

1 Diana Newmark, Bar No. 035764
2 Associate Clinical Professor of Law
3 Director, Education Advocacy Clinic
4 James E. Rogers College of Law,
5 University of Arizona
6 1145 N. Mountain Ave.
7 Tucson, Arizona 85719
8 (520) 626-9950

9 Amanda Glass, Bar No. 034769
10 Managing Attorney, Education Team
11 Arizona Center for Disability Law
12 5025 E. Washington Street, Suite 202
13 Phoenix, AZ 85034
14 (602) 274-6287

15 **IN THE SUPREME COURT**
16 **STATE OF ARIZONA**

17 In the Matter of:

18 **PETITION TO AMEND RULE**
19 **31.3(e)(1)**

20 Supreme Court No. R-21-

21 **Petition to Amend Rule 31.3(e)(1)**

22 Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Diana Newmark
23 and Amanda Glass hereby petition the Court to adopt amendments to Rule
24 31.3(e)(1), governing the practice of non-lawyer advocacy in administrative matters
25 related to the issues of children with disabilities, as proposed below.

1 its practice.

2 The Education Advocacy Clinic at the University of Arizona, James E.
3 Rogers College of Law, provides free legal services, as well as general information
4 and support, to families of students attending Tucson’s public schools. The
5 Education Advocacy Clinic focuses on providing services to students are also
6 involved in the juvenile delinquency, child welfare, or immigration systems. The
7 Clinic is staffed by students in the B.A. in Law, M.L.S., and J.D. programs at the
8 James E. Rogers College of Law, supervised by Clinical Director Diana Newmark,
9 an Associate Clinical Professor of Law and a member of the Arizona bar.

12 **II. Purpose of Proposed Amendments to Rule 31.3(e)(1)**

13 Currently, A.R.S. Sup. Ct. Rule 31.3(e)(1) allows non-lawyer advocates to
14 represent parties at special education administrative proceedings, under certain
15 conditions, without violating the prohibition on Unauthorized Practice of Law.
16 The administrative proceedings specifically mentioned in A.R.S. Sup. Ct. Rule
17 31.3(e)(1) include due process hearings,² which occur in front of an impartial
18 hearing officer who determines whether the school has complied with federal
19
20
21
22

23 ² 20 U.S.C. § 1415(f).

1 special education laws, and “manifestation determination reviews,”³ which are
2 meetings at the school level that occur when a child with a disability faces long-
3 term suspension, expulsion, or a pattern of classroom removals. We propose an
4 amendment to Rule 31.3(e)(1) to clarify that not-lawyer advocates may also
5 engage in informal advocacy measures, such as attending meetings or mediation
6 and conducting outreach to school officials, without violating the prohibition on
7 the unauthorized practice of law.
8
9

10 On April 4, 2022, we submitted an Ethics Opinion Request (EO-22-0001) to
11 the Supreme Court of Arizona’s Ethics Advisory Committee, in which we first
12 raised the issue of informal education advocacy. That request, attached here as an
13 Appendix, sought clarification that informal advocacy measures by non-lawyer
14 education advocates were authorized by A.R.S. Sup. Ct. Rule 31.3(e)(1).
15

16 On April 28, 2022, the Ethics Advisory Committee convened and discussed
17 our request. During that meeting, the Committee denied our request for a formal
18 Ethics Opinion and instead encouraged us to submit a rule change petition. This
19
20
21
22

23 ³ 20 U.S.C. § 1415(k).
24
25

1 discussion is reflected in the Ethics Advisory Committee Meeting Minutes, which
2 are also attached in the Appendix.

3
4 Informal advocacy measures are a crucial aspect of resolving disputes over
5 special education issues. We propose an amendment to Rule 31.3(e)(1) that would
6 specifically authorize non-lawyer education advocates to engage in these informal
7 measures.

8 9 **III. Background on Non-Lawyer Education Advocacy**

10 Navigating the public special education system can be a difficult and
11 confusing process for many parents of students with disabilities. Federal and state
12 special education laws require that all children with disabilities receive a free
13 appropriate public education, “designed to meet their unique needs and prepare
14 them for further education, employment, and independently living.”⁴ In order to
15 determine what exactly a “free appropriate public education” entails for any
16 particular child with a disability, special education laws include numerous
17 procedural requirements.⁵ These requirements include details such as specific
18 timelines for completing special education evaluations, provisions requiring
19
20
21

22
23 ⁴ See 20 U.S.C. §1400(d)(1)(A).

