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17A A.R.S. Sup.Ct.Rules, Rule 46

Rule 46. Jurisdiction in Discipline and Disability matters; Definitions

(a) Lawyers Admitted to Practice. Any lawyer admitted to practice law in this state is subject to the disciplinary and disability jurisdiction of this court and the state bar. Any false statement or misrepresentation made by an applicant for admission to the practice of law which is not discovered until after the applicant is admitted may serve as an independent ground for the imposition of discipline under these rules and as an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for admission to the practice of law may result in revocation of the member's admission to the state bar, pursuant to Rule 33(b) of these rules.

(b) Non-members. A non-member engaged in the practice of law in the State of Arizona or specially admitted to practice for a particular proceeding before any court in the State of Arizona, a non-lawyer permitted to appear in such capacity, a foreign legal consultant as defined in Rule 38(b), or in-house counsel as defined in, and registered pursuant to, Rule 38(i), submits himself or herself to the disciplinary and disability jurisdiction of this court in accordance with these rules.

(c) Former Judges. A former judge who has resumed the status of a lawyer is subject to the jurisdiction of the state bar and the court not only for that person's conduct as a lawyer, but also for misconduct that occurred while serving as a judge that would have been grounds for lawyer discipline, provided that the misconduct was not the subject of a judicial discipline proceeding as to which there has been a final determination by the court.

(d) Incumbent Judges. Upon removal or resignation from office of an incumbent judge as the result of a judicial discipline or disability proceeding, the court shall afford the state bar and the judge an opportunity to submit to the court a recommendation whether lawyer discipline or disability status should be imposed based on the record in the judicial proceeding, and if so, the extent thereof.

(e) Disbarred Lawyers. Upon order or judgment of the court disbarring a member, the member shall no longer be entitled to the rights and privileges of a lawyer, but shall remain subject to the jurisdiction of this court with respect to matters occurring prior to the disbarment.

(f) Definitions. When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers:

1. “Acting presiding disciplinary judge” means an attorney member of a hearing panel designated to serve when the presiding disciplinary judge is disqualified or unable to serve in any matter.

2. “Bar counsel” means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. “Chief bar counsel” means that person employed by the state bar to administer the discipline and disability system under the direction of the executive director.

3. “Board” means the Board of Governors of the State Bar of Arizona.

4. “Charge” means any allegation or other information of misconduct or incapacity that comes to the attention of the state bar.

5. “Committee” means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.

6. “Complainant” means a person who initiates a charge against a lawyer or later joins in a charge to the state bar regarding the conduct of a lawyer. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. “Complaint” means a formal complaint prepared and filed with the disciplinary clerk pursuant to these rules.

8. “Costs” means all sums taxable as such in a civil action.

9. “Court” means Supreme Court of Arizona.

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” means an individual designated by the court to be the custodian of the record in all discipline, disability, and reinstatement proceedings before the attorney discipline probable cause committee, the presiding disciplinary judge, and the hearing panel, who shall maintain the records according to the common practice of clerks of court.

12. “Discipline proceeding” and “disability proceeding” mean any action involving a respondent pursuant to the rules relating thereto.

13. “Expenses” means all obligations in money, other than costs, necessarily incurred by the state bar, the committee, the hearing panel, the disciplinary clerk's and the presiding disciplinary judge's offices in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of committee members, hearing panel members, bar counsel or staff, charges of expert witnesses, charges of certified reporters and all other direct, provable expenses.

14. “Filing” means delivery of the document or exhibit to the disciplinary clerk or clerk of the court, as appropriate, for inclusion in the record, or delivery of the document or exhibit to the state bar for inclusion in the state bar file, as provided for in these rules. All papers, whether filed electronically or in hard copy, shall comply with the requirements of Rule 32(j).

15. “Hearing panel” means the three-member panel that has the powers and duties set forth in Rule 52(h).

16. “Member” means member of the state bar, the classifications of which are set forth in Rule 32(c)(1).

17. “Misconduct” means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule 31(a)(2)(E) or conduct that is eligible for diversion.

18. “Non-member” means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.

19. “Presiding disciplinary judge” means the judicial officer appointed by the court to carry out the functions specified in these rules.

20. “Record,” for the purposes of these rules, means the complaint and accompanying committee's order of probable cause, or other document that commences formal discipline, disability or reinstatement proceedings, or contempt proceedings and every later-filed document, exhibit, or verbatim record of the proceedings.

21. “Respondent” means a member or non-member against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” means either a paid or a volunteer attorney who presides over a settlement conference.

23. “State bar” means the State Bar of Arizona, created by rule of this court.

24. “State bar file” means the original of every document, recording and transcript of testimony or exhibit created or received by the state bar in relation to a discipline, disability or reinstatement proceeding, but shall not include work product of the state bar or state bar staff, or information protected by any legally recognized privilege in Arizona.

Credits
Added June 9, 2003, effective December 1, 2003. Amended June 9, 2005, effective Dec. 1, 2005; Sept. 18, 2006, effective Jan. 1, 2007.; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013; Aug. 28, 2013, effective Jan. 1, 2014.

Source:

Laws 1933, Ch. 66, § 32.
Code 1939, § 32-332.
A.R.S. former § 32-264.
ABA Model Rule 6.
Former Rule 29(e).
Former Rule 30(a).
Former Rules 33(a), 37(g).
Former Rule 46.

Former Rule 46, which related to similar subject matter, was amended Dec. 12, 1991, effective Jan. 1, 1992; June 30, 1994, effective December 1, 1994, amended and effective April 14, 1999, amended Oct. 8, 1999, effective Oct. 5, 1999; May 31, 2000, effective Dec. 1, 2000, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 46, AZ ST S CT Rule 46
Current with amendments received through 1/1/14

Rule 47. General Procedural Matters
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
E. Discipline and Disability Administration; General Provisions

17A A.R.S. Sup.Ct.Rules, Rule 47

Rule 47. General Procedural Matters

(a) Pleadings. There may be a complaint, an answer, an amended complaint, and an answer to an amended complaint. No other pleadings may be filed unless as permitted by these rules or otherwise permitted by the presiding disciplinary judge, the hearing panel, or the court.

1. General Rules of Pleading. Pleadings filed shall conform to the requirements of Rule 8(b), (d), (e) and (f), Ariz. R. Civ. P., as may be applicable to these proceedings.

2. *Form and Signing of Pleading.* In addition to the requirements of these rules, pleadings filed shall also conform to the requirements of Rule 10(b), (c) and (d) and Rule 11(a), Ariz. R. Civ. P., as may be applicable to these proceedings.

(b) Amendment of Pleadings.

1. To Conform To Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, but failure so to amend does not affect the result of the hearing on these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the hearing panel may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the hearing panel that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The hearing panel may grant a continuance to enable the objecting party to meet such evidence.

2. *Pre-Hearing Amendments.* Bar counsel may file an amended complaint, without leave of the presiding disciplinary judge, any time prior to the time an answer is filed. Prior to the commencement of a hearing on the merits, the complaint may be amended with leave of the presiding disciplinary judge, who may permit the inclusion of additional charges. The respondent shall file a response within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period is longer. In the discretion of the presiding disciplinary judge, the hearing date may be continued to provide the respondent with adequate time to meet the factual allegations and alleged ethical violations first presented in the amended pleading.

(c) Service. Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the rules of civil procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

1. *Service of Complaint.* Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(3). When service of the complaint is made by mail, the state bar shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

2. *Service of Subpoena.* Subpoenas shall be personally served on the parties and the person under subpoena. In the case of a respondent under subpoena, if personal service proves impracticable, service may be accomplished in such manner as the presiding disciplinary judge, upon motion and without notice, may direct, including by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Whenever the presiding disciplinary judge allows an alternate form of service pursuant to this paragraph, reasonable efforts shall be undertaken by the party making service to assure that the respondent receives actual notice.

(d) Motions. Procedural or substantive motions may be filed and must comply with the requirements of Rule 7.1(a), Rule 12(b), (c), (e) and (f), and Rule 56, Ariz. R. Civ. P., as may be applicable to these proceedings. Motions for sanctions are governed by Rule 58(f)(3) of these rules. All motion practice shall be subject to the provisions of Rule 7.1(b), Ariz.R.Civ.P.

(e) Discovery. Discovery shall be governed as set forth in Rule 58(e) and (f).

(f) Administration of Oaths. Oaths and affirmations in discipline, disability and reinstatement proceedings shall be administered by the presiding disciplinary judge, or certified reporter.

(g) Transcript of Hearings. The disciplinary clerk shall cause a verbatim record to be made of all evidentiary hearings and oral arguments, or of other proceedings upon request of the presiding disciplinary judge or a party. Testimony recorded by electronic means is admissible for the same purposes as transcripts provided by certified reporters. Any party may request a certified reporter at that party's own expense. Upon request of the presiding disciplinary judge or the hearing panel, the disciplinary clerk shall obtain and file a copy of the written transcript of the hearing and serve a copy on the state bar and respondent. A party requesting a transcript shall arrange for transcription at the party's expense. If the record was not made by a certified reporter, the disciplinary clerk shall provide a copy of the verbatim recording to the party. If transcribed, the party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party. Transcripts shall be prepared in accordance with Rule 30. The costs of the services of a certified reporter and transcripts may be included in the costs of adjudication that are assessed against the respondent pursuant to Rule 60(b).

(h) Subpoena Power. Except as otherwise provided,the disciplinary clerk shall have the power to issue subpoenas. Service of subpoenas shall be as set forth in paragraph (c)(2) of this rule.

1. Investigative Subpoenas. During the course of an investigation and prior to the filing of a complaint, the state bar may obtain issuance of a subpoena by filing a written request with the chief bar counsel or the chair or vice-chair of the committee, containing a statement of facts to support the requested subpoena. A copy of the request and subpoena shall be provided to respondent or respondent's counsel, if represented. If chief bar counsel or the chair or vice-chair of the committee approves the request, chief bar counsel or the chair or vice-chair of the committee shall issue the subpoena. The subpoena may compel a respondent to provide a written response to the allegations, as required in Rule 55(b)(1), the attendance of witnesses and the production of pertinent books, papers and documents, and answers to written interrogatories. If a deposition upon subpoena is required as result of a respondent's failure to comply with bar counsel's request for information, the deposition may be conducted at any place within the State of Arizona and the respondent shall be liable for the costs of the deposition.

2. *Prehearing and Hearing Subpoenas.* After filing of a complaint, the parties may prepare subpoenas as needed in the form set forth in paragraph (i) of this rule and file the subpoenas with the disciplinary clerk .

3. *Objection to Issuance of Subpoena or Motion to Quash*. A party, a nonparty, or a person or entity having an interest in the subject matter who has been subpoenaed may, within five (5) days of service or such other time as the committee or presiding disciplinary judge may order, file a written objection or motion to quash with the committee in the case of a request for an investigative subpoena, or with the presiding disciplinary judge in the case of a hearing subpoena. The chair of the committee or presiding disciplinary judge, as appropriate, may rule on the objection or motion to quash without oral argument.

4. *Contempt.* When a person subpoenaed to provide a written response to a request for information, to appear and give testimony, or to produce books, papers or documents as required by the subpoena, refuses to provide a written response, to appear or testify, or to answer any relevant or proper questions, the person may be subject to civil contempt proceedings

.

A. Request for Order to Show Cause. A party may file with the presiding disciplinary judge a verified notice and request for order to show cause alleging that a person under subpoena has failed to comply with the subpoena.

The presiding disciplinary judge may enter an order to show cause directing the person alleged to be in contempt to appear before the judge at a specified time and place and then and there show cause why he or she should not be held in contempt. In the case of a respondent alleged to have failed to comply with a subpoena, the order shall indicate that a finding of contempt could result in a sanction of summary suspension of his or her license to practice law.

B. *Findings and* Possible *Sanctions*. If it appears to the presiding disciplinary judge that the subpoena was regularly issued and no good cause is shown for the failure to comply with a subpoena, the presiding disciplinary judge may issue an order holding the person in contempt and impose reasonable sanctions to ensure compliance with the subpoena. In the case of a respondent found to be in contempt under these proceedings, the presiding disciplinary judge may, among other possible sanctions, summarily suspend the respondent from the practice of law until the respondent complies with the subpoena or order. An order of summary suspension issued pursuant to this rule shall have the same effect as an order of interim suspension issued by the court, as set forth in Rule 61(d). Upon verification of compliance, the presiding disciplinary judge shall enter an order of reinstatement. Nothing in this rule shall be construed to preclude allegations or findings of a violation of ER 8.1, Rule 54 of these rules, or any other applicable rule regardless of whether contempt is sought or found.
5. *Deposition in Foreign Jurisdiction.* Depositions may be taken outside the State of Arizona, and a copy of the order of the presiding disciplinary judge, certified by the disciplinary clerk, shall be sufficient authority to authorize the taking of a deposition. If the deponent will not voluntarily appear, the subpoena may be enforced to the full extent and in the manner provided by the law of the jurisdiction where the deposition is to be taken.
6. *Subpoena upon Interrogatories.* A subpoena may require a person to submit written answers to written interrogatories. The answers shall be made under oath, signed by the witness, and served within the time and at the place stated in the subpoena.

(i) Subpoenas; Form.

1. Subpoenas for the attendance of witnesses and the production of books and records shall be in substantially the following form:

BEFORE THE PRESIDING DISCIPLINARY JUDGE
(THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE; CHIEF BAR COUNSEL)

In the Matter of a Member	)	Bar No.____
of the State Bar of Arizona	)	SUBPOENA
	)	or SUBPOENA DUCES
	)	TECUM

STATE OF ARIZONA

TO: (Name of Witness)

You are hereby directed to appear and attend before (Bar Counsel of the State Bar of Arizona) (Respondent and/or Respondent's Counsel) (the Attorney Discipline Probable Cause Committee) (Presiding Disciplinary Judge) of the Supreme Court of Arizona, at (address), in (city), _____ County on (day),_____ (date) _____, 20 ___, at the hour of ___ o'clock _____. m., then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add “and to bring with you the following:” and describe same).

BE WARNED THAT for failure to appear and attend as herein required, you will be deemed to be in contempt and answerable in court as provided by these rules.

By order of (the chair of the Attorney Discipline Probable Cause Committee) (the Presiding Disciplinary Judge) of the Supreme Court of Arizona.

Issued on _____, 20 ___ at _____, Arizona.

_____
(Name)
(Presiding Disciplinary Judge)
(Chair, Attorney Discipline Probable Cause Committee)
(Chief Bar Counsel)
(Disciplinary Clerk)
Whose Address is
_____

_____, Arizona

YOUR DUTIES IN RESPONDING TO THIS SUBPOENA

If this subpoena asks you to produce and permit inspection and copying of designated books, papers, documents, tangible things, or the inspection of premises, you need not appear to produce the items unless the subpoena states that you must appear for a deposition, hearing or trial. See Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

You have the duty to produce the documents requested as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in this subpoena. See Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

YOUR RIGHT TO OBJECT

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The presiding disciplinary judge enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within five (5) days after it is served upon you, or before the time specified for compliance, by filing a written objection with the Attorney Discipline Probable Cause Committee or the presiding disciplinary judge, as appropriate.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the documents, communication or item not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(C) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing you do not need to comply with the subpoena until you are ordered to do so.

If you are not a party to the litigation, or an officer of a party, the presiding disciplinary judge may issue an order to protect you from any significant expense resulting from the inspection and copying commanded
.

You may also file a motion with the presiding disciplinary judge to quash or modify the subpoena if the subpoena:

(i) does not provide a reasonable time for compliance;

(ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient place fixed by an order of the presiding disciplinary judge, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;

(iii) requires the disclosure of privileged or protected information and no waiver or exception applies;

(iv) subjects you to an undue burden. See Rules 45(c)(5)(B)(iii) and 45(e) of the Arizona Rules of Civil Procedure. If this subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial trade information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial travel expense;

the presiding disciplinary judge may either quash or modify the subpoena, or order you to appear or produce documents only upon specified conditions, if the party who served the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that your will be reasonably compensated. See Rule 45(e) of the Arizona Rules of Civil Procedure.

2. The subpoena may, in the alternative, require a respondent to provide to bar counsel a written response to any request for information by a date certain. The subpoena may also require the person to whom it is directed to make written answer to written interrogatories to be attached thereto. The answers shall be made under oath, signed by the witness, and filed within the time and at the place therein set forth. Such subpoena shall be in substantially the following form:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

(THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE)

(CHIEF BAR COUNSEL)

In the Matter of a Member of the State Bar of Arizona	))))	Bar No. SUBPOENA (FOR WRITTEN RESPONSE TO REQUEST FOR INFORMATION) UPON WRITTEN INTERROGATORIES)

STATE OF ARIZONA

TO: (Name of Witness)

(FOR SUBPOENA UPON WRITTEN RESPONSE TO ALLEGATIONS)

You are hereby directed to make a written response to the allegations and serve such response on bar counsel at (address) in the City of Phoenix, Arizona 850 ___, on or before ___ 20 ___.

(FOR SUBPOENA UPON WRITTEN INTERROGATORIES)

You are hereby directed to make written answers under oath, signed by you, to the written interrogatories (questions) attached hereto, and to file such answers with the Disciplinary Clerk at (address), in the city of Phoenix, Arizona 850 ___, on or before _____, 20 ___.

(The remainder of this subpoena shall be the same as a regular subpoena.)

(j) Power to Enter, Amend or Vacate. Unless prohibited elsewhere in these rules, for good cause shown and in the interest of justice any order or judgment may be entered, or may be amended or vacated, by the officer or body that entered it or by a superior body.

(k) Computation of Time. Unless otherwise provided, Rules 6(a) and 6(e) Ariz. R. Civ. P., shall apply in all proceedings brought pursuant to these rules
.

(l) Appearances of Counsel; Withdrawal of Counsel.

1. *Prior to Filing of Formal Complaint*. A respondent may elect to be represented by counsel at any stage of a discipline, disability or reinstatement matter. An attorney who wishes to file or submit papers, or otherwise appear on behalf of a respondent in any discipline, disability or reinstatement matter prior to the filing of a formal complaint shall notify the bar counsel assigned to the matter in writing of the representation. Counsel shall also notify bar counsel in writing upon termination of representation prior to the filing of a formal complaint.

2. *After Filing of Formal Complaint*. No attorney shall appear in any discipline, disability or reinstatement proceeding, or file anything in any such proceeding, without first appearing as counsel of record. Bar counsel who files a formal complaint shall be deemed counsel of record for the state bar, and a notice of appearance is not required. An attorney who files an answer on behalf of a respondent shall be deemed counsel of record for the respondent and no notice of appearance shall be required. An attorney who wishes to appear or file anything on behalf of the state bar after a complaint is filed, or on behalf of a respondent after an answer is filed, must file a formal notice of appearance with the disciplinary clerk, and serve a copy on the other party. An attorney who is not counsel of record may not appear or file anything unless there has been a motion for substitution, or notice of association of counsel, approved by the presiding disciplinary judge or the court.

3. *On Appeal to the Supreme Court*. Counsel who files an opening or answering brief on appeal shall be deemed counsel of record, and a notice of appearance is not required. Any attorney other than counsel of record who wishes to appear or file anything on behalf of either party shall file a formal notice of appearance with the clerk of the court and serve copies of the notice on the disciplinary clerk and the other party.

