Supreme Court
STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Scott Bales
Chief Justice

David K. Byers
Administrative Director
of the Courts

May 20, 2015

Committee on the Review of Supreme Court Rules
Governing Professional Conduct and the Practice of Law
State Courts Building
1501 West Washington
Phoenix, Arizona 85007

Re: Petition to Amend Rules 31, 34, 38, 39, and 42, Rules of the Supreme Court

Dear Members of the Committee:

The Administrative Office of the Courts has reviewed the Committee on the Review of Supreme Court Rules Governing the Practice of Law's ("Committee") proposed Rule amendments and offers the following comments.

1. Mediation. Currently, Rule 31(d)(25) provides "Nothing in these rules shall prohibit a mediator as defined in these rules from facilitating a mediation between parties, preparing a written mediation agreement, or filing such agreement with the appropriate court, provided that:

> (A) the mediator is employed, appointed or referred by a court or government entity and is serving as a mediator at the direction of the court or government entity; or
>
> (B) the mediator is participating without compensation in a non-profit mediation program, a community-based organization, or a professional association.

In all other cases, a mediator who is not a member of the state bar and who prepares or provides legal documents for the parties without the supervision of an attorney must be certified as a legal document preparer in compliance with the Arizona Code of judicial Administration, Part 7, Chapter 2, Section 7-208."

The proposed amendments would eliminate the exemptions described in (A) and (B) above and require all mediators either to be an Arizona licensed lawyer or

certified as a legal document preparer. The AOC understands that there are many, perhaps hundreds, of individuals serving as mediators for state and local government and superior, justice, and municipal courts under the existing exemptions. We understand that several committees of the Arizona Judicial Council and individual judges representing local benches will be commenting on the impact their courts will experience if the exemptions are eliminated.

2. Admission on Motion. The proposed amendments to Rule 34(b) and (f) modify admission on motion. One change removes the present "active practice" standard which requires the applicant to demonstrate 1,000 hours of practice per year and 50% of the applicant's earned income. The standard was removed but the "active practice" requirement was not removed. Removing the standard without removing the requirement of "active practice" causes the Rule to provide no guidance. If "active practice" continues to be a requirement for admission on motion, it is recommended that the Rule provide a measureable standard.

   Proposed amendments to Rule 36(h) allow an admission on motion applicant to begin practicing once an application is complete. Procedurally it is unclear when an application is complete and who makes the determination of completeness. Staff and/or the Committee on Character and Fitness often request additional information after the application has been submitted. Often, these requests are because the applicant did not initially submit required information. This type of "incomplete" application situation will create uncertainty as to when practice can begin.

   If there is a complete application, the proposed amendments do not anticipate the "unwinding" of temporary admission in the event the applicant is determined to be unfit or withdraws from the admission process before being admitted. Since the beginning of the program, twenty-two (about 2%) AOM applicant have had an informal or formal hearing. Fourteen applicants for which character issues were identified withdrew their applications or failed to schedule a MAP assessment during the character and fitness process. The Supreme Court in adopting the Military Spouse rules (Rule 38(i) Rules of the Supreme Court) recognized the temporary nature of Military Spouse admission and provided safeguards such as mandating clients be informed of temporary admission and requiring the temporary admittee to associate with a member of the State Bar. While it is desirable to allow a qualified individual to begin practicing as soon as possible, presently an admission on motion application is processed in under three months, if it presents no issues. Staff does not believe that three months creates an undue burden on a practicing lawyer electing to relocate to Arizona. AOC recommends that temporary admission should not be granted upon the

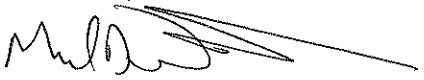
filing of a completed application or in the alternative, safeguards be adopted to inform and protect clients of the temporary admittee.

If the proposed amendment is adopted, it should be amended to describe whether a temporary admittee is allowed to continue practicing if the Committee on Character and Fitness determines the applicant's background presents sufficient facts to warrant an inquiry panel or a formal hearing prior to full admission. If the individual is not allowed to continue practicing the individual's procedural rights should be defined.

3. Registration of In-House Counsel. The Committee has proposed changes to the registration of in-house counsel and to the scope of permissible activities. The proposed Rules would transfer responsibility for registration of in-house counsel from the State Bar to the Clerk of the Supreme Court. Registration is an annual requirement. Currently, the State Bar registers in-house counsel, collects and keeps the registration fee, updates the Bar membership directory, and monitors mandatory CLE requirements as it does for all of its members. Moving the registration to the Clerk of the Supreme Court will add another layer of processing the registration. We assume the Clerk of Court also will need to create a registry for in-house counsel, receipt and deposit the money into the State Treasury, and issue monthly checks for the amounts collected to the State Bar. We assume the State Bar will continue to maintain its own record of the registration and membership status records, and monitor compliance with mandatory CLE. In other words, we are not clear what purpose is served or value added by inserting the Clerk's Office into the registration process and, therefore, recommend keeping all registration activity with the State Bar.

   The proposed Rules also provide that in–house counsel may appear in court on behalf of the employer and in certain pro bono situations. Historically, in-house lawyers are limited to providing advice to their employers. The privilege to provide this advice was conferred through a registration process. The registration process does not include a character and fitness process. If the Court decides to expand in-house lawyer privileges to practice law beyond providing advice to the employer client, the Court may want to consider requiring a character and fitness investigation.

Sincerely,



Mark D. Wilson
Director
Certification and Licensing Division