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**SUPREME COURT OF ARIZONA**

In the Matter of: ) Arizona Supreme Court  
) No. R-\_\_\_\_\_  
PETITION TO AMEND RULES 31, 34, )  
38, 39, and 42, Rules of the Supreme Court )  
)  
\_\_\_\_\_)

Pursuant to Rule 28, Rules of the Supreme Court, the Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law respectfully petitions this Court to adopt amendments to Rules 31, 34, 38, 39, and 42, Rules of the Supreme Court, as proposed in the attached Appendix A, showing changes in legislative format.

**I. Background and Purpose of Proposed Amendments**

The Arizona Supreme Court established the Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law (“Committee”) by Administrative Order 2014-66 entered June 17, 2014. The Court created the Committee in recognition that the changing practice of law in the last decade poses new ethical questions that necessitate review of certain court Rules governing the practice of law. The Court tasked the Committee with examining and updating the current Rules to ensure

that the public is protected and the Rules do not impose unnecessary barriers to the delivery of legal services. The Committee was also asked to consider making changes proposed by the American Bar Association's Commission on Ethics 20/20.

The Committee met several times from July to December 2014; a list of the members is attached as Appendix B. The Committee invited and received input from State Bar of Arizona sections and other stakeholders and established an email address for that purpose ([changingpracticeoflaw@azbar.org](mailto:changingpracticeoflaw@azbar.org)). The Committee considered a variety of different tools to address the implications of the modern practice of law, including educational and member services programs, advisory opinions, and Rule changes.

The Committee recommends a combination of changes to Rule text and to Rule Comments. When recommending a change in conduct, the Committee has recommended a change to the text of the applicable Rule or Rules. Many recommendations, however, involve providing guidance about the application of existing Rules in a contemporary law practice. In those instances, the Committee has recommended an explanatory Comment.

## **II. Proposed Amendments**

### **A. Rule 31. Regulation of the Practice of Law**

Representatives of the State Bar of Arizona's ADR Section attended two of the Committee's working sessions and submitted a memorandum, approved by the Section's Executive Committee, proposing changes in Rule 31 to clarify the status of mediators. The Committee considered the Section's proposed changes to Rule 31 and modified them slightly. These changes would clarify that mediation is not the practice of law, and that

mediators who are not active members of the State Bar and who prepare written mediation agreements resolving all or part of a dispute or other legal documents must be certified legal document preparers.

**B. Rule 34. Application for Admission**

*Time-in-Practice Requirement*

The ABA 20/20 Commission recommended that the time-in-practice requirement in the ABA Model Rule for Admission by Motion be shortened from five of the past seven years to three of the past five years.

Based on information received from the Supreme Court's Character & Fitness Committee and statistical information regarding the experience level of lawyers who receive disciplinary sanctions, the Committee concluded that the 20/20 Commission's proposed change in the time-in-practice requirement would not have any material impact on the competence of applicants or the protection of the public. The Committee therefore recommends that Arizona adopt the proposed change in the time-in-practice requirement.

*Admission on Motion*

The Commission recommended that each jurisdiction conform its admission on motion rule to the Model Rule. The Committee reviewed Arizona's current restrictions on admission on motion in Rule 34(f) and compared them to the Model Rule. The Committee also reviewed documents reflecting Arizona's initial decision to adopt admission on motion and changes made to the Model Rule at that time. In some cases, the Committee found that the differences between Rule 34(f) and the Model Rule were

not significant enough to warrant a change. In other cases, the Committee concluded that the changes Arizona made to the Model Rule when it adopted admission on motion were warranted and should be retained. The Committee recommends retaining the requirement that the applicant be licensed in a state that permits Arizona lawyers to be admitted on motion. Retention of this provision would serve the public interest by ensuring that the applicant's home state employs the same type of rigorous screening used by the Arizona Supreme Court in admitting qualified persons to the practice of law.

The Committee recommends deleting provisions of Rule 34(f)(3) that define the "active practice of law" to require that an applicant spend at least 1,000 hours engaged in the active practice of law for each of the time-in-practice years and derive at least 50% of non-investment income from the practice of law. The Committee concluded that those restrictions could prejudice lawyers, particularly young lawyers, whose law practice opportunities and income may have been adversely affected by economic developments.

#### *Practice Pending Admission on Motion*

The ABA 20/20 Commission recommended adoption of - and the ABA House of Delegates ultimately approved - a new Model Rule on Practice Pending Admission, which would allow a lawyer admitted in another jurisdiction who needs to relocate or commence practice in another jurisdiction to begin practicing law in that other jurisdiction while the lawyer's admission on motion is pending. The Commission asserted that these changes are warranted by "[c]ontinually evolving technology, client demands and a national (as well as global) legal services marketplace," which "have

fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions.”

The Committee concluded that the adoption of a practice-pending-admission Rule for applicants seeking admission by motion would not likely have any material impact on the competence of applicants or the protection of the public. The Committee had concerns about Model Rule provisions that would allow an applicant to begin practicing law in Arizona as many as 45 days before submitting an application for admission on motion. After considering Colorado’s version of the Model Rule, which requires the submission of an application before practice may commence, the Committee proposes an amendment to Rule 34 that would allow for practice pending admission by admission-on-motion applicants but would require that the application be received and deemed complete by the Committee on Character and Fitness before practice could commence.

The proposed amendment also differs from the Model Rule in other respects. Specifically, it does not include Model Rule provisions allowing for practice pending admission by those seeking admission by transfer of uniform bar exam results or for foreign legal consultants. The Committee distinguished admission-on-motion applicants because they must demonstrate practice experience while applicants in other categories do not.

#### *Pro Hac Vice Admission*

The ABA 20/20 Commission added a section to the Model Rule on Pro Hac Vice Admission that would permit lawyers admitted in a non-United States jurisdiction to appear pro hac vice. The Committee considered this recommendation, how other

jurisdictions have responded to the report, and the provisions of Rule 38. The Committee concluded that there is not a compelling need for Arizona to modify its Rules to permit foreign lawyers to appear pro hac vice and therefore does not recommend that Arizona adopt that portion of the Model Rule.

The 20/20 Commission also amended the Model Rule to require pro hac vice applicants to pay an assessment to a jurisdiction's client protection fund. Because Arizona-applicants' clients can collect from Arizona's Client Protection Fund and Arizona-admitted attorneys must pay into the Fund, the Committee recommends adopting this portion of the Model Rule.

Finally, the Committee recommends modifying the restriction in Rule 38(h) on pro hac vice admission by registered in-house counsel in two respects: (1) permitting registered in-house counsel to seek pro hac vice admission to represent their corporate client in Arizona court proceedings, which the current rule does not allow; and (2) removing the current requirement that registered in-house counsel obtain pro hac vice admission before providing pro bono services through an approved legal services organization under Rule 38(e). The Committee saw no need to preclude registered in-house counsel from seeking pro hac vice admission on behalf of their corporate employer; they already may engage in all other aspects of law practice. The Committee also concluded that requiring pro hac vice admission for Rule 38(e) services was an unnecessary impediment to pro bono representation by in-house counsel.

**C. Rule 38. Special Exceptions to Standard Examinations and Admission Process**

The Committee recommends that Rule 38 be revised to make it clearer and more understandable, to broaden the practice of in-house counsel, to move certification oversight from the State Bar to the Supreme Court, and to adjust language concerning the temporary admission of military spouses.

First, the Committee recommends that the pro hac vice provisions be moved to Rule 39, leaving Rule 38 to address other exceptions to standard admissions procedures. The pro hac vice admission is conceptually different from the other provisions because it allows non-members to practice before the Arizona courts only in specific cases. Consequently, and because the pro hac vice provisions are used more regularly than the other exceptions, the Committee proposes that the provisions be set forth by themselves in Rule 39. It suggests deleting the current Rule 39 – the so-called “Katrina Rule” – as unnecessary if the Court adopts the proposals for amending ER 5.5. The Katrina Rule allows lawyers who are displaced due to a major disaster to relocate to this jurisdiction and practice the law of their home jurisdiction. The ER 5.5 proposals clarify that non-members may establish a presence in this jurisdiction to practice the law of another jurisdiction in which they are licensed. This would cover lawyers from other jurisdictions displaced by major disasters.

Second, as noted previously, the Committee suggests that in-house counsel be able to appear on behalf of their employers in court or elsewhere if counsel complies with the pro hac vice provisions. To encourage lawyers to provide access to justice to those unable to pay for legal representation, registered in-house counsel should be able to appear in

court without complying with the pro hac vice provisions when representing pro bono clients through legal services organizations.

Third, the Committee recommends that the Court rather than the Bar decide who is granted in-house registered status. Currently, in-house counsel who are not members of the State Bar may, through registration, be allowed to do everything related to the practice of law other than appear in court. As a result, the registration procedure is more akin to admissions and should be housed in the Court's admissions office. Similarly, the Committee recommends revising the provision allowing the State Bar Board of Governors to waive practice-related criteria. Even if the Court is not inclined to relocate the in-house counsel registration function to the Court's admissions office, this change should be adopted. Only the Supreme Court should be able to waive practice-related criteria.

Fourth, the Committee has proposed language to clarify that a military spouse must complete fifteen hours of Arizona education each year. The Committee also recommends eliminating the requirement that the Bar maintain a separate list of temporarily admitted military spouses. The requirement is unnecessary as the Bar maintains a list by virtue of issuing a bar number to the military spouse.

Fifth, and finally, the Committee proposes adding practice pending admission to Rule 38, as it provides an exception to standard admissions procedures, and it suggests moving the in-house counsel process to subsection (a).

#### **D. Rule 39. Admission Pro Hac Vice**

The proposed amendments to Rule 39 address pro hac vice admission, which was previously addressed in Rule 38. As mentioned in conjunction with the prior discussion of Rule 38, the Committee recommends that Rule 39 require attorneys admitted pro hac vice to make payments to the Client Protection Fund. This change conforms to the Model Rule and is better designed to protect the public as clients of pro hac vice attorneys can collect from the fund.

The Committee also suggests clarifying language to Rule 39. It proposes to change “non-resident” attorneys to the more accurate “non-member” attorneys. It also added subsection (l), which consolidates concepts already in the Rules.

#### **E. Rule 42. Arizona Rules of Professional Conduct**

The Supreme Court has already adopted many of the Model Rule changes proposed by the ABA 20/20 Commission. The Committee proposes additional changes relating to technology, globalization of the practice of law, and possible impediments to the changing nature of the practice.

##### **1. ER 1.5. Fees**

The existing Rules of Professional Conduct contemplate that lawyers may affiliate in “firms,” by which the Rules mean long-term arrangements where the same lawyers work together in an ongoing association. (*See, e.g.*, ER 1.10(c) (defining “firm”).) Thus, various Rules attach consequences to the affiliation of a lawyer with a firm, such as imputation of conflicts or duties based on the role of the lawyer as a supervisor or subordinate within that firm structure. (*See* ER 1.10, 5.1, 5.2.) Lawyers who are not

affiliated with the same firm may cooperate in the representation of a client, but may divide fees only if they assume joint responsibility for the entire representation. (ER 1.5(e)(1).)

Alternative forms of legal teams are becoming increasingly popular in the legal profession. A client may engage a law firm to represent it in a particular matter, but ask or allow the firm to use other entities or individuals not employed by the firm to conduct research, review documents, or assemble electronic documents for production in discovery. A lawyer may wish to affiliate with other lawyers for a particular matter, because those lawyers have skills or experience needed for that matter, without entering into a long-term partnership with the other lawyer across multiple matters.

These alternative forms of lawyer teams can be beneficial for clients, providing greater flexibility and efficiency and giving the client access to teams of lawyers and other professionals assembled to meet the needs of their particular matter. But they also carry risks. Without a single entity agreeing to assume responsibility for the entire representation, it is possible that work will not get done, quality will not get checked, or nonlawyers involved in the matter will not understand or comply with ethical requirements, such as confidentiality.

The Supreme Court has already adopted ABA Ethics 20/20 recommendations to revise the Comments to ER 5.3 to accommodate new forms of lawyer teams. The revisions make clear that the lawyer's obligation to supervise nonlawyers assisting with a matter extend to both nonlawyers employed by the lawyer's firm and those employed

by other entities, such as external personnel engaged to assist with document assembly or review.

The Committee recommends amending ER 1.5 to facilitate alternative forms of lawyer teams by removing an obstacle not necessary to protect clients and by reiterating the necessity of following core ethical principles regardless of the form the lawyer team takes. The Model Rule allows lawyers not affiliated in the same firm to share fees based on the proportion of work completed or in another proportion as long as each agrees to assume joint responsibility for the entire representation. Conversely, Arizona's ER 1.5(e)(1) currently provides that lawyers not affiliated with the same firm may not share fees unless each lawyer agrees to assume joint responsibility for the entire representation. This makes assembling teams of lawyers not affiliated with the same firm more difficult, as a lawyer brought in to provide expertise on a narrow issue forming only part of a larger project may reasonably be unwilling to agree to be jointly responsible for the entire representation. Affiliation of lawyers with needed expertise is otherwise encouraged by the Rules, particularly the Rule regarding competence, which encourages lawyers to get assistance when they do not personally possess the necessary expertise to handle a particular matter. (*See* ER 1.1 cmt. 2.)

Consequently, the Committee recommends amending ER 1.5 to permit a division of fees between lawyers not in the same firm if (1) the division is proportionate to the services performed by each lawyer, unless each lawyer assumes joint responsibility of the representation, (2) the client agrees in writing to the divisions of fees and responsibilities, and (3) the total fee is reasonable. The Committee had an extensive discussion about the

possibility that gaps in responsibility may occur under this Rule but elected not to change the proposed language in light of the requirement that the client agree to the division. It thought that this would force both counsel and client to thoroughly discuss and decide the scope of each attorney's representation. The Committee highlights the issue for the Court, however, so that it may consider whether the potential gap should be foreclosed by, for example, having at least one attorney responsible for all aspects of the representation.

## **2. ER 1.6. Confidentiality of Information**

Under the Model Rule version of ER 1.6, most of which Arizona has adopted, the lawyer's duty of confidentiality extends to all information "relating to the representation." The Rule has been construed to prohibit a lawyer from disclosing even publicly available information without obtaining the client's express permission, or being impliedly authorized to do so.

Lawyers have reasons to want to disclose information "relating to" a client representation when that disclosure would do no harm to the client and would instead advance the overall interests of clients. For example, potential clients may wish to have information about the lawyer's experience handling similar cases or to review samples of the lawyer's work as part of deciding which lawyer to hire. In other industries, public information about a company's past work is widely and easily available, and clients may not understand why a lawyer wishing to follow Rule 1.6 would be reluctant to similarly disclose past work. Alternatively, a lawyer may wish to disclose information about the outcome of similar cases in which the lawyer has been involved, as a part of helping the

client to understand the lawyer's recommendations about how to proceed in the client's case.

In practice, ER 1.6 appears to be honored more in the breach. Many lawyers react to its breadth by doubting that it could actually mean what it says and acting accordingly. The effect is to disadvantage those lawyers who scrupulously follow the Rule and render enforcement difficult.

The Committee therefore recommends narrowing the scope of ER 1.6 to focus on maintaining the confidentiality of the information whose confidentiality is most essential to client interests. The specific proposed language draws on the language of other states' ethics Rules, particularly New York's, which uses an approach based on the Model Code that preceded the Model Rules. The Code approach protected information that was either (1) confidential or (2) even if not confidential, of such a kind that disclosure would harm the client's interests.

