

Ethical Issues

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**ETHICAL ISSUES IN
SUPERVISING LAW STUDENTS
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Supervisor CLE**

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ETHICAL ISSUES IN SUPERVISING LAW STUDENTS

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I. OVERVIEW

Students participating in Field Placements are expected to conduct themselves as professionals at all times and abide by the applicable rules of professional conduct. By undertaking the responsibility of supervising law students in field placements, supervising attorneys likewise assume responsibility for students' ethical conduct. This program is intended to offer a framework for considering some of the ethical issues that typically arise in the context of law student supervision in field placements.

The Georgia Rules of Professional Conduct require supervisory lawyers and law firms to take reasonable steps to ensure that non-lawyer assistants, including law interns, as well as subordinate lawyers, comply with the ethical codes and rules. These materials provide guidance for law interns and supervisors in Georgia.

II. ROLE OF SUPERVISING ATTORNEYS - GENERALLY

A. Obligation to Improve the Profession

As a supervising attorney, you play a key role in the students' development of foundational ethical practices and serve as a guide for students as they work in their field placement and beyond. Students will look to you for an understanding of how the ethical rules are put into practice and how an attorney acts in a professional manner. Assisting students by serving as a model of professionalism is part of the overall obligation to improve the legal profession.

The field placement may be one of the first instances in which law students directly interact with practicing attorneys in a professional setting. It is important for you to explore ethical issues students may encounter and explain their importance in practice. The essential ethical rules which students in field placements should be taught to recognize are the Georgia Rules of Professional Conduct, specialized ethical codes and rules (such as those for judges) and the ethical policies and rules used by your particular office or agency.

B. Screening for Conflicts (e.g., student employment)

All externship sites should have conflicts screenings procedures in place and should ask about potential conflicts during the application and interview process. Despite these procedures, it is possible that a conflict will arise during the course of the field placement. For example, a student may receive an offer for a summer position at a law firm or agency that is frequently

adverse to your office. It is essential in that case that both the student and the supervising attorney are aware of any potential conflicts and that such conflicts are handled appropriately.

The Georgia Rules of Professional Conduct allow flexibility in the type of overall apparatus used to evaluate conflicts – this flexibility depends on the size of the legal office and the resources that it has available to it.

If you determine that there is a conflict you have several courses of action available depending on the severity of the conflict. In the most serious situations the appropriateness of the field placement may need to be reevaluated. In other instances, however, the conflict can be handled through the use of an internal screening process. This process involves ensuring that the student with a conflict does not work on the matter that is the source of the conflict and that the student does not discuss the matter with others in the office. Further, the student should regularly be reminded of his/her confidentiality obligations [Rule 1.6]

C. Communication with Students

As a supervising attorney, you are the person to whom students will turn when they have questions or need clarification on the tasks they are assigned. In order to make the field placement a valuable learning experience, you should encourage students to ask questions and to come to you for clarification and guidance. You should also ensure that students receive feedback on their work from you as well as from other attorneys in your office who may assign legal tasks to students.

III. RESPONSIBILITIES OF STUDENTS - GENERALLY

A. Understanding Professionalism and Ethical Responsibilities

All the Georgia schools, either in an orientation or in regular class sessions, work with students to ensure they understand issues of professionalism and their ethical responsibilities. Students are directed to specifically consider their responsibilities with regard to confidentiality, conflicts of interest, competence, and client centered representation.

Students are also encouraged to take a proactive role in identifying their educational learning goals, in engaging in the work of their field placements, and in seeking meaningful supervision and feedback regarding their work.

B. Students' Duty to Seek Supervision

1. Rule 5.3 Non Lawyer Assistants

Although law interns in field placements are typically treated as non-lawyer assistant [Rule 5.3] rather than subordinate lawyers under the Georgia Rules of Professional Conduct, students are,

nevertheless, expected to govern themselves in accordance with the ethical obligations they will assume upon their admission to the bar. This includes a duty to seek supervision.

2. Rule 5.2 Responsibilities of a Subordinate Lawyer

Subordinate lawyers also are expected to seek appropriate supervision. In *Beverly Hills Concepts v. Schatz*, 717 A.2d 724 (Conn. 1998) in an action against a law firm to recover damages for legal malpractice, the Connecticut Supreme Court reversed a trial court's decision holding a junior associate attorney liable for negligent misrepresentation and breach of fiduciary duty. The appeals court noted, however, that the trial court "reasonably could have found that [the associate] had engaged in legal malpractice because, in her position as a junior associate, she failed to seek appropriate supervision."

