

**Scharf-Norton Center for Constitutional Litigation
at the GOLDWATER INSTITUTE**

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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

PETITION TO AMEND RULES 32(c)
AND (d), RULES OF THE SUPREME
COURT

Supreme Court
No.

**PETITION TO AMEND RULES
32(c) AND (d), RULES OF THE
SUPREME COURT**

Pursuant to Ariz. S. Ct. R. 28, Timothy Sandefur, individually and on behalf of the Goldwater Institute, respectfully petitions this Court to adopt amendments to Rules 32(c) and (d), Ariz. S. Ct. R. (“Rule 32”), governing membership in the State Bar of Arizona (“State Bar” or “Bar”), as proposed herein. The proposed amendments maintain the current mandatory membership requirement for all lawyers, but (1) eliminates membership dues for non-regulatory functions, (2) allows opt-in voluntary contributions for all other State Bar purposes, and (3) provides for an audit so that members can verify the use of mandatory dues. A redlined draft of

the proposed changes is attached as Appendix A. A clean draft of Rule 32, as amended, is attached as Appendix B.

I. Background and Purpose of the Proposed Rule Amendments

The proposed rule change splits the functions of the State Bar into two distinct subsets: a mandatory membership organization (“Mandatory Bar”) and a purely voluntary membership organization (“Bar Association”). The proposed amendments in the text of Rule 32 are minor. The proposed change is modest and designed to bring Rule 32 in compliance with the U.S. Supreme Court’s decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

A. Reasons for change

Arizona is a right-to-work state. This means that individuals are free to organize and become members in unions or professional associations for the purpose of furthering their interests in the workplace, whether for the purpose of collective bargaining with employers, lobbying for changes in the law, associating with like-minded members, or otherwise advocating for change where groups may have clout greater than individuals alone. Ariz. Const. art. 25; A.R.S. §§ 23-1301–1307. Arizona law also provides for the licensing of a number of professions and occupations. *See, e.g.*, A.R.S. §§ 32-101–4502. Right to work means that no person may be “denied the opportunity to obtain or retain employment because of nonmembership in a labor organization.” A.R.S. § 23-1302.

In addition, the First Amendment and the Arizona Constitution protect the freedom to associate or not to associate, and the right not to be compelled to

subsidize the political speech of groups one disagrees with. *Janus, supra*; *Knox v. Serv. Emp. Int’l Union, Local 1000*, 567 U.S. 298 (2012); *Harris v. Quinn*, 134 S. Ct. 2618 (2014); *May v. McNally*, 203 Ariz. 425 (2002).

But the Arizona State Bar, as currently constituted, violates this rule. Other than certain limited circumstances (such as admission *pro hac vice*), everyone seeking to practice law in Arizona must become a member of the union or association known as the State Bar. Ariz. S. Ct. R. 32(c)(3). Membership is mandatory. In addition to violating the principle of free association, this mandate also violates freedom of speech, because bar dues are spent to support and oppose legislation and to advocate for political positions that many attorneys do not share.

Mandatory bar membership was a fad of the past century, beginning in North Dakota in 1921. N.D. Cent. Code § 27-12-02 (enacted as 1921 N.D. Laws, Ch. 25, § 1). Arizona only hopped on the bandwagon in 1933 when the legislature created a mandatory membership organization, of which the Arizona Supreme Court assumed joint control alongside the legislature in 1973. In 1985, the legislature repealed the 1933 act, thus leaving the Bar under the sole oversight of the Court.¹

The justification for the membership requirement is typically that it is necessary to regulate the practice of law. But it is possible to protect the public “through means significantly less restrictive of associational freedoms” than mandatory bar association membership. *Harris*, 134 S. Ct. at 2639. Petitioners do not concede the constitutional validity of mandatory bar membership—but, as a

¹ History, State Bar of Arizona, <https://www.azbar.org/aboutus/history>.

modest reform, proposes to subdivide the existing bar into separate mandatory and voluntary categories, thereby achieving the goals of attorney regulation in Arizona without the burdens that compulsory association imposes on rights protected by the state and federal constitutions.

A single, mandatory organization does not and cannot reasonably be expected to speak for all lawyers on all matters. Much like the rest of the population, lawyers have diverse beliefs and interests, are members of all political parties—many are members of none. We have diverse practices that rapidly change with the times. The fungible storefront lawyer of a century ago is a thing of the past. It is time for lawyer regulation to recognize this fact, change with the times, and move into the twenty-first century.

B. General description of the proposed amendments

Currently, all Arizona lawyers must become members of the State Bar and pay an annual membership fee. Ariz. S. Ct. R. 32(c)(3). That fee² varies based on the special category in which the member belongs:

- Active members: \$505
- Active members admitted fewer than three years: \$345
- Inactive members: \$265
- Retired members: \$215
- Judicial members: \$340
- In-house counsel: \$379

² Ariz. S. Ct. Admin. Order No. 2016-52 at 2–3.

- In-house counsel admitted fewer than three years: \$259

This one membership, with the exception of voluntary section and certified specialist fees, funds everything from the regulatory aspects of lawyer licensing and discipline to the panoply of other activities that the Arizona Bar now funds, including lobbying and publishing material that takes political positions. This proposal bifurcates bar membership into mandatory and voluntary.

1. The mandatory bar

The proposed amendment keeps lawyer *regulation* as it is. This means all lawyers would continue to be required to fund and submit to regulation and discipline by the State Bar acting as a regulator—meaning such traditional regulatory functions as admissions testing, character and fitness, specialty certification, minimum requirements for and oversight of continuing legal education, and attorney discipline. These regulatory functions would remain under the oversight of the Court and would be funded by compulsory membership fees sufficient to pay for them and the client protection fund. Petitioners also propose that use of these fees be verified annually by an independently audited and itemized report given to all members.

2. The voluntary bar

Other functions currently overseen by the Arizona Bar would, however, be turned over to a state Bar Association, membership in which would be voluntary. This Bar Association would be responsible for all other non-regulatory activities in which the State Bar is currently involved, or those in which it may choose to become

involved in the future, including lobbying. Any lawyer may join, but no lawyer would be required to join as a condition of practicing law. Petitioners propose no limitations on the services provided, or the membership fee, either in amount or how it is used. These issues would be left to the discretion of the Bar Association's members. Only those who are members of the Bar Association would be involved in its government, and the Bar Association would be free to offer its services only to members, or at a reduced rate or an enhanced level of service to members, as it may choose, under whatever conditions it deems appropriate.

3. The audit requirement

The proposed amendment will make available to members the audited financial statement that is currently transmitted only to the Chief Justice. The State Bar is already required to itemize its expenditures to meet the *Hudson* notice requirements. *Chicago Teachers Union Local No. 1 v. Hudson*, 475 U.S. 292 (1986). The proposed amendment clarifies and codifies that itemization requirement. This does not burden or change any existing procedures followed by the bar, but, taken together, the reporting and itemization language added by the proposed amendment would enable members to make informed, voluntary decisions on whether they want to contribute money toward the Bar Association's voluntary activities. Such informed, voluntary decision-making is required under U.S. Supreme Court precedent.

