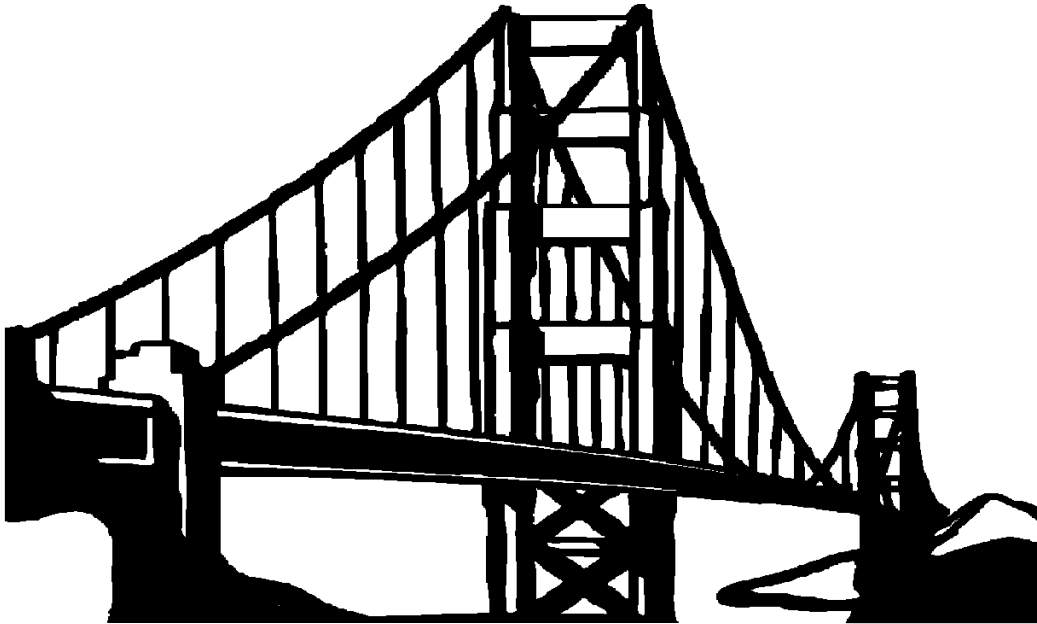


BACE

BAY AREA CONSORTIUM ON EXTERNSHIPS

**MANUAL FOR EXTERN SUPERVISORS
BEST PRACTICES – A PRIMER**



Golden Gate University School of Law, Santa Clara University School of Law, Stanford Law School,
UC Berkeley School of Law, UC Davis School of Law, UC Hastings College of the Law, UOP
McGeorge School of Law, University of San Francisco School of Law

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Thank you for offering your time and expertise as the supervisor of an extern. Externships provide students with the opportunity to put classroom instruction and theory into action, by placing students in legal settings where they learn through experience.

In any externship program, the quality of a student's experience is directly related to the quality of the supervision provided. The relationship between the student and his or her placement is a dynamic one; we hope that this manual will assist you in effectively supervising an extern and help you and your extern develop a mutually beneficial working relationship.

Students in an effective externship will learn in at least four important areas:

1. First, we anticipate that students will **improve their legal skills** in a variety of areas. At some placements students will significantly expand their legal analysis, research, and writing skills. At other placements, the focus might be on negotiation skills, client communication skills, or courtroom demeanor. Some placements are litigation focused while others expose students to transactional or policy practices.
2. Second, students will **increase their knowledge of a substantive area of the law** such as criminal justice, environmental law, administrative law, or general civil law.
3. Third, an externship gives students the chance to **understand the mission and operation** of a particular government agency, court, or non-profit (or, at some schools, for-profit) entity and to see how the organization accomplishes its mission.
4. Finally, and perhaps most importantly, externships **assist law students in developing their professional identities**. As a supervisor, you and those in your office are modeling professionalism in how you interact with clients, other lawyers, and other staff. Through observation and discussion all students will increase their understanding of how professional responsibility impacts the day-to-day practice of law. And students will learn how, as professionals, it is important to continually self-assess and evaluate their skills to continually improve their ability to be effective and zealous advocates.

Several years ago, Bay Area law schools formed the Bay Area Consortium on Externships (BACE). BACE has worked to develop joint evaluations and standards for the supervision of externs in their placements. This manual has been developed with the participation of BACE member schools and reflects the ABA requirements for the conduct of externship programs. The manual articulates the standards we expect our extern supervisors to follow and highlights best practices in extern supervision. We recognize and appreciate the demands on your time and understand that supervision of a law student adds to your duties and responsibilities. As we work to develop meaningful and exciting externship placements, we hope you will offer us your suggestions and feedback.

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SECTION I—EXPERIENTIAL LEARNING

Originally, legal education in the United States was accomplished solely through experiential learning, i.e., the process of learning from direct experience. New lawyers typically joined the profession after “reading law” as apprentices working for practicing attorneys. The academy entered the picture when the first law schools were formed over one hundred years ago, and legal education gradually evolved into a primarily academic pursuit (i.e., the study of a subject without the necessity for any direct experience) heavily based on the case method. Analyzing case decisions, typically using the Socratic method of teaching, prepares students to *think* like lawyers, and was a necessary innovation as the legal field became broader and more complex.

