

APPENDIX 6

CLINICAL PROGRAMS POLICIES AND PROCEDURES CONCERNING CONFLICTS OF INTEREST

The policy and procedures set forth herein are intended to address actual and potential conflicts of interest arising from participation in the Suffolk University Law School Clinical Programs (SLC). The first goal of these procedures is to protect the interests of clinic clients. The second goal of these procedures is to allow clinic students to participate in the SLC to the greatest extent possible. The third goal of these procedures is to teach student attorneys to fulfill their ethical obligations in accordance with best practices.

Clinic students will be expected to review these policies and procedures, which are included in the Suffolk Law Clinic Handbook, and sign an *Acknowledgment of Guidelines and Responsibilities*.

I. Reporting Requirements and General Conflict Check Rules

1. Clinic students are required to **know and adhere to the Massachusetts Rules of Professional Conduct (Mass. R. Prof. C.)**. Conflicts of interest are governed by Mass. R. Prof. C. 1.7 – 1.11. Any clinic student aware of any potential conflict must immediately bring the matter to the attention of their supervisor(s). Students should be mindful that their conflict check responsibilities are a continuing obligation while enrolled in Clinic.

2. Supervisors in the SLC will distribute a ***Conflict of Interest Form*** to all new clinic students when they join the SLC. The purpose of this form is to gather information about past and current legal employment, as described below. Supervisors and clinic students will discuss potential conflicts at the start of the clinic and also as needed during weekly supervision meetings.

3. **Past Legal Employment:** Clinic students who have performed any prior legal work outside of the SLC must commit to working with their supervisor(s) to identify potential conflicts of interest.¹ In order to do so, student attorneys must maintain and provide a list of prior legal employers, as well as a list of all matters on which they worked and/or acquired confidential information relating to the representation. This information will be included in the *Conflict of Interest Form* and is for the purpose of identifying conflicts related to prior representation.²

4. **Current Legal Employment:** Student attorneys who work in a legal capacity *while* participating in the SLC must also guard against conflicts of interest. To do so, students must maintain and provide a list of all matters associated with their outside employment on which they have worked, continue to work, and/or about which they acquired confidential information relating to the representation. A list of such cases will be included in the *Conflict of Interest Form* and is for the purpose of identifying conflicts related to their representation of non-SLC clients during concurrent, outside legal employment.

¹ Clinic supervisors will make a determination of whether the student is “associated with” the outside firm in question and will instruct students regarding any further obligations under the Mass. R. Prof. C. Clinic supervisors are to use the analysis of “associated with” found in ABA Formal Op. 88-356.

² At the time of accepting a spot in the SLC, students were apprised of their obligation to maintain complete lists of past and current legal employment, cases on which they have worked, and cases about which they have acquired confidential information related to the representation.

II. Conflict Checks for Newly Assigned Clinic Clients

Students must ensure that there are no conflicts of interest involving any cases they have been assigned (including cases new to the clinic and ongoing clinic cases on which former students worked).³ ***Every time a clinic student takes on a matter that is new to them, the student must conduct an initial conflict check as described below.***

5. Internal Conflict Check against Existing and Former SLC Clients: This conflict check is designed to ensure SLC's representation of a new or current client does not conflict with our representation of another client, former client, or other person associated with SLC. Clinic students will run a conflict check in Clio for all prospective and new clinic cases, as well as all ongoing cases to which they are newly assigned. For this initial conflict check for new and newly assigned cases, students should identify all known relevant names associated with the matter including, but not limited to, clients, opposing parties, and potential witnesses. To conduct these searches, clinic students should put all of the first and last names identified into the search field in Clio, including conducting a search of the first and last names with variable spellings where warranted. This will ensure that all potential conflicts with current and former SLC clients and parties are identified.

Clinic students must print out a report documenting this conflict check, regardless of whether the Clio search returned any results. Clinic students must print a report for every name entered during the conflict check and bring the printed records to their clinic supervisor(s) for a discussion about whether there is a potential conflict and the appropriate next steps. This documentation must be appended to the Case Opening Form for new matters.

6. Conflict Check against Outside Employment: Clinic students must also make sure that there is no conflict between their newly assigned cases and cases on which they are working or have worked through outside employment, or about which they received confidential information through their outside employment. To run this aspect of the conflict check, students should check the names of their newly assigned clients against their most up-to-date list of former and current clients and cases from outside employment (those should be listed and updated in the *Conflicts of Interest Form*). Students should also ask their colleagues within their individual clinics to do the same - check the student's newly assigned cases against their colleagues' *Conflict of Interest Forms*.

7. New Individuals in a Matter: These conflict checks have to be performed with respect to all relevant parties to a matter including clients, opposing parties, and witnesses. When a student identifies new individuals relevant to a matter (e.g., witnesses), the student may need to conduct additional conflict checks against these new individuals. The student should discuss with his/her supervisor whether any additional conflict checks need to be done.

