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**IN THE SUPREME COURT STATE OF ARIZONA**

AMENDED PETITION TO AMEND RULE	)	Supreme Court No:
38(d)(3)OF THE RULES OF THE SUPREME	)	R-06-0023
COURT OF ARIZONA PERTAINING	)	
TO THE ACTIVITIES OF LAW STUDENTS	)	
ACTING IN A VOLUNTEER CAPACITY	)	
	)	

**INTRODUCTION**

Pursuant to Rule 28 of the Rules of the Supreme Court, Southern Arizona Legal Aid, Inc. (SALA) respectfully submits this amended petition (the “Amended Petition”) to the Arizona Supreme Court to amend Rule 38(d)(3) by adding language which permits eligible law students volunteering with a volunteer lawyers program associated with an approved legal services organization to appear at the request of the court as a friend of the court in uncontested civil proceedings under the direct supervision of a volunteer attorney or staff attorney associated with an approved legal services organization.

This Amended Petition replaces the proposed amended rule language included in the original petition dated October 30, 2006. This Amended Petition includes the same proposed amended rule language included in the James E. Rogers College of Law’s

comment to the original petition. After consultation with the James E. Rogers College of Law and in an effort to propose the best language to co-exist but not encumber the clinical rules as they stand at present, this Amended Petition offers a solid and workable proposal of draft amendment rule language.

## **I. SUMMARY OF PROPOSED CHANGE**

As presently written, Arizona Supreme Court Rule 38(d)(3) governs the court appearances of law students who are enrolled in clinical curriculum-based law school programs for which they receive credit. The rule allows eligible law students to appear in a variety of matters, under the direct and indirect supervision of a supervising attorney with written consent of any person on whose behalf the student is appearing. The proposed amendment would permit an eligible law student participating in a volunteer legal services program managed by an approved legal services organization, and in cooperation with a law school, to, at the request of the court, appear as a friend of the court to assist with uncontested civil matters under the direct supervision of a volunteer attorney, and with the consent of self-represented litigants.

Law student volunteer programs in association with legal services organizations are relatively new in Arizona and as a result, were not considered upon the drafting of the original rule. Such volunteer programs fall outside the scope of the current rule for two reasons. One, students appear not to represent clients in contested hearings and receive school credit for doing so, but to assist the court with self-represented litigants and help expedite the judicial process. Under the volunteer model, students sign up at the beginning of each semester and are trained by members of the bar and judiciary. No school credit is given for student participation and no student practices law nor renders

legal advice. Two, law student volunteer programs are primarily designed to foster the pro-bono ethic so that upon graduation and entry into the bar, volunteerism will be part of the new attorney collective mindset. By virtue of its design alone, the law student volunteer model falls outside the scope of the current rule because participation is one hundred percent voluntary and students are supervised at all times by either a volunteer attorney or a legal services staff attorney.

The current SALA Volunteer Lawyers Program Bankruptcy Project is an example of an on-going successful volunteer-based court room project. In the Bankruptcy Project, students, under the direct in-person supervision of a volunteer attorney, meet with self-represented litigants before their reaffirmation hearings to ensure they understand the paperwork and process. After meeting with the self-represented litigant and reviewing the file, the law student and volunteer attorney appear at the hearing as friends of the court along side the self-represented litigant. The law student and volunteer attorney give a synopsis of the self-represented litigant's case and provide a recommendation as to whether they believe reaffirmation is the best alternative. The judge then proceeds with the hearing and interacts directly with the self-represented litigant. The court benefits from the project because the self-represented litigants are more informed upon going before the judge and, as a result, the hearing proceeds in an expeditious manner. The law students enjoy the opportunity and experience of appearing before a federal court judge, interacting with self-represented litigants and interacting with a licensed practicing attorney.

An amendment to the current rule will also remove ambiguity surrounding the question of whether Rule 38(d) governs law student volunteer programs. With its

adoption, important work between volunteer lawyer programs, the courts and the law schools can continue without concern about programming parameters and rule compliance.

SALA's Volunteer Lawyers Program is actively researching new projects that serve self-represented litigants and engage volunteer attorneys, volunteer law students and the judiciary. Adoption of this amendment will allow volunteer lawyer programs throughout the state to move forward and establish strong relationships with the judiciary while continuing to promote volunteerism at the law student level.