However, reliance on case studies through the Socratic method alone is not without a downside. Responding to desires for additional skills training, as well as calls for instilling a sense of social justice in law students, experiential learning reclaimed some of its original importance when many law schools added clinical education courses during the 1970’s. Students, supervised by law professors, represented a limited number of clients in specialized areas of the law. At the same time, law schools added simulation courses that allowed law students to assume the role of an attorney in a variety of mock settings. Law schools also began to restore the apprenticeship component to legal education with programs variously referred to as externships, internships, or field placements. These programs provide law students an opportunity to see and work with lawyers as they practice on a day-to-day basis, serving live-clients in an education-focused, yet real-world, setting.

Experiential learning approaches are being recognized anew as an integral component of a legal education.¹ All BACE law schools offer students elective courses that allow them to earn credit while working as externs for licensed attorneys. In an externship, the supervising attorneys, and indeed all staff at the field placement site, play a critically important role in the students’ education; in a real way, the field placement supervisors are an extension of the law school’s teaching faculty. Law school administrators and professors partner with field placement supervisors to ensure a quality educational experience. In an externship, the field placement staff have the most important role as students’ observations within their particular placement inform their future professional interactions.

We thank you for your willingness to become directly involved in the externs’ education, and ask that you choose assignments that will hone and expand their skills, and provide feedback which will allow them to learn efficiently from their experiences. To help externs reflect on their new experiences, the schools, as well as ABA rules, require externs to engage in a reflective component, often keeping reflective journals or attending related seminars. To further foster meaningful reflection, we hope that you will discuss with them your professional mores and the values that drive you to perform as a professional. Finally, we ask that you act as mentors and role models, helping the externs develop their own internal sense of professional commitment, responsibility, and identity.

1. See, *Educating Lawyers: Preparation for the Profession of Law*, Sullivan, Colby, Wegner, Bond, Shulman, Carnegie Foundation, (Jossey-Bass 2007); *Best Practices for Legal Education: a Vision and a Road Map*, Stuckey and others. (Clinical Legal Education Association 2007), and State Bar of CA Task Force on Admissions Regulation Reform: Phase 1 Final Report (June 24, 2013)
[http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_\(FINAL_AS_APPROVE_D_6_11_13\)_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVE_D_6_11_13)_062413.pdf).

SECTION II—DEVELOPING STUDENT EXTERNS

Learning from experience is critical for your externs to expand and hone the knowledge, skills, and attributes (referred to collectively as “competencies”) that they need to become attorneys and to excel in the legal profession. You, as the supervising attorney, are the lynchpin in creating that learning opportunity and providing much-needed experience and guidance. It is also our hope that the investment you make in developing your extern will serve you and your organization as the student’s competency and ability to take on progressively more complex tasks grows.

Many have attempted to articulate the critical skills needed to practice law. While no list is exhaustive, students should have an opportunity to observe and develop a range of skills during their externships. To facilitate this development we focus on a comprehensive set of ten key competencies.

The first five competencies relate to the legal skills essential to the substantive practice of law. These break down as follows:

- 1. Knowledge of the Law:** researching and finding the law, knowing general substantive and procedural law, developing subject-matter expertise
- 2. Marshalling Information:** fact finding, questioning and interviewing, collecting and reviewing documents, e-discovery, organizing and categorizing information
- 3. Analysis:** critical review, reasoning, problem solving, understanding what facts mean, understanding what the law means, and applying the law to the facts
- 4. Legal Expression:** persuasive or objective oral and written communication of analysis, positions, opinions, arguments, and recommendations
- 5. Practice Skills:** executing practice-specific tasks such as, in litigation, taking depositions, arguing motions, and trial tactics; or, in transactional work, negotiating, drafting agreements, conducting due diligence, and counseling clients

The other five competencies relate to the intrinsic professional skills that underlie a successful practice. These are:

- 1. Professionalism:** maintaining integrity and honesty, diligence, civility, ethics, diversity, mistake management
- 2. Client Service:** building client relationships; understanding the client’s business, interests, and needs; providing advice and counsel; and building trust)
- 3. Leadership:** communicating, influencing others, creative problem solving, collaborating, building consensus, envisioning, planning, and mentoring
- 4. Management:** communicating, giving feedback, planning and implementing tasks, organizing and managing one’s own work, working effectively as part of a team, organizing and managing others, and running the “business” side of the practice of law
- 5. Business Development:** developing strategic relationships, networking, and marketing your office

The key professional development tools for acquiring these competencies are planning, experience, feedback and evaluation, mentoring and coaching, and training. Work assignments are an especially effective professional development tool, especially when the assignments build on a solid foundation of basic lawyering skills and progressively increase in complexity and responsibility.

