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7
8 **IN THE SUPREME COURT**
STATE OF ARIZONA

9
10 In the Matter of:

Supreme Court No. R-18-

11 **PETITION TO AMEND RULE 45,**
12 **ARIZONA RULES OF SUPREME**
COURT

PETITION

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15 Pursuant to Rule 28, Ariz. R. Sup. Ct., the State Bar of Arizona (“State Bar”)
16 petitions the Court to amend Rule 45, Ariz. R. Sup. Ct. This proposed amendment
17 is necessary to eliminate certain outdated provisions of this Rule, and to allow
18 delinquency fees to change in the future without further Rule amendment.
19

20 **DISCUSSION**

21 Rule 45, Ariz. R. Sup. Ct., governs mandatory continuing legal education
22 (“MCLE”) requirements for those members of the State Bar subject to its provisions.
23 The current version of Rule 45 contains several provisions that have become
24 outdated. In addition, the current version of Rule 45 sets forth the specific
25

1 delinquency fee schedule established by this Court in Administrative Order 2014-
2 89. The proposed revision eliminates this specific delinquency fee schedule, instead
3 referring to delinquency fees established by the Board with the consent of this Court.
4

5 A redline of the proposed revisions is located at the Appendix. The outdated
6 provisions and proposed revisions are summarized below.

- 7
8 1. Subsection (a)(3), requiring active members to complete a professionalism
9 course between July 1, 1999 and June 30, 2004, is deleted in its entirety.

10 This provision has been rendered obsolete by the passage of time.

- 11 2. Subsection (b)(6) is revised to eliminate reference to the MCLE
12 Committee. To simplify and expedite the administrative task of granting a
13 hardship exemption, the State Bar proposes to designate the Chief
14 Executive Officer/Executive Director (CEO/ED) or his or her designee as
15 approval authority for hardship exemption requests, with denials of such
16 requests reviewed by the Board of Governors. Finally, this subsection is
17 revised to delete a superfluous comma.
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20 3. Subsections (d)(1)-(2) are revised to indicate that delinquency fees shall be
21 assessed per a delinquency fee schedule established by the Board with the
22 Court's consent. These revisions are consistent with the language of Rule
23 32(c)(10) pertaining to delinquent membership fees, and allows the
24 delinquency fee schedule to be changed in the future without further Rule
25

1 amendment.

2 4. For reasons described above, subsection (i) is revised to eliminate
3 reference to a specific reinstatement fee of \$100. The revised subsection
4 requires payment of a reinstatement fee “as established by the board with
5 consent of this court.”
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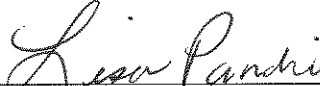
7 5. Subsection (k) is revised to eliminate reference to the MCLE Committee,
8 and replace it with “volunteers.” If subsection (b)(6) is revised as described
9 in paragraph 2, above, then the MCLE Committee will be disbanded.
10 However, the State Bar anticipates involving volunteers in MCLE working
11 groups, panels, or task forces in the future, and would desire that these
12 volunteers also be immune from suit for conduct performed in the course
13 of their official volunteer duties, to the extent permitted by law.
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15


16 **CONCLUSION**

17 The State Bar of Arizona respectfully requests amendment of Rule 45, Ariz.

18 R. Sup. Ct., as stated herein.
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20 RESPECTFULLY SUBMITTED this 10th day of January, 2018.
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24 _____
25 Lisa M. Panahi
General Counsel

1 Electronic copy filed with the
2 Clerk of the Arizona Supreme Court
3 this 10th day of January, 2018.
4 by: 

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Appendix

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 45. Mandatory Continuing Legal Education

(a) Continuing Legal Education Requirements.

~~3. Except as otherwise provided in this rule, every active member of the bar, not exempted shall, between July 1, 1999 and June 30, 2004, satisfy the requirements of subsection (a)(2) of this Rule, in whole or in part for any educational year or succeeding year falling within that period, by completing the state bar course on professionalism or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona for this purpose.~~

~~a. The requirements of this subsection shall be considered to have been fulfilled (i) by all members of the bar who have previously completed, or who do complete, such a course in satisfaction of the requirements of Rule 34(e) of these Rules, (ii) by all foreign legal consultants who have previously completed, or who do complete, such a course in satisfaction of the requirements of Rule 33(f)(9) of these Rules, or (iii) by all members of the bar who have previously completed a course on the principles of professionalism approved by the Board of Governors of the State Bar of Arizona as satisfying the requirements of this subsection.~~

~~b. Active members of the bar who neither reside nor practice law in Arizona shall be exempt from completing such a course, except that any such member shall complete one within twelve (12) months of becoming a resident of or commencing the practice of law in Arizona, or in accordance with such other schedule as may be established by the Board of Governors.~~

~~c. The Board of Governors may, in its discretion, establish a schedule of dates earlier than June 30, 2004, by which designated categories of active members of the bar shall satisfy the requirements of this subsection.~~

43. An active member of the bar, not exempted, who serves as an arbitrator under Rule 73, Arizona Rules of Civil Procedure, is eligible for two hours of continuing legal education activity credit in lieu of financial compensation otherwise available under A.R.S. § 12-133(g) or local rule for service as an arbitrator. Such credit shall be included in the maximum number of hours allowed for self-study and shall be awarded under procedures approved by the Board of Governors.

