

1 **WILLIAM G. MONTGOMERY**  
2 **MARICOPA COUNTY ATTORNEY**  
3 **(FIRM STATE BAR NO. 0003200)**

4 **MARK FAULL**  
5 **CHIEF DEPUTY**  
6 **301 WEST JEFFERSON STREET, SUITE 800**  
7 **PHOENIX, ARIZONA 85003**  
8 **TELEPHONE: (602) 506-3800**  
9 **(STATE BAR NUMBER 011474)**

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

11 **IN THE MATTER OF:**

R-15-0020

12 **PETITION TO AMEND RULES 2.3**  
13 **AND 3.6, ARIZONA CODE OF**  
14 **JUDICIAL CONDUCT, RULE 81,**  
15 **RULES OF THE ARIZONA**  
16 **SUPREME COURT**

MARICOPA COUNTY ATTORNEY'S  
RESPONSE TO PETITION TO AMEND RULES  
2.3 AND 3.6, ARIZONA CODE OF JUDICIAL  
CONDUCT, RULE 81, RULES OF THE  
SUPREME COURT OF ARIZONA

17 The Maricopa County Attorney hereby responds to the Petition to Amend Rules  
18 2.3 and 3.6 in Rule 81, Arizona Rules of the Supreme Court, and asks this Court to  
19 deny the petition. This petition, along with R-15-0014, illustrates why the Maricopa  
20 County Attorney's Office opposed the earlier efforts to amend ER 8.4 to further  
21 delineate discrete groups of fellow human beings with specific inclusion in the rules.  
22 This petition, like R-15-0014, bootstraps the same problematic arguments and  
23 justifications for adding "gender identity" as the State Bar Task Force heard in trying  
24 to add "gender expression" to ER 8.4. These two petitions now rely on the presence  
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1 of the term “gender identity” in ER 8.4 as the basis for listing “gender identity” in the  
2 Rules of Judicial Conduct.

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4 These petitions again highlight the problem of attempting to list specific  
5 differences in our court rules prohibiting prejudice and discrimination. Such a task is  
6 potentially never-ending and is always fraught with the danger that some difference  
7 has been omitted. Despite the fact that the rule clearly states, “. . . including but not  
8 limited to . . .” there will always be someone who feels their exclusion from the non-  
9 inclusive list needs to be rectified. Rather than continuing to try and define how  
10 specific groups of fellow human beings may be different to justify an official  
11 admonition to overlook such differences – differences that require self-declarations  
12 immune to objective verification (with one important caveat to the example of  
13 transgendered individuals noted below) – the proposed language in each of these  
14 petitions, along with current language, should be jettisoned in favor of the simple  
15 straightforward declaration that:  
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20 “All persons shall be treated with respect reflecting the inherent dignity and  
21 value shared and held in common by every human being.”  
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23 Rule 3.6 could likewise be modified to require that a judge not hold membership  
24 in any organization that does not “respect the inherent dignity and value shared and  
25 held in common by every human being.”  
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1 If the concern in these petitions in listing "gender identity" is to address specific  
2 cases of transgendered individuals, then it would be far better and more accurate to  
3 define "transgendered individuals" as those with a medical diagnosis of being  
4 transgendered due to an incongruity between their chromosomal gender and their  
5 physical gender, and use that specific term. A defined, diagnosed, objective term is  
6 far preferable to "gender identity."  
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9 Respectfully submitted this 20<sup>th</sup> day of May, 2015.  
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11 WILLIAM G. MONTGOMERY  
12 MARICOPA COUNTY ATTORNEY

13 By   
14 MARK FAULL  
15 CHIEF DEPUTY  
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