensuring effective supervision and feedback.

1. Giving Assignments

In their Handbook, Field Supervisors are told that 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 placement 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 regularly be assigned to perform routine or repetitive work, or clerical tasks such as filing, photocopying, or library updating.

At some placements, assignments come from more than one attorney. In this situation, we recommend that the Field Supervisor serve as a "clearinghouse" through which all assignments must pass, making this person more of a Site Supervisor with multiple Field Supervisors. The Site Supervisor should gather potential assignments from others and review the proposed work before it is assigned. In this way, the placement 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.

An effective approach to giving a Resident a work assignment entails:

a. 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.

b. 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. 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 is expected from the student.

c. 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. It is difficult to 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. Reviewing final work product or performance. 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 Residency. 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.

At the same time, students must do their part to make sure they understand assignments in order to produce quality work. An *Assignment Clarification Cheat Sheet* is available to students on TWEN. Students should be encouraged to use this checklist to make sure they have answers to all the relevant questions for tasks assigned, particularly written assignments. The questions are:

- When do you need this? or, How long do I have to work on this? or, How much time should I plan to spend on this project?
- Are you available if I have questions or need to check in? Can I email you with questions?
- Do you have any suggestions about the best place to start my research? or I was thinking of starting with the treatises [or Westlaw] [or A.L.R.]; would you recommend anything else?

- Are you interested in federal [or NC or 4th Circuit] law only, or should I broaden my search?
- Are there any samples of this type of [motion/brief/pleading/memo] I can look at? Where can I find them?
- Along with my memo, do you want me to turn in copies of the cases or other research materials I used? [Even if the answer is “no,” save them in case your supervisor asks for them later.]
- Are there any documents from the case file that I can look at to familiarize myself with the case more generally?

And the most important question:

- OK, just to make sure I understand, you want me to... (sum up assignment).

2. Giving Feedback on Performance

The importance of giving feedback to Residents cannot be over-emphasized. 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 verbal. Feedback is so essential that the ABA, in its accreditation standards, requires that for students to earn academic credit for fieldwork, the site must provide multiple opportunities for performance, feedback, and self-evaluation.

Both giving and receiving feedback can be uncomfortable. Supervisors may be reluctant to critique a student’s work, but students need, deserve, and actually *want* honest feedback. Without feedback, externs often 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 shared with Field Supervisors in their Residency Handbook is called **FAST**:¹⁰

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

¹⁰ Mentor Handbook, Brooklyn Law School Externship Programs (2017) at 10.

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, students are likely to repeat their mistakes.

Providing feedback does not mean that the Field or Faculty Supervisor should offer suggestions and the student should sit passively and accept those suggestions. Students will get far more out of a discussion when they are actively involved in evaluating their own performance.¹¹ To this end, we share with Field Supervisors a two-step process:

a. Student Self-Assessment. Ask students first to assess 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 Assessment 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?"

¹¹ 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).

- **Remain open** to the possibility of improvement. If a student's work does not measure up, you may be inclined to assign less demanding work. Instead, aid the educational mission by giving the student a chance to learn and improve.¹²

Ideas for what to look for on a broad range of legal and professional skills include:

- **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 the student able to identify the relevant issues? Does he integrate legal concepts with facts in a coherent and logical progression?
- **Creativity:** Is the student able to develop alternative arguments and pursue analogous extensions where the law is nebulous? Does she display curiosity and imagination?
- **Writing skills:** Are the student's drafts focused and well-organized? Does he write clearly, and persuasively? Does he use excessive legalese? Does he write for the appropriate audience? Does he cite accurately?
- **Oral advocacy:** Does the student communicate effectively with you, her colleagues, and the clients?
- **Professionalism:** Does the student ask questions when needed? Is he dependable? Does he manage her time well? Does he work independently? Does he accept criticism? Does he take initiative? Was he reflective of his work on the matter?
- **Client relations/communication:** Is the student diplomatic? Does she make clients feel comfortable? Is she persistent?¹³

Again, students have a role to play in getting feedback. They should seek feedback on all assignments and performances. As students are told in their Residency Handbook, they should :

- Seek feedback in a timely manner
- If Supervisor is busy, set appointment
- Be prepared
- Ask for examples when not clear
- Keep the lines of communication open
- Be appreciative

¹² Mentor Handbook, Brooklyn Law School Externship Programs, *supra*.

