SUPREME COURT OF ARIZONA

In the Matter of PETITION TO AMEND RULE 32, 46-48, 50, 52-65, 70-72, and 74 RULES OF THE SUPREME COURT	)	Arizona Supreme Court No. R-12-0010
	)	**FILED 08/30/2012**

ORDER
AMENDING RULES 32, 46-48, 60, 52-65, 70-72, AND 74,
RULSE OF THE SUPREME COURT

A petition having been filed proposing to amend the rules governing attorney discipline, and no comments having been received, upon consideration,

IT IS ORDERED that Rules 32, 46-48, 50, 52-65, 70-72, and 74, Rules of the Supreme Court, be amended in accordance with the attachment hereto, effective January 1, 2013.

DATED this 30th day of August, 2012.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
Hon. William J. O'Neill

ATTACHMENT*

RULES OF THE SUPREME COURT

V. Regulation of the Practice of Law

A. Supreme Court Jurisdiction over the Practice of Law

Rule 31. [No change in text.]

Rule 32. Organization of State Bar of Arizona

(a) Organization [No change in text.]

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers:

1. [No change]

~~2. "Commission" means Disciplinary Commission of the Supreme Court of Arizona.~~

~~3~~2. [No change in text.]

~~4~~3. [No change in text.]

~~5~~4. [No change in text.]

~~6~~5. [No change in text.]

~~7~~6. [No change in text.]

~~8~~7. [No change in text.]

~~9~~8. [No change in text.]

(c) Membership.

1.-10. [No change in text.]

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* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

11. *Resignation*

A. [No change in text.]

B. Such resignation shall not be a bar to 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 ~~censured~~ reprimanded, the resigned person's status shall be changed from "resigned in good standing" to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member.

C.-D. [No change in text.]

12. [No change in text.]

(d)-(l) [No change in text.]

Rules 33-45. [No change in text.]

E. Discipline and Disability Administration; General Provisions

Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions

(a) – (e) [No change in text.]

(f) Definitions. ~~Where~~ 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.-14. [No change in text.]

15. "Hearing panel" means the three-member panel that ~~conducts hearings on the merits of complaints seeking disciplinary action against a lawyer~~ has the powers and duties set forth in Rule 52(h).

16. "Member" means member of the state bar, the classifications of which ~~shall be as set forth in this rule~~ are set forth in Rule 32(c)(1).

17.-24. [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule incorporates language found in former Rule 46. Paragraphs (e) and (f) of the former rule have been stricken as superfluous. Paragraph (g) has been redesignated as paragraph (f) and incorporates definitions previously found in Rule 32(b). Paragraph (h) of the former rule has been redesignated paragraph (e), and removes the reference to a suspended lawyer because the Court's continuing authority over suspended lawyers is clear. The purpose of this paragraph relates to the Court's continuing authority over disbarred members for conduct occurring prior to disbarment.~~

Rule 47. General Procedural Matters

(a)-(f) [No change in text.]

(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 party shall file a copy of the transcript with the disciplinary clerk and serve a copy on the opposing party.~~ 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.-2. [No change in text.]

3. *Objection to Issuance of Subpoena* <u>*or Motion to Quash*</u>. A party<u>,</u> ~~or~~ a non-party, <u>or a person or entity having an interest in the subject matter</u> 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 <u>or motion to quash</u>

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. [No change in text.]

~~5. *Quashing Subpoena*. Any attack on the validity of a subpoena issued shall be heard and determined by the presiding disciplinary judge.~~

~~6~~5. [No change in text.]

~~7~~6. [No change in text.]

(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 ~~Attorney Regulation 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)~~(2)(A)~~(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~~(d)(1)~~(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~~(d)(2)~~(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)~~(3)(A)~~(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~~(c)(3)(B)~~(e) of the Arizona Rules of Civil Procedure.

2. [No change in text.]

