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10 **IN THE SUPREME COURT**  
11 **STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-23-54

13 **PETITION TO AMEND RULE 42 (ER**  
14 **4.2), ARIZ. R. SUP. CT.**

15 Pursuant to Rules 28 and 42.1(b)(2) of the Arizona Supreme Court Rules, Petitioner,  
16 the Arizona Supreme Court Ethics Advisory Committee, petitions the Court to amend ER  
17 4.2, *Communication with Person Represented by Counsel*, as set forth in Attachment 1 to  
18 this Petition.

19 ER 4.2 prohibits a lawyer from communicating with a person regarding a matter in  
20 which that person is represented by counsel without their lawyer’s permission unless the  
21 communicating lawyer is “authorized by law” to do so. The comment to the rule states that  
22 the “authorized by law” exception to the consent requirement includes “the right of a party  
23 to a controversy with a government agency to speak with government officials about the  
24 matter.” The proposed amendment to ER 4.2 requires a lawyer who intends to proceed  
25 under this “authorized by law” exception and communicate with a government official  
regarding a matter in which the government entity is represented by counsel without  
seeking the consent of the government’s lawyer, to first notify that lawyer. By requiring

1 this notification, the proposed amendment helps safeguard the represented government  
2 entity against overreaching by the communicating lawyer without inappropriately  
3 burdening that lawyer’s client’s right to communicate with their government  
4 representatives.

5 **I. Background.**

6 ER 4.2 prohibits a lawyer from “communicat[ing] about the subject of the  
7 representation with a party the lawyer knows to be represented by another lawyer in the  
8 matter, unless the lawyer has the consent of the other lawyer” – what this Petition will refer  
9 to as the “No-Contact Rule” – “or is authorized by law to do so.” As explained in one recent  
10 ethics opinion,

11 the no-contact rule contributes to the proper functioning of the legal system  
12 by (1) preserving the integrity of the attorney-client relationship; (2)  
13 protecting the client from the uncounseled disclosure of privileged or other  
14 damaging information relating to the representation; (3) facilitating the  
15 settlement of disputes by channeling them through dispassionate experts; (4)  
16 maintaining a lawyer's ability to monitor the case and effectively represent  
17 the client; and (5) providing parties with the rule that most would choose to  
18 follow anyway.

19 [VA Legal Eth. Op. 1890, at \\*2 \(2021\)](#).

20 The Comment to ER 4.2 explains that, for an organization, the rule applies to  
21 communications “with persons having a managerial responsibility on behalf of the  
22 organization, and with any other person whose act or omission in connection with that  
23 matter may be imputed to the organization for purposes of civil or criminal liability or  
24 whose statement may constitute an admission on the part of the organization.”<sup>1</sup> The

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25 <sup>1</sup> This is similar to the category of employee communications that fall within the scope of  
an organization’s attorney-client privilege as articulated by the Arizona Supreme Court in  
[Samaritan Foundation v. Superior Court In and For County of Maricopa, 176 Ariz. 497,  
499-500 \(1992\)](#) (holding that “factual communications from corporate employees to  
corporate counsel are within the corporation's privilege ... if they concern the employee's

1 Comment also notes that the “authorized by law” exception to the consent requirement  
2 includes “the right of a party to a controversy with a government agency to speak with  
3 government officials about the matter.”<sup>2</sup> The inclusion of that language is clearly intended  
4 to accommodate the First Amendment’s prohibition on laws abridging “the right of the  
5 people ... to petition the Government for a redress of grievances” (the “Right to Petition”).

6 Therefore, under ER 4.2 as currently written, if a lawyer intends to communicate  
7 with a government official to discuss a matter on behalf of a client, and the communication  
8 falls within the scope of the client’s Right to Petition, they do not need to obtain the consent  
9 of the lawyer who is representing the government entity in connection with that matter.  
10 Unfortunately, the application and scope of the Right to Petition – and in particular the  
11 scope of the right to do so through one’s lawyer – is not very clear. Left to their own  
12 devices, some lawyers will interpret it narrowly and always obtain the consent of the  
13 government’s lawyer. Others will interpret it more broadly but confine their  
14 communication to policy issues and carefully avoid communications that could  
15 compromise the government entity’s position or interfere with the relationship between the  
16 government actor and the government’s lawyer, evils that ER 4.2 is designed to prevent.  
17 But there is always the danger that a lawyer will, deliberately or inadvertently,

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20 \_\_\_\_\_  
21 own conduct within the scope of his or her employment and are made to assist counsel in  
22 assessing or responding to the legal consequences of that conduct for the corporate client”).

23 <sup>2</sup> Though the comment refers to communications by a party, most authorities assume that  
24 this includes communication through that party’s lawyer. *See, e.g.*, [ABA Formal Eth. Op. 97-408](#), n.10 (interpreting language identical to that in Arizona’s ER 4.2 comment); [AK Eth. Op. 2017-2 \(Alaska Bar Assn. Eth. Comm.\)](#). Several years after the ABA Opinion was  
25 issued, the language in the [model rule comment](#) was altered to explicitly refer to communications by a lawyer on behalf of their client: “Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government.”

1 communicate in a manner that causes the harm that the involvement of the government’s  
2 lawyer could otherwise have prevented.<sup>3</sup>

3 As one might imagine, government lawyers – who are left to deal with the fallout  
4 from such conversations – do not appreciate it when other lawyers avail themselves of ER  
5 4.2’s “authorized by law” exception. At the same time, those other lawyers can become  
6 understandably frustrated if they believe that a government lawyer is trying to use ER 4.2  
7 to block their access to government policy makers. And, to further exacerbate the situation,  
8 it is difficult for ethics committees to provide clear guidance, and for regulatory authorities  
9 to take disciplinary actions, regarding the application of ER 4.2 to communications with  
10 government officials because of the underlying uncertainty in the scope of the legal right  
11 being relied upon.

