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GREATER LOS ANGELES
CONSORTIUM ON EXTERNSHIPS

2011-2012

FIELD PLACEMENT SUPERVISION MANUAL



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GREATER LOS ANGELES CONSORTIUM ON EXTERNSHIPS (GLACE)

Supervision Manual for Field Placement Supervisors

In 1993, six Los Angeles area ABA-accredited law schools formed a consortium, the Greater Los Angeles Consortium on Externships (GLACE). In 2005, Chapman University School of Law in Orange County was added as a member school of GLACE. The purpose of the consortium was to develop joint standards for the field supervision of externs by field supervisors, judicial clerks and research attorneys. This GLACE-endorsed field supervision manual incorporates those standards and highlights common workplace issues that are often of interest to students and field supervisors. Your participation in our program as a supervising attorney and educator is our most valued asset. We hope these materials will be of value to you in your supervision efforts and thank you for your willingness to mentor our students.

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SECTION I: EXPERIENTIAL LEARNING AND THE PROCESS OF BECOMING AN ATTORNEY

GLACE law schools have a number of educational objectives, including exposure of students to different models of lawyering skills related to specific areas of legal practice, the acquisition of greater insight into the process of lawyering, the development of a sense of professional responsibility, and the awareness and ability to reflect on and learn from experiences. We stress to students that "doing" the work that they see performed by their field supervisors is just one component of the externship experience. Equally as important as performing lawyering tasks is the process of experiential learning in which students learn to reflect on their observations in order to make sense of their experiences and in order to integrate that reflection "to create new, or modify existing knowledge."¹

As externship directors, we probably define your role as a field supervisor and mentor more broadly than you. Although we appreciate the attention you give externs regarding the performance of legal tasks such as drafting documents, discovering and using facts, and arguing motions, externs can learn other invaluable insights from your observations about the legal system. Many of the externs you will supervise will have little or no legal experience; the legal world is an unknown universe. Externs are like cultural anthropologists who need to discover the professional mores in order to understand and respond to the legal ethos. We therefore often request externs to focus each week on a different aspect of the lifestyle of lawyers in the particular legal field in which they are practicing. For instance, in order for students to understand the legal context in which they practice, they need to reflect on a number of issues such as: (1) the relationships between the attorneys and support staff, clients, opposing counsel, and judges; (2) the lifestyle and demographics of such an attorney including gender, race, age, salary, and working conditions; (3) the relationship between the legal work and attorney values, perceptions, and concepts of self-worth; and (4) ethical conundrums inherent in that type of law practice.

We expect students to discuss many of their observations with you; you can add a context to the student's observation by sharing your opinions about the legal system and the lifestyle of an attorney specializing in your particular field of practice. We also expect students to reflect on their experiences in journals. The process of writing complements the process of reflecting. It is therefore important for you and the extern to have a discussion at your earliest convenience regarding the scope of confidentiality for the written journals. This provides an excellent opportunity to discuss with the student the ethical and legal parameters of client confidentiality and any specific rules which your office may have regarding client loyalty and privilege.

It is clear to GLACE members that you provide students a wealth of opportunities to not only practice law, but to experience and reflect upon the socialization process of becoming an attorney, as well as the quality of life your legal discipline might provide.

¹ J.P. Ogilvy, Leah Wortham & Lisa G. Lerman, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS*, 6 (West 1998).

SECTION II: PROVIDING STRUCTURE FOR AND FEEDBACK TO EXTERNING LAW STUDENTS

During the time you supervise our law students, you are providing a critical part of the students' legal education. Students from GLACE schools earn a substantial number of units for field placement experience and we are understandably concerned that they receive appropriately challenging work and regular, effective feedback. This section contains suggestions on preparing assignments for externs and provides you with a six step model approach to giving students feedback in a constructive manner, with the goal of assisting them to self-critique their own future work so that they will produce work that meets your goals in assigning the project.

A. STRUCTURING THE EXPERIENCE

1. Be prepared for the externs' arrival:

Some externship placements have formal, well-established externship programs that provide new externs with materials describing everything from the structure of the office to the externs' duties to the local eateries. It is far more common, however, to find that placements, whether large or small, run their externship program more informally. While there is nothing inherently wrong with some informality, students regularly report that early in the externship they spend a significant amount of time figuring out what they are supposed to do and what is expected of them.

You can avoid this problem by taking a few steps to prepare for the students' arrival. First, ask yourself what you expect the externs to do in your office. Will they be working primarily with one attorney or several? Who will be primarily responsible for assigning and reviewing work? Who will oversee the externs' assignments to ensure the students receive appropriate work that has sound pedagogical value? These are basic concerns for all students and it helps everyone if you have these issues settled before the students start work.

When the students arrive, take the time to conduct a brief orientation to the office. Particularly in large offices, it is very helpful if students are given a tour of the office and are introduced to people they will need to know. Explain up front your expectations and the students' obligations.

Ideally, before the first work is assigned, each supervisor should meet with her externs to discuss the externs' educational goals for the semester. The supervisor also should speak to the law school's extern coordinator about the school's expectations and educational goals. Some GLACE schools require students to prepare a learning plan that sets forth in some detail the students' academic goals for the semester and guides the students' progress during the externship. If the school does not require a learning plan, you might consider asking the students to prepare one for you. Whether or not the students prepare a formal learning plan, you should take some time at the beginning of the externship to discuss with the students their expectations and goals so, to the extent possible, the students receive work that promotes the stated goals.

2. Provide Appropriate and Well-Defined Assignments

Perhaps the most common extern complaints concern the type and/or number of assignments and the attorneys' or clerks' failure to explain precisely what they want the student to do. These problems can be easily solved if one supervising attorney or clerk acts as a "clearinghouse" through which all assignments must pass. That attorney should gather potential assignments from other attorneys and review the proposed work before it is assigned. In this way, the placement can ensure that the assigning attorney has provided an adequate description of the work required and has equipped the student with enough background information to get the work done. In addition, if one person takes responsibility for all extern assignments, she can make sure that no one student has too much or too little work and that no student gets bogged down with an assignment that is too burdensome or has only marginal educational value. At some placements, attorneys who wish to assign work to an extern use a standard "Request for Extern Help" form in which they describe the assignment so the proposed task can be reviewed and approved before it is passed along to a student extern. For more specific suggestions on designing and structuring assignments, see the checklist at the end of this section.

3. Arrange Weekly Conferences With Your Externs

This suggestion seems obvious, yet it is often overlooked. Because all supervisors are extremely busy practitioners, it is very easy to let weeks go by without spending any time one-on-one with your externs. But, from the law schools' perspective, it is *essential* that all students meet individually with their supervisors at least once a week to check in, review completed work, address any problems and discuss future assignments. If you schedule a weekly "standing appointment" to meet with your externs you are far less likely to find that your daily work prevents you from regularly meeting with the students.

B. A SIX-STEP MODEL APPROACH IN PROVIDING USEFUL AND EFFECTIVE FEEDBACK

Beryl Blaustone, Professor of Law, CUNY School of Law, and also the Director of the Mediation Clinic at Main Street Legal Services, Inc., developed a six step model to assist field or clinical supervisors in giving students constructive feedback.² A goal of her model is to begin teaching law students to self-critique their own work and to begin to develop critical self-awareness in performance.

Step One: The Student Identifies Strengths of the Performance: The student should identify those aspects of the work that he or she feels were done well, including an identification of what the performance accomplished.

² Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN.L.REV. 601 (2006).

Step Two: The Supervisor Responds Solely to Those Items Raised by The Student: Giving only positive feedback, the supervisor at this stage confines remarks to those items raised by the student.

Step Three: The Supervisor Identifies Other Strengths in the Performance: The supervisor now adds additional points that were done well. This wide-open stage explores all facets of the performance that were accomplished satisfactorily or that show a potential for success, with specific illustrations of why these aspects were successfully executed.

Step Four: The Student Identifies Difficulties and/or Changes to be Made: The student now takes the initiative in identifying areas in need of improvement, coming forward with specific comments.

