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IN THE SUPREME COURT

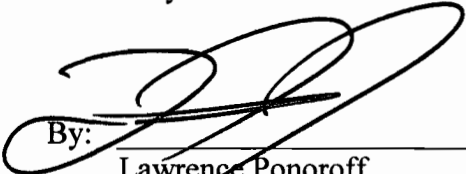
STATE OF ARIZONA

In the Matter of)	
)	R-09-0038
PETITION TO AMEND RULE 38(d))	
OF THE RULES OF THE SUPREME)	JAMES E. ROGERS COLLEGE OF
COURT OF ARIZONA)	LAW'S COMMENTS ON PETITION
)	TO AMEND RULE 38(d)
)	

The James E. Rogers College of Law, University of Arizona, hereby comments regarding the petition to amend Rule 38(d), Arizona Rules of the Supreme Court, related to limited law student practice.

Respectfully submitted this 22nd day of September 2010.

James E. Rogers College of Law
University of Arizona

By: 

Lawrence Ponoroff
Dean and Samuel F. Fegly
Chair in Commercial Law



Andrew Silverman
Joseph M. Livermore Professor and
Director, Clinical Programs

The Phoenix School of Law filed a petition to amend Rule 38(d) of the Arizona Supreme Court Rules. Among other things, Rule 38(d) sets forth rules allowing a limited practice by certified law students participating in a clinical law program. Comments were filed on September 14, 2010, by the Sandra Day O'Connor College of Law at Arizona State University.

We agree with and support the comments filed by the Sandra Day O'Connor College of Law. In particular, we are greatly concerned with the proposed elimination of the current requirement that a student certified under Rule 38(d) "be part of the law school's educational and clinical 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." Rule 38(d)(3)(G). We object to this proposed amendment because we believe that the primary purpose of limited student practice is to enhance the educational development of law students. We further believe that the best educational practices require that these experiences be undertaken in the setting of law school clinical or related programs.

That is not to say that all students' field work must be supervised directly by law school faculty. Placement programs are an important component of clinical legal education. Under American Bar Association law school accreditation standard 305(e), law school placement programs must meet rigorous requirements such as law faculty teaching in and supervising the program; methods for selecting, training, evaluating and communicating with field placement supervisors; periodic on-site visits or their equivalent by a faculty member; and opportunities for student reflection on their field placement experience through a seminar or other means of guided reflection. By removing the requirement that a certified limited practice student be enrolled in a clinical program, we will no longer be assuring that students who are placed with lawyers in the community receive the kind of educational experience contemplated by ABA

standard 305(e). The current proposal would allow law students to engage in limited practice without any involvement by professional educators, without any educational goals and without any opportunity for guided reflection. We cannot overemphasize the importance of ensuring that clinical students have the opportunity to reflect on their limited practice activities so that their experience will be a meaningful part of their development as lawyers.

We also share ASU's opposition to the rule modification that specifies the particular courses that a law student must have taken or currently taking in order to be certified (see proposed Rule 38(d)(5)(A)(iv)). As ASU pointed out in its comments, the proposed list of courses is not particularly relevant to some of the settings in which clinical students practice. For example, there is little need for students in our Child and Family Law Clinic to take Criminal Law. Moreover, we do not require our students to take Criminal Law, which is one of the courses specifically listed in the amended rule. Rather, we require them in the first year to take Criminal Procedure and then offer Criminal Law as an upper-level elective. We would hope that the Court would recognize that the individual law schools are in the best position to establish a curriculum that prepares students to practice as certified limited practice students and that maximizes the professional development of the students.

In addition to our support of all of the points raised by the Sandra Day O'Connor College of Law, we have two further comments – one relating to the requirement that would limit the number of students supervised by non-full time faculty and another dealing with a requirement that students must meet in order to be certified.

Under proposed Rule 38(d)(5)(E)(ii), non-full time faculty are limited to supervising five students. We understand and support the rule as to placement programs where practicing attorneys will directly supervise law students. However, we have adjunct professors who have

long-term commitments to clinical legal education and assist us in our in-house clinical programs in the summers so that full-time faculty can take summer breaks or work on other faculty responsibilities. We feel that these supervisors are in a position and should be allowed to supervise more than five students. We would therefore request that the provision be modified to read:

- ii. supervise no more than five (5) certified limited practice students concurrently; provided, however, that a supervising attorney who is employed by a law school primarily to supervise law students as part of an organized law school clinical education program may supervise up to, but in no case more than, fifty (50) certified students.

Secondly, both the current and proposed Rule 38(d) require that a law student applicant for certification must certify in writing that he or she has read and is familiar with the “statutes of the State of Arizona relating to the conduct of attorneys.” Proposed Rule 38(d)(5)(A)(iii). A number of years ago these statutes were repealed, and there is no longer Arizona statutory provisions dealing with the conduct of attorneys. But, since it is required by Rule 38(d), it must be part of the certification the students sign which, understandably, this always seems to generate questions and concerns by some students who are being asked to sign a document indicating they have done something they are unable to do. Also, it seems to us that a certification that is filed with the Supreme Court should accurately reflect the current status of the law. Therefore, we would request that the Court use this opportunity to bring the rule into conformity with the prevailing state of the law in Arizona.