



*UPL Advisory Opinion
10-01
(January 2010)*

Out-of-State Lawyers Authorized to Practice Law Under Rule 38(f)

This is an Advisory Opinion regarding Rule 38(f) of the Rules of the Arizona Supreme Court regarding the question of whether out-of-state lawyers must be active in at least one jurisdiction.¹

Issue:

Whether a person authorized to practice in a legal services organization, pursuant to Arizona Supreme Court Rule 38(f) must be an active attorney in at least one jurisdiction where he or she is licensed to practice. Answer: Yes

Facts:

A lawyer admitted to practice in Arizona pursuant to Supreme Court rule 38(f) posed the question of whether he must maintain an active license in his home licensing jurisdiction while being admitted under Rule 38(f).

Relevant Authority:

(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 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:

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. 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;

¹ Opinions of the Committee are advisory in nature only and are not binding in any disciplinary or other legal proceedings. © 2009 State Bar of Arizona.

Analysis:

The intended purpose of Rule 38(f) is to make admission in Arizona more flexible for those out-of-state lawyers willing to move to Arizona and work for an approved legal services organization. Such organizations are in dire need of qualified attorneys. The Rule authorizes the practice of law if out-of-state lawyer: 1) demonstrates that he or she is duly licensed in another jurisdiction; 2) has not been subject to discipline; 3) is willing to abide by the Rules of Professional Conduct in Arizona; 4) completes MCLE requirements in Arizona; and 5) is supervised by an Arizona attorney.

Given that the Rule 38(f) authorization contemplates that the out-of-state lawyer is active and in good standing in his or her home jurisdiction and given that the out-of-state lawyer is being given authorization to practice law in Arizona without taking a Bar exam, based upon his or her home jurisdiction license, the out-of-state lawyer must stay active and in good standing in their home jurisdiction.

Just as a lawyer admitted *pro hac vice* is admitted on a temporary basis and must remain active in their home state, so too must an out-of-state lawyer who is authorized to practice law under Rule 38(f). Neither Rule 38(a), the *pro hac vice* Rule, nor Rule 38(f) specifically note that home admission must remain active. This is because it is presumed in both instances. Both authorizations are temporary and conditioned on an active license in another state.