

Arizona Alternative Business Structure

Compliance Lawyer Primer^a

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I. Overview

This document is intended to provide a summary of obligations and issues of which an Arizona ABS compliance lawyer should be aware, as the compliance lawyer discharges the responsibilities attending that role.

An ABS is a law firm. The compliance lawyer is, for law of lawyering purposes, its chief compliance officer. This means that, at a *minimum*, the compliance lawyer must have sufficient involvement, oversight and time to manage, on a regular basis, the ethics and code compliance of the firm. This guide is intended to outline the main regulatory concepts the compliance lawyer should consider for the law firm.

It is important to distinguish between what the law requires, on the one hand, and guidance or best practices for satisfying the law, on the other.

As to what the law requires, there is no substitute for the compliance lawyer personally reading, knowing, and understanding the law. Below, we have *italicized* those portions of this primer that state or closely reflect pertinent law. For reference, we have provided citations, and in some instances [links](#) (so indicated), to the pertinent law.

The remainder of this primer consists of guidance or best practices. This content is not law, but it reflects procedures that experience suggests provide optimal results in avoiding bad client outcomes, regulatory issues, or malpractice/economic losses by lawyers, law firms, and firm owners. That said, **this primer is not intended to be, and is not, a comprehensive treatment of each and every issue a compliance lawyer may confront.** Nor does this primer cover employment law or other topics for a more general law firm policy manual. **The practice of law, and its administration, are complex.** Readers should consider availing themselves of the wide variety of other resources, from professional liability insurers, continuing legal education courses, the State Bar of Arizona, and others, that can help ABSs and other law firms identify and follow best practices in such areas as conflict database management and conflict checks, docket management, trust account management, and others.

II. Key Terms

- A. **“Alternative business structure”** (or **“ABS”**) — fundamentally, an entity licensed by the Arizona Supreme Court to practice law notwithstanding nonlawyer ownership.
- B. **Arizona Code of Judicial Administration (“ACJA”) § [7-209](#)** — the ABS regulations.
- C. **Arizona Rules of Professional Conduct** (also known as **“Ethics Rules”** or **“ERs”** in local parlance) — codified in Arizona Supreme Court Rule 42, these are Arizona’s ethics rules.
- D. **Arizona Supreme Court Administrative Office of the Courts (“AOC”) Certification & Licensing Division** (the **“Division”**) — Court regulatory staff who review each ABS licensure application, conduct (or have conducted) background investigations of authorized persons, and recommend to CABS whether applicant ought to be licensed
- E. **[Arizona Supreme Court Rules](#)** — Read together with ACJA § 7-209, these (especially the ERs) establish the codified law governing ABSs.
- F. **“Authorized person”** — *two types:*
 - 1. *10% or more direct or indirect economic interest in ABS or*
 - 2. *Requisite degree of decision-making authority over ABS operation¹*
- G. **Committee on Alternative Business Structures** (or **“CABS”**) — a body consisting of lawyers and nonlawyers, all appointed by the Arizona Supreme Court, which (1) for each applicant for ABS licensure, makes recommendation to the Court on whether applicant ought to be licensed, and (2) performs certain other functions established by regulation.²
- H. **Compliance audit (internal)** — semi-annual internal review and report of ABS regulatory compliance, prepared by compliance lawyer; invariably required by Arizona Supreme Court order granting licensure.
- I. **Compliance audit (requested or random)** — compliance audit conducted by Division staff among ABSs “randomly chosen . . . or . . . selected due to particular concerns that have come to the attention of staff”³; includes but is not necessarily limited to reports from internal compliance audits.

- J. **“Compliance lawyer”** — the Arizona-licensed attorney who has agreed to serve in this role, established by Arizona law to see to compliance of the ABS and its personnel with applicable law, and who is approved by CABS.⁴
- K. **“Designated principal”** — the ABS’s point of contact with the regulator⁵
- L. **Interest on Lawyer Trust Account (“IOLTA”)** — Every Arizona lawyer (or firm, including an ABS) must have a trust account if it receives any funds that are not completely owned by the firm at the time of receipt; an IOLTA is the particular kind of trust account which, as a practical matter, is required by Arizona Supreme Court Rule 43.⁶
- M. **State Bar of Arizona (“State Bar”)** — the entity created by the Arizona Supreme Court that, through its Lawyer Regulation Office, handles investigation and prosecution of discipline matters involving ABSs and their personnel⁷

III. The Compliance Lawyer's Role

- A. *Ensure compliance with the rules and regulations governing ABSs by*
 - 1. *the ABS as a whole;*
 - 2. *authorized persons;*
 - 3. *employees, independent contractors, and others engaged by or working for the ABS⁸; and*
 - 4. *any other managers, economic interest holders, and decision-makers.⁹*

- B. *Including*
 - 1. *maintaining qualifications to serve as an approved compliance lawyer per ACJA 7-209(G)(3)(a).*
 - 2. *establishing and implementing internal policies and procedures to provide reasonable assurance of compliance with pertinent rules and regulation¹⁰;*
 - 3. *supervising nonlawyers, especially in matters pertaining to legal services advertised or provided by the ABS¹¹;*
 - 4. *monitoring financial stability and business viability of the ABS,¹² and material risks to the business¹³;*
 - 5. *conducting and documenting semi-annual internal audits¹⁴; and*
 - 6. *as applicable, reporting misconduct by the ABS or its constituents to the State Bar.¹⁵*

