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**ARIZONA SUPREME COURT**

In the Matter of	)	
	)	
PETITION TO AMEND RULE 53,	)	Supreme Court No. R-24_____
RULES OF THE ARIZONA	)	(expedited consideration and
SUPREME COURT	)	emergency adoption requested)
_____	)	

**I. INTRODUCTION**

Pursuant to Rule 28 of the Arizona Supreme Court, Petitioner respectfully petitions this Court to amend Rules of the Supreme Court of Arizona, Rule 53, as shown in Appendix A. The amendment establishes a standing requirement to be considered a complainant in discipline proceedings. Prior to recent election cycles, few charges concerning attorneys were submitted for investigation by individuals unrelated to the underlying events. During the past several years, however, charges have been submitted by individuals based on second-hand information concerning the alleged misconduct, such as news reports. The proposed amendment seeks to balance any positive impact of this increased scrutiny of attorney conduct while reserving procedural protections for those more directly involved.

## II. GROUNDS FOR APPROVAL

Certain notice and procedural protections are provided to complainants even though they are not a party in a discipline proceeding. For example, the following information is to be provided to a complainant by bar counsel:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.
2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

Rule 53(b). A complainant may even seek additional review under certain circumstances. If bar counsel dismisses a matter prior to a full screening investigation, a “complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.” Rule 53(b)(2)(A). If bar counsel dismisses a matter following a screening investigation, a “complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).” Rule 53(b)(2)(B). When a recommendation is made by consent, bar counsel is to advise the complainant in accordance with Rule 53(b)(3). The complainant may “file a timely written objection and to be heard at any hearing concerning the agreement.” Rule 53(b)(3).

The notice and procedural protections are warranted and appropriate in situations where the complainant is directly involved with the underlying circumstances that are the subject of the investigation, such as where they have an attorney-client relationship or where the complainant became aware of the conduct

in their role as a judicial officer. The same notice requirements and procedural protections are not warranted, however, when the complainant was not directly involved.

Media coverage of election-related litigation generated charges from individuals who were not directly involved in the underlying case. According to Chief Bar Counsel, there have been at least 40 election-related cases submitted since November 2020. When these individuals are treated as complainants, they may be provided access to information that may otherwise be confidential until the conclusion of the investigation and then divulge it publicly before the discipline matter is finalized. Although there may be other examples where individuals not involved in the underlying events submit allegations of misconduct, submissions concerning election-related litigation create a risk of the disciplinary process being weaponized by partisans or the appearance of that occurring.

The proposed amendment preserves the state bar's ability to investigate and seek appropriate discipline based on allegations of misconduct brought to the attention of the state bar by individuals who are not directly involved. Those individuals, however, will not be considered as complainants. Instead, the state bar will be the complainant in those instances where it determines that there are allegations of serious misconduct, incapacity, overdraft of a trust account, or a criminal conviction. This maintains the state bar's obligation under Rule 55(a) to

“evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity.”

### **III. EXPEDITED CONSIDERATION AND EMERGENCY ADOPTION REQUESTED**

As permitted by Supreme Court Rule 28(h), petitioner requests expedited consideration and emergency temporary adoption of the proposed rule amendments at the Court’s August 2024 Rules Agenda with a comment period to follow and consideration for permanent adoption at the Court’s December 2024 Rules Agenda. Petitioner respectfully requests that this petition be open for preliminary comments until May 31, 2024, with a reply due by June 17, 2024, to provide an opportunity for the public to comment before this petition is considered at the Court’s August 2024 Rules Agenda. If adopted, the petition should be reopened for further comment following the August Rules Agenda.

The 2024 election cycle is already generating media coverage, and the attorney disciplinary process may again see numerous allegations submitted by those not directly involved in the alleged misconduct. This presents a compelling circumstance for consideration of the proposed amendment in August and emergency adoption. Adherence to the timeline for consideration and adoption through the normal rules cycle would delay implementation until January 1, 2026. Nothing would be gained by following that timeline, given that the petition can be opened now for comment and then reopened again after the August Rules Agenda.

The public will have ample opportunity to weigh in on the proposal before the Court considers adopting it on a permanent basis in December.

RESPECTFULLY SUBMITTED this \_\_\_\_\_ day of April, 2024.

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## APPENDIX A

### Rules of the Supreme Court of Arizona

#### Rule 53. Complainants

(new language is underlined, deleted text is ~~stricken~~)

#### Rule 53. Complainants

**(a) Standing.** An individual or entity has standing to submit a charge if they have an attorney-client relationship with the respondent, direct and specific first-hand knowledge of the conduct described in the charge, or they became aware of the conduct in their role as a judicial officer. If a charge is submitted by an individual or entity that does not have standing, the state bar must determine if the allegations are of serious misconduct, incapacity, overdraft of a trust account, or a criminal conviction. If such a determination is made, the state bar will be the named complainant and the individual or entity who submitted the charge will not be entitled to the rights provided to complainants in these rules.

**(ab) Status of Complainant.** The complainant is not a party to discipline, disability or reinstatement proceedings. By becoming a complainant, a person submits himself or herself to the jurisdiction of this court and the state bar for all purposes relating to these rules. In order to receive information as provided by this rule, the complainant must keep the state bar informed of any change of address, telephone number, or e-mail address during the pendency of the investigatory or adjudicatory phase of the proceedings. Notice may be accomplished by mailing or otherwise transmitting the notice to the complainant's last known address.

**(bc) Information.** The following information will be provided to a complainant, by bar counsel, concerning charges made against a lawyer:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.
2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

A. Prior to a Screening Investigation. If bar counsel dismisses a matter prior to a full screening investigation, bar counsel may notify the complainant of the dismissal by telephone. The complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.

B. Following a Screening Investigation. If bar counsel dismisses a matter following a screening investigation, bar counsel shall mail a notice of dismissal to the complainant. The complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).

3. *Duty to Advise Complainant of Proceedings.* Bar counsel shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. Bar counsel shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of bar counsel or the disciplinary clerk. In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement. A complainant's written objection to an agreement for discipline by consent must be submitted to bar counsel within five (5) business days of such notice. Bar counsel shall submit the complainant's objection to the presiding disciplinary judge and serve a copy on respondent or respondent's counsel.

4. *Final Disposition.* Complainants shall receive notice of the final disposition of each matter.

**(ed) Failure to Provide Information.** The ultimate disposition of any disciplinary proceedings shall not be affected by the failure of bar counsel to provide the complainant with information as required by subsection (bc) of this rule.