Feedback and evaluation provide the most meaningful (if occasionally uncomfortable) opportunities for professional development. Students need to receive constructive, timely, and specific feedback on an ongoing basis. It is important for the feedback to be both corrective and positive so students can build on what they are doing well and develop in the areas where there are challenges. Coaching and mentoring (formal or informal one-on-one intensive relationships, whether long- or short-term) are essential but need to have a specific focus. Most students succeed when a single key skill they want to improve, such as writing, oral advocacy, or time management, is identified. Mentoring should start where students are and move them along the development continuum to their desired goal.

Finally, training can include in-house programs, seminars, workshops, clinics, and observation (ideally with debriefing after). To be effective, training should be interactive and go beyond the lunchtime conversation. Ideally, students will think about the material, practice the specific skill during the semester, and continually apply what they have learned to the work assigned.

As field placements are considered skills courses at many of our schools, the ABA rule (Standard 303) and our schools' expectation is that externship placements will:

- (1) Integrate doctrine, theory, skills, and legal ethics, and engage students in performance of professional skills related to the practice of law;
- (2) Develop the concepts underlying the professional skills being taught;
- (3) Provide multiple opportunities for performance; and
- (4) Provide opportunities for self-evaluation.

In addition, ABA Standard 304 is the guiding rule for receiving academic credit for Field Placements and Judicial Externships.

SECTION III–TECHNIQUES FOR EFFECTIVE EXTERN SUPERVISION

I hear and I forget
I see and I remember
I do and I understand
Confucius (551 BC – 479 BC)

A bit of anticipation and preparation will add greatly to the externship experience for all involved. What follows are some quick suggestions that will be useful as you prepare for and work with your externs.

1. Be Prepared for the Externs' Arrival - Orient Yourself, Your Office, and the Extern

- a.** Before the extern arrives:
 - i.** Send the extern a letter or email confirming start date, time, and any other relevant details (e.g. how to enter building, where to report).
 - ii.** If appropriate, provide with student with background materials regarding your organization and/or work that they can review before they arrive.
 - iii.** Determine what desk, telephone, and computer the extern will use.
 - iv.** Gather office keys, restroom keys, copier codes, computer passwords, and office manuals that the extern might need.
 - v.** Determine for whom the extern will be completing assignments. If the extern has more than one supervisor, designate one who will provide oversight, help prioritize assignments, and serve as the point of contact with the school.
 - vi.** Determine which support staff the extern can rely upon if needed.
 - vii.** Request an office e-mail account, if appropriate.
 - viii.** Prepare a first assignment and gather the files, samples, and other materials the extern will need to get started. Externs are anxious to provide meaningful assistance from day one!
 - ix.** Plan for the extern to shadow supervisors at upcoming hearings, meetings, or conferences.

- b. First day orientation:**
 - i.** Be prepared and be present to greet the student. If the supervising attorney/intern coordinator cannot be available, designate someone for that task.
 - ii.** Provide an office tour and staff introductions.
 - iii.** Tell the extern how to contact his/her supervisors, including providing cell phone numbers if appropriate.
 - iv.** Explain the office's mission and structure, and discuss any broader issues that are critical to serving the mission or client population.
 - v.** Explain the role that externs play in furtherance of these issues.
 - vi.** Have an express conversation about confidentiality; if your office uses a confidentiality agreement with externs discuss it and have the extern sign it. Remind externs of the confidentiality policy often.
 - vii.** Brief the extern about office protocols regarding attendance, punctuality, security, safety emergency procedures, filing systems, routing of phone calls, dress code, computer usage, Lexis/Nexis, etc.

- viii. Ask the extern to post his/her work hours, e-mail address, and cell phone contact number near his/her desk.
- ix. Ask the extern to provide you with any paperwork required by the school.
- x. Invite the extern to upcoming staff or client meetings or other events.
- xi. Schedule a time within the first few days to have a conversation with the extern in which the goal is simply to get to know one another. As in any work situation, time spent establishing a cordial working relationship with your extern will help make it easier for you to understand each other's work style and meet each other's expectations.
- xii. Give the extern the first assignment, including a due date, what form the assignment should take (formal memo, email summary, oral briefing, etc.)

c. Within a week:

- i. All BACE schools require externs to establish learning goals for the semester with measurable objectives to serve as a guide to the externship. Whether or not your extern has been asked to draft learning goals, you may want to meet with him/her to discuss educational goals for the semester. This will allow you and the extern to have a mutual understanding regarding the kinds of work and experiences that will be available to the extern.

2. Adequately Define and Explain Work Assignments

- d. Even if multiple attorneys are assigning work, a single person should be designated to act as a "clearinghouse" through which assignments are channeled. That attorney should review the proposed work before it is assigned, and ensure that externs do not have too much or too little work and that an extern is receiving a variety of assignments.
- e. Assignments should:
 - i. include an adequate description of the work required, including the desired form for the finished product, i.e., an overview outline, a detailed memo with copies of cases, a draft order, an oral briefing, a declaration, etc.
 - ii. provide a sufficient factual and contextual background
 - iii. clearly explain the purpose or objectives of the assignment
 - iv. provide a realistic time frame for completion (triple the amount of time you think it might take you)
 - v. suggest available office or library reference materials ("I'd start with the Rutter Guide to orient yourself to...; A sample contract format can be found at...")
 - vi. include whether you will be available for questions along the way and, if not, who the extern should consult and how (e-mail, phone, in-person, etc.).

