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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of

Petition to Amend Rule 42 (ER 4.2),
Ariz. R. Sup. Ct.

Arizona Supreme Court No. R-23-0056

REPLY TO COMMENT

**REPLY TO COMMENT ON PETITION TO AMEND
ARIZONA RULE 42 (ER 4.2), ARIZ. R. SUP. CT.**

In support of its pending Petition to Amend Arizona Rules of the Supreme Court, Rule 42 (ER 4.2), the Ethics Advisory Committee (“Committee”), by and through its Chair, the Honorable Christopher Staring, and Vice Chair, Ann Ching, provides this Reply to a comment to the Petition submitted by the public.

ER 4.2, *Communications with Person Represented by Counsel*, provides as follows: “In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has consent of the other lawyer or is authorized by law to do so.” The Petition proposed amendments to ER 4.2 by providing that an attorney may talk with a represented government official without the consent of the official’s attorney only if the attorney notifies the official’s attorney in advance or at the same time of the communication. The Rules Petition was submitted to the Rules Forum in December 2023 for public comment. A public comment was received by Ms. Regina Nassen on September 12, 2024. Ms. Nassen has concerns regarding the proposed amended language to R-23-0056, the Petition to Amend ER 4.2.

The Committee has reviewed and respectfully responds to the comment filed by Ms. Nassen, a former member of the Committee. Notably, Ms. Nassen chaired the subcommittee that authored the Petition.

The Committee respects and agrees with Ms. Nassen’s comment, “The relevant language from the petition as submitted reads: ‘If a lawyer intends to communicate with a representative of a government entity on behalf of a client, other than in the course of an official public proceeding’ The Court’s version of that same language reads: ‘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 The modifications changed what was originally a description of a situation for which the remainder of the new provision gives ethical guidance into a positive recognition (or grant?) of authority. That is odd, because the right of a lawyer to communicate with public officials and bodies isn't a matter within the scope of the ethics rules; the question for the ethics rules is whether the lawyer may do so without first obtaining the government lawyer's consent. The modified language fails to make that connection.”

The revision makes a distinction between litigation and non-litigation. The new provision—as modified—provides that an attorney who intends to talk with a public body or official about a litigation matter must notify the government attorney but need not obtain the government attorney's consent. It does not address how a communication regarding a non-litigation matter should be treated. Ms. Nassen states that there is no good reason for the distinction.

The Ethics Advisory Committee respects Ms. Nassen's perspective and agrees with the comment that she filed on September 12, 2024. Ms. Nassen's comment can

be found here: [R-23-0056 Petition to Amend Rule 42 \(ER 4.2\) ARIZ. R. SUP. CT.](#)
[- \(azcourts.gov\)](#).

DATED this 15th day of October, 2024.

/s/ _____
Honorable Christopher Staring
Chair, Ethics Advisory Committee

/s/ _____
Ann Ching
Vice Chair, Ethics Advisory Committee