ANNUAL REPORT OF THE ATTORNEY REGULATION ADVISORY COMMITTEE TO THE ARIZONA SUPREME COURT

APRIL 30, 2014

ARIZONA SUPREME COURT
ATTORNEY REGULATION ADVISORY COMMITTEE (ARC)
Committee Member Public Term List
As of March 28, 2013

NOTE: Pursuant to the Administrative Order No. 2011-44, membership consists of:

Hon. William J. O'Neil - Chair
Presiding Disciplinary Judge

Hon. Lawrence Lawrence F. Winthrop - Vice Chair
Court of Appeals

Allan Bayham
Attorney Member

Bennie Click
Public Member

James Drake, Jr.
Attorney Member

Emily Johnston
Public Member

George Riemer
Attorney Member

Ronald R. Watson, PhD.
Public Member

J. Scott Rhodes
Attorney Member

Patricia Sallen
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ATTORNEY REGULATION ADVISORY COMMITTEE
ANNUAL REPORT
April 30, 2014

The Attorney Regulation Advisory Committee (ARC) was established by the Supreme Court of Arizona to periodically review the entire attorney admission and discipline system for the Court and make recommendations for any further needed changes. A stated purpose of the Committee is to review the rules governing attorney examination, admissions, reinstatement, and the disability and disciplinary process and make recommendations regarding these rules "to reinforce lawyer competency and professionalism and strengthen the Supreme Court's oversight of the regulation and practice of law in this state." The Court directed the Committee to submit an annual report each year by April 30. That report "shall contain case statistics on the processing of attorney admission and discipline cases and recommendations on specific issues addressed by ARC. (Administrative Order 2011-44)

In our last annual report, we intentionally emphasized the remarkable efforts of the ARC Admissions Subcommittee because of the scope of its review and the vision of improved efficiency in the admissions process. Led by its Co-Chairs, John Tuchi and James Drake, Jr., the Admissions Subcommittee of ARC undertook an extensive and comprehensive review of all aspects of the attorney admissions process, including the Supreme Court rules governing examinations, character and fitness review, and the structure and function of the Supreme Court committees carrying out these functions. A co-chair of the sub-committee filed its petition for extensive rule changes with the court. ARC has recommended approval of that petition. It is anticipated that the sub-committee will make further recommendations based upon its efforts over the last year.

ARC Action on Rule-Change Petitions

1. Attorney Discipline and Regulation General Clarification and Amendments (Petition R-13-0033)

This petition was filed by the Presiding Disciplinary Judge ("PDJ"). The PDJ is charged by Supreme Court Rule 51 to "recommend to the court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings." The transition from the use of previously existent Hearing Office and Disciplinary Commission system to the use of the PDJ and Hearing Panels comprised of a public member, an attorney member and the PDJ was extensive. Over time, inconsistencies in terminology or procedures have been discovered. This petition seeks to resolve those inconsistencies and to make other amendments designed to further implement Administrative Order 2009-73 by decreasing the time and cost to process cases. Rules 51, 56, 57, 58, 60, 61 and 63 are addressed within the petition. ARC recommends the Supreme Court approve the petition.

2. Permanent Disbarment Consideration (R-14-0009)

This petition was filed by the PDJ. Five states mandate that all disbarments be treated as permanent. Eight states allow disbarments to be permanent in some situations. To date, there has been no apparent public debate in Arizona regarding whether disbarment should be permanent in Arizona. This petition offers two alternate proposals: first, allowing the PDJ the option of imposing disbarment with the possibility of eventual reinstatement, or the option of imposing disbarment with no possibility of reinstatement; or second, adopting a policy whereby an order of disbarment is permanent, with no application for or the possibility of reinstatement allowed. The petition does not take a position regarding the issue. Instead, the petition requests the Court to either refer the petition to ARC for public

hearings and further discussion, or to deny the petition and not consider the issue at this time. ARC voted to recommend permanent disbarment.

