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**IN THE SUPREME COURT
STATE OF ARIZONA**

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| In the Matter of: |) | |
| |) | Supreme Court No. R- ____ - ____ |
| PETITION TO AMEND |) | |
| RULE 34(f)(4) A.R.S. SUPREME COURT RULES |) | Petition to Amend Rule 34(f)(4) A.R.S. |
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Pursuant to Rule 28, Rules of the Supreme Court, Kyle Castillo respectfully petitions this Court to adopt repealing Rule 34(f)(4), governing Arizona’s rule on out of state attorney’s being admitted on motion to the Arizona State Bar. The original rule is as follows:

“An applicant who has failed a bar examination administered in this jurisdiction or who has passed the uniform bar examination in another jurisdiction but failed to achieve the Arizona scaled score within five (5) years of the date of filing an application under this rule shall not be eligible for admission on motion.”¹

¹ A.R.S. Sup.Ct.Rules, Rule 34(f)(4).

The rule reads one of two ways to anyone thinking about applying for Admission on Motion to the Arizona Bar:

1. If a person has failed the Arizona Bar Exam or has passed in another jurisdiction but failed to achieve the scaled score within five (5) years, they are not eligible to apply for Admission on Motion to the Arizona Bar for five (5) years from the date they last failed the exam or from the last bar exam they took failing to achieve the scaled score;

OR

2. If a person has failed the Arizona Bar Exam or has passed in another jurisdiction but failed to achieve the scaled score within five (5) years, they are not eligible to apply for Admission on Motion to the Arizona Bar.

The Arizona Supreme Court should find both the ambiguous reading of Rule 34(f)(4) and the rule requirement itself, under either reading, as unacceptable. Moreover, the Arizona Supreme Court should use its exclusive authority to decide who may engage in the practice of law to repeal the requirement from the Admission on Motion process. A.R.S. Const. Art. 3.

I. The Importance of Alternative Pathways to Licensure Warrants Addressing Rule 34 Admission on Motion.

1. The more traditional way to obtain licensure in Arizona or any jurisdiction is by taking the jurisdictions respective bar exam. The Arizona Bar uses the Uniform Bar Exam (“UBE”) format to

test perspective attorney's "readiness" to practice in the state of Arizona. Arizona requires a scaled score of 273 or higher to be considered having passed the bar exam. Arizona's scaled score is the fifth highest score requirement of the 36 jurisdictions that have or will soon adopt the UBE format.

2. However, over the years, multiple jurisdictions, including Arizona, have recognized the necessity for experienced attorneys to be able to obtain full licensure in another jurisdiction without taking another bar exam, such as having to move your practice or having work that takes place in multiple jurisdictions. So they have adopted alternative pathways for experienced attorneys to obtain a full license in a new jurisdiction, which includes transferring your bar exam score or pursuing reciprocity, also known as "admission on motion."

3. As mentioned above, this petition focuses on Arizona Supreme Court Rule 34 Admission on Motion, more specifically Rule 34(f)(4). The last time a petition was filed on this specific rule was in October 2017. The Arizona Supreme Court denied ruling on the petition, noting that the Attorney Regulation Advisory Committee ("ARAC") was currently reviewing the rule provisions relating to admission on motion. Based on my research, the ARAC either has not finished reviewing the rule or they chose not to make any changes. Either way, given the importance of the decision, especially with everything that has transpired in the last year, the Arizona Supreme Court should step in and make a ruling.

II. The Arizona Bar Exam and a Decision to Pursue Admission on Motion.

4. My first Arizona bar exam was in July 2017 and I achieved a score of 270. After all the time I put into studying, it was difficult knowing that another multiple choice question or a different score on an essay would mean I passed. I took solace in knowing my score was high enough to

pass in a majority of other jurisdictions using the UBE format. Further, I knew I could always take the exam again.

5. I proceeded to take the next two Arizona bar exams, but each time I was still mentally exhausted from the prior attempt(s). Meanwhile, I began the process of transferring my first score to get licensed in New Mexico, I was sworn into the New Mexico Bar in November 2018. After I failed the Arizona exam on my next two attempts, I determined it was best to begin my career in New Mexico and begin gaining valuable practice experience. Then in a couple of years I could use reciprocity to move back to Arizona.

6. I never considered that those “failed” test attempts would impact my career beyond delaying my ability to practice in Arizona. However, based on either reading of Rule 34(f)(4), they would. I understand why the Arizona Supreme Court has the original three (3) year experience requirement, but I do not understand why it imposes either an additional two (2) year requirement or completely bars people who have “failed” the Arizona exam in the past or failed to achieve the scaled score from applying for Admission on Motion.

