Scheehle v. Justices of the Arizona Supreme Court of the State of Arizona

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Ruth V. McGregor, Vice Chief Justice, Rebecca White Berch, Justice, Michael D. Ryan, Justice, Andrew D. Hurwitz, Justice.

¶1 The United States District Court for the District of Arizona has asked us whether this Court "can promulgate court rules mandating experienced attorneys to serve as arbitrators in light of the statutory language of Arizona Revised Statutes ("A.R.S.") section 12-133 (2000) authorizing only voluntary service?" We have jurisdiction to decide the certified question pursuant to A.R.S. § 12-1861 (2001). [1]

¶2 We hold that this Court has authority to promulgate a court rule authorizing the superior courts in each county of this state to require active members of the state bar to provide limited service as arbitrators. We further hold that the exercise of that authority is neither constricted by, nor inconsistent with, A.R.S. § 12-133.

FACTS AND PROCEDURAL HISTORY

¶3 In 1971, the legislature passed a statute permitting the superior courts to implement by court, rule non-binding mandatory arbitration programs. The statute assigned to the courts the responsibility for appointing arbitrators in such cases and further specified that courts opting to create a mandatory arbitration program "shall maintain a list of qualified persons within its jurisdiction who have agreed to serve as arbitrators, subject to the right of each person to refuse to serve in a particular assigned case." [2] 1971 Ariz. Sess. Laws, ch. 142, § 1 (current version codified at A.R.S. § 12-133(C) (2003)). The legislature has amended the statute several times, to raise the mandatory arbitration limits and to require, as opposed to merely permit, superior courts to create mandatory arbitration programs, among other reasons. See, e.g., 1978 Ariz. Sess. Laws, ch. 35, § 1; 1984 Ariz. Sess. Laws, ch. 53, § 1; 1986 Ariz. Sess. Laws, ch. 360, § 1; 1991 Ariz. Sess. Laws, ch. 110, § 1; 1992 Ariz. Sess. Laws, ch. 9, § 1; 2000 Ariz. Sess. Laws, ch. 35, § 1.

¶4 In 1974, this Court promulgated the Uniform Rules of Procedure for Arbitration. Rule 1 indicated that the Uniform Rules were for those superior courts that implemented a mandatory arbitration program under A.R.S. § 12-133, and further directed the superior courts how to enact rules for such programs. Rule 2 specified how arbitrators would be appointed. That rule provided that if the parties could not stipulate to an arbitrator, the court would, through a random selection procedure, appoint an arbitrator from a list. The list would be comprised of "members of the Bar of the State of Arizona residing within the County in which the Court is located." [3] Unif. R.P. Arb. 2(b) (1980). The rule

allowed attorneys to remove their names from the list and also allowed them to refuse to serve if appointed as an arbitrator.

¶5 In 1984, pursuant to the rule and the statute, Maricopa County added a local rule implementing the mandatory arbitration program. [4]

¶6 In 1986, the legislature amended the statute to require, as opposed to merely permit, superior courts to implement mandatory arbitration programs by rule. In 1989 and 1990, the State Bar of Arizona, the Maricopa County Superior Court, and other attorneys, judges, and court administrators, petitioned this Court to remove the provisions from Rule 2 allowing attorneys to opt out of arbitration service absent good cause. In response, we adopted four changes to Rule 2. First, we omitted the provisions allowing practicing attorneys to remove their names from the list of potential arbitrators. Second, we specified the reasons that would permit an arbitrator to be excused from service. Third, we added a provision allowing an attorney who "has served as an Arbitrator pursuant to these Rules for two or more days during the current year to be excused." [5] Unif. R.P. Arb. 2(e)(3) (1992). Fourth, we added a comment to the rule confirming that "it is the obligation of all qualified lawyers to serve as Arbitrators and only exceptional circumstances should justify removal from the list." Unif. R.P. Arb. 2 cmt. (1992). In 2000, the Uniform Rules for Arbitration were incorporated into the Arizona Rules of Civil Procedure as Rules 72-76. Rules 1 and 2 of the Uniform Rules are now renumbered respectively as Arizona Rules of Civil Procedure 72 and 73. [6]

¶7 In this case, attorney Mark V. Scheehle challenges the provision of Rule 73 authorizing the Maricopa County Superior Court to include him on its list of eligible arbitrators without his consent. Scheehle's federal court complaint alleged that Rule 73 violated a number of his federal constitutional rights. Scheehle also raised a pendent state law claim that Rule 73 was invalid because it compelled him to serve as an arbitrator, whereas A.R.S. § 12-133 authorized the appointment only of arbitrators who had agreed to serve.