C. Arguments for a mandatory integrated bar

At present, the State Bar leadership, but not all state bar members—and obviously not the petitioners—are opposed to changing the current mandatory structure. The State Bar leadership, for instance, advocated against HB2221 during the 2016 legislative session, and used the petitioners’ compulsory dues to do so. That bill called for a less nuanced version of what Petitioner proposes here. *See* Video of Public Statements of John F. Phelps, State Bar CEO/Executive Director. House Judiciary Committee Hearing at 6:45–33:25 (Feb. 10, 2016).³ Many arguments made before the Legislature by the State Bar probably will be made against this petition. *See, e.g.*, Benefits of an integrated State Bar, <http://savethebar.com/benefits-of-the-bar/>, a copy of which is attached as Appendix C.

The proposed amendment to Rule 32 would have no adverse effects on the State Bar. It is based on the system adopted by the Nebraska Supreme Court in 2013, and this Petition makes certain refinements to that model based on Nebraska’s experience and the U.S. Supreme Court’s recent pronouncement in *Janus, supra*.

Eighteen other states regulate lawyers to the satisfaction of the public without any mandatory bar at all. *In re Pet. for a Rule Change to Create a Voluntary State Bar of Nebraska*, 841 N.W.2d 167, 171 (Neb. 2013). This proposal recommends nothing more drastic than following those models. There is no reason Arizona cannot regulate the practice of law as those states do, without infringing on lawyers’ right

³ goo.gl/ai9Xdc

of free association. The remaining mandatory subset of the State Bar would be sufficiently funded for all purposes directly related to lawyer regulation.

This Petition does not seek to prevent the State Bar from offering any services to its members. As the Nebraska Supreme Court recognized, there is no reason that a voluntary bar association cannot provide such services: “Many members of the Bar Association may well elect to pay the voluntary dues assessment—particularly if the Bar Association strictly adheres to the use of such funds for purposes clearly benefitting the bar as a whole and avoids entanglement in ideological or political issues or legislation.” *Id.* at 179. If Arizona State Bar offers worthwhile programs its members find valuable and continues to do so, one would expect members to *voluntarily* pay for them, also.

Many voluntary bar associations have done very well because of the value they provide to their members. Arizona already has many voluntary county, city, and specialty bar associations. One of the best known voluntary bar associations—mentioned in Ariz. S. Ct. R. 32(e)(9)—is the American Bar Association, an association which is very active in lobbying and other similar activities. The scope of the ABA need not be described here. It is well known for the many services it provides to its members. No lawyers are obligated to join, but many do. Arizona attorneys should have the same freedom of association with respect to the non-regulatory functions of the State Bar.

D. Arguments for a voluntary bar

There should be no dispute that mandatory membership organizations of any kind burden the rights of free speech and free association guaranteed by the United States and Arizona Constitutions. *See Keller v. State Bar of California*, 496 U.S. 1, 8 (1990) (citing *Lathrop v. Donohue*, 367 U.S. 820, 842–43 (1961)). If this blackletter principle was not clear before, it is clear now under *Janus*.

Janus stated unequivocally that the First Amendment standard “cannot be met” unless the union member “affirmatively consent[s].” 138 S. Ct. at 2486 (emphasis added). Arizona does not follow the opt-in requirement imposed by *Janus*, however. Instead, it operates under the same opt-out rule that *Janus* found unconstitutional. The current standard for “a member who objects to particular State Bar lobbying activities” is that the member “may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.” Ariz. S. Ct. R. 32(c)(8). As *Janus* makes clear, that presumption in acquiescence is not constitutionally permissible.

The current procedure is unduly cumbersome and requires everyone, individually, to monitor all Bar expenditures and to object to those directly applicable to lobbying activities with which they do not agree. This procedure is now untenable under the Supreme Court’s pronouncement in *Janus*.

In *Keller*, the Court recognized that some states force attorneys to join bar associations. The Court did not expressly approve of this arrangement, because that question was not directly before the Court. 496 U.S. at 17. Yet, since *Keller*, the

Court has repeatedly undermined the foundation on which mandatory membership is based. In *Knox*, 132 S. Ct. at 2291, it stated that “permitting the use of an opt-out system for the collection of fees levied to cover nonchargeable expenses, ... approach[es], if [it] do[es] not cross, the limit of what the First Amendment can tolerate.” “[T]he First Amendment does not permit a union to extract a loan from unwilling nonmembers even if the money is later paid back in full.” *Id.* at 2292–93. This is because “[a]n opt-out system creates a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree.” *Id.* at 2290. This approach “c[a]me about more as a historical accident than through the careful application of First Amendment principles.” *Id.* Later, in *Janus*, the Court made clear that presuming a person is willing to endorse the political activities of a public employee union unless that person takes action to opt out is insufficient to protect the free speech rights at stake. Instead, a person must be asked first, and presumed *not* to agree unless the person “affirmatively consents.” 138 S. Ct. at 2486.

Janus did not address mandatory bar associations, of course, but the proposed amendment avoids the need to resolve that question (thereby avoiding litigation) by clearly separating the state bar’s *mandatory* aspects—its regulation of the legal profession—from other functions, which would be left to a voluntary association.⁴

⁴ Recently, in *Fleck v. Wetch*, U.S.S.C. No. 17-886, __ S. Ct. __, 2018 WL 6272044 (Dec. 3, 2018), however, the Supreme Court granted certiorari, vacated the decision below, and remanded to the Eighth Circuit with instructions to evaluate North Dakota’s mandatory-membership bar association “in light of *Janus*.” Thus, bar association dues are subject to *Janus*’s affirmative-consent requirement to avoid constitutional problems with the opt-out system that is currently in place in Arizona.

This is what the Nebraska Supreme Court did in 2013, when it avoided “decid[ing] the precise boundaries of First Amendment compelled-speech jurisprudence” and simply amended its rules to create the bifurcated system proposed here. *Voluntary State Bar of Nebraska*, 841 N.W.2d at 177–78.

Not all states have mandatory bars. At least 18 states⁵ in addition to Nebraska have lawyers practicing law, representing the best interests of their clients, and otherwise engaging in the same activities as Arizona lawyers, all without being forced to join a state bar association. Ralph H. Brock, “*An Aliquot Portion of Their Dues:*” *A Survey of Unified Bar Compliance with Hudson and Keller*, 1 TEX. TECH. J. TEX. ADMIN. L. 23, 24 n.1 (2000). This has not damaged their legal systems. Even New York, which has the largest populations of attorneys in the nation, separate the mandatory, regulatory state bar from the voluntary, non-regulatory bar association. There is no reason Arizona cannot do the same.

