



Supreme Court

STATE OF ARIZONA

NOËL K. DESSAINT
CLERK OF THE COURT

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

TELEPHONE: (602) 542-9396

June 9, 2005

RE: RULES 33, 39 AND 40, AZ RULES OF SUPREME COURT
Arizona Supreme Court No. R-04-0026

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 1, 2005, in regard to the above-referenced cause:

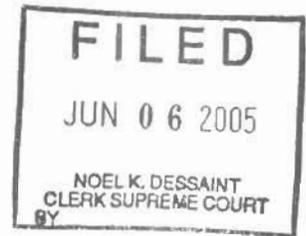
ORDERED: Petition to Amend Rules 33, 39 and 40, Arizona Rules of the Supreme Court = ADOPTED as modified, effective December 1, 2005.

Noel K Dessaint, Clerk

TO:
Robert B Van Wyck, Chief Counsel, State Bar of Arizona
Lexis-Nexis
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Rules Final List
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-04-0026



ORDER AMENDING
NEW RULE 38, RULES OF THE SUPREME COURT

IT IS ORDERED that Rule 38, Rules of the Supreme Court, as set forth in the attachment to the order of this date in Supreme Court No. R-04-0032 (transferring, *inter alia*, certain provisions of Rules 33, 39, and 40, Rules of the Supreme Court, to new Rule 38), be amended in accordance with the attachment hereto,* effective as of December 1, 2005.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 6th day of June, 2005.

For the Court:



RUTH V. MCGREGOR
Vice Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

RULES OF THE SUPREME COURT

Rule 38. Special Exceptions to Standard Examination and Admission Process

(a) Admission Pro Hac Vice.

1.-2. [No change in text.]

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 (1) 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 85% of 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 ~~may~~ shall be waived to permit pro bono representation of an indigent client or clients, ~~in the discretion of the State Bar of Arizona.~~ An attorney seeking a fee waiver under this provision 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.

B.-D. [No change in text.]

4.-7. [No change in text.]

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 85% of 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 exclusively engaged in pro bono representation of an indigent client or clients. No fee shall be paid under this section if the fee was waived under paragraph (a)(3)(A) of this rule, the client remains indigent, and no attorney fee shall be paid by the client.

9.-11. [No change in text.]

(b)-(d) [No change in text.]

(e) Emeritus Attorneys Pro Bono Participation Program Authorization to Practice Law for Attorneys Volunteering with Approved Legal Services Organizations.

1. *Purpose.* Individuals admitted to the practice of law in Arizona 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, ~~the following rule establishing the Emeritus Attorneys Pro Bono Participation Program is adopted. 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 States (other than Arizona) who volunteers to provide civil legal assistance to individuals who are unable to pay for such services is allowed to do so, under limited circumstances, under this rule. An attorney may be admitted to practice for the limited purpose of providing such 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. [No change in text.]

B. An "Rule 38(e) attorney" is any person, ~~retired from the active practice of law,~~ who is or was admitted to practice in the courts of any State, District or

~~Territory before the highest court of Arizona or any other state or territory of the United States of America or the District of Columbia (other than Arizona), and~~

~~i. Has been engaged in the active practice of law for a minimum of ten out of the fifteen years immediately preceding the application at least five years before applying to participate in the emeritus volunteer lawyer program; and~~

~~ii. Has been a member in good standing of the State Bar of Arizona or 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 fifteen years; and~~

~~iii. If not a retired member of the State Bar of Arizona, has graduated from a law school accredited by the American Bar Association and has not failed the Arizona Bar examination three or more times; and~~

~~iv-iii. [No change in text.]~~

~~v-iv. [No change in text.]~~

~~vi-v. Is certified under paragraph (5) hereof 3 below.~~

~~C. An "approved legal assistance services organization" for the purposes of this article rule is a not-for-non-profit legal assistance services organization which is approved by the Supreme Court of Arizona as set forth herein that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters. A legal assistance services organization seeking approval from the Supreme Court of Arizona for the purpose of this article must be approved as such by the Supreme Court of Arizona. The organization shall file a petition with the clerk of the Supreme Court of Arizona certifying that it is a not-for-profit organization and reciting with specificity explaining:~~

~~i.-ii. [No change in text.]~~

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

~~iv. The types of legal and nonlegal service performed by the organization;~~

~~v. [No change in text.]~~

vi. The existence and extent of malpractice insurance ~~which that~~ will cover the emeritus Rule 39(e) attorney.

