

# ATTORNEY REGULATION ADVISORY COMMITTEE

## MINUTES

Wednesday, January 7, 2015  
9:30 a.m. – 12:00 p.m.

State Courts Building, 1501 West Washington Street, Phoenix, Arizona  
Conference Room 109

### **Present**

Hon. Lawrence Winthrop  
Hon. William J. O'Neil  
Alan Bayham  
Anne B. Donahoe  
Edward Novak  
George Riemer  
Patricia Sallen  
Amy Rehm (for Maret Vessella)  
Ronald R. Watson – 9:43 a.m.

### **Telephonically Present**

Emily Johnston  
Pamela Treadwell-Rubin

### **Absent**

Bennie Click  
Mary M. Grier  
J. Scott Rhodes

### **Staff**

Kathleen Curry  
Mark Wilson  
Tara Wienke

### **Regular Business**

9:36 a.m. Call to Order and Introductions

Judge Lawrence Winthrop, Chair

### **Business Items and Potential Action Items**

*No. 1* Review and Approve December 2014 ARC minutes

**Motion:** Amend minutes to reflect submission of Mary Grier's comments and suggestions regarding cheating issue to Rules Subcommittee

**Moved by** Alan Bayham

**Seconded by** George Riemer

**Carried:** None opposed

*No. 2* Update on Rule Petitions

Judge Winthrop

- The Admissions Petition for Rules 34-36 is being finalized and will be submitted this week.mr

*No. 3* Update by Subcommittees

- Admissions – Ed Novak, Mark Wilson, and Emily Holliday will meet to formalize the guidelines to be submitted to the court for review and comment. Will be presented at a future meeting.
- Rules – Judge O’Neil did not file rule petition but will schedule a subcommittee meeting to move forward.

*No. 4* Planning for Annual Report

Judge Winthrop

- Judge O’Neil has created a template for the report. Topics covered will include Early Exam processes and statistics, changes in Character in Fitness, changes adopted by the Supreme Court, any other Rule changes, Regulation (including Discipline and statistics, report on Probable Cause Committee, and Presiding Disciplinary Court Judge, prepared by Amy Rehm and Maret Vessella) and Independent Bar Counsel.
- Judge Winthrop requests summary for respective areas within the next 30 days.

*No. 5* Update by Chair on Future Business

Judge Winthrop

- George Riemer – Commissioner of Judicial Conduct will be issuing an Annual report within the next couple weeks, he will include the committee in the release of the report
- The annual report anticipates inclusion of statistical differences between previous discipline system and the current one and maintenance of current program.
- Pat Sallen outlines material on the report from the Timmer Committee. Pat has provided an outline of the major proposals as follows:
  1. Major ability-to-practice-related proposals:
    - a. Revise ER 5.5 (unauthorized practice of law) to apply only to lawyers who practice Arizona law. In short, the proposal would allow a non-Arizona lawyer to live in and/or establish an office in this jurisdiction to practice the law of another jurisdiction.
    - b. Adopt most provisions of the ABA Model Rule on Practicing Pending Admission so a non-Arizona lawyer could, under certain conditions, engage in the “regular practice law in Arizona” for up to a year; would apply only to admission-on-motion applicants and requires the non-Arizona lawyer to file his/her application before commencing practice.
    - c. Lower the admission-on-motion active-practice-time requirement to three of the preceding five years, from five of the preceding seven years.
    - d. Allow registered in-house counsel to appear pro hac vice in court for their employers (currently not allowed); allow them to appear in court, without having to apply pro hac vice, when they are providing pro bono representation for clients as part of legal services organizations; and move the in-house counsel registration system from the State Bar to the Supreme Court.
    - e. Reorganize parts of Rule 38; relocate pro hac vice to Rule 39, replacing so-called Katrina Rule (no longer needed if ER 5.5 is revised); add Client Protection Fund assessment to pro hac vice fees.
  2. Major Ethical Rule proposals (other than ER 5.5):
    - a. In general, adopt the changes to ER 1.10(d) (imputation of conflicts) that the State Bar included in its 2013 rule-change petition, including removing the so-called “litigation exception” from lateral screening so that Arizona’s rule is more aligned with the ABA Model Rule 1.10(a).

- b. Provide a mechanism in ER 1.10(b) (which applies when a lawyer has left a law firm) for determining if the remaining lawyers retain information for conflict purposes.
  - c. Redefine the client information lawyers must keep confidential (unless an exception authorizes disclosure) under ER 1.6. The ABA Model Rules, adopted PAS 1/22/15 in the early 1980s, moved from the ABA Model Code of Professional Responsibility definition of confidential information (that which is privileged, the client requested to be kept secret, or would be embarrassing or detrimental to the client) to the current “information relating to the representation of a client.” The proposal would return to essentially the Code definition.
  - d. Expand ER 1.5(e) (the fee-sharing rule) to allow lawyers to share one legal fee with lawyers in other firms if, among other requirements, the division is in proportion to the services provided or if each lawyer assumes joint responsibility for the representation. Currently, ER 1.5(e) allows fee-sharing only if each lawyer assumes joint responsibility for the representation.
3. Among rule changes explicitly not recommended: Non-lawyer ownership of law firms
- Additional Discussion not included in the outline included:
    - Rule 31 Changes: Clarification that Mediation does not constitute the practice of law.
    - Rule 34: Recommendation to delete the current definition of what constitutes active practice for AOM purposes.
    - Recommendation to move In-House Counsel to Rule 38(a).
    - Regarding movement of in-house counsel registration to the Supreme Court - The Supreme Court would also be able to set the application fee. It is not yet decided which division of the Supreme Court will handle this registration. The ability of the Board of Governors to waive any requirement for in-house counsel has been removed.
    - More groups are now required to take the Arizona Law Course prior to practice including: in-house counsel, law school professor, and military spouse.
    - Provisions for law school professors, law school clinical professors/supervisors, and clinical law school students need to be looked at and streamlined and consolidated, but this is not included in the current petition.
  - The Timmer Committee Petition is expected to be filed by the end of the week.
  - This petition will be assigned to the Rules subcommittee for review, discussion, and possible comments.

No. 6 Call to Public

None

Meeting Adjourned: 10:36 a.m.