Step Five: The Supervisor Responds to the Identified Difficulties: Confining remarks to areas identified by the student for improvement, the supervisor comments on how the issues could be handled differently next time.

Step Six: The Supervisor Indicates Additional Difficulties: This final stage involves another wide-open exploration of all facets of the performance. The discussion focuses on aspects that were not satisfactorily accomplished, again with specific illustrations and concrete analysis.

To assist field supervisors in implementing the six step model, we suggest the following:

1. Provide Feedback on All Assignments

The assigning attorney should provide timely feedback on *every assignment the extern completes*. Obviously, the nature of the feedback will vary depending on the type of assignment involved: a short research assignment resulting in a brief oral report may only warrant a five or ten-minute conversation, while a substantial written project deserves more time and attention. Students consistently report that receiving regular feedback throughout their externship highlighted their areas of weakness and greatly improved the learning experience. In addition, constructive feedback benefits the supervising attorneys who see vastly improved student performance.

When we talk about "providing feedback" we do not mean to suggest that the attorney should offer suggestions and the student should sit passively and accept those suggestions. Students will get far more out of a discussion when they are actively involved in evaluating their own performance.³ To that end, students should be encouraged to assess their own work and to provide suggestions as to how the work could be improved.

³ See generally, A. Alexander and J. Smith, *A Practical Guide to Cooperative Supervision for Law Students and Legal Employers*, 29 *Law Office Economics and Management* 207 (1988).

2. Solicit the Student's Assessment of Her Performance on All Assignments

When reviewing an extern's work it is useful to first ask the student to evaluate both the assignment and her own performance. For example, did she think the assignment was appropriately challenging? Was it too difficult? Was the project adequately explained so she knew what was expected of her? If she encountered obstacles or questions along the way, did the assigning attorney provide helpful guidance? Is the student satisfied with her own performance? If not, what changes would she make?

These questions will not only help focus the conversation, they will force the student to reflect on the work she has done and what she could have done to improve it. The student is far more likely to accept suggestions for improvement if she has independently recognized the areas that need attention. Furthermore, the student's assessment may help highlight problems that need to be addressed: perhaps problems with the final work product were created by the attorney's limited description of the assignment or by the student's unfamiliarity with the necessary research tools. If the attorney elicits the student's impressions, these issues can be uncovered and handled more effectively.

3. Providing Constructive Feedback

Most extern supervisors are very concerned with making the students' externship pleasant and, as a result, may shy away from the sometimes uncomfortable task of critiquing the students' work. While this impulse is understandable, students need, deserve and actually *want* honest feedback on their work.

In our experience, students often assume that "no news is good news," and will continue to repeat the same errors unless they are given specific notice that improvement is necessary. We therefore urge all supervisors to provide feedback early in the semester so any problems can be addressed before the externship proceeds too far. Most students are eager to become good lawyers and welcome specific advice on how they can sharpen their skills.

What sort of feedback should you offer and how should you go about it? First, include a healthy dose of positive feedback. In fact, it is a good idea to start off on a positive note. For example, even if the student's writing needs improvement, you may be able to honestly commend the student's research abilities. And if the research was weak, perhaps the student's eagerness and curiosity warrant a compliment. While you should not be reluctant to criticize the work where necessary, students are apt to be less defensive if they hear some good news first.

In order to be effective, suggestions for improvement should be as specific as possible. Instead of telling a student to "tighten up the writing" or "use the facts more effectively," take a portion of the student's work and show her how to edit and rewrite the assignment. While this kind of feedback can be time-consuming, it is also the most helpful.

We recognize that it can be difficult to systematically review students' work and cover all the relevant points. Below we have set out nine categories you may want to consider when

reviewing a student's performance.⁴ You may not need or want to touch on each of these categories during every feedback session. But if you assess the student's performance on a specific assignment with these categories in mind it may help both you and the student focus on the areas of concern.

(a) Research Ability

- knows the basic, non-computer library research tools and how to use them
- is familiar with computerized legal research resources
- does thorough, careful and accurate work
- produces practical and useful results

(b) Legal Analysis

- integrates legal concepts and theory with facts in a coherent and logical progression
- is able to identify relevant issues and distinguish a logical hierarchy among them.

(c) Intellectual Capacity

- displays intellectual curiosity
- thinks creatively and imaginatively
- develops alternative avenues of argument
- pursues analogous extensions in areas where the law is nebulous
- explores subsidiary and related issues uncovered by research to develop innovative legal theory

(d) Writing Skill

- writes clearly, precisely and persuasively
- drafts well-organized written assignments
- cites accurately and properly

(e) Clarity of Oral Expression

- speaks well and is easily understood
- is able to discuss issues clearly
- communicates effectively in various advocacy proceedings

(f) Judgment

- is mature
- exercises good common sense
- knows how and when to ask questions or seek additional consultation
- sets appropriate priorities in handling assigned work

(g) Responsibility

- is trustworthy and acts ethically
- takes initiative
- is dependable and conscientious about work
- meets deadlines and manages time well
- works independently and efficiently without sacrificing quality
- accepts criticism and constructively modifies work habits

⁴ This list is presented and discussed in A. Alexander and J. Smith, *A Practical Guide for Cooperative Supervision for Law Students and Legal Employers*, supra, at pp. 216-217. See also, Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN. L. REV. 601 (2006).

(h) Client Relations

- develops effective working relationships with clients
- is sensitive and responsive to client needs
- knows how to be diplomatically persistent

(i) "Plus" Traits

- shows an interest in the employer's work
- has a sense of humor
- is cooperative and accommodating to the needs of the office
- is even-tempered
- remains unruffled in emergency situations
- is courteous and respectful to all staff
- demonstrates sensitivity to office human relations dynamics
- appears self-confident and enthusiastic
- maintains a professional demeanor

4. Keep the lines of communication open:

No matter how informal and friendly your office may be, there is no denying the fact that there is a significant imbalance of power between supervising attorneys and their externs. Most students are exquisitely aware of their place in the office hierarchy and may be reluctant to ask questions or seek advice for fear of appearing incompetent. In our experience, the best supervisory relationships exist when students feel free to approach their supervisors with all questions, large or small. Supervisors should therefore make every effort to create and maintain a comfortable and effective working relationship that will maximize both the students' educational experience and their contributions to your office.

C. SUPERVISORS' CHECKLIST FOR ASSIGNMENT CLARIFICATION

A key to a successful externship, whether in judicial chambers or in a more typical law office, is the ability of a supervising attorney or clerk to give assignments to the extern effectively. When any project is assigned, it is important to know exactly what you expect from the student and communicate all aspects of your expectations to him or her. Below is a checklist you may find helpful to ensure less confusion and more productivity for both you and the extern.

1. Have you explained each assignment with the relative inexperience of the student in mind?

Have you discussed the basic objectives of the assignment or project with the student? Does the student know how this particular assignment fits into the overall case file and what the assignment will help you or the judge accomplish or resolve? Effective supervisors take the time to explain:

- When drafts of the assignment are due, as well as when the final product is due.

- How much time you expect the student to spend on the assignment, including time for research and drafting (keeping in mind that students are often inexperienced and require extra time for thorough research). How many issues do you expect the student to address? How technically perfect do you want the letter/memo/brief to be in terms of case cites, for example? Do you want a rough draft or a more polished draft? How often should the student check in with you for a progress meeting? Is your schedule communicated to the student, and the student's schedule communicated to you, so that progress meetings are accomplished as planned?
- Is the student aware of the format you require or expect? Have you provided the student with an example of the format of the memo, brief or letter to assist the student in understanding your expectations?
- Who should the student ask for assistance if you are unavailable?
- Have you provided the student with some guidance in terms of starting points for legal research to help focus the issue?
- Have you asked the student if he/she has questions (again, remembering that some students may be unfamiliar with the substantive area of law you are asking them to address)?

