

AGENDA

FOR THE

ATTORNEY REGULATION ADVISORY COMMITTEE

Wednesday, November 18, 2015

9:30 a.m. – 12:00 p.m.

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

(All times shown on this agenda are approximate.)

Regular Business

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

Hon. William O'Neil

Business Items and Potential Action Items

No. 1 Review and Approve September 2015 ARC minutes

No. 2 Update from Rules Subcommittee
Rule petition proposals

Judge O'Neil

No. 3 Rule ER 1.6 Recommendation

Kathleen Curry

No. 4 Review proposed changes to Rule 46, Rules of Sup. Ct.

George Riemer,
Maret Vessella
Pat Sallen

No. 5 Review proposed changes to Rule 35(d) and 36(h)(3), Rules of Sup. Ct.

Mark Wilson

No. 6 Call to Public

Next meeting date: Wednesday, March 2, 2016

Any agenda item, including the call to the public, may be considered at a time other than what is indicated on this agenda.

The Committee may meet in executive session as permitted by A.C.J.A. §1-202.
Please contact Cassandra Ramos at (602) 452-3295 with any questions concerning this agenda.

ATTORNEY REGULATION ADVISORY COMMITTEE

Meeting Date:	Type of Action Required:	Subject:
November 18, 2015	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<i>No. 1</i> Approval of Minutes

PRESENTER(S):

Honorable William O'Neil, Chair

DISCUSSION:

Approve the draft minutes from the September 16, 2015 ARC meeting.

RECOMMENDED MOTION (IF ANY):

ATTORNEY REGULATION ADVISORY COMMITTEE

MINUTES

Wednesday, September 16, 2015
9:30 a.m. – 12:00 p.m.

State Courts Building, 1501 West Washington Street, Phoenix, Arizona
Conference Room 230

Present

Hon. Lawrence F. Winthrop
Hon. William J. O'Neil
Ben Click
Whitney Cunningham
Mary Grier
Edward Novak
George Reimer
Patricia Sallen

Telephonically Present

Emily Johnston
Ronald Watson

Absent

Scott Rhodes
Pamela Treadwell-Rubin
Maret Vessella

Staff

Kathleen Curry
Mark Wilson
Carol Mitchell
Cassandra Ramos

Regular Business

9:28 a.m. Call to Order and Introductions

Judge Lawrence Winthrop, Chair

Business Items and Potential Action Items

No. 1 Early Exam Presentations – Discussion only, no action taken

Rob Williams -- Professor of Law and Faculty Chair - University of Arizona

Sally Rider -- Associate Dean -- University of Arizona

- The University of Arizona expressed they had a very positive impression on the pilot program and recommend to keep this as a regular bar exam process. Overall 85% of early takers have passed. The number of early exam participants has increased from 20 in February 2014 to 33 in February 2015 and U of A is expecting 35-50 early exam participants in February 2016.
- U of A partners with Kaplan Bar Prep Company. Students are required to take the diagnostic test Kaplan provides, which is essentially a miniature bar exam, including two essay questions, multiple choices questions and an MPT. The tests are individually graded with written feedback and helps the student reevaluate if they are ready. Faculty meets with the student and reviews diagnostic results, law school records, GPA's and LSATs and this helps determine if the February Bar Exam is right for them. Kaplan offers a test on MPT, which allows the student to write and analyze like a lawyer.

- Students have been pleased and enjoy the flexibility of the program. Additional benefits are the enhanced employment opportunities, reduced need for bridge loans and ability to sit for the July exam in another state. A major benefit was allowing for change in curriculum. U of A offers a February Bar Experiential Class, which consists of over 25 courses over 8 weeks.
- U of A recommends students to complete Character and Fitness application earlier.
- Three other states have inquired about U of A's experience with the pilot program.

