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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)
) Arizona Supreme Court No. R-20-____
PETITION TO AMEND ARIZONA)
RULE OF THE SUPREME)
COURT 38)
_____)

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Task Force on the Delivery of Legal Services (“Task Force”) petitions the Court to amend Arizona Rules of the Supreme Court 38, as reflected in the attachments hereto, effective January 1, 2021.

I. INTRODUCTION AND BACKGROUND.

Established on November 21, 2018, by Arizona Supreme Court Administrative Order 2018-111, the Task Force was asked to address five charges and to make recommendations on each. The Administrative Order gave the chair

¹ Mr. Byers files this petition in his capacity of a member of the Task Force.

discretion to consider and recommend other rule changes on any topic concerning the delivery of legal services. Members of the legal community approached the Task Force with a proposal to amend Rule 38(d). The Task Force agreed to consider the proposal and worked with members of the legal community to draft this proposed rule amendment.

Although Rule 38(d) currently allows recent law graduates to engage in a limited practice of law until the first offering of the Arizona bar examination,² the rule was drafted in a way that downplayed or masked this opportunity for recent law graduates. Further, current Rule 38(d) is unduly complicated and unclear in large part and fails to include certain program essentials. Thus, the amendments proposed in this petition revise and reorganize the rule for clarity and substantive completeness. As revised, the proposed rule sets out the program requirements and practice restrictions for both law students and recent law graduates in a clear, organized, consistent, and complete manner.

The Task Force presented its recommendation to the Arizona Judicial Council (“AJC”) on October 24, 2019. The Report and Recommendations of the Task Force (*Report*), along with other Task Force information, can be found at the Task Force’s webpage: <https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force>. The

² Certification of a certified limited practice student shall commence on the date indicated on a notice of certification and shall remain in effect . . . [until] the certified student fails to take or pass the first general bar examination for which the student is eligible. Ariz. R. S. Ct. 38(d)(5)(F)(iv).

AJC adopted all recommendations of the Task Force, including the recommendation to amend Rule 38(d), identified as Recommendation 4 of the report.

II. SUMMARY OF PROPOSED AMENDMENTS TO ARIZONA RULE OF SUPREME COURT 38(d).

In Arizona, law students can practice law under the supervision of a licensed attorney in accordance with Arizona Supreme Court Rule 38(d). Participants in this limited practice of law must be supervised by an attorney in a public or private legal office or by a clinical law professor in conjunction with a law school clinical program. As discussed above, although Rule 38(d) currently allows recent law graduates to engage in a limited practice of law until the first offering of the Arizona bar examination, the rule was drafted in a way that downplayed or masked this opportunity for recent law graduates. The proposed amendments clarify that recent law graduates may be certified to engage in the limited practice of law under the supervision of an attorney. The proposed amendments also clarify that neither law students nor law graduates must also participate in a clinical law program.

At least 16 states allow recent law graduates to engage in the limited practice of law post-graduation and pre-bar admission. These state programs share common features:

- All programs have specified durations. For example, some programs authorize practice only during the period in which the graduate has applied to take the first bar examination after his or her graduation and is awaiting the

results. Other programs include similar restrictions and incorporate a tiered expiration date for the authorization to practice, such as no later than 12 or 18 months after the graduate graduated from law school.

- Most of these programs authorize graduates to practice law to the same extent law students are authorized to practice law under programs like existing Rule 38(d)(5). Thus, graduates are permitted to meet with clients, go to court, try cases, argue motions, and the like. Most of the states authorize graduates to handle civil and criminal cases, although some restrict the criminal cases to misdemeanors or less-serious felonies.
- Several programs authorize graduates to practice for certain types of employers, such as legal-aid clinics, public defenders, prosecutor's offices, or city, county, and state offices or agencies.
- Many programs impose supervisory requirements that are similar to the supervisory requirements imposed under existing Rule 38(d).
- A few programs require the dean of the graduate's law school, or the graduate's proposed supervising attorney, to certify the graduate's good character and competence to the state supreme court or another entity. Other programs simply require the employer to comply with the requirements of the program and do not require the employer to file any other documentation with any court or state agency.

Although these other state programs vary in operational details, they all provide a means by which law students and non-licensed law graduates may practice law, and effectively result in expanding the delivery of legal services, especially by public agencies or public service groups that provide legal services to individuals with limited resources. These programs do this by allowing recent law school graduates in the process of becoming licensed to gain experience by practicing law under the supervision of admitted lawyers for a limited duration. Because this limited exception to licensure is anticipated to benefit the public, the Task Force's proposed amendments to Rule 38(d) fall squarely within the mandate to consider and evaluate new models for delivering legal services.

Further, the amendments would eliminate, or at least lessen, many of the practical problems experienced by law school graduates given the workload of the individuals involved in the admission and character and fitness process. The amendments permit recent law graduates to practice under the supervision of a lawyer after graduation from an ABA accredited law school if the graduate takes the first Arizona uniform bar examination, or the first uniform bar examination offered in another state for which the graduate is eligible. Certification to practice terminates automatically if the graduate fails the bar examination, if the Committee on Character and Fitness does not recommend to the Supreme Court the graduate's admission to practice, if the graduate is denied admission to practice law by the Supreme Court, or on the expiration of 12 months from the date of the graduate's

graduation from law school unless the Supreme Court extends the 12-month period. If the graduate passes the bar examination, certification terminates 30 days after the graduate has been notified of approval for admission to practice and eligibility to take the oath of admission. Certification to practice for both graduates and law students also terminates on the occurrence of other events such as failure to meet the requirements for certification.

Finally, the amendments set out the program requirements and practice restrictions for both law students and recent law graduates in a clear, organized, consistent, and complete manner. Thus, for example, the amendments separately set out the program details for law students and law graduates and clarify as well as simplify the supervisory obligations of the supervising attorneys.

CONCLUSION

Petitioner respectfully requests that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment, and that the Court adopt the proposed rules as they currently appear, or as modified considering comments received, with an effective date of January 1, 2021.

DATED this 9th day of January, 2020.

_____/s/_____
Dave Byers
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