Rule 5.2 provides that a junior lawyer is still bound by the terms of the Georgia Rules of Professional Conduct when he/she acts pursuant to directions from a supervising or senior lawyer. However, if the junior lawyer "acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty," there is no ethical violation. In this situation, the essential determining factor is whether the ethical question could arguably have been determined in several ways – if there is only one way to answer the question, then this protection for junior lawyers would not apply.

IV. SUPERVISING ATTORNEY -- DUTY TO SUPERVISE

A. Supervision Under Student Practice Rules

Students in certain placements may be admitted to the limited supervised practice of law. Pursuant to the Third Year Practice Rules of the Supreme Court of Georgia, (Rules 91-97), law students who work under the supervision of prosecutors, public defenders, or attorneys for nonprofit organizations providing free legal services to the indigent may assist in proceedings as if licensed to practice. Students in good standing who have completed two thirds of the requirements toward the law degree are eligible. The third year practice rules apply to "proceedings." The Rules require that a judge administer an oath to the student, and they authorize the judge to admit the student to practice in such manner as the judge may prescribe. The supervising attorney of the student must be physically present at any proceeding in which the student appears. The Third Year Practice Rules are attached as an Appendix.

The Georgia Supreme Court Rules apply to the trial level courts in Georgia. Although there are not general rules governing third year practice in the federal courts, particular United States District Judges may have their own 3rd year practice requirements and site supervisors must be aware of those rules and comply with them.

In most circumstances, law interns in field placements function much like law clerks and are treated as non-lawyer employees. Students who are admitted to practice in accordance with student practice rules and who assume responsibility for client cases may under some circumstances be treated as lawyers under the ethical rules, particularly for purposes of assessing

conflicts of interest. In either case, the supervising attorney assumes responsibility for ensuring compliance with the rules of the profession.

B. Supervision Under Georgia Rules of Professional Conduct

1. Rule 5.1: Responsibilities of Law Firms, Partners, Managers, and Supervisory Lawyers

Under Rule 5.1, supervising attorneys must make reasonable efforts to ensure that lawyers under their supervision act in conformity with the Georgia Rules of Professional Conduct. Rule 5.1 also requires that supervising attorneys ensure that the work of those they supervise – as well as others in their practice – is appropriately supervised. Supervision in this instance includes not only direct supervision of activities, but also screening for conflicts and ensuring that filing and other deadlines are met.

In terms of responsibility, Rule 5.1 provides that a supervising attorney is responsible for the ethical violations of those under his/her supervision where the supervising attorney orders or directs the conduct that is a violation, or knowingly ratifies the conduct.

2. Rule 5.3 Lawyer's Responsibility for Conduct of Non-lawyers

Rule 5.3 addresses the lawyer's responsibility for the conduct of non-lawyers under his/her supervision. The rule requires that the supervising attorney provide appropriate supervision for non-lawyers. Appropriate supervision takes into account the experience of the non-lawyer, the amount of work involved in the matter, and the likelihood that ethical problems may arise, as well as any other relevant considerations. In order to comply with Rule 5.3, it is essential that the Supervising Attorney explain the ethical requirements for non-lawyers, particularly regarding confidentiality for all clients and cases in which the non-lawyers are involved. Numerous provisions of the Georgia Rules of Professional Conduct make it clear that a lawyer cannot ask a non-lawyer to take any action that would constitute a violation of ethical rules for the lawyer – for example, asking a law intern to speak with the opposing party when that party is represented by counsel.

C. Discipline for Failure to Provide Adequate Supervision

The form of discipline imposed for failure to provide adequate supervision over non-lawyers and subordinate lawyers will vary based on the facts and circumstances of each case. However, there are several cases that serve as illustrations of the forms of discipline imposed and the considerations taken into account by the appropriate disciplinary body.

