

**ISSUES COMMITTEE
SUBCOMMITTEE TO STUDY REGULATORY CHANGE**

North Carolina State Bar
Zoom Conference Call
September 29, 2020
2:00pm to 4:00pm

Ethics Act Statement

It is the duty of Committee members to avoid conflicts of interest and appearances of conflicts of interest in performing the duties as a member of the Committee to Study Regulatory Change and the North Carolina State Bar. Any member of the Committee who is aware of any personal conflicts or appearances thereof with respect to the matters before this Committee should disclose those at the meeting.

Agenda

- I. Welcome
- II. Approval of September 2, 2020 Minutes
- III. Brief Update on Regulatory Reform Efforts
 - a. Arizona – Amendments to Rules of Professional Conduct; Legal Paraprofessionals
- IV. Discussion with Jeff Ward, Director of the Duke Center on Law and Technology
- V. Goals for Next Quarter
- VI. Adjourn

Minutes of the Meeting of the Subcommittee to Study Regulatory Change September 2, 2020

The Issues Committee's Subcommittee to Study Regulatory Change met by Zoom videoconference on September 2, 2020. Mark Henriques, the chair of the subcommittee, presided. The following members of the subcommittee were present: Heidi Bloom; A. Todd Brown; Ric Buckner; Barbara R. Christy, State Bar President-Elect; Warren Hodges; Jeff Kelly; Joshua Malcolm; Dewitt F. "Mac" McCarley; Stephen Robertson; Camille Stell; and Jeff Summerlin-Long. Also present were State Bar President C. Colon Willoughby and State Bar Past-President G. Gray Wilson. The following guests were also present: George Hausen, Executive Director of Legal Aid North Carolina; Jennifer Lechner, Executive Director of the North Carolina Equal Access to Justice Commission; and Ken Schorr, Executive Director of the Charlotte Center for Legal Advocacy. The following members of the staff were in attendance: Alice Neece Mine, executive director; Brian Oten, ethics counsel and director of special programs; and Mary Irvine, IOLTA director.

At approximately 2:00pm, Mr. Henriques called the meeting to order and presided. He advised the members of the subcommittee of their responsibilities under the State Government Ethics Act. No conflicts or potential conflicts of interest were noted.

The first order of business was the review and approval of the minutes from the subcommittee's prior meeting on July 27, 2020. Upon motion duly made and seconded, those minutes were approved.

Next, Mr. Henriques called on Mr. Oten to provide the subcommittee with an update on two matters of interest to the subcommittee regarding other jurisdictions' efforts in regulatory change. Mr. Oten informed the subcommittee of the Utah Supreme Court's recent approval and implementation of a "regulatory sandbox" in Utah, as well as the Court's approval of various amendments to Utah's Rules of Professional Conduct to assist in facilitating the regulatory sandbox. Mr. Oten also informed the subcommittee of a report and recommendations published by the Chicago Bar Association Task Force on the Sustainable Practice of Law & Innovation. This report highlighted a variety of regulatory change ideas that had been studied by this task force in Illinois over the past year; many of the ideas and/or recommendations mirror those that have already been discussed in other states. Lastly, Mr. Oten and Mr. Henriques provided a brief update on the very recent news that the Arizona Supreme Court approved modifications to its court rules to allow a licensure process for "legal paraprofessionals", who would be empowered to provide limited legal services to the public, and to eliminate the prohibition on fee sharing with nonlawyers.

Mr. Henriques then introduced our guests for the meeting: George Hausen, Executive Director of Legal Aid North Carolina (LANC); Jennifer Lechner, Executive Director of the North Carolina Equal Access to Justice Commission; and Ken Schorr, Executive Director of the Charlotte Center for Legal Advocacy. Ms. Lechner began with a presentation on the legal service community in North Carolina, including funding, who seeks help from organizations like legal aid, and how many requests for legal assistance are rejected each year due to lack of capacity by the legal services community. Ms. Lechner's presentation slides are attached to these minutes. Mr. Schorr added that the legal services community offers assistance in a great deal of practice areas, many

of which the legal community is unaware (tax, being an example). Mr. Schorr also explained that utilizing nonlawyers in certain types of cases (e.g. social security proceedings) can be very effective. Mr. Hausen reiterated what Ms. Lechner and Mr. Schorr stated, noting that the gold standard is to ensure each client is represented by a lawyer. Mr. Hausen stated that a great number of individuals in the state are eligible for LANC services because of their difficult financial positions. Mr. Hausen also pointed out the need for increased funding for the legal services community, noting that LANC lawyers are typically offered relatively low salaries when hired.

At the conclusion of the presentation, Mr. Henriques opened up the discussion to the entire subcommittee. The subcommittee discussed a variety of issues with Ms. Lechner, Mr. Schorr, and Mr. Hausen, including the effectiveness and prioritization of the following:

- The potential to allow nonlawyers to offer limited legal services in certain practice areas – although nonlawyers have been and can be utilized in certain cases, Mr. Hausen expressed a concern about the optics of providing nonlawyer assistance to the poor in cases/disputes where others are retaining lawyers for assistance; having a “second tier” of legal services for the poor undermines the notion of equal access to justice. Mr. Hausen also observed that instead of funding nonlawyer assistance, it may be more effective (and only slightly more expensive) to simply hire more lawyers in the legal services community. The subcommittee also discussed the possibility of utilizing law students by expanding the opportunities for students to practice during law school under the supervision of legal service attorneys. Overall, the subcommittee and guests opined that training and leveraging nonlawyer resources may assist in increasing available services.
- The types of cases that represent the largest area of need for the legal services community – all guests noted that family law is the largest area of need. Mr. Summerlin-Long also observed that representation is needed at the administrative or pre-litigation levels due to the sometimes significant consequences of these stages (e.g. establishing the record/evidence for a particular proceeding, etc.).
- Models from other states – the subcommittee discussed the developments in Utah as an interesting idea, particularly the regulatory sandbox. Mr. Summerlin-Long noted that in Brazil everyone has a right to an attorney in civil cases. Ms. Lechner offered that mandatory, as opposed to voluntary, pro bono hours could assist in reducing the needs of the legal services community, but that such pro bono hours cannot be entirely supervised by the legal services community due to lack of resources. The subcommittee also briefly discussed online alternative dispute resolution processes, including the Civil Resolution Tribunal in Vancouver; the subcommittee may want to learn more about these processes at a later date.
- Funding needs – Mr. Schorr observed that increased funding is the primary need for the legal services community. One subcommittee member inquired as to the effectiveness of mandatory assessments on lawyers to fund the legal services community, primarily in response to the reality that lawyers do not provide as many pro bono hours as are needed to address the shortfall in available services. Ms. Lechner noted that some states have such assessments, and she will follow-up with staff after the meeting with examples.

With the scheduled end of the meeting approaching, Mr. Henriques suggested that the subcommittee continue its efforts to hear from different perspectives on North Carolina's access to justice concerns at its next meeting. Mr. Henriques expressed a desire to hold another meeting prior to the October 2020 State Bar Council meeting. Mr. Henriques and staff will inform the subcommittee when the next meeting is scheduled.

There being no further business to come before the subcommittee, the meeting was adjourned.

Brian Oten, Subcommittee Staff Counsel

NEWS RELEASE

Arizona Supreme Court
Administrative Office of the Courts



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August 27, 2020

Arizona Supreme Court Makes Generational Advance in Access to Justice

PHOENIX – The Arizona Supreme Court voted this week to make far-reaching changes that could transform the public’s access to legal services. The approved changes, stemming from the Court’s Task Force on the Delivery of Legal Services, chaired by Vice Chief Justice Ann A. Scott Timmer, focused on reforming regulations to allow for more innovation and to make legal services more affordable while still protecting the public. Arizona Supreme Court Chief Justice Robert Brutinel said of the development, “The Court’s goal is to improve access to justice and to encourage innovation in the delivery of legal services. The work of the task force adopted by the Court will make it possible for more people to access affordable legal services and for more individuals and families to get legal advice and help. These new rules will promote business innovation in providing legal services at affordable prices. I thank and commend the Task Force and its chair, Vice Chief Justice Timmer for their groundbreaking work.” The Utah Supreme Court recently made similar changes to their court rules while other states have task forces looking at reforms.

The Court approved modifications to the court rules regulating the practice of law, which allows for two significant changes. One change is a licensure process that will allow nonlawyers, called “Legal Paraprofessionals” (LPs), to provide limited legal services to the public, including being able to go into court with their client. The other change is the elimination of the rule prohibiting fee sharing and prohibiting nonlawyers from having economic interests in law firms. With these modifications, Arizona is set to implement the most far-reaching changes to the regulation of the practice of law of any state thus far.

Referred to as “LLLPs” in the task force report, the first regulatory framework addresses the Legal Paraprofessional (LP) model that would authorize nonlawyers to directly provide limited legal representation to clients. In many ways, LPs would be the legal system’s equivalent of a

nurse practitioner in the medical field. Those interested in becoming LPs would have to meet education and experience requirements, pass a professional abilities examination, and pass a character and fitness process. Successful candidates would be affiliate members of the state bar and would be subject to the same ethical rules and discipline process as lawyers.

The rule changes authorized by the Court have an effective date of January 1, 2021 and require the Administrative Office of the Courts to adopt a code section of the Arizona Code of Judicial Administration to implement the regulatory framework for the licensing of LPs.

Another significant rule change authorized by the Court was the elimination of ER 5.4, the rule barring nonlawyers from fee sharing and barring nonlawyers from having an economic interest in a law firm. The regulatory framework addressing this change requires businesses, called “Alternative Business Structures,” to be licensed. This provision will also become effective on January 1, 2021.

In part, the innovation opportunities created by these changes are intended to improve access to justice and to make access to legal documents and legal representation available to more members of the public. A sentiment driving the task force responsible for proposing the rule changes was that lawyers have an ethical obligation to assure that legal services are available to the public and that if the rules stand in the way of making those services available, the rules should change. At the same time, the changes must maintain the professional independence of lawyers and protect the public from unethical and unprofessional conduct.