## 12 **II. Approaches to the Problem.**

13 Disagreements about the scope of the Right to Petition exception to ER 4.2’s No  
14 Contact Rule are primarily focused on circumstances involving ongoing litigation. A few  
15 jurisdictions take a restrictive approach and prohibit direct communication by opposing  
16 counsel with government policy makers regarding a matter in litigation, with no  
17 exceptions. *See, e.g.,* [N.D. Ethics Op. 95-06 \(North Dakota Bar Assn. Eth. Comm.\)](#) (lawyer  
18 representing party in claim against state workers compensation bureau is not allowed to  
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20 <sup>3</sup> The Restatement characterizes the “practical need of the government for the broad  
21 protection of the anti-contact rule” as “dubious” and claims that “concern based on client  
22 vulnerability” is “misplaced” with respect to public officials. [Restatement of the Law –  
23 The Law Governing Lawyers \(Third\) § 101, cmt. b \(2000\)](#). See also [D.C. Eth. Op. 340  
24 \(District of Columbia Bar Assn. Eth. Comm.\) \(2007\)](#) (“Government officials, especially  
25 those who have significant decision making authority, are almost always capable of  
resisting any arguments or other suggestions that are not proper and genuinely  
persuasive.”). Many government lawyers – particularly those who work with smaller  
jurisdictions and districts, would beg to differ. Other commentaries recognize that the same  
concerns apply to government organizations. See n.4 *infra*.

1 contact bureau personnel about the matter without the consent of the bureau’s lawyer). *See*  
2 *also* [ME Ethics Op. 181 \(Maine Bd. of Overseers Prof. Eth. Comm.\) \(2003\)](#) (lawyer  
3 representing party in a litigation or administrative proceeding adverse to municipality may  
4 not contact high-level town officials responsible for making litigation decisions unless  
5 town's lawyer consents; leaves door open for *possible* exception for policy discussions).

6 Others generally prohibit such communications but, with a nod to the ER 4.2  
7 comment and the Right to Petition, try to carve out “policy issues.” That is the approach  
8 taken by the Restatement. It starts with a broad statement that the No-Contact Rule “does  
9 not apply to communications with employees of a represented governmental agency or  
10 with a governmental officer being represented in the officer's official capacity.”  
11 [Restatement of the Law – The Law Governing Lawyers \(Third\) § 101\(1\) \(2000\)](#). It then  
12 carves out the situation in which the lawyer is negotiating or litigating, on behalf of a client,  
13 a specific claim against the government organization or official; when that is the case, the  
14 No-Contact Rule *does* apply. *Id.*, at § 101(2). But it then adds an exception to the exception:  
15 the No-Contact Rule does *not* apply to a communication, even if related to a specific claim,  
16 regarding “an issue of general policy.” *Id.* The comments indicate that this exception to the  
17 exception is included to accommodate the Right to Petition but then states, unhelpfully,  
18 that “[d]elimiting that right is beyond the scope of the Restatement.” *Id.*, *cmt. b*. The same  
19 approach is used in Utah, through an addition to [its version of ER 4.2](#), and in an Illinois  
20 ethics opinion ([IL Adv. Op. 13-09 \(Ill. St. Bar. Assn.\)](#)). *See also* [GA Ethics Op. 98-3](#)  
21 ([Georgia Bar Assn. Adv. Op.](#)) (“lawyer for a non-profit legal services group may contact  
22 State officials to express concerns about the legality of treatment of ... clients ... because  
23 such communication is authorized by law and because the State is not an adverse party in  
24 that situation”).

1           There are several drawbacks to this approach. First, it is focused on the existence of  
2 a specific clearly delineated claim that the communicating lawyer’s client has against the  
3 government entity. This distinction ignores the fact that a lawyer attempting to persuade a  
4 government official to take a particular course of action, without the consent or knowledge  
5 of the government’s lawyer who is advising the government regarding the issue, can cause  
6 considerable mischief even when there is not an active legal dispute between the parties.  
7 Government lawyers – who are experts regarding the scope of governmental authority and  
8 are intimately familiar with the structure of the governments they represent – must  
9 sometimes advise government officials that they do not have the legal authority to take a  
10 proposed action, however laudable the underlying policy goals. Many, if not most, of those  
11 lawyers have had or will have the experience of being subsequently confronted by one or  
12 more of those officials who have been provided an alternative– and, at least in the opinion  
13 of the government lawyer, very flawed – legal analysis by a lawyer advocating for that  
14 action on behalf of a client. This can strain the relationship between the government lawyer  
15 and the government official and needlessly interfere with the lawyer’s ability to effectively  
16 represent the government organization.

17           Second, the distinction made between a matter involving a specific dispute or claim  
18 and a policy matter is clearer in theory than in practice. For example, the Illinois ethics  
19 opinion referenced above concludes that “a lawyer is prohibited by Rule 4.2 from  
20 communicating with represented city officials concerning a pending [zoning] violation  
21 proceeding, although not prohibited from communicating with City officials regarding a  
22 separate rezoning proceeding as to the same property” and that a lawyer can engage in  
23 “direct communications with a City decision maker as to underlying tax law policy issues,  
24 even when there is a pending tax case between the City and the attorney's client” but cannot  
25 discuss resolution of the tax case. [IL Adv. Op. 13-09 \(Ill. St. Bar. Assn.\)](#). It is questionable

1 whether even the most well-intentioned lawyer could successfully thread that needle in  
2 every case.