DATED this 8th day of May, 2007.

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ANTHONY L. YOUNG

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MICHELE MIRTO

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ANNE BARRETT

## **DRAFT OF PROPOSED AMENDED RULE**

### **Rule 38 (d) Activities of Law Students**

#### **(d) Clinical Law Professors and Law Students**

1. *Purpose.* The bench and the bar are primarily responsible for providing competent legal services for all persons, including those unable to pay for these services. This rule is adopted as one means of providing assistance to practicing attorneys in providing such services and to encourage law schools to provide clinical instruction in trial work of varying kinds and to facilitate volunteer opportunities for students in pro bono contexts.

2. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state bar but certified pursuant to paragraph (d)(6)(A) of this rule may appear as lawyer, solely in connection with supervision of a clinical law program approved by the dean and faculty of the College of Law of the University of Arizona or of the College of Law of Arizona State University, in any court or before any administrative tribunal in this state in any of the matters enumerated in paragraphs (d)(3)(A)-(D) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

3. *Activities of Law Students.*

A. An eligible law student [meeting the requirements of paragraph \(d\)\(5\)](#) may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the student is appearing has consented in writing to that appearance and the supervising lawyer has also indicated in writing approval of that appearance, in the following matters:

i. any civil matter: in such cases in justice, municipal, and magistrate courts, the supervising lawyer is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence;

ii. any misdemeanor criminal defense matter in justice, municipal, and magistrates courts: in such cases the supervising lawyer is not required to be personally present in court except during trial if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

iii. any felony criminal defense matter in justice, municipal, and magistrate courts and any criminal matter in superior court: in such cases the supervising lawyer must be personally present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.

Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising lawyer to be personally present for such period and under such circumstances as the court may direct.

B. An eligible law student [meeting the requirements of paragraph \(d\)\(5\)](#) may also appear in any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the prosecuting attorney or that attorney's authorized representative. In all appearances in criminal cases a supervising lawyer must be present except when such appearance is in justice, municipal, or magistrate courts.

C. In each case, the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the student shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to this rule.

D. Under the general supervision of the supervising lawyer, but outside his personal presence, an eligible law student [meeting the requirements of paragraph \(d\)\(5\)](#) may engage in other activities, including:

- i. preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer;
- ii. preparation of briefs, abstracts and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising lawyer;
- iii. assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court (if there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record);
- iv. rendering legal advice and performing other appropriate legal services, but only after prior consultation with and upon the express consent of the supervising lawyer.

E. An eligible law student [meeting the requirements of paragraph \(d\)\(5\)](#) may participate in oral argument in this Court and the court of appeals, but only in the presence of the supervising lawyer.

**F. Students who meet the requirements of (d)(6) below, may, at the invitation and request of the court, appear as a friend of the court to assist the proceeding in any civil matter involving an otherwise unrepresented individual in an uncontested proceeding. Such students must be directly supervised in person by an attorney associated with a volunteer legal services program as described in (d)(6)(B).**

G. **Except for students participating under the requirements of (d)(6) below,** all activities under this rule must be part of the law school's educational and clinical law practice program approved by the dean and faculty of the College of Law of the University of Arizona or the College of Law of Arizona State University, or other law school's juris doctorate program approved and accredited by the American Bar Association. A written statement of the contents of the school's educational and clinical law practice program of the Arizona State University or University of Arizona College of Law or other law school's juris doctorate program approved and accredited by the American Bar Association shall be filed with the executive director of the state bar not later than thirty days prior to the commencement of the program.

4. *Requirements and Limitations for Clinical Law School Professors.* In order to make an appearance as lawyer pursuant to this rule, the clinical law professor must:

A. be duly employed as a faculty member of the College of Law of the University of Arizona or the College of Law of Arizona State University for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

B. be admitted by examination to the bar of another state or the District of Columbia;

C. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered; and

D. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers.

