



*Committee on the Review of Supreme Court Rules Governing
Professional Conduct and the Practice of Law*

AGENDA

Thursday, November 20, 2014

9:30 a.m. - 12:00 p.m.

**Meeting location: State Bar of Arizona
4201 North 24th Street
Phoenix, AZ 85016**

Call to Order	Justice Timmer, Chair	
Review and approval of minutes of meeting held September 17, 2014	Justice Timmer, Chair	Page 2
Reports from Work Groups: Workgroup Examining the Rules of Professional Conduct Workgroup Examining the Practice of Law	Kimberly Demarchi Geoff Sturr	Pages 4, 5, 7, 9
BREAK		
Call to the public	Justice Timmer, Chair	
Chair comments and adjournment	Justice Timmer, Chair	

**MINUTES OF
COMMITTEE ON THE REVIEW OF SUPREME COURT RULES GOVERNING
PROFESSIONAL CONDUCT AND THE PRACTICE OF LAW**

Wednesday, September 17, 2014

State Bar of Arizona

4201 North 24th Street

Phoenix, AZ 85016

Web Site: <http://www.azcourts.gov/reviewscrulesgpc/Home.aspx>

Members Present:

The Honorable Ann A. Scott Timmer, Chair

James J. Belanger

Kimberly A. Demarchi

Jodi Knobel Feuerhelm

Mary Jo Foster

Nancy A. Greenlee

Geoffrey M. T. Sturr

The Honorable Samuel Thumma

Maret Vessella

Members Present via Telephone:

Jennifer Burns

Whitney Cunningham

Leticia Marquez

Staff Present:

Patricia A. Sallen

Quorum:

Yes

1. Call to Order & Introductions – Justice Timmer

Justice Timmer called the meeting to order at 9:32 a.m. and welcomed members.

2. Review and approval of minutes of meeting held July 9, 2014

Motion to approve the minutes of the meeting of July 9, 2014 by Geoff Sturr seconded by Kim Demarchi. Motion carried.

3. Reports from Workgroups and Possible Votes:

a. Workgroup Examining the Rules of Professional Conduct

Kim Demarchi updated the Committee and presented the issues her workgroup will be considering. Ms. Demarchi suggested some issues for Geoff Sturr's workgroup to handle. The workgroup has been divided into two teams. Technology expertise will be invited to attend next workgroup meeting.

b. Workgroup Examining the Practice of Law

Geoff Sturr updated the Committee and presented the issues his workgroup will be considering. The issues will mainly deal with the recommendations made by the ABA's 20/20 Commission. Mr. Sturr's workgroup will amend its list as necessary to include those referred by Ms. Demarchi's workgroup.

c. Plan for soliciting input

The committee agreed to circulate the workgroup lists (as amended) to State Bar entities for comment. Ms. Sallen advised that these issues lists could be circulated to stakeholders via the State Bar's distribution lists that include all sections and committees as well as other entities. Justice Timmer will draft a cover letter asking stakeholders to provide comment and feedback on the issues to the email address that has been set up, changingpracticeoflaw@azbar.org. Ms. Demarchi and Mr. Sturr will finalize their lists as soon as possible after the committee meeting.

4. Call to the Public/Adjournment – Justice Timmer

Justice Timmer made a call to the public. No members of the public were present.

Following the call to the public, Justice Timmer adjourned the meeting at approximately 10:49 a.m.

Insert for Committee Report Regarding Use of Comments vs. Rule Changes

In developing its recommendations, the Committee has considered a variety of different tools to address the implications of the modern practice of law, including educational and member services programs, advisory opinions, and rule changes.

In considering rule changes, the Committee has recommended a combination of changes to rule text and to rule comments. Where what is recommended is a change in the conduct that is permitted or required, the Committee has recommended a change to the text of the applicable rule or rules. However, many of the Committee's recommendations do not involve a proposal to change permitted or required conduct, but rather to provide additional guidance to Arizona lawyers regarding how existing rules apply in a contemporary practice context. In that instance, the Committee has recommended an explanatory comment, rather than a rule text change.

Lawyer Obligations to Safeguard Client Data in the Modern World

Recommendation One (Already Adopted):

The Supreme Court has already approved amendments to ER 1.6 and its comments that make express the lawyer's obligation to maintain the confidentiality of client data and specifically noting the associated technology-related issues. The proposed language is based on the ABA 20/20 recommendations, and the Committee believes it addresses these issues well and thoroughly, raising lawyers' awareness of data security issues without tying the comments too specifically to current, ever-changing technology.

Rule Text:

(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

Rule Comment:

[22] ~~{20}~~ Paragraph (e) requires a ~~A~~-lawyer ~~must~~ 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. See ~~Rules~~ 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].

Recommendation Two:

Lawyers increasingly use technological aids in their practice ranging from storage of client information in a digital format to the transmission of data over the internet or through other electronic means. In order to fulfill their obligation to take reasonable measures to safeguard confidential client information, lawyers must keep up-to-date on the security of the technological tools they use in their practice, but these technological options change too rapidly for permissible uses to be prescribed by rule.

To address the need for training of lawyers and law firm staff regarding security of client data, the State Bar, as part of its member assistance programs, should assist lawyers in obtaining information and training regarding technology that may aid their practice and the security issues associated with that technology. Training for law firm staff regarding technology and the need to maintain reasonable security of client data would be particularly valuable.

November 6, 2014

TO: Committee on the Review of Supreme Court Rules Governing Professional Conduct and the Practice of Law

FROM: Kim Demarchi and Jodi Knobel Feuerhelm/Workgroup Re: Rules of Professional Conduct

RE: **Proposed Revisions to ER 1.10 (Imputation of Conflicts of Interest: General Rule)**

This memorandum describes proposed changes to ER 1.10 governing the “Imputation of Conflicts of Interest.” Attached is a red-line showing proposed changes to the current rule, along with a clean word document containing the proposed changes.

I. SUMMARY OF PROPOSED CHANGES.

The Workgroup’s review of ER 1.10 focused on: (a) the changes proposed in the pending Petition to Amend ER 1.10 (Supreme Court No. R-13-0046), which the Supreme Court has referred to this Committee for consideration; (b) changes to the text of ER 1.10 to clarify that information contained solely in documents maintained by a firm will not be imputed to lawyers in the firm for purposes of ER 1.10(b), so long as the firm adopts screening procedures to restrict access to the documents; and (c) related changes to the comments to ER 1.10.

A summary of the proposed changes is set forth below.

A. Proposed Changes to ER 1.10(b) and Related Comments.

ER 1.10(b) addresses imputation of conflicts where a lawyer has terminated his or her association with a firm, and the firm proposes to represent a person with interests that are “materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm.”

The general rule is that the firm can undertake that representation *unless* the matter is the same or substantially related to the former representation; and “any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c).” Under the current rule, lawyers in the firm arguably “*have*” information in firm records, including closed client files and electronic records that may be maintained for a variety of reasons under the firm’s record retention policies. The proposed amendment provides that such information will *not* be imputed to the remaining lawyers in the firm if the firm adopts screening procedures that are reasonably adequate to prevent access to the information by those lawyers.

Comment [5], addressing ER 1.10(b), has been modified to provide guidance on the screening measures that should be considered, particularly with respect to electronic information and databases that may contain information on work performed for former clients of the firm.

B. Proposed Changes to ER 1.10(d) and Related Comments.

The proposed changes to ER 1.10(d) and the related comments are based in part on changes proposed by the State Bar of Arizona in Petition No. R-13-0046. The Workgroup recommends a number of modifications to the State Bar's proposal, which primarily are directed at providing greater protections for clients, along with additional guidance on the required notice and screening procedures in the proposed Comments.¹ Thus:

- ER 1.10(d)(1) is deleted (this is the so-called “litigation exception” that does not allow for screening where the laterally moving lawyer had a substantial role in a matter pending before a tribunal). This portion of the proposal is the same as that contained in the State Bar's Petition and also conforms to the ABA Model Rule.
- ER 1.10(d)(2) is modified to track the corresponding language in ABA Model Rule 1.10, except that we propose deleting the requirement that the notice shall include “a statement that review may be available before a tribunal” (which appears in the ABA Model Rule). Our proposal expands on the State Bar Petition's proposal, which simply required that the client get written notice “of the particular screening procedures adopted and when they were adopted.”
- ER 1.10(d)(3) has been added to reinforce that screening procedures must be reasonably adequate under the circumstances. This recommendation is not contained in the ABA Model Rules or the State Bar's Petition.
- Comment [9] has been added to address the factors that should be considered in implementing an adequate screen, and to emphasize that screening will not always be appropriate. The language proposed is taken in part from Comment [7] to ABA Model Rule 1.10, but has been expanded. It has no counterpart in the State Bar's Petition.
- Comment [10] has been added, and was taken directly from Comment [8] of the corresponding ABA Model Rule. It has no counterpart in the State Bar's Petition.
- Comment [11] has been added to expand on the content of the required notice. The language proposed is taken in part from Comment [9] to ABA Model Rule 1.10, but has been expanded. It has no counterpart in the State Bar's Petition.