1. In re Jaffe

The U.S. Court of Appeals in *In re Jaffe*, 585 F. 3d 118 (2d Cir. 2009) disbarred an attorney for, among other things, improperly ratifying and filing briefs drafted by unsupervised law students, and for aiding in the unauthorized practice of law. The Court also noted that Jaffe's explanation for submitting deficient briefs – that these were law student briefs – constituted an aggravating

rather than a mitigating factor, and was a clear concession that the attorney had aided the unauthorized practice of law and ratified and field briefs drafted by unsupervised law students.

The Court was particularly critical of the deficiencies of Jaffe's conduct, describing her conduct as "far more serious than a lack of competence or ability." Jaffe exhibited "an indifference to the rights and legal well-being of her clients, and to her professional obligations including the obligation of candor, to this Court."

2. Attorney Grievance Commission of Maryland v. Kimmel

In *Maryland v. Kimmel*, 55 A2d 269 (Md. 2008), law firm partners received an indefinite suspension from practice for failure to provide adequate supervision over a new associate who neglected discovery demands resulting in case dismissals. The Court noted that the partners relied on computerized case management rather than on hands-on, on-site review of how cases were being handled, and that the associate's lack of experience warranted the development of a more elaborate plan of supervision.

V. UNAUTHORIZED PRACTICE OF LAW

As noted above, in certain circumstances it is permissible for law students to be admitted to limited supervised practice before the Georgia courts. The third year practice rules have established specific boundaries in which students admitted to practice may operate and require that there be supervision from the designated supervising attorney. Exceeding the scope of these boundaries may result in a finding of unauthorized practice of law. Additionally, care needs to be taken in the supervision of students not admitted to practice through a student practice order to ensure that these students do not engage in the unauthorized practice of law during the course of field placement.

A. Rule 5.5 Unauthorized Practice of Law

Rule 5.5 provides that no lawyer may practice law in any state in violation of that state's rules on legal profession. This Rule also provides that "a lawyer shall not aid a non-lawyer in the unauthorized practice of law." Although the rule does not seek to limit the ability of a lawyer to engage non-lawyers in his/her practice, it requires adequate supervision of non-lawyers.

VI. CONFLICTS OF INTEREST

Conflicts of interest are an integral part of ethical regulations and have been the subject of numerous ethical opinions and court cases. The terms of the current Georgia Rules of Professional Conduct establish the boundaries of the duties owed to past, current and future clients and also address potential conflicts for governmental lawyers or judicial clerks who enter into private or other practice.

A. General Rules on Conflicts of Interests

1. Rule 1.7 Conflict of Interest: Current Clients

Rule 1.7 sets out the general regulations regarding conflicts of interest. Under Rule 1.7 a lawyer shall not represent a client if there is a significant risk that the representation of the client will be adversely affected by the lawyer's own interests or the lawyer's duties to another client, former client, or a third person. A lawyer must not represent clients with adverse interests in the same litigation proceedings.

These conflicts can be waived where all involved parties provide written informed consent to the representation and the lawyer reasonably believes that he/she can competently and diligently undertake the representation. However, even where a client is willing to consent to the conflict, a lawyer must decline representation under circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients..

Examples of a conflict can include current or prior representation of a different client, the personal interests of the lawyer, the business interests of the lawyer – including if the lawyer is negotiating with the opposing counsel's firm for employment – or financial interests of the lawyer.

2. Rule 1.8 Current Clients: Specific Conflict of Interest Rules

Under this rule, lawyers are prohibited from using information gained from representing a former client to the disadvantage of the former client without consent.

Lawyers may not accept gifts from clients, including testamentary gifts. While a lawyer can accept compensation from a person other than the client in a particular matter, he/she may only accept compensation if 1) the client provides informed consent to the payment arrangement, 2) the payment arrangement does not interfere with the independence of the lawyer's professional judgment or the terms of the client-lawyer relationship and 3) the client's confidential information is protected. If a lawyer is representing two or more clients, the lawyer shall not make an aggregate settlement of claims without court approval unless each client gives informed consent.

3. Rule 1.9 Lawyers' Duties to Former Clients

Rule 1.9 discusses the issue of conflicts of interest based duties to former clients. A key requirement of Rule 1.9 is that a lawyer not represent a new client in a matter that is the same or substantially similar to a prior representation when the new client has materially adverse interests to those of the former client. This conflict can be waived where the former client gives written informed consent to the representation. The same prohibition on representation would generally apply where the lawyer's former law firm has represented the former client – this requirement can also be waived by the former client through written informed consent. In all situations, the former client's confidential information is to be protected.