24 ⁵ See 20 U.S.C. §1414.

1 parental consent for any evaluations or special education services, and details
2 regarding how decisions regarding the education of a child with a disability are
3 made.⁶ Federal special education laws contemplate that decisions are made
4 collaboratively, by a “team” that includes school professionals, the parent, as well
5 as “any other individuals who have knowledge or special expertise regarding the
6 child” invited at the parent’s discretion.⁷
7

8
9 In Arizona and throughout the United States, many parents seek support of
10 an education advocate to help them navigate the complexities of special education
11 laws. A non-lawyer education advocate might support a parent, for example, by
12 participating in school meetings, writing letters requesting that the school follow
13 various procedures required by statute, and pursuing alternative dispute resolution
14 options such as a facilitated IEP meeting or a mediation session. These activities
15 are crucial measures to resolve disputes over a child’s educational program, but
16 they also have the potential to fit within the definition of “practice of law” under
17 A.R.S. Sup. Ct. Rule 31(b).
18
19
20
21
22

23 ⁶ *Id.*

24 ⁷ *See* 20 U.S.C. § 1414(d)(1)(B)(vi).
25

1 A.R.S. Sup. Ct. Rule 31.3(e) authorizes non-lawyer education advocates to
2 represent parties at administrative proceedings such as manifestation determination
3 reviews and due process hearings. It seems reasonable to infer that Rule 31.3(e)
4 also authorizes non-lawyer education advocates to represent families in less formal
5 settings that occur in lieu of or prior to the specific administrative proceedings
6 cited in the Rule. However, without clear authorization stating the non-lawyer
7 advocates may engage in these informal measures, a non-lawyer advocate
8 potentially risks engaging in the unauthorized practice of law in performing these
9 duties.
10
11

12 Rule 31.3(e) recognizes a role for non-lawyer education advocates in the
13 field of special education. We propose the following Amendment to Rule 31.3(e)
14 to clarify this role and, in doing so, expand access to justice for many parents of
15 children with disabilities.
16

17 **IV. Contents of the Proposed Amendment to Rule 31.3(e)(1)**

18 *Children with Disabilities.* A person may represent a party:
19

20 (A) in any informal conflict resolution method, such as school-based meetings
21 or mediation, regarding matters relating to the identification, evaluation,
22 educational placement, or the provision of a free appropriate public education
23

1 for a child with a disability or suspected disability if:

2 1. the person as special knowledge or training with respect to the problems of
3 children with disabilities; and

4
5 2. the person is not charging a fee for representing the party (other than
6 receiving reimbursement for costs);

7 ~~(A)~~ (B) In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k)
8 regarding any matter relating to the identification, evaluation, educational
9 placement, or the provision of a free appropriate public education for a child
10 with a disability or suspected disability ~~a person may represent a party~~ if:

11
12 ~~(A)~~ 1. the person as special knowledge or training with respect to the problems
13 of children with disabilities; and

14
15 ~~(B)~~ 2. the person is not charging a fee for representing the party (other than
16 receiving reimbursement for costs).

17 Despite these provisions, the hearing officer may order the party to appear
18 only through counsel or in some other manner if he or she determines that
19 the person representing the party is interfering with the proceeding's orderly
20 progress or imposing undue burdens on other parties.”
21
22
23

1 **CONCLUSION**

2 We respectfully request that the Supreme Court of Arizona amend Rule
3 31.3(e)(1) as requested above.
4

5
6 RESPECTFULLY SUBMITTED this 5th day of January 2023.

7
8 

9 Diana Newmark
10 Director, Education Advocacy Clinic
University of Arizona

11
12 

13 Amanda Glass
14 Managing Attorney, Education Team
Arizona Center for Disability Law

15
16
17
18 Electronic copy filed with the
19 Clerk of the Supreme Court of Arizona
this _____ day of _____, 2023.

20 by: _____

APPENDIX



BA IN LAW
JUVENILE & FAMILY CLINIC
James E Rogers College of Law
1145 N. Mountain Ave.
Tucson AZ 85719

Ofc: 520-626-5232
Fax: 520-626-5233

law.arizona.edu/law-clinics

March 29, 2022

Supreme Court of Arizona
Court Clerk's Office
1501 West Washington, Suite #402
Phoenix, AZ 85007-3231

Dear Members of the Ethics Advisory Committee:

We are writing to request a formal opinion regarding the practice of non-lawyer education advocacy. In particular, we are seeking clarification that informal advocacy by non-lawyer education advocates falls within Arizona Supreme Court Rule 31.3(e), the unauthorized practice of law exception for administrative proceedings related to the needs of children with disabilities.

