



# Externship Mentor Guidelines: Attorneys and Judges

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*"No one, if he could do otherwise, would teach the art of playing golf by having the teacher talk about golf to the prospective player and having the latter read a book relating to the subject. The same holds for toe-dancing, swimming, automobile-driving, hair-cutting, or cooking wild ducks. Is legal practice more simple? Why should law teachers and their students be more hampered than golf teachers and their students?"<sup>1</sup>*

—Jerome Frank

*Legal educators and practicing lawyers must " . . . stop viewing themselves as separated by a 'gap' and recognize that they are engaged in a common enterprise—the education and professional development of members of a great profession."<sup>2</sup>*

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The two statements above, made nearly a half a century apart, capture the essence of the New York Law School (NYLS) Externship Program. We are grateful to you for partnering with us to educate our students and help them make the transition from the classroom to the practice of law. We know that teaching and supervising law students takes time and effort, and we appreciate your willingness to integrate our students into your practice. We hope that your experience mentoring our students is rewarding.

## INTRODUCTION

The first part of these guidelines provides information about the externship course requirements and goals, the obligations of the judges, their law clerks, and the attorneys supervising our student externs (Mentor Attorneys), and the process of becoming a mentor and selecting student externs. The second part includes advice on working with our students during the externship.

If you have any concerns or questions, please contact

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<sup>1</sup> Jerome Frank, A Plea for Lawyer-Schools 56 THE YALE LAW JOURNAL 1303 at 1311 (1947).

<sup>2</sup> ABA Task Force on Law Schools and the Profession, Narrowing the Gap, Legal Education and Professional Development 4-5 (1992) [hereinafter McCrate Report].

## EXTERNSHIP PROGRAM GOALS AND OBLIGATIONS

The American Bar Association (ABA) Standards and Rules of Procedure for Approval of Law Schools require externships to provide students with a substantial lawyering experience that "... is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks ..."<sup>3</sup> When you become a mentor to one of our externs, you are committing to provide this "substantial lawyering experience." This requires you to integrate the extern as much as possible into all aspects of your practice.

### Learning Goals

The NYLS Externship Program has broad learning goals for all externs:

1. To develop the extern's ability to learn from experience.
2. To promote the extern's understanding of the roles of lawyers and their sense of professional responsibility or, for judicial externs, to enhance the extern's understanding of the judicial system and the administration of justice.

In addition, each NYLS extern must develop individualized learning goals customized to the work they will be doing at their externship placement. Externs will ask you, their Mentor Attorney, to review and discuss their proposed learning goals within the first two weeks of the semester. This discussion gives you the opportunity to help the student shape his or her goals, and it will enable you to choose assignments that will help the student to accomplish the goals. Once you and your extern have agreed upon a set of learning goals, you should each sign the *Externship Learning Goals* form.

### Externship Course Requirements

NYLS externs participating in the **Law Office or Judicial Externship Programs** earn 2 credits for the work they do at their externship placements and 1 credit for a seminar at the Law School. NYLS externs participating in the **Washington, D.C. Honors Externship Program** earn 9 credits for the work they do at their placement and 3 credits for a seminar in Washington, DC.

- Work a minimum of **140 hours** at the Law Office or Judicial Placement (documented by timesheets approved by the Mentor Attorney) or work a minimum of **385 hours** at the Washington, D.C. Honors Program Placement (documented by timesheets approved by the Mentor Attorney).
- Write journals reflecting on the placement experience.
- Participate in a seminar or meet with a faculty member.
- Complete other assignments determined by faculty.

### The Role of the Law School Faculty

All students in the Externship Program work with faculty members at the Law School during the externship. The school assignments are designed to enhance the externs' learning, and to further the NYLS externship course goals. All externs write journals reflecting on what they are learning at their field placements. Students are reminded to be careful not to reveal client confidences in their journals. In addition, law office externs participate in a 1-credit seminar focused on the roles of lawyers and professional development, and judicial externs participate in a seminar focused on our judicial system and role of judges.

Washington, D.C. Honors externs will participate in a 3-credit seminar where they will attend a substantive weekly seminar and engage in a critical examination of the multiple roles that lawyers play in federal government offices, private law offices, corporate offices, and nonprofit offices.

Classes will draw heavily on students' and guest speakers' experiences. Substantive and reflective writing will be required.

<sup>3</sup> ABA Standards and Rules of Procedure for Approval of Law Schools 304(c)

### The Role of the Mentor Attorney

Externs are in your office to learn. Legal work will be an instrument and by-product of their learning. Your job as mentor is to provide learning opportunities in a supportive environment. Many judges and lawyers have experience working with law clerks and new attorneys as junior employees, but being a Mentor Attorney differs from being an employer or supervisor. Mentors are teachers, not employers, and externs are students, not employees.

