

AMENDED PROPOSAL
Arizona Code of Judicial Administration
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-209: Alternative Business Structures
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Arizona Code of Judicial Administration
Part 7: Administrative Office of the Courts
Chapter 2: Certification and Licensing Programs
Section 7-209: Alternative Business Structures

A. Definitions.

“Alternative business structure” (“ABS”) is a business entity that includes nonlawyers who have an economic interest or decision-making authority in the firm and provides legal services in accord with Supreme Court Rules 31 and 31.1(c). An ABS does not include a traditional law firm that does not share any ownership interests with nonlawyers.

“Authorized person” means a person possessing:

1. An economic interest in the alternative business structure equal to or more than ten percent of all economic interests in the alternative business structure; or
2. The legal right to exercise decision-making authority on behalf of the alternative business structure. Examples may include: a sole proprietor of a sole proprietorship, a manager of a limited liability company, an officer of a corporation, a general partner of a general or limited partnership, or a person possessing comparable rights by operation of law or by agreement.

“Compliance attorney” means an active member of the State Bar of Arizona in good standing who, pursuant to Supreme Court Rule 42, ER 5.3(d) and subsection (G)(3)(b) of this section, is responsible for ensuring compliance with the rules governing ABSs, Supreme Court Rule 42, and the regulatory requirements of this section.

“Decision-making authority” in an ABS means the authority, by operation of law or by agreement, to directly or indirectly:

1. Legally bind the ABS;
2. Control or participate in the management or affairs of the ABS;
3. Direct or cause the direction of the management and policies of the ABS; or
4. Make day-to-day or long-term decisions on matters of management, policy, and operations of the ABS.

“Director” means the administrative director of the courts or the director’s designee.

“Economic interest” means the right to share in the income, gains, losses, deductions, credits, or similar items of, and to receive distributions from, the alternative business structure.

"Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, or government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

B. Applicability. This section governs the administration, licensing and regulation of alternative business structures, and shall be read with the supreme court rules governing the practice of law.

C. Purpose. This section is intended to result in the effective administration of the alternative business structures licensing program.

D. Administration

1. **Role and Responsibilities of the Supreme Court.** The supreme court is authorized to regulate the practice of law as a function of its responsibility to administer an integrated judiciary, pursuant to article VI, §§ 1 and 3 of the Arizona Constitution.
2. **Establishment and Administration of Fund.** The State Treasurer shall establish an Alternative Business Structures Fund consisting of monies received for licensure fees, costs, and civil penalties. The Administrative Office of the Courts shall administer the fund and shall receive and expend monies from the fund for ABS program operations, including disciplinary operations by the State Bar of Arizona.
3. **Role and Responsibilities of the Director.** The director as designated by the Az. Const. Art. 6, § 7:
 - a. **Shall:**
 - (1) Develop policies and procedures in conformity with this section;
 - (2) Appoint and supervise all division staff;
 - (3) Approve or disapprove all budgetary matters;
 - (4) Ensure implementation of the applicable laws and this section; and
 - (5) Develop policies and procedures regarding the processing of applications for licensing by division staff.
 - b. **May:**
 - (1) Direct division staff to conduct an investigation into alleged acts of misconduct or violations in relation to initial licensure, renewal of a license or licensure after a period of revocation; and
 - (2) Refer a complaint to the state bar.
 - (3) Initiate a compliance audit of a license holder to determine if the license holder is in compliance with statutes, court rules, administrative orders, court orders, local rules, the ACJA, and any other legal or ethical requirement relating to the license holder's ABS license. The following provisions apply to audits:
 - (a) **Timeframes.** The director shall develop timeframes and procedures for division staff conducting compliance audits.
 - (b) **Confidentiality.**
 - (i) Working papers associated with the compliance audit maintained by division staff are not public records and are not subject to disclosure, except to court staff in connection with their official duties, the state bar, the attorney general, county attorney, public regulatory entities, or law

enforcement agencies.

- (ii) Upon completion of an audit the final report issued to the affected party is a public record subject to public inspection.
- (c) Subpoena. The director may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the audit.
- (d) Referral. The director may refer the audited license holder to the state bar for investigation of alleged acts of misconduct or violations of statutes, court rules, administrative orders, court orders, local rules, the ACJA, and any other legal or ethical requirement relating to the license holder's ABS license.
- (e) Violations or Noncompliance. Willful violation of or willful noncompliance with an order of the director regarding the audit, or willful noncompliance with a corrective action plan resulting from an audit, may result in an order directing the license holder to comply. The director may forward a copy of the order or report to the superior court and request the superior court issue an order to require the appearance of a person or business, compliance with the director's order, or both. The superior court may treat the failure to obey the order as contempt of court and may impose penalties as though the license holder had disobeyed an order issued by the superior court.

4. Role and Responsibilities of Division Staff.

- a. The director shall designate the division director and other division staff to assist in the administration of the ABS licensing program pursuant to the Az. Const. art 6, § 7.
- b. Division staff shall:
 - (1) Submit completed applicant fingerprint cards and applicable fees to the Arizona Department of Public Safety, in accordance with A.R.S. § 41-1750 and Public Law 92-544, pursuant to subsection (E)(1)(c);
 - (2) Make recommendations to the committee on all application and licensing matters and any other matters regarding applicants and license holders;
 - (3) Provide updates to the committee on program activities;
 - (4) Maintain a list of license holders and post the list on the applicable website and make the list available to the public;
 - (5) Conduct compliance audits and monitoring as required by this section; and
 - (6) Conduct pre-licensure investigations of allegations of acts of misconduct or violations of the statutes, court rules, or the applicable sections of the ACJA by applicants or authorized persons and report the findings to the committee.

