

**SUBMISSION OF**  
**THE CLINICAL LEGAL EDUCATION ASSOCIATION**  
**TO THE SUPREME COURT OF THE**  
**STATE OF LOUISIANA**  
**CONCERNING THE REVIEW OF THE SUPREME COURT'S**  
**STUDENT PRACTICE RULE**

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## INTRODUCTION

For over twenty-five years, Louisiana, like every other jurisdiction in the Nation, has had a student practice rule which permits qualified law students to engage in the limited practice of law under supervision of members of the bar.<sup>1</sup> Like all other jurisdictions, Louisiana adopted this student practice rule so that the State could provide quality legal education to its law students in hands-on clinical programs. Three groups<sup>2</sup> are now attempting to amend Louisiana's student practice rule in a way which would be interfere with the ethical obligations of clinical teachers and their students, harmful to clinical legal education, harmful to the present and future clients of law school clinics and harmful to the future clients of graduates of Louisiana law schools.

While the three groups seems to share the same interests and goals, this memorandum will focus primarily on several specific proposals made by one group, the Louisiana Association of Business and Industry (LABI). LABI proposes, inter alia, that this Court amend Rule XX to:

1. Require balanced representation of government, small business and environmental interests by student attorneys and law school clinics;
2. Require screening and approval of matters undertaken by law clinics and student attorneys, both initially an on an on-going basis, to determine whether there is a substantive basis for the action to be taken. Such screening, whether by the university or an advisory panel of practitioners, should include individuals with knowledge and representations of the various types of interests and positions affected by the legal or administrative proceeding in question (emphasis in original);
3. Affirmatively clarify that Rule XX requires the student attorney be the primary spokesperson at oral arguments in court and before administrative agencies. The clinic staff should be restricted to supervision only, and appearance by the supervising attorneys before courts or administrative agencies in the absence of the student should be prohibited,

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<sup>1</sup> La. S. Ct. R. XX.

<sup>2</sup> The Chamber of Commerce, the Business Council of New Orleans and the River Region and the Louisiana Association of Business and Industry.

4. Clearly prohibit client solicitation and/or use of outreach coordinators.  
LABI Letter, pp.1-2.

For the reasons set forth below, this Court should reject these proposals.<sup>3</sup>

### **STATEMENT OF INTEREST**

The Clinical Legal Education Association (“CLEA”) is a non-profit educational organization which was formed in 1992 to improve the quality of legal education both in the United States and abroad. CLEA currently has 650 members representing more than 140 law schools from six continents. To meet its goal, CLEA engages in activities designed to: (1) encourage the expansion and improvement of clinical legal education in this country and abroad; (2) encourage, promote and support clinical legal research and scholarship by, among other things, publishing a peer edited journal devoted to such work; (3) disseminate information to and between clinical teachers; (4) work cooperatively with other groups interested in clinical education, the improvement of legal education, and the improvement of the legal system; (5) promote and/or conduct conferences and other educational activities designed to facilitate the other purposes of the organization; and (6) promote the interests of clinical teachers.<sup>4</sup>

CLEA is committed to ensuring the success and quality of clinical legal education because it is an integral part of a quality education for future attorneys. Through clinical education, students “learn from experience”,<sup>5</sup> by interacting with and on behalf of real clients. Students develop their

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<sup>3</sup> CLEA also joins in the opinions contained in a memorandum being separately filed by the Association of American Law Schools.

<sup>4</sup> By-Laws, Clinical Legal Education Association.

<sup>5</sup> Association of American Law Schools, Section on Clinical Legal Education Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 511 (1992) as excerpted in

professional skills through both the educational and the service components of their clinical experience.

## DISCUSSION

### **I. STUDENT PRACTICE RULES ARE ESSENTIAL TO QUALITY LEGAL EDUCATION**

Although the history of modern clinical education is generally traced only to the 1960's, in fact, clinical education has its roots in the apprenticeship system of the late 1800's.<sup>6</sup> The apprenticeship system, however, had serious drawbacks and, by the 1930's, legal educators were proposing that law schools develop in-house clinical programs.<sup>7</sup> In clinics, students could work on real cases under the supervision of an attorney/teacher. The idea, in a nutshell, was to provide a place for students to practice their skills while preparing them to deal with the association between law and facts, client interactions and, importantly, to assist them in developing a working ethical understanding of their profession. An important, and indeed necessary tool in this andragogical method was the passage of student practice rules which would allow students at least a limited license to practice under close supervision of a clinical supervisor.

