

Proposed Change to Third Year Student Practice Rule

For many years the Supreme Court of Virginia has had a Third Year Student Practice Rule, Part 6, Section IV, Paragraph 15, Rules of the Supreme Court of Virginia. This rule permits eligible third year students working under the supervision of a licensed Virginia lawyer to appear before any court or administrative tribunal in the Commonwealth in a civil, criminal or administrative matter, provided he or she obtains the written consent of either the person on whose behalf he or she is appearing or the written approval of the prosecutor if appearing on behalf of the Commonwealth in a criminal matter.

The present version of the rule also requires written approval from the Court or the administrative tribunal at least ten days before any appearance. The bar has received information that this ten-day prior approval requirement sometimes frustrates appearances, particularly in the case of third year students interning or working in Commonwealth Attorneys' offices where opportunities to appear can arise on relatively short notice.

The proposed change in the rule would eliminate the absolute ten-day requirement and give a judge or administrative tribunal the discretion to grant approval at any time prior to the scheduled appearance. This would enable the Court or administrative tribunal to make the determination on a case-by-case basis whether to permit a third year student to appear with fewer than ten days prior approval.

The proposed rule change will be considered by the Council of the Virginia State Bar at its next meeting on June 14, 2007, and the proposed change is published below for comment. Any member of the bar having comments about the proposed change may direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800 no later than May 25, 2007.

15. THIRD YEAR STUDENT PRACTICE RULE.—

(a) Activities.

- (i) An eligible law student may, in the presence of a supervising lawyer, appear in any court or before any administrative tribunal in this Commonwealth in any civil, criminal or administrative matter on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance. The eligible law student must obtain written approval from the court or administrative tribunal ~~at least ten days before~~ prior to any appearance before the court or administrative tribunal.
- (ii) An eligible law student may also, in the presence of a supervising lawyer, appear in any criminal matter on behalf of the Commonwealth with the written approval of the prosecuting attorney or his authorized representative, provided the student obtains the written authorization from the court or administrative tribunal prescribed in paragraph (a)(i) of this Rule.
- (iii) The written consent and approval of the person or entity on whose behalf the student appears shall be filed in the record of the case and shall be brought to the attention of the judge of

the court or the presiding officer of the administrative tribunal.

(b) Requirements and Limitations.

In order to qualify pursuant to this Rule, the law student must:

- (i) (a) Be duly enrolled and in good standing in a law school that is approved by the American Bar Association, but if such school is located in another state that permits law student practice, only if such other state permits a student of a law school in this State to engage in such practice; or
(b) Be duly enrolled in a program of study in the office of an attorney as authorized in subdivision 2. of § 54.1-3926, Code of Virginia, and in accordance with the Rules of the Virginia Board of Bar Examiners.
- (ii) (a) Have completed satisfactorily legal studies amounting to at least four semesters, or the equivalent if the school is on a basis other than a semester basis; or
(b) Be certified by the Virginia Board of Bar Examiners as being in the final year of a program of study in the office of an attorney as authorized in subdivision 2. of § 54.1-3926, Code of Virginia, and in accordance with the Rules

of the Virginia Board of Bar Examiners.

- (iii) Be certified by the dean of his law school, or by the attorney under whom he is studying in the case of a law reader, as being of good character and competent ability, and as having completed satisfactorily a course or program of study in each of the following: criminal law, professional ethics, evidence and procedure.
- (iv) Be introduced to the court or agency in which he is appearing by an attorney admitted to practice in that court or agency.
- (v) Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services but this shall not prevent a lawyer or law firm, legal aid bureau, public defender agency, or the Commonwealth from paying compensation to the eligible law student, nor shall it prevent charges by a lawyer or law firm for such services as may otherwise be proper.

(c) Certification.

The certification of a student by Virginia Board of Bar Examiners, the law school dean or the attorney under whom the student is studying in compliance with Paragraph 15 (b)(ii) and (iii) above:

- (i) Shall be filed with the Executive Director of the Virginia State Bar and, unless it is sooner withdrawn, shall remain in effect

until the expiration of eighteen months after it is filed, or until the announcement of the results of the first examination be given by the Virginia Board of Bar Examiners following the student's graduation or completion of the program of study, whichever date is earlier. Thereafter, the certification shall lapse and be of no further force and effect.

- (ii) May be withdrawn by the Board, dean or attorney under whom the student is studying at any time by mailing a notice to that effect to the Executive Director of the Virginia State Bar. It is not necessary that the notice state the cause for withdrawal.

(d) Supervision.

The supervising attorney under whose supervision an eligible law student performs any of the activities permitted by this Rule (Paragraph) 15 shall:

- (i) Be an active member of the Virginia State Bar who prac-

tices before, and whose service as a supervising lawyer for this program is approved by, each court or administrative body in which the eligible law student engages in limited practice.

- (ii) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
- (iii) Assist the student in his preparation to the extent the supervising lawyer considers it necessary.
- (iv) The approval of the court designated in (a)(i) or (d)(i) may be withdrawn at any time without stating the cause for withdrawal.

(e) Miscellaneous.

Nothing contained in this Rule (Paragraph) shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do before the adoption of this Rule (Paragraph).