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

10 In the Matter of:

Supreme Court No. R-18-0004

11 **PETITION FOR AMENDMENTS**
12 **TO RULE 31 OF THE ARIZONA**
13 **RULES OF SUPREME COURT**

(CORRECTED) COMMENT OF
THE STATE BAR OF ARIZONA

14 Pursuant to Supreme Court Rule 28, the State Bar of Arizona respectfully
15 submits this Comment on the Petition to Amend Rule 31 of the Rules of the
16 Supreme Court of Arizona, filed by the Honorable David B. Gass (“the Petition”).
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18 Although the State Bar agrees that Rule 31 likely warrants amendments and
19 reorganization; the State Bar opposes the adoption of the amendments proposed in
20 the Petition. In particular, the State Bar opposes proposed Rule 31(d)(9), which is
21 the most significant departure from the current rule and the focus of the Petition.
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23 The State Bar supports efforts to streamline and update Rule 31, but believes that
24 this effort would best be addressed by a task force or committee comprised of
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1 different institutional stakeholders taking a holistic approach to a proposed revised
2 Rule 31.

3 4 **DISCUSSION**

5 **I. Summary of the Petition.**

6 Petition R-18-0004 seeks to substantially rewrite Supreme Court Rule 31 to
7 amend and expand upon the exemptions to Rule 31(b), which bars the practice of
8 law by a person who is not an active member of the Arizona State Bar (hereafter
9 “non-lawyer”). Proposed Amended Rule 31(d)(9) would expressly permit a non-
10 lawyer to represent any “entity” other than an “issuing public corporation” in
11 virtually any type of legal proceeding. Petitioner argues that the current form of
12 Rule 31 fails to acknowledge the self-representation capabilities of Arizona’s
13 corporate entities, and that proposed changes to Rule 31 would improve access to
14 justice for small business litigants. Petition at p. 2, ¶¶ 1-2. The proposal contains
15 certain safeguards, including that the corporate entity must have specifically
16 authorized the person to represent it in the particular matter; the representation must
17 be secondary or incidental to the authorized non-lawyer’s other duties relating to
18 the management or operation of the entity; and the authorized non-lawyer must not
19 receive compensation for representing the corporate entity in the particular matter.
20 Petition at p. 7, ¶ 2. In addition, the amendment provides that a presiding officer in
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1 any proceeding may require the business entity to retain counsel if the officer
2 determines that the non-lawyer representation is interfering with the orderly
3 progress of the proceeding, imposing undue burdens on other parties, or causing
4 harm to the represented entity. Petition at p. 7, ¶ 3 – p. 8, ¶ 1.

6 **II. Proposed Rule 31(d)(9) Would Result In Representation Of Business**
7 **Entities By Unqualified Persons, Injuring Those Entities and the**
8 **Judicial Process.**

9 Despite the good intentions of the Petition, the State Bar opposes the
10 proposed amendments. The safeguards the Petition proposes address some of the
11 concerns raised by the expansion of non-lawyer representation, but ultimately the
12 amendment authorizes non-lawyer representation for virtually every type of private
13 business entity, in any kind of proceeding. This goes too far. The State Bar
14 recognizes that the cost of retaining a licensed attorney may be significant, but
15 disagrees that the benefits of expanding the circumstances under which a business
16 can be represented by a non-lawyer outweigh the risks.

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18 The purpose of the rule against the unauthorized practice of law is the same
19 as the core mission of the State Bar itself – to protect the public.
20 <http://www.azbar.org/LawyerConcerns/RegulationofNon-Lawyers>. The public
21 interest is supported by the rendition of legal services by those subject to the high
22 educational and ethical standards imposed by this Court in the exercise of its
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1 ultimate authority over the practice of law in this state, and reinforced by the State
2 Bar in its regulatory and disciplinary role.

