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

10 PETITION TO AMEND RULE
11 38, ARIZONA RULES OF THE
12 SUPREME COURT

Supreme Court No. _____

**Petition to Amend Rule 38, Arizona
Rules of the Supreme Court**

13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona petitions the
14 Court to amend Rule 38, Ariz. R. Sup. Ct., to increase and clarify the pool of
15 lawyers eligible to provide pro bono services. Specifically, the proposed changes
16 would clarify the rules regarding retired Arizona lawyers and also would clarify
17 and simplify the ability of registered in-house counsel to provide pro bono legal
18 services.

19 Clarifying the option of pro bono service to these lawyers would increase
20 the number of lawyers available to serve the population in need. Requiring them
21 to provide pro bono services through an approved legal services organization
22 would provide them with the necessary resources, supervision, and insurance
23 coverage.

24 These recommendations arose out of the State Bar's Access to Justice Task
25 Force. Recognizing the Bar's unique obligation to improve access to justice,
26

1 particularly in the current economic circumstances, the Board of Governors
2 charged the Task Force with developing specific proposals to increase access to
3 civil justice for Arizona's indigent and working poor. The Task Force was
4 specifically directed to examine proposals for adoption by the Bar, as well as
5 proposals that would require partnership with the legislative, executive, or judicial
6 branches. In addition, the Task Force was charged with determining how the
7 \$400,000 initially allocated by the Board of Governors for increased access to
8 justice should be distributed for maximum effect.

9 **I. Arizona lawyers on retired member status.**

10 Although an Arizona lawyer who retires after spending decades practicing
11 law may be a rich resource for pro bono work, the current Supreme Court rules are
12 confusing and may in some cases appear to foreclose that option. This confusion
13 appears to have resulted from amendments to Rule 38 that took effect on
14 December 1, 2005.

15 Prior to that date, then-existing Rule 39, Ariz. R. Sup. Ct., provided for the
16 "Emeritus Attorneys Pro Bono Participation Program," under which retired
17 lawyers in Arizona – both those admitted in Arizona and elsewhere – could
18 provide pro bono services to an approved legal assistance organization.

19 In November 2004, the State Bar filed a rule change petition that purported
20 to expand the pool of retired lawyers able to provide pro bono services by
21 substantially amending then-existing Rule 39. One of those requested amendments
22 was to define an eligible lawyer as, in part, one who "is or was admitted to
23 practice in the courts of any State, District or Territory of the United States of
24 America (*other than Arizona*).” (Emphasis added.)

1 Rather than amending Rule 39 as proposed, this Court consolidated the
2 provisions of Rule 39 into Rule 38, adopting a modified version of the State Bar's
3 proposal. Other than making minor grammatical changes, however, the Court
4 adopted the State Bar's proposed definition of an eligible lawyer. That language
5 remains today.

6 Effective January 1, 2009, the Court apparently sought to clarify the retired
7 membership category, adding the following language to Rule 32(c): "Retired
8 members may provide volunteer legal services to approved legal services
9 organizations as defined in Rule 38(e) of these rules, except that retired members
10 need not have engaged in the active practice of law within the last five years as
11 required in Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A)."

12 To clarify the rules in a concerted effort to make sure that retired Arizona
13 lawyers may provide pro bono services, Rule 38(e)(1) should be amended by
14 deleting the limiting language described above. The language should also be
15 clarified. The proposed revision is:

16 (e) Authorization to Practice Law for Attorneys Volunteering with
17 Approved Legal Services Organizations.

18 1. Purpose. ~~Individuals admitted to the practice of law in Arizona~~
19 Attorneys have a responsibility to provide competent legal
20 services for all persons, including those unable to pay for such
21 services. As one means of meeting these legal needs, attorneys
22 who otherwise are not allowed to practice law in Arizona may
volunteer to provide civil legal assistance to individuals who
are unable to pay for such services under limited circumstances.

23 A. Aan attorney who is or was admitted to practice law for
24 at least five (5) years in the courts of any state, district, or
25 territory of the United States (other than Arizona) who
26 volunteers to provide civil legal assistance to individuals
who are unable to pay for such services is allowed to do

1 ~~so, under limited circumstances, under this rule.~~ An
2 attorney may be admitted to practice for the limited
3 purpose of providing ~~such~~ assistance as an unpaid
4 volunteer in association with an approved legal services
5 organization so long as that organization employs at least
6 one Arizona attorney not admitted pursuant to any
7 provision of this rule.

