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

10 PETITION TO AMEND THE
11 ARIZONA RULES OF THE
12 SUPREME COURT TO ADOPT
13 RULE 38(g)

Supreme Court No. R_____.

**Petition to Amend the
Arizona Rules of The
Supreme Court to Adopt
Rule 38(g)**

14 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Law Offices of
15 the Mohave County Public Defender hereby petitions this court to amend the
16 Arizona Rules of the Supreme Court by adopting a new Rule 38(g) (attached as
17 Exhibit A). Proposed Rule 38(g) would allow for a special exception to standard
18 examination and admissions process for attorneys who are licensed in another
19 state, are in good standing with the attorney regulation authority of every state in
20 which they are, or have been licensed, and who are employed by a qualified
21 government funded rural public defense agency. The general terms of the
22 exception parallel those currently in existence for Approved Legal Services
23 organizations.
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25

Petition to Amend the Arizona Rules of The Supreme Court to Adopt Rule 38(g)

1 03-01 (April 2003, attached hereto as Exhibit 2); ABA Standards Relating to
2 Providing Defense Services, ABA Formal Ethics opinion 06-441 (Attached hereto
3 as Exhibit 3); and Arizona Ethics Committee Opinion No. 90-10 (Attached hereto
4 as Exhibit 4).

5 It is generally very difficult to recruit experienced defense attorneys to rural
6 Arizona communities. By the time an attorney has several years of practice in one
7 of the metro areas, it is very difficult for a rural county to offer sufficient
8 incentives to lure an individual to leave their lifestyle, friends and social network
9 to begin over again. Similarly it is difficult to recruit Arizona Law School
10 graduates to the rural counties immediately after graduation. These individuals
11 have spent a minimum of 3 years in either Phoenix/Tempe, or Tucson and have
12 generally become accustomed to a certain lifestyle that is not available in rural
13 Arizona. As a result of these challenges, it is common practice in Mohave County
14 to recruit both experienced and graduating law school students from other state's.
15 In comparison to other State's most of Arizona's counties pay a very competitive
16 and attractive salary for public defenders. The success of recruiting efforts in other
17 States is very high, especially for graduating law school students. It is somewhat
18 more difficult to recruit experienced criminal attorneys from other states due to the
19 fact that they must sit for and pass the Arizona Bar Examination and often be fully
20 licensed before they can begin earning a comparative salary to what they are
21 earning in another State. Newly graduating law school students on the other hand,
22 seem to realize that they must wait for their Bar license before beginning their
23 career anyway and seem more willing to accept offers in rural Arizona.

24 However, whether it is an experienced criminal attorney, or new law school
25 graduate, there is a significant delay in the ability of rural counties in filling

1 vacancies that occur when experienced attorneys retire, move to private practice, or
2 move to a metro area. The impact of the departure of an experienced attorney who
3 is most likely handling a fairly complex set of serious felony cases is immediate.
4 Absent an individual ready to advance with comparable legal skills and
5 knowledge, there is a delay in the provision of services, often requiring that
6 numerous cases be referred to private contract attorneys. From the time a vacancy
7 is identified, it can take several months to recruit a person from out of state, and
8 then they must wait for the next Bar Examination cycle, to take and pass the
9 examination, as well as wait for clearance by Character and Fitness. In total this
10 process can take anywhere from 6-18 months from start to finish. During this time
11 period, the cases which would otherwise be handled by the attorney in that vacant
12 position are generally sent out to more expensive private contract counsel. In
13 Mohave County the average difference in the cost of providing representation
14 through in-house indigent defense employees versus private contractors has
15 historically been roughly \$300 more per case for private contract counsel. This
16 cost can add up quickly when one or more vacancies are present and grow as the
17 length of the vacancy grows.

18 The need for a quicker method of filling vacancies for rural counties is
19 reflected in the high cost of providing private contract counsel in lieu of authorized
20 staff attorneys. Rural counties are simply without sufficient funds and social
21 infrastructure to fill vacancies in a timely manner. The inability to rapidly fill
22 vacancies with qualified criminal attorneys places an unnecessary burden on the
23 rural counties and interferes with the orderly administration of justice. This
24 disruption impacts, courts, prosecutors, county budgets, law enforcement and
25 victims, all in a negative manner.

