

TASK FORCE ON THE DELIVERY OF LEGAL SERVICES

DRAFT MINUTES

Thursday, July 11, 2019

Room 119 A/B, Arizona State Courts Building

1501 W. Washington Street

Phoenix, Arizona 85007

Present: Justice Ann Timmer; Chair; Victoria Ames; Robyn Austin; Betsey Bayless; Justice Rebecca Berch (ret.); Don Bivens; Stacy Butler; Dave Byers; Whitney Cunningham; Judge Maria Elena Cruz; Judge Joseph Kreamer; John Phelps; Judge Peter Swann; Billie Tarascio; Guy Testini; Mark Wilson

Absent: Peter Akmajian; Diane Culin; Jeff Fine; Paul Friedman; Tami Johnson

AOC Staff: Jennifer Albright; Kathy Sekardi

Guests: Patricia Sallen; Lynda Shely (telephonic); Chris Groninger, Arizona Bar Foundation; Kevin Ruegg, Arizona Bar Foundation; Judge Lawrence Winthrop, Arizona Court of Appeals, Division 1

I. REGULAR BUSINESS

The seventh meeting of the Task Force on the Delivery of Legal Services was called to order at 9:03 a.m. Justice Timmer, Chair, welcomed the membership, and others in the room.

The meeting minutes from June 13, 2019, were provided to members in advance. Justice Timmer asked if there were any edits. Justice Berch noted edits had been requested prior to the meeting. Staff indicated those had been made. No additional edits were sought. Justice Berch moved to approve the minutes. Dave Byers seconded the motion. The minutes were approved unanimously.

Rule 38, Arizona Rules of Supreme Court Recommendation:

Judge Cruz presented the final version of the Rule 38, law graduate limited practice certification recommendation. Judge Cruz reviewed the three questions raised by the task force at the June meeting and explained the discussion had by the workgroup on each. Judge Cruz first addressed whether law graduates should be required to prove they had no felony convictions before being granted a Rule 38 certification. The workgroup's final draft did not include such a requirement. Judge Cruz reported that of the 15 states with similar law graduate limited practice certifications, only California expressly required disclosure of any prior felony conviction. Judge Cruz noted that Rule 38 certification for law students does not include disclosure of any felonies. Victoria Ames reported that law schools typically address criminal history for law students through part of the honor code disclosures that are associated with applying for clinics and that supervising

agencies often have their own background criteria and address criminal histories. It was suggested that legal agencies that would hire a Rule 38 certified law graduate would take similar precautions in who they would supervise and be liable for.

Judge Cruz then addressed whether supervisors of Rule 38 certified law graduates should have more than two years legal experience. Judge Cruz pointed out that the current Rule 38 only requires supervisors of law students acting under Rule 38 to have two years' experience, and the workgroup did not recommend having a more stringent level of experience for recent graduates than is required for students.

After significant discussion on both topics, a motion was made to approve the draft proposal submitted by the workgroup. Amendments were offered to the motion to approve if the felony prohibition language was offered and separately if the supervisor experience was raised to more than two years. The amendments failed. The motion to approve the recommendation as submitted was renewed. The recommendation passed by 11 to 3 in favor (note: The Chair abstained from all votes on all matters).

Alternative Business Structure/Ethical Rule Recommendations:

The task force next considered the recommendation to amend the Arizona Ethical Rules to allow lawyers and non-lawyers to form legal service businesses, known as alternative business structures. First, Lynda Shely explained the portion of the recommendation that involved amendments to ethical rules (ERs) 7.1 to 7.5 and the relation of those amendments to the proposed amendments to ERs 1.1 to 5.4. Ms. Shely noted that the proposed amendments also align with changes to the ABA Model Rules that were made in the past. A motion was made to approve the proposed amendments. The motion passed unanimously.

Judge Cruz then presented the proposed amendments to ERs 1.1 to 5.4 with the assistance of Patricia Sallen. Members had discussion on regulation of ABS entities. Concern was raised about moving forward on this portion of the proposal without a recommendation for entity regulation. A motion was made to approve proposed amendments to ERs 1.0 through 5.4 as presented with understanding that the workgroup would continue to explore language for a separate recommendation related to entity regulation. The motion passed 12 to 2 in favor of the proposed amendments as presented.

Rule 31, Arizona Rules of Supreme Court, Re-styling Recommendation:

Jennifer Albright, staff, assisted in the presentation of this recommendation. Ms. Albright noted that the proposed re-styled Rule was presented to the full task force at the June meeting. No changes were made to the draft re-styled rule since the June meeting. Ms. Albright noted that if the proposed re-styled rule was approved by the task force, any future rule petition would include an amendment to Rule 41 or 54 to include the definition of "unprofessional conduct" which was not included in the re-styled Rule 31, as the term was defined, but not used in current Rule 31. Ms. Albright also shared that any future rule petition would include an amendment to add the lawyers' oath and creed as found in an editor's note to current Rule 31, in another rule.