4. *Withdrawals and Substitutions of Counsel*. After the filing of a formal complaint, no attorney shall be permitted to withdraw, or be substituted, as attorney of record in any discipline, disability or reinstatement

proceeding until a motion for withdrawal or substitution of counsel has been filed and approved by the presiding disciplinary judge or the court.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Laws 1933, Ch. 66, § 37.
Code 1939, § 32-337.
A.R.S. Rules Civ.Proc., Rules 4.2, 7(a).
A.R.S. former §§ 32-269, 32-270.
ABA Model Rules 12, 13, 17(B).
Former Rule 32(a).
Former Rule 34(c to e).
Former Rule 35(b).
Revisers' addition.
Former Rule 55.

Former Rule 47, amended Oct. 7, 1991, effective Oct. 10, 1991; Dec. 12, 1991, effective Jan. 1, 1992, adopted in final form Feb. 18, 1992, amended Oct. 30, 1996, effective Dec. 1, 1996; Nov. 22, 1996, effective June 1, 1997, amended Jan. 12, 1998, effective June 1, 1998, amended and effective April 14, 1999, amended May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 47, AZ ST S CT Rule 47
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Rule 48. Rules of Construction
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
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E. Discipline and Disability Administration; General Provisions

17A A.R.S. Sup.Ct.Rules, Rule 48

Rule 48. Rules of Construction

(a) Nature of Proceedings. Discipline and disability proceedings are neither civil nor criminal, but are sui generis.

(b) Rules of Civil Procedure. Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5(f), 6(a), 6(e), 7.1(a), 7.1(b), 8(b), 8(d)-(f), 10(b)-(d), 11(a), 12(b), 12(c), 12(e), 12(f), 26(a)-(f), 29-36, 38.1(c), 38.1(d), 42(a), 43-45, 56, 60(c), 80(a), 80(d), 80(h), and 80(i). In addition, Rules 6(c) and 13 of the Arizona Rules of Civil Appellate Procedure shall apply as specified in Rule 59.

(c) Rules of Evidence. Except as otherwise provided in these rules, the rules of evidence applicable in the superior court shall be followed as far as practicable.

(d) Standard of Proof. Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer who fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz.R.S.Ct., or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz.R.S.Ct.

(e) Burden of Proof. The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant.

(f) Related Pending Litigation. The processing of a discipline matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the presiding disciplinary judge, in the exercise of discretion, authorizes a stay for good cause shown.

(g) Non-Abatement. Unwillingness, failure of the complainant to cooperate with the state bar, withdrawal of a charge, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint.

(h) Effect of Time Limitations. Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator, but does not justify abatement of any discipline or disability investigation or proceeding.
(i) Validity of Proceedings. No action taken by the presiding disciplinary judge or a hearing panel on any complaint, or by the committee, the board, or this court, shall be subject to challenge because of defective or insufficient service if, in fact, the respondent had ample notice of the discipline hearing and full opportunity to be heard. No findings or recommendations made in any proceeding shall be invalidated because of an error in pleading, or in procedure, or upon any other ground, unless upon appeal to the court, it appears from the entire record, including the evidence, that error has been committed which has resulted or will result in a miscarriage of justice.

(j) Disqualification. Members of the board, members of the committee, the members of a hearing panel, the presiding disciplinary judge, and settlement officers shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

(k) Effect of Dismissal, Diversion and Prior Discipline.

1. A dismissal by the state bar or the committee, or a dismissal without prejudice by the presiding disciplinary judge before a hearing on the merits, shall not bar further action based upon the same facts.

2. A dismissal or the imposition of any sanction by the presiding disciplinary judge pursuant to Rule 57, by a hearing panel that is final pursuant to Rules 58(k) or 60, or by the court on appeal after a discipline hearing, shall bar further discipline proceedings based upon the same facts before the presiding disciplinary judge, any hearing panel or the court. Respondent's acceptance of a decision by the hearing panel will also bar further action based upon the same facts.

3. Prior discipline imposed on respondent, with or without respondent's consent, shall be considered by the committee, the presiding disciplinary judge, the hearing panel, and this court in imposing discipline.

4. Successful completion of diversion under these rules pursuant to an agreement with the state bar or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court, shall bar further proceedings based upon the same facts before the committee, the presiding disciplinary judge, a hearing panel, or the court.

(l) Immunity from Civil Suit. Communications to the court, state bar, committee, presiding disciplinary judge, acting presiding disciplinary judge, hearing panel members, settlement officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, state bar staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, members of the committee, the presiding disciplinary judge, hearing panel members , the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the Committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, state bar staff, and court staff shall be immune from suit for any conduct in the course of their official duties.

(m) Immunity from Disciplinary Complaint. Members of the board, the members of the committee, the presiding disciplinary judge, an acting presiding disciplinary judge, hearing panel members, settlement officers, bar counsel or attorneys acting under the direction or authority of such persons or the court are immune from any charge or discipline complaint alleging ethical misconduct that arises out of an administrative act performed in the exercise of discretion under the authority granted under these rules. No charge or disciplinary complaint against such persons may be docketed for filing by the state bar or be a part of any person's disciplinary history absent a finding by the committee that the charge or complaint alleges one or more violations of the Rules of Professional Conduct. In the event such a finding is made, the matter shall be docketed but may be stayed by order of the presiding disciplinary judge upon application and a showing of good cause.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended and effective Jan. 20, 2005. Amended Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011.

Source:
Laws 1933, Ch. 66, § 37.
Code 1939, § 32-337.
A.R.S. former § 32-269.
ABA Model Rules 12 and 17.
Former Rules 35(a) and (b), 38(b) .
Former Rule 54.

Former Rule 48, amended Dec. 12, 1991, effective Jan. 1, 1992; Oct. 30, 1996, effective Dec. 1, 1996, amended Oct. 8, 1999, effective Oct. 5, 1999; May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 48, AZ ST S CT Rule 48
Current with amendments received through 1/1/14

Rule 49. Bar Counsel

Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona (Refs & Annos)

V. Regulation of the Practice of Law

F. Participants

17A A.R.S. Sup.Ct.Rules, Rule 49

Rule 49. Bar Counsel

(a) Powers and Duties of Chief Bar Counsel. Acting under the authority of the board, and under the direction and by appointment of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member or non-member and for the coordination of such investigations; employ and supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. Chief bar counsel shall transmit notice of discipline, transfers to or from disability inactive status, reinstatements and judgments of conviction to the disciplinary enforcement agency of any other jurisdiction in which the respondent is known to be admitted. Respondent shall identify each such jurisdiction in writing addressed to the chief bar counsel.

B. Disclosure to National Discipline Data Bank. Chief bar counsel shall transmit notice of all public discipline imposed against a respondent, transfers to or from disability inactive status, reinstatements, and certified copies of any criminal conviction to the National Discipline Data Bank maintained by the American Bar Association's National Lawyer Regulatory Data Bank.

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) Disbarment, suspension, interim suspension, reprimand, and reinstatement shall be posted for an indefinite period of time.

(ii) Probation (including admonition with probation), restitution and costs shall be posted for five (5) years from the effective date of the sanction or until completion, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iii) A finding of contempt of a supreme court order shall be posted for five (5) years from the effective date of the order or until the contempt is purged, whichever is later; the posting shall indicate whether or not the terms of the order have been satisfied.

(iv) A transfer to disability inactive status shall be posted while the order is in effect.

(v) An administrative or summary suspension shall be posted while the suspension is in effect.

D. Notice to Courts. Chief bar counsel shall promptly advise all courts in this state of orders or judgments of suspension, disbarment, reinstatement and transfers to or from disability inactive status. In addition, chief bar counsel shall petition the appropriate court to take such action as may be indicated in order to protect the interests of the public, respondent and respondent's clients.

(b) Powers and Duties of Bar Counsel. Bar counsel shall:

1. Review all information coming to the attention of the state bar. Bar counsel shall exercise discretion in initiating investigations when allegations, if true, would be grounds for discipline or transfer to disability inactive status. Bar counsel may request one or more staff examiners to aid in conducting investigations. Staff examiners shall work under the supervision of staff bar counsel. Staff examiners may be, but need not be members of the state bar and may be selected from the regular employees of the state bar.

2. Recommend dispositions prior to formal proceedings, and, if deemed advisable, recommend any discipline in formal proceedings.

3. In appropriate cases, negotiate dispositions of pending matters as authorized in Rule 57(a) or 58.

4. Promptly notify the complainant and respondent of the disposition of each matter.

5. Represent the state bar in and prosecute discipline and reinstatement proceedings and proceedings for transfer to or from disability inactive status before the presiding disciplinary judge, hearing panels, the committee and this court, and prosecute contempt proceedings in the appropriate forum.

6. Dismiss proceedings if, after conducting a screening investigation, there is no probable cause to believe misconduct or incapacity exists pursuant to these rules.

7. Monitor and supervise respondents during a probationary or diversionary term and, as appropriate, report material violations of the terms of probation or diversion to the presiding disciplinary judge and prepare and forward a report to the imposing entity regarding the respondent's completion of the imposed terms.

8. Monitor and supervise conditional admittees during the conditional admission period, pursuant to Rule 36(a)(2)(C)(ii); and

9. Perform such other duties as the court may direct.

Credits
Added June 30, 2010, effective Jan. 1, 2011.

17A A. R. S. Sup. Ct. Rules, Rule 49, AZ ST S CT Rule 49
Current with amendments received through 1/1/14

Rule 50. Attorney Discipline Probable Cause Committee

Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated

Rules of the Supreme Court of Arizona (Refs & Annos)

V. Regulation of the Practice of Law

F. Participants

17A A.R.S. Sup.Ct.Rules, Rule 50

Rule 50. Attorney Discipline Probable Cause Committee

(a) Appointment of Members. The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (hereinafter committee) is established as a permanent committee of the supreme court. The committee shall consist of nine members, including six active members of the state bar and three public, nonlawyer members. Nonlawyer members shall have all the powers and duties of lawyer members, as provided in these rules. The chief justice shall appoint the members of the committee considering geographical, gender and ethnic diversity. The members of the committee shall serve at the pleasure of the court and may be removed from the committee at any time by order of the court. A member of the committee may resign at any time. A member shall continue to serve until the member's term expires and a replacement is appointed.

(b) Terms of Office. The volunteer members shall be appointed for fixed, staggered terms. One third of the members shall be appointed for an initial term of one (1) year, one third for an initial term of two (2) years, and one third for an initial term of three (3) years. After the initial appointments, regular terms shall be three (3) years, except that a member shall continue to serve until the member's successor is duly appointed. Members of the committee shall be eligible to serve no more than two (2) consecutive three-year terms. Appointments to fill a vacancy shall be for the unexpired portion of the term and will be filled in the same manner as the original appointment.

(c) Chair and Vice-Chair. The chief justice shall appoint lawyer members as chair and vice chair of the committee for a term to be determined by the chief justice. The chair shall exercise overall supervisory control of the committee and may rule on procedural motions. The vice-chair shall assist the chair and shall serve as chair in the chair's absence and on any matters in which the chair is unavailable.

(d) Reimbursement of Committee Members. Committee members shall receive no compensation for their services but may be entitled to reimbursement for travel and other expenses incurred in the performance of their official duties, as permitted by law.

(e) Powers and Duties of the Committee. Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);

2. periodically report to the court on the operation of the committee;

3. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

(f) Meetings, Quorum, and Voting. The meetings of the committee are not open to respondent, respondent's counsel, or the public. The committee shall have a quorum to conduct business and for all official actions. A quorum consists of a majority of the committee. A majority of the votes of the members present and participating in the vote shall decide matters arising at any meeting of the committee, provided that at least one public member and one lawyer member participate in the matter. A member may participate in the meetings by remote access.

(g) Change of Committee Member for Cause. Upon motion and affidavit of a party and for good cause shown, the chair of the committee may order the removal of a committee member from consideration of a particular matter pending before the committee. If the party seeks removal of the chair, the vice-chair shall consider the request. Absent extraordinary circumstances, a request to remove a committee member shall be filed as soon as the grounds for removal are discovered and prior to the commencement of the committee meeting at which the matter is scheduled for consideration.

(h) Alternate Members. If it appears that a significant number of members who may properly render a decision may not be present at the meeting, or may not be able to act in a particular case, the committee chair, or vice-chair if the chair has been recused, may appoint, for that member or for that case only, the number of alternate members necessary to restore the committee to full membership or at least achieve a quorum of the committee. Alternate members shall be appointed based on the same criteria as committee members.

Credits
Added June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

17A A. R. S. Sup. Ct. Rules, Rule 50, AZ ST S CT Rule 50
Current with amendments received through 1/1/14

Rule 51. Presiding Disciplinary Judge
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
F. Participants

17A A.R.S. Sup.Ct.Rules, Rule 51

Rule 51. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The supreme court shall appoint a presiding disciplinary judge and other judges as necessary to serve at the pleasure of the supreme court. The court shall periodically review and evaluate the performance of the presiding disciplinary judge and other judges. Any judge appointed pursuant to this paragraph shall be subject to the same qualification and evaluation criteria as the presiding disciplinary judge.

(b) Qualifications. The presiding disciplinary judge shall be an active or judicial member of the state bar and shall have been admitted to the practice of law for at least five years preceding his or her appointment. The presiding disciplinary judge, while serving in that capacity, may not hold any other public office.

(c) Powers and Duties of the Presiding Disciplinary Judge. The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. appoint a staff in accordance with an approved budget as necessary to assist the presiding disciplinary judge in the administration of the judge's office and in the performance of the judge's duties;

2. order the parties in disciplinary proceedings to attend a settlement conference;

3. impose discipline on an attorney, transfer an attorney to disability inactive status, and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. shorten or expand time limits set forth in these rules, as the presiding disciplinary judge, in the exercise of discretion, determines necessary;

5. enlist the assistance of members of the bar to conduct investigations in conflict cases;

6. periodically report to the court on the operation of the office of the presiding disciplinary judge;

7. recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

(d) Change of Presiding Disciplinary Judge for Cause. The presiding disciplinary judge shall not be subject to removal by the parties to a proceeding except upon the grounds set forth in A.R.S. § 12-409(B). Any request to remove the presiding disciplinary judge for cause shall be filed as soon as the grounds for removal are discovered. The disciplinary clerk shall designate a volunteer attorney member from the hearing panel pool to hear the matter and to decide by a preponderance of the evidence whether cause exists. Following the hearing, depending on the findings of the assigned hearing panel member, the matter shall be reassigned to the presiding disciplinary judge or referred to the disciplinary clerk for designation of an acting presiding disciplinary judge.

Credits
Added June 30, 2010, effective Jan. 1, 2011.

17A A. R. S. Sup. Ct. Rules, Rule 51, AZ ST S CT Rule 51
Current with amendments received through 1/1/14

Rule 52. Hearing Panels
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
F. Participants

17A A.R.S. Sup.Ct.Rules, Rule 52

Rule 52. Hearing Panels

(a) Appointment. The chief justice shall appoint a pool of volunteer attorney and public members to serve on hearing panels. Attorney members of the pool may also serve as settlement officers. An attorney member shall have been an active or judicial member of the state bar for at least five (5) of the seven (7) years preceding his or her appointment.

(b) Hearing Panels. Hearing panels are hereby established and empowered to act in accordance with these rules. Each hearing panel shall consist of the presiding disciplinary judge, who shall serve as chair of the hearing panel, one volunteer attorney member, and one volunteer public member assigned by the disciplinary clerk. To the extent practicable, at least one of the volunteer members shall reside in the same general geographic area as the respondent.

(c) Terms of Office. The volunteer pool members shall be appointed for fixed, staggered three (3) year terms. Pool members shall serve at the pleasure of the court and may be dismissed from service at any time by the court. A pool member whose term has expired and is serving as a hearing panel member may continue to serve as a panel member until the final decision of any proceeding commenced before the expiration of the term, and until a successor is appointed.

(d) Vacancy. In the event of a vacancy on a hearing panel, the vacancy shall be filled in the manner provided for in the original appointment. If the vacancy occurs after the hearing has commenced, the new panel member must be given time to review the record of the proceedings before the hearing re-commences.

(e) Alternate Hearing Panel Members. In extraordinary circumstances and before the commencement of the hearing, the presiding disciplinary judge may direct that additional hearing panel members be assigned by the disciplinary clerk to sit as alternate hearing panel members in a particular case. The disciplinary clerk shall assign one volunteer attorney member and one volunteer public member. In the event a panel member is excused or removed under paragraph (g) of this rule by the presiding disciplinary judge, the alternate may replace that member on the panel. To ensure the proper composition of the panel, the alternate volunteer attorney member shall replace an excused volunteer attorney member and the alternate volunteer public member shall replace an excused volunteer public member. In the event that the presiding disciplinary judge is excused from the panel, the alternate volunteer attorney member shall replace the presiding disciplinary judge. Alternates may discuss the case with panel members during the hearing but shall not deliberate with the panel members after the conclusion of the hearing. Upon being excused at the conclusion of the hearing by the presiding disciplinary judge, alternates shall not discuss the case with anyone until informed that a judgment and order has been issued in the case. In the event a deliberating panel member is excused or removed, the presiding disciplinary judge may substitute an appropriate alternate hearing panel member to join the deliberations. If an alternate joins the deliberations, the hearing panel shall begin deliberations anew.

(f) Reimbursement. Members of hearing panels shall receive no compensation for their services but may be entitled to reimbursement for travel and other expenses incurred in the performance of their official duties, as permitted by law.

(g) Change of Hearing Panel Member for Cause. The members of the hearing panels shall not be subject to removal by the parties to a proceeding except upon the grounds set forth in A.R.S. § 12-409(B). Any request to remove a hearing officer for cause shall be filed as soon as the grounds for removal are discovered. The presiding disciplinary judge shall hear the matter and decide by a preponderance of the evidence whether cause exists.

(h) Powers and Duties. Hearing panels shall be authorized to act in accordance with these rules and shall have the following powers and duties:

1. Hearing panels shall have statewide jurisdiction over proceedings on complaints of misconduct, applications for reinstatement, and any other matters designated by the court, including contempt proceedings (other than those under Rule 47), and upon assignment by the disciplinary clerk.

2. Hearing panels shall prepare findings of fact, conclusions of law, and issue orders consistent with these rules.

3. Hearing panels may dismiss a complaint, order diversion, or impose discipline as provided in these rules.

4. Hearing panels shall file with the disciplinary clerk the originals of all documents and exhibits received or created that are part of the record.

Credits
Added June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

17A A. R. S. Sup. Ct. Rules, Rule 52, AZ ST S CT Rule 52
Current with amendments received through 1/1/14

Rule 53. Complainants
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
F. Participants

17A A.R.S. Sup.Ct.Rules, Rule 53

Rule 53. Complainants

(a) Status of Complainant. The complainant is not a party to discipline, disability or reinstatement proceedings. By becoming a complainant, a person submits himself or herself to the jurisdiction of this court and the state bar for all purposes relating to these rules. In order to receive information as provided by this rule, the complainant must keep the state bar informed of any change of address, telephone number, or e-mail address during the pendency of the investigatory or adjudicatory phase of the proceedings. Notice may be accomplished by mailing or otherwise transmitting the notice to the complainant's last known address.

(b) Information. The following information will be provided to a complainant, by the state bar, concerning charges made against a lawyer:

1. *Respondent's Response.* A copy of respondent's initial response to the charge, if any, except those portions subject to a protective order, will be provided to the complainant.

2. *Dismissal by Bar Counsel.* Bar counsel shall notify the complainant of the dismissal of a charge.