Loni Burnette – Director with Academic Affairs - Arizona State University

- Arizona State University strongly encourages Committee to permanently keep the program.
- ASU's program has had lower numbers of students participate than U of A. ASU students have had a high level of success. ASU requires students to have completed their graduation requirements outside of seven credits before fall of their third year.
- ASU does not offer a bar class through their program but does encourage students to take a commercial bar class. Students are not enrolled in other courses while preparing for the bar and once finished, return to class to complete a mandatory two credit survey class on Transitioning into Law, which helps them move into practicing law. ASU also offers a two credit Arizona Legal Research Class, this is geared towards students taking the bar exam. Early exam takers have shown high levels in job placement. Concerning financial aid, this allows students to study for the exam with the loans they have already taken out and eliminates financial stress.
- The first year the program was in place, 12 students participated and had a 100% passage rate. February 2015, 11 students participated in the program and had an 82% passage rate.
- ASU does not see the program growing in high numbers because of the requirements, but once the students have completed the program, they understand why these requirements are in place.
- Six students have expressed interest in the February 2016 early bar exam.

Penny Wilrich – Professor of Law - Summit Law School

- Summit Law School recommends keeping the program as well.
- When Summit faculty was first introduced to the program, faculty wanted to take a conservative approach to ensure top students are taking the early bar with a chance of success the first try. Two students have opted to sit for early bar exam and both have passed, and currently waiting on one's results.
- Summit requires the student's law school graduation GPA to be a 3.5, which will eliminate some students from participating. Summit also shifted the curriculum so that students who were taking February bar exam would not have more than 8 hours of law school instruction left in final term and have taken all required courses in curriculum. Summit partnered with BARBRI and Kaplan to create an in-house bar study program, Arizona Bar Strategies class 1 and 2, and any applicant that opts to sit at the early bar is required to take these courses.
- Summit also requires the completion of advanced writing and that the students have taken and passed the MPRE. Students are required to submit Character and Fitness applications. The school recommends considering having the Character and Fitness applications to be submitted during a law students first year. Summit also has their students perform at least 30 hours of pro bono work during their law school careers; and make sure that no honor codes have been violated or are pending violations. Current financial obligations are mandatory as well.

Ben Click commented on the difference of passage rates between schools for first time bar sitters, and asked each school to comment on the issue.

- University of Arizona – It is hard to know whether a first time exam tester recently graduated from law school or is a law school graduate from many years ago and are just now testing to be admitted in Arizona. The February bar participants are a self-selective group that are goal-oriented, focused, organized and have the mindset for the early exam.
- Arizona State University – The students at ASU are also a self-selective group and this program tends to lean towards students who are more organized and would do well on any bar exam they took. Faculty discuss with them why they believe the early bar exam is the correct option for them and make sure they are setting themselves up for the best position and fully have thought about the career.
- Summit Law School – Statistically Summit has two to three times more students taking the bar at any time. Bar strategies classes were put into place because students were not thinking about the bar exam until graduation, therefore pressing to study and prepare for the exam. This encourages students to evaluate their readiness for the bar at the time of graduation, this is why Summit offers a miniature bar test to determine the student's strong and weak areas.

No. 2 Review and Approve April and July 2015 ARC minutes

Motion: Approve the minutes from the April and July meetings. The motion was amended to correct the April minutes to reflect that Amy Rehm was present on behalf of Maret Vessella.

Moved by: Ed Novak

Second: Bennie Click

Carried: None opposed

*No. 3 Update on Petition R-15-0018 from Committee on the Review of
Supreme Court Rules Governing Professional Conduct and the Practice of Law*

Patricia Sallen

- The Supreme Court adopted about 95% of changes from the Justice Timmer Committee recommendations.
- ER 1.6: ARC in its previous comment to the Rule Petition expressed concern about proposed changes to ER 1.6. In particular issues concerning protecting confidentiality. Patricia Sallen briefly addressed and stated Kathleen Curry would address further later in meeting.
- ER 5.5: The Justice Timmer Committee's proposal concerning ER 5.5 was adopted by the Supreme Court. As adopted, ER 5.5 will allow a lawyer physically present in Arizona, licensed in another jurisdiction to practice law of that jurisdiction without being licensed in Arizona. The lawyer will still be subject to the Supreme Court's discipline process.
- Significant Admissions Proposal: The Court adopted the practicing pending admission Rule. If a lawyer licensed in another state applies to be licensed in Arizona pursuant to the Admission on Motion Rule, under certain circumstances the individual may practice in Arizona while application is pending. Judge Winthrop inquires as to whether there will be an article addressing this issue and Patricia Sallen confirmed there would be in the December issue. Ed Novak notes that authority to practice while admission is pending is terminated when applicant withdraws or application is denied and that these things do not always occur, the applicant can also abandon the application process. Ed

