



# Task Force on the Delivery of Legal Services

October 4, 2019

Report and Recommendations

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## **EXECUTIVE SUMMARY**

### **Creation and Charge of Task Force**

On November 21, 2018, then Chief Justice Scott Bales issued Administrative Order No. 2018-111, which established the Task Force on Delivery of Legal Services. The administrative order outlined the purpose of the task force as follows:

- a) Restyle, update, and reorganize Rule 31(d) of the Arizona Rules of Supreme Court to simplify and clarify its provisions.
- b) Review the Legal Document Preparers program and related Arizona Code of Judicial Administration requirements and, if warranted, recommend revisions to the existing rules and code sections that would improve access to and quality of legal services and information provided by legal document preparers.
- c) Examine and recommend whether nonlawyers, with specific qualifications, should be allowed to provide limited legal services, including representing individuals in civil proceedings in limited jurisdiction courts, and administrative hearings not otherwise allowed by Rule 31(d), and family court.
- d) Review Supreme Court Rule 42, ER 1.2 related to scope of representation and determine if changes to this and other rules would encourage broader use of limited scope representation by individuals needing legal services.
- e) Recommend whether Supreme Court rules should be modified to allow for co-ownership by lawyers and nonlawyers in entities providing legal services.
- f) In the Chair's discretion, consider and recommend other rule or code changes or pilot projects on the foregoing topics concerning the delivery of legal services.

The administrative order further directed the task force to submit a report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2019. The report that follows consists of the task force's recommendations for the AJC's review and consideration.

### **The Task Force Process**

Members of the task force represented a wide variety of perspectives on the delivery of legal services. From January through September 2019, the task force met monthly, discussing the issues outlined by Administrative Order 2018-111 and its charge. The task force received

presentations on various innovative approaches employed nationally and internationally to deliver legal services. The task force also heard from speakers about the changing legal marketplace and the impact of those changes on the cost of legal services and on the legal profession itself. Information about how local, national, and international community leaders are examining, exploring, and implementing innovative ways of delivering legal services was a regular part of information shared and discussed at monthly meetings.

Due to the number and complexity of topics the task force was charged with addressing and the limited time it had to explore those topics, task force members divided into two workgroups.<sup>1</sup> Workgroups met in breakout sessions during monthly task force meetings as well as in meetings held separately as needed. Workgroups invited subject matter experts, legal practitioners, and other stakeholders to give presentations and to testify on various topics. Each task force meeting included presentations by the workgroups, along with questions from and feedback by all task force members about workgroup efforts. Task force meetings were attended by the public and stakeholders who were encouraged to comment on the recommendations generated by the workgroups. This approach facilitated input from different perspectives, accounted for potential overlap among workgroups, ensured workgroups were not working in isolation, and recognized that members of the public and local stakeholders had a substantial interest in and knowledge about the topics being explored that would facilitate developing meaningful final recommendations.

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<sup>1</sup> A workgroup co-led by Don Bivens and Stacy Butler addressed items (a) through (c) and a workgroup led by Judge Maria Elena Cruz addressed items (d) through (f) of the task force's charge.

## **Abbreviated Recommendations**

1. Eliminate Arizona's Rules of Professional Conduct (ER) 5.4 and 5.7 and amend ERs 1.0 through 5.3 to remove the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public. In anticipation of these rule changes, the Supreme Court should immediately convene a group to explore regulation of legal entities in which nonlawyers have a financial interest.
2. Modify ERs 7.1 through 7.5 (the "Advertising Rules") to incorporate many of the 2018 ABA Advertising Rule amendments and to align the rules with the recommendation to amend ERs 1.0 through 5.3 and eliminate ERs 5.4 and 5.7.
3. Promote education and information on what unbundled legal services are to the bench, bar, and public to encourage expanded understanding and utilization of unbundled legal services.
4. Revise Rule 38(d), Arizona Rules of Supreme Court, to clarify when a law student at an accredited law school or recent law school graduate may practice law under the supervision of a lawyer admitted to practice in Arizona, what legal services the law student or law graduate may provide, and the duties and obligations of the supervising lawyer.
5. Revise Rule 31(d), Arizona Rules of Supreme Court, by re-styling the rule into four separate rules, making the rule easier to navigate and understand.
6. Develop, via a future steering committee, a tier of nonlawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.
7. Initiate, by administrative order, the Licensed Legal Advocate Pilot program developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College

of Law, to expand delivery of legal services to domestic violence survivors through the creation of a new tier of legal service provider.

8. Initiate, by administrative order, the DVLAP Document Preparer Pilot program as proposed by the Arizona Foundation for Legal Services and Education (the “Bar Foundation”) to create exceptions to the requirements of the Legal Document Preparer program and allow domestic violence lay advocates to prepare legal documents for victims of domestic violence receiving services through the Bar Foundation’s Domestic Violence Legal Assistance Program (DVLAP).
9. Make the following changes to improve access to and the quality of legal services provided by certified Legal Document Preparers:
  - a. Amend ACJA § 7-208 to allow LDPs to speak in court when addressed by a judge.
  - b. Amend ACJA § 7-208 to further define permissible and prohibited activities of LDPs.
  - c. The Arizona Supreme Court should pursue a campaign of educating the bench, members of the bar, and the public regarding what a legal document preparer is, what they can do, and what they are prohibited from doing.
  - d. Amend ACJA § 7-208 to remove the restrictions prohibiting legal document preparers from assisting clients who are represented by counsel.
  - e. Recommend increased access to LDP training, especially online, particularly for LDPs in rural areas.
  - f. Amend the ACJA and any other rules governing the investigation of and seeking of legal sanctions for engaging in unauthorized practice of law when the actions in

question involve a person acting in a manner that a legal document preparer would act if certified.

10. Advance and encourage local courts to establish positions and programs where nonlawyers located within the court are available to provide direct person-to-person legal information to self-represented litigants about court processes and available self-help services.

## REPORT AND RECOMMENDATIONS

### I. Background

The American Bar Association Commission on the Future of Legal Services found that “[d]espite sustained efforts to expand the public access to legal services, significant unmet needs persist” and that “[m]ost people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need.”<sup>2</sup> In 2017, the Legal Services Corporation released a report, finding that 86% of civil legal matters reported by low-income Americans in the prior year received no or inadequate legal help.<sup>3</sup> Relevant to the task force’s work, the Commission found that as of the last census, 63 million people met the financial qualifications for legal aid, but funding for the Legal Services Corporation is inadequate.”<sup>4</sup> In fact, in some jurisdictions more than 80% of civil litigants are in poverty and unrepresented.<sup>5</sup> Importantly, one study has shown that “well over 100 million Americans [are] living with civil justice problems many involving what the American Bar Association has termed ‘basic human needs,’” including

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<sup>2</sup> Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States*, 11-14 (American Bar Association 2016), available at [https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport\\_FNL\\_WEB.pdf](https://www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf)

<sup>3</sup> Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans* (2017), available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>; National Center for State Courts, *Nonlawyer Legal Assistant Roles Efficacy, Design, and Implementation*, 1 (2015) (Research on unmet civil legal needs suggest that around 80% of such need does not make it into a court. At the same time, legal aid organizations are able to satisfy less than half of those that request legal help.).

<sup>4</sup> Commission on the Future of Legal Services, *supra* note 2, at p. 12.

<sup>5</sup> *Id.*

matters such as housing (evictions and mortgage foreclosure), child custody proceedings, and debt collection.<sup>6</sup>

One reason for the current “justice gap” is that the costs of hiring lawyers has increased since the 1970s, and many individual litigants have been forced to forego using professional legal services and either represent themselves or ignore their legal problems.<sup>7</sup> Professor William D. Henderson, Indiana University Maurer School of Law, has noted the alarming decline in legal representation for what he calls the “PeopleLaw sector,” observing that law firms have gradually shifted the core of their client base from individuals to entities. Indeed, while total receipts of United States law firms from 2007 to 2012 rose by \$21 billion, receipts from representing individuals declined by almost \$7 billion. Correspondingly, the percentage of revenue generated by representing individuals fell 4.8% during that time period.<sup>8</sup> And according to a report issued by the National Center for State Courts, 76% of 900,000 civil cases examined from July 1, 2012 through June 30, 2013 involved at least one self-represented party.<sup>9</sup>

Small firm lawyers, who primarily serve the PeopleLaw sector, are struggling to earn a living, which curtails their abilities to represent people unable to pay adequate amounts for legal services.<sup>10</sup> According to the 2017 Clio Legal Trends Report, the average small firm lawyer bills

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<sup>6</sup> *Id.* (quoting Rebecca L. Sandefur, What We Know and Need to Know About the Legal Needs of the Public, 67 S.C. L. Rev. 433, 466 (2016)).

<sup>7</sup> William Henderson, *The Decline of the People Law Sector*, November 19, 2017, Post 037, available at <https://www.legalevolution.org/2017/11/decline-peoplelaw-sector-037/>.

<sup>8</sup> *Id.* at i.

<sup>9</sup> National Center for State Courts, *The Landscape of Civil Litigation in State Courts*, 31-33 (2015), available at <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

<sup>10</sup> See Henderson, *supra* note 7 at p. 14-15.

\$260 per hour, performs 2.3 hours billable work a day, bills 1.9 hours of that work, and collects 86% of invoiced fees.<sup>11</sup> As a result, the average small firm lawyer earns \$422 per day before paying overhead costs. These lawyers are spending roughly the same amount of time looking for legal work and running their business as they are performing legal work for clients.<sup>12</sup> Professor Henderson suggests that this lagging legal productivity may result in part from ethical rules that restrict ownership of law firms to lawyers because “ethics rules are the primary mechanism for regulating the market for legal services.”<sup>13</sup> Also, a growing mismatch between the cost of litigation and amounts in controversy has made many cases unattractive to lawyers and clients alike.<sup>14</sup>

Courts across the nation strive to give litigants greater access to civil justice. Much of that focus, in the past decade, has been on providing clear information to self-represented litigants about court processes and procedures. But despite these efforts, the justice gap has grown between those who can afford to pay for legal services and those who cannot do so. Clearly, merely assisting litigants to navigate the justice system alone is insufficient to ensure that Arizonans have meaningful access to our courts to resolve legal issues. And although subsidized and free legal

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<sup>11</sup> Clio, *2017 Legal Trends Report*, 17 (2017), <https://www.clio.com/resources/legal-trends/2017-report/>.

<sup>12</sup> *Id.*

<sup>13</sup> Henderson, *supra* note 7, at p. 21 (citing Larry E. Ribstein, *Ethical Rules, Agency Costs, and Law Firm Structures*, 84 Va. L. Rev. 1707 (1998) (noting that “[e]thical rules are a form of professional self-regulation enforced by civil liability or professional discipline.”)).

<sup>14</sup> National Center for State Courts, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, 25 (2015), available at <https://www.ncsc.org/~media/Files/PDF/Research/CivilJusticeReport-2015.ashx>.

services, including low bono and pro bono legal services, are a key part to solving this access to justice gap, they are insufficient. “U.S. lawyers would have to increase their pro bono efforts . . . to over nine hundred hours each to provide some measure of assistance to all households with civil legal needs.”<sup>15</sup>

Considering the large market for legal services left unserved by lawyers, technology-based and artificial intelligence platforms have stepped in to serve clients. Online entities assist customers to form businesses, register trademarks, and draft wills and other legal forms.

Arizona has long explored new ways of delivering legal services. Since 2003, the Arizona Supreme Court has authorized the certification of Legal Document Preparers (“LDPs”), and the State Bar of Arizona recently implemented a web-based “Find A Lawyer” program, connecting those with legal needs to lawyers willing to do the work pro bono or at an affordable cost.<sup>16</sup> Arizona courts have also worked to expand and clarify ways in which court staff can provide legal information to self-represented parties.<sup>17</sup> Arizona, like other states, has also recently turned to technology to help bridge the justice gap. Examples include implementing a virtual resource center through the award-winning webpage AZCourtHelp.org with legal information sheets and legal information videos, pilot online dispute resolution programs, and the design of an online program (AZPoint.org) to streamline drafting, filing, serving, and transmitting orders of protection.

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<sup>15</sup> Commission on the Future of Legal Services, *supra* note 2, at p. 14 (citing Gillian K. Hadfield, *Innovating Access: Changing the Way Courts Regulate Legal Markets*, Daedalus 5 (2014)).

<sup>16</sup> <https://azbar.legalserviceslink.com/>

<sup>17</sup> *See, e.g.*, the Arizona Commission on Access to Justice’s Question and Response Handbook available in print for court employees and accessible online through AZCourtHelp.org available at <https://www.azcourthelp.org/faq>.

It is against this backdrop and Arizona's many years of efforts to advance access to justice that the task force was established and carried out its work. The task force developed 10 recommendations in relation to the six topics it was charged with analyzing. The following pages summarize those recommendations and the impetus and rationale behind them.

## **II. Recommendations.**

**Recommendation 1: Eliminate Arizona's ERs 5.4 and 5.7 and amend ERs 1.0 through 5.3 to remove the explicit barrier to lawyers and nonlawyers co-owning businesses that engage in the practice of law while preserving the dual goals of ensuring the professional independence of lawyers and protecting the public.**

### **A. Review of National Efforts and Recommendation Development.**

Ethical rules have been called out as contributing to the justice gap as demonstrated by Professor Henderson's *Legal Marketplace Landscape Report*.<sup>18</sup> Henderson's watershed report and the work of the Association of Professional Responsibility Lawyers (APRL) make clear that Arizona's ethical rules should be amended given that lawyers are increasingly providing services in a manner other than through traditional legal partnerships or professional corporations. E.R. 5.4, which generally prohibits lawyers from sharing fees with nonlawyers and prohibits nonlawyers from having any financial interest in law firms, has been identified as a barrier to innovation in the delivery of legal services.

Arizona is not alone in considering significant and innovative changes to the ethical rules that restrict ownership of any business that engages in the practice of law to lawyers alone. In June 2019 the Board of Trustees of the State Bar of California voted to seek public comment on broad concepts for changing California's ethical rules that would allow limited alternative business

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<sup>18</sup> Henderson, *supra* note 7, at p. 21; Oregon State Bar Futures Task Force, *Future: The Future of Legal Services in Oregon, Executive Summary*, 4 (2017), available at [http://www.osbar.org/docs/resources/taskforces/futures/futurestf\\_summary.pdf](http://www.osbar.org/docs/resources/taskforces/futures/futurestf_summary.pdf) (citing Commission on the Future of Legal Services, *supra* note 2, at p. 16).

structures.<sup>19</sup> These concepts include loosening rules on passive investment and allowing nonlawyers to partner with lawyers in the formation of businesses that provide legal services. Utah is similarly considering a two-year pilot “sandbox” program that would allow the formation of alternative business structures and regulate those businesses through an independent regulatory body overseen by the Utah Supreme Court. In addition, Washington D.C. has allowed limited alternative business structures for several decades<sup>20</sup> and the American Bar Association (“ABA”) Commission on the Future of Legal Services has also considered proposals to eliminate model ethical rule 5.4.<sup>21</sup>

Task force members not only heard from Professor Henderson but spoke with representatives from the Washington D.C. Bar about the effect of D.C.’s 5.4 rule changes, heard from ethics experts locally, and attended a summit hosted by the Institute for the Advancement of the American Legal System (“IAALS”), that focused on regulatory changes related to the practice of law. The task force received information about past and present efforts of national organizations like the ABA and APRL to consider and propose rule changes that would allow for the creation of alternative legal business structures. To assist it, the workgroup assigned to examine whether to permit nonlawyer ownership of firms invited two Arizona ethics lawyers to join in forming proposals.<sup>22</sup> A sentiment that resounded within the workgroup was that lawyers have the ethical

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<sup>19</sup> See State Bar of California Task Force on Access Through Innovation of Legal Services Report: *Request to Circulate Tentative Recommendations for Public Comment*, July 11, 2019, available at <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000024450.pdf>.

<sup>20</sup> Rule 5.4, D.C. Rules of Professional Conduct.

<sup>21</sup> Commission on the Future of Legal Services, *supra* note 2, at p. 66.

<sup>22</sup> Patricia A. Sallen, a legal ethics consultant and lawyer based in Phoenix, Arizona, whose work has included serving as Director of Special Services and Ethics with the Arizona State Bar,

obligation to assure legal services are available to the public, and that if the rules of professional conduct stand in the way of making those services available, then the rules should be changed, albeit in a way that continues to protect the public.

Before deciding to recommend eliminating ER 5.4, the task force considered and rejected two other proposals offered by the workgroup. First, similar to Washington D.C.'s approach, the task force considered amending Rule 5.4 to allow the formation of alternative business structures.<sup>23</sup> The goal of this proposal was to open business possibilities and allow passive investment in legal services businesses. Important aspects of this proposal included disclosing to the public and clients that the businesses involved nonlawyer partners or investors, registering with the State Bar, and reinforcing the ethical rules that address lawyer independence and conflicts of interest. Major hurdles faced by the workgroup in attempting to merely amend ER 5.4 and other ethical rules addressing the independence of lawyers and protection of the public included how to regulate nonlawyers, the impossibility of identifying all possible businesses arrangements that might be formed and considering the effect of such rule changes on multi-jurisdiction law practices.

Second, the task force explored recommending a pilot "sandbox" program in which ER 5.4 would be waived for entities that applied for and were granted permission to operate as multi-discipline legal service providers. This proposal was rooted in the idea that entrepreneurial lawyers and nonlawyers would pilot a range of different business forms, which would permit the Supreme

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working as ethics counsel for the Arizona State Bar, membership on the Arizona Supreme Court Attorney Regulation Advisory Committee, and teaching and writing about ethics-related topics nationally. Lynda L. Shely, is a Scottsdale, Arizona, attorney who provides ethics advice and representation to lawyers and law firms in Arizona and the District of Columbia, presents nationally on ethics-related topics, served as Director of Ethics for the State Bar of Arizona, has been called as an ethics expert witness, is a member of the Association of Professional Responsibility Lawyers (APRL), and is active in ABA committees.

<sup>23</sup> Commission on the Future of Legal Services, *supra* note 2, at p. 42.

Court to determine how ER 5.4 should be amended and eliminate the guesswork involved in the first proposal. Hurdles to this proposal included identifying who would decide applications for waivers of the ethical rules and whether the limited duration of a pilot project would deter business formation because of the risk that the businesses would have to close if the pilot program did not result in permanent rule changes.

The task force ultimately concluded that no compelling reason exists for maintaining ER 5.4 because its twin goals of protecting a lawyer's independent professional judgment and protecting the public are reflected in other ethical rules which can be strengthened. The task force therefore voted to file a rule petition to eliminate ERs 5.4 and 5.7 and modify ERs 1.0 through 5.3 to ensure lawyer independence and public protection. Considering these changes, the task force also recommends eliminating ER 5.7.

After significant discussion, the task force relatedly recommends that the Supreme Court convene a group to explore entity regulation for firms in which nonlawyers have an ownership interest. Currently, Arizona's rules of professional responsibility apply only to lawyers. But entity regulation is not a unique concept. The United Kingdom regulates legal entities, and the Utah Work Group on Regulatory Reform recently made a proposal regarding the issue. Utah proposes developing a new regulatory body for legal services. As the Utah Supreme Court moves forward with revising the rules of practice, it will simultaneously pursue creation of a new regulator, operating under the supervision and direction of the Supreme Court, for the provision of legal services. Utah anticipates some form of an independent, non-profit regulator with delegated regulatory authority over some or all legal services.<sup>24</sup>

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<sup>24</sup> The Utah Work Group on Regulatory Reform, *Narrowing the Access-to-Justice Gap by Reimagining Regulation*, 15, 21 (2019) available at <https://www.utahbar.org/wp-content/uploads/2019/08/FINAL-Task-Force-Report.pdf>

Entity regulation should be explored as an additional tool to ensure lawyer independence, client confidentiality, and consumer protection. Given the limited time afforded the task force for its work, it did not explore in detail the advisability of legal entity regulation or what such regulation would entail. Task force members considered, however, whether entity regulation should, at least, (1) require a lawyer with a financial interest or managerial authority in a legal entity to be responsible for nonlawyer owners to the same extent as if the nonlawyers were lawyers, (2) require informed written consent from clients acknowledging both a nonlawyer's financial interest or managerial authority in the entity and the entity's commitment to the lawyer's independence of professional judgment, and (3) designate one person in the entity to be responsible for the nonlawyers' compliance with any regulations.

The proposed amendments are summarized below and are detailed in Appendix 1 accompanying this report.

#### **B. Summary of Proposed Elimination of ERs 5.4 and 5.7 and Amendments to ERs 1.0 through 5.3.**

The proposed amendments to Arizona's ERs 1.0 through 5.3 would remove the requirement restricting the ownership of any business that engages in the practice of law exclusively to lawyers. This recommendation is centered in the elimination of ER 5.4 and re-defining the term "firm" in ER 1.0(c). Proposed changes to the ethical rules also ensure that the concepts of a lawyer's independent professional judgment and protection of the public are emphasized in the remaining ethical rules. Several proposed amendments eliminate comments to the rules, incorporating any substantive comments into the rules themselves, deleting comments that are duplicative or unnecessary, and amending remaining comments to be more concise and instructive. All proposed rule changes are designed to ensure that the ethical rules governing conflicts, obligations to the client, professional independence of lawyers, and maintaining the

overarching goal of protecting the public that have traditionally been the core values of the rules of professional conduct remain, regardless whether services are provided by a business that involves a partnership between lawyers and nonlawyers, involve passive investment in a purely legal services business, or provides both legal and nonlegal services.

#### ***ER 5.4 Professional Independence of a Lawyer***

ER 5.4, which prohibits sharing fees with nonlawyers and forming partnerships with nonlawyers if any part of the partnership's activities include the practice of law, is "directed mainly against entrepreneurial relationships with nonlawyers" and aimed at "protecting a lawyer's independence in exercising professional judgment on the client's behalf free from control by nonlawyers."<sup>25</sup> The ABA Model Rule 5.4 and its predecessor rules as far back as the 1928 Canons of Professional Ethics, "originated in legislation aimed at forbidding lawyers from being employed by corporations to provide services to members of the public."<sup>26</sup> The prohibition was not rooted in protecting the public but in economic protectionism. There was "no evidence that the corporations then supplying lawyers to clients were harming the public, and the transparent motivation behind the legislation was to protect lawyers' businesses."<sup>27</sup> In evaluating the need to continue ER 5.4, the task force considered whether the rule serves a modern purpose and concluded it no longer serves any purpose, and in fact may impede the legal profession's ability to innovate to fill the access-to-civil-justice gap.

ER 5.4's negative effect was evident during the great recession, when many lawyers expressed interest in partnering with nonlawyers to be a "one-stop shop" for consumers who

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<sup>25</sup> ABA Formal Ethics Opinion 01-423 (2001).

