

**IN THE MATTER OF THE ESTABLISHMENT OF
A MONTANA STUDENT PRACTICE RULE**

The following Order of the Montana Supreme Court became effective on May 1, 1975 with 'Rule III. Requirements and Limitations' amended August 13, 1991.

PER CURIAM:

Dean Robert E. Sullivan of the University of Montana Law School, and Ronald F. Waterman, Esq., Chairman of Liaison Committee of the Montana Bar Association (now the State Bar of Montana) and the Student Bar Association of the Law School, petitioned this Court to adopt a rule permitting and governing student practice.

A hearing was had on said petition and the proposed rule was also submitted to our local Bar Associations throughout Montana and received many endorsements, and the Court having now considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that the following rule permitting and governing law student practice be adopted:

MONTANA STUDENT PRACTICE RULE

I. Purpose

The bench and the bar are responsible for providing competent legal services. This rule is adopted as one means of providing assistance to practicing lawyers in providing such services and to encourage law schools to provide clinical instruction in trial work of varying kinds.

II. Activities

A. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

1. Any civil matter. In such cases the supervising lawyer is not required to be personally present in court unless directed to be present by the judge, magistrate, or referee before whom the matter is pending.
2. Any criminal matter in which the defendant does not have the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer is not required to be personally present in court.
3. Any criminal matter in which the defendant has the right to the assignment of counsel under any constitutional provision, statute, or rule of this court. In such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

B. An eligible law student may also appear in any criminal matter on behalf of the State with the written approval of the supervising lawyer and the prosecuting attorney or his authorized representative.

C. In each case the written consent and approval referred to above 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.

D. A judge may exclude a law student from active participation in proceedings before the court, in the interest of orderly administration of justice or for the protection of a client or witness, and shall thereupon grant a continuance to secure the attendance of the supervising lawyer.

E. Under the general supervision of a member of the State Bar of Montana, but outside the personal presence of that lawyer, an eligible law student may engage in other activities, including:

1. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.
2. Preparation of briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer.
3. Advising, negotiating, and performing other appropriate legal services, but only after prior consultation with and obtaining the express consent of the supervising lawyer. Negotiations are subject to final approval of the supervising lawyer.

F. An eligible law student may participate in oral argument in the Supreme Court of Montana, but only in the presence of the supervising lawyer.

III. Requirements and Limitations (*Amended August 13, 1991*)

In order to make an appearance pursuant to this rule, the law student must:

- A. Be duly enrolled in a law school approved by the American Bar Association.
- B. Have completed legal studies amounting to at least two-thirds ($2/3$) of the total credit hours required for graduation, or be within five credit hours (assuming ninety credits are required for graduation) of meeting this requirement.
- C. Be certified by the dean of the law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern.
- D. Be introduced to the court in which he is appearing by an attorney admitted to practice in that court.
- E. Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on behalf he renders services; but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require.
- F. Certify in writing that he has read and is familiar with and will abide by the Code of Professional Responsibility.

IV. Certification

The certification of a student by the law school dean;

- A. Shall be filed with the clerk of the court; and, unless it is sooner withdrawn, it shall remain in effect until the expiration of twelve (12) months after it is filed, or admission to the bar, whichever occurs first. Upon exceptional circumstances shown, the dean may renew the certification for one more twelve (12)

month period. Law school graduates who must take the bar examination are eligible until the results are announced of the first bar examination after their certification under this rule.

B. May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the court, who shall forthwith mail copies thereof to the student and the supervising lawyer.

C. May be terminated by the court at any time without notice or hearing and without any showing of cause.

V. Supervision

The lawyer under whose supervision an eligible law student participates in any of the activities permitted by this rule shall:

A. Be a member in good standing of the State Bar of Montana whose service as a supervising lawyer for this program is approved by a judge of the court in which the student must appear.

B. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

C. Assist and counsel the law student in the activities mentioned in these rules and review such activities with such student, all to the extent required for the proper practical training of the student and the protection of the client.

D. No supervising lawyer shall have supervision over more than one (1) law student at any one time: however, in the case of recognized legal aid, legal assistance, public defender, and similar programs furnishing legal assistance to indigents, or of state, county, or municipal legal departments, the supervising lawyer may supervise two (2) law students at one time. This restriction shall not apply to any clinical legal education program conducted as a part of the curriculum of any law school in this state.

VI. Miscellaneous

A. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that he might lawfully do prior to the adoption of this rule.

B. This rule shall not restrict any previous court orders concerning student practice.