

## **THIRD YEAR PRACTICE RULES** (updated 10/28/08)

Every student engaged in third year practice is required to read the applicable rules. These are included in your orientation booklet for your convenience. Highlights of the rules are outlined below but are not intended as a substitute for reading the actual rules. If you have any questions regarding these rules or the Clinical Placement Program's requirements, please talk with Professor Bacigal.

### **State Courts**

Virginia recently amended its Third Year Practice Rule. The new rule requires a judge's written consent for a student to appear in court. The rule eliminates the requirement that eligible law students obtain written approval from the court or administrative tribunal at least 10 days prior to any appearance before such court or tribunal. See attached amendment. In addition, an eligible law student may, in the presence of a supervising lawyer, appear in any court or before an administrative tribunal on behalf of a person if the person on whose behalf the student is to appear has given written consent to that appearance. 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. 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. See *Code of Virginia, Rules of Virginia Supreme Court*, Vol. 11, Pt. 6, § IV, Para. 15 (2007)

It is essential that a **supervising lawyer be with you at all times during the proceedings**. The **client's or Commonwealth's written consent** must also be **filed with each case and brought to the judge's attention**. Although the rule does not specifically state that a copy of the court's written approval be filed with each case in which a student appears, it is recommended as the better practice in the event any questions are later raised. The Clinical Placement Program has requested the field instructors provide the law school with copies of the following: (1) the court or administrative tribunal's written approval for you to appear; and (2) either a copy of the signed approval form utilized by the Commonwealth, or a copy of the client consent form used by your office which is filed with a case and brought to the court or administrative tribunal's attention. These will be kept in each student's file. **You may not appear in court and engage in third year practice until all applicable forms are received by Professor Bacigal.**

### **Federal Courts**

Students practicing in the federal district courts are governed by the federal Plan for Third Year Practice Rule. See *Michie's Jurisprudence of Virginia and West Virginia*, Vol. 21D, Appendix A, pp. 38-40 (1997 Replacement Volume). A student may appear in any criminal or civil matter on behalf of the government with the **written approval of the United States Attorney or his authorized representative as the supervising lawyer**. If any student appears on behalf of any person, the **person must indicate in**

**writing consent to that appearance and the supervising lawyer, who must be counsel of record for the person on whose behalf the student is appearing, must also indicate in writing approval** of that appearance in any civil, criminal, or bankruptcy matter. **The supervising lawyer must be personally present unless permission to the contrary is granted by the court.** The United States Attorney's Office has been requested to forward a copy of the permission form for each student to Professor Bacigal at the beginning of the semester so it can be placed in the student's file. If any student appears on behalf of a client, a copy of the applicable consent form with all required signatures must likewise be forwarded to Professor Bacigal. The rules pertaining to practice before the federal court of appeals are similar and are included here. **You may not appear in any federal court proceeding until there has been compliance with the rules and copies of the applicable written consent forms have been received by Professor Bacigal.**

Your field instructors have been notified of the requirements outlined here. **You are ultimately responsible, however, for being sure that you comply with the third year practice rules at all times and that you do not appear in any court proceeding until all required filings have been made with the law school.**