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10 **IN THE SUPREME COURT**
11 **STATE OF ARIZONA**
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PETITION TO AMEND
COMMENT [3] TO ER 8.4,
RULE 42, ARIZONA RULES
OF THE SUPREME COURT

Supreme Court No. R-12-0018
**State Bar of Arizona's Comment
on Petition to Amend Comment [3]
to ER 8.4, Rule 42, Arizona Rules
of the Supreme Court**

The State Bar of Arizona respectfully requests that the Court reject this petition and delay action on the subject until the 2013 rule-petition cycle. Arizona's legal community needs – and deserves – additional time to sufficiently consider this serious and divisive issue.

In June 2010, the State Bar filed a rule-change petition (the “2010 petition”) asking the Court to relocate most of the language currently in Ethical Rule (“ER”) 8.4, comment [3], into the rule itself and add to it the phrase “gender expression.” In January 2011, the Court circulated the petition as part of its 2011 rules cycle, with comments to be submitted by mid May 2011.

Only one comment – by the Maricopa County Attorney's Office – was filed by the deadline. On July 15, 2011, a group of fifty-two Bar members requested additional time for comment.¹ In light of that request, the State Bar, on July 21,

¹ By notice filed July 20, 2011, this group was expanded to seventy-one lawyers.

1 2011, asked the Court to extend the comment period for ninety days. The Court
2 reopened the matter for comment until November 1, 2011, and allowed the State
3 Bar to file a response to the comments by December 31, 2011. During the extended
4 comment period, additional lawyers filed comments, both pro and con.

5 On December 20, 2011, after considering all comments, the State Bar filed a
6 motion asking to withdraw the 2010 petition in order to “further study the issue.”
7 The Court granted that request in a December 22, 2011, order, in which it
8 specifically noted that “significant numbers of comments were received” and that
9 the State Bar had filed the motion to withdraw “to permit it to further study the
10 issue.”

11 Slightly more than two weeks later, on January 10, 2012, the current petition
12 – addressing the same issues – was filed by Cathi W. Herrod. The Court circulated
13 the new petition for comments, which are due by May 21, 2012.

14 In response to the new petition, State Bar President Joe Kanefield, along with
15 President-Elect Amelia Craig Cramer, appointed a nineteen-member task force to
16 propose a State Bar comment to the petition. The task force included
17 representatives of prosecuting agencies; the State Bar’s Sexual Orientation and
18 Gender Identity Committee; minority bar associations, including Asian, Hispanic,
19 African-American, Gay and Lesbian, and women; the Alliance Defense Fund; and
20 community organizations, including the NAACP, NOW, and the Secular Coalition
21 of Arizona. To meet the comment deadline, the task force was to prepare a report
22 by March 30, 2012, for consideration by the Board of Governors’ Rules
23 Committee.

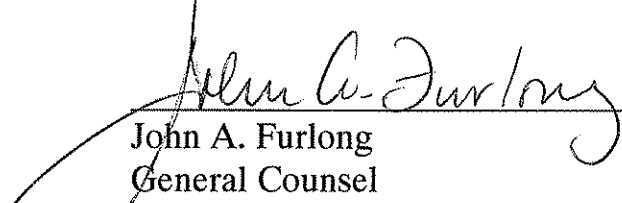
24 During the task force’s three meetings – held on February 27, March 12, and
25 March 26, 2012 – it was clear that the task force could not reach a consensus on a
26 proposal.

1 The task force members agreed, however, that three meetings within a short
2 period of time were not sufficient to fully consider this serious issue, and
3 recommended that the Court be asked to delay consideration of the current petition
4 for a year.

5 As the Court noted, the State Bar sought to withdraw the 2010 petition to
6 allow it time to further study the issue. As the representative task force concluded,
7 the State Bar cannot do so effectively under the time constraints imposed by the
8 current petition, filed just two weeks after the 2010 petition was withdrawn.

9 The State Bar, therefore, respectfully requests that the Court deny the current
10 proposed rule change until the State Bar can study the issue further and bring back a
11 proposal for the 2013 rules cycle.

12 RESPECTFULLY SUBMITTED this 7th day of May, 2012.

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16 John A. Furlong
17 General Counsel

18 Electronic copy filed with the Clerk
19 of the Supreme Court of Arizona this
20 7th day of May, 2012,

21 by: Kathleen A. Lundgren
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