SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-18-0006
NEW RULE 42.1, RULES OF	)	
THE SUPREME COURT	)	**FILED 8/28/2018**
	)	

ORDER
ADOPTING A NEW RULE 42.1 OF
THE ARIZONA RULES OF THE SUPREME COURT

A petition having been filed proposing to adopt a new Rule 42.1 of the Arizona Rules of the Supreme Court, and having considered the petition and comments,

IT IS ORDERED adopting a new Rule 42.1 of the Rules of the Arizona Supreme Court in accordance with the attachment to this Order, effective January 1, 2019.

DATED this 28th day of August, 2018.

/s/
SCOTT BALES
Chief Justice

TO:

Hon. Rebecca White Berch (ret.)
Geoffrey M. Trachtenberg
Hon. Ann A. Scott Timmer
Rule 28 Distribution List

ATTACHMENT

ARIZONA RULES OF THE SUPREME COURT

Rule 42.1 Attorney Ethics Advisory Committee

(a) Membership. The Chief Justice shall appoint an Attorney Ethics Advisory Committee of the Arizona Supreme Court ("the Committee"), which must consist of at least 9 members. Committee members must be members of the State Bar of Arizona ("the State Bar"), selected from a variety of practice areas, settings, and geographic locations. Members will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may serve no more than two consecutive terms. Members may continue to serve until a successor is appointed, and appointments to fill a vacancy must be for the balance of the vacated term.

(b) Powers and Duties. The Committee may issue opinions on lawyer ethics, professionalism, and the unauthorized practice of law.

1. The Committee may issue opinions:

A. on the request of a State Bar member~~s~~ to address questions regarding the member's own proposed conduct;

B. on the request of any person to address questions regarding whether the person's proposed conduct would constitute the unauthorized practice of law;

C. on questions referred to it by the Supreme Court or the State Bar;

D. to address court opinions of the court or changes in the rules of ethics, professionalism, or unauthorized practice of law; or

E. on subjects of widespread interest to the State Bar, as identified by reviewing past State Bar advisory ethics opinions, other states' ethics opinions, or scholarly literature regarding ethics, professionalism, or the unauthorized practice of law.

2. The Committee may file rule petitions with the Supreme Court recommending amendments to the Arizona Rules of Professional Conduct.

3. The Committee may make recommendations to the State Bar regarding appropriate subjects for continuing legal education programs.

(c) Proscribed Areas. The Committee may not provide informal advisory opinions, and may not issue opinions:

1. involving the ethical propriety of past conduct of a State Bar member;

2. on whether a non-lawyer's past conduct constituted the unauthorized practice of law;

3. on pure questions of law;

4. on questions solely involving the lawyer's exercise of judgment or discretion, if the ethics of choices within the range of discretion is not at issue;

5. on the reasonableness of a lawyer's hourly, flat, or contingent fee in a particular case; or

6. on the propriety of the division of fees between or among lawyers in a particular case.

(d) Administration.

1. The Committee will be administered under the direction of a chair appointed by the Chief Justice. The chair may call meetings as needed, appoint a vice-chair from Committee members, and otherwise coordinate the Committee's work.

2. The Committee may receive mail at the Supreme Court's address and will meet at the Arizona State Courts Building, unless the Committee decides to meet elsewhere.

3. The Supreme Court will provide staff assistance to the Committee as appropriate. Staff will be available to answer questions concerning Committee procedures, maintain Committee records, receive and process opinion requests, and provide general assistance in preparing opinions and other written material.

(e) Opinion Requests. Opinions may be requested by the State Bar, any State Bar member, any person seeking advice about whether the person's proposed conduct would constitute the unauthorized practice of law, any Committee member, or the Supreme Court. Requests for opinions must be submitted in writing to the Supreme Court clerk and be accompanied by a letter or memorandum describing the facts and discussing the issues presented in the request. The Supreme Court clerk will assign a number to each opinion request when it is received, and forward copies of the request to all Committee members. The clerk and the Committee members must keep confidential the identity, organizational affiliation, and geographic location of persons requesting opinions.

(f) Consideration of Requests. The Committee must promptly determine whether a request for an opinion should be resolved formally or declined. The Committee may issue an opinion only if a majority of the then-serving Committee members vote in favor of it. The Committee may meet in person or confer by telephone, email, or other electronic means as often as needed to conduct Committee business and resolve pending requests. The Committee also may consult with the State Bar to determine whether a request for an opinion relates to a pending disciplinary proceeding.

(g) Written Opinions. The Committee's opinions must be in writing and conform to a format approved by the Supreme Court.

(h) Public Comment Period. The Supreme Court clerk must post proposed opinions on the Supreme Court's website and the State Bar must distribute such opinions through electronic postings and links through e-publications such as e-Legal. Proposed opinions must be open for public comment for at least 90 days. After the public comment period

ends, the Committee must consider all submitted comments and, in light of those comments, revise the proposed opinion, leave it unaltered, or withdraw it.

(i) Supreme Court Review. After the public comment period ends and the Committee reviews the comments and makes any further revisions to the proposed opinion that it believes are appropriate, the Committee chair must submit the proposed opinion to the Supreme Court for review. Within 90 days after the proposed opinion's submission, the court may take any action it deems appropriate, including declining review of the opinion, approving the opinion, ordering that the opinion not be posted or distributed, modifying the opinion, or directing the Committee to make specified changes or reconsider certain issues.

(j) Opinion Posting and Distribution. If the Supreme Court does not take any action on the proposed opinion within 90 days or after it declines review or approves the opinion (with or without modifications), the opinion will be deemed final. The Committee's opinion must then be posted on the Supreme Court's website, sent to the State Bar for inclusion by link in e-Legal or similar publications, and distributed to all interested parties, including the requesting party and the editor of the *Arizona Attorney*.

(k) Reconsideration. Within 30 days after the posting of a final opinion on the Supreme Court's website, any person may request the Committee to reconsider its opinion by submitting a letter or memorandum to the Supreme Court clerk explaining the basis for the request. The clerk must then forward copies of the request to all Committee members. In response, the Committee must either deny the request or reaffirm, revise, or withdraw the opinion. If the Committee revises the opinion, it must resubmit the opinion to the Supreme Court for review. The Committee or the Supreme Court also may reconsider an opinion at any time on its own motion. The Supreme Court clerk and the State Bar must post and distribute revised opinions and the Committee's actions on reconsideration requests in the same manner as original opinions.

(l) Opinion as Defense. Reliance on a final Committee opinion may be raised as a defense in any discipline proceeding.