

What soon-to-be lawyers and law students can't do

by

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Every year as summer approaches, and then again in October after the results of the bar exam become known, the Office of Lawyers Professional Responsibility begins receiving calls requesting information on what tasks a law clerk or summer associate may perform, or what tasks may be performed by an individual who has passed the bar exam, but who has not yet been sworn into the bar.

In general, the answer is that until an individual has graduated from law school, passed the bar exam *and* been sworn into the bar, she is not yet a licensed attorney and not yet authorized to practice law. Thus, your law clerk or soon-to-be-admitted associate cannot represent clients at depositions, argue motions, sign pleadings or engage in any other conduct that clearly constitutes the practice of law. Nor can you hold them out as a licensed attorney until they are sworn in.

For law students, there are some exceptions contained in the Minnesota Student Practice Rules. These rules distinguish two categories: general student practice and clinical student practice.

The clinical practice rules are easier to apply. A law student in good standing who is enrolled in a certified law school clinical program, under the direction and supervision of a Minnesota licensed attorney, may represent clients in all respects except for signing pleadings, which must be done by the supervisor. The client must be informed of the student practitioner's status and agree to the student representation.

Through this process, law school clinical programs provide excellent training for future lawyers while also providing valuable free or low-cost legal services to many people whose legal needs might otherwise go unmet.

The general student practice rules apply to all other students not currently enrolled in a law school clinical program. (All student practice rules apply only to students who have completed two semesters of law school.)

These students, upon request by an agency or a supervising attorney, and upon certification by their law school as being in good standing, may represent a government agency or represent indigent persons under close supervision of a practicing attorney. This is not a general authorization to represent clients through a private law firm. It just allows for students to participate in a program similar to those provided by the law school clinics under the close supervision of a licensed attorney. (There are some instances when the student attorney may appear in court on behalf of the client without the supervising attorney being present,

such as certain ministerial matters. See *Randall v. Segall*, 265 N.W.2d 832 (Minn. 1978)).

Your summer law clerk, no matter how closely supervised, may not represent paying clients.

The soon-to-be licensed attorney you've hired may do research or drafting, and attend client meetings and hearings with an attorney just as a law clerk or legal assistant might. Indeed, law clerks, summer associates and about-to-be admittees can be viewed as being the functional equivalent of a legal assistant, and thus can perform any duties that a legal assistant could perform under the supervision of a licensed attorney.

Many law firms choose to include their soon-to-be attorneys in dealing with clients they will be representing. The individual's status must be clearly identified during any contact with clients or opposing parties, on any letters the individual may write or on any business cards provided during this period, just as with a law clerk or legal assistant. See e.g., Lawyers Professional Responsibility Board Opinion No. 8.

Also, the law firm's letterhead should not begin identifying new attorneys as such until after they officially have been sworn into the bar. In *In re Stage*, 692 N.E.2d 993 (Ohio 1998), a bar applicant was found to have engaged in the unauthorized practice of law by being listed as general counsel on business letterhead prior to admission.

Finally, just as with other nonlawyer assistants, a supervising attorney may be held accountable for these individuals' conduct for professional responsibility purposes under Rule 5.3 of the Minnesota Rules of Professional Conduct.