



NEWS RELEASE

Arizona House of Representatives

Representative Anthony Kern (R-20)

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FOR IMMEDIATE RELEASE

Lawmakers Question Constitutionality of Court's Lawyer Membership Survey

STATE CAPITOL, PHOENIX –Two state representatives, one a member of the State Bar of Arizona, are raising concerns about a new membership requirements survey being circulated among the state's lawyers by the Chief Justice of the Arizona Supreme Court. The survey asks lawyers to comment on a proposal that allows lawyers who file a “conscientious objector” affidavit to opt-out of compulsory membership in the State Bar of Arizona. The State Bar is the professional trade association that lawyers are now required to join as a precondition to working in the state. Under the proposal, all lawyers would remain licensed by the State Supreme Court and subject to regulation by the Court through the Bar, but lawyers who opt-out would not be required to support the State Bar's trade association functions.

The proposal requires lawyers to personally file an affidavit with the State Bar stating they have “a firm, fixed, and sincere ethical, religious or moral objection to compulsory State Bar membership.” Those opting out would be required to notify clients they were no longer members of the State Bar but are licensed to practice in the state. New State Bar cards would be issued designating those opting out as “Non Member Attorneys” (NMAs). The NMAs would be excluded from voting in State Bar elections or from running for the governing board. NMAs would also be ineligible for State Bar discretionary services and would be charged higher non-member registration fees for State Bar sponsored continuing education programs. In exchange for opting out, NMAs would pay a reduced mandatory licensing fee the Court estimates would be a 14% to 20% reduction in the mandatory fee currently paid by all lawyers.

Rep. Anthony Kern, a longtime opponent of mandatory bar membership, says, **“If anything, what the Court is thinking about doing makes an even stronger case for a voluntary bar.”** Kern, who also serves as Vice Chair of the House Judiciary and Public Safety Committee states that **“while the government can regulate lawyers, the government cannot compel attorneys to support a trade association as a condition of their law license. The government also cannot force an attorney to notify clients that the attorney is no longer a**

member of a voluntary trade association. This plan sounds like another violation of the First Amendment. It also stigmatizes those who opt-out.”

Rep. David Stringer, a lawyer and Arizona Bar member believes, “The opt out requirements of the proposal go too far and raise serious concerns about their constitutionality under the First Amendment. Requiring attorneys to notify clients that they are not members of what is essentially a trade association will have a chilling effect on their decision not to join the Bar.

“The Arizona Bar Association has taken on many activities that are unrelated to attorney fitness and discipline. Attorneys in Arizona should not be forced to subsidize a government mandated bar association as a condition to practicing their profession,” said Representative Stringer. Representative Stringer also serves on the House Judiciary and Public Safety Committee that will again be considering legislation to reform the State Bar to improve public protection.

Rep. Kern further argues, “this proposal goes in the wrong direction. It continues what we have now with the State Bar – an organization that is both a regulator and trade association at the same time. This arrangement violates lawyers’ First Amendment rights and threatens the public because no organization can, at the same time, be both a trade association for lawyers and a fair regulator of lawyers. Unlike the Court’s proposal, the bill I introduced this session, HB 2119, does fix the problem of a conflicted regulator.”

“This unworkable proposal doesn’t. Instead, it continues what we now have with the State Bar – a threat to lawyers because their First Amendment rights are being violated – and a threat to the public because of the inherent conflict of interest.”

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