

DRAFT MINUTES

FOR THE

ATTORNEY REGULATION ADVISORY COMMITTEE

Wednesday, April 10, 2019 9:30 a.m. – 11:30 a.m.
State Courts Building, 1501 West Washington Street, Phoenix, Arizona
Conference Room 109

Present

Justice Ann A. Scott Timmer, Chair
Hon. William J. O'Neil, Vice Chair
Maria Hubbard
Hon. Margaret Downie
Maret Vessella
George Riemer
Elaine Sweet
J. Scott Rhodes
Whitney Cunningham
Edward Novak
Lisa Panahi

Telephonically Present

David Lunn

Absent

Hon. Lawrence Withrop
Bennie Click

Staff

Mark Wilson
Kathy Curry
Michelle Martinez
Kate Novak
Jennifer Ashley

Regular Business

9:28 a.m. Call to Order

Justice Ann A. Scott Timmer, Chair

Business Items and Potential Action Items

No. 1 Review and Approve March 13, 2019 Committee Minutes
Chair

Justice Ann A. Scott Timmer,

Motion: Review and Approve March 13, 2019 Committee Minutes

Moved by: J. Scott Rhodes

Second: Margaret Downie

Carried: Passed 11-0-2

No. 2 Presentation on R-19-0010 by Sandra Day O'Connor and James E. Rogers Colleges of Law

Mark Wilson provides introduction and explains that the current Rule Petition is in regards to Arizona State University and University of Arizona Law Schools who are seeking more individual-specific information regarding student's/applicant's Bar Exam Score.

Christopher Robertson, Professor and Associate Dean for Research and Innovation, from the University of Arizona-James E. Rogers College of Law and Tom Williams, Associate Dean, from Arizona State University, Sandra O' Day Connor Law School present led to the Committee using a projected PowerPoint concerning the schools desire to name specific information. R-19-0010 contains two options: allowing the schools to receive the information without consent of the applicants or an opt out option.

Both representatives express great commitment and desire to assist students of their respective law schools and express appreciation for the information they already receive.

The representatives explain that their schools currently receive more vague information which although, useful is not enough to pinpoint what applicant s specifically struggle in. Mr. Williams expresses that both schools do receive more individualized information from other states, such as California, Ohio and New York and they are asking that names not be redacted in the release of Bar Exam scores.

After discussion, the committee is more receptive to "Opt-In/Opt-Out" option for applicants.

Whitney Cunningham to draft comment.

Edward Novak proposed that this presentation and its respective discussion be transcribed for delivery to the Supreme Court for its consideration.

Motion: Draft a comment in support of petition but that Bar Exam takers be given to the opportunity to "Opt-In/Opt-Out" that must be selected in order for applicant to move forward with Bar Exam application.

Moved by: Whitney Cunningham

Second: Elaine Sweet

Carried: 10-1-3

Note: Justice Ann A. Scott Timmer abstained from vote.

No. 3 Discussion and Possible Action on proposed Rule Change Petition comments/responses

- o R-18-0024 Findings re disciplinary actions where need to show rehabilitation *S. Rhodes*

J. Scott Rhodes presented the draft comment.

The issue at hand is that if there is no disciplinary action against an attorney than there is no need for the attorney to necessarily prove rehabilitation in cases where an attorney has been suspended. The distinction lies between an Administrative short-coming versus a disciplinary action. The comment proposed seeks to: (1) Make a semantic change with eliminating the word “finding” and (2) Change the reinstatement process and to place the responsibility of providing the burden of proof on the attorney. The attorney must also prove fitness and competence. Though the attorney will need to demonstrate competence and fitness, the State Bar may still review and challenge the attorney’s fitness and competence at their discretion if it is deemed necessary to do so.

Motion: Approve and file comment with removal of the word “the” found on page 2, Paragraph 2, line 64.

Moved by: Margaret Downie

Second: Lisa Panahi

Carried: Passed 12-0-3

- o R-19-0004 Rule 38(f) permission to sit for the Uniform Bar Examination *K. Curry*

Honorable Lawrence Winthrop drafted comment but was unable to present, Kathy Curry presented on his behalf.

The petition surrounds the issue of an applicant wanting to sit for the Bar Exam without acquiring a Juris Doctor. This change would allow an applicant’s time of lawfully practicing to replace the requirement of an earned Juris Doctor which will permit the applicant to sit for the Bar Exam. This change will provide a more general exception and not solely on those applicants where Rule 38(f) applies.

Maria Hubbard located a typographical error: Period after “Ann” in Justice Ann A. Scott Timmer within petition.

Motion: Approve Rule Petition with typographical error corrected

Moved by: J. Scott Rhodes

Second: Maria Hubbard

Carried: Passed 12-0-2

- o R-19-0010 Disclosure of applicant-specific examination information to law schools *Staff*

To be decided upon telephonically

- o R-19-0011 ARC Petition re Rules 38, 39 & abrogation of Rule 40 *Staff*

Mark Wilson presented

Mark Wilson explained that this petition was submitted by the Committee and has not received any comments and therefore, no action will need to be taken.

- o R-19-0026 Scope of public access to State Bar records *Staff*

Mark Wilson presented and proposed a draft comment whose development was supported in the last meeting.

Motion: Approve draft comment

Moved by Elaine Sweet

Second: Maria Hubbard

Carried: Passed 12-0-2

- o R-19-0030 Petition to Amend Rule 43 *Staff*

Mark Wilson presented.

At March 13, 2019's meeting, it was decided to await State Bar comment on petition.

The State Bar has drafted a comment, but the comment has not yet been filed. Lisa Panahi explains that lawyers will have the ability to provide Trust information through electronic means as long as it is through a secure portal.

Lisa Panahi anticipates the comment would be filed between April 19th and May 1, 2019, if approved during meeting.

After discussion, the Committee seeks to create a simpler, broader comment that encompasses the nature of "ruling cautiously"

Staff to draft Comment.

Motion: Create simpler, broader comment that encompasses the nature of the courts to rule cautiously regarding rule changes pertaining to Trust Rules

Moved by: Honorable William O'Neil

Second: J. Scott Rhodes

Carried: Passed 12-0-2

No. 4 Discussion and Possible Action on draft 2018 ARC Report *Staff*

Justice Ann. A. Scott Timmer thanked committee and expressed gratitude for all those who worked on ARC Report.

Mark Wilson presented.

Honorable William O'Neil proposes an amendment for the ARC Report: He proposes that under the Sanctions and Outcomes section of the report, to list in the footnotes, that there were eleven disbarments

by consent to reflect and differentiate an attorney voluntarily leaving versus being sanctioned by Honorable William O'Neil. Honorable William O'Neil goes on to specify that in 2016, there were five disbarments by consent and nine in 2017 by consent.

Justice Ann A. Scott Timmer expresses interest in knowing the amount of early Bar applicants and their status in being admitted after successfully accomplishing the State Bar Exam and seeks to create a clarification on page nine, footnote 1, under the Final Orders from court to add language to reflect Supreme Court.

Motion: Approve ARC notes with the discussed amendments

Moved by: George Riemer

Second: Edward Novak

Carried: Passed 12-0-2

No. 5 Possible May Meeting

Staff

After discussion, the committee will meet on May 9, 2019 at 1:00 p.m

No. 6 New Business

No new business.

No. 7 Call to Public
Chair

Hon. Ann A. Scott Timmer,

None.

Next Meeting: May 24, 2019

Adjourned: 11:18 a.m.