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IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION TO AMEND RULE)	
38(d) OF THE RULES OF THE SUPREME)	Supreme Court
COURT OF ARIZONA PERTAINING TO)	No. R-_____
SPECIAL EXCEPTIONS TO STANDARD)	
EXAMINATION AND ADMISSION PROCESS)	Petition to Amend Rule 38(d)
TO INCORPORATE RECENT LAW)	
GRADUATES INTO THIS EXCEPTION.)	

I. SUMMARY OF PROPOSED CHANGES

Rule 38(d) makes exception for clinical law professors and law students to practice law. To assure competent practice, the Rule outlines appearances, limitations, and other practice allowances to be done under the supervision of a supervising attorney who is a member of the state bar. The proposed change will allow a postgraduate candidate who is waiting for Bar results to practice under the same limitations as a student. The current law only makes this exception for postgraduate candidates who were certified under this rule while enrolled in law school. It does not make exception for postgraduate candidates from out of state or postgraduate candidates from the University of Arizona College of Law and Arizona State University College of Law that did not elect to participate in clinical activities while enrolled in school. The amended rule extends this exception to otherwise qualified candidates.

Compliance With Stated Purpose of Rule 38(d).

“The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. This rule is adopted as one

means of providing assistance to practicing attorneys in providing such services...” (See 17A A.R.S. Sup.Ct.Rules, Rule 38(d)) One way to advance this purpose is to allow recent graduates the opportunity to practice in the same way a clinical student would. The proposed change will allow a candidate for admission to the bar the ability to practice law in the same way an intern would, thus allowing them to transition into practice more efficiently and allow them to provide legal services at a non-lawyer salary which will increase the availability of services to those unable to pay. The proposed rule change is designed to create more competent attorneys who benefit from the tutelage of their “supervising lawyer” who should be a master practitioner. The benefit of providing legal services at a lower rate is that more people that are unable to pay will be served, but because these are graduates waiting for bar results, the clients they serve conceivably receive more competent service than when dealing with a mid-second-year law student.

In addition to easing the burden on legal aid and other entities that may service indigent clientele, this exception will further aid state agencies who are currently feeling the strain of a \$1.5 billion dollar state budget deficit. The proposed change is modeled after the statute in Kansas to which I am more familiar.

Kansas Statute

KS R ADMIS Rule 705(a) reads:

(a) Any applicant for admission to the bar upon written examination who is otherwise qualified for admission and who has achieved the required Kansas score on the Multistate Professional Responsibility Examination may file with the Clerk of the Appellate Courts a request for a temporary permit to practice law. The request must be accompanied by a written statement from an attorney actively engaged in the practice of law in Kansas that such attorney will supervise and be responsible for the acts of the applicant during the period covered by the temporary certificate. If the Supreme Court shall find that the circumstances are such to justify it, a temporary permit may be granted, expiring at the date the results of the examination are announced, if unsuccessful, or, if successful, on the last Friday in April or September following the bar examination. The temporary

permit shall be effective upon the applicant's taking an oath to support the Constitution of the United States and the Constitution of the State of Kansas, and to conform to the oath prescribed by Rule 704(i).

An applicant who, within ten years prior to filing an application in Kansas, has failed a bar examination in Kansas or any other state or jurisdiction will not thereafter be eligible for a temporary permit.

Much of this Kansas statute is strictly applicable to Kansas. For one thing, bar results in Arizona are not available until the first part of May or October. The attachment will show the proposed change to Arizona law that will, in effect, give law graduates the same ability to practice in the capacity of a limited intern without being enrolled in school.

DATED this 28th day of April, 2008.


Jeremy Claridge

DRAFT OF PROPOSED AMENDED RULE

(d) Clinical Law Professors, and Law Students, and Bar Applicants Awaiting Bar Examination Results

1. *Purpose.* The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. This rule is adopted as one means of providing assistance to practicing attorneys in providing such services and to encourage law schools to provide clinical instruction in trial work of varying kinds and to facilitate volunteer opportunities for students and juris doctorate graduates in pro bono contexts.

2. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state bar but certified pursuant to paragraph (d)(7)(A) of this rule may appear as lawyer, solely in connection with supervision of a clinical law program approved by the dean and faculty of the College of Law of the University of Arizona or of the College of Law of Arizona State University, in any court or before any administrative tribunal in this state in any of the matters enumerated in paragraphs (d)(3)(A)-(D) 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.

3. *Activities of Law Students and Bar Applicants Awaiting Bar Examination Results.*

A. An eligible law student meeting the requirements of paragraph (d)-(5) or an eligible bar applicant meeting the requirements of paragraph (d)(8) 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 or bar applicant is appearing has consented in writing to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

i. any civil matter: in such cases in justice, municipal, and magistrate courts, the supervising 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;

ii. any misdemeanor criminal defense matter in justice, municipal, and magistrates courts: in such cases the supervising lawyer is not required to be personally present in court except during trial if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

iii. any felony criminal defense matter in justice, municipal, and magistrate courts and any criminal matter in superior court: in such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

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

B. An eligible law student meeting the requirements of paragraph (d)-(5) or an eligible bar applicant meeting the requirements of paragraph (d)(8) may also appear in any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the prosecuting attorney or that attorney's authorized representative. In all appearances in criminal cases a supervising lawyer must be present except when such appearance is in justice, municipal, or magistrate courts.

C. In each case, the written consent and approval referred to above 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 student or eligible bar applicant shall orally advise the court on the occasion of ~~the student's~~ their initial appearance in the case of the certification to appear as a law student or eligible bar applicant pursuant to this rule.

D. Under the general supervision of the supervising lawyer, but outside his personal presence, an eligible law student meeting the requirements of paragraph (d)(5) or an eligible bar applicant meeting the requirements of paragraph (d)(8) may engage in other activities, including:

- i. preparation of pleadings and other documents to be filed in any matter in which the student or bar applicant is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer;
- ii. preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer;
- iii. 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);
- iv. rendering legal advice and performing other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising lawyer.

E. An eligible law student meeting the requirements of paragraph (d)-(5) or an eligible bar applicant meeting the requirements of paragraph (d)(8) may participate in oral argument in this Court and the court of appeals, but only in the presence of the supervising lawyer.

F. Students who meet the requirements of (d)(6) below, may, at the invitation and request of the court, provide assistance to unrepresented individuals in uncontested civil proceedings without entering an appearance as counsel. Such students must be directly supervised in

person by an attorney associated with a volunteer legal services program as described in (d)(6)(B).

G. In the case of students practicing under this rule, Except for students participating under the requirements of (d)(6) below, all activities under this rule must be part of the law school's educational and clinical law practice program approved by the dean and faculty of the College of Law of the University of Arizona or the College of Law of Arizona State University, or other law school's juris doctorate program approved and accredited by the American Bar Association. A written statement of the contents of the school's educational and clinical law practice program of the Arizona State University or University of Arizona College of Law or other law school's juris doctorate program approved and accredited by the American Bar Association shall be filed with the executive director of the state bar not later than thirty days prior to the commencement of the program.

4. *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:

A. be duly employed as a faculty member of the College of Law of the University of Arizona or the College of Law of Arizona State University for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

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

C. 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; and

D. 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.

5. *Requirements and Limitations for Law Students.* Except for students making an appearance pursuant to paragraph (d)(3)(F), in order to make an appearance pursuant to this rule, the law student must:

A. either be duly enrolled in the College of Law of the University of Arizona or the College of Law of Arizona State University, or be duly enrolled in a law school's juris doctorate program approved and accredited by the American Bar Association, and be supervised by a member of the State Bar of Arizona, and be certified by the deans of the law school on a form approved by the clerk of this Court showing compliance with Rules 38(d)(3)(G), 38(d)(5)(B) and (C), and 38(d)(8);

B. have successfully completed legal studies amounting to at least three semesters, or the equivalent if the school is on some basis other than a semester basis;

C. be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern, including instruction in civil, criminal, and courtroom procedure;

D. 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, but this shall not prevent a 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; and

E. 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.

6. Requirements and Limitations for Law Students making appearances pursuant to paragraph (d)(3)(F). The law student must:

A. During the academic year, be duly enrolled in the University of Arizona or Arizona State University or any other American Bar Association accredited law school in the State of Arizona, and during the summer, must be in good standing at the University of Arizona, Arizona State University, or any other accredited law school in the State of Arizona and intending to return, or have graduated and be studying for the Arizona Bar;

B. Be participating in a volunteer legal services program managed by an approved legal services organization in cooperation with the University of Arizona College of Law, the Arizona State University College of Law, or any other American Bar Association accredited law school in the State of Arizona;

C. Be directly supervised in person by an attorney associated with such volunteer legal services program;

D. Receive 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 by the volunteer legal services program.

7. Certification for Students making an appearance pursuant to paragraph (d)(3)(A) -(E):

A. The certification of a clinical law professor by the law school dean shall be filed with the clerk of this Court and with the state bar and shall remain in effect until withdrawn.

B. The certification of a law student making an appearance pursuant to paragraph (d)(3)(A) -(E): by the law school dean shall be filed with the clerk of this Court and with the state bar and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen months after it is filed or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. As to any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the bar.

C. In the case of either a clinical law professor or a law student, certification:

i. may be withdrawn by the dean 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 or the law student and the supervising lawyer;

ii. may be terminated by this Court at any time without cause and without notice or hearing by filing notice of the termination with the clerk of the Court and with the state bar; and

iii. 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. 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 law student pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor or student to make application for admission to practice law if the professor or student is in other respects qualified for such admission.

8. Requirements and Limitations for Bar Applicants. In order to make an appearance pursuant to this rule, the bar applicant must:

A. have completed the bar admission examination in either February or July;

B. have submitted proof of graduation from the College of Law of the University of Arizona or the College of Law of Arizona State University or a law school's juris doctorate program approved and accredited by the American Bar Association;

C. not apply for the exception if the applicant has failed the examination within 5 years prior to filing;

D. must relinquish the certification at the date the examination results are announced if unsuccessful or, if successful, relinquish the certification on the Friday of the week following the announced results or upon the date the applicant is admitted to the bar, which ever is sooner;

E. have achieved the required Arizona score on the Multistate Professional Responsibility Examination;

F. 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, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible bar applicant, nor shall it prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require; and

G. certify in writing that the bar applicant 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.

98. Supervision. In this rule, "supervising lawyer" means either a clinical law professor or a member of the state bar in each case whose service as a supervising lawyer for this program is

approved by the dean of the law school in which the law student is enrolled or (in the case of a law student enrolled in a law school other than the Arizona State University or University of Arizona College of Law) whose service as a supervising lawyer is approved by the dean of that law school in which the student is enrolled or (in the case of a bar applicant awaiting exam results) whose service is approved by the executive director of the state bar.

An eligible law student or eligible bar applicant shall do any of the things permitted by this rule only under the supervision of the supervising lawyer. The supervising lawyer shall not delegate this responsibility to another, except that the incumbent of a public office may designate one or more qualified deputies for this purpose. The supervising lawyer shall:

A. assume personal professional responsibility for the student's guidance or bar applicant's guidance in any work undertaken and for supervising the quality of the student's work thereof;

B. assist in the student's preparation or bar applicant's preparation to the extent the supervising lawyer considers it necessary; and

C. agree to serve as a supervising lawyer and in the case of a law student enrolled in a juris doctorate program to participate either in the program administered by the Arizona State University or University of Arizona College of Law, or agree to participate in the program or activities authorized and certified by the dean of a law school's juris doctorate program other than the Arizona State University or University of Arizona College of Law.

109. Miscellaneous.

A. To the extent that a professor or student or bar applicant is engaged in practice of law under this rule, the professor or student or bar applicant shall, for the limited purpose of performing professional services as authorized by this rule, be deemed active members of the state bar (but not required to pay fees).

B. The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

C. Nothing contained in this rule 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.

D. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by professors or students or bar applicants certified under the provisions of this rule. All persons participating in a program of instruction pursuant to which a professor or student or bar applicant is certified under this rule are enjoined not to disclose privileged or confidential communications whether in the implementation of a course of instruction or otherwise.