A. *Prior to a Screening Investigation*. If the state bar dismisses a matter prior to a full screening investigation, bar counsel may notify the complainant of the dismissal by telephone. The complainant may request that the decision to dismiss be reviewed by chief bar counsel or chief bar counsel's deputy.

B. *Following a Screening Investigation*. If the state bar dismisses a matter following a screening investigation, bar counsel shall mail a notice of dismissal to the complainant. The complainant may object to the dismissal as provided by Rule 55(b)(2)(A)(ii).

3. *Duty to Advise Complainant of Proceedings*. The state bar shall advise the complainant of a recommendation of any discipline, diversion, or pending agreement for discipline by consent. It shall also provide written notice of the hearing on the merits before a hearing panel, and of any public proceeding before the presiding disciplinary judge or the court. The state bar shall provide information to enable the complainant to ascertain the date, time and location of such proceedings, which may include the website address of the state bar or the disciplinary clerk. In the case of an agreement for discipline by consent, the complainant shall also be notified of the opportunity to file a timely written objection and to be heard at any hearing concerning the agreement. A complainant's written objection to an agreement for discipline by consent must be submitted to the state bar within five (5) business days of bar counsel's notice. Bar counsel shall submit the complainant's objection to the presiding disciplinary judge and serve a copy on respondent or respondent's counsel.

4. *Final Disposition.* Complainants shall receive notice of the final disposition of each matter.

(c) Failure to Provide Information. The ultimate disposition of any disciplinary proceedings shall not be affected by the failure of the state bar to provide the complainant with information as required by subsection (b) of this rule.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Renumbered from Rule 52 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Revisers' addition.
Laws 1933, Ch. 66, §§ 37, 40.
Code 1939, §§ 32-268, 32-337.
Rule 23, ARCAP.
A.R.S. former § 32-269.
ABA Model Rules 11, 12, 14(F), 17, 17(E).
Former Rules 33 to 37, 38(b).
Former Rules 53, 54.

Former Rule 52, amended July 20, 1989, effective Sept. 1, 1989; Dec. 12, 1991, effective Jan. 1, 1992; Jan. 30, 1995, effective June 1, 1995; Oct. 30, 1996, effective Dec. 1, 1996, amended April 27, 1998, effective July 1, 1998, amended and effective April 14, 1999, amended May 31, 2000, effective Dec. 1, 2000, amended and effective May 7, 2001, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

Rule 54. Grounds for Discipline

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
G. Grounds for Discipline

17A A.R.S. Sup.Ct.Rules, Rule 54

Rule 54. Grounds for Discipline

Grounds for discipline of members and non-members include the following:

(a) Violation of a rule of professional conduct. This includes violations of professional conduct rules in effect in any jurisdiction.

(b) Violation of a canon of judicial conduct.

(c) Knowing violation of any rule or any order of the court. This includes court orders issuing from a state, tribe, territory or district of the United States, including child support orders.

(d) Violation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding. Such violations include, but are not limited to, the following:

1. *Evading service or refusal to cooperate.* Evading service or refusal to cooperate with officials and staff of the state bar, the committee, the presiding disciplinary judge, a hearing panel, or a conservator appointed under these rules acting in the course of that person's duties constitutes grounds for discipline.

2. *Failure to furnish information.* The failure to furnish information or respond promptly to any inquiry or request from bar counsel, the board, the committee, the presiding disciplinary judge, a hearing panel, or this court, made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so constitutes grounds for discipline. Nothing in this rule shall limit the lawyer's ability to request a protective order pursuant to Rule 70(g). Upon such inquiry or request, every lawyer:

A. shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

B. shall permit inspection and copying of the lawyer's business records, files and accounts;

C. shall furnish copies of requested records, files and accounts;

D. shall furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties including, in the case of inquiries into the physical or mental capacity of a lawyer, written releases or authorizations needed to obtain access to medical, psychiatric, psychological or other relevant records and opinions; and

E. shall comply with discovery conducted pursuant to these rules.

(e) Violation of a condition of probation or diversion.

(f) Violation of a condition of admission imposed by the court or the Committee on Character and Fitness pursuant to Rule 36(a)(4)(D).

(g) Conviction of a crime. A lawyer shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or of any felony. "Serious crime" means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude. A conspiracy, a solicitation of another or any attempt to commit a serious crime, is a serious crime. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, shall be treated and processed as is any other charge against a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. In any discipline proceeding based on the conviction, proof of conviction shall be conclusive evidence of the attorney's guilt of the crime. Lawyers shall comply with the duty to self-report convictions as set forth in Rule 61(c)(1).

(h) Discipline imposed in another jurisdiction.

(i)Unprofessional conduct as defined in Rule 31(a)(2)(E).

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 5, 2007, effective Jan. 1, 2008; Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009. Renumbered from Rule 53 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Pen.Code 1901, §§ 158, 159.
Pen.Code 1913, §§ 152, 153.
Laws 1925, Ch. 32, §§ 2, 3, 11.
Rev.Code 1928, §§ 201, 202, 206, 4569.
Laws 1933, Ch. 66, §§ 32, 49, 51.
Code 1939, §§ 32-201, 32-202, 32-206, 32-332, 32-349, 32-351, 43-3304.
A.R.S. former §§ 32-261, 32-264, 32-266, 32-267, 32-272, 32-273.
Laws 1977, Ch. 61, § 1.
Laws 1978, Ch. 85, § 1.
Laws 1978, Ch. 201, §§ 530, 532.
Laws 1979, Ch. 143, § 1.
ABA Model Rules 9(A), 9(F), 18A to H.
Sections 51(k)-(l): revisers' additions.
Former Rules 29(b)(2) to 29(b)(9), 29(c) and (d).
Washington Proposed Rules 1.1(a), 13.2.
Former Rules 51, 57.

Former Rule 53, amended July 20, 1989, effective Sept. 1, 1989; Dec. 12, 1991, effective Jan. 1, 1992; Jan. 30, 1995, effective June 1, 1995; July 12, 1995, effective Dec. 1, 1995; Oct. 30, 1996, effective Dec. 1, 1996, amended and effective April 14, 1999; Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000; Jan. 22, 2002, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 54, AZ ST S CT Rule 54
Current with amendments received through 1/1/14

Rule 55. Initiation of Proceedings; Investigation
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
H. Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 55

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. The state bar shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity.

1. If the state bar determines the lawyer is not subject to the disciplinary jurisdiction of the supreme court, it shall refer the information to the appropriate entity.

2. If the state bar determines the lawyer is subject to the disciplinary jurisdiction of the court, it shall, in the exercise of its discretion, resolve the matter in one of the following ways:

A. dismiss the matter with or without comment; or

B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted ; or-

C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

(b) Screening Investigation and Recommendation by the State Bar. When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that he or she is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by the state bar until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* The respondent shall provide a written response to the allegations to bar counsel within twenty (20) days after notice of the investigation is given.

A. *Extensions of Time.* Bar counsel may grant one extension of time to file a written response not to exceed twenty (20) days. Any additional requests for extensions of time must be approved by chief bar counsel for good cause shown.

B. *Failure to Respond.* If respondent fails to timely respond as provided in these rules, bar counsel may seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent's attendance and production of documents. Respondent may be subject to contempt proceedings pursuant to Rule 47(h)(4) if he or she refuses to appear or comply with the subpoena.

2. *Action Taken by the State Bar*.

A. Dismissal.

(i) *Notice.* After conducting a screening investigation, if there is no probable cause to believe that misconduct or incapacity under these rules exists, bar counsel shall dismiss the charge, with or without comment, by filing a notice of dismissal with the Records Manager of the Lawyer Regulation Office of the state bar. Within twenty (20) days of dismissal of a charge, bar counsel shall provide a written explanation of the dismissal to the complainant.

(ii) *Review by Committee*. If bar counsel dismisses the charge, the complainant may, within ten (10) days of receipt of the explanation of dismissal, submit to the state bar an objection to bar counsel's decision, which shall be reviewed by the committee. Objections shall be referred to the committee for decision. The committee shall review the matter and make a determination as provided in subsection (c) below; provided, however, that the committee shall sustain the dismissal unless it constituted an abuse of discretion. The committee may, rather than sustaining or overturning a dismissal, direct bar counsel to conduct further investigation. When the committee sustains a dismissal, it shall furnish the complainant a written explanation of its determination.

B. *Recommendation Other than Dismissal*. If, after investigation, bar counsel determines a recommendation for diversion, stay, probation, restitution, admonition, assessment of costs and expenses, or probable cause is appropriate, bar counsel shall provide to the complainant and to respondent a written explanation of the recommendation. Bar counsel shall inform the complainant of the right to submit a written objection, and the respondent of the right to submit a summary of the response to the charges, not to exceed five (5) pages. Such documents shall be filed with the state bar within ten (10) days of receipt of the explanation. The state bar shall submit complainant's objection, if any, to the committee along with bar counsel's report of investigation and recommendation.

(c) Decision by Committee. Any recommendation by the state bar for a disposition other than dismissal shall be reviewed by the committee.

1. *Action Taken by the Committee.* The committee shall review the report, the complainant's objection, if any, and respondent's summary of the response to the charges, if any, and:

A. direct bar counsel to conduct further investigation;

B. dismiss the allegations and furnish the complainant with a written explanation of its determination;

C. refer the matter to diversion as provided in Rule 56;

D. make a finding that probable cause exists and order an admonition, probation, restitution, assessment of costs and expenses, or a stay; or

E. authorize bar counsel to prepare and file a complaint against the respondent or a petition for transfer to disability inactive status.

2. *Considerations in Authorizing Complaint.* In determining whether to authorize bar counsel to file a complaint, the committee shall first determine whether probable cause exists, and if so, shall consider the following:

A. whether it is reasonable to believe that misconduct warranting discipline can be proven by clear and convincing evidence;

B. whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings;

C. the level of the actual or potential injury; and

D. whether the respondent has previously been disciplined or participated in diversion.

3. *Filing of Committee Decision*. The committee shall file its decision with the Records Manager of the Lawyer Regulation Office of the state bar. The state bar shall serve a copy of the decision on respondent or respondent's counsel.

4. Disposition Prior to Formal Complaint.

A. Subject to the terms of this subsection, a decision of the committee shall be final with respect to dismissal, diversion, stay, admonition, assessment of costs and expenses, probation, restitution, and the filing of formal discipline or disability proceedings. Orders of diversion, stay, admonition, probation, restitution, and assessment of costs and expenses shall be signed by the committee chair or vice-chair.

B. Within ten (10) days of service of an order of diversion, stay, probation, restitution, admonition, or assessment of costs and expenses entered by the committee, respondent has the right to demand that a formal proceeding be instituted by filing a demand with the committee and submitting a copy to bar counsel. Upon receipt of the demand, the committee shall issue an order vacating the earlier order and directing bar counsel to file a complaint with the disciplinary clerk for institution of formal proceedings. The committee shall serve a copy of the order on bar counsel of record and the respondent or respondent's counsel.

C. A recommendation of any sanction that is consented to by respondent, pursuant to Rule 57(a), before or while the matter is pending before the committee, other than those made final by decision of the committee, shall be submitted directly to the presiding disciplinary judge for review.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009. Renumbered from Rule 54 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Revisers' addition.
Laws 1933, Ch. 66, § 40.
Code 1939, § 32-340.
A.R.S. former § 32-268.
Rule 23, ARCAP.
ABA Model Rules 11, 14(F), 17(E).
Former Rules 33 to 37.
Former Rule 53.

Former Rule 54, amended Dec. 12, 1991, effective Jan. 1, 1992; Feb. 18, 1993, effective March 1, 1993; Jan. 30, 1995, effective June 1, 1995; July 12, 1995, effective Dec. 1, 1995; Oct. 30, 1996, effective Dec. 1, 1996, amended Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000; May 31, 2002, effective September 1, 2002; Oct. 28, 2002, effective Dec. 1, 2002, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 55, AZ ST S CT Rule 55
Current with amendments received through 1/1/14

Rule 56. Diversion
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
H. Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 56

Rule 56. Diversion

(a) Alternative to Discipline. Diversion is an alternative to formal discipline and may be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period. The terms of the diversion agreement will be stated in writing, and may include restitution and assessment of costs and expenses.

(b) Referral to Diversion. Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to the attorney, based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer committed professional misconduct, is incapacitated, or does not wish to contest the evidence of misconduct and the state bar and the respondent agree that diversion will be appropriate;

2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;

3. the cause or basis of the professional misconduct or incapacity is subject to remediation or resolution through alternative programs or mechanisms, including:

A. medical, psychological, or other professional treatment, counseling or assistance,

B. appropriate educational courses or programs,

C. mentoring or practice monitoring services,

D. dispute resolution programs, or

E. any other program or corrective course of action agreed upon by the state bar and respondent to address respondent's misconduct;

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and

5. the terms and conditions of the diversion plan can be adequately supervised.

(c) Diversion Agreement or Order. If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and the state bar. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the

recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after a complaint has been filed, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) Reinstatement of Discipline Proceeding. A discipline matter shall be held in abeyance during diversion. If a respondent violates a term of diversion, bar counsel may reinstate the discipline proceeding and go forward with the proceeding as provided in these rules.

(e) Dismissal. After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude the state bar from using the fact of an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the order shall not be considered as a prior disciplinary offense in aggravation.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009. Renumbered from Rule 55 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Pen.Code 1901, §§ 158, 159.
Pen.Code 1913, §§ 152, 153.
Laws 1925, Ch. 32, §§ 3, 11.
Rev.Code 1928, §§ 202, 206, 4569.
Laws 1933, Ch. 66, § 32.
Code 1939, §§ 32-202, 32-206, 32-332, 43-3304.
A.R.S. former §§ 32-264, 32-266, 32-272, 32-273.
Laws 1978, Ch. 201, § 532.
ABA Model Rules 10(A), 22.
ABA 1977 Rule 4(C).
Revisers' addition.
Former Rule 52.

Former Rule 55, amended Dec. 12, 1991, effective Jan. 1, 1992; May 20, 1993, effective June 1, 1993; adopted in final form Sept. 30, 1993; amended Oct. 30, 1996, effective Dec. 1, 1996, amended and effective April 14, 1999; Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 56, AZ ST S CT Rule 56
Current with amendments received through 1/1/14

Rule 57. Special Discipline Proceedings
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
H. Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 57

Rule 57. Special Discipline Proceedings

(a) Discipline by Consent

1. *Consent to Discipline.* A respondent against whom a charge has been made or a complaint has been filed may tender, with the agreement of the state bar, a conditional admission to the charge or complaint or to a particular count in exchange for a stated form of discipline, other than disbarment, at any stage of the proceedings.

2. *Form of Agreement*. An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. *Rule Violation*. Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. *Form of Discipline*. The form of discipline to be imposed shall be set forth in the agreement. If probation is agreed to, the terms shall be stated in specific, understandable, and enforceable language and advise the respondent that failure to comply with the terms and conditions of probation will result in the filing of a notice of non-compliance by the bar with the presiding disciplinary judge and a hearing will be held within thirty (30) days to determine whether the respondent has breached the agreement. A finding that the respondent breached the terms and conditions of probation may result in the imposition of disciplinary sanctions.

C. *Restitution*. Restitution which may be due each complainant named in the charge or complaint shall be addressed in the agreement. If restitution is not sought or agreed to, bar counsel must avow that a good faith effort has been made to notify the complainant that restitution will not be forthcoming pursuant to these proceedings.

D. *General Language.* Agreements must include the following language, as applicable:

(i) a statement that the respondent's admission(s) to the charge, complaint, or portion thereof, is being tendered in exchange for the stated form of discipline and is submitted freely and voluntarily and not as a result of coercion or intimidation;

(ii) a statement that the respondent is represented by counsel or has chosen not to seek the assistance of counsel and voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered,

and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved;

(iii) a statement that respondent acknowledges the duty to comply with all rules pertaining to notification of clients, return of property and other rules pertaining to suspension, including reinstatement;

(iv) a statement that outlines the possible consequences of any violation of the terms and conditions of probation or any other provision of the agreement;

(v) a statement that the agreement has been approved as to form and content by the chief bar counsel or chief bar counsel's designee.

E. *Legal Grounds*. Each agreement shall include a discussion of the American Bar Association's *Standards for Imposing Lawyer Sanctions* and an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case. Exhibits, such as a record of criminal conviction, pre-sentence reports, medical records, public records, and any other records in support of the agreement or the sanction to be imposed may be filed with the agreement, as agreed upon by the parties, in addition to any statement of costs and expenses on admitted counts. The parties shall be responsible for redacting any sensitive data filed with the agreement, in accordance with Rule 5(f), Ariz. R. Civ. P.

F. *Use of Standardized Documents*. The Agreement for Discipline by Consent may include standardized documents approved by chief bar counsel related to the terms of probation.

3. *Procedure.*

A. If the parties reach an agreement before the authorization to file a formal complaint and the agreed upon sanction does not include a reprimand, suspension, or disbarment, the parties may elect to request an order pursuant to Rule 55(c) by providing to the committee for its review an investigative report and bar counsel's recommendation for an admonition, probation, restitution, or an assessment of costs and expenses. Alternatively, the parties may submit an agreement for discipline by consent with all supporting exhibits to the committee for its review. The committee shall either reject the request or agreement and order the proceedings continued in accordance with these rules, or accept the request or agreement and issue the appropriate order.

B. If the agreement is reached before the authorization to file a formal complaint and the agreed upon sanction includes a reprimand or suspension, or if the agreement is reached after the authorization to file a formal complaint, the agreement shall be filed with the disciplinary clerk to be presented to the presiding disciplinary judge for review. The presiding disciplinary judge, in his or her discretion or upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified.

4. *Presiding Disciplinary Judge Report.* Within thirty (30) days of the submission of an agreement or the conclusion of hearing, if one is held, and receipt of the transcript, if any, the presiding disciplinary judge shall file a report with the disciplinary clerk and serve a copy on the parties. The report shall accept, reject or recommend modification of the proposed agreement. The report shall incorporate all or portions of the agreement, as appropriate.

A. *Acceptance*. If the agreement is accepted, the presiding disciplinary judge shall issue an appropriate judgment and order, which shall be final.

B. *Modification.* The presiding disciplinary judge may recommend the modification of an agreement. In that event, the presiding disciplinary judge shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten (10) or more than thirty (30) days to execute the proposed modifications

and file the modified agreement for consideration. If the parties fail to submit a modified agreement within the time provided, and they have not requested additional time, the agreement shall be deemed rejected. For good cause shown, the presiding disciplinary judge may grant one thirty (30) day extension of time to file the modified agreement, so long as the modified agreement is filed within one hundred fifty (150) days of the filing of the complaint.

C. *Rejection.* If the agreement is rejected, the presiding disciplinary judge shall state the reasons for rejection. Upon rejection, the agreement and all admissions contained therein are withdrawn and shall not be used against the parties in any subsequent proceeding.