In 1969, the American Bar Association ("ABA") adopted a Model Student Practice Rule<sup>8</sup> under which law students would be authorized to practice under the supervision of licensed

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Clinical Anthology Readings for Live-Client Clinics (Anderson Publishing: 1997) at p.25.

<sup>6</sup> See e.g. Marc Feldman, *On The Margins of Legal Education*, 13 NYU Rev. L. & Soc. Change 607 (1984-85). See also Clinical Legal Education: Report of the Association of American Clinical Legal Education (1980).

<sup>7</sup> See e.g. Jerome Frank, *Why Not a Clinical Law School*, 81 U. Pa. L. Rev. 907, 913 (1933).

<sup>8</sup> See ABA Model Student Practice Rule.

practitioners. This Model Rule implicitly and explicitly recognized the importance of clinical education as being an integral part of a meaningful legal education.<sup>9</sup> Louisiana adopted its student practice rule, which is substantially similar to the ABA Model Rule, soon after. More recently, in 1992, the ABA's Task Force on Law Schools and the Profession issued a statement -- known familiarly as the "MacCrate Report" -- which emphasized the lawyering skills and professional values it found to be necessary for future attorneys to learn in order that they be prepared to appropriately, effectively and ethically practice in their profession. This ABA Task Force found that it was essential for students to learn various practice skills through real life problem solving, including legal analysis and reasoning, factual investigation, communication, counseling, litigation, negotiation and litigation alternatives, organization and management of legal work and recognizing and resolving ethical dilemmas.<sup>10</sup> In fact, it is so clearly understood that real life practice experience is a necessary part of a quality legal education that today, ABA Standards do not equivocate but they instead require that each accredited law school "shall . . . offer instruction in professional skills"<sup>11</sup>(emphasis added) and that each accredited law school "shall offer live-client or other real life practice experience"<sup>12</sup> (emphasis added)

The essential value of practical, experiential education, as recognized by the American

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<sup>9</sup> See ABA Model Student Practice Rule. See also Clinical Legal Education: Report of the Association of American Clinical Legal Education (1980).

<sup>10</sup> Legal Education and Professional Development -- An Educational Continuum (Report of the Task Force On Law Schools and the Profession: Narrowing the Gap) at 125 (1992) (The "MacCrate Report")

<sup>11</sup> ABA Standards for Approval of Law Schools (1996) (Standard 302(a)(iv)).

<sup>12</sup> Id. (Standard 302(d)).

Association of Law Schools (AALS)<sup>13</sup> and the ABA, has not been lost on individual states. Since the first Model ABA student practice rule was developed in 1969, all fifty states, the District of Columbia and Puerto Rico have passed student practice rules.<sup>14</sup> In fact, every jurisdiction recognizes that a critical component in the effective education of young attorneys rests upon the ability of qualified students to develop and practice not only their lawyering skills and professional values, but also to develop as attorneys and to do so within the ethical and moral guidelines of the bar. Today, Louisiana can proudly stand among all other States in this regard.

Significantly, Louisiana's student practice rule, like those in the rest of the Nation, allows clinics to provide education to future young attorneys while also providing much needed legal services to those who might not otherwise be able to afford them. These student practice rules, therefore, provide education to young lawyers not only in the practice and development of their skills, but also in their roles as lawyers and in their obligations as future members of the bar.

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<sup>13</sup> The Association of American Law Schools ("AALS") is a non-profit educational organization whose purpose is to improve "the legal profession through legal education" Article 3, Article of Incorporation of the American Association of Law Schools, Inc.

<sup>14</sup> See e.g. Avellone, Frank G. *The State of State Student Practice: Proposals For Reforming Ohio's Legal Internship Rule*, 17 Ohio Northern Univ. L. Rev. 13, 13 (1990); See also David F. Chavkin, *Am I My Client's Lawyer?: Legal Constraints on the Supervising Attorney-Client Relationship* (unpublished manuscript, on file with author).



