



**STATE BAR OF ARIZONA
COMMITTEE ON THE RULES OF PROFESSIONAL CONDUCT
("ETHICS COMMITTEE")**

STATEMENT OF JURISDICTION

The jurisdiction of the Committee on the Rules of Professional Conduct of the State Bar of Arizona (the “Ethics Committee” or the “Committee”), governing the rendition of its formal and informal opinions and other activities, shall be as follows:

1. The Ethics Committee, having been created by the Board of Governors of the State Bar of Arizona (the “State Bar”) as a means of providing assistance to the State Bar and its members in the resolution of questions of professional ethics arising from time to time, shall provide non-binding ethical guidance to and for the benefit of Arizona lawyers. Ethical guidance may consist of formal or informal written opinions or informal advice in response to inquiries presenting questions of professional ethics with respect to the inquiring lawyer’s own contemplated future conduct. Such opinions shall endeavor to construe and apply to the particular facts presented in each such inquiry and then-controlling ethical standards defining proper professional conduct of members of the State Bar.
2. The controlling ethical standards defining proper professional conduct of members of the State Bar include the Rules of Professional Conduct, contained in Rule 42, Ariz.R.S.Ct., as well as Rule 31, Ariz.R.S.Ct. (Regulation of the Practice of Law); Rule 41, Ariz.R.S.Ct. (Duties and Obligations of Members); and Rule 43, Ariz.R.S.Ct. (Trust Accounts).
3. In addition to rendering opinions affording ethical guidance to lawyers, the Committee also may, either of its own initiative or at the request of the Board of Governors, provide comment, guidance and input to the Board of Governors on any proposed rule change presented to or contemplated being presented to the Board of Governors that may affect existing ethical standards defining proper professional conduct of State Bar members or that may institute new standards. The Committee also may propose to the Board of Governors, on its own initiative, changes or additions to the ethical standards that define proper professional conduct of State Bar members.

4. Written opinions. The Committee shall issue written opinions of two kinds: formal opinions and informal opinions. Formal opinions shall be limited to subjects or inquiries determined by the Committee to be of widespread interest, to address issues that may be useful or important to particular categories of lawyers or particular practice areas, and to address issues of current statewide or national importance. All other opinions shall be designated and treated as informal opinions. A formal opinion overrules an earlier formal opinion or informal opinion to the extent that the opinion so states or there is conflict with the earlier opinion. Opinions, whether formal or informal, may be issued at the request of an inquiring lawyer, the Board of Governors, the State Bar’s ethics counsel, the Lawyer Regulation Department of the State Bar, law students or upon the Committee’s own initiative. Formal opinions shall not bear the name of the primary author(s) but shall be issued as the opinion of the Ethics Committee upon a majority vote of the Committee members present at any meeting in which there is a quorum. Issued opinions shall not state the ayes and nays of the Committee’s vote.

5. Written dissents are disfavored and will only be appended to a formal opinion upon a vote of the majority of the quorum. Any written dissent shall not use personal pronouns that indicate the number of Committee members joining the dissent but shall refer to itself as “the Dissent.”

6. The Committee will render formal and informal opinions in as anonymous a form as is reasonably feasible. The Committee shall strive not to include information that would identify a specific lawyer, firm; client or matter by name or fact. Informal opinions will note that they are the opinions of only one member of the Committee and are intended for reference only by the inquiring lawyer.

7. To the extent permitted by law, the Committee shall keep confidential the identity of all inquiring lawyers, correspondence between them and the Committee, and any records evidencing telephone inquiries from inquiring lawyers, except in the following circumstances:

- (a) The inquiring lawyer agrees to disclosure.
- (b) The Committee has been ordered to disclose pursuant to a valid subpoena for relevant documents.
- (c) Upon request of the State Bar’s Lawyer Regulation Office, either the Committee’s Chair¹ or the State Bar’s ethics counsel may disclose records related to a lawyer’s request for ethical guidance if the lawyer has, in a disciplinary investigation pursuant to Rule 54, Ariz..R.S.Ct., or a discipline proceeding pursuant to Rule 57, Ariz.R.S.Ct., asserted that the conduct for which the lawyer is being investigated and/or prosecuted was in conformance with ethical guidance provided specifically to that lawyer by a member of the Committee or the ethics counsel.

¹ When used in this document, “Chair” includes Vice Chair or any other Committee member designated by the Chair.

8. The Committee will not render opinions involving the questioned ethical propriety of past conduct of a member of the State Bar, nor will it render opinions involving the questioned ethical propriety of the conduct of any lawyer other than the inquiring lawyer or of any judicial officer.

9. The Committee’s jurisdiction being limited to the resolution of questions of professional ethics, it will not render opinions:

- (a) On pure questions of law. If an inquiry involves a mixed question of law and ethics, the Committee may render an opinion;
- (b) On questions within the jurisdiction of the Board of Governors, the Disciplinary Commission, another Committee, or an official of the State Bar;
- (c) On questions involving solely the lawyer’s exercise of judgment or discretion;
- (d) On the reasonableness of a lawyer’s fee or of a contingent fee percentage. However, the Committee may discuss the requirements of Ethical Rule 1.5 as it deems appropriate in the context of rendering an opinion on an issue not solely related to the reasonableness of fees;
- (e) On the propriety of the division of fees between or among lawyers. However, the Committee may discuss the requirements of ER 1.5(e) as it deems appropriate in the context of rendering an opinion on an issue not related to the actual division of fees among lawyers; and
- (f) On the propriety of a lawyer enforcing a possessory retaining lien against the papers, funds or other property of a client to secure the lawyer’s reasonable fee and disbursements. However, the Committee may discuss the requirements of ERs 1.8(a), 1.8(i), 1.15(e), and 1.16(d) as it deems appropriate in the context of rendering an opinion on an issue not related to any actual possessory retaining lien.