¶8 The district court granted summary judgment against Scheehle on his federal civil rights claims. It then declined to exercise supplemental jurisdiction over the state law claims after resolution of all the federal questions and accordingly dismissed the state law claims. The Ninth Circuit initially affirmed the decision, Scheehle v. Justices of the Supreme Court, 257 F.3d 1082 (9th Cir. 2001), but then withdrew that opinion. Scheehle v. Justices of the Supreme Court, 269 F.3d 1127 (9th Cir. 2001). It then certified a question to this Court asking whether A.R.S. § 12-133 mandated compulsory participation of attorneys as arbitrators.

¶9 This Court, addressing only that very limited question, held that A.R.S. § 12-133 does not require that lawyers serve as arbitrators. Scheehle v. Justices of the Supreme Court, 203 Ariz. 520, 522, P6, 57 P.3d 379, 381 (2002). After our decision, the Ninth Circuit remanded the case to the district court for further consideration. Scheehle v. Justices of the Supreme Court, 315 F.3d 1191 (9th Cir. 2003).

¶10 Upon remand, the district court again reaffirmed its rejection of Scheehle's federal constitutional arguments and dismissed them from this case.

¶11 In the same order, the district court certified the following question to this Court:

Whether the Arizona Supreme Court under its exclusive constitutional authority to regulate the practice of law can promulgate court rules mandating experienced attorneys to serve as arbitrators in light of the statutory language of A.R.S. § 12-133 authorizing only voluntary service?

The district court stayed all further consideration as to Scheehle's state law claim pending the answer to its certified question. [7]

ANALYSIS

¶12 In his briefing on the certified question, Scheehle makes three alternative arguments. First, Scheehle argues that Rule 73 violates the Takings Clause, U.S. Const. amend. V, and the Equal Protection Clause, U.S. Const. amend. IV. Second, he argues that Rule 73 impermissibly conflicts with the legislation authorizing the mandatory arbitration program. Third, he asserts that this Court's power to regulate the practice of law does not extend to compelling attorneys to serve as arbitrators. We analyze each argument in turn.

A. The District Court Has Already Decided Scheehle's Federal Law Claims.

¶13 Scheehle acknowledges that the district court has already dismissed his federal constitutional claims. But he nonetheless asserts that it would be improper for this Court "to answer the certified questions, when the district court seeks answers from this Court devoid of any analysis of the impact of the Constitution of the United States on such state law authority." We disagree.

¶14 It is not the role of this Court in responding to a certified question of state law to review the federal law rulings of the certifying federal court. The authority pursuant to which we respond to the district court's questions permits us to answer only questions of state law. A.R.S. § 12-1861 ("The supreme court may answer questions of law certified to it . . . if there are involved in any proceedings before the certifying court questions of the law of this state which may be determinative of the cause."). This opinion is thus limited to the question certified: Does this Court have authority under state law to promulgate the rules at issue and, if it does, is that authority limited by the provisions of A.R.S. § 12-133?

B. Rule 73 Does Not Conflict with A.R.S. § 12-133.

¶15 Scheehle next contends that A.R.S. § 12-133(C), by requiring each superior court to "maintain a list of qualified persons within its jurisdiction who have agreed to serve as arbitrators," limits the

court to appointing arbitrators from that list. A.R.S. § 12-133(C). We disagree.

¶16 In interpreting a statute, we "try to determine and give effect to the legislature's intent." Hayes v. Cont'l Ins. Co., 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994). If we cannot do so by looking at the plain language of the statute, "we consider the statute's context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." Id. We also avoid interpretations that unnecessarily implicate constitutional concerns. In re Shannon, 179 Ariz. 52, 78, 876 P.2d 548, 574 (1994) (opting for statutory interpretation that does not limit this court in interpreting range of sanctions it could impose on attorneys so as not to implicate constitutional concerns); Hayes, 178 Ariz. at 273, 872 P.2d at 677.