2. Have you followed up regularly with your students as assignments progress?

As students begin working on assignments, they often need additional and periodic help, assignment clarification, reassurance, or relief. Redefinition of the task is common as the student gathers information and gains a more precise understanding of the assignment. Since interactions during this phase are frequently marked by informality and brevity, the importance of these exchanges can be easily overlooked. Have you been diligent in keeping those scheduled progress meetings?

3. Have you provided students with feedback on their work?

As the assignment progresses, and again at the completion of it, you should solicit student impressions about performance and convey your impressions about the performance on the assignment, using the Blaustone **Six Step Model** if that works well for you. Without periodic feedback, neither you nor the student can effectively evaluate his or her performance and make any necessary changes to result in a final product which closely resembles your goals for the assignment and provides your student with a sense of accomplishment.

SECTION III: LAW STUDENTS AND WORKPLACE CONFIDENTIALITY

The observance by lawyers and their respective employees of the ethical obligations of confidentiality is a fundamental principle of the lawyer-client relationship. GLACE schools recommend that all externship placements implement steps to ensure that law students, who may or may not have experienced formal training in professional responsibility at the time of the placement, are aware of the specific confidentiality policies of the placement. GLACE schools recommend that:

- ◆ Confidentiality policies be in writing and distributed to each extern or law student volunteer each semester or summer session;
- ◆ Students sign an acknowledgement of receipt of the policies; and
- ◆ Students actively engage in dialogue throughout the term of the placement with supervising attorneys on the importance of confidentiality and the ethical implications involved in individual cases or circumstances.

For your reference and convenience, this section contains:

- ◆ California Business and Professions Code Section 6068 (e) (as amended), *Duties of an Attorney*, the ethical obligation regarding client confidences and secrets;
- ◆ California Rules of Professional Conduct, **Rule 3-100** (effective 7-1-04), *Confidential Information of a Client*. Text of rule and comments included.
- ◆ A sample written confidentiality policy from an externship placement agency, the Loyola Law School Center for Conflict Resolution; and
- ◆ A sample written confidentiality policy and acknowledgement of receipt and agreement for externs from the Loyola Law School Externship Department.

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 6067 (OATH OF OFFICE) AND 6068 (DUTIES OF AN ATTORNEY)

§ 6067

SELECTED PROVISIONS

ARTICLE 4. ADMISSION TO THE PRACTICE OF LAW

§ 6067. Oath

Every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. A certificate of the oath shall be indorsed upon his license.

§ 6068. Duties of Attorney

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain such actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her, such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

*Effective July 1, 2004, Section 6068(e) is amended to read:

(e)(1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual.

(f) To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States or any other constitutional or statutory privileges.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

CALIFORNIA RULES OF PROFESSIONAL RESPONSIBILITY, RULE 3-100, CONFIDENTIAL INFORMATION OF A CLIENT

(Effective July 1, 2004)

Rule 3-100: Confidential Information of a Client

(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances:

- (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and
- (2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).

(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.

(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.

Discussion:

[1] *Duty of confidentiality.* Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr.371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld. Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship, that in the absence of the client's informed consent, a member

must not reveal information relating to the representation. (See, e.g., *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].)

[2] *Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality.* The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See *In the Matter of Johnson* (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; *Goldstein v. Lees* (1975) 46 Cal.3d 614, 621 [120 Cal.Rptr. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law.

[3] *Narrow exception to duty of confidentiality under this Rule.* Notwithstanding the important public policies promoted by lawyers adhering to the core duty of confidentiality, the overriding value of life permits disclosures otherwise prohibited under Business and Professions Code section 6068(e), subdivision (1). Paragraph (B), which restates Business and Professions Code section 6068, subdivision (e)(2), identifies a narrow confidentiality exception, absent the client's informed consent, when a member reasonably believes that disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in the death of, or substantial bodily harm to, an individual. Evidence Code section 956.5, which relates to the evidentiary attorney-client privilege, sets forth a similar express exception. Although a member is not permitted to reveal confidential information concerning a client's past, completed criminal acts, the policy favoring the preservation of human life that underlies this exception to the duty of confidentiality and the evidentiary privilege permits disclosure to prevent a future or ongoing criminal act.

[4] *Member not subject to discipline for revealing confidential information as permitted under this Rule.* Rule 3-100, which restates Business and Professions Code section 6068, subdivision (e)(2), reflects a balancing between the interests of preserving client confidentiality and of preventing a criminal act that a member reasonably believes is likely to result in death or substantial bodily harm to an individual. A member who reveals information as permitted under this rule is not subject to discipline.

[5] *No duty to reveal confidential information.* Neither Business and Professions Code section 6068, subdivision (e)(2) nor this rule imposes an affirmative obligation on a member to reveal information in order to prevent harm. (See rule 1-100(A).) A member may decide not to reveal confidential information. Whether a member chooses to reveal confidential information as permitted under this rule is a matter for the individual member to decide, based on all the facts and circumstances, such as those discussed in paragraph [6] of this discussion.

[6] *Deciding to reveal confidential information as permitted under paragraph (B).* Disclosure permitted under paragraph (B) is ordinarily a last resort, when no other available action is reasonably likely to prevent the criminal act. Prior to revealing information as permitted under paragraph (B), the member must, if reasonable under the circumstances, make a good faith effort to persuade the client to take steps to avoid the criminal act or threatened harm.

Among the factors to be considered in determining whether to disclose confidential information are the following:

- (1) the amount of time that the member has to make a decision about disclosure;
- (2) whether the client or a third party has made similar threats before and whether they have ever acted or attempted to act upon them;
- (3) whether the member believes the member's efforts to persuade the client or a third person not to engage in the criminal conduct have or have not been successful;
- (4) the extent of adverse effect to the client's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and analogous rights and privacy rights under Article 1 of the Constitution of the State of California that may result from disclosure contemplated by the member;
- (5) the extent of other adverse effects to the client that may result from disclosure contemplated by the member; and
- (6) the nature and extent of information that must be disclosed to prevent the criminal act or threatened harm.

A member may also consider whether the prospective harm to the victim or victims is imminent in deciding whether to disclose the confidential information. However, the imminence of the harm is not a prerequisite to disclosure and a member may disclose the information without waiting until immediately before the harm is likely to occur.

[7] *Counseling client or third person not to commit a criminal act reasonably likely to result in death or substantial bodily harm.* Subparagraph (C)(1) provides that before a member may reveal confidential information, the member must, if reasonable under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial bodily harm, or if necessary, do both. The interest protected by such counseling is the client's interest in limiting disclosure of confidential information and in taking responsible action to deal with situations attributable to the client. If a client, whether in response to the member's counseling or otherwise, takes corrective action – such as by ceasing the criminal act before harm is caused – the option for permissive disclosure by the member would cease as the threat posed by the criminal act would no longer be present. When the actor is a non-client or when the act is deliberate or malicious, the member who contemplates making adverse disclosure of confidential information may reasonably conclude that the compelling interests of the member or others in their own personal safety preclude personal contact with the actor. Before counseling an actor who is a non-client, the member should, if reasonable under the circumstances, first advise the client of the member's intended course of action. If a client or another person has already acted but the intended harm has not yet occurred, the member should consider, if reasonable under the circumstances, efforts to persuade the client or third person to warn the victim or consider other appropriate action to prevent the harm. Even when the member has concluded that paragraph (B) does not permit the member to reveal confidential information, the member nevertheless is permitted to counsel the client as to why it may be in the client's best interest to consent to the attorney's disclosure of that information.

[8] *Disclosure of confidential information must be no more than is reasonably necessary to prevent the criminal act.* Under paragraph (D), disclosure of confidential information, when

made, must be no more extensive than the member reasonably believes necessary to prevent the criminal act. Disclosure should allow access to the confidential information to only those persons who the member reasonably believes can act to prevent the harm. Under some circumstances, a member may determine that the best course to pursue is to make an anonymous disclosure to the potential victim or relevant law-enforcement authorities. What particular measures are reasonable depends on the circumstances known to the member. Relevant circumstances include the time available, whether the victim might be unaware of the threat, the member's prior course of dealings with the client, and the extent of the adverse effect on the client that may result from the disclosure contemplated by the member.