5. Role and Responsibilities of Committee on Alternative Business Structures.

- a. Appointment of Members. Pursuant to Rule 33.1, the court shall appoint members to initial varying terms of one, two, and three years to encourage continuity of the committee. Other appointment details are contained in Supreme Court Rule 33.1(a)(2) and (3). The members shall assist division staff in the recruitment of committee members.
- c. Duties of the Committee. In addition to Supreme Court Rule 33.1(a)(4) – (6) and (b):

- (1) The committee shall:
 - (a) Make recommendations to the supreme court or the Arizona Judicial Council regarding rules, policies, and procedures for regulating ABSs, including:
 - (i) applicant qualifications;
 - (ii) fees;
 - (iii) a code of conduct; and
 - (vi) any other matter pertaining to ABSs.
 - (b) Recommend whether to license an applicant for initial licensure;
 - (c) Examine license renewal applications and grant or deny renewal; and
 - (d) Order a summary suspension of a license.
 - (2) The committee may:
 - (a) Hold interviews of applicants regarding initial licensure; and
 - (b) Hold interviews of license holders regarding renewal of licensure;
- d. In addition to the requirements of subsection (D), and except as otherwise provided herein, committee members must abide by ACJA § 7-201(I)(2) through (7).
6. **Role and Responsibility of the State Bar of Arizona.** The State Bar of Arizona is responsible for receiving, processing, investigating, seeking interim suspension of and prosecuting disciplinary matters against ABSs and an ABS's members, and shall carry out this responsibility according to supreme court rules and this code section.
7. **Computation of Time.** For the purposes of this section, the computation of days pursuant to Rule 6(a), Rules of Civil Procedure is calculated as follows:
- (1) **Day of the Event Excluded.** Exclude the day of the act, event, or default that begins the period.
 - (2) **Exclusions if the Deadline is Less Than 11 Days.** Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.
 - (3) **Last Day.** Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.
 - (4) **Next Day.** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

E. Licensure.

1. **Application for Initial Licensure.**
 - a. **Forms.** An applicant, including all authorized persons, shall apply for licensure on approved forms and file them with division staff.

- (1) Division staff shall conduct a preliminary review of the submitted application and determine if the application is deficient, the required supporting documents are deficient, fees are deficient, or a combination of these requirements are deficient.
 - (2) Division staff shall advise the applicant in writing of the deficiencies.
 - (3) The applicant shall provide the information and a written response to correct or explain the deficiencies, or otherwise remedy the defects in the application, supporting documents or fees.
 - (4) Division staff may require the applicant to provide additional information or an explanation reasonably necessary to determine if the applicant meets the required qualifications specified in this section.
 - (5) Upon receipt of a complete application, division staff may conduct a personal credit review and review records regarding an application for initial licensure, consistent with the policies and procedures developed by the director.
 - (6) The applicant shall notify division staff of any changes relevant to the application for licensure within five days of the change.
 - (7) Upon a final review of the application, division staff shall prepare and forward to the committee a written recommendation regarding the applicant's qualifications and eligibility for licensure.
 - (8) Division staff shall advise the committee in any written recommendation regarding licensure of an applicant, of any complaints alleging acts of misconduct or violations of statute, court rules or order, or this section, if the allegations occurred during the time the applicant held an active license and were received after the applicant's licensure expired.
 - (9) The division staff's written recommendation to the committee shall note any deficiencies in the application. A deficient application for initial licensure is lacking one or more of the following requirements:
 - (a) An explanation or correction of any deficiencies, pursuant to subsection (E)(1)(a)(4);
 - (b) Payment of all appropriate fees, pursuant to subsection (E)(1)(b); or
 - (c) Necessary information or documents to complete a criminal background check, including a readable fingerprint card or affidavit in lieu of a fingerprint card, pursuant to subsection (E)(1)(c).
 - (10) The committee, upon review of the division staff recommendation, may request an informal interview with an applicant, pursuant to subsection (D)(5)(c)(2)(a), to establish if:
 - (a) Additional information is needed to determine if the applicant meets all qualifications in this section;
 - (b) An explanation of the information provided by the applicant is needed to determine if the applicant meets all qualifications in this section; or
 - (c) Any complaints, regarding allegations of misconduct or violations of the statutes, court rules, or applicable sections of the ACJA, received after the applicant's original licensure expired, require investigation by division staff pursuant to subsection (E)(1)(a)(4).
- b. Fees. The applicant shall submit with the application, an application fee, initial licensure fee, and any other fees required as specified in subsection (J). Fees are not refundable or waivable. An applicant shall make the payment for any fee payable to

the Arizona Supreme Court. An application submitted without fees is deficient.

- c. Fingerprinting. If required, an authorized person shall submit with the application, a full set of fingerprints, with the fee established by law, for the purpose of obtaining a state and federal criminal records check. An application submitted without a fingerprint card, if required, is deficient.
 - (1) The authorized person shall provide a readable and complete fingerprint card. The authorized person shall pay any costs attributable to the original fingerprinting or subsequent re-fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints.
 - (2) If after two attempts, the FBI determines the fingerprints provided are not readable, the authorized person shall submit a written statement, under oath, that the authorized person has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.
 - (3) Division staff shall submit completed fingerprint cards and the applicable fees to the Arizona Department of Public Safety, pursuant to A.R.S. § 41-1750, Public Law 92-544, and subsection (D)(4)(b)(1).

2. Decisions Regarding Licensure.

- a. In determining whether to recommend to the supreme court a grant of licensure, the committee shall take into consideration Supreme Court Rule 33.1(b), which states:

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

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

- (A) protecting and promoting the public interest;
- (B) promoting access to legal services;
- (C) advancing the administration of justice and the rule of law;
- (D) encouraging an independent, strong, diverse, and effective legal profession; and
- (E) promoting and maintaining adherence to professional principles.