¹ This discussion only addresses ER 1.10(d), however, to the extent the Committee endorses this proposal, corresponding changes may be appropriate in ER 1.11(a)(2), ER 1.12(c)(2) and ER 1.18(d)(2), which were also addressed by the State Bar's Petition.

Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona (Refs & Annos)

V. Regulation of the Practice of Law

D. Lawyer Obligations

Rule 42. Arizona Rules of Professional Conduct

Client-Lawyer Relationship

17A A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.10

ER 1.10. Imputation of Conflicts of Interest: General Rule

Currentness

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client 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 and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to those documents by the remaining lawyers, those remaining lawyers will not be considered to have protected information within the meaning of this rule.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in [ER 1.7](#).

(d) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under [ER 1.9](#) unless:

~~(1) the matter does not involve a proceeding before a tribunal in which the personally disqualified lawyer had a substantial role;~~
~~(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and~~

(32) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures adopted; a statement of the firm's and of the screened lawyer's compliance with these Rules; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(3) the screening procedures adopted are reasonably adequate under the circumstances to prevent material information from being disclosed to the new firm and its client.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by ER 1.11.

Credits

Amended June 9, 2003, effective Dec. 1, 2003.

Editors' Notes

COMMENT [2003 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 or 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 in 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\(I\)](#) from a family or cohabiting relationship is personal 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 the 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 the firm have a legal duty to protect. See ERs 1.0(k) and 5.3.

[5] ER 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate ER 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by ERs 1.6 and 1.9(c). For purposes of determining whether any current lawyer in the firm has such material information, information maintained by a firm in the form of documents, including electronic records, will not be imputed to the remaining lawyers if the firm adopts screening procedures that are reasonably adequate under the circumstances to prevent the remaining lawyers from accessing such information. In determining whether screening procedures are reasonably adequate, factors to be considered include whether technology is available and has been implemented to restrict lawyer access to electronic information maintained by the firm. In addition, the firm should consider whether its lawyers have access to internal research databases that utilize research memoranda or other work product from past client representations, to ensure that any protected information is removed from such databases or that access is appropriately restricted.

[6] ER 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in ER 1.7. The conditions stated in ER 1.7 require the lawyer to determine that the representation is not prohibited by ER 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see ER 1.7, Comment [21]. For a definition of informed consent, see ER 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by ER 1.11(a), not this Rule. Under ER 1.11(c), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under ER 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[9] Rule 1.10(d) removes the imputation otherwise required by ER 1.10(a), but unlike section (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures and requirements laid out in sections (d)(1) and (2) be followed. For purposes of section (d), in determining the adequacy of screening procedures “under the circumstances,” factors to be considered include whether technology is available and has been implemented to restrict lawyer access to electronic information maintained by the firm. Other relevant circumstances may include the size of the matter in relation to the overall business of the firm, the number of lawyers in the firm that are actively involved in the matter that is the subject of the screening measures, or other factors that may make it difficult to implement a screen that is reasonably adequate to ensure that protected information is not disclosed, even inadvertently. There may be some circumstances where, taking all factors into account, screening procedures will not be reasonably adequate to guard against inadvertent disclosure of protected information. Lawyers should also be aware that even where screening procedures have been adopted that comply with this Rule, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

[10] Paragraph (d)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established

by prior independent agreement, but the lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[11] The notice required by paragraph (d)(2) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the need for screening becomes apparent. It also should include a statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules. The requirements of ERs 5.1 and 5.3 should be considered in implementing screening procedures under this Rule. If the screened lawyer or the firm become aware that the screening procedures have been violated or are ineffective, reasonable steps should be taken to remedy the deficiencies and prevent prejudice to the impacted client.

Notes of Decisions (31)

17A A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.10, AZ ST S CT RULE 42 RPC ER 1.10
Current with amendments received through 7/15/14

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Supreme Court Committee on Review of Rules
Governing Professional Conduct and Practice of Law

Practice of Law Workgroup Status Report

November 19, 2014

The Practice of Law Workgroup has had three working sessions since the Committee's September 17, 2014 meeting. This report summarizes the Workgroup's recommendations to date and its remaining tasks.

I. ABA 20/20 Proposals

The Workgroup was asked to review the following proposals made by the ABA's Commission on Ethics 20/20.

A. Admission on Motion and Practice Pending Admission

1. Proposed Changes

The ABA 20/20 Commission recommended that the time-in-practice requirement in the ABA Model Rule for Admission by Motion be shortened from five of the past seven years to three of the past five years.

In a separate report, the Commission recommended adoption of a new Model Rule on Practice Pending Admission, which would allow a lawyer admitted in another jurisdiction who needs to relocate or commence practice in another jurisdiction to begin practicing law in that other jurisdiction while the lawyer's admission on motion is pending.

The report on the Model Rule for Admission by Motion also noted that of the 40 jurisdictions that have adopted an admission on motion procedure, only 10 jurisdictions had adopted a procedure identical to the Model Rule, while the remaining 30 jurisdictions have procedures that impose restrictions beyond the Model Rule's requirements, and more than one-half of those jurisdictions have some type of reciprocity requirement, which makes admission on motion possible only for lawyers from states that also offer admission by motion on a reciprocal basis. The report recommended that all jurisdictions conform their admission on motion rules to the Model Rule for Admission by Motion.

The Commission asserts that these changes are warranted by "[c]ontinually evolving technology, client demands and a national (as well as global) legal services marketplace," which "have fueled an increase in cross-border practice as well as a related need for lawyers to relocate to new jurisdictions."

2. Workgroup Review and Recommendations

The Workgroup solicited input from the Character & Fitness Committee and the State Bar's Lawyer Regulation Department as to the possible impact of a change in the time-in-practice requirement and the adoption of a practice pending admission rule. It also considered the actions taken by other jurisdictions in responding to these proposals.

a. Time-in-Practice Requirement

Based on the information received from the Character & Fitness Committee and statistical information regarding the experience level of lawyers who receive disciplinary sanctions, the Workgroup concluded that the proposed change in the time-in-practice requirement would not have any material impact on the competence of applicants or the protection of the public. The Workgroup therefore recommends that Arizona adopt the proposed change in the time-in-practice requirement. A redlined version of Rule 34 reflecting the change is attached to this report as **Appendix A**.

b. Practice Pending Admission

The Workgroup concluded that the adoption of a practice pending admission rule for applicants seeking admission by motion was not likely to have any material impact on the competence of applicants or the protection of the public. The Workgroup had concerns about Model Rule provisions that would allow an applicant to begin practicing law in Arizona as many as 45 days before submitting an application for admission on motion. After considering Colorado's version of the Model Rule, which requires the submission of an application before practice may be commenced, the Workgroup has drafted a proposed amendment to Rule 34 that would allow for practice pending admission by admission on motion applicants, but would require that the application be received and deemed complete by the Committee on Character and Fitness before practice could commence. The Model Rule was also modified to conform to Rule 38(f) and to incorporate certain provisions of Colorado's rule. This proposed amendment is included in **Appendix A**. The Workgroup's draft does not include Model Rule provisions allowing for practice pending admission by those seeking admission by transfer of uniform bar exam results or foreign legal consultants.

c. Restrictions on Admission on Motion Beyond Model Rule Requirements

The Workgroup reviewed Arizona's current restrictions on admission on motion in Rule 34(f) and compared them to the Model Rule. The Workgroup also reviewed documents reflecting Arizona's decision to adopt admission on motion and changes made to the Model Rule at that time. In some cases, the Workgroup found that the differences between Rule 34(f) and the Model Rule were not significant enough to warrant a change. In other cases, the Workgroup concluded that the changes Arizona made to the Model Rule when it adopted admission on motion were warranted and should be retained.

The changes to Rule 34(f) that the Workgroup recommends are the deletions of the provisions of Rule 34(f)(3) that define the “active practice of law” to require that an applicant spend at least 1,000 hours engaged in the active practice of law for each of the time-in-practice years, and derive at least 50% of non-investment income from the practice of law. The Workgroup concluded that those restrictions could prejudice lawyers, particularly young lawyers, whose law practice opportunities and income may have been adversely affected by economic developments. These proposed revisions to Rule 34 are reflected in **Appendix A**.

c. Reciprocity

The Workgroup considered whether Arizona should eliminate the current restriction on admission by motion to those jurisdictions that offer admission on motion on a reciprocal basis. The Workgroup does not recommend that Arizona do so, as eliminating reciprocity would not provide any benefit to Arizona attorneys by allowing them to seek admission by motion in a non-reciprocal jurisdiction, while allowing attorneys from non-reciprocal jurisdictions to obtain admission on motion in Arizona.

B. Pro Hac Vice Admission

The 20/20 Commission recommended modifications to the Model Rule on Pro Hac Vice Admission, the most significant of which is a new section that would permit lawyers admitted in a non-United States jurisdiction to appear pro hac vice.