¶17 The language upon which Scheehle relies has been in A.R.S. § 12-133 since its adoption in 1971. The full text of the relevant provision states:

The court shall maintain a list of qualified persons within its jurisdiction who have agreed to serve as arbitrators, subject to the right of each person to refuse to serve in a particular assigned case and subject further to the right of any party to show good cause why an appointed arbitrator should not serve in a particular assigned case. The court rules shall provide that the case subject to arbitration shall be assigned for hearing to a panel of three arbitrators, or in the alternative, to a single arbitrator, each of whom shall be selected by the court.

A.R.S. § 12-133(C).

¶18 Scheehle argues that under this statute the list of voluntary arbitrators is the only source from which the superior court may appoint arbitrators. Nowhere, however, does the statute say so. Rather, the plain text of the statute vests in the superior court the authority, without limit, to select each arbitrator. "The court rules shall provide that the cases subject to arbitration shall be assigned . . . to [an arbitrator or arbitrators] . . . each of whom shall be selected by the court." A.R.S. § 12-133(C).

¶19 While implying a limitation not explicitly stated in a statute may be appropriate in some circumstances, it is not in this case for several reasons. First, the legislature has been aware since 1974 that this Court, by rule, authorized superior courts to place active members of the bar on their lists of eligible arbitrators. After we promulgated the rule, the legislature repeatedly amended the statute, but never indicated that the court could appoint only arbitrators who volunteered. We, therefore presume that the legislature approved of the rule's operation. As we have said in the context of statutory interpretation:

It is universally the rule that where a statute which has been construed by a court of last resort is reenacted in the same or substantially the same terms, the legislature is presumed to have placed its approval on the judicial interpretation given and to have adopted such construction and made it part of the reenacted statute.

State v. Superior Court of Pima County, 104 Ariz. 440, 442, 454 P.2d 982, 984 (1969) (quoting Madrigal v. Indus. Comm'n, 69 Ariz. 138, 142, 210 P.2d 967, 971 (1949)).

¶20 After this Court promulgated the rule authorizing superior courts to appoint active members of the bar as arbitrators, the legislature amended the statute both to increase the jurisdictional limit on cases that must be referred to mandatory arbitration and to require, as opposed to merely authorize, each superior court to adopt a mandatory arbitration program. In doing so the legislature must have anticipated a corresponding increase in the demand for arbitrators. Yet it made no provision for additional arbitrators. We therefore presume that the legislature relied on this Court's rule authorizing the service of the members of the bar as arbitrators to meet that demand.

¶21 Second, nothing in the statute seeks to regulate attorneys. To imply in the statute a limitation on the court's power of appointment would limit not only a superior court's power to appoint arbitrators but also the scope of this Court's power to require bar members to assist in the administration of justice by authorizing superior courts, on a limited basis, to appoint members of the bar as arbitrators. We do not interpret a statute as intending to limit the court's ability to otherwise act unless the legislature explicitly indicates such an intent. Hayes, 178 Ariz. at 273, 872 P.2d at 677. None is evident here.

¶22 As Scheehle acknowledges, this Court has exclusive authority over the regulation of attorneys. "The practice of law is a matter exclusively within the authority of the Judiciary. The determination of who shall practice law in Arizona and under what condition is a function placed by the state constitution in this court." Hunt v. Maricopa County Employees Merit Sys. Comm'n, 127 Ariz. 259, 261-62, 619 P.2d 1036, 1038-39 (1980). [8]

¶23 This Court fulfills the administrative responsibilities assigned to it under the constitution by, among other methods, promulgating rules. Those rules are distinct from those enacted by state administrative agencies pursuant to legislation. When this Court promulgates rules pertaining to attorneys or to court procedures, it does so pursuant to its own constitutional authority over the bench, the bar, and the procedures pertaining to them. Heat Pump Equip. Co. v. Glen Alden Corp., 93 Ariz. 361, 363, 380 P.2d 1016, 1017 (1963) (stating that courts have constitutional power to promulgate rules on judicial matters); Burney v. Lee, 59 Ariz. 360, 363, 129 P.2d 308, 309 (1942) (courts have power to promulgate rules to fulfill constitutional mandates).

