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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-23-

10 **PETITION TO AMEND E.R. 1.4,**  
11 **RULE 42 OF THE ARIZONA**  
12 **RULES OF SUPREME COURT**

**PETITION**

13 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar  
14 of Arizona (the “State Bar”) hereby petitions the Court to amend Ethical Rule 1.4,  
15 Rule 42, of the Arizona Rules of Supreme Court. The purpose of the amendment is  
16 to create an affirmative duty for attorneys to inform clients if they do not carry  
17 professional liability (malpractice) insurance.  
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19 **Background and Purpose of the Proposed Rule Amendment**

20 The State Bar’s mission, as defined in Rule 32(a)(2), Ariz. R. S. Ct., is to serve  
21 and protect the public with respect to the provision of legal services and access to  
22 justice. Consistent with these goals, the State Bar seeks to improve the  
23 administration of justice and the competency, ethics, and professionalism of lawyers  
24 practicing in Arizona. Protection of the public necessarily includes making  
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1 information available to them so that their interaction with members of the legal  
2 profession may be conducted with enough information to allow them to make  
3 informed choices.  
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5 Arizona attorneys are not required to have professional liability (malpractice)  
6 insurance. Lawyers in private practice are required to report annually whether or  
7 not they have professional liability insurance, Rule 32(c)(13)(A), Ariz. R. S. Ct. The  
8 attorneys' response is reflected in their State Bar membership record and is  
9 available, upon search, to members of the public through the State Bar's member  
10 directory, but that information may not be otherwise available to clients or  
11 prospective clients. Members of the public who are unaccustomed to hiring lawyers  
12 may not think to inquire or appreciate the import of such information.  
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15 Unfortunately, clients harmed by a lawyer's malpractice may discover far too  
16 late that they have little or no recourse, and that they may never be made whole  
17 monetarily. A 2022 survey conducted by nationally recognized insurance and risk  
18 management specialists, Ames & Gough, Inc., concluded that the severity of legal  
19 malpractice claims has increased, with the last several years being "the worst on  
20 record for legal malpractice claim payouts." Conflicts of interest were the most  
21 frequently alleged error, with failure to timely file, clerical errors, and general  
22 negligence following. Each of these areas for possible claims are ones that are  
23 regularly challenges for lawyers.  
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1           While a large majority of lawyers in private practice in Arizona do have  
2 professional liability coverage, members of the State Bar’s Board of Governors  
3 Executive Council raised the concern that clients might not know whether or not this  
4 level of protection was available to them. The Executive Council asked the Bar’s  
5 Program Review Working Group to consider the issue and make recommendations  
6 as to what, if any, action should be taken by the Board of Governors or requested via  
7 rule change of the Court. After consideration of the issue, and given that the majority  
8 of lawyers in private practice (approximately 80 – 84% based on lawyers reports in  
9 2020 and 2021) report they do have insurance, the Program Review Working Group  
10 determined that requiring all lawyers to disclose whether they have professional  
11 liability insurance was unnecessary.  
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15           The protection of the public was a paramount consideration of the Committee.  
16 So that the public could be made aware of this information, and therefore be  
17 protected, the Working Group recommended, and the Board of Governors agreed,  
18 that requiring those lawyers who do not have professional liability insurance to  
19 disclose that to their clients in writing would provide information that clients or  
20 prospective clients need to make wise choices in retaining counsel. So that clients  
21 may make informed decisions about whether to continue to be represented by a  
22 lawyer who, at some time during the representation is no longer insured, the  
23 proposed amendment requires the lawyer to inform the client in writing within thirty  
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1 (30) days of the date on which the lawyer knows their insurance has been terminated  
2 or has lapsed.

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4 These requirements would not stand alone but be accompanied by an  
5 education campaign by the State Bar to educate the public and members why a  
6 lawyer should have professional liability coverage. In this way clients and  
7 prospective clients will be able to make an informed choice about the lawyer they  
8 choose to hire and continue to be represented by.

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10 **CONCLUSION**

11 The State Bar of Arizona respectfully requests that the Court amend ER 1.4,  
12 Rule 42 as detailed in the Appendix.

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14 **RESPECTFULLY SUBMITTED** this 9<sup>th</sup> day of January 2023.

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16 */s/ Lisa M. Panahi*

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Lisa M. Panahi  
18 General Counsel

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20 Electronic copy filed with the  
21 Clerk of the Supreme Court of Arizona  
22 this 9<sup>th</sup> day of January 2023.

23 by: P Seguin  
24  
25

1 **APPENDIX**

2 *(Please note: deletions are reflected by ~~striketrough~~ and additions are reflected*  
3 *by underline.)*

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5 ER 1.4. Communication

6 (a) A lawyer shall:

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8 (1) promptly inform the client of any decision or circumstance with respect to which  
9 the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

10 (2) reasonably consult with the client about the means by which the client's  
11 objectives are to be accomplished;

12 (3) keep the client reasonably informed about the status of the matter;

13  
14 (4) promptly comply with reasonable requests for information; and

15 (5) consult with the client about any relevant limitation on the lawyer's conduct when  
16 the lawyer knows that the client expects assistance not permitted by the Rules of  
17 Professional Conduct or other law.

18 (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the  
19 client to make informed decisions regarding the representation.

20 (c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea  
21 agreements.

22 (d) All lawyers in private practice shall inform the client in writing, prior to or at the  
23 commencement of the attorney-client relationship, if they do not have professional  
24 liability insurance. If notice has not been provided at or before the commencement  
25 of the attorney-client relationship, the lawyer shall inform the client in writing within

thirty (30) days of the date the lawyer knows that the lawyer no longer has professional liability insurance during the attorney-client relationship.

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