We write on behalf of organizations that provide education advocacy services to families of students with special needs. Arizona Center for Disability Law (ACDL) is a not-for-profit public interest law firm dedicated to protecting the rights of individuals with a wide range of physical, mental, psychiatric and cognitive disabilities. As part of the nationwide Protection and Advocacy system, ACDL provides free legal services to individuals with disabilities, as well as provides information on legal rights, investigates abuse and neglect, and provides training on legal rights and self-advocacy. As a Protection and Advocacy agency, ACDL must develop priorities to direct the provision of its services on an annual basis, and must seek input from the public, including individuals with disabilities, on the proposed priorities.¹ One of ACDL's priorities is—and has been since its designation—to ensure that students with disabilities have access to appropriate special education services under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. For several years, ACDL has employed both attorneys and non-lawyer education advocates working under the supervision of attorneys in its practice.

The Education Advocacy Project is part of the Undergraduate Juvenile and Family Clinic, housed at the University of Arizona, James E. Rogers College of Law. Launched in 2021, the Education Advocacy Project provides information and support at no cost to families of students attending Tucson's public schools. The Education Advocacy Project is staffed by students in the B.A. in Law program at the James E. Rogers College of Law, supervised by

¹ 42 U.S.C. § 794e (f)(3).



Clinical Director Diana Newmark, an Associate Clinical Professor of Law and a member of the Arizona bar.

Background

Navigating the public special education system can be a difficult and confusing process for many parents of students with disabilities. Federal and state special education laws require that all children with disabilities receive a free appropriate public education, “designed to meet their unique needs and prepare them for further education, employment, and independently living.”² In order to determine what exactly a “free appropriate public education” entails for any particular child with a disability, special education laws include numerous procedural requirements.³ These requirements include details such as specific timelines for completing special education evaluations, provisions requiring parental consent for any evaluations or special education services, and details regarding how decisions regarding the education of a child with a disability are made.⁴ Special education laws contemplate that decisions are made collaboratively, by a “team” that includes school professionals, the parent, as well as “any other individuals who have knowledge or special expertise regarding the child” invited at the parent’s discretion.⁵

Decisions regarding the child’s special education services are usually determined at the school level, between the school and parent. When the school and the parent cannot agree about a disabled student’s education program, various dispute resolution options are available, established by state and federal special education laws. These options include requesting the assistance of a Program Support and Monitoring specialist from the Arizona Department of Education, a “facilitated IEP” for support developing the child’s individualized education program, mediation,⁶ filing an administrative state complaint with the Arizona Department of Education,⁷ filing a complaint with the United States Department of Education’s Office for Civil Rights, and pursuing a due process hearing.⁸ At the conclusion of the administrative process, an aggrieved school or parent could then seek redress in state or federal court.

Many parents seek assistance for navigating the special education system for their children. All parents of students with disabilities should receive a copy of a Procedural Safeguards Notice.⁹ The Procedural Safeguards Notice for the State of Arizona begins by providing contact information for ACDL, as well as a non-profit training and information center called Raising Special Kids, in order to help parents “better understand the attached rights and required special education procedures.”

² See 20 U.S.C. §1400(d)(1)(A).

³ See 20 U.S.C. §1414.

⁴ *Id.*

⁵ See 20 U.S.C. § 1414(d)(1)(B)(vi).

⁶ 34 C.F.R. § 300.506.

⁷ 34 C.F.R. § 300.151-156.

⁸ 34 C.F.R. § 300.507.

⁹ 34 C.F.R. §399.504(a).



Despite the information publicly available about special education laws, obtaining the direct assistance of a special education advocate or attorney is often out of reach for many families. Raising Special Kids provides information and training to support parents advocating on behalf of their own children, but direct advocacy on behalf of students is outside the scope of their service. ACDL provides no-cost legal representation, as well as the support of non-lawyer education advocates under the supervision of attorneys. However, the demand for free legal services from ACDL, especially in the area of special education, exceeds ACDL's staff availability and resources. Although ACDL provides every individual who calls the agency seeking assistance with information and referrals, ACDL is unfortunately not able to provide every caller with direct services and representation. There are a few additional non-profit organizations in Arizona that provide support in navigating the special education system, but no others that provide no-cost legal representation.