IV. Getting Started — Compliance Lawyer First Steps

- A. Review the pertinent rules and regulation:
 1. ACJA § 7-209, especially subsections G and K
 2. Arizona Supreme Court Rules, especially Rules 33.1 and 41-43
 3. Ethical Rules (in Arizona Supreme Court Rule 42)
- B. Identify, confirm current contact information for, and see to any required update to Division,^b of
 1. authorized persons;
 2. the designated principal;
 3. current contact information^c; and
 4. the ABS's statutory agent.¹⁶
- C. Confirm existence, and currency of required disclosure to State Bar, of professional liability insurance.¹⁷
- D. Review whether the ABS has adopted adequate policies, procedures, and systems addressing the following matters raised by the rules and regulation:
 1. Professional integrity,¹⁸ professionalism,¹⁹ and competence²⁰
 2. The professional independence of the ABS and its lawyers providing legal services²¹
 3. Avoiding conflicts of interest, including proper intake procedures²²
 4. Engagement of clients; fee agreements (normally in writing, to all new clients and on new matters for existing clients)²³
 5. Termination of client engagements²⁴
 6. Confidentiality (normally all-encompassing) as to clients, prospective clients, and former clients,²⁵ including information security measures²⁶
 7. Delivering legal services with diligence and promptness, including docketing applicable deadlines in client matters²⁷
 8. Communicating effectively with clients²⁸

^b See *infra* § V(F).

^c Telephone number, business address, mailing address, and home address.

9. Trust accounting documentation and internal controls²⁹
 10. Supervision of lawyers, paralegals, and other staff³⁰
 11. Avoiding unauthorized practice of law³¹
 12. Compliance personnel
 13. Recordkeeping and client file retention³²
 14. Marketing, advertising, and solicitation — materials and activities³³
 15. Reporting applicable misconduct³⁴
 16. Complying with any promises or avowals in ABS initial license or license renewal applications
- E. Calendar pertinent compliance deadlines (identified herein)

V. Ongoing Compliance Lawyer Obligations

- A. *Monitor and supervise compliance, per Sections III and IV(B)-(E) above.*
- B. *Conduct, and prepare internal reports of, semi-annual compliance audits.*
 1. Invariably required by the Supreme Court order approving the ABS's initial licensure,³⁵ and requiring that the audit:
 - a. be conducted by the compliance lawyer;
 - b. review the ABS's compliance with Arizona Supreme Court Rule 33.1, ACJA § 7-209, and the ABS's internal policies and procedures; and
 - c. result in findings reduced to a written report.
 2. The Division has provided a [sample audit report](#) reflecting best practice (as defined above).
- C. Consider corrective action as to any issues raised by compliance audit.
- D. Conduct regular compliance training of ABS personnel.
- E. Reporting to State Bar
 1. *Be aware of and comply with "reporting out" rules*
 - a. *Compliance lawyer must "take all reasonable steps" to "[e]nsure that a prompt report is made to the State Bar of Arizona 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."*³⁶
 - b. *Compliance lawyer also must "take all reasonable steps" to "ensure that the State Bar of Arizona is promptly informed of any fact or matter that reasonably should be brought to its attention in order that the State Bar of Arizona may investigate whether a breach of regulatory or ethical requirements has occurred."*³⁷
 - c. *Compliance lawyer is subject to discipline for failure to comply with the foregoing obligations.*³⁸

- d. Accordingly, the compliance lawyer does not have a confidential relationship with, or enjoy the protections of the attorney-client privilege as to, the ABS or its constituents.^d The compliance lawyer should ensure that the ABS and its constituents know this.
2. Report professional liability insurance
 - a. Coverage is not mandatory in Arizona but disclosure to the State Bar is.
 - b. *Disclosure to State Bar of whether ABS has coverage is required*
 - (i) [Disclosure form](#) due to State Bar on or before February 1 annually.³⁹
 - c. *If firm doesn't have coverage, disclosure to client is required.*⁴⁰
 - d. *If reported coverage lapses or terminates — must notify State Bar within 30 days*⁴¹
 3. *Report annual trust account compliance statement for each lawyer in the ABS — see § VIII below.*
 4. *Assure all the ABS's Arizona lawyers comply with annual bar dues payments (February 1 deadline)⁴² and MCLE requirements (complete CLE by June 30⁴³; file affidavit of compliance by September 15).⁴⁴*
- F. Required notifications to the Division
1. *Change in designated principal, compliance lawyer, or authorized person — within 30 days*⁴⁵
 - a. *Application for Committee approval of change in authorized person or compliance lawyer must be submitted and approved.*⁴⁶
 2. *Change in contact information of designated principal, compliance lawyer, or authorized person — within 30 days*⁴⁷

^d This is distinct from the protections of confidentiality and attorney-client privilege belonging to the ABS's clients.