54. An active member of the bar, not exempted, who provides pro bono service to the poor or near poor through an approved legal services organization, as defined in Rule 38(e), is eligible for one hour of continuing legal education credit for every five hours of pro bono service provided, up to a maximum of five hours per educational year of continuing legal education credit. Such credit shall be included in the maximum number of hours allowed for self-study and shall be reported in the attorney's annual affidavit of compliance.

65. An active member of the bar, not exempted, who serves as an arbitrator for a fee dispute resolution under the auspices of the State Bar Fee Arbitration Committee is eligible for one hour of continuing legal education activity credit for each hearing actually conducted, up to a maximum of two hours credit in any one educational year. This credit shall be applied to the required three hours of activity in the area of professional responsibility mandated for that educational year.

(b) Exemptions.

6. *Other Exemptions.* Upon application and showing of undue hardship, the ~~MCLE~~ Committee CEO/ED of the state bar or his or her designee may exempt an active member from the requirements of section (a) or extend the deadline for compliance for a period of not more than one year. Any consideration for additional time past one year based on a continuing hardship, would require a new application. Any denial of a request made pursuant to this rule shall be reviewed by the board.

(d) Delinquent Compliance Fee and Delinquent Affidavit Filing Fee.

1. *Delinquent Compliance Fee.* A member who was active during the educational year and not otherwise exempted and who fails to complete the requirements of section (a) by the end of the educational year shall be deemed delinquent. Failure to

obtain the required 15 hours of continuing legal education credit by the June 30 deadline will result in assessment of a delinquency fee per a delinquency fee schedule established by the board with the consent of this court. ~~the following delinquency fees:~~

- ~~a. If CLE requirements are completed between July 1 and July 31, a delinquent compliance fee of \$25.00 is assessed.~~
- ~~b. If CLE requirements are completed between August 1 and August 31, a delinquent compliance fee of \$50.00 is assessed.~~
- ~~c. If CLE requirements are completed between September 1 and September 15, a delinquent compliance fee of \$100.00 is assessed.~~
- ~~d. If CLE requirements are completed after September 15, a delinquent compliance fee of \$125.00 is assessed.~~

Such fees shall be in addition to any fee for delinquent filing of the affidavit required by section (c) as set forth below in sub§ 2. Failure to complete the requirements of section (a) by September 15 may result in a motion for summary suspension pursuant to section (h) of this rule.

2. Delinquent Affidavit Filing Fee. An affidavit not filed when due under sections (b)(5) or (c) shall be deemed delinquent. A member who was active during the educational year and not otherwise exempted shall be subject to assessment of a delinquency fee per a delinquency fee schedule established by the board with the consent of this court. ~~the following delinquent filing fees:~~

- ~~a. Members who file their affidavits between September 16 and October 15 will be assessed a delinquent filing fee of \$100.00.~~
- ~~b. Members who file their affidavits between October 16 and November 15 will be assessed a delinquent filing fee of \$125.00.~~
- ~~c. Members who file their affidavits after November 16 will be assessed a delinquent filing fee of \$150.00.~~

Failure to file the affidavit by December 15 may result in a motion for summary suspension pursuant to section (h) of this rule.

(i) Summary Suspension. Upon notice of the state bar pursuant to Rule 62, any member who fails to comply with this rule for any educational year in which he or she was an active member and not otherwise exempted may be summarily suspended

by order of the board, provided that a notice by certified mail, return receipt requested, of such noncompliance shall have been sent to the member, mailed to his or her last address of record in the State Bar office, at least 30 days prior to such suspension. The member may be reinstated upon completion of the continuing legal education activity requirements for each educational year in which the member was suspended with proof of cure, payment of a reinstatement fee as established by the board with consent of this court ~~of \$100.00~~, and payment of all delinquency fees pursuant to section (d) of this rule and in accordance with Rule 64(f) of these rules.

(k) Immunity from Civil Suit. Communications to the court, state bar, or committee thereof relating to compliance with this rule and testimony given in compliance proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any witness. Members of the board, ~~MCLE Committee~~, volunteers, and staff shall be immune from suit for any conduct in the course of their official duties to the extent permitted by law.