¹³ 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.

3. The Role of the Faculty Supervisor

As set out in ABA Standard 304(d)(ii), in field placement courses, there must be “regular contact between the faculty and [field] supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience.” Communication between Faculty and Field Supervisors in the Residency-in-Practice course occur both directly and indirectly, i.e., through students.

In your individual meetings with students, either in person or virtually, you can assess what the student is doing and how the student and Field Supervisor are interacting. Importantly, at the initial meeting, you can help shape the student’s learning goals and planned activities, input that the student takes back to the Field Supervisor. In addition, by reading the student’s learning journal and timesheet weekly, you can stay abreast of what the student is doing and look for any red flags that the student is not getting substantive work or is unhappy or having difficulty with his or her Field Supervisor.

You will contact the Field Supervisor directly when you send him or her a formal assessment form early in the term and at the end. These assessment forms are available through the Experiential Faculty Hub on TWEN or directly from the Director of Residencies. The forms are tools that the Field Supervisor uses to dialogue with the student about the areas of lawyering skills, knowledge, and values in which the student has excelled and the areas in which he or she can improve. The forms are signed by the Field Supervisor and by the student before being uploaded on TWEN.

Your most significant contact with the Field supervisor is around mid-term, when you check in with all Field Supervisors to assess the quality of the learning experience of your Residents and their progress on their goals. Ideally, this check-in is in person, with the student present. Not only can assessments and corrections be made better in person, both the student and the attorney or judge usually appreciate the personal touch. However, if time or distance does not allow for an in-person check-in, it can be done via phone or Skype, with or without the student participating. A form to document this contact is located on TWEN.

C. *Stage Three: Reflection*

Reflection is part of the cycle of developing expertise. As noted above, to develop legal expertise, one must identify the necessary skills for success, practice those skills, reflect on the performance of those skills (and on the performance of others), make adjustments, and repeat. Chapter Eight of *Learning from Practice* provides an excellent discussion on teaching students to be reflective lawyers and is thus recommended reading. The chapter is not assigned to students. Instead, the journal prompt on reflection uses a video on the importance of reflection in experiential education, lightening the reading load for students. However, you are always free to substitute Chapter Eight or any other learning from reflection tool.

Several components of the Residency course are designed to aid students in developing the habit of reflection and recognizing valuable opportunities for learning in Residency.

1. Learning from Practice Journals

To systematize faculty-guided reflection, students are required to write weekly learning journal entries. Prompts are provided in TWEN assignments for the students to reflect upon and to record their thoughts. These topics are intended to compel students to record, observe, reflect upon and critically evaluate their experiences. Students are encouraged to read the prompt at the beginning of each week, though their journal entries are not due until the end of the week. A common mistake students make is that they record experiences from a factual perspective, as opposed to writing their analysis of those experiences. Students should keep descriptions of the activity, observation or discussion brief and focus on their thoughts, ideas, responses and reactions. TWEN provides you an easy channel to respond to student assignments with your feedback on their reflections.

Note that journal entries are also a useful tool for students to communicate confidentially with you. Thus, it is important for Faculty to read the journals close in time to their submission by students.

Nuts and Bolts:

- Journal submissions are due in the TWEN assignment drop box each week by Sunday at midnight (unless you indicate on your syllabus otherwise).
- Student's name and date should appear at the top of the first page of every submission.
- Submissions should be at least 2 full pages, excluding any restating of the topic, and no more than 5 full pages.
- Double-spaced with 12 pt. font.
- Organized well and with complete sentences. Think of it as a professional communication
- No client confidences or protected work product should be contained within journals.

Failure to abide by the requirements is grounds for a grade reduction. Examples of good Learning from Practice Journals provided to students and are included in Appendix C for your convenience.

2. Residency Conferences

Over the course of the term, students meet with you individually at least twice to review goals, to reflect on progress towards meeting them, and to address any other issues important to student success. They also meet with you in two conferences with other Residents in your section, known as a Practice Affinity Group. (This is in addition to a meeting during the Introduction to Residency Workshop.) These faculty-led group conferences typically provide the students opportunity to share what they have been doing and learning, as well to discuss any Residency issues that might benefit the group.

