

1 Arizona Supreme Court
2 Attorney Regulation Advisory
3 Committee
4 1501 W. Washington St.
Phoenix, AZ 85007

5 **IN THE SUPREME COURT**
6 **STATE OF ARIZONA**

7 In the Matter of:

Supreme Court No. R-18-0006

8 **PETITION FOR ADOPTION OF**
9 **NEW RULE 42.1, ARIZONA**
10 **RULES OF SUPREME COURT**

Comment of Attorney Regulation
Advisory Committee

11 The Arizona Supreme Court’s Attorney Regulation Advisory Committee
12 (“ARC”) supports the proposal to establish a new Supreme Court Attorney Ethics
13 Advisory Committee (“AEAC”) that would issue formal opinions on ethics,
14 professionalism, and the unauthorized practice of law.

15 ARC endorses the concept of separating the formal advisory function from
16 the State Bar of Arizona, which serves as investigator and prosecutor on lawyer
17 discipline and UPL cases. In addition, ARC endorses the recognition that, as in
18 judicial ethics proceedings, compliance with or reliance on a formal advisory
19 opinion is recognized as a defense in lawyer disciplinary proceedings.

20 ARC suggests that the proposed rule be revised to address three issues.

21 Who may request opinions: ARC supports the concept of consolidating the
22 formal advisory functions for lawyer ethics, lawyer professionalism and the
23 unauthorized practice of law (UPL) in the AEAC.
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1 As currently proposed, Rule 42.1(b) allows the AEAC to consider UPL issues
2 but Rule 42.1(b)(1), which deals with the AEAC’s powers and duties, and Rule
3 42.1(e), which addresses opinion requests, would not allow non-lawyers to request
4 advisory opinions.

5 Both lawyers and non-lawyers can engage in UPL, however, and the State
6 Bar’s UPL Committee may issue opinions on questions regarding the interpretation
7 of rules that apply to lawyers as well as non-lawyers. Report of Supreme Court’s
8 Task Force on Lawyer Ethics, Professionalism, and the Unauthorized Practice of
9 Law (hereinafter the “Task Force”), attached to Petition to Adopt New Rule 42.1, at
10 5 (“The UPL Committee issues opinions on questions regarding the interpretation of
11 Rule 31, Ariz. R. Sup. Ct., Ethical Rule 5.5, Rule 42, Ariz. R. Sup. Ct., or the Arizona
12 Code of Judicial Administration, Part 7, Chapter 2, Section 7-208 (governing
13 Certified Legal Document Preparers (the CLDP Code)).”)

14 While the name of the proposed AEAC (“Attorney Ethics Advisory
15 Committee”) implies that it will address matters only involving lawyers, neither the
16 Task Force’s rule-change petition nor its report detail explains how non-lawyers’
17 questions about their prospective conduct under Rule 31 or the CLDP Code would
18 be addressed. However, considering that the intent is to consolidate formal advisory
19 opinions on the topics of ethics, professionalism and UPL with this new Supreme
20 Court committee, the AEAC apparently will assume the ability to issue UPL
21 opinions involving non-lawyers.

22 As a result, proposed Rule 42.1(b)(1) should be expanded to allow the AEAC
23 to issue opinions “on the request of any person to address questions regarding
24 whether their proposed conduct constitutes the unauthorized practice of law.”
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1 Proposed Rule 42.1(c) should be expanded to allow non-lawyers to request opinions
2 on their own prospective conduct involving UPL.

3 Making these changes comports with proposed Rule 42.1(k), which would
4 allow “any person” – not just lawyers – to petition the committee to reconsider an
5 opinion.

6 Past conduct: Proposed Rule 42.1(c)(1) provides that the AEAC “should not”
7 issue opinions “involving the ethical propriety of past conduct of a member of the
8 State Bar.” This provision should be revised to provide that the AEAC *may not* issue
9 opinions involving the ethical propriety of a lawyer’s past conduct. Assuming the
10 AEAC also would be able to issue opinions related to non-member UPL, it likewise
11 should be prohibited from issuing opinions on whether a non-lawyer’s past conduct
12 constitutes UPL.

13 Prohibiting the AEAC from issuing opinions that involve past conduct would
14 eliminate any possibility that the AEAC’s actions would conflict with judicial bodies
15 that act within the lawyer-regulation system or which rule on non-member UPL
16 prosecutions.

17 Pending disciplinary litigation: Because of the possibility that someone
18 involved with a discipline or UPL proceeding will request a formal advisory opinion,
19 the AEAC should ensure that an opinion request being resolved formally does not
20 involve a pending disciplinary or UPL proceeding. The AEAC and/or supreme court
21 staff on its behalf should therefore be authorized to consult as necessary with
22 participants in the lawyer discipline system and UPL process.

1 RESPECTFULLY SUBMITTED this __ day of **May**, 2018.

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4 _____
5 Attorney Regulation Advisory Committee

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7 Electronic copy filed with the
8 Clerk of the Arizona Supreme Court
9 this __ day of **May**, 2018.

10 By: _____

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