E. Arguments for the audit requirement

In *Hudson*, 475 U.S. 292, the Court identified procedural requirements that must be met in order to collect fees without violating individual rights. A “pure rebate approach,” the Court concluded, “in which the union refunds ... any money to which the union was not entitled,” is “inadequate.” *Id.* at 303–04. “A forced exaction followed by a rebate equal to the amount improperly expended,” wrote

⁵ Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and Vermont.

Justice Stevens for the Court, is “*not* a permissible [solution].” *Id.* at 305–06 (emphasis added).

Fairness and the First Amendment rights at stake “dictate that” the bar should give “sufficient information to gauge the propriety of the union’s fee. Leaving the [dues payer] in the dark about the source of the figure for the agency fee—and requiring [the dues payer] to object in order to receive information—does not adequately protect” the dues payer’s rights. *Id.* at 306. Thus, itemizing expenditures up front is one of the requirements of a *Hudson* notice.

In *Knox*, the Court emphasized that “*Hudson* rests on the principle that nonmembers should not be required to fund a union’s political and ideological projects *unless* they choose to do so after having ‘*a fair opportunity*’ to assess the impact of paying for nonchargeable union activities.” 567 U.S. at 314–15 (emphasis added; cleaned up). *Knox* reiterated the central premise of *Hudson*, that “even a full refund would not undo the violation of First Amendment rights” because it “does not permit a union to extract a loan from [dues payers] even if the money is later paid back in full.” *Id.* at 316–17.

Knox also addressed the practical anomalies of requiring the union to only provide an audited report of expenditures. “[A]uditors typically do not make a legal determination as to whether particular expenditures are chargeable”; instead, they “take the union’s characterization for granted and perform the simple accounting function of ensuring that the expenditures which the union claims it made for certain expenses were actually made for those expenses.” *Id.* at 318–19 (cleaned up). Thus,

“if a union takes a very broad view of what is chargeable ... the auditors will classify these political expenditures as chargeable.” *Id.* at 319.

The proposed amendment clarifies the scope of the itemization required to avoid the inherent problems with reporting only financial- or tax-audited statements. The *Hudson* notice requirement is satisfied by reporting, in addition to reporting financial statements and tax forms, a detailed itemized list of expenditures that is “sufficient ... to gauge the propriety of the ... fee.” *Hudson*, 475 U.S. at 306.

The Arizona Bar already has procedures in place for itemizing expenditures. The proposed rule explicitly states this understanding under existing case law, that expenditures in the audited annual report must be itemized under categories including but not limited to: admissions testing, character and fitness, specialty certification, continuing legal education, attorney discipline, lobbying, publications, communications, fundraising, and other categories that the State Bar may from time to time determine will provide attorneys adequate information as required by *Hudson*.

II. Contents of the Proposed Amendment

The subsections to which amendments are proposed are set forth here in redline form:

(c) Membership.

...

8. *Computation of Fee.* The annual membership fee shall be composed of an amount for the ~~operation of the~~ **REGULATORY** activities of the State Bar and an

amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. ~~The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.~~

9. *Allocation of fee.* Upon payment of the ANNUAL membership fee, each member shall receive a bar card issued by the board evidencing payment. EACH MEMBER SHALL ALSO RECEIVE AN INDEPENDENTLY AUDITED LIST OF EXPENDITURES THAT VERIFIES MANDATORY ASSESSMENTS WERE SPENT IN THE PRECEDING CALENDAR YEAR ONLY ON REGULATORY FUNCTIONS OR FOR THE FUNDING OF THE CLIENT PROTECTION FUND. All ANNUAL MEMBERSHIP fees shall be paid into the treasury of the state bar and, ~~when so paid, shall become part of its funds,~~ SHALL BE USED ONLY TO FUND THE REGULATORY ACTIVITIES OF THE STATE BAR, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

...

11. *VOLUNTARY CONTRIBUTIONS FOR LOBBYING AND OTHER NON-REGULATORY ACTIVITIES.* THE STATE BAR MAY ESTABLISH, COLLECT, AND USE VOLUNTARY CONTRIBUTIONS TO ANALYZE AND DISSEMINATE INFORMATION ON PROPOSED OR PENDING LEGISLATIVE PROPOSALS AND FOR ANY OTHER NON-REGULATORY ACTIVITY INTENDED TO IMPROVE THE QUALITY OF LEGAL SERVICES TO THE PUBLIC AND PROMOTE THE PURPOSES OF THE STATE BAR AS SET FORTH HEREIN.

...

(d) Powers of 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:

...

7. Prepare an annual statement showing receipts and expenditures of the State Bar for the twelve preceding months. The statement shall be promptly certified by the secretary-treasurer and a certified public accountant, and transmitted to the Chief Justice of this Court **AND TO EACH MEMBER. THE STATEMENT SHALL ITEMIZE EXPENDITURES UNDER SEPARATE CATEGORIES, INCLUDING BUT NOT LIMITED TO, ADMISSIONS TESTING, CHARACTER AND FITNESS, SPECIALTY CERTIFICATION, CONTINUING LEGAL EDUCATION, ATTORNEY DISCIPLINE, LOBBYING, PUBLICATIONS, COMMUNICATIONS, FUNDRAISING, AND SUCH OTHER ITEMS AS THE**

STATE BAR MAY FROM TIME TO TIME DETERMINE SUFFICIENT FOR A MEMBER TO INDEPENDENTLY GAUGE THE PROPRIETY OF THE MEMBERSHIP FEE.

...

11. APPOINT A SUBCOMMITTEE OF ACTIVE MEMBERS WHO HAVE PAID ANY VOLUNTARY CONTRIBUTION COLLECTED PURSUANT TO THESE RULES TO ADMINISTER SUCH VOLUNTARY CONTRIBUTIONS.

III. Conclusion

Petitioner requests that this Court adopt amendments to Rules 32(c) and (d) as proposed herein.

Respectfully submitted January 8, 2018 by:

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APPENDIX A

Rule 32. Organization of State Bar of Arizona

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* Every person licensed by this Court to engage in the practice of law must be a member of the State Bar of Arizona in accordance with these rules.

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers practicing in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its individual members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers:

1. "Board" means Board of Governors of the State Bar of Arizona.

2. “Court” means Supreme Court of Arizona.
3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.
4. “Discipline proceeding” and “disability proceeding” mean any action involving a respondent pursuant to the rules relating thereto. Further definitions applying to such proceedings are stated in the rule on disciplinary jurisdiction.
5. “Member” means member of the state bar, the classifications of which shall be as set forth in this rule.
6. “Non-member” means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.
7. “Respondent” means any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.
8. “State bar” means the State Bar of Arizona created by rule of this court.

