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June 12, 2015

The Honorable W. Scott Bales
Chief Justice of the Supreme Court of Arizona
1501 W. Washington Street
Phoenix, AZ 85007

Re: Timmer Committee Rule Change Proposal, and Related Rule Change Petition, re: ER 1.10

Dear Mr. Chief Justice:

I understand efforts are underway to change or amend ER 1.10. I write to support these efforts, the Timmer Committee's proposal (Rule Change Petition 15-0018) and the related State Bar of Arizona Rule Change Petition (13-0046).

I manage a five-lawyer firm in midtown Phoenix, Arizona. We focus on issues related to the construction and real estate industries. In March and April of this year we looked for a young associate. After reviewing dozens of resumes and conducting several interviews we identified an associate at another local law firm. Our firm wanted to hire the associate, and the associate wanted to join us. The associate's skills and experience matched our requirements better than we thought were possible to find, and we believed that the associate would have professionally excelled at our firm.

Given the similarity of practices of the two firms, I had occasion to review ER 1.10(d). The associate's then-current firm was working on the "other side" of a handful of cases in which that firm's developer client opposed my firm's subcontractor client in about a half-dozen construction defect matters. Each case had 15 to 30 parties. The associate had appeared in only one case of the half-dozen. The associate was third on the pleadings, and, to the best of my knowledge and information, had done no work on the matter adverse to my client up to that time.

In trying to figure out what to do, I read the State Bar's rule change petition (13-0046). I also read Bill Klain's supporting comment, and, having known Bill for many years, discussed it with him. He encouraged me to review the comments supporting and opposing the rule change.

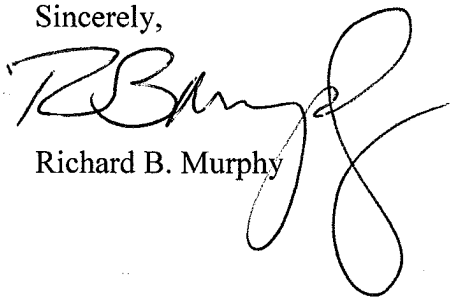
The supporting comments describe exactly the predicament our firm and the associate were facing. I believed that the associate's involvement did not "involve a proceeding before a tribunal in which the personally disqualified lawyer had a substantial role." Unfortunately, there was no guarantee that the developer client at the associate's firm would agree without asking. Naturally, if the associate had to ask permission and the client refused, the associate not only would have made the associate's employer aware of a desire to find other employment, the associate would likely have been shown the door.

Ultimately, we determined that we could not hire the associate without risking the loss of our own client in the event that the associate's client refused to waive the perceived conflict. And we would not put the associate in the position of having to ask first. We were forced to keep looking, and the associate eventually took employment at another firm.

I ask that the Court consider the foregoing "real world" circumstances created by current ER 1.10(d), and either adopt the Timmer Committee's proposal or the State Bar's proposal. Either would be a big improvement over the status quo which unfairly treats litigators in particular, and contains an inherent distrust in lawyers that are faced with this issue by refusing to allow the screening that is permitted for lawyers that are not litigators.

Thank you for your time in considering these issues.

Sincerely,



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RBM/tjh