5. *Disbarment by Consent.* The following provisions shall apply to admissions that constitute disbarment by consent:

A. Any member against whom charges have been made or a formal complaint filed may voluntarily consent to disbarment by filing with the disciplinary clerk, in duplicate original, a written, verified consent to disbarment in the form prescribed in these rules or as otherwise approved by the court. The consent to disbarment shall be effective only upon acceptance by the presiding disciplinary judge. The general form of consent to disbarment shall be as follows:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In re:	)	No. SB.
(NAME OF MEMBER), a	)	Bar No.
Member of the State Bar of	)	
Arizona	)	CONSENT TO
Respondent	)	DISBARMENT
_____	)	

I, (name of lawyer), residing at (city and street address), voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

I acknowledge that (charges) a formal complaint have/has been (made) filed against me. I have read the (charges) complaint, and the charges there made against me. I further acknowledge that I do not desire to contest or defend against the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and reinstatement, and I understand that any future application by me for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the (charges) complaint (made) filed against me. The misconduct of which I am accused is described in the (charges) complaint bearing the number referenced above, a copy of which is attached hereto.

DONE AT _____, Arizona on _____, 20 ___.

(Signature)

_____

(Name)
(Verification)

B. Upon acceptance of the consent to disbarment, the presiding disciplinary judge shall promptly enter a judgment disbarring the member and striking the name of the member from the roll of lawyers, and the member shall no longer be entitled to the rights and privileges of a lawyer, but will remain subject to the jurisdiction of the court, and the member shall immediately comply with the requirements relating to notification of clients and others.

C. Upon the acceptance of the consent to disbarment, and unless otherwise ordered by the presiding disciplinary judge, no further disciplinary action shall be taken in reference to the matters that were the subject of the (charges) complaint upon which the consent to disbarment and the judgment of disbarment were based.

(b) Reciprocal Discipline.

1. *Duty to Obtain Order of Discipline from Another Jurisdiction.* Upon being disciplined in another jurisdiction, a lawyer admitted to practice in the State of Arizona, whether active, inactive, retired, or suspended, shall, within thirty (30) days of service of the notice of imposition of discipline from the other jurisdiction, inform the disciplinary clerk of such action, and identify every court in which the lawyer is or has been admitted to practice. Upon notification that a lawyer subject to the jurisdiction of this court has been disciplined in another jurisdiction, the disciplinary clerk shall obtain a certified copy of the disciplinary order and file it with the presiding disciplinary judge.

2. *Notice Served Upon Respondent.* Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in the State of Arizona has been disciplined in another jurisdiction, the presiding disciplinary judge shall issue a notice to the lawyer and to bar counsel containing:

A. a copy of the order from the other jurisdiction; and

B. an order directing that the lawyer or bar counsel inform the presiding disciplinary judge, within thirty (30) days from service of the notice, of any claim by the lawyer or bar counsel predicated upon the grounds set forth in the next paragraph that the imposition of identical or substantially similar discipline in this state would be unwarranted and the reasons therefor.

3. *Discipline to Be Imposed.* Upon the expiration of thirty (30) days from service of the notice pursuant to the provisions above, the presiding disciplinary judge shall impose the identical or substantially similar discipline, unless bar counsel or respondent establishes by a preponderance of the evidence, through affidavits or documentary evidence, or as a matter of law by reference to applicable legal authority, or the presiding disciplinary judge finds on the face of the record from which the discipline is predicated, it clearly appears that:

A. the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

B. there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the presiding disciplinary judge could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or

C. the imposition of the same discipline would result in grave injustice; or

D. the misconduct established warrants substantially different discipline in this state.

4. *Alternative Discipline.* If the presiding disciplinary judge determines that any of the above listed elements exist, the judge may:

A. direct that a complaint be filed;

B. impose suitable discipline; or

C. dismiss the matter.

The decision of the presiding disciplinary judge shall be final as provided for in other discipline matters, except that an order of reprimand, suspension or disbarment shall be subject to the parties' right to appeal.

5. *Conclusiveness of Adjudication in Other Jurisdiction.* In all other respects, a final adjudication in another jurisdiction that a lawyer has been found guilty of misconduct shall establish conclusively the misconduct for purposes of a discipline proceeding in this state.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; Sept. 16, 2008, effective Jan. 1, 2009. Renumbered from Rule 56 and amended June 30, 2010, effective Jan. 1, 2011.

Source:
Former Rules 19(A), 30(b).
Former Rule 56.

Former Rule 56, amended Dec. 12, 1991, effective Jan. 1, 1992; Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 57, AZ ST S CT Rule 57
Current with amendments received through 1/1/14

Rule 58. Formal Proceedings
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
H. Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 58

Rule 58. Formal Proceedings

(a) Complaint. Formal discipline proceedings shall be instituted by the state bar filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint and all subsequent pleadings filed before the presiding disciplinary judge should be captioned as set forth below:

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Member	)
of the State Bar of Arizona	)
(Name)	)
Bar No. 000000	)

2. *Service of Complaint.* The state bar shall serve the complaint upon the respondent within five (5) days of filing and in the manner set forth in Rule 47(c). Upon receipt of the complaint and notice that the state bar has served the complaint upon the respondent, the disciplinary clerk shall assign the matter to the presiding disciplinary judge and advise the respondent in writing of respondent's right to retain counsel.

(b) Answer. Respondent shall file an answer with the disciplinary clerk and serve copies upon bar counsel of record within twenty (20) days after service of the complaint, unless, upon written request by respondent, the time is extended by the presiding disciplinary judge. The presiding disciplinary judge may grant one extension of time, not to exceed thirty (30) days. Respondent shall provide a current address in his or her answer, and confirm that the address given is the address reported to the state bar pursuant to Rule 32(c)(3). A respondent's answer must comply with Rule 8(b), Ariz.R.Civ.P.

(c) Initial Case Management Conference. Within ten (10) days after an answer has been filed, the presiding disciplinary judge shall contact the parties and hold a mandatory case management conference for purposes of establishing the discovery schedule, as well as scheduling the hearing on the merits and all other prehearing conferences, unless a notice of agreement for discipline by consent or an agreement for discipline by consent has been filed. Bar counsel and respondent, and respondent's counsel, if any, shall appear for the initial case management conference. The parties may participate in the conference telephonically or by other appropriate electronic means.

(d) Default Procedure; Aggravation/Mitigation Hearing. If respondent fails to answer within the prescribed time, the disciplinary clerk shall, within ten (10) days thereafter, enter that party's default and serve a copy of the notice of default upon respondent and bar counsel. A default entered by the disciplinary clerk shall be effective ten (10) days after service of the notice of default, upon which the allegations in the complaint shall be deemed admitted. A default shall not become effective if the respondent pleads or otherwise defends within ten (10) days from the service of the notice of default. Entry of default shall not be set aside except in cases where such relief would be warranted under Rule 60(c), Ariz. R. Civ. P. The presiding disciplinary judge shall schedule an aggravation/mitigation hearing before the hearing panel. Not less than fifteen (15) days before the date set for the aggravation/mitigation hearing, the presiding disciplinary judge shall serve notice of the hearing on the parties. The hearing shall be held not earlier than fifteen (15) days nor later than thirty (30) days after the entry of default. The hearing panel shall prepare a report as provided in paragraph (k) of this rule.

(e) Initial Disclosure Statements. The state bar, within ten (10) days after the answer is filed, and respondent, within thirty (30) days after the answer is filed, shall each serve upon the other an initial disclosure statement. The initial disclosure statement shall include the following:

1. the names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at the hearing with a description of each witness' expected testimony;

2. the names and addresses of all persons whom the party believes may have knowledge or information relevant to the matter and the nature of the knowledge or information each such individual is believed to possess;

3. the names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements;

4. the name and address of each person whom the disclosing party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to

which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;

5. the existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing, including documentation of prior discipline the state bar may seek to introduce;

6. a list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist whether or not in the party's possession, custody or control and which that party intends to introduce at the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure if not previously provided. If production is not made, the name and address of the custodian of the document will be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business;

7. the existence of prior discipline or a prior course of conduct;

8. evidence in aggravation or mitigation that may be presented at hearing;

9. the factual and legal bases upon which the respondent may rely at hearing to contest the allegations in the complaint.

(f) Discovery.

1. *Time limits.* Unless extended by agreement of the parties or otherwise ordered at the case management conference, all initial discovery requests must be made within forty (40) days of the date an initial answer is filed, except that additional discovery requests may be filed within thirty (30) days of the date an answer is filed to an amended complaint. Discovery requests based upon an amended complaint shall be limited to new allegations. Discovery shall be governed by Rules 26(a) through (f), Rules 29 through 36, and Rule 45, Ariz. R. Civ. P., to the extent not inconsistent with these rules.

2. *Response time.* Unless extended by agreement of the parties, answers to discovery requests, including interrogatories, requests for admission, and requests for production of documents or things, shall be provided within thirty (30) days of the date of service of the discovery request. Failure of a respondent to comply with discovery requests and disclosure requirements may be construed as failure to cooperate under Rule 54(d).

3. *Sanctions for failure to make disclosure or discovery.* Following a good faith effort to resolve a discovery issue, either party may file a notice of failure to comply with discovery rules, which shall include a statement that an attempt was made to resolve the issue. A hearing, which may be telephonic, shall be held within five (5) days of the date the notice is filed. Evidence of compliance and non-compliance may be produced at the hearing. The presiding disciplinary judge shall enter appropriate orders at the conclusion of the hearing, which are limited to the sanctions set forth in subsections (A) and (B) of this rule.

(A) *Willful violation of the disclosure or discovery rules*. Evidence that is not disclosed as required by these rules shall not be admitted at hearing by the non-compliant party if the presiding disciplinary judge concludes that non-compliance was willful. In making findings of fact about the allegations of misconduct, the presiding disciplinary judge shall conclude that responses to specific interrogatories and requests for admissions and production would have been adverse to the non-compliant party.

(B) *Other violations of the disclosure or discovery rules*. The presiding disciplinary judge may utilize any of the following sanctions for non-willful violations of the disclosure or discovery rules:

(i) An order refusing to allow the non-compliant party to support or oppose designated allegations, claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(ii) An order striking out pleadings or parts thereof, or staying further proceedings until the disclosure or discovery rules or presiding disciplinary judge order is obeyed, or dismissing designated allegations in the complaint or defenses thereto, or rendering a judgment by default against the non-compliant party.

(C) *Evasive or incomplete disclosure, answer, or response*. An evasive or incomplete disclosure, answer, or response by a respondent may be construed as a violation under Rule 54(d).

(g) Settlement Conference. After an answer has been filed and respondent is not otherwise in default, the disciplinary clerk shall assign the matter to a settlement officer, not otherwise assigned to the matter, who shall conduct at least one (1) conference for the purpose of facilitating settlement of the case, unless both parties agree otherwise. The settlement officer shall serve upon the state bar and the respondent a notice of date and place of the settlement conference. Failure of a respondent to participate in good faith in a duly noticed settlement conference may be construed as a violation under Rule 54(d).

1. *Ex Parte Communications/Confidentiality.* The settlement officer may engage in ex parte communications. Discussions in the settlement conference shall not be disclosed unless stipulated to by the parties or necessary to implement the agreement of the parties.

2. *Settlement.* In the event an agreement is reached, the settlement officer, upon agreement of the parties, may order the submission of a written agreement within thirty (30) days.

(h) Prehearing Conference. At the discretion of the presiding disciplinary judge, or upon request of either party, one or more prehearing conferences may be held before the presiding disciplinary judge for the purpose of determining case status, establishing a hearing schedule, disposing of outstanding procedural matters or otherwise narrowing the issues to be presented at the hearing on the merits. If the presiding disciplinary judge intends to hear oral argument or otherwise rule on substantive motions, the parties shall be so advised in advance of the conference. The parties may participate in the conference telephonically or by other appropriate electronic means.

(i) Joint Prehearing Statements. Either party may request an order directing the filing of a joint prehearing statement. The presiding disciplinary judge shall order the parties to file a joint prehearing statement if requested by either party, and may do so sua sponte. A party shall file a unilateral prehearing statement if the opposing party is not cooperating in good faith to prepare a joint prehearing statement.

(j) Hearing.

1. *Time Limits.* The hearing panel shall hold and complete the hearing on the merits within one hundred fifty (150) days of the filing of the complaint. The hearing date may be continued sua sponte by the presiding disciplinary judge, or upon request or stipulation of the parties, for good cause shown. Continuances may be granted for no more than thirty (30) days at a time, and may not extend the hearing on the merits beyond one hundred fifty (150) days from the filing of the complaint, except as otherwise provided by the presiding disciplinary judge pursuant to Rule 51(c)(4).

2. *Venue.* The hearing shall be held in the office of the presiding disciplinary judge, unless the respondent requests that it be held in the county in which he or she resides or maintains an office for the practice of law, provided that the principles of forum non conveniens apply.

3. *Procedure.* The state bar shall prove the allegations contained in the complaint by clear and convincing evidence. The respondent may retain counsel to provide representation at the hearing and may cross-examine witnesses and present evidence on respondent's behalf, as permitted by the rules of evidence. Rule 38.1(c) and (d), Rule 42(a), Rule 43, Rule 44, Rule 80(a),(d),(h), and (i), Ariz. R. Civ. P., are applicable to these proceedings.

4. *Telephonic testimony.* Telephonic witness testimony should normally be permitted if the offering party provides evidence that the witness is unavailable to testify in-person.

5. *Evidence of prior sanctions.* The existence of prior sanctions, including those that are imposed subsequent to the filing of the complaint, may be presented to the hearing panel during the hearing on the merits of the complaint, to the extent permitted by the Rules of Evidence, or as a factor in aggravation. When determining an appropriate sanction, the hearing panel shall consider in aggravation prior sanctions that were final at the time of hearing.

(k) Report. Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written report containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. The report shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the report and indicate the basis of the dissent in the report. The disciplinary clerk shall serve a copy of the report on respondent and on bar counsel of record. The hearing panel shall notify the parties when the report will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; Sept. 5, 2007, effective Jan. 1, 2008; Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009. Renumbered from Rule 57 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Revisers' addition.
Laws 1933, Ch. 66, § 40.
Code 1939, §§ 32-340.
A.R.S. former § 32-268.
Rule 23, ARCAP.
ABA Model Rules 11, 14(F), 17(E).
Former Rules 33 to 37.
Former Rule 53.

Former Rule 57, amended Dec. 12, 1991, effective Jan. 1, 1992, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 58, AZ ST S CT Rule 58
Current with amendments received through 1/1/14

Rule 59. Review by the Court
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
H. Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 59

Rule 59. Review by the Court

(a) Notice of Appeal. Within ten (10) days after service of a report of the presiding disciplinary judge, except reports regarding consent agreements, or a hearing panel, respondent or the state bar may appeal by filing with the disciplinary clerk a notice of appeal and serving a copy on the opposing party. An opposing party may file a notice of cross-appeal within ten (10) days from service of the notice of appeal and serve a copy on the opposing party.

(b) Extension of Appeal Time. The presiding disciplinary judge may, upon motion filed not later than 30 days after the expiration of the time for appeal and a showing of excusable neglect, extend the time for filing the notice of appeal for a period not to exceed fourteen (14) days from the date of the order granting the motion.

(c) Stay Pending Appeal. A respondent may seek a stay of the decision of the hearing panel by filing a request with the hearing panel within ten (10) days of the date the report was filed. Within five (5) days of a respondent filing an application for stay pending appeal, the state bar may file a response with the hearing panel. The application for stay pending appeal shall be granted subject to appropriate conditions of supervision, except when an interim suspension has been ordered or when the hearing panel, in its discretion, determines no conditions of supervision will protect the public while the appeal is pending. No stay of the sanction shall be granted if the only issue on appeal is the assessment of costs and expenses.

(d) Transmittal of Record. Upon the filing of a notice of cross-appeal, or upon the expiration of time for filing a notice of cross-appeal, the disciplinary clerk shall have ten (10) days to transmit the entire record to the clerk of the court. The disciplinary clerk shall notify the parties of the transmittal of the record.

(e) Notice of Transcripts. Within ten (10) days of the notice of the transmittal of the record, a party requesting transcripts for purposes of appeal shall serve the clerk of the court with a notice designating the transcripts requested. A party requesting transcripts for the purpose of appeal shall arrange for transcription at the party's expense. Within thirty (30) days of the notice designating the requested transcripts, or as otherwise ordered by the clerk of the court, the party shall file the certified transcript with the clerk of the court and serve a copy on the opposing party.

(f) Docketing the Appeal. Upon receipt of the record and the filing of any transcripts of which a party filed notice pursuant to paragraph (e), the clerk of the court shall docket the appeal and send a notice of docketing and filing of the record on appeal and a briefing schedule to the disciplinary clerk, respondent, respondent's counsel, if any, and bar counsel.

(g) Time for Filing Briefs. The appellant's opening brief, and appellee's opening brief in a cross-appeal, if any, shall be filed with the clerk of the court no later than thirty (30) days after the notice of docketing. The answering briefs shall be filed with the clerk of the court no later than thirty (30) days after service of the opening brief. A reply brief may be filed with the clerk of the court no later than fifteen (15) days after service of

the answering brief. A party who files a cross-appeal may combine in one brief the opening cross-appeal brief and the answering brief, but such brief shall be filed within the time allowed for filing the brief as cross-appellant.

(h) Briefs; Form, Length, and Content. Briefs shall conform to the requirements of Rule 6(c), Ariz. R. Civ. App. P. Principal briefs shall not exceed 10,500 words, or thirty (30) pages if prepared in monospaced typeface, and reply briefs shall not exceed 7,000 words, or twenty (20) pages if prepared in monospaced typeface. Briefs shall not be bound. The content of the briefs shall conform to Rule 13, Ariz. R. Civ. App. P.

(i) Oral Argument. Oral argument may, in the court's discretion, be scheduled in an appeal upon request of either party or upon the court's own motion.

(j) Standard of Review. The court shall review questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

(k) Form of Decision. The court may resolve any matter before it by opinion, memorandum decision, or order, as the court may determine in its discretion.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended and effective Oct. 12, 2005. Amended June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013; Aug. 28, 2013, effective Jan. 1, 2014.

Source:
Revisers' addition.
Laws 1933, Ch. 66, § 40.
Code 1939, §§ 32-340.
A.R.S. former § 32-268.
Rule 23, ARCAP.
ABA Model Rules 11, 14(F), 17(E).
Former Rules 33 to 37.
Former Rule 53.

Former Rule 59, amended Dec. 12, 1991, effective Jan. 1, 1992, amended and effective April 14, 1999; May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 59, AZ ST S CT Rule 59
Current with amendments received through 1/1/14

Rule 60. Disciplinary Sanctions
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
I. Sanctions

17A A.R.S. Sup.Ct.Rules, Rule 60

Rule 60. Disciplinary Sanctions

(a) Types and Forms of Sanctions. Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment*. Disbarment may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

2. *Suspension*. Suspension may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge for an appropriate fixed period of time not in excess of five (5) years. Suspended members shall remain suspended until the court enters an order reinstating the member to the practice of law in Arizona or upon order of the presiding disciplinary judge pursuant to Rule 64(e)(2)(B).

3. Reprimand. A reprimand may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge.

4. *Admonition*. An admonition may be imposed by judgment and order of the court, a hearing panel, the presiding disciplinary judge, or the committee.

5. *Probation*. Probation may be imposed by order of the court, a hearing panel, the presiding disciplinary judge, or the committee as follows:

A. Probation shall be imposed for a specified period not in excess of two (2) years, but may be renewed for an additional two (2) year period.

B. Probation may be imposed only in those cases in which there is little likelihood that the respondent will harm the public during the period of probation, and the conditions of probation can be adequately supervised. The conditions of probation shall be stated in writing, shall be specific, understandable and enforceable, and may include restitution and assessment of costs and expenses.