3. Arrange Weekly Meetings to Check In With Your Externs

- f. Schedule a weekly "standing appointment" to meet individually with your externs to check in, review completed work, address any problems, and discuss future assignments.

4. Provide Timely and Constructive Feedback on All Assignments²

2. The mid-term self-assessment and end-of-term evaluation, included in this manual, are useful reference tools when considering topics on which you might want to provide externs with feedback. The broad topics for evaluation are:

- g. Providing Timely Feedback – Externs should receive timely feedback on *every completed assignment* from the assigning attorney. One supervision model suggests that supervision should be FAST:
- Frequent – the weekly meetings work well to assure the frequency of feedback
 - Accurate – describe actions or behaviors that can be addressed, not the person
 - Specific – pinpoint discrete identifiable points to be replicated or improved upon
 - Timely – if too much time passes, externs are likely to repeat their mistakes
- h. *Providing Constructive Feedback* – you may be reluctant to critique an extern’s work but externs need, deserve, and actually *want* honest feedback. Without feedback, externs often assume that "no news is good news," and will continue to repeat the same errors unless they are given specific suggestions regarding how to improve.
- i. Lead with the positive – the goal is to highlight a particular success (be it a paragraph or an aspect of a presentation) so that it can be reinforced and replicated. Recognition of something that was well done can be a powerful motivator.
 - ii. Provide a limited number of suggestions for improvement at any given time.
 - iii. Plan what you want to communicate in terms of content and the manner in which you will say it.
 - iv. Check for understanding by posing a question or comment that allows the extern to show he/she can incorporate the suggestions going forward.
 - v. Remain open to the possibility of improvement. Occasionally an extern’s work does not measure up and a natural inclination may be to give the extern less demanding work. However, the extern’s placement with you has an educational purpose; allowing the opportunity to demonstrate learning is critical to the extern’s professional development.

Externs are encouraged to engage with you in a collaborative supervision mode, not a passive one. We suggest that you encourage externs to assess their own work, to identify and discuss what they found challenging, and to suggest their ideas as to how the work could be improved. See, 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).

5. Create Opportunities for Learning:

Students are motivated to do their best work when they understand the intrinsic value and context of the task they have been given, and also see where that task fits into the larger picture of the work of the office. In addition to giving your extern research and writing assignments, make sure to invite him/her to observe you, and/or co-workers, in the full panoply of lawyering tasks that you engage in yourself.

Although lawyering tasks vary among different law offices, if your office engages in all or some of the activities described below, consider including the extern, either as observer or participant:

- a. Client interviewing and counseling
- b. Witness interviewing and preparation
- c. Fact investigation
- d. Case strategy discussions

Research and Analytical Skills, Writing Skills, Legal Knowledge, Oral/Advocacy Skills, Ethical Concerns, Attitude and Work Habits, and Professionalism.

- e. Depositions
- f. Due diligence
- g. MCLE events
- h. Meetings with co-counsel
- i. Negotiations with opposing counsel
- j. In-chambers discussions or staff meetings
- k. Hearings and/or trials

6. Keep the lines of communication open:

No matter how informal and friendly your office may be, be aware that there is a significant imbalance of power between supervising attorneys and externs. Most externs are aware of their place in the office hierarchy and may be reluctant to ask questions or seek advice for fear of appearing incompetent. When you make every effort to create and maintain a comfortable and effective working relationship, the externs' educational experiences and their contributions to your office will be maximized.

7. What to Expect from the Law School Coordinators/Directors

The law school coordinators and directors are here to support you. We are happy to provide training for you and your office on effective supervision techniques, to assist you with giving feedback, to brainstorm how to address a student who is underperforming, or any other concerns you might have about an extern or the program.

A site visit will be arranged periodically so that you might meet with the coordinators/directors from the different schools. The purpose of the site visit is to maintain open communication between the placement and the school and to model collaboration for the externs. We are eager to support you and are grateful for your work with our students; please do not hesitate to call upon us for assistance.

APPENDIX A

BACE MEMBER SCHOOLS – WEB ADDRESSES AND CONTACT LIST

Golden Gate University School of Law

Teresa Wall-Cyb

Associate Professor

Director, Externship Program

Golden Gate University School of Law

536 Mission Street

San Francisco, California 94105

(415) 350-3161 · twallcyb@ggu.edu

<http://law.ggu.edu/clinics-and-centers/externships/>

Santa Clara University School of Law

Thiadora A. Pina

Associate Clinical Professor

Director, Externship Program (ExPro)

