

ATTORNEY REGULATION ADVISORY COMMITTEE

MINUTES

Wednesday, December 7, 2016
9:30 a.m. – 10:30 a.m.

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

Present

Hon. Lawrence Winthrop
Hon. William J. O'Neil
Whitney Cunningham
Elaine Sweet
Lisa Panahi
George Riemer
Patricia Sallen
David Lunn
Scott Rhodes

Telephonically Present

Ben Click
Maret Vessella

Absent

Emily Johnston
Ronald R. Watson
Edward Novak
Pamela Treadwill-Rubin
Mark Wilson

Staff

Kathleen Curry
Carol Mitchell
Brianna Farmer
Tara Smith

Regular Business

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

Hon. William J. O'Neil

Business Items and Potential Action Items

No. 1 Review and Approve September 2016 ARC minutes

Motion: Approve September minutes with edits from Kathleen Curry and George Riemer.

Moved by: Scott Rhodes

Second: Whitney Cunningham

Carried: None opposed.

No. 2 Review, Discussion and Possible Action from Supreme Court's Rules Forum

Judge Winthrop joined the meeting.

- *R-16-0023 Rule 59 Petitioner provides transcripts on appeal*

The Supreme Court's Rules Agenda will take place on December 12, 2016. The committee submitted R-16-0023 Rule 59 petition upon Judge O'Neil's request. Judge O'Neil mentions that the petition would make the review easier but explained that the decision would always have to refer back to the recording instead of a transcript. Scott Rhodes comments that he is not opposed to the rule change but sees that there may be some underlying issues regarding costs being directed back to the respondent.

- *R-16-0029 Oath and Creed*

Judge Winthrop provided a report to the committee regarding R-16-0029. Judge Winthrop believes there is a strong probability that a similar version of the current proposed oath will be adopted.

- *R-16-0042 Online JD exam eligibility (petition filed 11/16)*

Judge Winthrop provided a report to the committee regarding R-16-0042. Concord Law School proposed a rule change to the Supreme Court to allow their graduates to sit for the Arizona State Bar Exam. Concord Law School filed this petition in other states as well. Judge Winthrop suggests that the committee takes a look at the petition and file a comment if appropriate. David Lunn, Patricia Sallen, George Riemer and Elaine Sweet will be a part of a subcommittee to further discuss and draft a potential position paper on behalf of ARC, which will be added to March's agenda.

Elaine Sweet mentions that the data that Concord provides is compelling, and that online education is prevalent and part of the future of education. Scott Rhodes discussed how he is a law professor at Arizona State University and believes that there is a social element to the practice of law and part of the training for that skill is gained by attending law school in person. Patricia Sallen and Carol Mitchell discussed that the Supreme Court has received requests to waive the ABA requirement to sit for the exam. Patricia Sallen mentions that in the past two years the court has granted waivers for individuals who apply for in-house counsel that attended Concord Law School. Whitney Cunningham expresses his concern about steering away from the ABA requirements and does not want to see Arizona at the forefront of that movement.

- *Anticipated rule petition filings:*

- *Rule 38-In-House Counsel Registration*

Patricia Sallen

Patricia Sallen provided a report to the committee regarding Rule 38-In-House Counsel Registration. The petition is to amend Rule 38(a) to allow lawyers who are registered as in-house counsel to provide legal services without registering under Rule 38(e). Currently Rule 38 (e) requires registered in-house counsel to re-register to become certified to provide legal services. Ultimately Rule 38(e) would be amended to exclude registered in-house counsel.

The Supreme Court created term limitations for the Probable Cause Committee so members could participate for two terms only. An issue that has occurred when renewing the appointments for this upcoming term, is that ADPCC will be losing several of its very experience committee members. The issue was raised informally with the Chief who suggested a rule change petition be offered that gives discretion on reappointment. Carol Mitchell and Mark Wilson will be in charge of drafting the proposed rule change for March's meeting.

No. 3 Certification and Licensing/Attorney Admissions Year in Review- *Exam Results/Statistics*

Carol Mitchell provided a report to the committee regarding the Bar Exam Results and Statistics from the July 2016 exam. The pass rates for all three law schools in Arizona are listed as well as showing the difference between ABA and non-ABA schools. The overall pass rate from the July 2016 exam was 52.9%. One of the rules that the court has is that if an applicant has attempted to take the exam more than three times, they must receive permission from the Committee on Examinations to be able to sit again. In the report it shows how those numbers vary but there were two individuals who have taken the exam six and seven times and were successful this past exam. For the February 2016 exam the overall pass rate was 48.7%. Staff has found that February typically has a lower pass rate due to the amount of repeat students. Judge O'Neil mentions that he would like to see a chart that shows first time testers' pass rates rather than combining all testers together. Judge Winthrop mentions how in the past the committee has invited representatives from each law school to discuss discrete issues, such as the policy surrounding allowing taking the bar exam early, and the interim results during the pilot program; several members questioned, however, whether the reasons underlying a particular school's pass/fail rate were within the scope of ARC's responsibility and authority regarding admissions.

Carol Mitchell informs the committee that she, Mark Wilson, and one of the investigators go out to the law schools every year to share information on behalf of the character and fitness process, and to inform them about the guidelines and to encourage the first and second year students to recognize and begin addressing any character and fitness issues early. Scott Rhodes raised an idea he previously proposed about whether ARC should consider having character and fitness addressed earlier in the admissions process, prior to the examination for example. Carol Mitchell mentioned some jurisdictions are structured to complete character and fitness before the exam. Some members questioned the extent of the problems related to character and fitness and law school admissions standards and it was determined that ARC's charge should be reviewed prior to any action.

No. 4 Confirmed 2017 ARC Meeting Schedule

Meetings held on Wednesdays for the following dates:

3/1/17	6/7/17	12/13/17
4/12/17	9/13/17	

No. 5 Call to Public.

George Riemer mentions to the committee about the Supreme Court's Task Force on ethics, professionalism, and the unauthorized practice of law. Mark Wilson and George Riemer are a part of the task force which Justice Berch chairs. He believes that this committee should be involved and provide input to the task force. The task force will have two meeting before the next ARC meeting, Judge Winthrop suggests that Mark Wilson and George Riemer to be added to next meeting's agenda for an update on the task force's meetings.

David Lunn discusses the petitions that have been received from the Supreme Court regarding changing the applicant's score on the bar exam. There is a potential conflict with Rule 35(d) with applicants being able to submit a petition for admission due to extraordinary circumstances during the testing process with the agreement the UBE signed regarding not to review or adjust an applicant's score. The Committee on Examinations has adjusted the Committee response to petitions where if the Court should see appropriate in an extraordinary circumstance, the applicant may be able to practice in Arizona, but their score would not be adjusted. The question is whether this issue needs to be raised with the Court or whether we consider changing our acceptable passing score.

Judge Winthrop mentions that every state is able to set its own passing score, and Arizona has one of the highest minimum scores in the country. There are individuals who took the exam in July who achieved a score to be admitted as a fully qualified UBE in other states but not in Arizona. The tradeoff for becoming a uniform bar exam jurisdiction was the agreement that participating states would not have the ability to subjectively adjust scoring via post-exam application. Judge Winthrop noted that to allow states to do so would create a slippery slope. David Lunn and Carol Mitchell discuss how testing accommodations are made for certain applicants and how to determine what exactly needs to have accommodations.

Lisa Panahi mentions that she anticipates that the state bar will be filing a Rule 38 petition as well not regarding the issue that Patricia Sallen mentioned before, but to clarify the application of the rule based on questions that the general counsel has received from the resource center.

Next meeting date: Wednesday, March 1, 2017

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.