

2016 Ethics and Practice of Law Update

Arizona Attorney General's Office
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Significant rule changes resulting from a Supreme Court committee appointed to look at the changing nature of law practice took effect January 1, 2016. Of particular significance for government lawyers are new comments to two rules that directly impact government attorneys.

In addition to changes resulting from that Supreme Court committee's recommendations, the Court also made changes to rules dealing with conflicts for lawyers – including former and current government lawyers – who move between practice settings. These changes were prompted by a State Bar of Arizona rule-change petition.

Finally, the Court also has adopted a requirement that all lawyers – including government lawyers -- plan for their “termination of or inability to continue a law practice, either temporarily or permanently.” In other words, all lawyers must have a succession plan. This change also was prompted by a State Bar of Arizona rule-change petition.

A. Changes resulting from Timmer Committee proposals

In June 2014, then-Arizona Supreme Court Chief Justice Rebecca White Berch appointed a committee to review and consider whether rule changes should be made in light of “the changing nature of legal practice in a technologically-enabled and connected workplace”; the growing trend of multi-state and international practice of law; and changes proposed by an American Bar Association commission.

What became known as the “Timmer Committee” (after its chair, Justice Ann A. Scott Timmer) filed an extensive package of rule-change proposals¹ in January 2015 as well as a final report.

The Court adopted most of the Timmer Committee's major proposals. As a result, the Court has:

- Revised ER 5.5 (unauthorized practice of law) to apply only to lawyers who practice Arizona law. Before the 2016 change, ER 5.5(b) told non-Arizona-admitted lawyers they could not “establish an office or other systematic and continuous presence in this jurisdiction for the practice law,” unless authorized by the rules or other law. ER 5.5(b) now has been changed to provide that a non-Arizona-admitted lawyer shall not

¹ Read the Timmer Committee's final report at <http://www.azcourts.gov/Portals/54/Linda/Final%20Report.pdf> and rule-change petition R-15-0018 at <https://www.azcourts.gov/Rules-Forum/aft/501>. The Court's order is attached.

“engage in the regular practice of Arizona law” in Arizona. The Timmer Committee concluded that in defining what constitutes the practice of law in Arizona, “the appropriate focus is whether a lawyer is providing legal services to Arizona residents that involve the application of Arizona law.” In short, the new rule allows a non-Arizona-admitted lawyer to live in and/or establish an office in this jurisdiction to practice the law of another jurisdiction. That non-Arizona-admitted lawyer nonetheless remains subject to the Supreme Court’s disciplinary jurisdiction.

ER 5.5 now includes helpful new comments:

[3] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

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

- Adopted most provisions of the ABA Model Rule on Practicing Pending Admission. As a result of what is now Rule 38(h), a non-Arizona lawyer (already admitted in another jurisdiction) may, under certain conditions, engage in the “regular practice law in Arizona” for up to a year after applying for admission by motion here. The non-Arizona lawyer’s application for admission must be filed and “deemed complete” by the Committee on Character and Fitness. To practice pending admission, the non-Arizona lawyer must be associated with and supervised by an Arizona lawyer. While pending admission, the non-Arizona lawyer could apply for admission pro hac vice.
- Lowered the admission-on-motion active-practice-time requirement. To be admitted on motion, a non-Arizona lawyer has, since Arizona adopted AOM as of January 2010, been required to show that the lawyer has engaged in the active practice of law for five of the preceding seven

years. At the time Arizona adopted AOM, this comported with the ABA model rule. In August 2012, however, the ABA lowered the requirement to three-of-the-previous-five years. The Timmer Committee recommended adopting the ABA standard, and eliminating Arizona's custom definition of "active practice" that required that the applicant have spent at least 1,000 hours practicing law for each of the required five years and have derived at least half of non-investment income from the practice of law. The Timmer Committee said these restrictions "could prejudice lawyers, particularly young lawyers, whose law practice opportunities and income may have been adversely affected by economic developments." Applicants still must have held their law license in "active" status, however.

- Changed the registered in-house-counsel rule to allow registered IHC to appear pro hac vice in court for their employers (currently not allowed); to allow them to appear in court, without having to apply pro hac vice, when they are providing pro bono representation for clients as part of legal services organizations; and to transfer authority to waive any requirements of the registered IHC rule from the State Bar Board of Governors to the Supreme Court. The registered IHC rule now appears as Rule 38(a).
- Relocated pro hac vice, which previously occupied Rule 38(a), to its own rule, Rule 39.
- Expanded ER 1.5(e) (the fee-sharing rule) to allow lawyers to share one legal fee with lawyers in other firms if, among other requirements, the division is in proportion to the services provided *or* if each lawyer assumes joint responsibility for the representation. To share a fee, lawyers must get client consent not only to the participation of all lawyers involved, but now to the "division of the fees and responsibilities of the lawyers." Before the 2016 changes, ER 1.5(e) allowed fee-sharing *only* if each lawyer assumed joint responsibility for the representation and did not require the additional agreement from the client. The Timmer Committee recommended the changes to make it easier to assemble "alternative forms of lawyer teams" while at the same time ensuring that both counsel and client would "thoroughly discuss and decide the scope of each attorney's representation."
- Amended ER 1.10(b), which applies when a lawyer has left a law firm and taken a client, to add a mechanism for determining if the lawyers remaining at the firm retain information for conflict purposes. Since its adoption, ER 1.10(b) has provided that the law firm could represent a new client with adverse interests to the former client unless the matter was the same or substantially related to that in which the departed lawyer represented the client and if "any lawyer remaining in the firm has