4. Rule 1.10 Imputation of Conflicts of Interest

Rule 1.10 discusses various situations where conflicts of interests may arise due to a lawyer's prior association with a firm. Some of the more pertinent provisions are as follows:

- 1) A lawyer associated in a firm should not knowingly represent a client when any firm member practicing alone would be prohibited from representing that client under the other conflict of interest provisions (Rules 1.7, 1.8, or 1.9).
- 2) When a lawyer leaves a firm, the firm may not represent a person with materially adverse interests to those of a client represented by the lawyer who has left.
- 3) When a lawyer joins a firm, the firm may not represent a client in a matter that is the same as one in which the new lawyer or the lawyer's former firm represented a client with adverse interests.

The Rules specifically note that law departments of particular organizations are generally considered a "firm" within the meaning of the Rules. Also, lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. And according to a recent decision of the Georgia Supreme Court, a public defender office is a legal service organization, and thus a "firm," within the meaning of this rule.

In cases of imputation, it is important to remember that whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

B. Conflict Check Systems and Law Students

Law firms and departments should keep a written record of engagements in order to monitor real or potential conflicts. The size and complexity of the conflict checking system used by the firm can vary based on the size of the firm. However ignorance of a conflict due to improper conflict checking is not an excuse for an ethical violation. If a conflict exists for one lawyer in a firm it is generally extended to the entire firm. Several ethics opinions provide guidance regarding conflict screening including for law students and other non-lawyers.

C. Government Employees, Law Clerks and Conflicts of Interest

1. Rule 1.11: Special Conflict of Interest for Former and Current Government Officers and Employees

Under Rule 1.11, a lawyer who leaves government service is not allowed to represent a client in connection with a matter in which the lawyer was involved personally and substantially, unless the appropriate governmental agency gives written informed consent to the representation. If a lawyer is disqualified as a result, the lawyer's firm is also disqualified unless the firm implements significant screening measures to ensure that there is no involvement in the matter by the disqualified lawyer. These screening measures must be explained to the appropriate governmental agency and both the firm and the disqualified lawyer must certify that they have complied with these screening requirements.

Additionally, Rule 1.11 provides that a former governmental lawyer who has knowledge of confidential governmental information may not use that information for the benefit of a subsequent private client. The same screening requirements apply here as for representation of an adverse party.

2. Rule 1.12: Special Conflicts of Interest for Former Judges, Arbitrators, Mediators and Other Third Party Neutrals

Conflicts involving law clerks in particular fall under Rule 1.12. Rule 1.12 provides that a lawyer may not represent anyone in a matter in which he or she was personally and substantially involved as a law clerk to a judge unless all parties to the matter give written informed consent. Further, Rule 1.12 states that a lawyer is not to negotiate for employment with anyone covered under the rule when the lawyer has a matter pending before the court or other tribunal.

VII. CONFIDENTIALITY

The protection and preservation of confidentiality and confidential information is an essential component of a lawyer's ethical responsibilities. Although students placed in field placements receive instruction from the law school on confidentiality, it is crucial that supervising attorneys reinforce the importance of confidentiality in the professional setting.

A. Rule 1.6 Confidentiality of Information

Rule 1.6 of the Georgia Rules of Professional Conduct defines confidential information as all information gained in the professional relationship with the client, including information which is likely to be embarrassing or detrimental to the client if disclosed, or information that the client has requested be kept confidential.

Lawyers are responsible for safeguarding confidential information. Lawyers are also required to use reasonable care to ensure that non-lawyers and others associated with the lawyer also protect confidential information.

As a general matter, a lawyer may not reveal confidential information or use this confidential information to the disadvantage of the client or advantage of the lawyer, except in certain limited circumstances.

B. Confidentiality and Technology – Use of E-Mail

1. ABA Formal Op. 99-413 – Protecting Confidentiality of Unencrypted E-Mail

The American Bar Association has stated that a lawyer may use email communications in the representation of a client because there is a reasonable expectation of privacy in email akin to that in the US mail or telephone. However, a lawyer should consult with the client before using electronic communications for particularly sensitive matters.