~~D. A "supervising attorney" as used herein is an active member of the State Bar of Arizona who directs and supervises an emeritus attorney engaged in activities permitted by this article. The supervising attorney must:~~

~~i. Be employed by or be a participating volunteer for an approved legal assistance organization; and~~

~~ii. Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding or other legal services in which the emeritus attorney participates.~~

~~iii. Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.~~

~~3. Activities:~~

~~A. An emeritus attorney, in association with an approved legal assistance organization and under the supervision of a supervising attorney, may perform the following activities:~~

~~i. The emeritus attorney may appear in any court or before any administrative tribunal in this state on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.~~

~~ii. The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleadings also shall be signed by the supervising attorney.~~

~~iii. The emeritus attorney may render legal advice and perform other appropriate legal services but only after prior consultation with, and upon the express consent of, the supervising lawyer.~~

~~iv. The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.~~

~~B. The presiding judge or hearing officer may, in his or her discretion, determine the extent of the emeritus attorney's participation in any proceeding.~~

~~4. *Supervision and Limitations.*~~

~~A. An emeritus attorney must perform all activities authorized by this article under the direct supervision of a supervising attorney.~~

~~B. Emeritus attorneys permitted to perform services under this article are not, and shall not represent themselves to be, active members of the State Bar of Arizona licensed to practice law in this state.~~

~~C. The prohibition against compensation for the emeritus attorney contained in paragraph (2)(b)(5) shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.~~

~~3. *Certification.* Permission for an emeritus attorney to perform services under this article shall become effective upon filing with and approval by the clerk of the Supreme Court of Arizona and the State Bar of Arizona of 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 by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder;~~

~~B. A certification certificate from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been applicant is presently licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by paragraph (2)(b)(2) hereof; and 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 15 years;~~

~~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 ~~emeritus-attorney-applicant~~ that he or she:

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

ii. ~~S~~submits to the jurisdiction of the Supreme Court of Arizona for disciplinary purposes, as defined by the Rules of Professional Conduct ~~the Supreme Court; and-~~

iii. ~~Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder~~ has not been disciplined by the bar or courts of any jurisdiction during the last fifteen years.

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.* 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 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.

6. *Withdrawal of Certification.*

~~A. Permission to perform services under this article shall cease immediately upon the filing with the clerk of the Supreme Court of Arizona and the State Bar of Arizona of a notice either:~~

~~i. By the approved legal assistance organization stating that:~~

~~a. The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or~~

~~b. That certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the clerk of the Supreme Court of Arizona and with the State Bar of Arizona and shall be mailed by the organization to the emeritus attorney concerned.~~

~~ii. By the Supreme Court of Arizona, in its discretion, at any time, stating that permission to perform services under this article has been revoked. A copy of such notice shall be mailed by the clerk of the Supreme Court of Arizona to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified and to the State Bar of Arizona.~~

~~B. If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action before any court or tribunal in which the emeritus attorney was involved.~~

~~7. *Discipline.* In addition to any appropriate proceedings and discipline which may be imposed by the Supreme Court of Arizona under Rule 31, the emeritus Rule 38(e) attorney shall be subject to the following disciplinary measures:~~

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

~~B. [No change in text.]~~

~~8. *Mandatory Continuing Legal Education.* Emeritus attorneys certified under paragraph (5) hereof shall be exempt from the requirements of Rule 45, Mandatory Continuing Legal Education.~~

(f) Authorization to Practice Law for Attorneys Working Full-Time for Approved Legal Services Organizations. An attorney who has been admitted to practice law in any other jurisdiction for at least two years and who is employed full

time-by an approved legal services organization in this State which 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 ~~not-for~~non-profit legal services organization ~~which~~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 Supreme Court of Arizona explaining:

A.-C. [No change in text.]

D. The types of ~~legal and nonlegal~~ services performed by the organization;

E.-F. [No change in text.]

A copy of the petition for approval shall be sent by the organization to the Chief Bar Counsel of the State Bar of Arizona, which shall file any comment which it desires to file respecting such petition with the Clerk of the Supreme Court within ten (10) 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 Arizona Supreme Court. A copy of the order approving the legal services organization under this rule shall be sent by the Clerk of the Supreme 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. [No change in text.]

B. A statement signed by an authorized representative of the approved legal services organization that the applicant is employed ~~full-time~~ by the organization;

C. [No change in text.]

A copy of the application shall be sent by the attorney to the Chief Bar Counsel of 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 Arizona Supreme Court. A copy of the order authorizing the practice of law shall be sent by the Clerk of the Supreme Court to the Chief Bar Counsel of the State Bar of Arizona.

3. *Expiration of Authorization.* Authorization to practice law under this section shall expire 24 months remain in effect from the date of the order authorizing the applicant to practice law in the State of Arizona until such time as the applicant no longer works for an approved legal services organization. If the applicant ceases full-time employment with the approved legal services organization before the 24-month period expires, an authorized representative of the organization shall, within five-ten (10) days of the date of termination of employment, file a notification of the termination with the Clerk of the Supreme Court of Arizona and the Chief Bar Counsel of the State Bar of Arizona, specifying the date of termination of full-time-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 Supreme Court of Arizona 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 full-time. 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.