<sup>26</sup> Bruce A. Green, *Lawyers Professional Independence: Overrated or Undervalued?* 46 *Akron L. Rev.* 599, 618 (2013).

<sup>27</sup> *Id.*

wanted to refinance home loans, stop foreclosures, or participate in short sales. Typically, lawyers endeavored to create partnerships with mortgage brokers and real estate agents to help consumers. But ER 5.4's bar to partnering with a nonlawyer to provide legal services prohibited lawyers from forming these relationships. And yet creating single entities to offer all those services may have served consumer-clients' best interests.

The legal profession cannot continue to pretend that lawyers operate in a vacuum, surrounded and aided only by other lawyers or that lawyers practice law in a hierarchy in which only lawyers should be owners. Nonlawyers are instrumental in helping lawyers deliver legal services, and they bring valuable skills to the table.

Eliminating ER 5.4 would allow, for example:

- A nonlawyer to have an ownership interest in a partnership in which a lawyer provides legal services to others outside the entity;
- A nonlawyer partner in a firm to provide nonlegal services to clients of the entity;
- A nonlawyer to serve as a firm's chief financial officer or chief technology officer; and
- A lawyer to pay nonlawyer personnel a percentage of fees earned by the law firm on a particular case.

Eliminating ER 5.4 will not remove protection afforded a lawyer's professional independence and the public. ER 1.8(f), for example, already directs that third-party payers such as insurance companies cannot interfere with a lawyer's independent professional judgment or the client-lawyer relationship.

### ***ER 1.0 Terminology***

The proposed amendments include a new definition of "firm" to account for ownership interests in legal businesses by nonlawyers. The amendments include broadening the definition of "screened" to clarify that reasonably adequate procedures to screen both lawyers and nonlawyers

with ownership interests must be undertaken, and the amended definition provides direction on what constitutes “reasonably adequate procedures.”

In addition, proposed amendments to ER 1.0 incorporate concepts from existing comments to the rule and other rules that the task force determined were important enough to be part of the rule’s text. Amendments also define previously undefined phrases in rules that are necessary to address the new concept of nonlawyers having an ownership interest in firms and those nonlawyers providing nonlegal services to firm clients.

### ***ER 1.5 Fees***

The proposed amendments to ER 1.5 are rooted in ensuring that the language of the rule reflects the change to the definition of “firm” in ER 1.0(c) and reflects the elimination of ER 5.4’s prohibition of a business providing legal services to be owned by lawyers and nonlawyers alike. The proposed rule also incorporates language from current comments to clearly provide that the rule applies to firms dividing a single billing to a client and firms jointly working on a matter. The rule further requires that division of responsibility must be reasonable.

### ***ER 1.6 Confidentiality***

The amendment to ER 1.6 requires that a lawyer make reasonable efforts to prevent inadvertent or unauthorized disclosure of confidential information about a client, even if the services the firm provides to the client are purely nonlegal. The task force recognized that by eliminating ER 5.4 and allowing lawyers and nonlawyers to partner together to form businesses that might provide both legal and nonlegal services, it remains imperative to protect clients and the confidentiality of representations. Therefore, the amendment to ER 1.6 preserves that protection and clarifies that regardless whether a client is receiving legal services from a lawyer or receiving nonlegal services from a nonlawyer, the traditional protections of the client’s information apply to all aspects of the business.

***ER 1.7 Conflict of Interest: Current Clients***

There are no proposed amendments to ER 1.7. However, the concept of personal-interest conflicts addressed in comment 10 to the rule were imported into the new definition in ER 1.0(o), and amendments to ERs 1.8, 1.10, and 5.3 address other conflict-related issues. This permits elimination of comment 10 while adding these essential concepts into the text of the ethical rules.

***ER 1.8 Conflict of Interest: Current Clients: Specific Rules***

An amendment to this rule adds subsection (m), which states that when lawyers refer clients for nonlegal services provided either by the lawyer or nonlawyers in the firm or refer clients to a separate entity in which the lawyer has a financial interest, they must comply with ERs 1.7 and 1.8(a). This addition takes content from comment 3 and moves it into the rule's text. In addition, comments 1, 2, and 3 are deleted because relevant parts of comments 1 and 3 are made part of a new definition of "business transaction" in ER 1.0(n) and comment 2 merely restates ER 1.8(a) and is therefore redundant. In addition, the personal-interest conflicts issue addressed in comments to ER 1.7 are included in a new provision to ER 1.8.

***ER 1.10 Imputation of Conflicts of Interest: General Rule***

ER 1.10(a) is amended to address nonlawyers. With the elimination of ER 5.4, nonlawyers will be able to play significant roles in firms, including having ownership interests. Therefore, the rules should explicitly address imputation of their conflicts. Amendments to the comments include deleting comments 1 through 4. Comment 1, which discusses a "firm," is no longer needed in light of the expanded definition of "firm" in ER 1.0(c). Comments 2 and 3 summarize the concepts of imputation, with one important exception that addresses conflicts if a lawyer owns all or part of an opposing party. That exception was expanded to include nonlawyers and was added to the rule's text as subsection (f), which provides that a conflict is imputed to the entire firm if a lawyer or nonlawyer owns all or part of an opposing party. Comment 4 contains important concepts the task

force determined should be part of the rule itself. New subsection (g) therefore allows disqualified nonlawyers to be screened from matters without imputing the conflict to the firm, unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm. Similarly, new subsection (h) allows lawyers to be screened if they are disqualified because of events or conduct that occurred before they became licensed lawyers, unless the lawyer is an owner, shareholder, partner, officer, or director of the firm.

#### ***ER 1.17 Sale of Law Practice or Firm***

Current subsections (a) and (b) are removed considering the elimination of ER 5.4, which, in turn, rendered many comments to the rule unnecessary. Several new subsections were added to move important information from remaining comments into the rule's text. Subsection (a)(1) now requires the seller to disclose the purchaser's identity. Subsection (c) states that the purchaser cannot increase fees to clients to finance the sale, and the purchaser must honor existing arrangements between the seller and clients regarding fees and scope of work. New subsection (d) requires the seller to give notice to clients before allowing a purchaser to access detailed client information. New subsection (e) requires the seller to ensure that a purchaser is qualified and new subsection (f) advises that if courts must approve substitution, the matter cannot be included in the sale until obtaining that approval. Finally, new subsection (g) makes the rule inapplicable to transfers of legal representation unrelated to a sale of the firm. No comments are necessary for the proposed rule.

#### ***ER 5.1 Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors***

Amendments to this rule were made in part because a lawyer may hold an ownership interest in a firm in a variety of ways. The rule is no longer limited to a "partner" and instead a broader reference to "ownership interests" was added to the title because of the change in the definition of "firm" in ER 1.0(c) and the elimination of ER 5.4. As with several other ERs

discussed here, the task force determined that comments to this rule addressed important concepts that should be part of the rule. The definition of “internal policies and procedures” was moved from the comment to subsection (b). Subsection (c) now states that whether a lawyer has supervisory duties over lawyers may vary depending on the circumstances. And, subsection (d) now provides guidance on what constitutes reasonable remedial action. No comments are necessary for the proposed rule.

### ***ER 5.3 Responsibilities Regarding Nonlawyers***

The task force determined that the rule should refer to both nonlawyers in the firm and nonlawyer assistants, who can be inside or outside the firm, and therefore a change to the title was made to identify the scope of the rule. As with ER 5.1(a), ER 5.3(a) now instructs that lawyers and firms must ensure lawyers and nonlawyers alike undertake reasonable measures to conform to the Rules of Professional Conduct. The remaining amendments move important information from the comments to the rule itself. A definition of “reasonable measures” was added to subsection (b), while direction on what constitutes a direct supervisor’s “reasonable efforts” was added in subsection (c)(1). New subsection (c)(3) requires that lawyers give directions appropriate under the circumstances to nonlawyers outside the firm and guidance on allocating responsibility for monitoring an external nonlawyer when the client directs that the lawyer select the particular nonlawyer was added to new subsection (c)(4). Finally, new subsection (d) requires that each firm designate one lawyer who is responsible for establishing policies and procedures in the firm to assure that all nonlawyers comply with the lawyers’ ethical obligations. The task force suggests that the State Bar may then require that the lawyer identify on the annual dues statement which lawyer in the firm is responsible under ER 5.3(d), similar to the requirement that each lawyer identify the lawyer responsible for the firm trust account procedures. This would provide a level

of entity accountability to assure that a specific attorney must establish appropriate nonlawyer ethics procedures.

### ***ER 5.7 Responsibilities Regarding Law Related Services***

In evaluating whether to recommend eliminating ER 5.4, the task force considered the need to maintain ER 5.7. Under the existing rule, and depending on the circumstances, a lawyer may be obligated to provide the recipient of law-related services the full panoply of protections enjoyed by the lawyer-client relationship.

Considering the recommendation to eliminate ER 5.4, and thus allow lawyers to partner with nonlawyers, ER 5.7 seems unnecessary and restrictive of innovation. The general conflict-of-interest and confidentiality rules, as well as the rules protecting the professional independence of lawyers, as amended, should suffice to protect clients.

## **Recommendation 2: Modify Arizona’s ERs 7.1 through 7.5 to incorporate many 2018 ABA Advertising Rule amendments and to align the rules with the recommendation to eliminate ERs 5.4 and 5.7 and amend ERs 1.0 through 5.3.**

### **A. ABA Model Rule Changes and National Trends.**

In 1977, the United States Supreme Court decided *Bates v. State Bar of Arizona*,<sup>28</sup> and in 1985 Arizona adopted the ABA Model Rules. Current ERs 7.1 through 7.5 (the “Advertising Rules”), which govern lawyer communications about legal services, have not substantively changed since their adoption in 1985, despite compelling reasons to make changes.<sup>29</sup> Technological advances in the delivery of legal services as well as cross-border marketing of legal services through the internet, television, radio, and even print advertising have changed the ways

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<sup>28</sup> *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

<sup>29</sup> Portions of this summary are derived from the Standing Committee on Ethics and Professional Responsibility’s 2018 Report and Resolution 101 for amendment of the ABA Model Rules on Professional Conduct on lawyer advertising.

consumers learn about available legal services. These changes, as well as the mobility of clients and lawyers, require more uniformity in the rules that regulate lawyer advertising among United States jurisdictions. Therefore, the task force recommends bringing the Advertising Rules into conformity with recent changes made by the ABA in 2018 and aligning the rules with current realities of lawyer advertising and law practice.

The task force's recommended amendments to the Advertising Rules accommodate three trends calling for simplicity and uniformity in the regulation of lawyer advertising. First, lawyers increasingly practice across state and international borders, and clients often need services in multiple jurisdictions. Second, technologies that were not prevalent in 1985 to search for professional services today are ubiquitous.<sup>30</sup> Third, trends in First Amendment and antitrust law suggest that burdensome and unnecessary restrictions on the dissemination of accurate information about legal services may be unlawful.<sup>31</sup>

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<sup>30</sup> See Association of Professional Responsibility Lawyers 2015 Report of the Regulation of Lawyer Advertising Committee (2015) [hereinafter APRL 2015 Report], [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aprl\\_june\\_22\\_2015%20report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aprl_june_22_2015%20report.authcheckdam.pdf) at 18-19 (“According to a Pew Research Center 2014 Social Media Update, for the 81% of American Adults who use the Internet: 52% of online adults now use two or more social media sites; 71% are on Facebook; 70% engage in daily use; 56% of all online adults 65 and older use Facebook; 23% use Twitter; 26% use Instagram; 49% engage in daily use; 53% of online young adults (18-29) use Instagram; and 28% use LinkedIn.”).

<sup>31</sup> For nearly 20 years, the Federal Trade Commission (FTC) has actively opposed lawyer regulation where the FTC believed it would, for example, restrict consumer access to factually accurate information regarding the availability of lawyer services. The FTC has reminded regulators in Alabama, Arizona, Florida, Indiana, Louisiana, New Jersey, New Mexico, New York, Ohio, Tennessee, and Texas that overly broad advertising restrictions may reduce competition, violate federal antitrust laws, and impermissibly restrict truthful information about legal services. For developments in First Amendment law on lawyer advertising, see APRL June 2015 Report, *supra* note 30, at 7-18.

Empirical data from a survey sent to bar regulators by APRL regarding the enforcement of current advertising rules shows that complaints about lawyer advertising are rare; the vast majority of advertising complaints are filed by other lawyers and not consumers, and most complaints are handled informally, even when there is a provable advertising rule violation.<sup>32</sup> APRL's survey data is consistent with charges received by the State Bar of Arizona regarding lawyer advertising. Based in part on this data, in August 2018 the ABA House of Delegates adopted model rule amendments while maintaining the primary regulatory standard for advertising – communications must be truthful and not misleading.<sup>33</sup> The State Bar of Arizona expressed support for these amendments through the vetting process. Many jurisdictions currently are considering adoption of the 2018 ABA Model Rule amendments – and some jurisdictions, such as Virginia, Washington, and Oregon already have updated their Rules with variations on the recommendations.

#### **B. Summary of Proposed Amendments to ERs 7.1 through 7.5.**

The proposed amendments to Arizona's ERs 7.1 through 7.5 incorporate many of the 2018 ABA Model Rule amendments and fulfill the task force's charge to identify issues and improvements in the delivery of legal services. As evidenced by Recommendation 1 above, the task force recommends eliminating or amending ethical rules that impede lawyers' abilities to provide cost-effective legal services.

The proposed amendments to the Advertising Rules would:

- retain the rules' primary regulatory mandate of refraining from making false and misleading communications;

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<sup>32</sup> ABA Report and Resolution 101 on Lawyer Advertising, August, 2018: [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/final\\_dar\\_resolution\\_and\\_report\\_advertising\\_report\\_as\\_amended\\_by\\_rules\\_and\\_calendar\\_for\\_submission\\_004.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_dar_resolution_and_report_advertising_report_as_amended_by_rules_and_calendar_for_submission_004.pdf)

<sup>33</sup> *Id.*

- set forth the requirements for who may identify themselves as a “certified specialist” in an area of law;
- maintain reasonable restrictions on direct solicitation of specific potential clients; and
- eliminate obsolete and anticompetitive provisions that unreasonably restrict the dissemination of truthful advertising.

The most significant proposed amendment, which goes beyond the 2018 ABA Model Rule amendments, would eliminate current ER 7.2(b)’s prohibition against giving *anyone* anything of “value” for recommending a lawyer or referring a potential client to a lawyer. Anecdotally, it has been observed that this provision is violated daily because, taken literally, this provision prohibits taking an existing client golfing to say thank you for a referral or giving a firm paralegal a gift card or sending flowers for referring a family member to the firm. Similarly, there are many ethics opinions issued both in Arizona<sup>34</sup> and around the United States that provide convoluted attempts to distinguish between what is permissible “group advertising” versus what is an impermissible “referral service.” Not only do these technical interpretations serve no productive regulatory purpose, but the unnecessary complexity in the regulations stifles lawyers’ abilities to embrace more efficient online marketing platforms for fear the website or service may be deemed a for-profit referral service.

Rule 7.2(b)’s prohibition against “giving anything of value” exists although there is no quantifiable data evidencing that *for-profit* referral services or even paying for referrals confuses or harms consumers. Consumers do not expect online marketing platforms to be nonprofit operations – which are the only referral services permissible under the current regulatory

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<sup>34</sup> See State Bar of Ariz. Ops.05-08 (2005), 06-06 (2006); 10-01 (2010), and 11-02 (2011).

framework. Note that Florida, one of the most restrictive lawyer advertising jurisdictions in the country, already permits for-profit referral services.

The proposed changes to the Advertising Rules are set forth in Appendix 1. The following summarizes those changes.

### ***ER 7.1 Communications Concerning a Lawyer's Services***

The amended rule retains the existing prohibition against “false and misleading” communications about a lawyer’s services. Most bar regulators in the United States have expressed the view that this provision is the rule primarily relied on to regulate lawyer advertising. The current requirements for identifying a lawyer as a “certified specialist” were moved from current ER 7.4 into new ER 7.1(b) and the proposed amendment updates the language from restricting use of the term “specialist” to restricting only the use of the phrase “certified specialist,” consistent with the ABA Model Rule. This change avoids constitutional challenges to the overly restrictive prohibition in current ER 7.4, which limits use of the term “specialist.” The proposed changes would also bring Arizona’s rule in line with the ABA Model Rule language in noting that lawyers may not identify themselves as “*certified* specialists” unless they comply with the requirements set forth in Court rules. The reference in new ER 7.1(b) to new criteria for certified specialist will be contained in Supreme Court Rule 44, and this cross-reference will assist lawyers researching Arizona’s certified specialist advertising requirements. Explanatory comments from current ER 7.4 have been moved to the comments of ER 7.1 to reassure patent attorneys that their specialization is still recognized.

The amendments also move the requirement that all communications must contain the name of a lawyer or law firm and some “contact” information from ER 7.2(c) into new ER 7.1(c). Comments to 7.1 also now include explanatory comments regarding law firm names that were in current ER 7.5. This is consistent with the 2018 Amendments to the ABA Model Rules of

Professional Conduct and clarifies that disbarred lawyers' names and names of lawyers on disability inactive status cannot continue in a firm name.

### ***ER 7.2 (RESERVED)***

Current ER 7.2 sets forth specific rules concerning lawyer advertising. The task force recommends deleting that rule and moving the substance of current ER 7.2(c) to new ER 7.1(c). The consumer protection afforded by current ER 7.2 can be provided by less non-competitive provisions. For instance, the rules on conflicts of interest, including ERs 1.7, 1.8, and 1.10, protect clients/consumers because they restrict a lawyer's (and firm's) representation of a client if the lawyer's own interests could "materially limit" the lawyer's independent professional judgment in representing the client. Thus, a lawyer cannot be "forced" to represent a client simply because they were referred by someone who the lawyer pays as a referral source. The conflict of interest rules control who and how a lawyer may represent a client, and such representations must be free of any conflict that could materially limit the lawyer's objectivity. And disclosures revealing that a lawyer will pay referral fees sufficiently informs consumers about the referral system. Such disclosures may be required to comply with ER 7.1's "false and misleading" standard to assure that adequate information is conveyed to website visitors or referral sources about the fact that the site is not a nonprofit operation.

### ***ER 7.3 Solicitation of Clients***

Consistent with the 2018 Amendments to the ABA Model Rules, the title of this rule was modified, and a definition of "solicitation" was added. This rule governs direct marketing to individuals with specific needs for legal services, as opposed to general advertising on billboards, business cards, print advertisements, television commercials, websites, and the like. The proposed amendments are narrowly tailored to protect consumers who need legal services in particular matters from overreaching by lawyers. The amendments would preclude, for example, solicitation

letters sent to homeowners in a community where there are known construction defects, car accident victims, members of a neighborhood that has been affected by an environmental hazard, and individuals charged with crimes. Solicitation would *not* include sending a letter to everyone in a certain zip code simply to introduce a law firm to a general community that does not have a specific legal need (such as an estate planning firm sending letters to everyone in Paradise Valley or a family law attorney sending announcement postcards to all businesses in her business complex, announcing the opening of her office). Solicitation also would exempt class action court or rule-required notifications.

ER 7.3 retains the prohibition against in-person (face to face or door-to-door) and real-time electronic (such as telephone calls or Facetime) solicitation, unless the prospective client falls within certain categories of individuals not likely to be overwhelmed by a lawyer's advocacy/solicitation skills, such as other lawyers, a former client, or a family member or friend of the lawyer. And even for these categories of prospective clients, a lawyer cannot solicit them (or anyone) if they have made known that they do not want to be solicited or the communication involves coercion, harassment, or duress. At the same time, an amendment to ER 7.3 adds an exception to the prohibition against in-person solicitation for communications directly with business people who regularly hire lawyers for business legal services, consistent with the 2018 Amendments to the ABA Model Rules. The task force notes that this language was vetted extensively through ABA entities and Bar regulators to assure that the language could not be misinterpreted to mean, for instance, that a lawyer could call someone who regularly hires business lawyers to solicit business for criminal defense, bankruptcy, or family law matters. The language in the proposed amendment limits this category of prospective client to only those who regularly

retain counsel for business purposes and therefore are experienced at receiving calls, emails, and meetings with lawyers seeking to represent their companies.

The proposed amendments delete the current Rule’s “ADVERTISING MATERIAL” notation requirement for envelopes (and filing requirement), consistent with the 2018 Amendments to the ABA Model Rules. Several jurisdictions, including, for instance, the District of Columbia, Massachusetts, Maine, Pennsylvania, North Dakota, Oregon, and Washington either have never had a notation requirement or deleted the requirement years ago. None of these jurisdictions indicate any consumer confusion in receiving written communications from lawyers. Nor is there any empirical evidence to indicate that the notation serves a necessary purpose in alerting consumers to the contents of an envelope. Given the changes in technology and methods of direct marketing consumers receive on a regular basis, there is far less likelihood of a consumer being confused about the purpose of a direct mail solicitation letter or email today, than perhaps existed in 1985 when the notation requirement was adopted.

***ER 7.4 (RESERVED)***

Current ER 7.4 concerns a lawyers’ abilities to communicate their fields of practice. As noted previously, the requirements for identifying a lawyer as a “certified specialist” was moved to new ER 7.1(b). Comments to ER 7.4 regarding patent attorneys were moved to ER 7.1. The remainder of ER 7.4 has been deleted as duplicative of proposed ER 7.1.

***ER 7.5 (RESERVED)***

Current ER 7.5 concerns firm names and letterheads. The ABA deleted ER 7.5 as unnecessary, given that ER 7.5 simply described information in a firm name that might be false or misleading. The task force recommends deleting ER 7.5 because it is not needed to regulate law firm names. ER 7.1 is sufficient and the more commonly used regulation. As previously explained, the task force recommends moving ER 7.5’s comments to ER 7.1.

**Recommendation 3: Promote education and information on what unbundled legal services are to the bench, bar, and public to encourage expanded understanding and utilization of unbundled legal services.**

When lawyers provide limited scope representation also known as “unbundled” legal services, clients hire them to perform a specific task or represent them for only a limited process or issue of the legal matter instead of the entire matter. There is no standard unbundled process because lawyers perform many different tasks and clients have different needs. Arizona has allowed lawyers to engage in limited scope representation since 2003.<sup>35</sup> However, the practice appears to be used predominately by lawyers who work in family law. One explanation for the lack of lawyers engaging in limited scope representation is a concern that once the limited representation ends between the client and the lawyer, the court will continue to require the lawyer to represent the client beyond the limited scope agreement.

The task force reviewed articles and best practices concerning unbundled legal services. Unbundled legal services have existed in the American legal system for some time as many legal engagements can be broken into discrete tasks. However, it is imperative that courts explicitly support this model of providing legal services to ensure that the bench, bar, and public fully understand what this type of legal service entails and ensure that consumers do not go without representation rather than pay the high cost of a full-service legal engagement.

