

1 Hon. Ann A. Scott Timmer, Chair  
2 Attorney Regulation Advisory  
3 Committee  
4 1501 W. Washington St.  
5 Phoenix, AZ 85007

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

7 In the Matter of:  
8 PETITION FOR ADOPTION OF  
9 NEW RULE 42.1, RULES OF  
10 SUPREME COURT

Supreme Court No. R-18-0006  
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.  
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16 ARC endorses the concept of separating the formal advisory function from  
17 the State Bar of Arizona, which serves as investigator and prosecutor on lawyer  
18 discipline and UPL cases. In addition, ARC endorses the recognition that, as in  
19 judicial ethics proceedings, compliance with or reliance on a formal advisory  
20 opinion is recognized as a defense in lawyer disciplinary proceedings.  
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22 ARC suggests that the proposed rule be revised to address three issues.  
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1        Who may request opinions: ARC supports the concept of consolidating the  
2 formal advisory functions for lawyer ethics, lawyer professionalism and the  
3 unauthorized practice of law (UPL) in the AEAC.  
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5        As currently proposed, Rule 42.1(b) allows the AEAC to consider UPL issues  
6 but Rule 42.1(b)(1), which deals with the AEAC's powers and duties, and Rule  
7 42.1(e), which addresses opinion requests, would not allow non-lawyers to request  
8 advisory opinions.  
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10       Both lawyers and non-lawyers can engage in UPL, and the State Bar's UPL  
11 Committee may issue opinions on questions regarding the interpretation of rules that  
12 apply to lawyers as well as non-lawyers. Report of Supreme Court's Task Force on  
13 Lawyer Ethics, Professionalism, and the Unauthorized Practice of Law (hereinafter  
14 the "Task Force"), attached to Petition to Adopt New Rule 42.1, at 5 ("The UPL  
15 Committee issues opinions on questions regarding the interpretation of Rule 31,  
16 Ariz. R. Sup. Ct., Ethical Rule 5.5, Rule 42, Ariz. R. Sup. Ct., or the Arizona Code  
17 of Judicial Administration, Part 7, Chapter 2, Section 7-208 (governing Certified  
18 Legal Document Preparers (the CLDP Code)).")  
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21       While the name of the proposed AEAC ("*Attorney Ethics Advisory*  
22 *Committee*") implies that it will address matters only involving lawyers, neither the  
23 Task Force's rule-change petition nor its report detail explains how non-lawyers'  
24 questions about prospective conduct under Rule 31 or the CLDP Code would be  
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1 addressed. However, considering that the intent is to consolidate formal advisory  
2 opinions on the topics of ethics, professionalism and UPL with this new Supreme  
3 Court committee, the AEAC apparently will assume the ability to issue UPL  
4 opinions involving non-lawyers.  
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6 As a result, proposed Rule 42.1(b)(1) should be expanded to allow the AEAC  
7 to issue opinions “on the request of any person to address questions regarding  
8 whether proposed conduct constitutes the unauthorized practice of law.”  
9 Proposed Rule 42.1(c) should be expanded to allow non-lawyers to request opinions  
10 about prospective conduct involving UPL.  
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12 Making these changes comports with proposed Rule 42.1(k), which would  
13 allow “any person” – not just lawyers – to petition the committee to reconsider an  
14 opinion.  
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16 While lawyers should be restricted to requesting opinions about their own  
17 prospective conduct, a majority of ARC voted to recommend that the Court allow  
18 non-lawyers to request UPL opinions about their own or someone else’s prospective  
19 conduct. The AEAC thus will be able to help the public understand what constitutes  
20 UPL.  
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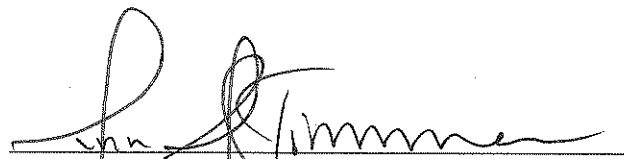
22 Past conduct: Proposed Rule 42.1(c)(1) provides that the AEAC “should not”  
23 issue opinions “involving the ethical propriety of past conduct of a member of the  
24 State Bar.” This provision should be revised to provide that the AEAC *may not* issue  
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1 opinions involving the ethical propriety of a lawyer's past conduct. Assuming the  
2 AEAC also would be able to issue opinions related to non-member UPL, it likewise  
3 should be prohibited from issuing opinions on whether a non-lawyer's past conduct  
4 constitutes UPL.  
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6 Prohibiting the AEAC from issuing opinions that involve past conduct would  
7 eliminate any possibility that the AEAC's actions would conflict with judicial bodies  
8 that act within the lawyer-regulation system or which rule on non-member UPL  
9 prosecutions.  
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11 Pending disciplinary litigation: Because of the possibility that someone  
12 involved with a discipline or UPL proceeding will request a formal advisory opinion,  
13 the AEAC should ensure that an opinion request being resolved formally does not  
14 involve a pending disciplinary or UPL proceeding. The AEAC and/or supreme court  
15 staff on its behalf should therefore be authorized to consult as necessary with  
16 participants in the lawyer discipline system and UPL process.  
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19 RESPECTFULLY SUBMITTED this 21st day of May, 2018.

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23 Hon. Ann A. Scott Timmer, Chair  
24 Attorney Regulation Advisory Committee  
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