(j)-(l) [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule incorporates and clarifies language found in former Rule 55. Paragraph (a) modifies former Rule 55(a) to reflect the fact that pleadings other than complaints and answers are routinely filed in discipline matters. The rule further clarifies specific provisions within the rules of civil procedure which may be applicable in discipline proceedings.~~

~~Paragraph (6)(1) restates language found in former Rule 55(a), except it deletes language permitting amendments to the complaint which would add additional charges once the hearing has commenced. Instead, paragraph (b)(2) mirrors language found in Rule 15(a)(2), Ariz. R. Civ. P., concerning additional charges. Paragraph (c) will permit personal service of complaints and subpoenas to be made by staff examiners employed by the state bar. Paragraphs (d) and (e) include language from former Rule 53(c)(4) and set forth specific rules of civil procedure as they may apply to discipline proceedings. Paragraph (f) is amended to reflect that oaths may be administered by a certified court reporter.~~

~~Paragraph (g) incorporates language found in former Rule 55(d) and adds language concerning the admissibility of testimony recorded by electronic means. This provision also provides that a transcript of an evidentiary hearing involving an agreement for discipline by consent will be prepared only if requested by the parties, the Disciplinary Commission, or the Court. This provision is necessary to distinguish hearings relating to agreements from other types of evidentiary hearings where a transcript is automatically prepared.~~

~~Paragraph (h)(1) requires notice to the respondent if the state bar is seeking a subpoena during the course of an investigation. Paragraph (h)(3) is a new provision which outlines the procedure for a party to object to the issuance of a subpoena.~~

~~Paragraph (j) reduces the time for a lawyer to comply with a state bar request for information from thirty (30) to twenty (20) days in an effort to further reduce the time the~~

~~bar takes to investigate complaints. Subparagraph (2) removes the requirement that chief bar counsel approve the taking of a deposition in order to recover costs associated with the taking of a lawyer's deposition. Subparagraph (3) has been amended to clarify that a lawyer may reveal client confidences in the context of discipline proceedings, but only as necessary to defend against a complaint, unless the information is otherwise subject to a protective order.~~

Rule 48. Rules of Construction [No change in text.]

~~Notes to 2003 Amendments~~

~~This rule incorporates language found in former Rule 54. Paragraph (b) is a new provision which limits the applicability of the rules of civil procedure to those rules specifically cited in the discipline rules. Paragraph (d) clarifies the standard for competency determinations in disability matters. Paragraphs (l) and (m) incorporate language found in former Rule 54(l) and (m).~~

F. Participants

Rule 49. [No change in text.]

Rule 50. Attorney Discipline Probable Cause Committee

(a) Appointment of Members. [No change in text.]

(b) Terms of Office. [No change in text.]

(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. [No change in text.]

(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-~~member~~ person panels, each of which shall include a public member and a lawyer member~~, as deemed appropriate by the chair~~ (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.-4. [No change in text.]

(f) Meetings, ~~and~~ 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. ~~The committee shall act only with the concurrence of a majority of the members of a panel or of the committee, if meeting en banc.~~ A member may participate in the meetings by remote access.

(g) Change of Committee Member for Cause. [No change in text.]

(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 ~~ad hoc~~ 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.

Rule 51. [No change in text.]

Rule 52. Hearing Panels

(a) ~~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. To the extent practicable, at least one of the volunteer members shall reside in the same general geographic area as the respondent.~~

~~(b)~~ 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. ~~One volunteer member shall be appointed for an initial term of one (1) year, another member for an initial term of two (2) years. The presiding disciplinary judge shall be appointed to the hearing panels by virtue of the position and shall serve in that capacity while employed as the presiding disciplinary judge. After the initial appointments of the volunteer members, regular terms shall be three (3) years.~~ Pool ~~M~~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 ~~conclusion~~ final decision of any proceeding commenced ~~prior to~~ before the expiration of the term, ~~and decision thereon,~~ 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)~~(e)~~ Reimbursement [No change in text.]

(g)~~(f)~~ Change of Hearing Panel Member for Cause. [No change in text.]

(h) Powers and Duties. [No change in text.]

Rule 53. Complainants

(a) Status of Complainant. [No change in text.]

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

1.-2. [No change in text.]

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. [No change in text.]

(c) Failure to Provide Information. [No change in text.]

