

Hon. Christopher Staring
Chair, Ethics Advisory Committee
Judge, Arizona Court of Appeals,
Division 2
400 W. Congress, Ste. 200
Tucson, AZ 85701
Telephone: (602) 452-3378
Email: EAC@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

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

Supreme Court No. R-25-0033

COMMENT

The Ethics Advisory Committee (EAC), by and through its Chair, the Honorable Christopher Staring, supports the State Bar of Arizona's Petition R-25-0033 to amend Comment[1] to ER 4.2. This amendment will clarify that lawyers are allowed to advise their clients on communications that their clients are lawfully permitted to make, including communications with a represented party. The EAC agrees with the State Bar's thorough explanation of the need for this amendment. The EAC submits this comment to address potential objections to the proposal.

In the course of providing competent representation to a client as required by ER 1.1, lawyers may need to advise their clients regarding their lawful

1 communications. In its current version. ER 4.2, Comment [1], reinforces that
2 “parties to a matter may communicate directly with each other.” The amendment to
3 Comment [1] will clarify that lawyers may “advise a client concerning a
4 communication that the client is legally entitled to make,” including those between
5 parties.
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7 As the Petition notes, this language appears in the American Bar Association
8 Model Rule of Professional Conduct 4.2, Comment [1], and has been adopted by
9 thirty-two states. Thus, this proposal is neither novel nor unprecedented.
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11 Concerns that a lawyer may overreach by using a client as a conduit for
12 communications prohibited by ER 4.2 are not unfounded. However, the ERs
13 already prohibit this. ER 8.4(a) states, “It is professional misconduct for a lawyer
14 to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly
15 assist or induce another to do so, or do so through the acts of another” The
16 proposed amendment to ER 4.2, Comment [1], will not alter this rule. Lawyers will
17 still be prohibited from using their clients (or any other person) to violate ER 4.2.
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20 Therefore, as in countless other instances, lawyers are entrusted to exercise
21 their professional judgment and discretion. Situations may arise where lawyers are
22 uncertain whether their advice to a client goes beyond what the Rules of
23 Professional Conduct permit. In those situations, lawyers may draw upon many
24 resources for assistance: their own experience and research, consultation with other
25

1 lawyers, ethics opinions, the State Bar of Arizona’s ethics hotline, or advice from
2 an ethics attorney.

3 Indeed, the EAC is in the process of drafting an ethics opinion on this topic,
4 EO-24-0002. The EAC has paused its work on this opinion pending the outcome of
5 this Petition. Should the Supreme Court amend Comment [1] as proposed, the
6 EAC is prepared to revise its opinion and resubmit it for public comment.
7

8 Moreover, the State Bar of Arizona’s Ethics Advisory Group (EAG) can
9 assist lawyers with understanding the boundaries of the proposed amendment. The
10 EAG routinely provides continuing legal education programs on the Rules of
11 Professional Conduct. The EAG also publishes “Best Practices” on the State Bar
12 website.
13

14 As aptly stated in the Preamble to the Arizona’s ERs, “The Rules of
15 Professional Conduct are rules of reason. They should be interpreted with
16 reference to the purposes of legal representation and of the law itself.” The
17 proposed amendment to ER 4.2, Comment [1], provides reasonable guidance to
18 Arizona lawyers without placing unreasonable restrictions on their clients’ ability
19 to fully benefit from the advice of counsel. Adopting this amendment will allow
20 the Court to demonstrate its trust in Arizona lawyers to represent their clients
21 professionally, competently, and ethically.
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2 DATED this 29th day of April, 2025.
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Honorable Christopher Staring
6 Chair, Ethics Advisory Committee
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9 Electronic copy filed with the
10 Clerk of the Supreme Court of Arizona
11 this 29th day of April, 2025.

12 by:

13 C Acree
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