3 It is also questionable whether this line between specific disputes and policy matters,  
4 even if it could be consistently and reliably drawn, necessarily corresponds to the line  
5 between constitutionally protected and unprotected conduct. A grievance, after all,  
6 presumably includes a party's active legal claim against a government entity.<sup>4</sup> And the  
7 right to seek redress for it should arguably include the right of the person with the claim to  
8 discuss the legal issues and arguments involved in the matter, through their lawyer, with  
9 the government decision makers on whose policy choices the government's legal position  
10 is based.<sup>5</sup> The ER 4.2 Comment's reference to the existence of a "controversy" between  
11 the lawyer's client and the government entity seems to assume that this is the case. *See also*  
12 [ER 1.2\(a\)](#) (settlement of a matter is a policy decision for the client).

13 Some authorities have therefore limited the scope of the ER 4.2 No-Contact Rule to  
14 a greater degree, allowing communication with government officials and bodies, including  
15 about pending claims, without the consent of their lawyer. The versions of Rule 4.2 adopted  
16 by the District of Columbia ([D.C. R. Prof. Conduct, Rule 4.2](#)) and Maryland ([MD Rules,](#)  
17 [Attorneys, Rule 19-304.2](#)), for example, contain an express exception for communications  
18 with "government officials who have the authority to redress the grievances of the lawyer's  
19 client." California's version of the rule excepts all communications with "public officials."  
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22 <sup>4</sup> See [AK Eth. Op. 2017-2 \(Alaska Bar Assn. Eth. Comm.\)](#) (noting that the right to petition  
23 "is not lost merely because litigation is ongoing" and concluding that a lawyer may directly  
24 contact a government official to urge them not to appeal a trial court ruling in favor of the  
25 lawyer's client).

<sup>5</sup> "A 'genuine grievance' can and frequently does pertain to substantive legal arguments  
advanced by the government." [D.C. Eth. Op. 340 \(District of Columbia Bar Assn. Eth.  
Comm.\) \(2007\)](#).

1 [Cal. R. Prof. Conduct, Rule 4.2](#). See also [AL Ethic Op. 2003-03 \(Alabama Bar Assn.\)](#)  
2 (lawyer for State Board of Education can directly communicate with a County Board of  
3 Education regarding the County Board’s lawsuit against the State Board). This approach,  
4 however, does nothing to assuage the legitimate desire of government lawyers to prevent  
5 overreaching by opposing counsel and to preserve their ability to effectively represent their  
6 organizational client.

7         The ABA, in an opinion issued in 1997, fashioned an elegant solution to the  
8 conundrum. It first interprets the “authorized by law” exception to encompass the  
9 discussion of actual controversies, consistent with the Comment’s use of that word: “Rule  
10 4.2 does not prohibit a lawyer representing a private party in a controversy with the  
11 government from communicating directly with governmental officials who have authority  
12 to take or recommend action in the matter, provided the communication is solely for the  
13 purpose of addressing a policy issue, including settling the controversy.” [ABA Formal Op.](#)  
14 [97-408](#). But it goes on to impose a notice requirement: When a lawyer intends to  
15 communicate with a government official to discuss policy issues on behalf of a client  
16 without obtaining the consent of the government’s lawyer “the lawyer must give  
17 government counsel reasonable advance notice of [their] intent to communicate with such  
18 officials, to afford an opportunity for consultation between government counsel and the  
19 officials on the advisability of their entertaining the communication.” See also [CT Eth. Op.](#)  
20 [01-17 \(Conn. Bar. Assn.\)](#) (taking ABA approach); [NY Eth. Op. 812, ¶ 14 \(N.Y. St. Bar.](#)  
21 [Assn. Comm. Prof. Eth.\) \(2007\)](#) (taking the ABA approach); [AK Eth. Op. 2017-2](#) (Alaska  
22 Bar Assn. Eth. Comm.) (taking the ABA approach).

23         The problem, as the Illinois State Bar Association points out in the 2013 ethics  
24 opinion mentioned previously, [IL Adv. Op. 13-09 \(Ill. St. Bar. Assn.\)](#), is that this  
25 requirement was made up by the ABA out of whole cloth. There is no reference in the

1 language of ER 4.2 or its comment that imposes such a requirement. The Illinois opinion  
2 rejects the ABA approach on that basis. The EAC, after carefully considering the matter,  
3 likewise could not in good conscience impose such a requirement through the issuance of  
4 an ethics opinion. The solution, however, is a good one, and this Rule Petition accordingly  
5 seeks to embed the notice requirement in the rule itself.

### 6 **III. The Proposed Amendment**

7 Attached to this Petition, as Attachment 2, is a table showing how ER 4.2 differs  
8 among the various jurisdictions in the United States. This table was obtained from the  
9 American Bar Association’s website but the provisions specific to communications with  
10 government officials and employees have been highlighted for the Court’s convenience.  
11 [California](#), the [District of Columbia](#), [Maryland](#), [North Carolina](#), and [Utah](#), have adopted  
12 such provisions. The amendment proposed by this petition is not modeled on any one of  
13 those other rules and borrows language from several of them, but most closely resembles  
14 North Carolina’s rule, [N.C. Bar Rules, Rule 4.2](#), which is the only one of the five that  
15 incorporates a notification requirement.

16 The amendment adds a new subsection (b) to ER 42. The new subsection first adopts  
17 the ABA’s understanding of the scope of the Right to Petition by specifically referencing  
18 the settlement of a dispute or claim. As discussed above, support for this is found in the  
19 existing comment’s reference to a “controversy” between the communicating lawyer’s  
20 client and the government entity. But it goes on to require that the communicating lawyer  
21 notify the government’s lawyer in advance of any oral communication, and copy the  
22 government’s lawyer on any written communication, giving that lawyer an opportunity to  
23 take measures to mitigate any negative effects that might flow from the direct  
24 communication:

25 (b) If a lawyer intends to communicate with a representative of a government

1 entity on behalf of a client, other than in the course of an official public  
2 proceeding, and has a good faith and objectively reasonable belief that the  
3 communication is a legitimate exercise of the client's constitutional right to  
4 petition the government for the redress of grievances, including the  
5 settlement of a dispute or claim involving the client and the government  
6 entity, the lawyer is not required to obtain the consent of the lawyer  
7 representing the government entity in the matter, but must notify that lawyer  
8 as follows:

- 9 1. If the lawyer is seeking to initiate an oral exchange, in-person or by  
10 electronic means, they must notify the lawyer representing the  
11 government in the matter in writing regarding the intended  
12 communication and the matters to be discussed. This notice must be  
13 provided far enough in advance of the intended communication that  
14 the government's lawyer has a reasonable opportunity to contact the  
15 government representative to discuss the matter before the  
16 communication takes place.
- 17 2. If the intended communication is a written communication, the lawyer  
18 must provide a copy of it to the lawyer representing the government  
19 in the matter, at the same time it is provided to the government  
20 representative.