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

- (A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;
- (B) the alternative business structure maintains proper standards of work;
- (C) the lawyer makes decisions in the best interest of clients;

- (D) confidentiality consistent with Supreme Court Rule 42 is maintained; and
 - (E) any other business policies or procedures do not interfere with a lawyers' duties and responsibilities to clients.
- b. Notification of Licensure. Upon the supreme court's order approving a license, division staff shall promptly notify qualified applicants of licensure in writing. Each qualified ABS shall receive a document evidencing licensure, stating the applicant's name, date of licensure, license number, and expiration date of the license. Each license shall expire as provided in (F)(1).
- c. License Status. All licenses are valid until expired, voluntarily surrendered, suspended or revoked.
- d. Denial of Initial License.
- (1) The committee shall recommend to the supreme court denial of licensure if the applicant does not meet the qualifications or eligibility requirements at the time of the application described in this section; or has not submitted a complete application with all deficiencies corrected, the required documents and fees.
 - (2) The committee shall recommend denial of licensure if the committee finds, with respect to the applicant or any authorized person, one or more of the following:
 - (a) Has committed material misrepresentation, omission, fraud, dishonesty, or corruption in the application form;
 - (b) Has committed any act constituting material misrepresentation, omission, fraud, dishonesty or corruption in business or financial matters;
 - (c) Has conduct showing the applicant or an authorized person of the applicant is incompetent or a source of injury and loss to the public;
 - (d) Has a conviction by final judgment of a felony, regardless of whether civil rights have been restored;
 - (e) Has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of law or the delivery of legal services to be provided by the ABS, regardless of whether civil rights have been restored;
 - (f) Has been disbarred from, or denied admission to, the practice of law or the equivalent of disbarment or denial in this state or any other jurisdiction;
 - (g) Is currently suspended from the practice of law in this state or any jurisdiction;
 - (h) Has a denial, revocation, suspension, or any disciplinary action of any professional or occupational license or certificate;
 - (i) Has a censure, probation, or any other disciplinary action of any professional or occupational license or certificate by other licensing or regulatory entities if the underlying conduct is relevant to licensure under this section;
 - (j) Has a termination, suspension, probation, or any other disciplinary action regarding past employment if the underlying conduct is relevant to licensure under this section;
 - (k) Has been found civilly liable in an action involving misrepresentation, material

- omission, fraud, misappropriation, theft, or conversion;
- (l) Is currently on probation or parole;
 - (m) Has violated any decision, order, or rule issued by a professional regulatory entity;
 - (n) Has violated any order of a court, judicial officer, administrative tribunal, or the committee;
 - (o) Has made a false or misleading statement or verification in support of an application for licensure filed by another person;
 - (p) Has made a false or misleading oral or written statement to division staff or the committee;
 - (q) Failed to disclose information on the application subsequently revealed through the background check;
 - (r) Failed to respond or furnish information to division staff or the committee when the information is legally requested and is in the applicant's control or is reasonably available to the applicant and pertains to licensure or investigative inquiries; or
 - (s) If the applicant's business has a record of conduct constituting dishonesty or fraud on the part of an employee, authorized person, or the business.
- (3) The committee may consider any or all of the following criteria when reviewing the application of an applicant with a misdemeanor or felony conviction, pursuant to subsection (E)(2)(d)(2)(d) or (e):
- (a) The applicant's age at the time of the conviction;
 - (b) The applicant's experience and general level of sophistication at the time of the pertinent conduct and conviction;
 - (c) The degree of violence, injury or property damage and the cumulative effect of the conduct;
 - (d) The applicant's level of disregard of ethical or professional obligations;
 - (e) The reliability of the information regarding the conduct;
 - (f) If the offenses involved fraud, deceit, or dishonesty on the part of the applicant resulting in harm to others;
 - (g) The recency of the conviction;
 - (h) Any evidence of rehabilitation or positive social contributions since the conviction occurred as offered by the applicant;
 - (i) The relationship of the conviction to the purpose of licensure;
 - (j) The relationship of the conviction to the practice of law or the delivery of legal services to be provided by the ABS;
 - (k) The applicant's candor during the application process;
 - (l) The significance of any omissions or misrepresentation during the application process; and
 - (m) The applicant's overall qualifications for licensure separate from the conviction.
- (4) Upon the committee's decision to recommend denial of licensure, division staff shall notify each applicant of the reasons for the denial and the right of the applicant to a hearing, pursuant to subsection (E)(2)(d)(5). The division staff shall provide the notice in writing and shall send the notice within ten days after the committee's

decision.

- (5) An applicant is entitled to a hearing on the decision to recommend denial of licensure, if the disciplinary clerk receives a written request for a hearing within fifteen days after division staff mails the notice of the denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of ACJA § 7-201(H)(12) through (23) apply regarding procedures for the hearing and appeal.
- (6) An applicant denied licensure by a final decision of the supreme court, whether or not a hearing was requested and held, may reapply for licensure, pursuant to subsection (E), under the following circumstances:
 - (a) It has been twelve months since the final decision by the supreme court;
 - (b) The applicant shall present new documentation to address the original issues resulting in denial including all of the following:
 - (i) Demonstration of acceptance of responsibility for the conduct leading to the denial by the committee; and
 - (ii) Establishes purpose of business meets the regulatory objective of Supreme Court Rule 33.1(b)(1) and subsection (E)(2)(a)(1).
 - (c) In determining whether the applicant has established that the purpose of business meets the regulatory objective of Supreme Court Rule 33.1(b)(1) and subsection (E)(2)(a), the committee shall conduct an informal interview with the applicant no later than 60 days after the applicant has submitted a completed application.