Other changes approved by the Court include those regulating lawyer advertising, most of which align with recent changes made to the American Bar Association’s Model Rules. For information about Arizona’s legal services innovations, the application processes that are in development for these new regulatory programs, links to the proposals, FAQs, the Task Force report, the Court’s recent order and more, see the Access to Legal Services webpage at <https://www.azcourts.gov/accesstolegalservices/>.

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To learn more about Arizona’s judicial branch, visit www.azcourts.gov.

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SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0034
RESTYLE AND AMEND RULE 31; ADOPT)
NEW RULE 33.1; AMEND RULES 32,)
41, 42 (VARIOUS ERS FROM 1.0 TO)
5.7), 46-51, 54-58, 60 AND 75-76)
)
)
) FILED: 8/27/2020
)
)
_____)

**ORDER AMENDING
THE ARIZONA RULES OF THE SUPREME COURT
AND THE ARIZONA RULES OF EVIDENCE**

Petitioner Dave Byers, on behalf of the Task Force on the Delivery of Legal Services, has filed a rule petition and amended rule petition proposing to: (a) abrogate Arizona Supreme Court Rule 31 (and associated items following the rule) and replace them with proposed new Rules 31, 31.1, 31.2, and 31.3; (b) amend Supreme Court Rules 32, 41, 42 (and certain ethics rules and comments set forth in that rule), 43, 46-51, 54-58, 60, 63, 66, 67, 75 and 76; and (c) adopt a new Supreme Court Rule 33.1. Having considered the petition, comments submitted in response to the petition, and Petitioner's reply to those comments,

IT IS ORDERED:

(a) abrogating current Supreme Court Rule 31 and the Oath of Admission and the Lawyer's Creed of Professionalism that follow the rule, and replacing them with the adoption of new Rules 31, 31.1, 31.2, and 31.3 in accordance with Attachment #1 to this order, effective January 1, 2021;

(b) adopting new Supreme Court Rule 33.1 in accordance with Attachment #2 to this order, effective January 1, 2021;

(c) amending or abrogating ERs 1.0, 1.5, 1.6, 1.7, 1.8, 1.10, 1.17, 5.1, 5.3, 5.4, 5.7 and 8.3 in Supreme Court Rule 42 and those rules' associated rule comments, in accordance with Attachment #3 to this order, effective January 1, 2021;

(d) amending Supreme Court Rules 32, 41, 43, 46-51, 54-58, 60, 63, 66, 67, 75 and 76 in accordance with Attachment #4 to this order, effective January 1, 2021; and

(e) adopting new Arizona Rule of Evidence 513 in accordance with Attachment #5 to this order, effective January 1, 2021.

DATED this 27th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

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Attachment #1

ATTACHMENT #1

ARIZONA RULES OF THE SUPREME COURT

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). The Arizona Supreme Court also has jurisdiction over any ABS licensed under Rule 31.1(c) and ACJA 7-209.

(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).

(c) Alternative Business Structure (ABS). An entity that includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide legal services to third parties only if:

- (1) it employs at least one person who is an active member in good standing of the State Bar of Arizona under Rule 32 who supervises the practice of law under ER 5.3;

(2) it is licensed pursuant to ACJA § 7-209; and

(3) legal services are only provided by persons authorized to do so and in compliance with the Rules of Supreme Court.

Rule 31.2. Unauthorized Practice of Law. Except as provided in Rule 31.3, a person, entity, or ABS who is not authorized to practice law in Arizona under Rule 31.1(a), (c), or Rule 31.3 must not:

(a) engage in the practice of law or provide legal services in Arizona; or

(b) use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” “alternative business structure (ABS),” 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 or provide legal services in Arizona.

Rule 31.3. Exceptions to Rule 31.2.

(a) **Generally.**

(1) 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.

(2) 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 in any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(3) An ABS whose license has been suspended or revoked may not engage in any of the activities specified in this rule, except an ABS whose license has been suspended may engage in activities as expressly authorized by judgment or order of the Arizona Supreme Court, the presiding disciplinary judge, or a hearing panel.

(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, a trust, or a governmental or tribal entity.

(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 an 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 an 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 an 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) ***Arizona Corporation Commission.*** A person may represent a legal entity in a proceeding before the Arizona Corporation Commission ("Commission") if the representation complies with subsection (c)(5). Additionally, a person with expertise in the field of public utility regulatory compliance, public utility accounting or finance, public utility engineering, railroad engineering or safety, or pipeline engineering or safety may prepare, submit, or file with the Commission on the entity's behalf a tariff, rate schedule, engineering report, or other technical or financial document within the person's field of expertise.

(7) ***Exception.*** Despite Rule 31.3(c)(3) through (c)(6), 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 claim 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,

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 an 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 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 Legal Paraprofessionals.*** Certified legal document preparers and legal paraprofessionals may perform services in compliance with the Arizona Code of Judicial Administration. Disbarred or suspended attorneys may only be certified as a legal document preparer or licensed as a legal paraprofessional if approved by the Supreme Court.

(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)(2) 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).

Attachment #2

ATTACHMENT #2

ARIZONA RULES OF THE SUPREME COURT

Rule 33.1. Committee; Entity Regulation

(a) Committee.

1. *Creation of the Committee.* The examination of applications and recommendations to grant or deny licensure of alternative business structures shall conform to this rule and ACJA § 7-209. For such purposes, there shall be a Committee on Alternative Business Structures. The Committee on Alternative Business Structures shall consist of eleven members.

2. *Appointment of Members.* Members of the Committee shall be appointed by the Arizona Supreme Court, considering geographical, gender, and ethnic diversity. Members shall serve at the pleasure of the Court and may be removed from the Committee at any time by order of the Court. A member of the Committee may resign at any time. The Chief Justice shall appoint the Committee chair.

3. *Terms of Office.* Members of the Committee will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may be reappointed to successive terms. If a vacancy exists due to resignation or inability of a board member to serve, the Court shall appoint another person to serve the unexpired term.

4. *Powers and Duties of the Committee.* The Committee on Alternative Business Structures shall examine applications for licensure and recommend to the Court those applicants who are deemed by the Committee to be qualified and not qualified pursuant to ACJA § 7-209. The Court will then consider the recommendations and either grant or deny licensure.

5. *Review by Court.* The Committee's recommendation regarding an application for licensure will be transmitted to the Arizona Supreme Court for review as provided in ACJA § 7-209(E). Upon receipt of the recommendation, the Court may decline review or issue an order approving, denying, or approving with modification the recommendation. Upon receipt of the Court's order, the Committee shall either grant or deny the application as directed.

6. *Response to Recommendation to Deny.*

A. An applicant affected by any recommendation of the Committee on Alternative Business Structures may, within twenty (20) days after such a recommendation has been filed with the Arizona Supreme Court file a response with the Court. The response should state the facts that form the basis for the response, and applicant's reasons for believing this Court should approve, deny, or modify the recommendation of the Committee.

B. A copy of the response must be promptly served upon the Committee. The Committee will have thirty (30) days after service to transmit the applicant's file, including all findings and reports prepared by or for the Committee, and a reply to the response fully advising the Court as to the Committee's reason for its recommendation. Thereafter, the Court may hold any hearings or request additional information as necessary to decide whether to approve or deny the application or approve it with modification.

C. Any document filed under Rule 33.1(a)(6) is open to the public except that, upon request by an applicant, the Clerk will seal medical or psychological reports and records. An applicant may request the Court to seal a portion of any other materials submitted.

(b) Decision Regarding Licensure. The Committee shall recommend approval of applications if the requirements in this rule and in ACJA § 7-209 are met by the applicant. The Committee's recommendation shall state the factors in favor of approval.

(1) Decisions of the Committee must take into consideration the following regulatory objectives:

- (A) protecting and promoting the public interest;
- (B) promoting access to legal services;
- (C) advancing the administration of justice and the rule of law;
- (D) encouraging an independent, strong, diverse, and effective legal profession; and
- (E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

- (A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;
- (B) the alternative business structure maintains proper standards of work;
- (C) the lawyer makes decisions in the best interest of clients;
- (D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and
- (E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

(c) Power of Court to Revoke or Suspend License. Nothing contained in this rule shall be considered as a limitation upon the power and authority of the Arizona Supreme Court upon petition of the Committee on Alternative Business Structures, probable cause committee, bar counsel, or on its own motion, to file a petition with the presiding disciplinary judge to revoke or suspend, after due notice and hearing, the license of an

alternative business structure in this state for fraud or material misrepresentation in the procurement the ABS's license.

(d) Practice in Courts. No alternative business structure shall employ any person to provide legal services in the State of Arizona unless the person is licensed to practice law or otherwise authorized to provide legal services under Rule 31.1 or 31.3.

(e) Retention and Confidentiality of Records of Applicants. The records of applicants for licensure pursuant to ACJA § 7-209 shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of Supreme Court. The records and the proceedings concerning an application for licensure shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for licensure and the proceedings of the Committee concerning an application for licensure in connection with any proceeding before the Court. In addition, the Committee or designated staff may disclose their respective records pertaining to an applicant for licensure to:

1. any licensing authority in any other state the applicant seeks similar licensure;
2. bar counsel for discipline enforcement purposes; and
3. a law enforcement agency, upon subpoena or good cause shown.

(f) Immunity from Civil Suit.

1. The Arizona Supreme Court, the Committee, and the members, staff, employees, and agents thereof, are immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the licensing of applicants seeking to be licensed as an alternative business structure.

2. Records, statements of opinions and other information regarding an applicant for licensure communicated by any person, firm, or institution, without malice, to the Court or the Committee, and the Court's and Committee's members, staff, employees, and agents, are privileged, and civil suits predicated on such records, statements, or other information may not be instituted.

