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RE: R-20-0034: Petition to Abrogate ER 5.4, Non-Lawyer Ownership of Law Firms, Addition of LLLP's, etc.

I am writing in opposition to the Petition to Abrogate ER 5.4 and other features of the proposal to expand opportunities for non-lawyers effectively to practice law.

MY BACKGROUND [skip to page 2 for my objections]

I have been a licensed attorney in Arizona since May 1983 and my practice initially was limited to representation of claimants for Social Security (SS) disability, retirement, and other benefits. I was initially hired by a Phoenix law firm to write federal court briefs on the appeals of denied SS cases and I was eventually assigned my own clients when I passed the bar examination for and was admitted in Pennsylvania (November 1982). The SS practice involved federal administrative law and proceedings, and I was considered an attorney upon my admission to the bar in Pennsylvania. I sat for the Arizona bar exam in February 1983 and was admitted three months later.

I represented SS claimants in administrative proceedings up to and including hearings before Administrative Law Judges (ALJs), and I was the appellate attorney for the law firm where I started when I arrived in Arizona. I appeared in the United States District Court for the District of Arizona and in the United States Court of Appeals for the Ninth Circuit, and I had rare cases in other District Courts for clients who had relocated from Arizona to different venues. I obtained sponsorships and applied for and was granted pro hac vice status in the foreign courts.

My practice expanded in about 1987 to representation of injured workers with claims for Arizona workers' compensation (WC) benefits. I performed legal services for my clients with insurance carriers and insurance attorneys, before the Industrial Commission of Arizona (ICA) and the Arizona Court of Appeals, with one notable appearance at the Arizona Supreme Court. My practice currently exclusively involves representation of injured workers with Arizona WC claims, as well as ancillary matters involving Medicare Set Aside (MSA) issues for WC and tort-personal injury (PI) cases.

I became an active member of the National Organization of Social Security Claimants Representatives (NOSSCR) in 1984, eventually joining the Board of Directors in 1993 and serving as President of the organization from October 2001-November 2002. My political engagement began with my May 13, 1987, appearance before the Subcommittee on Social Security of the Committee on Ways and Means. I remained actively involved in both the legal and political aspects of my practice, spending several days in the Springs of odd-numbered years, when NOSSCR conferences were held in Washington DC, visiting with members of the Arizona Congressional delegation (House and Senate).

My appearance before the Subcommittee related to a sub-regulatory change in the payment of attorney fees by the then director of the Social Security Administration (SSA), which was not than a cabinet level agency. I continued my personal efforts as a private lawyer when The Omnibus Budget Reconciliation Act of 1990 created a relatively streamlined fee agreement process, and again when The Ticket to Work and Work Incentives Improvement Act of 1999 implemented the fondly named "user fee," a percentage charge of attorney fees to cover administrative costs of determining and paying fees directly to representatives.

A seminal issue during my years as an SS practitioner was not only permitting non-attorneys to represent claimants before the Social Security Administration (SSA), but also to provide a mechanism for payment of fees for those non-attorneys. I personally opposed what was essentially the expansion of an already-existing cottage industry by creating an equal footing for fee compensation; non-attorney representatives previously could appear on behalf of claimants but had to collect fees directly while attorneys benefited from a mechanism of direct fee payments. It was difficult for me to reconcile my personal opposition with my responsibility as NOSSCR President, representing attorneys and non-attorneys, to consider the interests of all members of the organization

MY OBJECTIONS TO THE PROPOSAL

I personally saw the development of what became a self-proliferating cottage industry of non-attorney representative businesses. I personally saw the consequences of unrestricted marketing that violated multiple tenets of the Arizona Rules of Professional Conduct. I personally saw the consequences of representation by poorly or simply not qualified non-attorneys when their "clients" would come to me for help with an appeal because they did not realize their representative could not continue to pursue their claim in federal court. I personally saw the consequences of inadequate representation when the administrative record that was the basis of any appellate review lacked material evidence or a viable legal argument during adjudicative proceedings before an ALJ.

My observations as an SS attorney representative of non-attorney representatives, and the competition with businesses, not law practices, contributed to my decision to exit from a practice area that I started in 1981-1982, during my third year of law school. I learned the

law, and basic medical terms, as a brief writer for the US Department of Health and Human Services, Office of General Counsel in Philadelphia Pennsylvania. I had that background when I began representing claimants and a major factor in what I perceived as the deterioration of that area of law was the incursion of non-attorneys.

My, again personal, assessment was that the most important individual in the corporate non-attorney business structure was the marketing director. The website was unrestrained, the information about success rates could never be validated, and the sole objective was to drive traffic because volume volume volume meant revenue revenue revenue. There was no State Bar of Arizona to complain to when representations turned out to be false and when promises were unkept, and I, also personally as an attorney subject to the Arizona Rules of Professional Conduct, inquired whether a licensed Arizona attorney could have a different business structure, performing exactly the same services as her law firm, with her non-lawyer partner on the purported non-law practice Board of Directors. The answer was no, a lawyer could not create a "safe harbor" by proclaiming themselves not to be acting as a lawyer for purposes of a business that in fact provided legal services.

This proposal R-20-0034, validates that safe harbor. This proposal is more likely than not to increase the authority of marketing experts to direct the operation of what should be expected to become a business, not a law firm. The suggestion that the introduction of technology, business systems analysis, and marketing will only succeed by creating equity positions in the new business structure is belied by the fact that all of those functions already presumably exist in current law firms or they would not have been specifically identified in the proposal. The profit incentive for a non-attorney does not require an equity position and the increased risk of allowing a non-attorney to participate in business operations, even if the influence on policy is indirect, outweighs any supposed benefit to clients. The more probable benefit will be to the bottom line of the business, not to any client who still will need skills that only the attorney can provide.

The technologist, the business systems analyst, the marketer, are ancillary functionaries in what a lawyer does for a client. I saw the consequences when a business claiming to provide legal services without lawyers is permitted entry into the practice of law. The view was not pretty. I am opposed to approval of R-20-0034: Petition to Abrogate ER 5.4, Non-Lawyer Ownership of Law Firms, Addition of LLLPs. Please contact me if you think it would help to discuss this matter further. Thank you for your courtesy and consideration.

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