C. The state bar shall be responsible for monitoring and supervising the respondent during the probationary period. The state bar shall report material violations of the terms of probation to the presiding disciplinary judge, which may hold a hearing within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. In a probation violation hearing, a violation must be proven by a preponderance of the evidence. At the end of the probation term, bar counsel shall prepare and forward a notice to the presiding disciplinary judge regarding the respondent's completion or non-completion of the imposed terms.

6. *Restitution*. Restitution may be imposed by order of the committee, the presiding disciplinary judge, the hearing panel, or this court to persons financially injured, including reimbursement to the state bar client security fund. Restitution and the amount thereof must be proven by a preponderance of the evidence.

(b) Assessment of the Costs and Expenses. An assessment of costs and expenses related to disciplinary proceedings shall be imposed upon a respondent by the committee, the presiding disciplinary judge, the hearing panel, or the court, as appropriate, in addition to any other sanction imposed. Upon a showing of good cause, all or a portion of the costs and expenses may be reduced, deferred, or waived.

1. Statement of Costs and Expenses; Objections. At the conclusion of the disciplinary proceedings or the entry of a disciplinary sanction by the presiding disciplinary judge or the hearing panel, the state bar shall file an itemized statement of costs and expenses on proven or admitted counts and shall serve a copy on respondent and the disciplinary clerk.

2. *Procedure.*

A. *Upon Final Order of the Presiding Disciplinary Judge or the Hearing Panel*. If the disciplinary sanction ordered by the presiding disciplinary judge or the hearing panel is not appealed, the state bar shall file a final statement of costs and expenses with the disciplinary clerk within five (5) days after the time to appeal has expired. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. The respondent shall file any objections to the statements of costs and expenses within ten (10) days of service. The state bar may file a response within five (5) days of service of the objection. Unless otherwise ordered, objections shall be determined on the pleadings without oral argument or an evidentiary hearing. The presiding disciplinary judge or the hearing panel shall rule on any objections to costs and expenses, enter an appropriate order, file the same with the disciplinary clerk, and serve a copy on the bar counsel of record and respondent or respondent's counsel. The respondent or state bar may appeal a decision on the assessment of costs and expenses as set forth in Rule 59.

B. *Upon Final Order of the Court*. Upon final order of the court affirming or imposing any disciplinary sanction, the state bar shall file a final statement of costs and expenses with the clerk of the court within five (5) days after the clerk has given notice that a decision has been rendered. At the same time, the disciplinary clerk shall file a statement reflecting the costs and expenses of that office in connection with the proceeding. Respondent may file an objection to the statement of costs and expenses within ten (10) days of service. The state bar may file a response within five (5) days of service of the objection. If respondent objects, the court may remand the matter to the presiding disciplinary judge or the hearing panel for determination as provided in subparagraph (2)(A) of this rule.

(c) Enforcement. Execution and other post-judgment remedies may issue out of and proceed before the superior court as in civil cases for the enforcement of any judgment entered in this court under these rules. Such matters shall be docketed in the superior court without filing fee as though the complaint had originally been filed in that court.

Credits

Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Editors' Notes

COMMENT TO 2012 AMENDMENT

It is presumed that costs and expenses will be imposed. Factors that may be considered in determining “good cause” for a reduction, deferral, or waiver may include, but are not limited to: evidence that respondent offered in writing to consent, prior to hearing on the merits, to the same or a greater sanction for the same rule violations he or she was found to have violated after that hearing; disparity between the gravity of the charges

filed and the violations found; and extreme financial hardship. It is presumed that many lawyers who find themselves in the discipline process will be subject to some degree of financial hardship. However, “extreme financial hardship” is not intended to encompass the financial hardship of the proceeding or imposed sanction but rather is intended to refer to circumstances that occurred independently of the misconduct. A claim of extreme financial hardship should be supported by financial information (which may be offered with a request for protective order or in camera review). Deferment may be appropriate, for example, in situations involving a substantial order of restitution.

Source:
Pen.Code 1901, §§ 158, 159.
Pen.Code 1913, §§ 152, 153.
Laws 1925, Ch. 32, §§ 3, 11.
Rev.Code 1928, §§ 202, 206, 4569.
Laws 1933, Ch. 66, § 32.
Code 1939, §§ 32-202, 32-206, 32-332, 43-3304.
A.R.S. former §§ 32-264, 32-266, 32-272, 32-273.
Laws 1978, Ch. 201, § 532.
ABA Model Rules 10(A), 22.
ABA 1977 Rule 4(C).
Revisers' addition.
Former Rule 52.

Former Rule 60, which related to expunction of records, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 60, AZ ST S CT Rule 60
Current with amendments received through 1/1/14

Rule 61. Interim Suspension by the Court
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
I. Sanctions

17A A.R.S. Sup.Ct.Rules, Rule 61

Rule 61. Interim Suspension by the Court

(a) Grounds for Interim Suspension. An interim suspension may be entered upon a showing of probable cause that a lawyer has been convicted of a misdemeanor involving a serious crime, as defined in Rule 54(g), or is engaging in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice. An interim suspension shall be entered pursuant to paragraph (c)(1)(A) of this rule upon receipt by the presiding disciplinary judge of proof of a lawyer's conviction of a felony. For purposes of this rule, an undesignated class six felony is considered a misdemeanor conviction.

(b) Period of Interim Suspension. A lawyer may be suspended from the practice of law for an indeterminate interim period, pending further order of this court.

(c) Procedure.

1. *Conviction of a Crime*. Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to the disciplinary clerk and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was entered; and (d) the date the judgment of conviction was entered.

A. *Felony Conviction*. A lawyer shall be suspended after the disciplinary clerk's receipt of proof of the lawyer's conviction of a felony under either state or federal law, regardless of the pendency of post conviction motions or an appeal, unless within ten (10) days of the clerk's receipt of proof of the conviction the member files with the presiding disciplinary judge a verified motion showing good cause why the suspension should not be entered. The presiding disciplinary judge may permit the lawyer to present oral argument in support of the lawyer's motion and shall promptly grant or deny it. If the motion is denied, the lawyer shall be suspended as of the date the motion is denied. If the motion is granted, the lawyer shall not be suspended pending completion of a disciplinary proceeding based on such conviction.

B. *Serious Misdemeanor Conviction*. A lawyer convicted of a serious crime other than a felony may be suspended, upon motion of the state bar, pending final disposition of a disciplinary proceeding predicated upon the conviction. Within ten (10) days of the state bar filing a motion, respondent may file with the presiding disciplinary judge a verified response showing good cause why respondent should not be suspended. The presiding disciplinary judge may permit respondent to present oral argument in support of the respondent's response and shall promptly grant or deny the motion. If the motion is granted, the lawyer shall be suspended as of the date of such order.

C. *Reinstatement*. If a lawyer suspended solely under the provisions of sections (A) or (B) demonstrates that the underlying conviction has been reversed or vacated, the order for interim suspension shall be vacated and the lawyer placed on active status. The vacating of the interim suspension will not automatically terminate any proceeding then pending against the lawyer, the disposition of which shall be determined on the basis of the available evidence.

2. *All Other Grounds for Interim Suspension*. The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel report.

A. *Service of Motion; Response*. Upon filing of the motion, the presiding disciplinary judge shall issue an order requiring the state bar to serve the motion and the presiding disciplinary judge's order on respondent. The motion and order shall be served within five (5) days, as appropriate under Rule 47(c), including service by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent to the state bar's membership records department pursuant to Rule 32(c)(3). Respondent shall file a response to the motion within ten (10) days of service of the motion.

B. *Hearing*. After receiving the response or after the time for filing a response has passed, the presiding disciplinary judge shall, within ten (10) days, conduct an evidentiary hearing, unless the parties have stipulated to the entry of an order of interim suspension. The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate. The presiding disciplinary judge is not bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice. Respondent shall have the right to present evidence, cross-examine witnesses, and be represented by counsel. Within five (5) days after the matter is deemed submitted or a hearing is held, the presiding disciplinary judge shall file a report and an order.

C. *Interim Probation*. The presiding disciplinary judge may order interim probation terms in lieu of interim suspension. The state bar shall be responsible for monitoring the respondent's compliance with any order of interim probation entered under these rules. The state bar may seek relief from material violations of the terms of probation by filing with the presiding disciplinary judge a motion supported by affidavit setting forth sufficient grounds. The state bar shall have the burden of proving by a preponderance of the evidence a material violation. The presiding disciplinary judge may hold a hearing promptly to determine whether a violation occurred, and whether the interim probation should be reaffirmed, modified, or revoked, or whether interim suspension should be imposed.

D. *Status Review*. After the entry of an order of interim suspension or interim probation, the state bar must expeditiously proceed with any related disciplinary investigation and proceeding. The presiding disciplinary judge may order any necessary measures, including but not limited to setting deadlines and holding regular status reviews, to ensure the state bar's compliance with this provision.

(d) Effect of Order. An order of interim suspension or interim probation shall be effective when entered unless otherwise specified, and shall continue in force until final disposition of all pending proceedings against the lawyer, unless vacated or modified. The disciplinary clerk shall serve a copy of any resulting order entered in this court on the disciplinary clerk, the respondent, and the state bar. Any order that restricts a lawyer maintaining a trust account shall, when served on any bank maintaining an account against which the lawyer may make withdrawals, serve as an injunction to prevent the bank from making further payment from the account or accounts on any obligation except in accordance with restrictions imposed. Unless otherwise specified by the presiding disciplinary judge, the provisions of Rule 72 relating to suspended lawyers shall apply.

(e) Review by the Court. Either party may seek review of the presiding disciplinary judge's decision.

1. *Appeal*. Within five (5) days after service of a report and order of the presiding disciplinary judge, respondent or the state bar may appeal by filing an opening brief with the disciplinary clerk. An answering brief may be filed with the disciplinary clerk no later than five (5) days after service of the opening brief. Briefs shall conform to the requirements of ARCAP 6(c). Briefs shall not exceed ten (10) pages and shall not be bound. The content of the briefs shall conform to ARCAP 13. After the time for filing the appellate briefs has expired, the disciplinary clerk shall transmit the entire record, including any transcripts and the parties' briefs, to the clerk of the court.

2. *Stay Pending Appeal*. Within five (5) days after service of a report and order of the presiding disciplinary judge, a respondent may seek a stay of the decision by filing an application for stay with the disciplinary clerk, along with the opening brief on appeal. The state bar may file a response with the disciplinary clerk, along with the answering brief on appeal, within five (5) days after service of the application for stay. The disciplinary clerk shall transmit the application for stay with the record as set forth in paragraph (e)(1) to the clerk of the court. The court shall promptly rule on the application for stay, which shall not be granted unless good cause is shown.

3. *Standard of Review*. The court shall review questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

4. *Form of Decision*. The court may resolve any matter before it by opinion, memorandum decision, or order, as the court may determine in its discretion.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
Pen.Code 1901, §§ 158, 159.
Pen.Code 1913, §§ 152, 153.
Laws 1925, Ch. 32, §§ 3, 11.
Rev.Code 1928, §§ 202, 206, 4569.
Laws 1933, Ch. 66, § 32.
Code 1939, §§ 32-202, 32-206, 32-332, 43-3304.
A.R.S. former §§ 32-264, 32-266, 32-272, 32-273.
Laws 1978, Ch. 201, § 532.
ABA Model Rules 10(A), 22.
ABA 1977 Rule 4(C).
Revisers' addition.
Former Rule 52.

Former Rule 61, relating to access to information, was amended Dec. 12, 1991, effective Jan. 1, 1992; Oct. 30, 1996, effective Dec. 1, 1996, amended and effective April 14, 1999; Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000; Oct. 28, effective Dec. 1, 2002, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 61, AZ ST S CT Rule 61
Current with amendments received through 1/1/14

Rule 62. Summary Suspension by the Board of Governors of the State Bar
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
I. Sanctions

17A A.R.S. Sup.Ct.Rules, Rule 62

Rule 62. Summary Suspension by the Board of Governors of the State Bar

(a) Grounds. A member may be summarily suspended from the practice of law upon administrative grounds as provided in these rules, including the following:

1. *Failure to Pay Assessment; Restitution.* A member who fails to pay any order of assessment or restitution may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

2. *Failure to Pay Annual Membership Fee; Delinquent Fee*. A member who fails to pay a fee within two (2) months after written notice of delinquency, pursuant to Rule 32, or fails to sign the annual dues statement as required by Rule 43(c) may be summarily suspended.

3. *Failure to Complete Mandatory Continuing Legal Education Requirements*. A member who fails to comply with continuing legal education requirements, pursuant to Rule 45, may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

4. *Failure to Comply with Trust Account Requirements*. A member who fails to comply with the requirement pertaining to trust accounts, pursuant to Rule 43, may be summarily suspended, provided that a notice by certified, return receipt mail of such non-compliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

5. *Failure of New Admittee to Complete Professionalism Course*. A new admittee who fails to complete the state bar course on professionalism, or an equivalent course on the principles of professionalism approved or licensed by the Board of Governors of the State Bar of Arizona, as required by Rule 34(h)(1), may be summarily suspended, provided that a notice by certified, return receipt mail of such noncompliance has been sent to the member, mailed to the member's last address of record in the state bar office at least thirty (30) days prior to such suspension.

(b) Procedure. The state bar shall provide a request for summary suspension to the board stating the grounds for and referring to the rule authorizing the order. A copy of the request shall be served on the member by certified mail, return receipt. One request may relate to more than one member. Within ten (10) days of service of the request upon the member, the member may file with the board a verified response showing good cause why the member should not be so suspended. The board may permit the member to present oral argument and shall grant or deny the state bar's request. Upon satisfaction that the state bar has shown a prima facie case under the rule referred to, the board shall enter an order of summary suspension, which the state bar shall mail to the respondent within ten (10) days of entry of the order.

(c) Appeal. A lawyer may request review of the lawyer's suspension before the board by filing an appeal following the procedures set forth in Rule 59, except that all notices and documents will be filed directly with the clerk of the court.

(d) Effect of Order. An order of summary suspension issued pursuant to this rule shall have the same effect as an order of interim suspension issued by the court, as set forth in Rule 61(d).

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended June 9, 2005, effective Dec. 1, 2005; June 30, 2010, effective Jan. 1, 2011.

Source:
A.R.S. former Rules 31(c)(9), 43(b) and (g), 45(h), 52(a)(9) and (10).

Former Rule 62, which related to dissemination of discipline and disability information, was amended Dec. 12, 1991, effective Jan. 1, 1992; Sept. 24, 1999, effective Dec. 1, 1999, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 62, AZ ST S CT Rule 62
Current with amendments received through 1/1/14

Rule 63. Transfer to Disability Inactive Status
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
J. Disability Proceedings

17A A.R.S. Sup.Ct.Rules, Rule 63

Rule 63. Transfer to Disability Inactive Status

(a) Purpose. A lawyer whose physical or mental condition adversely affects the lawyer's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer shall be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and rehabilitation of the lawyer. Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged.

(b) Method of Transfer

1. *Judicial Determinations of Incapacity.* If a lawyer has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order immediately transferring the lawyer to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer, the lawyer's guardian and conservator, and the director of the institution to which the lawyer may have been committed.

2. *Interim Order of Incapacity*. When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer may be incapacitated to the extent that the lawyer may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, may be filed with the disciplinary clerk, for an order temporarily transferring the lawyer to disability inactive status pending a hearing to determine incapacity as provided in this rule. The motion for an interim order of incapacity may be filed with the petition requesting transfer to disability inactive status. A response may be filed within five (5) days of service of the motion. The motion or response, if one is filed, will be personally served upon the lawyer alleged to be incapacitated and a notice of service will be filed with the disciplinary clerk. The presiding disciplinary judge may issue an order in the nature of a temporary restraining order and impose such conditions as necessary to protect the public. The interim order of incapacity shall be personally served on the clerk of the court and the lawyer alleged to be

incapacitated and shall remain in effect until the hearing to determine incapacity is held. Within ten (10) days of being served with the interim order of incapacity, either party may file with the disciplinary clerk a notice of intent to appeal to the court, pursuant to Rule 59.

3. *Finding of Incapacity to Discharge Duty*. If it is alleged by a lawyer or otherwise appears in the course of a discipline proceeding that the lawyer is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer lacks the capacity to adequately discharge the lawyer's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the presiding disciplinary judge, or the lawyer alleged to be incapacitated.

4. *Finding of Incompetency to Assist in Defense*. If it is alleged by a lawyer or otherwise appears in the course of a discipline or disability proceeding that the lawyer is unable to understand the proceedings or assist in the lawyer's defense as a result of a mental or physical condition, the presiding disciplinary judge, sua sponte, or upon motion of bar counsel, shall immediately transfer the lawyer to disability inactive status on a temporary basis pending a determination of competency, and all pending discipline proceedings shall be temporarily stayed. When a lawyer files a petition requesting transfer to disability inactive status alleging incompetence to assist in the lawyer's defense, the petition shall be processed according to paragraph (c) of this rule.

(c) Proceedings to Determine Incapacity or Competence.

1. *Petition*. A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the presiding disciplinary judge, or the lawyer alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2. *Service*. Within seven (7) days of the filing of the petition, petitioner shall personally serve the petition and accompanying documentation on the parties and will provide notice of service to the disciplinary clerk. A response may be filed within ten (10) days of service of the petition. The presiding disciplinary judge shall hold a hearing within ninety (90) days of the filing of the response or the time for filing the response. The presiding disciplinary judge may continue the hearing if additional time is needed to obtain necessary evaluations and reports and may enter an interim order of incapacity, as set forth in subsection (b)(2) of this rule, pending the hearing upon stipulation of the parties.

3. *Appointment of Counsel*. The presiding disciplinary judge may appoint counsel to represent the lawyer alleged to be incapacitated if the lawyer is without adequate representation and the presiding disciplinary judge determines there is prima facie evidence of incapacity. The presiding disciplinary judge shall appoint counsel to represent a lawyer who is without representation in proceedings to determine competency.

4. *Hearing*.

A. *Incapacity to Discharge Duty*. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer is incapacitated, including directing examination of the lawyer by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer lacks the capacity to adequately discharge the lawyer's duty to clients, the bar, the courts or the public.

B. *Competency to Assist in Defense*. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer is competent, including directing examination of the

lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer is able to assist in the lawyer's own defense. To assist in the lawyer's own defense, the lawyer needs to understand the charges, be able to communicate with the lawyer's attorney about the charges and any defense to those charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

5. *Report of Presiding Disciplinary Judge*. Within thirty (30) days after the filing of the hearing transcript or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a report containing findings of fact and conclusions concerning transfer to disability inactive status based on a determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer to disability inactive status on the parties. Thereafter, the lawyer shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

6. *Appeal*. Either party may appeal the presiding disciplinary judge's order regarding transfer of a lawyer to disability inactive status as provided in Rule 59.

(d) Status of Pending Disciplinary Proceedings.

1. *Incapacity to Discharge Duty*. An order transferring a lawyer to disability inactive status based on a finding that a lawyer is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3) of this rule.

2. *Competency to Assist in Defense*. If the presiding disciplinary judge or this court determines a lawyer is not competent to assist in the lawyer's own defense, discipline proceedings shall be stayed, and the lawyer placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer is competent to assist in the lawyer's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

3. *Order to Show Cause*.

A. *Petition*. In the case of a lawyer who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, the state bar shall file with the disciplinary clerk a petition for order to show cause.

