Rules Review Committee

MEETING AGENDA

Telephonic
1-877-217-8938
16477489#

March 24, 2020
2:00 p.m.

General inquiries call: Patricia Seguin, 602-340-7236

For any item listed on the agenda, the Committee may vote to go into Executive Session pursuant to the State Bar's Public Meetings Policy.

Meeting Agenda

1. CALL TO ORDER — Jennifer Rebholz, Chair

2. Review and Approval of November 22, 2019 Meeting Minutes (page 2) — Jennifer Rebholz

3. Discussion Re R-20-0034, Petition to Restyle and Amend Rule 31, Adopt New Rule 33.1, and Amend Rules 32, 41, 42, 46-51, 54-58, 60, and 75-76, Ariz. R. Sup. Ct. (page 4)
   a. Reporting Form submitted by Family Law Practice & Procedure Committee (page 156)
   Presenters: *State Bar Staff*

4. Discussion Re R-20-0030, Petition to Amend Rule 42, ERs 7.1 to 7.5, Ariz. R. Sup. Ct. (page 158)
   Presenters: *State Bar Staff*

5. Discussion Re R-20-0026, Petition to Amend Rule 32, Ariz. R. Sup. Ct. (page 189)
   Presenter: *Lisa M. Panahi, General Counsel*

6. CALL TO THE PUBLIC — Jennifer Rebholz

7. ADJOURN

Next meeting date: April 9, 2020 9:30 a.m.

Rules Review Committee
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

November 22, 2019
9:00 a.m.
Cholla Conference Room

Minutes

MEMBER ATTENDANCE:
P = present in person; T = present telephonically; A= absent.

Jennifer Rebholz, Chair = P
Mark Harrison = P
Chris Russell = T
Dee-Dee Samet = T
Robert McWhirter, Vice-Chair = P
Leticia Marquez = T
Sam Saks = T

OTHER ATTENDEES:

Guests: Paul Stoller, John Ager, John Gray and Lynda Vescio

State Bar Staff: Lisa Panahi, Patricia Seguin and Richard L. Palmatier, Jr.

Minutes taken by: Patricia Seguin

1. **CALL TO ORDER**
   Called to Order by: Jennifer Rebholz, Chair
   Time: 9:06 a.m.

2. Review and approval of August 27, 2019 meeting minutes:
   Motion to approve the minutes: Dee-Dee Samet
   Seconded by: Robert McWhirter
   Motion: pass

3. Proposed Petition to Amend Rule 23, Ariz. R. Civ. P.
   (submitted by Civil Practice & Procedure Committee)
   Discussion: Paul Stoller, member of the Civil Practice & Procedure Committee presented the proposed petition. Committee discussed.
   Motion to recommend to BOG that Proposed Petition be filed by: Robert McWhirter
   Seconded by: Mark Harrison
   Motion: passed; for BOG Consent Agenda.

4. Proposed Petition to Add Rule 16.3, Ariz. R. Civ. P.
(submitted by Civil Practice & Procedure Committee)
Discussion: John Ager, member of the Civil Practice & Procedure Committee presented the proposed petition. Committee discussed.
Motion to recommend to BOG that Proposed Petition be filed by: Mark Harrison
Seconded by: Robert McWhirter
Motion: passed; for BOG Consent Agenda.

5. Proposed Petition to Amend Rules 12 and 8.1, Ariz. R. Civ. P.
(submitted by Civil Practice & Procedure Committee)
Discussion: John Gray, member of the Civil Practice & Procedure Committee presented the proposed petition. Committee discussed.
Motion to recommend to BOG that Proposed Petition be filed by: Mark Harrison
Seconded by: Robert McWhirter
Motion: passed; for BOG Consent Agenda.

6. Proposed Petition to Amend Rule 37(b), Ariz. R. Fam. L. P.
(submitted by Family Law Practice & Procedure Committee)
Discussion: Lynda Vescio, member of the Family Law Practice & Procedure Committee presented the proposed petition. Committee discussed.
Motion to recommend to BOG that Proposed Petition be filed by: Robert McWhirter
Seconded by: Mark Harrison
Motion: passed; for BOG Consent Agenda.

7. Proposed Petition to Amend Rule 97, Ariz. R. Fam. L. P.
(submitted by Family Law Practice & Procedure Committee)
Discussion: Lynda Vescio, member of the Family Law Practice & Procedure Committee presented the proposed petition. Committee discussed.
Motion to recommend to BOG that Proposed Petition be filed by: Robert McWhirter
Seconded by: Mark Harrison
Motion: passed; for BOG Consent Agenda.

8. **CALL TO THE PUBLIC**
No response

9. **Meeting adjourned by:** Jennifer Rebholz at 9:40 a.m.

Dave Byers[1]
Administrative Director, Administrative Office of Courts
Member, Task Force on the Delivery of Legal Services
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of PETITION TO AMEND RULES 31, 32, 41, 42 (ERs 1.0-5.7), 46-51, 54-58, 60, 75 and 76, ARIZ. R. SUP. CT., and ADOPT NEW RULE 33.1, ARIZ. R. SUP. CT.	Arizona Supreme Court No. R-20-___

I. Introduction

Pursuant to Rule 28, Ariz. R. Sup. Ct., the Petitioner petitions the Court to abrogate and amend Rule 31; amend Rules 32, 41, 42 (ERs 1.0, 1.5-1.8, 1.10, 1.17, 5.1, 5.3, 5.4, and 5.7), 46-51, 54-58, 60, 75 and 76, Ariz. R. Sup. Ct.; and adopt new Rule 33.1, Ariz. R. Sup. Ct.

[1] Mr. Byers files this petition in his capacity of a member of the Task Force and as chairman of the workgroup established to develop proposed rule changes to accomplish entity regulation.

This petition proposes substantial rule changes to implement recommendations resulting from the Task Force on the Delivery of Legal Services extensive review, fact-finding and analysis of the changing consumer legal market and the well-documented access-to-justice gap.[2] This petition includes rule changes developed through a subsequent workgroup on entity regulation established at the recommendation of the Task Force.[3]

The bulk of this petition focuses on the Task Force's recommendation that the Court eliminate Ethical Rule (ER) 5.4 of the Arizona Rules of Professional Conduct, Rule 42, Ariz. R. Sup. Ct., which in general bars lawyers from sharing legal fees with nonlawyers or forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. The petition requests that the Court adopt a framework for regulating what would be called an "alternative business structure" (ABS) — an entity that provides legal services to third parties and in which a nonlawyer has an economic interest or decision-making authority.

Arizona's ER 5.4, which is the same as the American Bar Association's Model Rule 5.4, reflects the nearly-century-old general prohibition on nonlawyers owning any interest in a law firm. Eliminating the rule would mean, for example, that a professional nonlawyer administrator in a law firm could have an ownership interest

[2] The Task Force's October 4, 2019, report and recommendations and other Task Force information is available at https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force.
[3] *See* Task Force report at 14.

or that a Fortune 500 company could be a passive investor. It also could mean that a law firm could attract nonlawyer talent, such as technologists, marketers, and business systems analysts, by providing equity in the firm,.

The Task Force concluded that eliminating the rule would encourage innovation in the delivery of legal services. Innovation, in turn, may help bridge the access-to-justice gap as lawyers, technology companies and others would be less constrained by an artificial restriction.[4]

To protect core values of professional independence, confidentiality of client information, and conflict-free representation, this petition proposes that an ABS be required to identify a compliance attorney who would be responsible for establishing policies and procedures within the entity to assure that nonlawyer owners and managers comply with the Arizona ethical rules that govern these core concepts. In addition, the ABS will be required to be licensed, and only active lawyers who are part of the ABS will be able to provide legal services. Licensure as an ABS does not entitle the ABS itself to practice law; rather, licensure creates the ability of nonlawyers and lawyers to jointly own a legal practice.

This petition also proposes expanding the universe of legal professionals in Arizona by adopting a new category of nonlawyer legal-service provider: the limited license legal practitioner ("LLLP"). An LLLP could appear in court and

[4] *See* Task Force report at 10.

administrative hearings in limited practice areas. LLLPs would become affiliate members of the State Bar of Arizona for regulation and discipline purposes. For context, an LLLP in some ways would be similar to a nurse practitioner, an innovation implemented decades ago that is now an integral part of the delivery of medical services. The purpose of creating this new tier of licensed legal service provider is to fill a gap that exists between medium- and low-income individuals needing legal services and the cost of securing those services from the traditional legal market. LLLPs will be required to meet education, examination, and licensure requirements that are greater than what LDPs must meet and LLLPs will therefore be able to provide legal assistance to a portion of the population that LDPs cannot.

The creation of LLLPs is not the first instance Arizona has allowed nonlawyers to provide legal assistance. Decades ago Arizona voters authorized real estate agents to engage in limited scope practice of law by conveying real estate without requiring an attorney to draft the contract, a requirement that still exist in many states. In Arizona it is now routine to conduct what is often the largest economic transaction in which a person will be involved without an attorney but instead with a nonlawyer real estate agent. This example demonstrates that nonlawyers can successfully deliver legal services in limited areas if trained and regulated properly.

Moreover, Arizona is not the first U.S. jurisdiction to consider licensing nonlawyers to provide limited legal services and appear in court. Washington adopted what it calls "Limited License Legal Technicians" in 2012 and Utah established its program for "Licensed Paralegal Practitioners" in 2018.[5] In fact, Arizona's Legal Document Preparer program, (LDPs), which took effect in 2003, was one of the first programs to allow nonlawyers to provide limited legal services. Today, 600 LDPs are certified in Arizona.

This petition also proposes a restyling and reorganization of Rule 31.

II. Background

Arizona Supreme Court Administrative Order 2018-111, issued November 21, 2018, charged the Task Force on Delivery of Legal Services with "review[ing] the regulation of the delivery of legal services in Arizona." The order specifically noted that "consumers often rely on sources other than lawyers for legal information or other assistance and that lawyers increasingly are providing services other than through traditional legal partnerships or professional corporations."

To that end, the order directed the Task Force to:

> a. Restyle, update, and reorganize Rule 31(d) of the Arizona Rules of Supreme Court to simplify and clarify its provisions.

[5] The Bar Examiner, "Limited Practice Legal Professionals: A Look at Three Models," available at https://thebarexaminer.org/article/winter-2018-2019/limited-practice-legal-professionals-a-look-at-three-models/ (winter 2018-19).

b. Review the Legal Document Preparers program and related Arizona Code of Judicial Administration requirements and, if warranted, recommend revisions to the existing rules and code sections that would improve access to and quality of legal services and information provided by legal document preparers.

c. Examine and recommend whether other nonlawyers, with specified qualifications, should be allowed to provide limited legal services, including representing individuals in civil proceedings in limited jurisdiction courts, administrative hearings not otherwise allowed by Rule 31(d), and family court matters.

d. Review Supreme Court Rule 42, ER 1.2 related to scope of representation and determine if changes to this and other rules would encourage broader use of limited scope representation by individuals needing legal services.

e. Recommend whether Supreme Court rules should be modified to allow for co-ownership by lawyers and nonlawyers in entities providing legal services; and,

f. In the Chair's discretion, consider and recommend other rule or code changes or pilot projects on the foregoing topics concerning the delivery of legal services.

The Task Force responded to its charge by recommending amendments to the Ethical Rules in Rule 42 and other Supreme Court rules; amendments to the Arizona Code of Judicial Administration (ACJA); and other administrative changes.[6]

The Task Force presented its recommendations to the Arizona Judicial Council ("AJC") on October 24, 2019. The AJC accepted all recommendations of the Task Force.

[6] *See* Task Force report at 3-5.

This petition addresses the Task Force's recommendations responding to the Court's assignments to review and clarify Rule 31(d); examine whether nonlawyers should be licensed to provide legal services; and consider nonlawyer ownership of legal-service entities.[7]

After adoption of the Task Force's report and recommendations a workgroup was formed to explore the technicalities of regulating alternative business structures. The workgroup was convened to propose rule changes under which alternative business structures would be regulated. The workgroup also proposed a regulatory framework, code of conduct, and disciplinary sanctions for ABSs that will be encompassed in a new section of the Arizona Code of Judicial Administration.[8]

The workgroup also gave input on amendments to rules that would accomplish the regulation of the LLLP. While most LLLP regulation will be in the ACJA, this petition includes recommendations for incorporating necessary references to LLLPs in jurisdictional and procedural rules. The Administrative Office of Courts has begun the process of convening other workgroups to identify the practice areas, scope of practice, educational requirements, licensing and

[7] In addition to the rule changes proposed in this petition, the Task Force also recommended amending ERs 7.1 through 7.5 (information about legal services) and amending Rule 38(d), which deals with law practice by clinical law professors and law students. Those rule changes are the subjects of petitions R-20-0030 and R-20-0007, respectively.

[8] The ACJA code section proposal will be filed shortly after the filing of this rule petition and a link to the code section proposal will be provided in the Rules Forum. ACJA code section proposals are open for public comment.

examination requirements and ethical code for LLLPs. Therefore, the proposed amendment to rules in this petition would not be triggered until after development, posting, and adopting of those regulatory requirements.[9]

A clean version of the proposed amendments for Rule 42, ERs 1.0 through 5.7, is attached at Appendix 1A and a markup version of the proposed amendments is attached at Appendix 1B.

A clean version of the proposed amendments to Rules 31 through 76 is attached at Appendix 2A and a markup version of the proposed amendments is attached at Appendix 2B.

III. Nonlawyer-ownership-related Ethical Rule proposals

A. Eliminate ER 5.4

The cornerstone of the Task Force's recommendations regarding "co-ownership by lawyers and nonlawyers in entities providing legal services" was eliminating ER 5.4, which in general prohibits lawyers from sharing legal fees with nonlawyers, prohibits nonlawyers from having any financial interest in law firms, and prohibits a lawyer from forming a partnership with a nonlawyer if any of the partnership's activities consist of the practice of law.

[9] An ACJA code section proposal containing the regulatory requirements for the LLLP program will be filed and open for public comment in the Spring of 2020.

This petition proposes that ER 5.4 be eliminated because no modern compelling reason for maintaining the rule exists. ABA Model Rule 5.4 and its predecessor rules as far back as the 1928 Canons of Professional Ethics "originated in legislation aimed at forbidding lawyers from being employed by corporations to provide services to members of the public."[10] This prohibition was not rooted in protecting the public but in economic protectionism. There was "no evidence that the corporations then supplying lawyers to clients were harming the public, and the transparent motivation behind the legislation was to protect lawyers' business."[11]

Today, Model Rule 5.4 is "directed mainly against entrepreneurial relationships with nonlawyers."[12] As a result, it has been identified as a barrier to innovation in the delivery of legal services and contributing to the justice gap.[13]

It purportedly "protect[s] a lawyer's independence in exercising professional judgment on the client's behalf free from control by nonlawyers"[14] but other rules provide that protection. ER 1.7 prohibits a lawyer from representing a client if there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to a third person – a nonlawyer investor, for example. And ER 1.8(f)

[10] Bruce A. Green, *Lawyers' Professional Independence: Overrated or Undervalued?*, 46 Akron L. Rev. 599, 618 (2013).
[11] *Id.*
[12] ABA Formal Ethics Opinion 01-423 (2001).
[13] Task Force report at 10.
[14] ABA Op. 01-423.

directs that third-party payers (such as insurance companies) cannot interfere with a lawyer's independent professional judgment or the client-lawyer relationship.

The general concept of nonlawyers owning law firms is not new. Insurance companies often employ staff lawyers – sometimes called "captive counsel" – who function as law firms to represent insureds, not as in-house counsel who provide legal services to the insurance company.[15] In that situation, a nonlawyer – the insurance company – employs lawyers who provide legal services to third parties (the insureds).

Arizona would not be the first U.S. jurisdiction to explicitly allow nonlawyer ownership by rule. For three decades Washington D.C. has allowed an "individual nonlawyer who performs professional services [that] assist the organization in providing legal services to clients" to have a financial interest or managerial authority in a law firm under limited circumstances. That jurisdiction explains that it "liberaliz[ed]" Rule 5.4

> *to permit nonlawyer professionals to work with lawyers in the delivery of legal services without being relegated to the role of an employee*. For example, the rule permits economists to work in a firm with antitrust or public utility practitioners, psychologists or psychiatric social workers to work with family law practitioners to assist in counseling clients, nonlawyer lobbyists to work with lawyers who perform legislative services, certified public accountants to work in conjunction with tax lawyers or others who use accountants' services in performing legal services, and professional managers to serve as office managers, executive directors, or in similar positions. In all of these situations, the

[15] ABA Formal Ethics Opinion 03-430 (2003).

> professionals may be given financial interests or managerial responsibility….

D.C. Rule 5.4 comment [7] (emphasis added). Further, Utah recently adopted a two-year pilot "sandbox" program that would allow the formation of alternative business structures and regulate those businesses through an independent regulatory body overseen by the Utah Supreme Court.[16]

Eliminating – not just liberalizing – ER 5.4 means nonlawyers could partner with lawyers in an entity that solely provides legal services or in an entity that provides legal services among non-legal services. A nonlawyer could make a passive investment in a legal-services entity. A lawyer even could pay nonlawyer personnel a percentage of fees earned by the law firm on a particular case.