information protected by ERs 1.6 and 1.9(c) that is material to the matter.” In support of the mechanism, the Timmer Committee’s petition explained that “Lawyers in the firm arguably ‘have’ information in firm records, including closed client files and electronic records that may be maintained for a variety of reasons.... This creates an overbroad application that would preclude representation even when no lawyer currently in the firm was involved in the former client’s representation, simply because the firm itself maintains stored electronic or other records.”

- Added a new comment [10] to ER 1.13, which deals with organizational clients. The Timmer Committee proposed the new comment to help government lawyers deal with conflicts between their entity clients and constituents of those entities:

[10] A government lawyer may have an obligation to render advice to a government entity and constituents of a government entity. Normally, the government entity, rather than an individual constituent, is the client. Some government lawyers may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual constituents under certain circumstances. The government lawyer, therefore, must clearly identify the client and disclose to the individual constituents any limitations that are imposed on the lawyer’s other legal obligations. See ER 1.2(c) and related comments. Further, where a conflict arises between a constituent and the government entity the lawyer represents or between constituents of the same government entity, the lawyer must make the identity of the client clear to the constituents and determine which constituent has authority to act for the government entity in each instance.

- Added a new comment [6] to ER 3.5 to address when a government law office not only advises tribunals but also appears before those same tribunals in contested proceedings or appeals. ER 3.5(b) prohibits lawyers from having ex parte contact with tribunals. The new comment provides:

[6] At times, a government entity is required to act in a “quasi-judicial” capacity as part of an administrative process. In that capacity, it may act as the decision-maker in contested proceedings or hear appeals from the determinations of another officer, body or agency of the same government. A government lawyer may be called upon to advise the tribunal after another lawyer in the same office has advised the other

government constituent about the matter, or while another attorney from the same office appears before the tribunal. Advice given by the lawyer to the tribunal does not constitute impermissible ex parte contact, provided that reasonable measures are taken to ensure the fairness of the administrative process, such as using different attorneys to advise and represent the two constituents and screening those lawyers from one another or strictly limiting the lawyer's advice to the tribunal to procedural matters. In no event can the same lawyer both provide advice to the tribunal and appear before it in the same matter, even if the advice is limited to procedural advice.

Finally, the Court did not adopt the Timmer Committee's proposal to narrow the scope of ER 1.6, which deals with confidentiality. ER 1.6(a) prohibits a lawyer from disclosing "information relating to the representation of a client" unless the client gives informed consent, the disclosure furthers the representation or some specific exception applies. The Timmer Committee proposed essentially returning to how the Code of Professional Responsibility (in effect in Arizona until February 1985, when Arizona adopted the Rules of Professional Conduct and ER 1.6) defined "confidence": information protected by the attorney-client privilege and "secret" as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

B. Changes resulting from the State Bar's "lateral screening" rule-change petition

In 2013, the State Bar filed a rule-change petition proposing to eliminate the so-called "litigation exception" from private-law-firm lateral screening so that Arizona's ER 1.10(d) would be more aligned with the ABA Model Rule 1.10(a).

Here's an example: Assume you're at a private law firm and think opposing counsel would be an awesome addition to your firm. She agrees to leave her firm (and leave the client at that firm) and join your firm. Let's call her Opposing Counsel, her former firm Former Firm, and her former client Former Client.

- If Opposing Counsel had been handling a *non-litigation* matter for Former Client, Opposing Counsel could leave Former Client at Former Firm and join your firm, even though you represent the opposing party. Opposing Counsel might have been negotiating a multi-million-dollar land transaction for Former Client, but she could still join your firm, which could continue to represent the party who had sat on the other side of the negotiating table from Opposing Counsel. Your Firm would screen Opposing Counsel from having anything to do with your client, but otherwise your firm would keep representing your client and you add Opposing Counsel to your stable.

- However, if Opposing Counsel had been handling "*a proceeding before a tribunal*" -- any proceeding before a tribunal -- in which she had a "*substantial role*," she couldn't join your firm unless your firm withdrew from representing your client, because her mere presence would infect all lawyers in your firm.

After receiving input from the Timmer Committee (among others), the Court did indeed remove the "litigation exception." It also, however, tightened up another part of the rule to make it more restrictive so that if a lawyer had "primary responsibility" for a matter -- regardless whether the matter involved a multi-million-dollar land transaction or small litigation -- the lawyer cannot move to opposing counsel's firm and be screened.² In the example above, if Opposing Counsel had "primary responsibility" for the matter, she could not join your firm and be screened. You would have to either not hire her or withdraw from representing your client.