A small handful of private special education attorneys regularly represent parents in special education matters, although their legal services can be too costly for many families to access. In addition, private special education attorneys often accept only those cases that are likely to proceed to a formal hearing, which can make it difficult for parents to access representation during the informal process that occurs prior to or in lieu of formal hearings.

In contrast to the handful of attorneys representing parents in special education disputes, the private bar representing school districts and charter schools is much more robust. Nearly all school districts and charter schools are represented by law firms with established educational practices or have in-house counsel. School districts and charter schools typically finance their legal representation through the Arizona Risk Retention Trusts, whereas parents have no such insurance or state-sponsored funding opportunities for securing counsel in education matters.

Furthermore, many parents prefer to resolve disputes regarding their child's special education program quickly, using informal measures instead of litigation. Due process hearings, appeals, and further litigation take time. Many parents worry about lost learning opportunities for their child with a disability and prefer to resolve any special education issues quickly. Even parents who litigate special education matters through due process hearings often find that litigation does not permanently resolve disputes because new issues arise as the child grows older or changes schools. Non-lawyer education advocates can help meet this need for supporting parents throughout the entire special education process.

Applicable Arizona Rules

Arizona Supreme Court Rules recognize a role for non-lawyer education advocacy in special education matters, despite the general prohibition against non-lawyers engaging in the practice of law.

A.R.S. Sup. Ct. Rule 31(b) defines the "practice of law" as "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.”

A.R.S. Sup. Ct. Rule 31.2 states the general prohibition against 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...engage in the practice of law or provide legal services in Arizona.”

Despite the general prohibition against practice of law by non-attorneys, A.R.S. Sup. Ct. Rule 31.3(a)(1) allows the limited practice of law in specific areas, under the jurisdiction of the Arizona Supreme Court. A.R.S. Sup. Ct. Rule 31.3(a)(1) states: “Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court's jurisdiction concerning that activity.”

A.R.S. Sup. Ct. Rule 31.3(e)(1) specifically addresses the role of non-lawyer education advocates. Under A.R.S. Sup. Ct. Rule 31.3(e)(1), non-lawyer education advocates may represent parties at special education due process hearings, if certain conditions are met. The text of A.R.S. Sup. Ct. Rule 31.3(e)(1) reads:

“*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.”

In short, A.R.S. Sup. Ct. Rule 31.3(e)(1) allows non-lawyer advocates to represent parties at special education administrative proceedings, under certain conditions, without violating the prohibition on Unauthorized Practice of Law.



The administrative proceedings specifically mentioned in A.R.S. Sup. Ct. Rule 31.3(e)(1) include due process hearings,¹⁰ which occur in front of an impartial hearing officer who determines whether the school has complied with federal special education laws, and “manifestation determination reviews,”¹¹ which are meetings at the school level that occur when a child with a disability faces long-term suspension, expulsion, or a pattern of classroom removals.

Issues Presented

Does informal advocacy by non-lawyer education advocates fall within Arizona Supreme Court Rule 31.3(e), the unauthorized practice of law exception for administrative proceedings related to the needs of children with disabilities?

Most disputes regarding special education resolve with informal measures, and parents may seek support throughout the entire special education process. A non-lawyer education advocate might support a parent, for example, by participating in school meetings, requesting that the school follow various procedures required by statute, and pursuing alternative dispute resolution options. Typically, a due process hearing occurs only after considerable attempts to resolve disputes in less formal settings.

As part of supporting a parent through the special education process, an advocate might communicate with school personnel, including writing letters and emails or attending special education meetings, in order to secure rights established under special education law. An education advocate might also participate in informal dispute resolution proceedings, such as a facilitated IEP meeting or a mediation session. These activities have the potential to fit within the definition of “practice of law” under A.R.S. Sup. Ct. Rule 31(b).

Because A.R.S. Sup. Ct. Rule 31.3(e) authorizes non-lawyer education advocates to represent parties at administrative proceedings such as manifestation determination reviews and due process hearings, it seems reasonable to infer that Rule 31.3(e) also authorizes non-lawyer education advocates to represent families in less formal settings that occur in lieu of or prior to the specific administrative proceedings cited in the Rule.

For example, a parent and school might disagree about whether the child is entitled to receive certain specialized services at school. Rule 31.3(e) would authorize a non-attorney education advocate with specialized knowledge or training to represent a parent at a due process hearing regarding this dispute. Therefore, it seems reasonable that the same non-attorney education advocate would also be able to assist the parent with informal measures that would typically precede a due process hearing, or occur in lieu of a hearing, such as meeting with the school, requesting certain evaluations, seeking the support of a “facilitated IEP,” or attending mediation.

