

TO:

Rule 28 Distribution
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ATTACHMENT¹

RULES OF THE SUPREME COURT OF ARIZONA

Rule 32. Organization of the State Bar of Arizona

(a)-(c) [No change]

(d) Powers of the Board. The state bar shall be governed by the Board of Governors, which shall have the powers and duties prescribed by this court. The board shall:

1. – 10. [No change]

11. Establish, maintain, and fund the administration of a voluntary member assistance program to assist lawyers whose performance may be impaired by a mental, emotional, or behavioral condition, including use of alcohol or other drugs.

(e)-(m) [No change]

Rule 32.1. Member Assistance Program.

(a) Duty to Establish, Maintain, and Administratively Fund. The board of governors of the state bar shall establish, maintain, and administratively fund a voluntary member assistance program to assist lawyers whose performance may be impaired by a mental, emotional, or behavioral condition, including use of alcohol or other drugs.

(b) Participation Voluntary. Participation by a lawyer in the member assistance program is voluntary.

(c) Confidentiality. All information received by the member assistance program, including staff and volunteers, is a privileged communication which, unless authorized by the lawyer to whom the information relates, shall not be disclosed to any person or entity outside the member assistance program and shall not be discoverable or admissible in any civil proceeding or disciplinary proceeding. This rule is not meant to preclude the use of information independently discovered from a source separate from the member assistance program.

(d) Immunity. A person who reports or fails to report information, or a person who takes action or fails to take action, or a person who receives information, while participating in the member assistance program is immune from civil liability, providing the person has acted in good faith and without malice. A presumption of good faith and absence of malice applies, and a person alleging lack of good faith or presence of malice has the burden of proof.

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

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Rule 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

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ER 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority, except as otherwise provided in these Rules or by law.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority, except as otherwise provided in these Rules or by law.

(c) This Rule does not require disclosure of information otherwise protected by ER 1.6 ~~or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.~~

(d) This Rule does not require disclosure of information about another lawyer or a judge as a result of participation in an approved lawyer assistance program. A lawyer shall not disclose that information except as permitted by rules applicable to the program or by law.

COMMENT [2003 AMENDMENT]

[1] – [4] [No change]

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for ~~the confidentiality of such information~~ an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such ~~confidentiality~~ an exception, lawyers and judges may hesitate to seek assistance from these programs, which may ~~then~~ result in additional harm to their professional careers and additional injury to the welfare of clients and the public. ~~The Rule therefore provides that a lawyer may not report pursuant to paragraphs (a) and (b) information that would be protected by ER 1.6 if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer. Therefore, this Rule provides that a lawyer is not required to disclose such information in complying with the reporting requirements of paragraphs (a) and (b), and that a lawyer is prohibited from disclosing that information except as permitted by rules applicable to the assistance program or by law. Participation by a lawyer in an approved assistance~~

program includes lawyers and judges seeking assistance as well as lawyers and judges seeking to provide assistance.

~~COMMENT TO 2002 AMENDMENT TO ER 8.3(C)~~

~~Information about a lawyer's or judge's misconduct or fitness may be gained by a lawyer participating in an approved lawyers' assistance program. For purposes of this rule, lawyers 'participating' shall mean lawyers seeking assistance, program staff and volunteers, including members of MAC, as well as any other Arizona lawyer whose assistance is requested or approved by the MAP Director or MAC Chair(s) or Vice Chair(s). Treating information gained in this context as confidential encourages lawyers to seek the diverse services provided by such programs. It also ensures that lawyers assisting or providing services to the program as staff or volunteers are not subject to discipline for failure to disclose information that would otherwise be subject to reporting under paragraphs (a) and (b) of the rule. Without confidentiality, lawyers may hesitate to utilize program services, which may result in additional harm to clients, the public, or themselves, and may discourage lawyers from providing assistance and services offered by the program.~~

COMMENT TO 2021 AMENDMENT TO ER 8.3(C)

[No change]

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Rule 48. Rules of Construction

(a)-(k) [No change]

(l) Immunity from Civil Suit. Communications to the court, state bar, committee, presiding disciplinary judge, acting presiding disciplinary judge, hearing panel members, settlement officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, ~~monitors of the Member Assistance or Law Office Management Assistance Programs~~ participants in an approved member assistance program including those seeking assistance and those seeking to provide assistance, participants or staff of a State Bar law office or practice management assistance programs, state bar staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, members of the committee, the presiding disciplinary judge, hearing panel members, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the Committee on the Rules of Professional Conduct, ~~monitors of the Member Assistance or Law Office Management Assistance Programs~~ participants in an approved member assistance program, including those seeking assistance and those seeking to provide assistance, or

participants or staff in a State Bar law office or practice management assistance program, state bar staff, and court staff shall be immune from suit for any conduct in the participation in the program.

(m) [No change]