3. Self-Assessments

"Knowing thyself" is key to success and happiness in one's personal and professional life. In seeking professional growth, critical self-knowledge serves as a baseline from which to improve. Residency provides students the opportunity to examine their initial steps at lawyering, the critiques they receive, and their own understanding of what they have accomplished. Formal opportunities for self-assessment are provided in journal prompts at the mid-term and end-of-term.

D. Stage Four: Integration

After honest reflection, students should be ready to make changes and integrate what they have learned into their plan on how to proceed with their goals or toward new goals. It is at this point that the cycle starts over.

Hopefully, student improvement from feedback and reflection will be noticeable in the Field Supervisor's final assessment of the student. Upon receipt of this assessment, the Faculty Supervisor should have all the information needed to provide a final grade to the student. As set forth in your syllabus, the student is graded on a pass/fail basis. Minimum requirements to pass are:

1. Completion of required number of hours.
2. Timely submission of all assignments, including weekly journal entries and time logs.
3. Professionalism in dealing with Site Supervisor, Faculty Supervisor, and clients.

Exemplary performance on-site and in written assignments may result in a High Pass. Failure to meet standards will result in either a Low Pass or a Fail, depending on the degree of the gap.

V. CONCLUSION

The responsibilities of Residency Faculty Supervisors are summed up in the Residency Trimester Agreement signed at the beginning of the term by you, the Resident, and the Site Supervisor. These are:

- A. The Faculty Supervisor, with assistance from other Elon faculty, agrees to interact with the Student and the Field Supervisor to ensure a quality educational experience at the Student's field placement.
- 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 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 Field 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.

The Director of Residencies is responsible for the structure of the Residency program, provides technical assistance and training to Field and Faculty Supervisors, approves placement sites, resolves problems that arise, and works with all involved to ensure ABA standards and other regulations are met. This Handbook is a work-in-progress, and all feedback to make it more useful to faculty is appreciated.

APPENDIX A

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 FLSA¹:

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.

¹ See WHD Fact Sheet 71, enclosed, for further guidance.

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.² 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).

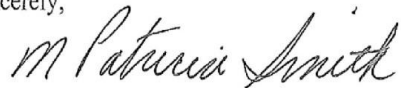
You also raised concerns that recent law school graduates who have not yet passed any state bar should be able to participate in unpaid internships with law firms working on pro bono matters to the same extent as current law students. But we understand from your communications that the Labor and Employment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

² The Department considers all of the facts in assessing whether all of the criteria are met. A different set of circumstances may, thus, lead to a different conclusion.

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

Elon University Non-Discrimination Policy

Field Supervisors are responsible for ensuring a safe and comfortable work environment for Residents. Elon University School of Law does not tolerate workplace bullying or harassment of any kind and enforces the University's nondiscrimination statement:

Elon University does not discriminate on the basis of age, race, color, creed, sex, national or ethnic origin, disability, sexual orientation, gender identity, or veteran's status (collectively, "Protected Categories") in the recruitment and admission of students, the recruitment and employment of faculty and staff, or the operation of any of its programs." Consistent with our nondiscrimination statement, the university does not tolerate discrimination or harassment of employees, students or other individuals associated with the University including, but not limited to, vendors, contractors, and guests on the basis of any of these Protected Categories.

Definitions

- 1) Discrimination. Prohibited discrimination occurs when an individual suffers an adverse employment, academic or other decision based on Protected Categories.
- 2) Harassment is defined as conduct (including verbal, written, visual, or physical conduct) that denigrates or shows hostility against an individual based on Protected Categories when such conduct has the purpose or effect of:
 - i. unreasonably interfering with his or her work or academic performance, or
 - ii. creating an intimidating, hostile, humiliating, or offensive working, living or learning environment.
- 3) Sexual harassment. Sexual harassment is a particular type of harassment and is a form of prohibited sex discrimination. Sexual harassment includes sexual violence. Sexual harassment generally may be described to include unwelcome sexual advances, requests for sexual favors, or other physical and expressive behavior of a sexual nature when:
 - i. Submission to or rejection of such conduct is made either explicitly or implicitly a term of or a condition of education, employment, or participating in university activities;
 - ii. Submission to or rejection of such conduct by an individual is or could be used as the basis for evaluation in making academic or personnel decisions affecting that individual; or

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance, or creating an intimidating, hostile or offensive working, living or learning environment.

