

# INDIGENT DEFENSE MJP

BY DANA P. HLAVAC & JASON STEFFEN

The Arizona Supreme Court recently amended the rules for admission to practice in Arizona (see p. 14). The new rules have gained significant attention for what many may feel is a major philosophical shift in law admission. Amid the debate over what is traditionally referred to as “reciprocity,” some may overlook the addition of a section (g) within Rule 38. As the petitioner of the Rule, I wanted to take a moment to draw attention to the structure and intent of the section.

Rule 38(g) of the Rules of the Supreme Court provides for an exception to the typical licensing procedures for qualified out-of-state attorneys seeking to work in qualified indigent defense offices. The new rule states with specificity the qualifications for the attorney seeking admission and for the indigent defense office seeking to hire the attorney.

The attorney must have been admitted to the active practice of law in some other jurisdiction for a minimum of two years prior to seeking the exception. The attorney also must not have been subject to discipline for professional misconduct for the greater of the past five years, or the applicant’s entire period of licensure. Lastly, the attorney seeking the exception must be preparing to work full-time for a qualified indigent defense office in a county with a population less than 500,000.

The intent of these limitations is to uphold the highest of standards for those attorneys who sought this exception and to limit the ability of the applicant to use the exception to work in areas other than where key shortages in constitutionally mandated legal services exist. For an out-of-state licensed attorney to be granted this exception, he or she must have been offered employment by an approved indigent defense office in Arizona.

That indigent defense office must itself gain approval to sponsor and employ out-of-state licensed attorneys under this exception. To qualify, the office must: (1) have staffing structures that are based on identifiable accepted defense standards; (2) file a copy of the required annual report under A.R.S. § 110584(a)(3) with the Supreme Court; (3) certify that the office monitors, manages and complies with accepted ethical workload standards; (4) identify the source of major funding used by the office; (5) pay both attorneys practicing under an exception and those admitted under the standard bar examination and Character and Fitness provisions under the same pay guidelines; and (6) notify the Supreme Court and State Bar if an out-of-state licensed attorney practicing under this exception leaves employment prior to the expiration of the exception.

These qualifications were put in place to ensure that no rural indigent defense office could substitute the use of attorneys practicing under this exception for proper and ethical oversight of workloads, or undercut the employment of existing Arizona-licensed attorneys by attorneys practicing under this exception.

The motivation for the petition to create this new exception was based on the need for a quicker method of filling vacancies for rural counties due to the comparatively high cost of providing private contract counsel in lieu of authorized staff attorneys in criminal cases. Rural counties lack sufficient funds and social infrastructure to fill vacancies in a timely manner. The inability to fill vacancies rapidly with qualified criminal law attorneys places an unnecessary burden on the rural counties and interferes with the orderly administration of justice. This disruption negatively affects courts, prosecutors, county budgets, law enforcement and victims.

The hope is that this exception will be the perfect marriage of the desires of experienced criminal practitioners who are seeking to relocate to Arizona and rural indigent defense offices that are often in a position of overspending on legal services contracts due to staffing shortages.

Our personal thanks and appreciation to our Supreme Court for taking this step forward. 

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