



THE UNIVERSITY OF ARIZONA

**James E. Rogers
College of Law**

Manual for Externship Field Supervisors

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Introduction

We greatly appreciate your willingness to serve as a field supervising attorney to University of Arizona Law students as they begin the transition from the classroom to the practice of law. We recognize that extern supervision takes time and effort, but we hope your experience as a mentor to Arizona Law students will also be enjoyable and rewarding. Externships are an integral part of the Law College's experiential learning program. Through externships, students gain skills needed to be successful attorneys—from improving their research, writing, and drafting proficiencies to developing their interpersonal communication skills, honing their strategic decision-making, and understanding and integrating the values of the profession. For many students, externships are the first real opportunity they have to appreciate, in real time, what it means to be a lawyer.

In any externship program, the quality of a student's experience is directly related to the quality of the supervision provided—both by the law school and the field supervisor. We hope that this manual will assist you in effectively mentoring an extern and helping to establish a mutually beneficial relationship between you, your extern, and Arizona Law.

This manual contains the ABA and Federal Fair Labor Standards requirements for the conduct of externship programs, articulates the standards extern supervisors should follow, and highlights some 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 experiences, we hope you will offer us your suggestions and feedback.

Thank you again for your willingness to supervise an extern.

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Responsibilities of the Field Supervisor

Under **ABA Standard 304**, which governs law externs' field placement experiences at ABA accredited law schools, externs earning credit for work outside of school must be provided with a

“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 setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and
- (2) includes the following:

- (i) 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;
- (ii) 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;
- (iii) evaluation of each student's educational achievement by a faculty member; and
- (iv) 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..."

Thus, to the extent possible, a field supervisor should provide externs with the experience of an entry-level attorney at the office and provide adequate supervision and feedback.

Supervisor's Obligations to the Law School

- At the beginning of the semester, each extern completes a Learning Agreement outlining the extern's individual learning objectives for their externship. The field supervisor must acknowledge familiarity with the expectations of externs and supervisors, as well as the extern's individual learning objectives.
- The field supervisor will be expected to communicate with the extern's faculty supervisor throughout the semester by completing biweekly check-in surveys, a mid-term evaluation (submitted by the extern), and a final evaluation (also submitted by the extern). All feedback is shared with the faculty supervisor, but biweekly check-in surveys are not shared with the student absent consent from the field supervisor.
- If requested by the faculty supervisor, the field supervisor will allow the faculty supervisor to visit the externship site for a site visit, during which the extern's progress will be discussed. Externships that are remote-only may be conducted via video conference.

Experiential Education

In bygone days, legal education in the United States was accomplished solely through experiential learning—i.e., learning by doing. New lawyers typically joined the profession after “reading law” as apprentices working for practicing attorneys. When the first law schools were formed over one hundred years ago, legal education gradually evolved into a primarily academic pursuit heavily based on the case method. Analyzing case decisions, typically using the Socratic method of teaching, does a wonderful job of teaching students to “think like lawyers,” and was probably a necessary innovation as the law became broader and more complex.

But reliance on case studies through the Socratic method alone is not without a downside. Responding to desires for additional skills training and instilling a sense of social justice in law students, experiential learning reclaimed some of its original importance when many law schools, including Arizona Law, added clinical education courses during the late 1960s and early 1970s. The first clinical legal education program at the University of Arizona College of Law was set up in 1968 by David Wexler.

Today, students in our in-house clinical programs represent a limited number of clients in specialized areas of the law. However, our in-house resources are limited and cannot simulate the inner workings of a law office. Thus, there was a necessity for a restoration of the apprenticeship component to legal education with programs variously referred to as externships, internships, or field placements. These programs often provide the only opportunity law students have 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.

Structuring the Extern’s Experience

Be prepared: Before the extern’s arrival, think about the projects you will assign the extern and who will be supervising those projects. Many externs arrive to find that they are without an assigned desk or workspace, a computer, password access, telephone access, office keys, or entry codes, for a substantial period of time. All of this should be prepared before the extern’s arrival so the extern can begin work right away.

