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BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member of
the State Bar of Arizona,

DAVID S. GINGRAS,
Bar No. 021097,

Respondent.

PDJ 2026-9010

**STATE BAR'S RESPONSE TO
RESPONDENT'S REQUEST FOR
JUDICIAL NOTICE RE:
COMMENT 8 TO ER 3.3**

[State Bar Nos. 24-1692, 24-1826, 24-
2483, 24-2819, 24-3080 and 25-1230]

The State Bar of Arizona, by undersigned bar counsel, hereby responds to Respondent's *Request for Judicial Notice* of a petition to amend ERs 1.6 and 3.3, Supreme Court Petition No. R-25-0029, filed by Justice Brutinel on behalf of the Arizona Steering Committee on Artificial Intelligence and the Courts, and the order subsequently entered by the Supreme Court.

The State Bar objects to the Presiding Disciplinary Judge of the Supreme Court of Arizona (PDJ) taking judicial notice of the petition to amend Comment 8

to ER 3.3 because judicial notice may be taken *only* of adjudicative facts, *not* legislative facts. Rule 201(a), Ariz. R. Evid.

Adjudicative facts are simply the facts of the particular case. Legislative facts, on the other hand, are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body.

Fed. R. Evid., “Notes of Advisory Committee on Proposed Rules.”¹

Courts across the country have defined “legislative facts” differently. *See United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976) (defining “legislative facts” as “established truths, facts or pronouncements that do not change from case to case but apply universally”); *Dunagin v. City of Oxford*, 718 F.2d 738, 748 n.8 (5th Cir. 1983) (deeming a fact legislative because it turns on “social factors and happenings which may submit to some partial empirical solution but is likely to remain subject to opinion and reasoning”); *United States v. Bello*, 194 F.3d 18, 22 (1st Cir. 1999) (“Whether a fact is adjudicative or legislative depends not on the nature of the fact . . . but rather on the use made of it (*i.e.*, whether it is a fact

¹ The Arizona Supreme Court amended many of the Rules of Evidence to conform to the Federal Rules of Evidence. Prefatory Comment to 2012 Amendments to the Arizona Rules of Evidence. Arizona Evidence Rule 201 now “mirrors” the Federal Rule. In *State v. Winegardner*, 243 Ariz. 482, 485 ¶ 8, 413 P.3d 683, 686 (2018), the Arizona Supreme Court stated: “When an Arizona evidentiary rule mirrors the corresponding federal rule, we look to federal law for guidance. . . . Although the federal courts’ interpretation of the Federal Rules of Evidence does not control our interpretation of our own evidentiary rules, federal precedent is particularly persuasive given that we have expressly sought to conform our rules to the federal rules.” (Citations omitted).

germane to what happened in the case or a fact useful in formulating common law policy or interpreting a statute) . . .”); *Dayco Corp. v. FTC*, 362 F.2d 180, 186 (6th Cir. 1966) (“‘[L]egislative facts’ involve generalized factual propositions . . ., while ‘adjudicative facts’ relate to, and are determinative of, one individual situation or course of conduct.”); *Lemieux v. Cwalt, Inc.*, 2017 WL 365481, *1 (D. Mont. 2017) (“Plaintiffs ask the Court to take judicial notice of several federal and Montana statutes, regulations, and published court decisions. But because these statutes, cases, and regulations are ‘legislative facts’ rather than ‘adjudicative facts,’ they are not appropriate for judicial notice.”).

Arguments made by a single person—or in this case, a committee—in support of the adoption or interpretation of a particular rule or law is not a “legislative fact.” Undersigned counsel has found no Arizona case specifically addressing the meaning of “legislative fact,” as that term is used in Evidence Rule 201. Neither has counsel located any case finding that someone’s interpretation of a rule amounts to a “legislative” fact.

In addition, the current Comment 8 to ER 3.3 was not applicable at the time of Respondent’s conduct. The amendment to Rule 201, based on Justice Brutinel’s petition, did not become effective until January 1, 2026. Respondent’s conduct occurred in 2024.

Based on the foregoing, the State Bar moves the PDJ to deny Respondent's *Request for Judicial Notice* regarding the recent amendments to Comment 8 to Evidence Rule 201.

DATED this 15th day of May, 2026.

STATE BAR OF ARIZONA

/s/ James D. Lee
James D. Lee
Senior Bar Counsel

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 15th day of May, 2026.

Copy of the foregoing emailed this 15th day of May, 2026, to:

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