B. Other Ethical Rule changes necessitated by eliminating ER 5.4

After deciding to recommend eliminating ER 5.4, the Task Force determined that other ERs needed amendments, with the goal of protecting core values of professional independence, confidentiality of client information, and conflict-free representation. The following is a summary of the proposed amendments to other ERs contained in this petition.

[16] The Utah Work Group on Regulatory Reform, *Narrowing the Access-to-Justice Gap by Reimagining Regulation*, 15, 21 (2019) available at https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf; "Utah Supreme Court Adopts Groundbreaking Changes to Legal Service Regulation," available at https://www.utcourts.gov/utc/news/2019/08/29/utah-supreme-court-adopts-groundbreaking-changes-to-legal-service-regulation/.

1. Terminology

Proposed amendments to ER 1.0 (terminology) incorporate concepts from existing comments to the rule that the Task Force determined were important enough to be part of the rule's text. Amendments also define previously undefined phrases in rules that are necessary to address the new concept of nonlawyers having ownership interests in firms and the potential that nonlawyers in those firms may provide nonlegal services to firm clients.

"Firm" or "law firm": A streamlined definition encompasses "any affiliation," rather than listing types of entities, and is expanded to include "any entity that provides legal services for which it employs lawyers."

"Screened": The definition has been expanded to apply to a nonlawyer with the firm as well as lawyers within the firm. Because the existing definition refers to "reasonably adequate" screening procedures, what constitutes those procedures has been imported from ER 1.0 comments [8], [9] and [10].

"Business transaction": A definition has been created from ER 1.8 comments [1] and [3].

"Personal interests": A definition was created from comments to ER 1.7 and ER 1.8.

"Authorized to practice law in this jurisdiction": This new definition pegs a firm's conduct to Rule 31.

"Nonlawyer": New definition to clarify that a "nonlawyer" could either be a person not licensed as a lawyer in any jurisdiction or a lawyer licensed in another jurisdiction who is not authorized to practice in this jurisdiction.

"Nonlawyer assistant": New definition created from ER 5.3 comment [3].

One definition is proposed to be eliminated: "Partner." The specific term "partner" is no longer relevant if ER 5.4, which contains the prohibition on being partners with a nonlawyer, is eliminated and proposed changes to ERs 5.1 and 5.3 are adopted.

2. Professional independence

ERs 5.1 and ER 5.3 detail the obligations of lawyer owners and managers in a firm.

i. ER 5.1 (Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors)

Amendments to this rule were made in part because a lawyer may hold an ownership interest in a firm in a variety of ways. The rule is no longer limited to a "partner" and instead a broader reference to "ownership interests" was added to the title because of the change in the definition of "firm" in ER 1.0(c) and the elimination of ER 5.4.

As with several other ERs, rule comments that addressed important concepts were integrated into the text of the rule itself. The definition of "internal policies and procedures" was moved from the comment to subsection (a)(1). Subsection (b) now

states that whether a lawyer has supervisory duties over lawyers may vary depending on the circumstances. And, subsection (c) now provides guidance on what constitutes reasonable remedial action. Existing comments to the rule were deleted because of the changes and additions to the rule itself.

ii. ER 5.3 (Responsibilities Regarding Nonlawyers)

A change to the title was made to identify the rule's scope, which now encompasses both nonlawyers in the firm and nonlawyer assistants, who can be inside or outside the firm.

The proposed amendments to ER 5.3(a) instruct that all lawyers in a firm must ensure that the firm has in effect measures that provide reasonable assurance that the conduct of all nonlawyers, including any nonlawyers who have economic interests in the firm, comports with a lawyer's professional obligations.

ER 5.3(a) also now contains two important criteria of "reasonable measures."

First, proposed amendments to ER 5.3(a)(1) require that policies and procedures be designed to prevent nonlawyers from "directing, controlling or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent." This language provides additional protection against nonlawyer owner influence over a lawyer's legal practice.

Second, ER 5.3(a)(2) specifies that policies and procedures must be designed to ensure that nonlawyers avoid conflicts of interest, maintain the confidentiality of all firm client information, and otherwise comport themselves in accordance with a lawyer's ethical obligations. This is another protection against nonlawyer interference.

The amendments to ER 5.3(b) also move important information from the comments to the rule itself resulting in the deletion of those comments. New subsection (b)(1) states what constitutes a direct supervisor's "reasonable efforts." New subsections (b)(2) and (3) require that lawyers be cognizant that nonlawyers may not have legal training and are not subject to professional discipline, and therefore must give directions appropriate under the circumstances. New subsection (b)(4) deals with the allocation of responsibility between the lawyer and the client when the client directs that the lawyer use a particular nonlawyer service provider.

Finally, and perhaps most importantly, new subsection (d) requires that *all* lawyers practicing in firms that include nonlawyer owners or managers must ensure that one firm lawyer has been designated to be responsible for establishing policies and procedures to assure that all nonlawyers comply with the lawyers' ethical obligations.

Further, the forthcoming proposed section of the ACJA requires that ABSs identify on an annual registration statement which lawyer in the ABS is responsible

under ER 5.3(d), similar to how a lawyer required to have a trust account may identify another lawyer in the firm as being responsible for maintaining the trust account. This provides a level of entity accountability to assure that a specific attorney must establish appropriate nonlawyer ethics procedures.

3. Confidentiality of client information: ER 1.6

The Task Force recognized that by eliminating ER 5.4 and allowing lawyers and nonlawyers to partner together to form businesses that might provide both legal and nonlegal services, there would be a heightened need to protect client confidentiality.

ER 1.6(e) currently requires that a lawyer make reasonable efforts to prevent inadvertent or unauthorized disclosure of confidential information about a client. A proposed amendment to subsection (e) adds this obligation even if the services the firm provides to the client are purely nonlegal. The amendment thus clarifies that regardless whether a client is receiving legal services from a lawyer or receiving nonlegal services from a nonlawyer in the same firm, the traditional protections to the client's information apply to all aspects of the business.

4. Conflict-free representation: ER 1.7, ER 1.8, ER 1.10

i. ER 1.7 (Conflict of Interest: Current Clients)

There are no proposed amendments to ER 1.7. However, the concept of personal-interest conflicts addressed in ER 1.7 comment [10] was imported into a

new definition of personal-interest conflict in ER 1.0(o). Existing comment [10] therefore was eliminated.

ii. ER 1.8 (Conflict of Interest: Current Clients: Specific Rules)

The possibility that a firm may provide legal and non-legal services raises the specter of lawyers referring their legal clients to the firm's nonlawyers for services. This is not a new ethical issue, considering that law firms already may provide law-related services and some lawyers have businesses in addition to their law practices. If, however, ER 5.4 is eliminated, and an entity can employ a lawyer to provide legal services to third parties, the referral issue becomes more significant.

The proposed amendment to ER 1.8 adds subsection (m), which states that when lawyers refer clients for nonlegal services provided either by the lawyer or nonlawyers in the firm or refer clients to a separate entity in which the lawyer has a financial interest, they must comply with ERs 1.7 and 1.8(a). This proposed amendment is based on content from ER 1.8 comment [3].

ER 1.8 comments [1], [2], and [3] were deleted. Relevant parts of comments [1] and [3] have been made part of a new definition of "business transaction" in ER 1.0(n). Comment [2] merely restates ER 1.8(a) and is therefore redundant and thus deleted.

iii. ER 1.10 (Imputation of Conflicts of Interest: General Rule)

With the elimination of ER 5.4, nonlawyers would be able to play significant roles in firms, including having ownership interests. Therefore, ER 1.10 should explicitly address imputation of their conflicts to others.

Amendments include deleting comments 1 through 4. Comment 1, which discusses a "firm," is no longer needed in light of the expanded definition of "firm" in ER 1.0(c). Comments 2 and 3 summarize the concepts of imputation, with one important exception that addresses conflicts if a lawyer owns all or part of an opposing party. That exception was expanded to include nonlawyers and was added to the rule's text as subsection (f), which provides that a conflict is imputed to the entire firm if a lawyer or nonlawyer owns all or part of an opposing party.

Comment 4 contains important concepts the task force determined should be part of the rule itself. New subsection (g) therefore allows disqualified nonlawyers to be screened from matters without imputing the conflict to the firm, unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm. Similarly, new subsection (h) allows lawyers to be screened if they are disqualified because of events or conduct that occurred before they became licensed lawyers, unless the lawyer is an owner, shareholder, partner, officer, or director of the firm.

C. Other Ethical Rules impacted and therefore amended

1. ER 1.5 (Fees)

The proposed amendments to ER 1.5 are based on ensuring that the rule's language reflects the change to the definition of "firm" in ER 1.0(c) as well as the elimination of ER 5.4's prohibition of lawyer and nonlawyer co-ownership of businesses providing legal services. The proposed rule also incorporates language from current comments to clearly provide that the rule applies to firms dividing a single billing to a client and firms jointly working on a matter. The rule further requires that division of responsibility must be reasonable.

2. ER 1.17 (Sale of Law Practice or Firm)

Removing the ER 5.4 restrictions on law-firm ownership conceptually impacts ER 1.17, which governs selling a law practice. ER 1.17(a) and (b)'s restrictions on lawyers selling their law practices do not remained viable in light of elimination of ER 5.4.

ER 1.17(a) currently requires that a lawyer who sells all or part of a private law practice stop practicing law – either entirely or in the practice area that has been sold – in the geographic area where the practice has been conducted. This is in part rooted in ER 5.4, which contained explicit exceptions to the ban on sharing fees with a nonlawyer for paying money to a lawyer's estate. ER 5.4(a)(1), (2).

The comments to ER 1.17 contain exceptions that undercut the value of what is effectively an artificial non-compete clause imposed on the selling lawyer. For example, comment [2] explains that a lawyer who sells their law practice but then returns to private practice "as a result of an unanticipated change in circumstances" does not necessarily violate subsection (a).

ER 1.17(b) currently requires that an "entire practice" or an "entire practice area" be sold to one or more lawyers or law firms. The stated reason is to protect "those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters." ER 1.17 comment [6]. The comments, however, contain exceptions that swallow the rule. They recognize that not all of the seller's clients will choose to be represented by the buyer (ER 1.17 comment [2]) and that a purchaser may not be able to take on a particular matter because of a conflict of interest (ER 1.17 comment [6]).

Again, as with other ERs discussed above, amendments encompass moving important information from remaining comments into the rule's text. The amendments require that clients be advised of the purchaser's identity (new subsection (a)(1)) and new subsection (c) requires that the purchaser honor existing fee and scope-of-work arrangements between the seller and client. New subsection (d) requires the seller to give notice to clients before allowing a purchaser to access detailed client information. New subsection (e) requires the seller to ensure that a

purchaser is qualified and new subsection (f) advises that if courts must approve substitution, the matter cannot be included in the sale until obtaining that approval. Finally, new subsection (g) makes the rule inapplicable to transfers of legal representation unrelated to a sale of the firm.

As a result of these changes, all comments were eliminated.

3. ER 5.7 (Responsibilities Regarding Law Related Services)

In evaluating whether to recommend eliminating ER 5.4, the task force also considered the viability of ER 5.7. Under that rule, and depending on the circumstances, a lawyer may be obligated to provide the recipient of law-related services the full panoply of protections enjoyed by the lawyer-client relationship.

Considering the recommendation to eliminate ER 5.4, and thus allow lawyers to partner with nonlawyers, ER 5.7 is unnecessary, restrictive of innovation and therefore is eliminated.

IV. Rule 31

As the Court directed, the Task Force reviewed Rule 31(d), which over years has expanded to include 31 exceptions to the general rule that only active lawyers may practice law, thus becoming cumbersome and difficult to navigate.

The Task Force opted to take a holistic view of Rule 31 and proposed restyling and reorganizing the entire rule, not just subsection (d), into four separate rules. This

makes the rule easier to navigate and understand and is consistent with other rule-restyling efforts.

Consistent with the Court's restyling conventions, the new proposed rules use the active voice and eliminate ambiguous words (especially "shall") and archaic terms (*e.g.*, "herein," "thereto"). The rules are also restated in a positive—rather than prohibitory—manner (*e.g.*, "a person may" rather than "a person may not,"; "a person or entity may" rather than "nothing in this rule prohibits").

The workgroup that developed recommended amendments for regulating ABSs and LLLPs did so in the context of the proposed restyled Rule 31. Therefore, the rules included in Appendix 2A and Appendix 2B show the restyled rules – not current Rule 31 —with the ABS additions shown through underlining. Original Rule 31 appears in the Task Force's report at pages 150 through 155.

A. Rule 31 (Supreme Court Jurisdiction)[17]

The changes in proposed Rule 31, which incorporates much of current Rule 31(a), are stylistic, with one major exception.

Although current Rule 31(a) already referred to the Court having jurisdiction over "any person or *entity* engaged in the authorized or unauthorized 'practice of law' in Arizona…" (emphasis added) a sentence has been added to make explicit

[17] Restyling as described led to amendments to Rule 41 (but not substantive changes) to incorporate content deleted from restyled Rule 31.

that the Court has jurisdiction "over any ABS who is licensed pursuant to Rule 31.1(b) and ACJA 7-209." This amendment was necessary because the term "entity' has particular meaning in the existing rules regulating the practice of law and it is ABSs that amendments in the petition are designed to regulate, not traditional law firms.

The restyled Rule 31 does not include all of the content of current Rule 31(a). In particular, three definitions have been omitted:

- "Legal assistant/paralegal" (defined by current Rule 31(a)(2)(C)) was removed as that term is not used in either current or restyled Rule 31.
- "Mediator" (defined by current Rule 31(a)(2)(D)) was not included in the restyled rule. An exception for mediators appears in restyled Rule 31.3(e)(5).
- "Unprofessional conduct" (defined by current Rule 31(a)(2)(E)) was not included because the term is not otherwise used in Rule 31.

This petition recognizes that the definition of "unprofessional conduct" is a cornerstone of lawyer discipline. Therefore, it is proposed that definition be relocated to Rule 41, which lists the duties and obligations of members. Rule 41 also has been amended to specifically incorporate the Oath of Admission to the Bar and the Lawyer's Creed of Professionalism of the State Bar of Arizona, neither of which were previously officially part of a rule.

B. Rule 31.1 (Authorized Practice of Law)

Proposed Rule 31.1 incorporates current Rule 31(b) as Rule 31.1(a).

A new proposed Rule 31.1(b) defines an Alternative Business Structure. Although the criteria for an ABS will be in ACJA 7-209, adding this definition is important to clarify that an ABS must employ an active State Bar member in good standing; must be licensed pursuant to ACJA 7-209; and that legal services only may be provided by authorized persons and in compliance with Court rules.

C. Rule 31.2 (Unauthorized Practice of Law)

Current Rule 31(a)(2)(B) describes the "unauthorized practice of law." Restyled Rule 31.2(a) carries over but broadens the definition of who may engage in the practice of law by acknowledging that lawyers such as registered in-house counsel and out-of-state lawyers admitted pro hac vice may practice law in Arizona.

Restyled Rule 31.2(b) adds "alternative business structure" to the list of descriptions that are reasonably likely to induce others to believe that the person or entity is able to practice law or provide legal services in this state.

D. Rule 31.3 (Exceptions to Rule 31.2)

The most extensive restyling occurs to current Rule 31(d), which the proposed rule denominates as Rule 31.3. Rule 31(d) currently has 31 subsections with little reason to their order.

To make the rule more useful, subsection (d) was reorganized into 10 subsections in proposed Rule 31.3: (1) a "Generally" section; (2) Governmental Activities and Court Forms; (3) Corporations, Limited Liability Companies, Associations, and Other Entities; (4) Administrative Hearings and Agency Proceedings; (5) Tax-Related Activities and Proceedings; (6) Legal Document Preparers; (7) Mediators; (8) Legal Assistants and Out-of-State Attorneys; (9) Fiduciaries; and (10) Other.

The following merit specific mention:

- Proposed restyled Rule 31.3(c)(1) provides a definition of "legal entity."
- Subsection (3) collapses the three current provisions regarding the representation of companies and associations in municipal or justice courts.
- Subsection (4) retains the provision authorizing a person to represent entities in superior court in general stream adjudications.
- Subsection (5) collapses seven current rules regarding the representation of various types of legal entities in administrative hearings or administrative proceedings.
- Subsection (6) sets forth in a single location a general exception saying that a hearing officer or presiding officer can order an entity to be represented by counsel.

The Task Force also considered rule petition R-18-0004, which the Supreme Court had continued pending the Task Force's recommendation. That petition sought an amendment to the rule that would permit owners of closely held corporations and like entities, or their designees, to represent the entities in litigation. While the Task Force empathized with the plight of "mom and pop" entities that cannot afford counsel and yet are deprived of the ability to represent the entities in court, the Task Force did not recommend this proposal. However, the proposed restyling of Rule 31(d) herein addresses the organizational issues raised by rule petition R-18-0004.

