BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID S. GINGRAS** Bar No. 021097 Respondent.	**No. PDJ 2026-9010** **REQUEST FOR JUDICIAL NOTICE**

To support his position either at trial and/or in pending dispositive motions, pursuant to Ariz. R. Evid. 201(c)(2), Respondent David S. Gingras ("Respondent" or "Gingras") respectfully asks the Court to take notice of the following court records: *In The Matter of Petition to Amend Rule 42 (ER's 1.6 and 3.3), Rules of the Supreme Court*, Supreme Court No. R-25-0029 ("Petition R-25-0029"), filed January 10, 2025, attached as Exhibit A, and Arizona Supreme Court Order No. R-25-0029, filed August 27, 2025, attached as Exhibit B.

Petition R-25-0029 and the Supreme Court's order granting that petition bear directly on the State Bar's legal positions in this case. Specifically, multiple claims in this case are based on the bar's legal assertion that: "Respondent had a duty to diligently investigate and research everything that Owens told him or provided to him." Amended Compl. ¶ 17.

The bar's allegations regarding the "duty to diligently investigate" are direct misstatements of the law, as explained by the author of Petition R-25-0029, the Chief Justice of the Arizona Supreme Court, Hon. Robert Brutinel.

In that Petition, Chief Justice Brutinel explained the then-current state of the law as follows:

> Existing Rules of Professional Conduct prohibit a lawyer from knowingly misleading the court or offering evidence the lawyer knows to be false and restrict a lawyer from alluding to any matter that the lawyer does not reasonably believe will be supported by admissible evidence. However, the existing Ethical Rules **do not require a lawyer to inquire or investigate the authenticity of evidence before presenting the evidence to the tribunal**, even if the lawyer reasonably believes the evidence has been materially altered or generated with the intent to deceive.
>
> * * *
>
> [E]xisting Ethical Rules **do not require a lawyer to investigate or take any affirmative steps to learn whether proffered evidence is authentic** or whether it has been digitally forged. In fact, ER 3.3, Comment 8 implies that a lawyer is permitted to request admission of evidence even if the lawyer reasonably believes the evidence is false, providing that "a lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact."

Petition R-25-0029 at 2–3 (emphasis added).

Given the Chief Justice's observation about the rules *not* imposing a duty to investigate the authenticity of evidence, Petition R-25-0029 was drafted to recommend "a revision to Comment 8 of ER 3.3 as set forth in the Appendix, to provide that a lawyer who reasonably believes evidence has been materially altered or generated with the intent to deceive has an affirmative obligation of reasonable inquiry before submitting the evidence to the court." *Id*. at 4.

Petition R-25-0029 was filed on January 10, 2025, seven months after the trial in *Owens v. Echard*. The Arizona Supreme Court granted the petition on August 27, 2025, with an effective date of January 1, 2026.

These filings demonstrate the State Bar's assertion that: "Respondent had a duty to diligently investigate and research everything that Owens told him or provided to him" materially misstate the law as it existed at the time of the conduct giving rise to this matter. To the extent the State Bar seeks to impose punishment based on a *retroactive* application of the new rule change which occurred *after* the conduct at issue in this case, that position violates A.R.S. § 1-244 (providing, "No statute is retroactive unless expressly declared therein."), and also violates the *ex post facto* clauses of the Arizona and U.S. Constitutions. *See State v. Pry,* 259 Ariz. 111, 562 P.3d 885, 890 (Ariz. App. 2025) (explaining, "The Arizona and federal Ex Post Facto Clauses provide: "No ... ex-post-facto law ... shall ever be enacted," Ariz. Const. art. 2, § 25, and "No State shall ... pass any ... ex post facto Law," U.S. Const. art. 1, § 10.")

Respectfully submitted May 7, 2026.

