

Hon. Rebecca Berch (ret.)
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

SUPREME COURT OF ARIZONA

PETITION TO AMEND RULE 32) Supreme Court No. R-16-____
OF THE RULES OF THE)
SUPREME COURT OF ARIZONA) With Request to Allow a
) Modified Comment Period
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_____)

Petitioner served as chair of the Supreme Court’s Task Force on the Review of the Role and Governance Structure of the State Bar of Arizona (hereinafter the “Mission and Governance Task Force” or “Task Force”). The Task Force submitted a report to the Supreme Court on September 1, 2015. Petitioner now requests amendments to Rule 32 of the Rules of the Supreme Court of Arizona, as shown in the appendix. As discussed in Part IV of this petition, the appendix contains two alternatives for Rule 32(e).

Part I: Background. Supreme Court Administrative Order number 2014-79 established the Mission and Governance Task Force. The Order directed the Task Force to review the Rules of the Supreme Court on the mission and governance structure of the State Bar of Arizona (“SBA”) and to make

recommendations concerning the SBA's mission and governance. The Order had its genesis in the Supreme Court's *Strategic Agenda: Advancing Justice Together*, which includes the following objective under the goal of "Regulating the practice of law to protect the public:"

Review the current Supreme Court Rules establishing the State Bar to assess how well the current governance structure allows the State Bar to fulfill its mission of protecting the public and improving the legal profession.

As noted in the Task Force report, no crisis or event prompted a review of these rules. Rather, the Court established the Task Force in furtherance of the Court's responsibility to oversee the SBA. The Court, Bar, and public recognize the SBA as a valuable asset of this State. During the more than eight decades of its existence, the SBA has performed a wealth of services for Arizona's legal community and the public. It is a nationally respected organization. But the SBA's mission and governance have not been the subject of recent or comprehensive reviews, and a periodic review by the Court comports with best governance and business practices.

The Court appointed to the Task Force five former presidents of the SBA, others who have served on the SBA's governing board, a former Arizona Secretary of State and a former Arizona Attorney General, former Arizona gubernatorial chiefs of staff, a past-president of Arizona State University, and leaders of public and private organizations. Six of its 15 members are not attorneys. The SBA's

executive director served as a consultant to the Task Force. The Task Force held eight meetings between August 2014 and July 2015. Three Task Force workgroups also met during that time.

II. Pre-petition comments. Administrative Order No. 2014-79 directed the Task Force to submit its report to the Court by September 1, 2015. On August 7, 2015, the Task Force posted a draft of its report on the Arizona Judicial Branch website. Petitioner summarized the work and recommendations of the Task Force in a video that appeared on the website adjacent to the draft. In the video, Petitioner also invited comments on the draft, and the Task Force established an Outlook “Bar Governance” mailbox for those comments. This website information was publicized in an email the SBA sent to its members on August 10, 2015. The local PBS station’s August 18, 2015 “Horizon” program and a Supreme Court press release also publicized the draft report.

The Task Force submitted its final report to the Court on September 1, 2015. The final report also was posted on the Task Force webpage, and it may be found [by clicking here](#). The report provides additional background information and reasons supporting the Task Force recommendations discussed below.

The Task Force transmitted its final report to the president of the SBA Board of Governors. On November 11, 2015, the SBA’s Board of Governors submitted to the Chief Justice its response to the Task Force final report.

The recommendations of the Mission and Governance Task Force were widely vetted and generated a number of pre-petition comments. The next section of this petition outlines recommendations on which there seems to be general agreement.

Part III: Areas of general agreement. Three matters on which the Task Force, the State Bar, and commentators appear to agree are

- a. Supreme Court Rule 32, which includes the SBA’s governance provisions, could be improved with restyling.
- b. The State Bar’s mission should be clarified.
- c. There are ways to improve the SBA’s governance structure.

a. **Restyling.** Rule 32 details the mission of the SBA in a cumbersome, 266-word sentence; restyling could state that mission more clearly and meaningfully. Even if the Court elects to make no substantive changes to the mission or governance provisions of Rule 32, the rule would benefit from restyling. The proposed Rule 32 restyling includes updated language in Rules 32(d), (h), and (k).

b. **Mission.** The mission provisions of Rule 32 are meritorious, but unfocused. The Task Force and others believe that Rule 32’s statement of the SBA’s mission should be readily apparent and highly visible. (The word “mission” does not even appear in the portion of the rule that describes it.)

