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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULE  
34(f)(1)(A), RULES OF THE  
ARIZONA SUPREME COURT

Supreme Court No. R-12-0005

**Reply to Comment of the Attorney  
Regulation Advisory Committee on  
Petition to Amend Rule 34(f)(1)(A),  
Rules of the Arizona Supreme Court**

Pursuant to Rule 28(D)(2), Ariz. R. Sup. Ct., Petitioners hereby reply to the Comment of the Honorable William J. O’Neil, writing as Chair of the Attorney Regulation Advisory Committee.<sup>1</sup>

Petitioners filed their “Petition to Amend Rule 38(h)(1)(A)” on January 6, 2012. On March 26, 2012, Petitioners filed a supplement, renaming the Petition to reflect the Court’s reorganization of its rules and proposing final rule language for

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<sup>1</sup> Though the Comment is dated May 8, 2012, it did not appear in the Court’s online Court Rules Forum until June 19, 2012. The paper comment was not served on Petitioners as required by Rule 28(D)(2), Ariz. R. Sup. Ct. The Attorney Regulation Advisory Committee and one or more of its subcommittees appear to have considered the Petition on March 19, 2012, according to the Committee’s minutes. Petitioners were not given notice of the Committee’s meeting, its consideration of the Petition, or an opportunity to address the Committee. Petitioners would have welcomed an opportunity to address the Committee’s concerns at its meetings. Petitioners also note that the Committee’s consideration of the Petition may have preceded the filing of the supplement on March 26, 2012. The supplemental language proposed in Exhibit A fully addresses the Committee’s concerns.

the Court's consideration. That rule language is again attached to this Reply as Exhibit A.

Having read the Comment with care, Petitioners are respectfully uncertain of the source of the concerns, which appear to result from a misapprehension of the proposed amendment's language. In short, Petitioners' proposed amendment would *not* "eliminate the reciprocal link to state of bar passage"<sup>2</sup> and would *not* "open Arizona membership to anyone who has ever practiced in any state recognized as reciprocal, no matter how admitted and if any period of time was spent there." *See* Comment at 1-2; *compare* Exhibit A.

Instead, the Petition's proposed amendment would permit an attorney to apply for admission on motion on the basis of an at-least-five-year record of active practice of law established in and while admitted to a reciprocal jurisdiction or jurisdictions and would require that the applicant already be "admitted by bar examination to practice law in one or more states, territories, or the District of Columbia." Exhibit A. Applicants applying for admission on motion under the proposed amended rule would need to demonstrate that they had been *both* admitted to and engaged in the active practice of law in a reciprocal jurisdiction *for at least five years. Id.*

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<sup>2</sup> The proposed rule language retains the option for admission-on-motion applicants to apply based on their "admission by bar examination to practice law in another jurisdiction allowing for admission of licensed Arizona lawyers on a basis equivalent to" Rule 34(f)(1)(A), Ariz. R. Sup. Ct.

The proposed amendment creates a high burden for admission for those applicants that actively practiced in a reciprocal jurisdiction or jurisdictions for at least five years, while admitted in that jurisdiction or jurisdictions. *See* Exhibit A. For example, Rule 34(f)(3), Ariz. R. Sup. Ct., requires that an applicant have spent 1,000 or more hours per year engaged in the practice of law for each year in the five-year durational period *and* have derived at least 50 percent of non-investment income from the practice of law at all times during that durational period. The proposed rule amendment would require that those activities have taken place in the reciprocal jurisdiction or jurisdictions. *See* Exhibit A. Thus, contrary to the Comment’s conclusion, not “the entire membership of the DC bar would be eligible for admission on motion based on their waiver admission in DC.” Comment at 2.

Instead, only those members of the District of Columbia bar who were (1) “admitted by bar examination to practice law in one or more states, territories, or the District of Columbia,” (2) admitted to practice in the District of Columbia , *and* (3) actively practiced law<sup>3</sup> in the District of Columbia for at least five years, would be additionally eligible for admission on motion under Petitioners’ proposed

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<sup>3</sup> As discussed above, the phrase “active practice of law” is already defined in Rule 34(f)(3), Ariz. R. Sup. Ct.

change.<sup>4</sup> The District of Columbia does not discriminate against Arizona applicants for admission. There is no legitimate reason for Arizona to treat *qualified* applicants from the District of Columbia in a disparate manner.

Petitioners respectfully submit that the fear that the proposed amendment would, if adopted, lead to an influx of attorneys using admission on motion in the District of Columbia<sup>5</sup> as a work-around to gain admission in Arizona is unfounded. In phone conferences with Petitioners, admissions officials in several of Arizona’s reciprocal states<sup>6</sup> that have rules similar to that proposed by Petitioners confirmed that those states have *not* seen an undue flood of applicants from jurisdictions like the District of Columbia. This evidence shows, as one would surmise, that attorneys simply do not orient their practices—or their lives—to achieve a record of active of practice of law for at least five years in one jurisdiction solely as a means of gaining admission on motion in another.

Furthermore, the proposed amendment does not address an issue unique to “one individual” as suggested in the Comment. Comment at 1. The amendment would more closely align Arizona with its reciprocal jurisdictions, nearly a third of

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<sup>4</sup> The District of Columbia is used here as an example. Petitioners’ proposed change would operate in the same manner and pose the same requirements for applicants from Arizona’s other reciprocal jurisdictions.

<sup>5</sup> Or reciprocal jurisdictions with similar requirements.

<sup>6</sup> Petitioners consulted admissions officials in Colorado, Kentucky, North Carolina, New Hampshire, Pennsylvania, and South Dakota by phone.

which already base admission on motion on a record of active practice in a reciprocal jurisdiction, instead of, or as an alternative to, place of bar examination.

Petitioners also note that Arizona's recent adoption of the Uniform Bar Examination ("UBE") demonstrates a shift from a focus on where a test was taken. Under this Court's Rule 34(h), applicants may now gain admission through transfer of a UBE score. Though admission by transfer of UBE score and admission on motion are separate processes, not all of the UBE jurisdictions are presently reciprocal with Arizona for admission on motion purposes. This evolution in admission standards suggests that strict place-of-bar-examination-reciprocity should no longer be the only measure of an applicant's eligibility.

Finally, the proposed amendment does *not* eliminate the requirement that attorneys applying for admission on motion have passed a bar examination. *See* Comment at 1. The proposed language requires that a person applying for admission on motion on the basis of an active practice of law in a reciprocal jurisdiction "have been admitted by bar examination to practice law in one or more states, territories, or the District of Columbia." Exhibit A. This language eliminates any concern that graduates of law schools in "diploma privilege" jurisdictions, e.g., New Hampshire and Wisconsin, could be admitted on motion in Arizona without ever passing a bar examination in any state.

Consistent with the above Reply, Petitioners respectfully request that the Court adopt the proposed rule change set forth in Exhibit A and amend Arizona Supreme Court Rule 34(f)(1)(A) accordingly.

RESPECTFULLY SUBMITTED this 29th day of June, 2012.

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