G. *ABS license renewal — required two years after initial licensure*⁴⁸

1. *Must file renewal within 90 days before expiration date of license, as established in initial Administrative Order licensing the ABS*⁴⁹ (e.g., if Administrative Order grants license February 14, 2025, the renewal application must be filed no more than 90 days before and no later than February 14, 2027).
2. *Timely and complete renewal application submission tolls expiration*⁵⁰

VI. Recurring Law Firm Conflict of Interest Issues

A. Overview

1. *Associated nonlawyers must be factored into ABS conflicts analysis and resolution,⁵¹ including (where available) screening.⁵²*
2. *Most conflicts of interest are imputed from one lawyer to the firm as a whole.⁵³*

B. Prospective clients⁵⁴

1. *If lawyer received confidential information from a prospective client, the lawyer may not (without informed consent confirmed in writing⁵⁵) represent a client materially adversely to that prospective client in the same or a substantially related matter.*
2. *But with screening and notice, another lawyer at the firm may.*
3. *Maintaining prospective client information in conflict database can help avoid issues.*

C. Concurrent conflicts of interest — current clients⁵⁶

1. *Two kinds*
 - a. *Direct adversity to another client⁵⁷*
 - b. *Significant risk something else — such as responsibilities to someone else, or the lawyer's personal interest — will materially limit the client's representation⁵⁸*
2. *Waiver by clients*
 - a. *Many conflicts may be waived with informed consent, confirmed in writing.⁵⁹*
 - b. *Some may not*
 - (i) *Claim by one client against another represented by the lawyer in the same litigation⁶⁰*
 - (ii) *Same, even if separate firms, where 10% or more common owner or common authority⁶¹*

- c. Apart from client's position, lawyer judgment is required in determining whether, and on what terms, conflict is waivable or may be waived, as well as how to document the waiver. Consultation of the compliance lawyer may well be helpful or required.

3. Special conflict rules

- a. *Aggregate settlements — not allowed unless lawyer discloses existence and nature of all claims or pleas involved and participation of each person in the settlement, and each client gives informed consent in writing*⁶²
- b. *Business transaction with a client — doable but only on certain terms with certain safeguards*⁶³
- c. *Financial assistance to a client — not allowed unless advancing expenses of litigation or paying same for an indigent client*⁶⁴
- d. *Compensation for representation from someone besides client — permitted but only on certain terms with certain safeguards*⁶⁵
- e. *Prospective malpractice waivers — not allowed unless client is independently represented*⁶⁶
- f. *Prospective agreement not to report lawyer to disciplinary authority — not allowed*⁶⁷
- g. *Acquiring interest in client's claim — not allowed except for attorneys' lien or contingent fee*⁶⁸

D. Former clients

- 1. *Material adversity to former client, in same or substantially related matter in which firm represented former client, is barred — unless waived by affected former client and current client.*⁶⁹
- 2. *Use or revelation of former client's information is severely restricted.*⁷⁰

VII. Client Confidentiality

- A. *Confidential information encompasses any and all “information relating to the representation of a client,”⁷¹ regardless of
 - 1. *source;*
 - 2. *whether it is publicly known;*
 - 3. *whether the client still is a client;*
 - 4. *whether the client still is alive; and*
 - 5. *whether the lawyer still is alive.**

- B. *In Arizona, a lawyer must “reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm”⁷²*

- C. *Otherwise, confidential information may not be revealed unless
 - 1. *impliedly authorized to carry out the representation,⁷³*
 - 2. *the client gives informed consent,⁷⁴ or*
 - 3. *limited other circumstances exist.⁷⁵**

- D. *Confidentiality applies to prospective clients too.⁷⁶*

- E. *Reasonable safeguards must be implemented in the firm to assure all personnel understand and satisfy the duty of confidentiality, including appropriate security measures.⁷⁷*

VIII. Trust Account^e

- A. *Arizona lawyers and law firms must maintain an interest-bearing trust account in an [approved financial institution](#)⁷⁸*
1. *Though the rules allow other kinds of trust accounts,⁷⁹ the practical choice for a firm (including an ABS) in virtually every instance is the “IOLTA account,” in which interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education.⁸⁰*
 2. *File [Notification to Financial Institutions](#) with financial institution to identify account as an IOLTA account, and ensure institution assigns the account the Arizona Foundation for Legal Services & Education tax ID number (95-3351710).*
 3. *Do not set up overdraft protection on the account, do not get a debit card, order checks immediately with the words “Trust Account” or “IOLTA Account,” along with the firm name, and order deposit slips.*
 4. *[Enroll](#) IOLTA account with the State Bar.*
- B. *Accounting*
1. *Create general ledger that will keep a running total of all transactions in the account, including date, type of transaction, check number, client name, description of transaction, deposit or withdrawal, and running balance.*
 - a. *Create an administrative ledger for money deposited in the IOLTA account to cover bank charges (e.g., check printing charges, credit card transactions, monthly service charges, and NSF for funds deposited).*
 2. *Create client ledgers for each client that shows the above details for each client account.*
 3. *Complete or cause to be made^f **each month** 3-way reconciliation of client ledgers, general ledger, and trust account bank statement*

^e For more guidance, see not only the applicable rules, but also the [State Bar Client Trust Account Manual](#).

^f Delegating this function to accounting personnel does not, without more, discharge compliance lawyer’s responsibilities. Compliance lawyer still owes obligations to ensure those personnel are properly trained, and to supervise their work to ensure it is done correctly.