To remedy these concerns the task force recommends:

**A. The Supreme Court should explicitly support the delivery of unbundled legal services through a campaign of education for the bench and court staff in Arizona.**

The task force recommends that the Supreme Court incorporate information on what unbundled legal services are, how to recognize an entry of limited appearance and notice of termination of appearance, and how to honor those limited engagements in cases. This education

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<sup>35</sup> ER 1.2(c), Ariz. R. Sup. Ct. 42.

campaign should include educating court clerk offices and staff on unbundled legal services so that staff can ensure once a notice of termination of limited appearance is entered, the attorney is no longer noticed or required to appear in court for matters unrelated to the limited scope of service for which they had appeared. The task force recommends that the Court include information on unbundled legal services in new judge orientation programs and in annual judicial conference and leadership conference programs.

**B. The State Bar should explicitly promote and educate the bar about unbundled legal services.**

The task force recommends that the State Bar of Arizona encourage listings and promotion of lawyers offering unbundled legal services. The State Bar recently launched a Find-A-Lawyer portal that aids consumers in connecting with lawyers offering needed legal assistance in particular areas of the law. This website also allows consumers to indicate their ability to pay for such services which opens a pathway for lawyers conducting pro bono work to connect to clients in need of services with limited financial means. The task force recommends the State Bar assess the Find-A-Lawyer program to determine ways to allow consumers to identify attorneys who offer unbundled legal services to encourage the public to obtain representation rather than go it alone for the entirety of their matter.

The task force also recommends that the State Bar offer educational opportunities through regular CLE programs, the annual bar conference, and articles in the Bar's e-news and print journals about what unbundled legal series are, best practices for initiating and terminating a limited scope representation, including drafting limited scope fee agreements, and how to assess a matter to determine if unbundled legal services are appropriate.

**C. Provide information to the public on the different types of lawyer representation, including limited scope representation, on AZCourtHelp.org and AZCourts.gov.**

The task force explored opportunities to educate the public on what unbundled legal services are and how they differ from other types of legal services, particularly full-service legal representation. The Bar Foundation in conjunction with the Supreme Court hosts the AZCourtHelp.org webpage which is a statewide virtual legal resource center. Cathleen Cole, Content Manager for AZCourtHelp.org, developed a draft webpage that describes each type of legal representation that an attorney might provide. Descriptions of the various types of legal services include a summary of what each type of legal representation is and descriptions of what each type of service entails. The page on unbundled legal services includes a Notice of Limited Scope Representation form, a Notice of Completion of Limited Scope Representation form, and an example of a limited scope representation contract.

At the time of this report, the Bar Foundation had launched this webpage. The task force recommends that the Supreme Court continue to collaborate with the State Bar and the Bar Foundation to ensure that relevant and meaningful content remains available on the type of legal services pages to ensure that the public has every opportunity to learn about the types of legal services they might secure to assist them with their legal needs.

In addition, the task force recommends that the Administrative Office of Courts develop similar content on AZCourts.gov. The Court Programs Unit of the AOC also developed webpages located under “Resources” in the Self-Help Center that explain the various types of legal representation. In addition, the AOC is working on developing legal information sheets – essentially pages that answer frequently asked questions – for inclusion on the types of representation page. The task force recommends that the Court continue to support the efforts of

the AOC to provide educational information to the public about the types of legal services, particularly unbundled legal services, through the Court's website.

**D. Issue an administrative order drawing attention to limited scope representation and adopting uniform notices.**

The task force recommends that the Supreme Court issue an administrative order that notifies the Judiciary that ER 1.2 explicitly allows limited scope representation (unbundled legal services) by attorneys in Arizona if the appearances are reasonable under the circumstances. Low-income individuals and increasing numbers of unrepresented litigants cannot afford the costs of full-service legal representation. Although self-represented litigants may be armed with online court forms and self-help materials, without advice and counsel from an attorney, many come to court uninformed, unprepared, or simply overwhelmed.

The task force also recommends that the Supreme Court, by administrative order, adopt two form notices for all practice areas:

- A form Notice of Limited Scope Representation that a lawyer would file upon appearing and which notifies the court that the filing attorney is entering the case for a specific scope of representation (by date, time period, activity, or subject matter).
- A Notice of Completion of Limited Scope Representation that notifies the court when the attorney's appearance terminates. Through education, judicial officers should learn that such a withdrawal or termination of appearance does not require leave of court (1) if the notice of limited appearance specifically states the scope of the appearance by date or time period; or (2) upon the attorney filing a Notice of Completion, which must be served on each of the parties, including the attorney's client.

Finally the task force urges the Supreme Court to inform the bench through the administrative order that (1) service on an attorney who has entered a limited appearance is

required only for matters within the scope of the representation as stated in the notice, (2) any such service must also be made on the party, and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney's representation. These efforts will ensure that the bench, opposing parties or counsel, and court staff are aware of when an attorney appearing for a limited purpose should be served with pleadings or noticed for court appearances.

A proposed administrative order and forms can be found in Appendix 2 to this report.

**Recommendation 4: Revise Rule 38(d), Arizona Rules of Supreme Court, to clarify when a law student at an accredited law school or a recent law graduate may practice law under the supervision of a lawyer admitted to practice in Arizona, what legal services the law student or law graduate may provide, and the duties and obligations of the supervising lawyer.**

This recommendation was brought to the task force by members of the legal community. In Arizona, law students can practice law under the supervision of a licensed attorney in accordance with Arizona Supreme Court Rule 38(d). This limited student law practice is restricted to students who are either supervised by an attorney in a public or private legal office or by a clinical law professor in conjunction with a law school clinical program. Although Rule 38(d) currently allows recent law graduates to engage in a limited practice of law until the first offering of the Arizona bar examination,<sup>36</sup> the rule was drafted in a way that downplayed or masked this opportunity for recent law graduates. Current Rule 38(d) is unduly complicated and unclear in large part and fails to include certain program essentials. Thus, the proposed amendments revise and reorganize the rule for clarity and substantive completeness. As revised, the proposed rule

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<sup>36</sup> Certification of a certified limited practice student shall commence on the date indicated on a notice of certification and shall remain in effect . . . [until] the certified student fails to take or pass the first general bar examination for which the student is eligible. Ariz. R. S. Ct. 38(d)(5)(F)(iv).

sets out the program requirements and practice restrictions for both law students and recent law graduates in a clear, organized, consistent, and complete manner.

The proposed amendments clarify that recent law graduates may be certified to engage in the limited practice of law under the supervision of an attorney. The proposed amendments also more clearly state that limited practice does not need to be tied to a clinical law program. At least 16 states allow recent law graduates to engage in the limited practice of law post-graduation and pre-bar admission. These state programs share common features:

- All programs have specified durations. For example, some programs authorize practice only during the period in which the graduate has applied to take the first bar examination after his or her graduation and is awaiting the results. Other programs include similar restrictions and incorporate a tiered expiration date for the authorization to practice, such as no later than 12 or 18 months after the graduate graduated from law school.
- Most of these programs authorize graduates to practice law to the same extent law students are authorized to practice law under programs like existing Rule 38(d)(5). Thus, graduates are permitted to meet with clients, go to court, try cases, argue motions, and the like. Most of the states authorize graduates to handle civil and criminal cases, although some restrict the criminal cases to misdemeanors or less-serious felonies.
- Several programs authorize graduates to practice for certain type of employers, such as legal-aid clinics, public defenders, prosecutor's offices, or city, county, and state offices or agencies.
- Many programs impose supervisory requirements that are similar to the supervisory requirements imposed under existing Rule 38(d).

- A few programs require the dean of the graduate's law school, or the graduate's proposed supervising attorney, to certify the graduate's good character and competence to the state supreme court or another entity. Other programs simply require the employer to comply with the requirements of the program and do not require the employer to file any other documentation with any court or state agency.

Although these other state programs vary in operational details, they all provide a means by which law students and non-licensed law graduates may practice law, and effectively result in expanding the delivery of legal services, especially by public agencies or public service groups that provide legal services to individuals with limited resources. These programs do this by allowing recent law school graduates in the process of becoming licensed to gain experience by practicing law under the supervision of admitted lawyers for a limited duration. Because this limited exception to licensure is anticipated to benefit the public, the task force's proposed amendments to Rule 38(d) fall squarely within the mandate to consider and evaluate new models for delivering legal services.

Further, the amendments would eliminate, or at least lessen, many of the practical problems experienced by law school graduates given the workload of the individuals involved in the admission and character and fitness process. The amendments permit recent law graduates to practice under the supervision of a lawyer after graduation from an ABA accredited law school if the graduate takes the first Arizona uniform bar examination, or the first uniform bar examination offered in another state for which the graduate is eligible. Certification to practice terminates automatically if the graduate fails the bar examination, if the Committee on Character and Fitness does not recommend to the Supreme Court the graduate's admission to practice, if the graduate is denied admission to practice law by the Supreme Court, or on the expiration of 12 months from

the date of the graduate's graduation from law school unless the Supreme Court extends the 12-month period. If the graduate passes the bar examination, certification terminates 30 days after the graduate has been notified of approval for admission to practice and eligibility to take the oath of admission. Certification to practice for both graduates and law students also terminates on the occurrence of other events such as failure to meet the requirements for certification.

Proposed amended Rule 38(d) is set forth in Appendix 3.

**Recommendation 5: Revise Rule 31(d), Arizona Rules of Supreme Court, by restyling the rule into four separate rules, making the rule easier to navigate and understand.**

The task force was charged with re-styling Rule 31(d), Arizona Rules of Supreme Court, which govern the practice of law. Over the years, Rule 31(d) has been expanded incrementally to include thirty-one exceptions, becoming cumbersome and difficult to navigate. Consistent with other restyling efforts, the task force separated current Rule 31 into four separate rules. Thus, proposed Rule 31 incorporates current Rule 31(a), proposed Rule 31.1 incorporates current Rule 31(b), proposed Rule 31.2 incorporates current Rule 31(c), and proposed Rule 31.3 incorporates current Rule 31(d). This restructuring is intended to make the rule easier to navigate and understand. Consistent with the Arizona Supreme Court's restyling conventions, the task force sought to state the rules using the active voice and eliminate ambiguous words (especially "shall") and archaic terms (e.g., herein, thereto, etc.). The rules were also restated in a positive—rather than prohibitory—manner (e.g., "a person may" rather than "a person may not,"; "a person or entity may" rather than "nothing in this rule prohibits").

The following is a summary of the changes recommended by the task force. The changes in restyled Rules 31 through 31.2 are mostly stylistic, with one major exception. Currently, the "authority to practice" in Rule 31(b) and the "unauthorized practice of law" in Rule 31(a)(2)(B) state that one is authorized to practice law only if he or she is an active member of the State Bar

of Arizona. One notable difference is restyled Rule 31.2(a), which specifically acknowledges that Rules 38 and 39 authorize non-Bar members (such as in-house counsel and out-of-state lawyers admitted *pro hac vice*) to practice law in Arizona.

The definition of “legal assistant/paralegal” was removed as that term is not used in current or restyled Rule 31. The definition of “mediator” was not included in the restyled rule. The definition of “unprofessional conduct” in current Rule 31(a)(2)(E) was not included in the restyled rule. The term “unprofessional conduct” is not used in Rule 31. In a rule petition seeking to restyle Rule 31, the task force also proposes an amendment to Supreme Court Rule 41 or 54 to include the definition of “unprofessional conduct” as those rules depend on that definition.

The most extensive changes occur to current Rule 31(d), which the proposed rule denominates as Rule 31.3. Rule 31(d) currently has thirty-one subsections with little reason to their order. To make the rule more useful, subsection (d) was reorganized into ten subsections in proposed Rule 31.3: (1) a “Generally” section; (2) Governmental Activities and Court Forms; (3) Corporations, Limited Liability Companies, Associations, and Other Entities; (4) Administrative Hearings and Agency Proceedings; (5) Tax-Related Activities and Proceedings; (6) Legal Document Preparers; (7) Mediators; (8) Legal Assistants and Out-of-State Attorneys; (9) Fiduciaries; and (10) Other.

The following matters merit specific mention. First, proposed restyled Rule 31.3(c)(i)(1) provides a definition of “legal entity.” Second, subsection (3) collapses the three current provisions regarding the representation of companies and associations in municipal or justice courts. Third, subsection (4) retains the provision authorizing a person to represent entities in superior court in general stream adjudications. Fourth, subsection (5) collapses seven current rules regarding the representation of various types of legal entities in administrative hearings or

administrative proceedings. Fifth, subsection (6) sets forth in a single location a general exception saying that a hearing officer or presiding officer can order an entity to be represented by counsel.

In addition, the task force considered rule petition R-18-0004, which the Supreme Court had continued pending the task force's recommendation. That petition seeks an amendment to the rule that would permit owners of closely held corporations and like entities, or their designees, to represent the entities in litigation. While the task force empathized with the plight of "mom and pop" entities that cannot afford counsel and yet are deprived of the ability to represent the entities in court, the task force does not recommend this proposal. Closely held corporations are not limited to one or two owners, and a myriad of unanticipated consequences could occur if entities are allowed to represent themselves. For example, nothing would prohibit a disbarred attorney from representing the entity. Also, task force members expressed concerns that unless every interest, particularly minority interests, agreed to the nonlawyer representation, the nonlawyer representative might not adequately represent the interests of the business, but rather may only represent majority interests. The task force's proposed restyling of Rule 31(d) addresses the organizational issues raised by the pending rule petition.

Finally, to the extent practicable, the task force endeavored to conform the rules to one another to avoid expressing identical requirements in different ways. With one possible exception, the task force does not recommend substantive changes to Rule 31. The task force clarified language in proposed 31.3(d), which addresses "Tax-Related Activities and Proceedings." Even assuming this clarification effects a substantive change, the task force believes the change is within its charge to simplify and clarify the Rule.

The restyled Rule 31 and a copy of existing Rule 31 are found in Appendix 4.

**Recommendation 6: Develop, via a future steering committee, a tier of nonlawyer legal service providers, qualified by education, training, and examination, to provide limited legal services to clients, including representation in court and at administrative proceedings.**

The task force recommends that Arizona develop a program to license nonlawyer “limited license legal practitioners,” (“LLLPs”) qualified by education, training, and examination, to provide legal advice and to advocate for clients within a limited scope of practice to be determined by future steering committees. The task force discussed at length the elements that would be required to establish an LLLP program, and we offer recommended next steps and component parts below. But the “in the weeds” details required for different areas of certification and regulation are many, and beyond the collective expertise of this task force. We therefore recommend that the Supreme Court appoint a steering committee (and perhaps subcommittees) to establish reasonable parameters for LLLPs, including (A) different areas and scopes of practice; (B) common ethical rules and discipline, (C) education, examination and licensing requirements, and (D) assessment and evaluation methods for proposed program. The task force highly recommends an early focus on family law as a subject area for LLLPs, as this is where the greatest need lies. However, the task force believes several other subject matter areas deserve serious consideration, including all limited jurisdiction civil practice matters, limited jurisdiction criminal matters that carry no prospect for incarceration, and many matters within administrative law.<sup>37</sup> Self-represented litigants encounter these practice areas every day in Arizona court with no access to legal assistance.

Members of a steering committee should include lawyers experienced in the subject area, judges who have presided over cases in the subject area, legal educators from law school and

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<sup>37</sup> The task force also identified areas of the law where practice should specifically be excluded from the new tier due to their complexity and conflict with federal law. For example, federal law prohibits nonlawyers from giving legal advice in bankruptcy (*see* 11 U.S.C. § 110(e)(2)).

paralegal programs, court administrators, and public representatives. Litigants and potential litigants currently excluded from most legal services should play some role in the steering committee's process. Guiding principles should include access to justice, service to the public, economic sustainability, professional competence and accountability, and respect for our system of justice.

Arizona is not the first state to consider licensing nonlawyers to provide limited legal services. Washington and Utah have established programs to license nonlawyers to provide limited legal services, as has Ontario, Canada, all of which the task force heard from during its work. Other jurisdictions, including California, Colorado, Nevada, New Mexico, New York, and Oregon are also examining the potential for nonlawyers to provide limited legal services.

Evidence exists that licensing nonlawyers to provide limited legal services will not undermine the employment of lawyers. First, the legal needs targeted for LLLPs involve routine, relatively straight-forward, high-volume but low-paying work that lawyers rarely perform, if ever. Second, other recommendations in this report would allow lawyers to team with LLLPs to provide complementary services, thereby increasing business opportunities for lawyers. Moreover, to date no jurisdiction that allows certified nonlawyers to provide limited legal services has reported any diminution in lawyer employment. The task force acknowledges that some lawyers may prove instinctive skeptics on this issue, but the task force can find no empirical evidence that lawyers risk economic harm from certified LLLPs who provide limited legal services to clients with unmet legal needs.

The task force offers the following specific recommendations for consideration and refinement by a steering committee:

## **A. Areas of Practice and Scope of Practice**

The steering committee should familiarize itself with the report and recommendation of the Delivery of Legal Services Task Force, consider the practice areas explored by the task force including hearing from members of the task force who were involved in the analysis of subject matter areas and educational needs, and address questions raised by the task force about areas of practice and scope of practice. Scope decisions include role definition, as well as identifying areas of law and particular tasks suitable for LLLPs to perform.

The task force recommends that the scope of the new tier — unlike the current role of LDPs — include the ability to provide legal advice and to make appearances in court on behalf of clients. The task force recommends that the steering committee consider whether LLLPs should be able to provide pre-litigation education about legal rights and responsibilities (for example, counseling tenants about how to avoid eviction and counseling debtors about avoiding debt collection litigation).

## **B. Oversight**

The task force recommends that the steering committee develop ethical rules and regulation for LLLPs and create a disciplinary process for the unauthorized practice of law and ethical violations. In general, the task force recommends that such rules be approved by the Supreme Court in the same manner that the Court governs rules for attorneys. The task force further recommends that disciplinary matters for LLLPs be overseen by the State Bar of Arizona in the same manner that the State Bar governs attorney discipline.

Oversight is a critical aspect of the program. Making regulatory requirements that are too onerous will make the new tier unattractive and cost-prohibitive to both participants and users.<sup>38</sup>

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<sup>38</sup> The stifling effect of over-regulation on expansion of a new tier of service was one caution shared by the State of Washington.

At the same time, the market cannot be the only regulatory control. The steering committee should identify a balance between existing regulatory processes and the scope of practice LLLPs will be engaged in.

### **C. Education, Examination and Licensing**

The steering committee should develop rules, regulations, and administration processes for application and examination to certify LLLPs. The task force recommends, based on requirements for lawyers and other legal paraprofessionals in Arizona, that the steering committee consider regulations in the following areas:

- application and licensing;
- examination; and
- development of curriculum to meet the requirements for obtaining a license.

Questions the task force did not have time or expertise to resolve include whether a minimum number of academic credits in legal ethics be required; whether only ABA-accredited legal training program be accepted; and whether equivalent credentials from other states or nations might satisfy the education requirements in whole or in part. The task force considered whether training should require an experiential learning component. If so, the task force recommends that any experiential learning requirement be integrated into a broader academic program, as opposed to a separate stand-alone endeavor. This recommendation comes after considering the barrier that high experiential learning requirements have posed to the existing Washington State Limited License Legal Technician program, and after considering what other states have shared with the task force about barriers that experiential learning requirements can pose for people in rural areas who apply for certification. Finally, the task force recommends that the steering committee might explore a separate path to certification for existing LDPs and paralegals, who may have had a head start on education and on-the-job experience.

#### **D. Assessment and Evaluation of the Program**

The task force recommends that the steering committee develop methods for measuring the appropriateness, effectiveness and sustainability of the LLLP program. Program goals should be to increase access to justice and to protect consumers of legal services. Appropriateness might require that the authorized tasks for LLLPs directly impact access to the courts and unmet legal needs. Appropriateness might also include whether the education requirements and regulations enable LLLPs to perform tasks competently.

Effectiveness might be measured by competence and usage. If self-represented litigants do not engage the services of LLLPs, of course the program fails. But other measures of effectiveness might include reduced burden on courts from self-represented litigants, improvements in procedural justice, improvements in litigant understanding, and improved litigant outcomes such as reduced costs for limited legal services and increased satisfaction ultimate legal outcomes.

Finally, the program should be assessed for sustainability, which would include economic viability for the public, for the court system, and for LLLPs.

**Recommendation 7: Initiate, by administrative order, the Licensed Legal Advocate Pilot program developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law, to expand delivery of legal services to domestic violence survivors through the creation of a new tier of legal service provider.**

In spring 2019, the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law (i4J) brought graduate students, undergraduate students and over 50 members of the community together in i4J's Innovating Legal Services course to explore a challenge framed as: "should Arizona create a new tier of civil legal professional, and what could that mean for survivors of domestic abuse?" That challenge was selected to provide a community-engaged "sandbox" that would supplement the task force's exploration of whether nonlawyers, with specific qualifications, should be allowed to provide limited legal services. i4J partnered with

Emerge! Center Against Domestic Abuse and collaborated with community participants including judges, attorneys, lay legal advocates, social services providers, government representatives, domestic violence survivors, social scientists, interested community members, and other stakeholders.

The results of i4J's Innovating Legal Services course are presented in a report titled *[Report to the Arizona Supreme Court Task Force on Delivery of Legal Services: Designing a New Tier of Legal Professional for Survivors of Domestic Violence](#)* and a video summarizing that report.<sup>39</sup> Course co-instructors Stacy Butler and Jeffrey Willis shared the course's report and [video presentation](#) at a task force meeting.<sup>40</sup> The report demonstrates that domestic violence service providers like Emerge! serve thousands of domestic abuse survivors a year. Lay legal advocates employed by agencies like Emerge! provide information and explain processes within the legal system, but currently cannot provide legal advice.

The Innovating Legal Services course developed a proposal for a pilot program that would train lay legal advocates to become Licensed Legal Advocates (LLAs), able to provide legal advice to domestic violence survivors as they navigate Arizona's civil legal system. The proposed pilot removes the barrier imposed by unauthorized practice of law restrictions, giving the LLAs the ability to handle specifically-identified legal needs of participants at Emerge! and enhancing those participants' access to justice. The Innovating Legal Services course report identified above details the scope of service LLAs would be allowed to provide, as well as the training and education requirements LLAs would be required to complete to become an LLA. The report

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<sup>39</sup> The full report and video are available under the "projects" tab of the i4J webpage, <https://law.arizona.edu/i4J>.

<sup>40</sup> Retired Pima County Superior Court Judge Karen Adam also served as a co-instructor in the course.

further details licensing and regulation requirements, bench, bar, and public education about LLAs, and an evaluation process for the pilot.

The task force recommends that the Supreme Court issue an administrative order establishing the Licensed Legal Advocate Pilot program, developed by the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law, to expand delivery of legal services to domestic violence survivors through the creation of a new tier of legal services provider.