Finally, to the extent practicable, the proposed restyling endeavors to conform the rules to one another to avoid expressing identical requirements in different ways. With one possible exception, this petition does not recommend substantive changes to existing Rule 31 language. The Task Force clarified language in proposed Rule 31.3(d), which addresses "Tax-Related Activities and Proceedings." Even assuming this clarification effects a substantive change, the Task Force believed the change was within its charge to simplify and clarify the rule.[18]

V. ABS/Entity Regulation proposals

Arizona's current professional-responsibility rules apply only to individual lawyers. Regulating ABSs, however, requires adopting rules that apply to entities.

[18] Task Force report at 38.

Entity regulation is not a unique concept. Australia, England and Wales, and parts of Canada already use some form of entity regulation that supplements individual lawyer responsibility for ethical behavior.[19] It is notable that after ten years of experience in the UK, the traditional legal field thrives with no decrease in billings by traditional legal practices even with the implementation of the ABS structure. Moreover, a statewide poll of adult Arizonans, commissioned by the Arizona Administrative Office of Courts, shows that 62% of those polled support the idea of allowing nonlawyers to partner with lawyers to own businesses that provide legal services. Of those in support who are lawyers or have immediate family who are lawyers, 54% support allowing nonlawyer ownership interests in legal services businesses.

In the United States, New Jersey and New York require law firms – not just individual lawyers – to comply with professional rules. *See, e.g.*, New Jersey Rule of Professional Conduct 5.1(a) ("Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct."). Entity

[19] *See, e.g.*, Jayne Reardon, "Would Entity Regulation Improve Consumer Protection?" available at https://www.2civility.org/can-entity-regulation-protect-consumers/

regulation is not foreign to Arizona. The state already regulates Licensed Document Preparer businesses (ACJA 7-208 et seq) as well as defensive driving schools (ACJA 7-205 et seq.) and licensed fiduciary business entities (ACJA 7-202 et seq.)

The Task Force recommended that the Court adopt a system of entity regulation for ABSs; the post-task-force work fleshed out that recommendation with a framework.

Under that framework, ABSs would be licensed by this Court after being vetted by a new court committee, and then folded into the existing lawyer discipline system, with investigation and prosecution by the State Bar; assessment by the Attorney Discipline Probable Cause Committee of reports of investigation by the State Bar; and adjudication by the Presiding Disciplinary Judge.

All definitions, criteria and process for licensing, code of conduct, requirements for the compliance lawyer, disciplinary sanctions, and other specifics will be regulations in ACJA 7-209, rather than as Supreme Court rules.

Significant substantive proposed rule changes proposed by this petition include the following.

A. Rule 31

As described in section IV above, the Task Force proposes adding provisions to restyled Rules 31, 31.1, 31.2 and 31.3 to effectuate ABS regulation.

B. Rule 32 (Organization of the State Bar of Arizona)

Substantive proposed amendments include adding to Rule 32(a)(2)(D) that the State Bar is obligated to assist the Court with regulating ABSs; defining "discipline" in Rule 32(b)(3) to include sanctions and limitations on ABSs; defining "respondent" in Rule 32(b)(7) to include ABSs; and adding to Rule 32(h) a reference that ABSs will be licensed by the new Committee on Alternative Business Structures.

Rule 32(l) now includes a sentence allowing the State Bar and the Administrative Office of the Courts to recoup "extraordinary costs" beyond the Court-adopted schedule of fees. The concern is that investigating the application of or a complaint against an ABS could entail extraordinary investigation, prosecution and adjudication costs, depending on the size and organizational structure of the ABS.

C. New Rule 33.1 (Committee; Entity Regulation)

This new rule creates the Committee on Alternative Business Structures, which will review applications and licensure of ABSs and make recommendations to the Court.

Proposed Rule 33.1(b)(1) requires that the Committee take into consideration these regulatory objectives:

(A) protecting and promoting the public interest;

(B) promoting access to legal services

(C) advancing the administration of justice and the rule of law;

(D) encouraging an independent, strong, diverse, and effective legal profession; and

(E) promoting and maintaining adherence to professional principles.

Proposed Rule 33.1(b)(2) requires that the Committee examine whether an ABS applicant has "adequate governance structures and policies in place to ensure" that

(A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;

(B) the alternative business structure maintains proper standards of work;

(C) the lawyer makes decisions in the best interest of clients;

(D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and

(E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

D. Rule 46 (Jurisdiction in Discipline and Disability Matters; Definitions

A new paragraph provides that an ABS applicant's false statements or misrepresentations may be independent grounds for discipline and an aggravating

factor in any discipline proceeding, and that fraudulent misstatements or material misrepresentations may result in an ABS's license being revoked.

E. Rule 47 (General Procedural Matters)

Service of discipline complaints on ABS respondents may be made on a designated agent for service.

F. Rule 48 (Rules of Construction)

Proposed Rule 48(d)(2) provides that allegations in a complaint against an ABS shall be established by a preponderance of the evidence, compared to the clear-and-convincing standard required for lawyers. The rule includes the same rebuttable presumptions for failing to maintain trust account records as lawyers are subjected to in Rule 48(d)(1).

G. Rule 49 (Bar Counsel)

Proposed Rule 49(c)(2)(C) would be amended to require that all sanctions against ABSs be published in *Arizona Attorney* magazine, and revocation, suspension, reprimand, and licensing after a period of revocation be posted on the State Bar's website for an indefinite period.

H. Rule 50 (Attorney Discipline Probable Cause Committee)

The ADPCC's jurisdiction is expanded to include an ABS's violations of ACJA 7-209.

I. Rule 51 (Presiding Disciplinary Judge)

The presiding disciplinary judge's jurisdiction is expanded to include imposing discipline on ABSs.

J. Rule 54 (Grounds for Discipline)

The rule is expanded to include ABSs and violations of ACJA 7-209.

K. Rule 56 (Diversion)

Amendments to this rule make ABSs eligible for diversion.

L. Rule 58 (Formal Proceedings)

Under the proposed amendment to Rule 58(k), sanctions imposed against an ABS shall be determined in accordance ACJA 7-209 and to the extent applicable, with the American Bar Association *Standards for Imposing Lawyer Sanctions*.

M. Rule 60 (Sanctions)

Misconduct by an ABS would be grounds for sanctions specified by ACJA 7-209, which will include license revocation, suspension, reprimand, probation, restitution, disgorgement of profits and civil fines.

N. Rule 75 (Unauthorized Practice of Law, Jurisdiction)

Amendments extend jurisdiction to pursue allegations of UPL against an ABS.

O. Rule 76 (Unauthorized Practice of Law, Grounds for Sanctions, Sanctions and Implementation)

An amendment adds authority for the Superior Court to impose a civil penalty of up to $25,000 against respondents upon whom another sanction is imposed.

VI. Limited License Legal Practitioner (LLLP)

The Task Force proposed that the Court adopt a new category of nonlawyer legal-service provider, the LLLP, who would be licensed and able to provide limited legal services to clients, including appearing in court and administrative hearings in limited practice areas, such as family law.

The Task Force concluded that licensing nonlawyers to provide limited legal services will not undermine the employment of lawyers for several reasons. First, the legal needs targeted for LLLPs involve routine, relatively straight-forward, high-volume but low-paying work that lawyers rarely perform, if ever. Second, lawyers could team with LLLPs to provide complementary services, thereby increasing business opportunities for lawyers. Moreover, to date no jurisdiction that allows certified nonlawyers to provide limited legal services has reported any diminution in lawyer employment. While some lawyers may prove instinctive skeptics on this issue, the Task Force was not able to find empirical evidence that lawyers are at risk of economic harm from certified LLLPs who provide limited legal services to clients with unmet legal needs. A statewide poll of adult Arizonans, commissioned by the Arizona Administrative Office of Courts shows that 80% of those polled support the

concept of a new tier of limited legal service provider. Of those in support who are lawyers or who have immediate family who are lawyers, 83% support the new tier. This proposal had overwhelming support in both urban and rural counties.

LLLPs would provide services distinctly different from Legal Document Preparers. LDPs may not give legal advice nor may appear in court for customers who hire them to prepare documents. The Task Force recommended that LLLPs, on the other hand, be able to provide legal advice and to make appearances in court on behalf of clients.[20]

Therefore, this petition proposes rule amendments that would effect regulation and licensing of LLLPs. As with ABSs, the definitions, criteria and process for licensing, code of conduct, and other specifics regarding LLLPs will be regulations in an ACJA section (ACJA 7-210), rather than Supreme Court rules. Also, like ABSs, LLLPs would be folded into the existing lawyer discipline system, with investigation and prosecution by the State Bar; assessment by the ADPCC of reports of investigation by the State Bar; and adjudication by the Presiding Disciplinary Judge.

Unlike ABSs, however, LLLPs would become affiliate members of the State Bar with limited benefits of membership, such as access to the ethics hotline.

[20] The exact parameters of an LLLP's authority, such as particular legal tasks suitable for LLLPs to perform and whether LLLPs could provide "pre-litigation education about legal rights and responsibilities," would need to be developed by a steering committee. Task Force report at 41.

Significant substantive proposed rule changes include:

A. Rule 32 (Organization of the State Bar of Arizona)

Rule 32(c)(1) currently provides that the State Bar has five classes of membership: active, inactive, retired, suspended, and–judicial. Proposed Rule 32(c)(3) creates a sixth category of membership, for LLLPs. They would be "affiliate members" for the purposes of regulation and discipline only. They would pay annual fees, including an amount designated for the Client Protection Fund. They would receive a certificate of licensure, not a bar card.

Rule 32(c)(13) would be amended to require that LLLPs, like active lawyers in private practice, disclose whether they have professional liability insurance.

B. Rule 46 (Jurisdiction in Discipline and Disability Matters; Definitions

A new paragraph provides that an LLLP applicant's false statements or misrepresentations may be independent grounds for discipline and an aggravating factor in any discipline proceeding, and that fraudulent misstatements or material misrepresentations may result in an LLLP's license being revoked.

The definitions of "discipline", "misconduct", and "respondent" were amended to include LLLPs.

C. Rule 49. (Bar Counsel)

Amendment to Rule 49(c)(1) ensures chief bar counsel has prosecutorial oversight over LLLPs and amendment to Rule 49(c)(2)(C) specifies that as with ABSs, all sanctions against an LLLP would be reported publicly.

D. Rules 50 (Attorney Discipline Probable Cause Committee) and 51 (Presiding Disciplinary Judge)

Amendments to both rules expand jurisdiction to include discipline-related activities involving LLLPs.

E. Rule 54 (Grounds for Discipline)

This rule is expanded to include LLLPs and violations of ACJA 7-210, which will be the ACJA section governing LLLPs.

F. Rule 56 (Diversion)

Amendments to this rule make LLLPs eligible for diversion.

G. Rule 60 (Sanctions)

Misconduct by an LLLP would be grounds for sanctions specified by ACJA 7-210, which will closely resemble the sanctions for misconduct by lawyers including revocation of license, suspension, reprimand, probation, and civil fines.

VII. Conclusion

Petitioner respectfully requests that the Court consider this petition and proposed rule changes at its scheduled August rules conference. Petitioner additionally requests that the petition be circulated for public comment, and that a staggered comment period as follows be ordered: (a) initial comments due on March

30, 2020; (b) response to initial comments on April 27, 2020; (c) second round comments due on May 26, 2020; and (d) reply and final amended petition due on June 22, 2020. Petitioner respectfully requests that the Court adopt the proposed rules as they currently appear, or as modified considering comments received, with an effective date of January 1, 2021.

DATED this 30th day of January, 2020.

___/s/_____

Dave Byers
Administrative Director
Arizona Administrative Office of Courts
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 452-3301
Projects2@courts.az.gov

APPENDIX 1

PROPOSED AMENDED ERs 1.0 THROUGH 5.7

CLEAN AND MARKUP

APPENDIX 1A: Proposed Amended ERs 1.0 through 5.7 (Clean)

ER 1.0. Terminology

(a) – **(b)** [[No change]]

(c) "Firm" or "law firm" denotes a lawyer or lawyers in any affiliation, or any entity that provides legal services for which it employs lawyers. Whether two or more lawyers constitute a firm can depend on the specific facts.

(d) – **(f)** [[No change]]

(g) – **(i)** [[Formerly (h) – (j); No change to text]]

(j) "Screened" denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

(i) Written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;

(ii) Adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;

(iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter;

(iv) Periodic reminders of the screen to all affected firm personnel; and

(v) Additional screening measures that are appropriate for the particular matter will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer or firm knows or reasonably should know that there is a need for screening.

(k) – **(m)** [[Formerly (l) – (n); No change to text]]

(n) "Business transaction," when used in reference to conflicts of interests:

(1) includes but is not limited to

(i) The sale of goods or services related to the practice of law to existing clients of a firm's legal practice;

(ii) A lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer's firm has a financial interest; or

(iii) Transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client's business as payment of all or part of a fee.

(2) does not include

(i) Ordinary fee arrangements between client and lawyer; or

(ii) Standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) "Personal interests," when used in reference to conflicts of interests, include but are not limited to:

(1) The probity of a lawyer's own conduct, or the conduct of a nonlawyer in the firm, in a transaction;

(2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or

(3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) "Authorized to practice law in this jurisdiction" denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.1(b).

(q) "Nonlawyer" denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) "Nonlawyer assistant" denotes a person, whether an employee or independent contractor, who is not licensed to practice law in this jurisdiction, including but not limited to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement personnel are not considered the nonlawyer assistants of government lawyers.

Comment [2021 amendments]

Confirmed in Writing

[1] [[No change]]

Firm

[2] Questions can arise with respect to lawyers in legal aid, legal services organizations, and other entities that include nonlawyers and provide other services in addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a "firm" for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. *See Rules 5.1, 5.2 and 5.3.*

Fraud

[3] – [5] [[Renumbered from comments [5] – [7]; No change to text]]

ER 1.5. Fees

(a) – **(d)** [[No Change]]

(e) Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

(1) the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;

(2) the client consents to the division of fees, in a writing signed by the client;

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Comment [2021 amendment]

Reasonableness of Fee and Expenses

[1] [[No Change]]

Basis or Rate of Fee

[2] – [3] [[No Change]]

Terms of Payment

[4] – [5] [[No Change]]

Prohibited Contingent Fees

[6] [[No Change]]

Disclosure of Refund Rights for Certain prepaid Fees

[7] [[No Change]]

Disputes Over Fees

[8] [[Renumbered from comment [10]; No change to text]

ER 1.6. Confidentiality

(a) – **(d)** [[No change]]

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

2003 Comment [amended 2021]

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] - [4] [[No change]]

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation in some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm, information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] [[No change]]

Disclosure Adverse to Client

[7] – [20] [[No change]]

Withdrawal

[21] [[No change]]

Acting Competently to Preserve Confidentiality

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision including individuals who are providing nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to assure that all information learned from or about a firm client shall remain confidential even if the only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] [[No change]]

Former Client

[24] [[No Change]]

ER 1.7. Conflict of Interest: Current Clients

[[No change to the black letter rule]]

Comment [2021 amendment]

[1] – [9] [[No change]]

[10] – [33] [[Renumbered from [11] – [34]; No change to text]]

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

(a) – **(l)** [[No change]]

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm's financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm's financial interest in the transaction.

Comment [2021 amendment]

[1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyers dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the form or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that ER 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[2] – [19] [[Renumbered from [4] to [21]; No change to text]]

ER 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – **(e)** [[No change]]

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified, the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

Comment [2021 amendment]

[1] – [7] [[Renumbered from [5] – [11]; No change to text]]

ER 1.17. Sale of Law Practice or Firm

(a) A firm may sell or purchase a law practice, or a practice area of a firm, including good will, if the seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(c) A sale may not be financed by increases in fees charged to the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

ER 5.1 Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these.

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the persons who is being supervised and the amount of work involved. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

ER 5.3. Responsibilities Regarding Nonlawyers

(a) A lawyer in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have economic interests in the firm, is compatible with the professional obligations of the lawyer. Reasonable measures include but are not limited to adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) A lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

Comment [2021 amendment]

[1] The rule in paragraph (d) recognizes that lawyers may provide legal services through firms that include nonlawyers economic interest holders, owners, managers, shareholders, officers, or who hold any decision-making authority. Any such alternative business structure (ABS) as defined in Rule 31 must be licensed in accordance with ACJA 7-209. Any lawyer who provides legal services through an unlicensed ABS is engaged in the unauthorized practice of law.

ER 5.4. Reserved

ER 5.7. Reserved

APPENDIX 1B: Proposed Amended ERs 1.0 through 5.7 (Markup)

ER 1.0. Terminology

(a) – **(b)** [[No change]]

(c) "Firm" or "law firm" denotes a lawyer or lawyers in ~~a law partnership, professional corporation sole proprietorship, or other association; or lawyers employed in a legal services organization or the legal department of a corporation or other organization~~ any affiliation, or any entity that provides legal services for which it employs lawyers. Whether ~~government lawyers should be treated as a firm depends on the particular Rule involved and the specific facts of the situation~~ two or more lawyers constitute a firm can depend on the specific facts.