21 The proposed amendment then adds three paragraphs to the Comment. The first  
22 explains that the intended communication must be with government officials who have the  
23 authority to make the decision or take the policy action that the lawyer's client is seeking.  
24 The next cautions government lawyers, when deciding how to react to a notification from  
25 another lawyer that the lawyer intends to contact a government official, not to simply  
attempt to block access to government officials but to take more measured actions such as  
discussing the matter with the official before the communication takes place or asking to  
be present during the meeting. The final paragraph notes that the Right to Petition exception  
does not extend to communications about routine litigation matters, nor does it permit the  
communication to be used to obtain evidence, admissions, or information about legal  
strategy or privileged communications. [See, e.g., \*United States v. Sierra Pac. Indus.\*, 759  
F. Supp. 2d 1206, 1213 \(E.D. Cal. 2010\)](#), amended, [857 F. Supp. 2d 975 \(E.D. Cal. 2011\)](#)

1 (lawyer who contacted and questioned Forest Service employees for the purpose of  
2 gathering evidence in a lawsuit, without notice to Service’s lawyer, was not seeking redress  
3 of grievances and therefore violated ER 4.2; court granted protective order).

#### 4 **IV. Anticipated Concerns**

5 Initial concerns about the proposed rule change that were provided to or expressed  
6 by EAC members when this petition was discussed included concerns on both sides of the  
7 issue. Some lawyers were concerned that the notification requirement would apply to any  
8 and all contacts with public employees, imposing a new and unreasonable burden on  
9 private lawyers who routinely do things like contact staff in the planning departments of  
10 local jurisdictions to coordinate administrative matters regarding a client’s request for  
11 development approvals. Other lawyers were concerned that the rule change would  
12 embolden private lawyers to contact public officials to discuss pending claims and  
13 litigation, without the consent of the government lawyer involved in the matter, which they  
14 believe to be prohibited under the current rule.

15 After discussion, EAC concluded that these concerns are largely unwarranted  
16 because they are based on the perception that the proposed addition of the notice  
17 requirement will somehow either expand or narrow the scope of the existing ER 4.2 No-  
18 Contact Rule or the existing Right to Petition exception to it. That is not the case.

19 The notification requirement applies when, and only when (1) the No-Contact Rule  
20 applies to the intended communication unless there is an applicable exception to it; and (2)  
21 the lawyer has a good faith and objectively reasonable belief that the communication is in  
22 fact a valid exercise of their client’s Right to Petition. In situations in which ER 4.2’s No-  
23 Contact Rule currently is – and under the revised rule will remain – inapplicable because  
24 of the purpose of the communication or the roles of the individuals involved, the new  
25 notification requirement will be likewise inapplicable. A routine communication with the

1 planning staff of an Arizona county or municipality regarding planning submittals will  
2 typically be outside the scope of the no-contact rule for one or more of several possible  
3 reasons: (1) the communication doesn't concern and will not evoke acts, omissions, or  
4 admissions by the public employees that will irrevocably bind the government organization  
5 or be imputed to it for purposes of criminal or civil liability; (2) the government lawyer  
6 who advises the department has consented, either explicitly or implicitly, to a routine  
7 communication of this type; or (3) the communicating lawyer has no reason to know or  
8 infer<sup>6</sup> that the department employees have yet sought legal advice or representation  
9 regarding the matter from the government lawyer. Conversely, in situations in which the  
10 No-Contact Rule currently is and will remain *applicable*, and the Right to Petition  
11 exception currently is and will remain *inapplicable*, providing notice to the government  
12 lawyer will not excuse the communicating lawyer's violation of the No-Contact Rule.

13 In addition, however, it is important to note that the addition of the notification  
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15 <sup>6</sup> General representation does not suffice to trigger the rule; neither the client nor their  
16 lawyer can “simply claim blanket, inchoate representation for all future conduct whatever  
17 it may prove to be, and expect the prohibition on communications to apply.” [ABA Formal  
18 Op. 95-396 \(1995\)](#) at 13-14. Instead, “the subject matter of the representation needs to have  
19 crystallized between the client and the lawyer.” *Id.* at 13. *See also* [AK Eth. Op. 2006-1  
20 \(Alaska Bar Assn. Eth. Comm.\)](#) (lawyer acting on own behalf in matter not in litigation  
21 may communicate directly with corporate management even though he knows corporation  
22 regularly represented by counsel, but once lawyer knows corporation asked counsel to deal  
23 with particular matter, Rule 4.2 applies); [WI Eth. Op. E-07-01 \(Wisconsin Bar Assn. Prof.  
24 Eth. Comm.\)](#) (fact that organization has in-house counsel or regularly retains outside  
25 counsel does not make it “represented” in connection with any particular matter). *But cf.*,  
[Fla. Ethics Op. 09-1 \(Florida Bar Assn.\) \(2010\)](#) (because knowledge can be implied, a  
lawyer communicating with government officials or employees should ask whether they  
are being advised by the government's lawyer); [N.C. Ethics Op. 2005-5 \(N.C. Bar Assn.\)](#)  
(lawyer who knows county attorney has defended county in past employment litigation and  
who has been asked by county attorney to direct any communications about litigation or  
threatened litigation to the county attorney must communicate through county attorney  
regarding new matter).