Both the ABA and the U.S. Department of Labor have provisions that apply to academic externship programs. These provisions help clarify the distinction between employers and mentors working with students in an academic program:

#### ABA

Here is the link to ABA Standard 304(d), which governs law school field placement programs: [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf)

#### U.S. Department of Labor

The U.S. Department of Labor Wage and Hour Division has published a fact sheet summarizing the criteria used to distinguish between “for-profit” private sector internship positions that must be paid and training programs that are exempt from the minimum wage requirements of the Fair Labor Standards Act. The Department of Labor criteria provide a useful gauge for law offices determining whether they want to hire a legal intern or mentor a law student extern. <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>

Being a Mentor Attorney is a responsibility, but successful mentors report that:

- Being a mentor improved their supervision skills
- Teaching externs helped them to master subjects and improve their own skills
- Seeing the practice through fresh eyes revived their enthusiasm for the practice
- Having externs whose time is not billed allowed their offices to explore “long shot” research and do special projects
- Hiring a tried and true extern is more effective than interviewing for a position

## SETTING UP THE EXTERNSHIP

### Becoming a Mentor Attorney and Selecting Student Externs

Chemistry is important to a successful relationship between an extern and Mentor Attorney, so we encourage mentors to select externs through an application and interview process. You may post an externship position on *Symlicity*, our job database, or you may find an extern through direct contact with a student or through a referral. Once you offer a student a position, the student must apply to register for the Externship Course. The student application triggers our placement review process.

### Posting an Externship Position on *Symlicity*

First fill out the Externship Placement Registration Form [Externship Placement Certification Form](#) and a [Job Posting Form](#).

**Mentor Attorney Memorandum of Understanding/Placement Certification Form** *(For law office and firms only. Judges do not need to complete this form).*

To become a Mentor Attorney and have your office designated as an approved NYLS externship placement, submit the Mentor Attorney Memorandum of Understanding/Placement Certification form. The form asks for information about the background of the Mentor Attorney(s). The form also reminds attorneys of the special obligations that externship placements assume. NYLS reviews the completed form to make sure that the position will fulfill all program and ABA requirements. You will receive a follow-up email or phone call to confirm your participation in the program. NYLS updates these forms periodically for all placements to make sure that students receive accurate information about prospective externship opportunities.

Paid externships are permitted under certain circumstances. For compensated placements, Mentor Attorneys must certify that no student time will be billed to clients, that all assigned work will be substantive legal work and that the placement will comply with all other program guidelines. The externship program is a credit-bearing academic program and NYLS will take explicit steps to ensure that the student's educational experience is paramount.

### Job Order Form

The *Job Order Form* asks you to describe the position and allows you to set any criteria for hiring that you may have. Be sure to check the Externship box on the form. We use this information to post your position on our job site.

### Timing Externship Hiring

Student externs must begin externship positions at the start of an academic semester, and they must complete their hours by the end of the semester. The exact timing of our academic calendar varies year to year, but here is an approximation:

<b>Fall semester</b>	begins mid-August and ends early December (14 weeks)
<b>Spring semester</b>	begins mid-January and ends late April (14 weeks)
<b>Summer session</b>	begins early June and ends late July (7 weeks)

Students set their schedules in advance of the semester, so we recommend that you post positions and begin your hiring process **two to three months before** the beginning of the semester during which you wish to have an extern.

### Placement Approval *(For law offices and firms only. Judicial placements are pre-approved.)*

Once a student extern has accepted a position in your office, the student must apply to register for the Law Office Externship Placement course. The student's application is accepted based on his or her readiness to benefit from the experience, the learning potential of the experience, and whether the externship fits in the student's schedule.

### Limitations on Externships

1. Students may not receive credit for working at an office where they have a prior affiliation.
2. Students may not receive credit for working at the same placement more than one semester.
3. Students may not be supervised by a relative or close family friend.

### Faculty Externship Director or Externship Program Staff and Mentor Attorney Conversation

Externship Program faculty or staff conducts phone interviews with Mentor Attorneys when placing a student for the first time, and does a check-in call with established placements at the beginning of each semester in which they have a student extern. We want to confirm that the placement will satisfy the ABA requirements for awarding externship credit and that the externship placement will be mutually beneficial.

## CONDUCTING THE EXTERNSHIP

### DO A SHORT ORIENTATION

#### The First Day

Schedule the first day carefully. A short orientation that covers essential information and introductions sets the stage for a productive relationship.

### **Describe Your Office**

Give your extern a basic understanding of your practice by describing in a straightforward way the size and function of your office, who uses your services, the area(s) of law you deal with, how your office is funded, the chain of command (if there is an organization chart, show the extern), and to whom, if anyone, you and your office are accountable. Being direct and to the point with this information will help assure your extern that you are there to guide, rather than to test.

