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BY: *[Signature]*

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DEC - 1 2005  
**CLERK SUPREME COURT**

**IN THE SUPREME COURT STATE OF ARIZONA**

In the Matter of PETITION	)	
TO AMEND RULE 38(c)1B and C,	)	Supreme Court
Arizona Rules of the Supreme Court,	)	No. R-_____
	)	
	)	Petition to Amend
	)	Rule 38(c)1B and C
	)	
_____	)	

**INTRODUCTION**

Pursuant to Rule 28 of the Rules of the Supreme Court, the Pima County Public Defender's Office respectfully petitions the Arizona Supreme Court to amend Rule 38(c)1B, C to permit eligible law students to appear and represent persons accused of felony charges at their initial appearance<sup>1</sup> in Justice, Magistrate or Superior Court without the necessity of a supervising lawyer being personally present.

**SUMMARY OF PROPOSED CHANGES**

Rule 38(c) presently permits eligible law students to represent criminal defendants in any misdemeanor criminal offense matter without the law student's supervising lawyer being personally present except that in a trial of a misdemeanor the defendant must consent to the supervising attorney being absent in writing. The proposed amendment would permit eligible law students to represent persons arrested for felony charges in initial appearances under ARCP 4.2 without a supervisor being personally present throughout those proceedings. At the present time neither the Pima County Public

<sup>1</sup> ARCP 4.2.

receives notice of appointment. The consequence of this is that indigent defendants are afforded no representation during the Rule 4.2 process. At the present time the Pima County Public Defender's Office does not have sufficient funds to employ lawyers to be available at initial appearances. Because these proceedings are held on a daily basis at 9:00 a.m. and 9:00 p.m. additional funds would have to be provided for lawyers to be available at the hours in which these hearings are held.

Because people arrested on felony charges have no access to attorneys at their initial bail hearing they are frequently held in custody on a high bond. The consequence of this places a burden on justice system resources and results in unfairness to people that are held in jail waiting for preliminary hearings or grand jury resolutions to their case. A recent report provided to Pima County by Robert Spangenberg, *A Review of the Delivery of Indigent Defense Services of Pima County*, showed that fifty percent of those defendants arrested by law enforcement in Pima County ultimately had their cases dismissed without any probable cause determination after nine days, obviating the preliminary hearing that had been set. This is because lawyers from the Pima County Attorney's Office frequently use that period of time to determine whether the case is prosecutable or not. Having lawyers available to argue for reduced bond for charged defendants is contemplated by the Rules of Procedure, and will service the interest of justice and result in cost benefits to Pima County. The placement of eligible law students

will provide a voice for indigent defendants in these proceedings, and will result in cost savings for Pima County.

DATED this 30th day of November, 2005.



ROBERT HOOKER

**DRAFT OF PROPOSED AMENDED RULE**

**Rule 38. Limited Practice by Clinical Law Professors and Law Students**

**Rule 38(c) Activities of law students**

1. An eligible law student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf he is appearing has indicated in writing his consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

A. Any civil matter. In such cases in justice, municipal, and magistrate courts, the supervising lawyer is not required to be personally present in court if the person on whose behalf an appearance is being made consents to his absence.

B. Any felony initial appearance and misdemeanor criminal defense matter in justice, municipal, and magistrates courts. In such cases the supervising lawyer is not required to be personally present in court except during trial if the person on whose behalf an appearance is being made consents to his absence.

C. Any felony criminal defense matter in justice, municipal, and magistrate courts other than initial appearance, and any criminal matter in superior court. In such cases the

any political subdivision thereof with the written approval of the prosecuting attorney or his authorized representative. In all appearances in criminal cases a supervising lawyer must be present except when such appearance is in justice, municipal, or magistrate courts.

3. In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the student shall orally advise the court on the occasion of his initial appearance in the case that he is a law student certified to appear pursuant to this rule.

4. Under the general supervision of the supervising lawyer, but outside his personal presence, an eligible law student may engage in other activities, including:

A. Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.

B. Preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer.

C. Assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications for and supporting documents for post-conviction relief except when the assignment of counsel in the matter is required by any constitutional provision, statute or rule of this court. If there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record.

D. Rendering legal advice and performing other appropriate legal services but only after prior consultation with and upon the express consent of the supervising lawyer.

5. An eligible law student may participate in oral argument in this court and the court of appeals, but only in the presence of the supervising lawyer.

6. All activities under this rule must be part of the law school's educational and clinical law practice program approved by the dean and faculty of the College of Law of the University of Arizona or the College of Law of Arizona State University, or other law school's juris doctorate program approved and accredited by the American Bar Association. A written statement of the contents of the school's educational and clinical law practice program of the Arizona State University or University of Arizona College of Law or other law school's juris doctorate program approved and accredited by the American Bar Association shall be filed with the executive director of the State Bar not later than thirty days prior to the commencement of the program.