Novak suggests the Character and Fitness Committee develop a process to deal with abandonment. The Admission on Motion requirement of active practice has been changed from 5 of the previous 7 years to 3 of the previous 5 years. This is consistent with ABA model rule. Presently, the active practice requirement involves a certain number of hours accrued, and percentage of income. The Court accepted Justice Timmer Committee's proposal to remove the requirements and as amended, active practice requires an active bar license.

- The Court adopted the recommendation the Justice Timmer Committee proposed relating to registered in-house counsel. As amended the Rule now allows registered in-house counsel to appear pro hac vice for their employer or to perform pro bono services through a volunteer organization. The current Rule allows the Board of Governors to waive any requirements of the registered in-house counsel Rule. As amended, registered in-house counsel may petition the Court, not the State Bar or Board of Governors to waive requirements of the Rule.
- ER 1.5 – This Rule concerns sharing fees. It was amended and is now consistent with the ABA model rule. As amended, two lawyers from separate firms may share fee based on agreement to share liability or divide fee based on services performed. The new addition to this Rule is that they must inform the client that the fee is being divided and the client must agree with the division of fee and duties.
- ER 1.10 – As presently drafted, lawyers not directly involved in representing a client in litigation may change employment and become employed by opposing counsel's firm if an appropriate wall is developed. If on the other hand, the moving lawyer was directly involved in representation, then the opposing firm will be disqualified from representation. The Rule, as amended, eliminates the litigation exception. As amended, if the moving lawyer had primary responsibility, the firm would be disqualified. If the moving lawyer does not have primary responsibility, then the firm can establish a wall and is not disqualified. These changes are found in a different Rule petition. ER 1.10 was also amended to address the situation when a lawyer leaves the first firm and goes to the second firm. The ER as amended, allows first firm to not be disqualified if any information remaining in first firm is screened off from the firm's lawyers.

No. 4 ER 1.6 Recommendation

Kathleen Curry

- ARC filed a comment recommending the Court not adopt the proposed changes. ARC was concerned about weakening the bright line rule and the subjective nature of the attorney deciding what the client might object to having disclosed and that the proposal was not in line with the ABA model rule.
- Comments to the Rule petition have been filed suggesting that exceptions be added to Rule to be more reflective on what needs to be protected as opposed to protecting everything. Kathleen Curry created a draft amendment for discussion.
- Judge Winthrop suggests sending ER 1.6 Rule petition issue to Rules Subcommittee for consideration and to prepare a recommendation to ARC.

No. 5 Discussion of proposed changes to Rule 46

George Riemer

- No recommendation has been made for Rules subcommittees' consideration.
- If a lawyer becomes a judge, and is disciplined and removed or resigned on charges, the question is whether the State Bar and the Commission on Judicial Conduct have concurrent jurisdiction. George Riemer believes as the Rule is presently drafted, the Commission on Judicial Conduct has jurisdiction and not the State Bar.
- Judge Winthrop recommended that the work group consider reciprocal posting of discipline with both the State Bar and the State Board of Judicial Conduct.

- Rules 46 (C) and (D), address situations where a judge is accused of judicial misconduct, and the judge resigns or is removed. Issue is, if the conduct also violates the rules of professional conduct, what is the State Bar's role?

No. 6 Proposed 2016 meeting schedule

Judge Winthrop

- Committee agreed on 2016 meeting dates.
 - March 2, 2016
 - April 13, 2016
 - June 8, 2016
 - September 14, 2016
 - December 7, 2016

No. 7 Call to Public

- None.

Meeting Adjourned: 11:06 p.m.

DRAFT

ATTORNEY REGULATION ADVISORY COMMITTEE

Meeting Date:	Type of Action Required:	Subject:
November 18, 2015	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<i>No. 2</i> Rule Petition Review

PRESENTER(S):

Judge O'Neil

DISCUSSION:

Review rule petition proposals submitted from the Presiding Disciplinary Judge's office.