Ensure attorney supervision: Externs must have a supervising attorney or an individual otherwise qualified to supervise who is directly providing supervision and feedback. Although the extern may work with non-lawyers for discrete aspects of the externship, an attorney or other qualified person must supervise the extern’s legal work. Supervisors must work on site in the same location as the extern unless the externship has been approved as a remote externship.

Schedule an orientation: Before the extern arrives, schedule an orientation to acquaint the extern with the office and other staff members. During the orientation, brief the extern about the office protocols regarding such things as attendance, punctuality, security, safety emergency procedures, filing systems, routing phone calls, dress code, computer usage, and use of research databases such as LexisNexis and Westlaw. (See the Orientation Checklist below for guidance.)

Assign only substantive legal work: Externs must be engaged in substantive legal work to receive academic credit for their externships. Although there are times, in an effort to meet a deadline, prepare for trial, etc., that everyone pitches in to assist with administrative matters, administrative work should not be part of the extern’s regularly assigned duties. For example, externs should not answer phones, photocopy, update databases, or schedule events on a regular basis. Externs

should never be assigned personal errands. Providing referrals to other agencies may provide some useful experience but should be a limited portion of the extern's work.

Goals meeting: Within the first week, meet with the extern to discuss the extern's educational goals for the semester and your goals regarding work product to be completed. To the extent possible, the work that externs receive should promote the stated goals. Externs are also likely to have some personal goals that they may be hesitant to articulate that you may want to ask about and help coordinate. For example, consider asking your externs if they are interested in producing a writing sample, networking with other attorneys in the field, and/or discussing career strategies.

Schedule regular meetings: It is important to meet regularly with externs individually to check in, review completed work, address any problems, and discuss future assignments. Meetings should cover both substantive work and professional development when applicable. Scheduled meetings should take place a minimum of once a week.

Keep the lines of communication open: Externs 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 extern's educational experiences and contributions to your office will be maximized. Create opportunities to observe legal practice. One of the most important aspects of a legal externship is the opportunity to observe attorneys engaged in the practice of law. Avoid having externs spend large amounts of time in relative isolation. Externs should be given every opportunity to meet with attorneys and to observe them in action by attending meetings, hearings and trials, settlement conferences, client interview and preparation, appellate arguments, CLE events, and any other substantive activities involving the attorneys working in the office. In addition, externs should be allowed to see the application of their work to the final product. Ensure that externs are included on the lists of those receiving office memoranda.

Provide clarity in assignments: One of the best ways to ensure that externs provide you with the product you want is to make sure that you have given them enough information at the commencement of the project. To maximize clarity, assignments should provide an adequate description of the work required, including the desired form for the finished product; provide a sufficient factual and contextual background; clearly explain the purpose or objectives of the assignment; provide a realistic timeframe for completion, which accounts for an extern's level of experience; suggest available reference materials; and indicate whom the extern should consult regarding questions along the way and how that person should be contacted.

Extern Work Schedule

An essential element of the externship experience is establishing a sense of responsibility and commitment. To this end, externs should have a regular schedule so that everyone knows when the extern will be at work. As a supervising attorney who must plan assignments and still get your own work done, you are entitled to know when the extern will be at your office (or available remotely). A set schedule also gives the extern an opportunity to develop a sense of commitment and to view their work as a regular part of the office's functioning.

We ask you to be firm with externs about their work schedule. Let the extern know that tardiness or absences are unacceptable in the professional world. If an extern is tardy or absent more than once, please discuss this with the extern. If this behavior continues, report it to the faculty supervisor so they can speak with the extern.

Conversely, please be respectful of the student's schedule by not contacting them or asking them to work outside of scheduled hours, absent an emergency or a prior agreement by the student that they are open to this kind of scheduling arrangement. During the academic year, students usually have several academic commitments in addition to their externship, and they rely on their time away from their externship to complete other work. Additionally, many students have family and other personal commitments and depend on scheduled time away to tend to those matters.