In addition, the Court beefed up the notice and screening requirements of not only ER 1.10, which guides lawyers in private firms, but also ER 1.11, which deals with conflicts of current and former government lawyers; ER 1.12, which deals with former judges and other third-party neutrals, including judicial law clerks; and ER 1.18, which deals with duties to prospective clients. All four rules allow screening under certain circumstances. That screening now not only means that written notice must be given to the appropriate parties under each rule, but that the notice includes:

a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the agency's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the agency about the screening procedure

In all screening circumstances, the personally disqualified lawyer and the new firm must "reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client."

C. Changes resulting from the State Bar's succession-planning rule-change petition

All lawyers now must have a succession plan. Rule 41, Ariz. R. Sup. Ct., now includes this new duty as subparagraph (j):

The duties and obligations of members shall be...[t]o protect current and former client interests by planning for the lawyer's

² The Court's order resulting from rule-change petition R-13-0046 is attached.

termination of or inability to continue a law practice, either temporarily or permanently.

The Court added a comment explaining this new duty:

[2] Lawyers must plan for the possibility that they will be unable or unwilling to discharge their duties to current and former clients or to protect, transfer and dispose of client files, property or other client-related materials. As part of their succession plan, solo practitioners should arrange for one or more responsible transition counsel agreeable to assuming these responsibilities. Lawyers in multi-lawyer firms and lawyers who are not in private practice, such as those employed by government or corporate entities, should have a similar plan reasonable for their practice setting.

This was among the rule changes the State Bar proffered in a rule-change petition it filed last January as the result of its Succession Planning Task Force. The Court adopted many of the State Bar's proposed changes.³

The Court adopted the State Bar's proposed language for the new Rule 41(j), although it slightly changed the State Bar's proposed comment language. The State Bar had proposed that the comment explain that new Rule 41(j) require, at a minimum, identifying an active lawyer to assume successor duties. In the new comment, the Court instead says solo practitioners "should" arrange for "responsible transition counsel."

Why did the State Bar propose this addition? The rule-change petition explained:

The lack of succession planning by lawyers has directly impacted the State Bar because many lawyers who have died, disappeared, become disabled or been disbarred or suspended have left either an ongoing practice that needs to be closed down or have abandoned client files. A lawyer who dies suddenly may leave hundreds of active files and clients who need to be notified. A lawyer who has been disbarred may abandon boxes of files with a landlord or storage facility who is not being paid to keep those files safe.....

Nothing requires *all* lawyers – no matter their practice setting -- to adopt a succession plan. ABA Formal Op. 92-369 *suggests* that a sole practitioner have a backup lawyer named to notify the lawyer's client in the event the lawyer is unable to practice. Ariz. Ethics Op. 04-05 *advises* that a prudent lawyer would make arrangements to administer the lawyer's trust account if the lawyer dies or becomes disabled.

It appears to be time to add a professional obligation that clearly obligates all members to plan for their termination

³ The Court's order resulting from rule-change petition R-15-0023 is attached.

of or inability to continue a law practice. To that end, the State Bar suggests adding a new section to the rule that lists the general duties and obligations of members -- Rule 41, Ariz. R. Sup. Ct. -- to require that lawyers plan for their temporary or permanent closing or inability to continue their law practice.....

Lawyers in multi-lawyer firms, government or corporate entities also need a plan. Toddlers drown in swimming pools even when lots of people are around because no one is specifically designated to watch them. Similarly, everyone in a multi-lawyer firm may assume *someone else* is handling the cases and matters of a lawyer who has become incapacitated.

- Patricia A. Sallen formerly served as director of special services & ethics/deputy general counsel at the State Bar of Arizona. She served as consultant to the Timmer Committee. She can be reached at psallen@ethicsatlaw.com or 480-290-4841. She blogs at www.ethicsatlaw.com.

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-15-0018
RULES 31, 34, 38, 39 & 42,)
RULES OF THE SUPREME COURT)
) **FILED 08/27/2015**
)
)
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**ORDER
AMENDING RULES 31, 34, 38, 39, AND 42, AND PROMULGATING RULE 40,
RULES OF THE ARIZONA SUPREME COURT**

A petition having been filed proposing to amend Rules 31, 34, 38, 39, and 42, Rules of the Arizona Supreme Court, and comments having been received, upon consideration,

IT IS ORDERED that Rules 31, 34, 38, 39, and 42, Rules of the Arizona Supreme Court, be amended, and Rule 40, Rules of the Arizona Supreme Court, be promulgated, in accordance with the attachment hereto, effective January 1, 2016.

IT IS FURTHER ORDERED that consideration of the proposed amendments to ER 1.6 is continued.

With respect to the proposed amendments to ER 1.10(d) and related Comments, refer to the order in R-13-0046.

DATED this 27th day of August, 2015.

SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution
Hon. Ann A. Scott Timmer
Hon. Daniel A Washburn
Denise M Blommel
Kathy McCormick
Hon. Janet E Barton
Elizabeth B Ortiz
Gary Krcmarik
Scott M Drucker
Susan Pickard
C Steven McMurry
Kenneth Mann
Hon. Sarah R Simmons
Hon. Kathleen A Quigley
Hon. Jeffrey T Bergin
John R Lopez IV
John A Furlong
Hon. David L Mackey
E Hardy Smith
D Greg Sakall
Lee D Stein
Mark Brnovich
Hon. Karl C Eppich
Art Hinshaw
Hon. Kathleen A Quigley
Mark D Wilson
Mark C Faull
Joshua Halversen
Mark I Harrison
Keith A Swisher
Jerome Allan Landau
David C. Tierney
Richard B Murphy
Hon. Lawrence Winthrop

ATTACHMENT*

RULES OF THE ARIZONA SUPREME COURT

RULE 31. REGULATION OF THE PRACTICE OF LAW

(a) Supreme Court Jurisdiction Over the Practice of Law

1. [No change in text.]

2. *Definitions.*

A – C. [No change in text.]

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

E. [No change in text.]

(b) – (c) [No change in text.]

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

1. – 24. [No change in text.]

25. Nothing in these rules shall prohibit a mediator as defined in these rules from ~~facilitating a mediation between parties~~, preparing a written mediation agreement, or filing such agreement with the appropriate court, provided that:

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

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

In all other cases, a mediator who is not an active member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified

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

as a legal document preparer in compliance with the Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

26. – 31. [No change in text.]

RULE 34. APPLICATION FOR ADMISSION

(a) [No change in text.]

(b) Applicant Requirements and Qualifications.

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

A. – C. [No change in text.]

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

E. – F. [No change in text.]

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

A. – E. [No change in text.]

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

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

[Remainder of section F remains unchanged.]

3. [No change in text.]

(c) – (e) [No change in text.]

(f) Admission on Motion.

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

The applicant shall:

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

B. [No change in text.]

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

D – H. [No change in text.]

2. [No change in text.]

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

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

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

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

4 – 5. [No change in text.]

(g) – (n) [No change in text.]

RULE 38. SPECIAL EXCEPTIONS TO STANDARD EXAMINATIONS AND ADMISSION PROCESS

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

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

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

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

~~in the event of subsequent failure by the nonresident attorney to so complete the application procedures.~~

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

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

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

~~*C. Motion to Associate Counsel Pro Hac Vice.* Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is pending, together with proof of service on all parties in accordance with Arizona Rules of Civil~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~if permission to appear pro hac vice pursuant to this rule is revoked by any court, board, or administrative agency.~~

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

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

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

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

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

1. – 2. [No change in text.]

3. An applicant for a Registration Certificate shall:

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

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

C. [No change in text.]

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

E. [No change in text.]

4. [No change in text.]

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

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

7. [No change in text.]

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

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

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

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

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

~~12.~~ [No change in text.]

~~13.~~ [No change in text.]

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

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

(b) Foreign Legal Consultant.

1. – 2. [No change in text.]

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

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

B. – E. [No change in text.]

4. – 10. [No change in text.]

(c) – (d) [No change in text.]

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

1. – 2. [No change in text.]

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

A. – B. [No change in text.]

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

i. – iii. [No change in text.]

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

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

4. – 7. [No change in text.]

(f) Authorization to Practice Law for Attorneys Working for Approved Legal Services Organization.

An attorney who has been admitted to practice law in any other jurisdiction for at least two years and who is employed part-time or full-time by an approved legal services organization in this State that provides legal assistance to indigents in civil matters, free of charge, may be admitted to practice before all courts of this State, subject to the following:

1. [No change in text.]

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

A. – B. [No change in text.]

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

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

ii. – iv. [No change in text.]

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

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

4. *Limitation of Activities.* An attorney authorized to practice under this rule shall not perform any legal services within the State of Arizona except for clients of the approved legal services

organization by which the attorney is employed. The attorney shall not accept any compensation for such services except such salary as may be provided to him or her by the organization. ~~Part-time employment is permitted under this rule.~~ A Rule 38(f) attorney may not provide services for compensation other than compensation from the legal services organization with which the attorney is employed.

5. [No change in text.]

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

7. [No change in text.]

(g) Authorization to Practice Law for Attorneys Employed by Indigent Defense Offices.

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

1. [No change in text.]

2. *Approval of Funded Indigent Defense Office.*

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

i. – ii. [No change in text.]

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

iv. – viii. [No change in text.]

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

approving the funded indigent defense office under this rule ~~shall be sent by the clerk of the Court~~ to the Chief Bar Counsel of the State Bar of Arizona.

3. – 8. [No change in text.]