1 requirement makes the consequences of misapplying the rule less dire than they currently  
2 are. Even if a lawyer seeking to communicate with a public employee feels compelled to  
3 notify the government lawyer about the intended communication when such notification  
4 isn't actually required by the rule, the burden thus voluntarily assumed is not a particularly  
5 heavy one. And if a lawyer erroneously only provides notice to the government lawyer  
6 when the proposed communication is not in fact protected by the Right to Petition  
7 exception, instead of obtaining government lawyer's *consent*, the notification nevertheless  
8 gives the government lawyer the ability to prevent or minimize most if not all untoward  
9 results. Finally, the addition of the notification requirement increases accountability. A  
10 lawyer under the rule as it currently exists can potentially communicate inappropriately  
11 with a public official, without either obtaining the government lawyer's consent or  
12 notifying them, and then evade disciplinary consequences based on the uncertain scope of  
13 their client's Right to petition. In contrast, under the proposed amended rule, if the  
14 communication is within the scope of the No-Contact Rule, the communicating lawyer  
15 must do one of two things: obtain the government lawyer's consent or notify them. Doing  
16 neither would be a clear and easily established violation of the rule.

17 **V. Conclusion.**

18 The Petitioner respectfully requests that the Court adopt the proposed rule  
19 amendment as set forth in Appendix A.

20 RESPECTFULLY SUBMITTED this  13  day of  December , 2023.

21   
22 /s/  
23 \_\_\_\_\_  
24 Judge Christopher Staring  
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1 Electronic copy filed with the  
2 Clerk of the Supreme Court of Arizona  
3 this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

4 by: \_\_\_\_\_

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## **ATTACHMENT 1**

**ER 4.2. Communication with Person Represented by Counsel**

- (a) In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.
- (b) If a lawyer intends to communicate with a representative of a government entity on behalf of a client, other than in the course of an official public proceeding, and has a good faith and objectively reasonable belief that the communication is a legitimate exercise of the client's constitutional right to petition the government for the redress of grievances, including the settlement of a dispute or claim involving the client and the government entity, the lawyer is not required to obtain the consent of the lawyer representing the government entity in the matter, but must notify that lawyer as follows:
1. If the lawyer is seeking to initiate an oral exchange, in-person or by electronic means, they must notify the lawyer representing the government in the matter in writing regarding the intended communication and the matters to be discussed. This notice must be provided far enough in advance of the intended communication that the government's lawyer has a reasonable opportunity to contact the government representative to discuss the matter before the communication takes place.
  2. If the intended communication is a written communication, the lawyer must provide a copy of it to the lawyer representing the government in the matter, at the same time it is provided to the government representative.

**COMMENT [2003 AMENDMENT]**

[1] This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. ~~Communications authorized by the law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.~~

[2] In the case of an organization, including a government organization (subject to paragraph (b)), this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that

matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare [ER 3.4\(f\)](#).

[3] This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

#### **COMMENT [2013 AMENDMENT]**

[4] A person to whom limited-scope representation is being provided or has been provided in accordance with [ER 1.2\(c\)](#) is considered to be unrepresented for the purposes of this rule unless the opposing party or lawyer knows of the limited-scope representation and the identity of the lawyer providing limited representation. With the consent of the client, a lawyer providing limited-scope representation should consider informing the opposing party or lawyer of the limited-scope representation with instructions as to when opposing counsel may communicate directly with the client. Such instructions may include, for example, whom the opposing counsel should contact on specific matters, to whom and where opposing counsel should send pleadings, correspondence and other notices, and whether the lawyer performing limited-scope services is authorized to accept service on the client's behalf.

#### **COMMENT [2024 AMENDMENT]**

[5] Communications authorized by the law include, for example, the right of a party to a controversy with a government agency to speak with government officials, through their lawyer, about the matter. Paragraph (b) recognizes that special considerations come into play when a lawyer is seeking on behalf of a client to redress grievances involving the government, a right guaranteed by the First Amendment to the United States Constitution. Paragraph (b) permits communications with those in government having the ultimate authority to make policy decisions regarding the matter (but not with any other government personnel) without the prior consent of the lawyer representing the government in such cases. However, a lawyer planning to initiate such a communication without the prior consent of the lawyer representing the government must notify that lawyer regarding the intended communication. This is intended to preserve a person's right to seek the redress of grievances while also allowing the government's lawyer to fulfil their duty to protect the interests of their government client.

[6] A government lawyer who is notified that another lawyer intends to meet with an official or employee of their government client may choose to discuss the underlying matter with the government official or employee in advance of the meeting, ask to be included in the meeting, or actively discourage the government actor from consenting to the meeting. If there is a colorable claim that the communication is a legitimate exercise

of the other lawyer's client's first amendment right to petition the government for redress, however, the government lawyer should not, without a strong justification, seek to prevent the meeting altogether. See ER 4.4(a) ("a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person").

[7] Paragraph (b) does not permit a lawyer to bypass counsel representing the government on every issue that may arise in the course of disputes with the government. It is intended to provide lawyers access to high-level decision makers in government with respect to genuine policy issues, such as to present the view that the government's basic policy position with respect to a dispute is faulty, or that government personnel are conducting themselves improperly with respect to aspects of the dispute. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar routine aspects of the resolution of disputes. In addition, a communication that is initiated for the purpose of obtaining, or is conducted in a manner likely to obtain, evidence, admissions, or information about litigation strategy or privileged communications, is clearly not for the purpose of seeking redress under the First Amendment.

