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At the request of the Notre Dame Legal Aid and Defender Association, members of the Notre Dame Legislative Research Service initiated a revision of Indiana Supreme Court Admission and Discipline Rule 2.1¹, which governs student court practice. The Legal Aid and Defender Association desired a revision that would allow second year law students to appear in Indiana courts and before governmental agencies.

Currently under Rule 2.1 a law student enrolled in a law school approved by the American Bar Association or the Association of American Law Schools² can take part in a legal internship program if certain requirements are fulfilled. The rule specifies:

1. The student must have successfully completed 2/3 of the requirements for the ELB or equivalent;³
2. The student must receive the permission of the dean of his law school to participate in a legal internship program;⁴
3. The student must be working in a program which was developed according to the guidelines jointly developed by the law schools offering such programs in this state;⁵
4. Any work performed pursuant to this rule must be undertaken under the supervision of a member of the bar of the state of Indiana;⁶
5. The internship in the program may continue until the student "has taken the first examination for admission to the bar of this state for which he is eligible and he has been notified of the results;"⁷
6. a. The student must obtain the written consent of the indigent in any civil matter if the supervising attorney is not present;⁸
b. The attorney must be present in all proceedings in open court;⁹
7. The supervising attorney must be present in any criminal matter, juvenile matter, or post conviction remedy proceeding only when the defendant has the right to the assignment of counsel under any constitutional provision, court rule, or statute provided that at all times the absence of the supervising attorney be consented to in writing by the indigent;¹⁰

8. Representation is limited to those financially unable to afford counsel, the state of Indiana, or any governmental agency.¹¹

While researching the background of Rule 2.1, it became apparent that because of a 1974 addition to the Admission and Discipline Rules there could be a problem concerning the time period a student was eligible for the internship program contained in Rule 2.1. (Refer to number 5 above.) In 1974 the Indiana Supreme Court amended Admission and Disciplinary Rule 13.¹² Under Rule 13 the law student who has successfully completed the requirements specified in subsection five¹³ is permitted to take the bar examination after the completion of two years of law school.¹⁴ It is unclear from this if under Rule 2.1 the words referring to the first bar examination for which the student is eligible is the first examination after the student has completed the requirements specified in Rule 13(5) or the first examination for which the student would be eligible after graduation from law school. It is also unclear if the student is eligible to participate in a legal internship program in his third year of law school whether or not he has taken the bar examination and whether or not he has passed it.

With Rules 2.1 and 13 in mind, plus the two conditions specified above, the redrafting of Rule 2.1 was undertaken. As the proposed rule is written it presents only one addition and three changes. The addition is a purpose section which has been added to enumerate and expand on the purposes contained in the present Indiana Rule 2.1 and the American Bar Association Model Rule for student practice.

The changes and the rationale are as follows:

1. The proposed rule requires the student to obtain the written consent of the indigent before appearing in court in his behalf. Obtaining the consent of the indigent at the beginning of all court proceedings would be a safeguard to the student and the indigent, and eliminate the necessity of obtaining consent at a later time.
2. The proposed rule would permit a student to continue in this internship program until he has graduated from law school, thus eliminating the difficulty presented in Rule 2.1(3) when considered in conjunction with Rule 13.
3. The proposed rule would allow a student to participate in the program after having passed a minimum of 28 semester hours in law school.¹⁵ Allowing a student to participate after having completed 28 semester hours would give additional assistance to the various legal aid programs and state and governmental agencies. It would also allow a student to gain valuable clinical experience in trial work for two years instead of one, and thereby increase his competence in trial practice.

The complete text of the proposed rule follows.

Proposed Rule

- I. Purpose. The following rule is adopted to:
- A. Aid the bench and bar in providing competent legal services for all people regardless of their ability to pay;¹⁶
 - B. Provide assistance to the state of Indiana and governmental agencies;¹⁷
 - C. Encourage law schools to foster the development of clinical instruction in trial work;¹⁸ and
 - D. Aid the law student in his professional development.¹⁹
- II. Activities. A law student shall be permitted to interview, advise, negotiate for, and represent parties in any judicial or administrative proceeding provided the following prerequisites are fulfilled:²⁰
- A. That the eligible law student, before appearing in any court in this state on behalf of an indigent person, obtain the written consent of the indigent.²¹
 - B. The personal presence of the supervising attorney is not required during every stage of the civil matter, but is required during all proceedings in open court.²²
 - C. In any criminal matter, juvenile matter, or in post-conviction remedy proceedings, the supervising attorney need be present personally only at those stages at which the defendant has a right to the assignment of counsel under any constitutional provision, statute, or rule of court.²³
 - D. Representation is limited to persons financially unable to employ counsel or to the state of Indiana or any governmental agency.²⁴
- III. Requirements of Student Eligibility. The law student shall be permitted to practice under this rule if he fulfills all the following requirements:
- A. The student is enrolled in a law school accredited by the American Bar Association or the Association of American Law Schools²⁵ and has received a passing grade in a minimum of 28 semester hours or their equivalent.²⁶
 - B. The student has received permission of his dean to participate in a legal internship program conducted by the law school pursuant to guidelines jointly developed by the law schools offering legal internship programs in this state.²⁷
 - C. This internship can continue until the law student has graduated from law school.²⁸

D. All work undertaken by a law student under this rule shall be supervised by a member of the bar of this state.²⁹

Footnotes

1. Hereafter Indiana Supreme Court Admission and Discipline Rule 2.1 will be referred to as Rule 2.1.
2. Rule 2.1(1). All four law schools in Indiana are so approved by both.
3. Ibid. All four schools offer the Juris Doctor (J.D.) degree.
4. Rule 2.1(2).
5. Ibid.
6. Rule 2.1(3).
7. Ibid.
8. Rule 2.1(3)(a).
9. Ibid.
10. Rule 2.1(3)(b).
11. Rule 2.1(4).
12. Hereafter Indiana Supreme Court Admission and Discipline Rule 13 will be referred to as Rule 13.
13. Rule 13(5) states "Provided further that an applicant who has completed two (2) years of work in an accredited law school and has satisfactorily passed work in the subject matter as set forth in Rule 13(3), and has otherwise completed all requirements for admission to the Bar except such applicant has not yet graduated from an approved law school, shall be entitled to take the examination for admission to the Bar, but may not be admitted to the Bar of this Court until the said applicant has graduated from an improved law school within two (2) years after taking the examination.
14. Ibid.
15. Michigan Supreme Court Rule 921(3) was the model from which this section of the proposed rule was devised.
16. This section is taken basically from the American Bar Association Model Rule, I.
17. This section is taken basically from Rule 2.1.
18. This section is taken basically from the American Bar Association Model Rule, I.
19. This was added to the purpose as it seemed to be an underlying reason in the various student practice rules for allowing these activities on the part of the students.

20. Rule 2.1.
21. This is a change from the current rule.
22. Rule 2.1(3)(a).
23. Rule 2.1(3)(b).
24. Rule 2.1(4).
25. Rule 2.1(1).
26. This section is taken basically from Michigan Supreme Court Rule 921(3).
27. Rule 2.1(2).
28. This is a change from the current rule.
29. Rule 2.1(3).