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into five classes: active, inactive, retired, suspended, and judicial. Disbarred or resigned persons are not members of the bar.
2. *Active Members.* Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, or judicial members.
3. *Admission and Fees.* All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar, the applicant shall pay a fee as required by the supreme court, which shall include the annual membership fee for active members of the state bar. If an applicant is admitted to the state bar on or after July 1 in any year, the annual membership fee payable upon admission shall be reduced by one half.

Upon admission to the state bar, an applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court. All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

4. *Inactive Members.* Inactive members shall be those who have, as provided in these rules, been transferred to inactive status. An active member who is not engaged in practice in Arizona may be transferred to inactive status upon written request to the executive director. Inactive members shall not practice law in Arizona, or hold office in the State Bar or vote in State Bar elections. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Inactive members shall have such other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and returned to active status as provided in these rules.

5. *Retired Members.* Retired members shall be those who have, as provided in these rules, been transferred to retired status. An active, inactive or judicial member who is not engaged in active practice in any state, district, or territory of the United States may be transferred to retired status upon written request to the executive director. Retired members shall not hold State Bar office or vote in State Bar elections. Retired members shall not practice law in any state, district, or territory of the United States. Retired members may provide volunteer legal services to approved legal services organizations as defined in Rule 38(e) of these rules, except that retired members need not have engaged in the active practice of law within the last five years as required in Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A). Retired members may return to active status subject to the requirements imposed on inactive members who return to active status, as set forth in subsection (c)(4) of this rule. Retired members shall have other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and return to active status as provided in these rules.

6. *Judicial Members.* Judicial members shall be justices of the Supreme Court of Arizona, judges of the Court of Appeals and Superior Court of Arizona and of the United States District Court for the District of Arizona, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Judicial membership status shall likewise be accorded to members of the State Bar who are full-time commissioners, city or municipal court judges, tribal court judges, judges pro tempore or justices of the peace in the state of Arizona not engaged in the practice of law, or justices or judges of other courts of record of the United States or of the several states. Judicial members shall hold such classification only so long as they hold the offices or occupations entitling them to such membership or are retired from the offices or occupations entitling them to such membership, are eligible for temporary judicial assignment, and are not engaged in the practice of law. Judicial members shall be entitled to vote but shall not be entitled to hold office. Judicial members shall have such privileges, not inconsistent with the rules of this court, as the board provides. A judicial member who retires or resigns from the bench and seeks to engage in the practice of law must become an active member subject to all provisions of these rules.

7. *Membership Fees.* An annual membership fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Board of Governors may waive the dues of any other member for reasons of personal hardship.

8. *Computation of Fee.* The annual membership fee shall be composed of an amount for the ~~operation of the regulatory~~ activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. ~~The State Bar shall conduct any lobbying activities in compliance with Keller v. State Bar of California, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.~~

9. *Allocation of fee.* Upon payment of the annual membership fee, each member shall receive a bar card issued by the board evidencing payment. Each member shall also receive an independently audited list of expenditures that verifies mandatory assessments were spent in the preceding calendar year only on regulatory functions or for the funding of the client protection fund. All annual membership fees shall be paid into the treasury of the state bar and, ~~when so paid, shall become part of its funds,~~ shall be used only to fund the regulatory activities of the state bar, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

10. *Delinquent Fees.* A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

11. *Voluntary Contributions for Lobbying and Other Non-Regulatory Activities.* The State Bar may establish, collect, and use voluntary contributions to analyze and disseminate information on proposed or pending legislative proposals and for any other non-regulatory activity intended to improve the quality of legal services to the public and promote the purposes of the State Bar as set forth herein.

12. *Resignation.*

A. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed in the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such person's status shall be changed to "resigned in good standing."

B. Such resignation shall not be a bar to institution of subsequent discipline proceedings for any conduct of the resigned person occurring prior to the resignation. In the event such resigned person thereafter is disbarred, suspended or reprimanded, the resigned person's status shall be changed from "resigned in good standing" to that of a person so disciplined. Such resignation shall not be

accepted if there is a disciplinary charge or complaint pending against the member.

C. Resigned persons in good standing may be reinstated to membership in the same manner as members summarily suspended under Rule 62 of these rules. Reinstatement of resigned persons shall be governed by the procedures set forth in Rule 64(f) and shall require:

i. payment of fees, assessments, and administrative costs the resigned person would have been required to pay;

ii. proof of completion of any hours of continuing legal education activity the resigned person would have been required to take, had the applicant remained a member; and

iii. proof that the resigned person possesses the character and fitness to resume practicing law in this jurisdiction.

D. A member wishing to resign shall apply on a form approved by the board and shall furnish such information as is required upon such form and shall make such allegations, under oath, as are required on such form.

13. *Insurance Disclosure.*

A. Each active member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer is currently covered by professional liability insurance. Each active member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A lawyer who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by active members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer to appropriate disciplinary action.

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1. Fix and collect, as provided in these rules, fees approved by the Supreme Court, which shall be paid into the treasury of the State Bar.
2. Promote and aid in the advancement of the science of jurisprudence, the education of lawyers, and the improvement of the administration of justice.
3. Approve budgets and make appropriations and disbursements from funds of the State Bar to pay expenses necessary for carrying out its functions.
4. Formulate and declare rules and regulations not inconsistent with Supreme Court Rules that are necessary or expedient to enforce these rules, and by rule fix the time and place of State Bar meetings and the manner of calling special meetings thereof, and determine what number shall constitute a quorum of the State Bar.
5. Appoint a Chief Executive Officer/Executive Director to manage the State Bar's day-to-day operations.
6. Appoint from time to time one or more executive committees composed of members of the board and vest in the executive committees any powers and duties granted to the board as the board may determine.
7. Prepare an annual statement showing receipts and expenditures of the State Bar for the twelve preceding months. The statement shall be promptly certified by the secretary-treasurer and a certified public accountant, and transmitted to the Chief Justice of this Court **and to each member. The statement shall itemize expenditures under separate categories, including but not limited to, admissions testing, character and fitness, specialty certification, continuing legal education, attorney discipline, lobbying, publications, communications, fundraising, and such other**

items as the State Bar may from time to time determine sufficient for a member to independently gauge the propriety of the membership fee.

8. Create and maintain the Client Protection Fund, as required by this court and authorized by the membership of the State Bar on April 9, 1960, said fund to exist and be maintained as a separate entity from the State Bar in the form of the Declaration of Trust established January 7, 1961, as subsequently amended and as it may be further amended from time to time by the board. The trust shall be governed by a Board of Trustees appointed by the Board of Governors in accordance with the terms of the trust and the trustees shall govern and administer the Fund pursuant to the provisions of the trust as amended from time to time by the board and in accordance with such other procedural rules as may be approved by the Board of Governors.

9. Implement and administer mandatory continuing legal education in accordance with Rule 45.

10. Administer a Board of Legal Specialization to certify specialists in specified areas of practice in accordance with Rule 44.

11. Appoint a subcommittee of active members who have paid any voluntary contribution collected pursuant to these rules to administer such voluntary contributions.