Attachment #3

ATTACHMENT #3¹

ARIZONA RULES OF THE SUPREME COURT

Rule 42. Arizona Rules of Professional Conduct

* * *

ER 1.0. Terminology

(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 to text]]

(~~i~~ h) [[No change to text]]

(~~j~~ i) [[No change to text]]

(~~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;

¹ Additions to the text of the rules are shown by underscoring and deletions of text are shown by ~~strike-through~~.

(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; and

(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~~ k) – (~~m~~ m) **[[No change to text]]**

(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; or

(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; or

(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 31.1(a).

(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 Supreme Court Rule 31.1(a) to practice Arizona law.

Comment [2003 2021 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] **[[Renumbered; No change to text]]**

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

(a) – (d) [[No change]]

~~(e) A division of fees 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 paid by 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 firms disclose to the client in writing how the fee will be divided and how the firms will divide responsibility for the matter among themselves;~~

~~(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 2021 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

[40 8] **[[Renumbered; No change to text]]**

ER 1.6. Confidentiality

(a) – (e) [[No change]]

2003 Comment [amended ~~2009~~ 2021]

[1] - [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 in 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 the legal representation of a client of the firm, unless the client has instructed that particular information be confined to specified lawyers. Any such shared information shall be subject to requirements of confidentiality.

[6] [[No change]]

Disclosure Adverse to Client

[7] – [20] [[No change]]

Withdrawal

[21] [[No change]]

Acting Competently to Preserve Confidentiality

[22] – [23] [[No change]]

Former Client

[24] [[No change]]

ER 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

(c) A lawyer may not represent a party in asserting a claim against another party represented by a firm if the same person or entity holds an ownership interest, directly or indirectly, of 10 percent or more, or has managerial authority comparable to that of a partner, in the lawyer's firm and the other firm.

Comment [2003 2021 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] [[Renumbered; No change to text]]~~

~~[13 12] – [34 33] [[Renumbered; No change to text]]~~

[34] ER 1.7(c) parallels ER 1.7(b)(3) in barring certain concurrent representations of adverse parties, irrespective of consent. Where there is an overlap of ownership or management between law firms that does not involve effective control, ER 1.7(a) and (b) will determine whether the two firms can concurrently represent adverse parties. Moreover, where a lawyer or other owner of a firm has a financial interest in an opposing party, the interest will ordinarily be considered a “personal interest” as that term is used in ER 1.10(a) that may not be imputed to other lawyers in the firm, unless that personal interest would materially limit the other lawyers’ independent professional judgment. Even though the personal interest conflict will not be imputed to other members of the firm, the lawyer must disclose the interest to the firm’s client and obtain their informed consent, confirmed in writing, to proceed with the representation.

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

(a) – (l) [[No change]]

(m) A lawyer wishing to engage in a business transaction with a client must comply with both ER 1.7 and 1.8(a) if:

(1) the client expects the lawyer to represent the client in the transaction; or

(2) 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.

Comment [2003 2021 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 material 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 lawyer's 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] – [21 19] **[[Renumbered; No change to text]]**

ER 1.10. Imputation of Conflicts of Interest: General Rule

(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 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.

(g) 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~~ 2021 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] [[Renumbered; No change to text]]~~

ER 1.17. Sale of Law Practice or Firm

~~(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 to 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]

~~[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See ERs 5.4 and 5.6.~~

Termination of Practice by the Seller

~~[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.~~

~~[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in house counsel to a business.~~

~~[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice on the occasion of moving to another state. Some states are so large that a move from one locale therein to another is tantamount to leaving the jurisdiction in which the lawyer has engaged in the practice of law. To also accommodate lawyers so situated, states may permit the sale of the practice when the lawyer leaves the geographical area rather than the jurisdiction.~~

~~[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by ER 1.5(e). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the~~

~~practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue practice in the areas of the practice that were not sold.~~

~~Sale of Entire Practice or Entire Area of Practice~~

~~[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.~~

~~Client Confidences, Consent and Notice~~

~~[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of ER 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. See ER 1.6(b)(7). Providing the purchaser access to detailed information relating to the representation, such as the client's file, however, requires client consent. The ER provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.~~

~~[8] A lawyer or law firm ceasing to practice cannot be required to remain in practice because some clients cannot be given actual notice of the proposed purchase. Since these clients cannot themselves consent to the purchase or direct any other disposition of their files, the Rule requires an order from a court having jurisdiction authorizing their transfer or other disposition. The Court can be expected to determine whether reasonable efforts to locate the client have been exhausted, and whether the absent client's legitimate interests will be served by authorizing the transfer of the file so that the purchaser may continue the representation. Preservation of client confidences requires that the petition for a court order be considered in camera. (A procedure by which such an order can be obtained needs to be established in jurisdictions in which it presently does not exist.)~~

~~[9] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.~~

~~Fee Arrangements Between Client and Purchaser~~

~~[10] The 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.~~

~~Other Applicable Ethical Standards~~

~~[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see ER 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see ER 1.7 regarding conflicts and ER 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see ERs 1.6 and 1.9).~~

~~[12] If approval of the substitution of the purchasing lawyer for the selling lawyer 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 (see ER 1.16).~~

~~Applicability of the Rule~~

~~[13] This Rule applies to the sale of a law practice of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.~~

~~[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.~~

~~[15] 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.~~

ER 5.1. Responsibilities of Partners, Managers, and Supervisory Lawyers
Lawyers Who Have Ownership Interests or are Managers or Supervisors

~~(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 Rules of Professional Conduct.

(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]

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See ER 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See ER 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also ER 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows

~~that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.~~

~~[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.~~

~~[7] Apart from this Rule and ER 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.~~

~~[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See ER 5.2(a).~~

ER 5.3. Responsibilities Regarding Nonlawyers Assistants

~~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;~~

~~(ab) 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 engaged in activities assisting lawyers in providing legal services and those who have access to attorney-client information, 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 assisting in the delivery of legal services or working under the supervision of a lawyer 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 lawyer client information protected by ER 1.6.

~~(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 when engaged in activities assisting lawyers in providing legal services 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 to assist the lawyer's delivery of legal services, 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 economic 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 2021 amendment]

[1] The rule in paragraph (d) recognizes that lawyers may provide legal services through firms that include nonlawyers as economic interest holders, owners, managers, shareholders, officers, or other nonlawyers who hold decision-making authority. Any such alternative business structure (ABS) as defined in Rule 31 must be licensed in accordance with ACJA § 7-209. Any lawyer who provides legal services through an unlicensed ABS is engaged in the unauthorized practice of law.

Nonlawyers Within the Firm

~~[1] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See ER 5.1, Comment [1] (responsibilities with respect to lawyers within a firm). Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.~~

~~[2] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. Law enforcement officers generally are not considered associated with government lawyers, for purposes of this ER. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The~~

~~measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.~~

~~Nonlawyers Outside the Firm~~

~~[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also ERs 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). 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. See ER 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these ERs.~~

ER 5.4. Professional Independence of a Lawyer

~~(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 disappeared 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 Services

~~(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 8.3. Reporting Professional Misconduct

(a) – (b) [[No change]]

(c) A lawyer who knows that a legal paraprofessional or certified Alternative Business Structure entity has committed a violation of the applicable codes of conduct that raises a substantial question as to the person or entity’s compliance with the codes shall inform the appropriate authority.

(e d) This Rule does not require disclosure of information otherwise protected by ER 1.6 or information gained by a lawyer or judge while serving as a member of an approved lawyers assistance program to the extent that such information would be confidential if it related to the representation of a client.

Comment [2003 amendment]

[1] – [5] [[No change]]

Comment to 2002 Amendment to ER 8.3(D)

[[No change]]

Comment to 2021 Amendment to ER 8.3(c)

The duty to report misconduct of a legal paraprofessional that raises a substantial question as to that individual’s compliance with their code of conduct as set forth in ACJA § 7-210 does not apply to a lawyer who is retained to represent the legal paraprofessional. Similarly, the duty to report misconduct by an Alternative Business Structure (ABS) entity that raises a substantial question as to the entity’s compliance with the code of conduct in ACJA § 7-209 does not apply to a lawyer retained to represent the ABS but does apply to lawyers who work in or have ownership interests in an ABS.

Attachment #4

ATTACHMENT #4²

ARIZONA RULES OF THE SUPREME COURT

Rule 32. Organization of State Bar of Arizona.

(a) **State Bar of Arizona.** The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* **[[No change]]**

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers and those engaged in the authorized practice of law ~~practicing~~ in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its ~~individual~~ members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; assist the Court with the regulation and discipline of alternative business structures (ABS) and legal paraprofessionals; foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

(b) **Definitions.** Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers, ABSs, and legal paraprofessionals:

1. "Board" **[[No change]]**

2. "Court" **[[No change]]**

² Additions to the text of the rules are shown by underscoring and deletions of text are shown by ~~strike-through~~.

3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires. Discipline includes sanctions and limitations on ABSs as provided in these rules and ACJA § 7-209 and legal paraprofessionals as provided in these rules and ACJA § 7-210.

4. “Discipline proceeding” and “disability proceeding” **[[No change]]**

5. “Member” **[[No change]]**

6. “Non-member” **[[No change]]**

7. “Respondent” means any person, ABS, or legal paraprofessional subject to the jurisdiction of the court against whom a charge is received for violation of these rules, ACJA § 7-209 or ACJA § 7-210.

8. “State bar” **[[No change]]**

(c) Membership.

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, retired, suspended, ~~and~~ judicial, and affiliate. Disbarred or resigned persons are not members of the bar.

2. *Active Members.* Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, ~~or~~ judicial, or affiliate members.

3. *Affiliate Members.* Legal paraprofessionals are affiliate members for purposes of regulation and discipline under these rules.