3. Time Frames for Licensure.

- a. The director shall develop time frames for the processing of applications by division staff, pursuant to subsection (D)(3)(a)(5).
- b. An applicant shall respond timely to requests for information from division staff pertaining to the applicant's application. Unless the applicant can show good cause as to why the committee should grant additional time, the committee shall not approve any applicant unless the applicant successfully completes all requirements within 90 days from the date division staff received the original initial application for licensure.
- c. If an applicant needs additional time to comply with division staff requests or to complete the application process within the time frames specified in this subsection, the applicant shall file a written request for an extension with division staff. The request shall state the reasons for additional time to comply with time frames and licensure requirements. The applicant shall file the request for additional time to complete the initial application at a minimum, ten days prior to the 90-day deadline, unless the applicant makes a showing of good cause. Failure to complete the application process or file a written request for an extension of time within this time period shall nullify and void the original application and supporting documents, including fingerprints and fees.

- d. Division staff shall forward the written request for an extension of time to the committee at the next scheduled committee meeting.
 - e. If the applicant fails to meet the 90-day deadline or is not granted additional time by the committee to complete the initial licensure process, the applicant is considered a new applicant. The applicant shall submit a new application including a fingerprint card and fees.
4. Records of Applicants for Licensure and License Holders. Unless otherwise provided by law, the following applies to applicant and license holder records:
- a. Applicant and license holder licensure records are open to the public, after home addresses, home or cellular telephone numbers, social security numbers and all other personally identifying information, except for the name of the license holder, have been redacted.
 - b. Division staff shall retain applicant and license holder records for a period of five years from the last activity in the record. Division staff shall take appropriate methods to ensure the confidentiality of any destroyed records.
5. Unlawful Use of Designation or Abbreviation.
- a. An ABS who has received a license is authorized to utilize the designation of “Arizona licensed” in connection with their title or name and may use any appropriate abbreviation connected with this licensure. No other business shall assume or use the title, designation, or abbreviation, or any other title, designation, sign or card, the use of which is reasonably likely to induce others to believe the business holds valid ABS license issued by the Arizona Supreme Court. The license holder shall not sell, transfer, or assign its license to any other business.
 - b. The committee, upon completion of an investigation may issue a cease and desist order. A hearing officer or a superior court judge, upon petition by the committee, may enter an order for an individual or business to immediately cease and desist conduct constituting engagement as an ABS without the required license.
6. Voluntary Surrender. A license holder in good standing may surrender its license to the committee. However, the surrender is not valid until accepted by the committee. The committee or division staff may require additional information reasonably necessary to determine if the license holder has violated any provision of the statutes, court rules, and this section. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered license holder occurring prior to the surrender.
- a. Division staff shall present the surrendered license to the committee at the next available committee meeting after receiving notice of the surrender. Upon the committee’s acceptance of the voluntary surrender division staff shall designate the license of the license holder as a “surrendered license holder in good standing.”

Division staff shall notify the license holder in writing within ten days after the committee's acceptance of the surrender.

- b. The committee shall not accept the surrender if there is a complaint pending against the license holder.
- c. The committee shall, within 90 days of the receipt of the surrendered license by division staff, either accept the surrender or, based upon the recommendations of division staff, await the outcome of the pending disciplinary proceedings. If the supreme court, hearing panel or presiding disciplinary judge subsequently imposes a sanction upon the license of the surrendered license holder, division staff shall change the status of the license holder from "surrendered license holder in good standing" to that of an ABS so disciplined.
- d. An ABS who is granted voluntary surrender must comply with the requirements of subsections (H)(4)-(6).

F. Renewal of Licensure.

- 1. Expiration Date. Licenses expire on February 1 of each year, except as otherwise provided in this section. All licenses shall continue in force until expired, voluntarily surrendered, suspended, or revoked.
- 2. Application. A license holder is responsible for applying for a renewal license. The license holder shall apply for renewal of licensure on the form provided by division staff. The committee shall set a renewal application deadline, in advance of the expiration date, to allow a reasonable time frame for processing the renewal application.
 - a. When a license holder has filed a timely and complete renewal application, the existing license does not expire until the administrative process for review of the renewal application has been completed.
 - b. When a license holder requests to file an untimely renewal application, the division director may process the untimely application and recommend to the committee to renew a license if the untimely renewal applicant demonstrates to the director good cause for the untimely filing. In addition, the following shall apply:
 - (1) The applicant shall submit a complete renewal application and applicable fees, and any other documentation requested by division staff to verify the grounds for the good cause exception requested.
 - (2) The applicant shall not provide legal services:
 - (a) Until the director decides in writing based on good cause to process the application; or
 - (b) If the director decides not to process the untimely application, until an initial application is processed, and the applicant is granted a license renewal pursuant to this section.