The Workgroup considered the 20/20 Commission’s report, how other jurisdictions have responded to the report, and the terms of Rule 38. The Workgroup concluded that there is not a compelling need for Arizona to modify its rules to permit foreign lawyers to appear pro hac vice and therefore does not recommend that Arizona adopt that portion of the Model Rule. The Workgroup recommends adopting the portion of the Model Rule which requires pro hac vice applicants to pay an assessment to the Client Protection Fund. It also recommends removing the restriction in Rule 38(h) on pro hac vice admission by registered in-house counsel. These proposed revisions to Rule 38 are reflected in the redlined copy attached as **Appendix B**.

C. In-House Counsel Registration

The 20/20 Commission proposed amendments to the Model Rule for Registration of In-House Counsel, the most significant of which is to allow lawyers admitted only in a foreign jurisdiction to register as in-house counsel but to impose restrictions on the legal services those lawyers could provide. The Workgroup does not recommend adoption of those amendments because Rule 38(h) already permits foreign lawyers to register as in-house counsel and does not restrict the legal services they can provide.

D. Choice of Law for Multijurisdictional Practice

The 20/20 Commission proposed amendments to comment 5 to Model Rule 8.5, which addresses choice of law provisions in disciplinary matters. Section 8.5(b)(2) states that for any conduct not involving a matter before a tribunal

the rules of the jurisdiction in which the lawyer's conduct occurred, or if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

The 20/20 amendments would add the following language to comment 5:

With respect to conflicts of interest, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably specifies a particular jurisdiction as within the scope of that paragraph may be considered if the agreement was obtained with the client's informed consent confirmed in the agreement.

The Commission recommends this change to address the impact of globalization and increasing requests by clients to handle matters that implicate multiple jurisdictions, both within the United States and abroad.

The Workgroup notes that when Arizona originally adopted ER 8.5, it did not adopt the Model Rule's comments, including comment 5. It also concluded that there does not appear to be a compelling reason to adopt the 20/20 proposal, given the nature of law practice in Arizona. It therefore does not recommend that any change be made to the comments to ER 8.5

E. Other Proposals Regarding Foreign Lawyers

As previously reported, the Workgroup reviewed the various proposals included in the ABA report regarding the "Georgia Experience." Some already have been adopted by Arizona (registration of foreign in-house lawyers and foreign legal consultants) or were considered by the Workgroup (pro hac vice admission). The Workgroup has consider the proposal regarding temporary transactional practice in its review of ER 5.5, which is discussed below. The Workgroup does not recommend pursuing the proposal for full licensure of foreign lawyers.

II. Revisions to Rule 31

Representatives of the State Bar's ADR Section attended two of the Workgroup's working sessions and submitted a memorandum, approved by the Section's Executive Committee, requesting changes in Rule 31 to clarify the status of mediators. A copy of the Section's memorandum is attached as **Appendix C**. The Workgroup considered the Section's suggested changes to Rule 31 and modified them slightly. The Workgroup's suggested revisions

to Rule 31 appear in **Appendix D**. Those changes would clarify that mediation is not the practice of law, and that mediators who are not active members of the State Bar and who prepare written mediation agreements resolving all or part of a dispute or other legal documents must be certified legal document preparers.

III. Revisions to ER 5.5

The Workgroup has considered whether Rule 31 and/or ER 5.5 should be modified to (1) more effectively address the virtual practice of law and (2) clarify what qualifies as the “temporary” practice of law permitted by the safe harbor provisions of ER 5.5(c). The Workgroup has considered opinions issued by the State Bar’s Unauthorized Practice of Law Committee relating to the provision of legal services in, or from, Arizona by non-Arizona lawyers. It also considered how other jurisdictions, notably Florida, as reflected in *Gould v. Harkness*, 470 F. Supp. 2d 1357 (S.D. Florida 2006), and Colorado have defined the practice of law. The question in *Gould* was whether, under Florida’s expansive definition of the practice of law, a New York admitted lawyer could advertise and provide legal services in Florida that were limited to New York law matters. The district court affirmed summary judgment in favor of the Florida Bar that Gould was engaged in the unauthorized practice of law. Colorado takes a narrower approach, defining the practice of law to involve legal services that involve Colorado law.

The Workgroup has concluded that in defining what constitutes the practice of law in Arizona, the appropriate focus is whether a lawyer is providing legal services to Arizona residents that involve the application of Arizona law. Unlike the Florida Bar, the Workgroup does not believe that non-Arizona lawyers who either permanently reside here, or live in Arizona for part of the year, should be prohibited from exclusively practicing the law of another jurisdiction, federal law, or tribal law. As long as the non-Arizona lawyer is not practicing Arizona law, there does not appear to be a valid public-protection issues requiring that the non-Arizona lawyer be licensed in Arizona. Requiring non-Arizona lawyers to disclose in their advertising and other communications that they are not members of the Arizona bar and that their practice is limited to law other than Arizona law will adequately protect the public.

The Workgroup also concluded that a focus on the nature of the legal services provided is more easily applied than a rule based on whether a lawyer has a “systematic and continuous presence,” which is difficult to define in an increasingly virtual world.

Lastly, the Workgroup concluded that the Model Rule comments regarding the temporary practice of law, which were not adopted when Arizona adopted ER 5.5, should be revised and added to ER 5.5 to provide better guidance on the safe harbor provisions of ER 5.5(c).

The Workgroup’s proposed revisions to ER 5.5 are attached as **Appendix E**. The Workgroup has gone back and forth as to whether to use “the law of this jurisdiction” or “Arizona law” and has settled on using “Arizona law,” concluding that the latter wording is clearer and more readily understood. We provide in Appendix E two draft amendments, one utilizing “Arizona law” and the other “the law of this jurisdiction.”

IV. Restructuring of Rule 38

As previously reported, the Workgroup recommends that Rule 38 be restructured or otherwise revised to make it clearer and more understandable. The Workgroup is still working on those revisions, and anticipates presenting them to the full committee before its December meeting.

Appendix A

Rule 34. Application for Admission

(a) Methods of admission to the practice of law in Arizona. Persons desiring to be admitted to the practice of law in the State of Arizona may apply for admission by one of three methods: (1) admission by Arizona uniform bar examination, (2) admission on motion, or (3) admission by transfer of uniform bar examination score from another jurisdiction.

(b) Applicant Requirements and Qualifications.

1. No applicant will be recommended for admission to the practice of law in Arizona by the Committee on Character and Fitness unless the Committee is satisfied that:

A. the applicant is over the age of twenty-one years;

B. the applicant is of good moral character;

C. the applicant is mentally, emotionally and physically able to engage in the practice of law, and possesses the required knowledge of the law to do so;

D. the applicant is a graduate with a juris doctor from a law school provisionally or fully approved by the American Bar Association at the time of graduation or the applicant is a graduate with a juris doctor and has been actively engaged in the practice of law in some other state or states for at least ~~five~~three of the last ~~seven~~five years prior to filing an application for admission to practice in Arizona; and

E. if ever admitted to practice in any jurisdiction, foreign or domestic, the applicant is presently in good standing, or the applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction.

F. the Arizona uniform bar examination applicant has successfully completed the course on Arizona law described in paragraph (j) of this rule.

2. An applicant may be allowed to sit for the Arizona uniform bar examination prior to the award of a juris doctor degree if the applicant:

A. is a currently enrolled student in good standing at a law school fully or provisionally approved

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by the American Bar Association;

B. is expected to graduate with a juris doctor degree within one hundred twenty (120) days of the first day of early exam administration;

C. has satisfied all requirements for graduation with a juris doctor except for not more than eight (8) semester hours or its equivalent in quarter hours at the time of early exam administration;

D. will not be enrolled in more than two (2) semester hours or its equivalent in quarter hours during the month of early bar examination testing and the immediately preceding month;

E. has been determined by their school to be academically prepared for early testing;

F. provides by the deadline to the Committee on Character and Fitness, on a form provided by the Committee, an affidavit attested to by the applicant and the law school that they meet the above criteria. The law school's decision whether to certify that the student meets the criteria is final and shall not be subject to review by the Committee or the Court.

No applicant shall be recommended to practice law until graduation or satisfaction of all requirements for graduation, and completion of all requirements for admission to the practice of law under these rules. If an applicant under this subsection has not graduated with a juris doctor within one hundred twenty (120) days of the first day of early exam administration, all parts of the Arizona uniform bar examination, including the score, are void and the applicant's examination scores shall not be disclose for any purpose. Scores may not be released until such time as satisfactory proof of award of juris doctor, as determined by the Court, is provided to the Committee. An early examination which is voided shall count as a examination attempt under Rule 35(c)(1).

At the completion of the juris doctor requirements and within sixty (60) days after graduation, the applicant must cause his or her law school, dean, or registrar to submit to the Committee on Character and Fitness proof of graduation, showing his or her juris doctor was conferred within one hundred twenty (120) days of the first day of early exam administration. Failure to complete the course of study within one hundred twenty (120) days of the examination and provide evidence of graduation within an additional sixty (60) days shall render the applicant's score void.

3. The Committee on Character and Fitness shall endeavor to complete its inquiries, some or all of which may be delegated to the National Conference of Bar Examiners, to be in position to rec-

ommend for or against a successful Arizona uniform bar examinee's admission to the practice of law no later than the time the results of the Arizona uniform bar examination are available for examination applicants. This time limitation is aspirational only, and may be extended for further inquiry and formulation of a recommendation when the circumstances of a case so require.

