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ARIZONA SUPREME COURT

10 IN RE:
11 PETITION TO AMEND RULE 31,
12 RULES OF THE SUPREME
13 COURT

R-16-0029

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO AMEND RULE
31, RULES OF THE SUPREME COURT

14 The Maricopa County Attorney hereby responds to the Petition to Amend Rule
15 31 of the Rules of the Supreme Court and asks this Court to deny the Petition, at least
16 in part. The Court's modified Petition makes far more significant changes than
17 originally proposed and most appear unnecessary. The most shocking proposal is to
18 amend Rule 41(b) to remove a lawyer's obligation to support the laws of the United
19 States. This proposed change seeks to upend a lawyer's basic responsibility and
20 essential role in our federal system and that part of the Petition must be denied.
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23 Respectfully submitted this 17th day of October, 2016.

24 WILLIAM G. MONTGOMERY
25 MARICOPA COUNTY ATTORNEY

26 By 
27 MARK FAULL
28 CHIEF DEPUTY

1 **I. BACKGROUND**

2 According to the Petition that was filed in January, 2016, the State Bar has
3 been looking at changes to The Oath of Admission to the Bar (Lawyer's Oath) and A
4 Lawyer's Creed of Professionalism of the State Bar of Arizona (Creed) since at least
5 2013. Initially, the State Bar's Professionalism Committee could not reach any
6 agreement on any changes and the Board of Governors' (BOG) declined to
7 recommend any changes. The Committee then revisited their work and was
8 apparently able to propose changes with sufficient consensus that the BOG decided to
9 file this Petition. On September 2, 2016, after holding its regularly scheduled Rules
10 Agenda, this Court issued an order that reopened the Petition for comments and itself
11 suggested numerous changes to the Petition many of which are far more sweeping
12 than those initially recommended.

13 **II. DISCUSSION**

14 When a petition for a rule change is filed, the petitioner provides justifications
15 to support the proposed changes. The difficulty with commenting on the Court's own
16 proposals is that there is no similar justification or discussion included in the Court's
17 order so it is difficult to know why this Court believes the suggested changes are
18 needed. Certainly the original Petition did not justify the significant re-write this
19 Court now proposes.

1 For the most part, this Court's suggested changes appear harmless if
2 unnecessary. However, the Court's proposal to affirmatively remove a lawyer's
3 obligation to support the laws of the United States is unnecessary, confusing, and,
4 frankly, embarrassing to a profession that claims to support the rule of law.
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6 **A. The proposed modifications to the first paragraph of the Lawyer's Oath**
7 **are unnecessary.**

8 The original Petition suggested the addition of language to the Lawyer's Oath
9 that was intended to "harmonize it with the Arizona Loyalty Oath of Office and Rule
10 32(c)(3) of the Rules of the Supreme Court." [Petition at 2]. There was no
11 explanation in the Petition for why it was necessary to "harmonize" the Lawyer's
12 Oath with those two sources.
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15 The "Arizona Loyalty Oath" is codified at A.R.S. § 38-321(E) and is required
16 for all employees of the state and its political subdivisions.¹ Other than those who
17 work for the government, this oath does not apply to lawyers and there is no clear
18 reason why the statutory oath and the Lawyer's Oath need to be "harmonized." If the
19 intent is to make them the same, why is there no suggestion to add any of the
20 additional language from the Loyalty Oath? That oath requires that after the person
21 swears "to support the Constitution of the United States and the Constitution and laws
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25 ¹ The Arizona Constitution requires that all judges take an oath to "support the
26 Constitution of the United States and the Constitution of the State of Arizona" and to
27 faithfully and impartially discharge the duties of the office, but it does not include a
28 specific reference the laws of either the United States or Arizona. ARIZ. CONST. art.
6, § 26.

1 of the State of Arizona” the person additionally swears or affirms that they “. . . will
2 bear true faith and allegiance to the same and defend them against all enemies,
3 foreign and domestic, and that I will faithfully and impartially discharge the duties of
4 the office of _____ according to the best of my ability, so help me God (or
5 so I do affirm).” A.R.S. § 38-321(E). No one is seeking to add this additional
6 language to the Lawyer’s Oath to “harmonize” it with the statute likely because the
7 two oaths serve completely different purposes so there is no reason for them to be
8 identical. If there is a legitimate reason to make them the same, then they should be
9 the same in their entirety.
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13 It is not surprising, however, that the oath for state government employees
14 would emphasize the “laws” of Arizona while not mentioning the laws of the United
15 States. The laws of Arizona are the specific items that these employees are charged
16 with administering, enforcing, and following. Arizona state employees are not
17 required to work with or support federal laws in the same way they are required to
18 *implement* Arizona law. Therefore, the legislature’s specific reference to the “laws”
19 of Arizona in the statutory oath makes sense. The same is not true for all lawyers,
20 however, as many of them will work heavily or exclusively in areas covered by
21 federal law despite the fact that they are members of the Arizona State Bar. The
22 Lawyer’s Oath and the Arizona Loyalty Oath serve different purposes and it is not
23 necessary to modify the Lawyer’s Oath to specifically emphasize the laws of
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1 Arizona. However, if it needs to be included, it should be included as a reference to
2 both the laws of the United States and Arizona.