- c. When a timely renewal application is denied, the existing licensure does not expire until the last day for seeking a hearing on the denial decision pursuant to subsection (E)(2)(d)(5); or if a hearing is requested, until the final decision is made on an appeal of the denial by the committee pursuant to ACJA § 7-201(H)(25).
 - d. The committee may request an informal interview with the applicant for renewal, pursuant to subsection (D)(5)(c)(2)(b), to establish if additional information or an explanation of the information provided by the applicant is needed to determine if the applicant continues to meet the qualifications for licensure in this section.
 - e. The license of a license holder who does not supply a complete renewal application and payment of the renewal fee in the specified time and manner to division staff shall expire as of the expiration date. Division staff shall treat any renewal application received after the expiration date as a new application, except when the license holder requests to file an untimely renewal application pursuant to subsection (F)(2)(b).
3. Additional Information. Before renewal of licensure, division staff may require additional information reasonably necessary to determine if the applicant continues to meet the qualifications specified in this section, which may include:
- a. Background information, pursuant to subsection (E)(1)(a); and
 - b. Fingerprinting pursuant to subsection (E)(1)(c).
4. Decision Regarding Renewal.
- a. The committee may renew a license if the license holder:
 - (1) meets all requirements for renewal as specified in this section;
 - (2) submits a completed renewal application;
 - (3) pays the renewal fees on or before the expiration date as specified by this section; and
 - (4) meets the regulatory objectives and governance structures and policies of section (E)(2)(a).
 - b. Division staff shall promptly notify the applicant in writing of the committee's decision to renew the applicant's license. Each renewed applicant shall receive a document evidencing renewal of licensure, stating the applicant's name, date of licensure, license number and expiration date.
 - c. The committee may deny renewal of licensure for any of the reasons stated in subsection (E)(2)(d). Division staff shall promptly notify the applicant, in writing, within ten days of the committee's decision to deny renewal of licensure. The notice shall include the committee's reasons for the denial of renewal of licensure and the right of the applicant to a hearing, pursuant to subsection (F)(4)(d).

- d. An applicant is entitled to a hearing, on the decision to deny renewal of licensure if the disciplinary clerk receives a written request for a hearing within fifteen days after the date of the notice of denial. The applicant is the moving party at the hearing and has the burden of proof. The provisions of ACJA § 7-201(H)(12) through (23) and (H)(25) through (27) apply regarding procedures for hearing and appeal.

G. Role and Responsibilities of Licensed Alternative Business Structures and Designated Compliance Lawyers.

1. Initial Licensure. In addition to the requirements of subsection (E)(1), each applicant for licensure as an ABS must meet the following requirements:
 - a. Submit completed applications for the alternative business structure and each authorized person.
 - b. Submit a prescribed indemnification statement and conflict of interest statement signed by each authorized person.
 - c. Fully disclose all relationships to any parent company or organization, and currently paid or unpaid officers, directors, owners, and boards of directors, and any and all company subsidiary dba's operating in any state.
 - d. Declare a statutory agent in Arizona.
 - e. Obtain any necessary federal and state tax identification numbers as required by law.
 - f. Designate a principal with whom division staff may communicate on any administrative, procedural, or operational issues.
 - g. Submit articles of incorporation and letters of good standing from the Arizona Corporation Commission or otherwise demonstrate authorization to do business in the State of Arizona.
 - h. Demonstrate the business meets objectives identified in Supreme Court Rule 33.1(b) and subsection (e)(2)(b) herein.
 - i. Submit the prescribed acknowledgement form that the ABS and its members are subject to the regulatory and discipline authority as set forth in the supreme court rules and this section.
 - j. Insurance Disclosure

(1) Each ABS shall certify to the state bar on an annual form prescribed by the state bar on or before February 1 of each year whether the ABS is currently

covered by professional liability insurance. Each ABS who reports being covered by professional liability insurance shall notify the state bar in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. An ABS who acquires professional liability insurance after February 1 shall advise the state bar of the change of status in coverage.

- (2) The state bar shall make the information submitted by ABSs pursuant to this rule available to the public on its website as soon as practicable after receiving the information.
- (3) Any ABS who fails to comply with this section in a timely fashion may be summarily suspended by the committee on alternative business structures. Supplying false information in complying with the requirements of this section shall subject the ABS to appropriate disciplinary action.

2. Roles and Responsibilities of ABSs. Each ABS shall:

- a. Adhere to the Rules of Arizona Supreme Court and the standards in the code of conduct in subsection (K) herein.
- b. Maintain a statutory agent in Arizona.
- c. Notify division staff of any change in the telephone number, business address, mailing address, or home address of principals, compliance lawyers, and authorized persons, or any other required database information within three business days of the change. The designated principal of the ABS shall notify division staff of changes through the ABS regulation email system or in writing, utilizing the form provided by division staff.
- d. Maintain the confidentiality of all records regarding any person receiving legal services.
- e. Notify division staff in writing within 30 days of a change in designated principal or compliance attorney.
- f. Any ABS that ceases doing business must adhere to the requirements of subsections (H)(4) through (6).
- g. Any ABS subject of an acquisition or merger with another business entity, regardless of whether the other business entity is also an ABS, must prior to merger or acquisition:
 - (1) Submit on the form prescribed notice of impending merger or acquisition; and
 - (2) Comply with the requirements of subsections (G)(1)(a) through (c), and (j).

3. Compliance lawyer. Each ABS must designate a compliance lawyer whose qualifications and responsibilities are as follows:

- a. Qualifications. The compliance lawyer shall:
 - (1) Meet the requirements of Supreme Court Rule 31(a) and (b);
 - (2) Be a manager or employee of the ABS;
 - (3) Consent to the designation;
 - (4) Not have been subject to discipline by the State Bar of Arizona or any similar agency in any other jurisdiction during the past ten years; and
 - (5) Possess credentials and experience in the legal field to ensure that ethical obligations, protection of the public, and standards of professionalism are adhered to.

- b. Responsibilities. The compliance lawyer shall take all reasonable steps to:
 - (1) Ensure compliance with the ethical and professional responsibilities of lawyers in the ABS providing legal services;
 - (2) Ensure compliance by the ABS's authorized persons;
 - (3) Ensure the ABS's authorized persons and others employed, associated with, or engaged by the ABS do not cause or substantially contribute to a breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers;
 - (4) Ensure that a prompt report is made to the state bar of any facts or matters reasonably believed to be a substantial breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers;
 - (5) Ensure that the state bar is promptly informed of any fact or matter that reasonably should be brought to its attention in order that the state bar may investigate whether a breach of regulatory or ethical requirements has occurred; and
 - (6) Notify the AOC and the state bar in writing when the compliance lawyer has ceased to be the compliance lawyer for the ABS.

