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

In the Matter of:

Supreme Court No. _____

PETITION

**PETITION TO AMEND RULE 36(e),
ARIZONA RULES OF THE
SUPREME COURT**

Pursuant to Rule 28, Arizona Rules of the Supreme Court, undersigned counsel (“Petitioner”) petitions the Supreme Court to amend Rule 36(e), Ariz. R. Sup. Ct., to restore the disclosure requirement for informal inquiries. This would ensure that applicants receive the due process they are entitled to under state and federal law. In Petitioner’s understanding, due process protection was the reason the disclosure requirement was added in 2011. Unfortunately, the disclosure requirement was removed from the rule for informal inquiries in 2015. That was a mistake, as discussed below. The text of the proposed amendment is set forth in Appendix A (attached).

DISCUSSION

A. Background

The disclosure requirement was added to the rule following Rule Petition R-10-0019, effective January 1, 2012. R-10-0019 was initially submitted by David Byers (Administrative Director of the Courts). That original Petition is no longer linked on the Court’s Rule Forum—or it was under a different number. However, a comment from the Co-Chairs of the Committee on Character and Fitness (the Committee) is linked and describes the history.

“On September 2, 2010, the Court adopted amendments to Rules 34-37 and continued consideration of Rules 36(c)(7) and 36(f)(7) for further study. Staff of the Supreme Court proposed revisions to the rules and on December 10, 2010, the court ordered the matter reopened for public comment on proposed revisions to Rules 36(e), 36(f) and 37(c), Rules of the Supreme Court, titled ‘Alternative Proposal’.”

See Comment to R-10-0019 posted on the Rule forum April 15, 2011 (emphasis added). The “Alternative Proposal” is currently linked on the Rule Forum under R-10-0019, and it includes a disclosure requirement for both informal and formal proceedings.

In its Comment, the Committee described admirable efforts to research the issues presented. What is not expressly described is the background that was taking place prior to and around the time of the “Alternative Proposal.” In 2009, an Attorney Discipline Task Force was formed and during 2009/2010 that Task Force

1 was meeting regularly concerning major changes to the discipline system in Arizona.
2 There was a rule change petition (R-09-0044), multiple comments to that petition
3 (both written and orally at public open meetings), and amendments to that petition,
4 prior to the final version which was ordered effective January 1, 2011.
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6 During that time, many respondents' counsel (including myself) attended
7 various Task Force meetings and joined together to submit comments. The character
8 and fitness process also came up at some point during that period. While I cannot
9 recall exactly how it happened and see no written record to refresh my recollection,
10 I believe that the Court staff's September 2010 proposed changes were the result of
11 discussions between Court staff (such as Kathleen Currey), the Committee, and
12 respondents' counsel who also work on admissions matters ("applicants' counsel").
13 There may have been an in-person meeting or two. At any rate, I know that due
14 process concerns expressed by applicants' counsel were at least part of the reason
15 behind the proposed changes to add a disclosure requirement to the rules.
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17 When the Co-Chairs of the Committee filed their comment, they invited
18 applicants' counsel to submit comments as well. Mark Harrison's comment is
19 included as an exhibit here because it perfectly states the issue at the time—which
20 is unfortunately at issue again now. Mr. Harrison first noted that applicants are
21 entitled to due process in the admissions process under decisions of this Court as
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1 well as of the Supreme Court of the United States. *See, e.g., Schware v. Board of*
2 *Bar Examiners*, 353 U.S. 232, 238-39, 77 S.Ct. 752, 756 (1957); *Application of*
3 *Burke*, 87 Ariz. 336, 351 P.2d 169, 172 (1960). He went on to note that:

5 The current Arizona rules do not assure that applicants receive due process.
6 The formal “Notice” typically issued by the Committee at the present time
7 lists only very general “categories” of information (e.g., “Misconduct in
8 employment”; “Acts involving dishonesty, fraud, deceit or
9 misrepresentation”; and typically includes a “catch-all” category (“All other
10 matters that may bear upon your character and fitness to practice law”) which will be the subject of the Committee’s inquiry. It is self-evident that
11 “Notices” of this kind are not notices that comport with due process. Under
12 the current rules, the Committee is not required to timely disclose to
13 applicants in advance of either an informal or formal hearing (a) the names
14 of adverse witnesses or (b) notice of the negative evidence (or even a
15 summary of the negative evidence) that may adversely affect the
16 applicant’s ability to secure admission to the Bar and enable the applicant
17 to prepare for the hearing. Denying the applicant this information in
18 advance of the informal and formal hearings obviously deprives the
19 applicant of due process and the ability to properly prepare to respond to
20 negative evidence.

21 *See Harrison Comment, page 2, emphasis added.*

22 By Order filed 09/01/2011, this Court adopted the proposed amendments and
23 required disclosure in advance of both informal and informal proceedings. This was
24 a positive outcome that ended situations where applicants were surprised with
25 undisclosed negative evidence during their hearings.