~~3.~~ 4. *Admission, Licensure and Fees.* ~~All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar or licensure as a legal paraprofessional, the applicant a person:~~

(i) shall pay a fee as required by the supreme court, which shall include the annual membership fee for ~~active~~ members of the state bar. If ~~an applicant a person~~ is admitted or licensed to the state bar on or after July 1 in any year, the annual membership fee ~~payable upon admission~~ shall be reduced by one half.

(ii) Upon admission to the state bar, ~~an~~ a lawyer applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court.

(iii) All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall be reported to the state bar

within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

~~4.~~ 5. *Inactive Members.* **[[No change to text]]**

~~5.~~ 6. *Retired Members.* **[[No change to text]]**

~~6.~~ 7. *Judicial Members.* **[[No change to text]]**

~~7~~ 8. *Membership Fees.* An annual membership fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Chief Executive Officer/Executive Director may waive all or part of the dues of any other member for reasons of personal hardship. Both the grant or denial of an application shall be reported to the board. Denial of a personal hardship waiver shall be reviewed by the board. The board should take all steps necessary to protect private information relating to the application.

~~8~~ 9. *Computation of Fee.* The annual membership fee shall be composed of an amount for the operation of the activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, and each affiliate member shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.

~~9~~ 10. *Allocation of fee.* Upon payment of the membership fee, each individual lawyer member shall receive a bar card and each legal paraprofessional shall receive a certificate of licensure, issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

~~10~~ 11. *Delinquent Fees.* A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee

if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

~~11~~ 12. *Resignation.* **[[No change to text]]**

~~12~~ 13. *Insurance Disclosure.*

A. Each active and affiliate member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer or legal paraprofessional is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer or legal paraprofessional is currently covered by professional liability insurance. Each active and affiliate member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A lawyer or legal paraprofessional who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by active and affiliate members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active or affiliate member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer or legal paraprofessional complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer or legal paraprofessional to appropriate disciplinary action.

(d) Powers of Board. **[[Only change is to subpart 2. As reflected below]]**

1. **[[No change]]**

2. Promote and aid in the advancement of the science of jurisprudence, the education of ~~lawyers~~ legal professionals and the improvement of the administration of justice.

3. – 10. **[[No change]]**

(e) – (g) [[No change]]

(h) Administration of Rrules. Examination and admission of lawyer members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Examination and licensure of legal paraprofessionals shall be administered by the Administrative Office of Courts as provided in ACJA § 7-210. Licensure of alternative business structures shall be by the Committee on

Alternative Business Structures, as provided in these rules and ACJA § 7-209. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) – (j) [[No change]]

(k) Payment of Fees and Costs. The payment of all fees, costs and expenses required under the provision of these rules related to membership, mandatory continuing legal education, discipline, ~~and~~ reinstatement, and unauthorized practice of law shall be made to the State Bar. The payment of all fees, costs and expenses required under the application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of courts.

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, including the membership, mandatory continuing legal education and disability of legal paraprofessionals, except that costs and expenses shall be taxed against a respondent lawyer or applicant for readmission, as provided in these rules. The Administrative Office of the Courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission, including expenses related to application for licensure and examination of legal paraprofessionals. The State Bar and the Administrative Office of Courts may recoup extraordinary costs beyond the schedule of fees adopted by the Court relating to an alternative business structure application for licensure or administration and enforcement of these rules against an alternative business structure.

(m) [[No change]]

Rule 41. Duties and Obligations of Members

(a) Definition.

“Unprofessional conduct” means substantial or repeated violations of the oath of Admission to the State Bar or the Lawyer’s Creed of Professionalism of the State Bar of Arizona. Unprofessional conduct includes substantial or repeated violations of the Legal Paraprofessional’s Creed of Professionalism.

(b) Duties and Obligations. The duties and obligations of members, including affiliate members, shall be:

(a 1) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these Rules.

(b 2) To support the constitution and the laws of the United States and the State of Arizona.

(c 3) To maintain the respect due to courts of justice and judicial officers.

(d 4) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.

(e 5) To be honest in dealings with others and not make false or misleading statements of fact or law.

(f 6) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client’s knowledge and approval.

(g 7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

(h 8) To support the fair administration of justice, professionalism among lawyers and legal paraprofessionals, and legal representation for those unable to afford counsel.

(i 9) To protect the interests of current and former clients by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently.

(c) Oath and Creed. The Oath of Admission to the Bar and Lawyer’s and Legal Paraprofessional’s Creed of Professionalism of the State Bar of Arizona are as follows.

Oath of Admission to the Bar

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with respect;

I will not counsel or maintain an action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

A Lawyer's and Legal Paraprofessional's

Creed of Professionalism of the State Bar of Arizona

Preamble

As a [lawyer/legal paraprofessional], I must strive to make our system of justice work fairly and efficiently. To carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all [lawyers/ legal paraprofessionals] and I will conduct myself in accordance with the following Code of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

A. With respect to my client:

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;

2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;

3. In appropriate cases, I will counsel my client with respect to alternative methods of resolving disputes;

4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of a matter or to harass or drain the financial resources of the opposing party;

5. I will advise my client that civility and courtesy are not to be equated with weakness;

6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with effective and honorable representation.

B. With respect to opposing parties and their counsel:

1. I will be courteous and civil, both in oral and written communication;
2. I will not knowingly make statements of fact or law that are untrue;
3. In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected;
4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;
5. I will not utilize litigation or any other course of conduct to harass the opposing party;
6. I will not engage in excessive and abusive discovery; and I will advise my client to comply with all reasonable discovery requests;
7. I will not threaten to seek sanctions against any party, ~~or~~ lawyer, or legal paraprofessional unless I believe that they have a reasonable basis in fact and law;
8. I will not delay resolution of a matter, unless the delay is incidental to an action reasonably necessary to ensure the fair and efficient resolution of that matter;
9. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and not be rude or disrespectful;
10. I will not serve motions and pleadings on the other party or the party's counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;
11. In business transactions I will not quarrel over matters of form or style but will concentrate on matters of substance and content;
12. I will identify clearly, for other counsel or parties, all changes that I have made in the documents submitted to me for review.

C. With respect to the courts and other tribunals:

1. I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice;
2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;
3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;
4. I will not file frivolous motions;

5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel and, if appropriate, the court (or other tribunal) as early as possible;

8. Before dates for hearings or trial are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;

10. I will endeavor to be punctual in attending court hearings, conferences, and dispositions;

11. I will at all times be candid with, and respectful to, the tribunal.

D. With respect to the public and our system of justice:

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a [lawyer/legal paraprofessional] include a devotion to the public good;

2. I will keep current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field or practice;

3. As a member of a self-regulating profession, I will be mindful of my obligations under the Rules of Professional Conduct to report violations of those Rules;

4. I will be mindful of the need to protect the integrity of the legal profession and will be so guided when considering methods and contents of advertising;

5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement or administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

Rule 43. Trust Accounts

(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer or Legal Paraprofessional. Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's or legal paraprofessional's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer, legal paraprofessional, or ~~law~~ firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. – 2. **[[No change]]**

3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer or legal paraprofessional to direct such funds to the lawyer's or legal paraprofessional's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer, legal paraprofessional, or ~~law~~ firm must be deposited therein, but the portion belonging to the lawyer, or legal paraprofessional, or ~~law~~ firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or ~~law~~ firm to receive it is disputed by the client or third person, in which event the lawyer or legal paraprofessional shall comply with ER 1.15(e).

(b) Trust Account Requirements.

1. Standards of Performance.

A. Due professional care must be exercised in the performance of the lawyer's or legal paraprofessional's duties under this rule.

B. Employees and others assisting the attorneys or legal paraprofessional's in the performance of such duties must be competent and properly trained and supervised.

C. Internal controls within the lawyer's or legal paraprofessional's office must be adequate under the circumstances to safeguard funds or other property held in trust.

2. Trust Account Records.

A. Every active and affiliate member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by

ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer or legal paraprofessional of all such funds, securities and other property. The lawyer or legal paraprofessional shall preserve these records for a period of five years after termination of the representation.

B. A lawyer or legal paraprofessional shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

(i) – (iii) **[[No change]]**

C. A lawyer or legal paraprofessional shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer or legal paraprofessional shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

3. *Deposits from Credit Card Transactions.* A lawyer, legal paraprofessional, or ~~law~~ firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer or legal paraprofessional has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

B. **[[No change]]**

C. the trust account contains sufficient funds of the lawyer, legal paraprofessional, or ~~law~~ firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. *Disbursement Against Uncollected Funds.* A lawyer or legal paraprofessional generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer or legal

paraprofessional may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled by the issuer’s bank, and credited without recourse to the lawyer’s or legal paraprofessional’s trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer’s or legal paraprofessional’s trust account has not been finally settled and credited to the account, the lawyer or legal paraprofessional may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer or legal paraprofessional has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

(i) – (iv) **[[No change]]**

In any of the above circumstances, a lawyer’s or legal paraprofessional’s disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer or legal paraprofessional making the disbursement. If any of the deposits fail, for any reason, the lawyer or legal paraprofessional, upon receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer’s or legal paraprofessional’s clients and third persons. If the lawyer or legal paraprofessional accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer or legal paraprofessional will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer’s or legal paraprofessional’s disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

5. *Methods of Disbursement.* All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer or legal paraprofessional maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

(c) Certificate of Compliance. Every active and affiliate member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

[[No change]]

(d) Trust Account Examination; Random Examination.

1. *Authority.* The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer or legal paraprofessional. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.

2. *Scope of Examination.* [[No change]]

3. *Rebuttable Presumption.* If a lawyer or legal paraprofessional fails to maintain trust account records required by this rule or ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer or legal paraprofessional failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. *Limited Exception for Out-of-State Members.* All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer or legal paraprofessional whose ~~law~~ office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. *Trust Account Examination and Verification Expenses.* [[No change]]

(e) Confidentiality. [[No change]]

(f) Establishment of Trust Accounts; State Bar Oversight.

