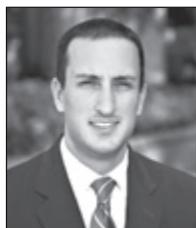


## Arizona Joins Other States in Examining Rules on Partnering With Non-lawyers

### Q&A



### LAWYER LIABILITY AND ETHICS



Joseph Brophy

In July 2018, Professor William Henderson of Indiana University delivered to the Board of Trustees for the State Bar of California a landscape analysis of the current state of the legal services market.

The trustees asked for the report to facilitate their goal of enhancing access to justice with an eye towards making regulatory changes to allow new business models for delivering legal services. In response to Professor Henderson's report, the State Bar of California formed a task force to examine the issues raised by the report, including allowing outside ownership of law firms.

What happens in California never stays in California. In November 2018, Arizona's Chief Justice Scott Bales issued Administra-

tive Order No. 2018 – 111, pursuant to which a task force was formed to review the regulation of the delivery of legal services in Arizona. The gist of the assignment is to examine whether and to what extent certain legal services can be provided by non-lawyers or by embracing new ways for lawyers to provide legal services, such as unbundled or "limited scope" representation, including representing individuals in civil proceedings in limited jurisdiction courts, administrative hearings not otherwise allowed by Arizona Supreme Court Rule 31(d), and in family court matters. The task force is due to issue a report and recommendation before the end of 2019. Utah is undertaking a review similar to the one being conducted by California and Arizona.

Arizona's examination of this issue takes place against the backdrop of a larger debate regarding whether the consumer protection benefits of ethical rules that restrict the practice of law (e.g. Rule 5.4 (impermissible

fee-splitting and law firm ownership by non-lawyers), Rule 5.5 (the unauthorized practice of law), and Rules 7.2-7.3 (payment of improper referral fees)) are worth the increased costs of legal services to legal consumers, many of whom are priced out of the market for those services. The idea behind the reforms proposed by Professor Henderson is to increase consumer access to lawyers by lowering costs, thus increasing the number of consumers who can afford legal services.

Theoretically, partnerships with non-lawyers could create efficiencies and cost-savings so that small to midsize firms that represent individual consumers will be able to offer products and services that increase the volume of fee-paying client work—tapping into the pool of potential clients who often forgo legal services due to cost. According to Professor Henderson, those costs are driven upwards by the fact that law firms must pay out of their own pocket for necessities like technology, business planning, data analytics, accounting, marketing, finance, and capital improvements, in large part because of the ownership/profit sharing restrictions mentioned above. In his order, Chief Justice Bales noted that court rules "have not necessarily kept pace with changes impacting the delivery of legal services." Opponents point out that loosening the ethical rules allows non-lawyers to be in a position to take advantage of vulnerable populations that need legal services, and may otherwise affect a lawyer's independent professional judgment.

The early reports out of California are that a heated debate is underway, with a sixty-day comment period that began in July 2019 regarding the proposed changes.

The proposals by the State Bar of California to allow non-lawyers to share in law firm profits and provide legal advice had superior numbers and received vigorous backing from notable law professors and several other speakers at a public hearing August 10. In contrast, the written comments thus far have been 90 percent against the proposals under consideration. The State Bar of California's board of trustees will vote on them in January. Ultimately, the proposed changes would require either approval by the California Supreme Court or implementation through legislation.

A review of the current regulatory regime seems appropriate. The restrictions on the practice of law, fee splitting and law firm ownership were conceived of and written decades ago before the information technology revolution of recent years presented the opportunity to deliver legal services using different, potentially cheaper business models. Meanwhile, the cost of legal services has increased while access to those services has decreased, and the revenue for the smaller and mid-sized firms that serve individual, as opposed to institutional, clients has plummeted. Consumer protection is a noble goal, but consumer protection is pointless if the consumers cannot afford the service in the first place. ■

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### In Memory Arizona Judiciary Mourns Loss of Sitting Court of Appeals Judge Jon Thompson

The Arizona Judicial Branch shares its condolences with the family of sitting Court of Appeals, Division One Judge Jon Thompson. Judge Thompson passed away on July 22, soon after his 65th birthday. Judge Thompson is survived by his wife of nearly forty-four years, Paulene; their sons, Hans Thompson (Nanna) and Paul Thompson (Lindsay) and an unofficially adopted daughter, Mina Holliday; Judge Thompson's mother, Beatrice Ann Thompson; brothers Alan Thompson and Thomas Thompson; and five grandchildren. Judge Thompson was preceded in death by his father, William Alan Thompson and his sister, Ann Thompson Bergner.



Judge Thompson was appointed to the Arizona Court of Appeals by Governor Fife Symington in 1995. At the time of his passing, Judge Thompson's twenty-four years on the bench made him Arizona's second-longest serving appellate judge on the bench. Before his appointment to the court of appeals, Judge Thompson was a partner in the law firm Mangum, Wall, Stoops & Warden in Flagstaff, was a Judge Pro Tempore in the Superior Court in Coconino County, and served as a deputy county attorney for both Coconino County and Yuma County. Judge Thompson attended Glendale Community College, earned a Bachelor of Science degree from Northern Arizona University where he met Paulene, and earned his law degree from the University of Colorado.

Arizona Court of Appeals, Division One Chief Judge Peter Swann stated, "Judge Thompson was not only our most senior judge, he was also one of the longest-serving judges in Arizona at the time of his death, and he had an encyclopedic knowledge of the history of our court. Those of us lucky enough to have worked

with Jon know what a dedicated scholar of the law he was, and how generous he was with his mind, even to the point of assisting judges on decisions with which he disagreed. I have counted Jon as a friend since 1995, and his loss will be felt by many for years to come. I know the court will never be quite the same."

Judge Thompson's public service included more than thirty years as an elder and deacon with the Flagstaff Federated Community Church. His service with the courts included roles as a board member with the Coconino County Silent Witness and Victim-Witness Boards, the State Bar of Arizona's Criminal Justice Section, and service on the State Bar's Civil Jury Instruction Committee.

Judge Thompson was a well-regarded musician, playing in a band with Court of Appeals, Division Two Judge Philip Espinosa (Arizona's longest-serving sitting appellate judge); Court of Appeals, Division One Chief Judge Peter Swann; Court of Appeals, Division One Judge Lawrence Winthrop; and with other lawyer/musicians.



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### In Memory Legal Community Mourns the Loss of Ted Warner

Ted Warner, who co-founded Warner Angle in 1959, passed away on July 11 at the age of 87.

After serving in the U.S. Air Force during the Korean War, Mr. Warner earned his law degree at the University of Arizona in 1959, where he was managing editor of the Arizona Law Review. He and Jerry Angle co-founded Warner Angle, where Mr. Warner practiced first as a litigator and later in corporate and real estate law until his retirement in 2014.

A devoted leader in the legal profession, Mr. Warner was a fourteen-year member of the American Bar Association's House of Delegates and a Life Fellow of the American Bar Foundation. He was president of the Maricopa County



Bar Association in 1981 and chaired the Arizona Supreme Court Committee of Character and Fitness in 1989. In 1995 he chaired the Arizona Committee for the Preservation of Legal Services for the Poor.

Mr. Warner was also an active and selfless community servant.

A founding member of the Fiesta Bowl Committee, his civic leadership also included chairing the Phoenix and Valley of the Sun YMCA, chairing the local chapter of the March of Dimes Foundation, and serving the March of Dimes as state chair.

Mr. Warner is survived by his wife of sixty-one years and their two children, five grandchildren and two great-grandchildren.