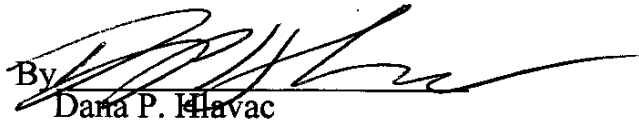
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2 **II. An Alternative Recruiting Model Already in Use in Arizona and other**
3 **States exists for the Recruiting of Experienced Attorneys for Indigent**
4 **legal Services to rural areas.**

5 Dealing with turn-over and retention in the area of indigent legal service has
6 long been a problem throughout this country. Many jurisdictions have taken
7 positive steps to ease the difficulty of recruiting attorneys into what are generally
8 considered low paying indigent legal services positions. This list currently
9 includes Arizona, where the ability to recruit attorneys to legal services (civil)
10 organizations is opened to include out of state attorneys under Rule of Supreme
11 Court 38(e). Under this rule, "an attorney who is or was admitted to practice law
12 for at least five (5) years in the courts of any state, district, or territory of the
13 United States (other than Arizona) who volunteers to provide civil legal assistance
14 to individuals who are unable to pay for such services is allowed to do so, under
15 limited circumstances, under this rule. An attorney may be admitted to practice for
16 the limited purpose of providing such assistance as an unpaid volunteer in
17 association with an approved legal services organization so long as that
18 organization employs at least one Arizona attorney not admitted pursuant to any
19 provision of this rule." Rule of the Supreme Court 38(f) also provides for a type of
20 reciprocal admission for attorneys from other states who have been admitted for a
21 minimum of two years in another licensing state. The proposed rule is more
22 restrictive than its' counterparts (38(e) & (f) in that it requires the individual
23 attorney seeking admission under 38(g) to ultimately be admitted under normal
24 admission procedures, or the limited admission terminates after three years.
25

1 **Conclusion**

2 It is respectfully requested that the Court adopt proposed Rule 38(g) in
3 accord with this petition.

4
5 Dated this 7th day of January, 2008

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7
8 By 
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Exhibit A

1 **Rule 38(g) Authorization to Practice Law for Attorneys Employed by Rural**
2 **Indigent Defense Offices**

3 An attorney who has been admitted to the active practice of law in any other
4 jurisdiction for at least two years and who is employed full time by a State or
5 County funded rural indigent defense office, in this State may be admitted to
6 practice before all courts of this State, for the limited purpose of providing
7 representation to appointed clients of such office, so long as that office employs at
8 least one Arizona attorney not admitted pursuant to any provision of this rule,
9 subject to the following:

10 **1. *Definitions.***

11
12 a. The "active practice of law" means that an attorney has been
13 engaged in the practice of law, which includes, but is not limited to,
14 private practice, house counsel, public employment, or academic
15 employment.

16 b. A "funded rural indigent defense office" means a governmental,
17 department, organization or other entity formed under the authority of
18 A.R.S. § 11-581 et seq.. The office also must be located in a county
19 with a population less than 500,000. A funded indigent defense office
20 must be approved as such by the Supreme Court of Arizona.

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22 **2. *Approval of Funded Indigent Defense Office.***

23 A. To obtain approval of the Supreme Court the Office shall file a
24 petition with the clerk of the Court containing the following:
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- i. a description of the structure of the organization, to include a certification that the organization maintains a supervisory structure and ratio in line with accepted defense standards and the source of those standards utilized in establishing the structure and ratio of supervisory structure and ratios;
- ii. a copy of the last annual report prepared pursuant to A.R.S. § 11-584(A)(3). During any time in which the office has an attorney employed under this rule, a copy of the annual report shall be filed with the Supreme Court at the same time as it is filed with the other designees under A.R.S. § 11-584(A)(3); and
- iii. a certification that the office complies with ethical workload limits, American Bar Association Formal Ethics Opinion 06-441 (2006), American Council of Chief Defenders/National Legal Aid and Defender Association Ethics Opinion 03-01 (April 2003) and Arizona Bar Ethics Opinion 90-10. Such certification shall include an affirmation that the office has a means of reviewing caseload/workload of assigned attorneys; and
- iv. a description of the source of major funds used by the organization; and

- 1 v. the type of representation the office provides under
2 A.R.S. § 11-584(A); and
3
4 vi. the names of all members of the State Bar of Arizona
5 who are employed by the office or who regularly
6 perform legal work for the office; and
7
8 vii. a certification that any, and all, attorneys employed under
9 this rule, receive pay and benefits commensurate with
10 other regularly licensed attorneys in the office.

11 A copy of the petition for approval shall be sent by the Office to the
12 Chief Bar Counsel of the State Bar of Arizona, who shall file any
13 comment the state bar desires to file respecting such petition with the
14 clerk of the Court within ten days after the date of receipt of such
15 petition. A funded indigent defense office is not approved until an
16 order confirming such approval is entered by the Court. A copy of the
17 order approving the funded indigent defense office under this rule
18 shall be sent by the clerk of the Court to the Chief Bar Counsel of the
19 State Bar of Arizona.

