

27 NCAC 01C .0209 RELATIONSHIP OF LAW SCHOOL AND CLINICS; RESPONSIBILITY UPON DEPARTURE OF SUPERVISING ATTORNEY OR CLOSURE OF CLINIC

(a) Relationship to Other Clinics. The clinics that are a part of a clinical legal education program at a law school may each operate as an independent entity (the "independent clinic model") or they may operate collectively as one entity with each clinic acting as a department or division of the entity (the "unified clinic model"). In the independent clinic model, clinics function independently of each other, including the maintenance of separate offices and separate conflicts-checking and case management systems. In the unified clinic model, clinics may share offices as well as conflicts-checking and case management systems.

(b) Application of the Rules of Professional Conduct. For the purposes of applying the Rules of Professional Conduct, each law school clinic operated pursuant to the independent clinic model shall be considered one law firm and clinics operated pursuant to the unified clinic model shall collectively be considered one law firm.

(c) Relationship with Law School. The relationship between law school clinics and the law school in which they operate shall be managed in a manner consistent with the requirements of the Rules of Professional Conduct. Procedures shall be established by both the clinics and the law school that are reasonably adequate to protect confidential client information from disclosure including disclosure to the law school administration, non-participating law school faculty and staff, and non-participating students of the law school. The rule of imputed disqualification, as stated in Rule 1.10(a) of the Rules of Professional Conduct, shall not apply to the law school administrators, non-participating law school faculty and staff, and non-participating law school students if reasonable efforts are made to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of clients. See Rule 1.6(c) of the Rules of Professional Conduct.

(d) Responsibility for Maintenance of Client Files. Client files shall be maintained and safeguarded by a law school clinic in accordance with the Rules of Professional Conduct and the ethics opinions interpretative thereof. Closed client files shall be returned to the client or shall be safeguarded and maintained by a law school clinic until disposal is permitted under the Rules of Professional Conduct. See RPC 209.

(e) Engagement Letter. In addition to the consent agreement required by Rule .0206(d) of this section for any representation of an individual client in a matter before a tribunal, a written engagement letter or memorandum of understanding with each client is recommended. The writing should state the general nature of the legal services to be provided and explain the roles and responsibilities of the clinic, the supervising attorney, and the certified law student. See Rule 1.5, cmt. [2] of the Rules of Professional Conduct ("A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.")

(f) Responsibility upon Departure of Supervising Attorney. Upon the departure of a supervising attorney from a law school clinic, the administration of the law school and of the clinic shall promptly identify a replacement supervising attorney for any active case in which no other supervising attorney is participating. In such cases, the departing attorney and the clinic administration shall protect the interests of all affected clients by taking appropriate steps to preserve the status quo of the legal matters of affected clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. If the departing attorney will not continue the representation after departure from the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation. Affected clients shall be notified and advised that (i) they have the right to counsel of choice (which may include the departing attorney if the departing attorney intends to engage in legal practice outside of the law school clinic); (ii) their file will be transferred to the new supervising attorney in the absence of other instructions from the client; and (iii) they may instruct the clinic to mail or deliver the file to the client or to transfer the file to legal counsel outside of the clinic. If instructed by a client, a file shall be promptly returned to the client or transferred to authorized legal counsel outside of the clinic.

(g) Responsibility upon Closure of a Law School Clinic. If a law school clinic is closed for any reason, the supervising attorney, with support from the law school, shall take appropriate steps to preserve the status quo of the legal matters of clients, consistent with the Rules of Professional Conduct and the ethics opinions interpretative thereof. The administration of the law school and of the clinic shall promptly notify all affected clients that (i) they have the right to counsel of choice (which may include the supervising attorney if the supervising attorney will engage in legal practice after closure of the clinic); (ii) the file will be mailed to or delivered to the client and the supervising attorney will withdraw from representation in the absence of other instructions from the client; and (iii) they may instruct the clinic to transfer the file to authorized legal counsel outside of the clinic (which may include the supervising attorney). If the supervising attorney will not continue the representation after closure of the clinic, the attorney shall comply with Rule 1.16 of the Rules of Professional Conduct and all court rules for withdrawal from representation.

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