~~(h) In-house Counsel~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Practice Pending Admission on Motion

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

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

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

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

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

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

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

G. includes in all written communications with the public and clients the following language: "Arizona practice temporarily authorized pending admission under Ariz. R. Sup. Ct. 38(h). Supervision by [name of Arizona attorney], a member of the State Bar of Arizona"; and

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

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

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

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

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

A. the applicant withdraws the application for admission by motion, or the application is denied;

B. the applicant fails to remain in compliance with paragraph (h)(1) of this rule;

C. the applicant is disbarred, suspended, or placed on disability inactive status in any other jurisdiction in which the applicant is licensed to practice law; or

D. the applicant fails to comply with the notification requirements of paragraph (h)(3) of this rule.

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

A. immediately cease practicing law in Arizona;

B. notify in writing all clients in pending matters, and opposing counsel and co-counsel in pending litigation, of the termination of the applicant's authority to practice law in Arizona; and

C. take all other necessary steps to protect the interests of the applicant's clients.

(i) Military Spouse Temporary Admission.

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

A. – N. [No change in text.]

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

2. *Duration and Renewal.*

A. [No change in text.]

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

i. [No change in text.]

ii. paying an \$300 application fee.

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

4. – 6. [No change in text.]

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

~~RULE 39. PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER~~ ADMISSION PRO HAC VICE

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

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

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

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

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

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

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

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

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

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

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

[Comments deleted.]

a. Eligibility. An attorney who is not a member of the State Bar of Arizona but is currently a member in good standing of the bar of another state and eligible to practice before the highest court in any state, territory or insular possession of the United States (hereinafter called a non-member attorney) and who is of good moral character and is familiar with the ethics, professionalism and practices of the legal profession in the State of Arizona, may appear as counsel pro hac vice in a particular case before any state or local court, board or administrative agency in the State of Arizona upon compliance with this rule. However, except for non-members authorized pursuant to Rule 38(a)(10), no person is eligible to appear as counsel pursuant to this rule if that person (a) is a resident of the State of Arizona, or (b) is regularly employed in the State of Arizona, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Arizona.

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

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

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

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

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

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

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

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

3. *Motion to Associate Counsel Pro Hac Vice.* Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is pending, together with proof of service on all parties in accordance with Arizona Rules of Civil Procedure. The motion to associate counsel pro hac vice shall include as exhibits: (1) the original verified application; (2) the original certificates of good standing; and (3) the State Bar of Arizona Notice. The motion to associate counsel pro hac vice shall also be accompanied by a proposed order granting or denying the motion. Local counsel shall mail a copy of each order granting or denying the motion as entered by the court, board, or administrative agency to the State Bar of Arizona.

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

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

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

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

3. the jurisdictions to which the non-member attorney is admitted to practice and the date(s) of such admission;

4. whether the non-member attorney is an active member in good standing of such jurisdictions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

payment of all accrued fees and late penalty, the executive director shall reinstate the non-member attorney and shall certify such reinstatement to the court, board, or administrative agency where the cause is filed.

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

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

l. *Disposition of Fees.* Fifteen percent of the application fees paid pursuant to this rule shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in Rule 38(e) and (f).

RULE 40. PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

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

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

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction.

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

lawyer. The provision of such legal services shall be supervised by a lawyer assigned and supervised through an established not-for-profit bar association, pro bono program or legal services organization or through such other organization(s) specifically designated by this Court.

(c) Duration of authority for temporary practice. The authority to practice law in the State of Arizona granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in the State of Arizona have ended, except that a lawyer then representing clients in Arizona pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The lawyer shall not, however, thereafter accept new clients.

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

(1) pursuant to the provisions of Rule 39 of these Rules for securing admission pro hac vice and, if such authority is granted, any fees for securing such admission shall be waived: or

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

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

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

Comment

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time, interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to

continue to represent clients until the disaster has ended. Lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal services needs as a result of the disaster or, through circumstances independent of the disaster, whose legal services needs are temporarily unmet because of the disruption of the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices, or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in the State of Arizona, or in a part of the State, for purposes of triggering paragraph (b) of this Rule. The Court may, for example, determine that the entirety of the State has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the State of Arizona following determination of an emergency caused by a major disaster has occurred notwithstanding that they are not otherwise authorized to practice law in Arizona. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of those lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers, as defined in Rule 38 of these Rules. Alternatively, this Court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under the provisions of Rule ER 5.5(c) of the Arizona Rules of Professional Conduct.

[4] Emergency conditions created by major disasters end, and when they do, the authority created by paragraph (b) also ends with appropriate notice to enable lawyers to plan and complete pending legal matters. Under paragraph (c), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of Arizona under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation.

[5] Paragraph (b) does not authorize lawyers to appear in the courts or before other tribunals in this jurisdiction. Court appearances are governed by the provisions of Rule 39 of this Court's Rules concerning admission pro hac vice. This Court may, in a determination made under paragraph (d)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts or other tribunals in this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any fees for securing admission pro hac vice shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (d) may continue to appear in any such matter notwithstanding a declaration under paragraph (c) that the conditions created by the major disaster have ended. Furthermore, withdrawal from a court appearance is subject to the provisions of Rule ER 1.16 of the Arizona Rules of Professional Conduct.