A draft administrative order can be found in Appendix 5 of this report.

**Recommendation 8: Initiate, by administrative order, the DVLAP Legal Document Preparer Pilot program as proposed by the Arizona Bar Foundation.**

The task force recommends that the proposal offered by the Bar Foundation on behalf of the Domestic Violence Legal Assistance Project (“DVLAP”) to create a DVLAP Legal Document Preparer Pilot program be adopted. The purpose of the Bar Foundation’s recommendation is to increase access to free assistance in the completion of civil legal forms for domestic violence victims. During the pilot program DVLAP Legal Document Preparers would provide this free assistance to domestic violence victims who are receiving services from DVLAP programs in Arizona. The Bar Foundation created this proposed pilot after service providers within DVLAP identified three issues: a need among domestic violence survivors for assistance with the completion of family law and other common court forms, capacity to leverage the role of lay legal advocates within the civil legal justice system, and challenges with applying the traditional process to become a certified legal document preparer to legal professionals working in a social service capacity.<sup>41</sup> Because of the high demand for legal aid services, access to legal assistance from one

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<sup>41</sup> The Bar Foundation gave a presentation to the task force proposing this recommendation and reported that in conversations throughout 2014 and 2015, lay legal advocates and various stakeholders unanimously identified cost and time as the biggest barriers to lay legal advocates using the current process to become certified legal document preparers. Arizona Foundation for

of Arizona's three Legal Services Corporation funded legal aid organizations is often limited to basic advice on how to represent oneself, coupled with document preparation help. Lay legal advocates funded by DVLAP can provide legal information to survivors but cannot complete forms on their behalf. Using the existing LDP program and the infrastructure of the DVLAP program, this recommendation would create a pilot project allowing lay legal advocates employed by DVLAP-supported nonprofit domestic violence service and shelter programs to become DVLAP Legal Document Preparers. Under the proposed pilot, the minimum requirements for certification as an LDP under ACJA § 7-208 would be made less restrictive for DVLAP Legal Document Preparers (DVLAP LDPs") participating in the pilot as follows:

- While LDPs with a high school diploma or GED must have two years of law-related experience,<sup>42</sup> a DVLAP lay legal advocate with a high school diploma or GED would be eligible to become a DVLAP LDP after one year of supervision by an attorney in a partnering DVLAP legal aid office.
- While LDPs with a four-year college degree must have one year of law-related experience, a DVLAP lay legal advocate with a four-year college degree would be eligible to become a DVLAP LDP after six months of supervision by an attorney in a partnering DVLAP legal aid office.
- DVLAP LDP would pay a lower certification fee.

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Legal Services and Education, *Legal Advocate Preparer: Expanding the Role of Lay Legal Advocate*, p. 3 (August 2019), <https://www.azcourts.gov/Portals/74/LSTF/Meetings/08142019/4LegalAdvocatePreparerProposa1081419LSTF.pdf?ver=2019-08-12-091436-423>.

<sup>42</sup> ACJA § 7-208(3)(b)(6) states that "law related experience" is one or a combination of the following: under the supervision of a licensed attorney, providing services in preparation of legal documents prior to July 1, 2003, under the supervision of a certified legal document preparer after July 1, 2003, or as a court employee.

- DVLAP LDP would be qualified through the LDP certification exam process and a separate exam measuring DVLAP LDP competency in substantive areas of law.

In exchange for this relaxed eligibility requirement, the scope of work in which a DVLAP LDP can engage is more limited than the scope of work authorized for LDPs pursuant to ACJA § 7-208. For example, an LDP can assist a self-represented litigant in identifying and completing legal documents at the litigant's direction, without the supervision of an attorney, for any form "for which the legal document preparer's level of competence will result in the preparation of an accurate document."<sup>43</sup> Conversely, an DVLAP LDP would only be authorized to assist a self-represented litigant in identifying and completing civil legal forms related to a domestic violence victim's family law needs (separation/divorce, legal decision making and/or parenting time, child support, guardianship, and modifications of post-decree matters), housing matters (landlord/tenant related to health, safety and eviction matters, foreclosure, and public housing issues), and areas of law related to stability, safety and rights (including obtaining/preserving protective orders, public benefits, victims' rights, and safety planning matters such as securing documents). Unlike LDPs, an DVLAP LDP in this pilot program would have a limited certification to provide document preparation services only for DVLAP clients and would not be allowed to charge for those services.

In another recommendation made elsewhere in this report, the task force has recommended that LDPs be allowed to respond if directly addressed by a judge. DVLAP LDP would similarly be able to attend court with DVLAP clients to the same extent that LDPs can attend court with their clients. Otherwise, DVLAP LDP would be subject to the same restrictions as LDPs, such as not giving legal advice or advocating on behalf of domestic violence victims.

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<sup>43</sup> ACJA § 7-208(J)(4)(b).

All pilot project participants must be employed by nonprofit organizations approved by the Arizona Bar Foundation and DVLAP, and only domestic violence victims accessing services through DVLAP can receive assistance from DVLAP LDP. The Bar Foundation’s report, shared with the task force, detailed the minimum requirements for becoming a DVLAP LDP and set forth a 24-month pilot project timeline.<sup>44</sup> The Bar Foundation would administrator the pilot project and verify eligibility for each pilot project participant. All pilot project participants would be orientated to the purpose and goals of the pilot project and addendums to the current DVLAP funding agreements or Memorandums of Understanding would be executed with each party acknowledging the roles and responsibilities of each participant. Throughout the duration of the pilot project, each participant would be required to report quarterly on all activities related to the preparation of documents, number of domestic violence victims served, supervision and training processes, and participate in the evaluation of the pilot project, including implementation of client and stakeholder satisfaction surveys.

**Recommendation 9: Make the following changes to improve access to and quality of the legal services provided by certified Legal Document Preparers.**

The task force was charged with reviewing the LDP program and related Arizona Code of Judicial Administration (“ACJA”) requirements and, if warranted, making recommendations for revisions to the existing rules and code sections that would improve access to and quality of legal services provided by legal document preparers. Since 2003, Arizona has certified LDPs to prepare legal documents for self-represented litigants. Rule 31, Arizona Rules of Supreme Court, defines

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<sup>44</sup> *Legal Advocate Preparer: Expanding the Role of Lay Legal Advocate, Design of the Legal Advocate Preparer Pilot Project*, p. 8-11 (August 2019), available at <https://www.azcourts.gov/Portals/74/LSTF/Meetings/08142019/4LegalAdvocatePreparerProposa1081419LSTF.pdf?ver=2019-08-12-091436-423>.

the practice of law and provides an exception that defines the scope of legal practice allowed to LDPs.<sup>45</sup> Section 7-208(A) defines a “legal document preparer” as “an individual or business entity certified pursuant to [ACJA § 7-208] to prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public who is engaging in self representation in any legal matter . . . .”<sup>46</sup> LDPs spoke to the task force and testified before a workgroup relating their work experiences and sharing suggestions for improvement in the LDP program. In addition, members of the task force with experience in the LDP program shared their observations and suggestions.

After review, the task force makes the following recommendations:

**A. Amend ACJA § 7-208 to allow LDPs to speak in court when addressed by a judge.**

The task force learned that some judges will directly address an LDP in court, knowing that the LDP will be assisting the litigant in completing the necessary legal documents required by the court. LDPs of course want to be responsive to a judge, but they are also mindful of potential disciplinary action under current rules that prohibit an LDP from assisting consumers by speaking in court unless “ordered” by the court to do so. The task force recommends a single word change to ACJA § 7-208(J)(5)(b) to clarify that LDPs may assist a consumer in court when “authorized” (as opposed to “ordered”) by the court. This proposed amendment does not give an LDP the right to attend court on behalf of a client or to advocate for a client. But, allowing an LDP to interact with a judge who purposefully opens a dialogue with the LDP in the interests of justice should be permitted. The proposed amendment is as follows:

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<sup>45</sup> ACJA § 7-208.

<sup>46</sup> ACJA § 7-208(A).

*A legal document preparer shall not attend court with a consumer for the purpose of assisting the consumer in the court proceeding, unless otherwise ~~ordered~~ authorized by the court.*<sup>47</sup>

**B. Amend ACJA § 7-208 to further define permissible and prohibited activities of LDPs.**

Since 2003, LDPs have assisted self-represented litigants with the completion of legal forms and documents. However, there is some confusion as to the scope of documents LDPs can complete. The task force recognized that LDPs sometimes need to conduct basic legal research to do their jobs competently, such as prepare up-to-date documents that comply with new statutes or court rules. However, LDPs cannot give legal advice. The line between conducting legal research to assist a self-represented litigant in the form of completing a legal document and conducting research for purposes of giving legal advice can be blurred. A perceived lack of clarity in the current rules governing LDPs has led to some confusion, with some LDPs hesitant to conduct any legal research and other LDPs going so far as to draft substantive motions and briefs based on their legal research.

The task force recommends the ACJA § 7-208 be amended to provide clarity. First, § 7-208 should clarify that an LDP may conduct legal research so far as needed to understand general legal principles required to assist a client identify and complete a competent legal form or document. Second, the rule should also clarify that an LDP cannot perform legal research for providing legal options or legal advice to a client. LDP's are limited to completing forms and documents that conform to instructions and decisions communicated by clients. Similarly, an LDP cannot perform legal research for purposes of advocating a legal theory on behalf of a client. Specifically, LDPs cannot engage in legal analysis, i.e., conducting legal research and then

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<sup>47</sup> ACJA § 7-208(J)(5)(b).

applying that research to the facts of the client’s case to advocate for an outcome. This means LDPs cannot draft substantive legal motions,<sup>48</sup> supporting memoranda, or appellate briefs to be filed in any court. These types of legal activities are beyond the certification and the limited scope of practice allowed to LDPs. However, LDPs can produce motions in family court cases using the “motions form.” The task force envisions that the recommended LLLP program might well file substantive motions and advocate on behalf of clients within the scope of the LLLPs particular certification(s).

The task force urges the Supreme Court to direct the Certified Legal Document Preparers Board and the Certification and Licensing Division to work together to draft a petition to amend ACJA § 7-208 in accordance with this recommendation. The task force also recommends that the amendment reference specific examples of court filings that LDPs can and cannot prepare.

**C. The Arizona Supreme Court should pursue a campaign of educating the bench and members of the bar on what a legal document preparer is, what they can do, and what they are prohibited from doing.**

The task force recommends that the Supreme Court produce information sheets (referred to as Legal Info Sheets) that can be available in paper and electronically for self-help centers in courts, and the court websites, AZCourtHelp.org, and Azcourts.gov, about LPD services. Presentations should be delivered at the annual judicial conference to educate the bench about LDPs. Moreover, the State Bar should educate its membership about LDPs through presentations at the annual bar convention, articles in e-news and the Arizona Attorney Magazine or other appropriate forums and publications.

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<sup>48</sup> There was some debate within the task force regarding what constitutes a substantive legal motion. As stated below, the task force recommends that the Certified Legal Document Preparers Board and the Certification and Licensing Division develop a definition accompanied by a comment with examples for clarity.

**D. Recommend ACJA § 7-208 be amended to remove the restrictions prohibiting legal document preparers from assisting clients who are represented by counsel.**

The task force has recommended elsewhere in this report that ER 5.4 be eliminated, removing the barrier for attorneys to partner with nonlawyers, such as LDPs.<sup>49</sup> Moreover, the task force has recommended elsewhere in this report that the Supreme Court take steps to expand the utilization of limited scope representation. Anecdotally, limited scope representation occurs most often in family law matters, an area in which LDPs often assist clients too. An LDP might well assist in drafting most of the documents required for a divorce, but a lawyer may be needed to advise on discrete legal questions.

This recommendation would allow otherwise self-represented litigants to benefit from the services of both an LDP and an attorney. Amendment to § 7-208 as recommended is not intended to create a relationship between an LDP and attorney akin to that of a paralegal working under the supervision of an attorney. Rather, the amendment will allow both legal services providers to work with a client simultaneously (with transparency and disclosure) where the client continues to direct the work of the LDP consistent with existing rules.

**E. Recommend that there be increased access to training, especially online, for LDPs, particularly for LDPs in rural areas.**

Many rural communities rely on LDPs due to the small number of attorneys in their area as compared with the number of low-income residents in those communities. The task force recommends that the Supreme Court direct increased access to training and continuing education courses for LDPs concerning core skills and the LDP code of conduct. The task force further recommends that these training and education materials be developed in a way that would allow LDPs to participate online.

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<sup>49</sup> See Recommendation 1 herein.

**F. Amend the ACJA and any other rules governing the investigation of and seeking of legal sanctions for engaging in unauthorized practice of law when the actions in question involve a person acting in a manner that a legal document preparer would act if certified.**

The task force learned through the course of its work that persons have wrongly held themselves out as certified LDPs to the detriment of self-represented litigants. It is difficult to pursue these persons for engaging in the unauthorized practice of law (“UPL”) in a swift and consistent manner. Typically, a superior court judge orders the persons to cease the UPL on threat of sanctions. The task force recommends that UPL matters be brought before the Presiding Disciplinary Judge (PDJ) rather than a superior court judge. This recommendation is supported by several considerations.

First, the sections of the ACJA governing LDPs and LDP sanctions already provides authority for cease and desist orders against persons not certified but otherwise acting in the manner of a certified LDP.<sup>50</sup> The current process brings UPL claims before superior court judges who may not be intimately familiar with the certified LDP program, its governing regulations, or the risks to consumers from uncertified persons pretending to be LDPs. Conversely the PDJ’s function centers on regulatory matters, specifically enforcement of ethical rules and regulations surrounding the practice of law by attorneys and the limited practice afforded to LDPs. The PDJ already presides over LDP Board disciplinary sanctions and is therefore familiar with ACJA 7-208 and Arizona Rule of Supreme Court, Rule 31. It would be consistent with Arizona’s existing process regulating the practice of law to have the PDJ preside over UPL matters related to persons who pretend to be, but are not, certified LDPs. The task force also recommends that the Supreme Court identify any rule or statutory changes necessary for assessment of a civil fine against those persons found to be engaging in the kind of UPL discussed here.

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<sup>50</sup> ACJA § 7-201(E)(6).

The task force acknowledges that there are inherent difficulties in enforcing the limited sanctions available to address UPL cases. But, having these matters go through the PDJ would result in consistent application of the rules, sharing of these decisions on the PDJ's website and further increasing the confidence of the bench and bar in the LDP program.

**Recommendation 10: Advance and encourage local courts to establish positions or programs where nonlawyers are located within the court to provide direct person-to-person legal information about court processes to self-represented litigants.**

Arizona courts have initiated programs to make information about legal processes available to self-represented litigants. Some programs reach self-represented litigants statewide, such as self-help resources like legal information sheets and legal information videos available on [AZCourts.gov](http://AZCourts.gov) and [AZCourtHelp.org](http://AZCourtHelp.org). Few Arizona courts, however, offer programs that provide direct “person to person” assistance to self-represented litigants. Two counties offer such services in Arizona, each different from the other, but both developed based on local resources and other practical considerations. For example, the Superior Court of Santa Cruz County employs a court coordinator who meets with self-represented litigants by appointment to assist them in identifying proper forms and giving them legal information about court processes. The court coordinator discloses to all litigants that she cannot give legal advice, that she may meet with an opposing litigant, and that litigant information is confidential. Conversely, the Maricopa County Superior Court Providing Access to Court Services (“PACS”)/AmeriCorps navigator program uses undergraduate students serving as AmeriCorps Navigators alongside staff in the Court's Law Library Resource Center (“LLRC”). Self-represented litigants can go to the LLRC to research law, obtain forms and receive assistance in completing them, file documents in the LLRC (versus the clerk's office), and get assistance with finding a courtroom or other court location. The LLRC also partners with the Arizona State University, Sandra Day O'Connor Legal Center to provide court customers with 15 minutes of free on-site legal advice from volunteer attorneys two days per

week. This program has an office in the Superior Court of Coconino County as well. The remaining Arizona courts do not have programs where a self-represented litigant can get direct person-to-person assistance.

Many Arizona residents live in rural communities, where significant distances separate home and the nearest courthouse. More importantly, rural residents have fewer opportunities to confer with lawyers or LDPs than urban and suburban residents.<sup>51</sup> Arizona's rural areas, like rural areas across the nation, are experiencing population declines and aging attorney populations.<sup>52</sup> Therefore, the attorney population in rural areas is diminishing while the average age of lawyers in rural areas is increasing, meaning rural residents are increasingly more likely to be self-represented.<sup>53</sup> In addition, rural courts are closing, increasing the justice gap in rural communities.<sup>54</sup>

Urban and suburban areas face their own challenges meeting the needs of self-represented litigants. Burgeoning dockets can be slowed as judges attempt to accommodate the lack of legal knowledge possessed by self-represented litigants.

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<sup>51</sup> Conference of State Court Administrators *Courts Need to Enhance Access to Justice in Rural America*, p. 1-3 (2018), available at <https://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/Policy-Paper-1-28-2019.ashx>.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> *Id.* at 3.

<sup>54</sup> Example, in 2018 the Santa Cruz County Board of Supervisors voted to close the court in Sonoita, forcing residents to travel another 30 miles or more, no small distance to rural residents, to Nogales for court services.

The task force’s review of various court coordinator and court navigator programs here and elsewhere<sup>55</sup> demonstrates that well-trained and appropriately supervised nonlawyers can perform a wide array of tasks to help self-represented litigants understand and manage their cases.

Understanding the need for each jurisdiction to identify and adopt a program that is sustainable, the task force recommends that the Supreme Court pursue means to advance establishment of nonlawyer staff who are located within the court and who provide direct person-to-person court and civil process navigation assistance to self-represented litigants in local courts.

### **III. Conclusion**

The task force undertook the Supreme Court’s assigned tasks with great enthusiasm and worked as diligently as possible within the limited time allotted to make significant recommendations to “move the ball forward” in closing the civil justice gap. Some in the bar and in the public may have grave concerns about some recommendations. Skepticism is healthy and welcomed in debating the merits of our recommendations. When all is said and done, we are hopeful that our system of justice in Arizona is remolded to accommodate the needs of all Arizonans needing legal assistance without sacrificing the high ethical and performance standards necessary to protect the public.

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<sup>55</sup> See report from the Justice Lab at Georgetown Law Center, titled [Nonlawyer Navigators in State Courts: An Emerging Consensus](#).

## **OPPOSITION STATEMENT<sup>56</sup>**

**Hon. Peter B. Swann**  
**Chief Judge, Arizona Court of Appeals, Division I**

I wholeheartedly embrace the basic mission of the Task Force to make access to legal services more affordable to all. And I concur with recommendation numbers 2-5, 7, 8, and 10 in its report. I write separately, however, because I view recommendation number 1 as posing a serious threat to the long-term health of the justice system, and I view recommendations number 6 and 9 as ineffective proposals that create more risk of public harm than opportunity for good.

The Report begins with a discussion of a problem whose existence cannot be disputed: legal services are too expensive, and most citizens are priced out of the ability to secure meaningful justice through the courts. The Report does not, however, examine the barriers to justice erected by the court system itself: understaffing, which contributes to delay and cost, and bloated, one-size-fits-all procedural rules that are designed for the most complex cases. The recommendations then take an odd turn: rather than examining the reasons that the system is so difficult and expensive to navigate, the Task Force's first recommendation is to cast aside ethical rules in an effort to make the practice of law more profitable. Such a proposal would make Arizona unique in the nation, and a leader in the race to the bottom of legal ethics.

I was honored to serve on the Civil Justice Reform Committee and the Restyling Task Forces for the Civil and Family Rules. In my opinion, the rules that came from those efforts are among the most cogent sets of procedural rules in effect in any jurisdiction. But the existing rules

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<sup>56</sup> The task force discussed many of Judge Swann's concerns (some are newly raised in his opposition statement) and ultimately rejected them. The task force modestly supported having court-employed navigators but lacked sufficient time to formulate a recommendation. (See Recommendation 10.) Finally, because the minority position was received after the last task force meeting, the task force was unable to discuss it and address specific points.

should ensure the effective litigation of *all* cases, and in this regard they fail. Though the current rules do an excellent job of implementing the “Cadillac” system of trial by jury and cutting-edge discovery techniques, they are completely ineffective at offering a simple path to dispute resolution for self-represented litigants, and they offer no streamlined procedures for small cases.<sup>57</sup> The complexity of the system – indeed the very need for legal services in many cases – is a problem of our own making. I respectfully submit that the Task Force should have directed its attention to *systemic* reforms, and not to finding ways to direct even more resources to an already-too-resource-hungry system. If the court system is too complex for the average citizen, then we must create a simpler and more efficient system – not new industries that will continue to consume the public’s money.

Bad legal advice is never a bargain. And nothing in the Report suggests that allowing nonlawyers to own law firms or otherwise practice law will increase the *quality* of legal services. Yet the recommendations from which I dissent here are designed to enhance the role of nonlawyers in the delivery of legal services at every level. The argument seems to be that “something is better than nothing,” and because traditional legal representation is often unaffordable, a corps of new service providers is the answer. This argument ignores the underlying reality that our system is ill-designed to assist the very people it tries to help.

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<sup>57</sup> For reasons addressed at length by the Civil Justice Reform Committee, Arizona’s system of compulsory arbitration has proven ineffective at ensuring access to justice. The Task Force nonetheless declined to devote time to alternative procedures that would better enable self-represented litigants to handle their own matters without the cost of a lawyer, LDP or LLLP.

***Recommendation 1:***

Recommendation number one is to eliminate the ethical rules prohibiting nonlawyer ownership of law practices. To be clear, this recommendation would allow anyone, including disbarred lawyers, large corporations, and venture capitalists to have full equity stakes in law firms while escaping any duties to the clients. No other state has adopted such a proposal.<sup>58</sup> And while I take pride in Arizona’s spirit of innovation, this proposal is neither innovative nor responsible. The proposal would surely open vistas of new sources of wealth for lawyers, but it would not benefit the public.

The Task Force’s discussions of this proposal often questioned why the current rules against nonlawyer equity, which have existed in every state for at least decades, exist at all. The Report proclaims “Ethical rules have been called out as contributing to the justice gap as demonstrated by [the Henderson Report].” Indeed, the Report relies exclusively on the Henderson Report for this proposition. The fact that a professor has “called out” ethical rules is, to my mind, no more persuasive than the fact that a substantial part of the population has “called out” lawyers as greedy crooks. Both beliefs are no doubt sincere – I submit that neither is correct.

There is no empirical proof that ethical rules have created the problems with the delivery of legal services. I find this perspective troubling, and therefore highlight a few of the reasons for the existing rule.