~~**Notes to 2003 Amendments**~~

~~This new rule addresses the manner in which complainants are to be kept informed of the status of their complaints. The rule requires that the complainant be provided with a copy of the respondent's initial response, notice of any pending hearing on the merits or any agreement for discipline by consent, and notice of the final disposition of the matter.~~

~~Paragraphs (a) and (b) incorporate language found in former Rule 54(f) and require that the complainant maintain a current address on file with the state bar in order to ensure receipt of the required notices. Paragraph (b)(1) clarifies language in former Rule 54(f) concerning information contained in the lawyer's initial response to a charge which may be disclosed to the complainant. The rule permits the complainant to receive the entire response submitted by the lawyer, except information the lawyer has sought to withhold through a protective order. Paragraph (b)(2) clarifies that once bar counsel dismisses a complaint, the complainant must be notified within twenty (20) days and has ten (10) days from receipt of the notification to file an appeal with the bar.~~

~~Paragraph (b)(3) is a new provision which requires the bar to notify the complainant of any pending agreement for discipline by consent, as well as the hearing on the merits. This section authorizes the state bar to post information concerning scheduled hearings on its website as a cost-effective means of notifying complainants of hearing dates.~~

~~Paragraph (c) is a new provision which makes clear that any failure on the part of the bar to notify complainants as required by this rule will not impact the ultimate outcome of the case.~~

G. Grounds for Discipline

Rule 54. Grounds for Discipline

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

(a)-(f) [No change in text.]

(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)-(i) [No change in text.]

~~**Notes to 2003 Amendments**~~

~~This rule basically restates language found in former Rule 51, as amended in 1991 and 2000. Paragraph (h) incorporates language found in former Rule 57 governing discipline of lawyers convicted of criminal offenses and sets forth the procedure for suspension. Paragraph (i) incorporates language found in former Rule 58 governing reciprocal discipline proceedings. The phrase "substantially similar" is added to Rule 53(i)(2)(B) and (3) to address cases where the sanction imposed in another jurisdiction is not available in Arizona.~~

H. Proceedings

Rule 55. Initiation of Proceedings; Investigation

(a) Commencement; Determination to Proceed. [No change in text.]

(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*. [No change in text.]

2. *Action Taken by the State Bar*.

A. *Dismissal.*

(i) *Notice.* [No change in text.]

(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, ~~or~~ 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.-C. [No change in text.]

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

E. [No change in text.]

2. *Considerations in Authorizing Complaint* [No change in text.]

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. [No change in text.]

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~~, whereupon such order shall be vacated and the matter disposed of in the same manner as any other matter instituted before the presiding disciplinary judge~~.

C. [No change in text.]

~~Notes to 2003 Amendments~~

~~This rule incorporates and clarifies language found in former Rule 53(a) and (b). Paragraph (b)(3) omits language concerning notice to the complainant upon dismissal of a complaint by bar counsel because that language has been incorporated in Rule 52(b)(2). Paragraph (b)(4) removes reference to the first vice president and replaces it with "panelist." Paragraph (b)(5) now references the appeal panel and requires that agreements for discipline by consent submitted prior to the filing of a formal complaint be filed with a hearing officer, not the Disciplinary Commission, as former Rule 53(b)(5) required. As noted in the changes to consent agreements set forth in Rule 56, this change marks a significant departure from former rules which required submission of agreements directly to the Disciplinary Commission.~~

Rule 56. Diversion

(a)-(b) [No change in text.]

(c) ~~Approval of~~ Diversion Agreement or Order. If diversion is offered and accepted

~~the agreement is entered~~ 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 ~~is offered and entered~~ after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion ~~agreement~~ shall be submitted to the committee for consideration. If the committee rejects the recommendation ~~diversion agreement~~, the matter shall proceed as otherwise provided in these rules. If diversion is offered and ~~entered~~ accepted after a complaint has been filed, the matter shall proceed pursuant to Rule ~~58~~ 57~~, the diversion agreement shall be submitted to the presiding disciplinary judge or the court, depending on the body before which the matter is pending~~. If the presiding disciplinary judge rejects the diversion agreement ~~is rejected~~, the matter shall proceed as provided in these rules.

(d)-(e) [No change in text.]