8. Documenting Conflict Checks for Newly Assigned Cases: As noted above in paragraph 5, clinic students should print out a report documenting the results of each conflict check conducted in Clio, regardless of whether a conflict was identified. This report should then be scanned and added as a PDF into the newly assigned matter in Clio. To the extent any potential conflicts were identified, the student should create a note in the newly assigned matter in Clio indicating that

³ For new clinic clients assisted as part of a limited assistance representation project ("LAR") or lawyer for the day programs, these procedures may not apply. Rather, pursuant to Mass. R. Prof. C. 6.5, students are instructed to decline representation in some LAR contexts only if either the student or his/her clinic supervisor knows that the representation would pose a conflict of interest. See Mass. R. Prof. C. 6.5(a) and (b) and relevant comments.

the student met with his/her supervisor regarding the potential conflict and reporting how the potential conflict was resolved.

III. Identifying “Imputed” Conflicts Related to Outside Employment⁴:

For those students who are or have worked in a legal capacity outside of SLC, there are additional conflict check requirements to avoid *imputed* conflicts – conflicts that pass from one lawyer in a firm to other lawyers in the same firm. In other words, just because neither you nor SLC has any conflicts associated with the cases on which you are working in your Clinic, doesn’t mean SLC as a large firm (with many Clinics) doesn’t have conflicts associated with your prior or current outside employment. This type of conflict check, which protects against imputed conflicts, should be conducted at the start of the year by any student who has worked on any cases in prior outside legal employment. For those who continue to work outside of SLC while participating in a Clinic, these conflict checks must be conducted periodically.

9. Imputed Conflict Checks against *Prior Outside Employment*: At the start of the school year, Clinic students will run a conflict check in CLIO for all clients he/she has represented outside of SLC or about whom he/she has acquired confidential information related to *prior employment outside of SLC*. This involves checking all of SLC’s clients (from all Clinics) against all names documented in the student’s *Conflict of Interest Form*. For this conflict check, students should identify all known relevant names associated with prior outside representation including, but not limited to, clients, opposing parties, and witnesses. To conduct these searches, clinic students should put the names associated with past outside employment into the Clio search field. Be sure to check different spellings if there are multiple ways a name can be spelled. Clinic students must print a report for every name that produces a result during the conflict check and bring the printed reports to their clinic supervisor for a discussion about whether there is a potential conflict and what appropriate next steps should be.

10. Imputed Conflict Checks against *Current Outside Employment*: *As noted in paragraph 18 below, all students working outside of SLC during their enrollment in SLC must first obtain the permission of their supervisors.* At the start of the school year, mid-year, and as needed thereafter, Clinic students concurrently working outside of Clinic will run conflict checks in CLIO for all clients he/she has represented, is currently representing, or about whom he/she has acquired confidential information, related to work through *current employment outside of SLC*. This involves conflict checking SLC’s clients (for all Clinics) against all names documented in the student’s most up-to-date *Conflict of Interest Form*. As students take on new cases or acquire information about new cases associated with *concurrent* legal employment outside of their clinic, they must run updated conflict checks in Clio against those outside names. For these conflict checks against outside employment, students should identify all known relevant names associated with outside representation including, but not limited to, clients, opposing parties, and witnesses. Clinic students should put these names into the Clio search field. Be sure to check different spellings if there are multiple ways a name can be spelled. Clinic students must print a report for every name that produces a result during the conflict check and bring the printed reports to their clinic supervisor for a discussion about whether there is a potential conflict and what appropriate next steps should be.

⁴ This part of the policy ensures that students who have had or currently have outside legal employment do not bring with them to our firm any conflicts of interest. The SLC operates as “one firm” for the purpose of conflict checking. Therefore, if a student in clinic A has represented a client in outside employment, clinic B may be prohibited from taking or continuing to represent a client in a related matter.

11. Documenting Conflict Checks for Imputed Conflicts: Clinic students should log these conflict checks related to outside employment in their clinic’s ***“Imputed Conflicts Log,”*** matter located in CLIO. An entry should be made via a “note” in the Conflicts Log matter confirming that the student ran a thorough conflict check against all outside employment and noting whether and to what extent the conflict check revealed any potential conflicts. Supervisors will review the Imputed Conflicts Log periodically to confirm that conflict checks have been properly conducted.

IV. Resolving Conflicts

12. Clinic students will meet with their supervisors concerning the results of their conflict checks. Supervisors will consult with the program administrator to determine what other clinics are implicated. Should a potential conflict be discovered, the student and her/his supervisor must take the appropriate remedial steps (see paragraph 13 below). If the potential conflict involves another clinic, the supervisors for each clinic shall meet and determine whether a conflict of interest exists.