The relationship between attorney and client is the most sacred of fiduciary relationships. The duties of loyalty and confidentiality that are present in every representation are foundational to a functioning justice system. Proponents of the recommendation will point out that they are

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<sup>58</sup> Washington, D.C. and Utah have made modest efforts at exploring alternate business structures, but the Task Force recommendation takes an absolutist approach, and expressly rejects the approaches of these jurisdictions.

proposing no changes to the rules governing loyalty and confidentiality. But this is at most theoretically half-correct. As a matter of law, practice, and human nature, the fiduciary duties owed to partners and other investors are quite real. And the interest of an investor may well be in conflict with that of a client.

Investors owe no duty of loyalty to the clients of the lawyers in whom they invest. The lawyers in such relationships would retain the full duty of undivided loyalty to the client, yet assume fiduciary duties to conduct the representations to maximize profit for the nonlawyer partner. It does not take great imagination to understand that undivided loyalty would be a practical impossibility in such a relationship.

Because the recommendation does not include a proposal for entity regulation (opting instead to leave the question for future study), a nonlawyer investor with interests directly adverse to the client would generally not impute that conflict to the lawyer. Under the proposed revisions to ER1.10, nonlawyer conflicts would be imputed only in the rare circumstance when the nonlawyer owns the opposing party. Lawyers would then be free to represent clients despite conflicts of interest that would rightly disqualify a law firm operating under the current rules. Though it might be comforting to suppose that no lawyer would take advantage of such a situation, it is not realistic.

Much of the need for legal services exists in Arizona's smaller communities. The recommendation contains no limits on the types of entities that could be formed, or on their size. Under the proposal, an entity could effectively buy up a majority of the practices in these communities, consuming brick-and-mortar law firms and leaving residents of those communities with no real choice but to be represented by a lawyer beholden to the entity. Under the proposal, both sides of a dispute could even be represented by lawyers beholden to the *same* entity.

The risks of such conflicts are not theoretical. Under the current rules, *all* individuals with an ownership stake in a law firm must be lawyers. All such individuals owe the *same* duty of loyalty to the client. The proposal would shatter that unified duty, and require that clients entrust their rights, their lives, and their secrets to a lawyer who has an affirmative duty (not merely a desire) to maximize profit – even at the expense of the client.

A glimpse of this phenomenon can be seen in the use of captive law firms by insurance companies. Insurance defense counsel already experience an evolved form of control over representation through aggressive cost restraints. And while few insurance defense counsel would candidly deny those restrictions sometimes interfere with their ability to provide the best service to their clients, they are nonetheless able to serve ethically when there is significant alignment of interests between the insurer and the insured. In these cases, the insurer bears the financial risk of any enforced lack of diligence. Imagine, however, that there was *no* alignment of interests between the insurer and insured, and the insurer did *not* bear the risk of shoddy legal work. What incentive would the insurer then have except to drive quality down?

The latter, nearly unimaginable, scenario is exactly what the recommendation entails. Any entity could substitute itself for the insurer in the above example, control local markets, drive costs (and quality) down, and control fees. But apart from the rare legal malpractice judgment, the nonlawyer would bear no practical risk if the results of its business practices were an increase in unjust or unfavorable results. And the risk of a malpractice judgment could neatly be reduced by requiring clients to sign retainer agreements with comprehensive arbitration clauses.

I fail to see how the public would be benefitted by a system that allows law firm owners to run the business aspect of the practice without regard to the interests of clients or serious conflicts,

and without meaningful economic risk or ethical regulation. The goal of the Supreme Court should be to promote access to justice, not merely access to for-profit services.

The Court should consider the harm that will befall the public perception of a justice system that strips away ethical constraints on lawyers in favor of corporate profits. Public confidence in lawyers is already low. Yet public confidence in the courts remains high, and that confidence is the basis of the legitimacy of the justice system itself. If the Arizona Supreme Court is perceived as placing a thumb on the scale in favor of lawyers and investors, it is difficult to see how that public confidence will be enhanced. “Trickle down economics” might be the subject of fair debate, but “trickle down justice” is not. There is simply no likelihood that nonlawyers will enhance the quality of justice in Arizona, and I urge the Court not to place Arizona on the track to be the first jurisdiction to be seduced by such an argument.

***Recommendation 6:***

Arizona ranks 51st in lawyers per capita in the United States, including the District of Columbia and Puerto Rico.<sup>59</sup> And with so few lawyers, Arizona is still home to one of the largest trial courts in the nation. This is important, because it undercuts the relevance of the national economic data underlying the speculations advanced in the “watershed” Henderson paper on which the Report places such heavy reliance. Because the relative supply and demand for legal services in Arizona is far out of line with much of the country, the relevance of Professor Henderson’s economic models is questionable. But if one thing is clear, it is that Arizonans are not clamoring for more lawyers. Nor is there a public thirst for practitioners who never attended law school and charge a “mere” \$100 per hour. What the public rightfully wants is a system of

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<sup>59</sup> For raw lawyer-population data, see ABA National Lawyer Population Survey, 2019, [https://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-by-state-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2019.pdf)

justice that is itself more scalable and responsive to its diverse needs – a system it can navigate for free.

A theme in the Task Force deliberations was a sense that because services like LegalZoom exist, the Court should embrace them and create a new industry of nonlawyers to offer similar services. By the same reasoning, the existence of WebMD should prompt the state to allow anyone to take a few courses, pass a test, and prescribe medication. Both arguments are fallacious, and any expansion of legal services provided by nonlawyers should instead be justified by a firm conviction that the services will benefit the public without significant risk. Recommendation number 6 does not satisfy that test.

Indeed, experienced practitioners understand that services such as LegalZoom actually create massive risk for clients. While basic forms can be useful tools, it is dangerous in the extreme to assume that they constitute adequate legal services. Rarely are an individual's legal needs so "standard" that a simple form will ensure the efficient or effective protection of legal rights. And the use of such devices without adequate advice concerning the implications of various courses of action can transform a simple problem into ruinous litigation. I fail to grasp how a corps of individuals with minimal legal training and experience can expect to protect their clients' interests.

The Task Force's response to my question, of course, is that many legal problems are fairly simple and do not require the full resources of a lawyer. To be sure, services are often effectively rendered today by a paralegal operating under the supervision of a lawyer. But that supervision is critical: in our complex justice system, every move entails great risk of unintended consequences and it is naive to assume that a nonlawyer will be effective in providing the advice needed to guard against such risks. A simple problem poorly managed can become a complex problem, and the Task Force's tacit assumption that "simple" matters can safely be left to forms is simply wrong.

My objections to recommendation number 6 is not simply a kneejerk defense of a guild. I recognize that nonlawyers can and do serve critical roles in assuring access to justice. To that end, I regret that the Task Force did not include in its recommendations my proposal to create a system of court navigators who could provide meaningful information to litigants at the courthouse. I regret that it did not propose the creation of alternative procedural tracks for self-represented litigants in smaller disputes. And yet I agree with its support for targeted *nonprofit* programs aimed at providing services in specific case types. Programs carefully developed by each of Arizona's two law schools and the Arizona Bar Foundation reflect the type of careful planning and targeted services that are likely to provide services to those in crisis who could not otherwise afford them. By contrast, the sweeping recommendations of the Task Force to create a new class of practitioner, the LLLP, have been the product of a few days of discussion, and the details are left to a future steering committee.

By acknowledging that a steering committee would be needed to do the real work of defining the LLLP tier, the Task Force highlights the extreme difficulty of turning a "new tier" into a successful program. The Task Force worked for nine months, yet its recommendation provides only the most skeletal description of the proposed LLLP program. Put simply, the concept is not fully baked. In view of the large number of issues (both known and unknown) that remain unaddressed, I suggest that the Court either reject the recommendation outright or request further detailed study before deciding to create such a tier. It would be unwise to decide to create the LLLP program until its precise contours can be described and debated.

***Recommendation 9:***

I agree with most of the components of Recommendation number 9. I disagree, however, with subpart (a), which would authorize LDPs to speak in court. Though the Task Force acknowledges that LDPs are engaged in the practice of law (a prerequisite to the Court's regulation of LDPs), it speaks with two inconsistent voices. On the one hand, it seeks to expand the role of LDPs by letting them address a court. On the other hand, it sets LDPs up for failure by prescribing unworkable limitations on their ability to do legal research. I find both proposals untenable.

Legal research is a First Amendment right. Any person is free to conduct legal research, and I cannot see how the Court can lawfully prohibit such research. But even if a prohibition were constitutionally possible, where is the public good in such a proposal? The Court has already created the LDP tier of practitioners, and any notion that they do not provide legal advice is folly. Legal advice is inherent in any aspect of the practice of law, and a LDP cannot properly fill out a form or prepare an original document without creating legal consequences.

It is essential, if we are to have such a tier in Arizona, that LDPs be empowered to provide the best service possible to clients. An uninformed LDP is an ineffective or even dangerous LDP, and I submit that LDPs should face no restrictions on research activities. If we cannot trust LDPs to conduct legal research, then we should not allow them to practice law in any form. But I have no reason to believe that LDPs would not be able to conduct legal research appropriately as long as the services they offer do not exceed the scope authorized by the code. I would therefore delete the restriction.

## APPENDIX

### APPENDIX 1: Proposed Amended ERs (Clean and Redline)<sup>60</sup>

#### ER 1.0 Terminology (Clean)

(a) – (b) No Change.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in any affiliation, or any entity that provides legal services for which it employs lawyers. Whether two or more lawyers constitute a firm can depend on the specific facts.

(d) – (f) No Change.

(g) – (i) [Formerly (h) – (j)] No Change.

(j) "Screened" denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

(i) Written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;

(ii) Adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;

(iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter;

(iv) Periodic reminders of the screen to all affected firm personnel.

(v) Additional screening measures that are appropriate for the particular matter will depend on the circumstances.

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<sup>60</sup> This Appendix presents all of the ERs covered by Recommendations 1 and 2. A clean version of each ER is followed immediately by a redline version of that ER.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer or firm knows or reasonably should know that there is a need for screening.

(k) – (m) [Formerly (l) – (n)] No Change.

(n) “Business transaction,” when used in reference to conflicts of interests:

(1) includes but is not limited to

(i) The sale of goods or services related to the practice of law to existing clients of a firm’s legal practice;

(ii) A lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer’s firm has a financial interest;

(iii) Transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client’s business as payment of all or part of a fee.

(2) does not include

(i) Ordinary fee arrangements between client and lawyer;

(ii) Standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) “Personal interests,” when used in reference to conflicts of interests, include but are not limited to:

(1) The probity of a lawyer’s own conduct, or the conduct of a nonlawyer in the firm, in a transaction;

(2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or

(3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) “Authorized to practice law in this jurisdiction” denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.

(q) “Nonlawyer” denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) “Nonlawyer assistant” denotes a person, whether an employee or independent contractor, who is not licensed to practice law in this jurisdiction, including but not limited to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement personnel are not considered the nonlawyer assistants of government lawyers.

**Comment [2019 amendments]  
Confirmed in Writing**

[1] No Change.

**Firm**

[2] Similar questions can also arise with respect to lawyers in legal aid, legal services organizations, and other entities that include nonlawyers and provide other services in addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a “firm” for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. *See Rules 5.1, 5.2 and 5.3.*

**Fraud**

[3] – [5] No Change, except renumbered from comments [5] – [7].

**ER 1.0 Terminology (Redline)**

(a) – (b) No Change.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in ~~a law partnership, professional corporation sole proprietorship, or other association; or lawyers employed in a legal services organization or the legal department of a corporation or other organization~~ any affiliation, or any entity that provides legal services for which it employs lawyers. Whether ~~government lawyers should be treated as a firm depends on the particular Rule involved and the specific facts of the situation~~ two or more lawyers constitute a firm can depend on the specific facts.

(d) – (f) No Change.

(g) ~~“Partner” denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.~~

(~~h~~ g) No Change other than renumbered.

(~~i~~ h) No Change other than renumbered.

(~~j~~ i) “No Change other than renumbered.

(~~k~~ j) “Screened” denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably

adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

- (i) Written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;
- (ii) Adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;
- (iii) Acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter
- (iv) Periodic reminders of the screen to all affected firm personnel.
- (v) Additional screening measures that are appropriate for the particular matter will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer or firm knows or reasonably should know that there is a need for screening.

~~(k)~~ – ~~(m)~~ No Change, other than renumbered.

(n) “Business transaction,” when used in reference to conflicts of interests:

(1) includes but is not limited to

- (i) The sale of goods or services related to the practice of law to existing clients of a firm’s legal practice;
- (ii) A lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer’s firm has a financial interest;
- (iii) Transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client’s business as payment of all or part of a fee.

(2) does not include

- (i) Ordinary fee arrangements between client and lawyer;
- (ii) Standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

(o) “Personal interests,” when used in reference to conflicts of interests, include but are not limited to:

(1) The probity of a lawyer’s own conduct, or the conduct of a nonlawyer in the firm, in a transaction;

(2) Referring clients to a nonlawyer within a firm to provide nonlegal services; or

(3) Referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

(p) “Authorized to practice law in this jurisdiction” denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.

(q) “Nonlawyer” denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by these rules to practice Arizona law.

(r) “Nonlawyer assistant” denotes a person, whether an employee or independent contractor, who is not licensed to practice law in this jurisdiction, including but not limited to secretaries, investigators, law student interns, and paraprofessionals. Law enforcement personnel are not considered the nonlawyer assistants of government lawyers.

#### **Comment [2003 2019 amendment]**

#### **Confirmed Writing**

[1] No Change.

#### **Firm**

~~[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.~~

~~[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.~~

~~[4-2] Similar questions can also arise with respect to lawyers in legal aid, and legal services organizations, and other entities that include nonlawyers and provide other services in~~

addition to legal services. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules. For instance, an organization that provides legal, accounting, and financial planning services to clients is a “firm” for purposes of these Rules for which a lawyer is responsible for assuring that reasonable measures are in place to safeguard client confidences and avoid conflicts of interest by all employees, officers, directors, owners, shareholders, and members of the firm regardless of whether or not the nonlawyers participate in providing legal services. See Rules 5.1, 5.2, and 5.3.

## **Fraud**

[3 5] – [5 7] No Change, other than renumbered.

## **Screened**

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under ERs 1.10, 1.11, 1.12 or 1.18.

[9] ~~The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter, and periodic reminders of the screen to the screened lawyer and all other firm personnel.~~

[10] ~~In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.~~

**ER 1.5 Fees (Clean)**

(a) – (d) No Change.

(e) Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

(1) the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;

(2) the client consents to the division of fees, in a writing signed by the client;

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

**Comment [2019 amendment]**

**Reasonableness of Fee and Expenses**

[1] No Change.

**Basis or Rate of Fee**

[2] – [3] No Change.

**Terms of Payment**

[4] – [5] No Change.

**Prohibited Contingent Fees**

[6] No Change.

**Disclosure of Refund Rights for Certain prepaid Fees**

[7] No Change.

**Disputes Over Fees**

[8] No Change, except renumbered from comment [10].

**ER 1.5 Fees (Redline)**

(a) – (d) No Change.

~~(e) A division of a fee between lawyers who are not in the same firm may be made only~~  
Two or more firms jointly working on a matter may divide a fee resulting from a single billing to a client if:

~~(1) the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the~~

representation; the basis for division of the fees and the firms among whom the fees are to be divided are disclosed in writing to the client;

(2) the client agrees consents to the division of fees, in a writing signed by the client; to the participation of all the lawyers involved and the division of the fees and responsibilities between lawyers; and

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

**Comment [2003 2019 amendment]**

**Reasonableness of Fee and Expenses**

[1] No Change.

**Basis or Rate of Fee**

[2] – [3] No Change.

**Term of Payment**

[4] – [5] No Change.

**Prohibited Contingent Fees**

[6] No Change.

**Disclosure of Refund Rights for Certain Prepaid Fees**

[7] No Change.

**Division of Fee**

~~[8] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee by agreement between the participating lawyers, if the division is in proportion to the services performed by each lawyer or all lawyer assume joint responsibility for the representation and the client agrees, in a writing signed by the client, to the arrangement. A lawyer should only refer a matter to a lawyer who the referring lawyer reasonably believes is competent to handle the matter and any division of responsibility among lawyers working jointly on a matter should be reasonable in light of the client's need that the entire representation be completely and diligently completed. See ERs 1.1, 1.3. If the referring lawyer knows that the lawyer to whom the matter was referred has engaged in a violation of these Rules, the referring lawyer should take appropriate steps to protect the interests of the client. Except as permitted by this Rule, referral fees are prohibited by ER 7.2(b).~~

~~[9] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.~~

**Dispute Over Fees**

[10 8] No Change, other than renumbered.

## **ER 1.6 Confidentiality (Clean)**

(a) – (d) No change.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

### **2003 Comment [amended 2019]**

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] - [4] No Change.

### **Authorized Disclosure**

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm, information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] No Change.

### **Disclosure Adverse to Client**

[7] – [20] No Change

### **Withdrawal**

[21] No Change.

### **Acting Competently to Preserve Confidentiality**

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision including individuals who are providing nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to assure that all information learned from or about a firm client shall remain confidential even if the only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made

reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] No Change.

#### **Former Client**

[24] No Change.

#### **ER 1.6 Confidentiality (Redline)**

(a) – (d) No change.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client, even if the firm provides the client with only nonlegal services.

#### **2003 Comment [amended ~~2009~~ 2019]**

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client, including representation by the firm for only nonlegal services. See ER 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, ER 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and ERs 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] - [4] No Change.

#### **Authorized Disclosure**

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or, to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other, and nonlawyers in the firm,

information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[6] No Change.

### **Disclosure Adverse to Client**

[7] – [20] No Change

### **Withdrawal**

[21] No Change.

### **Acting Competently to Preserve Confidentiality**

[22] Paragraph (e) requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision including individuals who are providing nonlegal services through the firm. Lawyers shall establish reasonable safeguards within firms to assure that all information learned from or about a firm client shall remain confidential even if the only services provided to the client are nonlegal services. See ERs 1.1, 5.1 and 5.3. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (e) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this ER or may give informed consent to forgo security measures that would otherwise be required by this ER. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these ERs. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see ER 5.3, Comments [3]–[4].

[23] No Change.

### **Former Client**

[24] No Change.

**ER 1.7 Conflict of Interest: Current Clients (Clean)**

No change to the black letter rule.

**Comment [2019 amendment]**

[1] – [9] No Change.

[10] – [33] No change except renumbered from [11] – [34]

**ER 1.7 Conflict of Interest: Current Clients (Redline)**

No change to the black letter rule.

**Comment [~~2003~~ 2019 amendment]**

[1] – [9] No Change.

**Personal Interest Conflicts**

~~[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of the lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, a lawyer may not allow related business interest to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See ER 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also ER 1.10 (personal interest conflicts under ER 1.7 ordinarily are not imputed to other lawyers in a law firm).~~

~~[11 10]~~ – ~~[12 11]~~ No Change other than renumbered.

~~[13 12]~~ – ~~[34 33]~~ No change other than renumbered.

## **ER 1.8 Conflict of Interest: Current Clients: Specific Rules (Clean)**

(a) – (l) No Change.

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm's financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm's financial interest in the transaction.

### **Comment [2019 amendment]**

[1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that that lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyers dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the form or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that ER 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[2] – [19] No Change, excepted renumbered from comments [4] to [21].

## **ER 1.8 Conflict of Interest: Current Clients: Specific Rules (Redline)**

(a) – (l) No Change.

(m) A lawyer or firm must comply with ER 1.7 if the client expects the lawyer or firm to represent the client in a business transaction or when the lawyer's or firm's financial interest otherwise poses a significant risk that the representation of the client will be materially limited by the lawyer's or firm's financial interest in the transaction.

### **Comment [2003 2019 amendment]**

#### **Business Transactions Between Client and Lawyer**

~~[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyers and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the~~

lawyer's legal practice. See ER 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by ER 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. IN such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the materials risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See ER 1.0(e) (definition of informed consent).

[3 1] The risk to a client is greatest when the client expects the lawyers to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with requirements of paragraph (a), but also with requirements of ER 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyers dual role as both legal adviser and participant in the transaction, including when lawyers refer clients for nonlegal services provided in the firm by either the lawyer or nonlawyer in the firm or refer clients through a separate entity in which the lawyer has a financial interest, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that ER 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4 2] – [24 19] No Change, other than renumbered.

### **ER 1.10 Imputation of Conflicts of Interest: General Rule (Clean)**

(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – (e) [No change.]

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified, the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

### **Comment [2019 amendment]**

[1] – [7] No change, except renumbered from current [5] – [11].

### **ER 1.10 Imputation of Conflicts of Interest: General Rule (Redline)**

(a) While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

(b) – (e) No change.

(f) If a lawyer or nonlawyer in a firm owns all or part of an opposing party, the personal disqualification of the lawyer or nonlawyer is imputed to all others in the firm.

(g) If a nonlawyer is personally disqualified pursuant to paragraph (a), the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer or director of the firm.

(h) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer

may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

**Comment [2003 and 2016 2019 amendment]**

**Definition of Firm**

~~[1] For purposes of the Rules of Professional Conduct, the term 'firm' denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association; or lawyers employed in a legal services organization of the legal department of a corporation or other organization. See ER 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See ER 1.0 Comments [2]—[4].~~

**Principles of Imputed Disqualification**

~~[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by ERs 1.9(b) and 1.10(b).~~

~~[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, for example, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm are reasonably likely to be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm. A disqualification arising under ER 1.8(l) from a family or cohabitating relationship is persona and ordinarily is not imputed to other lawyers with whom the lawyers are associated.~~

~~[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that a person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and firm have a legal duty to protect. See ERs 1.0(k) and 5.3.~~

[5 1] – [~~11~~ 7] No change, other than renumbered.

**ER 1.17 Sale of Law Practice or Firm (Clean)**

(a) A firm may sell or purchase a law practice, or a practice area of a firm, including good will, if the seller gives written notice to each of the seller's clients regarding:

- (1) the proposed sale, including the identity of the purchaser;
- (2) the client's right to retain other counsel or to take possession of the file; and
- (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

(c) A sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

[Note: All Comments to existing ER 1.17 were deleted.]

