

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-19-0040
RULE 56, RULES OF THE)
SUPREME COURT)
)
) **FILED 12/12/2019**
)
)
_____)

ORDER

AMENDING RULES 55 AND 56, RULES OF THE ARIZONA SUPREME COURT

A petition having been filed proposing to amend Rule 56, Rules of the Arizona Supreme Court, and comments having been received, upon consideration,

IT IS ORDERED that Rules 55 and 56, Rules of the Arizona Supreme court, be amended in accordance with the attachment hereto, effective January 1, 2020.

DATED this 12th day of December, 2019.

_____/S/
ROBERT BRUTINEL
Chief Justice

TO:
Rule 28 Distribution
Maret Vessella
Mark I Harrison

ATTACHMENT¹

Rule 55. Initiation of Proceedings; Investigation

(a) [No change in text.]

(b) Screening Investigation and Recommendation by Bar Counsel. 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 bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. [No change in text.]

2. *Action Taken by Bar Counsel.*

A. Dismissal. [No change in text.]

B. Diversion Agreement. Bar counsel and respondent may enter into a diversion agreement, as set forth in Rule 56(c), prior to submission of a recommendation to the committee.

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

(c) [No change in text.]

Rule 56. Diversion

(a) [No change in text.]

¹ Additions in the text of the rule are shown by underscoring and deletions from text are shown by ~~strike through~~.

(b) [No change in text.]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to submission of the matter to the committee, ~~an investigation pursuant to Rule 55(b)~~, the agreement shall be between the attorney and bar counsel. If bar counsel ~~recommends~~ offers diversion after an investigation pursuant to Rule 55(b) and the attorney does not accept the offer of diversion, ~~but before authorization to file a complaint~~, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) [No change in text.]

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