8 An additional paragraph referring to in-house counsel would be added as
9 Rule 38(e)(1)(B), as discussed below.

10 **II. Registered in-house counsel.**

11 Rule 38(h) requires that lawyers who are not members of the State Bar of
12 Arizona but are employed in this state as in-house counsel must register with the
13 State Bar. Although a registered in-house counsel generally may not provide legal
14 services to anyone other than the lawyer's employer, the lawyer may provide
15 services in accordance with the requirements of Rule 38(e). Rule 38(h)(9), (10).
16 In short, registered in-house counsel may provide legal services only to their
17 employers and as volunteers for an approved legal services organization.

18 If in-house counsel choose to perform such pro bono services, they would
19 have to file a *second*, slightly more detailed, application with the Supreme Court.
20 To encourage more pro bono legal services under Rule 38(e), in-house counsel
21 should be exempted from the second application.

22 The Rule 38(e) application requires the applicant to include:

23 3. * * *

24 A. a certificate from the highest court or agency in the state,
25 territory, or district in which the applicant is presently licensed to
26 practice law documenting that the applicant has fulfilled the
requirements of active bar members for at least five years preceding
the date of the application, and that the applicant has not been

1 disciplined for professional misconduct by the bar or highest court of
2 the state, territory or district during the last 15 years;

3 B. A statement signed by an authorized representative of the
4 approved legal services organization that the applicant is an unpaid
5 volunteer associated with the organization; and

6 C. a sworn statement signed by the applicant that he or she:

7 i. has read and is familiar with the Rules of the Supreme
8 Court and the applicable statutes of the State of Arizona relative
9 to the conduct of lawyers, and will abide by the provisions
10 thereof;

11 ii. submits to the jurisdiction of the Supreme Court of
12 Arizona for disciplinary purposes, as defined by the Rules of
13 the Supreme Court; and

14 iii. has not been disciplined by the bar or courts of any
15 jurisdiction during the last fifteen years.

16 In-house counsel, by having registered under Rule 38(h), already would
17 have performed the following:

18 A. file with the State Bar of Arizona its form of verified
19 application for an Arizona Certificate of Registration of In-House
20 Counsel;

21 B. furnish to the State Bar of Arizona a certificate from the state
22 bar or from the clerk of the highest admitting court of each state,
23 territory, or insular possession of the United States, or foreign
24 jurisdiction, in which the applicant has been admitted to practice law
25 certifying the current status of the applicant's membership or
26 eligibility to practice therein;

27 C. certify that the applicant has read and is familiar with the
28 Arizona Rules of Professional Conduct; and

29 D. pay an application fee in an amount equal to seventy-five
30 percent (75%) of the current dues paid by active members of the State
31 Bar of Arizona for the calendar year in which such application is filed.

1 Rule 38(h)(3).

2 This in-house counsel registration should be sufficient for those lawyers
3 who qualify to practice in this state under Rule 38(h) and seek to provide pro bono
4 services to approved legal services organizations under Rule 38(e).

5 By virtue of their positions as in-house counsel, they are able to practice
6 law in Arizona (albeit for a circumscribed universe). Unlike non-Arizona lawyers
7 who would apply to volunteer under Rule 38(e), all in-house counsel registrants
8 must have an existing tie to the legal community due to their employment as in-
9 house counsel. The rule authorizing their practice also explicitly makes them
10 subject to the jurisdiction of the Arizona courts. Rule 38(h)(9). Finally, that same
11 rule also provides that, once registered, in-house counsel are entitled to “the
12 benefits and responsibilities” of active State Bar members – another distinct
13 difference from non-Arizona lawyers who seek to provide services under
14 Rule 38(e).

15 As a result, in addition to the amendments detailed above, Rule 38(e)
16 should be further amended to exclude in-house counsel from the certification
17 requirement:

18 (e) Authorization to Practice Law for Attorneys Volunteering with
19 Approved Legal Services Organizations.