VIII. PROFESSIONALISM

A. Email and Confidentiality Protections

Email is an essential part of communication, including in the context of field placements. It is important that supervising attorneys advise law interns as soon as possible of any office policies regarding the use of email for official purposes, including use of email to communicate with clients.

Law interns should be informed whether they will be assigned an email account for their field placement offices and how that account is to be used. Additionally, it is recommended that law interns be informed of the privacy and confidentiality terms that should become a part of their email signatures in order to protect any information exchanged or received via email.

Many students use their smart phones to access email accounts. Supervising attorneys should inform law interns whether this is an accepted practice since there is a balance between convenience and privacy that needs to be made in this regard.

B. Appropriate Attire

All externship students are advised as to proper attire for professional settings during field placement orientation as well as in other law school contexts. Issues of interpretation regarding appropriate dress, however, can and do occur. Supervising attorneys are encouraged to discuss expectations regarding professional appearance at the outset (e.g., courtroom attire vs. “casual Friday wear”) and raise these issues with the student in the event that they become problematic.

C. Social Media

Social media has become part of everyday life. While it has many legitimate functions, social media has begun to raise serious ethical issues for the legal profession. Perhaps the most obvious issue raised is that of preserving confidentiality. People will often feel more comfortable disclosing information over the internet or via text than in person and have lowered their social media boundaries as a result.

It is important for law interns to understand that confidentiality applies not only to oral and written communication but also to electronic communication. Supervising attorneys should make office or agency policies regarding the use of text at the office clear to law interns and should be sure that law interns understand the importance of maintaining confidentiality obligations on social networking sites such as Facebook.

IX. PROFESSIONAL MISCONDUCT

A. Rules of Professional Conduct - Generally

Professional misconduct by lawyers and law firms is governed by Rule 8 of the Georgia Rules of Professional Conduct.

1. Rule 8.4: Misconduct

Rule 8.4 sets out acts that explicitly constitute professional misconduct and states that it is a violation of the Georgia Rules of Professional Conduct for a lawyer to:

1. violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
2. be convicted of a felony;
3. be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
4. engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
5. fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten (10) days after the time appointed in the order or judgment;
 - i. state an ability to influence improperly a government agency or official by means that violate the Rules of Professional Conduct or other law;
 - ii. state an ability to achieve results by means that violate the Rules of Professional Conduct or other law;
 - iii. achieve results by means that violate the Rules of Professional Conduct or other law;
6. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio the commission of such act.

2. Rule 8.3: Reporting Professional Misconduct

Rule 8.3 requires that when a lawyer knows of a violation of the rules that raises a "substantial question" regarding honesty, trustworthiness and fitness committed by another lawyer, the lawyer must report this conduct to the appropriate authority. If a lawyer has information or evidence regarding the conduct of another lawyer or judge the lawyer is required to provide it to the appropriately authorized investigative agency.

B. Misconduct Involving Law Students

1. Improper Use of Office Information

In *Louisiana Crisis Center v. Marzano-Lasenvich*, 827 F.Supp.2d 668 (E.D. La 2011), a legal aid group representing defendants in capital cases sued a former summer law clerk for breach of fiduciary duty and breach of contract stemming from the law clerk's dissemination and disclosure of sensitive client information in literary work she published about her experiences. The court denied defendant's motion to dismiss these claims.

2. Improper Use of Westlaw and Lexis

LexisNexis and Westlaw permit students to use their law school subscriptions at unpaid internships, externships or clinics taken for law school course credit. If a student subsequently is hired for a paid position, however, the student may not continue to use her/his LexisNexis or Westlaw law student subscription for the paid work. LexisNexis Terms and Conditions for Law Schools can be found at <http://www.lexisnexis.com/terms/lawschool/>.