### **3. ER 1.10. Imputation of Conflicts of Interest: General Rule**

The Committee's review of ER 1.10 focused on: (a) the changes proposed in the pending Petition to Amend ER 1.10 (Supreme Court No. R-13-0046) (hereafter, "Petition No. R-13-0046"), which the Supreme Court referred to this Committee for consideration; (b) changes to the text of ER 1.10 to clarify that information contained solely in documents or electronically stored information maintained by a firm will not be imputed to lawyers in the firm for purposes of ER 1.10(b), so long as the firm adopts screening procedures to restrict access to the information; and (c) related changes to the Comments to ER 1.10. The Committee also recommends a corrective change to ER 1.0, Comment [8] to add a

missing reference to ER 1.10, as proposed in Petition No. R-13-0046. A summary of the proposed changes is set forth below.

**(a) ER 1.10(b)**

ER 1.10(b) addresses imputation of conflicts when a lawyer has terminated association with a firm, and the firm proposes to represent a person with interests that are “materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm.”

The current Rule states that the firm can undertake that representation *unless* (1) the matter is the same or substantially related to the former representation, and (2) “any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c).” Lawyers in the firm arguably “have” information in firm records, including closed client files and electronic records that may be maintained for a variety of reasons under the firm’s record retention policies. This creates an overbroad application that would preclude representation even when no lawyer currently in the firm was involved in the former client’s representation, simply because the firm itself maintains stored electronic or other records.

The changes proposed by the Committee are intended to address this ambiguity in the current Rule. The proposed amendment provides that such information will not be imputed to the remaining lawyers in the firm if the firm adopts screening procedures that are reasonably adequate to prevent access to the information by those lawyers.

Comment [5], addressing ER 1.10(b), has been modified to provide guidance on the screening measures that should be considered, particularly with respect to electronically stored information (such as research databases) that may contain information on work performed for former clients of the firm.

**(b) ER 1.10(d)**

The proposed changes to ER 1.10(d) and the related Comments are based in part on changes proposed by the State Bar of Arizona in Petition No. R-13-0046. The Committee recommends a number of modifications to the State Bar's proposal, set forth below, which are directed at providing greater protections for clients and additional guidance on the required notice and screening procedures.<sup>1</sup>

The Committee recommends deletion of ER 1.10(d)(1). This is the so-called "litigation exception," which does not allow for screening when the laterally moving lawyer had a "substantial role" in a matter pending before a tribunal. This portion of the Committee's proposal is the same as that contained in Petition No. R-13-0046 and also conforms to the ABA Model Rule. The Committee concluded that there is no reasoned

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<sup>1</sup> Petition No. R-13-0046 also proposed adding additional notice requirements to ERs 1.11, 1.12 and 1.18, addressing screening in the context of former government lawyers, former adjudicative officers, and prospective clients. The Committee recommends maintaining the current notice provisions of ERs 1.11, 1.12 and 1.18, which are identical to the ABA Model Rule provisions. The notice and screening requirements of ERs 1.11, 1.12, and 1.18 reflect an underlying policy decision that the Rules should facilitate the transition of government lawyers and adjudicative officers who desire to leave public service for private practice. Similarly, prospective clients are not accorded the same status under the ABA Model Rules as existing clients. The notice provisions of ERs 1.11, 1.12 and 1.18 have been in effect for some time and appear to have achieved the proper balance of client and lawyer interests.

basis for disallowing screening for lawyers handling litigation matters when screening is allowed in all other contexts. Thus, under the current rule, the lead lawyer involved in a major transaction for a client may be allowed to move laterally to a firm that represents the opposing party in a transaction, so long as an adequate screen is put in place. Yet, a litigator with a comparable role in a litigation matter would be precluded from going to the new firm as screening would not be permitted. The proposed amendment eliminates this *per se* bar, while providing additional client protections in the form of more detailed notice requirements. The use of screening measures is now well-established in modern law practice, reflecting a recognition that screening is effective and provides adequate protection for clients in most instances. (As discussed below, the Committee's proposed additions to Comment [9] caution that screening may not be adequate to protect the client in all circumstances.)

The Committee's proposed amendment to ER 1.10(d)(2) expands on the State Bar Petition's proposal, which simply requires that the client get written notice "of the particular screening procedures adopted and when they were adopted." The proposed amendment tracks the corresponding language in ABA Model Rule 1.10, except that the Committee proposes deleting the requirement that the notice shall include "a statement that review may be available before a tribunal" (which appears in the ABA Model Rule).<sup>2</sup>

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<sup>2</sup> The corresponding provision in ABA Model Rule 1.10(a)(2)(ii) provides that the notice "shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures...."

No other ethical rule requires a lawyer to advise a client regarding the client's right to obtain legal review of the lawyer's "compliance" with an ethical rule. Moreover, the statement is potentially misleading, as review by a tribunal may not be available in all contexts; the issue generally would arise in the context of a motion to disqualify counsel in a pending litigation matter, which is not strictly a "review" of the lawyer's compliance with ER 1.10(d) and may consider other factors as established in case law. The Committee proposes instead to add the following sentence to Comment [9]: "Lawyers should be aware that even where screening procedures have been adopted that comply with this Rule, tribunals may consider other factors in ruling upon motions to disqualify a lawyer from pending litigation."

The Committee also proposes adding a new subparagraph (d)(3), to reinforce that screening procedures must be "reasonably adequate under the circumstances to prevent material information from being disclosed to the firm and its client." This language is not contained in the State Bar's proposal in Petition No. R-13-0046 or in the ABA Model Rules, and is intended to provide additional protection to clients. As discussed below, a corresponding addition to Comment [9] makes clear that there may be some circumstances when screening will not be adequate to protect the client's interest.

**(c) ER 1.10 Comments**

Along with these changes to the text of ER 1.10, the Committee recommends several modifications to the explanatory Comments to ER 1.10(d), to provide additional guidance to lawyers on the new screening and notice requirements.

The Committee recommends a new Comment [9], addressing the factors that should be considered in implementing adequate screening and to emphasize that screening will not always be appropriate. The proposed Comment provides that in evaluating the adequacy of screening procedures, “relevant circumstances may include the size of the matter in relation to the overall business of the firm,” and “the number of lawyers in the firm that are actively involved in the matter that is the subject of the screening measures,” among other considerations. The proposed addition cautions that “[t]here may be some circumstances where, taking all factors into account, screening procedures will not be reasonably adequate to guard against inadvertent disclosure of protected information.” The language proposed is taken in part from Comment [7] to ABA Model Rule 1.10, but has been expanded. It has no counterpart in Petition No. R-13-0046.

A new Comment [10] is proposed to provide guidance to lawyers on the requirement of ER 1.10(d)(2) that the screened lawyer shall be “apportioned no part of the fee” from the screened matter. The proposed language is taken verbatim from Comment [8] of the corresponding ABA Model Rule, and provides: “Paragraph (d)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but the lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.” It has no counterpart in Petition No. R-13-0046.

A new Comment [11] is proposed to provide guidance to lawyers on the content of the required notice. The language proposed is taken in part from Comment [9] to ABA Model Rule 1.10. It has no counterpart in Petition No. R-13-0046.

A new Comment [12] is proposed to cross-reference ERs 5.1 and 5.3 and to reinforce the ethical responsibility of lawyers with managerial responsibility to adequately supervise subordinate lawyers and nonlawyer employees in implementing screening procedures. This reminder is particularly appropriate in the case of screening measures for electronically stored information, which likely will be implemented by technical personnel with specialized training. Proposed Comment [12] also provides guidance to lawyers and firms in the event of a breach of screening procedures. The proposed language reads: “The requirements of ERs 5.1 and 5.3 should be considered in implementing screening procedures under this Rule. If the screened lawyer or the firm become aware that the screening procedures have been violated or are ineffective, reasonable steps should be taken to remedy the deficiencies and prevent prejudice to the impacted client.” It has no counterpart in Petition No. R-13-0046.

**(d) ER 1.0, Comment [8]**

Petition No. R-13-0046 proposed a corrective change to Comment [8] to ER 1.0 that should be adopted. The proposal adds a reference to ER 1.10 in Comment [8] addressing screening, as follows (addition in bold): “This definition [of screening] applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs **1.10**, 1.11, 1.12 or 1.18.”

**4. ER 3.4. Fairness to Opposing Party and Counsel**

The 20/20 Commission made a number of changes to the ethics Rules to reference “electronic information” or “electronically stored information.” That change did not get made in Comment [2] to ER 3.4, which still refers to “computerized information.” The Committee recommends changing the language to conform to the other ABA 20/20 changes, so that the Comment refers to “electronically stored information” instead of “computerized information.” This technical amendment would eliminate confusion (and disputes) arising from using different terminology in different Rules to refer to the same thing.

#### **5. ER 5.5. Unauthorized Practice of Law**

The Committee recommends changes to ER 5.5 to (1) more effectively address the virtual practice of law and (2) clarify what qualifies as the “temporary” practice of law permitted by the safe harbor provisions of ER 5.5(c). The Committee has considered opinions issued by the State Bar’s Unauthorized Practice of Law Committee relating to the provision of legal services in, or from, Arizona by non-Arizona lawyers. It also considered how other jurisdictions, notably Florida, as reflected in *Gould v. Harkness*, 470 F. Supp. 2d 1357 (S.D. Fla. 2006), and Colorado have defined the practice of law. The question in *Gould* was whether, under Florida’s expansive definition of the practice of law, a New York admitted lawyer could advertise and provide legal services in Florida that were limited to New York law matters. The district court affirmed summary judgment in favor of the Florida Bar that Gould was engaged in the unauthorized practice of law. Colorado takes a narrower approach, defining the practice of law to involve legal services that involve Colorado law.

The Committee concluded that in defining what constitutes the practice of law in Arizona, the appropriate focus is whether a lawyer is providing legal services to Arizona residents that involve the application of Arizona law. Unlike the Florida Bar, the Committee does not believe that non-Arizona lawyers who either permanently reside here, or live in Arizona for part of the year, should be prohibited from exclusively practicing the law of another jurisdiction, federal law, or tribal law. As long as the non-Arizona lawyer is not practicing Arizona law, there does not appear to be valid public-protection reasons requiring that the non-Arizona lawyer be licensed in Arizona. Requiring non-Arizona lawyers to disclose in their advertising and other communications that they are not members of the Arizona Bar and that their practice is limited to law other than Arizona law would adequately protect the public.

The Committee also concluded that a focus on the nature of the legal services provided is more easily applied than a Rule based on whether a lawyer has a “systematic and continuous presence,” which is difficult to define in an increasingly virtual world.

Lastly, the Committee concluded that the Model Rule Comments regarding the temporary practice of law, which were not adopted when Arizona adopted ER 5.5, should be revised and added to ER 5.5 to provide better guidance on the safe harbor provisions of ER 5.5(c).

## **5. Proposals Regarding Government Law Practice**

The Rules of Professional Conduct currently contain Comments hinting at “special considerations” that “may” affect the application of the Rules to government lawyers. *See* Preamble cmt. [19]; ER 1.13 cmt. [9]. The Committee recommends amending

Comments to ER 1.13, ER 3.5, and ER 4.2 to augment existing Comments and to provide additional guidance to government lawyers on three frequently arising issues: (1) identifying the client in the governmental context, (2) advising government entities acting in a quasi-judicial capacity and restricting *ex parte* contact, and (3) providing additional guidance on the scope of an authorized exception to ER 4.2. None of these Comments is intended to change what behavior is permissible under the Rules. Instead, they are intended to provide useful guidance to government lawyers on application of existing Rules to their practice.

Respectfully submitted this 9th day of January, 2015.

/s/  
Hon. Ann A. Scott Timmer  
Chair, Committee on the Review of  
Supreme Court Rules Governing  
Professional Conduct and the Practice of  
Law

# Appendix A

## Rules of the Supreme Court:

### Rule 31. Regulation of the Practice of Law

#### (a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a);  
or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law,"

“law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. “Legal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. “Mediator” means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, ~~signed by all disputants,~~ to mediate a dispute. Serving as a mediator is not the practice of law.

E. “Unprofessional conduct” means substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

**(b) Authority to Practice.** Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

**(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice.** No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

**(d) Exemptions.** Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and

supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for

behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such

person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation.

The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the

Arizona Code of Judicial Administration.

25. ~~Nothing in these rules shall prohibit~~ Aa mediator, as defined in these rules, who is an active member of the state bar may ~~from facilitating a mediation between parties,~~ preparing a written mediation agreement resolving all or part of a dispute or other legal documents. ~~, or filing such agreement with the appropriate court, provided that:~~

~~(A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or~~

~~(B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.~~

~~In all other cases,~~ Aa mediator who is not an active member of the state bar and who prepares a written mediation agreement resolving all or part of a dispute or other legal documents ~~or provides legal documents~~ for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

(A) the association's employee or management company is specifically authorized in writing by the association to appear on behalf of the association;

(B) the association is a party to the small claims action.

## **Rule 34. Application for Admission**

**(a) Methods of admission to the practice of law in Arizona.** Persons desiring to be admitted to the practice of law in the State of Arizona may apply for admission by one of three methods: (1) admission by Arizona uniform bar examination, (2) admission on

motion, or (3) admission by transfer of uniform bar examination score from another jurisdiction.

**(b) Applicant Requirements and Qualifications.**

1. No applicant will be recommended for admission to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied that:

A. the applicant is over the age of twenty-one years;

B. the applicant is of good moral character;

C. the applicant is mentally, emotionally and physically able to engage in the practice of law, and possesses the required knowledge of the law to do so;

D. the applicant is a graduate with a juris doctor from a law school provisionally or fully approved by the American Bar Association at the time of graduation or the applicant is a graduate with a juris doctor and has been actively engaged in the practice of law in some other state or states for at least ~~five~~three of the last ~~seven~~five years prior to filing an application for admission to practice in Arizona; and

E. if ever admitted to practice in any jurisdiction, foreign or domestic, the applicant is presently in good standing, or the applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction.

F. the Arizona uniform bar examination applicant has successfully completed the course on Arizona law described in paragraph (j) of this rule.

2. An applicant may be allowed to sit for the Arizona uniform bar examination prior to the award of a juris doctor degree if the applicant:

A. is a currently enrolled student in good standing at a law school fully or provisionally approved by the American Bar Association;

B. is expected to graduate with a juris doctor degree within one hundred twenty (120) days of the first day of early exam administration;

C. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent in quarter hours at the time of early exam administration;

D. will not be enrolled in more than two (2) semester hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month;

E. has been determined by their school to be academically prepared for early testing;

F. provides by the deadline to the Committee on Character and Fitness, on a form provided by the Committee, an affidavit attested to by the applicant and the law school that they meet the above criteria. The law school's decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee or the Court.

No applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a juris doctor within one hundred twenty (120) days of the first day of early exam administration, all parts of the Arizona uniform bar examination, including the score, are void and the applicant's examination scores shall not be disclose for any purpose. Scores may not be released until such time as satisfactory proof of award of juris doctor, as determined by the Court, is provided to the Committee. An early examination which is voided shall count as an examination attempt under Rule 35(c)(1).

At the completion of the juris doctor requirements and within sixty (60) days after graduation, the applicant must cause his or her law school, dean, or registrar to submit to the Committee on Character and Fitness proof of graduation, showing his or her juris doctor was conferred within one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination and provide evidence of graduation within an additional sixty (60) days shall render the applicant's score void.