### **Tour Your Office and Make Introductions**

Show the extern the workspace he or she will use. Point out resources the extern may need such as phones, faxes, copying machines, library materials, computers, and office supplies. Introduce your extern to everyone, and let them know where and when he or she will be working.

Give your extern access to any necessary passwords and describe any limitations or procedures related to use of any office equipment or supplies. These short steps will go a long way toward making your extern comfortable and productive and avoiding mistakes.

### **Explain Office Policies and Practices**

Describe any relevant office policies and practices, such as

- Dress code or expectations regarding attire
- Any law office management or tickler system in your office
- Expectations for how the extern will interact with office staff
- How your office approaches ethical issues, such as conflicts and confidentiality
- Forms or formats your office uses, if any
- The types of legal authority preferred in your practice, if applicable
- Citation format preferred in your office, if applicable

### **Establish the Supervisory Process and Communication Preferences**

Every supervisor has preferences for how to work with externs and other subordinates. Use the orientation meeting to introduce your extern to your preferences, such as

- How should the extern contact you—email, phone, cell phone, in-person? If you expect contact by cell phone, is texting appropriate?
- How frequently should the extern touch base with you on a project?
- With whom should the extern speak if you are not available?

It is our preference that externs work directly and exclusively with the Mentor Attorney, but we recognize that there may be occasions when this is not possible or when it is to the extern's benefit to work with more than one attorney. If your extern will receive assignments from multiple attorneys, set up a way to set priorities for overlapping assignments.

### **Explain the Extern's Role in the Office**

During your orientation meeting with the extern, explain your expectations. Outline duties and responsibilities. Discuss the kinds of work the extern will be doing. To the extent that you know or can anticipate specific cases and projects, discuss them with the extern. Encourage the extern to tell you about his or her personal goals and expectations for the externship.

## AGREE ON LEARNING GOALS

### The Extern's Individual Learning Goals

The extern's first assignment for the externship course is to develop learning goals for the semester. This is an essential step in achieving one of the prime goals of the Externship Program—learning from experience.

Many students are passive learners. Years of having professors select their readings, provide the syllabus, and lecture have taken their toll. Students are unaccustomed to thinking about what they want to learn. The externship is often their first opportunity to begin the career-long process of learning on the job.

Every extern must draft at least four learning goals along with a specific plan for achieving each goal through their externship placement. The externs can set broad or narrow goals. For instance, an extern in a criminal practice might want to learn about the criminal justice system generally or might have the more specific goal of learning how to draft or respond to a discovery demand. During the first two weeks of the semester, meet with the extern to review and discuss their learning goals.

### Create a Mutually Beneficial Plan

Establish a mutually beneficial understanding by discussing your expectations and the extern's goals. Resolve any questions and conflicts during your discussion. If the extern's goals and expectations are unrealistic, explain why and suggest alternatives. For instance, if the extern's goals lean heavily toward observation, you should point out the learning limitations of observation without direct involvement. Suggest projects that the extern can do while offering ample opportunity to observe you doing related work. If you need assistance, contact the Faculty Director of the Externship Program, Professor Matthew Gewolb at 212.431.2352. Once you have agreed on the extern's learning goals, please sign them.

### Schedule Regular Meetings

Some Mentor Attorneys and externs are joined at the hip during the externship, and formal weekly meetings would be superfluous. Others prefer to have a more formal relationship with their externs. Each Mentor Attorney has different preferences regarding interruptions. The orientation meeting is the time to communicate your wishes to the extern and to develop a system of communication during the semester. If you have an open-door policy, tell the extern. On the other hand, if you prefer not to be interrupted, set defined times each week for meetings. If you want advance notice of any open questions, ask for an email ahead of time.

## GIVE ASSIGNMENTS THOUGHTFULLY

### Assignments: Content and Delivery

Mentoring requires you to do more planning and follow-up on the extern's assignments than you might do with a junior law clerk. You should delegate meaningful assignments to the extern. The externship program is about learning by doing, so give your extern lots to do.

When you give assignments, be as explicit as possible. Set a specific deadline and at least one interim opportunity for the extern to check in with questions and a progress report. Be specific about the format of the final product, providing examples, if appropriate. Externs are often intimidated by asking questions, so it is helpful if you elicit questions.

Here are some considerations in developing assignments for your extern:

1. **Provide detail:** Start by assuming that your extern may know very little about a particular topic, especially if he or she has yet to take a related course. Explain the terms of art, suggest a starting place, recommend additional sources, estimate the time involved, and clearly describe your expectations regarding the end product. Let the extern know how to contact you with follow-up questions.
2. **Give varied and progressive assignments:** Plan to give a variety of tasks that will expose the extern to multiple aspects of your practice during the course of the semester. There should be a progression of difficulty and complexity to the assignments. Don't be afraid to challenge your extern, but also try not to overwhelm.