**II. THE PROPOSAL TO LIMIT THE ROLE OF CLINICAL TEACHERS TO “SUPERVISION ONLY” INTERFERES WITH THE ETHICAL OBLIGATION OF CLINICAL TEACHERS AND STUDENTS TO PROVIDE COMPETENT REPRESENTATION TO CLIENTS AND WITH THE ABILITY OF LAW SCHOOL CLINICAL PROGRAMS TO PREPARE STUDENTS TO PRACTICE LAW EFFECTIVELY.**

LABI has proposed that Rule XX be amended to:

Affirmatively clarify that Rule XX requires the student attorney be the primary spokesperson at oral arguments in court and before administrative agencies. The clinic staff should be restricted to supervision only, and appearance by the supervising attorneys before courts or administrative agencies in the absence of the student should be prohibited.

This proposal should be rejected because it interferes with the ethical obligation of clinical teachers and law students to provide competent representation to clients and with the ability of law schools to prepare students to practice law.

Rule 1.1 of the Louisiana Bar Association Rules of Professional Conduct provides, in relevant part, that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Of course, law students are just beginning to learn how to practice law competently. Few possess the skills and knowledge to perform every aspect of advocacy necessary for competent representation. That is why Supreme Court Rule XX, Section 7(b) provides, in relevant part, that “the member of the bar under whose supervision an eligible law student does any of the things permitted by this rule shall...[a]ssume personal professional responsibility and liability for the student's guidance in any work undertaken and for supervising the quality of the student's work.” It would be irresponsible for a clinical teacher to permit every student under his representation to perform every lawyerly task. Some tasks can only be performed by an experienced attorney. The proposed rule would require the supervising attorney

to permit law students to perform tasks even if that attorney believed that the student was not yet ready to perform these tasks. This would violate the supervising attorney's ethical obligation to provide competent representation as well as his obligation to "assume personal professional responsibility for the student's work."

Supreme Court Rule XX, Section 4(f) also provides that every student who appears in court must take an oath stating that: "[I] have read and am familiar with the Code of Professional Responsibility of the Louisiana State Bar Association, and I understand that I am bound by the precepts therein contained as fully as if I were admitted to the practice of law in Louisiana...." Thus, law students are also required to provide competent representation to clients under Rule 1.1 of the Rules of Professional Conduct and they too would be acting unethically if they insisted upon performing tasks for which they were not yet completely prepared, rather than allowing their supervising attorney to perform these tasks.

LABI's proposal also ignores important teaching goals and methods. Student in many clinical programs participate in wide variety of advocacy, including simpler cases and more complex ones. In the simpler cases, the student may learn by performing all of the in-court work. In more complex cases, the student may participate through research, writing, formal and informal discovery and other important litigation work. However, the student may not actually perform all of the in-court advocacy. When the case reaches this stage, the student may learn from preparation for the in-court work and observation of her supervisor performing some tasks which the student is not yet capable of performing. Indeed, junior lawyers in law firms often learn how to engage in complex litigation through precisely this form of participation and observation. LABI's proposal would interfere with the ability of students to learn how to handle complex

litigation by preventing clinics from undertaking such cases .

LABI's proposed rule also ignores the realities of litigation and legal education. Litigation has a pace and structure that is dictated by court rules and practices. However, law students are often unavailable to appear in court due to examination periods or other breaks in the academic calendar. In most clinics, supervising clinical teachers assume responsibility for ongoing litigation during these times. The LABI proposal would presumably require a party represented by a law school clinical program to default or appear *pro se* if the student were unable to appear. Either scenario would also violate the ethical obligations of both students and clinical supervisors.