3. The Committee on Character and Fitness shall endeavor to complete its inquiries, some or all of which may be delegated to the National Conference of Bar Examiners, to be in position to recommend for or against a successful Arizona uniform bar examinee's admission to the practice of law no later than the time the results of the Arizona uniform bar examination are available for examination applicants. This time limitation is aspirational only, and may be extended for further inquiry and formulation of a recommendation when the circumstances of a case so require.

**(c) Application and Character Report Materials.** Any person desiring to be admitted to the practice of law in the State of Arizona must submit to the Committee on Character and Fitness an application in the form supplied by the Committee. The application for admission must be accompanied by required supporting documents and application fee.

1. The Arizona uniform bar examination applicant shall also complete and submit a character report accompanied by a character investigation fee as established by the Court. For an Arizona uniform bar examination applicants only, the character report and related fee may be submitted separately from the application for admission.

2. An applicants for admission on motion or admission by transfer of uniform bar examination score shall submit character investigation materials together with the application.

**(d) Documents Required in Support of Application.** The following must accompany every application:

1. subject to the exception made in paragraph (b)(1)(D) of this rule, the applicant's law school diploma, or other evidence satisfactory to the Committee on Character and Fitness showing the applicant is a graduate with a juris doctor degree from a law school provisionally or fully approved by the American Bar Association at the time of graduation;

2. if the applicant has been previously admitted to practice law in any jurisdiction, foreign or domestic, the certificate of the appropriate court agency(ies) or the mandatory bar association, whichever has custody of the roll of attorneys in such jurisdiction, indicating the date of admission and that the applicant is presently in good standing, or that the applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction;

3. for applicants taking the Arizona uniform bar examination, an examination fee as established by the Court;

4. an application fee as established by the Court;

5. a full face photograph of the applicant's head, neck and shoulders, without a hat, and not larger than two and one-half (2.5) inches by two and one half (2.5) inches nor

smaller than two (2) inches by two (2) inches taken within six months prior to filing with the Committee on Character and Fitness; and

6. a complete set of the applicant's fingerprints. The Committee on Character and Fitness is authorized to receive criminal history information regarding any applicant for admission from any law enforcement agency in conjunction with the admissions process.

**(e) Arizona Uniform Bar Examination Application Filing Schedule; Fees**

1. On the basis of an application for admission by Arizona uniform bar examination properly and timely filed, with all required supporting documents and fees, the applicant will be certified to sit for the Arizona uniform bar examination.

2. The application for admission and all of the documents required to be submitted by the Arizona uniform bar examination applicant must be timely submitted, with required fees, in accordance with the schedule and filing fees established by the Court. In the event an application, documents or fees are submitted after the initial filing deadline, late fees as established by the Court shall be assessed. No application, documents or fees will be accepted after the close of filing deadline, as established by the Court.

Any applicant failing to pass a written Arizona uniform bar examination who wishes to take the next subsequent examination must submit an application for examination, required supporting documentation, and application and examination fees as established by the Court, no later than twenty days after the date of the letter notifying the applicant of the applicant's failure to pass the written examination. If the application is submitted after twenty days, a late application fee shall be paid in accordance with the schedule and filing fees established by the Court. No application for subsequent Arizona uniform bar examination will be accepted after the filing deadline as established by the Court.

3. When an application to take the Arizona uniform bar examination is properly filed with required supporting documents, the applicant shall be promptly notified that the application is in order and that the applicant is certified to sit for the Arizona uniform bar examination, specifying the time and place of such examination.

**(f) Admission on Motion.**

1. An applicant who meets the requirements of (A) through (H) of this paragraph (f)(1) may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

A. either (i) have been admitted by bar examination to practice law in another jurisdiction allowing for admission of Arizona lawyers on a basis equivalent to this rule, or (ii) have been admitted by bar examination to practice law in another jurisdiction that does not allow for admission of Arizona lawyers on a basis equivalent to this rule ~~one or more states, territories, or the District of Columbia,~~ and ~~thereafter were~~thereafter have been admitted to and engaged in the active practice of law in another jurisdiction allowing admission of Arizona lawyers on a basis equivalent to this rule for ~~five~~three of the ~~five~~seven years immediately preceding the date upon which the application is filed;

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for ~~five~~three of the ~~seven~~five years immediately preceding the date upon which the application is filed;

D. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;

E. establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

F. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

G. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

H. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however,

in no event shall any activities that were performed in advance of bar admission in some state, territory or the District of Columbia be accepted toward the durational requirement:

- A. representation of one or more clients in the practice of law;
- B. service as a lawyer with a local, state, or federal agency, including military service;
- C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
- D. service as a judge in a federal, state, territorial, or local court of record;
- E. service as a judicial law clerk;
- F. service as corporate counsel; or
- G. service as corporate counsel in Arizona before January 1, 2009 or while registered pursuant to Rule 38(h). Active practice performed within Arizona pursuant to Rule 38(h) may be applied to meet active practice requirements found in Rule 34(f)(1)(A)(ii) provided all other requirements of Rule 34(f) are met.

3. For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. The “active practice of law” is further defined to require that at all times in the durational period the applicant has [held a law license in “active” status.](#) †

~~A. held a law license in “active” status;~~

~~B. spent one thousand (1,000) hours or more per year engaged in the practice of law, for each of the required five years in the durational period; and~~

~~C. derived at least fifty percent (50%) of non-investment income from the practice of law.~~

4. An applicant who has failed a bar examination administered in this jurisdiction or

who has passed the uniform bar examination in another jurisdiction but failed to achieve the Arizona scaled score within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. The Court shall approve jurisdictions considered “reciprocal” to Arizona, and the Committee shall publish and make available a list of reciprocal jurisdictions.

**[No changes (g) - (n)]**

## Rule 38. Special Exceptions to Standard Examinations and Admission Process

### (a) ~~Admission Pro Hac Vice.~~ In-house Counsel

~~1. Eligibility. An attorney who is not a member of the State Bar of Arizona, but is currently a member in good standing of the bar of another state or eligible to practice before the highest court in any state, territory or insular possession of the United States (hereinafter called a nonresident attorney) and who is of good moral character and is familiar with the ethics, professionalism and practices of the legal profession in the State of Arizona, may appear as counsel pro hac vice in a particular case before any state or local court, board or administrative agency in the State of Arizona upon compliance with this rule. However, no person is eligible to appear as counsel pursuant to this rule if that person (a) is a resident of the State of Arizona, or (b) is regularly employed in the State of Arizona, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Arizona.~~

~~2. Association of Local Counsel. No nonresident attorney may appear pro hac vice before any court, board or administrative agency of this state unless the nonresident attorney has associated in that cause an attorney who is a member in good standing of the State Bar of Arizona (hereinafter called local counsel). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate. Local counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.~~

~~3. Procedure for Applying. Appearance pro hac vice in a cause is subject to the discretion and approval of the court, board, or administrative agency where such cause is pending. A nonresident attorney desiring to appear pro hac vice under this rule shall comply with the procedures set forth herein for each matter where pro hac vice status is requested. For good cause shown, a court, board, or administrative agency may permit a nonresident attorney to appear pro hac vice on a temporary basis prior to the completion by the nonresident attorney of the application procedures set forth herein. At the time such temporary admission is granted, the court, board, or administrative agency shall specify a time period for the nonresident attorney to complete the application procedures, and any temporary pro hac vice admission shall be revoked in the event of subsequent failure by the nonresident attorney to so complete the application procedures.~~

~~A. *Verified Application to State Bar of Arizona.* In order to appear as counsel in any matter pending before a court, board, or administrative agency in the State of Arizona, a nonresident attorney shall file with the State Bar of Arizona an original and one copy of a verified application together with a certificate from the state bar or from the clerk of the highest admitting court of each state, territory or insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein and a non-refundable application fee equal to the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed; provided that not more than one application fee may be required per nonresident attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the nonresident attorney; and further provided that the requirement of an application fee shall be waived i) for Judge Advocate General's Corps' military attorneys practicing before the Military Trial Court of the State of Arizona or the Arizona Court of Military Appeals and ii) to permit pro bono representation of an indigent client or clients. [REDACTED] An attorney seeking a fee waiver to provide pro bono representation of an indigent client or clients shall include in the application a verification that all clients represented in the action are indigent and that no attorney fee shall be paid by the client. "Indigent" is defined as those individuals whose gross income is at or below 125% of the federal poverty guidelines, as calculated in conformity with the eligibility requirements for Legal Services Corporation grantees, currently codified at 45 C.F.R. Section 1611.~~

~~Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) of this rule.~~

~~B. *Notice of Receipt by State Bar of Complete Application.* Upon receipt of the verified application and fee from the nonresident attorney as described above, the State Bar of Arizona shall issue to local counsel a Notice of Receipt of Complete Application which states: (1) whether the nonresident attorney has previously made any application or motion pursuant to this rule within the preceding three years; (2) the date of any such application or motion; and (3) whether the application or motion was granted or denied by the court or administrative agency. The State Bar of Arizona Notice shall include as exhibits: (1) the original verified application and (2) the original certificate(s) of good standing. Copies of verified applications, certificates of good standing and orders granting, denying or revoking applications to appear pro hac vice shall be retained by the State Bar of Arizona for three (3) years.~~

~~C. *Motion to Associate Counsel Pro Hac Vice.* Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is~~

~~pending, together with proof of service on all parties in accordance with Arizona Rules of Civil Procedure. The motion to associate counsel pro hac vice shall include as exhibits: (1) the original verified application; (2) the original certificates of good standing; and (3) the State Bar of Arizona Notice. The motion to associate counsel pro hac vice shall also be accompanied by a proposed order granting or denying the motion. A copy of each order granting or denying the motion as entered by the court, board, or administrative agency shall be mailed by local counsel to the State Bar of Arizona.~~

~~D. *Entry of Order.* The order granting or denying the motion to associate counsel pro hac vice shall be entered by the court, board, or administrative agency no later than 20 days (exclusive of weekends and holidays) after the filing of such motion. A nonresident attorney shall make no appearance in a cause until the court, board, or administrative agency where the cause is pending enters the order granting the motion to associate counsel pro hac vice. The order granting pro hac vice status shall be valid for a period of one year from the date of entry, and shall be renewed for subsequent one year periods upon compliance with renewal procedures as specified herein.~~

~~4. *Verified Application.* The verified application required by this rule shall be on a form approved by the Board of Governors of the State Bar of Arizona and available at the clerk of the court, board, or administrative agency where such cause is pending and shall state:~~

~~A. the title of the case or cause, court, board, or agency and docket number in which the nonresident attorney will be seeking to appear pro hac vice, and whether this case or cause is a related or consolidated matter for which the nonresident attorney has previously applied to appear pro hac vice;~~

~~B. the nonresident attorney's residence and office address;~~

~~C. the court(s) to which the nonresident attorney has been admitted to practice and the date(s) of such admission;~~

~~D. that the nonresident attorney is a member in good standing of such court(s);~~

~~E. that the nonresident attorney is not currently disbarred or suspended in any court;~~

~~F. whether the nonresident attorney is currently subject to any pending disciplinary proceeding by any court, agency or organization authorized to discipline attorneys at law, and if so pending, the application shall specify the jurisdiction, the nature of the matter under investigation and the name and address of the disciplinary authority investigating the matter;~~

~~G. whether the nonresident attorney has ever been disciplined by any court, agency, or organization authorized to discipline attorneys at law;~~

~~H. the court, board, or administrative agency, title of cause and docket number in which the nonresident attorney has filed an application to appear as counsel under this rule in this state in the preceding three years, the date of each application, and whether it was granted;~~

~~I. the name, address and telephone number of local counsel;~~

~~J. the name of each party in the cause and the name and address of counsel of record who is appearing for each party;~~

~~K. that the nonresident attorney certifies that he or she shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b), Rules of the Supreme Court;~~

~~L. that the nonresident will review and comply with appropriate rules of procedure as required in the underlying cause; and~~

~~M. that the nonresident attorney understands and shall comply with the standards of professional conduct required of members of the State Bar of Arizona.~~

~~5. *Discretion.* The granting or denial of a motion to associate counsel pro hac vice pursuant to this rule by the court, board, or administrative agency is discretionary. The court, board, or administrative agency may revoke the authority of a nonresident attorney to make continued appearances pursuant to this rule. Absent special circumstances, repeated appearances by any person pursuant to this rule may be the cause for denial of the motion to associate counsel pro hac vice. Such special circumstances may include, but are not limited to, the following:~~

~~A. a showing that the cause involves a complex area of law in which the nonresident attorney possesses a special expertise, or~~

~~B. a lack of local counsel with expertise in the area of law involved in the cause.~~

~~6. *Transfer.* The nonresident attorney shall be deemed admitted in the event venue in such action is transferred to another county or court or is appealed; provided, however, that the court having jurisdiction over such transferred or appealed cause may revoke the authority of the nonresident attorney to appear pro hac vice.~~

~~7. *Continuing Duties to Advise of Changes in Status.* A nonresident attorney admitted pro hac vice shall have the continuing obligation during the period of such admission to promptly advise the State Bar of Arizona of a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The State Bar of Arizona shall then advise any court, board, or administrative agency where the~~

~~nonresident attorney has been admitted pro hac vice of any such information. A nonresident attorney shall promptly advise the State Bar of Arizona if permission to appear pro hac vice pursuant to this rule is revoked by any court, board, or administrative agency.~~

~~8. *Renewal of Application.* On or before each anniversary date of the filing of the verified application with the State Bar of Arizona, local counsel must certify to the State Bar of Arizona whether (a) the nonresident attorney continues to act as counsel in the cause; or (b) such cause has been adjudicated to a final conclusion or is otherwise concluded. Any nonresident attorney who continues to act as counsel in the cause shall remit to the State Bar of Arizona on or before each anniversary date a fee equal to the current dues paid by active members of the State Bar of Arizona for the calendar year in which such renewal is sought, unless the nonresident attorney is waived under paragraph (a)(3)(A) of this rule as a Judge Advocate General's Corps' military attorney or as an attorney providing pro bono representation of an indigent client.~~

~~Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund administered by the Arizona Foundation for Legal Services and Education, to be distributed to and used exclusively for approved legal services organizations, as that term is defined in subparagraph (f) of this rule.~~

~~9. *Failure to Renew.* Any nonresident attorney who continues to appear pro hac vice in a cause and fails to pay the renewal fees set forth in paragraph (a)(8) of this rule shall be suspended from appearance in any cause upon the expiration of a period of thirty days from the anniversary date. The executive director of the State Bar of Arizona shall notify the nonresident attorney and local counsel of the suspension and shall file a certified copy of the notice with the court, board or administrative agency where the cause is filed. The nonresident attorney may be reinstated upon the payment of fees set forth in paragraph (a)(8) of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the executive director shall reinstate the nonresident attorney and shall certify such reinstatement to the court, board, or administrative agency where the cause is filed.~~

~~10. *Annual Reporting.* The State Bar of Arizona shall prepare an annual report which shall list: (a) all applications filed pursuant to this rule during the preceding twelve months; (b) the names of all applicants; and (c) whether the application was granted or denied. The report shall be available for inspection at the offices of the State Bar of Arizona, and shall be provided to the Supreme Court.~~

~~11. *Disciplinary Jurisdiction of the State Bar of Arizona.* As provided in Rule 46(b), Rules of the Supreme Court, a nonresident attorney admitted pro hac vice pursuant to these rules shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar of Arizona.~~

1. As used in this rule, “in-house counsel” shall refer to an attorney who is employed within the State of Arizona as in-house counsel or a related position for a for-profit or a non-profit corporation, association, or other organizational entity, which can include its parents, subsidiaries and/or affiliates, the business of which is lawful and is other than the practice of law or the provision of legal services.