**ER 1.17 Sale of Law Practice or Firm (Redline)**

(a) A lawyer or a law firm may sell or purchase a law practice, or an area of law practice a practice area of a firm, including good will, if the following conditions are satisfied seller gives written notice to each of the seller's clients regarding:

~~(a) The seller ceases to engage the private practice of law, or in the area of practice that has been sold, in the geographic area(s) in which the practice has been conducted;~~

~~(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;~~

~~(c) The seller gives written notice to each of the seller's clients regarding;~~

~~(1) the proposed sale, including the identity of the purchaser;~~

~~(2) the client's right to retain other counsel or to take possession of the file; and~~

~~(3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.~~

~~(b) If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.~~

~~(d) The fees charged clients shall not be increased by reason of the sale.~~

~~(c) A sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.~~

~~(d) Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.~~

~~(e) Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently; avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.~~

~~(f) If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.~~

~~(g) This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.~~

**Comment [2003 rule]**

[All comments to ER 1.17 were deleted]

### **ER 5.1 Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors (Clean)**

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these,

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the persons who is being supervised and the amount of work involved. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

### **ER 5.1 Responsibilities of ~~Partners, Managers, and Supervisory Lawyers~~ Lawyers Who Have Ownership Interests or are Managers or Supervisors (Redline)**

~~(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a firm, shall make reasonable efforts to ensure~~

~~that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.~~

(a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these,

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

(b) A lawyer having ~~direct~~ supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

(c) A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner~~ has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

**Comment [2003 amendment]**

[Note: All Comments to existing ER 5.1 were deleted.]

### **ER 5.3. Responsibilities Regarding Nonlawyers (Clean)**

(a) A lawyer who in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have equity interests in the firm, is compatible with the professional obligations of the lawyer. Reasonable measures include but are not limited to adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and.

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) A lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an equity interest or managerial authority in the form, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

[Note: All Comments to existing ER 5.3 were deleted.]

### **ER 5.3. Responsibilities Regarding Nonlawyers Assistants (Redline)**

~~With respect to a nonlawyer employed or retained by or associated with a lawyer:~~

~~(a) a partner, and a lawyer who individually or together with other lawyers possess comparable managerial authority in a law firm shall reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's is compatible with the professional obligations of the lawyer;~~

~~(a) a lawyer having direct supervisory authority over the nonlawyer~~ A lawyer in a firm shall make reasonable efforts to ensure that the ~~person's conduct~~ firm has in effect measures giving reasonable assurance that the conduct of nonlawyers, including those who have equity interests in the firm, is compatible with the professional obligations of the lawyer; and Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and.

(2) to ensure that nonlawyers comport themselves in accordance with the lawyer's ethical obligations, including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all firm client information.

(b) A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable

assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

(c) ~~a~~ A lawyer shall be responsible for conduct of ~~such a person~~ a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer ~~is a partner or has comparable~~ managerial authority in the firm ~~in which the person is employed, or has direct supervisory authority over the person,~~ and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(d) When a firm includes nonlawyers who have an equity interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

**Comment [2003 amendment]**

[Note: All Comments to existing ER 5.3 were deleted.]

## **ER 5.4 Professional Independence of a Lawyer (Clean)**

[Note: The entirety of this rule was deleted.]

## **~~ER 5.4 Professional Independence of a Lawyer (Redline)~~**

~~(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:~~

~~(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;~~

~~(2) a lawyer who purchases the practice of a deceased, disabled, or dis appeared lawyer may, pursuant to the provisions of ER 1.17, pay to the estate or to other representative of that lawyer the agreed upon purchase price:~~

~~(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit sharing arrangement; and~~

~~(4) a lawyer may share court awarded legal fees or fees otherwise received and permissible under these rules with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.~~

~~(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.~~

~~(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.~~

~~(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for profit, if:~~

~~(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;~~

~~(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or~~

~~(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.~~

## **Comment [2003 amendment]**

[1] The provisions of this Rule express traditional limitations on the sharing of fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment

~~of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.~~

~~[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also ER 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).~~

## **ER 5.7 Responsibilities Regarding Law-Related Service (Clean)**

[Note: The entirety of this rule was deleted.]

## **~~ER 5.7. Responsibilities Regarding Law-Related Services (Redline)~~**

~~(a) A lawyer may provide, to clients and to others, law-related services, as defined in paragraph (b), either:~~

~~(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or~~

~~(2) by a separate entity which is controlled by the lawyer individually or with others.~~

~~Where the law-related services are provided by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer shall be subject to the provisions of the Rules of Professional Conduct in the course of providing such services. In circumstances in which law-related services are provided by a separate entity controlled by the lawyer individually or with others, the lawyer shall not be subject to the Rules of Professional Conduct, in the course of providing such services, only if the lawyer takes reasonable measures to assure that a person obtaining the law-related services knows that the services of the separate entity are not legal services and that the protections of the client-lawyer relationship do not apply.~~

~~(b) The term law-related services denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.~~

### **Comment [2003 rule]**

~~[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflict interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.~~

~~[2] ER 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that~~

apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., ER 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1).

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with ER 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a) of the Rule cannot be met. In such a case a

lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by ER 5.3, that of nonlawyer employees in the distinct entity which the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers engaging in the delivery of law related services. Examples of law related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (ERs 1.7 through 1.11, especially ERs 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of ER 1.6 relating to disclosure of confidential information. The promotion of the law related services must also in all respects comply with ERs 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also ER 8.4.

[12] Variations in language of this Rule from ABA Model Rule 5.7 as adopted in 2002 are not intended to imply a difference in substance.

### **ER 7.1. Communications Concerning a Lawyer's Services (Clean)**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

[1] Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[2] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

#### **Firm Names**

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name

or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as “Springfield Legal Clinic,” an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm’s behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer “concentrates in” or is a “specialist,” practices a “specialty,” or “specializes in” particular fields based on the lawyer’s experience, specialized training or education, but such communications are subject to the “false and misleading” standard applied in this Rule to communications concerning a lawyer’s services.

### **Certified Specialists**

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer’s communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a United States Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a United States Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

### **Required Contact Information**

[9] This Rule requires that any communication about a lawyer or law firm’s services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

### **ER 7.1 Communications Concerning a Lawyer's Services (Redline)**

A lawyer shall not make ~~or knowingly permit to be made on the lawyer's behalf~~ a false or misleading communication about the lawyer or the lawyer's services.

(a) A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

(b) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.

(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

#### **Comment [2003 Rule 2019 amendment]**

~~[1] This Rule governs all communications about a lawyer's services, including advertising permitted by ER 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful. A clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is false or misleading.~~

[2 1] Misleading ~~Truthful~~ statements ~~that are misleading~~ are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement also is misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3 2] ~~Promising or guaranteeing a particular outcome or result is misleading.~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of a clear and conspicuous disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4 3] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. ER 8.4(c). See also ER 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

### **Firm Names**

[4] Firm names, letterhead and professional designations are communications concerning a lawyer's services. A firm may be designated by the names of all or some of its current members, by the names of deceased members where there has been a succession in the firm's identity or by a trade name if it is not false or misleading. A firm name cannot include the name of a lawyer who is disbarred or on disability inactive status because to continue to use a disbarred lawyer's name is misleading. A lawyer or law firm may be designated by a distinctive website address, social media username or comparable professional designation that is not misleading. A law firm name or designation is misleading if it implies a connection with a government agency, with a deceased lawyer who was not a former member of the firm, with a lawyer not associated with the firm or a predecessor firm, with a nonlawyer or with a public or charitable legal services organization. If a firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express statement explaining that it is not a public legal aid organization may be required to avoid a misleading implication.

[5] A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction. Lawyers may not imply or hold themselves out as practicing together in one firm when they are not a firm, as defined in Rule 1.0(c), because to do so would be false and misleading. It is misleading to use the name of a lawyer holding a public office in the name of a law firm, or in communications on the law firm's behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm. Whether a communication about a lawyer or legal services is false or misleading is based upon the perception of a reasonable person.

[6] Paragraph (b) of this Rule permits a lawyer to communicate that the lawyer does or does not practice in particular areas of law. A lawyer is generally permitted to state that the lawyer "concentrates in" or is a "specialist," practices a "specialty," or "specializes in" particular fields based on the lawyer's experience, specialized training or education, but such communications are subject to the "false and misleading" standard applied in this Rule to communications concerning a lawyer's services. See comment to ER 5.5(b)(2) regarding advertisements and communications by non-members. A non-member lawyer's failure to inform prospective clients that the lawyer is not licensed to practice law by the Supreme Court of Arizona or has limited his or her practice to federal or tribal legal matters may be misleading.

### **Certified Specialists**

[7] The Patent and Trademark Office has a long-established policy of designating lawyers practicing before the Office. The designation of Admiralty practice also has a long historical tradition associated with maritime commerce and the federal courts. A lawyer's communications about these practice areas are not prohibited by this Rule.

[8] This Rule permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate authority of a state, the District of Columbia or a U.S. Territory or accredited by the American Bar Association or another organization, such as a state supreme court or a state bar association, that has been approved by the authority of the state, the District of Columbia or a U.S. Territory to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an

advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. To ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

**Required Contact Information**

[9] This Rule requires that any communication about a lawyer or law firm's services include the name of, and contact information for, the lawyer or law firm. Contact information includes a website address, a telephone number, an email address or a physical office location.

## ER 7.2 [RESERVED] (Clean)

### **ER 7.2 [RESERVED] Advertising Communications Concerning a Lawyer's Services: Specific Rules (Redline)**

~~(a) Subject to the requirements of ERs 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.~~

~~(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:~~

~~(1) pay the reasonable costs of advertisements or communications permitted by this Rule;~~

~~(2) pay the usual charges of a legal service plan or a not for profit or qualified lawyer referral service, which may include, in addition to any membership fee, a fee calculated as a percentage of legal fees earned by the lawyer to whom the service or organization has referred a matter, provided that any such percentage fee shall not exceed ten percent, and shall be used only to help defray the reasonable operating expenses of the service or organization and to fund public service activities, including the delivery of pro bono legal services. The fees paid by a client referred by such service shall not exceed the total charges that the client would have paid had no such service been involved. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority; and~~

~~(3) pay for a law practice in accordance with ER 1.17.~~

~~(c) Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.~~

~~(d) Every advertisement (including advertisement by written solicitation) that contains information about the lawyer's fees shall be subject to the following requirements:~~

~~(1) advertisements and written solicitations indicating that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery shall disclose (A) that the client will be liable for expenses regardless of outcome unless the repayment of such is contingent upon the outcome of the matter and (B) whether the percentage fee will be computed before expenses are deducted from the recovery;~~

~~(2) range of fees or hourly rates for services may be communicated provided that the client is informed in writing at the commencement of any client lawyer relationship that the total fee within the range which will be charged or the total hours to be devoted will vary depending upon that particular matter to be handled for each client and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;~~

~~(3) fixed fees for specific routine legal services, the description of which would not be misunderstood or be deceptive, may be communicated provided that the client is informed~~

~~in writing at the commencement of any client-lawyer relationship that the quoted fee will be available only to clients whose matters fall within the services described and that the client is entitled without obligation to a specific estimate of the fee likely to be charged;~~

~~(4) a lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee, or range of fees, for at least ninety (90) days unless the advertisement specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.~~

~~(e) Advertisements on the electronic media may contain the same information as permitted in advertisements in the print media. If a law firm advertises on electronic media and a person appears purporting to be a lawyer, such person shall in fact be a lawyer employed full time at the advertising law firm. If a law firm advertises a particular legal service on electronic media, and a lawyer appears as the person purporting to render the service, the lawyer appearing shall be the lawyer who will actually perform the service advertised unless the advertisement discloses that the service may be performed by other lawyers in the firm.~~

~~(f) Communications required by paragraphs (e) and (d) shall be clear and conspicuous. To be “clear and conspicuous” a communication must be of such size, color, contrast, location, duration, cadence, and audibility that an ordinary person can readily notice, read, hear, and understand it.~~

#### **Comment [2003 rule]**

~~[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.~~

~~[2] This ER permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.~~

~~[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against “undignified” advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons~~

of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see ER 7.3(a) for the prohibition against a solicitation through a real-time electronic exchange initiated by the lawyer.

[4] Neither this Rule nor ER 7.3 prohibits communications authorized by law, such as notice to members of a class action litigation.

[5] Except as permitted under paragraphs (b)(1)–(b)(3), lawyers are not permitted to pay others for recommending the lawyer's services or channeling professional work in a manner that violates ER 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. Directory listings, group advertisements, and online referral services that list lawyers by practice area do not constitute impermissible "recommendations."

[3] Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this ER, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client development services, such as publicists, public relations personnel, business development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator is consistent with ERs 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with ER 7.1 (communications concerning a lawyer's services). To comply with ER 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. Giving or receiving a de minimis gift that is not a quid pro quo for referring a particular client is permissible. See also ER 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers); ER 8.4 (duty to avoid violating the ERs through the actions of another).

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. Published and electronic group advertising and directories are not lawyer referral services, but participation in such listings is governed by ERs 7.1 and 7.4. A lawyer referral service, on the other hand, is any organization in which a person or entity receives requests for lawyer services, and allocates such requests to a particular lawyer or lawyers or that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this ER only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that

is approved by an appropriate regulatory authority, such as the State Bar of Arizona, as affording adequate protections for the public.

~~[7] The reasonable operating expenses of a legal service plan or lawyer referral service include payment of the actual expenses of operating, conducting, promoting and developing the service, including expenditures for capital purposes for the service, as determined on a reasonable accounting basis and with provision for reasonable reserves. Public service activities of a legal service plan or lawyer referral service include the following: (a) furnishing or providing funding for legal services to persons and entities financially unable to pay for all or part of such services; (b) developing and implementing programs to educate members of the public with respect to the law, the judicial system, the legal profession, or the need, manner of obtaining, and availability of legal services; and (c) creating and administering programs to improve the administration of justice or aid in relations between the Bar and the public.~~

~~[8] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See ER 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these ERs. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in person, telephonic, or real-time contacts that would violate ER 7.3.~~

~~[9] Paragraph (f) requires communications under paragraphs (c) and (d) to be clear and conspicuous. In addition to the requirements of paragraph (f), a statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner.~~

### **ER 7.3. Solicitation of Clients (Clean)**

(a) “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the contact is with a:

- (1) lawyer;
- (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or
- (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf even when not otherwise prohibited by paragraph (b), if:

- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment; or

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

(e) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### **Comment**

[1] A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to electronic searches.

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer seeking pecuniary gain solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of under influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition, since lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. Those forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that may overwhelm the person's judgment.

[4] The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of live person-to-person contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in overreaching against a former client or a person with whom the lawyer has a close personal, family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[6] A solicitation that contains false or misleading information within the meaning of ER 7.1, that involves coercion, duress or harassment within the meaning of ER 7.3(c)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(c)(1) is prohibited. Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer.

[8] Communications authorized by law or ordered by a court or tribunal include a notice to potential members of a class in class action litigation.

### **ER 7.3 Solicitation of Clients (Clean)**

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

~~(a b)~~ A lawyer shall not solicit professional employment by live person-to-person ~~in person, live telephone or real-time electronic contact~~ ~~solicit professional employment from the person contacted or employ or compensate another to do so~~ when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the ~~person contacted~~ contact is with a:

(1) ~~is a lawyer; or~~

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

~~(b c)~~ A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf ~~from the person contacted by written, recorded or electronic communication or by in person, telephone or real-time electronic contact~~ even when not otherwise prohibited by paragraph ~~(ab)~~, if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment; or

~~(3) the solicitation relates to a personal injury or wrongful death and is made within thirty (30) days of such occurrence.~~

(d) This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

~~(e) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known or believed likely to be in need of legal services for a particular matter shall include the words "Advertising Material" in twice the font size of the body of the communication on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).~~

~~(1) At the time of dissemination of such written communication, a written copy shall be forwarded to the State Bar of Arizona at its Phoenix office.~~

~~(2) Written communications mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery.~~

~~(3) If a contract for representation is mailed with the written communication, the contract shall be marked "sample" in red ink and shall contain the words "do not sign" on the client signature line.~~

~~(4) The lawyer initiating the communication shall bear the burden of proof regarding the truthfulness of all facts contained in the communication, and shall, upon request of the State Bar or the recipient of the communication, disclose how the identity and specific legal need of the potential recipient were discovered.~~

~~(d e)~~ Notwithstanding the prohibitions in ~~paragraph (a)~~ this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in live person-to-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

### **2003 Comment [2009 2019 amendment]**

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a A lawyer's communication typically does is not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet electronic searches. See ER 8.4 (duty to avoid violating the ERs through the actions of another).~~

[2] “Live person-to-person contact” means in-person, face-to-face, live telephone and other real-time visual or auditory person-to-person communications, where the person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages, or other written communications that recipients may easily disregard. There is a A potential for abuse overreaching exists when a lawyer seeking pecuniary gain solicits solicitation a person involves direct in-person, live telephone or real-time electronic contact by a lawyer with someone known to be in need of legal services. This These forms of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon an immediate response being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The This potential for abuse overreaching inherent in direct in-person, live person-to-person contact telephone or real-time electronic solicitation justifies its prohibition, particularly since

lawyers have alternative means of conveying necessary information to those who may be in need of legal services. In particular, communications can be mailed or transmitted by email or other electronic means that do not ~~involve real-time contact and do not~~ violate other laws ~~governing solicitations~~. Those forms of communications ~~and solicitations~~ make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to ~~direct in live person-to-person, telephone or real-time electronic~~ persuasion that may overwhelm the person's judgment.

[4] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under ER 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of ER 7.1. The contents of direct in-live person-to-person, live telephone or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.~~

[5] There is far less likelihood that a lawyer would engage in ~~abusive practices~~ overreaching against a former client or a person with whom the lawyer has a close personal, or family, business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for ~~abuse~~ overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent the entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and other people who routinely retain lawyers for business transactions or formations. ~~Consequently, the general prohibition in ER 7.3(a) and the requirements of ER 7.3(c) are not applicable in those situations. Also, p Paragraph (ab)~~ is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to ~~its~~ their members or beneficiaries.

[6] ~~But even permitted forms of solicitation can be abused. Thus, any A solicitation which that contains false or misleading information which is false or misleading within the meaning of ER 7.1, which that involves coercion, duress or harassment within the meaning of ER 7.3(b-c)(2), or which that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of ER 7.3(b-c)(1) is prohibited. Moreover, if after sending a letter or other communication to a person as permitted by paragraph (c), the lawyer receives no response, any further effort to communicate with the person may violate the provisions of ER 7.3(b). Live, person-to-person contact of individuals who may be especially vulnerable to coercion or duress ordinarily is not appropriate, including, for example, the elderly, disabled, or those whose first language is not English.~~

[7] This ER Rule is ~~does not intended to~~ prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. ~~Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under ER 7.2.~~

[8] ~~The requirement in ER 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.~~

[9] ~~Lawyers may comply with the requirement of paragraph (c)(1) by submitting (a) a copy of every written, recorded or electronic communication soliciting professional employment from a prospective client known or believed likely to be in need of legal services for a particular matter, or (b) a single copy of any identical communication published or sent to more than one person and a list of the names and mailing or e-mail addresses or fax numbers of the intended recipients and the dates identical solicitations were published or sent. Lawyers may comply with the requirement of paragraph (c)(1) by submitting the required communications and information to the State Bar on a monthly basis.~~

[10] ~~The State Bar may dispose of the submissions received pursuant to paragraph (c)(1) after one year following receipt.~~

[11] ~~Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with ERs 7.1, 7.2 and 7.3(b). See ER 8.4(a).~~

## ER 7.4 [RESERVED] (Clean)

### **ER 7.4. [RESERVED]— Communication of Fields of Practice (Redline)**

~~(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state or imply that the lawyer is a specialist except as follows:~~

~~(1) a lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation;~~

~~(2) a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation; and (3) a lawyer certified by the Arizona Board of Legal Specialization or by a national entity that has standards for certification substantially the same as those established by the board may state the area or areas of specialization in which the lawyer is certified. Prior to stating that the lawyer is a specialist certified by a national entity, the entity must be recognized by the board as having standards for certification substantially the same as those established by the board. If the national entity has not been recognized by the board, it may make application for recognition by completing an application form provided by the board.~~

~~(b) Communications to the Arizona Board of Legal Specialization and its Advisory Commissions relating to an applicant's qualifications for specialization certification shall be absolutely privileged, and no civil action predicated thereon may be instituted or maintained against any evaluator, staff or witness who communicates with or before the Board or its Advisory Commissions. Members of the Board of Legal Specialization, its Advisory Commission, and others involved in the specialization certification process shall be immune from suit for any conduct in the course of their official duties.~~

### **Comment**

~~[1] This Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services; for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted so to indicate. However, stating that the lawyer is a "specialist" in a particular field is not permitted. These terms have acquired a secondary meaning implying formal recognition as a specialist. Hence, use of these terms may be misleading unless the lawyer is certified or recognized in accordance with procedures in the state where the lawyer is licensed to practice.~~

~~[2] Recognition of specialization in patent matters is a matter of long established policy of the Patent and Trademark Office. Designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.~~

## ER 7.5 [RESERVED] (Clean)

### **~~ER 7.5. [RESERVED] Firm Names and Letterheads (Redline)~~**

~~(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.~~

~~(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.~~

~~(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.~~

~~(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.~~

### **~~COMMENT TO 2003 AND 2012 AMENDMENTS~~**

~~[1] [2012 Amendment] A firm may be designated by the names of all or some of its members, by the names of deceased or retired members where there has been a continuing succession in the firm's identity, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation that complies with ER 7.1.~~

~~[2] [2003 Amendment] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.~~

~~[3] [2003 Amendment] "Of counsel" designation may be used to state or imply a relationship between lawyers only if the relationship is close, personal, continuous, and regular.~~

**APPENDIX 2: Draft Administrative Order and Forms Re: Limited Scope Representation**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
LIMITED SCOPE REPRESENTATION	)	Administrative Order
(DELIVERY OF UNBUNDLED LEGAL	)	No. 2019 - _____
SERVICES)	)	
	)	
_____	)	

Low-income individuals and increasing numbers of unrepresented litigants cannot afford the costs of full-service legal representation. Limited scope representation, or unbundled legal services, describes a legal service delivery method whereby an attorney assists a client with specific elements of the matter, as opposed to handling the case from beginning to end.

Although self-represented litigants may avail themselves of online court forms and self-help materials, without advice and counsel from an attorney, those litigants may come to court uninformed, unprepared, or simply overwhelmed. Others may be unable to afford the cost of legal representation for every aspect of their case. These situations impede access to justice. Limited scope representation provides unrepresented litigants an option for effective representation they may more easily afford.

Unbundling of legal services is authorized and does not violate the Arizona Rules of Professional Conduct as long as the attorney’s representation is reasonable under the circumstances. (Arizona Ethics Rule 1.2 governs limited scope representation).

Approved limited scope representation forms are commonly used in civil and family law matters, (Rule 5.3 of the Rules of Civil Procedure and Rule 9 of the Family Law Rules of Procedure). The delivery of Legal Services Task Force recommended that a general notice of limited scope representation and notice of completion of limited scope representation be developed for any area of law that may not already offer a form. See Appendix A to this Order for Notice of Limited Scope Representation and Notice of Completion of Limited Scope Representation.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED, that to the extent not inconsistent with the Rules of this Court, an attorney may enter a limited appearance when representing a client.