[9] *Informing client of member's ability or decision to reveal confidential information under subparagraph (C)(2).* A member is required to keep a client reasonably informed about significant developments regarding the employment or representation. Rule 3-500; Business and Professions Code, section 6068, subdivision (m). Paragraph (C)(2), however, recognizes that under certain circumstances, informing a client of the member's ability or decision to reveal confidential information under paragraph (B) would likely increase the risk of death or substantial bodily harm, not only to the originally-intended victims of the criminal act, but also to the client or members of the client's family, or to the member or the member's family or associates. Therefore, paragraph (C)(2) requires a member to inform the client of the member's ability or decision to reveal confidential information as provided in paragraph (B) only if it is reasonable to do so under the circumstances. Paragraph (C)(2) further recognizes that the appropriate time for the member to inform the client may vary depending upon the circumstances. (See paragraph [10] of this discussion.) Among the factors to be considered in determining an appropriate time, if any, to inform a client are:

- (1) whether the client is an experienced user of legal services;
- (2) the frequency of the member's contact with the client;
- (3) the nature and length of the professional relationship with the client;
- (4) whether the member and client have discussed the member's duty of confidentiality or any exceptions to that duty;
- (5) the likelihood that the client's matter will involve information within paragraph (B);
- (6) the member's belief, if applicable, that so informing the client is likely to increase the likelihood that a criminal act likely to result in the death of, or substantial bodily harm to, an individual; and
- (7) the member's belief, if applicable, that good faith efforts to persuade a client not to act on a threat have failed.

[10] *Avoiding a chilling effect on the lawyer-client relationship.* The foregoing flexible approach to the member's informing a client of his or her ability or decision to reveal confidential information recognizes the concern that informing a client about limits on confidentiality may have a chilling effect on client communication. (See Discussion, paragraph [1].) To avoid that chilling effect, one member may choose to inform the client of the member's ability to reveal information as early as the outset of the representation, while another member may choose to inform a client only at the point when that client has imparted information that may fall under paragraph (B), or even choose not to inform a client until such time as the member attempts to counsel the client as contemplated in Discussion,

paragraph [7]. In each situation, the member will have discharged properly the requirement under subparagraph (C)(2), and will not be subject to discipline.

[11] *Informing client that disclosure has been made; termination of the lawyer-client relationship.* When a member has revealed confidential information under paragraph (B), in all but extraordinary cases the relationship between member and client will have deteriorated so as to seek to withdraw from the representation (see rule 3-700(B)), unless the member is able to obtain the client's informed consent to the member's continued representation. The member must inform the client of the fact of the member's disclosure unless the member has a compelling interest in not informing the client, such as to protect the member, the member's family or a third person from the risk of death or substantial bodily harm.

[12] *Other consequences of the member's disclosure.* Depending upon the circumstances of a member's disclosure of confidential information, there may be other important issues that a member must address. For example, if a member will be called as a witness in the client's matter, then rule 5-210 should be considered. Similarly, the member should consider his or her duties of loyalty and competency (rule 3-110).

[13] *Other exceptions to confidentiality under California law.* Rule 3-100 is not intended to augment, diminish, or preclude reliance upon, any other exceptions to the duty to preserve the confidentiality of client information recognized under California law.

SAMPLE CONFIDENTIALITY POLICY

The Loyola Law School CENTER FOR CONFLICT RESOLUTION

POLICIES AND PROCEDURES

(ADOPTED JULY 1, 1994)

Confidentiality

- Center Staff shall release no information that might identify a Party served by The Center or that might identify a conflict brought to The Center.

No one other than Center Staff shall be permitted in The Center offices (Casassa 101 and 102) without the permission of the Director or of the Associate Director. If anyone else (including former Center Staff) enters The Center, they shall be escorted to the office of the Associate Director or into the hall. Say- *"It is important to The Center that confidentiality is maintained. Please come with me (go with them into the office/hall). How can I help you?"*

When returning a phone call, remember confidentiality. If the Party has waived confidentiality, Center Staff may give the name of the Party being called, Staff's name, The Center name and file number and questions about The Center may be answered. If not, then Center Staff shall only give the name of the Party being called, Staff's name and The Center name. No information about why the Party called shall be given. Center Staff cannot say what a Party did not call about because to say - "No", "No", then, "No comment", would be to say "No" "No", then "Yes". If asked, say- *"The services provided by The Center are confidential. We can release no information about what we rare told or not-told without permission."*

Students who are, or who have been, Parties at The Center shall not take the Community Conflict Resolution Clinic. Students *who* have represented a Party may, with the Director's permission, take the Clinic.

- The Center Confidentiality Form shall be signed by all Parties before a mediation may begin.
- A colored highlighter pen shall be used to mark all information in the file that a Party asks to be kept confidential.
- The address and telephone number of a Party shall not be released without the express permission of the Party.
- Files and parts thereof shall not leave The Center without the permission of the Associate Director or of the Director.
- If a Party requests that Students and/or 'Volunteers not have access to their file, that file shall be accessible only by the Director or by the Associate Director.
- Confidential material shall only be disposed of by shredding at The Center.

SAMPLE CONFIDENTIALITY/PERFORMANCE AGREEMENT

LOYOLA LAW SCHOOL EXTERNSHIP PROGRAM STUDENT PERFORMANCE AGREEMENT

As a Loyola Law School off-campus extern, I agree that:

1. I am familiar with law school externship programs and policies as set forth in the document provided to me entitled *Externship Policies and Procedures*. I agree to comply with law school off campus policies and procedures.
2. I will check my Loyola Law School e-mail at least one time per week during the semester. I agree that any email sent to me about my externship course from the Externship Department, which is printed out and in my student file, amounts to *presumptive* notice that I received that email and am aware of its contents.
3. I will make myself aware of my professional obligations at all times in my workplace. I am familiar with the confidentiality policy of the Externship Program and will adhere to the policy. The confidentiality policy requires that **I shall not reveal information designated as confidential** by the supervising attorney or judicial chambers. I shall not reveal information relating to the representation of a client, disclose the identity of a client or reveal information leading to the disclosure or identity of a case or client without the express advance authorization of the supervising attorney. I agree to redact all written work as necessary to preserve client confidentiality. I understand that **I am not permitted to give legal advice** to any person or client unless I am supervised by an attorney or expressly authorized to give advice by my supervising attorney.
4. I understand that it is solely my responsibility to submit all documents on time that are required to complete this externship course. The Externship Department has no obligation to notify me of any deficiencies in advance of entering a failing grade if I fail to adhere to my obligations under this paragraph.
5. I agree that if my grade point average puts me on Academic Probation during the term of my externship, or in the event that I disqualify from the Law School during the term of my externship, the units for which I enrolled may be adjusted or denied. In no event will any student with a GPA below 2.33 receive credit for more than four summer session units.

I have read this *Student Performance Agreement* and understand it. My signature reflects my agreement with the terms herein and acknowledges receipt of the document entitled *Loyola Law School Externship Policies and Procedures*.

Print Name: _____

Date: _____

Signature: _____

Student ID: _____

SECTION IV: TYPICAL FIELD PLACEMENT ISSUES

According to the American Bar Association standards regulating law school field placements and each individual GLACE institution's academic standards, there are several objectives and standards of supervision that must be met to maintain the quality and academic integrity of externship programs. Such standards are specifically addressed in the A.B.A. Standard 306 and the GLACE Joint Standards For Supervision of Externship Students each of which is included in Sections VII, VIII and IX of this manual. Below are several areas GLACE has identified as typical issues that occur most frequently in field placements which impede effective and successful extern performance.