A recent ethics opinion from Utah addressed the issue of lawyers asking law student employees to undertake research using the students' free Westlaw or Lexis accounts. Utah State Bar Opinion No. 11-03, available at http://webster.utahbar.org/committees/eaoc/2011/12/opinion_no_1103.html. The Utah State Bar Ethics Advisory Opinion Committee found it to be a violation of Rule 5.3 to encourage, require or condone a student to violate the students' contract with an electronic research service for non-educational purposes. The lawyer violates Rule 5.3 if the lawyer knows of unethical conduct by a non-lawyer and fails to take steps to avoid or remedy the actions. Further "[m]isuse of the student's educational privileges is a theft of services....even tolerating the violation of the law student's contractual obligation to refrain from using the services for profit, is misconduct" in violation of Rule 8.4(c)

X. COMPETENT REPRESENTATION

A. Rule 1.1: Competence

The Georgia Rules of Professional Conduct establish that a lawyer must provide competent and diligent representation to clients. Rule 1.1 defines competence as requiring legal knowledge, skill, thoroughness and preparation that is reasonably required for representation of clients. Lawyers should not handle matters which they are not competent to handle unless they seek the advice of lawyers who are competent in the subject matter.

B. Rule 1.3 Diligence

Rule 1.3 requires that lawyers act with "reasonable diligence and promptness in representing a client." Further, lawyers are not to neglect matters that are entrusted to them or intentionally carry out an agreed upon representation unless it is necessary for them to withdraw.

C. Rule 1.4 Communication

Communication is one of the essential elements of diligence in legal practice and is governed by Rule 1.4 of the Georgia Rules of Professional Conduct. Rule 1.4 requires that lawyers promptly inform clients of matters that require the client's informed consent, information that the court requires to be communicated, information that must be communicated to the client by law, and material developments in the case. A lawyer must also consult with the client regarding the client's objectives for the case, promptly return client phone calls and other requests for information, and explain any limitations on the terms of the lawyer's representation of the client. When communicating with a client, the lawyer is required to ensure that the client can understand what is being explained by the lawyer.

XI. LAW REGULATION AND POLICY GOVERNING FIELD PLACEMENTS

A. Civil Rights Protections and Accommodations

The Georgia law schools all strive to ensure that all students are protected against unlawful discrimination or harassment.

Students in field placements are not protected "employees" of their particular placements under Title VII of the Civil Rights Act or Title I of the ADA. Nevertheless, none of the Georgia law schools will tolerate discrimination or harassment in field placements regardless of student employee status.

B. Students with Disabilities

Students, supervising attorneys and field placements should be mindful of the relevant legal obligations of the law school and covered field placement offices with regard to non-discrimination, equality of opportunity and access to programs, services and activities by students who have disabilities. Students may be entitled to reasonable modifications, readily achievable barrier removal, or other accommodations as necessary to comply with state and federal law.

C. Sexual Harassment Policies

Students as well as supervising attorneys should be aware of their behavior in the workplace. As an expectation of ethics and practice, sexual harassment will not be tolerated regardless of a student's employee status.

Appendix

Georgia Supreme Court Rules

XV. THIRD-YEAR LAW STUDENTS

Rule 91. An authorized third-year law student, when under the supervision of the Attorney General, a district attorney, a solicitor general of a state court, a solicitor of a municipal court, a public defender, or a licensed practicing attorney who works or volunteers for a court or for a not-for-profit organization which provides free legal representation to indigent persons or children may assist in proceedings within this state as if admitted and licensed to practice law in this state.

Rule 92. All pleadings and other entries of record must also be signed by the Attorney General, district attorney, solicitor general, solicitor, public defender, or duly appointed assistant attorney general, assistant district attorney, assistant solicitor general, assistant solicitor, assistant public defender, or licensed practicing attorney as described in Rule 91. In the conduct of any grand jury investigation, administrative proceeding, hearing, trial, or other proceeding, such Attorney General, district attorney, solicitor general, solicitor, public defender, or duly appointed assistant attorney general, assistant district attorney, assistant solicitor general, assistant solicitor, assistant public defender, or licensed practicing attorney as described in Rule 91 must be physically present.

Rule 93. An eligible third-year law student is a student regularly enrolled and in good standing in a law school in this state, or an accredited law school located outside of this state, who has satisfactorily completed at least two-thirds of the requirements for the first professional degree in law, a J.D. or its equivalent, in not less than four semesters or six quarters of residence.

Any third-year law student eligible to assist the Attorney General, district attorney, solicitor general, solicitor, or public defender under this Rule is not required to possess the qualifications for appointment to the office of Attorney General, district attorney, solicitor general, solicitor, public defender, or assistant attorney general, assistant district attorney, assistant solicitor general, assistant solicitor, or assistant public defender.