- C. *What money goes into the trust account?*
1. *Money possessed by the lawyer in which (and to the extent) someone else (whether the client or a third party) has or claims an interest (e.g., retainer or advance fee payment; settlement payment subject to lien)⁸¹*
 2. *The lawyer's own funds, but only for very limited purposes, and in limited amounts, relating to*
 - a. *service charges or fees charged by financial institution for operation of trust account,⁸² or*
 - b. *credit card-related fees and expenses.⁸³*
- D. *What money should not go into the trust account?*
1. *The lawyer's or the firm's own money*
 - a. *Money in the trust account to which the lawyer becomes entitled (such as earned fee) should be moved reasonably promptly to the lawyer's operating account.*
 2. *Money that is not held in connection with representation of a client⁸⁴*
- E. *Maintain trust account records for five years after termination of representation, and keep client trust account statements, canceled checks, account deposit slips, and checkbook stubs.⁸⁵*
- F. *Must file with the State Bar on or before February 1 each year certificate of compliance with Supreme Court Rule 43 and ER 1.15⁸⁶*
- G. *Assure all personnel who have responsibility for any trust account record-keeping have reviewed the *State Bar Trust Account Manual* and taken a State Bar of Arizona CLE course on data entry requirements.*
- H. *Confirm the ABS attorney responsible for the trust account each year is reviewing the documentation on at least a monthly basis.*

IX. Other Resources^g

- A. Arizona Supreme Court Ethics Advisory Committee [opinions](#) — these have the force of law. Note, e.g.,
 - 1. [EO-19-0009](#), regarding file maintenance obligations, and
 - 2. [EO-20-0001](#), regarding termination of representation earlier than anticipated.
- B. State Bar of Arizona Rules of Professional Conduct Committee [opinions](#) — Committee is defunct; has issued no opinions since 2016; and those opinions are merely advisory, but they are voluminous and some still consider them.
- C. State Bar of Arizona [Ethics Hotline](#) — Advice is non-binding but may be considered, if relied upon, as mitigating factor in disciplinary proceeding. Staffed by State Bar Ethics Counsel or volunteers.
- D. Case law — e.g., [Matter of Swartz](#) (Ariz. 1984), basis of State Bar’s position that post hoc review of fee reasonableness is required for each representation.
- E. State Bar Self-Audit Checklist, attached as Appendix A — Used by State Bar’s Law Office Management Assistance Program (LOMAP), often with firms or lawyers who have been disciplined.

^g Beyond those mentioned or cited above, or outside counsel.

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- ¹ See ACJA § 7-209(A).
- ² See § 7-209(D)(5).
- ³ § 7-209(D)(4)(c).
- ⁴ See §§ 7-209(A), (G)(3).
- ⁵ See § 7-209(G)(1)(f).
- ⁶ See Ariz. R. Sup. Ct. 43(f), esp. (f)(1).
- ⁷ See Ariz. R. Sup. Ct. 32; see also § 7-209(D)(6), (G)(3)(b)(4)-(5).
- ⁸ See § 7-209(G)(3)(b)(1)-(3), (K), (K)(1)(e)(2).
- ⁹ *Id.*
- ¹⁰ See § 7-209(G)(3)(b)(1)-(3).
- ¹¹ *Id.*
- ¹² See § 7-209(K)(1)(g), (K)(3).
- ¹³ See § 7-209(K)(1)(h).
- ¹⁴ See *infra* § V(B).
- ¹⁵ See *infra* § V(E).
- ¹⁶ § 7-209(G)(2)(b).
- ¹⁷ § 7-209(G)(1)(j).
- ¹⁸ § 7-209(K)(1)(d); (G)(3)(b)(3); see also ER 8.4.
- ¹⁹ See § 7-209(K)(1)(e)(1); Ariz. R. Sup. Ct. 41.
- ²⁰ See § 7-209(K)(1)(e)(1); ER 1.1.
- ²¹ § 7-209(K)(1)(b); see also ER 2.1, 5.1, 5.3(a)(1).
- ²² § 7-209(K)(1)(a); see also ER 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.18.
- ²³ See ER 1.5.
- ²⁴ See ER 1.16.
- ²⁵ § 7-209(G)(2)(d), ER 1.6, 1.9, 1.18.
- ²⁶ See ER 1.6(e) and cmt. [22].
- ²⁷ § 7-209(K)(1)(c); see also ER 1.3.
- ²⁸ See § 7-209(K)(1)(e)(1); see also ER 1.4.
- ²⁹ § 7-209(K)(1)(i); Ariz. R. Sup. Ct. 43; see also ER 1.15.
- ³⁰ § 7-209(K)(1)(e); see also ER 5.1, 5.3.
- ³¹ Ariz. R. Sup. Ct. 31.1-31.2, ER 5.5.
- ³² § 7-209(K)(1)(f); see also ER 1.16; EO-19-0009, cited § IX(A), *infra*.
- ³³ § 7-209(K)(1)(d)-(e); see also ER 7.1, 7.3.
- ³⁴ § 7-209(G)(3)(b)(4)-(5).
- ³⁵ Requirements imposed by order presumably satisfy § 7-209(K)(1)(f)'s requirement that the ABS and its authorized persons "maintain records to demonstrate compliance with [the ABS's] obligations under the supreme court rules" and section 7-209.
- ³⁶ ACJA § 7-209(G)(3)(b)(4).
- ³⁷ § 7-209(G)(3)(b)(5).
- ³⁸ § 7-209(G)(3)(c).
- ³⁹ § 7-209(G)(1)(j)(1).
- ⁴⁰ ER 1.4(d).
- ⁴¹ ACJA § 7-209(G)(1)(j)(1).
- ⁴² Ariz. R. Sup. Ct. 32(c)(8).
- ⁴³ Ariz. R. Sup. Ct. 45(c)(1).
- ⁴⁴ Ariz. R. Sup. Ct. 45(c).
- ⁴⁵ § 7-209(G)(2)(c).
- ⁴⁶ § 7-209(D)(5)(b)(1)(c).
- ⁴⁷ § 7-209(G)(2)(c).
- ⁴⁸ § 7-209(F)(1).
- ⁴⁹ § 7-209(F)(2).
- ⁵⁰ § 7-209(F)(2)(a).
- ⁵¹ See ER 1.7(c), 1.10(a), (f).

