CONFLICT CHECKING BETWEEN ALL PSU LAW CLINICS

I. INTRODUCTION

During the spring semester of 2011, a subcommittee of the Clinics & Experiential Learning Committee was formed to research the topic of adopting a clinic-wide “conflict of interest policy,” in light of the growing number of clinical programs within the law school. The subcommittee members met and discussed various aspects related to conflicts of interest and ultimately narrowed the subcommittee’s focus to developing a policy to address potential conflicts of interest between the different clinical programs, as well as developing a uniform policy among clinics for screening conflicts of interest that incoming clinic students bring with them to the specific clinical program. The subcommittee members believe that it is best for the law school to adopt a policy to reflect the theory that the clinics are similar to separate divisions of one big law firm. Just as large firms regularly complete and screen for conflicts of interests, the clinics should act similarly. The subcommittee decided there should be a conflicts policy for the clinical program to screen among all clinics under the theory of “one law firm model” for the clinical program. The subcommittee also discussed concerns about potential conflicts between clinics and other academic entities (such as centers), as well as with the work of individual faculty members. At this time, the committee members recommend that another faculty committee examines the issue of broader conflict issues within the school.

The subcommittee members met, reviewed law review articles on the topics, contacted other clinical programs, contacted large law firms to review their conflict screening policies and discussed this issue with the University insurance providers. Based upon this analysis the subcommittee developed the following policy.

II. ALL CLINICS SHALL SCREEN FOR CONFLICTS OF INTEREST BETWEEN OTHER PSU LAW CLINIC PROGRAMS

Clinic directors should ensure screening of all client names in the Prevail<sup>2</sup> case management system to determine if potential conflicts of interest exist. Adopting this policy would require coordination of IIT staff and clinical faculty/staff to add client information into the Prevail system for those clinics that do not currently use Prevail. For clinics that do currently use Prevail, work must be completed to merge different client data bases. After a single system is created, each clinic’s faculty, staff and students will only be able to access other clinics’ client identifying information for conflict checking purposes, and will not be granted access to the other clinics’ detailed work products. While recognizing that clinics may keep both paper and electronic client files, a unified and uniform system will allow for quick and easy access to complete the conflict checks based on client names.

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<sup>1</sup> This policy includes all clinics including but not limited to the Arts, Sports, and Entertainment Clinic, Center for Immigrants’ Rights, Children’s Advocacy Clinic, Civil Rights Appellate Clinic, Community Law Clinic, Family Law Clinic, International Sustainable Development Projects Clinic, Rural Economic Development Clinic and Indigent Criminal Justice Clinic and any other clinic that is added after the date of the approval of this policy.

<sup>2</sup> Most Law School Clinics currently use this system but the policy would apply to any case management system adopted by the Clinics.
Should a conflict of interest be identified during the screening process, a mechanism must be developed to address the conflict of interest. If a conflict exists, several options are available to address the conflict, such as asking the client to waive the conflict. Clinical faculty may need to more closely examine the case to determine whether a true conflict of interest exists and whether it is a conflict that can be waived with client consent. Clinics might also develop a screening procedure to shield the conflicted student or attorney from the case. However, the preferred approach in most cases is to reject the conflicted case.

III. CONFLICT WHICH INCOMING CLINIC STUDENTS BRING WITH THEM TO THE CLINIC

All clinics shall uniformly screen their incoming clinic students for potential conflicts they bring with them to the clinical program, related to the students’ prior and contemporaneous work experience. Students shall be asked to complete a screening form to disclose potential conflicts of interest. The while the supervising attorney has an obligation to review the screening form with the student to examine and explore potential conflicts, the student also has a duty to reveal potential conflicts of interest. Attached to this memo as an appendix is a proposed clinic policy to be adopted by all Clinics.
APPENDIX A:

Conflicts of Interest Policy for Clinic Students:

Law students are governed by the conflict of interest rules set forth in the Pennsylvania Rules of Professional Conduct and all students should read these rules carefully (see Rules 1.7-1.10). Conflicts of interest exist when the lawyer or law student’s past or contemporaneous employment, internship/externship, business interests, or personal relationships would in any way impact the representation of a clinic client. A conflict MAY exist if you or anyone at your former or current employment or internship/externship represented someone, in the same or a related matter, whose interests are adverse to a current clinic client. In order to honor the obligations to past and present clients, you would not be permitted to work on a case on behalf of a client whose interests are or may be adverse to that of a former client which presents a conflict of interest.

Supervising attorneys are responsible for regularly checking with students for potential conflicts of interest as new cases come into the clinic, and students must review the list of clients and report in writing any potential conflict to a clinic supervising attorney. Upon starting work at the clinic, you will be asked to disclose any professional or personal relationships which may give rise to a conflict of interest. You must update this information if a new conflict arises, i.e. new employment. You should also keep in mind a potential conflict of interest which may form during the process of job searching. When a supervisor has confirmed that a law student has a conflict of interest with respect to a certain case, that student will be “screened” from participation in the matter. The conflicted student will not have access to any related files and must avoid communication with anyone regarding the matter. Failure to report a potential conflict to your supervisor may result in the clinic’s disqualification from continuing to represent our client. Please review the following “Conflict of Interest Policy & Procedures” for more information on how we handle conflict identification and screening.
Conflict of Interest Identification and Screening Procedures

STEP 1: Conflict Identification

Clinic Responsibilities:

- Clinic staff/supervisors will provide incoming students with the Clinic Manual which references the ethical rules related to conflicts of interest.