Confidentially and Other Ethical Obligations

Depending on where they are in their legal education, your externs may not have completed formal training in professional responsibility by the time they begin their externships. For that reason, field supervisors should inform externs of their office's specific policies concerning confidentiality. We also encourage you to help your extern identify and navigate ethical issues that may arise during the extern's fieldwork, such as protecting client confidences, upholding the duty of candor to third parties and tribunals, zealous advocacy, and avoiding conflicts of interest.

Please also be aware that students are required to track their hours and the tasks they perform for their externship class. The faculty supervisor will be reviewing those timesheets, which are submitted weekly, to ensure the student has completed enough hours in the externship to pass the class and that the work the extern is performing is substantial legal work. You may wish to view the first few timesheets the student submits to ensure they are not revealing any confidential information.

It is also possible that a student extern may have an additional position with another employer or a law clinic. This work could be paid or unpaid. If the extern has secondary employment, clinic, or volunteer work, they are required to disclose that position with their field and faculty supervisors to avoid any potential conflicts of interest. The Learning Agreement includes a section requiring students to disclose other employment.

Problems Arising During an Externship

In the vast majority of cases, externships proceed smoothly, with both externs and field supervising attorneys reaping the benefits of the mentor/student relationship. However, there are occasional surprises. We ask that you contact us should any problems arise during the course of the externship that might require our input. Examples of such issues might be the extern's failure to appear timely, the extern's inability to accomplish tasks assigned, or an uncomfortable relationship between the extern and yourself or other members of the office.

When externs raise such issues, we ask that they first contact you in order to discuss them. We will intervene only when the extern is unable to discuss them with you or when such discussion proves fruitless. Similarly, should you perceive any problems, we ask that you raise them with the extern first. If they are not immediately rectified, we ask that you inform us as soon as possible. If they are issues relating to the extern's irresponsibility toward their externship work or ethical issues, we ask that you contact us right away in addition to discussing them with the extern.

Finally, the University of Arizona is committed to creating and maintaining an environment free of discrimination. In support of this commitment, the University prohibits discrimination, including harassment and retaliation, based on a protected classification, including race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, or genetic

information. All externship sites are expected to adhere to these policies.

Feedback

Externs want feedback. You may be reluctant to critique an extern’s work, but externs need, deserve, and want honest feedback. Without feedback, externs often assume that no news is good news, and they will continue to repeat the same errors unless they are given specific suggestions regarding how to improve. 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. Provide a limited number of suggestions for improvement at any given time.

Provide feedback early in the process: Externs should receive timely feedback from the assigning attorney on every completed assignment soon after the assignment is completed. If too much time passes, externs are likely to repeat mistakes. Frequent feedback can also take the “sting” out of any constructive criticism, as the extern learns to expect regular praise of things they are doing well as well as regular course corrections.

Show your work: Occasionally walk the extern through your editing process so the extern understands exactly what was changed and why. Check for understanding by posing a question or comment that allows the extern to show an ability to incorporate the suggestions going forward. At the conclusion of assignments, give the extern a copy of the edited and/or final product.

Listen to the extern: 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, reflect on their experiences, identify and discuss what they found challenging, and suggest their ideas as to how the work could be improved. Don’t underestimate the power of self-critique.

Following the following formula may be helpful in efficiently giving effective feedback.

Southern California Externships provides a 6-step feedback plan:

1. Student identifies strengths of the performance.
2. Supervisor responds solely to items raised by student.
3. Supervisor identifies other strengths.
4. Student identifies difficulties and/or changes to be made.
5. Supervisor responds to identified difficulties.
6. Supervisor identifies additional difficulties.

These six steps provide a good formula for giving constructive feedback. Feel free to follow this approach to feedback, or use your own method of providing feedback if you prefer.