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- ⁵² See ER 1.0(j) for Arizona’s distinctive requirements for effective screening, including notice.
- ⁵³ See ER 1.10(a).
- ⁵⁴ See ER 1.18.
- ⁵⁵ See ER 1.0(e) for definition of “informed consent.”
- ⁵⁶ ER 1.7, 1.8.
- ⁵⁷ ER 1.7(a)(1).
- ⁵⁸ ER 1.7(a)(2).
- ⁵⁹ See ER 1.7(b).
- ⁶⁰ ER 1.7(b)(3).
- ⁶¹ ER 1.7(c).
- ⁶² ER 1.8(g),
- ⁶³ See ER 1.8(a).
- ⁶⁴ ER 1.8(e).
- ⁶⁵ ER 1.8(f).
- ⁶⁶ ER 1.8(h)(1).
- ⁶⁷ ER 1.8(h)(2).
- ⁶⁸ ER 1.8(i).
- ⁶⁹ ER 1.9(a) (applies where lawyer formerly represented client); ER 1.9(b) (applies where lawyer acquired information through former firm’s representation of currently-adverse party).
- ⁷⁰ See ER 1.9(c).
- ⁷¹ ER 1.6(a).
- ⁷² ER 1.6(b).
- ⁷³ ER 1.6(a).
- ⁷⁴ ER 1.6(a).
- ⁷⁵ See ER 1.6(a)-(d), 3.3(a)(3).
- ⁷⁶ ER 1.18.
- ⁷⁷ ER 1.6(e) & cmts. [22]-[23].
- ⁷⁸ Ariz. R. Sup. Ct. 43.
- ⁷⁹ See Rule 43(f)(1)(B)-(C).
- ⁸⁰ Rule 43(f)(1)(A).
- ⁸¹ ER 1.15(a), (c)-(e).
- ⁸² ER 1.15(b)(1)-(2).
- ⁸³ ER 1.15(b)(3).
- ⁸⁴ See Ariz. R. Sup. Ct. 43(a).
- ⁸⁵ See Ariz. R. Sup. Ct. 43(b)(2)(A).
- ⁸⁶ Rule 43(c).

Appendix A



LOMAP Self-Audit Checklist

This checklist is a tool for law offices, both big and small, to help identify strengths and weaknesses in office management policies and practices. Completion of this self-audit should assist practitioners in becoming more self-aware of the state of their practice, as well as identify areas where proactive steps may be taken to reduce liability and to proactively prevent ethics or malpractice problems from occurring. This checklist should be filled out by a managing attorney or other attorney with sufficient authority in the firm, as non-lawyer employees may not have all necessary information to complete the checklist and may be hesitant to be fully candid in responses.

To fill out the checklist, please enter the requested information in the space provided. For yes/no questions, please mark either the 'yes' or 'no' column for each question. If your answer to a question is 'frequently or most of the time', please check 'yes.' If your answer would be 'seldom or rarely,' please check 'no.' If a question does not apply to you or your firm, please leave the question blank. Please make note of questions and answers that you feel you would like to discuss in more depth with Bar Counsel during your consultation.

Attorney Completing Checklist: _____

Name of Firm: _____

Date Checklist Completed: _____

1. General Practice / Office Information

1a. Firm Background and Staffing

Year Existing Firm Began Operations: _____

Areas of Practice:

Area	% of practice

Total Firm Caseload: _____

Number of Partner Attorneys (Including Yourself): _____

Number of Non-Partner Attorneys: _____

Number of Staff Paralegals: _____

Legal Assistants: _____

Secretaries: _____

Receptionists: _____

Other: _____

	Yes	No
Does each staff member have clearly defined duties and responsibilities?		
Has each staff member received formal training on each of their duties and responsibilities?		
Do staff members receive specific training targeted at our ethical and regulatory responsibilities?		
Do we conduct additional formal refresher training for staff on a routine basis?		
Does each staff member have a clearly defined supervisor who is responsible for reviewing their work?		
Do we have a regular employee review/evaluation process for our employees?		
Do we have an actual, written office policy manual that lays out our office's policies and procedures?		
Do we have formal HR policies in place for dealing with employee discipline and/or disputes?		
Do we have a succession plan in place to deal with the incapacitation or death of an attorney?		

1b. Caseloads

	Yes	No
Does each case have a specific attorney assigned as the responsible attorney?		
If not, are there policies in place that dictate which attorney is responsible for what tasks?		
Does each case have a specific support staff member assigned as the responsible support person?		
If not, are there policies in place that dictate which staff member is responsible for what tasks?		
Do we conduct a regular review of the size of each attorney's caseload to prevent overburdening?		
Do we have a policy or procedure in place for reducing an attorney's caseload should it become too large or burdensome?		

