

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

Text of rule effective January 1, 2009.

### **(a) Admission Pro Hac Vice.**

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 to permit pro bono representation of an indigent client or clients. An attorney seeking a fee waiver under this provision shall include in the application a verification that all clients represented in the action are indigent and that no attorney fee shall be paid by the client. "Indigent" is defined as those individuals whose gross income is at or below 125% of the federal poverty guidelines, as calculated in conformity with the eligibility requirements for Legal Services Corporation grantees, currently codified at 45 C.F.R. Section 1611.

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

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.