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1. *Implementation.* The State Bar shall implement this Rule in a manner that provides for the election and appointment of approximately one-third of the board each year.

2. *Elected governors.*

A. Districts: Governors are elected from eight districts, as follows:

i. Bar District One (Mohave, Navajo, Coconino and Apache counties): one governor

- ii. Bar District Two (Yavapai county): one governor
- iii. Bar District Three (Gila, Graham and Greenlee counties): one governor
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- v. Bar District Five (Pima and Santa Cruz counties): two governors
- vi. Bar District Six (Maricopa county): seven governors
- vii. Bar District Seven (La Paz and Yuma counties): one governor
- viii. Bar District Eight (Pinal county): one governor

B. Qualifications. Each elected governor must be an active member of the State Bar of Arizona throughout the elected term. For five years prior to election to the board, each elected governor must have been an active State Bar member and have had no record of disciplinary sanctions under Rule 60.

C. Nominations. Nominations for elected governor shall be by petition signed by at least five active State Bar members. Each candidate named in a petition and all members signing a petition must have their main offices in the district in which the candidate seeks to be elected.

D. Elections. Election of governors will be by ballot. Active and judicial members are entitled to vote for the elected governor or governors in the district in which a member has his or her principal place of business, as shown in the records of the State Bar. Active out-of-state members may vote in the district of their most recent Arizona residence or place of business or, if none, in Bar District Six. The State Bar will send ballots electronically to each member entitled to vote, at the address shown in the records of the State Bar, at least two weeks prior to the date of canvassing the ballots. Members will return their ballots through electronic voting means, and the State Bar will announce the results at the ensuing annual meeting. The State Bar's bylaws will direct other details of the election process.

E. Terms of service. Each elected governor shall serve a three-year term. An elected governor will serve on the board until a successor is elected and takes office at the annual meeting. If the board receives notice that an elected

governor's principal place of business has moved from the district in which the governor was elected, or that the governor has died, become disabled, or is otherwise unable to serve, that governor's seat is deemed vacant, and the other elected and appointed governors will choose a successor by a majority vote.

F. Term limits. An elected governor may serve three consecutive terms, but may not be a candidate for a fourth term until three years have passed after the person's last year of service. Election or succession to a partial term of less than three years will not be included in calculating a member's term limit.

3. *Young Lawyers Division President.* In addition to those governors elected under Rule 32(e)(2), the elected president of the Young Lawyers Division will serve as a voting member of the board of governors. The election of the Young Lawyers Division president will be conducted as provided by Rule 32(e)(2)(C), except that only members of the Young Lawyers Division are entitled to vote in that election. The Young Lawyers Division president will serve a one-year term on the board.

4. *Appointed governors.* The Supreme Court will appoint public, at-large, and district governors, collectively referred to as “appointed governors,” to serve on the board.

A. Public governors. Four governors of the board are designated as “public” governors. The public governors must not be members of the State Bar and must not have, other than as consumers of legal services, a financial interest in the practice of law. Public governors are nominated by the board and appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court. The Court may decline to appoint any board nominee and may appoint as a public governor a person who was not nominated by the board. No more than two public governors may be from the same district. No individual may serve more than two terms as a public governor. The Court may fill a vacancy in an uncompleted term of a public governor, but appointment of a public member to a term of less than three years will not be included in a calculation of the member's term limit.

B. At-large governors. Three governors on the board are designated as “at-large” governors. At-large governors, who may be former elected, public, or district governors, are appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court. The Supreme Court

may appoint at-large governors to successive terms. The Court may fill a vacancy in an uncompleted term of an at-large governor.

C. District governors. Three governors on the board are designated as “district” governors. District governors must be members of the State Bar, have their main office in the district of appointment, and meet the qualifications set out in Rule 32(e)(2)(B). District governors are appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court. The Court must appoint one district governor from Bar District Five and two district governors from Bar District Six. No individual may serve more than two terms as a district governor. The Court may fill a vacancy in an uncompleted term of a district governor, but appointment to a term of less than three years will not be included in a calculation of the member's term limit.

5. *Oath of governors.* Upon commencing service, each governor, whether elected or appointed, must take an oath to faithfully and impartially discharge the duties of a governor.

6. *Removal of a governor.* A governor of the board may be removed for good cause by a vote of two-thirds or more of the governors cast in favor of removal. Good cause may include, but is not limited to, conviction of a felony or a crime involving moral turpitude, imposition of a discipline sanction under Rule 60, repeatedly ignoring the duties of a governor, or disorderly activity during a board meeting. A board governor so removed may, within thirty days of the board's action, file a petition pursuant to Rule 23 of the Arizona Rules of Civil Appellate Procedure requesting that the Supreme Court review the board's determination of good cause. The Court will expedite consideration of the petition.

7. *Recusal of an attorney governor.* An attorney board member who is the subject of either a probable cause order issued pursuant to Rule 55(c)(1)(E) or an agreement for discipline by consent filed under Rule 57(a) must recuse him- or herself from serving on the board pending disposition of the matter.

8. *Board advisor.* The immediate past president of the board will serve a one-year term as an advisor to the board. The advisor may participate in board discussions but has no vote at board meetings, except an immediate past president may continue to vote if his or her term as an elected board member has not expired. The board advisor, with the assistance of two or more governors chosen by the

president, will lead a committee to recruit, recommend, and nominate candidates for the offices of president-elect, vice-president, and secretary-treasurer.

9. *Ex officio members.* The dean of each ABA-accredited law school in Arizona will serve as an ex officio member of the board. An ex officio member may participate in board discussions but may not vote at board meetings.

(f) Officers of the State Bar.

1. *Officers.* The board will elect its officers. The officers are a president, a president-elect, a vice-president, and a secretary-treasurer. An elected, at-large, or district governor may serve as an officer.

2. *Terms of office.*

A. *President.* The term of the president will expire at the conclusion of the annual meeting. The president-elect whose term expired at the same annual meeting will then automatically become, and assume the duties of, president at that time.

B. *President-elect, vice-president, and secretary-treasurer.* The board must elect a new president-elect, a new vice-president, and a new secretary-treasurer at each annual meeting. Those newly elected officers will assume their respective offices at the conclusion of the annual meeting at which they are elected, and they will continue to hold their offices until the conclusion of the subsequent annual meeting at which their successors are elected.

C. *Length of term.* Each officer will serve a one-year term.

D. *Successive terms.* A governor may not be elected to a second term for any office that the governor has held during the preceding nine or fewer consecutive years of service on the board. However, a governor may serve a partial term under Rule 32(f)(5), either before or after service of one full term.