**ATTACHMENT 2**

	<p style="text-align: center;"><b>American Bar Association CPR Policy Implementation Committee</b></p> <p style="text-align: center;"><b>Variations of the ABA Model Rules of Professional Conduct</b></p> <p style="text-align: center;"><b>RULE 4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL</b></p> <p style="text-align: center;"><b>In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.</b></p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see <a href="http://www.abanet.org/cpr/jclr/home.html">http://www.abanet.org/cpr/jclr/home.html</a>.</p>
AL	<p>Same as MR but deletes “or a court order”</p> <p>Adds:</p> <p>(b) A person to whom limited-scope representation is being provided or has been provided in accordance with <u>Rule 1.2(c)</u> is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited-scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited-scope representation without consent or authorization as provided by <u>Rule 4.2(a)</u>.</p>
AK	<p>Same as MR.</p>
AZ	<p>Same as MR but changes “person” to “party” and deletes “or a court order”</p>
AR	<p>(a) same as MR but deletes “or a court order”</p> <p>Adds:</p> <p>(b) A person to whom limited scope representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer has been provided with a written notice of the limited scope representation. If such notice is provided, the opposing lawyer shall not communicate with the person regarding matters designated in the notice of limited scope representation without consent or authorization as provided by Rule 4.2(a).</p>

CA	<p><b>(a)</b> In representing a client, a lawyer shall not communicate directly or indirectly about the subject of the representation with a person* the lawyer knows* to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.</p> <p><b>(b)</b> In the case of a represented corporation, partnership, association, or other private or governmental organization, this rule prohibits communications with:</p> <p>(1) A current officer, director, partner,* or managing agent of the organization; or</p> <p>(2) A current employee, member, agent, or other constituent of the organization, if the subject of the communication is any act or omission of such person* in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability.</p> <p><b>(c)</b> This rule shall not prohibit:</p> <p>(1) communications with a public official, board, committee, or body; or</p> <p>(2) communications otherwise authorized by law or a court order.</p> <p><b>(d)</b> For purposes of this rule:</p> <p>(1) “Managing agent” means an employee, member, agent, or other constituent of an organization with substantial* discretionary authority over decisions that determine organizational policy.</p> <p>(2) “Public official” means a public officer of the United States government, or of a state, county, city, town, political subdivision, or other governmental organization, with the comparable decision-making authority and responsibilities as the organizational constituents described in paragraph (b)(1).</p>
CO	Same as MR
CT	<p>In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. An otherwise unrepresented party for whom a limited appearance has been filed pursuant to <a href="#">Practice Book Section 3-8(b)</a> is considered to be unrepresented for purposes of this Rule as to anything other than the subject matter of the limited appearance. When a limited appearance has been filed for the party, and served on the other lawyer, or the other lawyer is otherwise notified that a limited appearance has been filed or will be filed, that lawyer may directly communicate with the party only about matters outside the scope of the limited appearance without consulting with the party's limited appearance lawyer.</p>
DE	Same as MR
District of Columbia	<p>(a) same as MR but instead of “In representing a client” reads “During the course of representing a client”</p> <p>Adds:</p> <p><b>(b)</b> During the course of representing a client, a lawyer may communicate about the subject of the representation with a nonparty employee of an organization without obtaining the consent of that organization's lawyer. If the organization is</p>

	<p>an adverse party, however, prior to communicating with any such nonparty employee, a lawyer must disclose to such employee both the lawyer's identity and the fact that the lawyer represents a party that is adverse to the employee's employer.</p> <p><b>(c)</b> For purposes of this rule, the term “party” or “person” includes any person or organization, including an employee of an organization, who has the authority to bind an organization as to the representation to which the communication relates.</p> <p><b>(d)</b> This rule does not prohibit communication by a lawyer with government officials who have the authority to redress the grievances of the lawyer's client, whether or not those grievances or the lawyer's communications relate to matters that are the subject of the representation, provided that in the event of such communications the disclosures specified in (b) are made to the government official to whom the communication is made.</p>
FL	<p><b>(a)</b> In representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. Notwithstanding the foregoing, a lawyer may, without such prior consent, communicate with another's client to meet the requirements of any court rule, statute or contract requiring notice or service of process directly on a person, in which event the communication is strictly restricted to that required by the court rule, statute or contract, and a copy must be provided to the person's lawyer.</p> <p><b>(b)</b> An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with <a href="#">Rule Regulating the Florida Bar 4-1.2</a> is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited representation lawyer as to the subject matter within the limited scope of the representation.</p>
GA	<p>a. Same as MR but slightly different wording: A lawyer who is representing a client in a matter shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or court order.</p> <p>Adds b. Attorneys for the State and Federal Government shall be subject to this Rule in the same manner as other attorneys in this State.</p> <p>The maximum penalty for a violation of this Rule is disbarment.</p>
HI	Same as MR
ID	Same as MR
IL	Same as MR
IN	Same as MR

IA	<p>(a) same as MR</p> <p>Adds (b): An otherwise unrepresented person to whom limited representation is being provided or has been provided in accordance with rule 32:1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of appearance under which, or a written notice of time period during which, the opposing lawyer is to communicate with the limited-representation lawyer as to the subject matter within the limited scope of representation.</p>
KS	Same as MR
KY	Same as MR
LA	<p>Unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order, a lawyer in representing a client shall not communicate about the subject of the representation with:</p> <p>(a) a person the lawyer knows to be represented by another lawyer in the matter; or</p> <p>(b) a person the lawyer knows is presently a director, officer, employee, member, shareholder or other constituent of a represented organization and</p> <p>(1) who supervises, directs or regularly consults with the organization's lawyer concerning the matter;</p> <p>(2) who has the authority to obligate the organization with respect to the matter; or</p> <p>(3) whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability.</p>
ME	<p>(a) same as MR and adds: Specific limitations on recommendations by a prosecutor are contained in (c).</p> <p>(b) An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(c) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation attorney provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation attorney.</p> <p>(c) If a prosecutor knows a person is represented with respect to the matter under investigation:</p> <p>(1) the prosecutor shall not communicate directly with that person absent consent of the other lawyer or a court order; and</p> <p>(2) The prosecutor shall not extend, through any third person an offer to meet with the prosecutor or an offer to enter into plea negotiations with the prosecutor, or an offer of a plea agreement absent consent of the other lawyer or a court order.</p> <p>Communications by the prosecutor in the form of advice or instruction to law enforcement agents about a person a prosecutor knows is represented with</p>