- c. Violations. Any compliance attorney who fails to comply with this section, including any failure to report any facts or matters reasonably believed to amount to a substantial breach of the regulatory requirements of this code or the ethical and professional obligations of lawyers may, in addition to other possible sanctions, may be summarily suspended pursuant to Rule 61, Rules of Supreme Court.

H. Discipline.

- 1. Rules. The supreme court rules governing complaints, investigations, and disciplinary proceedings against Arizona licensed attorneys are applicable to alternative business structures and its members under this section, except as otherwise stated in this section.
- 2. Sanctions. Misconduct by an ABS or its members shall be grounds for imposition of one or more of the following types of sanctions:

- a. Revocation. Revocation of an ABS's license may be imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge. Any order of revocation must state a fixed period of time a license is revoked before an ABS can seek re-licensure.
- b. Suspension. Suspension of an ABS may be imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not to exceed three (3) years. Suspension of an ABS license prohibits the ABS from accepting new legal services clients and requires notification pursuant to subsection (H)(4). An order of the supreme court, a hearing panel, or the presiding disciplinary judge may specify additional restrictions on the activities of an ABS during the term of suspension. An ABS whose activities are suspended shall remain suspended until the Court enters an order reinstating the ABS to its full business capacity in Arizona or upon order of the presiding disciplinary judge pursuant to subsection (E)(8)(b).
- c. Reprimand. A reprimand may be imposed by judgment and order entered by the supreme court, a hearing panel, or the presiding disciplinary judge.
- d. Admonition. An admonition may be imposed by judgment and order entered by the supreme court, a hearing panel, the presiding disciplinary judge, or the Attorney Discipline Probable Cause Committee.
- e. Probation. Probation may be imposed by judgment and order entered by the supreme court, a hearing panel, the presiding disciplinary judge, or the Attorney Discipline Probable Cause Committee as follows:
 - (1) Probation shall be imposed for a specified period not in excess of one year but may be renewed for an additional one-year period.
 - (2) Probation may be imposed only in those cases in which there is little likelihood that the respondent ABS or its members will harm the public during the period of probation and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution, disgorgement, and assessment of costs and expenses.
 - (3) The presiding disciplinary judge may appoint a monitor to supervise the ABS during a period of probation. The cost of the monitor shall be paid by the ABS.
 - (4) The monitor shall report to the state bar which shall be responsible for supervising the respondent ABS during the probationary period. Bar counsel shall report material violations of the terms of probation to the presiding disciplinary judge by filing a notice of noncompliance with the disciplinary clerk and serving respondent with a copy of the notice. The notice of noncompliance shall include verification or separate affidavit upon personal knowledge stating sufficient facts to support the allegations of material violations of the terms of probation. Respondent shall have ten days after service of the notice to file a response. Upon filing the notice of noncompliance, the presiding disciplinary judge may (a) issue

an order declining to proceed with the notice; (b) issue an order setting the matter for status conference; or (c) issue an order setting a hearing within 30 days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, the state bar must prove a violation by preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

- f. Monetary Penalties. The supreme court, a hearing panel, or the presiding disciplinary judge may order the license holder to pay any of the following monetary obligations:
 - (1) Restitution or refund (disgorgement) may be ordered to persons financially injured, including reimbursement to the State Bar Client Protection Fund. Restitution or refund and the amount thereof must be proven by a preponderance of the evidence;
 - (2) A civil fine in an amount not to exceed \$1,000,000. Civil fines collected pursuant to this section shall be deposited in the Alternative Business Structure Fund.
 - g. Assessment of Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon an ABS pursuant to Supreme Court Rule 60(b).
3. Enforcement. Execution and other post-judgment remedies shall be governed by Supreme Court Rule 60(d).
4. Notice to Clients and Adverse Parties. Within ten days after the date of an order or judgment issued by the presiding disciplinary judge, a hearing panel, or the supreme court imposing discipline and sanctions, or the date of surrender of license, an ABS whose license was revoked or suspended or who has surrendered its license, shall notify the following persons by registered or certified mail, return receipt requested, of the order of judgment or surrender, and of the fact that the ABS is disqualified from providing legal services after the effective date of same:
- a. All legal services clients represented by ABS legal service providers in pending matters;
 - b. Any co-counsel in pending matters;
 - c. Any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties; and
 - d. Each court or tribunal in which the ABS's legal service providers have any pending matter, whether the matter is active or inactive.

5. Duty to Withdraw. In the case of a suspension for longer than 90 days, or a suspension of 90 days or less when any client does not consent to the association of counsel, and in all cases of revocation of licensure, it shall be the responsibility of the assigned attorney in the ABS to move in the court or agency in which any proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the suspension or revocation.
6. Return of Client Property. Respondent shall deliver to all clients being represented in pending legal matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. The respondent shall deliver all files and records in pending legal matters to the client, notwithstanding any claim of outstanding payment for services.
7. Effective Date of Order; Pending Matters. Judgments imposing suspension or revocation shall be effective 30 days after entry, unless the presiding disciplinary judge, hearing panel, or the supreme court specifies an earlier date. Judgments and orders imposing other sanctions are effective immediately upon entry. Respondent, after entry of a judgment of revocation or suspension, shall not provide legal services, except that during the period between entry and the effective date of the order, respondent may complete on behalf of any client all matters that were pending on the entry date. If a judgment or order permits the ABS to provide legal services under supervision of the state bar, respondent may only provide those services allowed by the judgment or order. Respondent shall refund any part of fees paid in advance which have not been earned.
8. Affidavit Filed with Presiding Disciplinary Judge and Court. Within ten days after the effective date of the judgment of revocation or suspension, respondent shall file with the disciplinary clerk and with the supreme court an affidavit showing:
 - a. Respondent has fully complied with the provisions of the order and with this section;
 - b. An agent of record and other addresses where communications may thereafter be directed; and
 - c. Respondent has served a copy of such affidavit upon bar counsel.
9. Duty to Maintain Records. An ABS whose license has been revoked or suspended shall keep and maintain records constituting proof of compliance with this section. Proof of compliance, which shall include copies of the notice sent pursuant to subsection (H)(4) and signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a condition precedent to any application for reinstatement or licensing.
10. Contempt. Failure to comply with the provisions of this section may be punishable by contempt.