E. *Limitations.* The term of a governor chosen as president or president-elect automatically extends until completion of a term as president if his or her term as a governor expires in the interim without their reelection or reappointment to the board, or if the term is limited under Rule 32(e)(2)(F). In either of these events, there shall not be an election or appointment of a new governor for the

seat held by the president or president-elect until the person has completed his or her term as president, and then the election or appointment of a successor governor shall be for a partial term that otherwise remains in the regular three-year cycle under Rule 32(e)(1).

3. *Duties of officers.* The president will preside at all meetings of the State Bar and of the board of governors, and if absent or unable to act, the president-elect will preside. Additional duties of the president, president-elect, vice-president, and secretary-treasurer may be prescribed by the board or set forth in the State Bar bylaws.

4. *Removal from office.* An officer may be removed from office, with or without good cause, by a vote of two-thirds or more of the members of the board of governors cast in favor of removal.

5. *Vacancy in office.* A vacancy in any office before expiration of a term may be filled by the board of governors at a meeting called for that purpose.

(g) Annual meeting. Annual meetings of the state bar shall be held at times and places designated by the board. At the annual meeting reports of the proceedings of the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received. Matters of interest pertaining to the state bar and the administration of justice may be considered and acted upon. Special meetings of the state bar may be held at such times and places as provided by the board.

(h) Administration of rules. Examination and admission of members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) Filings made. Papers required to be filed with the state bar under these rules shall be filed at the office of the state bar in Phoenix, except as is otherwise set forth in these rules.

(j) Formal Requirements of Filings. All verbatim records and all copies of recommendations, documents, papers, pleadings, reports and records required or

permitted by any provision of these rules relating to admission, discipline, disability, and reinstatement may be either typewritten, electronically prepared, or copied by a process that is clear, legible, or audible. An original is not required.

(k) Payment of Fees and Costs. The payment of all fees, costs, and expenses required under the provisions of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement shall be made to the State Bar. The payment of all fees costs and expenses required under the application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of the courts.

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, except that costs and expenses shall be taxed against a respondent lawyer or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission.

(m) Meetings and Records. The State Bar will conduct meetings and maintain records under public access policies adopted by the Supreme Court.

APPENDIX B

Rule 32. Organization of State Bar of Arizona

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* Every person licensed by this Court to engage in the practice of law must be a member of the State Bar of Arizona in accordance with these rules.

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers practicing in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its individual members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers:

1. "Board" means Board of Governors of the State Bar of Arizona.

2. “Court” means Supreme Court of Arizona.
3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.
4. “Discipline proceeding” and “disability proceeding” mean any action involving a respondent pursuant to the rules relating thereto. Further definitions applying to such proceedings are stated in the rule on disciplinary jurisdiction.
5. “Member” means member of the state bar, the classifications of which shall be as set forth in this rule.
6. “Non-member” means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.
7. “Respondent” means any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.
8. “State bar” means the State Bar of Arizona created by rule of this court.

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into five classes: active, inactive, retired, suspended, and judicial. Disbarred or resigned persons are not members of the bar.
2. *Active Members.* Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, or judicial members.
3. *Admission and Fees.* All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar, the applicant shall pay a fee as required by the supreme court, which shall include the annual membership fee for active members of the state bar. If an applicant is admitted to the state bar on or after July 1 in any year, the annual membership fee payable upon admission shall be reduced by one half.

Upon admission to the state bar, an applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court. All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

4. *Inactive Members.* Inactive members shall be those who have, as provided in these rules, been transferred to inactive status. An active member who is not engaged in practice in Arizona may be transferred to inactive status upon written request to the executive director. Inactive members shall not practice law in Arizona, or hold office in the State Bar or vote in State Bar elections. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Inactive members shall have such other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and returned to active status as provided in these rules.

5. *Retired Members.* Retired members shall be those who have, as provided in these rules, been transferred to retired status. An active, inactive or judicial member who is not engaged in active practice in any state, district, or territory of the United States may be transferred to retired status upon written request to the executive director. Retired members shall not hold State Bar office or vote in State Bar elections. Retired members shall not practice law in any state, district, or territory of the United States. Retired members may provide volunteer legal services to approved legal services organizations as defined in Rule 38(e) of these rules, except that retired members need not have engaged in the active practice of law within the last five years as required in Rule 38(e)(2)(B)(1) or Rule 38(e)(3)(A). Retired members may return to active status subject to the requirements imposed on inactive members who return to active status, as set forth in subsection (c)(4) of this rule. Retired members shall have other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and return to active status as provided in these rules.

6. *Judicial Members.* Judicial members shall be justices of the Supreme Court of Arizona, judges of the Court of Appeals and Superior Court of Arizona and of the United States District Court for the District of Arizona, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Judicial membership status shall likewise be accorded to members of the State Bar who are full-time commissioners, city or municipal court judges, tribal court judges, judges pro tempore or justices of the peace in the state of Arizona not engaged in the practice of law, or justices or judges of other courts of record of the United States or of the several states. Judicial members shall hold such classification only so long as they hold the offices or occupations entitling them to such membership or are retired from the offices or occupations entitling them to such membership, are eligible for temporary judicial assignment, and are not engaged in the practice of law. Judicial members shall be entitled to vote but shall not be entitled to hold office. Judicial members shall have such privileges, not inconsistent with the rules of this court, as the board provides. A judicial member who retires or resigns from the bench and seeks to engage in the practice of law must become an active member subject to all provisions of these rules.

7. *Membership Fees.* An annual membership fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Board of Governors may waive the dues of any other member for reasons of personal hardship.

8. *Computation of Fee.* The annual membership fee shall be composed of an amount for the regulatory activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund.

9. *Allocation of fee.* Upon payment of the annual membership fee, each member shall receive a bar card issued by the board evidencing payment. Each member shall also receive an independently audited list of expenditures that verifies mandatory assessments were spent in the preceding calendar year only on regulatory functions or for the funding of the client protection fund. All annual membership fees shall be

paid into the treasury of the state bar and shall be used only to fund the regulatory activities of the state bar, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

10. *Delinquent Fees.* A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

11. *Voluntary Contributions for Lobbying and Other Non-Regulatory Activities.* The State Bar may establish, collect, and use voluntary contributions to analyze and disseminate information on proposed or pending legislative proposals and for any other non-regulatory activity intended to improve the quality of legal services to the public and promote the purposes of the State Bar as set forth herein.

12. *Resignation.*

A. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed in the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such person's status shall be changed to "resigned in good standing."

B. Such resignation shall not be a bar to institution of subsequent discipline proceedings for any conduct of the resigned person occurring prior to the resignation. In the event such resigned person thereafter is disbarred, suspended or reprimanded, the resigned person's status shall be changed from "resigned in good standing" to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member.

C. Resigned persons in good standing may be reinstated to membership in the same manner as members summarily suspended under Rule 62 of these rules. Reinstatement of resigned persons shall be governed by the procedures set forth in Rule 64(f) and shall require:

- i. payment of fees, assessments, and administrative costs the resigned person would have been required to pay;
- ii. proof of completion of any hours of continuing legal education activity the resigned person would have been required to take, had the applicant remained a member; and
- iii. proof that the resigned person possesses the character and fitness to resume practicing law in this jurisdiction.

