

MEMORANDUM

November 27, 2015

TO: All Interested Persons

FROM: Robert D. Mayberger

RE: Proposed amendment of Rules of the Appellate Division, Third Department (22 NYCRR) § 805.5 (b), relating to the supervision of law interns.

Public comment is requested on a proposed amendment to subdivision (b) of the Rules of the Appellate Division, Third Department (22 NYCRR) § 805.5 that would enhance the level of supervision provided to law interns engaged in certain authorized activities. More specifically, the amendment would require the "immediate supervision" of law interns rendering legal services in all criminal matters and in contested civil actions and proceedings in or before any court or administrative agency. Under an already existing rule, "immediate supervision" requires the personal presence of a "supervising attorney" during the law intern's performance of the activity in question (see Rules of App Div, 3d Dept [22 NYCRR] § 805.5 [e]). In addition to more closely aligning this Court's law intern rule with the existing practices of the First, Second and Fourth Departments, the amendment is intended to ensure that such legal services are provided by qualified persons, thereby protecting the public.

Persons wishing to comment on this proposal should email their submissions to ad3-rulecomment@nycourts.gov or write to: Robert D. Mayberger, Clerk of the Court, Appellate Division, Third Department, PO Box 7288, Capitol Station, Albany NY 12224-0288. **Comments must be received no later than January 26, 2015.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Appellate Division, Third Department.

Proposed Amendments to Rules of the Appellate Division, Third Department (22 NYCRR) § 805.5 (b)

(b) **Authorized activities.** Law students who have completed at least two semesters of law school and law school graduates appointed as law interns are authorized to engage in the following activities:

(1) in the Appellate Division, Third Department, to prepare briefs and memoranda of law and, upon prior approval of the court and when under immediate supervision, to argue appeals in both civil and criminal actions and proceedings;

(2) in criminal matters, in superior courts, when under immediate supervision, to render legal services at arraignments, bail applications, pleas, sentencing, preliminary hearings and post-conviction proceedings, including appeals;

(3) in criminal matters, in local criminal courts, when under immediate supervision, to render legal services at arraignments, bail applications, pleas, sentencing, preliminary hearings, post-conviction proceedings, nonjury trials and jury trials;

(4) in family court, when under immediate supervision, to render legal services on motions and in contested matters, and, when under general supervision, in uncontested matters;

(5) in other civil actions and proceedings in or before any court or administrative agency, when under immediate supervision, to render legal services on motions and in contested matters, and, when under general supervision, in uncontested matters. Appearances before Federal courts and State and Federal administrative agencies shall be subject to the rules and regulations of the particular court or agency involved.

Proposed Amendments to Rules of the Appellate Division, Third Department (22 NYCRR) § 805.5 (b)

(Highlight and strikeout version)

(b) **Authorized activities.** Law students who have completed at least two semesters of law school and law school graduates appointed as law interns are authorized to engage in the following activities:

(1) in the Appellate Division, Third Department, to prepare briefs and memoranda of law and, upon prior approval of the court and when under immediate supervision ~~of a supervising attorney~~, to argue appeals ~~and motions~~ in both civil and criminal actions and proceedings;

(2) in criminal matters, in superior courts, **when** under ~~general~~ **immediate** supervision ~~of a supervising attorney~~, to render legal services at arraignments, bail applications, pleas, sentencings, preliminary hearings and post-conviction proceedings, including appeals;

(3) in criminal matters, in ~~inferior~~ **local criminal** courts, **when** under ~~general~~ **immediate** supervision, to render legal services at arraignments, **bail applications**, pleas, sentencings, preliminary hearings, post-conviction proceedings, ~~and at nonjury trials in cases involving misdemeanors and lesser offenses; and, when under immediate supervision of a supervising attorney, at~~ **and** jury trials in cases involving misdemeanors;

(4) in family court, **when** under ~~general~~ **immediate** supervision, to render legal services on motions and in ~~un~~contested **matters** proceedings, and, **when under** **general supervision**, in ~~un~~contested matters ~~when under immediate supervision of a supervising attorney~~;

(5) in **other** civil actions and proceedings in or before any court or administrative agency, **when** under ~~general~~ **immediate** supervision, to render legal services in **on** motions and **in** ~~un~~contested matters, and, **when** under ~~immediate~~ **general** supervision, in ~~un~~contested ~~civil~~ matters. Appearances before Federal courts and State and Federal administrative agencies shall be subject to the rules and regulations of the particular court or agency involved.