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

9 In the Matter of:

Supreme Court No. R-23-0018

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

AMENDED PETITION

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14 The State Bar of Arizona (the “State Bar”) inadvertently omitted legal
15 paraprofessionals from its original Petition and therefore submits this Amended
16 Petition to correct the omission. Although the Rules of Professional Conduct apply
17 to legal paraprofessionals, the proposed rule change applies only to legal
18 practitioners in private practice. Therefore, the State Bar decided it would be prudent
19 to ensure that the proposed new ER 1.4(d) be explicit with respect to its application
20 to lawyers and legal paraprofessionals in private practice.
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23 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
24 hereby petitions the Court to amend Ethical Rule 1.4, Rule 42, of the Arizona Rules
25 of Supreme Court. The purpose of the amendment is to create an affirmative duty

1 for attorneys and legal paraprofessionals to inform clients if they do not carry
2 professional liability (malpractice) insurance.

3 **Background and Purpose of the Proposed Rule Amendment**

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5 The State Bar's mission, as defined in Rule 32(a)(2), Ariz. R. S. Ct., is to serve
6 and protect the public with respect to the provision of legal services and access to
7 justice. Consistent with these goals, the State Bar seeks to improve the
8 administration of justice and the competency, ethics, and professionalism of lawyers
9 and legal paraprofessionals practicing in Arizona. Protection of the public
10 necessarily includes making information available to them so that their interaction
11 with members of the legal profession may be conducted with enough information to
12 allow them to make informed choices.
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15 Arizona attorneys and legal paraprofessionals are not required to have
16 professional liability (malpractice) insurance. Lawyers and legal paraprofessionals
17 in private practice are required to report annually whether or not they have
18 professional liability insurance, Rule 32(c)(13)(A), Ariz. R. S. Ct. The attorneys'
19 and legal paraprofessionals' response is reflected in their State Bar membership
20 record and is available, upon search, to members of the public through the State
21 Bar's member directory, but that information may not be otherwise available to
22 clients or prospective clients. Members of the public who are unaccustomed to hiring
23 lawyers and legal paraprofessionals may not think to inquire or appreciate the import
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1 of such information.

2 Unfortunately, clients harmed by a lawyer’s or legal paraprofessional’s
3 malpractice may discover far too late that they have little or no recourse, and that
4 they may never be made whole monetarily. A 2022 survey conducted by nationally
5 recognized insurance and risk management specialists, Ames & Gough, Inc.,
6 concluded that the severity of legal malpractice claims has increased, with the last
7 several years being “the worst on record for legal malpractice claim payouts.”
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9 Conflicts of interest were the most frequently alleged error, with failure to timely
10 file, clerical errors, and general negligence following. Each of these areas for
11 possible claims are ones that are regularly challenges for lawyers.
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14 While a large majority of lawyers in private practice in Arizona do have
15 professional liability coverage, members of the State Bar’s Board of Governors
16 Executive Council raised the concern that clients might not know whether or not this
17 level of protection was available to them. The Executive Council asked the Bar’s
18 Program Review Working Group to consider the issue and make recommendations
19 as to what, if any, action should be taken by the Board of Governors or requested via
20 rule change of the Court. After consideration of the issue and given that the majority
21 of lawyers in private practice (approximately 80 – 84% based on lawyers reports in
22 2020 and 2021) report they do have insurance, the Program Review Working Group
23 determined that requiring all lawyers and legal paraprofessionals to disclose whether
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1 they have professional liability insurance was unnecessary.

2 The protection of the public was a paramount consideration of the Committee.
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4 So that the public could be made aware of this information, and therefore be
5 protected, the Working Group recommended, and the Board of Governors agreed,
6 that requiring those lawyers and legal paraprofessionals who do not have
7 professional liability insurance to disclose that to their clients in writing would
8 provide information that clients or prospective clients need to make wise choices in
9 retaining counsel. So that clients may make informed decisions about whether to
10 continue to be represented by a lawyer or legal paraprofessional who, at some time
11 during the representation is no longer insured, the proposed amendment requires the
12 lawyer or legal paraprofessional to inform the client in writing within thirty (30)
13 days of the date on which the lawyer knows their insurance has been terminated or
14 has lapsed.
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17 These requirements would not stand alone but be accompanied by an
18 education campaign by the State Bar to educate the public and members why a
19 lawyer/legal paraprofessional should have professional liability coverage. In this
20 way clients and prospective clients will be able to make an informed choice about
21 the lawyer they choose to hire and continue to be represented by.
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2 **CONCLUSION**

3 The State Bar of Arizona respectfully requests that the Court amend ER 1.4,
4 Rule 42 as detailed in the Appendix.
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6 RESPECTFULLY SUBMITTED this 17th day of March 2023.
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8 */s/ Lisa M. Panahi*

9 _____
10 Lisa M. Panahi
General Counsel

11 Electronic copy filed with the
12 Clerk of the Supreme Court of Arizona
this 17th day of March 2023.

13 by: P Seguin
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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) - (c) [No change.]
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8 (d) All lawyers/legal paraprofessionals in private practice shall inform the client in
9 writing, prior to or at the commencement of the representation, if they do not have
10 professional liability insurance. If notice has not been provided at or before the
11 commencement of the representation, the lawyer/legal paraprofessional shall inform
12 the client in writing within thirty (30) days of the date the lawyer/legal
13 paraprofessional knows that the lawyer/legal paraprofessional no longer has
14 professional liability insurance during the representation.