Admission Statistics Update

In 2013, a total of 647 applicants passed the Arizona Uniform Bar Examination, which had an overall pass rate of 73%. A total of 722 new attorneys were admitted in 2013; 176 by admission on motion, 8 imported UBE scores earned elsewhere, and 538 by exam. Applicants testing in Arizona have requested their UBE scores be transferred to twelve states, most frequently to:

Washington	33
Colorado	28
Utah	27

In proceedings before the Committee on Character and Fitness, a total of 36 informal hearings and 6 formal hearings were held in 2013. Seven applicants were admitted with conditions, and three applicants were denied admission by the Committee.

ARC action related to admission issues:

Character and Fitness

The ARC admissions subcommittee filed Rule Petition R-14-0011. The ARC Committee supported the petition, which would modify processes of the Committee on Character and Fitness, including hearing panels and conditional admission.

Early Examination

In 2012, the Court approved a pilot program of early testing for law students in their last semester of law school, provided the semester was structured to allow study and student engagement. In February, 2014, thirty-seven students participated in early testing. Results of the exam will be released on May 9. Attorney Admissions will update ARC and submit a report to the Court regarding the program.

Lawyer Regulation

As cited above, Administrative Order 2011-44 directs that the annual ARC report "shall contain case statistics on the processing of attorney regulation cases."

1. **Intake Process**

The Intake process is designed to achieve two specific goals; resolve the greatest number of charges at the earliest stage of the process and expeditiously move the most serious charges of misconduct into investigation.

Complainants are encouraged to talk with an Intake lawyer before submitting a written charge. This has personalized the process and allowed for a better and timelier evaluation of the complainant's concerns. Many charges received by Lawyer Regulation represent low-level misconduct that can be appropriately resolved by means of providing instruction to the lawyer and/or directing the lawyer to resources that will resolve issues involving practice management concerns or personal matters that detract

from the lawyer's ability to adequately discharge duties. The system design provides for immediate outreach to complainants and lawyers providing opportunities for lawyers to resolve issues and complainants to receive an expedient resolution of their charges. In all cases where the bar decides not to proceed to investigation, the rules require a thorough explanation to complainants regarding the decision.

In addition, triaging charges as they are received by Intake allows the most serious allegations to be moved into investigation where significant attention can be devoted to those cases.

Ten years ago, in 2004, the State Bar received approximately 4,714 inquiries/charges. During the next two years those numbers increased to 4,940 for 2005 and 4,977 for 2006. They remained level at approximately 4,000 annually through 2011. In 2012, the average number dramatically dropped to 3,307. We cautioned last year, and do again this year, that the use of numeric counts is of some value. However, we recognize that reviewing a numeric count does not provide a full statistical analysis. It does offer a comparative snapshot. It also aids in the evaluation, over time, of trends. We are encouraged that the numbers remain lower in 2013 than in prior years. There were 3,492 inquiries/charges received in 2013. This remains significantly fewer than in the years preceding the change to the attorney regulation system. In 2013, 69% of the charges were resolved at Intake. This remains a significant improvement in the resolution of charges during Intake with no further action required than in the years preceding the implementation of the changes to the attorney regulation system under Administrative Order 2011-44.

In 2013 investigated charges involved 475 lawyers. While the number of charges in recent years has dropped, the actual number of lawyers each year has been relatively steady. In 2012, investigated charges involved 444 lawyers. In 2011, they involved 483 lawyers. The average time to resolve a charge through Intake in 2013 was 21 days, compared to an average of 27 days in 2012. The charges that are not resolved in Intake are moved on to investigation. The process of determining what charges are referred for investigation usually includes securing a written statement from the complainant and oftentimes includes gathering additional information. On average it took 19 days to review and make a referral of a charge for a full investigation. This timeframe is improved over the 29 day average time in 2012. In 2013, there were 792 charges referred for a full screening investigation. In 2012, 695 charges were sent for a full screening investigation.

Investigation of Charges

The Court previously directed that all disciplinary matters be resolved within twenty-two months; eleven months from receipt of the charge through the filing of a formal complaint and eleven months from formal complaint to final judgment and order. Historically, the annual average of compliance with these goals was in the range of 96-98% within that stated timeframe.[1] Those prior compliance numbers continue to offer insight for the implemented changes in the disciplinary system. The current investigative process is generally more comprehensive and the benefits of consistent and direct contact with relevant individuals is evident.

