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**IN THE SUPREME COURT
STATE OF ARIZONA**

PETITION TO AMEND RULE 42,
ER 5.5(d), ARIZONA RULES OF
THE SUPREME COURT

Supreme Court No. _____
**Petition to Amend Rule 42, ER 5.5(d),
Arizona Rules of the Supreme Court**

The State Bar of Arizona petitions this Court to amend Rule 42, ER 5.5(d), of the Arizona Rules of the Supreme Court. The proposed amendment would correct a drafting error in a previous amendment to the rule.

I. Background of the Proposed Amendment

In 2003, Arizona amended Rule 42, ER 5.5, to add various categories of lawyers who are authorized to practice law in Arizona without being admitted here. Among them, subsection (c) concerned in-house counsel and subsection (d) concerned lawyers engaging exclusively in federal practice. It is clear from a plain reading of the rule that these are two separate categories of lawyers. The language of the rule was taken from Model Rule 5.5(d) of the American Bar Association pursuant to a proposal from the Ethics 2000 Commission. The Commission's Report underscored the importance of the rule as it applies to lawyers practicing federal law, saying:

1 Because it is axiomatic that a lawyer may perform work when
2 authorized by federal law to do so, the Ethics 2000 Commission
3 initially proposed relegating a provision to this effect to a Comment to
4 Model Rule 5.5. However, the MJP Commission has been told that it
5 is important to lawyers who perform such work that this provision be
6 codified in black letter law, because at times they have been
7 threatened with sanctions for violating state UPL laws.

8 A.B.A. COMMISSION ON MULTIJURISDICTIONAL PRACTICE REPORT TO THE HOUSE OF
9 DELEGATES (REPORT 201B) at 11.

10 This Ethical Rule remained consistent with the language of Model Rule 5.5
11 until enactment of a subsequent amendment effective January 1, 2009. In 2008,
12 Petition No. R-08-0006 to amend Supreme Court Rules 38, 42, and 46 was filed with
13 this Court. The thrust of that petition was to create an in-house counsel registration
14 provision in Rule 38. According to the petition, the reason for also amending Rule 42,
15 ER 5.5, was as follows:

16 The proposed change to Rule 42, Ariz. R. Sup. Ct., ER 5.5, reflects
17 the requirements of registration of in-house counsel as a pre-requisite
18 to providing legal services to their employer or its affiliates.
19 Continued provision of legal services to an employer without
20 obtaining a certificate of registration of in-house counsel would
21 constitute the unauthorized practice of law. Petition at 3-4.

22 It is clear that the language referring to foreign lawyers and to registration
23 pursuant to Rule 38(i) was meant to apply only to subsection (d)(1). Unfortunately,
24 the placement of the language in the prefatory portion of the rule, rather than in (d)(1)
25 only, made it applicable to both (d)(1) and (d)(2). As a result of the placement of that
26 language, the rule could be read to say:

 A lawyer admitted in another United States jurisdiction, or a
lawyer admitted in a jurisdiction outside the United States, not
disbarred or suspended from practice in any jurisdiction, and
registered pursuant to Rule 38(i) of these rules, may provide legal

1 services in this jurisdiction that . . . are services that the lawyer is
2 authorized to provide by federal law or other law of this jurisdiction.

3 **II. Issue**

4 Whether to amend Rule 42, ER 5.5(d), Ariz. R. Sup. Ct., to limit the
5 amendments added effective January 1, 2009, to subsection (1) of the rule and restore
6 subsection (2) to the meaning consistent with American Bar Association Model
7 Rule 5.5(d).

8 **III. Discussion/Analysis**

9 The original language in ER 5.5 was:

10 (d) A lawyer admitted in another United States jurisdiction, not
11 disbarred or suspended from practice in any jurisdiction, may
12 provide legal services in this jurisdiction that:

13 (1) are provided to the lawyer's employer or its organizational
14 affiliates and are not services for which the forum requires pro hac
15 vice admission; or

16 (2) are services that the lawyer is authorized to provide by
17 federal law or other law of this jurisdiction.

18 The amendment effective January 1, 2009, resulted in the following
19 language:

20 (d) A lawyer admitted in another United States jurisdiction, or a
21 lawyer admitted in a jurisdiction outside the United States, not
22 disbarred or suspended from practice in any jurisdiction, and
23 registered pursuant to Rule 38(i) of these rules, may provide legal
24 services in this jurisdiction that:

25 (1) are provided to the lawyer's employer or its organizational
26 affiliates and are not services for which the forum requires pro hac
27 vice admission; or

28 (2) are services that the lawyer is authorized to provide by
29 federal law or other law of this jurisdiction.

30 Petitioner recommends that the language be amended to read as follows:

1 (d)(1) A lawyer admitted in another United States jurisdiction, or a
2 lawyer admitted in a jurisdiction outside the United States, not
3 disbarred or suspended from practice in any jurisdiction, and
4 registered pursuant to Rule 38(i) of these rules, may provide legal
5 services in this jurisdiction that are provided to the lawyer's employer
6 or its organizational affiliates and are not services for which the forum
7 requires pro hac vice admission.

8 (2) A lawyer admitted in another United States jurisdiction, not
9 disbarred or suspended from practice in any jurisdiction, may provide
10 legal services in this jurisdiction that are services that the lawyer is
11 authorized to provide by federal law or other law of this jurisdiction.

12 This language would restore the meaning of the rule prior to the insertion of
13 the inadvertently limiting language.

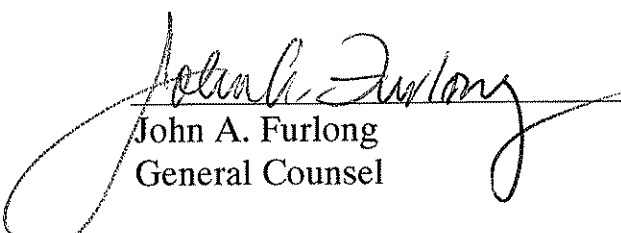
14 **IV. Text of Proposed Rule Change**

15 The text of the proposed revisions is attached hereto as Appendix A. The
16 changes are in legislative format, with additions indicated by underscoring and
17 deletions shown by strike-through.

18 **V. Conclusion**

19 This amendment to Rule 42, ER 5.5(d) would improve the functioning of the
20 legal system, restore the originally intended meaning of the rule relating to federal
21 practice, and return the rule to conformity with the ABA Model Rule. For these
22 reasons, the State Bar of Arizona respectfully requests that the Court adopt this
23 proposed rule amendment.

24 RESPECTFULLY SUBMITTED this 23rd day of November, 2011.

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26 John A. Furlong
General Counsel

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Electronic copy filed with the Clerk
of the Supreme Court of Arizona this
28th day of November, 2011.

By: Kathleen A. Lundgren

APPENDIX A

Proposed Rule Changes

(Petitioner's proposed changes shown with additions identified by underscoring and deletions identified by "~~strike-through~~").

APPENDIX A

Rule 42, Ariz. R. Sup. Ct., ER 5.5:

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

Current Rule Language:

~~(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(i) of these rules, may provide legal services in this jurisdiction that:~~

~~(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or~~

~~(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.~~

Proposed Amended Rule Language:

(d) (1) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(i) of these rules, may provide legal services in this jurisdiction that are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(2) A lawyer admitted in another United States jurisdiction, not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e)-(g) [No change in text.]