



1025 Connecticut Avenue, NW, Suite 200
Washington, DC 20036-5425 USA

tel +1 202.293.4103

fax +1 202.293.4701

www.acc.com

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Clerk of the Supreme Court
of the State of Arizona
1501 West Washington
Fourth Floor
Phoenix, Arizona 85007

Re: *Association of Corporate Counsel's support for amending Supreme Court Rule 38(e) to simplify the process for Arizona's registered in-house counsel to provide pro bono services.*

To the Clerk:

Arizona has a historic opportunity to recognize more fully the sophistication, the experience, and the capacity that all of Arizona's in-house lawyers have to help the enormous number of Arizona residents who need legal services but cannot afford to pay. The Supreme Court of Arizona is considering whether to permanently amend Supreme Court Rule 38(e) to make it easier for registered Arizona in-house lawyers whose law licenses come from elsewhere to provide pro bono assistance.¹ On behalf of the Association of Corporate Counsel and our Arizona Chapter, we are writing to support the proposal. Indeed, we urge this Court to go even further in removing rules that hinder the ability of registered in-house counsel to provide pro bono legal services.

ACC is a global bar association that promotes the common professional and business interests of in-house counsel, with over 30,000 members employed by over 10,000 organizations in more than 75 countries. ACC's Arizona Chapter represents over 360 in-house counsel. ACC's Arizona chapter offers legal education classes, networking opportunities, and hosts discussions on public reform and internal investigations. For years, ACC has advocated across the country to remove obstacles that make it difficult for many in-house lawyers to donate their legal expertise to people and organizations that need help. ACC's Arizona Chapter also supports this effort to allow all of the state's in-house lawyers to offer pro bono legal services free from unnecessary restrictions.

There's no question that people need more pro bono help, both in Arizona and across the country. According to the Legal Services Corporation, fewer than "one in five low-income persons get the legal assistance they need" from pro bono or legal aid lawyers. Legal Services Corporation, *Documenting the Justice Gap In America: The Current*

¹ See *In the Matter of Petition to Amend Rule 38, Arizona Rules of the Supreme Court*, No. R-12-0028 (Dec. 5, 2012) (available at http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1125342487471.pdf).

Unmet Civil Legal Needs of Low- Income Americans, An Updated Report of the Legal Services Corporation (2009).² See also American Bar Association, *Legal Needs and Civil Justice, A Survey of Americans* (1994) (stating that, for low-income households, the justice system does not address nearly three quarters of situations in which courts might intervene).³ Barriers to access to justice are a serious problem for Arizona as well. As this Court has stated, “the current economic recession . . . has increased the need for low or no cost legal services available to the indigent and working poor.”⁴

In-house legal departments are already making strong contributions toward meeting this need. Hundreds of in-house legal departments have formalized efforts to provide pro bono legal services. According to Corporate Pro Bono, a joint venture of the Pro Bono Institute and ACC, many of the Fortune 500 companies and a majority of Fortune 100 companies have set up or are moving to set up formal pro bono programs. They want to do more, but state practice rules often stand in their way.

The proposal to amend Rule 38(e) would make it easier for members of Arizona’s in-house legal departments to provide much-needed extra help. It would take the important step of removing the requirements that lawyers already registered pursuant to Rule 38(h) must have been practicing for a minimum of five years, and go through the additional cumbersome certification process of Rule 38(e)(3), before they can provide pro bono assistance. But the proposal is fairly modest compared to the approach other states have taken, and still retains unnecessary barriers.

First, the proposal would still require affected in-house lawyers to work “in association” with an approved legal services organization that employs an Arizona-licensed lawyer. See Rule 38(e)(1)(B). For staffing and budget reasons, many qualified legal service providers exclude a number of worthy and genuinely needy clients, such as non-profit organizations that often cannot afford to pay for legal work, and restrict the types of matters they support. Additionally, current Supreme Court rules potentially restrict legal departments from working with the full range of organized programs that support services to needy clients, including ACC Chapters, law firms, and in-house pro bono programs.⁵ By requiring registered in-house counsel to work in association with an approved legal services organization, the proposal would wrongly imply that the covered in-house lawyers – whose employers hire them because they are smart and effective and experienced – are second-class counsel.

² Available at <http://tinyurl.com/ahaoc5v>.

³ Available at <http://tinyurl.com/b6hbfs1>.

⁴ See *Petition to Amend Rule 38*, supra.

⁵ See Supreme Court Rule 38(f)(1), stating that an approved legal services organization must be “a non-profit legal services organization that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters. A legal services organization must be approved as such by the Supreme Court of Arizona.”

Second, while the proposal is not clear on this, it does not explicitly allow lawyers practicing under Rule 38(e)(1)(B) to do away with the *pro hac vice* process when representing pro bono clients in state courts. Given that in-house lawyers registered under Rule 38(h) do need to receive *pro hac vice* admission when representing their corporate clients in court, *see* Rules 38(h)(9) and 38(a), presumably that same process applies when representing pro bono clients. If the proposal does in fact retain the *pro hac* process for pro bono service, the restriction would restrain precious legal talent, and harm the people and organizations who need it.

By contrast, in Colorado and Virginia, registered in-house lawyers can provide the full range of legal services to their pro bono clients, without working in association with an approved legal services organization or locally-licensed lawyers, even in state courts. Illinois recently passed a reform greatly expanding the ability of its registered in-house lawyers to volunteer for pro bono clients, which included removing the unnecessary requirement to work with a “sponsoring entity.”

Therefore, we request that, in addition to the proposed changes to Rule 38(e)(3), this Court take the additional steps of eliminating the association and *pro hac vice* requirements.

While Arizona’s proposal may not go as far it could have, it is still a healthy and significant step toward improving Arizona’s rules and Arizona citizens’ access to pro bono resources. The proposal would continue the spirit of a resolution passed last summer by the Conference of Chief Justices, to expand pro bono legal services. That resolution supports allowing “non-locally licensed in-house counsel who are permitted to work for their employer to also provide pro bono legal services.” Conf. of Chief Justices, Resol. 11 (passed July 25, 2012).⁶

This proposal takes a step toward recognizing that Arizona’s in-house attorneys are well-qualified, ethical lawyers. That’s why their employers hire them, and why Arizona already allows them to serve their employers. The pending amendment simply recognizes that all of Arizona’s in-house lawyers can serve pro bono clients with the same excellence that they already serve their employers. By adopting these amendments to Rule 38(e), especially with the changes that we proposed above, this Court can help countless people in need.

⁶ See <http://ccj.ncsc.dni.us/AccessToJusticeResolutions/resol11ProBonoLegalServices.html>.

Sincerely yours,



Amar D. Sarwal
Vice President and Chief Legal Strategist
sarwal@acc.com

Evan P. Schultz
Senior Counsel and Director of Advocacy

Association of Corporate Counsel

Mark N. Rogers, President,
Arizona Chapter, Association of Corporate Counsel

Robert E. Longo, Vice President,
Arizona Chapter, Association of Corporate Counsel