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May 26, 2020

Supreme Court of Arizona

**Re: Comment on Supreme Court No. R-20-0034**

Dear Members of the Court:

I write to express my opposition to the proposal to eliminate Ethical Rule (ER) 5.4 of the Arizona Rules of Professional Conduct, Rule 42, Ariz. R. Sup. Ct., as set forth in the above-referenced petition. I am also against allowing unlimited referral fees. I have been licensed to practice in Arizona for nearly 20 years (October 2000). For approximately 17 of those 20 years, my practice has focused on ethics—specifically lawyer discipline and character and fitness.

I have watched the debate and discussion for some time now. I have read nearly all the multitude of comments. I have made an effort to carefully review much of the literature. In doing so, I hoped to find support for the claim that the proposed change would help cure the access to justice problem that undeniably exists. I hoped to find this support because I am very much in favor of increased access to justice for the less advantaged members of society.

Like many of us, I went to law school with the desire to help right wrongs. In undergraduate, I was a recipient of the Roger Yoshino Award. The criteria for that award included the evaluators' consideration of the student's promise for contributing to society. I was (and am) honored that my professors saw that promise in me. For my first ten years of practice, I contributed hundreds of hours of pro bono work. That work was always directed toward assisting the indigent. I was the recipient of the Volunteer Lawyers' Program ("VLP") New Lawyer of the Year" for 2002; the "Top 50 Pro Bono Attorneys of Arizona" Award for 2003; and the Arizona Foundation for Legal Services & Education's "Mark Santana Law-Related Education" Award for 2006. The law-related education award was specifically related to my work in recruiting and educating lawyers in ways they could help through pro bono work. I also sat on the VLP Advisory Committee from 2002 through 2005. I do not list these facts to pat myself on the back. To the contrary, I am the first to acknowledge that my pro bono efforts suffered a significant decline in my second decade of practice (which unfortunately is not at all uncommon). At any rate, I list these facts simply to refute in advance any implication that my concern regarding these proposals is driven by guild protectionism. My concern is driven by the fact that the proponents are waving the access-to-justice flag to garner support for the proposal, when in fact a close examination shows no evidence whatsoever that eliminating the protection in ER 5.4 would actually increase access to justice.

I will not reiterate the many comments already made by others that express that exact point. There are a number of well-written comments on this Forum. I write simply to state that my research and review supports their analysis.

Unfortunately, when the stated purpose is not supported by reasonable evidence, it logically leads one to wonder what the true purpose is. There is a member of the Task Force that I have been friends with for nearly 25 years. I do not believe that this individual supports the proposal due to money. I believe it is because that individual truly does think that the proposal will help. Nevertheless, I can fully understand the concerns expressed by many Arizona lawyers on this Forum that these proposals are driven by outside financial interests. The fact that there are lobbying organizations such as “Responsive Law” writing this Court in support of the proposals certainly does nothing to dispel that concern. The Executive Director of Responsive Law is Tom Gordon, the former Senior Counsel and Policy Director of HALT (“Help Abolish Legal Tyranny”). Other members of the Board include Josh King, the former CLO of Avvo, and Chas Rampenthal, former General Counsel of LegalZoom.

In my field, I have had occasion to see problems resulting from non-lawyer involvement in law firms. I echo the comment in that regard expressed recently by Nancy Greenlee and Anne Ching. They referred this Court to case law examples of such problems, including the *Phillips* and *Struthers* case. Another example is *In re Galbasini*, 163 Ariz. 120, 786 P.2d 971 (1990). Perhaps more importantly, there are many unpublished discipline cases reflecting the same problems. While I cannot talk about cases I have worked on, I do want to clearly state that I have seen problems. There have been small firm problems, as well as problems with larger “mills” of various sorts in Arizona, run by non-lawyers.

There have also been problems with national firms recruiting local lawyers. One example I can point the Court to is Upright Law (I did not represent an Upright Law attorney). *See, e.g.,* <https://news.bloomberglaw.com/business-and-practice/upright-law-partners-sanctioned-for-unauthorized-law-practice>. These entities actively recruit solos and small firms. They promise that they will take care of the grunt work, allowing the lawyers to focus on legal work and billing. They promise the very thing that the proposals suggest might help solos and small firms “charge less” while earning more. Importantly, they frequently claim to have an “ethics expert” that has informed them that their program meets the rules and is safe. Sadly, this is not necessarily borne out. I have yet to meet a lawyer who has benefitted from the experience. Rather, they typically end up with discipline, while the entity simply moves on to the next unfortunate sucker.

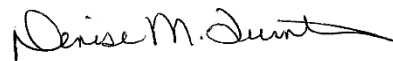
Another example may be found in Avvo’s relatively recent fee-splitting fiasco. Avvo, with Josh King then in charge, insisted that its program met with the rules. To quote from one commentator, Avvo’s position was basically: “Avvo: Ignore the Ethics Opinions — This Isn’t Impermissible Fee-Splitting — and Sign Up with Us!” (*See, e.g.,* <https://www.themodernfirm.com/blog/qotw/can-using-avvo-violate-bars-ethics-rules/>.) (*See also* [https://www.abajournal.com/news/article/new\\_york\\_ethics\\_opinion\\_lawyers\\_avvo](https://www.abajournal.com/news/article/new_york_ethics_opinion_lawyers_avvo); <https://taskforces.osbar.org/files/2018/06/Bernabe-Article-Avvo-Fee-Sharing.pdf>.)

I recognize that a rules task force has worked on trying to create regulations that would prevent many of these problems. I saw some provisions that did appear helpful. However, I am unable to agree at this point that it is a full solution, that all the problems have been addressed, or that all

unintended consequences have been anticipated. As many have said, these are sweeping changes to fundamental principles in professional responsibility. There is no good reason to rush. There is obviously a reason why these changes have not been made previously in other states. There is obviously a reason for the rules as they have existed for many years. Any effort to change those rules should be extensively researched and vetted with the participation of all concerned Arizona lawyers.

Finally, I am also against the proposal to eliminate restrictions on referral fees. I could understand a reasonable referral fee—I see nothing but problems from an unfettered ability to pay people to refer cases. I have some concerns about LLLPs for many of the reasons expressed by others, but those proposals are less worrisome in my view. The domestic violence advocates, in fact, I see as a good idea. That is an example of something that could help increase access to justice. There are many ways to help that situation. Various commentators have expressed ideas. The ASU Law Group is an example of a program that helps while still being safe—not to mention providing excellent training for young lawyers. I would love to see the Court have working brainstorming session along those lines, rather than utterly removing protections that have been in place for years.

Sincerely,

A handwritten signature in black ink that reads "Denise M. Quinterri". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Denise M. Quinterri