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May 20, 2009

The Honorable Ruth V. McGregor
Chief Justice of the Arizona Supreme Court
Arizona State Courts Building
1501 West Washington Street, Room 402
Phoenix, Arizona 85007-3329

Re: *Support for Petition to Include Indian Law on the Arizona Bar Examination*
(R-08-0016)

Dear Chief Justice McGregor:

I am writing to support the proposed amendment to Arizona Supreme Court Rule 35(b) to include principles of Indian law jurisdiction and sovereignty as subjects that may be tested on the Arizona Bar Examination.

For sixteen of the twenty-three years that I have practiced law in Arizona, a substantial part of my practice has involved the representation of Indian tribes and/or their gaming operations, in a wide variety of transactions and litigation. In addition, I served on the Governing Council of the State Bar of Arizona's Indian Law Section for three years, including serving as the Section's Chair for one year.

To date, the only objection submitted to the proposed amendment has been from the Committee on Examinations, which appears to raise two primary objections to the amendment. First, the Committee notes that most states do not include Indian law jurisdiction and sovereignty on their bar examinations. Second, the Committee contends that Indian law jurisdiction and sovereignty are highly specialized fields of legal knowledge, not core competencies needed by lawyers practicing law in this state. I take issue with both of the Committee's objections.

Although it is true that most states do not include Indian law on their bar examinations, it also is true in most states that: (i) Indian reservations do not comprise more than a quarter of the land base; (ii) Indian reservations tend to be distant from major metropolitan areas; and (iii) Indian tribes and their enterprises are not among the largest employers in the state. Because Arizona is not like most states when it comes to the level of interaction between the non-Indian population and Indian tribes, tribal enterprises, and tribal lands, Arizona's Supreme Court should

QUIGLEY & WHITEHILL, P.L.C.

The Honorable Ruth V. McGregor
May 20, 2009
Page 2

not follow the lead of most states when assessing the appropriateness of Indian law as a subject for the Arizona Bar Examination.

I also disagree with the Committee's contention that Indian law jurisdiction and sovereignty are highly specialized fields of legal knowledge, not suitable for inclusion on Arizona's Bar Examination. The proposed amendment does not require that all lawyers have an in-depth understanding of Indian law jurisdiction and sovereignty. Rather, it requires that they have a basic understanding of the law that will allow them to recognize jurisdictional issues when they arise. A basic understanding of tribal jurisdiction and sovereignty will allow lawyers to avoid errors I regularly encounter in the course of my practice, such as:

- Prosecutors prosecuting individuals in courts that have no jurisdiction because jurisdiction lies exclusively in the federal courts or in a tribal court;
- Lawyers filing tort suits in courts that have no jurisdiction to hear the cases;
- Lawyers serving subpoenas containing threats of legal sanctions for failure to comply with the subpoenas, when the courts issuing the subpoenas have no jurisdiction over the parties to whom the subpoenas are issued; and
- Lawyers drafting contracts with provisions that require disputes to be resolved exclusively in courts that have no jurisdiction to hear the disputes.

These problems (and others like them) generally arise because the lawyers cannot even spot the jurisdictional issue—not because the lawyers are not specialists in Indian law. Contrary to the Committee's suggestion, in Arizona a basic understanding of the jurisdictional issues that arise in transactions with Indian tribes, tribal enterprises, and tribal lands *is* a core competency that all lawyers need to know given the pervasive interaction that Arizona's residents and businesses have with Indian tribes, tribal enterprises, and tribal lands.

Finally, those sitting for the Bar Examination will not need to take a law school course in Indian law to obtain the basic understanding of tribal jurisdictional issues that the amendment will require. A lawyer or law student with a good grasp of federal and state jurisdiction should need no more than a few hours with an easy to read reference like Judge Canby's *American Indian Law in a Nutshell* to be well-prepared to address the issues that the amendment will add to the Bar Examination.

For these reasons, I urge the Court to adopt the proposed amendment to Arizona Supreme Court Rule 35(b).

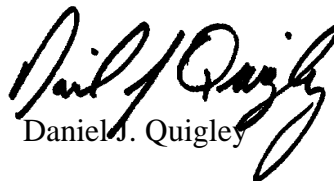
QUIGLEY & WHITEHILL, P.L.C.

The Honorable Ruth V. McGregor

May 20, 2009

Page 3

Sincerely,



Daniel J. Quigley

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