

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-09-0044
PETITION TO AMEND RULES 46-74,)
RULES OF THE SUPREME COURT)
) **FILED 09/02/2010**
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_____)

**ORDER
AMENDING RULES 70 AND 71, RULES OF THE SUPREME COURT**

This Court having adopted amendments to the Arizona attorney discipline rules on June 30, 2010, effective January 1, 2011, and the Court having concluded certain amendments to Rules 70 and 71, relating to public access to records, were improvidently adopted, upon consideration,

IT IS ORDERED that Rules 70 and 71, Rules of the Supreme Court, be amended in accordance with the attachment hereto, effective January 1, 2011.

DATED this _____ day of September, 2010.

REBECCA WHITE BERCH
Chief Justice

TO:

Rule 28 Distribution

David K Byers

George M Papa

Richard A Alcorn

Daniel C Barr

Joey A Flynn

Mark I Harrison

Errol H Shifman

Jeffrey Messing

Theodore Campagnolo

David F Gaona

ATTACHMENT*

RULES OF THE SUPREME COURT

Rule 70. Public Access to Information

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

1. waiver of confidentiality by respondent;
2. ~~in screening cases, the filing of an order, other than for diversion, by the committee pursuant to Rules 55(c)(1)(B), (D), and (E) and 55(c)(1)(E);~~
3. ~~in screening cases dismissed~~ dismissal by the state bar, ~~the mailing of notice of dismissal to complainant~~ 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, ~~the mailing of notice of disposition to complainant 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, ~~the filing of a complaint, motion or petition;~~
6. ~~4.~~ the filing of an agreement for discipline by consent; or
7. ~~5.~~ 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 ~~this~~ the court;

* Additions to text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

2. mediation records and proceedings;
3. ~~in diversion records and proceedings cases, memoranda or reports relating to audits, evaluations or assessments of respondent or respondent's practice;~~
4. deliberations pertaining to decisions of bar counsel, the committee, the presiding disciplinary judge, a hearing panel, settlement officer, or this court; ~~or~~
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 by State Bar. ~~Prior to~~ Before the record and proceedings ~~becoming~~ are made public, they shall not be disclosed by the state bar or disciplinary clerk, except that:

1. the name of the member under investigation and the matter under investigation ~~can~~ 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 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 no public disposition;

~~4.3.~~ the state bar or disciplinary clerk, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b);

~~5.4.~~ the state bar or disciplinary clerk may disclose the record 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 ~~which~~ that may be criminal in nature;

~~6.5.~~ 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

~~7.6.~~ the board may authorize other disclosures ~~which~~ 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, 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 an order of 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 ~~furnishing~~ 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.

Rule 71. Expungement of State Bar Records

(a) Definition. Expungement ~~shall~~ 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 ~~one year has~~ 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)~~(e) Effect of Expungement. After a file has been expunged, ~~the state bar shall not disclose the docket entry pertaining to the expungement except to the individuals or entities set forth in Rule 70(e)(4)~~ 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)~~(d) Retention of Records Eligible for Expungement. Upon application to 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 committee 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.