

TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

DRAFT MINUTES

Thursday, June 13, 2019

Room 345 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

Present: Justice Ann Timmer; Chair; Victoria Ames; Robyn Austin; Betsey Bayless; Dave Byers; Whitney Cunningham; Judge Maria Elena Cruz; Tami Johnson; Judge Joseph Kreamer; John Phelps; Billie Tarascio (telephonic); Guy Testini; Mark Wilson

Absent: Peter Akmajian; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Diane Culin; Judge Peter Swann

AOC Staff: Jennifer Albright; Kathy Sekardi

Guests: Sharon Flack; Patricia Sallen; Lynda Shely; Mark Meltzer; John Rogers

I. REGULAR BUSINESS

The sixth meeting of the Task Force on the Delivery of Legal Services was called to order at 9:09 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from May 16, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. No edits having been requested, Dave Byers moved to approve the minutes. Judge Joe Kreamer seconded the motion. The minutes were approved unanimously.

II. WORK GROUP BUSINESS

Work Group Breakouts

After approval of minutes, members broke into workgroups. Members of the public were able to attend breakout sessions.

Report Out

The full task force reconvened at 12:30 p.m. to hear from the workgroups.

First, discussion on edits to a re-styled Rule 31 of the Arizona Rules of Supreme Court was had. John Rogers and Mark Meltzer, who have been assisting the Bivens/Butler workgroup on this task, provided an overview of edits made thus far to the Rule. Members had been provided a copy of edits to the rule prior to the meeting. A copy of the version of the rule after edits made during the breakout session was also provided to members.

John Rogers shared that re-styled Rule 31.3(c) now has one definition of legal entity and that the previous 7 exceptions related to legal entities were combined into 1 subsection. John also explained that a reference to boards was added to the subsection. Member Dave Byers pointed out that re-styled 31.3(d)(5) related to CPAs and tax related matters. Mr. Byers thought that certain of the listed agencies did not have tax-related matters. Justice Timmer pointed out that the task was to re-style the existing rule and discussion was had whether the re-styling made substantive changes or merely re-styled the rule. Discussion continued as to whether there are tax-related matters before Arizona Department of Transportation, Department of Economic Security, and Department of Child Safety. Justice Timmer pointed out the edit may make a substantive change, narrowing the rule, which would likely would allow the rule to be read as originally intended. It was noted any change that may be substantive should be noted in a final report and proposed rule petition.

Lynda Shely asked where the existing Rule 31(a)(2)(E) definition of unprofessional conduct was moved to as that rule is needed for Rule 41. John Rogers shared the definition was taken out because the term is not used in Rule 31. Discussion followed on where that phrase was used, noting predominately in the lawyer's oath and in Rule 41(g). It was agreed the definition needed to be moved and the oath and creed that were included in an editor's note to the current Rule 31 should also be moved into an appropriately related rule. Rule 42 was discussed as a possible place for these edits to occur. It was also noted Rule 54(i) references Rule 31(a)(2)(E). It was agreed the definition had to be moved somewhere and then changes to Rule 54(i) are needed. Justice Timmer indicated Rule 41 contains the oath. She suggested subsection (e) may be a good place for the definition. Or maybe 46(f) with the other definitions related to discipline there.

John Rogers pointed out that Rule 31.3(c)(6) which gives judges, hearing officers, or other presiding officer power to revoke authority to proceed pro per makes this authority universal. The authority was included in some of the previous exceptions in existing Rule 31(d), and this edit in the re-styled rule made the authority consistently applicable across the rule.

Patricia Sallen noted that the definition of legal assistant and paralegal were also removed and instead there is a reference of non-lawyer assistant in the re-styled rule. Joh Rogers noted that definition was removed because the term was not used in Rule 31. He explained that the related ethical rule uses the term "non-lawyer assistant" and that term is appropriately defined in the ethical rule.

It was determined that the re-styled Rule 31 would be put to vote at the next meeting giving members additional time to review the current draft. It was agreed the final report of the task force should note the need to add definition of unprofessional conduct into an appropriate rule as well as the need to include the oath and creed in an appropriate rule.

Judge Cruz presented for her workgroup. Judge Crux first reviewed a new version of Rule 38, Rules of Supreme Court. She noted at the last meeting it was asked if there was a way resolve some questions about the requirement for recent law graduates practicing in limited jurisdiction

courts be allowed to sign documents without the supervising attorney present in the courtroom. That edit was reviewed with the task force.

Judge Cruz shared that the workgroup voted to approve this version, noting that a change would still be made to subsection (f) which addresses substitution of the supervising attorney. Judge Cruz stated the proposed edit is a bit larger than it needs to be. She suggested that the section be edited to read more simply. After discussion simplified language was agreed upon.

Member Dave Byers brought up the question of whether there would be a specific attorney or just the county attorney generally that would be named, for example, as supervising attorney. Judge Cruz indicated that a specific attorney would be identified. Victoria Ames related that currently a specific attorney signs their name and includes their bar number on the Rule 38 form and that requirement does not change for the edited rule. It was suggested there be a definition of “supervision” and that the rule include a specified minimum length of time a supervising lawyer must be in practice in order to act as a supervising attorney.

Mr. Byers also asked what happens if a person does not pass the bar. Judge Cruz related they immediately lose the ability to continue practicing under the rule. It was also pointed out the revocation is self-executing. A follow-up question was asked about what happens if a person holding a Rule 38 post-graduation certificate passes the bar examination but do not pass character and fitness. Member Mark Wilson shared that failure to pass character and fitness results in denial of admission to the bar. Members reviewed several specific sections to clarify answers to these questions.