1. A lawyer, legal paraprofessional, or ~~law~~ firm receiving funds belonging in whole or in part to a client or third person in connection with a representation must hold the funds in one of the following types of accounts:

A. a pooled interest-bearing or dividend-earning trust account ("IOLTA account") on which the interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education ("Foundation");

B. a separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

C. a pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer, legal paraprofessional, or the ~~law~~ firm, which will provide for

computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

2. In determining which type of account provided for in section (f)(1) to use, a lawyer, legal paraprofessional, or ~~law~~ firm shall take into consideration the following factors:

A. – C. **[[No change]]**

D. the cost of establishing and administering a separate non-IOLTA account for the client's benefit, including service charges, the costs of the lawyer's or legal paraprofessional's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

E. – F. **[[No change]]**

Funds should be deposited in an IOLTA account as provided for in section (f)(1)(A) if the interest does not cover the cost of opening and maintaining a separate interest-bearing or dividend-earning account. The State Bar shall not pursue a disciplinary matter against any lawyer, legal paraprofessional, or ~~law~~ firm solely based on the good-faith determination of the appropriate account in which to deposit or invest client funds.

3. A lawyer, legal paraprofessional, or ~~law~~ firm must maintain any client trust account provided for in section (f)(1) only at a regulated financial institution, which is either (i) a financial institution authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers or legal paraprofessionals and is insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws or (ii) any open-ended investment company registered with the Securities and Exchange Commission that is authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers. A regulated financial institution must agree to comply with the requirements of section (f)(4) below and agree to pay IOLTA interest to the Foundation. The lawyer, legal paraprofessional, or ~~law~~ firm must ensure that:

A. – C. **[[No change]]**

D. The financial institution sends notification immediately to the State Bar chief bar counsel of any properly payable instrument that is presented for payment against a client trust account containing insufficient funds, uncollectible funds, or a negative available balance, regardless of whether the financial institution honors the instrument. All occurrences shall be reported to the State Bar regardless of the cause.

If a financial institution ceases to operate as a regulated financial institution and has no successor operating as a regulated financial institution, a lawyer, legal paraprofessional, or ~~law~~ firm that maintains an account listed under section (f)(1) at that financial institution must, upon receiving notice of the financial institution's change in status, promptly notify any clients whose funds may be affected by the change in status, promptly transfer, to the extent possible, any client trust account funds from that

financial institution into another account provided for in section (f)(1), and promptly deposit into the other account provided for in section (f)(1) any insurance, collateral, or proceeds resulting from the financial institution's change in status.

4. In addition to the requirements of section (f)(3), a lawyer, legal paraprofessional, or ~~law~~ firm may only maintain an IOLTA account as provided for in section (f)(1)(A) at an authorized regulated financial institution. To be designated as authorized, a regulated financial institution must sign a participation certification before the fiscal year beginning July 1, with the State Bar as representative of its members, and the Foundation as a third-party beneficiary and administrator of the interest or dividends.

A. The participation certification must:

i. – ii. **[[No change]]**

iii. provide that the financial institution transmit, with each remittance to the Foundation, a statement, as directed by the Foundation, showing information including the name of the lawyer, legal paraprofessional, or ~~law~~ firm on whose account the remittance is sent, the period for the remittance submitted, the account number, the account status, the rate of interest applied or the dividends earned, and the charges imposed against the interest remitted;

iv. provide that the financial institution transmit a report on each separate account, similar to the report required by section (f)(4)(a)(iii), to the lawyer, legal paraprofessional, or ~~law~~ firm opening said trust account;

v. – vi. **[[No change]]**

vii. provide that the financial institution be allowed to charge a particular lawyer, legal paraprofessional, or ~~law~~ firm for the reasonable cost of producing the reports and records required by this rule;

viii. – xi. **[[No change]]**

B. – C. **[[No change]]**

5. – 6. **[[No change]]**

7. In addition to other obligations under section (f) of this rule, all lawyers admitted to practice or legal paraprofessionals in this state shall:

A. as a condition thereof, consent to the reporting and production requirements set forth in this rule, and

B. provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain.

(g) [Reserved].

(h) Suspension of Member. Any active or affiliate member who fails to comply with requirements of this rule shall be suspended summarily by order of the board upon notice

by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

(i) Reinstatement of Member. A lawyer or legal paraprofessional who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

(j) Applicability of Rule. Every lawyer admitted to practice law in Arizona or legal paraprofessional shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.

Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

(a) Lawyers Admitted to Practice. [[No change]]

(b) Licensed Alternative Business Structures. Any alternative business structure and its members are subject to the disciplinary jurisdiction of the Arizona Supreme Court. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-209 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for licensure may result in revocation of the alternative business structure's license.

(c) Legal Paraprofessionals. Any person licensed as a legal paraprofessional is subject to the disciplinary jurisdiction of the Arizona Supreme Court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for imposing discipline under these rules and ACJA § 7-210 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant may result in revocation of the legal paraprofessional's license.

(~~b~~ d) Non-members. [[No change to text]]

(e ~~e~~) Former Judges. [[No change to text]]

(~~d~~ f) Incumbent Judges. [[No change to text]]

(e ~~g~~) Disbarred Lawyers. [[No change to text]]

(~~f~~ h) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers, legal paraprofessionals, and alternative business structures:

1. "Acting presiding disciplinary judge" -- 4. "Charge" [[No change]]

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona unless stated otherwise.

6. "Complainant" means a person who initiates a charge against a lawyer, ~~or~~ alternative business structure, or legal paraprofessional, or later joins in a charge to the state bar regarding the conduct of a lawyer, alternative business structure, or legal paraprofessional. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. "Complaint" -- 9. "Court" [[No change]]

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules, including those sanctions and limitations provided in these rules and ACJA § 7-209 for alternative business structures and ACJA § 7-210 for legal paraprofessionals. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” -- 16. “Member” **[[No change]]**

17. “Misconduct” means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a) or conduct that is eligible for diversion, any conduct by an alternative business structure actionable under these rules or ACJA § 7-209, or any conduct by a legal paraprofessional actionable under these rules or ACJA § 7-210.

18. “Non-member” -- 20. “Record,” **[[No change]]**

21. “Respondent” means a member, including legal paraprofessional or ~~non-member,~~ including an ABS or its nonlawyer members, against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” -- 24. “State bar file” **[[No change]]**

Rule 47. General Procedural Matters

(a) – (b) [[No change]]

(c) **Service.** Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. Service of Complaint.

(A) Individual Respondents. Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule ~~32(c)(4)(iii)~~ ~~32(e)(3)~~. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(B) ABS Respondents. Service of the complaint in any discipline proceeding against an ABS or its members may be made on the designated agent for service pursuant to ACJA § 7-209 or the respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent, respondent's counsel, or the designated agent for service pursuant to ACJA § 7-209. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. Service of Subpoena. [[No change]]

(d) – (l) [[No change]]

Rule 48. Rules of Construction

(a) – (c) [[No change]]

(d) Standard of Proof.

1. *Lawyers and Legal Paraprofessionals.* Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer or legal paraprofessional who fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

2. *Alternative Business Structures.* Allegations in a complaint or applications for reinstatement, shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any ABS that fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or that fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

(e) Burden of Proof. The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant. The burden on an alternative business structure seeking licensure after a period of revocation or suspension is on respondent alternative business structure.

(f) – (i) [[No change]]

Rule 49. Bar Counsel

(a) – (b) [[No change]]

(c) Powers and Duties of Chief Bar Counsel. Acting under the authority granted by this Court and under the direction of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member, including an affiliate member, or non-member, including alternative business structures, and for the coordination of such investigations; supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. **[[No change]]**

B. Disclosure to National Discipline Data Bank. **[[No change]]**

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement as well as all sanctions against alternative business structures to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) – (v) **[[No change]]**

(vi) Revocation, suspension, reprimand, and licensing after a period of revocation involving an alternative business structure shall be posted for an indefinite period of time.

D. Notice to Courts. **[[No change]]**

3. *Report.* **[[No change]]**

(d) [[No change]]

Rule 50. Attorney Discipline Probable Cause Committee

(a) – (d) [[No change]]

(e) Powers and Duties of the Committee. Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, including ACJA §§ 7-209 and 7-210, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);
2. periodically report to the court on the operation of the committee;
3. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and
4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

(f) – (h) [[No change]]

Rule 51. Presiding Disciplinary Judge

(a) – (b) [[No change]]

(c) Powers and Duties of the Presiding Disciplinary Judge. The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. – 2. **[[No change]]**

3. impose discipline on an attorney, alternative business structure, or legal paraprofessional; transfer an attorney or legal paraprofessional to disability inactive status; and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. – 6. **[[No change]]**

7. recommend to the court proposed changes or additions to the rules of procedure for attorney and legal paraprofessional discipline and disability proceedings, and to rules and ACJA §§ 7-209 and 7-210 governing discipline of alternative business structures and legal paraprofessionals; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

(d) [[No change]]

Rule 54. Grounds for Discipline

Grounds for discipline of members, including affiliate members, and non-members, and alternative business structures include the following:

(a) – (h) [[No change]]

(i) Unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a).

(j) Violations of ACJA § 7-209.

(k) Violations of ACJA § 7-210.

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity. This shall include any allegation involving a violation of these rules or ACJA § 7-209 or ACJA § 7-210 by alternative business structures and legal paraprofessionals.

1. If bar counsel determines the lawyer, alternative business structure, or a legal paraprofessional is not subject to the disciplinary jurisdiction of the supreme court, bar counsel shall refer the information to the appropriate entity.