(c) Application and Character Report Materials. Any person desiring to be admitted to the practice of law in the State of Arizona must submit to the Committee on Character and Fitness an application in the form supplied by the Committee. The application for admission must be accompanied by required supporting documents and application fee.

1. The Arizona uniform bar examination applicant shall also complete and submit a character report accompanied by a character investigation fee as established by the Court. For an Arizona uniform bar examination applicants only, the character report and related fee may be submitted separately from the application for admission.

2. An applicants for admission on motion or admission by transfer of uniform bar examination score shall submit character investigation materials together with the application.

(d) Documents Required in Support of Application. The following must accompany every application:

1. subject to the exception made in paragraph (b)(1)(D) of this rule, the applicant's law school diploma, or other evidence satisfactory to the Committee on Character and Fitness showing the applicant is a graduate with a juris doctor degree from a law school provisionally or fully approved by the American Bar Association at the time of graduation;

2. if the applicant has been previously admitted to practice law in any jurisdiction, foreign or domestic, the certificate of the appropriate court agency(ies) or the mandatory bar association, whichever has custody of the roll of attorneys in such jurisdiction, indicating the date of admission and that the applicant is presently in good standing, or that the applicant resigned in good standing or is capable of achieving good standing status in that jurisdiction;

3. for applicants taking the Arizona uniform bar examination, an examination fee as established by the Court;

4. an application fee as established by the Court;

5. a full face photograph of the applicant's head, neck and shoulders, without a hat, and not larger than two and one-half (2.5) inches by two and one half (2.5) inches nor smaller than two (2) inches by two (2) inches taken within six months prior to filing with the Committee on Character and Fitness; and

6. a complete set of the applicant's fingerprints. The Committee on Character and Fitness is authorized to receive criminal history information regarding any applicant for admission from any law enforcement agency in conjunction with the admissions process.

(e) Arizona Uniform Bar Examination Application Filing Schedule; Fees

1. On the basis of an application for admission by Arizona uniform bar examination properly and timely filed, with all required supporting documents and fees, the applicant will be certified to sit for the Arizona uniform bar examination.

2. The application for admission and all of the documents required to be submitted by the Arizona uniform bar examination applicant must be timely submitted, with required fees, in accordance with the schedule and filing fees established by the Court. In the event an application, documents or fees are submitted after the initial filing deadline, late fees as established by the Court shall be assessed. No application, documents or fees will be accepted after the close of filing deadline, as established by the Court.

Any applicant failing to pass a written Arizona uniform bar examination who wishes to take the next subsequent examination must submit an application for examination, required supporting documentation, and application and examination fees as established by the Court, no later than twenty days after the date of the letter notifying the applicant of the applicant's failure to pass the written examination. If the application is submitted after twenty days, a late application fee shall be paid in accordance with the schedule and filing fees established by the Court. No application for subsequent Arizona uniform bar examination will be accepted after the filing deadline as established by the Court.

3. When an application to take the Arizona uniform bar examination is properly filed with required supporting documents, the applicant shall be promptly notified that the application is in order and that the applicant is certified to sit for the Arizona uniform bar examination, specifying the time and place of such examination.

(f) Admission on Motion.

1. An applicant who meets the requirements of (A) through (H) of this paragraph (f)(1) may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

A. either (i) have been admitted by bar examination to practice law in another jurisdiction allowing for admission of Arizona lawyers on a basis equivalent to this rule, or (ii) have been admitted by bar examination to practice law in another jurisdiction that does not allow for admission of Arizona lawyers on a basis equivalent to this rule ~~one or more states, territories, or the District of Columbia,~~ and thereafter were have been admitted to and engaged in the active practice of law in another jurisdiction allowing admission of Arizona lawyers on a basis equivalent to this rule for five-three of the five-seven years immediately preceding the date upon which the application is filed;:

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. have been primarily engaged in the active practice of law in one or more states, territories, or the District of Columbia for five-three of the ~~seven-five~~ years immediately preceding the date upon which the application is filed;

D. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;

E. establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

F. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

G. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

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H. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purposes of this rule, the “active practice of law” shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that permits such activity by a lawyer not admitted to practice; however, in no event shall any activities that were performed in advance of bar admission in some state, territory or the District of Columbia be accepted toward the durational requirement:

A. representation of one or more clients in the practice of law;

B. service as a lawyer with a local, state, or federal agency, including military service;

C. teaching law full-time at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;

D. service as a judge in a federal, state, territorial, or local court of record;

E. service as a judicial law clerk;

F. service as corporate counsel; or

G. service as corporate counsel in Arizona before January 1, 2009 or while registered pursuant to Rule 38(h). Active practice performed within Arizona pursuant to Rule 38(h) may be applied to meet active practice requirements found in Rule 34(f)(1)(A)(ii) provided all other requirements of Rule 34(f) are met.

3. For purposes of this rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located. The “active practice of law” is further defined to require that at all times in the durational period the applicant has held a law license in “active” status. ÷

~~A. held a law license in “active” status;~~

~~B. spent one thousand (1,000) hours or more per year engaged in the practice of law, for each of the~~

~~required five years in the durational period; and~~

~~C. derived at least fifty percent (50%) of non-investment income from the practice of law.~~

4. An applicant who has failed a bar examination administered in this jurisdiction or who has passed the uniform bar examination in another jurisdiction but failed to achieve the Arizona scaled score within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

5. The Court shall approve jurisdictions considered “reciprocal” to Arizona, and the Committee shall publish and make available a list of reciprocal jurisdictions.

(g) Admission on Motion Application Filing; Fees. Any applicant seeking admission on motion to the practice of law in Arizona must meet the requirements of paragraph (f) of this rule and shall:

1. file an application for admission on motion, including character investigation information, in a manner established by the Court, including all required supporting documents, and

2. pay the application fee as established by the Court.

(h) Practice Pending Admission by Motion

1. An applicant who meets the requirements of paragraph (f) of this rule and whose application for admission on motion has been filed and deemed complete by the Committee on Character & Fitness may provide legal services in Arizona through an office or other place for the regular practice of law in Arizona for no more than 365 days, provided that the applicant:

A. does not cease to be a member in good standing in every jurisdiction, foreign or domestic, wherever admitted to practice law;

B. does not become subject to lawyer discipline or the subject of a disciplinary matter in any other jurisdiction;

C. has never been denied admission on character and fitness grounds in any jurisdiction;

D. reasonably expects to fulfill all of Arizona's requirements for admission on motion;

E. associates with and is supervised by an attorney who is admitted to practice law in Arizona, and discloses in his or her application for admission on motion the name, address, and membership status of that attorney;

F. provides with his application for admission on motion a signed verification from the Arizona attorney certifying the applicant's association with and supervision by that attorney;

G. includes in all written communications with the public and clients the following language:
"Arizona practice temporarily authorized pending admission under Ariz. R. Sup. Ct. 34(h);

H. pays the annual assessment to the Client Protection Fund.

2. Until the applicant's application for admission on motion is granted, the applicant may not appear before a court of record or tribunal in Arizona that requires pro hac vice admission unless the applicant is granted such admission pursuant to Rule 38(a).

3. The applicant must immediately notify that Committee on Character and Fitness if the applicant becomes subject to a disciplinary or disability investigation, complaint, or sanctions in any other jurisdiction at any time during the 365 days of practice authorized by this rule. The Committee on Character and Fitness shall take into account such information in determining whether to grant the attorney's application for admission to practice law in Arizona.

4. Any attorney practicing under this rule shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in the State of Arizona.

5. The authority given an applicant to practice law pending admission pursuant to this rule shall terminate immediately if:

A. the applicant withdraws the application for admission by motion, or the application is denied;

B. the applicant fails to remain in compliance with paragraph (h)(1) of this rule;

C. the applicant is disbarred, suspended, or placed on disability inactive status in any other jurisdiction in which the applicant is licensed to practice law; or

D. the applicant fails to comply with the notification requirements of paragraph h(3) of this rule.

6. Upon the termination of authority to practice law pursuant to this rule, the applicant shall:

A. immediately cease practicing law in Arizona;

B. notify in writing all clients in pending matters, and opposing counsel and co-counsel in pending litigation, of the termination of the applicant's authority to practice law in Arizona; and

A.C. take all other necessary steps to protect the interests of the applicant's clients.

(ih) Admission by Transfer of Uniform Bar Examination Score.

1. An applicant who has taken the uniform bar examination in another jurisdiction and who meets the requirements of (A) through (G) of this paragraph (h)(1) may be admitted to the practice of law in this jurisdiction.