26 **B. Current Situation**

27 The disclosure requirement was removed from the informal inquiry portion of
28 the rule as a result of Petition R-14-0011, effective January 1, 2015. R-14-0011

1 notes that it is the product of meetings and review held in 2012 by an “Admissions
2 Subcommittee” branch of the Attorney Regulation Advisory Committee (ARC).
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4 The Petition contained approximately 14 proposed changes to the admissions rules.
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6 The reason for removal of the disclosure requirement from informal inquiries was
7 not addressed in any detail in the Petition. By the time the Petition was filed, I was
8 living in Texas with family, and I do not recall that there was any group discussion
9 about it between applicants’ counsel. As I have noted, not all respondents’ counsel
10 also do admissions work. The new Co-Chairs of the Committee did not notify
11 applicants’ counsel of the Petition, as best as I can recall. At page 4, the Petition
12 reads:
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15 ARC has determined that the Committee would benefit from less rigid
16 informal proceedings for the first inquiry, to be held before a panel of exactly
17 three Committee members who must attend in person. Informal hearings
18 will be more conversational and instructive, and will be handled by the
19 investigating member before three other members of the Committee, to be
20 assigned on a rotating basis by staff. The three panel members will
21 deliberate after the inquiry and reach a decision; the investigating member
22 will not participate in deliberations or decision. ARC intends this change to
23 eliminate any appearance that a Committee member is acting as both
24 advocate and judge. To ensure a diverse composition of the panel, the
25 proposal recommends that the panel include both a lawyer and a non-lawyer
26 member. At least two members must agree to reach a decision. There are
27 no discovery obligations and subpoenas may not be issued; a record may be
28 made but is not required.

25 In reading this description, the intent to make the proceeding more informal
26 sounds harmless—possibly even pleasant. The only change that stood out was the
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1 addition of an investigating member who would not vote, and Mark Harrison had
2 advocated for that modification. However, that change applied to both informal
3 inquiries and formal hearings. The only substantive change to informal inquiries
4 was the removal of that disclosure requirement. Unfortunately, I am now aware (on
5 information and belief) of multiple instances where applicants are again being
6 confronted with previously undisclosed negative evidence during informal inquiries.
7 Because there is no longer a disclosure requirement, the Committee is not disclosing
8 the negative information ahead of time.

9 Moreover, I am aware of at least one instance where the Committee received
10 a “confidential” report of some sort about the applicant and inquired about it in an
11 informal inquiry, without disclosing the document or identity of the reporting person.
12 The rule applying to that situation is as follows:

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18 3. *Consideration of Documents or Information.* Documents or other
19 information provided to the investigating member in confidence will remain
20 confidential and may be referenced, shared or considered at the informal
21 inquiry only if the providing party agrees. Absent such agreement,
22 confidential information must not be referenced, shared or considered at the
23 informal inquiry or otherwise considered by the panel in determining the
24 applicant's character and fitness for admission to practice law. Because the
25 objective of the informal inquiry is to informally resolve the investigating
26 member's concerns efficiently, there is no formal introduction of exhibits or
27 other evidence into a record at an informal inquiry. Neither the panel nor the
28 applicant may subpoena the appearance of witnesses at an informal inquiry.

Rule 36 (e)(3), Ariz. R. Sup. Ct. (emphasis added).

1 The last two sentences were added after the 2015 changes that removed
2 disclosure. Those sentences may say there “is no formal introduction of exhibits”
3 but they do not change the language specifying that such information “must not be
4 referenced” in the informal inquiry.
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6 This concept stems directly from our case law. *See, e.g., Application of Burke,*
7 *87 Ariz. 336, 351 P.2d 169, 172 (1960;)*¹ *Application of Guberman*, 90 Ariz. 27, 363
8 P.2d 617 (1961). Notably, Petition 10-0019 included language similar to that set
9 forth above (no use of “anonymous” information), yet Mark Harrison still had
10 concerns that it was not strong enough. He was concerned about something like this
11 happening. His comment recommended that the Court add specific language to Rule
12 36 (e) and (f) as follows:
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16 When information is submitted by potential witnesses, the staff should
17 initially determine whether the witness will agree to have his or her identity
18 disclosed to the applicant and agree to the disclosure of the information
19 submitted by the witness. If the witness will not waive confidentiality and
20 provide that agreement, *the information should not be distributed or
accessible to members of the Committee.*

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23 ¹ “However, we cannot allow information of this nature to be used by the committee for
24 the purpose of denying a man due process in so vital a matter as the right to practice his
25 chosen profession. To do so would be to open the door to the most noxious type of character
26 assassination and guilt by innuendo. If respectable persons have derogatory information or
27 bona fide charges to level against an applicant, they should not hesitate to come out into
the open and speak the truth. If they insist on hiding behind a cloak of secrecy, then their
evidence cannot be used to impeach the character of a man whose only apparent fault has
been to acquire a few devious secret enemies.” (*Id.*, emphasis added.)