2. If bar counsel determines the lawyer, alternative business structure, or legal paraprofessional is subject to the disciplinary jurisdiction of the court, bar counsel shall, in the exercise of bar counsel's discretion, resolve the matter in one of the following ways:

A. – C. **[[No change]]**

(b) Screening Investigation and Recommendation by Bar Counsel. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that ~~he or she is~~ the respondent is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* **[[No change]]**

2. *Action Taken by Bar Counsel.* **[[No change]]**

(c) [[No change]]

Rule 56. Diversion

(a) [[No change]]

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to ~~the~~ an attorney, alternative business structure, or legal paraprofessional based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer, alternative business structure, or legal paraprofessional committed professional misconduct, the lawyer is incapacitated, or the lawyer, alternative business structure, or legal paraprofessional does not wish to contest the evidence of misconduct and bar counsel and the respondent agree that diversion will be appropriate;
2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;
3. the cause or basis of the professional misconduct by an individual lawyer, alternative business structure, or legal paraprofessional, or incapacity of an individual lawyer or legal paraprofessional is subject to remediation or resolution through alternative programs or mechanisms, including:

A. – E. [[No change]]

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer or legal paraprofessional agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and
5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion Agreement or Order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney, alternative business structure or legal paraprofessional and bar counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent.

1. *Consent to Discipline.* **[[No change]]**

2. *Form of Agreement.* An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. ~~Rule~~ *Violations.* Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule or ACJA section that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. *Forms of Discipline.* – F. *Use of Standardized Documents.* **[[No change]]**

3. *Procedure.* **[[No change]]**

4. *Presiding Disciplinary Judge Decision.* **[[No change]]**

5. *Disbarment by Consent.* **[[No change]]**

(b) [[No change]]

Rule 60. Sanctions

(a) Types and Forms of Sanctions, Attorneys. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* **[[No change]]**
2. *Suspension.* **[[No change]]**
3. *Reprimand.* **[[No change]]**
4. *Admonition.* **[[No change]]**
5. *Probation.* **[[No change]]**
6. *Restitution.* **[[No change]]**

(b) Types and Forms of Sanctions, Alternative Business Structures. Misconduct by an ABS shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA § 7-209.

(c) Types and Forms of Sanctions, Legal Paraprofessional. Misconduct by a legal paraprofessional shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA § 7-210.

(~~b~~ d) Assessment of the Costs and Expenses. **[[No change to text]]**

(e e) Enforcement. **[[No change to text]]**

Rule 63. Transfer to Disability Inactive Status

(a) Purpose. A lawyer or legal paraprofessional whose physical or mental condition adversely affects the lawyer's or legal paraprofessional's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer or legal paraprofessional shall be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and rehabilitation of the lawyer. Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged.

(b) Method of Transfer

1. *Judicial Determinations of Incapacity.* If a lawyer or legal paraprofessional has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order of transfer immediately transferring the lawyer or legal paraprofessional to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer or legal paraprofessional, the lawyer's or legal paraprofessional's guardian and conservator, and the director of the institution to which the lawyer or legal paraprofessional may have been committed.

2. *Interim Order of Incapacity.* When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer or legal paraprofessional may be incapacitated to the extent that the lawyer or legal paraprofessional may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, bar counsel may file a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, with the disciplinary clerk, for an order temporarily transferring the lawyer or legal paraprofessional to disability inactive status pending a hearing to determine incapacity as provided in this rule.

3. *Finding of Incapacity to Discharge Duty.* If it is alleged by a lawyer or legal paraprofessional or otherwise appears in the course of a discipline proceeding that the lawyer or legal paraprofessional is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer or legal paraprofessional lacks the capacity to adequately discharge the lawyer's or legal paraprofessional's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer or legal paraprofessional alleged to be incapacitated.

4. *Finding of Incompetency to Assist in Defense.* If it is alleged by a lawyer or legal paraprofessional or otherwise appears in the course of a discipline or disability

proceeding that the lawyer is unable to understand the proceedings or assist in the lawyer's or legal paraprofessional's defense as a result of a mental or physical condition, the presiding disciplinary judge, sua sponte, or upon motion of bar counsel, shall immediately transfer the lawyer or legal paraprofessional to disability inactive status on a temporary basis pending a determination of competency, and all pending discipline proceedings shall be temporarily stayed. When a lawyer files a petition requesting transfer to disability inactive status alleging incompetence to assist in the lawyer's or legal paraprofessional's defense, the petition shall be processed according to paragraph (c) of this rule.

5. *By Consent Agreement.* An agreement for transfer to disability inactive status must be signed by the lawyer or legal paraprofessional, the lawyer's or legal paraprofessional's counsel, if any, and bar counsel.

A. General Language. Agreements must include the following language as applicable:

(i) a statement describing the nature and extent of the lawyer's or legal paraprofessional's physical or mental condition that adversely affects his or her ability to practice law warranting transfer to disability inactive status;

(ii) a statement that the order of transfer to disability inactive status may include conditions of conduct in the nature of probation;

(iii) a statement that the lawyer's or legal paraprofessional's consent to be transferred to disability inactive status is submitted freely and voluntarily and not as a result of coercion or intimidation;

(iv) a statement that the lawyer or legal paraprofessional is represented by counsel, has chosen not to seek the assistance of counsel or is unable to secure representation by counsel;

(v) a statement that the lawyer or legal paraprofessional voluntarily waives the right to an adjudicatory hearing on the transfer, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the transfer is approved;

(vi) a statement that the lawyer or legal paraprofessional acknowledges the duty to comply with all rules pertaining to notification of clients, return of property, and other rules pertaining to suspension, including reinstatement;

(vii) – (ix) **[[No change]]**

B. Evaluations. - C. Hearing. **[[No change]]**

(c) Proceedings to Determine Incapacity or Competence.

1. *Petition.* A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a

recommendation of the committee, the presiding disciplinary judge, or the lawyer or legal paraprofessional alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2. *Service.* **[[No change]]**

3. *Appointment of Counsel.* The presiding disciplinary judge may appoint counsel to represent the lawyer or legal paraprofessional alleged to be incapacitated if the lawyer or legal paraprofessional is without adequate representation and the presiding disciplinary judge determines there is prima facie evidence of incapacity. The presiding disciplinary judge shall appoint counsel to represent a lawyer or legal paraprofessional who is without representation in proceedings to determine competency.

4. *Hearing.*

A. *Incapacity to Discharge Duty.* The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or legal paraprofessional is incapacitated, including directing examination of the lawyer or legal paraprofessional by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer or legal paraprofessional lacks the capacity to adequately discharge the lawyer's or legal paraprofessional's duty to clients, the bar, the courts or the public.

B. *Competency to Assist in Defense.* The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or legal paraprofessional is competent, including directing examination of the lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer or legal paraprofessional is able to assist in the lawyer's or legal paraprofessional's own defense. To assist in the lawyer's or legal paraprofessional's own defense, the lawyer or legal paraprofessional needs to understand the charges, be able to communicate with the lawyer's or legal paraprofessional's attorney about the charges and any defense to those charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

5. *Report of Presiding Disciplinary Judge.* Within thirty (30) days after the hearing or the filing of the post-hearing memoranda or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a decision and order containing findings of fact and conclusions concerning transfer to disability inactive status based on a

determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer or legal paraprofessional to disability inactive status on the parties. Thereafter, the lawyer or legal paraprofessional shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

6. *Appeal.* **[[No change]]**

(d) Status of Pending Disciplinary Proceedings.

1. *Incapacity to Discharge Duty.* An order transferring a lawyer or legal paraprofessional to disability inactive status based on a finding that a lawyer or legal paraprofessional is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3) of this rule.

2. *Competency to Assist in Defense.* If the presiding disciplinary judge or this court determines a lawyer or legal paraprofessional is not competent to assist in the lawyer's or legal paraprofessional's own defense, discipline proceedings shall be stayed, and the lawyer or legal paraprofessional placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer is competent to assist in the lawyer's or legal paraprofessional's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

3. *Order to Show Cause.*

A. *Petition.* In the case of a lawyer or legal paraprofessional who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer or legal paraprofessional appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, bar counsel shall file with the disciplinary clerk a petition for order to show cause.

B. Hearing. The presiding disciplinary judge shall issue an order requiring the lawyer or legal paraprofessional to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

C. Decision and Order of presiding disciplinary judge. The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a decision containing findings of fact and an order concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the decision and order on the parties. Any such order is subject to appellate review by the court. If an order is entered finding that an existing stay is no longer supported by good cause, or if an order is entered finding that a lawyer or legal paraprofessional is no longer incompetent, and if the time to appeal has expired, any stayed discipline proceedings shall resume.

D. Appeal and Review. Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts the presiding disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer or legal paraprofessional is no longer incompetent, any stayed discipline proceedings shall resume.

(e) Confidentiality of Disability Proceedings. Proceedings and records relating to transfer to or from disability inactive status, including determinations of competency, are confidential, except that orders transferring a lawyer or legal paraprofessional to or from disability inactive status are public.

(f) Assessment of Costs. [[No change]]

(g) Reinstatement to Active Status.

1. *Application.* **[[No change]]**

2. *Waiver of Doctor-Patient Privilege.* The filing of an application for transfer to active status by a lawyer or legal paraprofessional transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the lawyer or legal paraprofessional during the period of disability. The lawyer or legal paraprofessional shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider, and hospital or other institution by whom or in which the lawyer or legal paraprofessional has been examined or treated since the lawyer's or legal paraprofessional's transfer to disability inactive status. The lawyer or legal paraprofessional shall furnish to the presiding disciplinary judge or this court written authorization to each health care provider and facility to release information and records relating to the disability if requested by the presiding disciplinary judge, this court or appointed medical experts.