Below is a rubric based on the 6-step plan described above. If you choose to use a sort of rubric, be sure to discuss the feedback with the extern. Do not merely list of strengths and difficulties. The dialogue about feedback is important and provides insight that the students can apply to future work projects.

Project/learning objective	Student identifies strengths	Supervisor identifies strengths	Student identifies difficulties	Supervisor identifies difficulties

Unacceptable forms of feedback: While hopefully this goes without saying, it is never permissible to yell or raise your voice at an extern (at least as a form of feedback—you may of course yell to warn them if there is a fire in the building). Other unacceptable forms of feedback include, but are not limited to, embarrassing an extern by criticizing their work product in front of externs or other members of the office (unless the other member of the office is also involved in providing feedback on the particular assignment at issue). Feedback should always be constructive, in both pointing out what the extern did wrong and what the extern should do instead in the future. See errors as learning experiences and try to assess both where the student went wrong and if the externship site’s training on future similar projects should be revised to avoid such errors in the future.

Violations of the above paragraph or of the Law College’s non-discrimination and anti-harassment policy by the field supervisor or other members of the externship site may lead to termination of the externship site’s approval status without notice.

What to Expect from the Law College

Externs are required to participate in an externship classroom component, which is usually taught by the extern’s faculty supervisor. The class covers various topics related to externships, from ethics to feedback to bias in the legal profession. In addition to viewing weekly lectures, students are expected to complete written reflection assignments to encourage contemporaneous reflection on the externship experience.

Communication: At the outset, the extern’s faculty supervisor should be communicating with you about our goals and expectations for the extern’s experience. They are mindful of your need for confidentiality. The faculty supervisor will be communicating with you on a regular basis about the status of the externship, assessing the extern’s performance, and improving the overall experience for both current and future externs.

Site visit: At some point, the faculty supervisor may conduct a site visit to physically visit the externship site, discuss the extern’s performance, and ask how Arizona Law’s externship program is working for the externship site. The purpose of a site visit is to maintain open communication between the externship site and the school. We are eager to support you and are grateful for your work with our externs; please do not hesitate to call upon us for assistance.

Assessment: Your assessment of the extern is particularly important. Your honest feedback is appreciated, as you are the person who will have hands-on contact with the extern. You can tell us not only what the extern has accomplished but also how we can improve the program.

Additional Training: 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 an extern who is underperforming, or any other concerns you might have about an extern or the program.

Orientation Checklist

On the extern's first day, please be sure to review the following:

- The function of your agency, office, or organization;
- The role of the extern in the office's functioning;
- The nature of the extern's work;
- Relevant office policies and chain-of-command;
- Schedule for weekly meetings with the extern;
- The extern's expectations for the externship;
- The extern's work schedule;
- Layout of the office and library and introduction to others;
- Showing the extern their workspace; and
- Explanation of the first assignment.

FAIR LABOR STANDARDS ACT

U.S. Department of Labor
Wage and Hour Division



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.

¹ The FLSA exempts certain people who volunteer to perform services for a state or local government agency or who volunteer for humanitarian purposes for non-profit food banks. WHD also recognizes an exception for individuals who volunteer their time, freely and without anticipation of compensation, for religious, charitable, civic, or humanitarian purposes to non-profit organizations. Unpaid internships for public sector and non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible.

² E.g., *Benjamin v. B & H Educ., Inc.*, --- F.3d ---, 2017 WL 6460087, at *4-5 (9th Cir. Dec. 19, 2017); *Glatt v. Fox Searchlight Pictures, Inc.*, 811 F.3d 528, 536-37 (2d Cir. 2016); *Schumann v. Collier Anesthesia, P.A.*, 803 F.3d 1199, 1211-12 (11th Cir. 2015); see also *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152-53 (1947); *Solis v. Laurelbrook Sanitarium & Sch., Inc.*, 642 F.3d 518, 529 (6th Cir. 2011).