3. **Provide perspective:** Make an effort to give context to assignments by explaining how each project fits into a case or the work of your office. Not only will the extern learn more if he or she understands what part his or her work will play in the larger picture, but the work product will often improve if the extern understands the context.
4. **Have back-up assignments:** Develop a list of general research projects to have available as stand-by assignments, should there be a lull in the work on current matters or should you be unavailable when the extern needs a new assignment.

### PROVIDE FEEDBACK AND FOLLOW-UP

Externs need direct feedback on their work. During an externship, the Mentor Attorney does not just take the extern's work product, edit it, and turn it into a usable end product. An employer-supervisor might do that, but Mentor Attorneys use this moment to teach. When you give meaningful, specific, and constructive feedback, the extern builds skills.

1. **Review and ask the extern to redraft.** Review each assignment with the extern and insist that he or she redo the assignment until it is done well. Reviewing draft and redraft can be painful for both of you, but it is critical to the extern's learning process. If deadlines preclude this process, take time later to help the extern compare your finished product with the work product he or she submitted, and analyze the differences.
2. **Encourage reflection.** When you discuss assignments with the extern, encourage him or her to reflect on the right approach. Analysis of the process is just as important as the product. What has the extern learned through the project? What mistakes did the extern make? How will he or she avoid similar mistakes in the future? What questions does the extern have? What resources did he or she use? Discussion of these questions and others will enrich the learning process.

### Add Opportunities for Observation

If the extern has worked on a motion, invite him or her to accompany you to court for the argument. If you plan to have an extern do fact investigation on a case, let him or her sit in on your interview with the client. If the extern has indexed depositions, invite him or her to listen in on your negotiations with your adversary or second chair the trial. An extern who has done legal research can benefit from hearing you describe the results of the research to a client during a counseling session. Observation is most meaningful when the extern is familiar with the issues.

Provide context for observation and give the extern an active role whenever possible, such as taking notes during trial or watching jurors' reactions to your examination of a witness. Talk to the extern in advance about your strategy and goals for the case and for the lawyering he or she will observe.

Take time after the observation event to discuss your approach. You can be a role model for critical analysis and continued professional development by giving an honest assessment of the strengths and weaknesses of your planning and execution of a strategy after an event.

### Review Extern Timesheets

Students in the Externship Program keep timesheets. The timesheets must be specific. "Research—4 hours" is not sufficient. The timesheet should contain the same level of detail that an attorney would provide to a client with a question about billing. Note: We instruct students to maintain client confidentiality, even on their timesheets. Mentor Attorneys review and approve timesheets each week. Timesheets give you insight into the extern's time management skills. If assignments are taking too long or the extern is misusing time, initiate a discussion about the extern's approach.

Externship staff and the extern's assigned faculty member review the timesheets to oversee the student's progress during the semester. If there is a question or if clarification is needed about the extern's work, NYLS personnel may call you.



### Discuss the Big Picture

Take time to step back from your practice and the extern's assignments to discuss the practice of law and our legal system with your extern. Externs are developing their notion of the lawyer's role. For the most part, they have not had exposure to the legal system as an insider. You are one of the extern's earliest guides. The best externship experiences involve mentors sharing their feelings about the practice of law, the system of justice, work as an attorney, ethical dilemmas, justice, careers in law, and engaging externs in discussion of these and other big picture issues.

## EVALUATIONS

### Formal Evaluations

At the end of each semester, we ask Mentor Attorneys to fill out evaluation forms for their externs. We will email you an electronic evaluation. Please return the evaluation promptly. We designed the evaluation to convey useful information for our academic monitoring without taking you a great deal of time to complete.

### Discuss the Evaluations with the Extern

Externs are hungry for feedback. Use the formal evaluations as opportunities to give the extern feedback. Have a meeting to discuss the evaluation with the extern. Schedule the meeting for a time when you will not be interrupted or rushed. We recommend that you ask the extern to prepare for the meeting by doing self-evaluation. Start the meeting by asking the extern to share the self-assessment. Listen before giving your own critique. Give the extern the opportunity to describe where his or her performance needs improvement and how he or she plans to accomplish that. This process advances the program goal of teaching externs to learn from experience. It will also make it easier for you to evaluate the extern. The most useful critiques give specific examples rather than conclusions. Feel free to show the extern the written NYLS form or just discuss it.

### Grading and Confidentiality

Students in the Externship Program are graded on a pass/fail basis. Feedback and evaluations are critical to learning and we appreciate your candid assessment.

If you have questions or concerns, call the Faculty Director of the Externship Program, Professor Matthew Gewolb, at 212.431.2352.

### The Extern's Evaluation of the Placement

At the end of the semester, we ask each extern to evaluate the placement experience. If there is a serious discrepancy between the Mentor Attorney's and the extern's description of the experience, we will contact the Mentor Attorney to discuss the evaluation.