In 2011, the average time from the date of the referral of a charge to investigation, through the investigative process, was 176 days. In 2012 that time period was 170 days. In 2013 that number was 174 days. Again, there is little variation between these years, and demonstrates significant and consistent improvement when compared to the prior system.

Attorney Discipline Probable Cause Committee

The Attorney Discipline Probable Cause Committee ("Committee") is a permanent committee of the Supreme Court. (*See* Supreme Court Rule 50.) The Committee has three public members and six

[1] This timeframe is no longer the relevant standard but provides context going forward for the appropriate measure.

attorney members and meets monthly to review the bar's recommendations on charges. This Committee occupies the gatekeeper position in the discipline system and benefits from the participation of public members and their insight. After deliberation, the Committee may direct bar counsel to conduct further investigation, dismiss the allegations, or enter an order of one or more of the following: diversion, admonition, probation, restitution, assessment of costs and expenses, or to authorize formal proceedings. The chair of the Committee is Judge Larry Winthrop.

Prior to each monthly meeting, the bar provides respondent with a written report of investigation that includes the bar's recommendations on the case. Respondent or respondent's attorney may provide a written submission to the committee in response. Complainants are also provided with the recommendation and informed of the opportunity to respond. At each meeting, the bar presents its cases orally, and Committee members may ask questions, request additional facts, challenge the bar's recommendations or offer their own recommendations. They thoroughly discuss and debate each individual case. Upon motion, the Committee votes on the disposition of each case. In 2013, the Committee modified the State Bar's recommendation on 21 cases. In six of those cases the Committee increased the recommended sanction or disposition and in fifteen of those cases the Committee decreased the State Bar's recommended sanction or disposition. The Committee meetings are confidential and not open to respondents, complainants or the public.

The Committee in 2013 reviewed 348 charges, not including dismissal appeals. The Committee issued 136 probable cause orders authorizing the filing of a formal complaint. For comparison, in 2012, the Committee reviewed 490 charges, not including dismissal appeals. The Committee issued 166 probable cause orders authorizing the filing of a formal complaint. In 2013, the Committee also issued 28 orders of admonition (26 of which included probation) compared with 39 orders of admonition (25 of which included probation) in 2012. There were 3 additional orders of probation, 18 orders of restitution and 63 orders of diversion. Again in comparison in 2012, there were 18 orders of restitution and 81 orders of diversion.

The Office of the Presiding Disciplinary Judge

The PDJ adjudicates all formal cases. Contested and default cases are heard by hearing panels, composed of the PDJ, an attorney member and a public member. The use of hearing panels has provided a second opportunity for public insight and participation in the lawyer regulation system which advances a system that is designed and administered to protect the public and provide transparency.

The PDJ has the authority to issue a final order imposing any sanction, including disbarment. The use of the PDJ continues to significantly streamline the processing of formal proceedings. Formal matters include both the formal complaints and direct consent agreements.[2] In 2013, 79 formal matters were filed, 27 of which were consent agreements. In 2012, 72 formal matters were filed, 31 of those were direct consent agreements. In 2011 there were 68 formal matters filed, 23 of which were direct consent agreements. The increase in the number of formal filings between 2010 and 2011 was 55%. There was an additional increase of 6% in 2012. That upward trend continued in 2013 as formal filings increased by 10%.

A significant goal of restructuring the lawyer regulation system was to achieve greater efficiency in the adjudication of formal cases. The average time in 2013 from the filing of a formal complaint to the issuance of a final order in all case types was 88 days. For comparison, in 2012, the average time from the filing of a formal complaint to the issuance of a final order in all case types was 66 days.

The breakdown of adjudication times on specific case types is as follows: In 2013, the average adjudication time of a contested case from filing of the formal complaint to formal order was 179 days.