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4 Likewise, Rule 32(c)(3) of the Rules of the Supreme Court does not require
5 any change to the Lawyer's Oath. Rule 32(c)(3) requires that anyone admitted to the
6 state bar must "take and subscribe an oath to support the constitution of the United
7 States and the constitution and laws of the State of Arizona in the form provided by
8 the supreme court." Nothing in the rule is in quotes and it does not mandate that the
9 oath be a verbatim statement from the rule. Indeed, the rule contemplates that the
10 oath may vary because the rule allows the oath to be in any form approved by the
11 supreme court. Obviously Rule 32 does not require specific language because the
12 current oath is much more detailed and much broader than the general statement
13 provided in Rule 32. The current Lawyer's Oath, approved by this Court,
14 substantially follows the requirements of Rule 32 and it does not need to be modified.
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16 The proposed change to the Lawyer's Oath serves no purpose other than a change for
17 the sake of change and for that reason it should be left as it is.

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21 **B. The proposed change to remove a lawyer's obligation to support the laws
22 of the United States is antithetical to a lawyer's duty to the rule of law.**

23 The addition of "and laws" to the Lawyer's Oath seems unnecessary and
24 pointless, but, at the same time, it is harmless. For that reason there was little cause
25 to even comment on the State Bar's original Petition. The Court's suggested change,
26 however, is more concerning. The new proposal now adds changes to Rule 41 of the
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1 Rules of the Supreme Court, and this proposed change *deletes* a lawyer's duty to
2 support the laws of the United States. Deleting a lawyer's obligation to support the
3 laws of the United States is completely contrary to the respect for the rule of law that
4 the Lawyer's Oath, Creed, and Rules of Professionalism require. What is the possible
5 benefit from affirmatively eliminating a lawyer's duty and obligation to support the
6 laws of the United States? The laws of the United States are the supreme laws of the
7 land. How can a lawyer support the Constitution of the United States without
8 supporting the laws created under that constitution? Because the obvious answer is
9 that to support the United States Constitution a lawyer must necessarily support the
10 laws of the United States as well, one might argue that the "laws" language is
11 superfluous and that is why it is being deleted. But this cannot be the justification for
12 this proposed change because the rule continues to require that lawyers support the
13 constitution *and* laws of Arizona. If this Court is taking the time to affirmatively
14 delete a lawyer's obligation to support the laws of the United States it must mean
15 something, but it begs the question of what this Court is trying to say. The only
16 conclusion is that this Court expects lawyers to support the laws of Arizona
17 differently from the laws of the United States. Surely this Court has not decided that
18 the laws of the United States are not worthy of an Arizona lawyer's support. Yet this
19 change, proposed without any rationale or discussion, would suggest such a decision
20 has been made.
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1 To the extent that this proposed change is merely an effort to “clean up” and
2 simplify the language of Rule 41 a far more adequate and responsible way to do so
3 would be “(b). To support the constitution and laws of the United States and the State
4 of Arizona.” At worst, this proposed change to eliminate a lawyer’s responsibility to
5 support the laws of the United States is an unreasonable (and ironically
6 unconstitutional) political position that this Court should not take; at best, it is a poor
7 attempt at improved drafting that only succeeds at creating confusion about the
8 Court’s intent. Either way, it is a proposal that should be denied.
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12 III. CONCLUSION

13 Many of the Court’s suggested changes to the Lawyer’s Oath and Creed are
14 unnecessary and go far beyond the few changes originally proposed. The Court’s
15 order does not contain any justification for these modifications and the State Bar’s
16 Petition does not explain the need for such major modifications. Most concerning,
17 however, is the change in a lawyer’s duty to support the laws of the United States.
18 Regardless of the underlying rationale, the proposed change to Rule 41(b) should be
19 denied.
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23 Respectfully submitted this 17th day of October, 2016.

24 WILLIAM G. MONTGOMERY
25 MARICOPA COUNTY ATTORNEY

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27 MARK FAULL
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