**III. THE PROPOSAL TO REQUIRE INITIAL AND ONGOING SCREENING OF CLINIC CASES WOULD VIOLATE THE ETHICAL OBLIGATIONS TO MAINTAIN CLIENT CONFIDENTIALITY AND TO EXERCISE INDEPENDENT JUDGMENT ON BEHALF OF CLIENTS.**

LABI has also proposed to amend Rule XX to:

Require screening and approval of matters undertaken by law clinics and student attorneys, both initially an on an on-going basis, to determine whether there is a substantive basis for the action to be taken. Such screening, whether by the university or an advisory panel of practitioners, should include individuals with knowledge and representations of the various types of interests and positions affected by the legal or administrative proceeding in question (emphasis in original);

This proposal should be rejected because it will require clinical teachers and students to violate their obligation to maintain the confidentiality of communications from clients and to exercise independent judgement on behalf of clients.

The Louisiana State Bar Association Rules of Professional Conduct provides, in relevant part, that “[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to

carry out the representation....” Permitting an outside panel to screen matters undertaken by clinics would violate the client’s right to the confidentiality of information provided by the client to the clinic. Moreover, if clinic clients were required to consent to such disclosures, this would provide clinic clients fewer rights than other clients. A requirement of such consent would be apt to chill many clients from even approaching a clinic concerning representation.

Such a rule would undermine one of the purposes of the Rule XX as stated in Section 1:

The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. As one means of providing assistance to clients unable to pay for such services and to encourage law schools to provide clinical instruction in trial work of varying kinds, the following rule is adopted.

This rule provides that one of the two purposes of permitting supervised student representation of clients is to provide competent legal services to the indigent. However, indigent clients would be discouraged from seeking such representation by the knowledge that information provided to a law student or clinical teacher would not be confidential.

As with its other proposed amendments, this proposal violates both the spirit and the letter of any attorney's professional obligations. As the ABA stated when it rejected a far more limited proposal for an "advisory board" in the context of Legal Service Offices:

[T]here should be no interference with the lawyer-client relationship by the directors of a legal aid society after a case has been assigned to a staff lawyer . . . the board should set broad guidelines respecting the categories or kinds of cases that may be undertaken rather than act on a case-by-case, client-by-client basis. . . The members of the Advisory Committee should not be given confidences or secrets of the client, for there is no lawyer-client relationship between the client and the Advisory Committee or any member of it. (emphasis added)<sup>15</sup>

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<sup>15</sup> ABA Comm. on Ethics and Professional Responsibility, Formal Opinion 334 at p. 7 (Legal Services Offices; Publicity; restrictions on lawyers’ activities as they affect independence of professional judgment; client confidences and secrets)

The LABI proposal would also interfere with the ethical obligation of clinical supervisors and students to exercise independent judgement on behalf of clients. Rule 5.4 protects this independence by providing, in part, that:

[a] lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the exercise of the lawyer's professional judgment in rendering such legal services.

A clinical teacher and her/his students would violate this rule if they permitted the university, either directly or through appointing a committee (LABI suggests both alternatives), to direct or control the exercise of their professional judgment.

The Louisiana Code of Civil Procedure ("The Code") also provides that attorneys exercise independent professional judgment. In fact, the Code requires attorneys to "certify", in the pleadings, that they have made "reasonable inquiry" and "to the best of [their] knowledge, information and belief", the pleadings are well based in fact and/or law.<sup>16</sup> Sanctions may be imposed against attorneys who fail to properly comply with these provisions.

In fact, Rule XX and Louisiana Civil Practice Code is predicated upon the requirement that attorneys who represent clients in court or before administrative tribunals -- and who therefore execute pleadings to be filed in those courts and tribunals -- have personally verified the veracity and/or good faith of the pleadings and have taken responsibility for them. As LA. C.C. P., Article 863<sup>17</sup> states:

. . . the signature of an attorney. . . shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or

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<sup>16</sup> LA. C.C. P., Article 863(B) (1997)

<sup>17</sup> LA. C.C. P., Article 863(B) (1997)

reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Indeed, sanctions and other punitive measures are available against those attorneys who do not comply with these requirements.<sup>18</sup> The rule, in short, requires that the *attorney* -- not a "panel" or committee or "advisory group" -- accept responsibility for the information contained in the pleadings.