IT IS ORDERED, that in accordance with Rule 1.2 of the Arizona Rules of Professional Conduct, an attorney may enter a limited appearance in a court proceeding including, but not limited to, discovery, motions practice, or hearings.

IT IS ORDERED, that an attorney's appearance may be limited by date, time period, activity, or subject matter, when specifically stated in a Notice of Limited Appearance filed and served prior to or simultaneous with the proceeding(s) for which the attorney appears.

IT IS ORDERED, that the attorney's limited appearance terminates when that attorney files a Notice of Completion of Limited Scope Representation, which must be served on each of the parties, including the limited appearance attorney's own client.

IT IS ORDERED, that (1) service on an attorney who has entered a limited appearance is required only for matters within the scope of the representation as stated in the notice; (2) any such service also must be made on the party; and (3) service on the attorney for matters outside the scope of the limited appearance does not extend the scope of the attorney's representation.

IT IS ORDERED, that this Administrative Order shall take effect on the date of this Order.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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ROBERT BRUTINEL  
Chief Justice

FOR CLERK'S USE ONLY

**ARIZONA SUPERIOR COURT**  
**IN \_\_\_\_\_ COUNTY**

**IN THE MATTER OF:**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff/Petitioner)

**NOTICE OF  
LIMITED SCOPE  
REPRESENTATION**

\_\_\_\_\_  
(Defendant/Respondent)

THE CLERK OF THE COURT will please note that I am entering an appearance limited to (select one and specify):

date:  
\_\_\_\_\_.

time period:  
\_\_\_\_\_.

activity:  
\_\_\_\_\_.

subject matter:  
\_\_\_\_\_.

My appearance will terminate upon my filing a Notice of Completion.

My client and I agree that my appearance is limited and does not extend beyond what is specified above without mutual and informed consent and unless a new Notice of Limited Scope Representation is filed.

Notices and documents concerning my limited scope representation must be served on me and my client. All notices and documents regarding matters outside the scope of my representation

must be served only on my client and any other counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a copy of this Notice of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street address

\_\_\_\_\_  
Print name and Bar number

\_\_\_\_\_  
City, state, zip code

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Date

FOR CLERK'S USE ONLY

**ARIZONA SUPERIOR COURT**  
**IN \_\_\_\_\_ COUNTY**

**IN THE MATTER OF:**

**CASE NO.:** \_\_\_\_\_

\_\_\_\_\_  
(Plaintiff/Petitioner)

**NOTICE OF  
COMPLETION OF  
LIMITED SCOPE  
REPRESENTATION**

\_\_\_\_\_  
(Defendant/Respondent)

THE CLERK OF THE COURT will please note that as of the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_, I completed the (select one):

date:  
\_\_\_\_\_

time period:  
\_\_\_\_\_

activity:  
\_\_\_\_\_

subject matter:  
\_\_\_\_\_

specified in my Notice of Limited Scope Representation. The filing of this Notice of Completion terminates my appearance without necessity of leave of court. I informed my client that my appearance was temporary and will terminate upon the filing of this Notice of Completion.

Any subsequent notices or documents pertaining to this case must now be served on my client and any other counsel who has entered an appearance on my client's behalf.

I hereby certify that the foregoing information is true and correct to the best of my knowledge

and belief and that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served a copy of this Notice of Completion of Limited Scope Representation on all parties or their counsel and on my client by hand, first-class mail, or electronically by agreement of the parties, court rule or court order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Street address

\_\_\_\_\_  
Print name and Bar number

\_\_\_\_\_  
City, state, zip code

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email address

\_\_\_\_\_  
Date

## **APPENDIX 3: Rule 38(d), Arizona Rules of Supreme Court**

### **Proposed Rule 38(d), Arizona Rules of Supreme Court (Clean)**

#### **(d) Clinical Law Professors, Law Students, and Law Graduates**

1. *Purpose.* This purpose of this rule is to provide law students and recent law school graduates with supervised instruction and training in the practice of law for a limited time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

#### 2. *Definitions.*

A. “Law school” means a law school either provisionally or fully accredited by the American Bar Association.

B. “Certified limited practice student” is a law student of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Certified limited practice graduate” is a law graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice graduate.

D. “Clinical Law Professor” is a faculty member teaching a clinical law program at a law school in Arizona either provisionally or fully accredited by the American Bar Association.

E. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.

F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, that he or she will be responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

G. “Supervising attorney” is an active member of the State Bar of Arizona in good standing who has practiced law or taught law in an accredited law school as a full-time occupation for at least two years, and agrees in writing to supervise the certified limited practice student or certified limited practice graduate pursuant to these rules, and is identified as the supervising attorney in the application for certification or recertification. The supervising attorney may designate a deputy, assistant, or other staff attorney to supervise the certified limited practice student or certified limited practice graduate when permitted by these rules.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.

#### 3. *General Provisions.*

A. Limited Bar Membership. To the extent a professor, law student, or law graduate is engaged

in the practice of law under this rule, the professor, law student, or law graduate shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. *Nonapplicability of Attorney Discipline Rules to Terms of the Certification.* The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor, certified limited practice student, or certified limited practice graduate pursuant to these rules. Termination of certification shall be without prejudice to the privilege of the professor, law student, or law graduate to apply for admission to practice law if the professor, law student, or law graduate is in other respects qualified for such admission.

C. *Effect of Certification on Application for Admission to Bar.* The certification of a clinical law professor, law student, or law graduate shall not be considered as an advantage or a disadvantage to the professor, law student, or law graduate in an application for admission to the state bar.

D. *Privileged Communications.* The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising and designated attorneys, certified limited practice students, and certified limited practice graduates.

#### 4. *Clinical Law Professors.*

A. *Activities of Clinical Law Professors.* A clinical law professor who is certified pursuant to this rule may appear as a lawyer solely in connection with supervision of students in a clinical law program in a law school in Arizona. A clinical law professor may appear in any court or before any administrative tribunal in this state in the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. *Requirements and Limitations for Clinical Law School Professors.* To appear as a lawyer pursuant to these rules, the clinical law professor must:

- i. be admitted by examination to the bar of any state or the District of Columbia;
- ii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;
- iii. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and

iv. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in [Rule 34\(j\)](#).

C. Certification of the Clinical Law Professor. The certification shall be signed by the clinical law professor and the dean of the law school on the form prescribed by the clerk of the Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student. The clinical law professor must ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school's clinical law program.

E. Termination of Certification.

i. The dean at any time, with or without cause or notice or hearing, may terminate a certification of a clinical law professor by filing a notice of the termination with the clerk of the Supreme Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

ii. The Court at any time, with or without cause or notice or hearing, may terminate a certification of a clinical law professor by filing notice of the termination with the clerk of this Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

## 5. *Law Students*

A. Law Student Eligibility for Limited Practice Certification. To be eligible to become a certified limited practice student, an applicant must

i. have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour credits if the law school or the student is on some basis other than a semester, at an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law student, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the law school where the student is enrolled as being in good

academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

**B. Application to become a Certified Limited Practice Student or Extend the Certification Period**

i. All applications to become a certified limited practice student or to extend the period of certification must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved student limited practice certifications to the admissions department of the state bar.

ii. The application for certification or extension must be signed by the applicant, the dean, of the law school in which the applicant is enrolled, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule; will immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules; and has read and will abide by the Arizona Rules of Professional Conduct and these rules.

iv. The dean of the law school in which the applicant is enrolled must attest that the applicant meets the requirements of these rules, and, to the best of the dean's knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the Clerk of the Court if the certified limited practice student no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for supervising the applicant and attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

**C. Permitted Activities and Requirements of a Certified Limited Practice Student; Presence of Supervising or Designated Attorney**

i. Court and Administrative Tribunal Appearances. A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has provided written approval of that appearance. The written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge or presiding officer and the certified limited practice student must advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice student in the following circumstances:

- a. In any civil case in justice, municipal, and magistrate court, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;
  - b. In any civil case in superior court or before any administrative tribunal.
  - c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;
  - d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;
  - e. In any misdemeanor criminal defense case, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and
  - f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.
  - g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.
- ii. Other Client Representation Activities. Under the supervision of the supervising attorney, but outside the supervisor's presence, a certified limited practice student may:
- a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney;
  - b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;
  - c. assist indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;
  - d. give legal advice and perform other appropriate legal services, but only with the consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation or request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title "Certified Limited Practice Student."

i. A certified limited practice student may use the title "Certified Limited Practice Student" only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice student's name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney or designated attorney; and otherwise comply with these rules.

iii. A certified limited practice student shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

i. supervise and assume professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

ii. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper training of the certified limited practice student and the protection of the client;

iii. read, approve, and sign any pleadings, briefs or other documents prepared by the certified

limited practice student before the filing thereof, and read and approve any document prepared by the certified limited practice student for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney shall still provide general supervision;

iv. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice student during the period of certification, the certified limited practice student must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice student. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice student shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice student requests termination of the certification in writing or notifies the clerk of the Court that he or she no longer meets the requirements of these rules. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease before the date specified in the notice of certification. In such event, the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar. The dean may issue a modified certification reflecting the substitution of a new supervising attorney.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice student or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

## 6. *Law Graduates*

A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, an applicant must:

- i. have graduated from an accredited law school;
- ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law graduate, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;
- iii. certify in writing that the law graduate has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and
- iv. be certified by the dean of the accredited law school where the law graduate was enrolled on graduation as having graduated in good academic standing and being of good character.

B. Application to Become a Certified Limited Practice Graduate

- i. All applications to become a certified limited practice graduate must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved graduate limited practice certifications to the admissions department of the state bar.
- ii. The application for certification must be signed by the applicant, the dean of the law school where the applicant was enrolled on graduation, and the supervising attorney.
- iii. The applicant must attest that he or she meets all of the requirements of this rule, will immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules, and has read and will abide by the Arizona Rules of Professional Conduct and these rules.
- iv. The dean of the law school where the applicant was enrolled on graduation must attest that the applicant meets the requirements of these rules, and, to the best of the dean's knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules.
- v. The supervising attorney must specify the period during which he or she will be responsible for and will supervise the applicant and attest that he or she has read and will abide by, the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Presence of Supervising Attorney or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has also provided written approval of that appearance. In each case, the written consent and approval must be filed in the case and be brought to the attention of the judge or the presiding officer. In addition, the certified limited practice graduate must advise the court at the law graduate's first appearance in the case of the certification to appear as a law graduate pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice graduate in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal;

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the general supervision of the supervising attorney or designated attorney, but outside his or her presence, a certified limited practice graduate may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;

b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

c. assist indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only after consultation with and consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the certified limited practice graduate's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

#### D. Use of the Title "Certified Limited Practice Graduate."

i. A certified limited practice graduate may use the title "Certified Limited Practice Graduate" only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice graduate's name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the law graduate is a certified limited practice graduate pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney or designated attorney if required by these rules, and otherwise comply with these rules.

iii. A certified limited practice graduate shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice graduate from describing his or

her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

- i. supervise and assume professional responsibility for any work performed by the certified limited practice graduate while under his or her supervision;
- ii. assist and counsel the certified limited practice graduate in the activities authorized by these rules and review such activities with the certified limited practice graduate, all to the extent required for the proper training of the certified limited practice graduate and the protection of the client;
- iii. read and approve all pleadings, briefs, or other documents prepared by the certified limited practice graduate as required by these rules; sign any pleading, brief, or other document if required by these rules, and read and approve any document prepared by the certified limited practice graduate for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney must still provide general supervision;
- iv. assume professional responsibility for all pleadings, briefs, or other documents filed in any court or with an administrative tribunal by the certified limited practice graduate under his or her supervision;
- v. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited graduate has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice graduate during the period of certification, the certified limited practice graduate must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice graduate. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice graduate shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

- i. The certified limited practice graduate requests termination of the certification in writing or notifies the Clerk of the Court that he or she no longer meets the requirements of these rules. In such event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.
- ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision

of the certified limited practice graduate will cease before the date specified in the certification. In such event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause or notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice graduate or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination, or the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible or fails to obtain a score equal to or greater than the acceptable score established by the Committee on Examinations on the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the law graduate, the Court extends the 12-month period.

**Rule 38, Arizona Rules of Supreme Court (Redline)**

(a) – (c) No Change.

**(d) Clinical Law Professors, ~~and Law Students, and Law Graduates~~**

1. *Purpose.* ~~This rule is adopted to encourage law schools to provide clinical instruction of varying kinds~~ The purpose of this rule is to provide law students and recent law school graduates with supervised instruction and training in the practice of law for a limited time, and to facilitate volunteer opportunities for those individuals in pro bono contexts.

2. *Definitions.*

A. ~~“Accredited law school”~~ “Law school” means a law school either provisionally or fully ~~approved and~~ accredited by the American Bar Association.

B. “Certified limited practice student” is a law student ~~or a graduate~~ of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice student.

C. “Certified limited practice graduate” is a law graduate of an accredited law school who holds a currently effective Arizona Supreme Court Certification as a certified limited practice graduate.

D. “Clinical Law Professor” is a faculty member teaching a clinical law program at a law school in Arizona either provisionally or fully accredited by the American Bar Association.

~~C.~~ E. “Dean” means the dean, the academic associate dean, or the dean’s designee of the accredited law school where the law student is enrolled or the law graduate was enrolled on graduation.

~~D.~~ “Designated attorney” is, ~~exclusively in the case of government, any deputy, assistant or other staff attorney authorized and selected by a supervising attorney to supervise the certified limited practice student where permitted by these rules.~~

~~E.~~ F. “Period of supervision” means the dates for which the supervising attorney has declared, on the application for certification or recertification, that he or she will be responsible for any work performed by the certified limited practice student or the certified limited practice graduate under his or her supervision.

~~F.~~ “Personal presence” means ~~the supervising attorney or designated attorney is in the physical presence of the certified limited practice student.~~

G. “Rules” means ~~Rule 38, Rules of Supreme Court.~~

~~H.~~ G. “Supervising attorney” is an ~~attorney admitted to Arizona full or limited practice who~~ active member of the State Bar of Arizona in good standing who has practiced law or taught

law in an accredited law school as a full-time occupation for at least two years, and agrees in writing to supervise the certified limited practice student or certified limited practice graduate pursuant to these rules, and is identified as the supervising attorney in and whose name appears on the application for certification or recertification. The supervising attorney may designate a deputy, assistant, or other staff attorney to supervise the certified limited practice student or certified limited practice graduate when permitted by these rules.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.

### 3. *General Provisions.*

A. Limited Bar Membership. To the extent a professor, ~~or a law student, or law graduate~~ is engaged in the practice of law under this rule, the professor, ~~or law student, or law graduate~~ shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees). The provisions of this rule shall govern rather than the provisions of other rules relating to admission and discipline.

B. Nonapplicability of Attorney Discipline Rules to Terms of the Certification. The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor, ~~or a certified limited practice student, or certified limited practice graduate~~ pursuant to ~~this rule~~ these rules. Termination of certification shall be without prejudice to the privilege of the professor, ~~or the law student, or law graduate~~ to ~~make application~~ apply for admission to practice law if the professor, ~~or the law student, or law graduate~~ is in other respects qualified for such admission.

C. Effect of Certification on Application for Admission to Bar. The certification of a clinical law professor, ~~or a limited practice law student, or law graduate~~ shall ~~in no way not~~ be considered as an advantage or a disadvantage to the professor, ~~or the law student, or law graduate~~ in an application for admission to the state bar.

D. Privileged Communications. The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising and designated attorneys (~~and designated attorneys~~), and certified limited ~~student~~ practice students, and certified limited practice graduates.

### 4. *Clinical Law Professors.*

A. Activities of Clinical Law Professors. A clinical law professor ~~not a member of the state bar but who is~~ certified pursuant to this rule may appear as a lawyer solely, in connection with supervision of students in a clinical law program ~~approved by the dean and faculty of~~ in a law school in Arizona ~~either provisionally or fully approved and accredited by the American Bar Association~~. A clinical law professor may appear in any court or before any administrative tribunal in this state in the matters enumerated in paragraph (d)(5)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing

to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. Requirements and Limitations for Clinical Law School Professors. ~~In order to make an appearance~~ To appear as a lawyer pursuant to ~~this~~ these rules, the clinical law professor must:

~~i. be duly employed as a faculty member of a law school in Arizona either provisionally or fully approved or accredited by the American Bar Association for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;~~

~~ii~~ i. be admitted by examination to the bar of ~~another~~ any state or the District of Columbia;

~~iii~~ ii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered;

~~iv~~ iii. certify in writing that the clinical law professor has read and is familiar with the Arizona Rules of Professional Conduct and the Rules of the Supreme Court of Arizona and statutes of the State of Arizona relating to the conduct of lawyers; and

~~v~~ iv. submit evidence that the clinical law professor has successfully completed the course on Arizona law described in [Rule 34\(j\)](#).

C. Certification of the Clinical Law Professor. The certification shall be signed by the clinical law professor and the dean of the law school on the form prescribed by the clerk of ~~this~~ the Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student. ~~It shall be the responsibility of t~~The clinical law professor must ~~to~~ ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school's clinical law program. ~~In the case of a certified student who has graduated and participates in the program pending the taking of the bar examination, the clinical law professor shall, on a monthly basis, based on such reporting from the certified limited practice student and the supervising attorney as the law school shall require, confirm that the certified graduate has received and is receiving adequate attorney supervision and guidance.~~

E. ~~Withdrawal or~~ Termination of Certification.

i. The dean at any time, with or without cause or notice or hearing, may ~~withdraw~~ terminate a certification of a clinical law professor ~~at any time~~ by filing a notice ~~to that effect, with or without stating the cause for the withdrawal,~~ of the termination with the clerk of ~~this Court,~~ who shall ~~forthwith mail copies thereof to the clinical law professor and the State Bar of Arizona~~ the Supreme Court. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

ii. The Court ~~at any time, with or without cause or notice or hearing,~~ may terminate ~~the~~ a certification of a clinical law professor ~~at any time without cause and without notice or hearing~~ by filing notice of the termination with the clerk of this Court ~~and with the state bar~~. The clerk shall mail copies of the notice to the clinical law professor and the state bar.

## 5. *Practical Training of Law Students*

A. Law Student Eligibility for Limited Practice Certification. To be eligible to become a certified limited practice student, ~~a law student applicant~~ an applicant must

i. have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour credits if the law school or the student is on some basis other than a semester, at an accredited law school, ~~subject to the time limitation set forth in these rules;~~

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered, ~~but this shall not;~~ this requirement does not prevent a supervising lawyer, legal aid bureau services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law student, nor shall it or prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the student has read and is familiar with the Arizona Rules of Professional Conduct, ~~and~~ the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the ~~accredited~~ law school where the student is enrolled (~~or was enrolled on graduation~~), ~~or by the dean's designee,~~ as being in good academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending academic courses in civil procedure, criminal law, evidence, and professional responsibility.

B. Application ~~for~~ to become a Certified Limited Practice Student or Extend the Certification Period

i. All applications ~~for student~~ to become a certified limited practice certification student or ~~requests to change or add a supervising attorney or to extend the period of certification pursuant to these rules~~ must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated ~~appropriate nonrefundable processing~~ fee. The clerk of the Court shall send a copy of all approved student limited practice certifications to the admissions department of the state bar.

ii. ~~The application for certification shall require the signature of the applicant, the dean, associate dean, or assistant dean of the accredited law school in which the applicant is enrolled,~~

and the signature of the supervising attorney. The application for certification or extension must be signed by the applicant, the dean, of the law school in which the applicant is enrolled, and the supervising attorney.

iii. The applicant ~~shall~~ must attest that he or she meets all of the requirements of ~~the~~ these rules; ~~agrees to and shall will~~ immediately notify the clerk of the Court ~~in the event~~ if he or she no longer meets the requirements of the rules; and ~~that he or she has read, is familiar with~~ and will abide by the Arizona Rules of Professional Conduct ~~of the State of Arizona~~ and these rules.

iv. The dean, ~~associate dean, or assistant dean~~ of the ~~accredited~~ law school in which the applicant is enrolled ~~shall~~ must attest that the applicant meets the requirements of these rules,; ~~that he or she shall immediately notify the clerk of the Court in the event that the certified limited practice student no longer meets the requirements of these rules; and that he or she has no knowledge of facts or information that would indicate that the applicant is not~~ and, to the best of the dean's knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the Clerk of the Court if the certified limited practice student no longer meets the requirements of these rules.

v. The supervising attorney ~~shall~~ must specify the period during which he or she will be responsible for ~~and will supervise~~ supervising the applicant and attest that he or she has read, ~~is familiar with,~~ and will abide by the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

#### C. Permitted Activities and Requirements of a Certified Limited Practice ~~Certification~~ Student; Physical Presence of Supervising or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person ~~if that person on whose behalf the student is appearing~~ who has consented in writing to that appearance ~~and if the supervising attorney has also indicated in writing~~ provided written approval of that appearance. ~~In each case, The written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition,~~ and the certified limited practice student ~~shall orally~~ must advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. ~~A certified limited practice student may appear in the following matters:~~

a. ~~Civil Matters. In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.~~

b. ~~Criminal Matters on Behalf of the State. In any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be present except when such appearance is in justice, municipal, or magistrate courts.~~

~~e. Felony Criminal Defense Matters. In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the supervising attorney (or designated attorney) must be personally be present throughout the proceedings and shall be fully responsible for the manner in which they are conducted.~~

~~d. Misdemeanor Criminal Defense Matters. In any misdemeanor criminal defense matter in justice, municipal, or magistrate courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney shall be present during trial.~~

~~e. Appellate Oral Argument. A certified limited practice student may participate in oral arguments in the Arizona Supreme Court and Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.~~

~~Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be personally present for such period and under such circumstances as the court may direct.~~

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice student in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal.