B. *Hearing*. The presiding disciplinary judge shall issue an order requiring the lawyer to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of

incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

C. *Report of Presiding Disciplinary Judge*. The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a report containing findings of fact and a recommendation concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the report on the parties. Upon a finding that an existing stay is no longer supported by good cause, or upon a finding that a lawyer is no longer incompetent, any stayed discipline proceedings shall resume, subject to appellate review by the court.

D. *Appeal and Review*. Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts the presiding disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer is no longer incompetent, any stayed discipline proceedings shall resume.

(e) Confidentiality of Disability Proceedings. Proceedings and records relating to transfer to or from disability inactive status, including determinations of competency, are confidential, except that orders transferring a lawyer to or from disability inactive status are public.

(f) Assessment of Costs. Costs and expenses of disability proceedings shall be determined, assessed, and enforced, at the discretion of the presiding disciplinary judge or the court, as provided for in Rule 60(b).

(g) Reinstatement to Active Status.

1. *Application*. An application for transfer from disability inactive status to active status shall be made pursuant to Rule 65 and will proceed as in other cases of reinstatement, except as may be provided in this rule. The application shall set forth the information required in other cases of reinstatement so far as applicable, and a brief statement of the facts and circumstances surrounding the transfer of applicant to disability inactive status.

2. *Waiver of Doctor-Patient Privilege*. The filing of an application for transfer to active status by a lawyer transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the lawyer during the period of disability. The lawyer shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider, and hospital or other institution by whom or in which the lawyer has been examined or treated since the lawyer's transfer to disability inactive status. The lawyer shall furnish to the presiding disciplinary judge or this court written authorization to each health care provider and facility to release information and records relating to the disability if requested by the presiding disciplinary judge, this court or appointed medical experts.

3. *Reinstatement*. No lawyer transferred to disability inactive status may resume active status until reinstated by order of this court. A lawyer shall be entitled to apply for transfer to active status at any time at least one year after the lawyer's last application or at such shorter intervals as the court or the presiding disciplinary judge may direct in the order transferring the lawyer to disability inactive status or any modification thereof. The application shall be granted upon a showing, by clear and convincing evidence, that the lawyer's mental or physical condition has been removed and the lawyer is fit to resume the practice of law. In its discretion, the hearing panel or the court may direct that the lawyer establish proof of competence and learning in law, which proof may include certification by the bar examiners of the lawyer's successful completion of an examination for admission to practice, notwithstanding the lawyer was on inactive status less than five years. If a lawyer has been transferred to disability inactive status by an order in accordance with these rules and, thereafter, has been judicially declared to be no longer under disability, the hearing panel may dispense with further evidence

that the disability has been removed and may recommend the lawyer's reinstatement to active status upon such terms as are deemed appropriate.

4. *Pending Discipline*. If the court, upon considering the application for transfer to active status, determines the application shall be granted, it shall also reinstate any stayed discipline proceedings.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 27, 2005, effective Dec. 1, 2005; June 30, 2010, effective Jan. 1, 2011.

Source:
ABA Model Rule 21.
Former Rule 42(e).
Former Rule 59.

Former Rule 63, which related to notice to clients. adverse parties and other counsel, was amended April 2, 1986, effective June 1, 1986; Jan. 26, 1994, effective June 1, 1994, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 63, AZ ST S CT Rule 63
Current with amendments received through 1/1/14

Rule 64. Reinstatement; Eligibility
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
K. Reinstatement

17A A.R.S. Sup.Ct.Rules, Rule 64

Rule 64. Reinstatement; Eligibility

(a) General Standard. Except as provided in paragraph (e)(2) of this rule, in order to be reinstated to the active practice of law, a suspended or disbarred lawyer or a lawyer on disability inactive status must show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. However, the requirements for reinstatement after summary suspension are as stated in paragraph (f) of this rule.

(b) Presumptive Disqualification. There shall be a presumption, rebuttable by clear and convincing evidence presented at the hearing, that a lawyer who has been convicted of a misdemeanor involving a serious crime or of any felony shall be disqualified for reinstatement. “Serious crime” includes any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or moral turpitude, including a conspiracy, a solicitation of another, or any attempt to commit a serious crime.

(c) Additional Requirements. If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required, unless the applicant meets the criteria to apply for reinstatement pursuant to paragraph (f)(1)(B) of this rule. An applicant subject to the additional requirements under this paragraph shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement.

(d) Reinstatement After Disbarment. A lawyer who has been disbarred may apply for reinstatement, as set forth in Rule 65, not sooner than ninety (90) days prior to the fifth anniversary of the effective date of the disbarment, but may not be reinstated until after the fifth anniversary of the effective date of the disbarment.

(e) Reinstatement After Suspension by the Presiding Disciplinary Judge, the Hearing Panel, or the Court.

1. *Six Months or More*. A lawyer who has been suspended for more than six (6) months may apply for reinstatement, as set forth in Rule 65, no sooner than ninety (90) days prior to the expiration of the period of suspension set forth in the judgment, but may not be reinstated until the full period of suspension has been served.

2. *Six Months or Less*.

A. *Affidavit*. A lawyer who has been suspended for six (6) months or less may apply for reinstatement no sooner than ten (10) days before the expiration of the period of suspension by filing with the disciplinary clerk and by serving upon the state bar an affidavit for reinstatement. The affidavit shall include an avowal that the lawyer has fully complied with the requirements of the suspension judgment or order, and has paid all required fees, costs and expenses. The lawyer need not show proof of rehabilitation. If an affidavit is not filed within one hundred eighty (180) days after expiration of the period of suspension the reinstatement procedure set forth in Rule 65 shall apply.

B. *Opposition*. Within ten (10) days of service of the affidavit, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the affidavit. If an opposition is filed, the matter shall be submitted to the presiding disciplinary judge for review and the member may not resume the practice of law until reinstated by order of the presiding disciplinary judge. If no timely opposition is filed, the state bar shall be deemed to consent to reinstatement, and the member may resume the practice of law upon order of the presiding disciplinary judge.

3. Suspended members shall remain suspended until an order is entered by the presiding disciplinary judge or the court reinstating the member to the active practice of law. This provision shall not apply to members who are summarily suspended by the board pursuant to Rule 62 of these rules and have filed their application for reinstatement within two years from the effective date of the suspension or otherwise qualify for reinstatement pursuant to paragraph (f)(1)(B) of this rule.

(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement.

1. *Reinstatement After Summary Suspension*.

A. *Within Two (2) Years*. The application of a member summarily suspended shall be filed with the board within two years from the effective date of the suspension on a form approved and provided by the court and be accompanied by:

(i) proof of cure of the grounds upon which the suspension order was entered;

(ii) payment equal to the amount of fees, assessments, and administrative costs, if any, the applicant would have been required to pay had the applicant remained an active member to the date of the application, plus the reinstatement fee and any applicable delinquency or late fees; and

(iii) proof of completion of any hours of continuing legal education activity required had the applicant remained an active member to the date of the application.

Upon verification of compliance, the board shall enter an order of reinstatement.

B. *After Two (2) Years*. If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in Rule 65 of these rules shall apply. Notwithstanding this provision, a suspended member may apply for reinstatement under the provisions of paragraph (f)(1)(A) as set forth above by submitting proof that the suspended member:

(i) is admitted to practice in another jurisdiction;

(ii) has actively practiced in that jurisdiction during the entirety of the summary suspension period;

(iii) has not had a disciplinary sanction imposed and has been a member in good standing in that jurisdiction during the entirety of the summary suspension period; and

(iv) has complied with all other application requirements set forth in paragraph (f)(1)(A) above.

Upon verification of compliance, the board shall enter an order of reinstatement.

2. *Resignation in Lieu of Reinstatement*. Notwithstanding the provisions of Rule 32(c)(11) of these rules, a member who has been summarily suspended by the board may resign from membership, in lieu of seeking reinstatement. Such a resignation shall become effective when filed in the office of the Records Manager of the state bar, accepted by the board, and approved by the presiding disciplinary judge. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member. After the resignation is approved by the presiding disciplinary judge, such person shall not represent to any other jurisdiction that such person resigned while in good standing. Such a resignation shall not be a bar to the institution of subsequent discipline proceedings for any conduct of the resigned person occurring prior to the resignation. In the event such resigned person thereafter is disbarred, suspended or reprimanded, the resigned person's status shall be changed from “resigned person” to that of a person so disciplined. A summarily suspended member who resigned in lieu of seeking reinstatement shall not be eligible for reinstatement, but may be readmitted to membership through the application procedures set forth in Rule 34 of these rules.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Oct. 4, 2004, effective Dec. 1, 2004; June 9, 2005, effective Dec. 1, 2005; Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009. Amended and effective Feb. 9, 2009. Amended June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
ABA Model Rule 23.
Former Rules 39, 40, 41(k).
Former Rule 71.
Former Rule 64, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

Rule 65. Reinstatement; Application and Proceedings
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
K. Reinstatement

17A A.R.S. Sup.Ct.Rules, Rule 65

Rule 65. Reinstatement; Application and Proceedings

(a) Application for Reinstatement. Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

1. *Application*. The lawyer shall file with the disciplinary clerk an application for reinstatement, which shall be verified by the lawyer and accompanied by the appropriate fees and proofs of payment required by paragraph (a)(3) of this rule. The lawyer shall serve the state bar with a copy of the application. The lawyer shall file with the application for reinstatement a written release or authorization for the state bar to obtain documents or information in the possession of any third party, including a physician, psychologist or psychiatrist. The application shall require the lawyer to provide information concerning the period of time between the date of disbarment, suspension, or transfer to disability inactive status, and the date of filing the application. The required information shall include, but is not limited to, the following:

A. name, age, residence and address of the lawyer;

B. the offense or misconduct upon which the disbarment or suspension was based, together with the date of disbarment or suspension;

C. the names and addresses of all complaining witnesses in discipline proceedings that resulted in disbarment or suspension, and the name of the hearing officer or presiding disciplinary judge before whom the discipline proceedings were heard, or of the trial judge, complaining witness and prosecuting attorney, if discipline was based upon conviction of a felony or serious misdemeanor;

D. a detailed description of lawyer's occupation during the period of rehabilitation, with names and addresses of all partners, associates in business and employers, if any, and dates and duration of all such relations and employment;

E. a statement showing the approximate monthly earnings and other income of the lawyer, and the sources from which all such earnings and income were derived for the period of rehabilitation;

F. a statement showing all residences maintained during such period, with the names and addresses of landlords, if any;

G. a statement showing all financial obligations of applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors;

H. a statement covering the period of rehabilitation showing the dates, general nature and final disposition of every civil action in which the lawyer was either a plaintiff or defendant or in which the lawyer had or claimed an interest, together with the dates of filing pleadings, titles of courts and actions, and the names and addresses of parties, attorneys for such parties, the trial judge or judges, and of all witnesses who testified in the action or actions;

I. a statement covering the period of rehabilitation showing dates, general nature and ultimate disposition of every matter involving the arrest or prosecution of lawyer for any crime, whether felony or misdemeanor, together with the names and addresses of complaining witnesses, prosecutors and trial judges;

J. a statement showing whether or not any applications were made during the period of rehabilitation for a license requiring proof of good character for its procurement, and as to each such application, the dates, the name and address of the authority to whom it was addressed and the disposition thereof;

K. a statement covering the period of rehabilitation setting forth any procedure or inquiry concerning lawyer's standing as a member of any profession or organization, or holder of any license or office, which involved the reprimand, removal, suspension, revocation of license or discipline of the lawyer and, as to each, the dates, facts and disposition thereof, and the name and address of the authority in possession of the record thereof;

L. a statement of any charges of fraud made or claimed against the lawyer during the period of rehabilitation, whether formal or informal, together with the dates, names and addresses of persons making such charges;

M. a concise statement of facts claimed to support readmission to the state bar, including facts showing the lawyer's rehabilitation; and

N. if the lawyer has been on disability status, a statement setting forth the status of pending discipline matters, if any.

2. *Documentation Supporting Application*. In addition to the application, the lawyer shall submit:

A. copies of the judgment of conviction, findings and judgment of the trial court and opinions of the appellate courts, or findings and recommendations of the hearing officer, the Disciplinary Commission, the presiding disciplinary judge, or the hearing panel, and decision, judgment or order of this court, as appropriate, upon which the lawyer was suspended or disbarred;

B. copies of all prior applications for reinstatement filed on the lawyer's behalf, including all findings, decisions or orders entered;

C. copies of state and federal income tax returns from the period of disbarment, suspension, or disability; and

D. further information as requested by the presiding disciplinary judge or hearing panel.

3. *Required Fees and Payments*.

A. *Application Fee*. As a prerequisite to filing and before investigation of the application, every applicant for reinstatement shall pay to the records manager of the state bar an application fee, as set by the court, along with the state bar's estimate of the costs of its investigation and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, or the court. If the lawyer's payment is less than the actual cost of investigation and subsequent proceedings, the lawyer shall be required to satisfy such deficiency before the application is reviewed by the court. Any excess costs advanced shall be promptly refunded to the lawyer at the conclusion of the proceedings. Any subsequent costs or expenses incurred shall be paid before the lawyer is reinstated by the court.

B. *Costs and Expenses of Disciplinary Proceedings*. Prior to filing the application, the applicant shall pay all outstanding costs and expenses of any disciplinary proceeding. Verification of such payment in the form of an affidavit from the records manager of the state bar must accompany the application.

C. *Amounts Owing to Client Security Fund*. Prior to filing the application, the applicant shall also pay any sums owing by the lawyer to the client security fund due to prior discipline, disability or reinstatement proceedings. Verification of such payment in the form of an affidavit from the Administrator of the Client Protection Fund must accompany the application.

D. *Membership Fees and Other Charges*. No reinstatement shall become effective until membership fees and other charges accruing after the application for reinstatement has been granted have been paid.

4. *Successive Applications*. No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement.

5. *Withdrawal of Application*. An applicant may withdraw an application any time before the filing of the hearing panel's report.

(b) Reinstatement Proceedings.

1. *Hearing*.

A. *Notice of Hearing; Continuance*. The hearing panel shall hold a hearing within one hundred fifty (150) days of the filing of the application and the disciplinary clerk shall notify the parties of the time and date thereof. Upon request of a party or the hearing panel, for good cause shown, the presiding disciplinary judge may continue the hearing.

B. *Rules Governing Hearing*. The hearing shall proceed in accordance with the rules governing discipline proceedings.

C. *Duty of Bar Counsel*. At the conclusion of the hearing, bar counsel shall provide the hearing panel with a recommendation as to whether or not the lawyer should be reinstated.

2. *Burden of Proof*. The lawyer requesting reinstatement shall have the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence.

3. *Hearing Panel's Report*. Within thirty (30) days after completion of the hearing or receipt of the certified transcript, whichever is later, the hearing panel shall file a report with the court containing findings of fact and a recommendation concerning reinstatement, together with the record of the proceedings. The disciplinary clerk shall serve a copy of the report on the parties.

4. *Court Review*. The court shall promptly review the report of the hearing panel. The court may request additional briefing by the parties and may calendar the matter for argument before the court. If the court finds the lawyer failed to establish qualification for reinstatement, the application shall be dismissed. If the court finds the applicant is qualified to practice law, the court shall reinstate the lawyer, subject to any conditions deemed necessary.

Credits

Added June 9, 2003, effective Dec. 1, 2003. Amended June 9, 2005, effective Dec. 1, 2005; Sept. 18, 2006, effective Jan. 1, 2007; Sept. 29, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
ABA 1977 Rule 20.
Former Rules 40, 41.
Former Rule 72.

Former Rule 65, which related to appointment of a conservator to protect client interests, was amended Dec. 12, 1991, effective Jan. 1, 1992, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 65, AZ ST S CT Rule 65
Current with amendments received through 1/1/14

Rule 66. Appointment of Conservator to Protect Client Interests
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
L. Conservatorship

17A A.R.S. Sup.Ct.Rules, Rule 66

Rule 66. Appointment of Conservator to Protect Client Interests

(a) Appointment of Conservator. The state bar or any other interested person may petition the presiding judge of a superior court to appoint one or more eligible persons to act as conservators of the affairs of a lawyer or formerly admitted lawyer. There shall be no filing fee for petitions for conservator under this rule. The presiding judge shall appoint a conservator if the lawyer maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer is known to exist, and:

1. the lawyer is made the subject of an order of interim suspension and related matters; or

2. the presiding judge of the superior court by order directs bar counsel to file an application under this rule; or

3. the lawyer is transferred to inactive status because of incapacity or disability, or disappears or dies; or

4. where other reasons requiring protection of the public are shown.

(b) Service of Petition. A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer, the chief bar counsel for the State Bar of Arizona, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or bar counsel that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made upon the clerk of this court, who shall proceed as provided for in discipline proceedings, except that service shall be final when made.

(c) Hearing on Petition. The presiding judge of the superior court shall conduct a hearing on the petition within seven (7) days of filing. At the hearing the petitioner shall have the burden of proving by a preponderance of the evidence that grounds exist for the appointment of a conservator. The presiding judge shall promptly enter an order either granting or denying the petition. The order shall contain findings of fact and a statement of the

grounds upon which the order is based. If no appearance has been entered on behalf of the respondent, a copy of the order shall be served upon respondent in the manner prescribed by section (b) of this rule.

(d) Effect of Petition. The filing of a petition for the appointment of a conservator under these rules shall be deemed, for purposes of any statute of limitations or limitation on time for appeal or vacation of a judgment, as the timely filing in the superior court or other proper court of this state, on behalf of every client of the respondent, of a complaint or other proper process commencing any action, proceeding, appeal or other matter arguably suggested by any information appearing in the files of the respondent if:

1. the application for appointment of a conservator is granted; and

2. substitute counsel actually files an appropriate document in a court within thirty (30) days after executing a receipt for the file relating to the matter.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; June 30, 2010, effective Jan. 1, 2011.

NOTES TO 2003 AMENDMENTS
The rule restates the language found in former Rule 65 and makes no substantive changes.

Source:
Pennsylvania R.D.E. 321.
Former Rule 65.

Former Rule 66, relating to the duties of the conservator, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 66, AZ ST S CT Rule 66
Current with amendments received through 1/1/14

Rule 67. Duties of Conservator
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
L. Conservatorship

17A A.R.S. Sup.Ct.Rules, Rule 67

Rule 67. Duties of Conservator

(a) Possession of Files. The conservator shall take immediate possession of all files and papers of the respondent. If such possession cannot be obtained peaceably, the conservator shall apply to the appointing court for issuance of a warrant authorizing seizure of the files. Probable cause for issuance of such a warrant shall be an affidavit executed by the conservator reciting the existence of the conservatorship and the fact that the persons in control of the premises where the files are or may be located will not consent to a search for, or

removal of the files, or other facts showing that the files cannot be obtained without the use of the process of the court.

(b) Inventory. The conservator shall make a written inventory of all files taken into the conservator's possession.

(c) Written Notice to Clients of Conservatorship. The conservator shall send written notice to all clients of the respondent of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's file. A file may be returned to a client upon the execution of a written receipt, or released to substitute counsel upon the request of the client and execution of a written receipt by such counsel. Upon the termination of the conservatorship, the conservator shall file all such receipts with the court. When six (6) consecutive months have passed without any activity, the conservator may apply to the court for an order discharging the conservator. Thereafter, the files and papers of the respondent will be maintained by the state bar in accordance with the state bar's file retention policy as approved by the Board of Governors.

