

in the attachment to this order are opened for public comment under Rule 28(c), Rules of the Supreme Court of Arizona, with all comments due no later than October 1, 2024, and any reply due no later than October 15, 2024.

The amendments shown in the attachment may be viewed by going to: <http://www.azcourts.gov/Rules-Forum>. This opens the "Welcome" page. This order and its attachment are posted under the file for this rule petition, which can be found by opening the category "Rules of the Supreme Court" and scrolling down the page.

For instructions on how to post comments electronically, click on <https://www.azcourts.gov/rules/Forum-FAQ> at the top of the "Forum FAQ" page and then "How do I file a comment on a Rule 28 petition?"

Alternatively, commenters may submit comments by filing an original and one paper copy of the comment and one electronic copy of the written comments and supporting documents in Microsoft Word format on a CD or other compatible electronic medium with the Clerk of the Supreme Court, 1501 West Washington St., Room 402, Phoenix, AZ 85007 in an envelope marked "Rule Comment."

Any person filing a comment must send a copy of the comment to the Petitioner electronically or by ordinary mail.

DATED this 22nd day of August, 2024.

/s/

ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution
Christopher P Staring

ATTACHMENT¹

RULES OF THE SUPREME COURT OF ARIZONA

Rule 42. Rules of Professional Conduct

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ER 4.2. Communication with Person Represented by Counsel

(a) [No change in text]

(b) A lawyer may communicate with a representative of a government entity on behalf of a client, other than in the course of an official public proceeding, concerning a matter that is the subject of pending or anticipated future litigation if the lawyer has a good faith and objectively reasonable belief that the communication is a legitimate exercise of the client's constitutional right to petition the government for the redress of grievances, including the settlement of a dispute or claim involving the client and the government entity. In such situations, the lawyer is not required to obtain the consent of the lawyer representing the government entity in the matter, but must notify that lawyer as follows:

(1) If the lawyer is seeking to initiate an oral exchange, in-person or by electronic means, the lawyer must notify the lawyer representing the government in the matter in writing regarding the intended communication and the matters to be discussed. This notice must be provided far enough in advance of the intended communication that the government's lawyer has a reasonable opportunity to contact the government representative to discuss the matter before the communication takes place.

(2) If the intended communication is a written communication, the lawyer must provide a copy of it to the lawyer representing the government in the matter, at the same time it is provided to the government representative.

Comment [2003 amendment]

[1] This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is

¹ Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike-through~~.

~~permitted to do so. Communications authorized by the law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.~~

[2] In the case of an organization, including a government organization (subject to paragraph (b)), this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare ER 3.4(f).

[3] **[No change]**

Comment [2013 Amendment]

[4] **[No change]**

Comment [2025 amendment]

[5] Communications authorized by the law include, for example, the right of a party to a controversy with a government agency to speak with government officials, through the party's lawyer, about the matter. Paragraph (b) recognizes that special considerations come into play when a lawyer is seeking on behalf of a client to redress grievances involving the government, a right guaranteed by the First Amendment to the United States Constitution. Paragraph (b) permits communications with those in government having the ultimate authority to make policy decisions regarding the matter (but not with any other government personnel) without the prior consent of the lawyer representing the government in such cases. However, a lawyer planning to initiate such a communication without the prior consent of the lawyer representing the government must notify that lawyer regarding the intended communication. This is intended to preserve a person's right to seek the redress of grievances while also allowing the government's lawyers to fulfil their duty to protect the interests of their government client.

[6] A government lawyer who is notified that another lawyer intends to meet with an official or employee of the government client may choose to discuss the underlying matter with the government official or employee in advance of the meeting, ask to be included in the meeting, or actively discourage the government actor from consenting to the meeting. Under ER 4.4(a), however, if there is a colorable claim that the communication is a legitimate exercise of the other lawyer's client's first amendment right to petition the government for redress, then

the government lawyer should not, without a strong justification, seek to prevent the meeting altogether.

[7] Paragraph (b) does not permit a lawyer to bypass counsel representing the government on every issue that may arise in the course of disputes with the government. It is intended to provide lawyers access to high-level decision makers in government with respect to genuine policy issues, such as to present the view that the government's basic policy position with respect to a dispute is faulty, or that government personnel are conducting themselves improperly with respect to aspects of the dispute. It is not intended to provide direct access on routine disputes such as ordinary discovery disputes, extensions of time or other scheduling matters, or similar routine aspects of the resolution of disputes. In addition, a communication that is initiated for the purpose of obtaining, or is conducted in a manner likely to obtain, evidence, admissions, or information about litigation strategy or privileged communications, is clearly not for the purpose of seeking redress under the First Amendment. A lawyer may file a public records request on behalf of a client if the lawyer complies with ER 4.2(b)(2).