¶24 Such rules are valid even if they are not completely cohesive with related legislation, so long as they are an appropriate exercise of the court's constitutional authority. Although the legislature may, by statute, regulate the practice of law, such regulation cannot be inconsistent with the mandates of this Court. In re Creasy, 198 Ariz. 539, 544, P18, 12 P.3d 214, 219 (stating that legislature cannot authorize by statute activity that would result in the unauthorized practice of law because a court rule governing the practice of law "trumps statutory law"); see also Ariz. Land Title & Trust Co., 90 Ariz. at 95, 366 P.2d at 14 ("although the legislature may impose additional restrictions which affect

the licensing of attorneys, it cannot infringe on the ultimate power of the courts to determine who may practice law") (citing In re Greer, 52 Ariz. 385, 389-90, 81 P.2d 96, 98 (1938)); State ex rel. Conway v. Superior Court, 60 Ariz. 69, 81, 131 P.2d 983, 988 ("When, however[,] it appears that the legislative rule unduly hampers the court in the duties imposed upon it by the Constitution, the rule adopted by the court will prevail.").

¶25 We are reluctant to imply a statutory limitation that would create a conflict in the constitutional prerogatives of separate branches of Arizona government. Shannon, 179 Ariz. at 78, 876 P.2d at 574; Hayes, 178 Ariz. at 273, 872 P.2d at 677. Scheehle's proposed interpretation would unnecessarily create such a conflict.

¶26 We therefore hold that A.R.S. § 12-133 does not limit the court's right to appoint persons other than volunteers to serve as arbitrators.

C. This Court's Responsibility to Administer an Integrated Judicial System Gives it Authority to Promulgate Rules Requiring Limited Service by Attorneys to the Judiciary.

¶27 Scheehle finally argues that the power to regulate the practice of law does not permit this Court to oblige attorneys to serve as court-appointed arbitrators because appointing such arbitrators "is not a function of regulating the practice of law." This argument reflects a misunderstanding of the constitutional basis from which this Court derives its power to regulate the practice of law. [9] This Court's power to regulate the practice of law is a function of its responsibility to administer an integrated judiciary. The power to administer the judicial branch allows this Court to regulate the practice of law to further the administration of justice.

¶28 Article 6, section 1 of our constitution vests the judicial power "in an integrated judicial department," which includes all of the courts of this state. Because "the practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice . . . the right to define and regulate its practice naturally and logically belongs to the judicial department." Shannon, 179 Ariz. at 76, 876 P.2d at 572 (quoting In re Integration of Neb. State Bar Ass'n, 133 Neb. 283, 275 N.W. 265, 268 (1937)).

¶29 Consequently, the Arizona Constitution's creation of an integrated judiciary gives to this Court the power not just to regulate all courts but also to regulate the practice of law. Shannon, 179 Ariz. at 76, 876 P.2d at 572; see also Creasy, 198 Ariz. at 541, P7, 12 P.3d at 216 ("The court's authority over the practice of law is also based on the creation of an integrated judicial department and the revisory jurisdiction of this court as provided in article VI sections 1 and 5(4) of the Arizona Constitution."); In re Smith, 189 Ariz. 144, 146, 939 P.2d 422, 424 (1997) ("The State Bar exists only by virtue of this court's rules, adopted under authority of article III and article VI, §§ 1 and 5 of the Arizona Constitution.").

¶30 The constitution's mandate in article 6, section 3 that this Court shall have "administrative supervision" over the courts of this state enables this Court to supervise judicial officers, including attorneys. "Administrative supervision contemplates managing the conduct of court personnel. . . . Attorneys are universally recognized as 'officers of the court,' . . . and as officers of the court, attorneys are amenable to the court as their superior." Shannon, 179 Ariz. at 76-77, 876 P.2d at 573 (citations omitted); Bailey, 30 Ariz. at 412, 248 P. at 30 (quoting McCloskey v. Powell, 16 A. 420, 421 (Pa. 1889)) ("The attorney is an officer of the court, and is brought into close and intimate relations with the court.").

