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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-22-

10 **PETITION TO AMEND RULE 38**
11 **OF THE ARIZONA RULES OF**
12 **SUPREME COURT**

PETITION

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
14 of Arizona (the “State Bar”) hereby petitions the Court to amend Rule 38 of the
15 Arizona Rules of Supreme Court, as set forth in Appendix A, attached to this
16 Petition. The proposed changes are not substantive, but rather, an effort to provide
17 clarity that will better enable the State Bar to process applications and notice
18 requirements as set forth in the existing rule.


19
20 Additionally, the State Bar seeks to reinsert a slightly modified version of the
21 Comment to Rule 38 that was omitted during the last revision to the Rule under
22 Arizona Supreme Court No. R-19-0011 Order, dated December 12, 2019. The State
23 Bar believes that the Rule 38 Comment may have been inadvertently deleted as part
24 of the rule petition and subsequent order. The omission of this comment has created
25

1 ambiguity with respect to interpretation of the in-house counsel provision.
2 Therefore, the State Bar proposes to reinsert the Comment, the attached modified
3 version, to assist with interpretation of in-house counsel requirements.
4


5 **CONCLUSION**

6 The State Bar of Arizona respectfully requests that Court amend Rule 38 as
7 set forth in Appendix A.
8

9
10 RESPECTFULLY SUBMITTED this 10th day of January, 2022.

11
12 
13 _____
14 Lisa M. Panahi
15 General Counsel

16 Electronic copy filed with the
17 Clerk of the Supreme Court of Arizona
18 this 10th day of January, 2022.

19 by: 
20 _____
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Appendix A

Appendix A

(Please note: deletions are reflected by ~~striketthrough~~ and additions are reflected by underline.)

Rule 38. Certifications and Limited Admissions to Practice Law

(a) In-house Counsel.

(1) [No change in text.]

(A) [No change in text.]

(B) The applicant ~~and~~ is currently a member in good standing, whether active, inactive or retired, 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

(C) [No change in text.]

(2) - (10) [No change in text.]

(b) - (c) [No change in text.]

(d) Approved Legal Services Organizations and Certification of *Pro Bono* Counsel.

(1) [No change in text.]

(A) – (B) [No change in text.]

(C) Annual Notice to Court. On or before ~~February 1~~ December 31 of each year, the organization shall file a notice with the Clerk and a copy with the ~~State Bar~~ Chief Bar Counsel of the State Bar of Arizona, providing updated information, including a current list of employed and volunteer lawyers certified under this rule, and certifying that the organization has provided, and will insure that volunteer *pro bono* lawyers providing services pursuant to this rule have been offered appropriate training and continuing legal education as it relates to the *pro bono* work being performed under the auspices of the organization. The State Bar, through its Chief Bar Counsel or other authorized representative, may, within ten days of receipt, file a comment on the organization's annual notice with the Clerk.

(D) – (E) [No change in text.]

(2) *Certification of Pro Bono Counsel.*

(A) [No change in text.]

(B) Eligibility. To be certified, the attorney must be one of the following:

(i) *An attorney, including a an inactive or retired attorney, admitted to practice in Arizona* who:

(a) – (d) [No change in text.]

(ii) – (iv) [No change in text.]

(C) – (G) [No change in text.]

(H) Notice of change of status. The approved legal services organization shall notify the Clerk of the Arizona Supreme Court and the Chief Bar Counsel of the State Bar of Arizona in writing of any change of status described in Rule 38(d)(2)(G) within 28 days of such change.

(I) Registration, Fees and CLE.

(i) [No change in text.]

(ii) [No change in text.]

(iii) Failure of an attorney certified under this rule to complete the State Bar’s dues statement, as described above, or to pay the prior year’s inactive or retired attorney registration fees by February 1 of each year, shall automatically terminate that lawyer’s status as certified *pro bono* counsel and result in suspension of the attorney’s Arizona license, if applicable.

(iv) [No change in text.]

(J) – (K) [No change in text.]

COMMENT

Rule 38(a) requires annual registration with the State Bar of Arizona for lawyers who are not admitted to practice in Arizona, but who are employed in Arizona by an entity, or one of its specified affiliates, as “in-house counsel,” as that term is defined in this rule. The registration requirements of this rule apply only to lawyers: (1) who are employed as in-house counsel by an entity that primarily conducts business within Arizona; and (2) who either have a principal office physically located in Arizona, or will otherwise be systematically and continuously present in Arizona on behalf of their employer. A lawyer who works remotely for a corporate entity primarily conducting business in Arizona, even if the lawyer is not physically in the State, is considered to be practicing “systematically and continuously” within Arizona and is thus properly eligible for in-house counsel registration. The

registration requirements of this rule do not apply to in-house counsel whose presence in Arizona is only temporary or sporadic.