Santa Clara University School of Law

500 El Camino Real

Santa Clara, CA 95053-0448

(408) 551-3268 · tpina@scu.edu

<https://law.scu.edu/externship>

Stanford Law School

Michael Winn

Director, Pro Bono & Externship Programs + Lecturer in Law

John and Terry Levin Center for Public Service and Public Interest Law

559 Nathan Abbott Way

Stanford, CA 94305-8610

(650) 725-7909 · mikewinn@law.stanford.edu

<http://www.law.stanford.edu/program/centers/pip/externship>

University of California, Berkeley School of Law

Sue Schechter

Director, Field Placement Program

Lecturer-in-Residence

UC Berkeley School of Law

489 Simon Hall

Berkeley, CA 94620-7200

(510) 643-7387 · sschechter@law.berkeley.edu

<https://www.law.berkeley.edu/experiential/field-placement-program/>

UC Davis, School of Law

Hollis L. Kulwin

Acting Director of Externships

Senior Asst. Dean for Student Affairs

UC Davis, School of Law

King Hall, 400 Mrak Hall Drive

Davis, CA 95616

(530) 752-0243 · hkkulwin@ucdavis.edu

<https://law.ucdavis.edu/externships/>

University of California, Hastings College of the Law

Brittany Glidden

Associate Clinical Professor

Director, Externship and Pro Bono Programs

University of California, Hastings College of the Law

200 McAllister Street

San Francisco, CA 94102

(415) 565-4620 · gliddenbrittany@uchastings.edu

<http://www.uchastings.edu/academics/clinical-programs/Externships/index.php>

University of the Pacific, McGeorge School of Law

Colleen Truden

Director of Externships

Lecturer in Law

University of the Pacific McGeorge School of Law

3200 Fifth Avenue

Sacramento, CA 95817

(916) 340-6104 · ctruden@pacific.edu

Go.mcgeorge.edu/externships

University of San Francisco School of Law

Nira Geevargis

Assistant Professor and Director

University of San Francisco School of Law

2130 Fulton Street

San Francisco, CA 94117

(415) 422-4467 · nageevargis@usfca.edu

<https://www.usfca.edu/law/professional-skills/externships>

APPENDIX B

ABA STANDARD GOVERNING EXTERNSHIP PROGRAMS

The American Bar Association, among many things, is the entity responsible for the accreditation of law schools. The Standards for Approval of Law Schools established by the American Bar Association are minimum requirements designed to aid law schools reach the goal of providing a sound program of legal education. ABA Standard 304 sets out the requirements for the development and operation of externships or field placement programs like those operated by BACE member schools. The relevant portion of the standard is included here for your reference.

Standard 304(c).

A field placement course provides substantial lawyering experience, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a practice setting outside a law clinic under the supervision of a licensed attorney, and (2) includes the following:

- (i) direct supervision of the student's performance by a faculty member or site supervisor;
- (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;
- (iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;
- (iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. 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;
- (v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection;
- (vi) evaluation of each student's educational achievement by a faculty member; and
- (vii) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).

APPENDIX C

WORKPLACE CONFIDENTIALITY

Observing ethical obligations of confidentiality is a central principle of the lawyer-client relationship. Because students may not have experienced formal training in professional responsibility at the time of the externship, BACE schools recommend supervising attorneys ensure that law students are aware of the confidentiality policies specific to the placement. BACE schools advise the following:

1. Confidentiality policies be set forth in writing and distributed to each extern at the beginning of the externship,
2. Externs sign an acknowledgement of receipt of the policies, and
3. Supervising attorneys discuss the importance of confidentiality and the ethical implications involved in a case or matter with externs throughout the term of the placement.

For your reference:

1. See California Business and Professions Code Section 6068, Duties of an Attorney, on the ethical obligation regarding client confidences and secrets.
2. See California Rules of Professional Conduct, Rule 3-100, Confidential Information of a Client.

SAMPLE EXTERN CONFIDENTIALITY AGREEMENT

Below are suggested confidentiality provisions a placement may wish to incorporate into a written confidentiality agreement and acknowledgment.

1. General –The obligations of confidentiality arising from CA Business and Prof. Code § 6068 apply to externs. [Placement] staff, including externs, shall not disclose or release any information designated as confidential, or that may identify a party, client, case, or matter that is served by or brought to [Placement], without the express, advance authorization of the extern supervisor. The extern must keep confidential any information received from a client whether or not it pertains to a pending case. This legal obligation continues beyond the period of the externship. With the supervisor’s express permission only, an extern may use a properly redacted document as a writing sample.
2. Providing Legal Advice – Externs shall not give any legal advice to a person or client, nor express any opinion concerning the merits of a client’s case to a client or to any third party, unless he or she is supervised by an attorney or is authorized by the attorney to provide the advice.
3. Office Visits – No one other than [Placement] staff should be permitted in the offices, without permission. If anyone other than [Placement] staff, including former staff members, enters the premises, they shall be escorted to an office or conference room. The extern or

another staff member should state, "It is important that confidentiality be maintained. Please come with me to this office. How can I help you?" Externs should receive permission from their supervisor before inviting personal guests to visit the office.

