

SUPREME COURT OF ARIZONA

|                                  |   |                         |
|----------------------------------|---|-------------------------|
| In the Matter of                 | ) | Arizona Supreme Court   |
|                                  | ) | No. R-12-0027           |
| PETITION TO AMEND ERs 1.5,       | ) |                         |
| 4.2, 4.3 and 6.5, RULE 42, RULES | ) |                         |
| OF THE SUPREME COURT, and RULES  | ) |                         |
| 5.1 and 11, ARIZONA RULES OF     | ) |                         |
| CIVIL PROCEDURE                  | ) | <b>FILED 12/05/2012</b> |
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**ORDER**  
**AMENDING ON AN EMERGENCY BASIS**  
**ERs 1.5, 4.2, 4.3, AND 6.5,**  
**RULE 42, RULES OF THE SUPREME COURT, and**  
**RULES 5.1 AND 11, ARIZONA RULES OF CIVIL PROCEDURE**

The State Bar of Arizona filed a petition on May 14, 2012, proposing to amend the above-captioned rules. The Petition is currently open for comment, with comments due May 21, 2013. On October 27, 2012, the William E. Morris Institute for Justice filed a "Motion for Expedited Consideration of Petition for Rule Change." Upon consideration,

IT IS ORDERED granting the motion for expedited consideration. ERs 1.5, 4.2, 4.3, and 6.5, Rule 42, Rules of the Supreme Court, and Rules 5.1 and 11, Arizona Rules of Civil Procedure, are amended as modified on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, as set forth in the attachment hereto, effective January 1, 2013. The Court finds compelling circumstances rendering the annual rule processing cycle inadequate in light of the State Bar of Arizona's obligation to improve access to justice and the current

economic recession, which has increased the need for low or no cost legal services available to the indigent and working poor. Further, the Petition has been thoroughly vetted by the Access to Justice Task Force and the Governing Board of the State Bar.

IT IS FURTHER ORDERED that this matter shall remain open for comment, with comments due May 21, 2013. The Court will consider final adoption of the amendments at its regular 2013 annual rules agenda.

DATED this \_\_\_\_\_ day of December, 2012.

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REBECCA WHITE BERCH  
Chief Justice

Arizona Supreme Court No. R-12-0027  
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TO:  
Rule 28 Distribution  
John A Furlong  
Ellen S Katz  
Debra A Weecks

**ATTACHMENT\***

**RULES OF THE SUPREME COURT**

**Rule 42. Arizona Rules of Professional Conduct**

\* \* \*

**ER 1.5. Fees**

(a) [No change in text.]

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to:

(1) court-appointed lawyers who are paid by a court or other governmental entity, and

(2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.

\* \* \*

**ER 4.2. Communication with Person Represented by Counsel**

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 the consent of the other lawyer or is authorized by law to do so.

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\* Additions to text are indicated by underscoring and deletions by ~~strikeouts~~.

**Comment [2013 Amendment]**

[4] A person to whom limited-scope representation is being provided or has been provided in accordance with ER 1.2(c) is considered to be unrepresented for purposes of this rule unless the opposing party or lawyer knows of the limited-scope representation and the identity of the lawyer providing limited representation. With the consent of the client, a lawyer providing limited-scope representation should consider informing the opposing party or lawyer of the limited-scope representation with instructions as to when opposing counsel may communicate directly with the client. Such instructions may include, for example, whom the opposing counsel should contact on specific matters, to whom and where opposing counsel should send pleadings, correspondence and other notices, and whether the lawyer performing limited-scope services is authorized to accept service on the client's behalf.

**ER 4.3. Dealing with Unrepresented Person**

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

\* \* \*

**Comment [2013 Amendment]**

[3] A person to whom limited-scope representation is being provided or has been provided in accordance with ER 1.2(c) is considered to be unrepresented for purposes of this Rule unless the opposing party or lawyer knows of the limited-scope representation and the identity of the lawyer providing limited representation. With the consent of the client, a lawyer providing limited-scope representation should consider informing the opposing party or lawyer of the limited-scope representation with instructions as to when opposing counsel may communicate directly with the client. Such instructions may include, for example, whom the opposing counsel should contact on specific matters, to whom and where opposing counsel should send pleadings, correspondence and other

notices, and whether the lawyer performing limited-scope services is authorized to accept service on the client's behalf.

\* \* \*

#### **ER 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to ERs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to ER 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by ERs 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), ER 1.10 is inapplicable to a representation governed by this Rule.

(c) ER 1.5 does not apply to a representation governed by this rule and for which the lawyer does not charge a fee.

#### **Comment**

\* \* \*

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, ERs 1.5, 1.7, 1.9(a) and 1.10 become applicable.

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## ARIZONA RULES OF CIVIL PROCEDURE

\* \* \*

### Rule 5.1. Duties of Counsel

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

**(c) Limited Appearance.** In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake limited representation of a person involved in a court proceeding.

(1) An attorney may make a limited appearance by filing and serving a Notice of Limited Scope Representation. The notice shall:

(A) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and

(B) specify the matters, hearings, or issues with regard to which the attorney will represent the party.

(2) Service on an attorney making a limited appearance on behalf of a party shall constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but shall not extend the attorney's responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

(3) Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) *With Consent.* If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating: (i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and (ii) the last known address and telephone number of the party who will no longer be represented. The attorney shall serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's

withdrawal from the action shall be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) Without Consent. If the client does not consent to withdrawal or to sign a Notice of Withdrawal with Consent, the attorney may file a motion to withdraw, which shall be served upon the client and all other parties, along with a proposed form of order.

(i) If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney shall serve a copy of the order on the client. The withdrawing attorney also shall promptly serve a written notice of the entry of such order, together with the name, last known address and telephone number of the client, on all other parties.

(ii) If an objection is filed within ten (10) days of the service of the motion, the court shall conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

**(d) Notice of Settlement.** [No change in remaining text.]

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### **Rule 11(a). Signing of pleadings, motions and other papers; sanctions**

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any



improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee. An attorney may help to draft a pleading, motion or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.