[6] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[7] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraph (b) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict that lawyer's ability to practice law in any other jurisdiction.

RULE 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

....

ER 1.0 Terminology

....

Comment

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

ER 1.5. Fees

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

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

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

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

(3) the total fee is reasonable.

....

Comment [2003 amendment]

....

Division of Fee

[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers if the division is in proportion to the services performed by each lawyer or all lawyers assume joint responsibility for the representation and the client agrees, in a writing signed by the client, to the arrangement. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be competently and diligently completed. See ERs 1.1, 1.3. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).

ER 1.10. Imputation of Conflicts of Interest: General Rule

(a) [No change in text.]

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

(1) [No change in text.]

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

(c) [No change in text.]

(d) [See Order in R-13-0046.]

(e) [No change in text.]

....

Comment [2003 and 2016 amendment]

....

Principles of Imputed Disqualification

....

[5] ER 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate ER 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by ERs 1.6 and 1.9(c). For purposes of determining whether any current lawyer in the firm has such material information, information maintained by a firm in the form of documents, including electronically stored information, will not be imputed to the remaining lawyers if the firm adopts screening procedures that are reasonably adequate under the circumstances to prevent the remaining lawyers from accessing such information. In determining whether screening procedures are reasonably adequate, factors

to be considered include whether technology is available and has been implemented to restrict lawyer access to electronically stored information maintained by the firm and whether adequate notice is provided to lawyers in the firm regarding the screening procedures. Further guidance is provided in ER 1.0, comments [8] – [10]. In addition, the firm should consider whether its lawyers have access to internal electronic databases that utilize research memoranda or other work product from past client representations, to ensure that any protected information is removed from such databases or that access is appropriately restricted.

[6] – [8] [No change in text.]

[Proposed Comments [9]-[12], see Order in R-13-0046.]

ER 1.13. Organization as Client

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

Comment [2004 amendment]

....

Government Agency

[9] [No change in text.]

[10] A government lawyer may have an obligation to render advice to a government entity and constituents of a government entity. Normally, the government entity, rather than an individual constituent, is the client. Some government lawyers may also be elected officials or the employees of elected officials who have statutory obligations to take formal action against individual constituents under certain circumstances. The government lawyer, therefore, must clearly identify the client and disclose to the individual constituents any limitations that are imposed on the lawyer's other legal obligations. See ER 1.2(c) and related comments. Further, where a conflict arises between a constituent and the government entity the lawyer represents or between constituents of the same government entity, the lawyer must make the identity of the client clear to the constituents and determine which constituent has authority to act for the government entity in each instance.

[Re-number subsequent comments.]

ER 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

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

Comment [2003 amendment]

....

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

ER 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

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

Comment [2003 rule]

....

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

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

(a) [No change in text.]

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

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

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

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

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

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

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

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

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

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

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

(gf) Attorneys not admitted to practice in ~~the State of~~ Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in ~~the State of~~ Arizona, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission. See Rule 39.

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

Comment

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

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

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

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

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

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

TO:

Rule 28 Distribution List

John A. Furlong

Patricia A. Sallen

Joseph Kanefield

William G. Klain

Mark I. Harrison

Keith A. Swisher

Andrew F. Halaby

Joy L. Isaacs

Amanda F. Jenkins

Richard Murphy

ATTACHMENT¹

RULE 42 OF THE RULES OF THE ARIZONA SUPREME COURT

* * *

ER 1.0. Terminology

* * *

Comment [2003]

* * *

Screened

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

ER 1.10 Imputation of Conflicts of Interest: General Rule

* * *

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

(1) ~~the matter does not involve a proceeding before a tribunal in which the personally disqualified lawyer had a substantial role~~ the personally disqualified lawyer did not have primary responsibility for the matter that causes the disqualification under Rule 1.9;

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

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule-, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the former client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the former client about the screening procedure; and

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(4) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

* * *

Comment [2003 amendment]

* * *

Comment [2016 amendment]

[9] Rule 1.10(d) removes the imputation otherwise required by ER 1.10(a), but unlike section (c), it does so in some cases without requiring that there be informed consent by the former client. In those cases and in cases where client consent is obtained, the rule requires that the procedures and requirements laid out in sections (d)(3) and (4) be followed. Factors to be considered in determining the adequacy of screening procedures include whether technology is available and has been implemented to restrict lawyer access to electronically stored information maintained by the firm. Other relevant circumstances may include the size of the matter in relation to the overall business of the firm, the number of lawyers in the firm that are actively involved in the matter that is the subject of the screening measures, or other factors that may make it difficult to implement a screen that is reasonably adequate to ensure that protected information is not disclosed, even inadvertently. Additional guidance is provided in ER 1.0, comments [8]–[10]. There may be some circumstances when, taking all factors into account, screening procedures will not be reasonably adequate to guard against inadvertent disclosure of protected information. Lawyers should also be aware that even when screening procedures have been adopted that comply with this Rule, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

[10] Paragraph (d)(2) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but the lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

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

ER 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially

as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

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

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule-, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the agency's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the agency about the screening procedure; and

(3) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

ER 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

* * *

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

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

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule-, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the parties' and tribunal's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the parties or the tribunal about the screening procedure; and

(3) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

ER 1.18. Duties to Prospective Client

* * *

(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:

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

(2) written notice is promptly given to the prospective client-, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the prospective client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and

(3) the personally disqualified lawyer and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

TO:
Rule 28 Distribution
Patricia A Sallen
John A Furlong
E Hardy Smith

ATTACHMENT*

RULES OF THE ARIZONA SUPREME COURT

Rule 41. Duties and Obligations of Members

The duties and obligations of members shall be:

(a) – (h) [No change in text.]