¶31 By virtue of our constitutional power over attorneys as officers of the court, this Court created the State Bar of Arizona. Ariz. R. Sup. Ct. 32(a)(1). We require those practicing law in this state to be members of this bar. Ariz. R. Sup. Ct. 31. As officers of the court, State Bar members are invested with significant rights and responsibilities. As the United States Supreme Court has observed:

As an officer of the court, a member of the bar enjoys singular powers that others do not possess; by virtue of admission, members of the bar share a kind of monopoly granted only to lawyers. Admission creates a license not only to advise and counsel clients but to appear in court and try cases; as an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that, while subject to the ultimate control of the court, may be conducted outside courtrooms.

In re Snyder, 472 U.S. 634, 644, 86 L. Ed. 2d 504, 105 S. Ct. 2874 (1985). Attorneys are invested with these powers because they have an individual and collective role in achieving "the primary duty of courts [which] is the proper and efficient administration of justice." Shannon, 179 Ariz. at 76, 876 P.2d at 572 (quoting In re Integration of Neb. State Bar Ass'n, 275 N.W. at 268).

¶32 Contrary to Scheehle's argument, this Court's exclusive authority to regulate the practice of law is therefore not independent from its responsibility to supervise an integrated judiciary. It is derived from that very power. The power extended to this Court by the constitution includes the authority to promulgate regulations assigning limited quasi-judicial functions to lawyers as judicial officers.

¶33 Scheehle cites Schware v. Board of Examiners of the State of New Mexico, 353 U.S. 232, 239, 1 L. Ed. 2d 796, 77 S. Ct. 752 (1957), and its progeny, for the proposition that any qualification a state places on the entry to the practice of law "must have a rational connection with the applicant's fitness or capacity to practice law." The obligation to perform limited service as an arbitrator, however, is not a restriction placed on the entry to the practice of law in this state. Rather it is a uniform regulation requiring limited service to the judiciary for those already admitted to practice relating to their roles as officers of that judiciary.

¶34 A state may engage in reasonable regulation of licensed professionals. See, e.g., Lupert v. Cal. State Bar, 761 F.2d 1325, 1328 (9th Cir. 1985) (citing Williamson v. Lee Optical, 348 U.S. 483, 487-89,

99 L. Ed. 563, 75 S. Ct. 461 (1955)); Watson v. Md., 218 U.S. 173, 177, 54 L. Ed. 987, 30 S. Ct. 644 (1910); see also Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 460, 56 L. Ed. 2d 444, 98 S. Ct. 1912 (1978). Our precedents involving attorney regulation underscore this point.

¶35 For example, this Court has rejected a challenge to its constitutional authority to require annual continuing legal education ("CLE") as a condition of continued practice. Smith, 189 Ariz. at 146, 939 P.2d at 424; Ariz. R. Sup. Ct. 45. Compliance with the mandatory CLE rule generally requires not only that an attorney spend unreimbursed time attending the courses but also that the lawyer pay for the course. Nevertheless, we rejected a constitutional challenge to such a rule because, like the requirement to provide limited arbitration services to benefit the judiciary, "such requirements . . . are rationally related to the court's obligation to serve the public interest." Id.

¶36 An attorney's right "to pursue a profession is subject to the paramount right of the state . . . to regulate . . . professions . . . to protect the public . . . welfare." Cohen v. State, 121 Ariz. 6, 10, 588 P.2d 299, 303 (1978) (citing Ariz. State Bd. of Dental Exam'rs v. Hyder, 114 Ariz. 544, 546, 562 P.2d 717, 719 (1977)). In addition to exacting time and money to meet the continuing standards necessary to retain a license, the state may exact a reasonable consideration from those who are engaged in a profession that it regulates. Duncan v. Truman, 74 Ariz. 328, 332, 248 P.2d 879, 883 (1952) ("[A] 'license' is a 'permit, granted by the sovereign, generally for a consideration . . . to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulation.'") (quoting State Bd. of Barber Exam'rs v. Walker, 67 Ariz. 156, 167, 192 P.2d 723, 730 (1948)) (emphasis added). That consideration need not be exclusively monetary, but can also be in the form of limited service to the bench, bar, or community.

¶37 Scheehle, citing Zarabis v. Bradshaw, 185 Ariz. 1, 912 P.2d 5 (1996), argues that whatever this Court's authority to compel service from attorneys without adequate compensation in individual cases, it has no authority to enact rules that systematically deprive attorneys of their time, no matter how small the deprivation. We do not so read Zarabis.