2. A lawyer who is not a member of the State Bar of Arizona, but who holds a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and is currently a member in good standing of the bar of another state or the District of Columbia, or eligible to practice before the highest court in any state, territory or insular possession of the United States, and who is employed within the State of Arizona as in-house counsel, as hereinabove defined, may apply for an Arizona Certificate of Registration of In-House Counsel (“Registration Certificate”). A lawyer employed as in-house counsel who is admitted to practice in a jurisdiction outside of the United States, in accordance with the standards and requirements generally applicable to the practice of law in that jurisdiction, may also apply for a Registration Certificate.

3. An applicant for a Registration Certificate shall:

A. file with the clerk of the Arizona Supreme Court ~~State Bar of Arizona its form of a~~ verified application for an Arizona Certificate of Registration of In-House Counsel;

B. attach to the verified application ~~furnish to the State Bar of Arizona~~ a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States, or foreign jurisdiction, in which the applicant has been admitted to practice law certifying the current status of the applicant's membership or eligibility to practice therein;

C. certify that the applicant has read and is familiar with the Arizona Rules of Professional Conduct;

D. pay an application fee in an amount established by the Supreme Court ~~equal to seventy five percent (75%) of the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed~~; and

E. submit evidence that the applicant has successfully completed the course on Arizona law described in Rule 34(j).

4. An attorney who is employed by an eligible organization as in-house counsel on the effective date of this rule shall apply for a Registration Certificate within one hundred and eighty (180) days of that effective date. From and after the effective date of this rule, any attorney who commences employment by an eligible organization as in-house counsel shall apply for a Registration Certificate within ninety (90) days of the date of commencement of employment.

5. On or before February 1 of each year, in-house counsel registered pursuant to the provisions of this rule, who continues to be employed as in-house counsel within the State of Arizona, shall renew the Registration Certificate, ~~in the manner prescribed by the Board of Governors of the State Bar of Arizona for that purpose,~~ and pay a renewal fee set by the Supreme Court. ~~in an amount equal to seventy-five percent (75%) of the current dues paid by active members of the State Bar of Arizona for that calendar year.~~

6. Upon a determination ~~by the State Bar of Arizona~~ that the applicant has complied with the requirements of subpart (3) of this rule, the clerk State Bar shall issue to the applicant a Registration Certificate. ~~The State Bar shall promptly notify any applicant if it determines that an application fails to comply with the requirements of subpart (3) of this rule, and the applicant shall have thirty (30) days from the date of such notice in which to cure any deficiency. If the applicant fails to cure such deficiency within that thirty (30) day period, the application shall be deemed denied.~~

7. Each lawyer issued a Registration Certificate shall report to the State Bar of Arizona, within thirty (30) days, any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction by any federal or state court or agency before which the applicant has been admitted to practice, or in any state in which the lawyer has rendered legal services while temporarily authorized under any rule or by admission *pro hac vice*.

8. If there is a change in circumstances, and an attorney holding a current Registration Certificate becomes ineligible for such Certificate, the attorney shall notify the ~~State Bar of Arizona~~ clerk of the supreme court of such change in writing within thirty (30) days. An attorney registered pursuant to this rule who has become employed by a different eligible entity, but continues to meet all the requirements of this rule, may apply for the issuance of an amended Registration Certificate to reflect that change.

9. Except as provided in this rule, the holder of a valid and current Registration Certificate shall be entitled to the benefits and responsibilities of active members of the State Bar of Arizona, and shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar. A Registration Certificate shall not authorize the registrant to provide legal services to any person or entity other than the one for which the registrant serves as in-house counsel, or its parents, subsidiaries or affiliates, or when participating in the provision of legal services to individuals unable to pay for such services under the circumstances contemplated by, and in accordance with the requirements of, Rule 38(e) of these rules. ~~or to engage in activities for which admission pro hac vice is required under Rule 38(a) of these rules.~~

~~A lawyer that has been issued a Registration Certificate under this rule shall satisfy the continuing legal education requirements, if any, of at least one of the other state(s) or jurisdiction(s) in which that lawyer is admitted to practice. If not subject to mandatory continuing legal education requirement in the other state(s) or jurisdiction(s), the registrant shall comply with Arizona's continuing legal education requirements. On or before September 15 of each calendar year, every registered in-house counsel shall file an affidavit demonstrating full compliance with this rule.~~

~~10. Notwithstanding the provisions of subpart (9) of this rule, the holder of a Registration Certificate may participate in the provision of legal services to individuals unable to pay for such services under the circumstances contemplated by, and in accordance with the requirements of, Rule 38(e) of these rules.~~

10. In providing legal services to the lawyer's employer, a lawyer who ~~that~~ has been issued a Registration Certificate under this rule may also secure admission *pro hac vice* in Arizona to provide the services authorized in the preceding paragraph by complying with the requirements of Rule 398(a) of these rules. A lawyer who has been issued a Registration Certificate under this rule may provide services under Rule 38(e) without securing admission *pro hac vice*.

11. A lawyer who has been issued a Registration Certificate under this rule shall satisfy the continuing legal education requirements, if any, of at least one of the other state(s) or jurisdiction(s) in which that lawyer is admitted to practice. If not subject to mandatory continuing legal education requirement in the other state(s) or jurisdiction(s), the lawyer shall comply with Arizona's continuing legal education requirements. On or before September 15 of each calendar year, every registered in-house counsel shall file an affidavit demonstrating full compliance with this rule.

~~11~~12. A lawyer's authority to practice as in-house counsel under a Registration Certificate issued pursuant to this rule shall be suspended when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which that lawyer has been admitted to practice.

~~12~~13. A lawyer serving as in-house counsel in Arizona who fails to register pursuant to the provisions of this rule shall be ineligible for admission *pro hac vice* in Arizona, and may be referred by the State Bar of Arizona to the Bar admission and/or disciplinary regulatory authority in any jurisdiction in which that lawyer has been admitted to practice of law.

14. An applicant may petition the Arizona Supreme Court for a waiver of any of the requirements for registration under this rule.

~~13. An applicant may petition the Board of Governors for a waiver of any of the requirements for registration under this rule.~~

Note: No changes proposed to (b), (c), (d) or (e); text is provided for context

**(b) Foreign Legal Consultant.**

1. *Definition.* A “foreign legal consultant” is a person who is admitted to practice and is in good standing as an attorney or counselor at law or the equivalent in a foreign country or political subdivision of a foreign country, and has been issued a certificate of registration as a foreign legal consultant.

2. *Requirement for Certificate of Registration.* To be issued a certificate of registration as a foreign legal consultant, an applicant must:

A. for a period of not less than five of the seven years immediately preceding the date of the application, have been admitted to practice and have been in good standing as an attorney or counselor at law or the equivalent in a foreign country or political subdivision of a foreign country; and have engaged either: (i) in the practice of law in such country or political subdivision; or (ii) in a profession or occupation that requires admission to practice and good standing as an attorney or counselor at law or the equivalent in such country or political subdivision;

B. possess the good moral character necessary for a member of the state bar;

C. intend to practice as a registered foreign legal consultant in this state and to maintain an office in the state for such practice;

D. possess the necessary documentation evidencing compliance with the immigration laws of the United States;

E. have attained the age of twenty-one;

F. file with the Committee on Character and Fitness an application in the form supplied by the Committee. The application must be accompanied by required supporting documents and application fee. The applicant shall also complete and submit a character report accompanied by a character investigation fee as established by the Court. The character report and related fee may be submitted separately from the application to practice as a registered foreign legal consultant.

3. *Documents Required in Support of Application.* The following must accompany every application:

A. an application fee as established by the Ssupreme Court;

B. a complete set of the applicant's fingerprints (the Committee on Character and Fitness is authorized to receive criminal history information regarding any applicant for admission from any law enforcement agency in conjunction with the admissions process);

C. a certificate, with a duly authenticated English translation, if not in English, from the authority having jurisdiction over admission in the foreign country or political subdivision of the foreign country in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive body of such authority and which shall be accompanied by the official seal, if any, of such authority and which shall certify (a) the authority's jurisdiction in such matters, and (b) the applicant's admission to practice in such foreign country or political subdivision of such country, the date of such admission, and the applicant's good standing as an attorney or counselor at law or the equivalent thereof;

D. a certificate, with a duly authenticated English translation, if not in English, from the authority having jurisdiction over professional discipline in the foreign country or political subdivision of the foreign country in which the applicant was admitted to practice, which shall be signed by a responsible official or one of the members of the executive board of such authority, and which shall be accompanied by the official seal, if any, of such authority and which shall certify (a) the authority's jurisdiction in such matters, and (b) whether any charge or complaint has ever been filed against the applicant with such authority, and if so, the substance of each such charge or complaint and the adjudication or resolution thereof;

E. a letter of recommendation, with a duly authenticated English translation, if not in English, from one of the members of the executive body of the authority mentioned in paragraph (b)(3)(C) of this rule or from one of the judges of the highest law court or of a court of original jurisdiction in the foreign country or political subdivision of the foreign country;

The Committee on Character and Fitness and its agents may require such information or further documents from a foreign legal consultant applicant as it is authorized to require of any applicant for admission to the state bar and may make such investigations, conduct such hearings, and otherwise process said application as if made pursuant to the provisions of the rules governing application for admission by examination.

4. *Time for Processing Application.* The Committee on Character and Fitness may receive and act upon any such application at any time or in its discretion may require that such applications be received and processed by the Committee at the same time and in the same manner as applications for admission upon examination.

5. *Hardship Waiver.* Upon a showing that strict compliance with the provisions of paragraphs (b)(3)(C) or (D) of this rule would cause the applicant unnecessary hardship,

or upon a showing of exceptional professional qualifications to practice as a foreign legal consultant, the Committee may in its discretion waive or vary the application of either or both of those provisions and permit the applicant to furnish other evidence in lieu thereof.

6. *Reciprocity.* In considering whether to issue a certificate of registration as a foreign legal consultant, the Committee may consider whether a member of the state bar would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission if (a) there is pending with the Committee a request from a member of the state bar to take this factor into account, (b) the member is actively seeking or has actively sought to establish such an office in that country, and (c) there is a serious question as to adequacy of the opportunity for a member of the state bar to establish such an office.

7. *Scope of practice.*

A. A person licensed to practice as a foreign legal consultant under this rule may render legal services in this state subject, however, to the limitations that he or she shall not:

i. appear for a person other than himself or herself as attorney in any court, or before any magistrate or other judicial officer, in this state other than upon admission pro hac vice pursuant to Rule 38(a);

ii. prepare any deed, mortgage, assignment, discharge, lease, or any other instrument affecting title to real estate located in the United States of America;

iii. prepare any will or trust instrument affecting the disposition on death of any property located in the United States of America and owned by a resident thereof;

iv. prepare any instrument relating to the administration of a decedent's estate in the United States of America;

v. prepare any instrument in respect to marital relations, rights or duties of a resident of the United States of America or the custody or care of the children of a resident;

vi. render professional legal advice on the law of this state or of the United States of America (whether rendered incident to the preparation of legal instruments or otherwise), except on the basis of advice from a person duly qualified and entitled (otherwise than by virtue of having been licensed under this rule) to render professional legal advice in this state;

vii. in any way hold himself or herself out as a member of the state bar.

B. A person registered as a foreign legal consultant under this rule shall at all times use the title “legal consultant”, which shall be used in conjunction with the name of the foreign country of his or her admission to practice, and shall not carry on his or her practice under, or utilize in connection with such practice, any name, title or designation other than one or more of the following:

i. his or her own name;

ii. the name of his or her law firm;

iii. his or her authorized title in the foreign country of his or her admission to practice, which may be used in conjunction with the name of such country.

8. *Rights and Obligations.* A foreign legal consultant registered under this rule shall not be a member of the state bar but shall be considered an affiliate of the state bar subject to the same conditions and requirements as apply to a member of the state bar under the Rules of the Supreme Court governing members of the state bar, insofar as conditions and requirements are consistent with the provisions of this rule, and shall:

A. have the right, in the same manner and to the same extent as members of the state bar, to:

i. employ one or more members of the state bar;

ii. be employed by one or more members of the state bar or by any partnership or professional corporation that includes members of the state bar or that maintains an office in this state; or

iii. be a partner in any partnership or shareholder in any professional corporation that includes members of the state bar or that maintains an office in this state; and

B. enjoy and be subject to all rights and obligations with respect to attorney-client privilege, work-product privilege, and other professional privileges in the same manner and to the same extent as members of the state bar.

9. *Disciplinary Provisions.* A person registered as a foreign legal consultant under this rule shall be subject to professional discipline in the same manner and to the same extent as members of the state bar.

10. *Course on Professionalism.* Within one year after receiving a certificate of registration, a foreign legal consultant shall complete the state bar course on professionalism, or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona for this purpose. The provisions of Rule 34(f)(2) regarding summary suspension and reinstatement shall apply.

**(c) Full-Time Law School Faculty Members.**

1. *Application; Examination by Committee on Examinations not Required.* Upon recommendation of the dean of a law school in Arizona which is either provisionally or fully approved and accredited by the American Bar Association or, as to such dean, upon recommendation of the president of such university or school, a full-time faculty member of such law school may apply for admission to practice law in the State of Arizona as an active member of the bar without examination by the Committee on Examinations.

2. *Requirements.* An applicant under this rule must be a graduate with a juris doctor degree from a law school provisionally or fully approved by the American Bar Association at the time of such applicant's graduation. Applicants shall be required to submit proof of their admission by examination to the bar of another state or the District of Columbia and shall pay the current applicable application and investigation fees. Each applicant must file an application with the Committee containing information relative to his or her educational and professional background and moral character. An applicant shall submit evidence that he or she has successfully completed the course on Arizona law described in Rule 34(j).

3. *Investigation.* The Committee may require such information from any such applicant as it is authorized to require of any applicant not within the exception made by this rule and may make such investigations, conduct such hearings, and otherwise process said application as if made pursuant to the provisions of the foregoing rules governing application for admission by examination.

4. *Recommendation for Admission by Committee.* If after such investigation as the Committee may deem appropriate it concludes that such applicant possesses the moral qualities and the intellectual attainments required of all other applicants for admission to practice law in the State of Arizona, it shall recommend such applicant for admission to practice and, if said recommendation is accepted by the Court, said applicant shall be admitted to practice and be enrolled as a member of the state bar, and except for the limitations imposed by this subsection, shall have all privileges and rights enjoyed by any member of the State Bar of Arizona admitted pursuant to application and admission by examination. Applicants admitted under this rule shall be subject to all the duties and obligations of members under Rules 41 and 42. The Committee may receive and act upon any such application at any time or in its discretion may require that such applications be received and processed by the Committee at the same time and in the same manner as applications for admission upon examination.