(d) – **(f)** [[No change]]

~~(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.~~

(~~h~~ g) [[No change to text]]

(~~i~~ h) [[No change to text]]

(~~j~~ i) [[No Change to text]]

(~~k~~ j) "Screened" denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

(i) Written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;

(ii) Adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;

(iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other

information, including information in electronic form, relating to the matter;

(iv) Periodic reminders of the screen to all affected firm personnel; and

(v) Additional screening measures that are appropriate for the particular matter will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer or firm knows or reasonably should know that there is a need for screening.

(~~l~~ k) – **(~~n~~ m)** [[No change to text]]

(n) "Business transaction," when used in reference to conflicts of interests:

(1) includes but is not limited to

(i) The sale of goods or services related to the practice of law to existing clients of a firm's legal practice;

(ii) A lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer's firm has a financial interest; or

(iii) Transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client's business as payment of all or part of a fee.

(2) does not include

(i) Ordinary fee arrangements between client and lawyer; or

(ii) Standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) "Personal interests," when used in reference to conflicts of interests, include but are not limited to:

(1) The probity of a lawyer's own conduct, or the conduct of a nonlawyer in the firm, in a transaction;

(2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or

(3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) "Authorized to practice law in this jurisdiction" denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.1(b).

(q) "Nonlawyer" denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) "Nonlawyer assistant" denotes a person, whether an employee or independent contractor, who is not licensed to practice law in this jurisdiction, including but not limited to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement personnel are not considered the nonlawyer assistants of government lawyers.

Comment [~~2003~~ 2021 amendment]

Confirmed Writing

[1] [[No change]]

Firm

~~[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.~~

~~[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the~~

~~corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.~~

[~~4~~ 2] ~~Similar questions~~ Questions can ~~also~~ arise with respect to lawyers in legal aid, ~~and~~ legal services organizations, and other entities that include nonlawyers and provide other services in addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a "firm" for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. *See Rules 5.1, 5.2, and 5.3*.

Fraud

[~~3~~ 5] – [~~5~~ 7] [[Renumbered; No change to text]]

~~Screened~~

~~[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs 1.10, 1.11, 1.12 or 1.18.~~

~~[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to~~

~~the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.~~

~~[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.~~

ER 1.5. Fees

(a) – **(d)** [[No change]]

(e) ~~A division of fees between lawyers who are not in the same firm may be made only~~ Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

(1) ~~the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the representation;~~ the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;

(2) the client ~~agrees~~ consents to the division of fees, in a writing signed by the client;~~, to the participation of all the lawyers involved and the division of the fees and responsibilities between lawyers; and~~

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

Comment [~~2003~~ 2021 amendment]

Reasonableness of Fee and Expenses

[1] [[No change]]

Basis or Rate of Fee

[2] – [3] [[No change]]

Term of Payment

[4] – [5] [[No change]]

Prohibited Contingent Fees

[6] [[No change]]

Disclosure of Refund Rights for Certain Prepaid Fees

[7] [[No change]]

~~**Division of Fee**~~

~~[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers, if the division is in proportion to the services performed by each lawyer or all lawyer assume joint responsibility for the representation and the client agrees, in a writing signed by the client, to the arrangement. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be completely and diligently completed. See ERs 1.1, 1.3. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).~~

~~[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.~~

Dispute Over Fees

[~~10~~ 8] [[Renumbered; No change to text]]

ER 1.6. Confidentiality

(a) – **(d)** [[No change]]

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

2003 Comment [amended ~~2009~~ 2021]

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] - [4] [[No change]]

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation in some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm, information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] No Change.

Disclosure Adverse to Client

[7] – [20] [[No change]]

Withdrawal

[21] [[No change]]

Acting Competently to Preserve Confidentiality

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision including individuals who are providing nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to assure that all information learned from or about a firm client shall remain confidential even if the only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] [[No change]]

Former Client

[24] [[No change]]

ER 1.7. Conflict of Interest: Current Clients

[[No change to the black letter rule]]

Comment [~~2003~~ 2021 amendment]

[1] – [9] [[No change]]

Personal Interest Conflicts

~~[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of the lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, a lawyer may not allow related business interest to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See ER 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also ER 1.10 (personal interest conflicts under ER 1.7 ordinarily are not imputed to other lawyers in a law firm).~~

[~~11~~ 10] – [~~12~~ 11] [[Renumbered; No change to text]]

[~~13~~ 12] – [~~34~~ 33] [[Renumbered; No change to text]]

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

(a) – **(l)** [[No change]]

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm's financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm's financial interest in the transaction.

Comment [~~2003~~ 2021 amendment]

Business Transactions Between Client and Lawyer

~~[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyers and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See ER 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by ER 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. IN such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.~~

~~[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the~~

~~client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the materials risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See ER 1.0(e) (definition of informed consent).~~

[~~3~~ 1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyers dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the firm or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that ER 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[~~4~~ 2] – [~~21~~ 19] [[Renumbered; No change to text]]

ER 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – **(e)** [[No change]]

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified pursuant to paragraph (a), the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

Comment [~~2003 and 2016~~ 2021 amendment]

Definition of Firm

~~[1] For purposes of the Rules of Professional Conduct, the term 'firm' denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association; or lawyers employed in a legal services organization of the legal department of a corporation or other organization. See ER 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See ER 1.0 Comments [2] – [4].~~

Principles of Imputed Disqualification

~~[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the~~

~~obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by ERs 1.9(b) and 1.10(b).~~

~~[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, for example, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm are reasonably likely to be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm. A disqualification arising under ER 1.8(l) from a family or cohabitating relationship is persona and ordinarily is not imputed to other lawyers with whom the lawyers are associated.~~

~~[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that a person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and firm have a legal duty to protect. See ERs 1.0(k) and 5.3.~~

[~~5~~ 1] – [~~11~~ 7] [[Renumbered; No change to text]]

ER 1.17. Sale of Law Practice or Firm

(a) A ~~lawyer or a law~~ firm may sell or purchase a law practice, or ~~an area of law practice~~ a practice area of a firm, including good will, if the ~~following conditions are satisfied~~ seller gives written notice to each of the seller's clients regarding:

~~**(a)** The seller ceases to engage the private practice of law, or in the area of practice that has been sold, in the geographic area(s) in which the practice has been conducted;~~

~~**(b)** The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;~~

~~**(c)** The seller gives written notice to each of the seller's clients regarding;~~

(1) the proposed sale, including the identity of the purchaser;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

~~**(d)** The fees charged clients shall not be increased by reason of the sale.~~

(c) A sale may not be financed by increases in fees charged to the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

~~**Comment [2003 rule]**~~

[[All comments to ER 1.17 were deleted]]

ER 5.1. Responsibilities of ~~Partners, Managers, and Supervisory Lawyers~~ Lawyers Who Have Ownership Interests or are Managers or Supervisors

~~**(a)** A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.~~

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these.

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having ~~direct~~ supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner~~ has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

~~**Comment [2003 amendment]**~~

[[All Comments to ER 5.1 were deleted]]

ER 5.3. Responsibilities Regarding Nonlawyers ~~Assistants~~

~~With respect to a nonlawyer employed or retained by or associated with a lawyer:~~

~~(a)~~ ~~a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall reasonable efforts to ensure that the~~ ~~firm has in effect measures giving reasonable assurance that the person's is compatible with the professional obligations of the lawyer;~~.
(a ~~b~~) ~~a lawyer having direct supervisory authority over the nonlawyer~~ A lawyer in a firm shall make reasonable efforts to ensure that the ~~person's conduct~~ firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have economic interests in the firm, is compatible with the professional obligations of the lawyer.~~; and~~ Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) ~~a~~ A lawyer shall be responsible for conduct of ~~such a person~~ a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner or~~ has ~~comparable~~ managerial authority in the firm ~~in which the person is employed, or has direct supervisory authority over the person,~~ and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

Comment [~~2003~~ 2021 amendment]

[[All current comments to existing ER 5.3 were deleted]]

[1] The rule in paragraph (d) recognizes that lawyers may provide legal services through firms that include nonlawyers economic interest holders, owners, managers, shareholders, officers, or who hold any decision-making authority. Any such alternative business structure (ABS) as defined in Rule 31 must be licensed in accordance with ACJA 7-209. Any lawyer who provides legal services through an unlicensed ABS is engaged in the unauthorized practice of law.

ER 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or dis appeared lawyer may, pursuant to the provisions of ER 1.17, pay to the estate or to other representative of that lawyer the agreed-upon purchase price:

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees or fees otherwise received and permissible under these rules with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Comment [2003 amendment]

[1] The provisions of this Rule express traditional limitations on the sharing of fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the

~~lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.~~

~~[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also ER 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).~~

ER 5.7. Responsibilities Regarding Law-Related Services

(a) A lawyer may provide, to clients and to others, law-related services, as defined in paragraph (b), either:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) by a separate entity which is controlled by the lawyer individually or with others.

Where the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the lawyer individually or with others, the lawyer shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the lawyer takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not apply.

(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

Comment [2003 rule]

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] ER 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved

in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., ER 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1).

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with ER 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute

when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by ER 5.3, that of nonlawyer employees in the distinct entity which the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law- related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (ERs 1.7 through 1.11, especially ERs 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of ER 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with ERs 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also ER 8. 4.

[12] Variations in language of this Rule from ABA Model Rule 5.7 as adopted in 2002 are not intended to imply a difference in substance.

APPENDIX 2

RESTYLED AND AMENDED RULE 31; PROPOSED AMENDED RULES 32, 41, 46-51, 54-58, 60, 75-76; AND PROPOSED NEW RULE 33.1

CLEAN AND MARKUP

Appendix 2A: Restyled and Amended Rule 31; Proposed Amended Rules 32, 41, 46-51, 54-58, 60, 75-76; and Proposed New Rule 33.1 (Clean)

Rule 31. Supreme Court Jurisdiction[1]

(a) Jurisdiction. The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized "practice of law" in Arizona, as that phrase is defined in (b). The Arizona Supreme Court also has jurisdiction over any ABS who is licensed pursuant to Rule 31.1(b) and ACJA 7-209.

(b) Definition. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing or expressing legal opinions to or for another person or entity;

(2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;

(3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;

(4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or

(5) preparing a document, in any medium, intended to affect or secure a specific person's or entity's legal rights.

Rule 31.1. Authorized Practice of Law.

(a) Requirement. A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

(1) the person is an active member in good standing of the State Bar of Arizona under Rule 32; or

(2) the person is specifically authorized to do so under Rules 31.3, 38, or 39.

(b) Alternative Business Structure (ABS). An entity that includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide legal services to third parties only if:

[1] Rules 31 through 31.3 as presented in this appendix represents the restyling of Rule 31 as discussed in the petition. Underlined content represents proposed amendments related only to the regulation of ABSs.

(1) it employs at least one person who is an active member in good standing of the State Bar of Arizona under Rule 32 who supervises the practice of law under ER 5.3;

(2) it is licensed pursuant to ACJA § 7-209; and

(3) legal services are only provided by persons authorized to do so and in compliance with the Rules of Supreme Court.

(c) Lack of Good Standing. A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

Rule 31.2. Unauthorized Practice of Law. Except as provided in Rule 31.3, a person, entity, or ABS who is not authorized to practice law in Arizona under Rule 31.1(a), (b) or Rule 31.3 must not:

(a) engage in the practice of law or provide legal services in Arizona; or

(b) use the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," "alternative business structure (ABS)" or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law or provide legal services in Arizona.

Rule 31.3. Exceptions to Rule 31.2.

(a) Generally.

(1) Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court's jurisdiction concerning that activity.

(2) A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage in any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(3) An ABS whose license has been suspended or revoked may not engage in any of the activities specified in this rule, except an ABS whose license has been suspended may engage in activities as expressly authorized by judgment or order of this court, the presiding disciplinary judge, or a hearing panel.

(b) Governmental Activities and Court Forms.

(1) ***In Furtherance of Official Duties.*** An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity's regular course of business.

(2) ***Forms.*** The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

(c) Legal Entities.

(1) ***Definition.*** "Legal entity" means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, or a trust.

(2) ***Documents.*** A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity's use and are not made available to third parties.

(3) ***Justice and Municipal Courts.*** A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) ***General Stream Adjudication Proceeding.*** A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity but is secondary or incidental to other duties related to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) ***Administrative Hearings and Agency Proceedings.*** A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency commission, or board, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) ***Exception.*** Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(d) Tax-Related Activities and Proceedings.

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than $25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claim proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

(i) a certified public accountant,

(ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

(iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than $5,000, the taxpayer's duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

(i) the person is full-time officer partner, member, manager, or employee of the entity;

(ii) the entity has specifically authorized the person to represent it in the proceeding;

(iii) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

(e) Other.

(1) ***Children with Disabilities.*** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(2) ***Department of Fire, Building and Life Safety.*** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not is not charging a fee for the representing the party (other than receiving reimbursement for costs).

(3) ***Fiduciaries.*** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary's authority to act without an attorney if it determines that lay representation is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(4) ***Legal Document Preparers and Limited License Legal Practitioners.*** Certified legal document preparers and limited license legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. Disbarred or suspended attorneys may only be certified as a legal document preparer or licensed as a limited license legal practitioner if approved by the Supreme Court.

(5) ***Mediators.***

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:

(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

(6) ***Nonlawyer Assistants and Out-of-State Attorneys.***

(A) A nonlawyer assistant may act under an attorney's supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a)(2) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

(7) ***Personnel Boards.*** An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

(8) ***State Bar Fee Arbitration***. A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

Rule 32. Organization of State Bar of Arizona.

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law*. [[No change]]

2. *Mission*. The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers and those engaged in the authorized practice of law in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; assist the Court with the regulation and discipline of alternative business structures (ABS) and limited license legal practitioners (LLLP); foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers, ABSs, and LLLPs:

1. “Board” [[No change]]

2. “Court”[[No change]]

3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so

requires. Discipline includes sanctions and limitations on ABSs as provided in these rules and ACJA 7-209 and LLLPs as provided in these rules and ACJA 7-210.

4. “Discipline proceeding” and “disability proceeding” [[No change]]

5. “Member” [[No change]]

6. “Non-member” [[No change]]

7. “Respondent” means any person, ABS, or LLLP subject to the jurisdiction of the court against whom a charge is received for violation of these rules or ACJA 7-209 or ACJA 7-210.

8. “State bar” [[No change]]

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, retired, suspended, judicial, and affiliate. Disbarred or resigned persons are not members of the bar.

2. *Active Members*. Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, ~~or~~ judicial, or affiliate members.

3. *Affiliate Members.* Limited license legal practitioners (LLLPs) are affiliate members for purposes of regulation and discipline under these rules.

4. *Admission, Licensure and Fees*. Upon admission to the state bar or licensure as an LLLP, a person:

(i) shall pay a fee as required by the supreme court, which shall include the annual membership fee for members of the state bar. If a person is admitted or licensed on or after July 1 in any year, the annual membership fee shall be reduced by one half.

(ii) Upon admission to the state bar, a lawyer applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court.

(iii) All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

5. *Inactive Members.* [[No change to text]]

6. *Retired Members.* [[No change to text]]

7. *Judicial Members*. [[No change to text]]

8. *Membership Fees.* An annual membership fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Chief Executive Officer/Executive Director may waive all or part of the dues of any other member for reasons of personal hardship. Both the grant or denial of an application shall be reported to the board. Denial of a personal hardship waiver shall be reviewed by the board. The board should take all steps necessary to protect private information relating to the application.

9. *Computation of Fee*. The annual membership fee shall be composed of an amount for the operation of the activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, and each affiliate member shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.

10. *Allocation of fee.* Upon payment of the membership fee, each individual lawyer member shall receive a bar card and each LLLP shall receive a certificate of licensure, issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

11. *Delinquent Fees*. A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be paid in addition to the

annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

12. *Resignation.* [[No change to text]]

13. *Insurance Disclosure*.

A. Each active and affiliate member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer or limited license legal practitioner is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer or limited license legal practitioner is currently covered by professional liability insurance. Each member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A member who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by ~~active~~ members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active or affiliate member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer or limited license legal practitioner complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer or limited license legal practitioner to appropriate disciplinary action.

(d) Powers of Board. [[Only change is to subpart 2. As reflected below]]

2. Promote and aid in the advancement of the science of jurisprudence, the education of legal professionals and the improvement of the administration of justice.

(e) – (g) [[No change]]

(h) Administration of rules. Examination and admission of lawyer members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Examination and licensure of limited license legal practitioners shall be administered by the Administrative Office of Courts as provided in ACJA 7-210. Licensure of alternative business structures shall be by the Committee on Alternative Business Structures, as provided in these rules and ACJA 7-209. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) – (k) [[No change]]

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, including the membership, mandatory continuing legal education and disability of limited license legal practitioners, except that costs and expenses shall be taxed against a respondent ~~lawyer~~ or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission, including expenses related to application for licensure and examination of limited license legal practitioners. The State Bar and Administrative Office of Courts may recoup extraordinary costs beyond the schedule of fees adopted by the Court relating to an alternative business structure application for licensure or administration and enforcement of these rules against an alternative business structure.

