

1 Lisa M. Panahi, Bar No. 023421  
2 General Counsel  
3 State Bar of Arizona  
4 4201 N. 24th Street, Suite 100  
5 Phoenix, AZ 85016-6288  
6 (602) 340-7236

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

9 In the Matter of:

10 **PETITION TO AMEND RULES**  
11 **32, 42 (ER 8.3) AND 48 OF THE**  
12 **ARIZONA RULES OF SUPREME**  
13 **COURT AND ADD NEW RULE**  
14 **32.1**

Supreme Court No. R-21-  
**STATE BAR OF ARIZONA**  
**PETITION**

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar  
15 of Arizona hereby petitions the Court to amend Rules 32, 42 (ER 8.3), and 48, Ariz.  
16 R. Sup. Ct. and add new Rule 32.1. The purpose of this Petition is to strengthen the  
17 State Bar's Member Assistance Program. Proposed rule language is provided in  
18 Exhibit 1.  
19

20  
21 In recognition of the significant mental health and substance abuse disorders  
22 faced by a growing number of lawyers in Arizona, the Board of Governors appointed  
23 a Task Force to investigate and recommend ways to revitalize the State Bar's  
24 Member Assistance Program. The Task Force met numerous times, solicited input  
25

1 from lawyer assistance programs in other jurisdictions, and sent out a Request for  
2 Proposal to Arizona treatment providers.

3  
4 Now, in furtherance of its mission, the Task Force proposes amendment of  
5 certain Supreme Court rules, and creation of a new rule. The first amendment is to  
6 Rule 32 and involves the addition of new clause 11 to subsection (d), to mandate the  
7 establishment, maintenance, and administrative funding of a voluntary member  
8 assistance program. The amendment does not fund treatment or therapeutic services  
9 for members; it only provides that there be State Bar staff to manage the program in  
10 whatever form it exists. It ensures that voluntary assistance will exist for members  
11 of the State Bar regardless of budgetary constraints, and that the program cannot be  
12 discontinued absent a rule change. Importantly, this amendment signals that the  
13 Court and the State Bar prioritize assistance to Arizona lawyers struggling with  
14 mental health and/or substance use disorders. Moreover, a strong lawyer assistance  
15 program serves to protect the public by ensuring that Bar members are mentally and  
16 physically capable of practicing law.  
17  
18  
19

20 To that end, the Task Force also recommends the addition of a new Rule 32.1  
21 to establish, maintain, and administratively fund a voluntary member assistance  
22 program. The proposed new Rule 32.1 also contains necessary provisions regarding  
23 confidentiality and immunity.  
24

25 The Task Force also recommends changes to Rule 42, ER 8.3 to clarify that

1 reporting of professional misconduct is not mandated for information received about  
2 another lawyer (or judge) when participating in an approved lawyer assistance  
3 program. Related, Comments [1] and [2] to ER 8.3 also require amendment.  
4

5 Finally, the Task Force recommends additions to Rule 48(1), Ariz. R. Sup. Ct.,  
6 to grant immunity from civil suit to participants (including staff and volunteers) in  
7 an approved member assistance program.  
8

### 9 CONCLUSION

10 The State Bar respectfully requests that this Court adopt the rule changes  
11 recommended in this Petition. These changes will ensure that the Rules of the  
12 Supreme Court facilitate and support the State Bar's revitalized Member Assistance  
13 Program.  
14

15 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January 2021.  
16

17 */s/ Lisa M. Panahi*

18 Lisa M. Panahi  
19 General Counsel

20 Electronic copy filed with the  
21 Clerk of the Supreme Court of Arizona  
22 this 8<sup>th</sup> day of January 2021.

23 by: */s/ Patricia Seguin*  
24  
25

## Exhibit 1

**Amend existing Rule 32 by the addition of a new clause 11 to subsection (d) as follows:**

Rule 32. Organization of the State Bar of Arizona

....

(d) Powers of the Board. The state bar shall be governed by the Board of Governors, which shall have the powers and duties prescribed by this court. The board shall:

....

11. Establish, maintain, and fund the administration of a voluntary member assistance program to assist lawyers whose performance may be impaired by a mental, emotional, or behavioral condition, including use of alcohol or other drugs.