The Task Force accordingly recommended adding a new mission provision to Rule 32(a). Petitioner proposes the following language, which is modeled on the SBA's own statement of its mission:

The State Bar of Arizona serves and protects the public and enhances the legal profession by promoting the competency, ethics, and professionalism of its members and enhancing the administration of and access to justice.

c. **Governance.** The Task Force's final report included two dozen governance recommendations. (A table summarizing those recommendations appears in Appendix E of the report.) Leaving aside for the moment recommendations concerning the size and composition of the governing board, the Task Force received no objections to the following recommendations, and accordingly they are contained in the proposed amendments to Rule 32 shown in the appendix to this petition. Those recommendations include the following:

- Rule 32 should include a uniform three-year election and appointment cycle. (The current cycle under Rule 32 is irregular and unbalanced. Elections are routinely held in only two years of the three-year cycle. In one year, 11 board members are elected, whereas in another, seven are elected.)
- Rule 32 should allow active out-of-state members to vote in SBA board elections. (Active out-of-state members currently cannot vote.)
- The immediate past president should serve a one-year term as an advisor to the board. (The immediate past president is currently an "ex officio" board member.)
- All elected board members should have a limit of three terms of three years each, and should not be a candidate for a fourth term until three

years have passed after the ninth year. (There currently is no term limit for elected board members.)

- An attorney member of the board must have no record of disciplinary sanctions for five years preceding board service. (“Disciplinary sanctions” are described in Rule 60.) An attorney member of the board who becomes the subject of a formal complaint under Rule 58 must be recused from serving on the board pending disposition of the complaint. (There currently are no such requirements.)
- A board member may be removed for good cause by a two-thirds vote of the board. (The current rule allows the removal of officers, but does not provide for the removal board members.)
- The board should elect three officers: a president, a president-elect, and a secretary-treasurer. (There are currently five officers: the three just mentioned and two vice presidents.)
- Each office should be held for a one-year term. A member may not be elected to a second term for any office that the member has held during nine or fewer years of consecutive board service. (Although an officer’s term currently is one year, there is no limitation on re-election to an office.)
- If the president or president-elect is term limited, that does not preclude the person from continuing to serve on the board until completion of his or her term as president. Upon completing a term as president, a new board member will be elected or appointed for the remaining partial term on the board. (This circumstance is currently covered by the SBA by-laws, although stated somewhat differently, rather than by Rule 32.)

Part IV. Composition of the Bar’s Board. Although most stakeholders see benefit in reconfiguring the board, there is no agreement on the size of the board, the respective numbers of elected and appointed members, and who should have the authority to appoint board members. This petition presents two thoughtful alternatives for composing the governing board, but these alternatives

can be “fine-tuned” and offer a number of possible variations. One of the alternatives this petition presents is Task Force Option Z, with certain modifications. The other alternative is a proposal from the SBA Board of Governors.

Currently. A 30-member Board of Governors governs the SBA. The board is composed of 26 voting members

The board includes 19 elected attorney members (18 members elected from eight districts, and one member who is the elected president of the SBA’s Young Lawyers Division, or “YLD”). Maricopa, Yavapai, Cochise, and Pinal Counties are “standalone,” single-county districts. The remaining three districts are groups of two, three, or four counties. The Maricopa District currently elects nine members. Pima County is combined with Santa Cruz County into a single district that elects three members. Other than Maricopa and Pima/Santa Cruz, each district elects one member.

The current board also includes as voting members four public members appointed by the SBA board (“public” in Rule 32 means non-attorney), and three at-large members appointed by the Arizona Supreme Court (“at-large” means attorney or non-attorney). In addition, the board now includes as non-voting ex officio members the deans of Arizona’s three law schools, and the immediate past president of the SBA board.

Task Force Option Z. The Task Force recommended reducing the size of the governing board. It believed a reduction would promote best practices for corporate governance. The Task Force report proposed three governance alternatives, which it labeled Options X, Y, and Z. Following public comment and after further consideration of those options, and with direction from the Court, this petition presents Option Z, as detailed at pages 18-20 of the Task Force report, but with some modifications. Option Z features a board with 18 voting members. Of the 18 voting members, 11 would be elected, and seven would be appointed. Option Z, as modified by this petition, would also include Arizona's law school deans as ex officio board members, and the immediate past president as an advisor to the board.