(m) [[No change]]

Proposed New Rule 33.1. Committee; Entity Regulation

(a) Committee.

1. *Creation of the Committee*. The review of applications and licensure of alternative business structures shall conform to this rule and ACJA 7-209. For such purposes, there shall be a Committee on Alternative Business Structures. The Committee on Alternative Business Structures shall consist of eleven members.

2. *Appointment of Members*. Members of the Committee and its Chair shall be appointed by the Court, considering geographical, gender, and ethnic diversity. Members shall serve at the pleasure of the Court and may be removed from the Committee at any time by order of the Court. A member of the Committee may resign at any time.

3. *Terms of Office*. Members of the Committee will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may be reappointed. If a vacancy exists due to resignation or inability of a board member to serve, the Court shall appoint another person to serve the unexpired term.

4. *Powers and Duties of the Committee*. The Committee on Alternative Business Structures shall review applications for licensure and recommend to the Court for licensure those applicants who are deemed by the Board to be qualified pursuant to ACJA § 7-209.

(b) Decision Regarding Licensure. The Committee shall recommend approval of applications if the requirements in this rule and in ACJA are met by the applicant. The Committee's recommendation shall state the factors in favor of approval.

(1) Decisions of the Committee must take into consideration the following regulatory objectives:

(A) protecting and promoting the public interest;

(B) promoting access to legal services

(C) advancing the administration of justice and the rule of law;

(D) encouraging an independent, strong, diverse, and effective legal profession; and

(E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

(A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;

(B) the alternative business structure maintains proper standards of work;

(C) the lawyer makes decisions in the best interest of clients;

(D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and

(E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

(c) Power of Court to Revoke or Suspend License. Nothing contained in this rule shall be considered as a limitation upon the power and authority of this Court upon petition of the Committee on Alternative Business Structures, probable cause committee, bar counsel, or on its own motion, to file a petition with the presiding disciplinary judge to revoke or suspend, after due notice and hearing, the license of an alternative business structure in this state for fraud or material misrepresentation in the procurement the ABS's license.

(d) Practice in Courts. No alternative business structure shall employ any person to provide legal services in the State of Arizona unless the person is licensed to practice law or otherwise authorized to provide legal services under Rule 31.1 or 31.3

(e) Retention and Confidentiality of Records of Applicants. The records of applicants for licensure pursuant to ACJA 7-209 shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of Supreme Court. The records and the proceedings concerning an application for licensure shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for licensure and the proceedings of the Board concerning an application for licensure in connection with any proceeding before the Court. In addition, the Board or designated staff may disclose their respective records pertaining to an applicant for licensure to:

1. any licensing authority in another any other state the applicant seeks similar licensure;

2. bar counsel for discipline enforcement purposes; and

3. a law enforcement agency, upon subpoena or good cause shown.

(f) Immunity from Civil Suit.

1. The Court, the Board, and the members, staff, employees, and agents thereof, are immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the licensing of applicants seeking to be licensed to practice law.

2. Records, statements of opinions and other information regarding an applicant for licensure communicated by any person, form, or institution, without malice, to the Court or the Board, and the members, staff, employees, and agents thereof, are privileged, and civil suits predicated thereon may not be instituted.

Rule 41. Duties and Obligations of Members[2]

(a) Definition.

"Unprofessional conduct" means substantial or repeated violations of the oath of Admission to the State Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

(b) Duties and Obligations. The duties and obligations of members shall be:

(1) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these Rules.

(2) To support the constitution and the laws of the United States and the State of Arizona.

(3) To maintain the respect due to courts of justice and judicial officers.

(4) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.

(5) To be honest in dealings with others and not make false or misleading statements of fact or law.

(6) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client's knowledge and approval.

(7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

(8) To support the fair administration of justice, professionalism among lawyers, and legal representation for those unable to afford counsel.

(9) To protect the interests of current and former clients by planning for the lawyer's termination of or inability to continue a law practice, either temporarily or permanently.

(c) Oath and Creed. The Oath of Admission to the Bar and Lawyer's Creed of Professionalism of the State Bar of Arizona are as follows.

[2] Definition of "unprofessional conduct", Oath of Admission, and Lawyers Creed of Professionalism are inserted, without substantive changes, into Rule 41 due to their deletion in restyled Rule 31. The only amendment to Rule 41 is to change the subsection numbering.

Oath of Admission to the Bar

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with respect;

I will not counsel or maintain an action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

A Lawyer's Creed of Professionalism of the State Bar of Arizona

Preamble

As a lawyer, I must strive to make our system of justice work fairly and efficiently. To carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers and I will conduct myself in accordance with the following Code of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;

2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;

3. In appropriate cases, I will counsel my client with respect to alternative methods of resolving disputes;

4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of a matter or to harass or drain the financial resources of the opposing party;

5. I will advise my client that civility and courtesy are not to be equated with weakness;

6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with effective and honorable representation.

B. With respect to opposing parties and their counsel:

1. I will be courteous and civil, both in oral and written communication;

2. I will not knowingly make statements of fact or law that are untrue;

3. In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected;

4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

5. I will not utilize litigation or any other course of conduct to harass the opposing party;

6. I will not engage in excessive and abusive discovery; and I will advise my client to comply with all reasonable discovery requests;

7. I will not threaten to seek sanctions against any party or lawyer unless I believe that they have a reasonable basis in fact and law;

8. I will not delay resolution of a matter, unless the delay is incidental to an action reasonably necessary to ensure the fair and efficient resolution of that matter;

9. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and not be rude or disrespectful;

10. I will not serve motions and pleadings on the other party or the party's counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

11. In business transactions I will not quarrel over matters of form or style but will concentrate on matters of substance and content;

12. I will identify clearly, for other counsel or parties, all changes that I have made in the documents submitted to me for review.

C. With respect to the courts and other tribunals:

1. I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice;

2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;

4. I will not file frivolous motions;

5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel and, if appropriate, the court (or other tribunal) as early as possible;

8. Before dates for hearings or trial are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;

10. I will endeavor to be punctual in attending court hearings, conferences, and dispositions;

11. I will at all times be candid with, and respectful to, the tribunal.

D. With respect to the public and our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

2. I will keep current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field or practice;

3. As a member of a self-regulating profession, I will be mindful of my obligations under the Rules of Professional Conduct to report violations of those Rules;

4. I will be mindful of the need to protect the integrity of the legal profession and will be so guided when considering methods and contents of advertising;

5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement or administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

(a) [[No change]]

(b) Licensed Alternative Business Structures. Any entity licensed as an alternative business structure and its members are subject to the disciplinary jurisdiction of this court. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-209 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for licensure may result in revocation of the alternative business structure's license.

(c) Limited License Legal Practitioners. Any person licensed as a limited license legal practitioner is subject to the disciplinary jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-210 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant may result in revocation of the limited license legal practitioner's license.

(d) Non-members. [[No change to text]]

(e) Former Judges. [[No change to text]]

(f) Incumbent Judges. [[No change to text]]

(g) Disbarred Lawyers. [[No change to text]]

(h) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. "Acting presiding disciplinary judge" -- 4. "Charge" [[No change]]

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona unless stated otherwise.

6. "Complainant" means a person who initiates a charge against a lawyer or entity or later joins in a charge to the state bar regarding the conduct of a lawyer. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. “Complaint” -- 9. “Court” [[No change]]

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules, including those sanctions and limitations provided in these rules and ACJA 7-209 for alternative business structures and ACJA 7-210 for limited license legal practitioners. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” -- 16. “Member” [[No change]]

17. “Misconduct” means any conduct by an individual sanctionable under these rules, including unprofessional conduct as defined in Rule 41(a) or conduct that is eligible for diversion, any conduct by an alternative business structure actionable under these rules or ACJA 7-209, or any conduct by a limited license legal practitioner actionable under these rules or ACJA 7-210.

18. “Non-member” -- 20. “Record,” [[No change]]

21. “Respondent” means a member, including limited license legal practitioners or non-member, including an ABS or its nonlawyer members, against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” -- 24. “State bar file” [[No change]]

Rule 47. General Procedural Matters

(a) - (b) [[No change]]

(c) Service. Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. *Service of Complaint.*

(A) *Individual Respondents*. Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(4)(iii). When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(B) *ABS Respondents*. Service of the complaint in any discipline proceeding against a licensed ABS or its members may be made on the designated agent for service per ACJA 7-209 or the respondent’s counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent, respondent’s counsel, or the designated agent for service pursuant to ACJA 7-209. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. *Service of Subpoena.* [[No change]]

(d) - (l) [[No change]]

Rule 48. Rules of Construction

(a) – (c) [[No change]]

(d) Standard of Proof.

1. *Lawyers*. Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer who fails to maintain trust account records as required by ER 1.15 or-Rule 43, Ariz. R. S. Ct, or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

2. *ABS*. Allegations in a complaint or applications for reinstatement, shall be established by a preponderance of the evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any ABS that fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or that fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

(**e) Burden of Proof.** The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant. The burden on an ABS seeking licensure after a period of revocation or suspension is on respondent ABS.

(f) – (i) [[No change]]

Rule 49. Bar Counsel

(a) - (b) [[No change]]

(c) Powers and Duties of Chief Bar Counsel. Acting under the authority granted by this Court and under the direction of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member, including limited license legal practitioners, or non-member and for the coordination of such investigations; supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. [[No change]]

B. Disclosure to National Discipline Data Bank. [[No change]]

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement as well as all sanctions against alternative business structures to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) Disbarment, suspension, interim suspension, reprimand, and reinstatement shall be posted for an indefinite period of time.

(ii) Probation (including admonition with probation), restitution and costs shall be posted for two (2) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iii) A finding of contempt of a supreme court order shall be posted for five (5) years from the effective date of the order or until the contempt is purged, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iv) A transfer to disability inactive status shall be posted while the order is in effect.

(v) An administrative or summary suspension shall be posted while the suspension is in effect.

(vi) Revocation, suspension, reprimand, and licensing after a period of revocation involving an alternative business structure shall be posted for an indefinite period of time.

D. Notice to Courts. [[No change]]

3. *Report.* [[No change]]

(d) [[No change]]

Rule 50. Attorney Discipline Probable Cause Committee

(a) – (d) [[No change]]

(e) Powers and Duties of the Committee. Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, including ACJA 7-209 and 7-210, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);

2. periodically report to the court on the operation of the committee;

3. recommend to the court proposed changes or additions to the rules of procedure for discipline and disability proceedings; and

4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

(f) – (h) [[No change]]

Rule 51. Presiding Disciplinary Judge

(a) – (b) [[No change]]

(c) Powers and Duties of the Presiding Disciplinary Judge. The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. appoint a staff in accordance with an approved budget as necessary to assist the presiding disciplinary judge in the administration of the judge's office and in the performance of the judge's duties;

2. order the parties in disciplinary proceedings to attend a settlement conference;

3. impose discipline on an attorney, alternative business structure, or limited license legal practitioner; transfer an attorney to disability inactive status; and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. shorten or expand time limits set forth in these rules, as the presiding disciplinary judge, in the exercise of discretion, determines necessary;

5. enlist the assistance of members of the bar to conduct investigations in conflict cases;

6. periodically report to the court on the operation of the office of the presiding disciplinary judge;

7. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings, including rules and ACJA 7-209 and 7-210 governing discipline of alternative business structures and limited license legal practitioners; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

(d) [[No change]]

Rule 54. Grounds for Discipline

Grounds for discipline of members, including limited license legal practitioners, non-members, and alternative business structures include the following:

(a) – (h) [[No change]]

(i) Unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a).

(j) Violations of ACJA 7-209.

(k) Violations of ACJA 7-210.

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity. This shall include any allegation involving a violation of these rules or ACJA 7-209 or ACJA 7-210 by alternative business structures and limited license legal practitioners.

1. If bar counsel determines the lawyer, alternative business structure, or a limited license legal practitioner is not subject to the disciplinary jurisdiction of the supreme court, bar counsel shall refer the information to the appropriate entity.

2. If bar counsel determines the lawyer, alternative business structure, or limited license legal practitioner is subject to the disciplinary jurisdiction of the court, bar counsel shall, in the exercise of bar counsel's discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted; or

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

(b) Screening Investigation and Recommendation by Bar Counsel. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that respondent is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* [[No change]]

2. *Action Taken by Bar Counsel.* [[No change]]

(c) [[No change]]

Rule 56. Diversion

(a) [[No change]]

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to an attorney, alternative business structure, or limited license legal practitioner based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer, alternative business structure, or limited license legal practitioner committed professional misconduct, the lawyer is incapacitated, or the lawyer, alternative business structure, or limited license legal practitioner does not wish to contest the evidence of misconduct and bar counsel and the respondent agree that diversion will be appropriate;

2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;

3. the cause or basis of the professional misconduct by an individual lawyer, alternative business structure, or limited license legal practitioner or incapacity of an individual lawyer is subject to remediation or resolution through alternative programs or mechanisms, including:

A. medical, psychological, or other professional treatment, counseling or assistance,

B. appropriate educational courses or programs,

C. mentoring or practice monitoring services,

D. dispute resolution programs, or

E. any other program or corrective course of action agreed upon by bar counsel and respondent to address respondent's misconduct;

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and

5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion agreement or order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney, or alternative business structure, or limited license legal practitioner and bar

counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent.

1. *Consent to Discipline.* [[No change]]

2. *Form of Agreement*. An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. Violations. Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule or ACJA section that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. Forms of Discipline. -- F. Use of Standardized Documents. [[No change]]

3. *Procedure.* [[No change]]

4. *Presiding Disciplinary Judge Decision.* [[No change]]

5. *Disbarment by Consent.* [[No Change]]

(b) [[No Change]]

Rule 58. Formal Proceedings

(a) Complaint. Formal discipline proceedings shall be instituted by bar counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint against any respondent and all subsequent pleadings filed before the presiding disciplinary judge should be captioned to identify the type of respondent: member of the State Bar of Arizona, licensed alternative business structure, or limited license legal practitioner.

2. *Service of Complaint.* Bar counsel shall serve the complaint upon the respondent within five (5) days of filing and in the manner set forth in Rule 47(c). Upon receipt of the complaint and notice that bar counsel has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to the presiding disciplinary judge and advise the respondent in writing of respondent's right to retain counsel.

(b) – (j) [[No change]]

(k) Decision. Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written decision containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed against individual lawyers shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. Sanctions imposed against an ABS shall be determined in accordance ACJA 7-209 and to the extent applicable, with the American Bar Association *Standards for Imposing Lawyer Sanctions*. The decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the decision and indicate the basis of the dissent in the decision. The disciplinary clerk shall serve a copy of the decision on respondent and on bar counsel of record. The hearing panel shall notify the parties when the decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

Rule 60. Sanctions

(a) Types and Forms of Sanctions, lawyers. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment*. [[No change]]
2. *Suspension*. [[No change]]
3. *Reprimand*. [[No change]]
4. *Admonition*. [[No change]]
5. *Probation.* [[No change]]
6. *Restitution*. [[No change]]

(b) Types and Forms of Sanctions, ABS. Misconduct by an ABS shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-209.

(c) Types and Forms of Sanctions, LLLP. Misconduct by an LLLP shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-210.

(d) Assessment of the Costs and Expenses. [[No change to text]]

(e) Enforcement. [[No change to text]]

VI. UNAUTHORIZED PRACTICE OF LAW

Rule 75. Jurisdiction

(a) Jurisdiction. This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(b) of these rules or any entity providing legal services contrary to the requirements of Rule 31.1(b). Proceedings against non-members or entities may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

(b) Definitions. The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rules 31(b), (c); 31.1; and 41(a) shall apply.

2. “Bar counsel” [[No change]]

3. “Charge” means any allegation of misconduct or incapacity of a lawyer or entity or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.

4. “Committee” [[No change]]

5. “Complainant” means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer or entity regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.

6. “Complaint” through 11. “Record” [[No change]]

12. “Respondent” is any person or entity subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

13. “State bar” through 16. “Unauthorized practice of law proceeding” [[No change]]

Rule 76. Grounds for Sanctions, Sanctions and Implementation

(a) Grounds for Sanctions. Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule 31.2.

2. Willful disobedience or violation of a court ruling or order requiring the individual or entity to do or forbear to do an act connected with the unauthorized practice of law.

3. [[No change]]

(b) Sanctions and Dispositions.

1. *Agreement to Cease And Desist*. [[No change]]

2. *Cease and Desist Order*. [[No change]]

3. *Injunction*. [[No change]]

4. *Civil Contempt*. [[No change]]

6. *Civil Penalty.* The superior court may order a civil penalty up to $25,000 against every respondent upon whom another sanction is imposed.