The applicant shall:

A. have achieved a scaled score on the uniform bar examination that is equal to or greater than the minimum acceptable score established by the Committee on Examinations and that was earned within five years prior to the applicant's taking the oath of admission and being admitted to the practice of law in Arizona;

B. hold a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time of graduation;

C. submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction, earned within five years of the date of application;

D. establish that the applicant is currently a member in good standing in every jurisdiction, for-

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foreign or domestic, wherever admitted to practice law; if the applicant is not presently in good standing, establish that the applicant resigned in good standing or is capable of achieving good standing;

E. establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

F. establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

G. submit evidence of successful completion of the course on Arizona law described in paragraph (j) of this rule.

2. For the purpose of paragraph (h)(1)(a) of this rule, a score is considered to have been earned on the date of administration of the uniform bar examination that resulted in the score.

3. An applicant who failed to earn the minimum acceptable score established by the Committee on Examinations in three or fewer attempts, regardless of where the uniform bar examination was taken, shall not be eligible for admission by transfer of uniform bar examination score under this paragraph.

4. Before being admitted by transfer of uniform bar examination score, the applicant must complete a course on Arizona law, the content and method of delivery of which shall be approved by the Supreme Court.

(i) Admission by Transfer of Uniform Bar Examination Score Application Filing; Fees. Any applicant seeking admission to the practice of law based on transfer of uniform bar examination score must meet the requirements of paragraph (h) and shall:

1. file an application for admission by transfer of uniform bar examination score, including character investigation information, in a manner established by the Court, including all required supporting documents, and

2. pay the application fee as established by the Court.

(k) Completion of Course on Arizona Law. Before being admitted to the practice of law in

Arizona, Arizona uniform bar examination applicants, applicants for admission by transfer of uniform bar examination score, and applicants for admission upon motion must complete a course on Arizona law, the content and delivery of which shall be approved by the Supreme Court.

(~~h~~) Deficiency in Examination Application and Supporting Documents. If the Committee on Examinations finds that an application is deficient, or the required supporting documents are deficient, or both, the Committee shall advise the applicant in writing of the deficiency, and the assessment of applicable late fees as established by the Court. The Committee shall allow the applicant either to supply additional information or to correct, explain in writing, or otherwise remedy the defects in the applicant's application, supporting documents, or fees up until the filing deadline. If such deficiencies in an examination application are not cured by the examination deadlines established by the Court, and if the Committee's reasons for refusing to grant permission for the applicant to take an examination are of record as a part of the applicant's file, the Committee shall withdraw the application and advise the applicant of such withdrawal and the reasons therefor.

(~~m~~) Deficiency in Character Report Materials. If the Committee on Character and Fitness finds that the character report materials are deficient, the Committee shall advise the applicant in writing of the deficiency and shall allow a reasonable time for the applicant either to submit additional written information or relevant documentation, or to correct or otherwise remedy the defects in the applicant's supporting documents. Thereafter, if such deficiencies have not been cured within the designated time period, the Committee may abandon processing and review of the investigation into the applicant's character, and shall advise applicant of such abandonment and the reasons therefore.

(~~n~~) Failure to Meet Standards; Effect on Time for Reapplication. If the Committee or the Court has denied an applicant admission to the practice of law by reason of the failure to meet the standards required by paragraph (b) of this rule, such applicant may not reapply for a period of five years from the date of denial of admission, unless the Committee or the Court orders otherwise.

(~~o~~) Completion of Professionalism Course.

1. *New Admittee Professionalism Course.* Except as otherwise provided in this rule, within one year after being admitted to the practice of law, the applicant shall complete the state bar course on professionalism, or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona for this purpose.

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A. A new admittee taking inactive status immediately upon admission is exempt from completing such a course but shall complete one within 12 months of becoming an active member of the state bar.

B. A new admittee who is an active member but neither resides nor practices law in Arizona is exempt from completing such a course but shall complete one within 12 months of becoming a resident of or commencing the practice of law in Arizona.

2. *Summary Suspension.* A new admittee who fails to comply with the requirements of paragraph (j)(1) of this rule shall be summarily suspended from the practice of law in Arizona, upon motion of the state bar pursuant to Rule 62, provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension, but may be reinstated in accordance with these rules.

Appendix B

Rule 38. Special Exceptions to Standard Examinations and Admission Process

(a) Admission Pro Hac Vice.

1. *Eligibility.* An attorney who is not a member of the State Bar of Arizona, but is currently a member in good standing of the bar of another state or eligible to practice before the highest court in any state, territory or insular possession of the United States (hereinafter called a nonresident attorney) and who is of good moral character and is familiar with the ethics, professionalism and practices of the legal profession in the State of Arizona, may appear as counsel pro hac vice in a particular case before any state or local court, board or administrative agency in the State of Arizona upon compliance with this rule. However, no person is eligible to appear as counsel pursuant to this rule if that person (a) is a resident of the State of Arizona, or (b) is regularly employed in the State of Arizona, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Arizona, except as permitted by paragraph (h) of this rule.

2. *Association of Local Counsel.* No nonresident attorney may appear pro hac vice before any court, board or administrative agency of this state unless the nonresident attorney has associated in that cause an attorney who is a member in good standing of the State Bar of Arizona (hereinafter called local counsel). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel may be required to personally appear and participate in pretrial conferences, hearings, trials, or other proceedings conducted before the court, board, or administrative agency when the court, board, or administrative agency deems such appearance and participation appropriate. Local counsel associating with a nonresident attorney in a particular cause shall accept joint responsibility with the nonresident attorney to the client, to opposing parties and counsel, and to court, board, or administrative agency in that particular cause.

3. *Procedure for Applying.* Appearance pro hac vice in a cause is subject to the discretion and approval of the court, board, or administrative agency where such cause is pending. A nonresident attorney desiring to appear pro hac vice under this rule shall comply with the procedures set forth herein for each matter where pro hac vice status is requested. For good cause shown, a court, board, or administrative agency may permit a nonresident attorney to appear pro hac vice on a temporary basis prior to the completion by the nonresident attorney of the application procedures set forth herein. At the time such temporary admission is granted, the court, board, or administra-

tive agency shall specify a time period for the nonresident attorney to complete the application procedures, and any temporary pro hac vice admission shall be revoked in the event of subsequent failure by the nonresident attorney to so complete the application procedures.

A. Verified Application to State Bar of Arizona. In order to appear as counsel in any matter pending before a court, board, or administrative agency in the State of Arizona, a nonresident attorney shall file with the State Bar of Arizona an original and one copy of a verified application together with a certificate from the state bar or from the clerk of the highest admitting court of each state, territory or insular possession of the United States in which the nonresident attorney has been admitted to practice law certifying the nonresident attorney's date of admission to such jurisdiction and the current status of the nonresident attorney's membership or eligibility to practice therein and a non-refundable application fee equal to the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed; provided that not more than one application fee may be required per nonresident attorney for consolidated or related matters regardless of how many applications are made in the consolidated or related proceedings by the nonresident attorney; and further provided that the requirement of an application fee shall be waived i) for Judge Advocate General's Corps' military attorneys practicing before the Military Trial Court of the State of Arizona or the Arizona Court of Military Appeals and ii) to permit pro bono representation of an indigent client or clients. An attorney seeking a fee waiver to provide pro bono representation of an indigent client or clients shall include in the application a verification that all clients represented in the action are indigent and that no attorney fee shall be paid by the client. "Indigent" is defined as those individuals whose gross income is at or below 125% of the federal poverty guidelines, as calculated in conformity with the eligibility requirements for Legal Services Corporation grantees, currently codified at 45. C.F.R. Section 1611.

Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund to be distributed by the Arizona Foundation for Legal Services and Education entirely to approved legal services organizations, as that term is defined in subparagraph (f) of this rule.

B. Notice of Receipt by State Bar of Complete Application. Upon receipt of the verified application and fee from the nonresident attorney as described above, the State Bar of Arizona shall issue to local counsel a Notice of Receipt of Complete Application which states: (1) whether the nonresident attorney has previously made any application or motion pursuant to this rule within the preceding three years; (2) the date of any such application or motion; and (3) whether the

application or motion was granted or denied by the court or administrative agency. The State Bar of Arizona Notice shall include as exhibits: (1) the original verified application and (2) the original certificate(s) of good standing. Copies of verified applications, certificates of good standing and orders granting, denying or revoking applications to appear pro hac vice shall be retained by the State Bar of Arizona for three (3) years.

C. Motion to Associate Counsel Pro Hac Vice. Local counsel shall file a motion to associate counsel pro hac vice with the court, board, or administrative agency where the cause is pending, together with proof of service on all parties in accordance with Arizona Rules of Civil Procedure. The motion to associate counsel pro hac vice shall include as exhibits: (1) the original verified application; (2) the original certificates of good standing; and (3) the State Bar of Arizona Notice. The motion to associate counsel pro hac vice shall also be accompanied by a proposed order granting or denying the motion. A copy of each order granting or denying the motion as entered by the court, board, or administrative agency shall be mailed by local counsel to the State Bar of Arizona.

D. Entry of Order. The order granting or denying the motion to associate counsel pro hac vice shall be entered by the court, board, or administrative agency no later than 20 days (exclusive of weekends and holidays) after the filing of such motion. A nonresident attorney shall make no appearance in a cause until the court, board, or administrative agency where the cause is pending enters the order granting the motion to associate counsel pro hac vice. The order granting pro hac vice status shall be valid for a period of one year from the date of entry, and shall be renewed for subsequent one year periods upon compliance with renewal procedures as specified herein.

