

1 Lisa M. Panahi, Bar No. 023421
2 General Counsel
3 State Bar of Arizona
4 4201 N. 24th Street, Suite 100
5 Phoenix, AZ 85016-6288
6 (602) 340-7236

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

10 In the Matter of:

Supreme Court No. R-24-0018

11 **PETITION TO AMEND RULE 412**
12 **OF THE ARIZONA RULES OF**
13 **EVIDENCE**

STATE BAR OF ARIZONA
COMMENT

14 Pursuant to Rule 28(e) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby submits the following as its comment to the
16 above-captioned Petition.

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18 The Advisory Committee on Rules of Evidence, by and through its Co-Chairs,
19 the Honorable Sara Agne and the Honorable Maria Elena Cruz, have filed Petition
20 R24-0018 to Amend Rule of Evidence 412. The State Bar of Arizona supports the
21 proposed amendment.
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23 Congress enacted Federal Rule of Evidence 412 in 1978, which adopted the
24 rape-shield protection for criminal cases. In 1998, Arizona followed by adopting a
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1 similar rape-shield statute for criminal cases. A.R.S. § 13-1421. Notably, in 1994—
2 four years before Arizona adopted its criminal statute—Congress had amended
3 Federal Rule 412 to apply in all civil *and* criminal cases involving alleged sexual
4 misconduct. Arizona did not adopt Rule 412 nor did it adopt a separate rule to
5 address rape-shield protection in civil cases. Thus, there is currently an
6 inconsistency between rape-shield protections in federal and Arizona state courts.
7 The proposed rule seeks to expand the rape-shield protections to civil cases, which
8 will eliminate this inconsistency for which there is no discernable reason.
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11 In 2012, the Advisory Committee on Rules of Evidence believed that A.R.S.
12 § 13-1421 was sufficient to address the issue and the Committee did not analyze
13 whether a civil rape-shield rule was necessary. Since that time, the Committee has
14 identified multiple states with laws that mirror the federal civil rape shield rule or
15 have other civil rape shield protections with no identified concerns. Arizona’s
16 criminal rape-shield statute enacted over twenty-five years ago seems to be working
17 well and serves to limit humiliating and distracting information from the trial.
18 Expanding the rape-shield protection to civil cases will bring consistency to civil
19 and criminal cases involving alleged sexual misconduct in both state and federal
20 court.
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1 **CONCLUSION**

2 The State Bar of Arizona respectfully requests that the Court adopt the
3 proposed rule.
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5 RESPECTFULLY SUBMITTED this 1st day of May 2024.

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8 Lisa M. Panahi
9 General Counsel

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11 Electronic copy filed with the
12 Clerk of the Supreme Court of Arizona
13 this 1st day of May 2024.

14 by: PSequin