~~Notes to 2003 Amendments~~

~~This is a new rule which incorporates and expands upon language found in former Rule 52(a)(11), as amended in 1995. Rule 55(a) substantially incorporates language found in former Rule 52(a)(11)(A) and (B) and in the official notes to the 1995 amendment to the rule. Paragraph (b) of the proposed rule sets forth the circumstances under which diversion may be appropriate in lieu of formal discipline proceedings and describes some of the remedial programs which may be utilized in cases deemed suitable for diversion. Language in former Rule 52(a)(11)(C) is now found in proposed Rule 51(b)(6) governing supervision of attorneys in diversion.~~

~~Because many respondents are not represented by counsel and may not be aware of diversion program guidelines, the Committee believes the guidelines should be made public. The state bar will provide a copy of the diversion guidelines to each lawyer along with the charge and will also post those guidelines on its website. This will provide to all respondents and the public information concerning this alternative to discipline and help a respondent to determine whether respondent's case may be appropriate for diversion.~~

~~Notes to 2008 Amendments~~

~~Diversion is intended to resolve charges without the imposition of sanctions while ensuring that lawyers address underlying problems to which minor ethical breaches can be linked. Diversion is not intended as a substitute for sanctions in cases involving dishonesty, self-dealing, breach of trust, lack of respect for the system, or like kinds of~~

~~conduct. It is intended to be an alternative where relatively minor misconduct is attributable to problems in law office management, impairment, or negligent conduct.~~

Rule 57. Special Discipline Proceedings [No change in text.]

~~Notes to 2003 Amendments~~

~~This rule substantially expands upon language found in former Rule 56 governing agreements for discipline by consent. It is estimated that one-third of the cases filed are resolved through consent agreements yet these cases are not always resolved within the time frames set by the Court. Amendments to former Rule 56 in 2000 resulted in all agreements being filed directly with the Disciplinary Commission rather than hearing officers. One of the reasons for this change was the belief that presenting these agreements for review directly to the commission would result in a more timely resolution. In practice, however, many agreements were rejected by the commission for lack of a sufficient record. The commission, as an appellate body, could not take testimony or supplement the record to resolve issues which the commission believed lacked sufficient evidentiary support. It is the consensus of the Committee that consent agreements should be submitted directly to a hearing officer for review, where additional testimony may be taken if needed, prior to review by the Disciplinary Commission. This will also eliminate the need for oral argument on each agreement unless the commission orders it or the parties request it.~~

~~Paragraph (b) outlines the procedure for submitting the consent agreement. The language is designed to encourage settlement well in advance of the hearing date to ensure that cases are resolved within one hundred and fifty (150) days. The rule requires that the agreement be filed not less than three (3) days prior to the day of the hearing on the merits. If the hearing officer believes testimony or other evidence is needed, the testimony or other evidence can be provided on the date otherwise reserved for the hearing, thereby resulting in no delay. If a consent agreement is reached after the hearing commences, this provision also requires the parties to submit their written agreement within ten (10) days thereafter or the hearing will proceed not more than thirty (30) days after the originally scheduled hearing date. The rule also requires that exhibits submitted in support of the consent agreement must be filed with the agreement, which, in most cases, should alleviate the need for further testimony.~~

~~Paragraph (c) of the rule sets forth the information which should be presented in the agreement. This language is currently found in guidelines developed by the Disciplinary~~

~~Commission. Paragraph (c)(1) requires that each count of the complaint be addressed in the agreement, including those counts which are being dismissed. Paragraph (c)(2) requires that if probation is included, the terms and conditions be clearly stated and enforceable. Paragraph (c)(3) requires that bar counsel avow that a good faith effort was made to notify the complainant if the agreement reached does not include the payment of restitution to which the complainant may otherwise be entitled.~~

~~Paragraph (d) requires that in addition to a proportionality analysis, the parties must explain why a greater or lesser sanction than the one agreed to would not be appropriate. This will assist the hearing officer in determining whether the agreement is fair and proportional given the admitted conduct.~~

~~Paragraph (e)(2) requires that any extension of time in which to file a modified agreement not exceed one hundred and fifty days (150) from the filing of the complaint. Paragraph (e)(3) requires that in the event the consent agreement is rejected, the parties will proceed to hearing within thirty (30) days. These proposed changes are intended to ensure that all discipline matters are resolved within one hundred and fifty (150) days of the filing of the complaint, exclusive of appeal time.~~

~~The form of consent to disbarment, as set forth in paragraph (f), eliminates the existing requirement that the respondent admit that the charges are true in substance and fact. The Committee believes such a requirement only serves as a barrier to resolving those cases where the respondent may agree to disbarment but cannot make the required admission due to possible civil or criminal liability.~~

~~Notes to 2008 Amendments~~

~~The use of standardized documents, which may include check-off boxes for the terms of probation, is intended to simplify and expedite discipline by consent. The parties may provide additional or explanatory information to supplement a check-off box.~~

Rule 58. Formal Proceedings

(a)-(b) [No change in text.]

