

UPL ADVISORY OPINION
UPL 09-01
(March 2009)

Registered In-House Counsel Court Appearance Limitation

This is an Advisory Opinion regarding Rules 31, 38, and 42, of the Rules of the Supreme Court of Arizona regarding the authorization and limitation of registered in-house court appearances.¹

Issues:

1. May a registered in-house counsel represent the employer corporation in an Arizona court?
No, the Special Exception to Standard Examination and Admission process permitting the registration of in-house counsel does not permit registered in-house counsel to represent the employer corporation in those forums that require *pro hac vice* admission.

Facts:

A registered in-house counsel, as defined by and registered pursuant to Arizona Supreme Court Rule 38(i), seeks the parameters of the services that counsel may provide in Arizona, specifically whether a registered in-house counsel may represent her employer corporation in an Arizona forum.

Relevant Authority:

Arizona Supreme Court Rule 31:

Rule 31. Regulation of the Practice of Law

(a) Supreme Court Jurisdiction Over the Practice of Law

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

- (1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (2) preparing or expressing legal opinions;

¹ Opinions of the Committee are advisory in nature only and are not binding in any disciplinary or other legal proceedings. ©

- (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
- (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- (5) negotiating legal rights or responsibilities for a specific person or entity.

B. “Unauthorized practice of law” includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. “Legal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

* * *

(b) Authority to Practice. Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

Arizona Supreme Court Rule 38(a): Special Exceptions to Standard Examination and Admission Process

(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.

Arizona Supreme Court Rule 38(i): Special Exceptions to Standard Examination and Admission Process

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.

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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.

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

Rule 42: Arizona Rules of Professional Conduct
ER 5.5. Unauthorized Practice of Law

(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, and registered pursuant to Rule 38(i) of these rules, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Discussion:

1. May a registered in-house counsel represent the employer corporation in an Arizona court?

No, the Special Exception to Standard Examination and Admission process permitting the registration of in-house counsel does not permit registered in-house counsel to represent the employer corporation in those forums that require *pro hac vice* admission.

In-house counsel registered pursuant to Arizona Supreme Court Rule 38(i) is subject to the limitations of Arizona Supreme Court Rule 38(i)(9) which states

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 Rules 38(a) of these rules.

This rule prohibiting representation in an Arizona forum by registered in-house counsel is also affirmed in Rule 42 of the Arizona Rules of Professional Conduct, ER 5.5, that provides:

(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, and registered pursuant to Rule 38(i) of these rules, may provide legal services in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission;
- or (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Furthermore, registered in-house counsel pursuant to Rule 38(i) 10 may secure admission *pro hac vice* in Arizona by complying with the requirements of Rule 38(a) of these rules which provides that "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."