

**From:** [Patricia K. Norris](#)  
**To:** [Cruz, Maria Elena](#); [Albright, Jennifer](#); [Sekardi, Kathy](#)  
**Cc:** [Polk, Sheila](#); [Sharon Flack](#)  
**Subject:** FW: Rule 38 Revision Drafts  
**Date:** Friday, April 12, 2019 2:54:45 PM  
**Attachments:** [image001.png](#)  
[2019-04-12 Rev. Rule 38 Ver. A Clean.docx](#)  
[2019-04-12 Rev. Rule 38 Ver. A Redline.docx](#)  
[2019-04-12 Rev. Rule 38 Ver. B Redline.docx](#)

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Judge Cruz, Jennifer, and Kathy:

Attached are our proposed revisions to Rule 38. We are submitting two versions of the revised rule, as I explained we would do in my April 10, 2019 email.

The draft labeled “2019-04-12 Rev. Rule 38 Ver. A Redline” sets out all the changes to the current rule that we propose minus any changes to the requirements that the supervising attorney separately sign certain filings made by law graduates representing the state in criminal cases pending in limited jurisdiction courts.

The draft labeled “2019-04-12 Rev. Rule 38 Ver. A Clean” is the same as version A but without any of the track changes.

The draft labeled “2019-04-12 Rev. Rule 38 Ver. B Redline” is identical to version A but contains the changes to the signature requirements for supervising attorneys representing the state in criminal cases pending in limited jurisdiction courts. I explained in my April 10, 2019 email why we believe those requirements should be eliminated.

Let me make a few additional points that are common to the two versions:

The revised rules limited to two the number of law graduates a supervising attorney should supervise.

The revised rules specify when a law graduate’s certification to practice will terminate. In particular, the revised rules specify that, at the outer limit, certification will terminate at the expiration of 12 months from the date the law graduate graduated from law school, unless the supreme

court extends the time period for good cause shown by the graduate. As I mentioned in my April 10 email, Illinois has a similar provision. I believe other states may have similar provisions as well, but I did not track them down.

Finally, the revised rules separate out the provisions that pertain to law graduates from the provisions that pertain to law students. This is clearly shown on the Revision A – redline version. Note, for consistency or clarity, we did make a few proposed changes to the provisions that pertain to law students. Again, these changes are clearly shown on the Revision A – redline version.

I will be in the office on Monday, albeit in meetings most of the day. But shoot us an email if you have any questions, and I will break free to respond. After Monday, I will be out of town until May 1, but I will have email access, so again let us know if you have questions. Note, I will be on the East Coast, so I may not be able to get back to you as promptly as I normally would.

Regards to all.

**Please note new email address and updated URL: [Pat.Norris@asulawgroup.org](mailto:Pat.Norris@asulawgroup.org) and [asulawgroup.org](http://asulawgroup.org)**

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**2019-04-12 Rev. Rule 38 Ver. A Redline**

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**(d) Clinical Law Professors, ~~and~~ Law Students, and Law Graduates**

1. *Purpose.* This ~~purpose of this rule is adopted to encourage~~ provide law schools to provide law students and law school graduates with supervised clinical instruction and training in the practice of law for a limited period of time, and to of varying kinds and to facilitate volunteer opportunities for those individuals ~~for students~~ in pro bono contexts.

Commented [PKN1]: As originally phrased the purpose section said nothing about recent law graduates

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

Commented [PKN2]: Or Who holds a currently effective . . . as a certified limited practice graduate

D. “Dean” means the dean of the ~~a~~ Accredited Law ~~S~~chool where the law student is enrolled ~~(~~or the law graduate~~ -was enrolled on graduation)~~, or the dean’s designee, who signed the application for limited practice certification for either the law student or law graduate.

E. “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 or certified limited practice graduate ~~where~~ permitted by these rules.