4. Meeting Clients During Intake – As the supervising attorney shall explain to the extern, [Placement] staff should explain to potential clients that confidences or secrets disclosed by the client will be kept confidential, and that staff cannot reveal this information without the client's permission.
5. Taking Office Files Off-Site – Offices files shall not be taken from the premises without permission from the extern's supervisor. In cases where permission is given, only copies and not originals of files shall be taken off-site. Office files should never be emailed to private email accounts. If communicating with a supervisor, co-worker, client, or others regarding confidential case information, special care should be taken to preserve confidentiality. Records of email communications should be maintained consistent with office policy.
6. Disposing of Office Files – Confidential information shall be disposed of by shredding it at the office or in accordance with the protocol for disposal of electronic copies.
7. Acknowledgement – By signing this agreement, the extern agrees to comply with the provisions above, and confirms he or she has read California Business and Professions Code section 6068 and California Rule of Professional Conduct 3-100, regarding confidentiality provisions.

Print Name: _____

Date: _____

Signature: _____

APPENDIX D

PRACTICAL TRAINING OF LAW STUDENTS (RELEVANT TO CERTAIN CA PLACEMENTS)

The State Bar of California's Practical Training of Law Students (PTLS) program certifies law students to provide specified legal services under the supervision of an attorney. If externs with your office will be appearing in court or counseling members of the public, externs should be advised to apply to the State Bar for PTLS certification (this process requires declarations by the extern, the law school, and the attorney who will supervise the student at the field placement as well as payment of a processing fee).

Further information about the PTLS program is available at the calbar.ca.gov website, by phone: (415) 538-2175, or by e-mail: PTLS@calbar.ca.gov. Attorneys who supervise certified law students must be active members of the CA Bar who have practiced or taught law for at least two years, and typically may supervise no more than five certified students concurrently. PTLS applications may take a few weeks for the Bar to process. If you require externs to be certified, you may want to have them submit their PTLS applications before their placement begins.

APPENDIX E – Legal Issues Related to Externships

ANTI-DISCRIMINATION AND HARASSMENT POLICY AND DISABILITY ACCOMMODATION

This section is not intended to provide legal advice, but to provide useful references for organizations hosting law students for academic credit.

All BACE member schools are committed to providing our students with externships free of discrimination and harassment based on color, race, religion, marital status, sex, national origin, age, sexual orientation, gender identity, disability, and military status. The externship working environment should be one where all students feel welcome to participate, where all students are safe from harassment and discrimination, and where any disabilities students may have are reasonably accommodated.

While this section is not intended to provide legal advice, below please find the following references for your consideration:

- 1) Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq.
- 2) Information and Technical Assistance on the American with Disabilities Act, www.ada.gov
- 3) Title VII of the Civil Rights Act, 42 U.S.C. Section 2000 et. seq.
- 4) California Fair Employment and Housing Act, Government Code Section 12940 et. seq.
- 5) California Department of Fair Employment and Housing, www.dfeh.ca.gov
- 6) U.S. Equal Employment Opportunity Commission, www.eeoc.gov/law
- 7) Fair Labor Standards Act, see U.S. Department of Labor Fact Sheet 71 at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm> and below

If you have any concerns about your organization's ability to provide a work experience in accordance with the above policies, please contact the externship faculty or administrator at the relevant BACE member school.

WORKERS' COMP AND LEGAL MALPRACTICE

These areas can be complicated. Organizations that have questions are advised to work with their legal counsel's office.

Please note: There may be applicable state laws depending on the jurisdiction you are located in. Placements are advised to contact their legal counsel regarding legal issues. The U.S. Department of Labor, Fact Sheet #71 is provided for information purposes only.

Fact Sheet #71: Internship Programs Under The Fair Labor Standards Act

This fact sheet provides general information to help determine whether interns and students working for “for-profit” employers are entitled to minimum wages and overtime pay under the Fair Labor Standards Act (FLSA).¹

Background

The FLSA requires “for-profit” employers to pay employees for their work. Interns and students, however, may not be “employees” under the FLSA—in which case the FLSA does not require compensation for their work.

The Test for Unpaid Interns and Students

Courts have used the “primary beneficiary test” to determine whether an intern or student is, in fact, an employee under the FLSA.² In short, this test allows courts to examine the “economic reality” of the intern-employer relationship to determine which party is the “primary beneficiary” of the relationship. Courts have identified the following seven factors as part of the test:

1. The extent to which the intern and the employer clearly understand that there is no expectation of compensation. Any promise of compensation, express or implied, suggests that the intern is an employee—and vice versa.
2. The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and other hands-on training provided by educational institutions.
3. The extent to which the internship is tied to the intern’s formal education program by integrated coursework or the receipt of academic credit.
4. The extent to which the internship accommodates the intern’s academic commitments by corresponding to the academic calendar.
5. The extent to which the internship’s duration is limited to the period in which the internship provides the intern with beneficial learning.
6. The extent to which the intern’s work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Courts have described the “primary beneficiary test” as a flexible test, and no single factor is determinative. Accordingly, whether an intern or student is an employee under the FLSA necessarily depends on the unique circumstances of each case.