5. *Limitations on Practice.* Faculty members who are admitted to the bar pursuant to this subsection and who subsequently terminate their full-time faculty status shall not retain active bar membership unless they pass the Arizona bar examination. Faculty members who are admitted to the bar under this subsection shall limit their practice hours in accordance with the limits imposed by each university and shall in no event engage in

compensated practice as members of the state bar for more than an average of eight hours per week during each calendar year. The dean of each law school shall annually advise the executive director of the state bar that faculty members who have been admitted to the bar under this subsection have complied with the reporting requirements under university rules and the limits imposed by this subsection. For purposes of this rule, activities of clinical law professors in connection with supervision of a clinical law program as described in paragraph (d) of this rule shall not be considered as compensated practice.

**(d) Clinical Law Professors and Law Students**

1. *Purpose.* This rule is adopted to encourage law schools to provide clinical instruction of varying kinds and to facilitate volunteer opportunities for students in pro bono contexts.

2. *Definitions.*

A. “Accredited law school” means a law school either provisionally or fully approved and accredited by the American Bar Association.

B. “Certified limited practice student” is a law student or a graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Dean” means the dean of the Accredited Law School where the student is enrolled (or was enrolled on graduation), or the dean's designee, who signed the application for limited practice certification.

D. “Designated attorney” is, exclusively in the case of government agencies, any deputy, assistant or other staff attorney authorized and selected by a supervising attorney to supervise the certified limited practice student where permitted by these rules.

E. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, he or she will be responsible for any work performed by the certified limited practice student under his or her supervision.

F. “Personal presence” means the supervising attorney or designated attorney is in the physical presence of the certified limited practice student.

G. “Rules” means Rule 38, Rules of the Supreme Court.

H. “Supervising attorney” is an attorney admitted to Arizona full or limited practice who agrees in writing to supervise the certified limited practice student pursuant to these rules and whose name appears on the application for certification or recertification.

I. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.

### 3. *General Provisions.*

A. *Limited Bar Membership.* To the extent a professor or a student is engaged in practice of law under this rule, the professor or student shall, for the limited purpose of performing professional services as authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. *Nonapplicability of Attorney Discipline Rules to Terms of the Certification.* The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor or a limited practice student pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor or the student to make application for admission to practice law if the professor or the student is in other respects qualified for such admission.

C. *Effect of Certification on Application for Admission to Bar.* The certification of a clinical law professor or a limited practice student shall in no way be considered as an advantage or a disadvantage to the professor or student in an application for admission to the state bar.

D. *Privileged Communications.* The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising attorneys (and designated attorneys), and certified limited student practice students. All persons participating in any program of instruction or professional activity for which a student is certified under these rules are enjoined not to disclose privileged or confidential communications whether in the implementation of a course of instruction or otherwise.

### 4. *Clinical Law Professors.*

A. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state bar but certified pursuant to this rule may appear as a lawyer, solely in connection with supervision of a clinical law program approved by the dean and faculty of a law school in Arizona either provisionally or fully approved and accredited by the American Bar Association, in any court or before any administrative tribunal in this state in any of the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be

brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. *Requirements and Limitations for Clinical Law School Professors.* In order to make an appearance as lawyer pursuant to this rule, the clinical law professor must:

i. be duly employed as a faculty member of a law school in Arizona either provisionally or fully approved and accredited by the American Bar Association for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

ii. be admitted by examination to the bar of another state or the District of Columbia;

iii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;

iv. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and

v. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in Rule 34(j).

C. *Certification.* The certification shall be signed by the dean of the law school on the form proscribed by the clerk of this Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. *Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student.* It shall be the responsibility of the clinical law professor to ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school's clinical law program. In the case of a certified student who has graduated and participates in the program pending the taking of the bar examination, the clinical law professor shall, on a monthly basis, based on such reporting from the certified limited practice student and the supervising attorney as the law school shall require, confirm that the certified graduate has received and is receiving adequate attorney supervision and guidance.

E. *Withdrawal or Termination of Certification.*

i. The dean may withdraw a certification of a clinical law professor at any time by filing a notice to that effect, with or without stating the cause for withdrawal, with the clerk of this Court, who shall forthwith mail copies thereof to the clinical law professor and the State Bar of Arizona.

ii. The Court may terminate the certification of a clinical law professor at any time without cause and without notice or hearing by filing notice of the termination with the clerk of this Court and with the state bar.

#### 5. *Practical Training of Law Students*

A. *Law Student Eligibility for Limited Practice Certification.* To be eligible to become a certified limited practice student, a law student applicant must:

i. have successfully completed legal studies amounting to at least three semesters, or the equivalent academic hour credits if the school or the student is on some basis other than a semester, at an accredited law school, or have graduated from an accredited law school, subject to the time limitations set forth in these rules;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered, but this shall not prevent a supervising lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student, nor shall it prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct and the rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the student is enrolled (or was enrolled on graduation), or by the dean's designee, as being in good academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending, academic courses in civil procedure, criminal law, evidence, and professional responsibility.

#### B. *Application for Limited Practice Certification.*

i. All applications for student limited practice certification or requests to change or add a supervising attorney or extend the period of certification pursuant to these rules must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated appropriate nonrefundable processing fee. The clerk of the Court shall send a copy of all approved student limited practice certifications to the admissions department of the state bar.

ii. The application for certification shall require the signature of the applicant, the dean, associate dean, or assistant dean of the accredited law school in which the applicant is enrolled, and the signature of the supervising attorney.

iii. The applicant shall attest that he or she meets all of the requirements of the rules; agrees to and shall immediately notify the clerk of the Court in the event he or she no longer meets the requirements the rules; and, that he or she has read, is familiar with and will abide by the Rules of Professional Conduct of the State of Arizona and these rules.

iv. The dean, associate dean, or assistant dean of the accredited law school in which the applicant is enrolled shall attest that the applicant meets the requirements of these rules; that he or she shall immediately notify the clerk of the Court in the event that the certified limited practice student no longer meets the requirements of these rules; and that he or she has no knowledge of facts or information that would indicate that the applicant is not qualified by ability, training, or character to participate in the activities permitted by these rules.

v. The supervising attorney shall specify the period during which he or she will be responsible for and will supervise the applicant and attest that he or she has read, is familiar with, will abide by, and will assume responsibility under the requirements of these rules;

*C. Permitted Activities and Requirements of Limited Practice Certification; Physical Presence of Supervising Attorney.*

i. *Court and Administrative Tribunal Appearances.* A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the student is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the certified limited practice student shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. A certified limited practice student may appear in the following matters:

a. *Civil Matters.* In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

b. *Criminal Matters on Behalf of the State.* In any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be present except when such appearance is in justice, municipal, or magistrate courts.

c. *Felony Criminal Defense Matters.* In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the

supervising attorney (or designated attorney) must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

d. *Misdemeanor Criminal Defense Matters.* In any misdemeanor criminal defense matter in justice, municipal, and magistrates courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney shall be present during trial.

e. *Appellate Oral Argument.* A certified limited practice student may participate in oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.

Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be personally present for such period and under such circumstances as the court may direct.

ii. *Other Client Representation Activities.* Under the general supervision of the supervising attorney (or designated attorney), but outside his or her personal presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney (or designated attorney);

b. prepare briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney (or designated attorney);

c. provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court (if there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney (or designated attorney);

d. render legal advice and perform other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising attorney (or designated attorney).

iii. *Other Non-Representation Activities.* A certified limited practice student may perform any advisory or non-representational activity which could be performed by a person who is not a member of the state bar, subject to the approval by the supervising

attorney (or designated attorney). In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

*D. Use of the Title "Certified Limited Practice Student."*

i. In connection with activities performed pursuant to these rules, a certified student may use the title "Certified Limited Practice Student" only and may not use the title in connection with activities not performed pursuant to these rules.

ii. When a certified limited practice student's name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney; and otherwise comply with these rules.

iii. A certified limited practice student may not and shall not in any way hold himself or herself out as a regularly admitted or active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive or misleading.

v. Nothing contained in these rules shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully do prior to the adoption of this rule.

*E. Requirements and Duties of the Supervising Attorney.* The supervising attorney shall:

i. be an active member of the state bar under these rules, and, before supervising a certified limited practice student shall have practiced law or taught law in an accredited law school as a full-time occupation for at least two years;

ii. supervise no more than five (5) certified limited practice students concurrently; provided, however, that a supervising attorney who is employed full-time to supervise law students as part of an organized law school or government agency training program may supervise up to, but in no case more than, fifty (50) certified students;

iii. assume personal professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

iv. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper practical training of the certified limited practice student and the protection of the client;

v. read, approve, and personally sign any pleadings, briefs or other similar documents prepared by the certified limited practice student prior to the filing thereof, and read and approve any documents which shall be prepared by the certified limited practice student for execution by any person (exclusively in the case of government agencies, a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the supervising attorney shall still provide general supervision);

vi. provide the level of supervision to the certified limited practice student required by these rules (exclusively in the case of government agencies, a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the Supervising Attorney shall still provide general supervision); and

vii. in the case of a certified student who is participating in the clinical program post-graduation pending the taking of the bar examination, report to the clinical law professor and the dean of the law school, as the law school shall require, on a monthly basis regarding the supervising attorney's supervision and guidance of the certified student.

viii. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease prior to the date indicated on a notice of certification.

F. *Duration of Certification.* Certification of a certified limited practice student shall commence on the date indicated on a notice of certification and shall remain in effect for the period specified on the notice of certification unless sooner terminated pursuant to the earliest of the following occurrences:

i. *Termination by the Student.* The certified limited practice student may request termination of the certification in writing or notify the clerk of the Court that he or she no longer meets the requirements of this rule, and in such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

ii. *Termination by the Supervising Attorney.* The supervising attorney may notify the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease prior to the date specified in the notice of certification. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean and the state bar, and the dean may issue a modified certification reflecting the substitution of a new supervising attorney, as necessary.

iii. *Termination by the Dean.* A certification of student limited practice may be terminated by the dean any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

iv. *Failure to Take or Pass the Bar Examination.* A certification of student limited practice shall be terminated if the certified student fails to take or pass the first general bar examination for which the student is eligible.

v. *Termination by the Arizona Supreme Court.* A certification of student limited practice may be terminated by the Arizona Supreme Court any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

**(e) Authorization to Practice Law for Attorneys Volunteering with Approved Legal Services Organizations.**

1. *Purpose.* Attorneys have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, this rule allows certain attorneys who otherwise are not allowed to practice law in Arizona to volunteer to provide civil legal assistance to individuals who are unable to pay for such services.

An attorney who is or was admitted to practice law for at least five (5) years in the courts of any state, district, or territory of the United may be admitted to practice for the limited purpose of providing assistance as an unpaid volunteer in association with an approved

legal services organization so long as that organization employs at least one Arizona attorney not admitted pursuant to any provision of this rule.

2. *Definitions.*

A. The “active practice of law” means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment, or academic employment.

B. A “Rule 38(e) attorney” is any person who is or was admitted to practice in the courts of any state, district, or territory of the United States of America and

i. has been engaged in the active practice of law for at least five years before applying to participate in the volunteer lawyer program;

ii. has been a member in good standing of the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past five years;

iii. agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Arizona for disciplinary purposes;

iv. neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

v. is certified under paragraph (e)(3) of this rule.

C. An “approved legal services organization” for the purposes of this rule is a non-profit legal services organization that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters. A legal services organization must be approved as such by the Supreme Court of Arizona. The organization shall file a petition with the clerk of the Court explaining:

i. the structure of the organization and whether it accepts funds from its clients;

ii. the major sources of funds used by the organization;

iii. the criteria used to determine potential clients' eligibility for services performed by the organization;

iv. the types of services performed by the organization;

v. the names of all members of the State Bar of Arizona who are employed by the organization or who regularly perform legal work for the organization; and

vi. the existence and extent of malpractice insurance that will cover the Rule 38(e) attorney.

3. *Certification.* An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory, or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar members for at least five years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory, or district during the last 5 years; provided that an attorney who is registered as in-house counsel pursuant to Rule 38(h) shall fulfill this requirement by providing a copy of his or her current Arizona Certification of Registration of In-House Counsel;

B. A statement signed by an authorized representative of the approved legal services organization that the applicant is an unpaid volunteer associated with the organization; and

C. a sworn statement signed by the applicant that he or she:

i. has read and is familiar with the Rules of the Supreme Court and the applicable statutes of the State of Arizona relative to the conduct of lawyers, and will abide by the provisions thereof;

ii. submits to the jurisdiction of the Supreme Court of Arizona for disciplinary purposes, as defined by the Rules of the Supreme Court;

iii. has not been disciplined by the bar or courts of any jurisdiction during the last fifteen years; and

~~v.~~<sup>1</sup> iv. has successfully completed the course on Arizona law described in Rule 34(j).

The applicant shall send a copy of the application to the [Chief Bar Counsel for the State Bar of Arizona](#), which shall file any objection to such application with the clerk of the Supreme Court within ten (10) days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court of Arizona. The clerk of the Supreme Court shall send a copy of the order authorizing the practice of law to the State Bar of Arizona.

4. *Mandatory Continuing Legal Education.* Rule 38(e) attorneys shall be exempt from the requirements of Rule 45, Mandatory Continuing Legal Education.

5. *Pro Bono Requirement.* As provided in paragraph (e)(2)(B)(iv) of this rule, no attorney who practices law under the authority of this rule may receive compensation from the approved legal services organization with which the attorney is associated, from the attorney's client, or through a contingent fee agreement. This prohibition shall not prevent the attorney from seeking legal fees and costs from the opposing party, so long as all fees obtained are received by the client or donated to a qualified legal services program with the client's consent. In addition, an approved legal service organization or a client may reimburse any attorney practicing under this rule for actual expenses incurred while rendering services hereunder.

6. *Expiration of Authorization.* Authorization to practice law under this section shall expire if the applicant ceases to be associated as an unpaid volunteer with the organization. If the applicant ceases to be associated as an unpaid volunteer with the organization, an authorized representative of the organization shall, within ten (10) days of the date that association ceased, file a notification of the cessation with the clerk of the Supreme Court of Arizona and the State Bar of Arizona, specifying the date the association ceased.

7. *Discipline.* In addition to any appropriate proceedings and discipline which may be imposed by the Court under these rules, the Rule 38(e) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(e) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Court or the approved legal assistance organization.

**(f) Authorization to Practice Law for Attorneys Working for Approved Legal Services Organization.** An attorney who has been admitted to practice law in any other jurisdiction for at least two years and who is employed [part-time or full-time](#) by an approved legal services organization in this State that provides legal assistance to indigents in civil matters, free of charge, may be admitted to practice before all courts of this State, subject to the following:

1. *Approval of Legal Services Organizations.* An "approved legal services organization" for the purposes of this rule is a non-profit legal services organization that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters. A legal services organization must be approved as such by the Supreme Court of Arizona. To obtain approval, the organization shall file a petition with the clerk of the Court containing the following:

A. a statement that it does not accept fees for services rendered from its clients;

- B. an explanation of the structure of the organization;
- C. disclosure of the major sources of funds used by the organization;
- D. the criteria used to determine potential clients' eligibility for legal and nonlegal services performed by the organization;
- E. a description of the types of services performed by the organization;
- F. the names of all members of the State Bar of Arizona who are employed by the organization or who regularly perform legal work for the organization; and
- G. the existence and extent of malpractice insurance that will cover attorneys authorized to practice under this rule.

A copy of the petition for approval shall be sent by the organization to the Chief Bar Counsel of the State Bar of Arizona, who shall file any comment the state bar desires to file respecting such petition with the clerk of the Court within ten days after the date of receipt of such petition. A legal services organization is not approved until an order confirming such approval is entered by the Court. A copy of the order approving the legal services organization under this rule shall be sent by the clerk of the Court to the Chief Bar Counsel of the State Bar of Arizona.