10. The Committee will not render an opinion upon an inquiry that does not present a specific factual problem to it. The Committee has authority to render an opinion based on hypothetical facts that the Committee develops for the purpose of rendering an opinion of its own initiative or for responding to a request for opinion by the Board of Governors or the Department of Lawyer Regulation.

11. If the facts submitted with the inquiry are insufficient to enable the Committee to answer the inquiry definitively, the Committee may request additional information from the inquiring lawyer, abstain from rendering an opinion, issue an opinion furnishing guidelines for the assistance of the inquiring lawyer, or add hypothetical facts that, in the Committee’s opinion, allow for the issuance of an opinion that will meet the requirements for a formal opinion.

12. The ethics counsel will advise the Chair whether an opinion request should result in a formal opinion. The Chair, in his or her discretion, will decide whether to circulate an opinion to the Committee as a proposed formal opinion. The Committee, by majority vote, may decline to render a formal opinion requested in a particular case if the Committee determines that a formal opinion would not be appropriate or serve a useful purpose. In considering whether to issue a formal opinion, the Committee may also consider whether the issue presented could be appropriately addressed by a rule change petition pursuant to Paragraph 3 above.

13. At least ten (10) days before issuing a formal ethics opinion for formal publication, the Committee will transmit a copy of the draft opinion to the President of the State Bar of Arizona and the Executive Director of the State Bar of Arizona. The President may take any of the following actions upon receipt of such a draft opinion pursuant to this Paragraph:

- (a) If no action is taken, the Ethics Committee may issue the opinion in the normal course for publication and posting on the State Bar of Arizona’s website.
- (b) If the President believes that a rule change petition may be warranted to address an issue presented by the opinion, or that more time is needed to enable the Board of Governors to evaluate and address possible statewide implications of the opinion, then within ten (10) days after receipt of the draft opinion, the President may inform the Chair of the Ethics Committee that publication of the opinion will be deferred for a period of up to ninety (90) days. Such notice shall be provided in writing with a statement of the specific concerns created by the opinion and shall be effective upon delivery to the Chair. It is anticipated that such action by the President shall occur only in exceptional circumstances. During the deferral period, the President or his or her designee and the Chair or his or her designee will meet and confer concerning the opinion, including whether a rule change petition should be initiated to address the issues presented and, if so, the appropriate party or body to initiate such a petition. Following the expiration of the deferral period:
 - (1) The Ethics Committee may either publish the opinion or decide to propose a draft rule change petition to the Board of Governors as an alternative to issuing the formal opinion.
 - (2) If a rule change petition is initiated by a party or body other than the Ethics Committee, the Ethics Committee may proceed to issue the opinion for publication and posting on the State Bar of Arizona’s website, but the opinion shall bear a legend on the first page indicating its procedural status, including whether any rule change petition is then pending and whether an emergency rule change has been adopted pending consideration of a rule change petition by the Arizona Supreme Court.

- (c) This Paragraph 13 is procedural in nature and is not intended to divest the Ethics Committee of its independence in deliberating and issuing formal ethics opinions.

14. While the reasoning and conclusions expressed by the opinions of the American Bar Association’s Standing Committee on Ethics and Professional Responsibility (the “ABA Ethics Committee”) are not binding on the Committee, the Committee will consider those opinions when resolving similar or analogous ethical questions.

15. Members of the State Bar and the general public should not assume that the Ethics Committee asserts or has any disciplinary function concerning the past conduct of any member of the Bar. However, the formal opinions of the Committee, along with other relevant authorities, may be considered by Hearing Officers, the Disciplinary Commission, and the Arizona Supreme Court (as well as any court of competent jurisdiction considering any issue of lawyer professional conduct) in determining whether any of the Rules of the Arizona Supreme Court relevant to lawyer conduct have been violated.

16. Reconsideration of Issued Opinions

- (a) The Committee will consider a written request from a member in good standing of the State Bar of Arizona to withdraw or modify a formal opinion if the request is based upon a claim of legal error, factual error, or change in authority. At the Chair’s discretion, such requests may be forwarded to an *ad hoc* subcommittee for reconsideration of issued opinions, consisting of at least three Committee members appointed by the Chair, but which will not include the Committee member(s) who drafted the formal opinion in question. If a majority of the subcommittee, after consultation with the member who drafted the formal opinion, determines that a material point of law or fact identified in the request for reconsideration creates a substantial question as to the soundness of the formal opinion, then the subcommittee shall prepare a report of its analysis and recommendations. The report will be provided to the drafting member(s), who may submit a written response. The subcommittee report and any response from the drafting member(s) will be forwarded to the Committee for consideration in a formal meeting. If the subcommittee does not recommend withdrawing or modifying the opinion, the subcommittee’s decision shall be deemed final and shall be so reported to the Committee and the individual(s) who requested reconsideration. The full Committee is limited to reviewing only the recommendations of the subcommittee to withdraw or modify an opinion and, in that review, cannot consider other issues beyond the subcommittee’s recommendations. A formal opinion may be withdrawn or modified only upon an affirmative vote by a majority of the members on the current Committee roster.
- (b) Any Committee member, the ethics counsel, or the Board of Governors may request that the Committee reconsider any formal opinion if there is a substantial

question about whether it reached the correct result. The Committee shall follow the same procedures as outlined above.

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