2. Intake / Pre-Retention

2a. Consultation Process

	Yes	No
Are incoming calls inquiring about our services logged or documented in some way?		
Do potential clients fill out an intake sheet with biographical information, names of involved parties and relevant details regarding their case or claim?		
Do we charge for initial consults?		
If so, are clients advised in writing, in advance of the consult, of the fee they will be charged for the consult?		
Are all initial consultations performed by an attorney?		
Do we send turndown letters or emails to clients that do not retain the firm after their consultation?		
Are persons who engage in initial consultations, including those who do not retain the firm, added to our conflicts checking system?		
Do we maintain records of initial consultations, including those that do not result in the potential client retaining the firm?		

2b. Conflicts

	Yes	No
Do we have a formal conflicts checking system?		
Does our conflicts checking system check against the names of current clients, past clients, opposing parties and major/essential witnesses?		
Does our conflicts checking system cross-reference to the related files in order to facilitate researching of potential conflicts?		
Do we ask potential clients for other names (maiden names, etc.) that they or the adverse party may use or have used?		
Do we run a formal conflicts check <i>prior</i> to the potential client having their initial consultation?		

Do we note or document somewhere that the conflicts check was run and who ran it?		
If a potential conflict is discovered, does a supervisory attorney review the situation to determine if representation can proceed?		
If it is determined representation can proceed despite a potential conflict, do we explain the potential conflict to the client in writing and obtained a signed waiver from them?		
Do we accept representation of multiple persons or parties in a single matter?		
If so, do we advise them, in writing, of the potential for conflicts and how confidentiality will be handled?		
Do we barter or accept property or services in exchange for legal services?		
If so, do we have the property or services appraised at a specific value and have the client sign a conflicts writing setting forth the specific terms of the agreement, that they are advised (and actually given) opportunity to seek the advice of independent legal counsel and that we are not representing them in the transaction itself?		
Do we solicit online case/contact submissions through our website?		
If so, do we limit the amount of case information a potential client can send via our submission form, so as not to accidentally conflict ourselves off of an existing matter?		

3. Retention & Fees

3a. Fee Agreements

	Yes	No
Do we have all clients sign a written fee agreement upon retention?		
Do we provide a copy of the signed fee agreement to the client and retain a copy for our records?		

Is the scope of representation clearly defined with sufficient specificity?		
Are common areas of representation that are not covered by the agreement (appeals, post-decree matters, etc.) clearly indicated as not being included in the agreement?		
Does our fee agreement correctly and specifically define <i>who</i> the actual client is?		
If we accept third-party payor funds, does our agreement make clear they are not the client, that they do not direct the representation, how confidentiality will be handled and how any refunds of those funds will be handled?		
If the fees to be charged are hourly fees, do we require the client to pay an advance deposit to bill against?		
If so, is this money deposited directly into the firm's IOLTA account?		
On hourly agreements, do we submit regular billing statements to the client to keep them apprised of the cost of their matter?		
Are billing statements reviewed by a supervisory attorney for accuracy and reasonableness prior to being sent out?		
If the fees to be charged are flat fees, do we define the fees as earned upon receipt or not in our fee agreement?		
If the flat fees are earned upon receipt, are they deposited directly into the firm's operating account?		
If the flat fees are not earned upon receipt, are they deposited directly into the firm's IOLTA account until earned?		
On flat fee agreements, do we charge a tiered fee (such as an additional fee for trial)?		
If so, is the trigger for the earning of that tiered fee specific enough to avoid disputes over whether it is due and/or earned?		
If the fee to be charged is a contingency fee, do we ensure the client has signed a written fee agreement?		
On contingency fee cases, do we make clear in the agreement whether the cost reimbursements are deducted before or after the attorney's fees?		

If we accept cost payments in advance, are those payments being deposited directly into the firm's IOLTA account until earned/expended?		
If any of our fees are called earned upon receipt or non-refundable, do we also advise the client in writing that they may discharge the firm at any time, and in that event, may be entitled to a refund to all or part of the fee based upon the value of the representation?		
Do we have language addressing early termination and specifically how our fees will be calculated in such an event?		
If our fees or fee rates change during a representation, do we notify the client in writing in advance of performing any work at the new rate?		
Do we have a 'no guarantee of results' clause in our fee agreement?		
Do we have document retention language in our fee agreement that defines when we may destroy the file?		
Do we have a fee arbitration clause in our fee agreement to deal with fee disputes?		
If we are splitting fees with an outside lawyer or firm, do we advise the client in writing of the outside lawyer/firm's participation and the fee split?		
If so, do we have the client sign that notification?		
Also if so, do we execute a writing with the outside lawyer/firm setting forth the terms of our agreement, including what the fee split will be, who will perform what work and who will undertake what responsibility for the representation?		
Do we have a system in place whereby all fees are reviewed at the end of representation to determine if the fees claimed were reasonable?		
Do we have a system or policy in place that ensures any refunds or residual funds are timely processed and sent out (usually within 30 days)?		