¹⁰ 20 U.S.C. § 1415(f).

¹¹ 20 U.S.C. § 1415(k).



As another example, Rule 31.3(e) would authorize a non-attorney advocate with specialized training and knowledge to represent a parent at a “manifestation determination review” when a child with a disability is facing a long-term suspension from school. It seems reasonable that the non-attorney advocate who could represent a parent at a manifestation determination review would also be able to attend school meetings with the parent, request that the school conduct behavioral assessments of the child, and request specialized school-based services or accommodations.

Rule 31.3(e) recognizes a role for non-lawyer education advocates in the field of special education. A formal opinion from this Committee regarding Rule 31.3(e) could clarify this role and, in doing so, expand access to justice for many parents of children with disabilities.

We are requesting that this Committee issue a formal opinion clarifying whether the Rule 31.3(e) exception for non-lawyer representation in administrative proceedings regarding the needs of children with disabilities includes informal advocacy measures that would occur prior to or in lieu of formal administrative proceedings, such as writing letters, attending school meetings, participating in alternative dispute resolution options, and pursuing administrative complaints through the Arizona Department of Education and the United States Department of Education Office for Civil Rights.

If the Committee determines that this issue is better resolved by a rule change, we ask that it consider filing a rule petition pursuant to Arizona Supreme Court Rule 42.1(b)(2).

Sincerely,

Diana Newmark
Associate Clinical Professor of Law
James E. Rogers College of Law
University of Arizona

Amanda Glass
Managing Attorney, Education Team
Arizona Center for Disability Law

Christopher Tiffany M.A.Ed.
Executive Director
Raising Special Kids
Arizona Parent Training and Information Center (PTI)

Jenny Mullins
Program Director
Advocacy31nine

/s/ Alexis M. DeLaCruz
Attorney
Native American Disability Law Center



ETHICS ADVISORY COMMITTEE

Agenda for Thursday April 28th, 2022

9:30 a.m.

State Courts Building, 1501 W. Washington St, Phoenix, Arizona
Conference Room 109

COMMITTEE MEMBERS

Present

Ann Ching
Christine Whalin
Angela Woolridge

Virtually Present

Hon. John Napper (Vice Chair)
Hon. Kim Ortiz
Michael Aaron
Maria Hubbard
Amy Rehm
Anne Schrock

Absent

Hon. Christopher Staring (Chair)
Jason Easterday
Ashley Mahoney
Kimberly Demarchi
Regina Nassen

STAFF

Aaron Nash
Christine Davis
Kristina Tuba
Mariann Nystrom
Ashleigh Hansen
Theresa Rodriguez
Téa Bravo

GUESTS

Diana Newmark
Victoria Goebel

The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202.

Please contact Ashleigh Hansen at (602) 452-3353 with any questions concerning this agenda.

Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Ashleigh Hansen at (602) 452-3353. Requests should be made as early as possible to allow time to arrange the accommodation.

Call to Order 9:30 AM

No. 1 Review and approve March 31, 2022 Minutes

Motion: To approve March 31, 2022 Minutes.
Moved by: Michael Aaron
Second: Hon. Kim Ortiz
Motion Passed 9-0-5

No. 2 Review and possible action regarding new Ethics Opinion Request

- EO-22-0001
Submitted 04/04/2022

Ashleigh Hansen presented.

The clerk's office provided on April 4th a new opinion request. The author, Diana Newark, was present at the meeting and discussed the Ethics Opinion request. There are a number of organizations that are trying to boost their practice of non-lawyer education advocacy. Ultimately this opinion request is regarding the kind of informal advocacy that proceed the formal due processes hearing be included in the exception to the rule. This would clarify the role for non-lawyer advocates to be able to attend meeting and make phone calls etc.

There is certain practice of law type actions that an education advocate might want to provide like negotiation over a phone, writing letters or emails. This type of conduct may proceed a formal hearing or could make the need for a formal hearing unnecessary. This limits the scope of how practice can happen, for fear of assisting someone in the unauthorized practice of law (UPL). There are not any known UPL complaints filed against non-lawyer education advocates for committing UPL, and the Bar has no interest in taking up a case like this. They focus on the more severe cases of UPL, the only action they may take against a non-lawyer education advocate is file an injunction. In most education advocacy cases they never reach a hearing officer.