E. Payment of Client Protection Fund Assessment. Upon the entry of an order granting a motion to associate counsel pro hac vice, the nonresident attorney shall pay the required annual assessment to the Client Protection Fund. The nonresident attorney shall pay the required annual assessment for each year that the application is renewed. These assessments are in addition to the application fee described in paragraph 3(A).

4. *Verified Application.* The verified application required by this rule shall be on a form approved by the Board of Governors of the State Bar of Arizona and available at the clerk of the court, board, or administrative agency where such cause is pending and shall state:

A. the title of the case or cause, court, board, or agency and docket number in which the nonresident attorney will be seeking to appear pro hac vice, and whether this case or cause is a re-

lated or consolidated matter for which the nonresident attorney has previously applied to appear pro hac vice;

B. the nonresident attorney's residence and office address;

C. the court(s) to which the nonresident attorney has been admitted to practice and the date(s) of such admission;

D. that the nonresident attorney is a member in good standing of such court(s);

E. that the nonresident attorney is not currently disbarred or suspended in any court;

F. whether the nonresident attorney is currently subject to any pending disciplinary proceeding by any court, agency or organization authorized to discipline attorneys at law, and if so pending, the application shall specify the jurisdiction, the nature of the matter under investigation and the name and address of the disciplinary authority investigating the matter;

G. whether the nonresident attorney has ever been disciplined by any court, agency, or organization authorized to discipline attorneys at law;

H. the court, board, or administrative agency, title of cause and docket number in which the nonresident attorney has filed an application to appear as counsel under this rule in this state in the preceding three years, the date of each application, and whether it was granted;

I. the name, address and telephone number of local counsel;

J. the name of each party in the cause and the name and address of counsel of record who is appearing for each party;

K. that the nonresident attorney certifies that he or she shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the law of this state governing the conduct of attorneys to the same extent as an active member of the State Bar of Arizona, as provided in Rule 46(b), Rules of the Supreme Court;

L. that the nonresident will review and comply with appropriate rules of procedure as required in the underlying cause; and

M. that the nonresident attorney understands and shall comply with the standards of professional conduct required of members of the State Bar of Arizona.

5. *Discretion.* The granting or denial of a motion to associate counsel pro hac vice pursuant to this rule by the court, board, or administrative agency is discretionary. The court, board, or administrative agency may revoke the authority of a nonresident attorney to make continued appearances pursuant to this rule. Absent special circumstances, repeated appearances by any person pursuant to this rule may be the cause for denial of the motion to associate counsel pro hac vice. Such special circumstances may include, but are not limited to, the following:

A. a showing that the cause involves a complex area of law in which the nonresident attorney possesses a special expertise, or

B. a lack of local counsel with expertise in the area of law involved in the cause.

6. *Transfer.* The nonresident attorney shall be deemed admitted in the event venue in such action is transferred to another county or court or is appealed; provided, however, that the court having jurisdiction over such transferred or appealed cause may revoke the authority of the nonresident attorney to appear pro hac vice.

7. *Continuing Duties to Advise of Changes in Status.* A nonresident attorney admitted pro hac vice shall have the continuing obligation during the period of such admission to promptly advise the State Bar of Arizona of a disposition made of pending charges or the institution of any new disciplinary proceedings or investigations. The State Bar of Arizona shall then advise any court, board, or administrative agency where the nonresident attorney has been admitted pro hac vice of any such information. A nonresident attorney shall promptly advise the State Bar of Arizona if permission to appear pro hac vice pursuant to this rule is revoked by any court, board, or administrative agency.

8. *Renewal of Application.* On or before each anniversary date of the filing of the verified application with the State Bar of Arizona, local counsel must certify to the State Bar of Arizona whether (a) the nonresident attorney continues to act as counsel in the cause; or (b) such cause has been adjudicated to a final conclusion or is otherwise concluded. Any nonresident attorney who continues to act as counsel in the cause shall remit to the State Bar of Arizona on or before each anniversary date a fee equal to the current dues paid by active members of the State Bar of Arizona

for the calendar year in which such renewal is sought, unless the nonresident attorney is waived under paragraph (a)(3)(A) of this rule as a Judge Advocate General's Corps' military attorney or as an attorney providing pro bono representation of an indigent client.

Fifteen percent of the non-refundable application fee paid pursuant to this section shall be deposited into a civil legal services fund administered by the Arizona Foundation for Legal Services and Education, to be distributed to and used exclusively for approved legal services organizations, as that term is defined in subparagraph (f) of this rule.

9. *Failure to Renew.* Any nonresident attorney who continues to appear pro hac vice in a cause and fails to pay the renewal fees set forth in paragraph (a)(8) of this rule shall be suspended from appearance in any cause upon the expiration of a period of thirty days from the anniversary date. The executive director of the State Bar of Arizona shall notify the nonresident attorney and local counsel of the suspension and shall file a certified copy of the notice with the court, board or administrative agency where the cause is filed. The nonresident attorney may be reinstated upon the payment of fees set forth in paragraph (a)(8) of this rule and a \$50 late penalty. Upon payment of all accrued fees and late penalty, the executive director shall reinstate the nonresident attorney and shall certify such reinstatement to the court, board, or administrative agency where the cause is filed.

10. *Annual Reporting.* The State Bar of Arizona shall prepare an annual report which shall list: (a) all applications filed pursuant to this rule during the preceding twelve months; (b) the names of all applicants; and (c) whether the application was granted or denied. The report shall be available for inspection at the offices of the State Bar of Arizona, and shall be provided to the Supreme Court.

11. *Disciplinary Jurisdiction of the State Bar of Arizona.* As provided in Rule 46(b), Rules of the Supreme Court, a nonresident attorney admitted pro hac vice pursuant to these rules shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar of Arizona.

....

(e) Authorization to Practice Law for Attorneys Volunteering with Approved Legal Services Organizations.

1. *Purpose.* Attorneys have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, this rule allows certain attorneys who otherwise are not allowed to practice law in Arizona to volunteer to provide civil legal assistance to individuals who are unable to pay for such services.

An attorney who is or was admitted to practice law for at least five (5) years in the courts of any state, district, or territory of the United may be admitted to practice for the limited purpose of providing assistance as an unpaid volunteer in association with an approved legal services organization so long as that organization employs at least one Arizona attorney not admitted pursuant to any provision of this rule.

2. *Definitions.*

A. The “active practice of law” means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment, or academic employment.

B. A “Rule 38(e) attorney” is any person who is or was admitted to practice in the courts of any state, district, or territory of the United States of America and

i. has been engaged in the active practice of law for at least five years before applying to participate in the volunteer lawyer program;

ii. has been a member in good standing of the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past five years;

iii. agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of Arizona for disciplinary purposes;

iv. neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

v. is certified under paragraph (e)(3) of this rule.

C. An “approved legal services organization” for the purposes of this rule is a non-profit legal services organization that has as one of its primary purposes the provision of legal assistance to indigents, free of charge, in civil matters. A legal services organization must be approved as such by the Supreme Court of Arizona. The organization shall file a petition with the clerk of the Court explaining:

- i. the structure of the organization and whether it accepts funds from its clients;
- ii. the major sources of funds used by the organization;
- iii. the criteria used to determine potential clients' eligibility for services performed by the organization;
- iv. the types of services performed by the organization;
- v. the names of all members of the State Bar of Arizona who are employed by the organization or who regularly perform legal work for the organization; and
- vi. the existence and extent of malpractice insurance that will cover the Rule 38(e) attorney.

3. *Certification.* An attorney who seeks authorization to practice law under this rule shall file with the clerk of the Supreme Court of Arizona an application including:

A. a certificate from the highest court or agency in the state, territory, or district in which the applicant is presently licensed to practice law documenting that the applicant has fulfilled the requirements of active bar members for at least five years preceding the date of the application, and that the applicant has not been disciplined for professional misconduct by the bar or highest court of the state, territory, or district during the last 5 years; provided that an attorney who is registered as in-house counsel pursuant to Rule 38(h) shall fulfill this requirement by providing a copy of his or her current Arizona Certification of Registration of In-House Counsel;

B. A statement signed by an authorized representative of the approved legal services organization that the applicant is an unpaid volunteer associated with the organization; and

C. a sworn statement signed by the applicant that he or she:

- i. has read and is familiar with the Rules of the Supreme Court and the applicable statutes of the State of Arizona relative to the conduct of lawyers, and will abide by the provisions thereof;
- ii. submits to the jurisdiction of the Supreme Court of Arizona for disciplinary purposes, as defined by the Rules of the Supreme Court;
- iii. has not been disciplined by the bar or courts of any jurisdiction during the last fifteen years; and
- v.¹ has successfully completed the course on Arizona law described in Rule 34(j).

The applicant shall send a copy of the application to the State Bar of Arizona, which shall file any objection to such application with the clerk of the Supreme Court within ten (10) days after the date of receipt of such application. An attorney is not allowed to practice law under this rule until the applicant has been authorized to do so by order of the Supreme Court of Arizona. The clerk of the Supreme Court shall send a copy of the order authorizing the practice of law to the State Bar of Arizona.

