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5 Bar ID #005152
6 Petitioner

7 BEFORE THE ARIZONA SUPREME COURT

8 PETITION TO AMEND ER 1.5)
9 OF THE ARIZONA RULES OF) Supreme Court No. _____
10 PROFESSIONAL CONDUCT.)
11 _____)

12 PURSUANT TO *Rule 28 of the Rules of the Supreme Court*, undersigned petitioner
13 submits the following proposed modification to *ER 1.5* as set forth in Appendix A hereto.

14 This Court has ruled that contingent fee agreements may be proper “when contracted”
15 but may “turn out to be excessive” in certain cases. *In the Matter of a Member of the State*
16 *Bar of Arizona, John F. Swartz, Respondent, 141 Ariz. 266 [Supreme Court of Arizona, In*
17 *Banc, 1984]*. In *Swartz*, the court said that “if **at the conclusion** of a lawyer’s services, it
18 appears that a fee, which seemed reasonable when agreed upon, has become excessive, the
19 attorney may not stand upon the contract.” *Id.* @ 273.

20 Thus, *Swartz* calls for an after-the fact revision to the fee agreement by the attorney if
21 it appears that the fee “has become” excessive. Such fee reductions may be required in cases
22 which settle early, easily and with little demands on the time or resources of the attorney.

23 ER 1.5[c], on the other hand, requires attorneys to commit **in advance** and in writing
24 to “the method by which the fee is to be determined.” A premise of the proposed amendment
25 is that if the fee agreement is subject to revision by the attorney because the claim settles early
26 and easily, it should say so. The proposed amendment would require that fee agreements
27 notify the client of the possibility that the contracted contingent fee percentage may be
28

1 reduced and that the factors of ER 1.5[a] will dictate the size of the reduced fee.

2 For these reasons, petitioner respectfully requests that this Court amend ER 1.5 as set
3 forth in Appendix A.

4 DATED this 20th day of December, 2007.

5 LAW OFFICE OF DOUGLAS C. FITZPATRICK

6 BY /s/ Douglas C. Fitzpatrick
7 Douglas C. Fitzpatrick
8 Petitioner

9
10 An electronic copy filed with
11 the Clerk of the Supreme Court
12 this 20th day of December, 2007.

13 /s/ Douglas C. Fitzpatrick
14 Douglas C. Fitzpatrick

APPENDIX A

ER 1.5

[d] A lawyer shall not enter into an arrangement for, charge or collect:

[1] – [3] [no change in text]

[4] a contingent fee for representing a client in a civil case unless the client is simultaneously advised in writing that if the client’s claim settles early, easily and without litigation, the lawyer’s fee will not exceed the value of the representation pursuant to paragraph [a].