3 The non-lawyer representatives the Petition contemplates do not have ethical
4 obligations to represent the business “client,” may not have fiduciary duties to the
5 business, and may be ill-equipped to resolve – as an ethically trained lawyer would
6 – complex issues of mixed loyalties to themselves, or clashing principals of the
7 business. Non-lawyers do not know the Rules of Professional Conduct and have
8 no duty to follow them. Grave harm could befall corporate entities who rely upon
9 unqualified representatives to present their case. Moreover, the potential harm of
10 permitting untrained representatives to represent corporate entities in all manner of
11 disputes extends not just to the corporate entity – but ultimately to all of those
12 holding an ownership interest in it. As a result, unlike a *pro se* litigant whose poor
13 representation will impact only his or her legal rights, the owners underlying a
14 corporate entity ultimately will all be harmed by poor representation.

15 There is also a strong potential for harm to opposing litigants and other
16 parties who are expected to negotiate or litigate with non-lawyer representatives,
17 who are not restrained by State Bar qualification and ethical requirements. Nothing
18 stops these representatives from violating the rule in the *Lang* decision and ER 4.2
19 by having otherwise unauthorized contact with former employees of an opposing
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1 party. Nothing stops them from communicating with a represented party before a
2 hearing – even though the business representative may be cross-examining that
3 represented opposing party at a hearing the next day. Nothing stops them from
4 engaging in the conflicted behaviors wisely prohibited in ERs 1.7 and 1.8. And so
5 on. Worse yet, the incentive for formerly-barred or disbarred people to hover
6 around the legal process and engage in shenanigans of these types – now immune
7 from charges of the unauthorized practice of law and unburdened by the ethical
8 prohibitions that constrained them as lawyers – is undeniable, and risks the integrity
9 of proceedings into which companies will inevitably invite them.
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12 Pro se litigants have always posed more significant burdens upon judicial
13 bodies before which they appear. Pro se *corporate* litigants are likely to pose even
14 greater burdens, as the interests at stake will not be limited to personal matters or
15 matters of comparatively limited monetary value. In addition, courts must be
16 confident that representatives appearing before them are in fact authorized to act for
17 the business entity, and are required to act in the business entity’s best interest.
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19 Courts should not be forced to bear the burden of confirming that non-lawyer
20 corporate representatives are both authorized and qualified to act on the corporate
21 entity’s behalf. For all these reasons, the State Bar opposes the current proposed
22 expansion of Rule 31(d).
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1 **III. The State Bar Opposes the Petition, and Believes an Ad Hoc Task Force**
2 **to Review and Potentially Propose a Revised Rule 31 May Be Timely.**

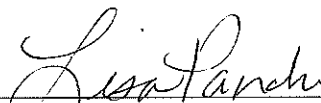
3 Although the State Bar believes that the current proposed amendments pose
4 unacceptable risks of unqualified and unauthorized representation of business
5 entities and undue burdens on judicial bodies, to the extent the Supreme Court
6 wishes to expand the circumstances under which a business entity could be
7 represented by a non-lawyer, the State Bar believes that the undertaking of further
8 revisions to Rule 31 should only take place after a comprehensive review of the
9 Rule by an ad hoc task force convened for this purpose, and not by piecemeal
10 revisions.
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13 As noted in the Petition, Rule 31 is convoluted and may, in certain respects,
14 be outmoded. The State Bar believes the importance of defining the practice of law
15 and exemptions for nonlawyers engaging in some limited form of authorized
16 practice warrants further study to determine if modernization of this Rule is needed.
17 The State Bar suggests a Supreme Court convene a task force comprised of relevant
18 stakeholders from the State Bar, the bench, the business community, and access to
19 justice expertise. All of these perspectives would be helpful in crafting a unified
20 approach to a potential overhaul of this Rule.
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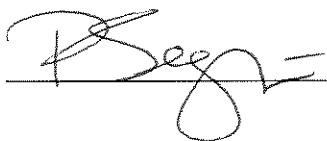
1 **CONCLUSION**

2 The State Bar believes that the risks inherent in the current proposed expansion of
3 non-lawyer representation of business entities seriously outweigh the perceived
4 benefits. The State Bar therefore respectfully recommends that the Court reject
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6 Petition R-18-0004, and that the Court convene a task force to review Rule 31 in its
7 entirety.

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9 RESPECTFULLY SUBMITTED this 31st day of May, 2018.
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13 _____
14 Lisa M. Panahi
15 General Counsel
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17 Electronic copy filed with the
18 Clerk of the Supreme Court of Arizona
19 this 31st day of May, 2018.

20 by: 
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