Task Force Option Z proposes five election districts: a Maricopa District; a Pima District; a North District (Mohave, Navajo, Coconino, and Apache Counties, which is the same as current District 1); a new West District (Yavapai, La Paz, and Yuma Counties); and a new Southeast District (Gila, Graham, Greenlee, Cochise, Santa Cruz, and Pinal Counties). The North, West, and Southeast Districts would each have one elected member; the Pima District would have two elected members; and the Maricopa District would have five elected members. There would be a total of ten board members elected by districts. In addition, the

president of the Young Lawyers Division would serve on the board as an eleventh elected member.

Option Z's board would also include a combination of appointed members: four "public" members and three "at-large" members. Under the current rule, the board itself appoints public members. Under Option Z, the governing board would nominate public members and the Court would actually appoint them. (In Option Z as well as in the current rule, the Court appoints at-large members.)

Option Z contemplates the same number of appointed members as currently provided by Rule 32. However, a reduction in the number of elected members (from 19 elected to 11 elected), while maintaining the same number (seven) of appointed members, would increase the relative proportions of public and at-large members on the board. The Court's appointment of every public and at-large member would help ensure the independence of the public and at-large members and further the Court's supervision of the SBA.

Neither Rule 32 nor the SBA's by laws provide for the deans of Arizona's three law schools as board members; they sit on the board as a matter of board policy. Modified Option Z would include the law school deans as non-voting ex officio members, and it would formalize that status by establishing these seats in Rule 32. The immediate past president is now an ex officio member of the board pursuant to SBA by-laws. Under Option Z, Rule 32 would expressly provide that

the immediate past president serves as a non-voting “advisor” to the board. The immediate past president brings wisdom and experience to the board, and “advisor” more accurately describes this role than “ex officio member.”

Board of Governor’s Proposal. The Board of Governors, in a November 11, 2015 letter to the Chief Justice and by an 11 to 9 vote, supported a board with 26 voting members. The Board of Governors believes that maintaining a board of this size is appropriate to fulfill the responsibilities that board members are traditionally assigned. Those responsibilities include service on one of the seven standing committees of the board and serving as a liaison to one of the SBA’s 28 sections.

The 26 voting members under this proposal would include four public members appointed by the board and three at-large members appointed by the Court. Both the number of appointed members and the manner of their appointment would remain the same as under the current rule.

The Board of Governors’ proposal would also include 19 elected members. One of these 19 elected members would be the president of the SBA’s Young Lawyers Division. The remaining 18 elected members would be elected from four statewide districts, rather than the current eight districts. The four proposed districts would be Maricopa County, Pima County, the Division One counties except Maricopa, and the Division Two counties except Pima. The Board of

Governors' proposal provides for ten members (rather than the current nine) elected from Maricopa County; four members (rather than the current three) elected from Pima County; three members from the Division One counties other than Maricopa (those counties currently have three members); and one member from the Division Two counties other than Pima (those counties currently have three members).

The Board of Governor's proposal would eliminate the four non-voting ex-officio members. Under that proposal, the three law school deans and the immediate past president would no longer serve on the board.

Part V. Tribal Court Judges. A comment submitted to the Bar Governance mailbox inquired why Rule 32 did not allow Arizona licensed attorneys who serve as judges in tribal courts to be judicial members of the SBA. The proposed amendments to Rule 32(c)(6) shown in the appendix would change that and provide judicial member status for full-time tribal court judges like the other judicial officers mentioned in this rule.

Part VI. Public Access. The proposed amendments to Rule 32 include a new section (m). This section would require the SBA to conduct its meetings, and to retain its records, pursuant to public access policies adopted by the Supreme Court.

Part VII. Request for a Modified Comment Period. This petition proposes a number of amendments to Rule 32. Although several interested stakeholders have already provided comments, additional public comments may address items that this petition overlooks, suggest other changes that would improve the proposed amendments, or provide other insights. Petitioner therefore requests the Court to allow a modified comment period that would accommodate the filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

April 1, 2016:	First round of comments due
May 13, 2016:	Amended petition due
June 10, 2016:	Second round of comments due
July 8, 2016:	Reply due

Part VIII. Conclusion. Petitioner requests that the Court open this petition for comments during the modified periods described above, and subject to any modifications requested by an amended petition, adopt amendments to Rule 32.

RESPECTFULLY SUBMITTED this __ day of January, 2016

By _____
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