3b. Client Expectations & Management

	Yes	No
Do we have any criteria developed for when we will turn away or decline representation of problematic potential clients?		
Do we send any type of opening letter or packet to new clients informing them of what to expect regarding our representation and the processing of their matter?		
Do we address communications expectations with new clients at retention so that they know how long to expect to wait for responses to questions or how often they should expect communication from the firm?		
Are clients made clearly aware at retention of the budgetary expectations regarding their representation (such as the fact an advance deposit will not likely be sufficient to cover the entire matter, or whether expensive expert witness services will be required)?		

3c. File Creation / Case Management

	Yes	No
Is there a standard process that dictates who opens a new client file and how it should be set up?		
Are routine expected deadlines (such as statutes of limitations) automatically calendared when a file is opened?		
Do we currently use paper files?		
If so, are the files organized in a standardized manner so that specific documents can easily be located?		
Do we use, or have we evaluated whether we should use, digital case management software?		
If we use digital case management software, have we conducted due diligence into the company providing it (is it large enough that we are confident it is not going to fail) and the terms and conditions of the software (where is our client data being stored and is it secure/confidential)?		
Do we currently store documents digitally?		

If so, are they stored in an organized and searchable manner so that cases and documents can be easily located?		
Do we copy or move emails from email accounts into the client file itself to maintain a complete unified file?		
If we store case documents both digitally and in paper format, do we ensure each copy is complete or have procedures in place to ensure a document in only one of the files is not missed when checking the other file?		
Are our computer systems backed up automatically, on a regular basis, to the cloud or an off-site location?		
Is there a policy in place that dictates how received mail is handled, by whom, and how it is added to the file?		
Is there a policy in place that dictates who should calendar new dates on the firm's calendaring system?		
Do we use a routing or notation system on received pleadings to document important dates contained within have been calendared and by whom?		
Do we use a calendar tickling system to warn of deadlines in advance of their arrival?		
Does each file have a log or notes section for tracking activity and communication conducted in the matter?		
Do we conduct a regular review (at least once a month) of all active matters to ensure no activity or client contact is necessary?		
Do we conduct a regular review of inactive matters (at least every other month) to determine if representation needs to be terminated or advance fees refunded?		
Are both active and closed files stored in a safe and secure location?		
Do we have policies and procedures in place to provide for a timely return of the client file upon demand (within 30 days, or sooner if client/case needs dictate)?		

4. Communications

4a. Communications Policies

	Yes	No
Do we have a policy in place that mandates all client calls must be returned within a set period of time (such as 48 hours)?		
Do we have a policy in place that mandates all written client communication must be responded to within a set period of time (such as 7 days)?		
Do we contemporaneously copy clients on all received or sent documents?		
Do we separately notify clients of all hearing dates and/or deadlines other than simply copying them on the documents that establish the dates?		
Do we log or document all client communications in our cases?		
Do we log or document important or major client decisions, such as the authorization of settlements?		
Do we send follow-up letters or emails after client meetings to confirm or memorialize decisions made during those meetings?		
Do we ask clients how they located us or who referred them to us?		
Do we ask clients for feedback at the conclusion of representation?		
If we use webmail or cloud computing, do we notify clients of this so they can raise any privacy concerns?		
Are our computer systems password protected?		
Are our emails and letters marked as “confidential” or “privileged?”		
Do we text message with clients?		
If so, do we have processes in place to preserve and store those text messages in our client files?		

4b. Confidentiality

	Yes	No
Do we have a formal confidentiality policy that is provided to all employees and contractors?		
Does our office have an adequate layout for clients to be able to discuss their confidential issues without being overheard by other clients or members of the public?		
Are confidential materials (including fax machines and printers) kept in a location not openly accessible to visiting clients or members of the public?		
Is our office adequately secured from a security standpoint? (locks, alarms, limited accessibility)		
Are our computer systems, including mobile devices, adequately password protected?		
Do we have regularly updated anti-virus software and an effective network firewall?		
If there is a breach of our office security or computer systems, do we have policies in place for notifying clients their information may have been compromised?		
If we share office staff with other attorneys, law firms or businesses, has the shared staff been formally trained on our confidentiality requirements?		
If we share office space with other attorneys, law firms or businesses, is the office signage sufficiently clear to indicate we are separate entities from them?		

5. Termination

5a. Withdrawal / Notification

	Yes	No
Do we formally notify clients when our representation of them has ended?		

If so, do we have a form or template letter that is sent out at the end of all matters?		
If a client wishes to terminate our firm's representation, are they able to do so without having to come in for an in-person meeting or sending a formal letter of termination?		
Do we formally withdraw from representation with the court at the end of a client matter?		
If not, do we have systems in place to identify new post-matter documents or pleadings that come in and to have them appropriately acted upon?		
Do we survey clients at termination regarding their experience with our firm?		
In personal injury matters, do we provide the client with a detailed settlement breakdown/accounting?		
If so, do we have the client sign that breakdown/accounting?		

5b. Client Property

	Yes	No
At the termination of representation, do we do a 'look back' at our fees in each case to determine if they were reasonable and actually earned?		
Do we have a system in place to ensure client refunds are processed in a timely manner?		
Do we make all necessary client refunds within 30 days?		
In case of a fee dispute, do we have procedures in place for the holding of disputed funds and how we will attempt to resolve the dispute?		
Do clients receive a copy of their client file at termination?		
If not, were they provided copies of all case documents as the case progressed, and were they warned in advance that these copies would constitute their copy of the client file?		
Do we retain copies of client files for a sufficient period of time post-representation?		
Do we regularly review our document retention policy to determine if our storage timelines are still sufficient?		

