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8
9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 PETITION TO AMEND ARIZONA
12 SUPREME COURT RULE 38(h)
13 REGARDING ADMISSION ON
14 MOTION TO THE STATE BAR
15 OF ARIZONA

Supreme Court No. R-11-0005

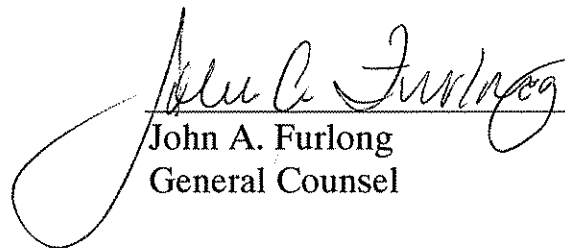
**Supplement to Petition to Amend
Rule 38(h), Ariz. R. Sup. Ct.
(Admission on Motion)**

16 The State Bar filed its "Petition to Amend Arizona Supreme Court
17 Rule 38(h) Regarding Admission on Motion to the State Bar of Arizona" on
18 January 5, 2011. In its petition, the Bar referenced the Model Rule for Admission
19 on Motion proposed by the American Bar Association ("ABA") Section of Legal
20 Education and Admissions to the Bar, which had not yet been voted on by the ABA
21 House of Delegates.

22 The State Bar hereby supplements its Petition No. R-11-0005 in order to
23 advise the Court that the ABA did, in fact, vote to approve the amendments to the
24 Model Rule for Admission on Motion in February 2011. A copy of the final
25 version of the Model Rule that was approved by the ABA is attached hereto as
26 Appendix A.

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RESPECTFULLY SUBMITTED this 20th day of May, 2011.



John A. Furlong
General Counsel

Electronic copy filed with the Clerk
of the Supreme Court of Arizona
this 20th day of May, 2011.

By: Kathleen A. Lundgren

APPENDIX A

AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
STANDING COMMITTEE ON CLIENT PROTECTION
REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association adopts amendments to the Model Rule for
 2 Admission by Motion, dated February 2011.

ABA Model Rule on Admission by Motion

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 6 1. An applicant who meets the requirements of (a) through (g) of this Rule may, upon motion,
 7 be admitted to the practice of law in this jurisdiction. The applicant shall:
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 9 (a) have been admitted to practice law in another state, territory, or the District of
 10 Columbia;
 11 (b) hold a ~~first professional degree in law (J.D. or LL.B.)~~ degree from a law school
 12 approved by the Council of the Section of Legal Education and Admissions to the Bar
 13 of the American Bar Association at the time the graduate applicant matriculated or
 14 graduated;
 15 (c) have been primarily engaged in the active practice of law in one or more states,
 16 territories or the District of Columbia for five of the seven years immediately
 17 preceding the date upon which the application is filed;
 18 (d) establish that the applicant is currently a member in good standing in all jurisdictions
 19 where admitted;
 20 (e) establish that the applicant is not currently subject to lawyer discipline or the subject
 21 of a pending disciplinary matter in any ~~other~~ jurisdiction;
 22 (f) establish that the applicant possesses the character and fitness to practice law in this
 23 jurisdiction; and
 24 (g) designate the Clerk of the jurisdiction's highest court for service of process.
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 26 2. For purposes of this rule, the "active practice of law" shall include the following activities, if
 27 performed in a jurisdiction in which the applicant is admitted and authorized to practice, or if
 28 performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted
 29 in that jurisdiction; however, in no event shall ~~any activities listed under (2)(3) and (f)~~ that
 30 were performed in advance of bar admission in some the state, territory, or the District of

31 ~~Columbia jurisdiction to which application is being made~~ be accepted toward the durational
32 requirement:

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- 34 (a) Representation of one or more clients in the private practice of law;
- 35 (b) Service as a lawyer with a local, state, territorial or federal agency, including military
36 service;
- 37 (c) Teaching law at a law school approved by the Council of the Section of Legal
38 Education and Admissions to the Bar of the American Bar Association;
- 39 (d) Service as a judge in a federal, state, territorial or local court of record;
- 40 (e) Service as a judicial law clerk; or
- 41 (f) Service as in-house counsel as corporate counsel provided to the lawyer's employer
42 or its organizational affiliates.

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44 3. For purposes of this rule, the active practice of law shall not include work that, as
45 undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was
46 performed or in the jurisdiction in which the clients receiving the unauthorized services were
47 located.

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49 4. An applicant who has failed a bar examination administered in this jurisdiction within five
50 years of the date of filing an application under this rule shall not be eligible for admission on
51 motion.

REPORT

The Section of Legal Education and Admissions to the Bar recommends that the House of Delegates amend the Model Rule on Admission by Motion to eliminate the provision in paragraph 2 that prohibits in-house counsel and judicial law clerks from qualifying on the basis of practice performed in the jurisdiction where admission on motion is being sought. That provision currently states: “however, in no event shall activities listed in (2)(e) [in-house counsel] and (f) [judicial law clerk] that were performed in advance of bar admission in the jurisdiction to which application is being made be accepted toward the durational requirement.”

The Standing Committee on Client Protection raised the concern that this language creates “an unfair and unnecessary distinction” between in-house counsel and judicial clerks, and the other categories of lawyers listed in paragraph 2. The Section agrees. For example, Attorney 1 licensed in State A who practices with a federal agency in State B for five years would qualify for admission on motion in State B, while Attorney 2 licensed in State A who practices as in-house counsel in State B for five years would not.

Other provisions of the Rule, which are retained, make clear that the practice has to occur in a jurisdiction “that affirmatively permits such activity by a lawyer not admitted” and “shall not include work that, as undertaken, constituted the unauthorized practice of law.” These provisions prevent an attorney from qualifying if he has skirted any admission or registration requirements a jurisdiction imposes. Thus, in the above example, if State B had not adopted Model Rule 5.5(d)(1) providing “safe harbor” to in-house counsel, Attorney 2 must have complied with any registration or admission requirements in State B in order for the practice to count.

In addition to the elimination of this provision of paragraph 2, other amendments to the Rule are proposed. The other amendments relate to all categories of practice, not just practice as in-house counsel or a judicial clerk.

Paragraph 2 is amended to make clear that any activities undertaken before the applicant was admitted to the bar in some jurisdiction will not count toward the durational requirement under any circumstances. When seeking admission on motion, applicants often expect to count their employment during the period between graduating from law school and passing the bar examination as qualifying practice. This arises most often in the context of service as a judicial clerk, but the Section suggests this bright-line rule should apply to all categories.

In paragraph 2, a new provision is added clarifying that the activities must be performed where the applicant is “authorized to practice” in order to count as the active practice of law under the Rule. This new provision is intended to address situations where an applicant is admitted in a jurisdiction but not authorized to practice because of inactive status. Some jurisdictions classify lawyers as in “good standing” even if the lawyer is inactive, so the provision of paragraph 1(d) [“the applicant is currently a member in good standing in all jurisdictions where admitted”] is inadequate to address this.

It is recommended that paragraph 1(b) be revised to include a degree from a law school that was ABA approved at the time the lawyer matriculated or graduated. This is common under the admission on motion rules already adopted in many jurisdictions. It also is consistent with Interpretation 102-10 of the Standards.

Finally, paragraph 2(f) is revised from “service as corporate counsel” to “service as in-house counsel provided to the lawyer’s employer or its organizational affiliates.” This is more consistent with the wording used in Model Rule 5.5 and the Model Rule for Registration of In-House Counsel.

Respectfully submitted,

Hon. Christine M. Durham, Chair
ABA Section of Legal Education
and Admissions to the Bar

February 2011