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8 IN THE SUPREME COURT
9 STATE OF ARIZONA

10
11 In the Matter of
12
13 PETITION TO AMEND RULE 38(D) OF
14 THE RULES OF THE SUPREME COURT
15 OF ARIZONA

R-09-0038
MARICOPA COUNTY ATTORNEY'S
OFFICE COMMENTS ON THE
PETITION TO AMEND RULE 38(D) OF
THE ARIZONA RULES OF THE
SUPREME COURT

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17 The Maricopa County Attorney hereby comments regarding the petition to amend Rule 38(d),
18 Arizona Rules of Supreme Court, which address the special exceptions to the standard examination and
19 admission process for law students.

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21 Respectfully submitted this 19th day of May, 2010.

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23 RICHARD M. ROMLEY
MARICOPA COUNTY ATTORNEY
24 BY: 
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1 I. COMMENTS

2 The Interim Dean and Director of Internships for the Phoenix School of Law filed a petition to
3 amend Rule 38(d) of the Arizona Rules of Supreme Court. The proposed changes reorganize the rule
4 and expand the circumstances under which a law student may engage in the limited practice of law
5 under the supervision of a Supervising Attorney. The Maricopa County Attorney’s Office (MCAO)
6 urges the Court to adopt the proposed changes to Rule 38(d) of the Arizona Rules of Supreme Court
7 with two exceptions noted and explained below.
8

9 First, the proposed changes include removing the current language in Rule 38(d)(3)(G), which
10 states the following:
11

12 “...all activities under this rule must be part of the law school's educational and clinical
13 law practice program approved by the dean and faculty of a law school either
provisionally or fully approved and accredited by the American Bar Association.”

14 *17A A.R.S. Sup.Ct. Rules, Rule 38.* This language ensures that a law student’s limited practice of law is
15 part of an educational program which is approved and supervised by a law school. Eliminating the
16 educational requirement would allow recent law school graduates the ability to be certified, which
17 MCAO generally supports because it would allow conditional hire candidates to appear in court while
18 they await their bar results. However, MCAO is concerned about loosening this requirement too much
19 as it may allow private attorneys to use students or recent law school graduates essentially as unpaid
20 associates and may not provide them with the quality of supervision and instruction that is an important
21 part of the certification experience. Accordingly, this requirement should be retained in the rule but
22 modified.
23

24 MCAO proposes retaining and amending the current language in Rule 38(d)(3)(G) substantively
25 as follows:
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1 Except for students participating under the requirements of paragraph (d)(6) below, all
2 activities under this rule must be part of ~~the~~ a law school's educational and clinical law
3 practice program approved by the dean and faculty of a law school either provisionally
4 or fully approved and accredited by the American Bar Association, or must be part of a
5 legal internship program conducted by the state or any political subdivision thereof. In
6 the case of a law school program, a A written statement of the contents of the school's
7 educational and clinical law practice program of the law school's juris doctorate program
8 either provisionally or fully approved and accredited by the American Bar Association
9 shall be filed with the executive director of the state bar not later than thirty days prior to
10 the commencement of the program. In the case of a legal internship program conducted
11 by the state or any political subdivision thereof, the governmental agency involved shall
12 file a written statement of the scope of the internship program and the education and
13 training to be provided to the legal interns with the executive director of the state bar not
14 later than thirty days prior to the commencement of the program.

15 This language provides for retaining the current standard governing certification of law students in
16 which the educational and clinical law practice program is in place and creates a second standard
17 governing certification of recent law school graduates in which any activities performed in conjunction
18 with the certification could be done at a government agency. Furthermore, the educational purposes of
19 Rule 38 are served by requiring the political subdivision to have a program of education and training for
20 the interns and to provide the State Bar with a written description of that program. The State Bar will be
21 able to review that program and recommend any necessary changes.

22 Second, the rule currently requires that an eligible law student "...have successfully completed
23 legal studies amounting to at least three semesters, or the equivalent if the school is on some basis other
24 than a semester basis..." before making an appearance pursuant to the Rule. *17A A.R.S. Sup.Ct. Rules,*
25 *Rule 38(d)(5)(B)*. Thus, second year law students, in the fourth semester, may participate in clinical
26 programs establish by the law school pursuant to the Rule.

27 The proposed language in revised Rule 38(d)(2)(C) requires that the student have both
28 completed three semesters of semesters of legal studies (or the equivalent) and have been accepted into,
and be enrolled in, the third or fourth years at an Accredited Law School. These requirements appear to

1 be inconsistent and would delay eligibility for a law student until their third year. MCAO regularly
2 supervises second year law students as part of law school clinical programs. Accordingly MCAO
3 suggests the language in the revised Rules 38(d)(2)(C)(1)&(2) be merged as follows:
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5 To be eligible to become a Certified Limited Practice Student, a law student applicant
6 must:

7 c.1 Have successfully completed legal studies amounting to at least three semesters, or
8 the equivalent if the school is on some basis other than a semester, at an Accredited Law
9 School; or have graduated from an Accredited Law School, subject to the time period
10 limitations set forth in these Rules;

11 ~~e.2 Have been accepted into, and be enrolled in, the third or fourth years at an
12 Accredited Law School in good academic standing or have graduated from an
13 Accredited Law School, subject to the time period limitations set forth in these Rules;~~

14 This language makes it clear that law students first become eligible to participate in such a program
15 after completing the equivalent of three semesters of law school and remain eligible after graduating,
16 during the time period which they are awaiting the results of the first general bar exam for which they
17 were eligible to take.

18 MCAO respectfully asks this Court to adopt its proposed changes which are included in this
19 Comment.

20 II. CONCLUSION

21 For all the reasons set forth in this Memorandum, the Maricopa County Attorney's Office asks
22 this Court to grant Petition No. R-09-0038, but to adopt MCAO's changes to the language proposed in
23 the petition.

24 Respectfully submitted this 19th of May, 2010.

25 RICHARD M. ROMLEY
26 MARICOPA COUNTY ATTORNEY

27 BY: 

28 PAUL AHLER
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