2. *Application and Authorization.* An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar membership for at least the two years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory or district for the past five years, or during the time of the applicant's licensure, whichever is greater;

B. a statement signed by an authorized representative of the approved legal services organization that the applicant is employed by the organization; and

C. a sworn statement signed by the applicant that he or she:

i. has read and is familiar with the Rules of the Supreme Court ~~and any applicable statutes of the State of Arizona relative to the conduct of lawyers,~~ and will abide by the provisions thereof;

ii. submits to the jurisdiction of the Court for disciplinary purposes, as defined by the Rules of the Supreme Court;

iii. has not been disciplined by the bar or courts of any jurisdiction within the past five years; and

iv. has successfully completed the course on Arizona law described in Rule 34(j).

The applicant ~~A copy of the application~~ shall send a copy of the application ~~be sent by the attorney~~ to the Chief Bar Counsel of the State Bar of Arizona, who shall file any objection to such application with the clerk of the Supreme Court within ten days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court. The clerk of the Supreme Court shall send a ~~A~~ copy of the order authorizing the practice of law ~~shall be sent by the clerk of the Court~~ to the Chief Bar Counsel of the State Bar of Arizona.

3. *Expiration of Authorization.* Authorization to practice law under this section shall ~~remain in effect from the date of the order authorizing the applicant to practice law in the State of Arizona until such time as~~ expire if the applicant ceases no longer to works for an approved legal services organization. If the applicant ceases employment with the approved legal services organization, an authorized representative of the organization shall, within ten (10) days of the date of termination of employment, file a notification of the termination with the clerk of the Court and the Chief Bar Counsel of the State Bar of Arizona, specifying the date of termination of employment. If the applicant leaves the approved legal services organization in order to work for another approved legal services organization, a notification of new employment shall be filed with the clerk of the Court and the State Bar of Arizona.

4. *Limitation of Activities.* An attorney authorized to practice under this rule shall not perform any legal services within the State of Arizona except for clients of the approved legal services organization by which the attorney is employed. The attorney shall not accept any compensation for such services except such salary as may be provided to him or her by the organization. ~~Part-time employment is permitted under this rule.~~ A Rule 38(f) attorney may not provide services for compensation other than compensation from the legal services organization with which the attorney is employed.

5. *Supervision.* An attorney authorized to practice under this section who has been practicing in Arizona for less than two years shall be supervised by an attorney who is an active member of the State Bar of Arizona, who is employed full time by the approved legal services organization for whom the applicant attorney works, and who will act as a

supervisory lawyer pursuant to Rule 42 of the Rules of the Supreme Court of Arizona, ER 5.1.

6. *Continuing Legal Education.* An attorney authorized to practice under this paragraph (f) must comply with the Mandatory Continuing Legal Education (~~MCLE~~) requirements of Rule 45.

7. *Discipline.* In addition to any appropriate proceedings and discipline that may be imposed by the Supreme Court of Arizona under Rule 31, an attorney practicing under this paragraph (f) shall be subject to the following disciplinary measures:

A. The presiding judge or hearing officer for any matter in which the attorney practicing under this paragraph (f) has participated may hold the attorney in civil contempt for any failure to abide by such tribunal's orders; and

B. The Supreme Court of Arizona or the approved legal services organization may, at any time, with or without cause, withdraw certification hereunder.

**(g) Authorization to Practice Law for Attorneys Employed by Indigent Defense Offices.** An attorney who has been admitted to the active practice of law in any other jurisdiction for at least two years, and who is employed full time by a state or county funded indigent defense office located in a county with a population less than 500,000, may be admitted to practice before all courts of this State, for the limited purpose of providing representation to appointed clients of such office, as provided in this paragraph (h).

1. *Definitions.*

A. The “active practice of law” means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment, or academic employment.

B. A “funded indigent defense office,” as used in this rule, means a governmental department, organization or other entity formed under the authority of A.R.S. § 11-581 et seq. The office also must employ at least one Arizona attorney not admitted pursuant to any provision of this rule and be located in a county with a population less than 500,000. A funded indigent defense office must be approved as such by the Supreme Court of Arizona.

2. *Approval of Funded Indigent Defense Office.*

A. To obtain approval of the Supreme Court the office shall file a petition with the clerk of the Court containing the following:

i. a description of the structure of the organization, including a certification that the organization maintains a supervisory structure and ratio in line with accepted defense standards, the source of which shall be identified;

ii. a copy of the last annual report prepared pursuant to A.R.S. § 11-584(A)(3), and an affirmation that, during any time in which the office has an attorney employed under this rule, the office will file a copy of the annual report with the Supreme Court at the same time as it files the report with the entities designated in A.R.S. § 11-584(A)(3);

iii. a certification that the office complies with ethical workload limits, ~~American Bar Association Formal Ethics Opinion 06-441 (2006), American Council of Chief Defenders/National Legal Aid and Defender Association Ethics Opinion 03-01 (April 2003), and Arizona Bar Ethics Opinion 90-10,~~ such certification to include an affirmation that the office has a means of reviewing caseload/workload of assigned attorneys;

iv. a description of the source of major funds used by the office;

v. the type of representation the office provides under A.R.S. § 11-584(A);

vi. the names of all members of the State Bar of Arizona who are employed by the office or who regularly perform legal work for the office; and

vii. a certification that all attorneys employed by the office under this rule receive pay and benefits commensurate with other regularly licensed attorneys in the office.

The office shall send aA copy of the petition for approval ~~shall be sent by the office to to~~ the Chief Bar Counsel of State Bar of Arizona, who shall file any comment to the state bar ~~desires to file respecting~~ such petition with the clerk of the Court within ten days after the date of receipt of such petition. A funded indigent defense office is not approved until an order confirming such approval is entered by the Court. The clerk shall send aA copy of the order approving the funded indigent defense office under this rule ~~shall be sent by the clerk of the Court~~ to the Chief Bar Counsel of the State Bar of Arizona.

3. *Application and Authorization.* An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar membership for at least the two years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory or district for the past five years, or during the time of the applicant's licensure, whichever is greater;

B. a statement signed by an authorized representative of the approved funded indigent defense office that the applicant is employed by the organization; and

C. a sworn statement signed by the applicant that he or she:

i. has read and is familiar with the Rules of the Supreme Court and any applicable statutes of the State of Arizona relative to the conduct of lawyers, and will abide by the provisions thereof;

ii. submits to the jurisdiction of the Court for disciplinary purposes, as defined by the Rules of the Supreme Court;

iii. has not been disciplined by the bar or courts of any jurisdiction within the past five years, or during the time of the applicant's licensure, whichever is greater; and

iv. has successfully completed the course on Arizona law described in Rule 34(j).

The applicant shall send a copy of the application to the State Bar of Arizona, which shall file any objection to such application with the clerk of the Supreme Court within ten (10) days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court of Arizona. The clerk of the Supreme Court shall send a copy of the order authorizing the practice of law to the State Bar of Arizona.

4. *Mandatory Continuing Legal Education.* An attorney authorized to practice under this paragraph (g) must comply with the Mandatory Continuing Legal Education (MCLE) requirements of Rule 45.

5. *Expiration of Authorization.* Authorization to practice law under this section shall remain in effect from the date of the order authorizing the applicant to practice law in the State of Arizona until (A) the applicant no longer works for an approved funded indigent defense office; (B) the applicant is admitted to the practice of law in Arizona pursuant to Rules of the Supreme Court 33 through 37; or (C) two years from the date of the order authorizing the applicant to practice law under this rule, whichever comes first. If the applicant ceases employment with the funded indigent defense office, an authorized representative of the office shall, within ten (10) days of the date of termination of employment, file a notification of the termination with the clerk of the Court and the Chief Bar Counsel of the State Bar of Arizona, specifying the date of termination of employment. If the applicant leaves the approved funded indigent defense office in order to work for another approved funded indigent defense office, a notification of new employment shall be filed with the clerk of the Court and the State Bar of Arizona. In the event of an applicant transferring from one approved funded indigent defense office to another, the time limits for expiration of licensure under this rule shall run from the date of the original order of admission. No applicant may be admitted more than once pursuant to this rule.

6. *Discipline.* In addition to any appropriate proceedings and discipline that may be imposed by the Court under these rules, the Rule 38(g) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(g) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Supreme Court, or the funded indigent defense office.

7. *Limitation of Activities.* An attorney authorized to practice under this rule shall not perform any legal services within the State of Arizona except for clients of the approved funded indigent defense office by which the attorney is employed. The attorney shall not accept any compensation for such services except such salary as may be provided to him or her by the office. Part-time employment is not permitted under this rule.

8. *Supervision.* An attorney authorized to practice under this section who has been practicing in Arizona for less than two years shall be supervised by an attorney who is an active member of the State Bar of Arizona, who is employed full time by the approved funded indigent defense office for whom the applicant attorney works, and who will act as a supervisory lawyer pursuant to Rule 42 of the Rules of the Supreme Court of Arizona, ER 5.1.

### **~~(h) In-house Counsel~~**

~~1. As used in this rule, "in-house counsel" shall refer to an attorney who is employed within the State of Arizona as in-house counsel or a related position for a for-profit or a non-profit corporation, association, or other organizational entity, which can include its parents, subsidiaries and/or affiliates, the business of which is lawful and is other than the practice of law or the provision of legal services.~~

~~2. A lawyer who is not a member of the State Bar of Arizona, but who holds a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and is currently a member in good standing of the bar of another state or the District of Columbia, or eligible to practice before the highest court in any state, territory or insular possession of the United States, and who is employed within the State of Arizona as in-house counsel, as hereinabove defined, may apply for an Arizona Certificate of Registration of In-House Counsel ("Registration Certificate"). A lawyer employed as in-house counsel who is admitted to practice in a jurisdiction outside of the United States, in accordance with the standards and requirements generally applicable to the practice of law in that jurisdiction, may also apply for a Registration Certificate.~~

~~3. An applicant for a Registration Certificate shall:~~

~~A. file with the State Bar of Arizona its form of verified application for an Arizona Certificate of Registration of In-House Counsel;~~

~~B. furnish to the State Bar of Arizona a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States, or foreign jurisdiction, in which the applicant has been admitted to practice law certifying the current status of the applicant's membership or eligibility to practice therein;~~

~~C. certify that the applicant has read and is familiar with the Arizona Rules of Professional Conduct;~~

~~D. pay an application fee in an amount equal to seventy-five percent (75%) of the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed; and~~

~~E. submit evidence that the applicant has successfully completed the course on Arizona law described in Rule 34(j).~~

~~4. An attorney who is employed by an eligible organization as in-house counsel on the effective date of this rule shall apply for a Registration Certificate within one hundred and eighty (180) days of that effective date. From and after the effective date of this rule, any attorney who commences employment by an eligible organization as in-house counsel shall apply for a Registration Certificate within ninety (90) days of the date of commencement of employment.~~

~~5. On or before February 1 of each year, in-house counsel registered pursuant to the provisions of this rule, who continues to be employed as in-house counsel within the State of Arizona, shall renew the Registration Certificate, in the manner prescribed by the Board of Governors of the State Bar of Arizona for that purpose, and pay a renewal fee in an amount equal to seventy five percent (75%) of the current dues paid by active members of the State Bar of Arizona for that calendar year.~~

~~6. Upon a determination by the State Bar of Arizona that the applicant has complied with the requirements of subpart (3) of this rule, the State Bar shall issue to the applicant a Registration Certificate. The State Bar shall promptly notify any applicant if it determines that an application fails to comply with the requirements of subpart (3) of this rule, and the applicant shall have thirty (30) days from the date of such notice in which to cure any deficiency. If the applicant fails to cure such deficiency within that thirty (30) day period, the application shall be deemed denied.~~

~~7. Each lawyer issued a Registration Certificate shall report to the State Bar of Arizona, within thirty (30) days, any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the applicant has been admitted to the~~

~~practice of law, or the imposition of any disciplinary sanction by any federal or state court or agency before which the applicant has been admitted to practice, or in any state in which the lawyer has rendered legal services while temporarily authorized under any rule or by admission *pro hac vice*.~~

~~8. If there is a change in circumstances, and an attorney holding a current Registration Certificate becomes ineligible for such Certificate, the attorney shall notify the State Bar of Arizona of such change in writing within thirty (30) days. An attorney registered pursuant to this rule who has become employed by a different eligible entity, but continues to meet all the requirements of this rule, may apply for the issuance of an amended Registration Certificate to reflect that change.~~

~~9. Except as provided in this rule, the holder of a valid and current Registration Certificate shall be entitled to the benefits and responsibilities of active members of the State Bar of Arizona, and shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar. A Registration Certificate shall not authorize the registrant to provide legal services to any person or entity other than the one for which the registrant serves as in-house counsel, or its parents, subsidiaries or affiliates, or to engage in activities for which admission *pro hac vice* is required under Rule 38(a) of these rules. A lawyer that has been issued a Registration Certificate under this rule shall satisfy the continuing legal education requirements, if any, of at least one of the other state(s) or jurisdiction(s) in which that lawyer is admitted to practice. If not subject to mandatory continuing legal education requirement in the other state(s) or jurisdiction(s), the registrant shall comply with Arizona's continuing legal education requirements. On or before September 15 of each calendar year, every registered in-house counsel shall file an affidavit demonstrating full compliance with this rule.~~

~~10. Notwithstanding the provisions of subpart (9) of this rule, the holder of a Registration Certificate may participate in the provision of legal services to individuals unable to pay for such services under the circumstances contemplated by, and in accordance with the requirements of, Rule 38(e) of these rules. A lawyer that has been issued a Registration Certificate under this rule may also secure admission *pro hac vice* in Arizona by complying with the requirements of  Rule 38(a) of these rules.~~

~~11. A lawyer's authority to practice as in-house counsel under a Registration Certificate issued pursuant to this rule shall be suspended when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which that lawyer has been admitted to practice.~~

~~12. A lawyer serving as in-house counsel in Arizona who fails to register pursuant to the provisions of this rule shall be ineligible for admission *pro hac vice* in Arizona, and may be referred by the State Bar of Arizona to the Bar admission and/or disciplinary regulatory authority in any jurisdiction in which that lawyer has been admitted to practice of law.~~

~~13. An applicant may petition the Board of Governors for a waiver of any of the requirements for registration under this rule.~~

#### (h) Practice Pending Admission by Motion

1. An applicant who meets the requirements of paragraph (f) of Rule 34 and whose application for admission on motion has been filed and deemed complete by the Committee on Character & Fitness may provide legal services in Arizona through an office or other place for the regular practice of law in Arizona for no more than 365 days, provided that the applicant:

A. does not cease to be a member in good standing in every jurisdiction, foreign or domestic, wherever admitted to practice law;

B. does not become subject to lawyer discipline or the subject of a disciplinary matter in any other jurisdiction;

C. has never been denied admission on character and fitness grounds in any jurisdiction;

D. reasonably expects to fulfill all of Arizona's requirements for admission on motion;

E. associates with and is supervised by an attorney who is admitted to practice law in Arizona, and discloses in his or her application for admission on motion the name, address, and membership status of that attorney;

F. provides with his application for admission on motion a signed verification from the Arizona attorney certifying the applicant's association with and supervision by that attorney;

G. includes in all written communications with the public and clients the following language: "Arizona practice temporarily authorized pending admission under Ariz. R. Sup. Ct. 38(h);"

H. pays the annual assessment to the Client Protection Fund.

2. Until the applicant's application for admission on motion is granted, the applicant may not appear before a court of record or tribunal in Arizona that requires pro hac vice admission unless the applicant is granted such admission pursuant to Rule 39.