¶38 In Zarabis, attorneys and defendants challenged Yuma County's procedures for providing criminal representation to indigent defendants. 185 Ariz. at 2, 912 P.2d at 6. At the time, Yuma County had no public defender's office and provided representation to indigent defendants in criminal cases through a mix of contract attorneys and attorneys appointed from the private bar. Id. The private practitioners were appointed on a rotational basis and were obliged to provide the representation regardless of experience or expertise. These lawyers were reimbursed "a total of $375 for up to twenty hours' work on a case ($17.50 per hour), and $50 an hour if more than twenty hours [were] required to complete the representation." Id. at 3, 912 P.2d at 7.

¶39 In reviewing that appointment system, we decided no constitutional questions. Rather we held that the system violated both A.R.S. § 13-4013, which requires that an attorney receive "reasonable" compensation when appointed to represent an indigent criminal defendant, and Arizona Rule of

Criminal Procedure 6.5(c), which requires that in appointing an attorney to represent a defendant in a criminal matter the court take "into account the skill likely to be required in handling a particular case." Zarabis, 185 Ariz. at 3, 912 P.2d at 7.

¶40 We expressly recognized in Zarabis, however, that the court has authority to require a lawyer's services, even on a pro bono basis, to assist in the administration of justice. "Nothing we say here should be interpreted as limiting a judge's inherent authority to achieve justice by appointing a particular lawyer to represent a [party] in a particular case, even if the appointment is pro bono or causes financial hardship to the appointed lawyer." Id. at 4, 912 P.2d at 8. We thus confirmed, as have other courts, the ability of a court to require attorneys, by virtue of their office, to provide pro bono publico service in certain circumstances. See, e.g., United States v. 30.64 Acres of Land, 795 F.2d 796, 800 (9th Cir. 1986) ("Courts have long recognized that attorneys, because of their profession, owe some duty to the court and to the public to serve without compensation when called on . . . . This duty of public service is a condition of practicing law, and constitutes neither a taking under the fifth amendment, nor involuntary servitude under the thirteenth amendment.") (citations omitted); see also United States v. Dillon, 346 F.2d 633 (9th Cir. 1965) (the state can condition a lawyer's ability to practice law upon the acceptance of certain responsibilities in the furtherance of the administration of justice).

¶41 Stressing that such power was limited, however, we remarked upon the difference between "requiring a lawyer to handle one case or a few" and conscripting lawyers to handle "all cases regardless of their ability or willingness to do so." Zarabis, 185 Ariz. at 4, 912 P.2d at 8. We therefore noted that "whatever appointment process a court adopts should reflect the principle that lawyers have the right to refuse to be drafted on a systematic basis and put to work at any price to satisfy a county's obligation to provide counsel to indigent defendants." Id.

¶42 Contrary to the appointment system in Zarabis, which was neither quantitatively nor qualitatively limited, the system authorized by Rule 73 contains several inherent limitations. First, Rule 73 does not, in and of itself, compel a lawyer to be an arbitrator. It merely authorizes superior courts to place attorneys on a list of eligible arbitrators. Thus, presumably, if sufficient volunteers exist in a particular county to meet that county's need for arbitrators, that county's superior court need not place eligible members of the state bar on the list of persons eligible for appointment.

¶43 Second, Rule 73 provides for random appointment of arbitrators from the list. Thus, placement on the list does not necessarily result in service as an arbitrator in any given year.

¶44 Third, when a lawyer is randomly selected to serve, Rule 73 explicitly limits the extent of that service. Under Rule 73, an attorney cannot be compelled to accept arbitrations in any year in which the attorney has already held hearings and ruled on two matters. According to Scheehle's own affidavit, service as an arbitrator typically requires only four to eight hours of his time and imposes only minor out-of-pocket expenses. Because Scheehle was asked to serve twice in 1997, he would

have provided no more than sixteen hours of arbitration service in that year. This simply does not constitute the systematic deprivation condemned in Zarabis. [10]

¶45 Citing Hackin v. Lockwood, 361 F.2d 499, 503 (9th Cir. 1966), Scheehle also argues that this Court cannot condition his practice of law on the deprivation of his constitutional rights. The district court, however, has already determined that no such rights were infringed upon here.