1. Lack of constructive feedback on work product

While we recognize the importance of students completing assignments independently, and learning from doing, it has been our experience that many supervisors do not spend the necessary time providing constructive criticism on work assignments. It is imperative to the learning process to provide students with feedback on an ongoing basis. Only when a student understands the drafting or strategic errors made on a project do they receive the most value from the assignment. Please refer to Section II in which suggested methods of offering constructive feedback are discussed at length.

2. Lack of communication regarding project expectations

Often, externship students express frustration with the level of explanation offered when given a project. Students participating in the externship program typically have a certain allotted time they are able to spend at the placement each week and not having a clear understanding of what is expected of them on a specific project typically results in lost time and an inferior work product. This can be avoided when supervisors take the time at the beginning of an assignment to give a clear understanding of the circumstances leading up to the assignment and the proposed end result. It is also extremely helpful to offer starting point suggestions. Please refer to Section II of this manual which addresses GLACE's recommendation for the most effective way to give assignments.

3. Lack of meaningful supervision

Below are several issues with field placement supervision which constitute lack of meaningful supervision:

(a) Too many students under the supervision of one placement supervisor.

An externship is most successful when each supervising attorney is responsible for no more than three or four students. On more than one occasion a placement supervisor has had primary responsibility for five or more students during a semester. To provide constructive feedback, meet regularly with students individually (a topic to be discussed below) and monitor student progress in the placement, placement supervisors should limit the number of students they are directly supervising. This allows more

time and flexibility for the supervisor as well as gives the student a more personal and valuable learning experience.

(b) Lack of regular meetings with students.

Some supervisors do not schedule weekly meetings with the students. An obvious component to providing the most meaningful supervision and feedback is actually scheduling the time to go over the progress of each student individually. Such meetings should take place at a minimum of once a week and should cover both substantive work and professional development when applicable.

(c) Not providing enough work

Externship coordinators receive complaints from students that they are not given a sufficient amount of work throughout the semester. Some students have to create their own work or wait idly for something substantive to do. Although externship coordinators encourage students to be proactive and assertive in seeking work assignments, it is an extremely important part of supervising students to make certain that at all times they have meaningful work. Law schools can only award academic credit and evaluate each student based on the work they actually perform.

(d) Assigning non-substantive/administrative/personal tasks.

Students are sometimes given administrative or even personal tasks to perform. The supervising attorney has the responsibility to maintain the academic credibility of the externship program by assigning substantive legal work. Understandably, as with most organizations, team efforts to meet deadlines or prepare for trial are often required; during such times, attorneys and other professional staff may perform tasks that are not standard for their position. However, it is difficult for schools to assert the value of an externship when students report they are spending entire days photocopying documents or organizing a filing system for current cases. Time spent performing administrative tasks should be minimized by the supervising attorney and personal errands or tasks should never be assigned.

(e) Hours required may be excessive in relation to externship expectations

Many supervisors assign students far more work than can actually be performed in the amount of time the student and the school has allotted for the externship. As we all remember, the demands of a law student are many. Each student will typically schedule their classes based on the time they know they will spend at an externship. It is extremely difficult and frustrating to students when they have to put aside other school work in order to balance the demands of the externship. While students understand that life as a lawyer demands a constant struggle to balance priorities, often they will make time to work for the externship to the detriment of other course work. To this end,

placement supervisors should consider law students' external demands when asking them to work hours in excess of the weekly time allotted for the placement.

(f) Lack of communication with law school contact.

Finally, placement supervisors often wait too late to involve the law school externship coordinator when problems arise. Keeping open lines of communication is essential to successful placements. When any sort of conflict arises, whether it is related to the quality of work, work habits, or general attitude toward the supervisor and/or the work, it is imperative to contact the school immediately to identify the problem and discuss potential remedies before the conclusion of the program. As our goal is to ensure the most mutually beneficial relationship between both parties, we can typically offer assistance in resolving the issue or deal with the problem completely from our end. When, in a final evaluation of the student's work, we discover a student has not performed up to standard, we are faced with the difficult dilemma of failing them or substantially reducing the amount of credit they receive. If we were able to intervene early enough we may prevent this unfortunate circumstance and remedy the problem behavior, or, if most appropriate, terminate the placement.

In conclusion, while most of our placements are excellent and provide a wonderful practical training ground for our students, placement supervisors can improve dramatically the overall effectiveness of the program by remembering the above-mentioned pitfalls. Each supervising attorney should spend time carefully reviewing what an effective placement supervisor is and remember to use the law school externship coordinator as a resource whenever any problem arises. Each GLACE member is available by phone or e-mail and contact information is provided on the second page of this manual. Please do not hesitate to discuss issues with us as they arise to keep a potentially difficult situation from spiraling into an uncontrollable problem that frustrates the learning process and the benefit of externships for all parties.

SECTION V: THE WORKPLACE ENVIRONMENT FOR STUDENT EXTERNS

The workplace environment is extremely important to the successful externship experience. Students who feel comfortable and welcome are far more productive. While it may not always be possible to provide separate workspace for each extern, GLACE recommends, at a minimum, that students be provided with:

- A desk or other secure workspace that is their own;
- A phone or easy access to a phone;
- A desktop computer, or sufficient access to one to facilitate prompt assignment completion;
- Sufficient office supplies to accomplish assigned tasks;
- Access to adequate legal research materials to accomplish assigned tasks;
- Access to support staff, if necessary to accomplish a task;
- Office keys or restroom keys, if necessary;
- Copier and fax access, if necessary to accomplish a task;
- Clear instructions regarding parking or reimbursement for parking expenses;
- Written office procedures and policies.

Along with the physical set up of the office, it is important to include the student in the office culture. The more the student is treated as part of the team, the better the experience will be for the student and most likely, performance will be positively influenced. As a minimum, consider some of the following:

- Students be invited to meetings, if they are relevant to the work or may enhance understanding of the project or task;
- Students be included in investigation or research out of the office, if appropriate or may enhance the understanding of the task or project;
- Office memoranda be circulated to students, if appropriate;
- Students be included in the informal matters of the workplace, such as celebrations or group luncheons;
- Students have been formally introduced to all staff they are likely to encounter during the workday;
- Students understand and receive instructions as to any workplace limitations, such as areas that may be off-limits or files or materials that may be sensitive or confidential.

Finally, it is critically important to communicate clearly and frequently with externs. Open communication can prevent misunderstandings, clarify office relationships and ensure that your extern is a functioning member of your work environment and the mission of your team.

SECTION VI: WORKPLACE ACCESS FOR PERSONS WITH DISABILITIES

Externship programs must be accessible to students with disabilities. By way of introduction, it is interesting to note that the number of law students with disabilities is dramatically increasing. This increase is due in large part to the fact that elementary and high school students with disabilities, since the 1970's, have been provided more educational opportunities, and the passage and publicity of the Americans with Disabilities Act in 1990.⁵ It is estimated that approximately 10 percent of all law students have some sort of disability, which may or may not require a reasonable accommodation.

The Americans with Disabilities Act (hereinafter "ADA") was passed by Congress and signed by President Bush in 1990. The Act has five titles, covering employment, state and local government programs, public accommodations, telecommunications and miscellaneous provisions.⁶

In passing the ADA, Congress noted that there are over 900 different disabilities. Therefore, rather than attempt to list all of them, Congress used the definition in place since 1973, that of the Rehab Act. The definition of a person with a disability has three prongs:

- ◆ A person with a substantial impairment from a major life activity,
- ◆ A person with a record or history of such an impairment, and
- ◆ A person who is perceived as having such an impairment.

An impairment can be mental, physical, emotional, sensory, or really of almost any type.⁷

The key phrases are substantial impairment and major life activity. A substantial impairment is compared to that of an average person. For example, somebody who cannot run a marathon probably does not have a substantial impairment from mobility, someone who cannot walk a block probably does. Major life activities include things such as caring for oneself, walking, seeing, hearing, breathing, speaking, learning or working.⁸

⁵ 42 U.S.C. Section 12101 et. seq.