(c) Initial Case Management Conference. Within ten (10) days after ~~the time for filing~~ an answer has ~~expired~~ 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, ~~file~~ enter that party's default and serve a copy of the notice of default upon respondent and bar counsel. A default ~~shall not be~~ 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 ~~if the respondent files an answer or otherwise defends prior to the expiration of~~ ten (10) days from the service of the notice of default. ~~Otherwise, a default shall be entered by the disciplinary clerk eleven (11) days after the notice of default is filed and served and the allegations in the complaint shall be deemed admitted~~. 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)-(k) [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule incorporates and expands upon provisions found in former Rule 53(c) governing proceedings before hearing officers. The rule goes step by step through the adjudicatory process, including the filing of an appeal before the Disciplinary Commission. Some of the changes are intended to formalize and/or shorten time limits to expedite the adjudicatory phase of the proceedings.~~

~~Paragraph (a) makes substantial changes with regard to allegations of prior misconduct. Former Rule 53(c)(1) permitted bar counsel to allege instances of prior misconduct as part of the initial complaint which could then be considered by the hearing officer after an adjudication of the charges. The amendment requires bar counsel to notify~~

~~the respondent of the intent to introduce evidence of prior misconduct and provide copies of all documents which will be introduced, unless evidence of prior misconduct is necessary to prove conduct alleged in the complaint. Subparagraph (1) of Rule 57(a) is a new provision which provides guidance as to the form of the complaint and subsequent pleadings filed before the hearing officer.~~

~~Paragraph (b) of this rule permits the hearing officer to grant one thirty (30) day extension of time to file an answer. Paragraph (c) is a new provision which requires the assigned hearing officer to contact the parties, within ten (10) days after the time for filing an answer has expired, in order to schedule future hearing dates. The Committee intends that hearing officers exercise greater management of cases to ensure all matters are adjudicated within one hundred and fifty days (150) of the filing of the complaint.~~

~~Paragraph (e) outlines specific information that should be included in the initial disclosure statement. The rule reduces the time for the respondent to submit a disclosure statement from forty (40) to thirty (30) days based on the understanding that respondents in discipline proceedings are provided ample notice and an opportunity to respond to complaints long before formal charges are instituted.~~

~~Paragraph (f) no longer authorizes a settlement conference once the respondent has defaulted, which was permitted in former Rule 53(c)(5). Subparagraph 1 of paragraph (f) clarifies that settlement negotiations are confidential but permits the settlement officer to authorize disclosure. It is the intent of the amendment that bar counsel inform the complainants of the terms of any settlement reached. Subparagraph (2) requires the parties to file a formal agreement within thirty (30) days of reaching the agreement and permits the settlement officer to formally accept the agreement, take testimony if needed, and prepare the report.~~

~~Paragraph (g) specifically requires that if the hearing officer intends to rule on outstanding substantive matters during the prehearing conference, the parties must be notified in advance of the hearing. Paragraph (h) is a new provision which requires that the parties provide each other with a final list of witnesses and exhibits they actually intend to present at the hearing on the merits.~~

~~Paragraph (i) replaces former Rule 53(c)(6). The former provision required that the hearing be set within one hundred and fifty (150) days of the filing of the complaint. The new rule requires that the hearing be scheduled and completed within one hundred and fifty (150) days and limits the circumstances under which continuances may be granted.~~

~~The hearing officer may continue a hearing for no more than thirty (30) days at a time, not to exceed one hundred and fifty (150) days from the filing of the complaint. An additional thirty (30) days may be granted by the Disciplinary Commission only upon a showing of extraordinary circumstances. For those exceptionally complex cases where the parties are unable to proceed within the stated time limits, the chair of the commission will be required to notify the Court and request additional time. These proposed changes are necessary to ensure cases are resolved within twenty-two (22) months from the filing of the charge, as required by the Court.~~

