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7 IN THE SUPREME COURT
8 STATE OF ARIZONA

9 PETITION TO AMEND RULE 38 OF)
10 THE ARIZONA RULES OF THE)
11 SUPREME COURT)

Supreme Court No. R-12-0028

**MOTION FOR EXPEDITED
CONSIDERATION OF PETITION
FOR RULE CHANGE**

12 Pursuant to Rule 28(G) of the Arizona Rules of the Supreme Court, the William E.
13 Morris Institute for Justice on behalf of the Arizona Foundation for Legal Services and
14 Education, Community Legal Services, Southern Arizona Legal Aid and DNA-People’s
15 Legal Services submits this Motion to Expedite Consideration of the Petition to Amend
16 Rule 38 of the Arizona Rules of Supreme Court. The Petition was submitted to the Court
17 on May 14, 2012. The Court opened the comment period at the end of August.
18 Currently, the comment period ends May 21, 2013. As of the filing of this motion, no
19 comments have been submitted.

20 Rule 28(G) allows for a Motion to Expedite when the petition “presents an urgent
21 matter for which compelling circumstances render the annual rule processing cycle
22 inadequate.” This petition presents such a situation. In support of this Motion, the
23 William E. Morris Institute for Justice states the following:

24 **Statement of Interest**

25 The William E. Morris Institute for Justice is a non-profit program established to
26 advocate, litigate and lobby on behalf of the interests of low-income Arizonans. We
27 work closely with the federally funded legal services programs and community groups.
28 The Arizona Foundation for Legal Services and Education is a non-profit organization

1 with the purpose of promoting access to justice for all Arizonans. Community Legal
2 Services, Southern Arizona Legal Aid and DNA-People’s Legal Services are the three
3 federally funded legal services in Arizona that provide civil legal services to low-income
4 Arizonans throughout the state.

5 The movants, who are the front line of providers of legal services to low-income
6 persons, know firsthand the huge unmet legal needs in this state. They support the rule
7 changes. The purpose of the rule changes is to remove barriers to retired Arizona
8 attorneys and registered in-house counsel providing pro bono civil legal services.

9 **Background to Proposed Rule Changes**

10 In the summer of 2011, the Arizona State Bar established the Access to Justice
11 Task Force to look at ways to increase access to justice for Arizonans. This broad based
12 task force came up with several recommendations. One of the recommendations was to
13 increase the number of attorneys available to provide pro bono services to low income
14 Arizonans. One part of the recommendation was to permit retired Arizona lawyers and
15 in-house counsel not admitted in Arizona to provide pro bono services and to require
16 these attorneys to provide pro bono services through an approved legal services
17 organization. The recommendation was presented to the State Bar. The proposed rule
18 changes were drafted and went through the normal vetting process. The proposed rule
19 changes were reviewed by the Rules Committee of the State Bar, approved by the Board
20 of Governors and subsequently the State Bar submitted the Petition to Amend Rule 38 to
21 the Court.

22 **Proposed Rule Changes**

23 The amendment to Rule 38 has two components. First, the amendment clarifies
24 and simplifies the rules allowing retired Arizona attorneys and registered in-house
25 counsel to provide pro bono services. Second, it requires that these attorneys provide pro
26 bono service through an approved legal services program that would provide the
27 attorneys with the necessary resources, supervision and insurance coverage. The
28 rationale for these changes is simple: to increase the number of attorneys available and

1 willing to take on pro bono representation to serve Arizonans who need legal assistance.

2 **Need for the Rule Changes**

3 Arizona was hit particularly hard by the economic recession and has a high
4 percentage of low income persons. In August 2012, 1,127,702 persons received food
5 stamps and 1,129,544 persons received medical care through the Arizona Health Care
6 Cost Containment System (“AHCCCS”). “State of Arizona Department of Economic
7 Security Family Assistance Administration Statistical Bulletin August 2012.” [https://](https://www.azdes.gov/InternetFiles/pdf/dbme_statistical_bulletin_08_2012.pdf)
8 www.azdes.gov/InternetFiles/pdf/dbme_statistical_bulletin_08_2012.pdf. (pages 15
9 (Table 6) and 17 (Table 7A), respectively. This represents almost 20% of our population.

10 In 2011, the Census Bureau estimated that during the period 2006-2010, 15.3% or
11 over 990,000 Arizonans fell below the poverty level. [http://quickfacts.census.gov/qfd/](http://quickfacts.census.gov/qfd/states/0400.html)
12 [states/0400.html](http://quickfacts.census.gov/qfd/states/0400.html). The federal poverty level for one person in 2012 is \$11,170 and for a
13 family of three it is \$19,090. <http://aspe.hhs.gov/poverty/12fedreg.shtml>. Persons who
14 meet or slightly exceed these amounts are not able to hire lawyers. Although low
15 income, these persons often have significant and life altering legal claims. Their legal
16 issues run the gamut of civil law and include: the need for benefits such as healthcare,
17 unemployment insurance or Social Security Disability; compensation for consumer
18 scams; rights to remain in rental unit (landlord and tenant); mortgage and home
19 ownership claims: the need for custody and support; and protection from abuse.

20 Legal services programs and their volunteer lawyers programs provide the primary
21 and often the only source of legal representation available to low income Arizonans. On
22 April 5, 2012, the three legal services programs kept track of the number of persons who
23 contacted the programs for assistance on that day. *The number was a staggering 638*
24 *calls*. Of those requesting assistance that day, 182 persons were turned away due to lack
25 of resources and no other available alternatives. “The Difference One Day Makes –
26 2012.” <http://www.azbar.org/aboutus/corevalues/2012thedifferenceonedaymakes>. At
27 this time of great legal need, from 2011 to 2012, the three Arizona legal services program
28 suffered significant reductions in federal financial support totaling over 1.6 million

1 dollars. <http://www.lsc.gov/local-programs/state-profile?st=AZ>. The result is that the
2 legal services programs cannot represent many persons who could benefit from legal
3 representation.

4 When low income persons cannot afford to hire an attorney and they cannot obtain
5 assistance from the legal services program or a volunteer/pro bono attorney, they must
6 fend for themselves in administrative and judicial processes that are unfamiliar and
7 difficult to navigate without legal assistance. Retired Arizona attorneys and registered in-
8 house counsel have many years of legal experience that could be put to good use meeting
9 the unmet legal needs of our citizens. The amended rule accomplishes this worthy goal.

10 **Request for Expedited Consideration**

11 The Petition is a product of the State Bar Access to Justice Committee and the
12 State Bar. It has been open for comment for over six weeks and there are no comments
13 posted. Currently, the comment period closes on May 21, 2013.

14 Rule 28(G) allows for a Motion to Expedite. While the Rule contemplates the
15 filing of the motion when the petition is filed, there is no reason to limit a motion to that
16 timing. Rather, as shown by the State Bar process and the lack of comments, this is a
17 well thought out proposal and is not a controversial petition. To delay consideration of
18 the Petition any further simply delays implementation of this critically needed rule
19 change if approved by the Court.

20 Wherefore, the William E. Morris Institute for Justice on behalf of the Arizona
21 Foundation for Legal Services and Education, Community Legal Services, Southern
22 Arizona Legal Aid and DNA-People's Legal Services requests that this Court:

- 23 A. Expedite consideration of this Petition; and
- 24 B. Grant such further relief as is just.

25 Respectfully submitted this 23rd day of October 2012.

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2
3 By /s/ Ellen Sue Katz

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8 Original electronically filed with the
9 Clerk of the Supreme Court of Arizona
10 this 23rd day of October 2012

11 Copy of the foregoing emailed this 23rd day
12 of October 2012, to:

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