⁶ Although the ADA had been portrayed as a radical new law, it was actually based in large part on an earlier law, the Rehabilitation Act of 1973. This Act is generally referred to as section 504 because that was the number it had during passage. Section 504 prohibited discrimination against persons with disabilities who were employed by the federal government, entities that received federal funding and entities that had federal contracts. The large body of case law developed under section 504 informs our discussion concerning the ADA.

⁷ For example, visual impairments, mobility impairments, depression, high blood pressure, cancer, multiple chemical sensitivity, and back injuries may all be covered.

⁸ Please note that when you are assessing whether a person is substantially impaired for major life activity you should do that assessment without regard to the availability of mitigating measures. Therefore, somebody who is

The ADA only prohibits discrimination against qualified individuals. The term qualified individual with a disability means an individual with a disability who has the skill, experience, education and other job related requirements of the position and who with or without reasonable accommodation can perform the essential functions of such position.

Title II of the ADA provides that a law school must not discriminate in offering and placing people with disabilities in externships. Besides this responsibility, the postsecondary institution must be sure that the outside source of employment provides appropriate accommodations for the student.⁹ It is clear that the law school must be sure that its externship placements are, as a whole, accommodating qualified students with disabilities.

The desired result is that the student with the disability will not be excluded from an externship on the basis of his or her disability. Also, the law school is responsible, when placing students in externships, to make sure that the externship site does not discriminate against students based on their disabilities; that the externship site accommodates the student's disability; and that the student is given a reasonable range of options with regard to having an opportunity to participate in an externship.¹⁰

Title III applies to any non-government or court placements. This Title prohibits persons who own, lease, lease to, or operate a place of public accommodation from discriminating against persons with disabilities. The purview of this section is very broad, applying to almost any privately owned entity, certainly covering all legal services organizations or any other private placement. Placements must make reasonable modifications in their policies, practices, or procedures, unless to do so would fundamentally alter the nature of their services. Most of the cases under Title III have dealt with communication problems, failing to provide interpreters for persons who having hearing impairments.¹¹

Placements must make themselves accessible to persons with disabilities if it is "readily achievable". This is assessed by considering the cost, the overall resources of the facility and the types of operations. Each person with a disability is different, as is each workplace, so exactly what needs to be done to accommodate a specific situation is very fact specific.

As an example, a law student who uses a wheelchair for mobility will need either a ramp or elevator if there are stairs. They might also require a desk that is higher, more room to maneuver, an accessible restroom and other particular requirements. A law student who is hearing impaired may require a text telephone, may require an interpreter at times and possibly other assistance. Other issues may arise with students with learning disabilities who may need extra time from a supervisor or extra assistance. In most cases, these types of modifications

substantially hard of hearing even though might be fairly well able to hear with a hearing aid is still considered substantially impaired from the major life activity of hearing.

⁹ 34 C.F.R. §104.12 (a): A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

¹⁰ Title II applies in exactly the same way to any state or local government agency. This includes the State Courts. The federal government is covered by the Rehab. Act of 1973, and the Federal Courts are not specifically covered.

¹¹ *People v. Mid Hudson Medical Group*, 877 F. Supp. 143 (SDNY 1995).

would be readily achievable, but there could be a case where the demand was so great that it caused a fundamental alteration of the services.

In general, the ADA is intended to provide equal access for law students with disabilities to participate in an externship experience. As we know, these externship experiences are enormously valuable to law students in many ways.

SECTION VII: WORKPLACE FREE OF ILLEGAL OR UNWANTED HARASSMENT

GLACE law schools are committed to providing students with internship and externship placements that are free from illegal and unwelcome harassment. Sexual harassment is prohibited under both Federal and State law.¹ GLACE schools expect all placement agencies to be cognizant of the law and provide a work environment for students free of harassment.

Prohibited harassment includes verbal, physical and visual conduct where: (1) submission to the conduct is made either an explicit or implicit condition of employment or business, service or professional relationship; (2) submission or rejection of the conduct is used as a basis for an employment decision or decision affecting the terms of a business, service or professional relationship; or (3) the harassment interferes with an employee's or other's work performance or creates an intimidating, hostile or offensive work environment for the employee, extern, intern or other protected person.

Sexual harassment can take many forms and includes, but is not limited to, the following: slurs, jokes, statements, email messages, gestures, assault, impeding or blocking another's movement or otherwise physically interfering with normal work, pictures, drawings or cartoons based upon an employee, intern, extern or other protected person's sex or gender. Sexual harassment also includes unwelcome conduct such as requests for sexual favors, conversation containing sexual comments and other unwelcome sexual advances. Sexually harassing conduct can be performed by a person of either the same or opposite sex as the person who is the subject of harassment.

It is also illegal under both California and federal law to retaliate, or tolerate retaliation by any person, against an employee, intern, extern or other protected person for either making a complaint of harassment or cooperating in an investigation of alleged harassment.

An intern or extern who believes he or she has been harassed is encouraged to promptly report the incident to his or her GLACE school internship/externship director. Each school has internal policies and procedures regarding harassment and will take appropriate steps as required in the policy, including contact with the placement agency complained of, if appropriate.

¹ Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e *et seq.*, California Fair Employment and Housing Act, California Government Code Section 12940 *et seq.*

SECTION VIII: GLACE JOINT STANDARDS FOR SUPERVISION OF EXTERNSHIP STUDENTS

GLACE

Greater Los Angeles Consortium on Externships

919 Albany Street
Los Angeles, California 90015
213/736-1104 Fax: 213/487-7856

Participating Schools:

Loyola Law School
Pepperdine University School of Law
Southwestern Law School
UCLA School of Law
USC Gould School of Law
Whittier Law School
Chapman University School of Law

GREATER LOS ANGELES CONSORTIUM ON EXTERNSHIPS

JOINT STANDARDS FOR SUPERVISION OF EXTERNSHIP STUDENTS

Introduction

In 1993, six Los Angeles ABA-accredited law schools formed the Greater Los Angeles Consortium on Externships (GLACE). The purpose of the organization is to develop joint standards for the supervision of externship students by field attorney supervisors. Participating schools are Loyola Law School, Pepperdine University School of Law, Southwestern Law School, UCLA School of Law, the USC Gould School of Law and Whittier Law School. Chapman University School of Law joined in 2005

The American Bar Association Standard 305 relating to law school field placement programs has been interpreted to require that any law school permitting students to participate in activities or studies away from the law school develop and publish a statement defining the education objectives of externship programs. While each individual participating school has developed specific objectives, GLACE law schools have prepared this handbook of joint field placement educational objectives and supervision standards for the assistance of all supervising attorneys and students who participate in field programs. The GLACE-endorsed educational objectives of externship placements are:

1. To encourage the further development of student research, writing and drafting skills through work on legal documents such as complaints, answers, trial and appellate briefs, agreements, legal memoranda, motions, and opinion letters;
2. To expose students to lawyering skills through participation in activities such as interviewing, counseling, negotiation, oral advocacy, investigation, and the formulation of case strategy;
3. To develop students' oral advocacy skills through participation in, or observations of court, discovery and administrative proceedings;
4. To give students practical legal experience, and to enhance their understanding of the application of the principles learned in law school to legal problems;

5. To give students the opportunity to participate in, and reflect upon, the work of legal institutions;
6. To expose students to issues of professional responsibility within the context of legal practice;
7. To encourage students to explore and consider different roles for lawyers, and to expose them to the range of career opportunities available in the law;
8. To permit students to gain practical experience in specialized areas of the law through experience that will supplement their course work within the law school; and
9. To instill fundamental values of the legal profession, including competent representation, the promotion of justice, fairness and morality, and the commitment to an on-going process of professional self-development and growth.

THE ROLE OF THE SUPERVISING ATTORNEY IN ACHIEVING EXTERNSHIP OBJECTIVES

In an externship program, the ability of the student to achieve the goals stated above depends in large measure on the quality of the student's relationship to his or her supervising attorney and the supervisory methods employed by the supervisor. The success of field placement programs depends on the willingness and ability of the supervising attorneys to serve as available role models and teachers. A good attorney's skills are not necessarily those of a good supervisor. Good supervision requires certain skills, techniques and attitudes that can be learned and applied effectively.

