STATE BAR OF ARIZONA

February 17, 2026

State Bar of Arizona's ACJA Forum Comment

The State Bar of Arizona (State Bar) opposes the proposed amendments to the Arizona Code of Judicial Administration (ACJA) § 7-209 because they are inconsistent with the Arizona Supreme Court's recent clarification that Alternative Business Structures (ABS) licensure must advance one of the objectives listed in Supreme Court of Arizona Rule 33.1(b)(1) and ACJA § 7-209 **as it relates to persons or entities located in Arizona**. Rather than providing clarity, the proposed amendments reintroduce ambiguity and conflict with the Court's recent Administrative Order (AO) 2025-241, *In the Matter of Alternative Business Structure Application of Summit National Law Group, LLC.*

First, the proposed amendment does not go far enough to codify the Court's reasoning and decision set forth in AO 2025-241. The amendment proposes to add section § 7-209(E)(2)(a)(2) requiring the Committee on Alternative Business Structures (the Committee) to "[c]onsider the [33.1(b)] regulatory objectives in light of the Supreme Court's jurisdiction given that licensure is sought in Arizona." However, the proposed amendment then adds that "[l]icensure must, ***at least in part***, further the regulatory objectives for persons or entities located in Arizona." (emphasis added).

There was no such "at least in part" parenthetical language used by the Court in AO 2025-241. To the contrary, AO 2025-241 expressly rejected licensure where Arizona residents may be involved "incidentally through marketing responses rather than as fulfilling the applicant's intended purpose." By adding the phrase "at least in part," the proposed amendment suggests that licensure would be permissible where the benefit to Arizona persons or entities is merely incidental.

The "merely incidental" interpretation has been advanced by some practitioners who argue that Arizona's rules permit organizational structures that extend the reach of Arizona-licensed ABSs across the United States. These structures range from mere referral firms to what some maintain are the "functional equivalent" of national law firms that are a family of companies under common ownership or control. Codifying "at least in part" would dilute the Court's reasoning, analysis, and conclusion set forth in AO 2025-241, and invite applicants to rely on secondary or nominal Arizona contacts rather than demonstrable, Arizona-centered services.

The State Bar maintains that the Court should adopt the proposed language without the "at least in part" qualifier to be consistent with AO 2025-241 and perhaps clearly state that "licensure must be served to benefit persons or entities located in Arizona."

Second, the proposal adds section (E)(2)(a)(3) requiring the Committee to "[e]nsure that lawyers working for the ABS are or will be providing legal services to consumers." However, without any timeframe or geographic limitation, this additional language is overbroad and risks licensing entities whose legal services are deferred, speculative, or predominantly delivered to persons or entities outside Arizona. This approach is incompatible with Rule 31(a) and with the Court's insistence that ABS licensure be grounded in the provision of Arizona legal services.

This language also conflicts with the AJCA's definition of an ABS, which requires that the entity "provides legal services in accord with Supreme Court Rules 31 and 31.1(c)," not merely that it may do so at some future point or primarily elsewhere. If the Court adopts the language set forth in (E)(2)(a)(3), the Court should also include clarifying language to require the Committee to ensure that lawyers working for the ABS are or will be providing legal services primarily to **Arizona consumers**.

Third, the proposed language fails to place the burden on the applicant to demonstrate how licensure will benefit people or entities in Arizona. Instead, it adds factors for the Committee to consider and incorporates them only into revised section (E)(2)(e)(1) governing recommendations for approval. Failure to demonstrate a meaningful Arizona benefit should, at minimum, constitute an independent ground for denial under section (E)(2)(e)(2).[1] As drafted, the proposal shifts the burden away from the applicant in a manner that is inconsistent with the Court's directive in AO 2025-241.

Fourth, approving ABS licensure for national firms (or their functional equivalents) with only secondary or incidental ties to Arizona may impose a significant burden on the State Bar which may be inadequately resourced to regulate national activity. The State Bar's Lawyer Regulation Office is required to investigate and prosecute misconduct arising from ABS operations, including conduct spanning multiple jurisdictions. Based on information and belief, there are some current ABS licensees operating mainly as referral firms for out-of-state entities with only a pretextual Arizona presence. At the same time, a growing number of practitioners are offering services to set up ABSs for the sole purpose of running a national practice through Arizona licensure without a focus on serving Arizona clients. These models do not meet the regulatory objectives of Rule 33.1 and ACJA § 7-209 and may increase the risk of consumer harm.

Finally, arguments that it is inappropriate for this Court to adopt rules limiting ABS practice to Arizona while traditional law firms have no such restrictions are not persuasive. The ABS regulations already impose requirements beyond those of traditional law firms and legal practice because the ABS structure has inherent risks not present in a traditional law form or legal practice structure. It is still an open and unanswered question in many other jurisdictions as to whether lawyers admitted there can ethically share fees with an ABS or practice law with an ABS. If Arizona ABS lawyers share fees with a lawyer in a jurisdiction prohibiting such action, the Arizona lawyers could be committing misconduct under ER 8.4(a), *Arizona Rules of Professional Conduct*.

Of note, the Utah Supreme Court addressed similar concerns in its Regulatory Reform Sandbox Project. While Utah permits reasonable fee-sharing with nonlawyers under regulatory oversight, regulators concluded that "bare" referral-fee structures pose ethical risks and should not be authorized. Utah also clarified that applicants must demonstrate a meaningful benefit to in-state consumers to satisfy the innovation requirement for authorization.

For these reasons, the proposed amendments should be reconsidered. Any changes to ACJA § 7-209 should clearly reflect the court's direction that ABS licensure is jurisdiction-specific and contingent on advancing the regulatory objectives of Rule 33.1 and ACJA § 7-209 within Arizona and to the benefit of Arizona consumers.

Sincerely,

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[1] The proposed amendment incorrectly cites (E)(2)(c), "Committee Recommendation," as it should be cited as (E)(2)(e). In this comment, the State Bar refers to (E)(2)(e)(1) and (2), as currently set forth in § 7-209.