There was a request by Dave Byers that there be language that prohibits applicants from having a felony conviction as a prerequisite to obtaining a post-graduation Rule 38 certification. Members agreed such a provision should be added.

It was agreed that the changes discussed would be considered by the workgroup and the final draft would be presented at the July meeting for a vote.

Judge Cruz then discussed proposals related to the topic of Alternative Business Structures (ABS) for law firms. Judge Cruz started by reminding the group there were originally three proposals. The first was to edit Ethical Rule (ER) 5.4 to allow for some types of ABS. This approach proved to be difficult because it was not possible to foresee all the types of ABS law firms might develop into and adequately make edits to ER 5.4 to account for the unforeseen. The second proposal was dubbed the “Lassiter” approach. At prior meetings it was determined that focus would be on the third proposal to delete ER 5.4 and any provisions in ER 5.4 related to conflicts of interest and lawyer independence would be moved to or bolstered in other ERs that already address those topics.

Judge Cruz related that a conference call with Chas Rampenthal of LegalZoom, Justice Timmer, Judge Cruz, and John Phelps was held. LegalZoom has expanded operations to the United Kingdom, who allows ABS. Mr. Rampenthal shared how entity formation works in the UK. The discussion allowed for understanding of the level of passive investment that would be needed for investors to commit to investing in or being partners in a law firm. It was also shared that there is a specific entity regulation arm of the UK Lawyer governing body for law firms that operate as an ABS entity. This information supported the workgroups focus on deleting ER 5.4 as the approach that would allow for the concept of ABS to be most beneficial to Arizona.

Therefore, the focus of the discussion during the report out was the deletion of ER 5.4. A review of the latest draft of edited ERs to accomplish that task was given by Judge Cruz. Whitney Cunningham shared that the workgroup had focused on the rules themselves and not the comments to rules. Justice Timmer reminded the task force that the Court preferred that the rules reflect necessary content and that where possible comments be avoided. The workgroup committed to working to ensure that the rules had the important content and to minimize comments.

Judge Cruz shared that the workgroup also determined that deleting ER 5.4 would trigger a need for amendment to the ERs that covered advertising. Those were briefly discussed, and drafts of those edits would accompany the next draft of the proposal brought to the full task force. In addition, it was discussed that the final report should include a recommendation that there be a shift to entity regulation to aid in the implementation of the proposal of deleting ER 5.4. There was consensus that some sort of firm registration or entity regulation be a part of any proposal.

After review of the substantive edits in the current draft, members discussed the proposal. After discussion and agreement on additional edits to make or items to consider for further editing, there was consensus that the workgroup should continue to focus on this third proposal of deleting ER 5.4 and that the other 2 proposals would not be pursued at this time. It was agreed the workgroup would submit a final draft of the proposed edits to ERs to the July meeting for vote.

Due to absence of Don Bivens and Stacy Butler, leads of the Bivens/Butler workgroup, AOC staff, Jennifer Albright, reported out for that workgroup. Jennifer shared that the workgroup reviewed the proposal involving a tier of non-lawyer legal service providers, referred to colloquially as the “new tier” until a name for the group was decided upon. Jennifer noted a few edits were agreed upon and that the workgroup would bring a final draft proposal to the July meeting. It was noted that some surveying had been conducted to narrow a list of names for this non-lawyer legal practitioner position.

Jennifer shared the workgroup would also be bringing forward a draft proposal that embodied the University of Arizona Domestic Violence Licensed Lay Advocate pilot program that was presented in the May meeting. Jennifer noted the task force has overwhelming support for the proposal at the May meeting.

Jennifer then shared with the task force that the workgroup discussed the various court navigator programs around the state. Both the Maricopa County AmeriCorps and the Santa Cruz County Court Coordinator programs were discussed as examples during the workgroup’s breakout session. It was noted that the entire membership had received a link to a report on navigator programs written by the Justice Lab at Georgetown Law, and that report provided support for courts developing navigator programs. Jennifer shared that the workgroup proposed a recommendation for the final report that would encourage local courts to develop navigator-like job positions within the court. Jennifer noted that several members of the workgroup noted this would be the first time that there was a statement of direct support for local courts themselves to develop in-house positions that would be devoted to assisting self-represented persons in navigating court processes and procedures.

Jennifer shared that the workgroup would begin to focus on the charge related to the Legal Document Preparer (LDP) program at the July workgroup breakout session. The workgroup spent some time discussing Code sections governing the LDP program’s restriction on disbarred

attorneys from becoming LDPs, noting that there should not be an absolute bar to disbarred attorneys. It was noted that there is a process in the Code section that allows denial of certification of a disbarred attorney and an appeal process to allow those that feel they have special circumstances that demonstrate they have the character and fitness to act as an LDP to be assessed.

The workgroup also will be looking into changes that would allow for more meaningful methods to manage persons who hold themselves out as LDPs when they are in fact not certified through the Certification and Licensing Division of the AOC. The workgroup spoke with Patricia Sallen about potential options and will continue to pursue this line of discussion at the July meeting.

III. OTHER BUSINESS

Call to the Public

The meeting concluded with a call to the public. Two members of the public spoke and answered questions by task force members.

Justice Timmer asked the workgroups to begin drafting their portions of the final report to the Supreme Court. She asked for workgroups to be prepared to present proposals for vote at the July meeting.

Next Meeting:

Thursday, July 11, 2019, at 9:00 a.m. in Room 119 A/B.

Adjournment:

The meeting adjourned at 3:04 p.m.