~~Paragraph (k) requires that the hearing officer file the officer's report within thirty (30) days after receiving the transcript. Former Rule 53(c)(8) required the hearing officer's report be filed within thirty (30) days of "final submission" of the matter. "Final submission" was considered to occur when the transcript was filed and the parties submitted proposed findings of facts and conclusions of law. The Committee recognizes that the hearing officer should not be expected to prepare the report without the benefit of a transcript. Once the transcript is received, the time for filing the report should begin to run. The chair of the Disciplinary Commission may grant an extension of time to the hearing officer to file the report for good cause shown.~~

Rule 59. Review by the Court

(a)-(b) [No change in text.]

(c) Stay Pending Appeal. A respondent may seek a stay of the decision of the hearing panel by filing ~~the~~ 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)-(n) [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule incorporates and reorganizes language in former Rule 53(e). Paragraph (a) requires that seven (7) copies of the petition and cross petition be filed with the~~

~~disciplinary clerk. The only other substantive change is found in paragraph (f) which now requires that a copy of any response filed be provided to the disciplinary clerk in order to ensure that the discipline file is complete.~~

I. Sanctions

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.* [No change in text.]

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.-6. [No change in text.]

(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. ~~The respondent may file objections within five (5) days of service of the statement of costs and expenses and shall serve a copy on the state bar 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 ~~twenty (20)~~ 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~~, after considering the statements of costs and expenses and any objections filed by the respondent, or respondent's counsel, if any, shall prepare a report and order assessing costs and expenses and~~ 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 ~~contest~~ appeal a decision on the assessment of costs and expenses ~~by filing an appeal~~ 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 ~~ten (10)~~ 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 ~~The clerk of the court or the court may enter an order assessing costs and expenses or~~ remand the matter to the presiding disciplinary judge or the hearing panel for ~~such a~~ determination as provided in subparagraph (2)(A) of this rule.

(c) Enforcement. [No change in text.]

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.

~~**Notes to 2003 Amendments**~~

~~The rule incorporates language found in former Rule 52, provides additional requirements governing the imposition of probation, and includes new procedures for the assessment of costs and expenses.~~

~~Rule 60(a)(5)(C) requires that a probation violation hearing be set within thirty (30) days of the reported violation and permits additional sanctions to be imposed if the respondent is found in violation of the terms and conditions of probation. This provision is necessary to remedy those circumstances where respondents do not abide by the terms of their probation yet no action is taken unless and until there is another reported ethical violation.~~

~~Paragraph (b) addresses the assessment of costs and expenses, an area which has caused much confusion and has become the focus of increasing litigation. The amendments require that the state bar file its statement of costs and expenses at the conclusion of the discipline proceedings, not at the time the hearing officer's report is filed. The Committee believes the assessment of costs is more appropriately imposed at the conclusion of the litigation, as is the case in other civil matters. The amendments permit the respondent to file an objection to the statement of costs, which is to be considered by the entity imposing the assessment. If the respondent does not prevail, the proposed rules permit an appeal to the Court, as permitted under Rule 21, Arizona Rules of Civil Appellate Procedure~~

Rule 61. Interim Suspension by the Court [No change in text.]

~~**Notes to 2003 Amendments**~~

~~The amendments incorporate and reorganize language found in former Rule 52(c). The only substantive change to the existing rule appears in subparagraph 3 of (c), which gives the Court the option, after the response time on the motion has run, to either rule on the motion, set the matter for oral argument, or assign the matter to a hearing officer to conduct an evidentiary hearing.~~

Rule 62. Summary Suspension by the Board of Governors of the State Bar [No change in text.]