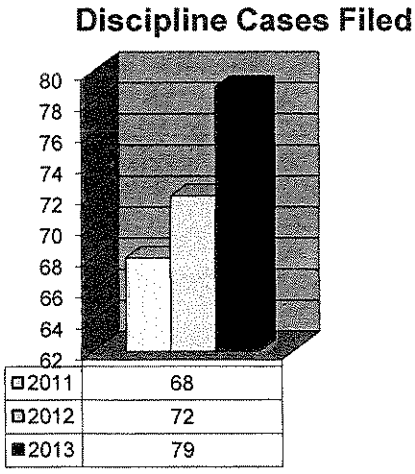
[2] Direct consent agreements are filed in lieu of a formal complaint and contain a stipulated set of facts and stipulated sanction.

That represents a 24% decrease from the average adjudication time in 2012. In 2011, cases from the prior system were included in calculating average adjudication times. A contested case took an average of 351 days from filing of a formal complaint to final order in 2011. This represented a 19% decrease compared with 2010. In 2012 that time dropped by 33%. In 2013, that trend continued with a 24% decrease in time.

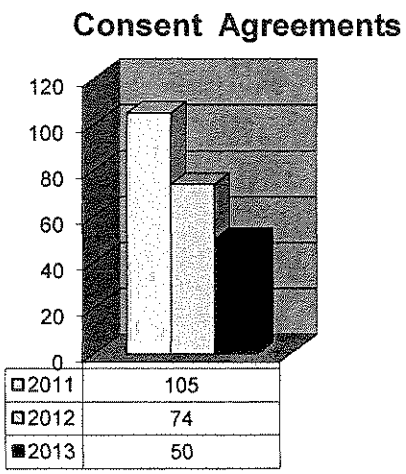
In 2013, the average time to a final order on consent agreements from the filing of the formal complaint to formal order increased. The PDJ may accept, reject or recommend modifications of such proposed consent agreements. In 2013, the PDJ recommended modifications to the agreement, not the sanction, on 5 occasions. As a result, in 2013 that average time increased to 74 days compared to 50 days in 2012. For comparison, in 2011, the average time was 105 days. Overall this remains an efficient and swift process for consent cases. In default cases, the average time from the filing of the formal complaint to the final order in 2013 was reduced to 82 days as compared to 85 days in 2012. In 2011, the average default took 117 days to final order.

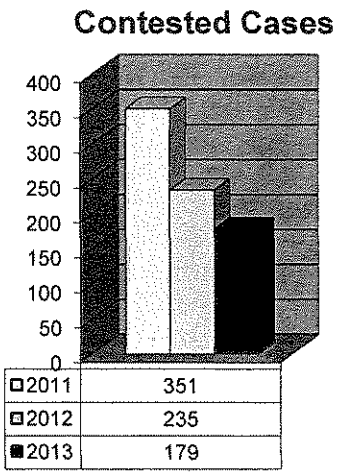
In 2013, there were 120 filings in the Office of the PDJ assigned a cause number. There were 249 informal filings that were not assigned a cause number. These include such matters as pre-complaint orders of protection, and pre-complaint discovery issues. 11% of the cases were contested, 33% were default and 56% resulted in a consent agreement. In 2012, there were 116 filings assigned a cause number and 273 informal filings not assigned a number. In that year 6% were contested, 14% were default and 80% resulted in consent agreements. Of those filings, there were 14 applications for reinstatement compared to 19 applications in 2012. At the close of 2013, 3 applications for reinstatement were granted, 4 were stayed, 1 denied, 2 withdrawn and 4 still pending. In addition, there were 7 appeals to the Supreme Court in 2013, compared to 6 appeals in 2012. Three of those appeals received a final order from the Supreme Court in 2013 and the others remained pending at the close of 2013.

