

ATTORNEY REGULATION ADVISORY COMMITTEE MINUTES

Thursday, December 5, 2013

9:30am - Noon

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

Present

Telephonically Present

Absent

Committee Members

Hon. William J. O'Neil (Chair)
Hon. Lawrence Winthrop
Ronald R. Watson
George Riemer
Maret Vessella
J. Scott Rhodes
Ben Click
John Tuchi
James Drake Jr.
Alan Bayham – at 10:10 a.m.

Pamela Treadwell-Rubin
Emily Johnston
Patricia Sallen

Staff

Emily Holliday
Kathy Curry
Mark Wilson
Jennifer Davy
Armita Oliver

Regular Business

9:30 a.m. Call to Order and Introductions

Judge William O'Neil, Chair

Business Items and Potential Action Items

No. 1 Review and Approve November 2013 ARC minutes

Correction: Change November minutes to reflect Pamela Treadwell-Rubin and Kathy Curry were not present.

Motion: Amend and approve as submitted

Moved by: Judge O'Neil

Carried: None opposed

- No. 2* Update by Subcommittees
Costs – Pamela Treadwell-Rubin
No updates at this time.
Rules – Judge O’Neil
Rule petition filed earlier this year. Intent to amend through subcommittee and then bring it to ARC for comment.
Admissions – John Tuchi
Move to Agenda Item 3 to address draft of proposed Rule 36 petition language.

- No. 3* Review Draft Rule Petition Language
Judge O’Neil
John Tuchi

Discussion regarding proposed Rule 36 petition included procedure, terminology, definitions, and clarifications.

Discussion included:

- 1) Changes throughout rule include deleting references to “informal” or “formal” hearings, to be substituted with “proceedings.”
- 2) The subcommittee will work through who shall perform administrative tasks, i.e. the PDJ shall certify cases as complex.
- 3) Public Comment – Mark Harrison: What is meaning of term “investigator”? Will size of Committee change?
- 4) Different entities/parties may act on behalf of the Committee: the Manager of Attorney Admissions (approval), investigating member (approval, call for inquiry or formal), panels (approval, denial, temporary admission).
- 5) Should temporary admission be transparent to public or confidential? Similar to probation, which is publicly known. Subcommittee wishes to retain confidentiality of status of temporary admission, following practice with conditional admission.
- 6) Conduct for which temporary admission may be used; when and how temporary admission may be implemented and monitored.
- 7) Public comment – Demitri Downing: If rule changes are recommended, does the Supreme Court have option to modify? Dishonesty should not preclude temporary admission and rule should not be written to bar dishonest applicants.
- 8) Diversion rule is more descriptive and could be better model for language regarding temporary admission, procedures and status.
- 9) Public comment – Mark Harrison: Manager of Attorney Admissions will conduct preliminary review, acting on behalf of Committee. Basic changes are improvement, but still concerning. Why no discovery at inquiry? Why no record at inquiry? Concerns about confidential information.
- 10) John Tuchi explained that this effort is to get structures in place, procedures and implementation will likely follow in another rule change cycle.
- 11) Information furnished by sources who do not wish to divulge shall not be used in proceedings.
- 12) Investigating member from inquiry shall not participate in formal panel.
- 13) Manager shall approve applicants whose files present no concerns, refer all others to investigating member. Manager shall report regularly to Committee regarding reason and numbers of approvals.

14) Should informal inquiry be recorded? Creating record changes nature from informal, instructive meeting to hearing. Should the meeting be structured, formal and litigation-like, or more of a conversation?

15) MOTION by Scott Rhodes
Pat Sallen seconded

Add an additional option under 36(e)(6) to allow the investigating member, with concurrence of the Chair, to convene a formal hearing without first holding an inquiry, if he believes issues are serious.

Motion carried – none opposed

16) MOTION by George Riemer
Judge Winthrop seconded

Remove reference to remote participation on inquiry panels, at least three members must attend in person.

Discussion against motion – if one member becomes unavailable at the last minute, inquiry must be postponed.

Motion failed – vote split 5-5

Additional discussion occurred, followed by voice vote, requiring all participants in informal inquiries to attend in person.

- 17) Hearing panel shall be made up of five members, two attorney members, two public members and presided over by PDJ, who shall participate in vote and make evidentiary rulings. If inquiry were held, no members of inquiry panel may participate in hearing other than investigating member, who shall present only.
- 18) No decision on procedure for who shall present evidence first, applicant or Committee. This should be vetted and finalized next year.
- 19) Suggested violation process is based on Rule 60.
- 20) How will temporary admission be reduced to writing, who shall prepare? Must applicant sign?

John Tuchi and the subcommittee are tasked with amending petition language in concert with committee recommendations. Updated petition and rule language will be circulated to committee members for review via email prior to next meeting.

No. 4 Schedule ARC meetings for 2014
January 8, 2014 9:00 a.m. to finalize draft of recommended Rule changes to submit to Court

No. 5 Call to Public
None

Meeting Adjourned: 12:08 p.m.