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2 See Harrison Memo, April 15, 2011, available on the Rules Forum and copy included
3 here. My comment at the time echoed Mr. Harrison's concerns on that issue.

4 The Court did not add the "extra" cautionary language suggested by Mr.
5 Harrison. Perhaps the Court should consider it now. In my opinion, though, it is the
6 loss of the disclosure requirement that is the main problem. If that language were
7 put back in, it seems that would reinforce that "confidential" negative reports cannot
8 be referenced if they cannot be disclosed.
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11 Because Petition R-14-0011 did not discuss or analyze due process concerns
12 about removing disclosure, it is difficult to address any potential argument. It may
13 have just been an oversight. However, if the Committee believes that due process
14 does not apply to informal inquiries, presumably it will respond to this Petition with
15 its reasoning.
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18 In Petitioner's opinion, the rules need to align with the case law. There is no
19 reason Petitioner can think of why the use of "secret" reports against an applicant
20 should be acceptable in either an informal inquiry or a formal hearing, or why
21 negative reports (such as job references or letters about the applicant) should not be
22 disclosed to an applicant in advance of a hearing, "informal" or not. Informal
23 inquiries, regardless of their title, are not informal to the applicant. The applicant
24 has spent years of preparation and in most cases a lot of money to get to the point of
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1 applying for admission. It is extremely serious to the applicant, and they are usually
2 very nervous about this “informal” meeting with four members of the Committee.
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4 If they are unsuccessful in the informal inquiry, that has real consequences—it
5 results in a formal hearing, at minimum.
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7 **CONCLUSION**

8 It took considerable work on the part of many to get the disclosure provisions
9 added to the rules in 2011. Those provisions were, and are, important to fundamental
10 fairness. Petitioner respectfully requests amendment of Rule 36(e), Ariz. R. Sup.
11 Ct., for the reasons stated above and as proposed in Appendix A submitted with this
12 petition.
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15 Respectfully submitted this _20th_ day of January, 2025.
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21 _____
Denise M. Quinterri

22 **ELECTRONICALLY** filed
23 on the Court Rules Forum of the Arizona Supreme Court
24 this _20th_ day of January, 2025.
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APPENDIX A

ARIZONA RULES OF THE SUPREME COURT

Rule 36. Procedure Before the Committee on Character and Fitness

(a)-(d) [No change in text.]

(e) Informal Inquiries.

1.-2. [No change in text.]

3. *Consideration of Documents or Information.* Documents or other information provided to the investigating member in confidence will remain confidential and may be referenced, shared or considered at the informal inquiry only if the providing party agrees. Absent such agreement, confidential information must not be referenced, shared or considered at the informal inquiry or otherwise considered by the panel in determining the applicant's character and fitness for admission to practice law. Because the objective of the informal inquiry is to informally resolve the investigating member's concerns efficiently, there is no formal introduction of exhibits or other evidence into a record at an informal inquiry. Neither the panel nor the applicant may subpoena the appearance of witnesses at an informal inquiry.

4. *Disclosure; Discovery.* Twelve (12) days before the inquiry, or otherwise as agreed by the parties, the Committee and the applicant shall disclose documents and other information to be discussed at the hearing. Neither party needs to disclose copies of documents already provided during the application process. Confidential information will be subject to disclosure or discovery only if the providing party has agreed to its use at the hearing as set forth in paragraph (e)(3). The Chair may permit untimely disclosed information to be admitted at hearing, for good cause shown.

5. 4. [No change in text.]

6. 5. [No change in text.]

(f) Formal Hearings.

1.-2. [No change in text.]

3. *Permissible Evidence.* Documents or other information provided to the Committee in confidence shall remain confidential and may be used at the hearing only if the providing party agrees. Absent such agreement, confidential information must not be presented at the hearing or otherwise considered by the panel in determining the applicant's character and fitness for admission to practice law.

1 4. *Disclosure; Discovery.* Twenty (20) days before the hearing, or otherwise as agreed by the
2 parties, the Committee and the applicant will ~~simultaneously~~ disclose documents and other
3 information to be used at the hearing. Neither party needs to disclose copies of documents
4 already provided during the application process. The Committee need not provide to the
5 applicant copies of documents the applicant has submitted during the application process, and
6 applicant need not provide to the Committee copies of documents submitted with the application.
Confidential information will be subject to disclosure or discovery only if the providing party has
agreed to its use at the hearing as set forth in paragraph (f)(3). The Chair may permit untimely
disclosed information to be admitted at hearing, for good cause shown.

7 Thirty (30) days before the hearing, or otherwise as agreed by the parties, the Committee and the
8 applicant shall simultaneously disclose documents and other information to be used at the
9 hearing. The Committee need not provide to the applicant copies of documents the applicant has
10 submitted during the application process. Confidential information shall be subject to disclosure
or discovery only if the providing party has agreed to its use at the hearing as set forth in
subparagraph (f)(3) of this rule.

11 [. . .]