



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

**AGENDA**

**Wednesday, September 17, 2014**

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

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

<b>Call to Order</b>	<b>Justice Timmer, Chair</b>	
<b>Review and approval of minutes of meeting held July 9, 2014</b>	<b>Justice Timmer, Chair</b>	<b>p. 2</b>
<b>Reports from Work Groups and Possible Votes:</b> <b>Workgroup Examining the Rules of Professional     Conduct</b>	<b>Kimberly Demarchi</b>	<b>p. 5</b>
<b>Workgroup Examining the Practice of Law</b>	<b>Geoff Sturr</b>	<b>p. 8</b>
<b>BREAK</b>		
<b>Call to the public</b>	<b>Justice Timmer, Chair</b>	
<b>Chair comments and adjournment</b>	<b>Justice Timmer, Chair</b>	

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

Wednesday, July 9, 2014

State Bar of Arizona

4201 North 24<sup>th</sup> 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  
Jennifer Burns  
Whitney Craig Cunningham  
Kimberly A. Demarchi  
Jodi Knobel Feuerhelm  
Mary Jo Foster  
Nancy A. Greenlee  
Leticia Marquez  
Geoffrey M. T. Sturr  
The Honorable Samuel Thumma  
Maret Vessella

**Members Not Present:**

Amelia Craig Cramer

**Staff Present:**

Patricia A. Sallen

**Quorum:**

Yes

### **1. Call to Order & Introductions – Justice Timmer**

Justice Timmer called the meeting to order at 9:34 a.m. and welcomed members. The members present introduced themselves.

### **2. Committee overview, structure and timeline – Justice Timmer & Pat Sallen**

The administrative regulations pertaining to open court committee meetings and materials were discussed. Resources and documents will be uploaded on the Committee's webpage.

Justice Timmer outlined the Committee's purpose. The deadline for the Committee's work is December 2014. Ms. Sallen will serve as consultant to the Committee.

Two workgroups have been established: Kim Demarchi will chair the workgroup examining the Rules of Professional Conduct and Geoff Sturr will chair the workgroup examining the practice of law. The workgroups will be expected to meet between scheduled meetings of the full Committee.

### **3. ABA Commission on Ethics 20/20 and other issues – Pat Sallen**

Ms. Sallen presented an overview of the model-rule changes resulting from the ABA Commission on Ethics 20/20. Most of the ethical rule changes are in the comments. Black letter changes were few. She discussed issues the ABA commission raised and discussed but did not make recommendations.

She presented a chart showing the model rule changes already included in a pending State Bar rule-change proposal and highlighted the model rule changes that are not pending.

The State Bar has established an email address -- [changingpracticeoflaw@azbar.org](mailto:changingpracticeoflaw@azbar.org) – and already has asked lawyers for ideas. We also will reach out to various interests and non-lawyer entities.

### **4. Overview: Issues presented by multi-state and international practice of law – Justice Timmer & Pat Sallen**

Justice Timmer presented materials on who can practice in this state, particularly under treaties. She discussed the "Georgia Toolkit," which has been recommended to jurisdictions by the Conference of Chief Justices.

Ms. Sallen discussed additional issues the Committee may wish to address, including interpretations of the unauthorized practice of law.

### **5. Overview: Changing nature of legal practice in modern times – Mark Lassiter**

Mr. Lassiter gave a PowerPoint presentation on the evolution of legal services and the need for significant changes in rules to accommodate that evolution.

Mr. Lassiter will submit a list of ethical rules he believes are particularly problematic.

**6. 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 12:15 p.m.

**Ethics Rules Workgroup – Issues to Be Considered  
From September 3, 2014 Meeting**

**The Ethics Rules Workgroup will be examining the following issues and preparing proposals for further consideration, first by the Workgroup and then by the entire Committee:**

**1. Conflicts of Interest in the Contemporary Practice of Law**

- a. Clients are increasingly served by lawyers and other professionals who come together to handle a matter or group of matters, rather than having a more permanent affiliation as a “firm.” How should imputed conflicts work in that context? [This issue includes what are sometimes called “of counsel” arrangements]
- b. Law firms are increasing in size and global scope, such that lawyers in some “firms” might never meet or interact with each other. How should imputed conflicts work in that context?
- c. Government lawyers may represent multiple agencies, including those that have prosecution and investigation duties, which can raise conflicts issues that require engaging outside counsel at substantial cost. Are there alternative approaches, such as expanded use of screening?
- d. Do current conflicts rules restrict lawyer mobility (e.g., between firms) too much? Should technological developments related to screening lawyers be relied on instead? [Note: a rule petition that would have changed ER 1.10 on this issue has been referred to the committee for consideration]
- e. Could current conflicts rules be adjusted to facilitate limited scope representation directed at increasing access to justice?

**2. Cloud Computing, Shared Resources, and Data Mining**

- a. Is cloud storage permissible? What obligations do lawyers have regarding maintaining the security of cloud-stored data?
- b. What obligations do lawyers who are part of a larger institution (government, corporation) have to ensure that information relating to their legal representation is stored separately from other institutional data or access restricted?
- c. How can lawyers use data mining practices such as knowledge or client management systems without violating ethics requirements?