Rule 94. An eligible third-year law student may be authorized to participate in the proceedings in such form and manner as the judge of the court where such authority is to be exercised may prescribe, if these requirements and the good moral character of the third-year law student are properly certified by the dean of the student's law school. Before entering an order authorizing a student to assist the Attorney General, district attorney, solicitor general, solicitor, or public defender, the judge shall further require of the student an oath similar to the oath required by the Attorney General, a district attorney, a solicitor general, a solicitor, or a public defender.

As to each third-year law student authorized to assist the Attorney General, district attorney, solicitor general, solicitor, public defender or licensed practicing attorney as described in Rule 91, there shall be kept on file in the office of the clerk of the court where such authority is to be exercised, the dean's certificate, the student's oath if required, and the judge's order.

Rule 95. The authority to assist the Attorney General, district attorney, solicitor general, solicitor, public defender, or licensed practicing attorney as described in Rule 91 shall extend for no longer than one year. If during this period any change occurs in the student's law school enrollment status, such authority shall terminate and be revoked.

Rule 96. A licensed practicing attorney as described in Rule 91, who is supervising law students under this Rule, shall ensure that at all times the student is covered by an adequate amount of malpractice insurance.

We are going to mainly cover the ethical duty to supervise & briefly discuss conflicts

In terms of the duty to supervise, we will discuss two sub-issues. The first is the power differential and power dynamics and how those can affect the duty to supervise. The second is the duty to supervise generally and as it relates to competent representation.

SLIDE ONE: Duty to supervise [Rule 5.3] – [will post the Rule]

SLIDE TWO: Identify some ways that the power dynamic/differential might manifest itself as you supervise students?

Our notes: Student afraid to ask for guidance or feedback may not receive any & will not learn from mistakes & may produce poor quality work; student uncomfortable in work environment & avoids criticism or correction misses opportunities to learn/practice new skills; ; student who relies on supervising atty for future employment or job recommendation may refrain from raising concerns about the nature of the supervision or educational experience; student who struggles quietly to catch on & is overlooked in busy office may miss much of the work experience; student who fails to recognize the need for supervision may go w/out it; student inadequately supervised may not only fail to learn but may engage in unauthorized practice of law or commit legal malpractice for which supervising atty ultimately responsible

SLIDE 3 – HYPO: *Student gets assignment from supervisor saying – look into this – it's an area I know nothing about but client asked for information. I am leaving for week and will review it when I return. Student feels clueless but does her best. Supervisor glances at it, says this looks good. Write advice letter to send to client and I'll sign it when I get back. Student very pleased supervisor trusts her so much. Scenario 1: letter was correct; Scenario 2: letter had incorrect information.*

Does this violate any ethical rules [if so, which ones]? Why did this happen? What should supervisor have done differently? What should student have done differently?

Both student and supervisor and student dropped the ball to some extent here. Supervisor had duty to review the student's work – discuss what that means. At the very least, the supervisor should have had a detailed conversation with Sharon about what she did and what she found before signing and sending. (Such a meeting would also be valuable educationally for Sharon.)

In re Jaffee – lawyer disbarred for failing, among other things, to review briefs written by law student s& permitting students to engage in unauthorized practice of law

NOTE: cases say – not enough to be available as needed

NOTE: students have duty to seek supervision – Model Rule 5.2

MAYBE A SLIDE ON THIS HYPO *[Depends on audience – if a lot of PDs & DAs will do this hypo, if not, will skip it] Student at DA's office has wanted to get court experience. Supervisor says to student, have you ever done a competency hearing. Student says "no". Supervisor says, o.k., you are about to do one.*

Supervisor rattles off questions student should ask & gives thumbnail sketch of facts of case. Student didn't want to decline b/c didn't want supervisor to think not ready or not grateful for oppor. Student afraid/nervous b/c didn't have skill level or understanding. Ethical rule violation? What is likely outcome of that experience for student/supervisor?

Clearly, the supervisor failed to ascertain whether student had sufficient experience and preparation to handle this witness examination. Before giving students' hearings or trials to handle, supervisors should make sure that students have had adequate practice and instruction on skills such as witness examination and on the substantive law and procedure involved.

