

# ATTORNEY REGULATION ADVISORY COMMITTEE

## MINUTES

Wednesday, April 15, 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  
Mary M. Grier  
Alan Bayham  
Pamela Treadwell-Rubin  
Edward Novak  
Amy Rehm (on behalf of Maret Vessella)  
George Riemer  
Patricia Sallen

### **Telephonically Present**

Emily Johnston

### **Absent**

Bennie Click  
J. Scott Rhodes  
Hon. William J. O'Neil  
Anne B. Donahoe

### **Staff**

Kathleen Curry  
Mark Wilson  
Emily Holliday

### **Regular Business**

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

Judge Lawrence Winthrop, Chair

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

*No. 1* Review and Approve Draft Annual Report  
Suggestions for Annual Report

#### Admissions:

- Revise the text to indicate that the Supreme Court denied three Committee on Character and Fitness' recommendations to admit conditional applicants.
- Provide tracking statistics on issues that the Committee on Character and Fitness has addressed and petitions for review.
- Add chart of outcomes for the informal and formal hearings in 2014.

#### Lawyer Regulation:

- Add a statement that the State Bar anticipates that the average time from referral through the investigative process will likely decrease in 2015.

#### Probable Cause:

- Revise the existing chart to include statistics on appeals of charges dismissed by the State Bar.
- Consider including in future reports the number of cases brought to Probable Cause Committee that the Committee dismissed.

Independent Bar Counsel:

- In existing chart, clarify whether the Board member and State Bar member sections are complaints filed by them or charges filed against them.

Issues for ARC in 2015:

- Add improving access to justice.

The draft Annual Report will be distributed before April 30<sup>th</sup> in time for final review and approval.

No. 2 Consider Whether to File Comments Concerning Judge O'Neil  
Rule Petition 15-0018 by the Committee on Review of Rules Governing Professional  
Conduct

The Rules Subcommittee has discussed these issues at length and has several recommendations; Patricia Sallen summarized the subcommittee's position.

1. ER 5.5 as proposed to be amended addresses geographical presence. The proposed amendments address when an attorney who is physically present in Arizona may practice law of a foreign jurisdiction without being a member of the State Bar.

- Issues with this proposal is permanent telecommuting.

Result:

- Presently, if you're in this jurisdiction and you're practicing Arizona law, you must be admitted into this jurisdiction. Proposed amendment changes ER so that a lawyer is no longer prohibited from practicing the law of a foreign jurisdiction and instead is prohibited from practicing Arizona law.
- After proposal change, any lawyer geographically located in Arizona is still subject to Supreme Court Discipline jurisdiction.
- This will alleviate technical issues and help regulate the multijurisdictional practice of law.

The subcommittee voted to recommend that ARC should comment that it is not in favor of the proposal and object saying that if you are a lawyer in this jurisdiction and practicing law of another jurisdiction, it is acceptable to not be admitted in Arizona, as long as you are not advertising to anyone in this jurisdiction or soliciting Arizona clients.

Judge O'Neil will draft proposed comment for review.

2. Rule ER 1.6 currently states that anything related to representation is confidential.

- The Timmer proposal will loosen the code definition of confidentiality and reduce the information protected by privilege.
- The subcommittee's concerns are the disclosure of information that could embarrass the client and that lawyers may inappropriately use the information.

If ARC approves, the subcommittee will prepare comments expressing our concerns on ER 5.5 and 1.6.

3. There is currently a pending petition from a law school professor, proposing to reduce the number of required semesters before a student can be certified to practice under Rule 38, from three to two.

After discussion, the subcommittee recommends deferring court approval on Rule 38 proposed changes until further input, particularly from the law schools, can be obtained.

The subcommittee recommends that ARC authorize the rules subcommittee to prepare comments on ER 5.5 and 1.6 and Rule 38 for the full committee to consider before the deadline.

**Motion:** Approving subcommittee to prepare proposed comment for consideration by ARC on ER 1.6, 5.5 and Rule 38.

**Moved by:** Edward Novak

**Second:** Pamela Treadwell-Rubin

**Carried:** None opposed

Patricia Sallen abstained.

*No. 3* Consider ARC Involvement in Helping Connect Retired Lawyers with Veterans Needing Legal Assistance Ed Novak

- There is a large number of volunteer lawyers but the number needs to increase to effectively serve the veteran population. Ed Novak raises the possibility of recruiting retired lawyers to assist.
- A potential concern of the retired lawyers that have retained their license, but are no longer practicing, is malpractice liability. Ed Novak suggests a rule change to provide civil immunity for anyone rendering this type of legal assistance.
- Judge Winthrop suggests that further investigation concerning already established groups of lawyers providing this assistance (e.g. VLPs run by the LSC entities) before proposing a broad immunity rule.

*No. 4* Update by Subcommittees

Ed Novak reported that the Committee on Character and Fitness is beginning to see admission matters that fall within Rules 34, 35, and 36 as amended by Rule Petition R-14-0011. The Committee has had one inquiry processing as opposed to an informal hearing.

*No. 5* Update by Chair on Future Business Judge Winthrop

- Next meeting is June 17<sup>th</sup>, 2015.
- Annual Report will be available for review before due date.
- Judge O'Neil and staff will prepare comment with respect to the Timmer Committee proposal, giving time for review before due date.

*No. 6* Call to Public

None.

Meeting Adjourned: 10:36 a.m.