I. Reinstatement after Suspension or Revocation. An alternative business structure license holder whose license was suspended or revoked by the supreme court may apply for reinstatement under the following conditions:

1. If an ABS's license has been revoked the ABS may, after a period of three (3) years, apply for reinstatement of licensure in accordance with the requirements for initial licensure herein. In addition, an applicant is subject to the requirements of subsection (3) below and shall pay the initial licensure and reinstatement fees.
2. An ABS whose license has been suspended 90 days or less may apply for reinstatement no sooner than ten days before the expiration of the period of suspension by filing with the disciplinary clerk and serving on the state bar an affidavit for reinstatement. The affidavit shall include an avowal that the ABS has fully complied with the requirements of the suspension judgment or order, and has paid all required fees, costs, expenses, and fines. If an affidavit is not filed within 60 days after expiration of the period of suspension, the reinstatement procedure set forth in subsection (3) below shall apply.
3. An ABS whose license has been suspended for more than 90 days may apply for reinstatement no sooner than 90 days prior to the expiration of the period of suspension set forth in the judgment but may not be reinstated until the full period of suspension has been served. An applicant for reinstatement shall file a written application for reinstatement with the disciplinary clerk, which shall be verified by the applicant, and accompanied by the appropriate fees and proofs of payment required by subsection (4) below of this section. The applicant shall file with the application for reinstatement a written release or authorization for the state bar to obtain documents or information in the possession of any third party. The application shall contain the following information and be accompanied by the following documents:
 - a. A copy of the final order of suspension;
 - b. An affidavit from the state bar stating whether any further investigations or formal proceedings alleging misconduct have been filed or are pending against the ABS, any authorized person, and any lawyer the ABS will employ, associate with, or engage to provide legal services;
 - c. A statement of the offense or misconduct upon which the suspension was based, together with the dates of suspension;
 - d. The names and addresses of all complaining witnesses in discipline proceedings that resulted in suspension and the names of the hearing officer or presiding judge before whom the discipline proceedings were heard;
 - e. A concise statement of facts claimed to support reinstatement of licensure. An ABS must show by clear and convincing evidence that the basis for suspension has been overcome;
 - f. A detailed description of any ABS activities during the period of suspension, if allowed by the judgment or order of suspension;
 - g. A description of the occupation and income, during the period of suspension, for all authorized persons and any lawyers the ABS will employ, associate with, or engage to provide legal services;

- h. A statement covering the period of suspension showing the dates, general nature and final disposition of every civil action against the ABS or in which any authorized person and any lawyer the ABS will employ, associate with, or engage to provide legal services, was either a plaintiff or defendant;
 - i. A statement covering the period of suspension showing dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of any authorized person and any lawyer the ABS will employ, associate with, or engage to provide legal services;
 - j. A statement showing whether or not any applications were made by any authorized person and any lawyer the ABS will employ, associate with, or engage to provide legal services, requiring proof of good moral character for its procurement, and as to each application, the dates, the name and address of the authority to whom it was addressed and the disposition thereof;
 - k. A statement covering the period of suspension setting forth any procedure or inquiry concerning the standing as a member of any profession or organization, or any holder of any license or office, which involved the reprimand, removal, suspension, revocation of any authorized person, and any lawyer the ABS will employ, associate with, or engage to provide legal services, together with the dates, facts and disposition thereof, and the name and address of the authority in possession of the record thereof;
 - l. A statement of any charges of fraud made or claimed against the ABS, or any authorized person, and any lawyer the ABS will employ, associate with, or engage to provide legal services, whether formal or informal, together with the dates, names, and addresses of persons making such charges;
 - m. Copies of all prior applications for reinstatement, including all findings, decisions or orders entered;
 - n. A list of all authorized persons, the designated principal, and compliance attorney. Any changes to who is an authorized person, principal, or compliance attorney must be noted. The following documentation shall accompany the list:
 - (a) application form for any newly identified authorized persons;
 - (b) form designating a principal for any newly identified principal; and
 - (c) form designating a compliance attorney for any newly identified compliance attorney; and
 - o. Any further information or documents as requested by the State Bar.
4. Application Fee. As a prerequisite to filing and before investigation of the application, every applicant for reinstatement, shall pay to the records manager of the state bar an application fee, as set forth in section (J) herein, along with the state bar's estimate of the costs of its investigation and the costs and expenses of all related proceedings before the presiding disciplinary judge, a hearing panel, or the supreme court. The state bar may contract with an outside agency to perform all or part of the investigation. If the applicant's payment is less than the actual cost of investigation and subsequent proceedings, the applicant shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly refunded to the applicant at the conclusion of proceedings. Any subsequent costs or expenses incurred shall be paid by the applicant before the ABS's license is reinstated.

