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

12 In the Matter of:

Supreme Court No. R-16-0011

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14 **PETITION TO AMEND ER 1.6,**
15 **RULE 42, ARIZONA RULES OF**
16 **SUPREME COURT**

17 **COMMENT OF**
18 **THE STATE BAR OF ARIZONA**

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Petition R-16-0011 proposes an amendment to Rule 1.6, the rule governing the confidentiality of information obtained by a lawyer in the course of representation. It would add a new subsection that would permit lawyers who serve as licensed adoption service providers to share specific information regarding birth mothers with other licensed adoption service providers for the purpose of preventing or mitigating fraudulent activities by birth parents. The petition advocates this rule change as a way to address possible fraud by birth mothers who represent that they are willing to place their child for adoption, obtain benefits such as financial support and medical care as a result, and then refuse to go through with the adoption.

1 While this may be a serious issue in need of being addressed, the proposed
2 rule change does not appear to be a necessary or appropriate way to address the issue.
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4 The proposed rule change would depart substantially from the Model Rules
5 of Professional Conduct. Arizona has generally followed the model rules where it
6 lacks a specific reason to depart from them, which increases overall compliance
7 (since lawyers learn the model rules and are tested on them as part of the admission
8 process) and allows Arizona to learn from persuasive interpretations of those
9 identical rules in other jurisdictions. The particular proposed departure from the
10 Model Rules does not appear to be necessary, for two reasons.
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13 First, the proposed rule change would only govern lawyers who serve as
14 adoption service providers. A statutory or regulatory change governing all adoption
15 service providers (including non-lawyers) would be a more effective way to solve
16 any problem in the adoption area. If state law or regulation was amended to require
17 the disclosures contemplated by the proposed rule change, lawyers would be able to
18 provide those disclosures under the existing language of Rule 1.6(d)(5), which
19 permits a lawyer to reveal information relating to the representation of a client “to
20 comply with other law.”
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23 Second, the proposed change may not be necessary to achieve the petition’s
24 goals. The existing Rule 1.6 may already permit disclosure in many of the
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1 circumstances cited by the petition, under one or both of the following provisions of
2 subsection (d):

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4 (d) A lawyer may reveal such information relating to the
5 representation of a client to the extent the lawyer
6 reasonably believes necessary:

7 (1) to prevent the client from committing a crime or fraud
8 that is reasonably certain to result in substantial injury to
9 the financial interests or property of another and in
10 furtherance of which the client has used or is using the
11 lawyer's services;

12 (2) to mitigate or rectify substantial injury to the financial
13 interests or property of another that is reasonably certain
14 to result or has resulted from the client's commission of a
15 crime or fraud in furtherance of which the client has used
16 the lawyer's services.

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CONCLUSION

In light of the existing rules and the possibility of a legislative or regulatory
solution that would affect all adoption services providers, the proposed amendment
is not necessary and may cause confusion. The State Bar therefore recommends that
the amendment not be adopted and the petition denied.

RESPECTFULLY SUBMITTED this 10th day of May, 2016.



John A. Furlong
General Counsel

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Electronic copy filed with the
Clerk of the Arizona Supreme Court
this 12th day of May, 2016.

by: 