7. *Costs and Expenses*. [[No change to text]]

(c) Implementation of Cease and Desist Sanction. [[No change]]

Appendix 2B: Restyled and Amended Rule 31; Proposed Amended Rules 32, 41, 46-51, 54-58, 60, 75-76; and Proposed New Rule 33.1 (Markup)

Rule 31. Supreme Court Jurisdiction[3]

(a) Jurisdiction. The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized "practice of law" in Arizona, as that phrase is defined in (b). The Arizona Supreme Court also has jurisdiction over any ABS who is licensed pursuant to Rule 31.1(b) and ACJA 7-209.

(b) Definition. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing or expressing legal opinions to or for another person or entity;

(2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;

(3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;

(4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or

(5) preparing a document, in any medium, intended to affect or secure a specific person's or entity's legal rights.

Rule 31.1. Authorized Practice of Law.

(a) Requirement. A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

(1) the person is an active member in good standing of the State Bar of Arizona under Rule 32; or

(2) the person is specifically authorized to do so under Rules 31.3, 38, or 39.

(b) Alternative Business Structure (ABS). An entity that includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide legal services to third parties only if:

[3] Rules 31 through 31.3 as presented in this appendix represents the restyling of Rule 31 as discussed in the petition. Underlined content represents proposed amendments related only to the regulation of ABSs or LLLPs.

(1) it employs at least one person who is an active member in good standing of the State Bar of Arizona under Rule 32 who supervises the practice of law under ER 5.3;

(2) it is licensed pursuant to ACJA § 7-209; and

(3) legal services are only provided by persons authorized to do so and in compliance with the Rules of Supreme Court.

(c) Lack of Good Standing. A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

Rule 31.2. Unauthorized Practice of Law. Except as provided in Rule 31.3, a person, entity, or ABS who is not authorized to practice law in Arizona under Rule 31.1(a), (b) or Rule 31.3 must not:

(a) engage in the practice of law or provide legal services in Arizona; or

(b) use the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," "alternative business structure (ABS)" or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law or provide legal services in Arizona.

Rule 31.3. Exceptions to Rule 31.2.

(a) Generally.

(1) Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court's jurisdiction concerning that activity.

(2) A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage in any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(3) An ABS whose license has been suspended or revoked may not engage in any of the activities specified in this rule, except an ABS whose license has been suspended may engage in activities as expressly authorized by judgment or order of this court, the presiding disciplinary judge, or a hearing panel.

(b) Governmental Activities and Court Forms.

(1) ***In Furtherance of Official Duties.*** An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity's regular course of business.

(2) ***Forms.*** The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

(c) Legal Entities.

(1) ***Definition.*** "Legal entity" means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, or a trust.

(2) ***Documents.*** A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity's use and are not made available to third parties.

(3) ***Justice and Municipal Courts.*** A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) ***General Stream Adjudication Proceeding.*** A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity but is secondary or incidental to other duties related to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) ***Administrative Hearings and Agency Proceedings.*** A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency commission, or board, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) ***Exception.*** Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(d) Tax-Related Activities and Proceedings.

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than $25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claim proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

(i) a certified public accountant,

(ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

(iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than $5,000, the taxpayer's duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

(i) the person is full-time officer partner, member, manager, or employee of the entity;

(ii) the entity has specifically authorized the person to represent it in the proceeding;

(iii) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

(e) Other.

(1) ***Children with Disabilities.*** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(2) ***Department of Fire, Building and Life Safety.*** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not is not charging a fee for the representing the party (other than receiving reimbursement for costs).

(3) ***Fiduciaries.*** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary's authority to act without an attorney if it determines that lay representation is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(4) ***Legal Document Preparers and Limited License Legal Practitioners.*** Certified legal document preparers and limited license legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. Disbarred or suspended attorneys may only be certified as a legal document preparer or licensed as a limited license legal practitioner if approved by the Supreme Court.

(5) ***Mediators.***

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:

(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

(6) ***Nonlawyer Assistants and Out-of-State Attorneys.***

(A) A nonlawyer assistant may act under an attorney's supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a)(2) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

(7) ***Personnel Boards.*** An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

(8) ***State Bar Fee Arbitration***. A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

Rule 32. Organization of State Bar of Arizona.

(a) State Bar of Arizona. The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law*. [[No change]]

2. *Mission*. The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers and those engaged in the authorized practice of law ~~practicing~~ in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its ~~individual~~ members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; assist the Court with the regulation and discipline of alternative business structures (ABS) and limited license legal practitioners (LLLP); foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers, ABSs, and LLLPs:

1. “Board” [[No change]]

2. “Court”[[No change]]

3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so

requires. Discipline includes sanctions and limitations on ABSs as provided in these rules and ACJA 7-209 and LLLPs as provided in these rules and ACJA 7-210.

4. "Discipline proceeding" and "disability proceeding" [[No change]]

5. "Member" [[No change]]

6. "Non-member" [[No change]]

7. "Respondent" means any person, ABS, or LLLP subject to the jurisdiction of the court against whom a charge is received for violation of these rules or ACJA 7-209 or ACJA 7-210.

8. "State bar" [[No change]]

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, retired, suspended, ~~and~~ judicial, and affiliate. Disbarred or resigned persons are not members of the bar.

2. *Active Members*. Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, ~~or~~ judicial, or affiliate members.

3. *Affiliate Members.* Limited license legal practitioners (LLLPs) are affiliate members for purposes of regulation and discipline under these rules.

~~3.~~ 4. *Admission, Licensure and Fees*. ~~All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar~~. Upon admission to the state bar or licensure as an LLLP, ~~the applicant~~ a person:

(i) shall pay a fee as required by the supreme court, which shall include the annual membership fee for ~~active~~ members of the state bar. If ~~an applicant~~ a person is admitted or licensed ~~to the state bar~~ on or after July 1 in any year, the annual membership fee ~~payable upon admission~~ shall be reduced by one half.

(ii) Upon admission to the state bar, ~~an~~ a lawyer applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court.

(iii) All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall

be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

~~4.~~ 5. *Inactive Members.* [[No change to text]]

~~5.~~ 6. *Retired Members.* [[No change to text]]

~~6.~~ 7. *Judicial Members*. [[No change to text]]

~~7~~ 8. *Membership Fees.* An annual membership fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Chief Executive Officer/Executive Director may waive all or part of the dues of any other member for reasons of personal hardship. Both the grant or denial of an application shall be reported to the board. Denial of a personal hardship waiver shall be reviewed by the board. The board should take all steps necessary to protect private information relating to the application.

~~8~~ 9. *Computation of Fee*. The annual membership fee shall be composed of an amount for the operation of the activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, and each affiliate member shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.

~~9~~ 10. *Allocation of fee.* Upon payment of the membership fee, each individual lawyer member shall receive a bar card and each LLLP shall receive a certificate of licensure, issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

~~10~~ 11. *Delinquent Fees*. A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

~~11~~ 12. *Resignation.* [[No change to text]]

~~12~~ 13. *Insurance Disclosure*.

A. Each active and affiliate member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer or limited license legal practitioner is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer or limited license legal practitioner is currently covered by professional liability insurance. Each ~~active~~ member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A ~~lawyer~~ member who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by ~~active~~ members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active or affiliate member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer or limited license legal practitioner complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer or limited license legal practitioner to appropriate disciplinary action.

(d) Powers of Board. [[Only change is to subpart 2. As reflected below]]

2. Promote and aid in the advancement of the science of jurisprudence, the education of ~~lawyers~~ legal professionals and the improvement of the administration of justice.

(e) – (g) [[No change]]

(h) Administration of rules. Examination and admission of lawyer members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Examination and licensure of limited license legal practitioners shall be administered by the Administrative Office of Courts as provided in ACJA 7-210. Licensure of alternative business structures shall be by the Committee on Alternative Business Structures, as provided in these rules and ACJA 7-209. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) – (k) [[No change]]

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, including the membership, mandatory continuing legal education and disability of limited license legal practitioners, except that costs and expenses shall be taxed against a respondent ~~lawyer~~ or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission, including expenses related to application for licensure and examination of limited license legal practitioners. The State Bar and Administrative Office of Courts may recoup extraordinary costs beyond the schedule of fees adopted by the Court relating to an alternative business structure application for licensure or administration and enforcement of these rules against an alternative business structure.

(m) [[No change]]

Proposed New Rule 33.1. Committee; Entity Regulation

(a) Committee.

1. *Creation of the Committee*. The review of applications and licensure of alternative business structures shall conform to this rule and ACJA 7-209. For such purposes, there shall be a Committee on Alternative Business Structures. The Committee on Alternative Business Structures shall consist of eleven members.

2. *Appointment of Members*. Members of the Committee and its Chair shall be appointed by the Court, considering geographical, gender, and ethnic diversity. Members shall serve at the pleasure of the Court and may be removed from the Committee at any time by order of the Court. A member of the Committee may resign at any time.

3. *Terms of Office*. Members of the Committee will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may be reappointed. If a vacancy exists due to resignation or inability of a board member to serve, the Court shall appoint another person to serve the unexpired term.

4. *Powers and Duties of the Committee*. The Committee on Alternative Business Structures shall review applications for licensure and recommend to the Court for licensure those applicants who are deemed by the Board to be qualified pursuant to ACJA § 7-209.

(b) Decision Regarding Licensure. The Committee shall recommend approval of applications if the requirements in this rule and in ACJA are met by the applicant. The Committee's recommendation shall state the factors in favor of approval.

(1) Decisions of the Committee must take into consideration the following regulatory objectives:

(A) protecting and promoting the public interest;

(B) promoting access to legal services

(C) advancing the administration of justice and the rule of law;

(D) encouraging an independent, strong, diverse, and effective legal profession; and

(E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

(A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;

(B) the alternative business structure maintains proper standards of work;

(C) the lawyer makes decisions in the best interest of clients;

(D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and

(E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

(c) Power of Court to Revoke or Suspend License. Nothing contained in this rule shall be considered as a limitation upon the power and authority of this Court upon petition of the Committee on Alternative Business Structures, probable cause committee, bar counsel, or on its own motion, to file a petition with the presiding disciplinary judge to revoke or suspend, after due notice and hearing, the license of an alternative business structure in this state for fraud or material misrepresentation in the procurement the ABS's license.

(d) Practice in Courts. No alternative business structure shall employ any person to provide legal services in the State of Arizona unless the person is licensed to practice law or otherwise authorized to provide legal services under Rule 31.1 or 31.3

(e) Retention and Confidentiality of Records of Applicants. The records of applicants for licensure pursuant to ACJA 7-209 shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of Supreme Court. The records and the proceedings concerning an application for licensure shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for licensure and the proceedings of the Board concerning an application for licensure in connection with any proceeding before the Court. In addition, the Board or designated staff may disclose their respective records pertaining to an applicant for licensure to:

1. any licensing authority in another any other state the applicant seeks similar licensure;

2. bar counsel for discipline enforcement purposes; and

3. a law enforcement agency, upon subpoena or good cause shown.

(f) Immunity from Civil Suit.

1. The Court, the Board, and the members, staff, employees, and agents thereof, are immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the licensing of applicants seeking to be licensed to practice law.

2. Records, statements of opinions and other information regarding an applicant for licensure communicated by any person, form, or institution, without malice, to the Court or the Board, and the members, staff, employees, and agents thereof, are privileged, and civil suits predicated thereon may not be instituted.

Rule 41. Duties and Obligations of Members[4]

(a) Definition.

"Unprofessional conduct" means substantial or repeated violations of the oath of Admission to the State Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

(b) Duties and Obligations. The duties and obligations of members shall be:

(~~a~~ 1) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these Rules.

(~~b~~ 2) To support the constitution and the laws of the United States and the State of Arizona.

(~~c~~ 3) To maintain the respect due to courts of justice and judicial officers.

(~~d~~ 4) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.

(~~e~~ 5) To be honest in dealings with others and not make false or misleading statements of fact or law.

(~~f~~ 6) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client's knowledge and approval.

(~~g~~ 7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

(~~h~~ 8) To support the fair administration of justice, professionalism among lawyers, and legal representation for those unable to afford counsel.

(~~I~~ 9) To protect the interests of current and former clients by planning for the lawyer's termination of or inability to continue a law practice, either temporarily or permanently.

(c) Oath and Creed. The Oath of Admission to the Bar and Lawyer's Creed of Professionalism of the State Bar of Arizona are as follows.

[4] Definition of "unprofessional conduct", Oath of Admission, and Lawyers Creed of Professionalism are inserted into Rule 41 due to their deletion in restyled Rule 31. The only amendment to Rule 41 is to change the subsection numbering. without change or amendment from text in current Rule 31.

Oath of Admission to the Bar

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with respect;

I will not counsel or maintain an action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

A Lawyer's Creed of Professionalism of the State Bar of Arizona

Preamble

As a lawyer, I must strive to make our system of justice work fairly and efficiently. To carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all lawyers and I will conduct myself in accordance with the following Code of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;

2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;

3. In appropriate cases, I will counsel my client with respect to alternative methods of resolving disputes;

4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of a matter or to harass or drain the financial resources of the opposing party;

5. I will advise my client that civility and courtesy are not to be equated with weakness;

6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with effective and honorable representation.

B. With respect to opposing parties and their counsel:

1. I will be courteous and civil, both in oral and written communication;

2. I will not knowingly make statements of fact or law that are untrue;

3. In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected;

4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

5. I will not utilize litigation or any other course of conduct to harass the opposing party;

6. I will not engage in excessive and abusive discovery; and I will advise my client to comply with all reasonable discovery requests;

7. I will not threaten to seek sanctions against any party or lawyer unless I believe that they have a reasonable basis in fact and law;

8. I will not delay resolution of a matter, unless the delay is incidental to an action reasonably necessary to ensure the fair and efficient resolution of that matter;

9. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and not be rude or disrespectful;

10. I will not serve motions and pleadings on the other party or the party's counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

11. In business transactions I will not quarrel over matters of form or style but will concentrate on matters of substance and content;

12. I will identify clearly, for other counsel or parties, all changes that I have made in the documents submitted to me for review.

C. With respect to the courts and other tribunals:

1. I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice;

2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;

4. I will not file frivolous motions;

5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel and, if appropriate, the court (or other tribunal) as early as possible;

8. Before dates for hearings or trial are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;

10. I will endeavor to be punctual in attending court hearings, conferences, and dispositions;

11. I will at all times be candid with, and respectful to, the tribunal.

D. With respect to the public and our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

2. I will keep current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field or practice;

3. As a member of a self-regulating profession, I will be mindful of my obligations under the Rules of Professional Conduct to report violations of those Rules;

4. I will be mindful of the need to protect the integrity of the legal profession and will be so guided when considering methods and contents of advertising;

5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement or administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

(a) [[No change]]

(b) Licensed Alternative Business Structures. Any entity licensed as an alternative business structure and its members are subject to the disciplinary jurisdiction of this court. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-209 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for licensure may result in revocation of the alternative business structure's license.

(c) Limited License Legal Practitioners. Any person licensed as a limited license legal practitioner is subject to the disciplinary jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-210 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant may result in revocation of the limited license legal practitioner's license.

(~~b~~ d) Non-members. [[No change to text]]

(~~c~~ e) Former Judges. [[No change to text]]

(~~d~~ f) Incumbent Judges. [[No change to text]]

(e g) Disbarred Lawyers. [[No change to text]]

(~~f~~ h) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. "Acting presiding disciplinary judge" -- 4. "Charge" [[No change]]

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona unless stated otherwise.

6. "Complainant" means a person who initiates a charge against a lawyer or entity or later joins in a charge to the state bar regarding the conduct of a lawyer. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. “Complaint” -- 9. “Court” [[No change]]

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules, including those sanctions and limitations provided in these rules and ACJA 7-209 for alternative business structures and ACJA 7-210 for limited license legal practitioners. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” -- 16. “Member” [[No change]]

17. “Misconduct” means any conduct by an individual sanctionable under these rules, including unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a) or conduct that is eligible for diversion, any conduct by an alternative business structure actionable under these rules or ACJA 7-209, or any conduct by a limited license legal practitioner actionable under these rules or ACJA 7-210.

18. “Non-member” -- 20. “Record,” [[No change]]

21. “Respondent” means a member, including limited license legal practitioners or non-member, including an ABS or its nonlawyer members, against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” -- 24. “State bar file” [[No change]]

Rule 47. General Procedural Matters

(a) - (b) [[No change]]

(c) Service. Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. *Service of Complaint.*

(A) *Individual Respondents*. Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(4)(iii) ~~32(c)(3)~~. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(B) *ABS Respondents*. Service of the complaint in any discipline proceeding against a licensed ABS or its members may be made on the designated agent for service per ACJA 7-209 or the respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent, respondent's counsel, or the designated agent for service pursuant to ACJA 7-209. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. *Service of Subpoena.* [[No change]]

(d) - (l) [[No change]]

Rule 48. Rules of Construction

(a) – (c) [[No change]]

(d) Standard of Proof.

1. *Lawyers*. Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer who fails to maintain trust account records as required by ER 1.15 or-Rule 43, Ariz. R. S. Ct, or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

2. *ABS*. Allegations in a complaint or applications for reinstatement, shall be established by a preponderance of the evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any ABS that fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or that fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

(**e) Burden of Proof.** The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant. The burden on an ABS seeking licensure after a period of revocation or suspension is on respondent ABS.