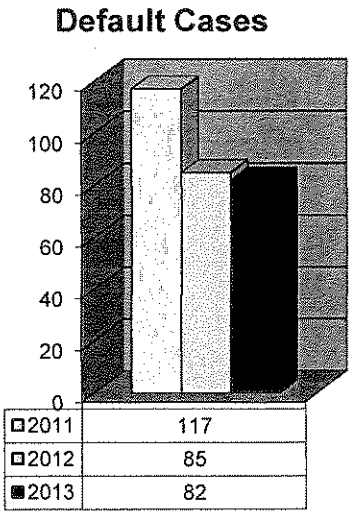
Formal Discipline Case Filings per Year

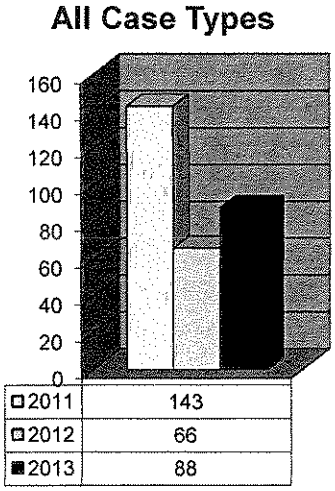


Average Number of Days from Filing of Formal Complaint to Final Disposition by Case Type









Pre-hearing matters are heard by the PDJ. In 2013, the PDJ individually conducted 80 separate pre-hearings, 7 Orders to Show Cause and 4 probation compliance hearings. The PDJ also served as a hearing officer in licensing and certification matters. In 2013, the PDJ conducted 6 hearings on licensing and certification matters. The PDJ also teaches or presents at various conferences. In 2013, the PDJ taught or presented on 23 occasions. Hearing panels comprised of the PDJ, a volunteer attorney member and a voluntary public member hear formal hearings regarding discipline complaints or reinstatement petitions. In 2013, hearing panels conducted 36 cases over 41 hearing days.

In 2013 there were 25 lawyers disbarred, 28 suspended, 26 reprimanded, 3 admonitions and 1 term of probation without other sanction. The disbarments are higher than in prior years. This appears due to the high number of consent to disbarments and abandonment of client and/or misappropriation of funds cases. 8 of the disbarments were by consent. There were 10 default cases of abandonment of client and/or misappropriation of client funds and 2 other default cases involved suspended lawyers continuing to practice law while suspended.

Calendar Year 2013 Attorney Discipline Probable Cause Committee Statistics

ACTION	JAN '13	FEB '13	MAR '13	APR '13	MAY '13	JUNE '13	JULY '13	AUG '13	SEPT '13	OCT '13	NOV '13	DEC '13	YTD
Cases Considered at Monthly Meeting[1]													
Order of Dismissal	3	0	3	0	2	1	0	0	1	1	0	1	12
Order of Diversion	9	0	12	7	7	4	4	3	6	3	4	4	63
Order of Admonition	2	0	8	3	0	5	1	0	2	1	1	5	28
Order of Probable Cause/Formal Complaint	3	0	11	11	5	4	8	8	6	7	6	6	75
Order of Restitution	2	0	5	1	0	1	2	1	0	1	2	3	18
Matter Deferred to Subsequent Meeting	0	19[2]	1	0	0	0	1	1	0	2	1	0	25
Order for Further Investigation	0	0	0	0	0	0	0	0	0	0	0	1	1
TOTALS	19	0	40	22	14	15	16	13	15	15	14	20	
Dismissal Appeals[3]													
Dismissal Appeal Denied (Affirm State Bar Counsel Dismissal)	2	0	6	1	3	6	1	4	3	2	1	7	36
Dismissal Appeal Granted	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	2	0	6	1	3	6	1	4	3	2	1	7	36

	JAN '13	FEB '13	MAR '13	APR '13	MAY '13	JUNE '13	JULY '13	AUG '13	SEPT '13	OCT '13	NOV '13	DEC '13	YTD
Cases Considered at Monthly Meeting[1]	19	0	40	22	14	15	16	13	15	15	14	20	203
Dismissal Appeals[3]	2	0	6	1	3	6	1	4	3	2	1	7	36
	21	0	46	23	17	21	17	17	18	17	15	27	239

[1] "Cases" does not include dismissal appeals or applications to retain file. "Cases" are per respondent and may involve multiple charges.

[2] February 2013 Meeting was cancelled

[3] "Dismissal Appeals" are those matters where the complainant appeals the dismissal of the charges by State Bar Counsel. The committee either affirms the dimissal or grants the appeal.

Respondent Appeal of ADPCC Orders	0	0	0	0	0	0	0	0	0	0	0	0	**0**