D. A member wishing to resign shall apply on a form approved by the board and shall furnish such information as is required upon such form and shall make such allegations, under oath, as are required on such form.

13. *Insurance Disclosure.*

A. Each active member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer is currently covered by professional liability insurance. Each active member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A lawyer who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by active members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer to appropriate disciplinary action.

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3. Approve budgets and make appropriations and disbursements from funds of the State Bar to pay expenses necessary for carrying out its functions.

4. Formulate and declare rules and regulations not inconsistent with Supreme Court Rules that are necessary or expedient to enforce these rules, and by rule fix the time and place of State Bar meetings and the manner of calling special meetings thereof, and determine what number shall constitute a quorum of the State Bar.

5. Appoint a Chief Executive Officer/Executive Director to manage the State Bar's day-to-day operations.

6. Appoint from time to time one or more executive committees composed of members of the board and vest in the executive committees any powers and duties granted to the board as the board may determine.

7. Prepare an annual statement showing receipts and expenditures of the State Bar for the twelve preceding months. The statement shall be promptly certified by the secretary-treasurer and a certified public accountant, and transmitted to the Chief Justice of this Court and to each member. The statement shall itemize expenditures under separate categories, including but not limited to, admissions testing, character and fitness, specialty certification, continuing legal education, attorney discipline, lobbying, publications, communications, fundraising, and such other items as the State Bar may from time to time determine sufficient for a member to independently gauge the propriety of the membership fee.

8. Create and maintain the Client Protection Fund, as required by this court and authorized by the membership of the State Bar on April 9, 1960, said fund to exist and be maintained as a separate entity from the State Bar in the form of the Declaration of Trust established January 7, 1961, as subsequently amended and as

it may be further amended from time to time by the board. The trust shall be governed by a Board of Trustees appointed by the Board of Governors in accordance with the terms of the trust and the trustees shall govern and administer the Fund pursuant to the provisions of the trust as amended from time to time by the board and in accordance with such other procedural rules as may be approved by the Board of Governors.

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F. Term limits. An elected governor may serve three consecutive terms, but may not be a candidate for a fourth term until three years have passed after the

person's last year of service. Election or succession to a partial term of less than three years will not be included in calculating a member's term limit.

3. *Young Lawyers Division President.* In addition to those governors elected under Rule 32(e)(2), the elected president of the Young Lawyers Division will serve as a voting member of the board of governors. The election of the Young Lawyers Division president will be conducted as provided by Rule 32(e)(2)(C), except that only members of the Young Lawyers Division are entitled to vote in that election. The Young Lawyers Division president will serve a one-year term on the board.

4. *Appointed governors.* The Supreme Court will appoint public, at-large, and district governors, collectively referred to as “appointed governors,” to serve on the board.

A. *Public governors.* Four governors of the board are designated as “public” governors. The public governors must not be members of the State Bar and must not have, other than as consumers of legal services, a financial interest in the practice of law. Public governors are nominated by the board and appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court. The Court may decline to appoint any board nominee and may appoint as a public governor a person who was not nominated by the board. No more than two public governors may be from the same district. No individual may serve more than two terms as a public governor. The Court may fill a vacancy in an uncompleted term of a public governor, but appointment of a public member to a term of less than three years will not be included in a calculation of the member's term limit.

B. *At-large governors.* Three governors on the board are designated as “at-large” governors. At-large governors, who may be former elected, public, or district governors, are appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court. The Supreme Court may appoint at-large governors to successive terms. The Court may fill a vacancy in an uncompleted term of an at-large governor.

C. *District governors.* Three governors on the board are designated as “district” governors. District governors must be members of the State Bar, have their main office in the district of appointment, and meet the qualifications set out in Rule 32(e)(2)(B). District governors are appointed by the Supreme Court for terms of three years and begin board service at a time designated by the Court.

The Court must appoint one district governor from Bar District Five and two district governors from Bar District Six. No individual may serve more than two terms as a district governor. The Court may fill a vacancy in an uncompleted term of a district governor, but appointment to a term of less than three years will not be included in a calculation of the member's term limit.

5. *Oath of governors.* Upon commencing service, each governor, whether elected or appointed, must take an oath to faithfully and impartially discharge the duties of a governor.

6. *Removal of a governor.* A governor of the board may be removed for good cause by a vote of two-thirds or more of the governors cast in favor of removal. Good cause may include, but is not limited to, conviction of a felony or a crime involving moral turpitude, imposition of a discipline sanction under Rule 60, repeatedly ignoring the duties of a governor, or disorderly activity during a board meeting. A board governor so removed may, within thirty days of the board's action, file a petition pursuant to Rule 23 of the Arizona Rules of Civil Appellate Procedure requesting that the Supreme Court review the board's determination of good cause. The Court will expedite consideration of the petition.

7. *Recusal of an attorney governor.* An attorney board member who is the subject of either a probable cause order issued pursuant to Rule 55(c)(1)(E) or an agreement for discipline by consent filed under Rule 57(a) must recuse him- or herself from serving on the board pending disposition of the matter.

8. *Board advisor.* The immediate past president of the board will serve a one-year term as an advisor to the board. The advisor may participate in board discussions but has no vote at board meetings, except an immediate past president may continue to vote if his or her term as an elected board member has not expired. The board advisor, with the assistance of two or more governors chosen by the president, will lead a committee to recruit, recommend, and nominate candidates for the offices of president-elect, vice-president, and secretary-treasurer.

9. *Ex officio members.* The dean of each ABA-accredited law school in Arizona will serve as an ex officio member of the board. An ex officio member may participate in board discussions but may not vote at board meetings.

(f) Officers of the State Bar.

1. *Officers.* The board will elect its officers. The officers are a president, a president-elect, a vice-president, and a secretary-treasurer. An elected, at-large, or district governor may serve as an officer.

2. *Terms of office.*

A. President. The term of the president will expire at the conclusion of the annual meeting. The president-elect whose term expired at the same annual meeting will then automatically become, and assume the duties of, president at that time.

B. President-elect, vice-president, and secretary-treasurer. The board must elect a new president-elect, a new vice-president, and a new secretary-treasurer at each annual meeting. Those newly elected officers will assume their respective offices at the conclusion of the annual meeting at which they are elected, and they will continue to hold their offices until the conclusion of the subsequent annual meeting at which their successors are elected.

C. Length of term. Each officer will serve a one-year term.

D. Successive terms. A governor may not be elected to a second term for any office that the governor has held during the preceding nine or fewer consecutive years of service on the board. However, a governor may serve a partial term under Rule 32(f)(5), either before or after service of one full term.

