

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ESTABLISHMENT OF)	Administrative Order
INDEPENDENT BAR COUNSEL)	No. 2016 - <u>44</u>
AND INDEPENDENT BAR)	(Replacing Administrative
COUNSEL ATTORNEY PANEL)	Order No. 2014-11)
)	

The Arizona Supreme Court (“Court”) has jurisdiction over any person engaged in the practice of law within the State of Arizona, Ariz. R. Sup. Ct. 31, and all lawyers are subject to the disciplinary jurisdiction of this Court, id. R. 46. This Court has previously delegated the duty to investigate and, when necessary, prosecute lawyer discipline matters to the State Bar of Arizona (“State Bar”).

From a desire to maintain a fair and impartial discipline system while decreasing the time and cost to process cases, the Court previously appointed the Attorney Discipline Task Force to review and recommend whether changes were needed to the rules applicable to these proceedings. The Task Force found that significant changes were needed. As a result, this Court made several changes to the rules. Included within those amendments was the establishment of the Office of the Presiding Disciplinary Judge (“PDJ”). The statistical reports submitted to this Court since those changes were implemented demonstrate that considerable progress has been made towards reaching these goals.

The Court has determined that it should take additional steps to ensure that the foregoing goals are substantially met in all cases, including matters that, because of the involvement (as applicants, complainants, respondents, material witnesses, or otherwise) of lawyers or others connected to the lawyer discipline system or the State Bar Board of Governors (“Board”), should not be handled by counsel in the State Bar Lawyer Regulation Office due to conflict of interest concerns.

The Board previously created the Conflict Case Committee (“Committee”) in 2001 to address these same concerns. The Committee’s charge was to timely process, investigate, and prosecute all aspects of disciplinary cases involving a member of the Board, a State Bar staff member, a Supreme Court Disciplinary Hearing Officer, a member of the Court’s Disciplinary Commission, or other persons similarly situated as identified by the State Bar Probable Cause Panelist.

This Court’s rule amendments, effective January 1, 2011, substantially modified Arizona’s lawyer discipline system. The amendments had the effect, among others, of eliminating the Hearing Officer and Disciplinary Commission positions that generated much of the Committee’s

work. The amendments also replaced the State Bar Probable Cause Panelist with the Attorney Discipline Probable Cause Committee (“ADPCC”). *See* Rule 50, Ariz. R. Sup. Ct.

The Court commends the Committee for its work and the substantial volunteer service provided over the years. Nonetheless, the Court has determined that the timely, fair, and impartial resolution of the cases previously assigned to the Committee and similar cases would be improved by devoting personnel and administrative resources in addition to those available using volunteers.

Therefore, pursuant to Article III and Article VI, Section 1 and 3 of the Arizona Constitution,

IT IS ORDERED that the position of Independent Bar Counsel shall be established and funded as follows:

1. INDEPENDENT BAR COUNSEL. The position of Independent Bar Counsel (“IBC”) is established.
2. PURPOSE AND AUTHORITY. IBC shall process, investigate, and prosecute all Qualifying Matters, as defined in subsection 4, involving lawyer discipline, disability, admission, and reinstatement cases. As to each Qualifying Matter, IBC shall perform the functions and have the authority of Chief Bar Counsel and Bar Counsel as generally described in Rule 49 of the Rules of the Supreme Court of Arizona. For purposes of an appeal pursuant to Rule 53(b)(2)(B), Ariz. R. Sup. Ct., the executive director of the Arizona Commission on Judicial Conduct (“Commission”) shall review IBC’s decision to dismiss a charge. IBC shall also have the authority of a member or special investigator of the Supreme Court Character and Fitness Committee as generally described in Rule 36 of the Rules of the Supreme Court of Arizona and shall also assist the Commission and handle other categories of cases as may in the future be assigned by the Supreme Court. In assisting the Commission, IBC shall perform the functions and have the authority of disciplinary counsel to the Commission under its rules and policies.
3. LOCATION OF OFFICE; SUPERVISION OF POSITION. IBC shall be located in the office of the Commission and shall work under the supervision and direction of its executive director. The position shall be subject to the personnel policies and procedures applicable to Commission employees. The director of the Administrative Office of the Courts shall submit a budget for the cost of IBC to the State Bar for payment. In the case of expenses that cannot be readily anticipated such as, by way of example, evidence retrieval, expert opinions, or independent medical examinations, IBC shall confer with Chief Bar Counsel of the State Bar to ensure the most cost effective means are utilized to obtain the necessary information. Such expenses shall be paid by the State Bar. The IBC may use State Bar employees for trust account exams and other investigative assignments as case investigations require. The State Bar shall remain the custodian of the lawyer cases handled by the IBC. The IBC shall coordinate with the State Bar to establish the necessary administrative record keeping procedures, access to the lawyer discipline case management system, and shall use the templates

