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9  
10 **IN THE SUPREME COURT**

11 **STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-\_\_ - \_\_\_\_

13 **PETITION TO AMEND**  
14 **COMMENT TO ETHICAL RULE**  
15 **7.1, RULE 42, RULES OF THE**  
**ARIZONA SUPREME COURT**

**Petition to Amend**  
**Comment to Ethical Rule 7.1,**  
**Rule 42, Ariz. R. Sup. Ct.**

16 Pursuant to Rule 28, Ariz. R. Sup. Ct, Petitioners respectfully ask this Court  
17 to amend the Comment to Ethical Rule (“ER”) 7.1 to reinstate two words that the  
18 2021 amendments apparently inadvertently omitted.

19 The 2021 ER amendments included reorganizing and making some  
20 substantive changes to ERs 7.1 through 7.5, which govern information about legal  
services. Although the comments to (now-former) ER 7.5 were supposed to be

1 merged into the newly revised ER 7.1, the phrase “or retired” – which Arizona  
2 specifically added in 2003 – was left out. This was not identified as an intended  
substantive change.

3 As explained below, Petitioners request that the Court amend ER 7.1  
4 Comment [4] and reinstate the words “or retired.”

5 Until the changes that took effect January 1, 2021, ER 7.5 focused on firm  
names and letterhead. Comment [1] to ER 7.5 stated, in part, that “[a] firm may be  
6 designated by the names of all or some of its members, or by the names of deceased  
7 *or retired* members where there has been a continuing succession in the firm's  
identity” [emphasis added].

8 This Court added the words “or retired” to the ER 7.5 comment in 2003. That  
9 change was among the State Bar of Arizona’s proposals for amending the ERs, in  
10 its rule change proposal R-02-0045. The petition did not explain why the State Bar  
11 proposed adding the alternative “retired.” Although many of the amendments R-02-  
12 0045 proposed were based on changes made to the ABA Model Rules, “retired” was  
not part of the ABA Model Rule 7.5’s comment.

13 This Court adopted the change as the State Bar proposed. As a result, by  
14 including “or retired,” Arizona’s Comment to ER 7.5 differed from the comment to  
ABA Model Rule 7.5 (on this as well as some other points).

15 In 2018, the ABA overhauled Model Rules 7.1 through 7.5. As part of its  
16 changes, Model Rule 7.5, as well as its comments – still not including the alternative  
17 “retired” as Arizona had adopted – were subsumed into Model Rule 7.1 and its  
Comments.

18 The Court’s recent Task Force on the Delivery of Legal Services proposed  
19 revising Arizona’s advertising-related ERs (ERs 7.1 through 7.5) to adopt many of  
20 the ABA Model Rule changes. In its report, the Task Force recommended

1 reorganizing ERs 7.1 through 7.5, including merging ER 7.5 and its Comments into  
2 ER 7.1 and its Comments, just as the ABA had done. The resulting rule change  
3 petition stated specifically that the Comments to ER 7.5 would be merged into ER  
4 7.1’s Comments.

5 Neither the Task Force report nor the resulting rule change petition included  
6 the Arizona-specifically-added words “or retired.” And neither did the Court’s order  
7 ruling on the petition.

8 As a result, although Arizona deliberately added the alternative “or retired” to  
9 ER 7.5’s Comment in 2003, and although the relevant Comment to ER 7.5 was  
10 supposedly imported wholesale into the revised ER 7.1 and Comments, the two  
11 words were left out.

12 This appears to be an unintended (but substantive) oversight. Nothing in the  
13 Task Force report or rule change petition otherwise explains the omission.

14 Having the alternative “retired” in this context is important. The word  
15 “deceased” by itself does not encompass the same sentiment as “retired.” By  
16 including the alternative “retired,” Arizona’s long-time Comment thus interpreted  
17 ER 7.5 as allowing a law firm to continue to be named for lawyers who no longer  
18 practiced in the firm – regardless of whether because they had died or had retired –  
19 as long as “there has been a succession in the firm’s identity.”

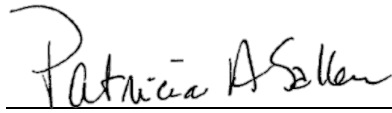
20 Many law firms, no doubt, currently use names that include a retired member,  
21 in reliance on the pre-2021 version of ER 7.5. Under the 2021 version of ER 7.1,  
22 they all would be in technical violation by continuing to use those names.

23 For the reasons stated above, Petitioners propose reinstating the words “or  
24 retired” to the applicable comment, as set forth in the Appendix.

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1 RESPECTFULLY SUBMITTED this 30th day of December, 2021.

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Patricia A. Sallen

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Nancy A. Greenlee

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