David S. Gingras, #021097
Gingras Law Office, PLLC
[redacted]
Phoenix, AZ 85044
Tel.: [redacted]
[redacted]
Respondent

CERTIFICATE OF SERVICE

ORIGINAL of the foregoing electronically filed May 7, 2026 with:

Office of Presiding Disciplinary Judge
Honorable Lisa VandenBerg
c/o Disciplinary Clerk of the Superior Court
[redacted]
Phoenix, Arizona 85007
[redacted]

COPY of the foregoing emailed to:
Jim Lee
[redacted]
Craig Henley
[redacted]
Senior Bar Counsel

Exhibit A

Robert M. Brutinel, Chair
On behalf of the Arizona Steering Committee on
Artificial Intelligence and the Courts
Administrative Office of the Courts
[redacted]
Phoenix, AZ 85007-3327
Phone: [redacted]

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the matter of:	)
	)
PETITION TO AMEND RULE 42 (ER's 1.16 AND 3.3), RULES OF THE SUPREME COURT	) Supreme Court No. 25-_____
	)
	)
	)
	)

Pursuant to Rule 28 of the Rules of the Supreme Court of Arizona, Robert M. Brutinel files this petition on behalf of the Arizona Steering Committee on Artificial Intelligence and the Courts ("Committee"), to respectfully petition this Court to amend ER 1.16 ("declining or terminating representation") and ER 3.3 ("candor toward the tribunal"), Comment 8, to ensure sufficient guidelines exist to help lawyers avoid improper presentation of digitally forged evidence to the court.

I. Background

Recognizing the transformative impact that Artificial Intelligence (AI) technologies will likely have on the justice system, this Court established the Committee on January 24, 2024, by Administrative Order 2024-33. Among other

tasks, the Committee is charged with making recommendations, including rule changes, related to AI technologies and their impact on judicial proceedings. After examining the Arizona Rules of Professional Conduct, the Committee recommends an amendment to ER 1.16 to conform it to the newly revised ABA Model Rule of Professional Conduct ("Model Rule") 1.16 and an amendment to ER 3.3, Comment 8, for the reasons stated below.

II. Discussion of Proposed Rule Changes

1. Proposed Revision to Comment 8 of Ethical Rule 3.3.

Existing Rules of Professional Conduct prohibit a lawyer from knowingly misleading the court or offering evidence the lawyer knows to be false and restrict a lawyer from alluding to any matter that the lawyer does not reasonably believe will be supported by admissible evidence. However, the existing Ethical Rules do not require a lawyer to inquire or investigate the authenticity of evidence before presenting the evidence to the tribunal, even if the lawyer reasonably believes the evidence has been materially altered or generated with the intent to deceive.

The Ethical Rules expressly prohibit a lawyer from preparing or knowingly offering digitally forged evidence that is presented with the intent to deceive the judge or jury. Specifically, ER 3.4 prohibits lawyers from unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value and prohibits a lawyer from falsifying evidence. Ethical Rule 3.3(a)(3) forbids

an attorney from knowingly making a false statement of fact or law to a tribunal and requires the lawyer to correct a false statement of material fact or law previously made to the tribunal by the lawyer "if the lawyer comes to know of its falsity." Existing Ethical Rules also prohibit a lawyer from counseling or knowingly assisting another to deceive the court through the presentation of digitally forged evidence.[1]

However, existing Ethical Rules do not require a lawyer to investigate or take any affirmative steps to learn whether proffered evidence is authentic or whether it has been digitally forged. In fact, ER 3.3, Comment 8 implies that a lawyer is permitted to request admission of evidence even if the lawyer reasonably believes the evidence is false, providing that "a lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact." The drafters of Comment 8 understandably intended to place the onus for resolving disputes regarding authenticity and reliability in the hands of the judge or disputes regarding weight in the hands of the jury and thus, drafted language that permitted a lawyer to offer evidence even if the lawyer reasonably believed that the evidence was false. However, given concerns regarding the presentation of deepfake evidence, the risk

[1] See ER 3.4(a) & (b); see also ER 1.2 Cmt. 11 (stating that a lawyer is required to "avoid assisting the client . . . by . . . delivering documents that the lawyer knows are fraudulent or suggesting how the wrongdoing might be concealed."); ER 4.1 (stating that a lawyer must not knowingly make a false statement of material fact to a third person or fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless the disclosure is prohibited by Ethical Rule 1.6).

of inaccurate decisions, and the erosion of the public's faith in the authenticity of admitted evidence, the Committee recommends a revision to Comment 8 of ER 3.3 as set forth in the Appendix, to provide that a lawyer who reasonably believes evidence has been materially altered or generated with the intent to deceive has an affirmative obligation of reasonable inquiry before submitting the evidence to the court. The revision includes factors that may be considered in determining the scope of the inquiry.