If analysis of these circumstances reveals that an intern or student is actually an employee, then he or she is entitled to both minimum wage and overtime pay under the FLSA. On the other hand, if the analysis confirms that the intern or student is not an employee, then he or she is not entitled to either minimum wage or overtime pay under the FLSA.

Where to Obtain Additional Information

This publication is for general information and is not a regulation. For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

ExPro Written Agreement

Thank you for your support and supervision of a Santa Clara Law Student Extern.

- This written understanding is in compliance with ABA Standard 304(c)(iii);
- Please initial sections 1 to 4 below and sign and date page two, or contact ExPro with any questions or concerns.

Site Supervisor

The supervisor/sponsoring organization will provide a substantial lawyering experience reasonably similar to the experience of a lawyer engaging in lawyering tasks. For this experience:

_____ *initial* **1. Supervision:** The extern student will be directly supervised by a licensed attorney or individual otherwise qualified to supervise, with at least five (5) year's practice experience;

_____ *initial* **2. Skills Development:** The extern student will engage in a substantial lawyering experience that includes multiple opportunities for performance, feedback, and self-evaluation;

_____ *initial* **3. Assignments:** The extern student will be assigned work that is similar to that of a law clerk or entry-level staff attorney. Administrative work will be kept to a minimum. Anticipated assignments include (check the box for all those that apply):

- researching, drafting memoranda, drafting court documents, drafting instruments,
- negotiating, policy advocacy, attending and/or participating in court appearances;
- attending and/or participating in settlement conferences, mediations, or "team" meetings
 - investigation and fact development, case management,
 - other _____.

_____ *initial* **4. Hours:** All of the above shall apply with the extern student completing, at a minimum, _ units of academic credit, or ___ externship hours at the sponsoring organization, between the fall 2018 semester dates of August 13 to November 21, 2018.

_____ *initial* **5. Forms:** I will comply with the ExPro's evaluation requirements, including reviewing any student self-assessments, completing evaluations, and providing feedback to the extern in a timely manner.

Please sign and date page two

Faculty Supervisor: Thiadora Pina

The faculty supervisor will always be available as a source of information or issues. The faculty supervisor will:

1. Ensure the educational value of the lawyering experience;
2. Ensure the academic requirements of the lawyering experience;

SAMPLE

3. Remain in regular contact with the supervisor and organization, including possible visits; and,
4. Evaluate the student's academic performance during the externship, relying on the supervisor's input and evaluation(s), and the timely compliance with all sponsor and academic requirements.

Extern Student

The extern has read the above and understands the respective roles of their site supervisor and faculty supervisor. The extern student agrees to:

- _____ *initial* 1. Diligently strive to comport him/herself in a manner representative of a lawyer while engaged with the sponsoring organization and/or their site supervisor;
- _____ *initial* 2. Timely complete all required readings, evaluations, and/or other assignments required by my faculty supervisor and companion class;
- _____ *initial* 3. Timely complete and submit all assignments on Camino;
- _____ *initial* 4. Complete check-ins with their assigned Professor, either in-person or through the online video conference platform, Zoom;
- _____ *initial* 5. Complete, at a minimum, ___ units of credit hours, or ___ hours of legal work at the sponsoring organization between the fall 2018 semester dates of August ___ to November ___. Hours accumulated outside these dates will not count toward credit hours. ; and
- _____ *initial* 6. Submit all questions regarding Camino and/or Zoom, including how to upload and submit assignments, how to accept a Zoom meeting, network/connectivity issues, etc., directly to Law Tech at lawhelpdesk@scu.edu , 408.551.5762, or Charney Room 111.

Site Supervisor:

Printed Name

Signature

Date

Student Extern:

Printed Name

Signature

Date

Faculty Supervisor:

Thiador Pina

Signature



Date: *Fall Semester 2018: August 13 to November 21, 2018*

BACE Bay Area Consortium on Externships
MID-TERM SELF-ASSESSMENT

Extern: _____ Semester/Year: _____

Supervisor(s): _____

Placement: _____

At this midpoint in your externship, you have completed a body of work and received feedback from which you may assess your skills. You are encouraged to be thoughtful, candid and specific in your assessment. Upon completion, please discuss your self-assessment with your placement supervisor and make any modifications needed. If something is not applicable, please explain the reason in the comments box.

Please provide a brief description of the range of tasks and responsibilities you have been given thus far:	
Research and Analytical Skills	How well are you able to identify and address relevant issues; how thorough and complete is your research; are you able to develop an effective and efficient research strategy?
Comments/Examples:	
Writing Skills	How well-organized, clear, grammatically correct, and persuasive is your writing? Are your citations accurate and in proper form? Is your writing tailored to your audience's needs?
Comments/Examples:	
Legal Knowledge	Have you demonstrated adequate familiarity with basic concepts of applicable law and procedure?
Comments/Examples:	
Oral Skills	How well do you orally communicate concerning legal matters; how clear is your communication; how well do you respond to questions?
Comments/Examples:	

SAMPLE

Ethical Concerns	Have you recognized ethical issues and raised them appropriately, do you conform with office confidentiality protocols, etc.?
Comments/Examples:	
Attitude and Work Habits	How dependable and reliable are you? How well do you manage your time? Do you demonstrate attention to detail? How organized and up to date are you with assignments? How well do you receive feedback and incorporate suggestions into subsequent work?
Comments/Examples:	
Professionalism	Do you demonstrate maturity, good judgment, and sensitivity in interactions with other staff, judges, etc.?
Comments/Examples:	
Please describe the areas/skills that you will focus on improving over the remainder of the semester.	
Have you been receiving specific, individualized and timely feedback on your assignments? Is the feedback oral, written or both? Has this feedback been effective?	
Are there any areas in which your external experience can be enhanced?	