Numerous ABA Ethical Formal Opinions have admonished that the exercise of independent professional judgment is critical to a lawyer's professional role.<sup>19</sup> This proposed rule would be yet another way in which the clients of law school clinics would receive second-class legal services. All other clients are entitled to the independent judgment of their lawyers. But the indigent clients of law schools clinical programs would not be so privileged.

#### **IV. THE PROPOSAL TO REQUIRED "BALANCED" REPRESENTATION OF INTERESTS WOULD INTERFERE WITH THE STATED GOAL OF RULE XX AND THE ABILITY OF LAW SCHOOLS TO DISCHARGE THEIR OBLIGATIONS TO STUDENTS.**

LABI has also proposed that Rule XX be amended to "[r]equire balanced representation of government, small business and environmental interests by student attorneys and law school clinics." This goal conflicts with the goal of Rule XX to "provide assistance to clients unable to

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<sup>18</sup> LA. C.C. P. Article 863(D) (1997)

<sup>19</sup> See, among others, ABA Comm. on Ethics and Professional Responsibility, Formal Opinion 334 ("Legal Services Offices; Publicity; restrictions on lawyers/ activities as they affect independence of professional judgment; client confidences and secrets); Formal Opinion 393; and Formal Opinion 399.

pay for [legal] services” and with the ability of law schools to prepare students to practice law competently and ethically.

One of the two goals expressly stated by Rule XX is to provide legal assistance to those who are unable to pay for such services. This corresponds with the ethical obligation of lawyers to “render public interest legal service [by] providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations....” Rule 6.1 of the Louisiana State Bar Association Rules of Professional Conduct. Businesses, business groups, poor people and community organizations all have a legitimate interest in receiving competent representation in matters relating to the environment. However, they are not similarly situated with regard to their ability to afford counsel. Businesses and business organizations (such as the three groups proposing changes in Rule XX) regularly hire lawyers to engage in litigation and lobbying on their behalf. Poor people, even when they come together in groups, can rarely afford this type of help. Thus, in order to focus their efforts on assisting clients unable to pay for legal services and to help fulfill their obligation under Rule XX, legal clinics typically represent the poor and community groups, not businesses or business groups. (Indeed, the bar might legitimately fear unfair competition were law school clinics to provide free legal services to businesses and their associations.) Since the demand for legal services from the indigent and from community groups is so great, it would be unreasonable for law school clinics to divert their scarce resources to assist those who can obtain legal services in the free market.

Where law school clinics to represent “both sides” in environmental disputes, even in separate and distinct matters, they would also be quite likely to run afoul of the important ethical rules regarding conflicts of interest. See Rules 1.7 through 1.10 of the Louisiana State Bar

Association Rules of Professional Conduct. While these rules would not prohibit every conceivable form of activity, they would make it quite difficult for clinical programs to avoid the appearance of a conflict.

The MacCrate Report also emphasizes that it is the duty of law schools to teach students one of the core values of the profession--contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them." Report, pp. 213-15. One of the ways of fulfilling this duty is for law schools to provide students with this opportunity while still in law school so that students understand the importance of their life-long obligation.

Finally, it is difficult to construct a clinical program which gives students useful and variable experiences in well supervised settings. Part of the difficult task of operating such a program is case selection. By creating additional rules governing case selection which serve no useful purpose, the LABI proposal makes this task even harder.

**V. THE PROPOSAL TO LIMIT OUTREACH INTERFERES WITH THE GOAL OF PROVIDING LEGAL SERVICES TO THE INDIGENT AND WOULD VIOLATE THE RIGHT OF FREEDOM OF ASSOCIATION.**

LABI proposes that Rule XX be amended to "clearly prohibit client solicitation and/or the use of so-called outreach coordinators." This proposal also interferes with the goal of providing legal services to the indigent and violate their First Amendment right of freedom of association.