The proposed changes merely acknowledge that a lawyer has an obligation of inquiry if the lawyer reasonably believes that evidence has been materially altered or generated with the intent to deceive the court. No changes are recommended for Comment 9 of ER 3.3, which underscores that Rule 3.3 only prohibits a lawyer from offering evidence the lawyer *knows* to be false.

2. Proposed amendment to Ethical Rule 1.16

Ethical Rule 3.1 imposes a limited obligation on a lawyer to ensure that they are not bringing or defending a proceeding or asserting or controverting an issue unless there is a good faith basis in law or fact for doing so that is not frivolous. Similarly, ER 3.1, Comment 2 states that lawyers are obligated to inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith and nonfrivolous arguments in support of their clients'

positions.[2] The Committee recommends a more affirmative requirement for lawyers to assess the facts and circumstances surrounding their representations through a revision to Ethical Rule 1.16 as set forth in the Appendix, which would conform it to the newly revised ABA Model Rule 1.16.

Recently, Model Rule 1.16 was amended to require lawyers to investigate the facts and circumstances of representation to determine whether the lawyer may accept or continue the representation. Although the revision was intended to prevent lawyers from assisting unknowingly in criminal activity, including money laundering, the newly revised language would provide additional requirements for lawyers generally to inquire into and assess the facts and circumstances of representation. The proposed amendment as set forth in the Appendix would also add a new subsection (a)(4) to provide that a lawyer is prohibited from representing a client if the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5), which in some circumstances, may involve the generation of digitally forged evidence.

[2] *See* also ER 3.4(d) (prohibiting a lawyer from making improper discovery requests and failing to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party); ER 8.4(c) & (d) (prohibiting professional misconduct, which includes engaging in behavior that is dishonest, fraudulent, deceptive, or prejudicial to the administration of justice).

III. Request

The Committee respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendix.

Respectfully submitted this 10th day of January 2025.

/s/ Robert M. Brutinel
Robert M. Brutinel, Chair
On behalf of the Arizona Steering Committee on
Artificial Intelligence and the Courts
Administrative Office of the Courts
[redacted]
Phoenix, AZ 85007
[redacted]

APPENDIX

(new language is underlined)

Rules of the Supreme Court of Arizona

Rule 42. Arizona Rules of Professional Conduct

ER 3.3. Candor Toward the Tribunal

(a) through (d) [No change]

Comment [2003 amendment] [amended 2025]

[1] through [7] [No change]

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See ER 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood. If a lawyer reasonably believes that evidence has been materially altered or generated with the intent to deceive the court, the lawyer has an obligation to conduct a reasonable inquiry before submitting the evidence to the court. The scope of the inquiry will vary according to the circumstances of each case, but factors to consider may include the probative value of the evidence, the value or importance of the case or issue, the source of the evidence, and what, if any, accessible, reliable, and affordable tools or methods are available to assess the evidence's authenticity or integrity. If after inquiry the lawyer still does not know that the evidence has been materially altered or generated with intent to deceive, the lawyer retains discretion to submit the evidence to the court.