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

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

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

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

IJ. “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 law~~ -student, or law graduate is engaged in the practice of law under this rule, the professor, ~~or law~~ -student, or law graduate 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 certified~~ limited practice student, or certified limited practice graduate pursuant to ~~these~~ is rules. Termination of certification shall be without prejudice to the privilege of the professor, ~~or the law~~ student, or law graduate to ~~make application~~ apply for admission to practice law if the professor, ~~or the law~~ student, or law graduate 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 law student, or law graduate practice student~~ shall in no way be considered as an advantage or a disadvantage to the professor, ~~or law student,~~ or law graduate 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, and certified limited practice graduates. All persons participating in any program of instruction or professional activity for which a law student or law graduate 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.

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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 ~~S~~state ~~B~~bar ~~of Arizona.~~

ii. The Court may terminate the certification of a clinical law professor at any time without

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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 two 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 Certified Limited Practice ~~Certification~~Student.

i. All applications to become a certified limited practice student ~~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-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 a Certified Limited Practice Certification Student; 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 magistrate 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~~law 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 ~~s~~Supervising ~~A~~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 ~~notif~~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 and Termination of~~ Certification. Certification of a certified limited practice student shall ~~commence~~begin on the date ~~indicated~~specified or in the notice of certification and shall remain in effect for the period specified ~~e~~in 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~~s termination of the certification in writing or ~~notifies~~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~~ies 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 at 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. 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~~

**Commented [PKN3]:** I have made the the second sentence of this paragraph into a freestanding provision that immediately follows. This sentence does not follow from first sentence which only deals with the Dean's termination of the certificate. Also see next comment. I also recommend that ¶ iv be placed after ¶ v.

~~for which the student is eligible.~~

~~vi. Termination by the Arizona Supreme Court. A certification of student limited practice may be terminated by the Arizona Supreme Court at 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.~~

**Commented [PKN4]:** I have deleted the second sentence of this paragraph. It is identical to the second sentence of the termination by Dean provision and that second sentence should be a freestanding provision as noted above. I think what happened here is a draftsman error in including the sentence twice and both times in the wrong place.

## 6. Law Graduates

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A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, a law graduate must:

i. have graduated from an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate 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 and any political subdivision thereof from paying compensation to the eligible law graduate, 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 law graduate 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

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

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## B. Application for Certified Limited Practice Graduate

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i. All applications to become a certified limited practice graduate 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 graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification shall require the signature of the law graduate, the dean, associate dean, or assistant dean of the accredited law school where the law graduate was enrolled on graduation, and the signature of the supervising attorney.

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iii. The law graduate 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.

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iv. The dean, associate dean, or assistant dean of the accredited law school where the law graduate was enrolled on graduation shall attest that the law graduate 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 graduate 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 law graduate is not qualified by ability, training, or character to participate in the activities permitted by these rules.

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

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C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Physical Presence of Supervising Attorney.

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i. Court and Administrative Tribunal Appearances. A certified limited practice graduate 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 law graduate 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 graduate shall orally advise the court on the occasion of the law graduate's initial appearance in the case of the certification to appear as a law graduate pursuant to these rules. A certified limited practice graduate may appear in the following matters:

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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.

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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.

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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.

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d. Misdemeanor Criminal Defense Matters. In any misdemeanor criminal defense matter in justice, municipal, and magistrate 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.

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e. Appellate Oral Argument. A certified limited practice graduate 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.

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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.

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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 graduate may:

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

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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);

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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);

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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).

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iii. Other Non-Representation Activities. A certified limited practice graduate 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 graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

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

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

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c. the certified limited practice graduate 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.

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D. Use of the Title “Certified Limited Practice Graduate.”

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i. In connection with activities performed pursuant to these rules, a law graduate may use the title “Certified Limited Practice Graduate” only and may not use the title in connection with activities not performed pursuant to these rules.

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

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

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iv. Nothing in these rules prohibits a certified limited practice graduate 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.

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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.

