

1 John A. Furlong, Bar No. 018356
General Counsel

2
3 Patricia A. Sallen, Bar No. 012338
Deputy General Counsel
4 STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
5 Phoenix, Arizona 85016-6266
Telephone: (602) 252-4804
6 John.Furlong@staff.azbar.org
7 Patricia.sallen@staff.azbar.org

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

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

Supreme Court No. R-12-0028

13 **Comment of State Bar of Arizona in**
14 **Response to Court's September 12,**
15 **2013, Order Re-Opening Comments**

16 As intended by the State Bar of Arizona, the emergency rule change to Rule
17 38(e), Ariz. R. Sup. Ct. – detailed in Attachment A to the Court's September 12, 2013,
18 order – relaxed restrictions on registered in-house counsel who want to provide civil
19 legal assistance to individuals unable to pay for such services. Attachment B to the
20 Court's September 12, 2013, order retreats from that emergency change. The State Bar
21 respectfully requests that the Court consider the impact that Attachment B's backward
22 steps would have on access to justice and, instead, permanently adopt the emergency
23 rule change.

24 The emergency rule change deleted the requirement that registered in-house
25 counsel comply with the certification requirement of Rule 38(c)(3), Ariz. R. Sup. Ct. As
the State Bar stated in its original rule-change petition, "If in-house counsel choose to
perform these pro bono services, they would have to file a *second* application, one

1 slightly more detailed, with the Supreme Court. To encourage more pro bono legal
2 services under Rule 38(e), in-house counsel should be exempted from the second
3 application.”

4 Appendix B reinstates the requirement that registered in-house counsel file a
5 certification with the Supreme Court clerk. *See* Proposed Rule 38(e)(2)(B) and (e)(3),
6 Appendix B. The only concession to the fact that the registered in-house counsel
7 already has filed the in-house counsel application – and because of that is able to
8 practice law in this state – is allowing the registered in-house counsel to use his or her
9 current Rule 38(h) registration certificate instead of a certificate of good standing from
10 wherever the lawyer is admitted to practice. *See* Proposed Rule 38(e)(3)(A), Appendix
11 B.

12 In addition, Appendix B also reinstates the requirements that the registered in-
13 house counsel has been engaged in the practice of law for at least five years and has not
14 been disciplined for professional misconduct in any jurisdiction within a number of
15 years. *See* Proposed Rule 38(e)(2)(B)(i) and (ii), Appendix B.

16 Deleting these latter requirements were, admittedly, unintended consequences of
17 the State Bar’s rule-change proposal, which focused on reducing roadblocks to
18 increasing the pool of lawyers eligible to do pro bono work. In retrospect, however,
19 deleting those two requirements makes eminent sense, as discussed below.

20 Neither the certification nor the active-practice and discipline-free time periods
21 are necessary. Considering the status of registered in-house counsel as being “entitled to
22 the benefits and responsibilities of active members,” as Rule 38(h)(9), Ariz. R. Sup. Ct.,
23 says, these roadblocks are also warranted.

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25

1 First, the certification requirement is unnecessary because the statements to be
2 certified – except for current Rules 38(e)(3)(A) and (e)(3)(C)(iii), discussed below – are
3 already otherwise addressed:

- 4 • Rule 38(e)(3)(B) (statement from organization that the applicant is an
5 unpaid volunteer): Rule 38(e)(5) already specifically prohibits any lawyer
6 providing services under Rule 38(e) from receiving compensation from
7 the approved legal services organization.
- 8 • Rule 38(e)(3)(C)(i) (statement that applicant has read and is familiar with
9 the Supreme Court rules and applicable laws regarding lawyer conduct
10 and will abide by them): Registered in-house counsel already certify, as
11 directed by Rule 38(h)(3)(C), that they have read and are familiar with the
12 Arizona Rules of Professional Conduct.
- 13 • Rule 38(e)(3)(C)(ii) (statement that lawyer submits to Supreme Court’s
14 jurisdiction): Rule 38(h)(9) also specifically notes that registered in-house
15 counsel are subject to the disciplinary jurisdiction of this state, just as are
16 active members.

17 Second, requiring registered in-house counsel to have at least five years of
18 active-practice time and be five years “discipline free” before performing civil pro bono
19 work for an authorized legal-services organization is contrary to the structure under
20 which they are already allowed to practice law in this state.

21 When applying for in-house-counsel registration, a non-Arizona lawyer must
22 certify that he or she is a member in good standing of another admitting bar. There is no
23 requirement that the non-Arizona lawyer:

- 24 • Have *any* amount of active-practice time. As a result, although a brand-
25 new lawyer who becomes registered as an in-house counsel may

1 immediately provide legal services in this state to his or her client,
2 Appendix B would exclude that same brand-new lawyer from providing
3 pro bono services through a legal services organization – an organization
4 that also must employ an Arizona-admitted lawyer.

- 5 • Have been “discipline free” for *any* length of time prior to being
6 registered. Although a lawyer who was disciplined three years ago could
7 become registered as an in-house counsel and allowed to practice in this
8 state, that same lawyer could not generously donate pro bono legal
9 services under proposed Rule 38(e).

10 Registered in-house counsel constitute a distinctly different group from the other
11 population of lawyers allowed to practice under Rule 38(e): lawyers who are or were
12 admitted to practice law for at least five years in another jurisdiction. While these other
13 lawyers are not required to even be currently practicing, registered in-house counsel
14 maintain their ability to practice in this state only by practicing for and being employed
15 by organizational entities. Rule 38(h)(1), Ariz. R. Sup. Ct.

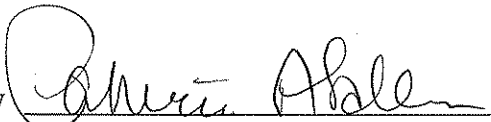
16 In addition, concerns about maintaining competency are unfounded. Unlike
17 formerly admitted lawyers, registered in-house counsel must comply with MCLE
18 requirements in the jurisdictions in which they are admitted or, if not subject to those,
19 then with Arizona’s requirements. Rule 38(h)(9), Ariz. R. Sup. Ct.

20 **Conclusion**

21 Registering as in-house counsel should be sufficient for those lawyers who
22 qualify to practice in this state under Rule 38(h) and seek to provide pro bono services
23 in conjunction with approved legal services organizations under Rule 38(e). Reinstating
24 the certification, active-practice and discipline-free requirements would add perceived
25 or actual hindrances to promoting access to justice. As a result, the State Bar

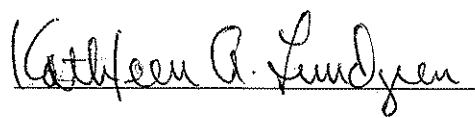
1 respectfully requests that the Court permanently adopt the emergency amendments
2 detailed in Attachment A to the Court's September 12, 2013, order.

3 RESPECTFULLY SUBMITTED this 25th day of October
4 2013.

5 By 
6 Patricia A. Sallen
7 Deputy General Counsel

8 John A. Furlong
9 General Counsel

10 Electronic copy filed with the Clerk
11 of the Supreme Court of Arizona this
12 25th day of October, 2013.

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