13. In resolving conflicts, the faculty in the SLC will make every effort to reconcile the interests of the clinic student and client. Appropriate remedial steps may include: (a) declining representation of the prospective clinic client, (b) seeking informed consent from all effected clients, (c) withdrawing from the case, and only as a last resort, (d) discharging the clinic student from the SLC. In rare circumstances, the SLC may seek other means of resolving conflicts under the law including, but not limited to, screening the affected student from work in other clinics in potential inter-clinic conflicts or obtaining an opinion letter from the Board of Bar Overseers. “Screening” refers to shielding the affected clinic student from any personal participation in or access to the conflicted client matter and avoiding any discussion about the case with the clinic student to avoid inadvertent disclosure of the client’s confidences.

V. Ongoing Duties Owed to Clients after Graduation

14. Students should be aware that they will owe an ongoing duty of loyalty to those clients they represented while enrolled in SLC, as well as those cases about which they acquired confidential information. This includes the duty to avoid conflicts of interests related to past representation of clinic clients and the duty to maintain client confidentiality. Students must carefully read and be aware of Mass. R. Prof. C. 1.9 and 1.10, or the equivalent in their local jurisdictions.

VI. Confidentiality Obligation of Clinic Students

15. Clinic students owe a duty of confidentiality to all clinic clients, and as a general matter cannot reveal information about clients to persons outside the firm. This duty of confidentiality survives the termination of the student’s clinic student status. Please see the *Policy and Procedures Concerning Confidentiality within the Suffolk Law Clinical Programs* in this Handbook.

VII. Procedure for Clinic Students and Former Clinic Students to Provide Conflict-checking Information to Non-clinic Legal Employers

16. A clinic student (or former clinic student) who is asked for conflict-checking information relating to SLC clients, former clinic clients, or prospective clinic clients may as a general matter

provide an employer or prospective employer with a list of each matter personally handled by the student while participating in the clinic (including the names of any significant parties to the matter and a summary description of the matter), but *only on the condition that* the employer or prospective employer provides the SLC with a signed copy of the *Agreement Regarding Non-Disclosure of Confidential Information*, guaranteeing that the information provided for purposes of conflict checking will be kept confidential. The student shall not provide additional information, and if a clinic student (or former clinic student) is requested to do so, the student shall consult with his or her supervisor. The supervisor shall provide such additional information only upon a determination that the information requested is essential to running a conflicts check. A supervisor may also decline to provide requested information upon a determination that complying with the request (even such basic information as the name of a client) may materially prejudice the interests of the client or former client.

17. A clinic student who is simultaneously employed by a legal employer should make arrangements with his/her supervisor and his/her legal employer for the ongoing provision to both the SLC and the legal employer of such information necessary for both to perform conflict checks.

VIII. Clinic Students Seeking Employment or Internships/Externships During Clinic

18. Clinic students are prohibited from accepting any employment (paid or unpaid) at any outside organization or firm during their tenure as a clinical student without *prior* approval by both their Clinic supervisor(s) and, if deemed necessary by the supervisor(s), the Director of Clinical Programs.

IX. Conflict Check Example

Mary is a brand new student in the Family Advocacy Clinic (FAC) and has been assigned her first new case. Mary has a part-time job working at a local firm. Below is a summary of the actions Mary must take to ensure there are no conflicts of interest related to her work on the case:

- 1) Mary must first enter the name of her new potential client and all key parties/witnesses into Clio and conduct a conflict check against other clients of the Clinical Programs per Part II, Par. 5 of these policies. She must put the results of this conflict check in the case matter once it is opened, per Par. 8.
- 2) Mary must then check the names of the new client and key parties/witnesses against the names in her *Conflict of Interest Form* from prior and current outside employment, per Part II, Par. 6 of these policies. She must put the results of this conflict check in the case matter once it is opened.
- 3) Mary must then ask her colleagues in the FAC to check the name of the new client and key parties/witnesses against the lists of their past and present clients from prior work (from their *Conflict of Interest Forms*), per Part II, Par. 6 of these policies. She must put the results of this conflict check in the case matter once it is opened.
- 4) Mary must enter all names from her *Conflicts of Interest Form* into Clio, per Part III, Par. 9 & 10. She must then put the results of this conflict check in the Imputed Conflicts Log in Clio per Par. 11.

- 5) Should any of these steps produce potential conflicts, Mary must take the information to her Supervisor to discuss an appropriate resolution per Part IV, Par. 12 & 13.
- 6) Assuming Mary proceeds with representing the new client, Mary should be aware that she has an ongoing obligation to conduct additional conflict checks with new parties, pursuant to Part II, Par. 7.
- 7) At least mid-year, and more frequently if deemed necessary, Mary should update her list of clients from outside employment in her *Conflicts of Interest Form* and enter any new names in the Clio search field per Part IV, Par. 10. Mary should document these ongoing searches in the Imputed Conflicts Log matter per Par. 11.