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

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

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ii. supervise no more than two certified limited practice graduates concurrently;

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iii. assume personal professional responsibility for any work performed by the certified limited

practice graduate while under his or her supervision:

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

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v. read, approve, and personally sign any pleadings, briefs or other similar documents prepared by the certified limited practice graduate prior to the filing thereof, and read and approve any documents which shall be prepared by the certified limited practice graduate 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);

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vi. provide the level of supervision to the certified limited practice graduate 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

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

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

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i. The certified limited practice graduate requests termination of the certification in writing or notifies 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 law graduate, the law graduate's supervising attorney, the dean, and the state bar.

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ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision

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of the certified limited practice graduate will cease prior to the date specified in the notice of certification. In such event the clerk shall send written notice to the law graduate, the law graduate'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.

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iii. The dean at any time, without cause and without notice or hearing, by filing a notice of the termination with the clerk of the Court.

iv. The Court at any time, without cause and without notice or hearing, by filing a notice of the termination with the clerk of the Court.

v. One or more of the requirements for the certification no longer exists or the certified limited practice graduate, 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 law graduate, the law graduate's supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

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ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

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xi. The law graduate is admitted to practice law by the Court.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the graduate, the Court extends the 12-month period for an additional period of time.

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

1. *Purpose.* This purpose of this rule is provide law students and law school graduates with supervised instruction and training in the practice of law for a limited period of time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

**Commented [PKN1]:** As originally phrased the purpose section said nothing about recent law graduates

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 of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

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

**Commented [PKN2]:** Or Who holds a currently effective . . . as a certified limited practice graduate

D. “Dean” means the dean of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation, or the dean’s designee, who signed the application for limited practice certification for either the law student or law graduate.

E. “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 or certified limited practice graduate when permitted by these rules.

F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or, if authorized by these rules, recertification, he or she will be

responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

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

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

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

J. “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, law student, or law graduate is engaged in the practice of law under this rule, the professor, law student, or law graduate 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, certified limited practice student, or certified limited practice graduate pursuant to these rules. Termination of certification shall be without prejudice to the privilege of the professor, law student, or law graduate to apply for admission to practice law if the professor, law student, or law graduate 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, law student, or law graduate shall in no way be considered as an advantage or a disadvantage to the professor, law student, or law graduate 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), certified limited student practice students, and certified limited practice graduates. All persons participating in any program of instruction or professional activity for which a law student or law graduate 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.

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.

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. 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 two 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;

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 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 Certified Limited Practice Student.

i. All applications to become a certified limited practice student 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 a Certified Limited Practice Student; 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 magistrate 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 law 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. 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 and Termination of Certification. Certification of a certified limited practice student shall begin on the date specified in the notice of certification and shall remain in effect for the period specified in the notice of certification unless sooner terminated pursuant to the earliest of the following occurrences:

i. The certified limited practice student requests termination of the certification in writing or notifies 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. The supervising attorney notifies 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. The dean at any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court.

iv. 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.

**Commented [PKN3]:** I have made the the second sentence of this paragraph into a freestanding provision that immediately follows. This sentence does not follow from first sentence which only deals with the Dean’s termination of the certificate. Also see next comment. I also recommend that ¶ iv be placed after ¶ v.

vi. The Court at any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court.

**Commented [PKN4]:** I have deleted the second sentence of this paragraph. It is identical to the second sentence of the termination by Dean provision and that second sentence should be a freestanding provision as noted above. I think what happened here is a draftsman error in including the sentence twice and both times in the wrong place.

6. Law Graduates

A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, a law graduate must:

i. have graduated from an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate 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 or any political subdivision thereof from paying compensation to the eligible law graduate, 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 law graduate 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 law graduate was enrolled on graduation, or by the dean’s designee, as having graduated in good academic standing, being of good character, and as having successfully completed academic courses in civil procedure, criminal law, evidence, and professional responsibility.