4. *Mandatory Continuing Legal Education.* Rule 38(e) attorneys shall be exempt from the requirements of Rule 45, Mandatory Continuing Legal Education.

5. *Pro Bono Requirement.* As provided in paragraph (e)(2)(B)(iv) of this rule, no attorney who practices law under the authority of this rule may receive compensation from the approved legal services organization with which the attorney is associated, from the attorney's client, or through a contingent fee agreement. This prohibition shall not prevent the attorney from seeking legal fees and costs from the opposing party, so long as all fees obtained are received by the client or donated to a qualified legal services program with the client's consent. In addition, an approved legal service organization or a client may reimburse any attorney practicing under this rule for actual expenses incurred while rendering services hereunder.

6. *Expiration of Authorization.* Authorization to practice law under this section shall expire if the applicant ceases to be associated as an unpaid volunteer with the organization. If the applicant ceases to be associated as an unpaid volunteer with the organization, an authorized representative of the organization shall, within ten (10) days of the date that association ceased, file a notification of the cessation with the clerk of the Supreme Court of Arizona and the State Bar of Arizona, specifying the date the association ceased.

7. *Discipline.* In addition to any appropriate proceedings and discipline which may be imposed by the Court under these rules, the Rule 38(e) attorney shall be subject to the following disciplinary measures:

A. civil contempt imposed by the presiding judge or hearing officer for failure to abide by a tribunal's orders in any matter in which the Rule 38(e) attorney has participated; and

B. withdrawal of the certification hereunder, with or without cause, by either the Court or the approved legal assistance organization.

....

(h) In-house Counsel

1. As used in this rule, “in-house counsel” shall refer to an attorney who is employed within the State of Arizona as in-house counsel or a related position for a for-profit or a non-profit corporation, association, or other organizational entity, which can include its parents, subsidiaries and/or affiliates, the business of which is lawful and is other than the practice of law or the provision of legal services.

2. A lawyer who is not a member of the State Bar of Arizona, but who holds a juris doctor degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and is currently a member in good standing of the bar of another state or the District of Columbia, or eligible to practice before the highest court in any state, territory or insular possession of the United States, and who is employed within the State of Arizona as in-house counsel, as hereinabove defined, may apply for an Arizona Certificate of Registration of In-House Counsel (“Registration Certificate”). A lawyer employed as in-house counsel who is admitted to practice in a jurisdiction outside of the United States, in accordance with the standards and requirements generally applicable to the practice of law in that jurisdiction, may also apply for a Registration Certificate.

3. An applicant for a Registration Certificate shall:

A. file with the State Bar of Arizona its form of verified application for an Arizona Certificate of Registration of In-House Counsel;

B. furnish to the State Bar of Arizona a certificate from the state bar or from the clerk of the highest admitting court of each state, territory, or insular possession of the United States, or foreign jurisdiction, in which the applicant has been admitted to practice law certifying the current status of the applicant's membership or eligibility to practice therein;

C. certify that the applicant has read and is familiar with the Arizona Rules of Professional Conduct;

D. pay an application fee in an amount equal to seventy-five percent (75%) of the current dues paid by active members of the State Bar of Arizona for the calendar year in which such application is filed; and

E. submit evidence that the applicant has successfully completed the course on Arizona law described in Rule 34(j).

4. An attorney who is employed by an eligible organization as in-house counsel on the effective date of this rule shall apply for a Registration Certificate within one hundred and eighty (180) days of that effective date. From and after the effective date of this rule, any attorney who commences employment by an eligible organization as in-house counsel shall apply for a Registration Certificate within ninety (90) days of the date of commencement of employment.

5. On or before February 1 of each year, in-house counsel registered pursuant to the provisions of this rule, who continues to be employed as in-house counsel within the State of Arizona, shall renew the Registration Certificate, in the manner prescribed by the Board of Governors of the State Bar of Arizona for that purpose, and pay a renewal fee in an amount equal to seventy-five percent (75%) of the current dues paid by active members of the State Bar of Arizona for that calendar year.

6. Upon a determination by the State Bar of Arizona that the applicant has complied with the requirements of subpart (3) of this rule, the State Bar shall issue to the applicant a Registration Certificate. The State Bar shall promptly notify any applicant if it determines that an application fails to comply with the requirements of subpart (3) of this rule, and the applicant shall have thirty (30) days from the date of such notice in which to cure any deficiency. If the applicant fails to cure such deficiency within that thirty (30) day period, the application shall be deemed denied.

7. Each lawyer issued a Registration Certificate shall report to the State Bar of Arizona, within thirty (30) days, any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction by any federal or state court or agency before which the applicant has been admitted to practice, or in any state in which the lawyer has rendered legal services while temporarily authorized under any rule or by admission *pro hac vice*.

8. If there is a change in circumstances, and an attorney holding a current Registration Certificate becomes ineligible for such Certificate, the attorney shall notify the State Bar of Arizona of such change in writing within thirty (30) days. An attorney registered pursuant to this rule who has become employed by a different eligible entity, but continues to meet all the requirements of this rule, may apply for the issuance of an amended Registration Certificate to reflect that change.

9. Except as provided in this rule, the holder of a valid and current Registration Certificate shall be entitled to the benefits and responsibilities of active members of the State Bar of Arizona, and shall be subject to the jurisdiction of the courts and agencies of the State of Arizona and to the State Bar of Arizona with respect to the laws and rules of this state governing the conduct and discipline of attorneys to the same extent as an active member of the State Bar. A Registration Certificate shall not authorize the registrant to provide legal services to any person or entity other than the one for which the registrant serves as in-house counsel, or its parents, subsidiaries or affiliates, ~~or to engage in activities for which admission pro hac vice is required under Rule 38(a) of these rules.~~ In the course of providing legal services permitted by this rule, a lawyer who has been issued a Registration Certificate may secure admission pro hac vice in Arizona by complying with the requirements of Rule 38(a) of these rules. A lawyer that has been issued a Registration Certificate under this rule shall satisfy the continuing legal education requirements, if any, of at least one of the other state(s) or jurisdiction(s) in which that lawyer is admitted to practice. If not subject to mandatory continuing legal education requirement in the other state(s) or jurisdiction(s), the registrant shall comply with Arizona's continuing legal education requirements. On or before September 15 of each calendar year, every registered in-house counsel shall file an affidavit demonstrating full compliance with this rule.

10. Notwithstanding the provisions of subpart (9) of this rule, the holder of a Registration Certificate may participate in the provision of legal services to individuals unable to pay for such services under the circumstances contemplated by, and in accordance with the requirements of, Rule 38(e) of these rules. A lawyer that has been issued a Registration Certificate under this rule may, in the course of providing such services, ~~also~~ secure admission *pro hac vice* in Arizona by complying

with the requirements of Rule 38(a) of these rules.

11. A lawyer's authority to practice as in-house counsel under a Registration Certificate issued pursuant to this rule shall be suspended when the lawyer is suspended or disbarred for disciplinary reasons in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which that lawyer has been admitted to practice.

12. A lawyer serving as in-house counsel in Arizona who fails to register pursuant to the provisions of this rule shall be ineligible for admission *pro hac vice* in Arizona, and may be referred by the State Bar of Arizona to the Bar admission and/or disciplinary regulatory authority in any jurisdiction in which that lawyer has been admitted to practice of law.

13. An applicant may petition the Board of Governors for a waiver of any of the requirements for registration under this rule.

Appendix C

MEMORANDUM

TO: Geoff Sturr, Esq.
Pat Sollen, Esq.
Whitney Cunningham, Esq.
Leticia Marquez, Esq.
Nancy Greenlee, Esq.
Sam Thumma, Esq.
Jennifer Burns, Esq.
(Work Group #2)

CC: Jerome Landau, Esq., ADR Section Chairman

FROM: David C. Tierney, Esq.

DATE: November 3, 2014

SUBJECT: Section Recommendations for the Work Group to Committee re: Supreme Court Rule Changes

1. **INTRODUCTION:**

We met on October 23, 2014 and I said to you that the ADR Section would present to you suggestions as regards possible rule changes that might affect mediation/arbitration. Chairman Jerome Landau organized a group of former Section Chairmen and current officers, which group convened on Friday, October 31, 2014. The following suggestions are therefore made for the Section.

2. **NO SUGGESTIONS AS TO ARBITRATION RULE**

E.R. 5.5 as regards advocates appearing in arbitrations and mediations is a relatively recently adopted rule. While there may one day be an interest in addressing the role of a non-lawyer arbitrator (or an out-of-state lawyer serving as an arbitrator), this does not seem like the time to grapple with those issues. This is not a very pressing issue, but one that the Section would want to have some time to look at this before making any proposal if the issue were going to be addressed some day in the future.

We suggest that E.R. 5.5 be left "as is".

3. **MEDIATION SUGGESTION:**

We think that Rule 31 needs some attention.

