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**IN THE ARIZONA SUPREME COURT**

IN THE MATTER OF:

PETITION TO AMEND RULE 53,  
RULES OF THE ARIZONA  
SUPREME COURT

Supreme Court No. R-24-0046

**COMMENT**

On behalf of Phoenix Newspapers, Inc. (“PNI”), publisher of *The Arizona Republic* and azcentral.com, undersigned counsel respectfully urge the Court to reject the proposed changes to Rule 53 set forth in Petition R-24-0046 (the “Petition”) for the following reasons:

As publisher of the largest-circulation newspaper in Arizona, PNI is committed to protecting and vindicating the public’s interest in the open and transparent operation of Arizona’s public institutions, including the legal profession’s disciplinary process. *The proposed changes to Rule 53, however, would dramatically diminish the public’s*

*access to information about attorney discipline, undermining the rules this Court has implemented to protect the transparency of the process. See Ariz. Sup. Ct. R. 70(a) (mandating in attorney disciplinary matters that “the state bar file, the record maintained by the disciplinary clerk, and all proceedings shall be open to the public”); see also id. Rule 123(c)(1) (“Historically, this state has always favored open government and an informed citizenry.”).*

If the Petition were granted, only complainants who were judicial officers, clients of the accused attorney or had first-hand knowledge of the circumstances would be allowed to receive copies of the respondent’s initial response, or notification of dismissal of the initial charge, and object to dismissal or settlement of the charges. In enacting the current version of Rule 70(d), this Court recognized that complainants, witnesses and respondents alike have First Amendment rights to speak freely about disciplinary proceedings. Those participants can be valuable sources of information about the disciplinary process for the news media and an informed public.

The proposed rule change would replace complainants, who are free to discuss disciplinary matters, with the State Bar, which is bound by

confidentiality rules inapplicable to other participants in the process. Closing off these avenues of public information would only diminish confidence in our judicial system and the legal profession. As then-Chief Justice Burger eloquently stated in upholding the public's First Amendment right to attend criminal trials: "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 572 (1980). Or, as this Court put it so well: "Democracy blooms where the public is informed and stagnates where secrecy prevails." *Phoenix Newspapers v. Jennings*, 107 Ariz. 557, 561 (1971).

PNI is concerned that the Petition is expressly aimed at a small but important subset of attorney disciplinary complaints: those involving alleged misconduct in election-related litigation, especially complaints based on news reports. Election-related litigation is a matter of the highest public concern, given its potential to affect the functioning of our democracy. PNI takes seriously its constitutionally protected role to bring information about these matters to the public, including information regarding potential misconduct by attorneys involved in

those proceedings. Attorney disciplinary complaints based on news reports about election-related litigation or any other topic should not be treated as inherently improper. They should be provided with the same careful consideration, investigation, deliberation and due-process protections as all other complaints, as they are now. Notably, the Petition does not cite any actual harm caused by such complaints, nor does it explain how some 40 complaints out of the thousands made each year have imposed a substantial burden on the disciplinary system.

Of course, as attorneys and officers of the Court, undersigned counsel also have a duty to report possible misconduct by fellow members of the State Bar. *See* ER 8.3. Indeed, the legal profession’s self-regulation depends on attorneys complying with their ethical obligations and reporting for discipline those who do not do so. *See id.* cmt. [1] (“Self-regulation of the legal profession requires that members of the legal profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. . . . *Reporting a violation is especially important where the victim is unlikely to discover the offense.*”) (emphasis added). The proposed “standing” rule would undermine the special role of Arizona attorneys in reporting misconduct

by leaving a complaining attorney without first-hand knowledge of the misconduct in the dark about, and unable to challenge, the outcome.

In short, the changes proposed in the Petition would throw a shroud over some attorney disciplinary proceedings, thus exacerbating public distrust of the legal profession's self-regulation. These changes would not serve the interests of either the legal profession or the public at large. To the contrary, while they may be well-intended, these amendments would undermine Rule 42 and the legal profession's "special responsibilities of self-government." See Rule 42, Preamble, at [12].

Therefore, for all of the foregoing reasons, undersigned counsel on behalf of PNI respectfully request that the Court deny the Petition and preserve the current Rule 53.

Respectfully submitted this 30th day of May, 2024.

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