Poor people and other disadvantaged groups often have serious problems which could be addressed through the legal system. However, they also are frequently unaware that this avenue is open to them. The United States Supreme Court expressly recognized this dilemma in *In Re*



*Primus*. In *Primus*, a state sought to discipline attorneys from the American Civil Liberties Union who were engaged in similar outreach to persons whose civil rights had been violated. While recognizing that states had a legitimate interest in limiting solicitation by lawyers engaged in fee generating work, the Court upheld the right of lawyers not so engaged to protect civil rights by soliciting clients because it:

[c]omes within the generous zone of the First Amendment protection reserved for association of political expression and association, as well as a means of communicating useful information to the public. . . [T]he efficacy of litigation as a means of advancing the cause of civil liberties often depends on the ability to make legal assistance available to suitable litigants. ‘Free trade in ideas’ means free trade in the opportunity to persuade to action, not merely to describe facts. The First and Fourteenth Amendments require a measure of protection for ‘advocating lawful means of vindicating legal right’, including “[advising] another that his legal rights have been infringed and [referring] him to a particular attorney or group of attorneys. . . for assistance.”<sup>20</sup>

Law school clinics in Louisiana cannot accept fees from clients. Rule XX, Section 3(c). Thus, their activities in identifying clients are virtually identical to those protected by the Supreme Court in *Primus*.

**VI. THE PROPOSED AMENDMENTS ARE DESIGNED TO ELIMINATE ONE PARTICULAR CLINICAL PROGRAM AND TO DENY SERVICE TO PARTICULAR CLIENTS AND THEREFORE CONSTITUTE IMPERMISSIBLE INTERFERENCE WITH SPEECH BASED ON ITS CONTENT**

This Court is currently reviewing Rule XX based upon the requests of three business groups whose interests and goals are neither the advancement of clinical experience, the excellence of Louisiana’s system of legal education nor the professional ethical obligations of the bar. Instead, these groups have simply targeted the State’s student practice rule, and in conjunction with it, the

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<sup>20</sup> *In Re Primus*, 436 U.S. 412, 431 (1978) (footnotes omitted)

State's decision to provide quality education to its future attorneys, as a means to lobby for the interests of their own members. These amendments are targeted at the Tulane Environmental Law Clinic<sup>21</sup> solely because this particular clinic has successfully represented its clients in environmental and regulatory advocacy to which members of these three groups have been opposed.

It is not difficult to discern that these groups' intentions and motivations are to advance their own interests by eliminating clinical programs which might represent interests opposed to theirs. They have, in fact, articulated precisely that to this Court. For example, one of these groups has suggested to this Court that Rule XX be modified *because* the practice of the students and supervisors "... are in direct conflict with business positions"<sup>22</sup> Another of these business group suggests that the rule be modified as a means to deter what it terms "anti-business litigation".<sup>23</sup> The final group, which has also proposed 10 specific changes to the Rule, even suggests that the rule should be modified because it has "... created concerns by investors and other stakeholders".<sup>24</sup> LABI has candidly explained that the proposed amendments are a result

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<sup>21</sup> See e.g. Letter from The Chamber to Chief Justice Calogero (July 8, 1997) at 1 (hereinafter "The Chamber letter") ("We respectfully request that you investigate the cases, positions and stands taken by the Tulane Legal Clinic. . ."); Letter from Business Council of New Orleans and the River Region to Chief Justice Calogero (July 16, 1997) at 1 (hereinafter "The Business Council letter") ("By these means we respectfully request you to investigate the use of the court's rule by the Tulane Law Clinic"); and Letter from Louisiana Association of Business and Industry to Chief Justice Calogero (September 9, 1997) and attached "Proposal to Amend and Enforce Rule XX" (hereinafter "LABI Letter") (directing 10 proposed "amendments" to the Tulane Environmental Law Clinic).

<sup>22</sup> The Chamber Letter, at 1.

<sup>23</sup> The Business Counsel Letter, at 1. Of course, it must be noted that the characterization of these groups as being either "pro" or "anti" business is done without explanation or definition.

<sup>24</sup> LABI Letter and attached "Proposal to Amend and Enforce Rule XX" , at 4.

of its efforts to stop the Tulane Environmental Law Clinic's "attacks on governmental decisions within the state."<sup>25</sup>

However, "selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content"<sup>26</sup> The First Amendment prevents this State from acting in a manner which would eliminate speech simply because it, or groups exerting pressure upon it, may disapprove of the expression of particular ideas.<sup>27</sup>

These lobbying groups do not claim that the representations engaged in by this clinic were ineffective or unsupported by law or precedent.<sup>28</sup> They do not even claim that the representations undertaken by this clinic would have been inappropriate if undertaken by private, fee-generating counsel. Instead these business groups claim that the rules should be changed *because* the representation provided by this clinic is effective and should somehow not be provided to particular clients.