3. The applicant must immediately notify the Committee on Character and Fitness if the applicant becomes subject to a disciplinary or disability investigation, complaint, or sanctions in any other jurisdiction at any time during the 365 days of practice authorized by this rule. The Committee on Character and Fitness shall take into account such information in determining whether to grant the attorney's application for admission to practice law in Arizona.

4. Any attorney practicing under this rule shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in the State of Arizona.

5. The authority given an applicant to practice law pending admission pursuant to this rule shall terminate immediately if:

- A. the applicant withdraws the application for admission by motion, or the application is denied;
- B. the applicant fails to remain in compliance with paragraph (h)(1) of this rule;
- C. the applicant is disbarred, suspended, or placed on disability inactive status in any other jurisdiction in which the applicant is licensed to practice law; or
- D. the applicant fails to comply with the notification requirements of paragraph (h)(3) of this rule.

6. Upon the termination of authority to practice law pursuant to this rule, the applicant shall:

- A. immediately cease practicing law in Arizona;
- B. notify in writing all clients in pending matters, and opposing counsel and co-counsel in pending litigation, of the termination of the applicant's authority to practice law in Arizona; and
- C. take all other necessary steps to protect the interests of the applicant's clients.

**(i) Military Spouse Temporary Admission.**

1. *Requirements.* An attorney who is not a member of the State Bar of Arizona~~applicant~~ who meets the requirements of (A) through (N) of this paragraph (i)(1) (“Applicant”) may, upon motion verified application, be admitted to the temporary practice of law in this jurisdiction. The Applicant shall:

A. have been admitted by bar examination to practice law in another jurisdiction in the United States or territory;

B. hold a juris doctor degree from a law school provisionally or fully approved by the American Bar Association at the time of graduation;

C. submit evidence of achieving the passing score established in this jurisdiction for the Multistate Professional Responsibility Examination;

D. establish that the Applicant is currently an active member in good standing in at least one jurisdiction where admitted, and establish that the Applicant is a member in good standing in all jurisdictions where admitted;

E. establish that the Applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

F. establish that the Applicant possesses the character and fitness to practice law in this jurisdiction;

G. submit evidence that the Applicant has successfully completed the course on Arizona law described in Rule 34(j);

H. submit evidence that the Applicant is a dependent spouse of a service member of the United States Uniformed Services as defined by the Department of Defense;

I. submit evidence that the service member is on full time, active duty pursuant to military orders in the State of Arizona;

J. submit evidence that the Applicant is residing in Arizona due to the service member's full time, active duty pursuant to military orders in this state;

K. submit character investigation information, in a manner established by the Court, including all required supporting documents;

L. not have failed the Arizona bar examination or failed to achieve the Arizona scaled score on the uniform bar examination administered within any jurisdiction within five years of the date of filing an application under this rule;

M. not have been previously denied admission to the practice of law in Arizona;

N. agree to advise all clients, prior to providing representation or services, that the attorney is temporarily admitted under the military spouse exception.

O. at the time of submitting the verified application, pay an application fee set by the Supreme Court.

2. *Duration and Renewal.*

A. A temporary admission will be valid for one year from the date of issuance, unless terminated earlier pursuant to paragraph (5).

B. An attorney admitted under this rule may annually renew a temporary admission upon:

i. filing a written request for renewal;

ii. paying an ~~\$300~~ application fee.

3. *Continuing Legal Education.* No later than six months following the attorney's temporary admission, the attorney shall certify to the Supreme Court completion of at least fifteen hours of continuing legal education on Arizona practice, procedure, and ethics. The attorney shall also comply with Rule 45 and on or before September 15 of each year certify completion of at least fifteen (15) hours of such continuing legal education during each year for which a temporary admission is renewed.

4. *Association of Local Counsel.*

A. No attorney temporarily admitted under this rule may appear before any court, board, or administrative agency of this state unless the attorney has associated in that cause an attorney who is a member in good standing of the State Bar of Arizona (hereinafter called local counsel). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate. Local counsel associating with an attorney temporarily admitted under this rule in a particular cause shall accept joint responsibility with that attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

B. If the attorney temporarily admitted under this rule has not engaged in the active practice of law for at least five years cumulatively, the attorney shall be supervised by local counsel as defined above, who will be responsible to the court, the bar, the Supreme Court, and the client for all services the temporarily admitted attorney provided pursuant to this rule.

5. *Termination.*

A. A temporary admission shall terminate, and an attorney shall cease the practice of law in Arizona pursuant to that admission, unless otherwise authorized by these rules, 30 days after any of the following events:

i. the service member's separation or retirement from the United States Uniformed Services;

ii. the service member's permanent relocation to another jurisdiction, unless the service member's immediately subsequent assignment specifies that the Department of Defense does not authorize dependents to accompany the service member, in which case the temporary attorney may continue to practice law in Arizona as provided in this rule;

iii. the attorney's permanent relocation outside the state of Arizona for reasons other than the service member's relocation;

iv. the attorney's ceasing to be a dependent as defined by the Department of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Department of Homeland Security;

v. the attorney's failure to meet the annual licensing requirements for an active member of the State Bar of Arizona;

vi. the attorney's request;

vii. the attorney's admission to practice law in Arizona under any other admissions rule;

viii. the attorney's failure to achieve the Arizona scaled score on the uniform bar examination administered within any jurisdiction;

ix. the attorney's denial of admission to the practice of law in Arizona for violating ethical rules; or

x. notice by the Supreme Court at any time, provided that the Clerk of the Supreme Court shall mail a copy of the notice of termination to the attorney and associated local counsel.

B. An attorney whose temporary admission is terminated shall provide written notice to the State Bar of Arizona within thirty (30) days of the terminating event.

C. At least sixty (60) days before termination of the temporary admission, or as soon as possible under the circumstances, the attorney shall:

i. file in each matter pending before any court or tribunal a notice that the attorney will no longer be involved in the case; and

ii. provide written notice to all clients receiving representation from the attorney that the attorney will no longer represent them.

6. *Benefits and Responsibilities of Temporary Admission.* An attorney temporarily admitted under this rule shall be entitled to the benefits and responsibilities of active members of the State Bar of Arizona, and shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the state bar.

~~7. *Record.* The State Bar of Arizona shall maintain a current record of all attorneys temporarily admitted under this provision and shall promptly provide such record upon request.~~

## **Rule 39. ~~Provision of Legal Services Following Determination of Major Disaster~~ Admission Pro Hac Vice**

~~(a) Determination of existence of major disaster.~~ Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

~~(1) the State of Arizona and whether the emergency caused by the major disaster affects the entirety or only part of the State, or~~

~~(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) of this Rule shall extend only to lawyers who principally practice in the geographical area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.~~

~~(b) Temporary practice in this jurisdiction following major disaster.~~ Following the determination of an emergency affecting the justice system in the State of Arizona pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Arizona are in need of *pro bono* service and the assistance of lawyers from outside Arizona is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Arizona on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. The provision of such legal services shall be supervised by a lawyer assigned and supervised through an established not-for-profit bar association, *pro bono* program or legal services organization or through such other organization(s) specifically designated by this Court.

~~(c) Temporary practice in this jurisdiction following major disaster in another jurisdiction.~~ Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in that affected jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

~~(d) Duration of authority for temporary practice.~~ The authority to practice law in the State of Arizona granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in the State of Arizona have ended, except that a lawyer then representing clients in Arizona pursuant to paragraph

~~(b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The lawyer shall not, however, thereafter accept new clients. The authority to practice law in the State of Arizona granted by paragraph (c) of this Rule shall end sixty (60) days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.~~

~~(e) Court appearances. The authority granted by this Rule does not include authority to appear in court or before any other tribunal except:~~

~~(1) pursuant to the provisions of Rule 38(a) of these Rules for securing admission *pro hac vice* and, if such authority is granted, any fees for securing such admission shall be waived; or~~

~~(2) if this Court, in any determination made under paragraph (a) of this Rule, grants blanket permission to appear in all designated courts and other tribunals in this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included in such determination, any fees for securing admission *pro hac vice* shall be waived.~~

~~(f) Disciplinary authority and registration requirement. Lawyers providing legal services in the State of Arizona pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Arizona Rules of Professional Conduct, as provided in Rule ER 8.5 of those Rules. Lawyers providing legal services in the State of Arizona under paragraphs (b) or (c) shall, within thirty (30) days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to, and in accordance with, the provisions of this Rule shall not be considered to be engaged in the unauthorized practice of law in the State of Arizona.~~

~~(g) Notification to clients. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits or restrictions on that authorization, and that they are not authorized to practice law in the State of Arizona except as permitted by this Rule. They shall not state or imply that they are otherwise authorized to practice law in the State of Arizona.~~

a. ~~1.~~ *Eligibility.* An attorney who is not a member of the State Bar of Arizona but is currently a member in good standing of the bar of another state ~~or~~ and eligible to practice before the highest court in any state, territory or insular possession of the United States (hereinafter called a ~~nonresident~~ non-member attorney) and who is of good moral character and is familiar with the ethics, professionalism and practices of the legal profession in the State of Arizona, may appear as counsel *pro hac vice* in a particular case before any state or local court, board or administrative agency in the State of Arizona

upon compliance with this rule. However, except for non-members authorized pursuant to Rule 38(a)(10), no person is eligible to appear as counsel pursuant to this rule if that person (a) is a resident of the State of Arizona, or (b) is regularly employed in the State of Arizona, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Arizona.

b. 2.-Association of Local Counsel. No ~~nonresident~~non-member attorney may appear pro hac vice before any court, board or administrative agency of this state unless the ~~nonresident~~non-member attorney has associated in that cause an attorney who is a member in good standing of the State Bar of Arizona (hereinafter called local counsel). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate. Local counsel associating with a ~~nonresident~~non-member attorney in a particular cause shall accept joint responsibility with the ~~nonresident~~non-member attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

~~m.c.~~

n.d. 3.-Procedure for Applying. Appearance pro hac vice in a cause is subject to the discretion and approval of the court, board, or administrative agency where such cause is pending. A ~~nonresident~~non-member attorney desiring to appear pro hac vice under this rule shall comply with the procedures set forth herein for each matter where pro hac vice status is requested. For good cause shown, a court, board, or administrative agency may permit a ~~nonresident~~non-member attorney to appear pro hac vice on a temporary basis prior to the completion by the ~~nonresident~~non-member attorney of the application procedures set forth herein. At the time such temporary admission is granted, the court, board, or administrative agency shall specify a time period for the ~~nonresident~~non-member attorney to complete the application procedures, and any temporary pro hac vice admission shall be revoked in the event of subsequent failure by the ~~nonresident~~non-member attorney to so complete the application procedures.

1. A.-Verified Application to State Bar of Arizona. In order to appear as counsel in any matter pending before a court, board, or administrative agency in the State of Arizona, a ~~nonresident~~non-member attorney shall:

(a) ~~file~~File with the State Bar of Arizona an original and one copy of a verified application together with a certificate from the state bar or from the clerk of the highest admitting court of each state, territory or insular possession of the United States in which the ~~nonresident~~non-member attorney has been admitted to practice law certifying the ~~nonresident~~non-member attorney's date of admission to such jurisdiction and the current status of the ~~nonresident~~non-member attorney's membership or eligibility to practice therein; and

(b) Pay a non-refundable application fee equal to the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed plus an additional assessment set by the Arizona Supreme Court for the Client Protection Fund, with the following exceptions:

~~i) ; provided that a~~ Not more than one application fee may be required per ~~nonresident non-member~~ attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the ~~nonresident non-member~~ attorney.

~~ii) ; and further provided that the requirement of~~ The an application fee shall be waived ~~i)(1)~~ for Judge Advocate General's Corps' military attorneys practicing before the Military Trial Court of the State of Arizona or the Arizona Court of Military Appeals and ~~ii)(2)~~ to permit pro bono representation of an indigent client or clients. An attorney seeking a fee waiver to provide pro bono representation of an indigent client or clients shall include in the application a verification that all clients represented in the action are indigent and that no attorney fee shall be paid by the client. "Indigent" is defined as those individuals whose gross income is at or below 125% of the federal poverty guidelines, as calculated in conformity with the eligibility requirements for Legal Services Corporation grantees, currently codified at 45 C.F.R. Section 1611.

~~Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) of this rule.~~

~~2. B. Notice of Receipt by State Bar of Complete Application.~~ Upon receipt of the verified application and fee from the ~~nonresident non-member~~ attorney as described above, the State Bar of Arizona shall issue to local counsel a Notice of Receipt of Complete Application ~~that~~which states: (1) whether the ~~nonresident non-member~~ attorney has previously made any application or motion pursuant to this rule within the preceding three years; (2) the date of any such application or motion; and (3) whether the application or motion was granted or denied by the court or administrative agency. The State Bar of Arizona Notice shall include as exhibits: (1) the original verified application and (2) the original certificate(s) of good standing. The State Bar shall retain cCopies of verified applications, certificates of good standing and orders granting, denying or revoking applications to appear pro hac vice ~~shall be retained by the State Bar of Arizona~~ for three (3) years.

~~3.~~ 3. *Motion to Associate Counsel Pro Hac Vice.* Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is pending, together with proof of service on all parties in accordance with Arizona Rules of Civil Procedure. The motion to associate counsel pro hac vice shall include as exhibits: (1) the original verified application; (2) the original certificates of good standing; and (3)

the State Bar of Arizona Notice. The motion to associate counsel pro hac vice shall also be accompanied by a proposed order granting or denying the motion. Local counsel shall mail a copy of each order granting or denying the motion as entered by the court, board, or administrative agency ~~shall be mailed by local counsel~~ to the State Bar of Arizona.

~~D~~4. *Entry of Order.* The order granting or denying the motion to associate counsel pro hac vice shall be entered by the court, board, or administrative agency no later than 20 days (exclusive of weekends and holidays) after the filing of such motion. A ~~nonresident~~non-member attorney shall make no appearance in a cause until the court, board, or administrative agency where the cause is pending enters the order granting the motion to associate counsel pro hac vice. The order granting pro hac vice status shall be valid for a period of one year from the date of entry, and shall be renewed for subsequent one year periods upon compliance with renewal procedures as specified herein.

e. ~~4-~~*Verified Application.* The verified application required by this rule shall be on a form approved by the ~~Board~~Arizona Supreme Court ~~of Governors of the State Bar of Arizona~~ and available at the clerk of the court, board, or administrative agency where such cause is pending and shall state:

1A. the title of the case or cause, court, board, or agency and docket number in which the ~~nonresident~~non-member attorney will be seeking to appear pro hac vice, and whether this case or cause is a related or consolidated matter for which the ~~nonresident~~non-member attorney has previously applied to appear pro hac vice;

2. ~~B-~~ the ~~nonresident~~non-member attorney's residence and office address;

3. ~~C-~~ the ~~court(s)~~jurisdictions to which the ~~nonresident~~non-member attorney ~~has been~~is admitted to practice and the date(s) of such admission;

4. ~~D. that-whether~~ the ~~nonresident~~non-member attorney is an active member in good standing of such ~~court(s)~~jurisdictions;

5. ~~E.~~ that the ~~nonresident~~non-member attorney is not currently disbarred or suspended in any court;

~~6. F.~~ whether the ~~nonresident~~non-member attorney is currently subject to any pending disciplinary proceeding by any court, agency or organization authorized to discipline attorneys at law, and if so pending, the application shall specify the jurisdiction, the nature of the matter under investigation and the name and address of the disciplinary authority investigating the matter;

~~7. G.~~ whether the ~~nonresident~~non-member attorney has ever been disciplined by any court, agency, or organization authorized to discipline attorneys at law;

~~8. H.~~ the court, board, or administrative agency, title of cause and docket number in which the ~~nonresident~~non-member attorney has filed an application to appear as counsel under this rule in this state in the preceding three years, the date of each application, and whether it was granted;

~~9. I.~~ the name, address and telephone number of local counsel;

~~10. J.~~ the name of each party in the cause and the name and address of counsel of record who is appearing for each party;

~~11. that the non-member attorney acknowledges~~ ~~K. that the nonresident attorney certifies that~~ he or she ~~acknowledges that he or she~~ shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b), Rules of the Supreme Court;

~~12. L.~~ that the ~~nonresident~~non-member attorney will review and comply with appropriate rules of procedure as required in the underlying cause; and

~~13. M.~~ that the ~~nonresident~~non-member attorney understands and shall comply with the standards of professional conduct required of members of the State Bar of Arizona.