An essential component of effective supervision is a reasonable supervisor-to-student ratio. Under the State Bar of California "Practical Rules for the Training of Law Students," one attorney may not supervise more than five certified law students at any time, and must be a licensed practicing attorney for two years prior to undertaking the supervision of a certified law student. While there is no limitation on the number of uncertified law students an attorney may supervise, and no required licensing period when supervising uncertified law students, GLACE law schools recommend that a one-to-four ratio is appropriate for adequate supervision in part-time field placements, and recommends that supervising attorneys have at least two years of practical experience. For full-time externships, GLACE law schools recommend a one-to-one ratio between students and field supervisors.

GLACE schools periodically provide specific, in-person training for field supervisors and provide, periodically, a comprehensive field supervision manual. At all times, GLACE schools suggest that quality supervision involves conscious application of several principles discussed below.

1. Providing a variety of well-defined tasks that encourage the learning of a range of skills.

For a student to function effectively, the supervisor must clearly explain what the assigned task involves and should put the specific task into the context of the entire case or issue on which the supervisor is working. Although narrow research projects may help the supervisor and be appropriate student projects, their true benefit to the student as a learning process comes from an explanation of how the particular issues arising in the small project fit into the context of and affect the whole case. Many students arrive at a placement with no academic or practical experience in the kind of law that is practiced there. Therefore, it is incumbent upon the supervisor to explain carefully the scope of the project, the work necessary to complete it, and a time estimate of how long the supervisor expects the student to work on the project.

Students should be encouraged to put their research into writing whenever possible. Even if the written form is less expedient, students need experience and practice in synthesizing their research into a coherent written product.

In our experience, the best externship experience offers a variety of assignments, in addition to the traditional tasks of legal research and drafting legal memoranda. The experiences should also include observation of courts, judges and lawyers, meetings, conferences, negotiations and telephone communications, as well as a discussion of the supervisor's interactions when completed. Whenever possible, students should be allowed to directly experience doing what they have observed others performing.

2. Providing students with insight into the workings of the legal system and profession.

One of the most important benefits of an externship program is that students can immerse themselves into a particular office and aspect of the legal system. In order to achieve this, the student should be exposed to a variety of situations and the supervising attorney should take the time to discuss what is observed. In some externships, students spend large amounts of time in relative isolation in the library. These students will not have a significantly better idea of the functioning of the legal system as a result of this experience, and GLACE law schools disfavor this type of placement. Even a student engaged in substantial research should be involved in the analysis of that research and its application. It is important, therefore, to explain the context in which an assignment arises and, whenever possible, to allow the student to see the application of his or her work product.

3. Developing professional responsibility skills through observation and application in the workplace.

Professional responsibility is a required course in the law school curriculum. The externship can supplement classroom learning by providing opportunities to see or be involved with actual professional responsibility decisions confronting practicing attorneys daily in court, with clients, with jurors and in conflict situations. All of these situations can generate professional responsibility questions and explanations. The externship is an excellent opportunity to learn about obligations to the client or the court, to explore the limits of client confidentiality, to learn to meet deadlines, and to learn basic work habits and skills. The supervisor should be both critical and reinforcing when a student has either failed or succeeded in meeting professional responsibility goals. Supervisors should be alert to professional responsibility issues, and raise them with externs as such issues present themselves.

4. Developing the student's ability to learn from experience, including critical professional feedback on performance.

Feedback on written work and other task performance is essential in field placements. Meaningful feedback consists of very specific information. It involves careful observation of student performance or product and tactful honesty in communicating the supervisor's views. A student learns nothing constructive from comments such as "good job" or "you'll do better next time." The supervisor should provide specific examples of what the student said, did, or wrote with a clear and detailed explanation as to why the work was sufficient or inadequate. Good feedback assures that the student fully understands the strengths and weaknesses of his or her performance in order to build upon them in future assignments.

Students need an opportunity to learn self-evaluation skills. This means that some constructive dialogue between the supervisor and between the supervisor and the student should take place to allow the student to recognize where he or she has been making mistakes in performance or legal analysis.

Certain supervisory methods are preferred in student evaluations. Generally, students learn more effectively when supervision is non-directive and student-centered. Rather than telling a student exactly what to do and where to find the answer, a supervisor should take the time and explain the context of an issue and the nature of the task being assigned, to discuss the student's reaction to the problem, to help the student form problem solving strategies, to agree upon a schedule for the project and the form which the student's work should take. Interim meetings should be held to discuss progress and to avoid misdirection, as well as to reassess the nature of the issues in light of the student's work to date.

GLACE law schools encourage all field supervisors to take the time to openly and candidly discuss their views of the legal system with students. Even the most insightful students will learn much more by hearing directly

the opinions of their supervisors about the range of issues concerning law practice and roles of lawyers in the institutions in which they are involved.

INDIVIDUAL SCHOOL AND STUDENT RESPONSIBILITIES

In addition to this introduction to effective field supervision, each GLACE law school has individual policies and procedures applicable to its students. The GLACE school placing your externs has attached a copy of specific policies and requirements necessary for completion of the externship course at that GLACE law school.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Loyola, Southwestern, UCLA, USC, Whittier and Chapman law schools are committed to a policy against discrimination in employment based on color, race, religion, marital status, sex, national origin, age, sexual orientation, disabilities and military status.

SECTION IX: GLACE JOINT STANDARDS FOR SUPERVISION OF JUDICIAL EXTERNSHIP STUDENTS

GLACE

Greater Los Angeles Consortium on Externships

919 Albany Street
Los Angeles, California
213/736-1104 Fax: 213/487-7856

Participating Schools:

Loyola Law School
Pepperdine University School of Law
Southwestern Law School
UCLA School of Law
USC Gould School of Law
Whittier Law School
Chapman University School of Law

GREATER LOS ANGELES CONSORTIUM ON EXTERNSHIPS JOINT STANDARDS FOR SUPERVISION OF JUDICIAL EXTERNSHIP STUDENTS

Introduction

In 1993, six Los Angeles ABA accredited law schools formed the Greater Los Angeles Consortium on Externships (GLACE). The purpose of the organization is to develop joint standards for the supervision of externship students, including the supervision of judicial externs. Participating schools are Loyola Law School, Pepperdine University School of Law, Southwestern Law School, UCLA School of Law, the USC Gould School of Law and Whittier Law School. Chapman University School of Law joined in 2005.

The American Bar Association standard 305 relating to law school field placement programs has been interpreted to require that any law school permitting students to participate in activities or studies away from the law school develop and publish a statement defining the educational objectives of externship programs. While each individual participating law school has developed specific objectives, GLACE has prepared this handbook of joint educational objectives and supervision standards for the assistance of all supervising judges and students who participate in judicial externships. The GLACE-endorsed educational objectives of judicial externships are:

1. To encourage the further development of student research, writing and drafting skills through work on legal documents such as legal memoranda, bench memoranda, opinion drafting, and motion evaluation;
2. To expose students to the judicial decision making process through participation in the various activities of judicial chambers such as case evaluation, legal research, evaluation of attorney performance, oral advocacy, and case conferences;
3. To develop students' oral advocacy skills through observation of court, discovery and administrative proceedings, and through making informal presentations to the judge in matters upon which the student has worked;

4. To give students practical legal experience, and to enhance their understanding of the application of the principles learned in law school to the resolution of legal problems through the judicial process;
5. To give students the opportunity to participate in, and reflect upon, the work of legal institutions
6. To expose students to issues of professional responsibility within the context of legal practice;
7. To encourage students to explore and consider different roles for lawyers, and to expose them to the range of career opportunities available in the law;
8. To permit students to gain practical experience in specialized areas of the law through experience that will supplement their course work within the law school; and
9. To instill fundamental values of the legal profession, including the provision of competent representation, the promotion of justice, fairness and morality, and the commitment to an on-going process of professional self-development and growth.