~~Notes to 2003 Amendments~~

~~This is a new rule which sets forth the circumstances under which a member may be summarily suspended from the practice of law without the initiation of formal proceedings. This rule incorporates language found in former Rules 52(a)(9) and (10), and 52(d), and Rules 31(c)(9), 43(b) and (g), and Rule 45(h). The Committee believes it will prove helpful to practitioners if the rules clearly set forth all conduct which could result in a suspension and clearly state that a summary suspension has the same force and effect as a suspension imposed through formal discipline proceedings. Some practitioners do not appear to understand that they cannot continue to practice law if they have been suspended for such things as failure to pay bar dues or meet continuing education requirements.~~

~~Former Rule 52(a)(19) authorized a summary suspension for respondents who failed to file an answer in the course of formal discipline proceeding. This language has been deleted from the rule; once formal proceedings are instituted other remedies are available such as defaulting a respondent who fails to file an answer.~~

J. Disability Proceedings

Rule 63. Transfer to Disability Inactive Status [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule substantially incorporates and expands upon language found in former Rule 59. The phrase "mental infirmity or illness" has been replaced with "physical or mental condition" throughout this rule. The procedure for applying for a transfer back to active status, former Rule 73, has been incorporated within this rule.~~

~~Rule 63(c) incorporates language in former Rule 59(c) which sets forth grounds for an interim order of incapacity and now requires that the motion be accompanied by~~

~~verification or affidavit in support of the allegation of incapacity. The change also requires personal service of the motion upon the allegedly incapacitated lawyer and provides for a brief response period. Paragraph (c) no longer refers to the rule concerning interim suspension by the Court, now found in Rule 61, but outlines the procedure for obtaining an interim order and clarifies that the Disciplinary Commission chair may enter an interim order of incapacity.~~

~~Paragraph (d) clarifies the procedure for determining whether a lawyer should be placed on disability inactive status and incorporates and clarifies language found in former Rule 59(b). Subparagraph (1) requires that the petition for transfer to disability inactive status be accompanied by documentation in support of the request. Subparagraph (2) no longer references Title 36 but specifically states there must be personal service, establishes the time within which to file a response, and requires that a hearing be held within thirty (30) days, unless additional time is required in order to obtain necessary evaluations. Subparagraph (3) authorizes the appointment of counsel if the lawyer is unrepresented and the hearing officer determines there is prima facie evidence of incapacity. Subparagraph (4) states the petitioner has the burden of proving incapacity by clear and convincing evidence, which must include a relevant medical, psychiatric, or psychological evaluation. Subparagraph (5) requires that the hearing officer prepare a report following the hearing to determine incapacity, which is the current practice but is not specifically required by existing rules. Subparagraphs (6) and (7) clarify language found in former Rule 59(b)(2) concerning transfer by the commission and review by the Court.~~

~~Paragraph (f) clearly distinguishes the procedures for determining competency to participate in the discipline or disability proceedings from incapacity to practice law. Subparagraph (1) requires the appointment of counsel if the lawyer is claiming incompetency and is unrepresented. This provision clarifies that the mere presence of a mental or physical disability is not sufficient to establish incompetence. The only issue the hearing officer should consider is whether the lawyer is able to understand the proceedings or assist in the lawyer's own defense.~~

~~Paragraph (i) restates language found in former Rule 73 governing reinstatement after transfer to disability inactive status. Subparagraph (1) replaces the term “motion” with “application.” Subparagraph (2) now includes health care providers among those names the lawyer must disclose. There are no substantive changes in the remaining provisions of the proposed rule~~.

K. Reinstatement

Rule 64. Reinstatement; Eligibility

(a)-(b) [No change in text.]

(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. ~~The~~ 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. [No change in text.]

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

1. *Six Months or More.* [No change in text.]

2. *Six Months or Less.*

A. ~~*Application.*~~ *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 ~~application~~ affidavit for reinstatement. The ~~application~~ affidavit ~~shall be on a form approved and provided by the court and~~ 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 ~~application~~ 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 ~~application~~ affidavit, or within the time period permitted by the presiding disciplinary judge, the state bar may file and serve an opposition to the ~~application~~ 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. [No change in text.]

(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement [No change in text.]

~~**Notes to 2003 Amendments**~~

~~The rule reorganizes and incorporates language found in former Rule 71 governing reinstatement proceedings. Paragraph (a) clarifies that the five (5) year period on disability inactive status or suspension which triggers the requirement that the bar examination be taken, is five (5) years "at the time the application [for reinstatement] is filed." Paragraph (c)(2) requires service of the affidavit of compliance upon the disciplinary clerk as well as the bar. This provision is necessary to ensure the disciplinary clerk does not process the reinstatement until proof of compliance is received.~~

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 ~~on a form approved and provided by the court~~, 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.-N. [No change in text.]