Examples of sexual harassment vary with the circumstances but may include, but are not limited to, slurs, threats, derogatory or suggestive comments, unwelcome jokes, and displays of sexually-oriented literature or pictures, unwelcome teasing or sexual advances and other similar verbal or physical conduct, including e-mail, phone calls or other online communications. Sexual violence includes acts such as rape, acquaintance rape and other forms of non-consensual sexual activity.

APPENDIX B

The Judicial Residency May Match

Judicial Residencies are an unparalleled opportunity to learn about the justice system from the inside, to network, and to build your resume. We are fortunate to have judicial residency opportunities not only with federal and state judges who require applicants be at the top of their class but also opportunities with specialty courts that care only that candidates have strong writing skills and an interest in the subject matter.

A catalog of Judicial Residency opportunities in North Carolina is posted in the Spring Trimester. Students who do well in Legal Method and Communication are eligible to apply for a Judicial Residency. Students who participate in the Judicial Residency Match but do not receive an offer, may proceed along either of the other paths to obtain their Residency.

The Independently Arranged Placement

Students may arrange their own Residency OUTSIDE OF THE METROPOLITAN AREAS OF NORTH CAROLINA as long as the prospective placement is NOT listed in the most recent catalog of participating sites. To qualify as a Residency, the placement location must provide opportunities for the student to engage in 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. The supervising attorney must have a minimum of four (4) years of full-time practice experience and must not be a member of the student's family.

- **PRE-CHECK:** BEFORE contacting any potential independent placement site, students must check with the Office of Career & Student Development or the Director of Residencies. This STEP insures that the student is not interfering with a relationship already established by Elon with that site and, in certain high-profile placement locations best contacted by Elon Law directly, that the student is not undermining your chances of securing a Residency.

Once the student has found an interested and qualified attorney or judge, he or she submits an application for approval through the Residency website. The Director of Residencies

then sends an application to the prospective field supervisor. The Director of Residencies reviews the applications and notifies the student of her decision.

The Fall Residency Match

All 2Ls who do not secure a Residency placement through the Judicial Residency Match or through the Independently Arranged Residency process MUST be matched with a Residency placement through the Fall Residency Match. An online catalog of participating placement sites containing information regarding practice areas, type of work, and any special requirements is provided. Students submit an application identifying their top preferences for Residency placement and trimester. In a hands-on, individualized approach, the Director of Residency, in consultation with the Office of Student and Career Development, matches each student with the placement that best fits their interests in specific areas of law, in types of practice, and in geographic location. The team seeks to make successful matches that enable each student to develop specialized knowledge and skills, while building credentials and networks that support their career goals.

APPENDIX C

Examples of good journal entries

Melissa

Watkins

November 3, 2017

Describe your most challenging experience in your field placement. What made the experience challenging? How did you handle the challenge? Was the result satisfactory? If so, why? If not, what could you have done differently?

The most challenging part of my field placement is the subject matter of some of the cases. My placement with the Bureau of Prisons has provided me with the opportunity to work on a wide variety of cases involving various areas of law. However, certain areas prove to be more difficult than others. Specifically, I have been assigned to cases involving child molestation and severe mental illness, and those cases have been very challenging to handle.

The subject matter of certain types of cases is challenging because it requires me to engage with a topic that is very uncomfortable and unpleasant. In order to effectively represent the US government in cases involving child molestation, I at times have to read through difficult case files, containing graphic material. Additionally, some of the cases require watching interviews with victims and that is always incredibly upsetting. Mental health cases are also very challenging because of the emotional impact of the case. Mental health matters often involve individuals who are suffering from very severe cases of mental illness. Those illnesses manifest themselves in a way that can often be challenging to those handling matters involving the individual. Both child molestation and mental illness are matters that Americans often avoid talking about and that makes both issues even more uncomfortable.