~~e. 5.~~ *Discretion.* The granting or denial of a motion to associate counsel pro hac vice pursuant to this rule by the court, board, or administrative agency is discretionary. The court, board, or administrative agency may revoke the authority of a ~~nonresident~~non-member attorney to make continued appearances pursuant to this rule. Absent special circumstances, repeated appearances by any person pursuant to this rule may be the cause for denial of the motion to associate counsel pro hac vice. Such special circumstances may include, but are not limited to, the following:

~~1. A.~~ a showing that the cause involves a complex area of law in which the ~~nonresident~~non-member attorney possesses a special expertise, or

~~2. B.~~ a lack of local counsel with expertise in the area of law involved in the cause.

~~f.6.~~ *Transfer.* The ~~nonresident~~non-member attorney shall be deemed admitted in the event venue in such action is transferred to another county or court or is appealed; provided, however, that the court having jurisdiction over such transferred or appealed cause may revoke the authority of the ~~nonresident~~non-member attorney to appear pro hac vice.

~~h.—~~

~~i.g.7.~~ *Continuing Duties to Advise of Changes in Status.* A ~~nonresident~~non-member attorney admitted pro hac vice shall have the continuing obligation during the period of such admission to promptly advise the State Bar of Arizona of a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The State Bar of Arizona shall then advise any court, board, or administrative agency where the ~~nonresident~~non-member attorney has been admitted pro hac vice of any such information. A ~~nonresident~~non-member attorney shall promptly advise the State Bar of Arizona if permission to appear pro hac vice pursuant to this rule is revoked by any court, board, or administrative agency.

~~h.8.~~ *Renewal of Application.* On or before each anniversary date of the filing of the verified application with the State Bar of Arizona, local counsel must certify to the State Bar of Arizona whether (a) the ~~nonresident~~non-member attorney continues to act as counsel in the cause; or (b) such cause has been adjudicated to a final conclusion or is otherwise concluded. Any ~~nonresident~~non-member attorney who continues to act as counsel in the cause shall remit to the State Bar of Arizona on or before each anniversary date an assessment set by the Arizona Supreme Court for the Client Protection Fund and a fee equal to the current dues paid by active members of the State Bar of Arizona for the calendar year in which such renewal is sought, unless the ~~nonresident~~non-member attorney is waived under paragraph ~~(a)(3)(A)-(c)(1)(B)(ii)~~ of this rule as a Judge Advocate General's Corps' military attorney or as an attorney providing pro bono representation of an indigent client.

~~Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund administered by the Arizona Foundation for Legal Services and Education, to be distributed to and used exclusively for approved legal services organizations, as that term is defined in subparagraph (f) of this rule.~~

~~i.9.~~ *Failure to Renew.* Any ~~nonresident~~non-member attorney who continues to appear pro hac vice in a cause and fails to pay the renewal fees set forth in paragraph (a)(8) of this rule shall be suspended from appearance in any cause upon the expiration of a period of thirty days from the anniversary date. The executive director of the State Bar of Arizona shall

notify the ~~nonresident~~non-member attorney and local counsel of the suspension and shall file a certified copy of the notice with the court, board or administrative agency where the cause is filed. The ~~nonresident~~non-member attorney may be reinstated upon the payment of fees set forth in paragraph (a)(8) of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the executive director shall reinstate the ~~nonresident~~non-member attorney and shall certify such reinstatement to the court, board, or administrative agency where the cause is filed.

j. ~~10.~~ *Annual Reporting.* The State Bar of Arizona shall prepare an annual report which shall list: (a) all applications filed pursuant to this rule during the preceding twelve months; (b) the names of all applicants; and (c) whether the application was granted or denied. The report shall be available for inspection at the offices of the State Bar of Arizona, and shall be provided to the Supreme Court.

k. ~~11.~~ *Disciplinary Jurisdiction of the State Bar of Arizona.* As provided in Rule 46(b), Rules of the Supreme Court, a ~~nonresident~~non-member attorney admitted pro hac vice pursuant to these rules shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar of Arizona.

Disposition of Fees. Fifteen percent of the application fees paid pursuant to this rule shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) and (g) of this rule.

## Rule 42. Rules of Professional Conduct

### ER 1.0 Terminology

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#### COMMENT

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[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs [1.10](#), 1.11, 1.12 or 1.18.

### ER 1.5. Fees

....

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) [the division is in proportion to the services performed by each lawyer or the division is in proportion to the services performed by each lawyer or](#) each lawyer receiving any portion of the fee assumes joint responsibility for the representation

(2) the client agrees, in a writing signed by the client, to the participation of all the lawyers involved [and the division of the fees and responsibilities between the lawyers](#) ~~and the division of the fees and responsibilities between the lawyers~~ and

(3) the total fee is reasonable.

....

#### Comments

....

#### Division of Fee

[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one

lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers if the division is in proportion to the services performed by each lawyer or ~~the division is in proportion to the services performed by each lawyer or all lawyers~~ lawyers assume joint responsibility for the representation and the client agrees, in a writing signed by the client, to the arrangement. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be competently and diligently completed. ~~and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be diligently completed.~~ See ERs 1.1, ~~1.3,~~ 1.3. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).

## ER 1.6. Confidentiality of Information

(a) A lawyer shall not reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c) or (d), or ER 3.3(a)(3).

“Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is (a) protected by applicable privileges and protections (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested to be kept confidential. “Confidential information” does not ordinarily include (i) a lawyer’s legal knowledge or legal research or (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

....

### Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal confidential information relating to the representation. See ER 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The public is better protected if full and open communication by the client is encouraged than if it is inhibited. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality also applies in such situations where evidence is sought from the lawyer through compulsion of law. ~~The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.~~ A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

### **Authorized Disclosure**

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

....

[20] A lawyer must act competently to safeguard [confidential](#) information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See ERs 1.1, 5.1 and 5.3.

[21] When transmitting a communication that includes confidential information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. The duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protect by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

## ER 1.10. Imputation of Conflict of Interest

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents or electronically stored information maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to such documents or electronically stored information by the remaining lawyers, those remaining lawyers will not be considered to have protected information within the meaning of this Rule.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in ER 1.7.

(d) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under ER 1.9 unless:

(1) ~~the matter does not involve a proceeding before a tribunal in which the personally disqualified lawyer had a substantial role;~~

~~(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and~~

~~(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule. The written notice shall include a description of the screening procedures adopted; a statement of the firm's and of the screened lawyer's compliance with these Rules; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and~~

(3) the screening procedures adopted are reasonably adequate under the circumstances to prevent material information from being disclosed to the firm and its client.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by ER 1.11.

#### COMMENT [2003 AMENDMENT]

....

#### Principles of Imputed Disqualification

....

[5] ER 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate ER 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by ERs 1.6 and 1.9(c). For purposes of determining whether any current lawyer in the firm has such material information, information maintained by a firm in the form of documents, including electronically stored information, will not be imputed to the remaining lawyers if the firm adopts screening procedures that are reasonably adequate under the circumstances to prevent the remaining lawyers from accessing such information. In determining whether screening procedures are reasonably adequate, factors to be considered include whether technology is available and has been implemented to restrict lawyer access to electronically stored information maintained by the firm and whether adequate notice is provided to lawyers in the firm regarding the screening procedures. Further guidance is provided in ER 1.0, comments [8] – [10]. In addition, the firm should consider whether its lawyers have access to internal electronic databases that utilize research memoranda or other work product from past client representations, to ensure that any protected information is removed from such databases or that access is appropriately restricted.

...

[9] Rule 1.10(d) removes the imputation otherwise required by ER 1.10(a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures and requirements laid out in sections (d)(1) and (2) be followed. For purposes of section (d), in determining the adequacy of screening procedures “under the circumstances,” factors to be considered include whether technology is available and has been implemented to restrict lawyer access to electronically stored information maintained by the firm. Other relevant circumstances may include the size of the matter in relation to the overall business of the firm, the number of lawyers in the firm that are actively involved in the matter that is the subject of the screening measures, or other factors that may make it difficult to implement a screen that is reasonably adequate to ensure that protected information is not disclosed, even inadvertently. Additional guidance is provided in ER 1.0, comments [8] - [10]. There may be some circumstances when, taking all factors into account, screening procedures will not be reasonably adequate to guard against inadvertent disclosure of protected information. Lawyers should also be aware that even when screening procedures have been adopted that comply with this Rule, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

[10] Paragraph (d)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but the lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[11] The notice required by paragraph (d)(2) generally should include a description of the screened lawyer’s prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client’s material confidential information has not been disclosed or used in violation of the Rules.

[12] The requirements of ERs 5.1 and 5.3 should be considered in implementing screening procedures under this Rule. If the screened lawyer or the firm become aware that the screening procedures have been violated or are ineffective, reasonable steps should be taken to remedy the deficiencies and prevent prejudice to the impacted client.

### ER 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

....

#### COMMENT [2004 AMENDMENT]

....

#### Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of lawyers may be more difficult in the government context. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example if the action or failure to act involves the head of the bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope. Government lawyers also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so.

[10] A government lawyer may have an obligation defined by statute, regulation, or case law to render legal advice to various constituents of a government organization, including elected officials, multi-member boards, or agencies, or to other governmental organizations. Some government lawyers may themselves be elected officials who have statutory obligations to take formal action against government constituents under certain circumstances. Normally, the government lawyer advises each constituent of a government organization not in his individual capacity but as a representative of the organizational client. In that event, there is only one client, and thus no joint representation or conflict of interest. See ER 1.7 cmts. [28] to [30]. The lawyer must make the identity of that client clear to the constituents and determine which constituent has authority to act for the government entity in each instance. The lawyer must also disclose

to the constituents any limitations that are imposed on the lawyer's representation or advice as a result of the lawyer's other statutory obligations. See ER 1.2(c) and related comments.

[Renumber subsequent comments]

### ER 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

....

#### **Comment [2003 amendment]**

....

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including [electronically stored information](#)~~computerized information~~. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

### ER 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror, or other official of a tribunal by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

....

#### Comment [2003 rule]

....

[6] At times, a government entity is required to act in a “quasi-judicial” capacity as part of an administrative process. In that capacity, it may act as the decision-maker in contested proceedings or hear appeals from the determinations of another officer, body or agency of the same government. A government lawyer may be called upon to advise the tribunal after another lawyer in the same office has advised the other government constituent about the matter, or while another attorney from the same office appears before the tribunal. Advice given by the lawyer to the tribunal does not constitute impermissible ex parte contact, provided that reasonable measures are taken to ensure the fairness of the administrative process, such as using different attorneys to advise and represent the two constituents and screening those lawyers from one another or strictly limiting the lawyer’s advice to the tribunal to procedural matters. In no event can the same lawyer both provide advice to the tribunal and appear before it in the same matter, even if the advice is limited to procedural advice.

[Renumber subsequent comments]

## ER 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

....

### Comment [2003 amendment]

[1] This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. ~~Communications authorized by the law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.~~

[2] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal prosecution about a matter other than the criminal prosecution, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[Renumber subsequent comments]

## ER 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) Except as authorized by these Rules or other law, ~~A~~a lawyer who is not admitted to practice in Arizona shall not:

(1) ~~except as authorized by these Rules or other law, establish an office or other systematic and continuous presence~~engage in the regular practice of Arizona law ~~for the practice of law;~~ or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice Arizona law.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law and which:

(1) are undertaken in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter.

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in ~~this~~ Arizona or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in ~~this~~ Arizona or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, may provide legal services in Arizona that exclusively involve ~~as authorized by federal law, the law of another~~ ~~or other law of this~~ jurisdiction, or tribal law.

(e) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(h) of these rules, may provide legal services in ~~this jurisdiction~~ Arizona that are provided to the lawyer's employer or its organizational affiliates and are not services for which ~~the forum requires~~ *pro hac vice* admission is required.

(fe) Any attorney who engages in the authorized multijurisdictional practice of law in ~~the State of~~ Arizona under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.

(g~~f~~) Attorneys not admitted to practice in ~~the State of~~ Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in ~~the State of~~ Arizona, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission. [See Rule 38\(a\).](#)

(h~~g~~) Any attorney who engages in the multijurisdictional practice of law in ~~the State of~~ Arizona, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in ~~the State of~~ Arizona.

## COMMENT

[1] Paragraph (a) applies to [the](#) unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. The definition of the practice of law is established by law and varies from one jurisdiction to another. [For Arizona's definition, see Rule 31\(a\)\(2\)\(A\).](#) Whatever the definition, limiting the practice [of](#) law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (~~ba~~) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See ER 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*.

[2] [Other than as authorized by these Rules or other law](#) ~~or this Rule~~, a lawyer who is not admitted to practice in Arizona violates paragraph (b)(1) if the lawyer engages in the regular practice of Arizona law in Arizona. A ~~lawyer~~ who ~~is~~ ~~are~~ not admitted to practice in Arizona ~~members of the State Bar of Arizona~~ violates paragraph (b)(2) if the lawyer fails to state ~~may comply with paragraph (b)(2) by stating~~ in any advertisement or communication that targets or specifically offers legal services to Arizona residents that: (1) the ~~non-member~~ lawyer is not licensed to practice [Arizona law](#) ~~the Supreme Court of Arizona~~; ~~or~~ ~~and~~ (2) the ~~non-member's~~ lawyer's practice is limited to federal [legal matters, such as immigration law](#), ~~or~~ tribal legal matters, ~~or the law of another jurisdiction.~~ ~~(for example, a non-member may state his or her practice is limited to immigration matters).~~ [See ERs 7.1\(a\) and 7.5\(b\).](#)

[4] [There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law under circumstances that do not create an unreasonable risk to the interests of their clients, the](#)

public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

[5] There is no single test to determine whether a lawyer's provision of legal services involving Arizona law are provided on a "temporary basis" in Arizona, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides legal services in Arizona that involve Arizona law on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

**Note: First sentence of comment [1] added effective 1/1/15**

## Appendix B

### COMMITTEE ON THE REVIEW OF SUPREME COURT RULES GOVERNING PROFESSIONAL CONDUCT AND THE PRACTICE OF LAW

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Arizona Supreme Court

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