SLIDE 4 HYPO: *You have observed your law intern leaving the office early on a number of occasions and noted a few discrepancies on the intern's weekly time sheets which you regularly review as part of your supervision. For example, the student noted court observation on a date when you know the court was not in session, and you suspect that the student may have "padded" her hours. What should you do?*

Check with student; call faculty supervisor; monitor student more closely [not an ethical violation per se, but a professionalism issue. Certainly a potential character & fitness issue]. At a minimum, supervisor must explain in detail about what is/is not permissible in terms of recording time. Especially troubling is the reporting court observation [which could be a clerical mistake or deliberate lie] Need to try and figure out what happened and impress upon student the importance of being honest & careful.

SLIDE 5 HYPO: *You discuss the time records problem with the student who apologizes for "sloppy" record keeping and agrees to make up the hours in question. The rest of the semester goes without incident. On your end of semester evaluation, you recommend that the student receive credit -- You do not want her to fail, but you still have nagging doubts about the student's integrity because of the earlier time record problems. You later receive the affidavit to complete for the student's (now a graduate) admission to the bar. Should you say anything?*

The question arises about informing the character and fitness committee. If the supervisor believes this student lacks integrity, he should discuss that with the student directly. It seems unfair to give negative info to the bar, after deciding not to do anything about it while the student was working there. To the extent the supervisor decides to do this, should at least give student a heads up

SLIDE 6: HYPO: *Mary has been working on a project and has done a great job. She has been working closely with her supervising attorney and he has praised her work. On a Sunday, her supervising atty texts her and asks her to go out to dinner with him following week. She likes the supervising attorney and is flattered. But, she is concerned about impact on work relationship/perception of her by other externs and other people in the office. Is it ok for them to begin dating? How would you advise Mary to handle this situation?*

Our view: supervisors should not attempt any romantic overtures with a student who is working in the office. Host of potential problems for supervisor/student [case of first impression as to whether Title VII Sexual Harassment claim might apply to supervisor]; power dynamic issues; professionalism issues for Mary, etc. It will be interesting to see what folks in the audience think about this one.

SLIDE 7 HYPO: *Several attorneys in your office go out together occasionally after work. One of your colleagues invites your field placement intern to join the group for happy hour. Everyone seems happy to buy drinks for the student. By the time you leave the bar, your extern is dancing on the tables with one of the attorneys. The next day at work, you discover that a photo of the inebriated intern has been posted by one of your colleagues on facebook. Should you have done anything at the bar? When you discover the picture has been posted, what, if anything should you do?*

Some could say that this is not work related [no professionalism issue] We think that as professionals can't look at it that way – anything in your life is fair game for character & fitness committee. As mentor, we think you should have conversation with someone if perceive alcohol or other professional conduct issues. It's OK, of course, for students and attorneys in the office to socialize, but supervising attorneys ought to be sensitive to the risk to students of becoming drunk in public (the risk of moral fitness for bar admission and the risk that prospective employers may not wish to hire her—many do facebook research before making offers). We think a supervisor should take it upon himself or herself to gently steer students away from embarrassing behavior but suspect not everyone in the audience will agree—taking the position that what happens after work is not their concern. We want to use this to impress upon the supervisors that they are in an educational/mentoring role vis a vis the students throughout the externship experience. As for the facebook posting, we think the professional think to do is to go to colleague & ask them to take it down.

CONFLICTS

SLIDE 8: What conflicts systems do you have in place for students when they start the semester?

Initial check – like what you do for incoming attorneys

SLIDE 9: What system, if any, do you have to screen for conflicts that develop during the semester? What information do you provide to students on this issue?

SLIDE 10 [if time] *A student intern with the DAs office is offered a part time law clerk job with a private law firm that specializes in real estate. The intern really needs the additional income and you would like to be able to accommodate the student. Is there a problem? What if the student informs you that one of the firm's biggest clients has just been charged with DWI in your county? What if your intern has been asked by a firm partner to do some research for the case? May the student continue to work with the DA and the firm?*

Tim will do a brief lecture on this rule - Student can't work on DUI case for firm if at DA's office. GA law doesn't allow ethical screening so student shouldn't work at both offices at all, even if he does no work for the firm on the DUI case – b/c of power issues, student shouldn't be in this position