Comment: Subsection [11] ensures that the State Bar will maintain a voluntary member assistance program and provide State Bar staff to administer the program. The funding referenced in this subsection is not intended to fund any type of evaluation, assessment or treatment. Those expenses will be borne by the individual member.

**Add new Rule 32.1 to read as follows:**

Rule 32.1. Member Assistance Program.

(a) Duty to Establish, Maintain, and Administratively Fund. The board of governors of the state bar shall establish, maintain, and administratively fund a voluntary member assistance program to assist lawyers whose performance may be impaired by a mental, emotional, or behavioral condition, including use of alcohol or other drugs.

(b) Participation Voluntary. Participation by a lawyer in the member assistance program is voluntary.

(c) Confidentiality. All information received by the member assistance program including staff and volunteers is a privileged communication which, unless authorized by the lawyer to whom the information relates, shall not be disclosed to any person or entity outside the member assistance program and shall not be discoverable or admissible in any civil proceeding or disciplinary proceeding. This rule is not meant to preclude the use of information independently discovered from a source separate from the member assistance program.

(d) Immunity. A person who reports or fails to report information, or a person who takes action or fails to take action, or a person who receives information, in connection with the member assistance program is immune from civil liability, providing the person has acted in good faith and without malice. A presumption of good faith and absence of malice applies, and a person alleging lack of good faith or presence of malice has the burden of proof.

**Amend Rule 42 by amending ER 8.3 and related Comments as follows:**

Amend ER 8.3 as follows:

ER 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority, except as otherwise provided in these Rules or by law.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority, except as otherwise provided in these Rules or by law.

(c) This Rule does not require disclosure of information otherwise protected by ER 1.6 ~~or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.~~

(d) This Rule does not require disclosure of information about another lawyer or a judge that was gained by a lawyer while participating in an approved lawyer assistance program. A lawyer shall not disclose that information except as permitted by rules applicable to the program or by law.

Amend the Comments to ER 8.3 as shown in (1) and (2) below:

(1) Delete the Comment identified in the Thomson Reuters Westlaw version of the Arizona Rules of Professional Responsibility as “Comment to 2002 Amendment to ER 8.3(c),” and reading as in the Attachment to Supreme Court No. R-01-0023 Order Amending Rule, 42, ER 8.3(c), Rules of the Supreme Court, dated January 22, 2002.

(2) Amend the Comment identified in the Thomson Reuters Westlaw version of the Arizona Rules of Professional Responsibility as “Comment [2003 Amendment] – [5]” and reading as in the Attachment to Supreme Court No. R-02-0045 Order Amending Rules 42 and 43, Rules of the Supreme Court, dated June 9, 2003, as follows:

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for ~~the confidentiality of such information~~ an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such ~~confidentiality~~ an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. ~~The Rule therefore provides that a lawyer may not report pursuant to paragraphs (a) and (b) information that would be protected by ER 1.6 if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer.~~ Therefore, this Rule provides that a lawyer is not required to disclose such information in complying with the reporting requirements of paragraphs (a) and (b), and that a lawyer is prohibited from disclosing that information except as permitted by rules applicable to the assistance program or by law. Participation by a lawyer in an

approved assistance program includes lawyers and judges seeking assistance as well as lawyers and judges seeking to provide assistance.

....

**Amend Rule 48 as follows:**

Rule 48. Rules of Construction.

....

(1) Immunity from Civil Suit. Communications to the court, state bar, committee, presiding disciplinary judge, acting presiding disciplinary judge, hearing panel members, settlement officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, ~~monitors of the Member Assistance or Law Office Management Assistance Programs~~ participants in an approved member assistance program including those seeking assistance and those seeking to provide assistance, participants or staff of a State Bar law office or practice management assistance programs, state bar staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, members of the committee, the presiding disciplinary judge, hearing panel members, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the Committee on the Rules of Professional Conduct, ~~monitors of the Member Assistance or Law Office Management Assistance Programs~~ participants in an approved member assistance program, including those seeking assistance and those seeking to provide assistance, or participants or staff in a State Bar law office or practice management assistance program, state bar staff, and court staff shall be immune from suit for any conduct in the course of their official duties.

....