*5. Requirements and Limitations for Law Students.* Except for students making an appearance pursuant to paragraph (d)(3)(F), in order to make an appearance pursuant to this rule, the law student must:

A. either be duly enrolled in the College of Law of the University of Arizona or the College of Law of Arizona State University, or be duly enrolled in a law school's juris doctorate program approved and accredited by the American Bar Association, and be supervised by a member of the State Bar of Arizona, and be certified by the deans of the law school on a form approved by the clerk of this Court showing compliance with Rules 38(d)(3)(F), 38(d)(5)(B) and (C), and 38(d)(7);

B. have successfully completed legal studies amounting to at least three semesters, or the equivalent if the school is on some basis other than a semester basis;

C. be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern, including instruction in civil, criminal, and courtroom procedure;

D. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered, but this shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student, nor shall it prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require; and

E. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct and the rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of attorneys.

*6. Requirements and Limitations for Law Students making appearances pursuant to paragraph (d)(3)(F). The law student must:*

**A. During the academic year, be duly enrolled in the University of Arizona or Arizona State University or any other American Bar Association accredited law school in the State of Arizona, and during the summer, must be in good standing at the University of Arizona, Arizona State University, or any other accredited law school in the State of Arizona and intending to return, or have graduated and be studying for the Arizona Bar;**

**B. Be participating in a volunteer legal services program managed by an approved legal services organization in cooperation with the University of Arizona College of Law, the Arizona State University College of Law, or any other American Bar Association accredited law school in the State of Arizona;**

**C. Be directly supervised in person by an attorney associated with such volunteer legal services program;**

**D. Receive written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court by the volunteer legal services program.**

*7. Certification for Students making an appearance pursuant to paragraph (d)(3)(A)–(E):*

A. The certification of a clinical law professor by the law school dean shall be filed with the clerk of this Court and with the state bar and shall remain in effect until withdrawn.

B. The certification of a law **student making an appearance pursuant to paragraph (d)(3)(A)–(E):** by the law school dean shall be filed with the clerk of this Court and with the state bar and, unless it is sooner withdrawn, it shall remain in effect until the expiration of eighteen months after it is filed or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. As to any student who passes that examination, the certification shall continue in effect until the date the student is admitted to the bar.

C. In the case of either a clinical law professor or a law student, certification:

i. may be withdrawn by the dean at any time by filing a notice to that effect, with or without stating the cause for withdrawal, with the clerk of this Court, who shall forthwith mail copies thereof to the clinical law professor or the law student and the supervising lawyer;

ii. may be terminated by this Court at any time without cause and without notice or hearing by filing notice of the termination with the clerk of the Court and with the state bar; and

iii. shall in no way be considered as an advantage or a disadvantage to the professor or student in an application for admission to the state bar.

D. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor or law student pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor or student to make application for admission to practice law if the professor or student is in other respects qualified for such admission.

7. *Supervision.* In this rule, "supervising lawyer" means either a clinical law professor or a member of the state bar in each case whose service as a supervising lawyer for this program is approved by the dean of the law school in which the law student is enrolled or (in the case of a law student enrolled in a law school other than the Arizona State University or University of Arizona College of Law) whose service as a supervising lawyer is approved by the dean of that law school in which the student is enrolled. An eligible law student shall do any of the things permitted by this rule only under the supervision of the supervising lawyer. The supervising lawyer shall not delegate this responsibility to another except that the incumbent of a public office may designate one or more qualified deputies for this purpose. The supervising lawyer shall:

A. assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;

B. assist in the student's preparation to the extent the supervising lawyer considers it necessary; and

C. agree to serve as a supervising lawyer and to participate either in the program administered by the Arizona State University or University of Arizona College of Law, or agree to participate in the program or activities authorized and certified by the dean of a law school's juris doctorate program other than the Arizona State University or University of Arizona College of Law.

8. *Miscellaneous.*

A. To the extent that a professor or student is engaged in practice of law under this rule, the professor or student shall, for the limited purpose of performing professional services as authorized by this rule, be deemed active members of the state bar (but not required to pay fees).

B. The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

C. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully do prior to the adoption of this rule.

D. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by professors or students certified under the provisions of this rule. All persons participating in a program of instruction pursuant to which a professor or student is certified under this rule are enjoined not to disclose privileged or confidential communications whether in the implementation of a course of instruction or otherwise.