3. *Reinstatement.* No lawyer or legal paraprofessional transferred to disability inactive status may resume active status until reinstated by order of this court. A lawyer or legal paraprofessional shall be entitled to apply for transfer to active status at any time at least one year after the lawyer's last application or at such shorter intervals as the court or the presiding disciplinary judge may direct in the order transferring the lawyer to disability inactive status or any modification thereof. The application shall be granted upon a showing, by clear and convincing evidence, that the lawyer's or legal paraprofessional's mental or physical condition has been removed and the lawyer or legal paraprofessional is fit to resume the practice of law. In its discretion, the hearing panel or the court may direct that the lawyer or legal paraprofessional establish proof of competence and learning in law, which proof may include certification by the bar examiners of the lawyer's or legal paraprofessional's successful completion of an examination for admission to practice, notwithstanding the lawyer or legal paraprofessional was on inactive status less than five years. If a lawyer or legal paraprofessional has been transferred to disability inactive status by an order in accordance with these rules and, thereafter, has been judicially declared to be no longer under disability, the hearing panel may dispense with further evidence that the disability has been removed and may recommend the lawyer's or legal paraprofessional's reinstatement to active status upon such terms as are deemed appropriate.

4. *Pending Discipline.* **[[No change]]**

Rule 66. Appointment of Conservator to Protect Client Interests.

(a) Appointment of Conservator. The state bar or any other interested person may petition the presiding judge of a superior court or the presiding judge's designee ("appointing judge") to appoint one or more eligible persons to act as conservators of the client files and records, client trust accounts and such other affairs of a lawyer or legal paraprofessional or formerly admitted lawyer or formerly admitted legal paraprofessional, as the appointing judge determines appropriate. There shall be no filing fee for petitions for conservator under this rule. The appointing judge shall appoint a conservator if the lawyer or legal paraprofessional maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer or legal paraprofessional is known to exist, and:

1. the lawyer or legal paraprofessional is made the subject of an order of interim suspension and related matters; or
2. the appointing judge by order directs the state bar to file an application under this rule; or
3. the lawyer or legal paraprofessional is transferred to inactive status because of incapacity or disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

(b) Service of Petition. A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer or legal paraprofessional, the state bar, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or the state bar that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made on the respondent by certified mail/delivery restricted to addressee in addition to regular first-class mail, sent to the last address provided by the respondent to the state bar pursuant to Rule 32(c)(3). When service of the petition is made by mail, the state bar shall file a notice of service in the conservatorship matter indicating the time and manner of mailing. Service shall be deemed complete when the notice is filed.

(c) – (e) [[No change]]

Rule 67. Duties of Conservator

(a) – (b) [[No change]]

(c) Written Notice to Clients of Conservatorship. The conservator shall send written notice to all clients listed in the inventory of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel or legal paraprofessional. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's file.

(d) Return of Files. A file in the conservator's possession or control shall be returned to a client upon the execution of a written receipt, or released to substitute counsel or legal paraprofessional upon the request of the client and execution of a written receipt by such counsel or legal paraprofessional.

(e) [[No change]]

(f) Conservator-Client Relationship. Neither the conservator nor any partner, associate or other lawyer or legal paraprofessional practicing in association with the conservator shall:

1. make any recommendation of counsel or legal paraprofessional to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or
2. represent such a client in connection with:
 - A. any matter identified during the conservatorship; or
 - B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

(g) – (h) [[No change]]

VI. UNAUTHORIZED PRACTICE OF LAW

Rule 75. Jurisdiction

(a) Jurisdiction. This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(b) ~~31(a)~~ of these rules or any entity providing legal services contrary to the requirements of Rule 31.1(c). Proceedings against non-members or alternative business structures may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

(b) Definitions. The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rules 31(b); 31.1(c); and 41(a) ~~31(a)(2)~~ shall apply.
2. “Bar counsel” **[[No change]]**
3. “Charge” means any allegation of misconduct or incapacity of a lawyer, legal paraprofessional, or alternative business structure or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.
4. “Committee” **[[No change]]**
5. “Complainant” means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer or alternative business structure regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.
6. “Complaint” — 11. “Record” **[[No change]]**
12. “Respondent” is any person or alternative business structure subject to the jurisdiction of the court against whom a charge is received for violation of these rules.
13. “State bar” — 16. “Unauthorized practice of law proceeding” **[[No change]]**

Rule 76. Grounds for Sanctions, Sanctions and Implementation

(a) Grounds for Sanctions. Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule 31-31.2.
2. Willful disobedience or violation of a court ruling or order requiring the individual or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.
3. **[[No change]]**

(b) Sanctions and Dispositions.

1. *Agreement to Cease and Desist.* **[[No change]]**
2. *Cease and Desist Order.* **[[No change]]**
3. *Injunction.* **[[No change]]**
4. *Civil Contempt.* **[[No change]]**
5. *Restitution.* **[[No change]]**
6. *Civil Penalty.* The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a legal paraprofessional shall be deposited in the fund established by the supreme court for that program.
7. *Costs and Expenses.* **[[No change to text]]**

(c) Implementation of Cease and Desist Sanction. **[[No change]]**

Attachment #5

ATTACHMENT #5

ARIZONA RULES OF EVIDENCE

Rule 513. Legal Paraprofessional

A communication between a legal paraprofessional and a client is privileged if it is made for the purpose of securing or giving legal advice, is made in confidence, and is treated confidentially. This privilege is co-extensive with, and affords the same protection as, the attorney-client privilege.

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0030
RULE 42, RULES OF THE)
SUPREME COURT)
) **FILED: 8/27/2020**
)
_____)

**ORDER
AMENDING RULE 42, ARIZONA RULES OF THE SUPREME COURT**

A petition having been filed to amend ERs 7.1 through 7.5 of Rule 42 of the Arizona Rules of the Supreme Court (and associated comments), and having considered the petition and a comment, upon consideration,

IT IS ORDERED that ERs 7.1 through 7.5 of Rule 42 of the Arizona Rules of the Supreme Court (and associated comments) are amended in accordance with the attachment to this order, effective January 1, 2021.

DATED this 27th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution

David K. Byers

Lisa M. Panahi

George A. Riemer

ATTACHMENT¹

ARIZONA RULES OF THE SUPREME COURT

Rule 42. Arizona Rules of Professional Conduct

* * *

ER 7.1 Communications Concerning a Lawyer's Services

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

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

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] Advertising Communications Concerning a Lawyer's Services: Specific Rules

~~(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 (c) 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

(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 (a**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 ~~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]– Communication of Fields of Practice

~~(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] Firm Names and Letterheads

~~(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.~~

Jeff Ward

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Jeff Ward is Associate Dean of Technology and Innovation and serves as the Director of Duke's Center on Law & Technology (DCLT), which coordinates Duke's leadership at the intersection of law and technology with programs such as the Duke Law Tech Lab (<http://www.dukelawtechlab.com>), a pre-accelerator for legal technology companies, and the Access Tech Tools initiative, a program to help students and Duke's community partners to employ human-centered design thinking and available technologies to create tools to enhance access to legal services.

Ward focuses his scholarship and professional activities on the law and policy of emerging technologies (blockchain, artificial intelligence, robotics, IoT, etc.), the future of lawyering, and the socio-economic effects of rapid technological change, with a focus on ensuring equitable access to the tools of economic growth and the resources of the law.

Ward currently teaches Law & Policy Lab: Blockchain (<https://law.duke.edu/academics/course/section/2017/Fall/475A.01>) and Frontier Robotics & AI: Law & Ethics (<https://law.duke.edu/academics/course/592/>), as well as Intellectual Property, Business Law, and Entrepreneurship for Duke's Pratt School of Engineering's Masters of Engineering Management Program.

Ward is involved with several law-tech leadership organizations, including the Kauffman Foundation-supported Legal Technology Laboratory, the American Association of Law Schools Section on Technology, Law, and Legal Education, the North Carolina Bar Association's Committee on the Future of Law. Through this work and through his role as a 2017-2019 Duke Alumni Association "Faculty Fellow (<https://alumni.duke.edu/forever-learning/alumni-faculty-fellows/>)," Ward frequently presents nationwide on technology- and economic development-related topics.

Prior to serving as director of the DCLT, Ward was director of the Start-Up Ventures Clinic, supervising attorney in the Law School's Community Enterprise Clinic, and an associate with the Chicago office of Latham & Watkins, where he focused on M&A and capital markets transactions and served as a Public Interest Law Initiative Fellow with the at the Community Economic Development Law Project of the Chicago Lawyers' Committee for Civil Rights Under Law, Inc.

Ward earned both his JD and his LLM in International & Comparative Law from Duke Law School, his MA in Literature from Northern Illinois University, and his BA in the Program of Liberal Studies (Great Books) and a concentration in Philosophy, Politics, & Economics from the University of Notre Dame. Before turning to the law, Ward worked first as a business consultant with a global management-consulting firm in Chicago and then as an English teacher in the Chicago suburbs.

Ward is licensed to practice in North Carolina and maintains his own law practice, counseling start-ups and offering corporate and transactional legal services to for-profit and non-profit business entities. He and his wife have two children.



Recent Courses

- 475A: Law & Policy Lab: Blockchain (<https://law.duke.edu/academics/course/475>)
- 592: Frontier Robotics: Law & Ethics (<https://law.duke.edu/academics/course/592>)
- 865: Designing Creative Legal Solutions (<https://law.duke.edu/academics/course/865>)

About the Center

The Duke Center on Law & Technology prepares students for the growing landscape of technology in the legal profession through collaboration with Duke's innovative and entrepreneurial initiatives, engagement with local entrepreneurs, and by providing educational opportunities at the intersection of technology and the law.



The law, from the way that large firms do business, to the way that courts operate, to the basic knowledge needed to aid certain clients, is increasingly tech-driven.

From an educational and career-preparation perspective, we are positioning Duke Law to be a leader at the intersection of technology and the law.

— Jeff Ward '09

Director of the Duke Center on Law & Technology
Associate Dean for Technology and Innovation

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Newsletter

Receive the latest updates from the Center on Law & Tech in your inbox!

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Support the Center

With your help, the Duke Center on Law & Technology can achieve its mission to capture this opportunity and to help place those involved in the Duke community at the forefront of this new era of tech-driven legal practice and thoughtful policy development.