(f) – (i) [[No change]]

Rule 49. Bar Counsel

(a) - (b) [[No change]]

(c) Powers and Duties of Chief Bar Counsel. Acting under the authority granted by this Court and under the direction of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member, including limited license legal practitioners, or non-member and for the coordination of such investigations; supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. [[No change]]

B. Disclosure to National Discipline Data Bank. [[No change]]

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement as well as all sanctions against alternative business structures to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) Disbarment, suspension, interim suspension, reprimand, and reinstatement shall be posted for an indefinite period of time.

(ii) Probation (including admonition with probation), restitution and costs shall be posted for two (2) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iii) A finding of contempt of a supreme court order shall be posted for five (5) years from the effective date of the order or until the contempt is purged, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iv) A transfer to disability inactive status shall be posted while the order is in effect.

(v) An administrative or summary suspension shall be posted while the suspension is in effect.

(vi) Revocation, suspension, reprimand, and licensing after a period of revocation involving an alternative business structure shall be posted for an indefinite period of time.

D. Notice to Courts. [[No change]]

3. *Report.* [[No change]]

(d) [[No change]]

Rule 50. Attorney Discipline Probable Cause Committee

(a) – (d) [[No change]]

(e) Powers and Duties of the Committee. Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, including ACJA 7-209 and 7-210, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);

2. periodically report to the court on the operation of the committee;

3. recommend to the court proposed changes or additions to the rules of procedure for ~~attorney~~ discipline and disability proceedings; and

4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

(f) – (h) [[No change]]

Rule 51. Presiding Disciplinary Judge

(a) – (b) [[No change]]

(c) Powers and Duties of the Presiding Disciplinary Judge. The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. appoint a staff in accordance with an approved budget as necessary to assist the presiding disciplinary judge in the administration of the judge's office and in the performance of the judge's duties;

2. order the parties in disciplinary proceedings to attend a settlement conference;

3. impose discipline on an attorney, alternative business structure, or limited license legal practitioner; transfer an attorney to disability inactive status; ~~,~~ and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. shorten or expand time limits set forth in these rules, as the presiding disciplinary judge, in the exercise of discretion, determines necessary;

5. enlist the assistance of members of the bar to conduct investigations in conflict cases;

6. periodically report to the court on the operation of the office of the presiding disciplinary judge;

7. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings, including rules and ACJA 7-209 and 7-210 governing discipline of alternative business structures and limited license legal practitioners; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

(d) [[No change]]

Rule 54. Grounds for Discipline

Grounds for discipline of members, including limited license legal practitioners, ~~and~~ non-members, and alternative business structures include the following:

(a) – (h) [[No change]]

(i) Unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a).

(j) Violations of ACJA 7-209.

(k) Violations of ACJA 7-210.

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity. This shall include any allegation involving a violation of these rules or ACJA 7-209 or ACJA 7-210 by alternative business structures and limited license legal practitioners.

1. If bar counsel determines the lawyer, alternative business structure, or a limited license legal practitioner is not subject to the disciplinary jurisdiction of the supreme court, bar counsel shall refer the information to the appropriate entity.

2. If bar counsel determines the lawyer, alternative business structure, or limited license legal practitioner is subject to the disciplinary jurisdiction of the court, bar counsel shall, in the exercise of bar counsel's discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted; or

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

(b) Screening Investigation and Recommendation by Bar Counsel. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that ~~he or she is~~ respondent is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* [[No change]]

2. *Action Taken by Bar Counsel.* [[No change]]

(c) [[No change]]

Rule 56. Diversion

(a) [[No change]]

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to ~~the~~ an attorney, alternative business structure, or limited license legal practitioner based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer, alternative business structure, or limited license legal practitioner committed professional misconduct, the lawyer is incapacitated, or the lawyer, alternative business structure, or limited license legal practitioner does not wish to contest the evidence of misconduct and bar counsel and the respondent agree that diversion will be appropriate;

2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;

3. the cause or basis of the professional misconduct by an individual lawyer, alternative business structure, or limited license legal practitioner or incapacity of an individual lawyer is subject to remediation or resolution through alternative programs or mechanisms, including:

A. medical, psychological, or other professional treatment, counseling or assistance,

B. appropriate educational courses or programs,

C. mentoring or practice monitoring services,

D. dispute resolution programs, or

E. any other program or corrective course of action agreed upon by bar counsel and respondent to address respondent's misconduct;

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and

5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion agreement or order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney, or alternative business structure, or limited license legal practitioner and bar

counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent.

1. *Consent to Discipline.* [[No change]]

2. *Form of Agreement*. An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. ~~Rule~~ Violations. Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule or ACJA section that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. Forms of Discipline. -- F. Use of Standardized Documents. [[No change]]

3. *Procedure.* [[No change]]

4. *Presiding Disciplinary Judge Decision.* [[No change]]

5. *Disbarment by Consent.* [[No Change]]

(b) [[No Change]]

Rule 58. Formal Proceedings

(a) Complaint. Formal discipline proceedings shall be instituted by bar counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint against any respondent and all subsequent pleadings filed before the presiding disciplinary judge should be captioned to identify the type of respondent: member of the State Bar of Arizona, licensed alternative business structure, or limited license legal practitioner.

~~BEFORE THE PRESIDING DISCIPLINARY JUDGE~~

~~In the Matter of a Member)~~
~~of the State Bar of Arizona,)~~
~~(Name))~~
~~Bar No./License No. 000000)~~

2. *Service of Complaint.* Bar counsel shall serve the complaint upon the respondent within five (5) days of filing and in the manner set forth in Rule 47(c). Upon receipt of the complaint and notice that bar counsel has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to the presiding disciplinary judge and advise the respondent in writing of respondent's right to retain counsel.

(b) – (j) [[No change]]

(k) Decision. Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written decision containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed against individual lawyers shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. Sanctions imposed against an ABS shall be determined in accordance ACJA 7-209 and to the extent applicable, with the American Bar Association *Standards for Imposing Lawyer Sanctions*. The decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the decision and indicate the basis of the dissent in the decision. The disciplinary clerk shall serve a copy of the decision on

respondent and on bar counsel of record. The hearing panel shall notify the parties when the decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

Rule 60. Sanctions

(a) Types and Forms of Sanctions, lawyers. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment*. [[No change]]
2. *Suspension*. [[No change]]
3. *Reprimand*. [[No change]]
4. *Admonition*. [[No change]]
5. *Probation.* [[No change]]
6. *Restitution*. [[No change]]

(b) Types and Forms of Sanctions, ABS. Misconduct by an ABS shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-209.

(c) Types and Forms of Sanctions, LLLP. Misconduct by an LLLP shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-210.

(~~b~~ d) Assessment of the Costs and Expenses. [[No change to text]]

(~~c~~ e) Enforcement. [[No change to text]]

VI. UNAUTHORIZED PRACTICE OF LAW

Rule 75. Jurisdiction

(a) Jurisdiction. This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(b) ~~31(a)~~ of these rules or any entity providing legal services contrary to the requirements of Rule 31.1(b). Proceedings against non-members or entities may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

(b) Definitions. The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rules 31(b), (c); 31.1; and 41(a) ~~31(a)(2)~~ shall apply.

2. "Bar counsel" [[No change]]

3. "Charge" means any allegation of misconduct or incapacity of a lawyer or entity or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.

4. "Committee" [[No change]]

5. "Complainant" means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer or entity regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.

6. "Complaint" through 11. "Record" [[No change]]

12. "Respondent" is any person or entity subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

13. "State bar" through 16. "Unauthorized practice of law proceeding" [[No change]]

Rule 76. Grounds for Sanctions, Sanctions and Implementation

(a) Grounds for Sanctions. Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule ~~31~~ 31.2.

2. Willful disobedience or violation of a court ruling or order requiring the individual or entity to do or forbear to do an act connected with the unauthorized practice of law.

3. [[No change]]

(b) Sanctions and Dispositions.

1. *Agreement to Cease And Desist*. [[No change]]

2. *Cease and Desist Order*. [[No change]]

3. *Injunction*. [[No change]]

4. *Civil Contempt*. [[No change]]

6. *Civil Penalty*. The superior court may order a civil penalty up to $25,000 against every respondent upon whom another sanction is imposed.

7. *Costs and Expenses*. [[No change to text]]

(c) Implementation of Cease and Desist Sanction. [[No change]]

STATE BAR OF ARIZONA

BOG'S RULES REVIEW COMMITTEE
Reporting Form

Please begin typing in the shaded box.

NAME: Kelly L. Mendoza PHONE: 602-255-6000

EMAIL ADDRESS: klm@tblaw.com

REPRESENTING: Family Law Practice and Procedure Committee

WHO WILL APPEAR BEFORE THE COMMITTEE?

SUBJECT: R-20-0034 Petition to Restyle and Amend Supreme Court Rule 31; Adopt New Rule 33.1; and Amend Rules 32, 41, 42 (Various ERs from 1.0 to 5.7), 46-51, 54-58, 60, and 75-76

BACKGROUND OF ISSUE:

Access to justice is an important issue that all agree needs to be addressed and undertaken to better serve the public's ability to have assistance in dealing with the court system. The proposed Petition to allow LLLPs as written will inevitably hurt unknowing consumers.

ISSUE(S) (*please be specific*):

The Committee understands and acknowledges the value to the public in this path toward professionals other than attorneys being able to assist parties in this manner however the proposed language as written lacks specificity in many areas and seems rushed. Some areas of significant concern are the lack of specificity of training requirements, testing or exam for certification, educational standards or requirements, lack of character and fitness requirement, lack of insurance requirements, and lack of supervisory requirement.

DISCUSSION/ANALYSIS:

The Committee feels that this change is being pushed through to quickly without the proper vetting and concern for the potential negative impact on the public. Many issues noted above need to be addressed prior to allowing LLLPs to begin practice. The Committee believes that there should also be apprenticeship requirements under a practicing attorney who would have supervisory liability or other regular oversight.

RECOMMENDED RULES REVIEW COMMITTEE ACTION:

Submit this Reporting Form for consideration.

VOTE OF THE COMMITTEE/SECTION (*if applicable*):

WAS A QUORUM PRESENT FOR THE VOTE? X YES _____ NO

VOTE WAS: X UNANIMOUS _____ TO _____

IF YOUR COMMITTEE OR SECTION HAS A BREAKDOWN AMONG MEMBERS OF DEFENSE/PROSECUTION OR PLAINTIFF/DEFENSE COUNSEL, OR IF ANY OTHER SPLIT EXISTS, HOW WAS THE VOTE SPLIT AMONG THOSE GROUPS?

HOW WILL THIS PROPOSAL IMPACT THE STATE BAR'S BUDGET? STATE BAR STAFF?

It will not.

IS THE RECOMMENDED ACTION CONSISTENT WITH THE KELLER DECISION?

X YES _____ NO

DOES THIS ISSUE RELATE TO (check any that apply):

_____ REGULATING THE PROFESSION

X IMPROVING THE QUALITY OF LEGAL SERVICES

_____ IMPROVING THE FUNCTIONING OF THE SYSTEM OF JUSTICE

_____ INCREASING THE AVAILABILITY OF LEGAL SERVICES TO THE PUBLIC

_____ REGULATION OF TRUST ACCOUNTS

_____ EDUCATION, ETHICS, COMPETENCY, AND INTEGRITY OF THE LEGAL PROFESSION

(Note that *Keller v. State Bar of California*, 496 U.S. 1 (1990), prohibits the expenditure of mandatory bar dues on political or ideological matters unrelated to these objectives.)

Dave Byers[1]
Executive Director, Administrative Office of Courts
Member, Task Force on the Delivery of Legal Services
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of	)
	) Arizona Supreme Court No. R-20-___
PETITION TO AMEND	)
RULE 42, OF THE SUPREME	)
COURT RULES, ERs 7.1 to 7.5	)
_____	)

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Task Force on the Delivery of Legal Services ("Task Force") petitions the Court to amend Rule 42 of the Arizona Rules of the Supreme Court, as reflected in the attachments hereto, effective January 1, 2021.

I. Introduction and Background.

Established on November 21, 2018, by Arizona Supreme Court Administrative Order 2018-111, the Task Force was asked to address five charges and to make recommendations on each. The Administrative Order gave the chair

[1] Mr. Byers files this petition in his capacity of a member of the Task Force.

discretion to consider and recommend other rule changes on any topic concerning the delivery of legal services.

The Task Force presented its recommendation to the Arizona Judicial Council ("AJC") on October 24, 2019. The Report and Recommendations of the Task Force (*Report*), along with other Task Force information, can be found at the Task Force's webpage: https://www.azcourts.gov/cscommittees/Legal-Services-Task-Force. The AJC approved all recommendations of the Task Force, including the recommendation to amend ethical rules (ERs) 7.1 through 7.5 of Supreme Court Rule 42, which was Recommendation 2 of the report.

A clean version of the proposed amendments for ERs 7.1 through 7.5 is attached at Appendix 1A, and a redline version of the proposed amendments is attached at Appendix 1B.

II. Summary of Proposed Amendments to ERs 7.1 through 7.5.

The proposed amendments address lawyer advertising and incorporate many of the 2018 ABA Model Rule amendments and fulfill the Task Force's charge to identify issues and improvements in the delivery of legal services. As evidenced by Recommendation 2, the Task Force recommends eliminating or amending ethical rules that impede lawyers' ability to provide cost-effective legal services.

The proposed amendments to these ethical rules would:

- retain the rules' primary regulatory mandate of refraining from making false and misleading communications;
- set forth the requirements for who may identify themselves as a "certified specialist" in an area of law;
- maintain reasonable restrictions on direct solicitation of specific potential clients; and
- eliminate obsolete and anticompetitive provisions that unreasonably restrict the dissemination of truthful advertising.

The most significant amendment, which goes beyond the 2018 ABA Model Rule amendments, would eliminate current ER 7.2(b)'s prohibition against giving *anyone* anything of "value" for recommending a lawyer or referring a potential client to a lawyer. Anecdotally, it has been observed that this provision is violated daily because, taken literally, this provision prohibits taking an existing client golfing to say thank you for a referral or giving a firm paralegal a gift card or sending flowers for referring a family member to the firm. Similarly, there are many ethics opinions issued both in Arizona[2] and around the United States that provide convoluted attempts to distinguish between what is permissible "group advertising" versus what is an impermissible "referral service." Not only do these technical interpretations serve no productive regulatory purpose, but the unnecessary complexity in the

[2] *See* State Bar of Ariz. Ops.05-08 (2005), 06-06 (2006); 10-01 (2010), and 11-02 (2011).

regulations stifles lawyers' ability to embrace more efficient online marketing platforms for fear the website or service may be deemed a for-profit referral service.

Rule 7.2(b)'s prohibition against "giving anything of value" exists although there is no quantifiable data evidencing that *for-profit* referral services or even paying for referrals confuses or harms consumers. Consumers do not expect online marketing platforms to be nonprofit operations – which are the only referral services permissible under the current regulatory framework. Note that Florida, one of the most restrictive lawyer advertising jurisdictions in the country, already permits for-profit referral services.

The following summarizes the changes proposed for each ER.

ER 7.1 Communications Concerning a Lawyer's Services

The amended rule retains the existing prohibition against "false and misleading" communications about a lawyer's services. Most bar regulators in the United States have expressed the view that this provision is the rule primarily relied on to regulate lawyer advertising. The current requirements for identifying a lawyer as a "certified specialist" were moved from current ER 7.4 into new ER 7.1(b) and the proposed amendment updates the language from restricting use of the term "specialist" to restricting only the use of the phrase "certified specialist," consistent with the ABA Model Rule. This change avoids constitutional challenges to the overly restrictive prohibition in current ER 7.4, which limits use of the term

"specialist." The proposed changes would also bring Arizona's rule in line with the ABA Model Rule language in noting that lawyers may not identify themselves as "*certified* specialists" unless they comply with the requirements set forth in court rules. The reference in new ER 7.1(b) to new criteria for certified specialist is contained in Supreme Court Rule 44, and this cross-reference will assist lawyers researching Arizona's certified specialist advertising requirements. Explanatory comments from current ER 7.4 have been moved to the comments of ER 7.1 to reassure patent attorneys that their specialization is still recognized.

The amendments also move the requirement that all communications must contain the name of a lawyer or law firm and some "contact" information from ER 7.2(c) into new ER 7.1(c). Comments to 7.1 also now include explanatory comments regarding law firm names that were in current ER 7.5. This is consistent with the 2018 Amendments to the ABA Model Rules of Professional Conduct and clarifies that disbarred lawyers' names and names of lawyers on disability inactive status must be removed from a firm name.