E. Limitations. The term of a governor chosen as president or president-elect automatically extends until completion of a term as president if his or her term as a governor expires in the interim without their reelection or reappointment to the board, or if the term is limited under Rule 32(e)(2)(F). In either of these events, there shall not be an election or appointment of a new governor for the seat held by the president or president-elect until the person has completed his or her term as president, and then the election or appointment of a successor governor shall be for a partial term that otherwise remains in the regular three-year cycle under Rule 32(e)(1).

3. *Duties of officers.* The president will preside at all meetings of the State Bar and of the board of governors, and if absent or unable to act, the president-elect will

preside. Additional duties of the president, president-elect, vice-president, and secretary-treasurer may be prescribed by the board or set forth in the State Bar bylaws.

4. *Removal from office.* An officer may be removed from office, with or without good cause, by a vote of two-thirds or more of the members of the board of governors cast in favor of removal.

5. *Vacancy in office.* A vacancy in any office before expiration of a term may be filled by the board of governors at a meeting called for that purpose.

(g) Annual meeting. Annual meetings of the state bar shall be held at times and places designated by the board. At the annual meeting reports of the proceedings of the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received. Matters of interest pertaining to the state bar and the administration of justice may be considered and acted upon. Special meetings of the state bar may be held at such times and places as provided by the board.

(h) Administration of rules. Examination and admission of members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) Filings made. Papers required to be filed with the state bar under these rules shall be filed at the office of the state bar in Phoenix, except as is otherwise set forth in these rules.

(j) Formal Requirements of Filings. All verbatim records and all copies of recommendations, documents, papers, pleadings, reports and records required or permitted by any provision of these rules relating to admission, discipline, disability, and reinstatement may be either typewritten, electronically prepared, or copied by a process that is clear, legible, or audible. An original is not required.

(k) Payment of Fees and Costs. The payment of all fees, costs, and expenses required under the provisions of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement shall be made

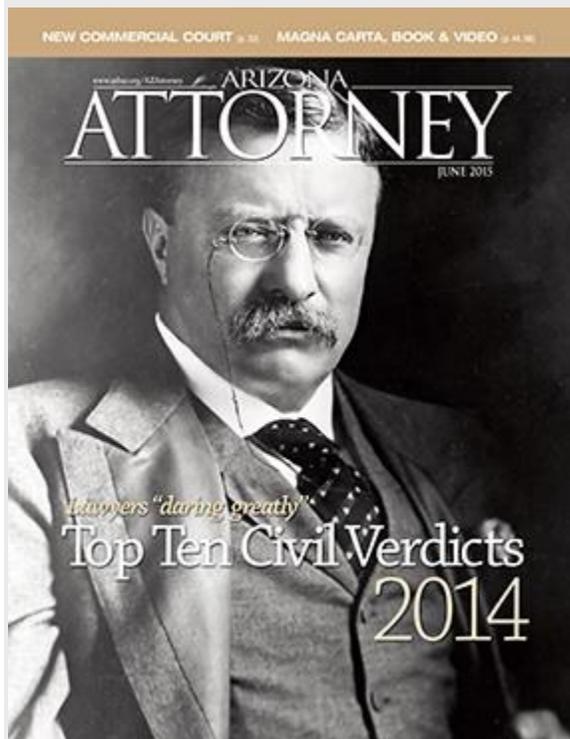
to the State Bar. The payment of all fees costs and expenses required under the application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of the courts.

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, except that costs and expenses shall be taxed against a respondent lawyer or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission.

(m) Meetings and Records. The State Bar will conduct meetings and maintain records under public access policies adopted by the Supreme Court.

APPENDIX C

Benefits of State Bar



Arizona Attorney Magazine – Award winning magazine with journal quality articles on substantive and other legal issues of interest to Arizona attorneys.

Ethics Hotline – The Ethics Hotline is a free service providing ethical guidance to all attorneys in Arizona.

Membership Directory – All attorneys who are licensed in Arizona are listed in an easy-to-use, publicly-accessible directory.

Law office management assistance program (Practice 2.0) – Provides practice management help in a variety of areas:

- Technology
- Business Development
- Social Media advice
- Free Forms and templates
- Succession Planning
- Startup Assistance

Mentor Program – Matches practicing lawyers and third year law students

Sections – 28 sections partially subsidized by the bar. Sections sponsor conferences, section educational programs, publish newsletters and consumer brochures, monitor legislation, as well as make recommendations to the State Bar Board of Governors.

Committees – The State Bar of Arizona has 27 standing and ad hoc committees to advise and serve the State Bar by overseeing programs, addressing current issues, and making recommendations about legal services and the administration of justice.

Member Discounts – Currently Bar members receive discounts with 25 service providers, most of which are directly related to law practice.



Fastcase – Free legal research offered to all

members of the Bar.

Access to Justice – The Bar currently provides logistical support helping organize volunteer attorneys for events ranging from Law Day to Veterans Stand Down and Channel 12's Lawyers on Call

Bar Leadership Institute – The Bar Leadership Institute (BLI) is a nine-month professional development program whose mission is to foster the professional growth and enhance the leadership skills of a diverse and inclusive group of lawyers. The program prepares them to take leadership positions in both the profession and their community.

CLE – Award winning CLE program that creates seminars of specific interest to Arizona attorneys. Significantly, Bar CLE is automatically entered into a member's record and they don't need to keep additional paperwork.

Economics of Law Practice Survey – Every 3 years the bar does an economic survey of members learning facts ranging from salaries to college debt. This information is regularly used by courts to determine attorney fees.

Convention – The state Bar's annual convention for attracts more than 1300 members. In 2015 nearly 50 seminars provided substantive legal training in a variety of areas.

Diversity – The Bar’s diversity initiatives include the CLE Institute (Training diverse attorneys to give CLE), Judicial Mentoring Program, CLE programs about diversity and the annual “Spring Training for Lawyers... Winning with Diversity and Inclusion”.



Fee Arbitration – The Fee Arbitration Program is a free, voluntary program for resolving fee disputes over \$500.00 between bar members and their clients, or under certain circumstances between bar members.

Government relations – Helps sections guide bills through the legislative process. The last bill brought forth by the Bar was the Arizona Entity Restructuring Act. It was proposed by the Business Law Section.

Publications – The bar publishes 25 books on a variety of Arizona topics. All are written by Arizona attorneys. About 1,000 are sold each year.

Resource Center – The resource center answers more than 20,000 calls from members and the public each year.

Rules – Provides the structure for attorneys in Arizona to propose and refine court rules.

Tucson Office – The Bar’s Tucson office provides both CLE opportunities as well as meeting space for attorneys.

YLD – The Young Lawyer Division provides networking opportunities and community outreach as well as having disaster assistance responsibilities.

Trust Account Hotline – Provides attorneys with assistance in both setting up and managing their trust accounts.

State Bar Meeting Rooms – The Phoenix office has five rooms that are available for attorneys to use for arbitration and depositions. Out of town members also use the space.