THE ROLE OF THE SUPERVISING JUDGE IN ACHIEVING EDUCATIONAL OBJECTIVES

In any externship program, the ability of the student to achieve the goals stated above depends in large measure on the quality of the student's daily relationship with his or her supervising judge, and the supervisory methods employed by the judge. The success of judicial externship programs depends on the willingness and ability of the supervising judges to serve as available role models and teachers.

An essential element of effective supervision is a reasonable supervisor-to-student ratio. In judicial chambers, GLACE recommends that judges always perform primary supervision of externs, including work assignments, supervision of work in progress and critiques of student work. Day-to-day details regarding student workflow or time management may be delegated to law clerks. In judicial chambers, GLACE recommends that clerks with less than two years' experience limit indirect supervision to no more than the equivalent of three law students per chambers in any semester or summer session, with direct supervision of externs performed by the chambers judge. Under ABA standards effective in July, 1993, a full-time faculty member of the placement school is required to document a site visit to the chambers of all of all full-time judicial externs. A review of student supervision standards is an essential component of the site visit. Additionally, all regular full-time judicial externship placement sites must be evaluated in writing by a full-time faculty member every three years, and a review of student supervision standards is again an essential component of the evaluation.

GUIDELINES FOR JUDICIAL EXTERNSHIP SUPERVISION

GLACE recognizes that by including the judicial externship program in the law school curriculum, we rely heavily on judges to assume responsibility for the legal education of law student externs. GLACE has developed and endorsed the following guidelines to help assure the educational value of the externship and to allow the law school to monitor and evaluate the student's progress during the semester:

1. The extern should be provided with an orientation to the court's work and the extern's role in it;
2. The extern should be assigned a progression of challenging, varied, and increasingly complex legal projects associated with on-going work in chambers. Routine and repetitive

work should be avoided as much as possible. In most respects, the work assigned to the extern should be the same as that given a law clerk, making due allowance for the extern's relative inexperience at the beginning of the semester;

3. The externs should be encouraged to observe court proceedings including, as appropriate, trials, motion practice, settlement conferences, and appellate arguments, particularly when the extern has worked on a matter before the court;
4. Externs should be provided with detailed critiques of their written work. Rewrites should be encouraged to assure a high standard of final product. Some GLACE schools require that copies of a student's written work product be provided to a faculty supervisor for review during or at the end of the externship. It is the responsibility of the extern to comply with all chambers' confidentiality concerns;
5. The extern should work directly with the judge in matters such as supervision of work in progress and critique of work product. Such regular direct contact with the judge provides the extern with the unique insights into the judicial process that make a judicial externship a valuable educational experience;
6. To the extent that the extern receives additional supervision by a law clerk or research attorney, the extern should be assigned, if practicable, to the most experienced law clerk or research attorney;
7. GLACE law schools require regular written reports of the extern's activities and work hours.

INDIVIDUAL SCHOOL AND STUDENT RESPONSIBILITIES

In addition to this introduction to effective externship supervision, each GLACE law school has individual policies and procedures applicable to students. The GLACE school placing your extern has attached a copy of specific policies and requirements necessary for completion of the judicial externship at the GLACE placement law school.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Loyola, Southwestern, UCLA, USC, Whittier and Chapman law schools are committed to a policy against discrimination in employment based on color, race, religion, sex, national origin, age, marital status, sexual orientation, disabilities and military status.

SECTION X: GLACE EXTERNSHIP FIELD SUPERVISOR'S EVALUATION FORM¹³

Externship Placement: _____

Supervisor(s): _____

Student Extern: _____

Unless otherwise requested, this evaluation may be shared with your student.

LAWYERING SKILLS	Not Applicable	Poor	Fair	Good	Excellent
Legal Knowledge					
Research					
Writing					
Analysis					
Oral Communication					
Interviewing					
Client Counseling					
Investigation					
Negotiation					
Other Skills _____					
PROFESSIONALISM/ WORK HABITS	Not Applicable	Poor	Fair	Good	Excellent
Client Relations					
Office and Staff Relations					
Professional Ethics					
Initiative					
Judgment					
Thoroughness and Attention to Detail					
Dependability					
Attitude toward Supervision, Criticism					
Productivity and Time Management					

¹³ This evaluation form was developed by the Greater Los Angeles Consortium on Externships ("GLACE"), made up of member schools Loyola, USC, Pepperdine, UCLA, Southwestern, Whittier and Chapman.

STRENGTHS: Please describe the extern’s contributions to your chambers or office, such as the type of projects completed or areas in which the extern showed particular strength or skill:

NEEDS IMPROVEMENT: For each category in which you rated the extern “Poor” or “Fair,” please provide examples or otherwise describe the reason for the rating:

EXTERNSHIP PROGRAM: Do you have any suggestions for improving our externship program in general, or ways we might assist you better in the future?

Date: _____

SIGNATURE OF JUDGE OR ATTORNEY SUPERVISOR

PRINT OR TYPE NAME

TITLE

Thank you for participating in the Externship Program.

Please return the completed form to:

**SECTION XI: AMERICAN BAR ASSOCIATION STANDARD
305:**

FIELD PLACEMENT PROGRAMS

American Bar Association Standards for Approval of Law Schools

Field Placement Programs, Standard 305

As you know, all American Bar Association-accredited law schools are subject to an accreditation review from time to time. As part of regular accreditation inspections, Accreditation Committees are required to evaluate field placement programs. In particular, Committees are required to evaluate the qualifications, training and performance of field instructors and to determine whether the placements are meeting their stated educational objectives. Additionally, standards require frequent contact with supervisors, visits to field placements, and in some instances, mandatory classroom components. To more fully assist you in understanding the structure of our programs and the requirements imposed on our students, faculty and field supervisors, GLACE includes a copy of ABA Standard 305 in your supervision manual for your convenience.

AMERICAN BAR ASSOCIATION

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

Standards for Approval of Law Schools

Compiled and Distributed by
The Office of the Consultant
On Legal Education to the
American Bar Association
550 West North Street Indianapolis, Indiana 46202
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Standard 305. STUDY OUTSIDE THE CLASSROOM

- (a) A law school may grant credit toward the J. D. degree for courses or a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions.
- (b) Credit granted shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.
- (c) Each student's academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term "faculty member" means a member of the full-time or part-time faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.
- (d) The studies or activities shall be approved in advance and periodically reviewed following the school's established procedures for approval of the curriculum.
- (e) A field placement program shall include:
 - (1) a clear statement of the goals and methods, and a demonstrated relationship between those goals and methods to the program in operation;
 - (2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;
 - (3) a clearly articulated method of evaluating each student's academic performance involving both a faculty member and the field placement supervisor;
 - (4) a method for selecting, training, evaluating, and communicating with field supervisors;
 - (5) periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for fieldwork in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;
 - (6) a requirement that students have successfully completed one academic year of study prior to participation in the field placement program;
 - (7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn four or more academic credits (or equivalent) in the program for field work, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

Interpretation 305-1:

Activities covered by Standard 305(a) include field placement, moot court, law review, and directed research programs or courses for which credit toward the J. D. degree is granted, as well as courses taken in parts of the college or university outside the law school for credit toward the J. D. degree is granted. (August 2004)

Interpretation 305-2:

The nature of field placement programs presents special opportunities and unique challenges for the maintenance of educational quality. Field placement programs accordingly require particular attention from the law school and the Accreditation Committee. (August 1999)

Interpretation 305-3:

A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement. (August 2004)

Interpretation 305-4:

- (a) A law school that has a field placement program shall develop, publish and communicate to students and field instructors a statement that describes the educational objectives of the program.*
- (b) In a field placement program, as the number of students involved or the number of credits awarded increase, the level of instructional resources devoted to the program should also increase. (August 1999)*

Interpretation 305-5:

Standard 305 by its own force does not allow credit for Distance Education courses. (August 2002)