



Changes in the Wind for Law Practice

There are some big changes being proposed and considered about the way we practice as a profession. Last year, then-Chief Justice Scott Bales established what is now known as the Task Force on Delivery of Legal Services. Assisted by Arizona ethics experts

The public could be offered a wide range of legal help without having to see (and pay for) a lawyer.

Lynda Shely and Patricia Sallen, the task force was represented by people, including lawyers and judges, having a broad range of perspectives on the practice and how effectively it delivers affordable legal services to the public. Its charge included (but was not limited to) whether and, if so, how our ethics rules should be amended to (1) allow for co-ownership by lawyers and nonlawyers in entities providing legal services to the public; (2) simplify our current rules on lawyer advertising; (3) encourage broader use of limited-scope representations; (4) allow the use of nonlawyer “limited license legal practitioners” (LLLPs) to provide legal services; and (5) improve

access to and regulation of legal document preparers.

The Report and Recommendations,¹ dated October 4, 2019, is a thoughtful and well-researched document, and we owe a debt of gratitude to those involved. It’s not something you can finish off during a lunch break; it’s 65 pages long, including a dissent and 59 footnotes, with five appendices comprising another 91 pages. It does, however, have a descriptive table of contents allowing you to go directly to the parts that most interest you. The recommendations cover more than amendments to the ethics rules, and some are beyond the scope of a column on legal ethics. A more complete description of the Report is in a companion article in this issue, written by Vice Chief Justice A. Ann Scott Timmer. As far as amendments to the ethics rules are concerned, here are the highlights:

1. Eliminate Arizona’s Rules of Professional Conduct² 5.4 (Professional Independence of a Lawyer) and 5.7 (Responsibilities Regarding Law-Related Services) and amend ERs 1.0 through 5.3 to remove the existing barriers to lawyers and non-lawyers co-owning and operating businesses that engage in the practice on law. For instance, ER 1.17 (Sale of Law Practice) would get a major overhaul, in part to reflect the elimination of ER 5.4. The Report states that any such co-owned entities would require regulation by the Arizona Supreme Court. This proposal could be a “game changer,” and Arizona thus joins the ABA and several other states in examining whether our present law firm ownership rules are in need of modernization.³
2. Modify ERs 7.1 through 7.5 (our advertising rules) to incorporate many of the 2018 rule amendments proposed

by the ABA.⁴ These proposals attempt to eliminate many of the more burdensome requirements of the advertising rules, requiring essentially that any form of communication to the public not be false or misleading, as defined therein. Much of the current rules, including ER 7.3 (Solicitation of Clients) would remain, so you should read the proposals before you start celebrating.

3. Promote education and information on what “unbundled” legal services are, and to encourage expanded understanding and use of limited scope representations.⁵ This proposal is based on the unfortunate fact that lawyers are pricing themselves out of the range of what many people can afford unless representations can be limited to certain tasks, thereby allowing legal assistance at hopefully a lower cost.
4. Develop, via a steering committee not yet established, a tier of qualified nonlawyer legal service providers, to provide limited legal services to clients, including representation in court and at administrative proceedings. This will most probably require some rewording of ER 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice of Law) to allow for what are frequently referred to as limited license legal practitioners, a category of providers already recognized in Utah and Washington.
5. Make provision to improve access to and the quality of legal services provided by legal document preparers, including removing current restrictions prohibiting legal document preparers from assisting clients who are represented by counsel. This could affect the provisions of ER 5.3 (Responsibilities Regarding Nonlawyer Assistants). The other ER potentially affected would be 5.7 (Responsibilities Regarding Law-Related Services), which is proposed to be eliminated anyway.

There is a lot more to the Report than is covered here and that will be interest to all

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Ethics Opinions and the Rules of Professional Conduct are available at www.azbar.org/Ethics




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of us—BigLaw and solo alike—especially the parts discussing how lawyers might practice in league with nonlawyers such as CPAs, litigation finance lenders, title insurance companies and the like.⁶ The rationale for these changes is that as long as the ethical rules governing conflicts, obligations to the client and professional independence of the lawyer are ensured and the public continues to be protected, the sharing of entity income with nonlawyers should not be viewed with as much alarm as it once was.

The overarching concern of the Task Force was the recognition that there are aspects of the restrictions in our ethics rules and other court regulations that—though appropriate when enacted—are making it unnecessarily harder for many lawyers to make a living in today’s world, and making legal services needed by the public unavailable because of their prohibitive costs.

It doesn’t take much of an imagination to see how the Report’s proposals could change the nature of our profession. Single-purpose standalone law firms will continue to exist, but the public would be offered a wide range of legal help without having to see (and pay for) a lawyer. Yet consumers still would be assured that what it is on offer is being supervised by a lawyer or is subject to licensing, regulation and sanctioning by the Arizona Supreme Court. 

endnotes

1. www.azcourts.gov/csccommittees/legal-services-task-force.
2. Rule 42, ARIZ. R.S. CT.
3. See *ABA Committees Urge States to Reexamine Law Firm Ownership Rules*, ABA/BNA LAW. MAN. OF PROF. CONDUCT, Current Reports No. 24 (Nov. 26, 2019).
4. A summary of these can be found at www.americanbar.org/news/abanews/your-aba/2019/july-2019/explained-update-to-advertising-marketing-rules.
5. See ER 1.2(c) (lawyer may limit scope of representation if limitation is reasonable and client gives informed consent).
6. Other examples can be found in Comment [9] to current ER 5.7.