2. *Documentation Supporting Application* [No change in text.]

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 ~~to the disciplinary clerk~~. ~~This fee shall represent an estimate of the costs of investigation by the state bar and the costs and expenses of all related proceedings before the presiding disciplinary judge, the hearing panel, and 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.

~~B~~C. [No change in text.]

~~C~~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 ~~filing of such application~~ have been paid.

4.-5. [No change in text.]

(b) Reinstatement Proceedings. [No change in text.]

~~Notes to 2003 Amendments~~

~~The rule reorganizes and restates language found in former Rule 72 with the following changes. Paragraph (a)(1) removes the specific dollar amount of the reinstatement application fee in order to prevent the need for future rule amendments should the fee amount change. Information concerning the fee can be obtained from the disciplinary~~

~~clerk. Paragraph (a)(2) specifically states that the application shall be in the form of a motion.~~

~~Rule 65(b) substantially expands upon language found in former Rule 72(e) governing reinstatement proceedings. Subparagraph (1) states that the hearing officer shall hold a hearing within thirty (30) days of receipt of the application for reinstatement. Subparagraph (3) requires the hearing officer to file a report within thirty (30) days after receiving the transcript of the hearing. Subparagraph (4) requires the Commission to provide a copy of their report to the parties. Subparagraph (5) incorporates language in former Rule 72(f).~~

Rule 66-Rule 69. [No change in text.]

M. Public Access; Record

Rule 70. Public Access to Information

(a)-(b) [No change in text.]

(c) Authorized Disclosures ~~by State Bar~~. 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.-2. [No change in text.]

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, ~~or~~ disciplinary clerk, or committee, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b);

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

A.-E. [No change in text.]

6.-7. [No change in text.]

(d)-(f) [No change in text.]

(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 ~~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 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 [No change in text.]

~~**Notes to 2003 Amendments**~~

~~The amendments generally restate language found in former Rule 61. Subparagraph (6) of paragraph (b) was amended to clarify that the records referred to in former Rule 61(b)(6) are records of telephonic requests for information received by the state bar Attorney Consumer Assistance Program.~~

~~The amendment at Rule 70(c)(2) is intended to clarify that prior to the record and proceedings becoming public, the bar may require that an inquiry concerning records and proceedings involving a lawyer also specify particular conduct before disclosing that a charge has been received and is under investigation. The intent of the amendment is to clarify that the bar need not disclose the existence of pending investigations in response to general inquiries about a lawyer's record but may disclose the existence of such pending investigations if the person making the inquiry identifies the particular conduct under investigation.~~

~~Language found in former Rule 61(c)(3) concerning disclosure of the state bar file and record based on any criminal conviction was deleted from Rule 70(c) for the reason that criminal proceedings and records are already public. Consequently, the state bar does not need any other specific authority to disclose such information.~~

~~Rule 70(h) is a new provision relating to the retention of records. Previously, both the state bar and the disciplinary clerk retained files indefinitely. The intent of the amendment is to permit the establishment of appropriate retention schedules to provide for the retention or disposition of the records of discipline proceedings maintained by the disciplinary clerk.~~

Rule 71. Expungement of State Bar Records

(a)-(d) [No change in text.]

(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 ~~committee~~ 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.

~~**Notes to 2003 Amendments**~~

~~This amendment made no substantive changes to former Rule 60. The only change was changing the term "expunction" to "expungement" as the revisers believe that is a more grammatical term.~~

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

(a)-(g) [No change in text.]

~~**Notes to 2003 Amendments**~~

~~The rule reorganizes and restates language found in former Rule 63 governing notice to others upon suspension, disbarment, or transfer to disability inactive status. Other than reorganizing various provisions, there are no substantive changes to former Rule 63.~~

Rule 73. [Reserved]

Rule 74. Certificates of Good Standing

(a)-(c) [No change in text.]

~~**Notes to 2003 Amendments**~~

~~The amendment makes no substantive changes to the prior rule governing certificates of good standing other than the requirements in paragraph (a) that requests be made in writing, include the lawyer's bar number, include a self-addressed stamped envelope, and be accompanied by the required fee. These changes are intended to reduce the cost and time involved in generating certificates of good standing.~~