7. The couple of reasons I was able to come up with were one or a combination of: you believe passing the Arizona bar exam and achieving its scaled score or higher makes one qualified to practice; or you just want the extra money from peoples bar exam fees.

8. Based on my research and interactions with other attorneys, there is no correlation between passing the bar exam and being qualified to practice law. Throughout an attorney’s legal career they will interact with a lot of judges and other attorneys. I have not met a single attorney or judge that after an experience with another attorney, whether good or bad, has thought about how many attempts they took to pass the bar exam or the score requirement of the state they

took it in. I am confident that if you were to go through all the attorneys and judges you have met in your career to see their bar exam experience, you would be surprised by what you would find for some of them. Additionally, I am confident the first thing you would attribute to their ability as an attorney, whether good or bad, would not be how many attempts it took to pass the bar exam or the score they needed. I know one retired judge that took multiple attempts to pass the Arizona bar exam, but, based on his long and well respected career, I would have never guessed he needed multiple attempts to pass. I would never of thought of it and it did not change my thoughts about his ability as an attorney.

9. Trying to equate prior failed attempts or not achieving the transfer states score requirement to being a qualified practitioner, is like trying to equate playing call of duty to being qualified to serve in a warzone. They are not the same and succeeding at one does not mean you will succeed at the other. So for Arizona or any jurisdiction to use prior failed attempts at its exam or not meeting the score requirement as an inhibitor to out of state attorneys for admission on motion is pathetic and demeans the profession. There is no statistical information, whether from disciplinary counsel or any other source, that out of state lawyers have been unable to practice competently in a new jurisdiction without first taking that jurisdictions bar exam or meeting its score requirement. So it is misleading to claim it's to protect Arizonan's from incompetent practitioners.

10. I am fortunate that I achieved a score on the exam that allowed me to get licensed in New Mexico and to be able to practice law, but, based on either reading of the rule, I am left questioning my decision to leave Arizona and begin my career in New Mexico. I made the decision under the assumption, as I am sure others have, that I could practice in New Mexico for a couple

of years, then return to my home of Arizona using the admission on motion process. However, I now know that I am either not eligible to use reciprocity, thus having to take the bar exam again, or I have to wait an additional two years beyond that required by Rule 34(f)(1)(A).²

11. I do not think either option should be considered acceptable. First, the entire point of reciprocity or admission on motion is that attorneys from other jurisdictions can gain access to the Arizona bar based on their years of ethical practice in a reciprocal jurisdiction. Whether or not they failed the Arizona bar exam in the past or failed to achieve the Arizona score should not impact that ability. Second, taking the bar exam at this point is not the same as taking the bar exam fresh out of law school. I, like many attorneys, do not have the time to work the hours I do and to study for the bar exam. Moreover, I do not practice in most of the areas tested on the Arizona exam and have not studied them since my last bar exam. In order to be prepared to take the exam next time it's offered, I would either have to start studying now, in the limited spare time I have, or I have to leave my job and devote all my time to preparing for the exam.

12. Leaving my job to study for the exam is not an option, especially in today's economy, and I need the limited downtime I have after work to relax. Otherwise, I will burn out and end up leaving the profession. Further, I cannot leave my job because the experience I gain actually practicing is far more beneficial to my career than studying for the bar exam. An additional two (2) years of practice would help in developing transferable skills. However, I would be missing out on valuable experience that practicing in Arizona provides, such as developing a demeanor and reputation within the Arizona community. Attributes that are not impossible to achieve after five (5) years practicing in another jurisdiction verses just three (3), but are unnecessarily and

² A.R.S. Sup.Ct.Rules, Rule 34(f)(1)(A).

unjustifiably delayed for arbitrary reasons. Additionally, if I was to “fail” the Arizona exam again and I can apply after five (5) years from my last attempt, I would be extending my time for reciprocity from that new failed attempt. Thus, the bar exam is just not a viable option.

13. Additionally, I highly doubt any jurisdiction or its respective state bar would demean the legal profession by restricting access to their jurisdiction for either previously mentioned reason or for the pathetic reason of receiving additional bar exam fees. If an applicant can become licensed in one of Arizona’s 37 reciprocal jurisdictions, including the District of Columbia, and they are in good standing for 3 of the last 5 years, they should be able to apply for Admission on Motion to the Arizona Bar, regardless of prior attempts at the Arizona bar exam or the scaled score they obtained on another jurisdictions exam.

14. There are 37 reciprocal jurisdictions with Arizona, 19 or 51%, have no such requirement as Rule 34(f)(4) for their admission on motion applicants. Therefore, I strongly recommend the Arizona Supreme Court consider this petition and repeal Rule 34(f)(4), following the guidance of those 19 reciprocal jurisdictions.

RESPECTFULLY SUBMITTED this 6 day of January, 2021.

By 
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