(d) Conservator-Client Relationship. Neither the conservator nor any partner, associate or other lawyer practicing in association with the conservator shall:

1. make any recommendation of counsel to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or

2. represent such a client in connection with:

A. any matter identified during the conservatorship; or

B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

(e) Filing a Written Report. The conservator shall file a written report with the appointing court not later than thirty (30) days after the date of appointment, advising the court of the status of efforts to comply with the requirements as set forth in paragraphs (a) through (c) of this rule. Thereafter, the conservator shall file a similar written report every thirty (30) days until discharged.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; June 30, 2010, effective Jan. 1, 2011.

NOTES TO 2003 AMENDMENTS
The rule restates the language found in former Rule 66. In addition, the amendment to Rule 67(c) permits the conservator to apply to the court for an order discharging the conservator if six (6) months have passed with no activity in the case. The change is intended to permit the court to close a conservatorship while setting a retention schedule to guide the state bar in retaining or disposing of any files and papers of the respondent lawyer remaining in the custody of the state bar.

Source:
Pennsylvania R.D.E. 322.
Former Rule 66.

Former Rule 67, amended Dec. 12, 1991, effective Jan. 1, 1992, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

Rule 68. Conservator; Bank and Other Accounts

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
L. Conservatorship

17A A.R.S. Sup.Ct.Rules, Rule 68

Rule 68. Conservator; Bank and Other Accounts

(a) Notification of Financial Institutions. A conservator shall notify all banks and financial institutions in which the respondent maintained either professional or trustee accounts of the appointment of a conservator under these rules. Service on a bank or financial institution of a certified copy of the order of appointment of the conservator shall operate as a modification of any agreement of deposit among such bank or financial institution, the respondent and any other party to the account so as to make the conservator a necessary signatory on any professional or trustee account maintained by the respondent with such bank or financial institution. The clerk of the superior court shall make certified copies of the order of appointment available upon request of the conservator without charge. The appointing court on application may order that the conservator shall be sole signatory on any such account to the extent necessary for the purposes of these rules and may direct the disposition and distribution of client and other funds.

(b) Client Funds. The conservator shall return all client funds in the custody of the respondent to the clients as soon as possible, allowing for deduction of expenses or other proper charges owed by the clients to the respondent.

(c) Sufficient Funds. Whenever it appears that sufficient funds are in the possession of the conservatorship to permit the return of all client funds in the custody of the respondent, and otherwise to complete the conservatorship and pay its expenses authorized under these rules, the conservator shall permit the respondent or the respondent's estate to take full possession of any remaining funds in the respondent's personal or operating accounts. Any remaining funds or monies being held in respondent's trust account shall be directed and distributed by order of the court to the Client Protection Fund.

(d) Certification of Payment of Expenses and Compensation of Conservator. The necessary expenses and any compensation of a conservator shall, if possible, be paid by the respondent or the respondent's estate. If not so paid, the conservator may apply to the board for payment. The board shall direct that all of the necessary expenses and all or a portion of the requested compensation be paid as a cost of disciplinary administration and enforcement or from any other source it deems appropriate. The necessary expense and reasonable compensation for the conservator as determined by the board shall be assessed against the respondent as set forth in Rule 65 whether paid by the state bar or not. Necessary expenses and reasonable compensation of a conservator to be paid by the state bar shall be determined by the board and shall not exceed $10,000 unless extraordinary circumstances exist. Upon application for readmission by the respondent, the expenses and

compensation paid by the state bar shall be reimbursed and such amounts not previously paid to the conservator shall then be paid.

(e) Assessment of Costs. Costs and expenses of conservatorship proceedings shall be determined, assessed, and enforced as provided for in disciplinary proceedings.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; June 30, 2010, effective Jan. 1, 2011.

NOTES TO 2003 AMENDMENTS
The amendment restates language found in former Rule 67 and makes no substantive changes.

Source:
Pennsylvania R.D.E. 324, 328(c).
Former Rule 67.
Former Rule 68 was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 68, AZ ST S CT Rule 68

Rule 69. Liability of Conservator
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
L. Conservatorship

17A A.R.S. Sup.Ct.Rules, Rule 69

Rule 69. Liability of Conservator

The general law of conservators and fiduciaries shall apply to the conduct of the conservator and the conservatorship, except that a conservator appointed under these rules shall:

(a) not be regarded as having an attorney-client relationship with clients of the respondent, except that the conservator shall be bound by the obligation of confidentiality imposed by the Arizona Rules of Professional Conduct with respect to information acquired as conservator;

(b) have no liability to the clients of the respondent except for injury to such clients caused by intentional, willful, or grossly negligent breach of duties as a conservator; and

(c) be immune to separate suit brought by or on behalf of the respondent. Any objections by or on behalf of the respondent or any other person to the conduct of the conservator shall be raised in the appointing court during the pendency of the conservatorship.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended June 30, 2010, effective Jan. 1, 2011.

NOTES TO 2003 AMENDMENTS
The amendment restates language found in former Rule 68 and makes no substantive changes.

Source:
Pennsylvania R.D.E. 327.
Former Rule 68.

17A A. R. S. Sup. Ct. Rules, Rule 69, AZ ST S CT Rule 69
Current with amendments received through 1/1/14

Rule 70. Public Access to Information
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
M. Public Access; Records

17A A.R.S. Sup.Ct.Rules, Rule 70

Rule 70. Public Access to Information

(a) Availability of Information. Except as otherwise provided in these rules, the state bar file, the record maintained by the disciplinary clerk, and all proceedings shall be open to the public upon

1. waiver of confidentiality by respondent;

2. the filing of an order by the committee pursuant to Rules 55(c)(1)(B), (D), and (E);

3. dismissal by the state bar following a screening investigation for six months from the date of notification to respondent or complainant (if any) of the dismissal;

4. dismissal, in cases not resulting in a screening investigation, for six months from the date of notification to respondent or complainant (if any) of the dismissal;

5. the filing of a complaint, motion, or petition in proceedings for summary or interim suspension or pursuant to Rules 54(g), 54(h), or 66;

6. the filing of an agreement for discipline by consent; or

7. the filing an application for reinstatement pursuant to Rules 64 and 65.

(b) Exceptions to Availability of Information. Notwithstanding other provisions of these rules, including Rule 123, Rules of the Supreme Court, the following do not become public:

1. work product of state bar staff, bar counsel, the committee, the settlement officer, the presiding disciplinary judge, hearing panel members, court staff, or the court;

2. mediation records and proceedings;

3. diversion records and proceedings;

4. deliberations pertaining to decisions of bar counsel, the committee, the presiding disciplinary judge, a hearing panel, settlement officer, or this court;

5. information with respect to which a protective order has been issued pursuant to these rules;

6. records of telephonic requests for information received by the state bar Attorney Consumer Assistance Program;

7. deliberations and work product of the client protection fund staff and board of trustees;

8. trust account records, trust account summary of findings, or trust account reconstructions;

9. an individual's social security number (if a social security number must be used, only the last four digits of that number shall be used); or

10. financial account numbers (if financial records must be used, only the last four digits of that number shall be used).

(c) Authorized Disclosures. Before the record and proceedings are made public, they shall not be disclosed by the state bar or disciplinary clerk or committee, except that

1. the name of the member under investigation and the matter under investigation may be disclosed to such member and the persons whose services or testimony are necessary in connection with the proceeding;

2. the state bar may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;

3. for matters in which the disposition is confidential under these rules, the state bar, disciplinary clerk, or committee may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and that the matter is closed but has not public disposition;

4. the state bar, disciplinary clerk, or committee, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b);

5. the state bar, disciplinary clerk, or committee may disclose the records and proceedings to

A. other lawyer disciplinary entities or agencies;

B. client security or protection funds;

C. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;

D. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment;

E. public or prosecuting authorities if it appears that the lawyer has engaged in conduct that may be criminal in nature;

6. if the proceeding is based on allegations that have become generally known to the public, the board may authorize disclosure of the record or other information; and

7. the board may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession.

(d) Disclosure by Others. Unless otherwise ordered by the committee, the presiding disciplinary judge, a hearing panel, or this court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Disability Proceedings. Proceedings and records relating to transfer to or from disability inactive status are confidential, except that orders transferring a lawyer to or from disability inactive status are public.

(f) Effect of Disclosure. The disclosure of information under these rules shall not constitute a waiver of any evidentiary, statutory, or other privilege that might otherwise be asserted.

(g) Sealing the Record/Protective Orders. Upon request by a party or by a person from whom the information or evidence was obtained, or upon a request by an interested non-party or the presiding disciplinary judge's own initiative, and for good cause shown, the presiding disciplinary judge may issue an order in a pending matter, sealing a portion of the record and/or state bar file and taking other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding that the remaining record in the matter is made public. Sealed material shall be opened and viewed only by the committee, the presiding disciplinary judge, a hearing panel, the board or the court for use by such body and the parties in pending proceedings, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person who is the subject of the information. A party aggrieved by an order relating to a request for a protective order may seek review by filing a petition for special action with the court.

(h) Retention of Records. Records of discipline proceedings maintained by the disciplinary clerk shall be retained as directed by the court, pursuant to Rule 29, Rules of the Supreme Court.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended and effective Jan. 20, 2005. Amended Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
ABA Model Rule 16.
Former Rule 61(a), (b), (g) and (i)(3).
Generally: Florida Bar Rule 3-7.1(e) and (h).
Former Rule 61.

17A A. R. S. Sup. Ct. Rules, Rule 70, AZ ST S CT Rule 70
Current with amendments received through 1/1/14

Rule 71. Expungement of State Bar Records
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
M. Public Access; Records

17A A.R.S. Sup.Ct.Rules, Rule 71

Rule 71. Expungement of State Bar Records

(a) Definition. Expungement means the destruction of all records or other evidence of the existence of a charge or complaint except for a docket entry showing the names of the respondent and complainant, the final disposition, and the date of expunction.

(b) Expungement. All records relating to a charge or complaint terminated by dismissal, or a random trust account examination, may be expunged from the files of the state bar after three years have elapsed from the date of dismissal or the completion of the examination.

(c) Notice to Respondent. The respondent shall be given thirty (30) days' written notice of expungement and opportunity to be heard.

(d) Effect of Expungement. After a file has been expunged, any response by the committee or state bar to an inquiry requiring a reference to the matter shall state that any record the state bar may have had of such matter has been expunged pursuant to court rule, and that no inference adverse to the respondent shall be drawn from the incident in question. The respondent may answer any inquiry requiring a reference to the matter by stating that the charge or complaint was dismissed and expunged pursuant to court rule.

(e) Retention of Records Eligible for Expungement. Upon application to the chair or the vice-chair of the committee by bar counsel or respondent, for good cause shown and with notice and opportunity to be heard, records that are eligible for expungement under this rule may be retained for such additional period of time not exceeding three (3) years as the chair or vice-chair deems appropriate. Bar counsel or respondent may seek an additional extension or extensions of the retention period, in each case not exceeding three (3) years, as provided above.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011; Sept. 2, 2010, effective Jan. 1, 2011; Aug. 30, 2012, effective Jan. 1, 2013.

Source:
ABA Standard 3.12.1 (Aug. 1982).
Former Rule 60.

Former Rule 71, which related to reinstatement, was amended April 2, 1986, effective June 1, 1986, amended and effective Nov. 19, 1990 on an emergency basis; amendment adopted in final form July 8, 1991, amended Dec. 12, 1991, effective Jan. 1, 1992; Jan. 30, 1995, effective June 1, 1995, amended April 27, 1998, effective July 1, 1998, and was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

Rule 72. Notice to Clients, Adverse Parties and Other Counsel
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
M. Public Access; Records

17A A.R.S. Sup.Ct.Rules, Rule 72

Rule 72. Notice to Clients, Adverse Parties and Other Counsel

(a) Recipients of Notice; Contents. Within ten (10) days after the date of an order or judgment issued by the presiding disciplinary judge, a hearing panel, or the court imposing discipline or transfer to disability inactive status, or the date of resignation, a respondent suspended, disbarred, transferred to disability inactive status, or who has resigned, shall notify the following persons by registered or certified mail, return receipt requested, of the order or judgment, and of the fact that the lawyer is disqualified to act as lawyer after the effective date of same:

1. all clients being represented in pending matters; and

2. any co-counsel in pending matters; and

3. any opposing counsel in pending matters, or in the absence of such counsel, the adverse parties; and

4. each court and division in which respondent has any pending matter, whether active or inactive.

(b) Association of Counsel; Duty to Withdraw.

1. *Association of Counsel*. In the case of suspensions of sixty (60) days or less, the suspended lawyer may choose, with the written consent of the client, to associate with another lawyer in matters pending in any court or agency during the period of suspension. This rule does not modify the suspended lawyer's duty not to practice law during the period of suspension. It shall be the responsibility of the suspended lawyer to file the “Notice of Association During Pendency of Suspension” in the relevant matters prior to the effective date of the suspension. It shall also be the responsibility of the lawyer, upon reinstatement to active status, to file either a notice of appearance as counsel of record and dissolve the association, or move for leave to withdraw in the relevant matters. In the event the suspended lawyer is not reinstated pursuant to Rule 64(e)(2) within one hundred twenty (120) days of the effective date of the suspension, the lawyer shall promptly move for leave to withdraw in the relevant matters.

2. *Duty to Withdraw*. In the case of suspensions for longer than sixty (60) days, or suspensions of sixty (60) days or less when the client does not consent to the association of counsel, and in all cases of disbarment, transfer or resignation, it shall be the responsibility of the disbarred, suspended, transferred or resigned lawyer to move in the court or agency in which the proceeding is pending for leave to withdraw in the event the client does not obtain substitute counsel before the effective date of the sanction, transfer or resignation.

(c) Return of Client Property. Respondent shall deliver to all clients being represented in pending matters any papers or other property to which they are entitled and shall notify them, and any counsel representing them, of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property. Respondent shall deliver all files and records in pending matters to the client, notwithstanding any claim of an attorney lien.

(d) Effective Date of Order; Pending Matters. Judgments imposing suspension or disbarment shall be effective thirty (30) days after entry, unless the presiding disciplinary judge or the court specifies an earlier date. Judgments and orders imposing other sanctions or transfer to disability inactive status are effective immediately upon entry. Respondent, after entry of a judgment of disbarment or suspension, shall not engage in the practice of law, except that during the period between entry and the effective date of the order, respondent may complete on behalf of any client all matters that were pending on the entry date. Respondent shall refund any part of any fees paid in advance which have not been earned.

(e) Affidavit Filed with Hearing Panel and Court. Within ten (10) days after the effective date of the judgment of disbarment or suspension, transfer to disability inactive status, or resignation, respondent shall file with the hearing panel and with the court an affidavit showing:

1. respondent has fully complied with the provisions of the order and with these rules;

2. all other state, federal and administrative jurisdictions in which respondent is admitted to practice;

3. respondent's residence and other addresses where communications may thereafter be directed; and

4. respondent has served a copy of such affidavit upon bar counsel, the chief judge of every federal circuit court of appeals in which respondent is admitted, the chief judge and chief deputy clerk of every United States district court in which respondent is admitted, and the chief bankruptcy judge and the divisional manager of every bankruptcy court in which respondent is admitted.

(f) Duty to Maintain Records. A disbarred or suspended lawyer, or a lawyer on disability status to the extent able, or the conservator shall keep and maintain records constituting proof of compliance with this rule. Proof of compliance, which shall include copies of notice sent pursuant to subsection (a) of this rule and signed returned receipts, shall be provided to chief bar counsel. Proof of compliance is a condition precedent to any application for reinstatement.

(g) Contempt. Failure to comply with the provisions of this rule may be punishable by contempt.

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; Sept. 3, 2009, effective Jan. 1, 2010; June 30, 2010, effective Jan. 1, 2011.

Source:
Laws 1925, Ch. 32, § 12.
Rev.Code 1928, § 207.
Code 1939, § 32-207.
A.R.S. former § 32-274.
ABA Model Rule 19.
Former Rule 37(h).
Former Rule 63.

Former Rule 72, amended and effective April 14, 1999; May 31, 2000, effective Dec. 1, 2000, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 72, AZ ST S CT Rule 72
Current with amendments received through 1/1/14

Rule 73. [Reserved]
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of La
M. Public Access; Records

17A A.R.S. Sup.Ct.Rules, Rule 73

Rule 73. [Reserved]

Former Rule 73, which provided for reinstatement after transfer to disability inactive status, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 73, AZ ST S CT Rule 73
Current with amendments received through 1/1/14

Rule 74. Certificates of Good Standing
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
V. Regulation of the Practice of Law
M. Public Access; Records

17A A.R.S. Sup.Ct.Rules, Rule 74

Rule 74. Certificates of Good Standing

(a) Request for Certificate. All requests by members of the state bar for a certificate of good standing shall be made in writing to the disciplinary clerk and shall include the lawyer's bar number and any required fee as established by the Supreme Court and made payable to the Arizona Supreme Court. Except as otherwise provided in this rule, all certificates related to the good standing or lack thereof of members of the state bar shall be issued by the disciplinary clerk for or on behalf of the court.

(b) Certificates Issued by the Supreme Court. In those instances where a certificate of good standing must be issued by the court, the certificate shall be presented by the disciplinary clerk to the clerk of the court for signature based on the disciplinary clerk's written recommendation that the certificate should be issued. The disciplinary clerk shall collect any required fee prior to issuance of the certificate of good standing and shall

transmit it to the clerk of the court. This fee shall be separate from any certification fee required by the disciplinary clerk.

(c) Form of Certificate. The certificate shall include any prior public discipline imposed, or transfers to and from disability inactive status during the prior ten (10) years. Where requested, the certificate shall include any public disciplinary proceedings that are pending as of the date of the certification. The form of the certificate shall be as follows:

CERTIFICATE OF GOOD STANDING ISSUED BY THE DISCIPLINARY CLERK FOR AND ON BEHALF OF THE SUPREME COURT OF ARIZONA

The Disciplinary Clerk, pursuant to Rule 74, Rules of the Supreme Court of Arizona, hereby certifies that, according to the records of the State Bar, (name of member) was duly admitted to practice as an attorney and counselor at law in all courts of Arizona by the Supreme Court of Arizona on (date) and is now, as of the date of this Certificate, an (active, inactive, judicial, retired) member of the State Bar of Arizona in good standing.

(add if applicable)

During the preceding ten (10) years, this attorney has had discipline imposed as follows:

(Date)		(Nature and type of discipline)

During the preceding ten (10) years, this attorney was transferred to disability status from ___ to ___

(add if applicable)

As of the date of this certification, public disciplinary proceedings concerning this attorney are pending before the (Presiding Disciplinary Judge, Hearing Panel, Supreme Court of Arizona).

Given under the seal of the Disciplinary
Clerk of the Supreme Court of Arizona
this ___ day of _____, 20 ___.

_____

(Authorized Signature)

Credits
Added June 9, 2003, effective Dec. 1, 2003. Amended June 30, 2010, effective Jan. 1, 2011.

