

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-08-0004  
PETITION TO AMEND THE ARIZONA )  
RULES OF THE SUPREME COURT TO )  
ADOPT RULE 38(g) )  
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**ORDER AMENDING  
RULE 38, RULES OF THE SUPREME COURT**

A petition having been filed proposing to provide an exception to the standard bar admission procedures for attorneys licensed in other states who are employed by rural Arizona indigent defense offices, and no comments having been received, upon consideration,

IT IS ORDERED that Rule 38, Rules of the Supreme Court, be amended by adding a new subparagraph (g), in accordance with the attachment hereto, effective January 1, 2009.

DATED this \_\_\_\_\_ day of September, 2008.

\_\_\_\_\_  
RUTH V. MCGREGOR  
Chief Justice

TO:  
Rule 28 Distribution

**ATTACHMENT\***

**RULES OF THE SUPREME COURT**

**Rule 38. Special Exceptions to Standard Examination and Admission Process**

**(a)-(f)** [No change in text as amended by order issued in R-06-0017.]

**(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. Definitions.

A. The "active practice of law" means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment, or academic employment.

B. A "funded indigent defense office," as used in this rule, means a governmental department, organization or other entity formed under the authority of A.R.S. § 11-581 et seq. The office also must employ at least one Arizona attorney not admitted pursuant to any provision of this rule and be located in a county with a population less than 500,000. A funded indigent defense office must be approved as such by the Supreme Court of Arizona.

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. a description of the structure of the organization, including a certification that the organization maintains a supervisory structure and ratio in line with accepted defense standards, the source of which shall be identified;

ii. a copy of the last annual report prepared pursuant to A.R.S. § 11-584(A)(3), and an affirmation that, during any time in which the office has an attorney employed under this rule, the office will file a copy of the annual report with the

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

Supreme Court at the same time as it files the report with the entities designated in A.R.S. § 11-584(A)(3);

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. a description of the source of major funds used by the office;

v. the type of representation the office provides under A.R.S. § 11-584(A);

vi. the names of all members of the State Bar of Arizona who are employed by the office or who regularly perform legal work for the office; and

vii. a certification that all attorneys employed by the office under this rule receive pay and benefits commensurate with other regularly licensed attorneys in the office.

A copy of the petition for approval shall be sent by the office to the Chief Bar Counsel of the State Bar of Arizona, who shall file any comment 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. 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. 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. a certificate from the highest court or agency in the state, territory or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar membership for at least the two years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory or district for the past five years, or during the time of the applicant's licensure, whichever is greater;

B. a statement signed by an authorized representative of the approved funded indigent defense office that the applicant is employed by the organization; and

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. submits to the jurisdiction of the Court for disciplinary purposes, as defined by the Rules of the Supreme Court; and

iii. has not been disciplined by the bar or courts of any jurisdiction within the past five years, or during the time of the applicant's licensure, whichever is greater.

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

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

5. *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 (A) the applicant no longer works for an approved funded indigent defense office; (B) the applicant is admitted to the practice of law in Arizona pursuant to Rules of the Supreme Court 33 through 37; or (C) two years from the date of the order authorizing the applicant to practice law under this rule, whichever comes first. If the applicant ceases employment with the funded indigent defense office, an authorized representative of the office 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 funded indigent defense office in order to work for another approved funded indigent defense office, a notification of new employment shall be filed with the clerk of the Court and the State Bar of Arizona. In the event of an applicant transferring from one approved funded indigent defense office to another, the time limits for expiration of licensure under this rule shall run from the date of the original order of admission. No applicant may be admitted more than once pursuant to this rule.

6. *Discipline.* In addition to any appropriate proceedings and discipline that may be imposed by the Court under these rules, the Rule 38(g) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(g) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Supreme Court, or the funded indigent defense office.

7. *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 funded indigent defense office 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 office. Part-time employment is not permitted under this rule.

8. *Supervision.* An attorney authorized to practice under this section who has been practicing in Arizona for less than two years shall be supervised by an attorney who is an active member of the State Bar of Arizona, who is employed full time by the approved funded indigent defense office for whom the applicant attorney works, and who will act as a supervisory lawyer pursuant to Rule 42 of the Rules of the Supreme Court of Arizona, ER 5.1.