The committee encouraged that a rule petition be drafted and file and once filed that it be brought back to the committee, so that the committee can file a comment, if they choose to do so, based on the text of the rule change.

Motion: Deny the request to take this matter up as an ethics opinion or a rule change but encourage the requester to file a rule change petition and present it back to the committee for comment.

Moved by:

Second: Anne Schrock
Motion Passed 8-1-5

No. 3 Review and possible action regarding past opinions

- EO-96-06 (Lawyers awaiting Admission)

Ashleigh presented.

This ethics opinion basically acknowledges if a lawyer employs someone who is admitted in another state and awaiting Arizona Bar Examination results. This ethics opinion addresses the scope of their capabilities, whether they may appear on the letterhead, and the scope of their capabilities within the business. This matter is part of the list that the State Bar has provided regarding past ethics opinions that may need to be reviewed.

This opinion is outdated, and the committee discussed the benefits of issuing an update or just a statement informing lawyer to not rely on the opinion anymore. The one caveat is that sentiment applies to all opinions, even listed on the State Bar site there is language saying relaying on these at your own risk knowing that the rules and laws may have changed. If a rule is clear there is no need for an opinion or to update an opinion. It may be the responsibility of the State Bar to review rule changes and provide additional provisions.

Motion: Decline to review EO-96-06.

Moved by: Michael Aaron

Second: Anne Schrock

Motion Passed 9-0-5

- EO-99-11 (Misrepresentation; Investigators)

Ashleigh Hansen presented.

This was a past ethics opinion regarding whether an attorney may hire a private investigator to pose as someone interested in being admitted to a post-secondary school using the clients actual work as a sample of admission in order to gather facts for a civil suit.

This ethics opinion essentially creates a public policy exception that overrides Rule 8.4 regarding the fact that lawyers can't lie but EO-99-11 gives a loophole that they can lie if they have a good enough reason. This is a topic that comes up on the hotline often. Lawyer's call trying to figure out what level/ amount of deception they can use pre litigation.

Motion: To form a subcommittee to evaluate in depth this opinion and propose possible revisions.

Moved by: Michael Aaron

Second: Maria Hubbard

Motion Passed 8-0-6

The committee formed a subcommittee comprised of: Hon. Kim Ortiz, Anne Schrock, and Amy Rehm.

No. 4 Update on and possible action regarding:

- R-21-0047

Aaron Nash presented.

This rule change proposal would amend subsections (e), (h), and (i) of Rule 42.1 changing the administrative way that the Certification and Licensing Division process opinion requests and opinions issued by this Committee. This would mean that opinions and opinion request be submitted to CLD, rather than processing them through the Clerk of the Arizona Supreme Court. Originally when this rule change was discussed there was also an elimination of subsection (k). After review from other committees, including ARC, it was determined that subsection (k) is at least used by the Arizona Supreme Court's Staff Attorneys' office, so the draft comment reflects the rejection of the elimination of subsection (k).

Motion: Adopt the proposed comment to R-21-0047 as proposed.

Moved by: Michael Aaron

Second: Ann Ching

Motion Passed 8-0-6

- R-21-0041

Ashleigh Hansen presented.

This is a rule petition that was originally submitted on August 5th, 2021 by former chair of Ethics Committee, Paul McMurdy. There has been a comment drafted by the Attorney Regulatory Committee. It is open for the committee to discuss if they would like to reply to the comment or make any changes. Ultimately this was regarding the right to counsel on matters that may be legal in Arizona but may be for illegal federally.

- R-22-0022

Ashleigh Hansen presented.

There is one comment that was posted in response to the rule petition and is at the committee's discretion on if they would like to respond. Ann Ching suggests that the committee waits to act on comment until the May 26th meeting. The deadline for comment is May 2nd so waiting till next meeting gives the public a chance to continue to comment on petition.

Motion: Defer to May meeting.

Moved by: Ann Ching

Second: Michael Aaron

Motion Passed 8-0-6

No. 5 Call to Public

No remarks from the public were made.

Motion: To adjourn.

Moved by: Michael Aaron

Second: Maria Hubbard

Motion Passed 8-0-6

Adjourn 10:31 AM

Upcoming Meeting Dates

May 26, 2022

June 30, 2022

July 21, 2022

August 25, 2022

September 29, 2022

October 27, 2022

November 17, 2022

December 16, 2022