Source:
Former Rule 74

Former Rule 74, added Jan. 30, 1995, effective June 1, 1995, amended and effective April 14, 1999, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 74, AZ ST S CT Rule 74
Current with amendments received through 1/1/14

Refs & Annos
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona
VI. Unauthorized Practice of Law

17A A.R.S. Sup.Ct.Rules, Refs & Annos

GENERAL NOTES

<New Part VI, Unauthorized Practice of Law, was added January 15, 2003, effective July 1, 2003.>

<Former Part VI, Judicial Ethics, was redesignated as Part VII, January 15, 2003, effective July 1, 2003. See Rules 81 et seq.>

17A A. R. S. Sup. Ct. Rules, Refs & Annos, AZ ST S CT Refs & Annos
Current with amendments received through 1/1/14

Rule 75. Jurisdiction; Definitions
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 75

Rule 75. Jurisdiction; Definitions

(a) Jurisdiction. This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(a) of these rules. Proceedings against non-members may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

(b) Definitions. The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rule 31(a)(2) shall apply.

2. “Bar counsel” means staff counsel employed by the state bar or volunteer counsel appointed to represent the state bar in discipline and other proceedings. “Chief bar counsel” means that person employed by the state bar to administer the discipline and disability system under the direction of the executive director.

3. “Charge” means any allegation of misconduct or incapacity of a lawyer or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.

4. “Committee” means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona.

5. “Complainant” means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.

6. “Complaint” means a formal complaint prepared and filed in the superior court pursuant to these rules.

7. “Court” means Supreme Court of Arizona.

8. “Costs” means all sums taxable as such in a civil action.

9. “Expenses” means all obligations in money, other than costs, necessarily incurred by the state bar in the performance of their duties under these rules. Expenses shall include, but are not limited to, administrative expenses, necessary expenses of bar counsel or staff, charges of expert witnesses, charges of court reporters and all other direct, provable expenses.

10. “Order” means an order signed by the superior court or the supreme court in unauthorized practice of law matters.

11. “Record” means the complaint and other documents that commence formal unauthorized practice of law proceedings, and every later-filed document or exhibit.

12. “Respondent” is any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

13. “State bar” means the State Bar of Arizona created by rule of this court.

14. “State bar file” means the original of every document, recording and transcript of testimony or exhibit created or received by the state bar in relation to an unauthorized practice of law proceeding, but shall not include work product of bar counsel and working files of state bar staff.

15. “Unauthorized practice of law counsel” means staff or bar counsel employed by the state bar appointed to represent the state bar in unauthorized practice of law proceedings.

16. “Unauthorized practice of law proceeding” means any action involving a respondent pursuant to the rules relating to the unauthorized practice of law.

Credits
Added Jan. 15, 2003, effective July 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; June 30, 2010, effective Jan. 1, 2011.

NOTES TO THE 2008 AMENDMENTS

“Non-member” is defined in Rule 46(f)(15), Ariz.R.S.Ct., as “a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.”

17A A. R. S. Sup. Ct. Rules, Rule 75, AZ ST S CT Rule 75
Current with amendments received through 1/1/14

Rule 76. Grounds for Sanctions, Sanctions, and Implementation
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 76

Rule 76. Grounds for Sanctions, Sanctions, and Implementation

(a) Grounds for Sanctions. Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule 31.

2. Willful disobedience or violation of a court ruling or order requiring the individual to do or forbear to do an act connected with the unauthorized practice of law.

3. Failure to respond promptly to any inquiry or request from unauthorized practice of law counsel, superior court, or this court, made pursuant to these rules for information relevant to complaints or matters under investigation concerning conduct of a respondent, or failure to assert the ground for refusing to do so. Upon such inquiry or request for relevant information from counsel, the superior court, or this court, every respondent shall:

A. furnish in writing, or orally if requested, a full and complete response to inquiries and questions:

B. permit inspection and copying of his or her business records, files and accounts;

C. furnish copies of requested records, files and accounts;

D. furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties; and

E. comply with discovery conducted pursuant to these rules.

4. Evasion of service or any other refusal to cooperate with officials and staff of the state bar acting in the course of their duties.

5. Violation of any injunction imposed during an unauthorized practice of law proceeding.

(b) Sanctions and Dispositions.

1. *Agreement to Cease And Desist*. Respondent and unauthorized practice of law counsel may enter into a "Consent to Cease and Desist Agreement" prior to formal proceedings that states respondent agrees to cease and desist from engaging in acts found to be the unauthorized practice of law, to refund fees collected, to pay costs and expenses, and to make any other restitution.

2. *Cease and Desist Order*. The superior court may enter an order for a respondent to immediately cease and desist from conduct that constitutes engaging in the unauthorized practice of law. After entry of a cease and desist order or judgment, and service thereof upon the respondent, respondent shall:

A. notify existing customers, opposing counsel or opposing parties, if not represented by counsel, of such sanctions:

B. return to all customers in pending matters any documents or other property to which they are entitled, including their files; and

C. cease use of any reference to titles or descriptions prohibited in the order or judgment on all advertising, business cards, and letterhead.

3. *Injunction*. The superior court, at any stage in an unauthorized practice of law proceeding, may enjoin a respondent from engaging in the unauthorized practice of law and order a respondent immediately to cease and desist such conduct. An injunction or order to cease and desist may be issued without proof of actual damages to any person.

4. *Civil Contempt*. The superior court may issue a civil contempt citation and determine if the respondent is guilty of contempt and, by order, prescribe the sanction, including assessment of costs, expenses, and reasonable attorney fees.

5. *Restitution*. In the event actual damages are shown, restitution may be ordered to any individual for money, property, or other items of value received and retained by a respondent.

6. *Costs and expenses*. Costs, expenses, and attorney's fees relating to the proceedings shall be assessed against every respondent upon whom another sanction is imposed. Assessment shall be included in the order or judgment.

(c) Implementation of Cease and Desist Sanction. Orders or judgments of the superior court imposing cease and desist sanctions shall be effective thirty days after entry, unless another date is specified.

Credits

Added Jan. 15, 2003, effective July 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 76, AZ ST S CT Rule 76
Current with amendments received through 1/1/14

Rule 77. Participants in Unauthorized Practice of Law Proceedings
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 77

Rule 77. Participants in Unauthorized Practice of Law Proceedings

(a) Complainant. The complainant is not a party to an unauthorized practice of law proceeding. However, by becoming a complainant, a person submits himself or herself to the jurisdiction of the supreme court and the superior court for all purposes relating to these rules. A complainant shall maintain confidentiality of proceedings, if so directed by the superior court. The superior court shall send a copy of any answer or response filed by respondent, as well as a notice of the final disposition of the matter, to the complainant. The

complainant may file a complaint on his or her own behalf in superior court if the state bar does not proceed with the case.

(b) Unauthorized Practice of Law Counsel; Powers and Duties. Acting under the authority of the board, and under the direction and by appointment of the executive director, unauthorized practice of law counsel shall have the following powers and duties:

1. investigate all information coming to the attention of the state bar which, if true, would be grounds for sanctions for engaging in unauthorized practice of law;

2. request one or more staff examiners or volunteer bar counsel to assist in conducting investigations, and supervise staff examiners, who may be, but need not be, members of the state bar and who may be selected from the regular employees of the state bar:

3. recommend dispositions prior to formal proceedings;

4. dismiss proceedings in appropriate cases as provided in Rule 78(b)(5) of these rules;

5. represent the state bar in and prosecute unauthorized practice of law proceedings before the superior court, the court of appeals, and this court, and prosecute contempt proceedings in the appropriate forum; and

6. promptly notify the complainant and respondent of the disposition of each matter.

(c) Chief Bar Counsel; Committee; Powers and Duties. For purposes of investigation by unauthorized practice of law counsel, the chief bar counsel or the chair or vice-chair of the committee shall have the power to issue investigative subpoenas with the same force and effect as in a civil action in superior court.

Credits
Added Jan. 15, 2003, effective July 1, 2003. Amended June 30, 2010, effective Jan. 1, 2011.

17A A. R. S. Sup. Ct. Rules, Rule 77, AZ ST S CT Rule 77
Current with amendments received through 1/1/14

Rule 78. Initial Proceedings
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 78

Rule 78. Initial Proceedings

(a) Commencement. An unauthorized practice of law proceeding commences upon receipt by the state bar of a charge against a respondent. An unauthorized practice of law proceeding shall be disposed of by dismissal or by the filing of a complaint in the superior court seeking imposition of one or more sanctions as provided in these rules.

(b) Screening and Investigation. Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening*. Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law. If the allegations, if true, would not constitute unauthorized practice of law under these rules, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation*. All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule 78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent to cease and desist agreement with the respondent pursuant to Rule 78(c); or file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. *Failure of Respondent to Provide Information; Deposition*. When a respondent has failed to comply with any request for information made pursuant to these rules for more than thirty days, unauthorized practice of law counsel may notify respondent that failure to so comply within ten days may necessitate the taking of the deposition of the respondent pursuant to subpoena.

A. *Venue*. Any deposition conducted after the expiration of that ten day period and necessitated by the continued failure to cooperate by the respondent may be conducted at any place within the State of Arizona.

B. *Imposition of Costs*. When a respondent's failure to cooperate results in a deposition being conducted pursuant to the preceding subsection (b)(3)(A), the respondent shall be liable for the actual costs of conducting the deposition, including but not limited to service fees, certified court reporter fees, travel expenses and the cost of transcribing the deposition, regardless of the ultimate disposition of the unauthorized practice of law proceeding. Upon application of chief bar counsel to the committee, itemizing the costs and setting forth the reasons necessitating the deposition, and after giving the respondent ten days to respond, the committee shall, by order, assess such costs as appear appropriate against the respondent. An order assessing costs under this rule may be appealed to the superior court.

4. *Investigative Subpoenas*. During the course of an investigation and prior to the filing of a complaint, unauthorized practice of law counsel may obtain issuance of a subpoena to compel the attendance of witnesses, the production of pertinent books, papers and documents, and answers to written interrogatories, by filing a written request with the chief bar counsel or the chair or vice-chair of the committee. A copy of the request, which shall contain a statement of facts to support the requested subpoena, shall be provided to respondent or respondent's counsel, if represented. Upon receipt of a request for subpoena, a party may, within five days of service by first class mail, file a written objection with the committee. The committee may rule on the objection without oral argument.

5. *Dismissal by Unauthorized Practice of Law Counsel*. After conducting an investigation, unauthorized practice of law counsel may dismiss an unauthorized practice of law proceeding if there is no probable cause to determine that unauthorized practice of law occurred. Unauthorized practice of law counsel shall provide complainants with a right-to-sue letter upon dismissal of the charge.

(c) Consent to Cease and Desist Agreement.

1. *Consent to Cease and Desist*. A respondent against whom a charge has been made or a complaint has been filed may tender a conditional admission to the charge or complaint or to a particular count in exchange for the imposition of a stated sanction at any stage of the proceedings.

2. *Procedure*. A tender of admissions and consent to cease and desist agreement, signed by respondent, respondent's counsel, if any, and unauthorized practice of law counsel, shall be filed with the clerk of the superior court. All agreements must be accompanied by a joint memorandum in support of consent to cease and desist agreement, as set forth below. Exhibits in support of the agreement or the sanction to be imposed must be filed with the agreement and joint memorandum, in addition to a statement of costs and expenses on proven counts. The agreement must state that the agreement and joint memorandum have been approved as to form and content by the chief bar counsel.

3. *Form of Agreement*. All agreements must include the following:

A. *Rule Violation*. Each count alleged in the charge or complaint must be addressed in the agreement, including a statement as to the specific rule that was violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. *Form of Sanction*. The form of sanction to be imposed must be set forth in the agreement.

C. *Restitution*. Restitution to each complainant named in the charge or complaint must be addressed in the agreement. If restitution is not sought or agreed to, unauthorized practice of law counsel must avow that the complainant has been made aware that restitution will not be forthcoming pursuant to these proceedings.

D. *General Language*. Agreements must include the following language, as applicable:

(1) A statement that the respondent's admission(s) to the charge, complaint, or portion thereof, is being tendered in exchange for the stated form of sanction and is submitted freely and voluntarily and not as a result of coercion or intimidation.

(2) A statement that the respondent has chosen not to seek the assistance of counsel, if not represented by counsel, and voluntarily waives his or her right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests that he or she has made or raised, or could assert thereafter, if the conditional admission and proposed form of sanction is approved.

(3) A statement that respondent acknowledges the duty to comply with all rules pertaining to the unauthorized practice of law.

(4) A statement that outlines the possible consequences of any violation of the provisions of the agreement, including the fact that a violation of such agreement shall prima facie establish that the respondent knows that he or she has in the past violated or is violating these rules.

4. *Joint Memorandum in Support of Consent to Cease and Desist Agreement*. Each agreement must be accompanied by a Joint Memorandum in Support of Consent to Cease and Desist Agreement that includes an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.

5. *Superior Court Hearing*. The superior court may hold an evidentiary hearing within thirty days of the filing of the agreement to establish a factual basis for the agreement and may accept, reject, or order the agreement modified.

A. *Acceptance*. If the agreement is accepted by the superior court it shall be final, with the same force and effect of other final orders.

B. *Modification*. The superior court may recommend the modification of an agreement and shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten nor more than thirty days to execute the proposed modifications and file the amended agreement and joint memorandum for consideration. If the parties fail to submit a modified agreement within the time provided, and no request for additional time has been submitted, the agreement shall be deemed rejected. For good cause shown, the superior court may grant one thirty day extension of time to file the agreement.

C. *Rejection*. Upon rejection, the agreement and all admissions contained therein are withdrawn and cannot be used against the parties in any subsequent proceeding. The parties may file an appeal for review by the court of appeals within ten days after service of the superior court's report. If a timely appeal is not filed, the superior court shall proceed with the adjudication hearing within thirty days.

6. *Judgment*. Upon the acceptance of the consent to cease and desist agreement by the superior court the clerk of the superior shall promptly enter a judgment enjoining the respondent from engaging in the unauthorized practice of law and stating that the respondent shall remain subject to the jurisdiction of this court with respect to unauthorized practice of law matters. Unless otherwise ordered, no further sanctions shall be taken in reference to the matters that were the subject of the charges or complaint upon which the agreement to cease and desist and the judgment enjoining the respondent from engaging in the unauthorized practice of law were based. The form of judgment signed and entered by the superior court clerk shall be:

This matter having come on for hearing before the superior court, said court having duly rendered its decision.

IT IS ORDERED, ADJUDGED AND DECREED that (Respondent), is hereby enjoined from engaging in the unauthorized practice of law.

(IT IS FURTHER ORDERED that (Respondent) shall pay restitution (in the following amounts to the following individual(s):))

(IT IS FURTHER ORDERED that (Respondent) shall be assessed the costs and expenses of these proceedings in the amount of _____.)

Credits
Added Jan. 15, 2003, effective July 1, 2003. Amended Sept. 18, 2006, effective Jan. 1, 2007; June 30, 2010, effective Jan. 1, 2011.

17A A. R. S. Sup. Ct. Rules, Rule 78, AZ ST S CT Rule 78
Current with amendments received through 1/1/14

Rule 79. Formal Proceedings Before the Superior Court; Appeal
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 79

Rule 79. Formal Proceedings Before the Superior Court; Appeal

(a) Commencement. Formal unauthorized practice of law proceedings shall be instituted by unauthorized practice of law counsel filing a consent to cease and desist agreement or a complaint with the clerk of the superior court.

(b) Complaint. The complaint shall be captioned as required for civil complaints filed in superior court and shall reflect the nature of the action as "Unauthorized Practice of Law."

(c) Applicability of Arizona Rules of Civil Procedure. The Arizona Rules of Civil Procedure shall apply to all aspects of the proceeding after the filing of the complaint, except as otherwise designated in these rules.

(d) Burden of Proof. The state bar must prove the allegations contained in the complaint by clear and convincing evidence.

(e) Order. Within thirty days after final submission of the matter, the superior court shall prepare and file with the clerk a written order containing findings of fact, conclusions of law and recommendations regarding sanctions and shall serve a copy of the order on respondent and unauthorized practice of law counsel. The order of the superior court is final if no motion for reconsideration or appeal is timely filed.

(f) Enforcement. An order or judgment of the superior court in unauthorized practice of law proceedings shall be enforceable like any other judgment, including through civil contempt proceedings pursuant to Rule 65(j), Ariz. R. Civ. P.

(g) Appeal. Final orders or judgments issued by the superior court in unauthorized practice of law proceedings shall be reviewable by the court of appeals and this court pursuant to the Arizona Rules of Civil Appellate Procedure. Failure of a party to appeal timely shall constitute consent to the discipline imposed by the superior court.

Credits
Added Jan. 15, 2003, effective July 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 79, AZ ST S CT Rule 79
Current with amendments received through 1/1/14

Rule 80. Rules of Construction and Access to Information
Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
VI. Unauthorized Practice of Law (Refs & Annos)

17A A.R.S. Sup.Ct.Rules, Rule 80

Rule 80. Rules of Construction and Access to Information

(a) Rules of Construction.

1. *Related Pending Litigation*. The processing of an unauthorized practice of law matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the superior court, in its discretion, authorizes a stay for good cause shown.

2. *Non-abatement*. Unwillingness or failure of the complainant to cooperate with the state bar, withdrawal of a charge by a complainant, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint.

3. *Effect of Time Limitations*. Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator, but does not justify abatement of any unauthorized practice of law investigation or proceeding.

4. *Validity of Proceedings*. No action taken on any complaint shall be subject to challenge because of defective or insufficient service if, in fact, the respondent had ample notice of the unauthorized practice of law proceedings and full opportunity to be heard. No findings or recommendations made in any proceeding shall be invalidated because of an error in pleading or procedure, or upon any other ground, unless upon review it appears from the entire record, including the evidence, that the error has resulted or will result in a miscarriage of justice.

5. *Effect of Dismissal and Prior Sanctions*.

A. A dismissal by unauthorized practice of law counsel based upon a determination that no probable cause exists shall not preclude further action based upon the same facts.

B. A dismissal or imposition of sanctions by the superior court after an unauthorized practice of law proceeding or the acceptance by respondent of a recommendation of sanctions by unauthorized practice of law counsel, shall preclude further proceedings based upon the same facts.

C. Prior sanctions imposed on respondent, with or without his or her consent, may be considered by the superior court in recommending or imposing sanctions.

6. *Immunity from Civil Suit*. Communications to the court, state bar, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, or investigators relating to testimony given in the proceedings shall be absolutely privileged as provided by law, and no civil action predicated thereon may be instituted against any complainant or witness. Board members, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, and state bar and court staff shall be immune from suit as provided by law for any conduct in the course of their official duties.

(b) Access to Information.

1. *Availability of Information*. Except as otherwise provided in these rules, the state bar file maintained by the state bar, the record maintained by the superior court clerk, and all proceedings shall be open to the public.

2. *Exceptions*. Notwithstanding other provisions of these rules, the following do not become public:

A. work product and working files of state bar staff, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, a panelist, or a court or court staff;

B. deliberations upon decisions to be rendered by unauthorized practice of law counsel, a panelist, or any court;

C. information with respect to which a protective order has been issued pursuant to these rules; or

D. records of telephonic requests for information received by the state bar Attorney Consumer Assistance Program.

3. *Sealing the Record/Protective Orders*. Upon motion by a party or by a person from whom the information or evidence was obtained, and for good cause shown, the superior court or this court may order that a portion of the record and/or state bar file be sealed and take other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding the remaining record in the matter is made public. Sealed material shall be opened and viewed only by an order of a court for use by such body and the parties in proceedings then pending before it, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person furnishing the information.

Credits
Added Jan. 15, 2003, effective July 1, 2003.

17A A. R. S. Sup. Ct. Rules, Rule 80, AZ ST S CT Rule 80
Current with amendments received through 1/1/14