These efforts are contrary to the standards to which we hold members of the legal profession<sup>29</sup> and contrary to that which we attempt to teach students: to practice law equitably,

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<sup>25</sup> LABI Letter, and attached "Proposal to Amend and Enforce Rule XX", at p. 4.

<sup>26</sup> *Carey v. Brown*, 447 U.S. 455, 462-63 (1980).; See also *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1991) ("The First Amendment generally prevents government from proscribing speech. . . because of disapproval of the ideas expressed") *Id.* at 381 (footnotes omitted).

<sup>27</sup> See e.g. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Texas v. Johnson*, 491 U.S. 397 (1989).

<sup>28</sup> Of course, if that *were* the case, the Louisiana Code of Civil Procedure already provides a remedy. See e.g. LA C.C. P., Article 863(B)(1997) (Sanction provision).

<sup>29</sup> See e.g. EC 1-1 of the Model Code of Professional Responsibility which states: "A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer." See also, Model Code of Professional Responsibility, Canon 2 ("A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available")

compassionately, zealously and with independent professional judgment for the client's interest.<sup>30</sup>

These values, we tell our students, are important to service and to their profession -- even as they take the oath under Rule XX itself, in which they declare that they "accept the privileges granted. . . as well as the responsibilities which will devolve upon [them], so that [they] may be more useful through [their] clinical education in the service of justice".<sup>31</sup>

This proposal, which specifically and intentionally seeks to prohibit representation of particular groups and/or opinions while actually requiring representation of others, is impermissible. As the ABA has stated:

It is possible that, in order to achieve the goal of maximizing legal services, services to individuals may be limited in order to use the program's resources to accomplish law reform in connection with particular legal subject matter. The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the community. They may not be based upon considerations such as the identity of the prospective adverse parties or the nature of the remedy. . . sought to be employed.<sup>32</sup> (emphasis added)

The proponents of these amendments are badly short sighted. The same students who would be taught how to practice law under these proposals will one day graduate and become practicing members of the bar. Many of them will practice in Louisiana. Like most lawyers, these students will primarily represent fee paying clients. Some of them may even represent members of

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<sup>30</sup> Justice Brandeis perhaps said it best: "The whole training of the lawyer leads to the development of judgment". Brandeis, *The Opportunity In The Law*, in *Business: A Profession* 329, 331, as cited in Lori Graham, *Aristotle's Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education*, 20 J. Leg. Prof. 5, 33 (1995-96).

<sup>31</sup> LA St. S. Ct. R. XX (f) (1997).

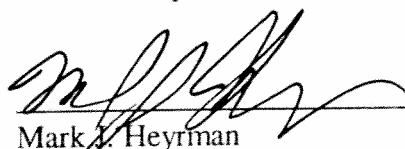
<sup>32</sup> ABA Comm. on Ethics and Professional Responsibility, Formal Opinion 334 at p. 6 (Legal Services Offices; Publicity; restrictions on lawyers' activities as they affect independence of professional judgment; client confidences and secrets).

these three business organizations. However, these future attorneys will have learned to accept unethical conditions on their practice of law and are unlikely to serve these clients effectively and with independent judgment.

## CONCLUSION

CLEA most respectfully requests that this Court maintain its commitment to legal education and to providing competent legal services to current and future citizens, including those unable to pay for these service, by refusing to adopt the proposed amendments to its student practice rules. This request is made on behalf of law faculty, who would be denied the opportunity to teach and/or ethically represent their clients as they see best; on behalf of law students, who would be denied the opportunity to learn and who would be asked to violate their ethical obligations; and on behalf of indigent persons and community organizations, who would be denied representation because one particular clinic was too successful in meeting Rule XX goals. Finally, this request is made on behalf of attorneys who are committed to their profession now, and for those who look forward to that commitment in the future.

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