- Clinic staff/supervisors will provide incoming students with the disclosure form, confirm the completion of the form and the non-existence of any current conflicts, and store the form in a separate and accessible file.

- Each time a new client is contemplated by a clinic, the Clinic staff/supervisors will complete a conflict check with other clinics to determine if another clinic has represented a party to the action. If no conflict exists, the clinic may accept the new client.

- After determining there is no conflict between clinics, the staff/supervising attorneys will circulate a client conflict clearance document for each new client (or party) listing the client’s name, address, matter, opposing party, and opposing attorney to all students and faculty and staff in that clinic (or in clinics in that building). This clearance document will be reviewed by all students and faculty for conflicts of interest. Clinic staff will confirm that all necessary conflicts checks have been completed and will file each conflict clearance document in the corresponding client’s file.

- Clinic staff/supervisors will ensure that, once a conflict has been identified, screening measures are immediately and appropriately implemented.

Student Responsibilities:

- Clinic students will review the conflict of interest rules set forth in the Pennsylvania Rules of Professional Conduct (see Rules 1.7-1.10).

- Clinic students will complete a disclosure form (see Appendix) upon starting work with the clinic, identifying any former or current employment experiences that may give rise to a conflict of interest with clinic clients and/or their family members/opposing parties, or any potential personal relationships (i.e. closely related by blood, marriage, or cohabitation to client or client’s family, such that relationship will interfere with loyalty and independent professional judgment). Disclosures should include attorney/firm names, relationships to the client or client’s family, timing/duration of the relationship, and location.

- To check for conflicts, Clinic students will update their disclosure forms any time a potentially conflicting relationship arises, and immediately notify their supervisors of the potential conflict. Students must reveal conflicts created through the job search process.

- Clinic students will review client conflict clearance documents circulated by the staff, will indicate the existence or non-existence of any actual or potential conflicts, and will return the documents to clinic staff in a timely manner.

STEP 2: Screening

Conflicted Student Responsibilities
• Conflicted students will acknowledge in writing that they are aware of their disqualification from participation in the conflicted matter and will promise to avoid communication on the matter.

• Conflicted students will refrain from accessing related files or communicating with anyone regarding the matter, including clinic colleagues, parties, and witnesses.

**Non-conflicted Student Responsibilities**

• Non-conflicted students will refrain from discussing any aspect of the conflicted matter with or in the presence of the conflicted student.

• Non-conflicted students working on the conflicted matter will collaborate with their supervisors to notify their client and/or caregivers, and any opposing counsel of the clinic screening process and explain to the client and/or caregivers that the disqualified student will in no way participate in their representation.

• Non-conflicted students working on the conflicted matter will take reasonable steps; including handling the keys to any restricted cabinets, to ensure that the disqualified student does not have access to related files or materials.

**Clinic Responsibilities**

• Clinic staff/supervisors will circulate a memorandum informing all clinic students, staff and faculty of the existence of the screening situation and procedures, and forbidding anyone from discussing any aspect of the conflicted matter with or in the presence of the conflicted student.

• Clinic staff/supervisors will exclude conflicted matters from case review meetings at which a conflicted student is present.

• Clinic staff/supervisors will collaborate with students working on the conflicted matter to notify their client and/or caregivers and any opposing counsel of the screen and explain to the client and/or family that the disqualified student will in no way participate in their representation.

• Clinic staff/supervisors will oversee the removal of the case files of all conflicted matters to a separate, locked file cabinet accessible only to those students and supervisors working on the matter.

• Clinic staff/supervisors will document and file in a single location all screening measures implemented, including conflicted student acknowledgements, memoranda, and client notification.
**APPENDIX B**

**Student Conflict Disclosure Form**

**Law Student Name:** ___________________________

Incoming Students: Please disclose any prior employment which may give rise to a conflict of interest for clinic clients and/or families, i.e. if you interned at a legal services office or private law firm which may have represented an opposing party to our clients. You do not need to disclose every employer you ever had.

**Prior Employer Name:** ___________________________

**Employer Address:** ___________________________

**Time Period:** ___________________________

**Prior Employer Name:** ___________________________

**Employer Address:** ___________________________

**Time Period:** ___________________________

Incoming Students: Please disclose any personal relationships you have which may give rise to a conflict of interest for one of the clinic clients, i.e. if your close relative or partner is one of the parties to a clinic case or if you are closely related to one of the judges before whom we appear.

**Name:** ___________________________

**Relationship:** ___________________________

**Name:** ___________________________

**Relationship:** ___________________________

If you are unclear whether one of your close relationships would constitute a conflict, or if you are unsure about a potential conflict from prior employment, please first read the Pennsylvania Rules of Professional Conduct (which are attached) and then speak with your supervisor.