	respect to a matter under investigation are authorized by this Rule and are governed by the substantive law.
MD	<p><b>(a)</b> Except as provided in section (c) of this Rule, in representing a client, an attorney shall not communicate about the subject of the representation with a person who the attorney knows is represented in the matter by another attorney unless the attorney has the consent of the other attorney or is authorized by law or court order to do so.</p> <p><b>(b)</b> If the person represented by another attorney is an organization, the prohibition extends to each of the organization's (1) current officers, directors, and managing agents and (2) current agents or employees who supervise, direct, or regularly communicate with the organization's attorneys concerning the matter or whose acts or omissions in the matter may bind the organization for civil or criminal liability. The attorney may not communicate with a current agent or employee of the organization unless the attorney first has made inquiry to ensure that the agent or employee is not an individual with whom communication is prohibited by this section and has disclosed to the individual the attorney's identity and the fact that the attorney represents a client who has an interest adverse to the organization.</p> <p><b>(c)</b> An attorney may communicate with a government official about matters that are the subject of the representation if the government official has the authority to redress the grievances of the attorney's client and the attorney first makes the disclosures specified in section (b) of this Rule.</p>
MA	Same as MR
MI	<p><b>(a)</b> In representing a client, a lawyer shall not communicate about the subject of the representation with a person whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.</p> <p><b>(b)</b> An otherwise self-represented person receiving limited representation in accordance with <a href="#">Rule 1.2(b)</a> is considered to be self-represented for purposes of this rule unless the opposing lawyer knows of, or has been provided with, a written notice of limited appearance comporting with <a href="#">MCR 2.117(B)(2)(c)</a> or other written communication advising of the limited scope representation. Oral communication shall be made first to the limited scope representation lawyer, who may, after consultation with the client, authorize oral communications directly with the client as agreed.</p> <p><b>(c)</b> Until a notice of termination of limited scope representation comporting with <a href="#">MCR 2.117(B)(2)(c)</a> is filed, or other written communication terminating the limited scope representation is provided, all written communication, both court filings and otherwise, shall be served upon both the client and the limited scope representation attorney.</p>
MN	Same as MR
MS	Same as MR but deletes “by law or a court order”
MO	Same as MR

MT	Same as MR
NE	Same as MR
NV	Same as MR
NH	In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. An otherwise unrepresented party to whom limited representation is being provided or has been provided in accordance with Rule 1.2(f)(1) is considered to be unrepresented for purposes of this Rule, except to the extent the limited representation lawyer provides other counsel written notice of a time period within which other counsel shall communicate only with the limited representation lawyer.
NJ	In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows, or by the exercise of reasonable diligence should know, to be represented by another lawyer in the matter, including members of an organization's litigation control group as defined by <u>RPC 1.13</u> , unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so, or unless the sole purpose of the communication is to ascertain whether the person is in fact represented. Reasonable diligence shall include, but not be limited to, a specific inquiry of the person as to whether that person is represented by counsel. Nothing in this rule shall, however, preclude a lawyer from counseling or representing a member or former member of an organization's litigation control group who seeks independent legal advice.
NM	In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Except for persons having a managerial responsibility on behalf of the organization, an attorney is not prohibited from communicating directly with employees of a corporation, partnership or other entity about the subject matter of the representation even though the corporation, partnership or entity itself is represented by counsel.
NY	(a) In representing a client, a lawyer shall not communicate or cause another to communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law. (b) Notwithstanding the prohibitions of paragraph (a), and unless otherwise prohibited by law, a lawyer may cause a client to communicate with a represented person unless the represented person is not legally competent, and may counsel the client with respect to those communications, provided the lawyer gives reasonable advance notice to the represented person's counsel that such communications will be taking place. (c) A lawyer who is acting pro se or is represented by counsel in a matter is

	subject to paragraph (a), but may communicate with a represented person, unless otherwise prohibited by law and unless the represented person is not legally competent, provided the lawyer or the lawyer's counsel gives reasonable advance notice to the represented person's counsel that such communications will be taking place.
NC	<p><b>(a)</b> During the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. It is not a violation of this rule for a lawyer to encourage his or her client to discuss the subject of the representation with the opposing party in a good-faith attempt to resolve the controversy.</p> <p><b>(b)</b> Notwithstanding section (a) above, in representing a client who has a dispute with a government agency or body, a lawyer may communicate about the subject of the representation with the elected officials who have authority over such government agency or body even if the lawyer knows that the government agency or body is represented by another lawyer in the matter, but such communications may only occur under the following circumstances:</p> <p>(1) In writing, if a copy of the writing is promptly delivered to opposing counsel;</p> <p>(2) orally, upon adequate notice to opposing counsel; or</p> <p>(3) in the course of official proceedings.</p>
ND	Same as MR
OH	Same as MR
OK	Same as MR
OR	<p>In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:</p> <p>(a) the lawyer has the prior consent of a lawyer representing such other person;</p> <p>(b) the lawyer is authorized by law or by court order to do so; or</p> <p>(c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.</p>
PA	Same as MR
RI	<p>In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. An otherwise unrepresented client for whom an Entry of Limited Appearance has been filed pursuant to <u>Rule 1.2</u> is considered to be unrepresented for purposes of this Rule as to any matter other than the subject matter of the limited appearance. When an Entry of Limited Appearance has been filed on behalf of the client, and served on the opposing</p>