(i) To protect current and former client interests by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently.

Comment [amended 2007 and 2016 Amendment]

[1] Lawyers, whether or not engaged in the practice of law, should act honorably and treat others with courtesy and respect. Unprofessional conduct, as defined by Rule 31(a)(2)(E), during the practice of law may result in discipline pursuant to Rules 41(g) and 53(j). Specific conduct outside the practice of law, such as conviction of a felony, Rule 53(h), or engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, Rule 42, ER 8.4(c), and Rule 53(a), may also be grounds for discipline.

[2] Lawyers must plan for the possibility that they will be unable or unwilling to discharge their duties to current and former clients or to protect, transfer and dispose of client files, property or other client-related materials. As part of their succession plan, solo practitioners should arrange for one or more responsible transition counsel agreeable to assuming these responsibilities. Lawyers in multi-lawyer firms and lawyers who are not in private practice, such as those employed by government or corporate entities, should have a similar plan reasonable for their practice setting.

* * *

Rule 66. Appointment of Conservator to Protect Client Interests

(a) **Appointment of Conservator.** The state bar or any other interested person may petition the presiding judge of a superior court or the presiding judge’s designee (“appointing judge”) to appoint one or more eligible persons to act as

* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

conservators of the client files and records, client trust accounts and such other affairs of a lawyer or formerly admitted lawyer, as the appointing judge determines appropriate. There shall be no filing fee for petitions for conservator under this rule. The appointing ~~presiding~~ judge shall appoint a conservator if the lawyer maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer is known to exist, and:

1. the lawyer is made the subject of an order of interim suspension and related matters; or
2. the appointing ~~presiding~~ judge ~~of the superior court~~ by order directs ~~bar counsel~~ the state bar to file an application under this rule; or
3. the lawyer is transferred to inactive status because of incapacity or disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

(b) **Service of Petition.** A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer, ~~the chief bar counsel for the sState bBar of Arizona~~, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or the state bar ~~bar counsel~~ that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made ~~upon the clerk of this court, who shall proceed as provided for in discipline proceedings, except that service shall be final when made.~~ on the respondent by certified mail/delivery restricted to addressee in addition to regular first-class mail, sent to the last address provided by the respondent to the state bar pursuant to Rule 32(c)(3). When service of the petition is made by mail, the state bar shall file a notice of service in the conservatorship matter indicating the time and manner of mailing. Service shall be deemed complete when the notice is filed.

(c) **Hearing on Petition; Order; Authority.**

1. Within seven days of the petition being filed, The ~~the appointing presiding judge of the superior court shall~~ may conduct a hearing on the petition or may rule on the petition without a hearing ~~within seven (7) days of filing.~~
2. If the appointing judge conducts a ~~At the~~ hearing, the petitioner shall have the burden of proving by a preponderance of the evidence that grounds exist for the appointment of a conservator.
3. The ~~presiding~~ appointing judge shall ~~promptly~~ enter an order either granting or denying all or part of the petition. The order shall contain findings of fact and a statement of the grounds upon which the order is based. If no appearance has been entered on behalf of the respondent, a copy of the order shall be served upon respondent in the manner prescribed by section (b) of this rule.
4. The parties may request and the appointing judge may make any other rulings as justice requires.

(d) Effect of Petition. The filing of a petition for the appointment of a conservator under these rules shall be deemed, for purposes of any statute of limitations or limitation on time for appeal or vacation of a judgment, as the timely filing in the superior court or other proper court of this state, on behalf of every client of the respondent, of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the respondent if:

1. the application for appointment of a conservator is granted; and
2. substitute counsel actually files an appropriate document in a court within thirty (30) days after executing a receipt for the file relating to the matter.

(e) The clerk of the superior court shall make certified copies of the order of appointment available upon request of the conservator without charge.

Rule 67. Duties of Conservator

(a) Possession of Files. The conservator shall take immediate possession or control of all files, ~~and~~ papers and records of the respondent, including computer data and related storage, if the conservator deems it necessary. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing ~~court~~ judge for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for, or removal of the files, or other facts showing that the files cannot be obtained without the use of the process of the court.