20 1. *Purpose.* ~~Individuals admitted to the practice of law in Arizona~~
21 Attorneys have a responsibility to provide competent legal services
22 for all persons, including those unable to pay for such services. As
23 one means of meeting these legal needs, attorneys who otherwise are
24 not allowed to practice law in Arizona may volunteer to provide civil
legal assistance to individuals who are unable to pay for such services
under limited circumstances.

25 A. An attorney who is or was admitted to practice law for at
26 least five (5) years in the courts of any state, district, or territory of

1 the United States (~~other than Arizona~~) who volunteers to provide
2 civil legal assistance to individuals who are unable to pay for such
3 services is allowed to do so, under limited circumstances, under
4 this rule. An attorney may be admitted to practice for the limited
5 purpose of providing such assistance as an unpaid volunteer in
6 association with an approved legal services organization so long as
7 that organization employs at least one Arizona attorney not
8 admitted pursuant to any provision of this rule.

9 B. An attorney who is registered as in-house counsel pursuant
10 to Rule 38(h) may provide assistance as an unpaid volunteer in
11 association with an approved legal services organization so long as
12 that organization employs at least one Arizona attorney not
13 admitted pursuant to any provision of this rule. An attorney who
14 qualifies under this provision need not comply with the
15 certification requirement of paragraph (e)(3) of this rule.

16 2. *Definitions.*

17 A. [no change]

18 B. A "Rule 38(e) attorney" is any person who is or was
19 admitted to practice in the courts of any state, district or
20 territory of the United States of America (~~other than Arizona~~)
21 and who is not registered as in-house counsel pursuant to
22 Rule38(h)

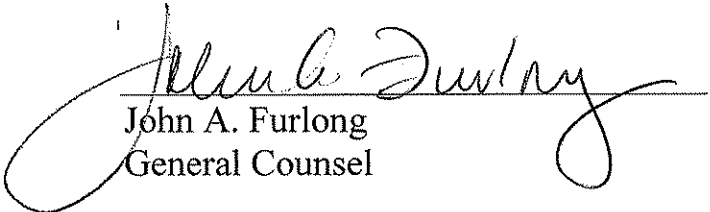
23 CONCLUSION

24 The need for pro bono legal services for the underserved and needy
25 population is so great that any perceived or actual hindrances to them should be
26 removed. The changes above attempt to clarify and simplify the rules to allow
more lawyers to more readily help approved legal services organizations meet
those unmet needs.

The State Bar respectfully requests that the Court amend Rule 38 as
described above. Appendix A contains the complete text of the proposed
amendments.

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RESPECTFULLY SUBMITTED this 14th day of May, 2012.


John A. Furlong
General Counsel

Electronic copy filed with the Clerk of
the Supreme Court this 14th day of
May, 2012.

by: Kathleen A. Lundgren

APPENDIX A

(e) Authorization to Practice Law for Attorneys Volunteering with Approved Legal Services Organizations.

1. *Purpose.* ~~Individuals admitted to the practice of law in Arizona~~ Attorneys have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, attorneys who otherwise are not allowed to practice law in Arizona may volunteer to provide civil legal assistance to individuals who are unable to pay for such services under limited circumstances.

A. ~~An attorney who is or was admitted to practice law for at least five (5) years in the courts of any state, district, or territory of the United States (other than Arizona) who volunteers to provide civil legal assistance to individuals who are unable to pay for such services is allowed to do so, under limited circumstances, under this rule. An attorney may be admitted to practice for the limited purpose of providing such assistance as an unpaid volunteer in association with an approved legal services organization so long as that organization employs at least one Arizona attorney not admitted pursuant to any provision of this rule.~~

B. An attorney who is registered as in-house counsel pursuant to Rule 38(h) may provide assistance as an unpaid volunteer in association with an approved legal services organization so long as that organization employs at least one Arizona attorney not admitted pursuant to any provision of this rule. An attorney who qualifies under this provision need not comply with the certification requirement of paragraph (e)(3) of this rule.

2. *Definitions.*

A. [no change]

B. A “Rule 38(e) attorney” is any person who is or was admitted to practice in the courts of any state, district or territory of the United States of America ~~(other than Arizona)~~ and who is not registered as in-house counsel pursuant to Rule38(h)