

FILED
SEP 21 2006
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

In the Matter of)
)
PETITION TO AMEND RULE 38(c)) Arizona Supreme Court
1B AND C, ARIZONA RULES OF) No. R-05-0028
THE SUPREME COURT)
)
) **ORDER**
)
)
)
)
_____)

A Petition to Amend Rule 38(c)(1)(B) and (C), Rules of the Supreme Court (now renumbered as Rule 38(d)(3)(A)(ii) and (iii)), having been filed by the Pima County Public Defender's Office, and the Court having considered the matter,

IT IS ORDERED denying the petition to amend the rule on a statewide basis. However, a pilot project shall be implemented in Pima County, as set forth in Administrative Order No. 2006-84, signed this date.

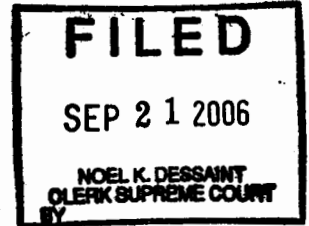
DATED this 21st day of September, 2006.



RUTH V. MCGREGOR
Chief Justice

TO:
Robert J Hooker, Public Defender, Pima County Public Defender's Office
Andrew P Thomas, County Attorney, Maricopa County Attorney's Office, Jefferson Street Office
Philip J MacDonnell, Maricopa County Attorney's Office, Jefferson Street Office

IN THE SUPREME COURT OF THE STATE OF ARIZONA



In the Matter of:)	
)	
PIMA COUNTY PILOT PROJECT)	
ALLOWING ELIGIBLE LAW)	Administrative Order
STUDENTS TO ASSIST PERSONS)	No. 2006-__84
ARRESTED ON FELONY CHARGES)	
AT INITIAL APPEARANCES)	
)	

Pursuant to Rule 28, Rules of the Supreme Court, the Pima County Public Defender's Office has requested this Court to amend Rule 38(d)(3)(A)(ii) and (iii), Rules of the Supreme Court (see R-05-0028). Rule 38(d) provides an exception to bar admission requirements that permits eligible law students to appear in court on behalf of a party under limited circumstances.

The rule currently permits eligible law students to represent defendants in any misdemeanor criminal defense matter in justice, municipal, and magistrate court without the supervising lawyer being present, except during trial, with the consent of the person on whose behalf an appearance is being made. Rule 38(d)(3)(A)(ii), Rules of the Supreme Court. The Pima County Public Defender's proposal would permit eligible law students to appear on behalf of persons arrested on felony charges at initial appearances held pursuant to Rule 4.1, Ariz. R. Crim. P., without a supervising lawyer being present, so long as the suspect consents to such representation.

The rationale behind the proposal is that there are insufficient resources in Pima County for either the Public Defender or any other indigent defense agency to provide representation to suspects at the initial appearance. Therefore, because they are frequently unrepresented at the initial appearance, people arrested on felony charges may be held in custody on an unnecessarily high bond. The placement of eligible law students will provide a voice for indigent defendants in these proceedings.

The Court agrees that the proposed amendment would serve the purposes of Rule 38(d), which is to assist in providing competent legal services for all persons, including those unable to pay for these services, and to encourage law schools to provide clinical instruction in trial work. It has concluded, however, that rather than amend the current rule on a statewide basis, a pilot project should be implemented in Pima County so that the proposal can be tested for a period of time and evaluated thereafter to determine its efficacy. Therefore,

IT IS ORDERED that Rule 38(d)(3)(A)(ii) and (iii), Rules of the Supreme Court, be amended, for purposes of the Pima County Pilot Project, as set forth in the attachment hereto, to be effective from January 1, 2007, until June 30, 2008.

IT IS FURTHER ORDERED that at the conclusion of the pilot project, the Pima County Public Defender's Office, in conjunction with the University of Arizona College of Law, shall submit a report to the Court regarding the outcome of the experimental rule, including its efficacy in assisting indigent persons arrested on felony charges, its clinical instructional value, and its financial impact, if any. Said report shall be submitted no later than July 31, 2008.

Dated this 21st day of September, 2006.


RUTH V. MCGREGOR
Chief Justice

Attachment to Administrative Order No. 2006-
(Changes or additions in text are indicated by underscoring and
deletions from text are indicated by ~~strikeouts~~.)

ARIZONA RULES OF CRIMINAL PROCEDURE

* * *

Rule 38. Special Exceptions to Standard Examination and Admission Process

(a)-(c) [No change in text.]

(d) Clinical Law Professors and Law Students

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

3. *Activities of Law Students*

A. An eligible law 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 lawyer has also indicated in writing approval of that appearance, in the following matters:

i. [No change in text.]

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

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

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

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

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

(e)-(f) [No change in text.]