Handling these cases has been challenging but as time has gone on I have found ways to cope with the difficult and upsetting nature of the cases while ensuring that I am still able to effectively do my job. One major way I handle these difficult cases is to take breaks from working on them periodically. It is easy to get absorbed into the negativity that such cases present, so I have found it important to remove myself from the cases and clear my head. This helps me to avoid becoming too upset. Additionally, I will reach out to attorneys in my office to vent and

discuss how I am feeling about certain cases. This has proved very beneficial because I am able to talk to someone that is familiar with the work and the challenges presented by certain types of cases. Having someone that understands the challenges helps because they often can provide helpful perspective and coping techniques. My final way of dealing with these challenging cases is to make sure that I leave my work at work. I try to not think about these cases after leaving work because it can very easily become very overwhelming.

My coping strategies have been successful in helping me to deal with this challenging aspect of my placement. I have become more capable of handling these difficult cases and do not dread being assigned these cases as much anymore. Initially, I found these cases hard to work on, and even harder to talk about. However, now I feel more comfortable working on these cases and reaching out to the attorneys in my office about these uncomfortable matters. Even though I feel as though I have made good progress in dealing with these aforementioned challenges, I wish that I had developed effective coping strategies earlier on in my time with the Bureau of Prisons. I spent a decent amount of time being unable to cope with these difficult cases with upsetting subject matter and found that I dreaded having to work on such issues. However, now I feel as though I am better at my job because I am more readily able to take on such cases and produce quality work regarding the legal issues presented by them.

Despite the difficulty, I am very happy to have been exposed to this challenge while at my placement with the Bureau of Prisons. I have already seen the value that overcoming such a challenge will provide to me moving forward in my career. I have referenced such challenges in several job interviews that I have been involved with because the interviewer asked a question about handling difficult cases or challenges.

Charles Draeger
Journal #7
October 26, 2018

This week I had a soul-searching moment after a pair of jail visits to go over discovery with clients. I struggled to reconcile my thoughts with the goals of defending clients.

I went to the first client who was charged with an impaired double vehicular homicide. I was worried that I would struggle to put my feelings about the crime aside in order to assist the client. I was especially concerned with how I might respond to the client's attitude. I was pleasantly surprised by this client. He was cooperative and receptive of my help and was not trying to assert untenable positions. I wanted to help this guy get fair treatment under the law.

The second client I visited was charged with assault with a deadly weapon inflicting serious injury, amongst other assaults, over a period of months against the same alleged victim. I read through the discovery before going over to the jail, including a jail call that made me question whether he was being honest with his attorney. However, it did not seem like an out of the ordinary domestic assault case. I have worked those cases from both sides of the shuck and was confident I would not have any big problems with it. By the end of talking about the discovery with this client I was could not muster a pleasant thought regarding this client.

This combined with some of my prior observations about defense attorneys differing opinions of their clients made me seriously question if anyone can fairly and zealously represent someone that they do not like. These clients may receive satisfactory care under the law, but there is a difference between zealous advocacy and perfunctory advocacy. I do not want to accept that my career will require perfunctory advocacy. The question that remains is whether that is a commitment that a person can make or whether certain roles in the criminal justice system require such behavior. I am worried that public defenders, generally, must engage in less than zealous advocacy. They cannot filter what cases they are assigned like private defense counsel can. They also do not have control over the dispensing of justice like the district attorneys do.

I spoke to one of the public defenders about this. I was advised that you can only be as zealous as your client allows you to be. If his behavior hinders his own defense, and you have advised your client of that risk, then the best you can do is all you can offer. I still worry that perception and emotions regarding a client may set the bar for "the best that can be done." I have tried to dig past that. I take extra time with clients who have made my job difficult. If they need me to sit down and listen to them scream for half an hour before we can make progress on their case, then that's what I do. I do not know how to deal with a client who is determined not to trust

his attorney with the truth. However, I have been able to eventually break through the resistance and accomplish my goals with clients through showing them that I am there for however they want to handle their case. I have played the role of the legal analyst, educator, therapist, and stand-up comedian. I have felt that I fulfilled my role as their attorney in all those instances.