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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-25-

11 **PETITION TO AMEND RULES 42,**
12 **60, 64 AND 65 OF THE ARIZONA**
13 **RULES OF SUPREME COURT**

PETITION

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby petitions the Court to amend Rules 42, 60, 64
16 and 65 of the Arizona Rules of Supreme Court. The purpose of this amendment is to
17 address the current inequities in the sanctions available when disciplining attorneys
18 not admitted to the State Bar of Arizona but engaged in the authorized practice of
19 law here pursuant to an exception in the rules allowing for the practice.
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22 **Background and Purpose of the Proposed Rule Amendment**

23 The Arizona Supreme Court Rules has exceptions that allow a non-admitted
24 attorney licensed in another jurisdiction to practice law in Arizona. The Rules
25

1 provide that a non-member engaged in the practice of law in the State of Arizona
2 submits himself or herself to the disciplinary and disability jurisdiction of the Court
3 in accordance with the rules. See, Rule 46(d), Ariz. R. Sup. Ct., and Rule 42, Ariz.
4 Sup. Ct., Rules, specifically ER 8.5(a). Although the Court has jurisdiction to
5 sanction such a lawyer if he has engaged in misconduct, the Court is currently limited
6 in the sanctions available to address that misconduct. This limitation was stated in
7 *Matter of Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994). Olsen sought permission to
8 appear pro hac vice in a civil matter pending in Maricopa County Superior Court.
9 Olsen submitted an affidavit that he was an active member of the Utah and California
10 Bars when he was in fact suspended from both. The Court concluded that although
11 Olsen's conduct warranted disbarment, he was not a member of the State Bar of
12 Arizona and could not be suspended or disbarred from that association. The only
13 sanction that could be imposed was a censure, now reprimand. A reprimand does not
14 affect the lawyer's authorization to practice law.
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19 The current restriction in sanctions allows serious misconduct to be addressed
20 by a lesser sanction that does not serve to protect Arizona.

21 By way of example, a non-admitted attorney who has a license in good
22 standing in another jurisdiction could reside in Arizona and practice exclusively
23 immigration law. If that lawyer stole money from his Arizona clients and is charged
24 with misconduct and made the subject of a disciplinary proceeding, the most serious
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1 sanction currently available is a reprimand. A reprimand does not prevent the lawyer
2 from continuing to engage in the practice of law in Arizona. Moreover, the lawyer's
3 home licensing jurisdiction is likely to impose reciprocal discipline on the lawyer
4 rather than seek to investigate and prosecute the case to obtain a more serious
5 sanction. This leaves the lawyer's license in good standing and does not prevent
6 further practice in Arizona.
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9 To rectify this situation, the proposed amendment to ER 8.5(a) would
10 explicitly state that all sanctions cited in Rule 60, Ariz. R. Sup. Ct., would be
11 available to impose on non-admitted attorneys found to have engaged in misconduct,
12 if appropriate. The effect of the change would allow the presiding disciplinary judge,
13 a hearing panel or the Court to disbar or suspend the lawyer's privilege to engage in
14 the practice of law pursuant to the exceptions in the rules.
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16 The proposed amendment to Rules 64 and 65 changes some references to
17 "member" to "attorney" to address the reinstatement of these lawyers to practice.
18 They would not be reinstated as a member but a lawyer who can once again practice
19 in accord with the exceptions set out in the rules.
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1 **CONCLUSION**

2 The State Bar of Arizona respectfully requests that the Court amend Rule 42,
3 specifically ER 8.5(a), Rules 60, 64 and 65 of the Arizona Rules of Supreme Court
4 as detailed in the Appendix.
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6 RESPECTFULLY SUBMITTED this 10th day of January, 2025.
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10 Lisa M. Panahi
11 General Counsel

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13 Electronic copy filed with the
14 Clerk of the Supreme Court of Arizona
15 this 10th day of January, 2025.

16 by: PSequin
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APPENDIX

Appendix

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

ER 8.5. Jurisdiction

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction and shall be subject to all sanctions provided for in these rules including, but not limited to, suspension or disbarment.

A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b)(1)-(b)(2) [No change]

Rule 60. Sanctions

(a) Types and Forms of Sanctions, Attorneys. Misconduct by an attorney subject to the jurisdiction of this court, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

(a)(1) [No change]

(a)(2) *Suspension.* Suspension may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not in excess of five (5) years. Suspended ~~members~~ attorneys shall remain suspended until the court enters, an order reinstating the ~~member~~ attorney to the practice of law in Arizona or upon order of the presiding disciplinary judge pursuant to Rule 64(e)(2)(B).

(a)(3-6) [No change]

(b)-(e) [No change]

Rule 64. Reinstatement Eligibility

(a)–(b) [No Change]

(c) Additional Requirements. If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required, unless the applicant meets the criteria to apply for reinstatement pursuant to paragraph (f)(1)(B) of this rule. An applicant subject to the additional requirements under this paragraph shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement. A non-admitted attorney is subject to the additional requirements of this rule unless waived by the presiding disciplinary judge or court.

(d) – (e)(2)(A) [No Change]

(e)(2)(B) Opposition. Within ten (10) days of service of the affidavit, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the affidavit. If an opposition is filed, the matter shall be submitted to the presiding disciplinary judge for review and the ~~member~~-attorney may not resume the practice of law until reinstated by order of the presiding disciplinary judge. If no timely opposition is filed, the state bar shall be deemed to consent to reinstatement, and the ~~member~~-attorney may resume the practice of law upon order of the presiding disciplinary judge.

(e)(3) Suspended ~~members~~-attorneys shall remain suspended until an order is entered by the presiding disciplinary judge or the court reinstating the ~~member~~ attorney to the active practice of law. This provision shall not apply to ~~members~~-attorneys who

are summarily suspended by the board pursuant to Rule 62 of these rules and have filed their application for reinstatement within two years from the effective date of the suspension or otherwise qualify for reinstatement pursuant to paragraph (f)(1)(B) of this rule.

(f)(1)-(2) [No change]

Rule 65 Reinstatement; Application and Proceedings

(a) Application for Reinstatement. Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active ~~membership~~practice only as provided in this rule.

(a)(1)-(3)(C) [No change]

(a)(3)(D) ~~Membership~~ Fees and Other Charges. No reinstatement shall become effective until all ~~membership~~fees and other charges accruing after the application for reinstatement has been granted have been paid.

(a)(4)-(a)(5) [No change]

(b)(1)-(4) [No Change]