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ARIZONA SUPREME COURT

In the Matter of)	
)	
PETITION TO AMEND RULE 82,)	Supreme Court No. R-24-0047
RULES OF THE ARIZONA)	
SUPREME COURT, JUDICIAL)	REPLY
ETHICS ADVISORY COMMITTEE))	
_____))	

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona and this Court’s Order dated June 4, 2024.

The Judicial Ethics Advisory Committee (Committee) filed a comment taking no position on the petition. The Committee did identify concerns for this Court’s consideration that merit attention. Petitioner was also alerted to a concern raised about this proposal not being vetted through the regular rules cycle.

A. Redacting Identities of Source of Request and Commenters

The Committee suggests that the identity of the inquirer and the identity of commenters should be redacted from materials filed with the Clerk of the Supreme Court to preserve the confidentiality integral to the advisory opinion process as

provided in Rule 82(c)(2) and (d). To achieve this aim, the proposed amendment to Rule 82(g) could be modified as follows:

(g) Supreme Court Review. If the advisory committee decides to issue a formal advisory opinion, the advisory committee chair must file the proposed opinion and, subject to redaction to preserve confidentiality of the source of the request and that of any commenters, all materials considered by the advisory committee in adopting the opinion with the Clerk of the Supreme Court for Supreme Court review. Within 90 days after the proposed opinion's submission, the court may take any action it deems appropriate, including declining review of the opinion, approving the opinion, ordering that the opinion not be posted or distributed, modifying the opinion, or directing the advisory committee to make specified changes or reconsider certain issues.

The Court could opt to eliminate the requirement to file supporting materials by striking “and all materials considered by the advisory committee in adopting the opinion” from the proposed amendment. This would obviate the need for redaction. If an instance arises where the Court believes the submission of materials would be helpful for its review, the Court could order that the materials be filed in that instance subject to appropriate redaction as the Court directs.

B. Length of Review Period Could Be Shortened

JEAC notes that adding a 90-day review period to the process may cause some inquirers to forego seeking a formal written opinion due to the length of time involved in obtaining guidance. The 90-day period proposed mirrors that provided in Rule 42.1(i) of the Rules of the Arizona Supreme Court. Petitioner does not oppose shortening the period if the Court is comfortable with its ability to act more quickly.

C. Normal Rules Cycle Would Delay Effective Date of Amendment

Petitioner has been informed that a question from a judge was raised through staff as to why this proposal was not being vetted through the regular rules cycle. Petitioner requested expedited consideration and emergency adoption because processing this petition through the normal cycle would delay implementation of any amendment until January 1, 2026.

RESPECTFULLY SUBMITTED this 9th day of July, 2024.

By /s/ David K. Byers
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