Rule 31(a)(2)(D) expressly notes that there are mediators who are not appointed by a Courts and who are not in pro bono programs. Then Rule 31(d)(25) carefully says that as a mediator, a non-lawyer is only exempted from UPL if he/she is (a) in a Court appointed role, or (b) in a pro bono program. Rule 31(d)(25) appears not to deal expressly with the mediator who is a non-lawyer but “engaged by the disputants”.

Proposal:

1. Remove from Rule 31(a)(2)(D) (the definition section) the words "through written agreement, signed by all the disputants..."
2. Add to Rule 31(a)(2)(D) (the definition section) this sentence: “Serving as a Mediator is not the Practice of Law”.
3. In Rule 31(d)(25) - remove “provided that...or a professional association.” and then remove “In all other cases,…” and omit “or provides”.

Thus, 31(a)(2)(D) would have the shaded text removed and the bold text added so as to read:

(D) "Mediator" means an impartial individual who is appointed by a court of government entity or engaged by disputants ~~through written agreement, signed by all disputants~~ to mediate a dispute. **Serving as a Mediator is not the practice of law.**

Thus, 31(d)(25) would have the shaded text shown below removed and the bold text added so as to read:

“25. Nothing in these rules shall prohibit a mediator as defined in these rules from facilitating a mediation between parties, preparing a written mediation **resolution agreement**¹, or filing such agreement with the appropriate court, ~~provided that:~~

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

(B) ~~the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.~~

~~In all other cases,~~ a mediator who is not a member of the state bar and who prepares ~~or provides~~ legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.”

¹ This was a bad turn of phrase. Did it mean a mediation - resolution agreement or an agreement to mediate? This is an important thing to be changed.

4. BRIEF JUSTIFICATION:

(a) The insertion of the “serving as a mediator is not the practice of law” sentence into Rule 31(a)(2)(D) defining mediator reflects what mediation is and does; a mediator facilitates parties reaching agreement but she does not have a lawyer-client relationship with any of the parties before her.

(b) In 31(a)(2)(D), many times the disputants never actually sign a mediation agreement. The mediation is scheduled and set by the mediator's letter, issued as a result of the parties or their attorneys calling or emailing the mediator.

(c) As of this point in time, approximately 80% of mediators are not Court appointed nor working in a pro bono program. To only direct Rule 31(d)(25)'s first paragraph toward Court appointed or pro bono mediators is to leave out of protection from UPL those mediators “engaged by the disputants” who happen not to be lawyers. In the family law area and in the employment law area, there are quite a few non-lawyer mediators. AAA actively seeks non-lawyer folks (contractors, CPA's) to train to serve as mediators.

(d) If any of those non-lawyer mediators (even those in Court appointed or pro bono roles) will engage in creating a settlement agreement, the revised Rule 31(d)(25) states they have to be a certified document preparer. We believe quite a few non-lawyer family law mediators (who often deal with pro per parties) have become certified document preparers.

(e) The phrase “written mediation agreement” is vague. We think it means the agreement which resolves a dispute, not the agreement in which parties agree to mediate. It would be good if that could be clarified.

DCT:pn

Appendix D

Rule 31. Regulation of the Practice of Law**(a) Supreme Court Jurisdiction Over the Practice of Law**

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office,"

“J.D.,” “Esq.,” or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. “Legal assistant/paralegal” means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. “Mediator” means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, ~~signed by all disputants~~, to mediate a dispute. Serving as a mediator is not the practice of law.

E. “Unprofessional conduct” means substantial or repeated violations of the Oath of Admission to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

(b) Authority to Practice. Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice. No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

(d) Exemptions. Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter 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 Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 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 party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation. The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal

Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.

25. ~~Nothing in these rules shall prohibit~~ Aa mediator, as defined in these rules, who is an active member of the state bar may ~~from facilitating a mediation between parties,~~ preparing a written

mediation agreement resolving all or part of a dispute or other legal documents. ~~or filing such agreement with the appropriate court, provided that:~~

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

~~(B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.~~

~~In all other cases,~~ A mediator who is not an active member of the state bar and who prepares a written mediation agreement resolving all or part of a dispute or other legal documents ~~or provides legal documents~~ for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit 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 pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a non-profit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if:

(A) the public service corporation, interim operator, or non-profit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or non-profit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or non-profit organization, and

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

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

- (A) the association's employee or management company is specifically authorized in writing by the association to appear on behalf of the association;
- (B) the association is a party to the small claims action.

Appendix E

ER 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) Except as authorized by these Rules or other law, A lawyer who is not admitted to practice in Arizona shall not:

(1) ~~except as authorized by these Rules or other law, establish an office or other systematic and continuous presence~~engage in the regular practice of Arizona law ~~for the practice of law~~; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice Arizona law.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law and which:

(1) are undertaken in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter.

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in ~~this~~ Arizona or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in ~~this~~ Arizona or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, may provide legal services in Arizona that exclusively involve as authorized by federal law, the law of another ~~or other law of this~~ jurisdiction, or tribal law.

(e) _____ A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and

registered pursuant to Rule 38(h) of these rules, may provide legal services in ~~this jurisdiction- Arizona~~ that are provided to the lawyer's employer or its organizational affiliates and are not services for which ~~the forum requires~~ pro hac vice admission is required.

(f) Any attorney who engages in the authorized multijurisdictional practice of law in ~~the State of Arizona~~ under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.

(g) Attorneys not admitted to practice in ~~the State of Arizona~~, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in ~~the State of Arizona~~, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission. See Rule 38(a).

(h) Any attorney who engages in the multijurisdictional practice of law in ~~the State of Arizona~~, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in ~~the State of Arizona~~.

COMMENT

[1] Paragraph (a) applies to the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. The definition of the practice of law is established by law and varies from one jurisdiction to another. For Arizona's definition, see Rule 31(a)(2)(A). Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See ER 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[2] Other than as authorized by these Rules or other law or this Rule, a lawyer who is not admitted to practice in Arizona violates paragraph (b)(1) if the lawyer engages in the regular practice of Arizona law in Arizona. A lawyer who is not admitted to practice in Arizona members of the State Bar of Arizona violates paragraph (b)(2) if the lawyer fails to state may comply with paragraph (b)(2) by stating in any advertisement or communication that targets or specifically offers legal services to Arizona residents that: (1) the non-member lawyer is not licensed to practice Arizona law the Supreme Court of Arizona; or and (2) the non-member's lawyer's practice is limited to federal legal matters, such as immigration law, or tribal legal

~~matters, or the law of another jurisdiction. (for example, a non-member may state his or her practice is limited to immigration matters). See ERs 7.1(a) and 7.5(b).~~

[4] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

[5] There is no single test to determine whether a lawyer's provision of legal services involving Arizona law are provided on a "temporary basis" in Arizona, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides legal services in Arizona that involve Arizona law on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Note: First sentence of comment [1] added effective 1/1/15

Version utilizing “law of this jurisdiction”

ER 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) Except as authorized by these Rules or other law, A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) ~~except as authorized by these Rules or other law, establish an office or other systematic and continuous presence engage in the regular practice of the law in~~ of this jurisdiction ~~for the practice of law~~; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice the law of in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that involve the law of this jurisdiction and which:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter.

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that exclusively involve as authorized by federal law, the law of another or other law of this jurisdiction, or tribal law.

(e) A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(h) of these rules, may provide legal services in this jurisdiction that are provided to the lawyer's employer or its organizational affiliates and are not services for which

~~the forum requires~~ pro hac vice admission is required.

(~~f~~e) Any attorney who engages in the authorized multijurisdictional practice of law in the State of Arizona under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.

(~~g~~f) Attorneys not admitted to practice in the State of Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in the State of Arizona, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission. See Rule 38(a).

(~~h~~g) Any attorney who engages in the multijurisdictional practice of law in the State of Arizona, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in the State of Arizona.

COMMENT

[1] Paragraph (a) applies to the unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. The definition of the practice of law is established by law and varies from one jurisdiction to another. For Arizona's definition, see Rule 31(a)(2)(A). Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (~~b~~a) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See ER 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law, for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[2] Other than as authorized by these Rules or other law ~~or this Rule~~, a lawyer who is not admitted to practice in this jurisdiction violates paragraph (b)(1) if the lawyer engages in the regular practice of the law of this jurisdiction. A ~~Lawyers~~ who ~~is~~are not a members of the State Bar of Arizona violates paragraph (b)(2) if the lawyer fails to state ~~may comply with paragraph (b)(2) by stating~~ in any advertisement or communication that targets or specifically offers legal services to Arizona residents that: (1) the non-member lawyer is not licensed to practice Arizona law by the Supreme Court of Arizona; ~~or~~ and (2) the non-member's lawyer's practice is limited to federal legal matters, such as immigration law, ~~or~~ tribal legal matters, ~~or the law of another jurisdiction~~. ~~(for example, a non-member may state his or her practice is limited to immigration matters)~~. See ERs 7.1(a) and 7.5(b).

[4] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that involve the law of this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized.

[5] There is no single test to determine whether a lawyer's provision of legal services involving the law of this jurisdiction are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides legal services in this jurisdiction that involve the law of this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Note: First sentence of comment [1] added effective 1/1/15