20 **3. *Application and Authorization.*** An attorney who seeks authorization
21 to practice law under this rule shall file with the clerk of the Supreme
22 Court of Arizona an application including:

- 23 **A.** a certificate from the highest court or agency in the state,
24 territory or district in which the applicant is presently licensed to
25 practice law documenting that the applicant has fulfilled the

1 requirements of active bar membership for at least the two years
2 preceding the date of the application, and that the applicant has
3 not been disciplined for professional misconduct by the bar or
4 highest court of the state, territory or district for the past five
5 years, or during the time of the applicant's licensure, whichever
6 is greater;

7 B. a statement signed by an authorized representative of the
8 approved funded indigent defense office that the applicant is
9 employed by the organization; and

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

11 i. has read and is familiar with the Rules of the Supreme
12 Court and any applicable statutes of the State of Arizona
13 relative to the conduct of lawyers, and will abide by the
14 provisions thereof; and

15 ii. submits to the jurisdiction of the Court for disciplinary
16 purposes, as defined by the Rules of the Supreme Court;
17 and
18

19 iii. has not been disciplined by the bar or courts of any
20 jurisdiction within the past five years, or during the time
21 of the applicant's licensure, whichever is greater.
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24 The applicant shall send a copy of the application to the State Bar of
25 Arizona, which shall file any objection to such application with the clerk of

1 the Supreme Court within ten (10) days after the date of receipt of such
2 application. An attorney is not allowed to practice law under this rule until
3 the applicant has been authorized to do so by order of the Supreme Court of
4 Arizona. The clerk of the Supreme Court shall send a copy of the order
5 authorizing the practice of law to the State Bar of Arizona.

6 **4. *Mandatory Continuing Legal Education.*** An attorney authorized to
7 practice under this paragraph (g) must comply with the Mandatory
8 Continuing Legal Education (MCLE) requirements of Rule 45.

9
10 **5. *Expiration of Authorization.*** Authorization to practice law under this
11 section shall remain in effect from the date of the order authorizing the
12 applicant to practice law in the State of Arizona until such time as the
13 applicant no longer works for an approved funded indigent defense
14 office, is admitted to the practice of law in Arizona pursuant to Rules
15 of the Supreme Court 33 through 37, or three years from the date of
16 the order authorizing the applicant to practice law under this rule,
17 whichever comes first. If the applicant ceases employment with the
18 funded indigent defense office, an authorized representative of the
19 office shall, within ten (10) days of the date of termination of
20 employment, file a notification of the termination with the clerk of the
21 Court and the Chief Bar Counsel of the State Bar of Arizona,
22 specifying the date of termination of employment. If the applicant
23 leaves the approved funded indigent defense office in order to work
24 for another approved funded indigent defense office, a notification of
25 new employment shall be filed with the clerk of the Court and the

1 State Bar of Arizona. In the event of an applicant transferring from
2 one approved funded indigent defense office to another, the time limits
3 for expiration of licensure under this rule shall run from the date of the
4 original order of admission. No applicant may be admitted more than
5 once pursuant to this rule.

6 **6. *Discipline.*** In addition to any appropriate proceedings and discipline
7 which may be imposed by the Court under these rules, the Rule 38(g)
8 attorney shall be subject to the following disciplinary measures:

9
10 A. civil contempt imposed by the presiding judge or hearing officer
11 for failure to abide by a tribunal's orders in any matter in which
12 the Rule 38(g) attorney has participated; and

13 B. withdrawal of the certification hereunder, with or without cause,
14 by either the Supreme Court, or the funded indigent defense
15 office.

16
17 **7. *Limitation of Activities.*** An attorney authorized to practice under this
18 rule shall not perform any legal services within the State of Arizona
19 except for clients of the approved funded indigent defense office by
20 which the attorney is employed. The attorney shall not accept any
21 compensation for such services except such salary as may be provided
22 to him or her by the organization. Part-time employment is not
23 permitted under this rule.

24 **8. *Supervision.*** An attorney authorized to practice under this section
25 who has been practicing in Arizona for less than two years shall be

1 supervised by an attorney who is an active member of the State Bar of
2 Arizona, who is employed full time by the approved funded indigent
3 defense office for whom the applicant attorney works, and who will
4 act as a supervisory lawyer pursuant to Rule 42 of the Rules of the
5 Supreme Court of Arizona, ER 5.1.