ER 7.2

Current ER 7.2 sets forth specific rules concerning lawyer advertising. The Task Force recommends deleting this rule and moving the substance of current ER 7.2(c) to new ER 7.1(c). Consumer protection afforded by current ER 7.2 can be provided by less non-competitive provisions. For instance, the rules on conflicts of

interest, including ERs 1.7, 1.8, and 1.10, protect clients/consumers because they restrict a lawyer's (and firm's) representation of a client if the lawyer's own interests could "materially limit" the lawyer's independent professional judgment in representing the client. Thus, a lawyer cannot be "forced" to represent a client simply because the client was referred by someone whom the lawyer pays as a referral source. The conflict of interest rules control who and how a lawyer may represent a client, and such representations must be free of any conflict that could materially limit the lawyer's objectivity. Additionally, disclosures revealing that a lawyer will pay referral fees sufficiently informs consumers about the referral system. Such disclosures may be required to comply with ER 7.1's "false and misleading" standard to assure that adequate information is conveyed to website visitors or referral sources about the fact that the site is not a nonprofit operation.

ER 7.3 Solicitation of Clients

Consistent with the 2018 Amendments to the ABA Model Rules, the title of this rule was modified, and a definition of "solicitation" was added. This rule governs direct marketing to individuals with specific needs for legal services, as opposed to general advertising on billboards, business cards, print advertisements, television commercials, websites, and the like. The proposed amendments are narrowly tailored to protect consumers who need legal services in particular matters from overreaching by lawyers. The amendments would preclude, for example,

solicitation letters sent to homeowners in a community where there are known construction defects, car accident victims, members of a neighborhood that has been affected by an environmental hazard, and individuals charged with crimes. As re-defined, "solicitation" would *not* include sending a letter to everyone in a certain zip code simply to introduce a law firm to a general community that does not have a specific legal need (such as an estate planning firm sending letters to everyone in Paradise Valley or a family law attorney sending announcement postcards to all businesses in her business complex, announcing the opening of her office). The definition of "solicitation" also would exempt class action court or rule-required notifications.

ER 7.3 retains the prohibition against in-person (face to face or door-to-door) and real-time electronic (such as telephone calls or Facetime) solicitation, unless the prospective client falls within certain categories of individuals not likely to be overwhelmed by a lawyer's advocacy/solicitation skills, such as other lawyers, a former client, or a family member or friend of the lawyer. And even for these categories of prospective clients, a lawyer cannot solicit them (or anyone) if they have made known that they do not want to be solicited or the communication involves coercion, harassment, or duress. At the same time, an amendment to ER 7.3 adds an exception to the prohibition against in-person solicitation for communications directly with business people who regularly hire lawyers for

business legal services, consistent with the 2018 Amendments to the ABA Model Rules. The Task Force notes that this language was vetted extensively through ABA entities and Bar regulators to assure that the language could not be misinterpreted to mean, for instance, that a lawyer could call someone who regularly hires business lawyers to solicit business for criminal defense, bankruptcy, or family law matters. The language in the proposed amendment limits this category of prospective client to only those who regularly retain counsel for business purposes and therefore are experienced at receiving calls, emails, and meetings with lawyers seeking to represent their companies.

The proposed amendments delete the current Rule's "ADVERTISING MATERIAL" notation requirement for envelopes (and filing requirement), consistent with the 2018 Amendments to the ABA Model Rules. Several jurisdictions, including, for instance, the District of Columbia, Massachusetts, Maine, Pennsylvania, North Dakota, Oregon, and Washington either have never had a notation requirement or deleted the requirement years ago. None of these jurisdictions indicate any consumer confusion in receiving written communications from lawyers. Nor is there any empirical evidence to indicate that the notation serves a necessary purpose in alerting consumers to the contents of an envelope. Given the changes in technology and methods of direct marketing consumers receive on a regular basis, there is far less likelihood of a consumer being confused about the

purpose of a direct mail solicitation letter or email today, than perhaps existed in 1985 when the notation requirement was adopted.

ER 7.4

Current ER 7.4 concerns a lawyer's ability to communicate the lawyer's fields of practice. As noted previously, the requirements for identifying a lawyer as a "certified specialist" was moved to new ER 7.1(b). Comments to ER 7.4 regarding patent attorneys were moved to ER 7.1. The remainder of ER 7.4 has been deleted as duplicative of proposed ER 7.1.

ER 7.5

Current ER 7.5 concerns firm names and letterheads. The ABA deleted ER 7.5 as unnecessary, given that ER 7.5 simply described information in a firm name that might be false or misleading. The Task Force recommends deleting ER 7.5 because it is not needed to regulate law firm names. ER 7.1 is sufficient and is the more commonly used regulation. As previously explained, the Task Force recommends moving ER 7.5's comments to ER 7.1.

III. Conclusion

Petitioner respectfully requests that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment, and that the Court adopt the proposed rules as they currently appear, or as modified considering comments received, with an effective date of January 1, 2021.

DATED this 10th day of January, 2020.

___/s/_____

Dave Byers
Administrative Director
Arizona Administrative Office of Courts
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 452-3301
Projects2@courts.az.gov

APPENDIX

APPENDIX 1A: PROPOSED AMENDED ERS 7.1 THROUGH 7.5 (Clean)

ER 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

[1] Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer’s communication requires that person to take further action when, in fact, no action is required.

[2] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in this Rule to communications concerning a lawyer's services.

Certified Specialists

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a United States Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a United States Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Required Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

ER 7.2 [Reserved]

ER 7.3. Solicitation of Clients

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or firm’s pecuniary gain, unless the contact is with a:

(1) lawyer;

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf even when not otherwise prohibited by paragraph (b), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment; or

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer seeking pecuniary gain solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of under influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. Those forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm the person's judgment.

[4] The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual

property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of ER 7.1, that involves coercion, duress or harassment within the meaning of ER 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

ER 7.4 [Reserved]

ER 7.5 [Reserved]

APPENDIX 1B: PROPOSED AMENDED ERS 7.1 THROUGH 7.5 (MARKUP)

ER 7.1 Communications Concerning a Lawyer's Services

A lawyer shall not make ~~or knowingly permit to be made on the lawyer's behalf~~ a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

Comment [~~2003 Rule~~ 2019 amendment]

~~[1] This Rule governs all communications about a lawyer's services, including advertising permitted by ER 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful. A clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is false or misleading.~~

[~~2~~ 1] Misleading ~~T~~truthful statements ~~that are misleading~~ are ~~also~~ prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is ~~also~~ misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[~~3~~ 2] ~~Promising or guaranteeing a particular outcome or result is misleading.~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal

circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4 3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

Firm Names

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. ~~Whether a communication about a lawyer or legal services is false or misleading is based upon the perception of a reasonable person.~~

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in this Rule to communications concerning a lawyer's services. ~~See comment to ER 5.5(b)(2) regarding advertisements and communications by non-members. A non-member lawyer's failure to inform prospective clients that the lawyer is not licensed to practice law by the Supreme Court of Arizona or has limited his or her practice to federal or tribal legal matters may be misleading.~~

Certified Specialists

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Required Contact Information

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

ER 7.2 [Reserved] ~~**Advertising Communications Concerning a Lawyer's Services: Specific Rules**~~

~~(a) Subject to the requirements of ERs 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:~~

> ~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule:~~
> ~~(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service, which may include, in addition to any membership fee, a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall not exceed ten percent, and shall be used only to help defray the reasonable operating expenses of the service or organization and to fund public service activities, including the delivery of pro bono legal services. The fees paid by a client referred by such service shall not exceed the total charges that the client would have paid had no such service been involved. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and~~
> ~~(3) pay for a law practice in accordance with ER 1.17.~~

~~(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.~~

~~(d) Every advertisement (including advertisement by written solicitation) that contains information about the lawyer's fees shall be subject to the following requirements:~~

> ~~(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose (A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter and (B) whether the percentage fee will be computed before expenses are deducted from the recovery;~~
>
> ~~(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the total fee within the range which will be charged~~

~~or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;~~

~~(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed in writing at the commencement of any client-lawyer relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;~~

~~(4) a lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.~~

~~(e) Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be a lawyer, such person shall in fact be a lawyer employed full-time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and a lawyer appears as the person purporting to render the service, the lawyer appearing shall be the lawyer who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other lawyers in the firm.~~

~~(f) Communications required by paragraphs (c) and (d) shall be clear and conspicuous. To be "clear and conspicuous" a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.~~

~~Comment [2003 rule]~~

~~[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The~~

~~interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.~~

~~[2] This ER permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.~~

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see ER 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.~~

~~[4] Neither this Rule nor ER 7.3 prohibits communications authorized by law, such as notice to members of a class action litigation.~~

~~[5] Except as permitted under paragraphs (b)(1)–(b)(3), lawyers are not permitted to pay others for recommending the lawyer's services or channeling professional work in a manner that violates ER 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings, group advertisements, and online referral services that list lawyers by practice area do not constitute impermissible "recommendations."~~

~~[3] Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this ER, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group~~

advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator is consistent with ERs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with ER 7.1 (communications concerning a lawyer's services). To comply with ER 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. Giving or receiving a de minimis gift that is not a quid pro quo for referring a particular client is permissible. See also ER 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); ER 8.4 (duty to avoid violating the ERs through the actions of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. Published and electronic group advertising and directories are not lawyer referral services, but participation in such listings is governed by ERs 7.1 and 7.4. A lawyer referral service, on the other hand, is any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers or that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this ER only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority, such as the State Bar of Arizona, as affording adequate protections for the public.

[7] The reasonable operating expenses of a legal service plan or lawyer referral service include payment of the actual expenses of operating, conducting, promoting and developing the service, including expenditures for capital purposes for the service, as determined on a reasonable accounting basis and with provision for reasonable reserves. Public service activities of a legal service plan or lawyer referral service include the following: (a) furnishing or providing funding for legal services to persons and entities financially unable to pay for all or part of such services; (b)

~~developing and implementing programs to educate members of the public with respect to the law, the judicial system, the legal profession, or the need, manner of obtaining, and availability of legal services; and (c) creating and administering programs to improve the administration of justice or aid in relations between the Bar and the public.~~

~~[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See ER 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these ERs. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate ER 7.3.~~

~~[9] Paragraph (f) requires communications under paragraphs (c) and (d) to be clear and conspicuous. In addition to the requirements of paragraph (f), a statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.~~

ER 7.3 Solicitation of Clients

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(~~a~~ b) A lawyer shall not solicit professional employment by live person-to-person ~~in-person, live telephone or real-time electronic~~ contact ~~solicit professional employment from the person contacted or employ or compensate another to do so~~ when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the ~~person contacted~~ contact is with a:

(1) ~~is a~~ lawyer; ~~or~~

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(~~b~~ c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf ~~from the person contacted by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph (~~a~~b), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment; or

~~(3) the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence.~~

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known or believed likely to be in need of legal services for a particular matter shall include the words "Advertising Material" in twice the font size of the body of the communication on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication,~~

~~unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

~~(1) At the time of dissemination of such written communication, a written copy shall be forwarded to the State Bar of Arizona at its Phoenix office.~~

~~(2) Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery.~~

~~(3) If a contract for representation is mailed with the written communication, the contract shall be marked "sample" in red ink and shall contain the words "do not sign" on the client signature line.~~

~~(4) The lawyer initiating the communication shall bear the burden of proof regarding the truthfulness of all facts contained in the communication, and shall, upon request of the State Bar or the recipient of the communication, disclose how the identity and specific legal need of the potential recipient were discovered.~~

(~~d~~ e) Notwithstanding the prohibitions in ~~paragraph (a)~~this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses ~~in~~ live person-to-person ~~or telephone~~ contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

~~2003~~ Comment [~~2009~~ 2019 amendment]

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a~~ A lawyer's communication ~~typically does~~ is not ~~constitute~~ a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to ~~Internet~~ electronic searches. ~~*See* ER 8.4 (duty to avoid violating the ERs through the actions of another).~~

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. ~~There is a~~ A potential for ~~abuse~~ overreaching exists when a lawyer seeking pecuniary gain solicits ~~solicitation~~ a person ~~involves direct in-person, live telephone or real-time electronic~~

~~contact by a lawyer with someone~~ known to be in need of legal services. This ~~These~~ form~~s~~ of contact subject~~s~~ a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response ~~being retained immediately~~. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The ~~This~~ potential for ~~abuse~~ overreaching inherent in ~~direct in-person~~, live person-to-person contact ~~telephone or real-time electronic solicitation~~ justifies its prohibition, ~~particularly~~ since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not ~~involve real-time contact and do not~~ violate other laws ~~governing solicitations~~. Those forms of communications ~~and solicitations~~ make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to ~~direct in~~ live person-to-person~~, telephone or real-time electronic~~ persuasion that may overwhelm the person's judgment.

[4] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely.~~ The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed ~~and may be shared with others who know the lawyer~~. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of ~~direct in~~-live person-to-person~~, live telephone or real-time electronic~~ contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in ~~abusive practices~~ overreaching against a former client or a person with whom the lawyer has a close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for ~~abuse~~ overreaching when the person contacted is

a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. ~~Consequently, the general prohibition in ER 7.3(a) and the requirements of ER 7.3(c) are not applicable in those situations. Also,~~ p Paragraph (~~a~~b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to ~~its~~ their members or beneficiaries.

[6] ~~But even permitted forms of solicitation can be abused. Thus, any~~ A solicitation ~~which~~ that contains false or misleading information ~~which is false or misleading~~ within the meaning of ER 7.1, ~~which~~ that involves coercion, duress or harassment within the meaning of ER 7.3(~~b~~ c)(2), or ~~which~~ that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(~~b~~ c)(1) is prohibited. ~~Moreover, if after sending a letter or other communication to a person as permitted by paragraph (c), the lawyer receives no response, any further effort to communicate with the person may violate the provisions of ER 7.3(b).~~ Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This ~~ER~~ Rule ~~is~~ does not ~~intended to~~ prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. ~~Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under ER 7.2.~~

~~[8] The requirement in ER 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to~~

~~requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

[9] ~~Lawyers may comply with the requirement of paragraph (c)(1) by submitting (a) a copy of every written, recorded or electronic communication soliciting professional employment from a prospective client known or believed likely to be in need of legal services for a particular matter, or (b) a single copy of any identical communication published or sent to more than one person and a list of the names and mailing or e-mail addresses or fax numbers of the intended recipients and the dates identical solicitations were published or sent. Lawyers may comply with the requirement of paragraph (c)(1) by submitting the required communications and information to the State Bar on a monthly basis.~~

~~[10] The State Bar may dispose of the submissions received pursuant to paragraph (c)(1) after one year following receipt.~~

~~[11] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with ERs 7.1, 7.2 and 7.3(b). See ER 8.4(a).~~

ER 7.4. [Reserved]~~— Communication of Fields of Practice~~

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:~~

~~(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;~~

~~(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation; and (3) a lawyer certified by the Arizona Board of Legal Specialization or by a national entity that has standards for certification substantially the same as those established by the board may state the area or areas of specialization in which the lawyer is certified. Prior to stating that the lawyer is a specialist certified by a national entity, the entity must be recognized by the board as having standards for certification substantially the same as those established by the board. If the national entity has not been recognized by the board, it may make application for recognition by completing an application form provided by the board.~~

~~(b) Communications to the Arizona Board of Legal Specialization and its Advisory Commissions relating to an applicant's qualifications for specialization certification shall be absolutely privileged, and no civil action predicated thereon may be instituted or maintained against any evaluator, staff or witness who communicates with or before the Board or its Advisory Commissions. Members of the Board of Legal Specialization, its Advisory Commission, and others involved in the specialization certification process shall be immune from suit for any conduct in the course of their official duties.~~

~~Comment~~

~~[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" in a particular field is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.~~

[2] Recognition of specialization in patent matters is a matter of long-established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

ER 7.5. [Reserved] Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT TO 2003 AND 2012 AMENDMENTS

[1] [2012 Amendment] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation that complies with ER 7.1.

[2] [2003 Amendment] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

[3] [2003 Amendment] "Of counsel" designation may be used to state or imply a relationship between lawyers only if the relationship is close, personal, continuous, and regular.

Petitioner: Martin Lynch
We the People Court Services
Legislative Committee Chairman – AZFR
1120 W Broadway Rd #55, Tempe AZ, 85282
602-550-6304
MDL2222222222@gmail.com

Returning Power and
Constitutional Authorities of Self Government
to the People

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION to Amend SC Rule 32 – the People exercising the Final Authority over Attorney Licensure and Discipline after the State Bar has Made Their Decision – Attorneys have Rights Also	Supreme Court Petition Number R-20-xxxx

To the Honorable Chief Justice Brutinel of the Arizona State Supreme Court,

¶1 The People respectfully request that Supreme Court Rule 32 be amended in conformance with AZ Art 2 Sect 23 "Jury Inviolate" such that the People make the final decision on Attorney Licensure and Discipline upon request of the Attorney. Attorneys should now be providing Jury verdicts in Civil Courts but there are many things they can't do for fear of losing their License. This would also correct pervasive violations of separation of powers. Don't Attorneys have Rights also?

¶2 The People are working on producing Statutes but regardless, the Constitution is the Supreme Law of the Land and everybody swears an oath per US Constitution Art 6 Sect 3.

Sincerely,
/s/ Martin Lynch

January 10, 2020