RECOMMENDED MOTION (IF ANY):

**ARIZONA RULES OF THE SUPREME COURT
PROPOSED AMENDMENTS**

Rule 48. Rules of construction.

(a) *Nature of proceedings.* Discipline and disability proceedings are neither civil nor criminal, but are sui generis.

(b) *Rules of Civil Procedure.* Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5(f), ~~6(a), 6(e), 7.1(a), 7.1(b), 8(b), 8(d)(f), 10(b)-(d), 11(a), 12(b), 12(e), 12(f), 26(a)-(f), 29-36, 38.1(i), 38.1(j), 42(a), 43-45, 56, 60(c), 80(a), 80(d), 80(h), and 80(i).~~ In addition, Rules 6(c) and 13 of the Arizona Rules of Civil Appellate Procedure shall apply as specified in Rule 59.

(c) Service in General. Unless the court orders otherwise, every pleading and similar paper subsequent to the original complaint shall be served upon each of the parties by delivering the paper by email. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4, or Rule 4.2 as applicable.

(d) Computation of time. In computing any period of time specified or allowed by these rules, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time specified or allowed, is less than 6 days, intermediate Saturdays and Sundays, shall not be included in the computation. When that period of time is 5 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday.

(d) Additional Time after Service Under Rule 5(c)(2)(C) by Order of the Court. Whenever the presiding disciplinary judge authorizes a party to serve by a method authorized by Rule 5(c)(2)(C), five calendar days are added after the prescribed period would otherwise expire.

Rule 51. Presiding disciplinary judge.

(c) *Powers and duties of the presiding disciplinary judge.* The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. appoint a staff in accordance with an approved budget as necessary to assist the presiding disciplinary judge in the administration of the judge's office and in the performance of the judge's duties;
2. order the parties in disciplinary proceedings to attend a settlement conference;
3. impose discipline on an attorney, transfer an attorney to disability inactive status, and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. ~~stay a matter for good cause~~, shorten or expand time limits set forth in these rules, as the presiding disciplinary judge, in the exercise of discretion, determines necessary;
5. enlist the assistance of members of the bar to conduct investigations in conflict cases;
6. periodically report to the court on the operation of the office of the presiding disciplinary judge;
7. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and
8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

Rule 58. Formal proceedings. (default)

(d) **Default procedure; aggravation/mitigation hearing.** If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within ten (10) days thereafter, enter that party's default and serve a copy of the notice of default upon respondent and bar counsel. A default entered by the disciplinary clerk shall be effective ten (10) days after ~~service entry~~ of the ~~notice of default~~, upon which the allegations in the complaint shall be deemed admitted. A default shall not become effective if the respondent files an answer ~~or otherwise defends~~ within ten (10) days from the ~~service entry~~ of the ~~notice of default~~.

Rule 59. Review by the court [Effective until January 1, 2015].

(a) *Notice of appeal.* Within ten (10) days after service of a ~~report decision~~ of the presiding disciplinary judge, except reports regarding consent agreements, or a hearing panel, denial of reinstatement, respondent or the state bar may appeal by filing with the disciplinary clerk a notice of appeal and serving a copy on the opposing party. An opposing party may file a notice of cross-appeal within ten (10) days from service of the notice of appeal and serve a copy on the opposing party.

Rule 63. Transfer to disability inactive status

Under (a), "Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged." However, there is no language within the rule that authorizes such consent orders. A consent agreement should not be subject to appeal. Let's make it more straightforward, true and accurate copies of medical records is way simpler than trying to get an "affidavit" or a "report" from a doctor. I'm not suggesting a report is not better, but sometimes the medical record is dispositive and you don't need the extra cost of a report or an affidavit from the doctor. Likewise a hearing should be on request of either side or directive of the PDJ.

Rule 64. Reinstatement; eligibility.

(f)(1)(B). *After Two (2) Years.* If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in Rule 65 of these rules shall apply. In the event the State Bar finds there is no need for rehabilitation and there appear to be no discipline or disability issues, the applicant, under Rule 65(b)(2) need only prove compliance

with all rules, fitness to practice and competence. Notwithstanding this provision, a suspended member may apply for reinstatement under the provisions of paragraph (f)(1)(A) as set forth above by submitting proof that the suspended member:

Rule 65. Reinstatement

- (a) 4. *Successive applications.* No application for reinstatement shall be filed within one (1) year following the ~~denial-~~ dismissal of a request for reinstatement.