SAMPLE

Supervisor's Comments on Extern's Self-Assessment (is the assessment consistent with the feedback the extern has received to date, thoughts on what the extern should focus on in the remaining weeks, etc.):	:

Please discuss the content of this evaluation with your supervisor.

Student Extern Signature

Date

Supervising Attorney/Law Clerk Signature

Date

SAMPLE

This form was developed and adopted for use by the Bay Area Consortium on Externships (BACE). Participating schools: Golden Gate University School of Law, JFK University College of Law, Santa Clara University School of Law, Stanford Law School, UC Berkeley School of Law, UC Davis School of Law, UC Hastings College of the Law, University of the Pacific/McGeorge School of Law, University of San Francisco School of Law.

BACE Bay Area Consortium on Externships
FINAL EVALUATION OF LAW STUDENT EXTERN

Extern: _____ Semester/Year: _____

Supervisor(s): _____

Placement: _____

Thank you for your support, supervision, and mentoring of a law student. Your candid evaluation of this student is much appreciated. Please provide specific examples and enough detail to inform the student and instructor of the student's progress in the specific areas noted in the following final evaluation. If an area is not applicable, please explain the reason in the comments box.

Please discuss the content of this evaluation with the student before, or promptly after, forwarding it to the law school.

Scope of Responsibilities: Has the extern's range of tasks and responsibilities changed significantly since the mid-term evaluation? Comments:

INSTRUCTIONS: Please score the extern using the following scale (use one whole number per area; do not use decimals or variations of #s such as "3.5" or "4-5" as ratings):

- | | |
|-----------------------|---|
| 1 = Unacceptable | Performance consistently fails to meet minimum expectations. |
| 2 = Needs Improvement | Performance occasionally falls short of minimum expectations. |
| 3 = Satisfactory | Performance meets minimum requirements; no evidence of particular strength or serious deficiency. |
| 4 = Good | Performance meets expectations, competent. |
| 5 = Excellent | Performance effective and strong, frequently beyond expectations. |
| 6 = Outstanding | Performance consistently and significantly above expectations, on par with an entry level attorney. |

Research and Analytical Skills SCORE= _____
Is the student able to bring his or her knowledge of legal principles to bear in analyzing cases? Is s/he able to recognize and properly identify legal issues in case fact patterns? Has s/he shown creativity in turning facts to legal advantage? Is s/he able to distinguish relevant from tangential issues? Is the student skilled with utilizing both computer and print resources?

SAMPLE

Writing Skills SCORE= _____

Does the student use proper grammar, spelling, syntax, and citation format? Does the student appreciate the differences in style among the different forms of legal writing (e.g. analytical for memoranda, argumentative/advocative for motions/pleadings)? Is the student's work well organized, concise, and clear?

Legal Knowledge SCORE= _____

Has the student demonstrated adequate familiarity with basic concepts of applicable law and procedure? Is the student adept at grasping legal problems and at fashioning solutions to them independently? Have you seen progress in these areas? Please discuss specific examples.

Oral/Advocacy Skills SCORE= _____

Is the student able to communicate clearly concerning legal matters? Is the student able to "think on his or her feet" and respond to extemporaneous questions? Is the student able to communicate in a manner appropriate to the particular audience (e.g., clients, supervising attorneys, staff, judges, etc.) If the student has appeared in court, how would you describe his or her demeanor and efficacy in communicating in the courtroom?

SAMPLE

Ethical Concerns SCORE= _____

Does the student recognize ethical problems as they arise, and deal with them appropriately? Does s/he seem properly reflective concerning the ethics of judicial decision making or practice? Has s/he properly conformed with confidentiality protocols? If applicable: Is s/he able to advocate zealously on a client's behalf while operating within ethical norms?

Professionalism SCORE= _____

Has the student demonstrated maturity, good judgment and sensitivity in interactions with other staff, attorneys, judges, clients, etc.?

Attitudes and Work Habits SCORE= _____

Does this student seem eager to learn? Does s/he accept constructive criticism? Is s/he diligent? Have the student's attendance, punctuality, industriousness, and attention to detail been satisfactory?

Is there any reason that this student should not receive credit for the externship? If yes, please explain.

What advice do you have for this student regarding his or her future professional development?

SAMPLE

Supervising Attorney/Law Clerk or Judge

Date

Exte...

Date

SAMPLE

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