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case, unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the ~~general~~ supervision of the supervising attorney ~~(or designated attorney)~~, but outside ~~his or her personal~~ the supervisor's presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney ~~(or designated attorney)~~;

b. prepare briefs, ~~abstracts~~ motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney ~~(or designated attorney)~~;

c. ~~provide assistance to~~ assist indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. ~~(If there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney (or designated attorney))~~;

d. ~~render~~ give legal advice and perform other appropriate legal services, but only ~~after prior consultation with and upon the express~~ with the consent of the supervising attorney ~~(or designated attorney)~~.

iii. Other Non-Representation Activities. ~~A certified limited practice student may perform any advisory or non-representational activity which could be performed by a person who is not a member of the state bar, subject to the approval by the supervising attorney (or designated attorney).~~ In connection with a volunteer legal services program and at the invitation or request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

#### D. Use of the Title "Certified Limited Practice Student."

~~i. In connection with activities performed pursuant to these rules, a~~ A certified limited practice student may use the title “Certified Limited Practice Student” only ~~and may not use the title in connection with activities not performed pursuant to these rules.~~

ii. When a certified limited practice student’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules; state the name of the supervising attorney; be signed by the supervising attorney or designated attorney; and otherwise comply with these rules.

iii. A certified limited practice student ~~may not and shall not in any way~~ hold himself or herself out as ~~a regularly admitted or~~ an active member of the state bar.

iv. Nothing ~~contained~~ in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. ~~Requirements and~~ Duties of the Supervising Attorney. The supervising attorney ~~shall~~ must:

~~i. be an active member of the state bar under these rules, and before supervising a certified limited practice student shall have practiced law or taught law in an accredited law school as a full-time occupation for at least two years;~~

~~ii. supervise no more than five (5) certified limited practice students concurrently; provided, however, that a supervising attorney who is employed full time to supervise law students as part of an organized law school or government agency training program may supervise up to, but in no case more than fifty (50) certified students;~~

~~iii. i.~~ supervise and assume personal professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

~~iv. ii.~~ assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper training of the certified limited practice student and the protection of the client;

~~v. iii.~~ read, approve, and sign any pleadings, briefs or other documents prepared by the certified limited practice student before the filing thereof, and read and approve any document prepared by the certified limited practice student for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney shall still provide general supervision;

~~vi. provide the level of supervision to the certified limited practice student required by these rules (exclusively in the case of government agencies, a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the Supervising Attorney shall still provide supervision); and~~

~~vii. in the case of a certified student who is participating in a clinical program post-graduation pending the taking of the bar examination, report to the clinical law professor and the dean of the law school, as the law school shall require, on a monthly basis regarding the supervising attorney's supervision and guidance of the certified student.~~

~~vii. iv. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on the certification.~~

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice student during the period of certification, the certified limited practice student must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice student. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

F. G. Duration and Termination of Certification. Certification of a certified limited practice student shall commence begin on the date indicated on specified in the certification and shall remain in effect for the period specified in the notice of certification unless sooner terminated pursuant to by the earliest of the following occurrences:

~~i. Termination by the Student. The certified limited practice student may requests termination of the certification in writing or notify notifies the clerk of the Court that he or she no longer meets the requirements of this rule, and these rules. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.~~

~~ii. Termination by the Supervising Attorney. The supervising attorney may notify notifies the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease before the date specified in the notice of certification. In such event, the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar, and ¶The dean may issue a modified certification reflecting the substitution of a new supervising attorney, as necessary.~~

~~iii. Termination by the Dean. A certification of student limited practice may be terminated by ¶The dean at any time, with or without cause and without notice or hearing, by filing files notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.~~

~~iv. Failure to take or Pass the Bar Examination. A certification of a student limited practice shall be terminated if the certified student fails to take or pass the first general bar examination~~

for which the student is eligible. The Court at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

~~v. Termination by the Arizona Supreme Court. A certification of student limited practice may be terminated by the Arizona Supreme Court any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if~~ One or more of the requirements for the certification no longer exists or the certified limited practice student, or supervising attorney or designated attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

## 6. Law Graduates

A. Law Graduate Eligibility for Limited Practice Certificate. To be eligible to become a certified limited practice graduate, an applicant must:

i. have graduated from an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice graduate from the person on whose behalf the services are rendered; this requirement does not prevent a supervising lawyer, legal services organization, law school, public defender agency, or the state or any political subdivision thereof from paying compensation to the eligible law graduate, or prevent any such lawyer or agency from requesting compensation or remuneration for legal services as otherwise authorized;

iii. certify in writing that the law graduate has read and is familiar with the Arizona Rules of Professional Conduct, the rules of the Supreme Court of Arizona, and the statutes of the State of Arizona relating to the conduct of attorneys; and

iv. be certified by the dean of the accredited law school where the law graduate was enrolled on graduation as having graduated in good academic standing and being of good character.

B. Application to Become a Certified Limited Practice Graduate

i. All applications to become a certified limited practice graduate must be submitted on a form provided by the clerk of the Court, to the clerk, with all the information requested on the form, together with any designated fee. The clerk of the Court shall send a copy of all approved graduate limited practice certifications to the admissions department of the state bar.

ii. The application for certification must be signed by the applicant, the dean of the law school where the applicant was enrolled on graduation, and the supervising attorney.

iii. The applicant must attest that he or she meets all of the requirements of this rule, will

immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules, and has read and will abide by the Arizona Rules of Professional Conduct and these rules.

iv. The dean of the law school where the applicant was enrolled on graduation must attest that the applicant meets the requirements of these rules, and, to the best of the dean's knowledge, is qualified by ability, training, or character to participate in the activities permitted by these rules. The dean must immediately notify the clerk of the Court if the certified limited practice graduate no longer meets the requirements of these rules.

v. The supervising attorney must specify the period during which he or she will be responsible for and will supervise the applicant and attest that he or she has read and will abide by, the Arizona Rules of Professional Responsibility, these rules, and will assume responsibility under the requirements of these rules.

#### C. Permitted Activities and Requirements of a Certified Limited Practice Graduate; Presence of Supervising Attorney or Designated Attorney

i. Court and Administrative Tribunal Appearances. A certified limited practice graduate may appear in any court or before any administrative tribunal in this state on behalf of any person who has consented in writing to that appearance if the supervising attorney has also provided written approval of that appearance. In each case, the written consent and approval must be filed in the case and be brought to the attention of the judge or the presiding officer. In addition, the certified limited practice graduate must advise the court at the law graduate's first appearance in the case of the certification to appear as a law graduate pursuant to these rules.

ii. Presence of Supervising Attorney or Designated Attorney. The supervising attorney or designated attorney must appear with the certified limited practice graduate in the following circumstances:

a. In any civil case in justice, municipal, and magistrate court unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney;

b. In any civil case in superior court or before any administrative tribunal;

c. In any criminal case on behalf of the state or any political subdivision of the state if the case is in the superior court or any appellate court;

d. In any felony criminal defense case in justice, municipal, and magistrate court, and in any criminal case in superior court;

e. In any misdemeanor criminal defense case unless the person on whose behalf the appearance is being made consents to the absence of the supervising attorney or designated attorney; however, the supervising attorney or designated attorney must be present during trial; and

f. In oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only with the specific approval of the court for that case.

g. Notwithstanding anything in this section, the court may at any time and in any proceeding require the supervising attorney or designated attorney to be present.

ii. Other Client Representation Activities. Under the general supervision of the supervising attorney or designated attorney, but outside his or her presence, a certified limited practice graduate may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice graduate is eligible to appear, but such pleadings or documents must be signed by the supervising attorney or designated attorney if filed in the superior court, Arizona Court of Appeals, Arizona Supreme Court, or with an administrative tribunal;

b. prepare briefs, motions, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney or designated attorney;

c. assist indigent inmates of correctional institutions or other persons who request assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this Court. If there is a lawyer of record in the matter, all assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney or designated attorney;

d. give legal advice and perform other appropriate legal services, but only after consultation with and consent of the supervising attorney or designated attorney.

iii. Other Non-Representation Activities. In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice graduate may appear as a law graduate volunteer to assist the proceeding in any civil matter, provided:

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the certified limited practice graduate's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice graduate has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. Use of the Title “Certified Limited Practice Graduate.”

i. A certified limited practice graduate may use the title “Certified Limited Practice Graduate” only in connection with activities performed pursuant to these rules.

ii. When a certified limited practice graduate’s name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the law graduate is a certified limited practice graduate pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney or designated attorney if required by these rules, and otherwise comply with these rules.

iii. A certified limited practice graduate shall not hold himself or herself out as an active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice graduate from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

E. Duties of the Supervising Attorney. The supervising attorney must:

i. supervise and assume professional responsibility for any work performed by the certified limited practice graduate while under his or her supervision;

ii. assist and counsel the certified limited practice graduate in the activities authorized by these rules and review such activities with the certified limited practice graduate, all to the extent required for the proper training of the certified limited practice graduate and the protection of the client;

iii. read and approve all pleadings, briefs, or other documents prepared by the certified limited practice graduate as required by these rules; sign any pleading, brief, or other document if required by these rules, and read and approve any document prepared by the certified limited practice graduate for execution by any person. If a designated attorney performs this duty in place of the supervising attorney, the supervising attorney must still provide general supervision;

iv. assume professional responsibility for all pleadings, briefs, or other documents filed in any court or with an administrative tribunal by the certified limited practice graduate under his or her supervision;

v. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited graduate has or will cease before the date indicated on the certification.

F. Substitution of the Supervising Attorney. If the supervising attorney becomes unable to supervise the certified limited practice graduate during the period of certification, the certified limited practice graduate must designate a substitute supervising attorney by submitting a form provided by the clerk of the Court, to the clerk, together with any designated fee. The substitute

supervising attorney must sign the form and specify the period during which he or she will be responsible for supervising the certified limited practice graduate. The substitute supervising attorney must also attest that he or she has read and will abide by the Arizona Rules of Professional Responsibility and will comply with the requirements of these rules.

G. Duration and Termination of Certification. Certification of a certified limited practice graduate shall begin on the date specified in the certification and shall remain in effect for the period specified in the certification unless sooner terminated by the earliest of the following occurrences:

i. The certified limited practice graduate requests termination of the certification in writing or notifies the Clerk of the Court that he or she no longer meets the requirements of these rules. In such event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

ii. The supervising attorney notifies the clerk of the Court in writing that his or her supervision of the certified limited practice graduate will cease before the date specified in the certification. In such event, the clerk shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

iii. The dean at any time, with or without cause and notice or hearing, files notice of the termination with the clerk of the Court.

iv. The Court at any time, with or without cause or notice or hearing, files notice of the termination with the clerk of the Court.

v. One or more of the requirements for certification no longer exists or the certified limited practice graduate or supervising attorney fails to comply fully with any provision of these rules or any other pertinent statute, rule or regulation. In the event of termination, the clerk of the Court shall send written notice to the law graduate, the law graduate's supervising attorney, the dean, and the state bar.

vi. The law graduate fails to take the first Arizona uniform bar examination, or the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

vii. The law graduate fails to pass the first Arizona uniform bar examination for which the law graduate is eligible or fails to obtain a score equal to or greater than the acceptable score established by the Committee on Examinations on the first uniform bar examination offered in another jurisdiction for which the law graduate is eligible.

viii. Thirty days after the Court notifies the law graduate that he or she has been approved for admission to practice law and is eligible to take the oath of admission.

ix. The Committee on Character and Fitness does not recommend to the Court that the law graduate be admitted to practice law.

x. The law graduate is denied admission to practice law by the Court.

xi. The law graduate is admitted to practice law.

xii. Expiration of 12 months from the date of the law graduate's graduation from law school unless, before expiration of the 12-month period and for good cause shown by the law graduate, the Court extends the 12-month period.

## **APPENDIX 4: Rule 31, Arizona Rules of Supreme Court**

### **Proposed Restyled Arizona Rule of Supreme Court 31 (Clean).**

#### **Rule 31. Supreme Court Jurisdiction**

**(a) Jurisdiction.** The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized “practice of law” in Arizona, as that phrase is defined in (b).

**(b) Definition.** “Practice of law” means providing legal advice or services to or for another by:

- (1) preparing or expressing legal opinions to or for another person or entity;
- (2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;
- (3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;
- (4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or
- (5) preparing a document, in any medium, intended to affect or secure a specific person’s or entity’s legal rights.

#### **Rule 31.1. Authorized Practice of Law.**

**(a) Requirement.** A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

- (1) the person is an active member in good standing of the State Bar of Arizona under Rule 32; or
- (2) the person is specifically authorized to do so under Rules 31.3, 38, or 39.

**(b) Lack of Good Standing.** A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

**Rule 31.2. Unauthorized Practice of Law.** Except as provided in Rule 31.3, a person or entity who is not authorized to practice law in Arizona under Rule 31.1(a) must not:

- (a)** engage in the practice of law in Arizona; or
- (b)** use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in Arizona.

#### **Rule 31.3. Exceptions to Rule 31.2.**

**(a) Generally.** Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court’s jurisdiction concerning that

activity. A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

**(b) Governmental Activities and Court Forms.**

(1) ***In Furtherance of Official Duties.*** An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity's regular course of business.

(2) ***Forms.*** The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

**(c) Legal Entities.**

(1) ***Definition.*** "Legal entity" means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, or a trust.

(2) ***Documents.*** A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity's use and are not made available to third parties.

(3) ***Justice and Municipal Courts.*** A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) ***General Stream Adjudication Proceeding.*** A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity but is secondary or incidental to other duties related to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) ***Administrative Hearings and Agency Proceedings.*** A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency, commission, or board, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) **Exception.** Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

**(d) Tax-Related Activities and Proceedings.**

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than \$25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claims proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

(i) a certified public accountant,

(ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

(iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than \$5,000, the taxpayer's duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

(i) the person is full-time officer partner, member, manager, or employee of the entity;

- (ii) the entity has specifically authorized the person to represent it in the proceeding;
- (iii) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and
- (v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

**(e) Other.**

(1) ***Children with Disabilities.*** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(2) ***Department of Fire, Building and Life Safety.*** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not charging a fee for the representing the party (other than receiving reimbursement for costs).

(3) ***Fiduciaries.*** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary's authority to act without an attorney if it determines that lay representation is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(4) ***Legal Document Preparers and Limited Licensed Legal Practitioners.*** Certified legal document preparers and limited licensed legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. This exception is not subject to the restriction in the second sentence of Rule 31.3(a) if a disbarred or suspended attorney has been certified as a legal document preparer or licensed as a limited license legal practitioner as provided in the Arizona Code of Judicial Administration.

(5) ***Mediators.***

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:

(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

**(6) *Nonlawyer Assistants and Out-of-State Attorneys.***

(A) A nonlawyer assistant may act under an attorney's supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

**(7) *Personnel Boards.*** An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

**(8) *State Bar Fee Arbitration.*** A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

## **Current Rule 31, Arizona Rules of Supreme Court**

### **Rule 31 Regulation of the Practice of Law**

#### **(a) Supreme Court Jurisdiction Over the Practice of Law**

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

#### 2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 38(a), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

C. "Legal assistant/paralegal" means a person qualified by education and training who performs substantive legal work requiring a sufficient knowledge of and expertise in legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona, and for whom an active member of the state bar is responsible, unless otherwise authorized by supreme court rule.

D. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement to mediate a dispute. Serving as a mediator is not the practice of law.

E. "Unprofessional conduct" means substantial or repeated violations of the Oath of Admission

to the Bar or the Lawyer's Creed of Professionalism of the State Bar of Arizona.

**(b) Authority to Practice.** Except as hereinafter provided in section (d), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar.

**(c) Restrictions on Disbarred Attorneys' and Members' Right to Practice.** No member who is currently suspended or on disability inactive status and no former member who has been disbarred shall practice law in this state or represent in any way that he or she may practice law in this state.

**(d) Exemptions.** Notwithstanding the provisions of section (b), but subject to the limitations of section (c) unless otherwise stated:

1. In any proceeding before the Department of Economic Security or Department of Child Safety, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

2. An employee may designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

3. An officer of a corporation or a managing member of a limited liability company who is not an active member of the state bar may represent such entity before a justice court or police court provided that: the entity has specifically authorized such officer or managing member to represent it before such courts; such representation is not the officer's or managing member's primary duty to the entity, but secondary or incidental to other duties relating to the management or operation of the entity; and the entity was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence that gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

4. A person who is not an active member of the state bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

5. In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

6. An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

7. A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

8. In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may be represented by a duly authorized agent who is not charging a fee for the representation.

9. An officer or employee of a corporation or unincorporated association who is not an active member of the state bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona Department of Environmental Quality in an administrative proceeding authorized under Arizona Revised Statutes. Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, or in fee arbitration proceedings conducted under the auspices of the State Bar of Arizona Fee Arbitration Committee, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not

receiving separate or additional compensation (other than reimbursement for costs) for such representation.

12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may be represented by a duly authorized agent who is not charging a fee for the representation.

13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Department of Child Safety, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1).

15. In any administrative proceeding pursuant to 20 U.S.C. § 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a party may be represented by an individual with special knowledge or training with respect to the problems of children with disabilities as determined by the administrative law judge, and who is not charging the party a fee for the representation. The hearing officer shall have discretion to remove the individual, if continued representation impairs the administrative process or causes harm to the parties represented.

16. Nothing in these rules shall limit a certified public accountant or other federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), from practicing before the Internal Revenue Service or other federal agencies where so authorized.

17. Nothing in these rules shall prohibit the rendering of individual and corporate financial and tax advice to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1).

18. Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision

of a lawyer in compliance with ER 5.3 of the rules of professional conduct. This exemption is not subject to section (c).

19. Nothing in these rules shall prohibit the supreme court, court of appeals, superior courts, or limited jurisdiction courts in this state from creating and distributing form documents for use in Arizona courts.

20. Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

21. Nothing in these rules shall prohibit the preparation of tax returns.

22. Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.

23. Nothing in these rules shall prohibit an officer or employee of a governmental entity from performing the duties of his or her office or carrying out the regular course of business of the governmental entity.

24. Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208. This exemption is not subject to paragraph (c) of this rule, as long as the disbarred attorney or member has been certified as provided in § 7-208 of the Arizona Code of Judicial Administration.

25. Nothing in these rules shall prohibit a mediator as defined in these rules from preparing a written mediation agreement or filing such agreement with the appropriate court, provided that:

(A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or

(B) the mediator is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not an active member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208.

26. Nothing in these rules shall prohibit a property tax agent, as that term is defined in A.R.S. § 32-3651, who is registered with the Arizona State Board of Appraisal pursuant to A.R.S. § 32-3642, from practicing as authorized pursuant to A.R.S. § 42-16001.

27. Nothing in these rules shall affect the ability of lawyers licensed in another jurisdiction to engage in conduct that is permitted under ER 5.5 of the rules of professional conduct.

28. In matters before the Arizona Corporation Commission, a public service corporation, an interim operator appointed by the Commission, or a nonprofit organization may be represented by a corporate officer, employee, or a member who is not an active member of the state bar if

(A) the public service corporation, interim operator, or nonprofit organization has specifically authorized the officer, employee, or member to represent it in the particular matter,

(B) such representation is not the person's primary duty to the public service corporation, interim operator, or nonprofit organization, but is secondary or incidental to such person's duties relating to the management or operation of the public service corporation, interim operator, or nonprofit organization, and

(C) the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Notwithstanding the foregoing provisions, the Commission or presiding officer may require counsel in lieu of lay representation whenever it determines that lay representation is interfering with the orderly progress of the proceeding, imposing undue burdens on the other parties, or causing harm to the parties represented.

29. In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, an individual may be represented by a duly authorized agent who is not charging a fee for the representation, other than reimbursement for actual costs.

30. A person licensed as a fiduciary pursuant to A.R.S. § 14-5651 may perform services in compliance with Arizona code of judicial administration, Part 7, Chapter 2, Section 7-202. Notwithstanding the foregoing provision, the court may suspend the fiduciary's authority to act without an attorney whenever it determines that lay representation is interfering with the orderly progress of the proceedings or imposing undue burdens on other parties.

31. Nothing in these rules shall prohibit an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action, so long as:

(A) the association's employee or management company is specifically authorized in writing by the association to appear on behalf of the association;

(B) the association is a party to the small claims action.

**APPENDIX 5: Draft Administrative Order Implementing Licensed Legal Advocate Pilot Program**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
AUTHORIZING A LICENSED ) Administrative Order  
LEGAL ADVOCATE PILOT PROGRAM ) No. 20\_\_ - \_\_\_\_\_  
 )  
 )  
 )  
\_\_\_\_\_ )

“Promoting Access to Justice” is Goal 1 of the Judiciary’s Strategic Agenda, *Justice for the Future: Planning for Excellence, 2019-2024*. The Task Force on the Delivery of Legal Services, established by Administrative Order 2018-111, was charged with reviewing the regulation of the delivery of legal services as well as examining and recommending whether nonlawyers, with specified qualifications, should be allowed to provide limited legal services.

At the same time the Task Force was pursuing its charge, the Innovation for Justice Program at the University of Arizona James E. Rogers College of Law (i4J) brought graduate students, undergraduate students and over 50 members of the community together in i4J’s Innovating Legal Services course to explore a challenge framed as: “should Arizona create a new tier of civil legal professional, and what could that mean for survivors of domestic abuse?” The Innovating Legal Services course developed a proposal for a pilot program that would train lay legal advocates to become Licensed Legal Advocates (LLAs), able to legally advise DV survivors as they navigate Arizona’s civil legal system. The proposed pilot removes the barrier imposed by unauthorized practice of law restrictions, giving the LLAs the ability to handle specifically-identified legal needs of participants at Emerge! and enhancing those participants’ access to justice. The details of the pilot program are captured in a report titled *Report to the Arizona Supreme Court Task Force on Delivery of Legal Services: Designing a New Tier of Legal Professional for Survivors of Domestic Violence*, which was presented to the Task Force.

The Task Force found the pilot program was consistent with its charge. In October 2019, the Task Force recommended to the Arizona Judicial Council (AJC) that the Supreme Court establish the Licensed Legal Advocate Pilot Program. The AJC recommended adoption of the [report/recommendation].

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that:

1. The Licensed Legal Advocate Pilot Program shall run for a period of 24 months from the date of implementation.
2. Rule 31(d) of the Arizona Rules of Supreme Court is deemed modified as set forth in Appendix A for the duration of the Licensed Legal Advocates Pilot Program.
3. Licensed legal advocates may provide legal advice in the following areas:
  - a. Identifying urgent legal needs at intake and providing advice regarding next steps of action with respect to those needs;
  - b. Assisting self-represented DV survivors with the completion of DV and family law forms and providing legal advice necessary to adequately complete those forms;
  - c. Providing advice regarding preserving potential court evidence and preparing for court hearings and mediations; and
  - d. Assisting survivors at court hearings by being able to sit with the survivor and quietly advise them as requested by the survivor or the court.
4. Licensed Legal Advocates are subject to the Licensed Legal Advocates Rules of Professional Conduct, as set forth in Appendix B, adapted from the Arizona Rules of Professional Conduct for the duration of the Licensed Legal Advocates Pilot Program.
5. Qualifications of Licensed Legal Advocates are set forth in Appendix C.
6. A licensing exam for the Licensed Legal Advocates Pilot Program shall be developed and administered by the Certification and Licensing Division of the AOC, who shall oversee licensure of Licensed legal Advocates.
7. The Licensed Legal Advocate Pilot Program shall be administered by the Pilot Program Director in coordination with the AOC.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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ROBERT BRUTINEL  
Chief Justice

Task Force on Delivery of Legal Services

Report and Recommendations

© 2019 Arizona Supreme Court

October 4, 2019

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