See 65(b) 4. Court review. The court shall promptly review the report of the hearing panel. The court may request additional briefing by the parties and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be *dismissed*. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, subject to any conditions deemed necessary.

- (b) 3. *Decision.*

(c) Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written decision containing findings of fact, conclusions of law and an order regarding reinstatement, together with a record of the proceedings. The decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the decision and indicate the basis of the dissent in the decision. The disciplinary clerk shall serve a copy of the decision on applicant and on bar counsel of record. The hearing panel shall notify the parties when the decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

~~65(b) 4. Court review.~~ The court shall promptly review the report of the hearing panel. The court may request additional briefing by the parties and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be *dismissed*. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, subject to any conditions deemed necessary.

ATTORNEY REGULATION ADVISORY COMMITTEE

Meeting Date:	Type of Action Required:	Subject:
November 18, 2015	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<i>No. 3</i> ER 1.6 Recommendation

PRESENTER(S):

Kathleen Curry

DISCUSSION:

In light of ARC's comment in R-15-0018 opposing the proposed amendments to ER 1.6, the client confidentiality rule, the Court wanted ARC to further consider this ethical rule and perhaps add some exceptions to its broad application. The following represents amended language as proposed by the Rules subcommittee.

RECOMMENDED MOTION (IF ANY):

ER 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless:

- (1) the client gives informed consent;
- (2) the disclosure is impliedly authorized in order to carry out the representation;
- (3) the information consists solely of~~relates to~~ the lawyer's legal knowledge or legal research acquired during the course of the representation;
- (4) the information is generally known or publicly available, unless the lawyer knows, or should know, that the client would not want the lawyer to communicate the information ; or
- (5) the disclosure is permitted or required by paragraphs (b), (c) or (d),~~r~~ or ER 3.3(a)(3).

[No change in remaining text.]

2003 Comment [amended 2009 and 2016]

[1] [No change in text.]

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See ER 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The public is better protected if full and open communication by the client is encouraged than if it is inhibited. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] [No change in text.]

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client unless one of the specified exceptions applies. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

[No change to remaining text.]

ATTORNEY REGULATION ADVISORY COMMITTEE

Meeting Date:	Type of Action Required:	Subject:
November 18, 2015	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<i>No.4</i> Proposed changes to Rule 46, AZ Rules of Supreme Court

PRESENTER(S):

George Riemer
Maret Vassella

DISCUSSION:

The presenters will guide a discussion of the suggested language changes to Arizona Supreme Court Rule 46. The following represents amended language as proposed by the Rules subcommittee.

RECOMMENDED MOTION (IF ANY):

Current Supreme Court Rule 46

Rule 46. Jurisdiction in Discipline and Disability matters; Definitions

* * *

(c) **Former Judges.** A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the state bar and the court not only for that person's conduct as a lawyer, but also for misconduct that occurred while serving as a judge that would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial discipline proceeding as to which there has been a final determination by the court.

(d) **Incumbent Judges.** Upon removal or resignation from office of an incumbent judge as the result of a judicial discipline or disability proceeding, the court shall afford the state bar and the judge an opportunity to submit to the court a recommendation whether lawyer discipline or disability status should be imposed based on the record in the judicial proceeding, and if so, the extent thereof.

* * *

Proposed Supreme Court Rule 46

Rule 46. Jurisdiction in Discipline and Disability matters; Definitions

* * *

(c) Conduct Prior to Assumption of Judicial Office. The state bar and commission on judicial conduct have concurrent jurisdiction over judges for misconduct as lawyers before becoming judicial officers.