CONCLUSION

¶46 We therefore answer the Certified Question as follows: This Court has the constitutional authority to require active members of the state bar to serve as arbitrators pursuant to Arizona Rules of Civil Procedure 73. Further, A.R.S. § 12-133 does not restrict this Court's authority to promulgate that rule.

G. Murray Snow, Judge [11]

1. The district court also requested that we determine whether the Maricopa County Superior Court had authority under A.R.S. § 12-133 to promulgate a program mandating experienced attorneys to serve as arbitrators. Because, as we explain in this opinion, the Supreme Court Rule explicitly authorizes the superior court to include active members of the Arizona bar on its list of eligible arbitrators, this question is not presented by the facts of this case. We thus decline to answer it.

2. The statute also provided that an arbitrator be paid fifty dollars per day for conducting an arbitration hearing. The statute has since been amended to raise the payment to seventy-five dollars per day. A.R.S. § 12-133(G).

3. This rule and its successor, Arizona Rule of Civil Procedure 73, have been modified several times. Rule 73 currently provides that "all residents of the county in which the court is located, who, for at least four years, have been active members of the State Bar of Arizona" may be placed on a county's list of eligible arbitrators. Ariz. R. Civ. P. 73(b)(1). It also permits the superior court to place on this list other lawyers of any bar, both active and inactive, who "have agreed to serve as arbitrators in the county where the action is pending." Ariz. R. Civ. P. 73(b)(2).

4. The Maricopa County Superior Court initially set the mandatory arbitration threshold at $15,000. Ariz. Local R. Prac. Super. Ct. (Maricopa) 3.10 (1984). In 1994 it adopted the $50,000 maximum threshold authorized by A.R.S. § 12-133.

5. In 2000, this provision was amended to excuse an appointed arbitrator who had "completed contested hearings and ruled as an arbitrator . . . in two or more cases assigned during the calendar year." Ariz. R. Civ. P. 73(e)(3).

6. The balance of this opinion will refer to these rules as they are currently codified in the Arizona Rules of Civil Procedure.

7. Upon certification, Scheehle objected to the participation of Justices McGregor, Berch, Ryan, and Hurwitz in answering the certified questions because they are defendants in the underlying federal court complaint. We considered

and rejected Scheehle's objections in a previous order that is appended to this decision and incorporated herein.

8. Since the early days of statehood, we have recognized that our constitution gives authority to this Court to regulate the practice of law. See, e.g., State Bar of Ariz. v. Ariz. Land Title & Trust Co., 90 Ariz. 76, 366 P.2d 1, 87 Ohio Law Abs. 418 (1961); In re Miller, 29 Ariz. 582, 244 P. 376 (1926); In re Bailey, 30 Ariz. 407, 248 P. 29 (1926).

9. Wholly apart from the power to regulate the bar given by our state constitution to the judiciary, extensive authority supports the inherent authority of the courts to regulate the practice of law. Shannon, 179 Ariz. at 75, 876 P.2d at 571 ("The judiciary's authority to regulate and control the practice of law is universally accepted and dates back to the year 1292."); Bridegroom v. State Bar, 27 Ariz. App. 47, 49, 550 P.2d 1089, 1091 (1976) ("There is no question but that the Supreme Court has inherent power to integrate the bar of this state.") (citations omitted).

10. When the annual time an attorney might be required to serve as an arbitrator is combined with the fifteen hours of continuing legal education an attorney is obliged to obtain, it is still well within the range of training hours required by state administrative agencies from other professionals. See, e.g., A.A.C. R4-1-453(D) (requiring accountants to obtain between sixty and eighty hours of continuing education every two years); A.A.C. R4-26-207 (requiring psychologists to obtain sixty hours every two years); A.A.C. R4-11-1203 (requiring dentists to obtain seventy-two hours every three years); A.A.C. R4-16-101 (requiring physicians to obtain forty hours every two years).

11. The Honorable Charles E. Jones recused himself; pursuant to Article 6, Section 3, of the Arizona Constitution, the Honorable G. Murray Snow, Judge of the Court of Appeals, Division One, was designated to sit in his stead.