



Supreme Court

STATE OF ARIZONA

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CLERK OF THE COURT

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June 9, 2005

RE: RULE 42, ER 1.8(g), AZ RULES OF THE SUPREME CT
Arizona Supreme Court No. R-04-0030

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 1, 2005, in regard to the above-referenced cause:

ORDERED: Sua Sponte Petition to Amend Rule 42, ER 1.8(g), Rules of the Supreme Court = ADOPTED as modified, effective December 1, 2005.

Noel K Dessaint, Clerk

TO:

Richard S Plattner, Plattner Verderame PC
Robert N Edwards, Law Office of Robert N Edwards
Peter M Gorski

Andrew P Thomas, Maricopa County Attorney
Attn: Philip J MacDonnell

Terry Goddard, Arizona Attorney General
Attn: Mary O'Grady, Solicitor General

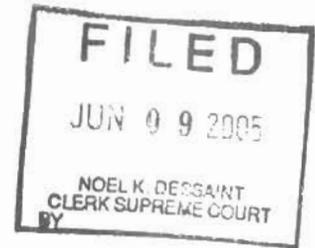
Stephen Gorey
David J Diamond, Goldberg & Osborne

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-04-0030



ORDER AMENDING COMMENT [13] TO
ER 1.8(g), RULE 42, RULES OF THE SUPREME COURT

IT IS ORDERED that Comment [13] to ER 1.8(g), Rule 42, Rules of the Supreme Court, be amended in accordance with the attachment hereto,* effective as of December 1, 2005.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 9th day of June, 2005.

For the Court:


RUTH V. MCGREGOR
Vice Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

RULES OF THE SUPREME COURT

RULE 42. ARIZONA RULES OF PROFESSIONAL CONDUCT

* * *

ER 1.8. Conflict of Interest: Current Clients: Specific Rules

* * *

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

* * *

Comment

* * *

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under ER 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, ER 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also ER 1.0(e) (definition of informed consent). This rule does not apply to lawyers representing governmental agencies or officials unless, in the particular action, there is a potential for a conflict of interest between the jointly represented government agencies or officials on the issue of settlement. Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

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