**B. Application for Certified Limited Practice Graduate**

i. All applications to become a certified limited practice graduate 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 graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification shall require the signature of the law graduate, the dean, associate dean, or assistant dean of the accredited law school where the law graduate was enrolled on graduation, and the signature of the supervising attorney.

iii. The law graduate 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 where the law graduate was enrolled on graduation shall attest that the law graduate 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 graduate 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 law graduate 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 law graduate 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 a Certified Limited Practice Graduate; Physical Presence of Supervising Attorney.**

i. **Court and Administrative Tribunal Appearances.** A certified limited practice graduate 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 law graduate 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 graduate shall orally advise the court on the occasion of the law graduate's initial appearance in the case of the certification to appear as a law graduate pursuant to these rules. A certified limited practice graduate 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 magistrate 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 graduate 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 graduate may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney (or designated attorney) if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;

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 graduate 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 graduate may appear as a law graduate 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 law graduate's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate 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 Graduate."

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

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

iii. A certified limited practice graduate 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 graduate 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 graduate 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 two certified limited practice graduates concurrently;

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

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

v. read ~~and~~ approve, ~~and personally sign any all~~ pleadings, briefs or other similar documents prepared by the certified limited practice graduate ~~prior to the filing thereof as required by these rules,~~ personally sign any pleading, brief or other similar document as required by these rules, and read and approve any documents which shall be prepared by the certified limited practice graduate 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. assume personal professional responsibility for all pleadings, briefs or other similar documents filed in any court or with an administrative tribunal by the certified practice graduate while under his or her supervision;

vii. provide the level of supervision to the certified limited practice graduate 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

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

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

i. The certified limited practice graduate requests termination of the certification in writing or notifies 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 law graduate, the law graduate's supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice graduate will cease prior to the date specified in the notice of certification. In such event the clerk shall send written notice to the law graduate, the law graduate'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. The dean at any time, without cause and without notice or hearing, by filing a notice of the termination with the clerk of the Court.

iv. The Court at any time, without cause and without notice or hearing, by filing a notice of the termination with the clerk of the Court.

v. One or more of the requirements for the certification no longer exists or the certified limited practice graduate, 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 law graduate, the law graduate's supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the graduate, the Court extends the 12-month period for an additional period of time.

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## Yavapai County Attorney

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**SHEILA POLK**  
Yavapai County Attorney

April 16, 2019

Legal Services Task Force - Team Cruz Work Group  
State Courts Building  
1501 W. Washington  
Phoenix, AZ 85007

*Re: Interim Admission Pursuant to Rule 38 (2019-04-12 Rev. Rule 38 Ver. B Redline)*

Dear Work Group Members:

This is the second letter I write in support of the proposal to allow law school graduates to practice law in Arizona under the supervision of licensed attorneys while awaiting admission to the practice of law in this state. I truly appreciate all the work your group has accomplished to date. I write to advocate for one additional change. I regret—once again—my unavailability to attend the April meeting of work group on this issue. I am thankful for, and confident in, the work of Judge Norris who has mastered the finer details of Rule 38(d) and produced two working drafts of revisions.

Specifically, I write in support of the amendment set forth in Version B to dispense with the requirement that the supervising attorney of a law school graduate sign all pleadings and documents in courts not of record, i.e. justice, municipal and magistrate courts. The rule currently dispenses with the need for the supervising attorney to be personally present with the Rule 38(d) attorney in these courts:

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.**”

Rule 38(d)(6)(C)(i)(b) (emphasis added).

I support extending this provision to cover the signing of pleadings as well. The pace in justice court is fast and we can best utilize the Rule 38(d) law school graduate in courts not of record if he/she can also personally sign documents, in particular plea agreements. Practically speaking, permitting the Rule 38(d) law graduate to appear in lower courts without also granting them the ability to sign off on plea agreements serves little purpose. Once we have trained the law school graduate who is waiting bar admission, we will trust him/her to perform the duties in lower courts just as we trust the newly admitted lawyer. This includes executing plea agreements without the signature of the supervising attorney.

Criminal Division  
(928) 771-3344

Civil Division  
(928) 771-3338

Bad Check Program  
(928) 771-3490

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I am available to speak to any member of the work group individually should you have questions. Thank you very much for your work on this issue.

Very truly yours,



Sheila Sullivan Polk  
Yavapai County Attorney