**3. New Forms of Client Teams**

- a. Current rules define certain ethical obligations and restrictions (supervision, fee-splitting, etc.) based on affiliation in a “firm.” How should those obligations and restrictions work in the context of more diffuse teams or temporary affiliations?

- b. Arizona’s prohibition on fee splitting without joint responsibility limits flexibility of arrangements to unbundle work between providers with different areas of expertise. Should it continue, be eliminated, or be modified?
- c. Should lawyers be permitted to form teams with non-lawyers to serve the needs of shared clients?
- d. Are there risks to clients associated with new forms of client teams that are not addressed by the current rules?

**4. Information Relating to the Representation.**

- a. What is included in the definition of “information relating to the representation”? What is not?
- b. How should information that is made public by someone other than the lawyer be handled? Is it then public and open for discussion?
- c. How does this rule interact with current trends in information available to and sought by consumers of other kinds of services (representative cases, etc.)?

**5. Criminal Defense Lawyers Receiving Data From Clients.**

- a. How should defense lawyers respond when their clients surrender to them items such as phones and computers that may have information about a crime along with other, unrelated and highly personal information?

**The following issues have been identified as important, but possibly better handled by the workgroup examining the rules governing the practice of law other than the RPC:**

1. Choice of laws for multi-jurisdictional firms and multi-jurisdictional matters: Different countries have different ethics rules, some of which are less restrictive than Arizona and U.S. rules. For example, in some jurisdictions, conflict-of-interest analysis is done at the level of the matter rather than the client. Should international clients be allowed to select one set of rules as governing their relationship with a firm? Does it matter if the firm has offices in jurisdictions with differing rules?
2. Lawyers are increasingly mobile between jurisdictions for a variety of reasons: moves to accommodate a spouse’s job or military service, retirement or summer homes, etc. Technology has made “virtual” practice significantly easier, such that lawyers can effectively represent clients who are located elsewhere.
  - a. How should these cross-border lawyers be regulated in terms of authorization to practice, etc.?
  - b. Should provision be made for provisional licensure to facilitate lawyers’ ability to continue practicing after a move?

3. New forms of teams also create potential unauthorized or multi-jurisdictional practice issues, such as where some aspect of the work is outsourced to another state or country. Do the rules need to be revised to address these arrangements?
4. Should unauthorized practice of law rules be revised to increase services available to those with unmet legal needs? [Limited scope representations also being addressed by RPC workgroup, see above; also possible area of coordination with new Supreme Court Commission on Access to Justice]

**The following issues have been identified as worthy of consideration, but are not in the first group of priority issues the workgroup is developing proposals to address:**

1. Non-lawyer ownership of firms and methods of raising capital
2. Alternative litigation financing

**The following issues have been identified as possible areas of inquiry that are not in need of additional consideration at this time, largely because they have been or will be addressed by other available forms of ethics guidance:**

1. Ranking and rating of lawyers and law firms
2. Social media and professional networking
3. New forms of marketing arrangements (online directories, deal-of-the-day offers, etc.)

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

Practice of Law Workgroup

9/9/14 Meeting

1. ABA 20/20 Proposals

The Practice of Law Workgroup will continue examining the following ABA 20/20 proposals:

1. Proposal on Admission on Motion. The current consensus of the Workgroup is to recommend adoption of the proposal. The Workgroup is seeking input from Character & Fitness and Discipline, and will review Rule 34 and related Administrative Orders, as it further considers the proposal.
2. Proposal on Practice Pending Admission. The Workgroup has not settled on whether to recommend adoption of the proposal. It is seeking information from Character & Fitness and Discipline as it further considers the proposal
3. Proposal on Pro Hac Vice Admission. The Workgroup has not settled on whether to recommend adoption of the proposal. It is reviewing the experience of other U.S. jurisdictions and will consider the interplay between the proposed rule and our current rule regarding foreign legal consultants. The current consensus is to recommend removing the restriction in Rule 38(h) on pro have vice admission by registered in-house counsel and to add a requirement that pro hac vice applicants pay an assessment to the Client Protection Fund.

The Workgroup does not believe further examination of the proposal on in-house counsel registration is warranted because the proposal is more restrictive than Rule 38(h).

2. Other Proposals Regarding Foreign Lawyers

The Workgroup reviewed the various proposals included in the ABA report regarding the “Georgia Experience.” Some have been adopted by Arizona (registration of foreign in-house lawyers and foreign legal consultants) or are being considered by the Workgroup (pro hac vice admission). The Workgroup will consider temporary transactional practice in its review of how the practice and unauthorized practice of law should be defined. The Workgroup does not recommend pursuing the proposal for full licensure of foreign lawyers.

3. Rule 38

The Workgroup is considering both specific revisions to Rule 38 in connection with the proposals set forth above and also anticipates recommending that Rule 38 be restructured or otherwise revised to make it clearer and more understandable. Pat Sallen is preparing a draft

revision. The revision will distinguish between those revisions that are substantive and those that are organizational.

4. The Practice and Unauthorized Practice of Law

The Workgroup will be reviewing Rule 31, which defines the practice and authorized practice of law, relevant opinions from the Unauthorized Practice of Law Committee, ER 5.5 and other materials relevant to virtual and temporary practice of law.

5. Other Issues Identified by the Ethical Rules Workgroup

The Workgroup will consider at its next working session issues identified by the Ethical Rules Workgroup.