[9] through [15] [No change]

ER 1.16. Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) [No change]

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; ~~or~~

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(e) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b) through (e) [No change]

2003 Comment [amended 2025]

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See ERs 1.2(d) and 6.5. See also ER 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw

simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

[3] and [4] [No change]

Discharge

[5] through [7] [No change]

Optional Withdrawal

[8] and [9] [No change]

Assisting the Client Upon Withdrawal

[10] through [12] [No change]

Exhibit B

SUPREME COURT OF ARIZONA

In the Matter of RULE 42 (ER'S 1.16 AND 3.3), RULES OF THE SUPREME COURT	)	Arizona Supreme Court No. R-25-0029 **FILED 8/28/2025**

ORDER AMENDING ETHICAL RULES 1.16 AND 3.3, RULE 42 OF THE RULES OF THE SUPREME COURT OF ARIZONA

A petition having been filed proposing to amend Ethical Rules 1.16 and 3.3, Rule 42 of the Rules of the Supreme Court of Arizona, and comments having been received, upon consideration,

IT IS ORDERED that Ethical Rules 1.16 and 3.3, Rule 42 of the Rules of the Supreme Court of Arizona, are amended in accordance with the attachment to this order, effective January 1, 2026.

DATED this 27th day of August, 2025.

/s/
ANN A. SCOTT TIMMER
Chief Justice

TO:

Rule 28 Distribution
Arizona Steering Committee on Artificial Intelligence
Hon Robert Brutinel
Hon Samuel A Thumma
Lisa M Panahi
Rosemarie Pena-Lynch
Steve B Koestner
Sherri McGuire Lawson
Gary M Kula
Shannon L Burns
Lina G Garcia

ATTACHMENT[1]

RULES OF THE SUPREME COURT OF ARIZONA

Rule 42. Arizona Rules of Professional Conduct

* * *

ER 1.16. Declining or Terminating Representation

(a) A lawyer shall inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) **[No change]**

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; ~~or~~

(3) the lawyer is discharged; or

(4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(e) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

(b)-(e) [No change]

2003 Comment [amended ~~2025~~2026]

[1] Paragraph (a) imposes an obligation on a lawyer to inquire into and assess the facts and circumstances of the representation before accepting it. The obligation imposed by Paragraph (a) continues throughout the representation. A change in the facts and circumstances relating to the representation may trigger a lawyer's need to make further inquiry and assessment. For example, a client traditionally uses a lawyer to acquire local real estate through the use of domestic limited liability companies, with financing from a local bank. The same client then asks the lawyer to create a multi-tier corporate structure, formed in another state to acquire property in a third jurisdiction, and requests to route the transaction's funding through the lawyer's trust account. Another example is when, during the course of a representation, a new party is named or a new entity becomes involved. A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to

[1] Additions to the text of a rule or comment are shown by underscoring and deletions are shown by ~~strike-through~~.

completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See ERs 1.2(~~c~~d) and 6.5. See also ER 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation. Under paragraph (a)(4), the lawyer's inquiry into and assessment of the facts and circumstances will be informed by the risk that the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud. This analysis means that the required level of a lawyer's inquiry and assessment will vary for each client or prospective client, depending on the nature of the risk posed by each situation. Factors to be considered in determining the level of risk may include: (i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held. For further guidance assessing risk, see, e.g., as amended or updated, Financial Action Task Force Guidance for a Risk-Based Approach for Legal Professionals, the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing, A Lawyer's Guide to Detecting and Preventing Money Laundering (a collaborative publication of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe), the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct, and the U.S. Department of Treasury Specially Designated Nationals and Blocked Persons List.

[3] — [12] **[No change]**

* * *

ER 3.3. Candor Toward the Tribunal

(a)-(d) [No change]

Comment [2003 amendment] [amended 2026]

[1] — [7] **[No change]**

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See ER 1.0(f). Thus, although a lawyer

should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood. If a lawyer reasonably believes that evidence has been materially altered or generated with the intent to deceive the court, the lawyer has an obligation to conduct a reasonable inquiry before submitting the evidence to the court. The scope of the inquiry will vary according to the circumstances of each case, but factors to consider may include the probative value of the evidence, the value or importance of the case or issue, the source of the evidence, and what, if any, accessible, reliable, and affordable tools or methods are available to assess the evidence's authenticity or integrity. If after inquiry the lawyer still does not know that the evidence has been materially altered or generated with intent to deceive, the lawyer retains discretion to submit the evidence to the court.

[9] — [15] **[No change]**