Pursuant to Rule 28, Ariz.R.Sup.Ct., the undersigned attorneys provide the following additional Supplemental Comments to the above-referenced Petition. These comments supplement or modify the Comments contained in the Comments on the Taskforce Amended Petition submitted by some of the undersigned respondents’ counsel on June 11, 2010.

**Proposed Rule 55(c)(2):** In comments submitted on June 11, 2010, undersigned counsel objected to the proposal that bar counsel be given the authority to offer diversion “... if the State Bar and respondent agree that diversion will be useful.” The basis for that objection was, in essence, that it would give bar counsel the authority to offer diversion even when the facts would not support a violation of an ethical rule. While we continue to object
to the proposed additional language, we are concerned that unless bar
counsel are given the authority to offer diversion during the initial intake
process – usually before anyone can assess with certainty whether a
violation can be proved by clear and convincing evidence – it will be
difficult to achieve the goal of early disposition in many cases in which the
evidence of ethical misconduct is tenuous at best. We remain concerned that
the proposed rule gives bar counsel the opportunity to misuse the diversion
option but on balance, believe the risks inherent in giving bar counsel that
authority are outweighed by enhancing the goal of early disposition -- before
respondents are forced to incur the emotional and financial costs of a full-
scale screening investigation and formal proceeding.

Accordingly, we propose the following modification of Rule 55(c)(2)
rather than the language proposed by the Taskforce:

“... diversion can be offered when, upon a good faith belief by
bar counsel, and after review by and with approval of Chief Bar
Counsel, it reliably appears that an ethical violation has
occurred”

Proposed Rule 70(a): This rule governs public access to information
in the discipline system. Significantly, the rule does not distinguish between
reports and recommendation and agreements for discipline that are not final
and final Orders of discipline from which no appeal by the respondent has
been taken. The failure to make this distinction in the rule governing public
access to discipline information affects respondents unfairly and in tangible
and significant ways. Based on our experience, it is entirely reasonable to
believe that the public generally will not understand the difference between
the report and recommendation of a hearing panel and a final disposition
imposed by the Court or by the respondent’s decision not to appeal the order
Undersigned counsel are aware of situations in which hearing officer and Commission recommendations were widely publicized and resulted in members of the public, including clients, believed that the respondents had in fact been disciplined in accordance with the recommendation. This misconception was widely-held despite the fact that the recommendation was not final and was subject to review by the Disciplinary Commission and/or this Court. As is readily understandable, the financial and reputational impact resulting from this unjustified misconception had a devastating effect on these respondents.

Accordingly, we urge the Court to add language to proposed Rule 70(a) which precludes the State Bar from publicizing discipline until it becomes final or the time has expired for any appeal from an Order imposing discipline. We realize that this prohibition will not preclude the commercial media from obtaining interim Orders proposing discipline but the limitation proposed by the undersigned respondents’ counsel will at least inhibit the State Bar from improperly exacerbating the misconception that proposed discipline is final and in addition, send a message to media that reports and recommendations are not final unless imposed by Order of an entity with the authority to impose discipline and have not been appealed by the respondent.

This assumption is based on the experience of the undersigned with the current system – the public does not distinguish between reports and recommendations of hearing officers or the Disciplinary Commission and final, unappealed Orders or Orders imposed by this Court.
Accordingly, we urge the Court to adopt amendments to Rule 70(a) consistent with these supplemental Comments.

Respectfully submitted this 18th day of June, 2010.

/s/ Mark I. Harrison
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Electronic copy filed with the Clerk of the Supreme Court of Arizona this 18th day of June, 2010.

By: /s/ Joni J. Jarrett-Mason
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