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

10 PETITION TO AMEND RULE  
11 38(h)(1)(A), ARIZONA RULES OF  
12 THE SUPREME COURT

Supreme Court No. R-12-0005

**Comment of the State Bar of  
Arizona on Petition to Amend  
Rule 38(h)(1)(A), Ariz. R. Sup. Ct.**

14 The State Bar of Arizona expresses its contingent support for the petition to  
15 amend Rule 38(h)(1)(A) of the Arizona Rules of the Supreme Court,<sup>1</sup> provided that  
16 the proposed changes do not endanger or compromise the Supreme Court's  
17 agreements with the thirty-one other jurisdictions with which Arizona has  
18 reciprocity for admission on motion.

19 The proposed amendment would allow admission on motion to the practice  
20 of law for an applicant who had been in active practice for the requisite period of  
21 time in a jurisdiction with which Arizona has reciprocity, even though the applicant  
22 had not taken a bar examination in that state and even though the state in which the  
23 applicant was admitted via bar examination does not have reciprocity with Arizona.

24 To be admitted on motion, the current rule requires that an applicant shall  
25 "have been admitted by bar examination to practice law in another jurisdiction

26 <sup>1</sup> Petitioners filed a supplemental petition on December 22, 2011, which renamed their  
petition "Petition to Amend Rule 34(f)(1)(A), Rules of the Arizona Supreme Court."

1 allowing for admission of licensed Arizona lawyers on a basis equivalent to this  
2 rule.” Rule 34(f)(1)(A), Ariz. R. Sup. Ct. In addition, among other requirements,  
3 an applicant “shall have been primarily engaged in the active practice of law in one  
4 or more states . . . for five of the seven years immediately preceding the date upon  
5 which the application is filed.” Rule 34(f)(1)(C), Ariz. R. Sup. Ct. Consequently, a  
6 lawyer who passes the bar examination in a non-reciprocal jurisdiction is ineligible  
7 for admission on motion, even if he or she has met the practice requirement in a  
8 reciprocal jurisdiction.

9       The petitioners contend that the proposed rule would eliminate an arbitrary  
10 factor – the applicant’s place of bar examination – as a requirement for admission  
11 on motion, allowing the substitution of active practice in a reciprocal jurisdiction  
12 for those applicants who qualify.

13       Some members have expressed the concern that a lawyer who passes the bar  
14 examination only in a state such as California with which Arizona does not have  
15 reciprocity may be admitted in Arizona after completing the practice requirement  
16 specified in the proposed rule, while an Arizona lawyer cannot become admitted in  
17 California on an equivalent basis. This factor may be alarming to one or more of  
18 the states with which Arizona has previously negotiated reciprocity agreements,  
19 because the California lawyer can then apply in any of them. If this concern were  
20 to be realized, our members’ licenses could become less portable.

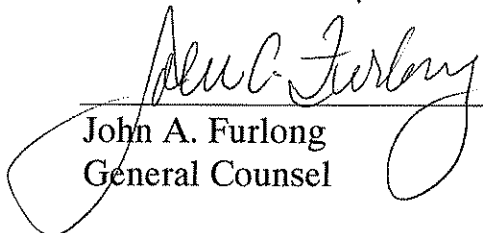
21       The State Bar Board of Governors took the position reflected in this  
22 comment after extensive discussion at its May 18, 2012, meeting. The Board voted  
23 to support the petition 11-10.

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As a result, the State Bar respectfully expresses its contingent support for the  
Petition to Amend Rule 34(f)(1)(A), Ariz. R. Sup. Ct., provided that the changes do  
not endanger or compromise the Supreme Court's agreements with the thirty-one  
other jurisdictions with which Arizona currently has reciprocity for admission on  
motion.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of May, 2012.

  
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John A. Furlong  
General Counsel

Electronic copy filed with the Clerk  
of the Supreme Court of Arizona this  
21<sup>st</sup> day of May, 2012,

By: Kathleen A. Lundgren