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**IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA**

In the matter of:

R-23-0051 Petition To Amend Rule 42
(ER 1.8), Ariz. R. Sup. Ct.

Arizona Supreme Court
No. R-23-0051

**Comment Supporting an
Amendment to Rule 42 (ER 1.8),
Ariz. R. Sup. Ct.**

Pursuant to Rule 28(e) of the Arizona Supreme Court Rules, undersigned counsel respectfully submits this comment supporting the proposed amendment to Rule 42 (ER 1.8), Arizona Rules of the Supreme Court. Counsel supports the proposal to amend ER 1.8 for the following reasons.

The proposal could aid in holistic representation in criminal defense. The proposal is very admirable and has a lot of potential. It would allow criminal defense attorneys and public defense agencies to assist clients with expenses that were not allowed in the past. It helps attorneys to treat clients and represent them as a whole person, which enhances their representation of clients.

In some states, there are already programs and agencies that practice holistic representation, recognizing that effective representation of an individual includes addressing other areas of the person’s life that impacts their criminal case, such as housing, medical care, transportation, etc. See “*Holistic Defense’s Importance*,” by National Legal Aid and Defender Association, Published November 17, 2021 ([Holistic Defense’s Importance National Legal Aid & Defender Association.pdf](#)); “*Holistic Representation: An Innovative Approach to Defending Poor Clients Can Reduce Incarceration and Save Taxpayer Dollars — Without Harm to Public Safety*,” by James M. Anderson, Maya Buenaventura, Paul Heaton, Published Jan 11, 2019, by the Rand Corporation ([Holistic Representation An Innovative Approach to Defending Poor Clients Can Reduce Incarceration and Save Taxpayer Dollars — Without Harm to Public Safety RAND.pdf](#)).

The expansion of ER 1.8 would expand holistic representation in the criminal defense field with extremely positive effects. This will propel the field of indigent defense in Arizona into the next era of holistic representation.

The proposal could be implemented without any conflict of interest/favoritism. One concern is whether any policy or decision to give gifts to one client but not another could rise to a conflict of interest and be considered favoritism. Expanding ER 1.8 would not cause any conflict of interest or favoritism. Conflicts can be avoided by allowing public defense agencies and private attorneys to have a budget or a fund, and to implement guidelines on how to qualify people

for certain expenses. The funds for expenses should be made available to everyone unconditionally, no strings attached, in order to avoid any conflict or appearance of impropriety.

The current proposal to modify and expand ER 1.8 seems to address conflict of interest concerns already. It codifies Arizona ethics opinions that essentially say that attorneys may give “gifts” to clients for expenses as long as there is no expectation of repayment, the payments are truly charitable, and the attorneys do not advertise or otherwise induce clients to retain the attorneys with the promise of receiving funds.

The definition of "modest gift" should be liberally construed. Counsel strongly supports the giving of “modest gifts” but wonders what dollar amounts are considered "modest." The dollar amount should be generous, because food, rent, transportation, medicine, and basic living expenses are expensive. Perhaps there could be a range on what is acceptable and a clarification on what is considered excessive. Or the dollar amount should be case-by-case and left up to the criminal defense agency or attorney. And with inflation, the costs of these basic things increase, so the definition of "modest" amounts will increase over time. It's really hard to put a dollar amount on this, so it should be flexible and changeable over time.

The proposal could allow for tattoo removal. The proposed amendment allows payments to clients for "medicine." Counsel supports extending the definition

to include payments for medical care, specifically to help pay for a client's tattoo removal (such as gang tattoos). Many prison inmates are interested in leaving gang life and removing their gang tattoos. Prisons don't offer safe, medical-grade laser tattoo removal, and don't want to pay for that. Incarcerated people left with burning off their gang tattoos or covering them up with tattoo ink. These methods are not only physically harmful and unsafe, they often violate prison rules that prohibit self-mutilation and tattooing. This puts prison inmate clients in a Catch-22 situation.

If public defense agencies and private attorneys were allowed to have a budget for tattoo removal and a process for dispensing these funds, this would greatly assist clients, in and out of custody, with their rehabilitation and well-being. It would help increase safety within prisons, and would help reduce violence. *See “Disengagement from street gangs: a systematic review of the literature,” by Sarah Tonks and Zoe Stephenson, Published September 13, 2018 ([Disengagement from street gangs - a systematic review of the literature - PMC.pdf](#))*. Expanding ER 1.8 to allow payments for medical expenses will allow attorneys and public defense agencies to coordinate with medical practitioners to donate their time and service for tattoo removal, or do it at a reduced rate. *See “Breaking Gang Affiliations Behind Bars,” by Singapore Prison Service ([breaking gang affiliations behind bars.pdf](#)); “Gang Renunciation,” by Singapore Prison Service ([Gang Renunciation.pdf](#))*.

In summary, undersigned counsel supports the extension of ER 1.8 because it will expand the ability of criminal defense attorneys and agencies to provide holistic representation to clients and treat clients as a whole person, it will address clients' needs, and it will aid attorneys and agencies to provide more effective representation of clients.

Respectfully submitted this 1st day of May, 2024

By: /s/ Mary Dreyer
Mary Dreyer