	<p>lawyer, or the opposing lawyer is otherwise notified that an Entry of Limited Appearance has been filed or will be filed, that lawyer may directly communicate with the client only about matters outside the scope of the limited appearance without consulting with the client's limited appearance lawyer.</p>
SC	Same as MR
SD	Same as MR
TN	Same as MR
TX	<p>(a) In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.</p> <p>(b) In representing a client a lawyer shall not communicate or cause another to communicate about the subject of representation with a person or organization a lawyer knows to be employed or retained for the purpose of conferring with or advising another lawyer about the subject of the representation, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.</p> <p>(c) For the purpose of this rule, “organization or entity of government” includes: (1) those persons presently having a managerial responsibility with an organization or entity of government that relates to the subject of the representation, or (2) those persons presently employed by such organization or entity and whose act or omission in connection with the subject of representation may make the organization or entity of government vicariously liable for such act or omission.</p> <p>(d) When a person, organization, or entity of government that is represented by a lawyer in a matter seeks advice regarding that matter from another lawyer, the second lawyer is not prohibited by paragraph (a) from giving such advice without notifying or seeking consent of the first lawyer.</p>
UT	<p>Title: Communication with Persons Represented by Legal Professionals</p> <p><b>(a) General Rule.</b> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by a legal professional in the matter, unless the lawyer has the consent of the legal professional. Notwithstanding the foregoing, an attorney may, without such prior consent, communicate with another's client if authorized to do so by any law, rule, or court order, in which event the communication shall be strictly restricted to that allowed by the law, rule, or court order, or as authorized by paragraphs (b), (c), (d) or (e) of this Rule.</p> <p><b>(b) Rules Relating to Unbundling of Legal Services.</b> A lawyer may consider a person whose representation by a legal professional in a matter does not encompass all aspects of the matter to be unrepresented for purposes of this Rule and <u>Rule 4.3</u>, unless that person's legal professional has provided written notice to the lawyer of those aspects of the matter or the time limitation for which the</p>

	<p>person is represented. Only as to such aspects and time is the person considered to be represented by a legal professional.</p> <p><b>(c) Rules Relating to Government Lawyers Engaged in Civil or Criminal Law Enforcement.</b> A government lawyer engaged in a criminal or civil law enforcement matter, or a person acting under the lawyer's direction in the matter, may communicate with a person known to be represented by a lawyer if:</p> <p>(1) the communication is in the course of, and limited to, an investigation of a different matter unrelated to the representation or any ongoing, unlawful conduct; or</p> <p>(2) the communication is made to protect against an imminent risk of death or serious bodily harm or substantial property damage that the government lawyer reasonably believes may occur and the communication is limited to those matters necessary to protect against the imminent risk; or</p> <p>(3) the communication is made at the time of the arrest of the represented person and after that person is advised of the right to remain silent and the right to counsel and voluntarily and knowingly waives these rights; or</p> <p>(4) the communication is initiated by the represented person, directly or through an intermediary, if prior to the communication the represented person has given a written or recorded voluntary and informed waiver of counsel, including the right to have substitute counsel, for that communication.</p> <p><b>(d) Organizations as Represented Persons.</b></p> <p>(1) When the represented person is an organization, an individual is represented by counsel for the organization if the individual is not separately represented with respect to the subject matter of the communication, and</p> <p>(A) with respect to a communication by a government lawyer in a civil or criminal law enforcement matter, is known by the government lawyer to be a current member of the control group of the represented organization; or</p> <p>(B) with respect to a communication by a lawyer in any other matter, is known by the lawyer to be</p> <p>(i) a current member of the control group of the represented organization; or</p> <p>(ii) a representative of the organization whose acts or omissions in the matter may be imputed to the organization under applicable law; or</p> <p>(iii) a representative of the organization whose statements under applicable rules of evidence would have the effect of binding the organization with respect to proof of the matter.</p> <p>(2) The term “control group” means the following persons: (A) the chief executive officer, chief operating officer, chief financial officer, and the chief legal officer of the organization; and (B) to the extent not encompassed by Subsection (A), the chair of the organization's governing body, president, treasurer, secretary and a vice-president or vice-chair who is in charge of a principal business unit, division or function (such as sales, administration or finance) or performs a major policy-making function for the organization; and (C) any other current employee or official who is known to be participating as a principal decision maker in the determination of the organization's legal position in the matter.</p> <p>(3) This Rule does not apply to communications with government parties,</p>
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	<p>employees or officials unless litigation about the subject of the representation is pending or imminent. Communications with elected officials on policy matters are permissible when litigation is pending or imminent after disclosure of the representation to the official.</p> <p><b>(e) Limitations on Communications.</b> When communicating with a represented person pursuant to this Rule, no lawyer may</p> <p>(1) inquire about privileged communications between the person and their legal professional or about information regarding litigation strategy or legal arguments of their legal professional or seek to induce the person to forgo representation or disregard the advice of the person's legal professional; or</p> <p>(2) engage in negotiations of a plea agreement, settlement, statutory or non-statutory immunity agreement or other disposition of actual or potential criminal charges or civil enforcement claims or sentences or penalties with respect to the matter in which the person is represented by a legal professional unless such negotiations are permitted by law, rule or court order.</p>
VT	Same as MR
VA	Same as MR but deletes “by law or a court order”
WA	Same as MR
WV	Same as MR
WI	<p>(a) same as MR</p> <p>Adds (b): An otherwise unrepresented party to whom limited scope representation is being provided or has been provided in accordance with SCR 20:1.2(c) is considered to be unrepresented for purposes of this rule unless the lawyer providing limited scope representation notifies the opposing lawyer otherwise.</p>
WY	Same as MR

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