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Latest News

- Raker discusses the value Duke Law Tech Lab brings to legal tech startups and the accelerator experience (<https://www.lawsitesblog.com/2020/09/guest-post-different-approaches-with-a-common-takeaway-across-legal-tech-incubators-accelerators.html>)
- Three startups in this summer's Duke Law Tech Lab advance to LexisNexis's Legal Tech Accelerator program (<https://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1599582661885477&y=2020>)
- Access to justice startups will pitch a virtual audience and judges Sept. 25 at Duke Law Tech Lab Demo Day (<https://duke.zoom.us/meeting/register/tjMkcOiqj8oE9VjY6rVI4GQNrGfiOLDZNTm>)
- Duke Law Tech Lab nurtures four early-stage companies, each with a mission of improving access to justice (<https://law.duke.edu/news/duke-law-tech-lab-nurtures-four-early-stage-companies-each-mission-improving-access-justice>)
- Ward JD/LLM '09: Startups in this summer's Duke Law Tech Lab have "the right attitude" in improving access to justice through technological innovation | Attorney at Law Magazine (<https://attorneyatlawmagazine.com/duke-center-on-law-tech-selects-4-legal-tech-companies-for-pre-accelerator-program-focused-on-access-to-justice>)

[MORE NEWS](#)

Initiatives

The Duke Center on Law & Technology coordinates many of Duke's leadership activities in legal technology; our initiatives aim to understand, re-imagine, shape, and lead the next generation of tech-enabled legal practice and to employ the tools of the law to ensure that rapidly emerging technologies empower and ennoble people.

Access Tech Tools

The Duke Center on Law & Technology's Access Tech Tools Initiative includes incorporating technology into access to justice programs, integrating design thinking processes into academic courses and community workshops, and supporting scholarship on these topics.

Our faculty, staff, and research assistants (<https://law.duke.edu/node/480971/>) partner with Duke Legal Clinics (<https://law.duke.edu/clinics>) and technologists in tech-development projects that aim expressly at expanding access to legal services and increasing efficiency at the Law School.

Data Governance Design Conference & Research Network

The Data Governance Design Conference (DGDC), held in November 2019, convened policymakers, industry, academia, and legal practitioners to explore models, needs, and enabling environment for data governance. The DGDC featured expert-level content, for a select audience of data governance leaders, toward establishing a practice-led research agenda that unlocks the field's tremendous potential.

As an outcome of the conference, a new collaborative research network on data governance was created, involving the Duke Center on Law & Tech, Indiana University's Ostrom Workshop, The University of Western Australia, and the Digital Civil Society Lab at the Stanford Center on Philanthropy and Civil Society.


[CONFERENCE DETAILS](#)
[NEWS](#)
[WATCH THE VIDEOS](#)

Duke Law By Design

Duke Law By Design is an initiative to bring human-centered design principles and practices into the law school.

A group of faculty and staff have completed training through IDEO U about design thinking, and are engaging student, staff, and faculty in human-centered design processes with stakeholders, other service professionals, and partner organizations from the community.

Topics have included eviction procedures in Durham, imagine measurements of project and attorney success beyond the billable hour, access to justice, improving forensic reports, and serving human trafficking survivors, and others.

[READ MORE](#)

Design thinking for law is a process of experiencing knowledge and exploring the human mind's 'playground of ideas'.

Design thinking helps us to change the law for the better by...

- Asking participants to take on a beginner's mindset
- Looking beyond the borders of the "law" as currently defined
- Stripping away the fear of making mistakes
- Teaching creativity and prototyping as core skill sets

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Alumni Profile



Rochael Soper Adranly, L '97/98 is Partner, General Counsel + Legal Design Lead for the international design firm IDEO (https://urldefense.proofpoint.com/v2/url?u=https-3A_www.ideo.com_d=DwMFaQ&c=imBPVzF25On6uCAQrpyg5JJDTduuw87X_lxZOkmRzFs&e=). In her role as Legal Design Lead, Adranly walks the fine line between the rules-based world of law and the nonrules-based world of innovation, seeing to ensure that legal processes, tools, roles, and assets fit the needs of users as well as the human-centered culture of the firm. In 2015, she worked closely with her IDEO colleagues to create IDEO's Legal Design + Innovation practice to help law firms, in-house legal teams, law schools, public sector clients, and criminal justice reform advocates across the globe embrace human centered design against a rigid legal landscape.

Before joining IDEO, she worked in law firms in Houston, New York, and Silicon Valley and taught client counseling and negotiation at the UC Hastings and UC Berkeley Schools of Law. In 2017, Adranly co-developed and co-taught the Wintersession course, Designing Creative Legal Solutions, at Duke Law with Professor Jeff Ward. Adranly earned her JD and LLM from Duke Law School.

Duke Law & Technology Society

The Duke Law & Technology Society is a student-run organization which seeks to create a forum where like-minded students interested in the intersection of law and

Courses using Design Thinking

- Designing Creative Legal Solutions
(<https://law.duke.edu/academics/course/section/2019/winter/865.01>)
- Readings in Social Justice: Mass Incarceration
(<https://law.duke.edu/academics/course/section/2018/spring/611.14>)



technology can share their ideas and satisfy their intellectual curiosity through peer (to-peer) instruction.

[LEARN MORE](#)

Meet the Facilitators



Prof. Erika Buell

"Lawyers bring an analytical mindset to a task or scenario - including rapid assessments, analysis, and conclusions. Suspending this type of 'lawyer' thinking — and embracing design thinking — watching (without judging) and empathizing with curiosity — is a profound shift in mindset that facilitates new insights."

[MEET PROF. BUELL](#)



Prof. Anne Gordon

"I've had a variety of professional interests and jobs, so I'm used to the idea of trying, failing, and stumbling toward something that at the end will work for me. Design thinking is right in line with how I view life - as an opportunity to iterate towards your final goal."

[MEET PROF. GORDON](#)



Prof. Crystal Grant

"I collaborate with professionals across a number of disciplines. Design thinking provides a framework I can use in my interdisciplinary work and client representation. I have expanded my problem solving skills and I can't wait to share my insights with students."

[MEET PROF. GRANT](#)



Prof. Cas Laskowski

"As a gamer, I'm used to failing several times before getting it right. Design thinking encourages us to embrace failure to progress. Failure compels us to look at problems in new ways and think of creative solutions."

[MEET PROF. LASKOWSKI](#)



Kelli Raker

"Empathy is one of the cornerstones of design thinking; it impacts how we respond to others when faced with a complex problem. I am a better person and professional when I connect with others around their experience."

[MEET KELLI](#)



Prof. Jeff Ward

"The law, like every powerful institution, needs engines of renewal and disruption, and design thinking fuels these engines, giving students full license to make tomorrow's law better than today's."

[MEET PROF. WARD](#)

Ethical Tech

Ethical Tech was co-founded by DCLT Fellows. It is a nonpartisan initiative focusing on research, education, and policy development.

[ETHICAL TECH @ DUKE](#)

Duke LawNext

Duke LawNext is a set of curated, remote, self-directed enrichment opportunities for Duke Law students and recent alumni to explore next-generation legal practice. Launching for summer 2020, this program helps participants explore the ways that both *legal*



practitioners and the world in which they are situated are changing on account of emerging technologies. Participants will choose from these Pathways:

- **Tomorrow's Digital Lawyer** - Exploring shifts in the delivery of legal services driven by digital technologies
- **Legal Design, Innovation, & A2J** - Applying design & tech to enhance access to legal services & solve entrenched social problems
- **Lawyering in the Age of AI** - Confronting our increasing embeddedness in a world of big data & artificial intelligence

By completing Pathway Foundations (core materials), engaging with Enrichment Windows, and completing a demonstration project, participants will be eligible to add a designated notation to their CV/résumé.

Duke Law Tech Lab

The Duke Law Tech Lab accelerates the next generation of startups that will change the way legal and civic services are delivered.



Working with early stage companies with a legal tech product and a mission to increase access to legal services, the Duke Law Tech Lab builds community, connects companies with valuable partners and mentors, and supports company growth through a three month remote program, culminating in a Demo Day where companies compete for prize money.

[LEARN MORE](#)

Events

We coordinate and support interdisciplinary events at Duke Law and across campus on emerging issues and technologies. We partner with other departments such as Duke Science & Society (<https://scienceandsociety.duke.edu/>), Duke Innovation & Entrepreneurship (<https://entrepreneurship.duke.edu/>), Innovation Co-Lab (<https://colab.duke.edu/>), Duke Pratt School of Engineering (<https://pratt.duke.edu/>), Duke Sanford School of Public Policy (<https://sanford.duke.edu/>), Duke Law Start-Up Ventures Clinic (<https://law.duke.edu/startupventures/>), student groups like Duke Law & Technology Society (<https://law.duke.edu/students/orgs/#dlts>) and Ethical Tech (<https://ethicaltech.duke.edu/>), and external groups like Triangle Privacy Research Hub (TPRH) (<http://www.triangleprivacyhub.org/>).

Some of our recent past events include:

- Data Privacy Day Panel (https://youtu.be/mo_EbaFwLoc)(2019)
- Cybersecurity Law and Policy: What Are the Top Issues for 2019? (<https://www.youtube.com/watch?v=q6SaCWh4QCY>)
- AI in the Administrative State: AI, Automated Vehicles, and Transportation Policy (https://www.youtube.com/watch?v=xVNjn0_17Co) (2018)
- Legal A.I. Showdown with Seal Software (<https://www.seal-software.com/blog/live-blog-duke-legal-ai-showdown/>) (2018)
- Lange Lecture with Jonathan L. Zittrain (<https://youtu.be/pNJubvIQnUo>)(2018)

Law +Data Science

In connection with the Duke +Data Science initiative (<https://plus.datascience.duke.edu/>), research assistants and faculty with the Duke Center on Law & Technology are current developing training modules and learning experiences which involve specialized content on the intersection between law and data science. Stay tuned for more details coming soon!