A motion was made to approve the draft re-styled Rule 31 as presented, with language in the report noting the need for relocating the definition of unprofessional conduct and the oath and creed into other rules. The motion was approved unanimously.

Recommendation that Arizona create a program to license non-lawyers to engage in the limited practice of law.

Ms. Albright presented the recommendation that the Arizona Supreme Court develop a program for licensed non-lawyers, qualified by education, training, and examination, to provide legal services to clients within specific limits. The recommendation included allowing these limited license practitioners to provide legal advice and appear in administrative or judicial proceedings. It was shared that the recommendation, presented in detail through materials made available to the task force in advance and presented at the June meeting, requires the Supreme Court to form a steering committee to determine the appropriate areas of law and scope of practice, establish ethical rules, a discipline process, set education, examination and licensing requirements, and develop assessment and evaluation criteria for the program. A motion was made to approve the recommendation as presented. The motion was approved 13 to 1.

Recommendation to implement the Licensed Legal Advocate (LLA) pilot program developed by the University of Arizona, James E. Rogers College of Law, Innovation for Justice Program.

This pilot program was presented in detail to the task force at its May meeting. A motion was made to approve the recommendation that the Supreme Court issue an Administrative Order implementing the pilot program. The motion was passed unanimously.

II. WORK GROUP BUSINESS

Presentations of Recommendations for Vote

Workgroups made presentations to the full membership on recommendations for consideration for inclusion in the final report. The summary of the recommendations, discussion, and the result of the vote follow.

Work Group Breakouts

The task force then broke into workgroups. Members of the public were able to attend.

Report Out

The full task force reconvened at 1:34 p.m. to hear from the workgroups. First, Billie Tarascio reported to the task force on discussions the Cruz workgroup had regarding the topic of unbundling of legal services. Ms. Tarascio reported that the workgroup determined that Ethical Rule 1.2, which allows Arizona attorneys to provide limited scope representation, did not seem to need amendment. Ms. Tarascio noted that in family law it was common for attorneys to engage in limited scope representation. It was not clear to the workgroup why lawyers practicing in other areas of law did not engage in the practice as much. A member countered that the rule and all the factors that needed to be met to engage in limited scope representation seemed to be what was often cited as a barrier to engaging in that kind of practice. The task force reviewed the rule and determined the rule contained no such criteria. The workgroup committed to looking at the source of this possible concern at their next meeting.

Ms. Tarascio noted the workgroup would pursue looking at recommendation about educating the bench and bar about limited scope representation. A member suggested that content about the rule and the practice be added to the Arizona Law Course required for admission to practice law.

Judge Cruz then shared that the workgroup would turn to the concept of entity regulation after completing their work on the topic of unbundling. Staff to the committee committed to sharing materials on England's entity regulation process for alternative business structures.

The Bivens/Butler workgroup then began its report out. First the workgroup reported that it heard a presentation from the Arizona Bar Foundation on a proposal to allow Domestic Violence Lay Advocates to obtain a limited certification as legal document preparers (LDPs). The proposal involved reducing the supervision requirement for becoming an LDP and restricting these persons to working under the supervision of a legal aid attorney in conjunction with the Domestic Violence Legal Assistance Project. It was agreed the Bar Foundation would present a draft recommendation to the task force for consideration, and as a voting item, at the August meeting.

Mr. Bivens then led the task force through discussion on topics the workgroup had discussed related to the LDP program. First, Mr. Bivens reported that the workgroup supported and would bring for a vote a proposal to amend the Arizona Code of Judicial Administration (ACJA) section 7-208(J)(5)(b) to allow LDPs to attend court with a client if "authorized" by a court instead of if "ordered" by a court.

Next Mr. Bivens shared that the workgroup was discussing an issue surrounding the concept of whether LDPs can conduct legal research, and if conducting legal research is considered legal advice – something LDPs are not authorized to provide. Discussion included legal research and drafting of appellate brief and substantive legal motions versus legal research to identify appropriate forms needed by a client. The task force discussed the issue at length, hearing from several LDPs present in the room. The workgroup indicated it would endeavor to bring a recommendation on the topic to the task force for formal input and vote at the August meeting.

III. OTHER BUSINESS

Call to the Public

The meeting concluded with a call to the public. There were no members of the public that spoke at this time. Members were given opportunity to speak on voting items at the time those were presented earlier in the meeting.

Justice Timmer reminded members that the final report needed to be completed by the September meeting and indicated a rough draft or portions of the report would be discussed at the August meeting. Members asked if the workgroups would see the draft in advance and Jennifer Albright indicated she would be seeking workgroup input as work began on the draft.

Next Meeting:

Wednesday, August 14, 2019, at 12:00 p.m. in Room 119 A/B.

Adjournment:

The meeting adjourned at 3:00 p.m.