

# DRAFT MINUTES

FOR THE

## ATTORNEY REGULATION ADVISORY COMMITTEE

Tuesday, March 10, 2020

1:30 p.m.-3:30 p.m.

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

### **Present**

Vice Chief Justice Ann. A Scott Timmer (Chair)  
Hon. William J. O'Neil (Vice Chair)  
Hon. Lawrence Winthrop  
Hon. Margaret Downie  
Lisa Panahi  
J. Scott Rhodes  
George Riemer  
Elaine Sweet  
Maret Vessella  
Karen Ryan

### **Telephonically Present**

Whitney Cunningham

### **Absent**

Evelyn Hernandez  
Maria Hubbard  
David Lunn  
Edward Novak

### **Staff**

Kathy Curry  
Michelle Martinez  
Kate Novak  
Brianna Farmer  
Carol Mitchell  
Ashleigh Hansen  
Dominique Cidro

### **Guests**

None

**No. 1 Review and Approve December 11, 2019 Minutes**

Discussion was held about the ARC Report language and if it required modification to reflect a workgroup creation. Vote on the minutes was tabled until the March 17 meeting to allow staff to review the December meeting recording and make necessary corrections, including identified typographical corrections.

**No. 2 Discussion and Possible Action on Rule Change Petitions**

*Staff*

- o R-20-0030 – Lawyer advertising

Kate Novak presented. Discussion was held regarding various aspects of the petition. In particular, members considered why the “or knowingly permit...” language in the opening of ER 7.1 was struck. Concern was also expressed regarding proposed elimination of ER 7.2(b)’s language prohibiting for-profit referrals.

Item was tabled for discussion and vote at the March 17 meeting, permitting time to research whether the ER 7.1 strikethrough was an adoption from the model rule, and to continue discussion regarding referrals.

- o R-20-0026 – Attorney discipline appeal to superior court

Michelle Martinez presented. Discussion was held regarding jurisdiction of superior courts; right to jury trial; the internally inconsistent language and lack of specific proposal in the petition to which the Committee may respond. Scott Rhodes will draft the comment for review.

**Motion:** To draft a comment in opposition to the petition.

**Moved by:** Hon. William J. O’Neil

**Second:** Elaine Sweet

**Motion Passed:** 11-0-4

- o R-20-0020 – CLD petition re Rules 34-37

Carol Mitchell presented information in the proposed rule amendment.

The presentation focused, in part, on changes to Rule 34 and character and fitness application withdrawals. The Committee on Character and Fitness has declined applicant requests to withdraw applications under certain circumstances and the Rules are presently silent as to the process for withdrawal. Carol Mitchell explained if a character and fitness issue is presented by an applicant, the Committee has the ultimate say in whether the application can be withdrawn. This would be particularly true in situations where delay might affect the presentation of evidence. A Committee member stated in opposition that if errors were made on applications, the applicants should have the ability to withdraw their application at any time.

Further discussion was held regarding the proposed definition of “active practice of law” and the history of attempting to define this standard.

Carol Mitchell also presented on the proposed changes to Rule 35(c), increasing the number of times an applicant may sit for the Arizona Bar Examination from three to six before requiring permission from the Committee on Examinations to sit again, and she fielded general questions regarding the number and passage statistics of repeat exam testers. George Riemer volunteered to draft the comment, and Vice Chief Justice Timmer asked Scott Rhodes to draft a dissent to preserve the concerns raised.

**Motion:** to draft a comment in support of the petition as drafted.

**Moved by:** George Riemer

**Second:** Elaine Sweet

**Motion Passed:** 10-2-4

- R-19-0044 – CLD petition re Rules 33-35, 37

Carol Mitchell presented information in the proposed rule amendment.

**Motion:** to file a comment in support of the petition as drafted.

**Moved by:** Hon. Lawrence Winthrop

**Second:** J. Scott Rhodes

**Motion Passed:** 11-0-4

- R-20-0007 – Rule 38(d) practice by recent law graduates

Kate Novak presented information in the proposed rule amendment. Kathy Curry noted that technical amendment would be needed if adopted to align with the possible changes to Rules 31, 38 and 39, but would be for appropriate renumbering. Judge Winthrop volunteers to draft the comment.

**Motion:** to file a comment in support of the petition, noting the potential need for technical amendment for renumbering

**Moved by:** Hon. Lawrence Winthrop

**Second:** Lisa Panahi

**Motion Passed:** 11-0-4

- R-20-0003 – Pro hac vice requirement for ICWA cases

Michelle Martinez presented information in the proposed rule amendment. During discussion, members noted that proposed subsection (a)(13)(B) appears to have a citation error that references a Federal code provision within the Rules of Procedure for Juvenile Court. It is suggested that Judge Howe be contacted for clarification. Judge O’Neil volunteered to draft the comment.

**Motion:** to file a comment in support of the petition, noting the citation concern in proposed subsection (a)(13)(B)

**Moved by:** Hon. William J. O’Neil

**Second:** J. Scott Rhodes

**Motion Passed:** 11-0-4

**No. 3 Discussion of Rule and Code Petitions**

*Hon. A. Timmer, Chair*

Vice Chief Justice Timmer presented briefly on the discussion and presentations to be made on R-20-0034 petition and related judicial code language.

**No. 4 2019 ARC Report**

*Kate Novak*

Kate Novak provided an update on the progress of the ARC Report draft.

**No. 5 New Business**

Kate Novak highlighted the changes to the ARC September meeting date as well as next week's meeting.

The updated confidential member contact list will be sent by email to members, but hard copies were available at the meeting from Kate Novak if desired.

**No. 6 Call to Public**

*Hon. A. Timmer, Chair*

No members of the public attended or presented.

**Next Meeting: March 17, 2020**

**Adjourned: 3:36 p.m.**