5. **Costs and Expenses of Disciplinary Proceedings.** Prior to filing the application for reinstatement, the applicant shall pay all outstanding costs and expenses of any disciplinary proceeding. Verification of such payment in the form of an affidavit from the records manager of the state bar must accompany the application.
6. **Amounts Owing to the Client Protection Fund.** Prior to filing an application for reinstatement, the applicant shall also pay sums owed to the client protection fund due prior to reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.
7. **Annual or Other Licensure Fees.** No reinstatement shall become effective until payment of all licensing fees and other charges accruing after the application for reinstatement has been granted.
8. **Successive Applications.** No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement.
9. **Withdrawal of Application.** An applicant may withdraw an application at any time before the filing of the hearing panel report.
10. **Reinstatement Proceedings.** Reinstatement hearings shall be governed by Supreme Court Rule 65(b).

J. Fee Schedule.

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|---|------------------|
| 1. Initial Licensure | [Fee Amount TBD] |
| 2. Renewal Licensure | [Fee Amount TBD] |
| 3. Miscellaneous Fees. | |
| a. Application Fee. | [Fee Amount TBD] |
| b. Client Protection Fund Fee | [Fee Amount TBD] |
| c. Replacement of License or Name Change. | [Fee Amount TBD] |
| d. Merger or Acquisition Fee | [Fee Amount TBD] |
| e. Public Record Request Per Page Copy | [Fee Amount TBD] |
| f. Certificate of Correctness of Copy of Record | [Fee Amount TBD] |
| g. Reinstatement Application (after suspension or revocation) | [Fee Amount TBD] |

- h. Delinquent Fee [Fee Amount TBD]
- i. Extraordinary investigation assessment [Fee Amount TBD]

K. Code of Conduct. The following code of conduct describes the expectations and standards that an ABS is expected to maintain as a provider of legal services. A failure to meet these standards or a breach of regulatory requirements are grounds for disciplinary action against an ABS itself, or its non-lawyer members, who each have the same responsibility for ensuring ethical legal services for clients. Members of an ABS who are members of the state bar bear the responsibility of the ethical and professional obligations of the profession as well as the standards stated herein. An individual failure or breach may warrant action itself or as a pattern of conduct.

1. Code of Conduct for ABS's. In addition to the requirements of subsection (G)(2), each ABS must adhere to the following minimum standards of conduct.
 - a. An ABS shall not allow the legal representation of clients, if the representation involves a conflict of interest as governed by Supreme Court Rule 42, ERs 1.7, 1.8, 1.9, 1.10, 1.11, 1.13 and 1.18.
 - b. An ABS shall not take any action or engage in activity that interferes with the professional independence of lawyers or others authorized to provide legal services.
 - c. An ABS shall ensure that legal services are delivered with reasonable diligence and promptness.
 - d. An ABS shall not take an action or engage in any activity that misleads or attempts to mislead a client, a court, or others, either by the ABS's own acts or omissions, or those of its members or employees, or by allowing or being complicit in the acts or omissions of others.
 - e. An ABS shall maintain effective governance structures, arrangements, systems, and controls to ensure:
 - (1) Compliance with the requirements of supreme court rules and this section; and
 - (2) Managers, economic interest holders, decision-makers, employees, or anyone employed, associated with, or engaged do not cause or substantially contribute to a breach of the ethical rules of Supreme Court Rule 42 or this section;
 - f. An ABS must maintain records to demonstrate compliance with its obligations under the supreme court rules and this section.
 - g. An ABS must monitor financial stability and business viability. When an ABS becomes aware it will cease to operate it must affect an orderly wind-down of business activities and comply with the requirements for surrender of an ABS license in this section.

- h. An ABS must monitor and manage all material risks to the business, including those which arise from connected businesses or connected services.
 - i. An ABS must hold property of legal services clients separate from the property of the ABS. The requirements of Supreme Court Rules 42, ER 1.15 and Rule 43 are applicable to all legal services-related client property.
 - j. An ABS and its members must cooperate with the Administrative Office of Courts, Committee on Alternative Business Structures, the State Bar of Arizona, the presiding disciplinary judge, and any court who oversees and investigates concerns related to its delivery of legal services.
 - k. An ABS must respond promptly to the Administrative Office of Courts, Committee on Alternative Business Structures, the state bar, the presiding disciplinary judge, and the supreme court and provide full and accurate information and documentation in response to any request or investigation.
 - l. An ABS shall not attempt to prevent any person from providing information or documents in response to any request or investigation.
 - m. An ABS must act promptly to take any remedial action requested by the state bar, the Administrative Office of Courts, the presiding disciplinary judge, and the supreme court.
 - n. An ABS shall not engage in any conduct or activity concerning legal services that causes a violation of Supreme Court Rule 42.
2. Code of Conduct for Authorized Persons, Managers, Economic Interest Holders, and Decision-makers. An authorized person, including any manager, economic interest holder, or decision-maker in an ABS is individually responsible for compliance by the ABS with this code of conduct. Failures or breaches of this responsibility may subject any authorized person, including any manager, economic interest holder, or decision-maker of an ABS to discipline.
 3. Code of Conduct for Compliance Lawyers. In addition to the requirements of subsection (G)(3)(b) and Supreme Court Rule 42, a designated compliance lawyer is responsible individually for compliance by the ABS and authorized persons, including any managers, economic interest holders, or decision-makers of the ABS, with this code of conduct. Failures or breaches of this responsibility may subject a compliance lawyer to discipline.
 4. As to matters involving legal services, in the event of a conflict between this code of conduct, Supreme Court Rule 42, and other professional codes of conduct (e.g., AICPA Code of Professional Conduct), this code of conduct and Rule 42 shall govern.