

Jennifer Albright
Senior Policy Analyst
Administrative Office of Courts
Phoenix, Arizona 85282
Tel: 602-452-3453
Email: jalbright@courts.az.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:
**PETITION TO AMEND RULE
56(c) OF THE ARIZONA
RULES OF THE SUPREME
COURT**

Supreme Court No. R-21-____
PETITION
(Expedited consideration requested)

**PETITION TO AMEND ARIZONA RULE
OF THE SUPREME COURT 56(c)**

Pursuant to Rule 28(a), Ariz. R. Sup. Ct., Petitioner respectfully requests this Court to amend the Arizona Rules of Supreme Court related to diversion to remedy an unintended amendment caused by Rule Petition R-20-0034. The petition and ultimate adoption of proposed amendments in R-20-0034 caused an unintentional abrogation of a prior amendment to Rule 56(c) that had been ordered by this Court on December 12, 2019, in Rule Petition R-19-0040.¹

I. Purpose of the Proposed Amendment.

The purpose of the proposed amendment herein is to correct the unintentional abrogation of a 2019 change to Arizona Rule of Supreme Court 56(c)

¹ See Arizona Supreme Court No. R-19-0040, Final Order Amending Rules 55 and 56, Rules of the Arizona Supreme Court: [Final Order - R-20-0034.pdf](#).

caused by an error in Rule Petition R-20-0034 adopted by Order of this Court on August 27, 2020.²

In 2019 the State Bar of Arizona filed Rule Petition R-2019-0040 in which it sought amendments to Rule 56(c) to align the diversion rules and achieve greater efficiency in the processing of discipline cases. Specifically, the amendment to Rule 56(c) sought herein will amend the rule language to allow a diversion agreement between bar counsel and respondent after an investigation as previously allowed by this Court's 2019 amendment of the rule.

II. Explanation of the Proposed Amendment.

In January 2020, Rule Petition R-20-0034 was filed seeking a significantly large number of amendments to many of the Arizona Rules of the Supreme Court following the adoption of recommendations to allow licensing and regulation of Alternative Business Structures and Legal Paraprofessionals. The breadth of the rules that required amendment to accomplish the licensing and regulation of these new programs was broad. Petitioner herein was staff to the Arizona Supreme Court Task Force on the Delivery of Legal Services and thus was tasked with the responsibility of initial drafts of rule changes and revising said drafts through coordination between two workgroups that were formed to aid in drafting the necessary amendments to rules to ensure appropriate regulation of alternative business structures and legal paraprofessionals.

Undersigned Petitioner reviewed early versions of drafts as well as the notes from meetings of workgroups and input from workgroup members on those drafts. It is clear from that review that the version of Rule 56 used was the one that existed *prior* to this Court's Order amending Rule 56 effective January 1, 2020. Those Rule 56 amendments were ordered and effective prior to the filing of R-20-0034

² See Arizona Supreme Court No. R-20-0034, Final Order Amending the Arizona Rules of the Supreme court and the Arizona Rules of Evidence, August 27, 2020: [Final Order - R-20-0034.pdf](#).

and those working on the amendments sought via R-20-0034 failed to update the Rule 56 content in R-20-0034 to reflect the rule as it read, effective January 1, 2020. Therefore, an unintentional abrogation of the Rule 56(c) amendments occurred.

Undersigned Petitioner has reviewed various versions of R-20-0034 and notes and other work product to verify that there was no discussion or intent to abrogate Rule 56(c) amendments that were effective January 1, 2020. Notes and the recollection of the undersigned indicate the only amendment that was sought to Rule 56(c) via R-20-0034 was to ensure Rule 56(c) covered the newly formed alternative business structures and legal paraprofessionals and aligned with other amendments to rules addressing discipline of these new legal service providers.³

III. Request for Expedited Consideration.

Petitioner requests expedited adoption of the proposed rule amendment as permitted by Rule 28(g)(1), Ariz. R. Sup. Ct. and that the Court consider adopting the amendment requested herein on an emergency basis pursuant to Rule 28(g)(2) at its December 2021 Rules Agenda subject to comment in on whether to adopt the proposed amendment on a permanent basis. The amendment sought would return the State Bar to the position of being able to expeditiously and efficiently manage discipline cases as was intended by the 2019 amendments.

When petitioner learned of the unintended abrogation of 2019 amendment at issue here, the Court and Staff Attorneys office were consulted for guidance on the best way to resolve this issue. Both indicated a rule petition seeking expedited consideration would be advisable.

The State Bar communicated to Petitioner the issue addressed herein and is aware of this petition. Petitioner provided Bar Counsel the opportunity to review

³ See R-20-0034, p.32 describing purpose of proposed amendment to Rule 56 Diversion: [Petition_Final.pdf](#).

this petition as well as the Presiding Disciplinary Judge and the Certification and Licensing Division of the Administrative Office of Courts before filing.

Petitioner respectfully request that the Court amend Supreme Court Rule 56(c) as proposed in Appendix A to this petition.

Submitted this 14th day of October 2021.

Jennifer R. Albright

Jennifer R. Albright
Senior Policy Analyst
Administrative Office of the Courts
1501 W. Washington Street
Phoenix, Arizona 85007

APPENDIX A

Rule 56. Diversion

(a) [No change]

(b) [No change]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to submission of the matter to the committee, 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~~ offers diversion after an investigation pursuant to Rule 55(b) and the attorney, alternative business structure or legal paraprofessional does not accept the offer of diversion, ~~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.

(d) [No change]

(e) [No change]

APPENDIX B

Rule 56. Diversion

(a) [No change]

(b) [No change]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to submission of the matter to the committee, the agreement shall be between the attorney, alternative business structure or legal paraprofessional and bar counsel. If bar counsel offers diversion after an investigation pursuant to Rule 55(b) and the attorney, alternative business structure or legal paraprofessional does not accept the offer of diversion, 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.

(d) [No change]

(e) [No change]