Do we store all closed client files in one location?		
Is our file storage in a secure location with adequate security protections?		
Do we have a procedure in place for regularly reviewing and destroying closed files that have passed their retention period?		
Do we destroy closed files in a manner that sufficiently protects confidentiality, such as shredding or burning?		
Do we use sub-contractors for file storage or destruction?		
If so, have we reviewed their policies and/or trained them to ensure that files are properly maintained and destroyed?		
Have we considered whether bulk scanning closed files makes financial and practical sense?		
If a client requests a copy of a closed file, do we have procedures in place that allow us to timely respond to the request?		

6. Advertising

6a. Advertising

	Yes	No
Have we reviewed our firm name to ensure it is in compliance with the Rules governing firm names and titles?		
Do we advertise our services?		
If so, do our advertisements contain the name of the firm or a responsible attorney at the firm?		
Also if so, do our advertisements contain contact information for the firm itself?		
Do we engage in direct mail (or direct electronic) solicitation of clients known to be in need of legal services?		
If so, do we have the appropriate ADVERTISING MATERIAL disclaimer on the outside of our advertisement?		
Also if so, are we submitting sample copies to the State Bar along with a list of recipients?		

Have we reviewed our advertising materials to ensure they do not contain any information likely to mislead a consumer?		
Have we ensured that our advertising materials do not use the word “specialist” or similar terms unless our attorneys are actually board-certified specialists?		
Do we have a policy prohibiting the payment of or acceptance of referral fees?		

7. IOLTA

7a. Account Operation

	Yes	No
Is our IOLTA held in a Foundation approved institution?		
Are only managerial/supervisory attorneys listed as signatories on the IOLTA account?		
When the IOLTA bank statement arrives, is a managerial/supervisory attorney the first one to open and review the bank statement?		
Have we sufficiently divided tasks as a security measure so that there is not one single person in charge of all IOLTA recording and accounting?		
Have we ensured there are no ATM or debit cards linked to the IOLTA?		
Are the IOLTA checks kept in a secure location?		
Are the IOLTA checks a different color than and/or sufficiently differently looking than the operating account checks?		
Do the IOLTA checks clearly identify themselves as being for the IOLTA account on the face of the checks?		
Are duplicate deposit slips used to make IOLTA deposits?		
Are all IOLTA disbursements made by electronic transfer or pre-numbered IOLTA check?		
Do we wait ten business days from a deposit into the IOLTA before disbursing funds out of the IOLTA?		

If we make disbursements prior to ten business days, are those funds proper limited-risk funds and do we have sufficient funds (outside the IOLTA) on hand to cover any shortfall?		
Do we maintain a small sum of administrative funds in the IOLTA to cover bank fees or charges?		
If so, is that amount \$200 or less?		
Do we only use our IOLTA for matters directly related to legal representations?		
Do we timely disburse all earned funds from the IOLTA?		
Do we timely disburse all client funds from the IOLTA?		
If we are maintaining manual records, have we considered using automated alternatives such as QuickBooks?		

7b. Record Keeping

	Yes	No
Is there a particular person or persons who are responsible for the day-to-day IOLTA accounting and recordkeeping?		
Have those persons been adequately trained in the IOLTA requirements?		
Are all IOLTA deposits and disbursements recorded in a timely manner, at the same time the deposits or disbursements are actually made?		
Do we maintain copies of canceled checks (front and back) that have been disbursed from the IOLTA?		
Do we maintain copies of duplicate deposit slips for funds that have been deposited into the IOLTA?		
If we make any electronic deposits to or disbursements from the IOLTA, do we maintain a copy of the confirmation?		
Do we maintain a general IOLTA ledger?		
Does our general IOLTA ledger contain the date, client matter, payor/payee, amount and running balance for each item?		
Do we maintain individual client ledgers for each client?		
Do our individual client ledgers contain the date, client matter, payor/payee, amount and running balance for each item?		

Do we maintain an administrative funds ledger?		
Does our administrative funds ledger contain the date, payor/payee, amount and running balance for each item?		
Do we conduct a monthly three-way reconciliation with our bank statement each month?		
Do we make and keep a written record of our monthly three-way reconciliation?		
Do we maintain copies of our IOLTA records for at least five years post-representation of a client?		

8. ADDITIONAL RESOURCES

If you require additional assistance, please visit our website at www.azbar.org/LOMAP or contact one of the programs listed below that the State Bar of Arizona offers to assist members in their day-to-day practice.

LOMAP - 602-340-7362

Offers law office management assistance and discipline compliance monitoring within the State Bar’s Lawyer Regulation Department.

Practice 2.0 - 602-340-7332

Offers both free and paid confidential practice management assistance on a voluntary basis for inquiring members.

Ethics Hotline - 602-340-7284

Offers informational telephonic ethics advice to members with specific prospective issues or questions.

Trust Account Hotline - 602-340-7305

Offers informational telephonic advice to members regarding setting up or managing IOLTA trust accounts.

Member Assistance Program - 602-340-7334

Offers peer support to persons experiencing personal, emotional, physical or substance related issues.