(d) Former Judges. A former judge is subject to the jurisdiction of the state bar and the court not only for that person's conduct as a lawyer, but also for conduct while serving as a judge that may constitute grounds for lawyer discipline. If a judge is removed, retires or resigns from office as a result of a judicial discipline or disability proceeding, the state bar shall have the discretion to recommend to the court whether lawyer discipline or disability status should be imposed based on the record of the judicial discipline or disability proceeding, or, in the alternative, proceed under Rule 55, Ariz. R. Sup. Ct. The commission on judicial conduct shall provide written notice to the state bar within ten business days of the effective date of such a removal, retirement or resignation and the state bar shall have thirty days from the date of that notice to inform the court in writing of its intent. Should the state bar notify the court of its intent to recommend lawyer discipline or disability status based on the record of the judicial discipline or disability proceeding, the court shall by order set the due date for the state bar's recommendation.

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ATTORNEY REGULATION ADVISORY COMMITTEE

Meeting Date:	Type of Action Required:	Subject:
November 18, 2015	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	<i>No. 5</i> Proposed changes to Rules 35(d) and 36(h)(3), AZ Rules of Sup. Ct.

PRESENTER(S):

DISCUSSION:

The Supreme Court asked ARC/Admissions subcommittee to evaluate the best practices regarding confidentiality of certain documentation filed in matters with the Clerk of the Supreme Court. The following represents the proposed language changes as approved by the Rules subcommittee.

RECOMMENDED MOTION (IF ANY):

Proposed language for rule change to Rules of the Supreme Court, Rule 35

Sup. Ct. Rule 35 (d)

(d) *Review by the Court.* (1) An applicant aggrieved by any decision of the Committee on Examinations may, within twenty (20) days after such decision, file a verified petition for review with this Court; however, the Committee on Examination's decision regarding any applicant's grade score is final and will not be reviewed by the Court absent extraordinary circumstances. The petition must succinctly state the facts that form the basis for the petition and the applicant's reasons for believing this Court should review the Committee's decision. A copy of the petition must be promptly served upon the Committee. The Committee will have thirty (30) days after service to file a response and transmit the applicant's file to this Court. Thereupon the Court will consider the matter and render a decision.

(2) Notwithstanding the provisions of Rule 37(c), any document filed pursuant to this Rule 35(d), shall not be confidential except any reports or records written by a licensed medical or psychological professional shall be considered confidential and sealed by the Clerk of Court, upon notice by the applicant or committee.

Rules of the Supreme Court, Rule 36:

(h) Review by the Court.

1. *Petition for Review.*

A. An applicant aggrieved by any decision of the Committee on Character and Fitness may, within twenty (20) days after such decision, file a verified petition for review with this Court. The petition must succinctly state the facts that form the basis for the petition, and applicant's reasons for believing this Court should review the decision of the Committee.

B. A copy of the petition must be promptly served upon the Committee. The Committee will have thirty (30) days after service to transmit the applicant's file, including all findings and reports prepared by or for the Committee, and a response to the petition fully advising this Court as to the Committee's reason for its decision and admitting or contesting any assertions made by the applicant in the petition. Thereupon this Court shall consider the papers so filed, together with the petition and response, and make such order, hold such hearings and give such directions as it may in its discretion deem best adapted to a prompt and fair decision as to the rights and obligations of applicant judged in the light of the Committee's and this Court's obligation to the public to see that only qualified applicants are admitted to practice as attorneys at law.

2. *Review on Court's Own Motion.* All recommendations for conditional admission are subject to de novo review by the Court. The Committee on Character and Fitness, through the assigned panel, must file with the clerk its written decision recommending conditional admission and the terms of conditional admission.

The Court may decline review, or it may grant review on its own motion. If the Court declines review, the panel's recommendation for conditional admission will be final and the panel will issue the Order of Conditional Admission. If the Court grants review, the Court may issue such orders as may be appropriate for its review, including remanding the matter to the Committee for further action, ordering transmittal of the applicant's file, ordering additional briefing and/or setting the matter for oral argument. After receiving all the appropriate pleadings and record, the matter will be deemed submitted to the Court for its decision. A party or the panel may request that the Court seal a portion of the materials submitted for de novo review.

3. *Sealed documents.* Notwithstanding the provisions of Rule 37(c), any document filed pursuant to this Rule 36(h), shall not be confidential except any reports or records written by a licensed medical or psychological professional shall be considered confidential and sealed by the Clerk of Court, upon notice by the applicant or committee.