

1 Lisa M. Panahi, Bar No. 023421
General Counsel
2 James D. Lee, Bar No. 011586
Senior Bar Counsel/Unauthorized Practice of Law Counsel
3 State Bar of Arizona
4201 North 24th Street, Suite 100
4 Phoenix, Arizona 85016-6288
Telephone: (602) 340-7236
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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

8 In the Matter of:

Supreme Court No. R-23-0009

9 **PETITION TO AMEND RULE**
10 **31.3(e)(1) OF THE ARIZONA**
RULES OF SUPREME COURT

COMMENT

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12 Pursuant to Rule 28(e), Ariz. R. Sup. Ct., the State Bar of Arizona (“State
13 Bar”) respectfully submits this Comment for the Court’s consideration.

14 The State Bar takes no position on the expansion of exceptions to the
15 unauthorized practice of law, as set forth in the proposed amendments to Rule
16 31.3(e)(1), Ariz. R. Sup. Ct. The State Bar, however, recommends that the
17 format/structure of the proposed rule be modified, if adopted, to be consistent with
18 another exception in Rule 31.3.
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1 **DISCUSSION**

2 The State Bar’s recommended modification of proposed Rule 31.3(e)(1)
3 would not alter or affect the intended purpose or application of the proposed rule,
4 but rather would simply modify the format/structure of the rule to be consistent with
5 the format/structure used in another exception in Rule 31.3. *See* Rule 31.3(d)(2),
6 Ariz. R. Sup. Ct. Paragraph (d)(2) first identifies the persons who qualify for
7 applicability of the exception, followed by subparagraphs (A) through (C), which set
8 forth the types of activities those persons may undertake.

9 The current version of Rule 31.3 first notes the types of activity that may be
10 undertaken by a nonlawyer, followed subparagraphs (A) and (B), which identify the
11 category of persons who may perform those activities. The proposed rule utilizes
12 that same format. The State Bar, however, recommends reversing the clauses in the
13 proposed rule to simplify the rule and to avoid duplication of subparagraphs 1 and
14 2.

15 Current Proposed Rule

- 16 (1) *Children with Disabilities*. A person may represent a party:
- 17 (A) in any informal conflict resolution method, such as school-based meetings or
18 mediation, regarding matters relating to the identification, evaluation, educational
19 placement, or the provision of a free appropriate public education for a child with a
disability or suspected disability if:
1. the person as special knowledge or training with respect to the problems of

1 children with disabilities; and

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

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

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

10 2. the person is not charging a fee for representing the party (other than receiving
11 reimbursement for costs).

12 Despite these provisions, the hearing officer may order the party to appear only
13 through counsel or in some other manner if he or she determines that the person
14 representing the party is interfering with the proceeding's orderly progress or
15 imposing undue burdens on other parties.

16 Alternative State Bar Proposal

17 (1) *Children with Disabilities*. A person may represent a party in the following
18 situations if the person has special knowledge or training with respect to the
19 problems of children with disabilities and the person is not charging a fee for
representing the party (other than receiving reimbursement for costs):

(A) in any informal conflict resolution method, such as school-based meetings or
mediation, regarding matters 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; and/or

(B) 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.

1 Despite these provisions, the hearing officer may order the party to appear only
2 through counsel or in some other manner if he or she determines that the person
3 representing the party is interfering with the proceeding's orderly progress or
4 imposing undue burdens on other parties.

5 The State Bar sent two versions of its proposed modification to proposed Rule
6 31.3(e)(1) to the petitioners, Diana Newmark and Amanda Glass, for their
7 consideration. Attached hereto is a copy of the email exchange between bar
8 counsel/unauthorized practice of law counsel and the petitioners. At that time, the
9 petitioners apparently had no objection to the State Bar's proposal, other than to
10 change the use of "or" between paragraphs (A) and (B) to "and/or." The State Bar
11 has no objection to that modification of its proposal and has included that requested
12 language in the above reformatted rule proposed by the State Bar.

12 CONCLUSION

13 The State Bar, without taking a position on the substance of the proposal to
14 amend Rule 31.3(e)(1), Ariz. R. Sup. Ct., recommends the Court consider the
15 alternative formatting of the proposed rule, as set forth above.

16 RESPECTFULLY SUBMITTED this 1st day of May, 2023.

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18 */s/ Lisa M. Panahi*

19 Lisa M. Panahi
General Counsel

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 1st day of May, 2023.

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