

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
EO-21-0004) No. EO-21-0004
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) **FILED: 10/13/2022**
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O R D E R

Before the Court is the Ethics Advisory Committee's ("the Committee") proposed formal ethics opinion EO-21-0004. Pursuant to Rule 42.1(i), Ariz. R. Sup. Ct., the Court may take any action it deems appropriate, including declining review of the opinion, approving the opinion, ordering that the opinion not be posted or distributed, modifying the opinion, or directing the Committee to make specified changes or reconsider certain issues.

The opinion was originally issued by the State Bar of Arizona's Rules of Professional Conduct Committee in 2000 as Op. 00-11. The opinion addresses the ethical duty of confidentiality when a lawyer is requested, by subpoena, to disclose information related to the representation of a current client, when the client does not authorize the disclosure. Notably, EO 21-0004 updates Op. 00-11, which predates comment 15 to ER 1.6. And although comment 15 of ER 1.6 directs the lawyer to raise "all nonfrivolous claims that the information sought is protected from disclosure," the EO would require the lawyer only to "invoke reasonable objections to the disclosure." The Committee explains that "the realities of practicing and raising all nonfrivolous objections may not be possible because of word or page restraints" and too many objections "may water down the one or two good objections against disclosure."

As proposed by the Committee, the EO involves a general rather than a specific situation. While the Court is willing to entertain a general inquiry, this EO illustrates that a general inquiry may not always be the best vehicle for a binding ethics opinion, especially where the matter is addressed by a rule.

First, where a matter is specifically addressed in a comment to the rule, the Court believes the better practice is to propose a rule petition rather than effectively modify the language of the comment (as opposed to clarifying a rule or comment).

Second, because this is a general inquiry, it is speculative whether a lawyer is facing a word or page limit or risks diluting stronger arguments with arguing weaker nonfrivolous objections. The lawyer may address the request and any such concerns in the appropriate tribunal in light of the nature of the request.

Third, ER 1.6 only invokes the reasonableness standard under the circumstances set forth in ER 1.5(d) (exceptions) and (e) (efforts to prevent unauthorized or inadvertent disclosure). The Court is not inclined to ameliorate the standard prohibiting disclosure through the opinion process.

IT IS ORDERED that EO-21-0004 shall not be posted or distributed under Rule 42.1(i), Arizona Rules of the Supreme Court.

DATED this 13th day of October, 2022.

/s/

ROBERT BRUTINEL
Chief Justice

TO:

Attorney Ethics Advisory Committee

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