(b) Inventory. The conservator shall make a ~~written inventory~~ reasonable assessment of all files, papers and records, including computer data and related storage, taken into the conservator's possession or control. The conservator shall then make a written inventory of all files in which the respondent appeared to be actively representing a client, of all files in which the representation appeared to terminate less than five years prior to the conservatorship being granted, and older files that may reasonably require further evaluation. For purposes of this rule, files that may require further evaluation include original wills, other trust and estate documents, and documents from capital criminal cases.

(c) Written Notice to Clients of Conservatorship. The conservator shall send written notice to all clients listed in the inventory ~~of the respondent~~ of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's

file.

(d) Return of Files. A file in the conservator's possession or control shall ~~may~~ be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel.

(e) ~~(e)~~ Termination of Conservatorship. ~~Six months after sending written notice to clients as described in section (c), the conservator may move the appointing judge for an order discharging the conservator. Upon the termination of the conservatorship, the conservator shall file all such receipts with the court. The motion shall include a report of the disposition and attempted disposition of all inventoried files. Upon discharge of the conservator, the appointing court may order the conservator to destroy all files and records not returned pursuant to section (d) or not previously destroyed. When six (6) consecutive months have passed without any activity, the conservator may apply to the court for an order discharging the conservator. Thereafter, the files and papers of the respondent will be maintained by the state bar in accordance with the state bar's file retention policy as approved by the Board of Governors.~~

(f) ~~(d)~~ Conservator-Client Relationship. Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

1. make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or
2. represent such a client in connection with:
 - A. any matter identified during the conservatorship; or
 - B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

(g) Filing a Written Report. The conservator shall file a written report with the appointing judge not later than thirty (30) days after the date of appointment, advising the court of the status of efforts to comply with the requirements as set forth in paragraphs (a) through (d) of this rule. Thereafter, the conservator shall file a similar written report every sixty (60) days until discharged.

(h) Request to Destroy Files. After taking possession or control of files, papers and records of the respondent, the conservator may move the appointing judge for an order granting permission for the conservator to destroy files.

Rule 68. Conservator; Bank and Other Accounts

(a) Notification of Financial Institutions. A conservator shall notify all banks and financial institutions in which the respondent maintained either professional

or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a ~~certified~~ copy of the order of appointment of the conservator shall operate as a modification of any agreement of deposit among such bank or financial institution, the respondent and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the respondent with such bank or financial institution. ~~The clerk of the superior court shall make certified copies of the order of appointment available upon request of the conservator without charge.~~ The appointing court on application may order that the conservator ~~shall~~ be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds following a determination that the clients or third parties are entitled to the funds.

(b) **Client Funds.** The conservator shall return all client funds in the custody of the respondent to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the respondent.

(c) **Sufficient Funds.** Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the respondent, and otherwise to complete the conservatorship and pay its expenses authorized under these rules, the conservator shall permit the respondent or the respondent's estate to take full possession of any remaining funds in the respondent's personal or operating accounts. After reimbursement to the conservator of costs and expenses, ~~a~~Any remaining funds or monies being held in respondent's trust account shall be directed and distributed by order of the appointing judge court to the Client Protection Fund.

(d) **Assessment of Costs. Certification of Payment of Expenses and Compensation of Conservator.**

1. The appointing judge shall award the conservator the costs and expenses of the conservatorship proceeding, including all costs resulting from the duties imposed by Rule 68.
2. The necessary expenses and any compensation of a conservator shall, if possible, be paid by the respondent or the respondent's estate.
3. ~~If not so paid, the conservator may apply to the board for payment. The board shall direct that all of the necessary expenses and all or a portion of the requested compensation be paid as a cost of disciplinary administration and enforcement or from any other source it deems appropriate. The necessary expense and reasonable compensation for the conservator as determined by the board shall be assessed against the respondent as set forth in Rule 65 whether paid by the state bar or not. Necessary expenses and reasonable compensation of a conservator to be paid by the state bar shall be determined by the board and shall not exceed \$10,000 unless extraordinary circumstances exist. Upon application for reinstatement or readmission by the respondent, the costs and~~

~~expenses and compensation paid by the state bar shall be reimbursed and such amounts not previously paid to the conservator shall then be paid. If the conservator is the state bar, the respondent must pay costs and expenses prior to applying for reinstatement or readmission.~~

~~(e) **Assessment of Costs.** Costs and expenses of conservatorship proceedings shall be determined, assessed, and enforced as provided for in disciplinary proceedings.~~

Rule 69. Liability of Conservator

The general law of conservators and fiduciaries shall apply to the conduct of the conservator and the conservatorship, except that a conservator appointed under these rules shall:

(a) not be regarded as having an attorney-client relationship with clients of the respondent, except that the conservator shall be bound by the obligation of confidentiality toward clients imposed by the Arizona Rules of Professional Conduct with respect to information acquired as conservator;

(b) have no liability to the clients of the respondent or any other person except for injury ~~to such clients~~ caused by intentional, willful, or grossly negligent breach of duties pursuant to Rules 66-69, Ariz. R. Sup. Ct. as a conservator; and

(c) be immune to separate suit brought by or on behalf of the respondent or respondent's estate or other person. Any objections by or on behalf of the respondent or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.