and document formats utilized by the State Bar Lawyer Regulation Office. The State Bar may provide training for the IBC.

4. QUALIFYING MATTERS. A Qualifying Matter is an admission, discipline, disability, or reinstatement matter in which:
 - a. Any of the following persons is an applicant, complainant, respondent, or material witness:
 - i. a member of the Board, or spouse, or domestic partner thereof;
 - ii. State Bar staff, or spouse, or domestic partner thereof;
 - iii. a member of the Attorney Discipline Probable Cause Committee, or spouse, or domestic partner thereof;
 - iv. a lawyer who worked for the State Bar within one year of the State Bar's receipt of a charge; and
 - v. a hearing panel member pursuant to Rule 52, Ariz. R. Sup. Ct., or spouse, or domestic partner thereof, or
 - b. Other circumstances exist, as determined by the Chief Justice, which cast into reasonable doubt the ability of the State Bar Lawyer Regulation Office to properly discharge its obligations under the Rules of the Supreme Court of Arizona in connection with the matter. Neither the exercise by State Bar Lawyer Regulation Office staff of their powers and duties under Supreme Court Rule 49(b)(1) to review information coming to the State Bar's attention, nor other participation by Lawyer Regulation Office staff in the process by which matters are assigned to IBC, shall, by itself, render Lawyer Regulation Office staff the "complainant" for purposes of section 4(a)(ii).
 - c. Following assignment of a qualifying matter to IBC, any open charge or new charge opened by the State Bar that relates to the respondent attorney or the qualifying matter may be referred to IBC.
 - d. Hearing panel members pursuant to Rule 52, Ariz. R. Sup. Ct.: Upon initiation of a disciplinary matter in which a hearing panel member, or spouse, or domestic partner thereof, is a complainant, respondent, or material witness:
 - i. The State Bar Lawyer Regulation Manager shall immediately notify the Disciplinary Clerk of the matter. If the panel member is not currently assigned to a hearing panel, the panel member shall not serve on a hearing panel until conclusion of the disciplinary matter; and
 - ii. if the panel member is currently assigned to a hearing panel, the disciplinary matter shall be immediately referred to IBC. Upon conclusion of the panel member's duties on that hearing panel, IBC may, in consultation with Chief Bar Counsel, refer the matter back to the State Bar Lawyer Regulation Office to be processed or may retain the matter, in IBC's discretion.
5. ASSIGNMENT OF MATTERS TO IBC BY STATE BAR.
 - a. The State Bar may perform intake functions as set forth in Rule 55(a), Ariz. R. Sup. Ct., for any matter falling within Section 4. If the State Bar performs the intake functions and a determination is made to proceed to a screening investigation pursuant to Rule 55(b), Ariz. R. Sup. Ct., the State Bar Lawyer Regulation Records Manager shall assign that matter to IBC. Any matter falling within Section 4 may,

in the discretion of Chief Bar Counsel, be immediately assigned to IBC without performing intake functions.

6. REPORTS.

- a. IBC shall report the status of each individual matter under sections 4(a), (b), and (c) to the chair of the ADPCC not less frequently than quarterly. Those reports shall be limited to the name of the respondent, case number, date of receipt of the charge, date of assignment to IBC, and other significant dates of progress or resolution of the matter. IBC may work with the State Bar Lawyer Regulation Records Manager to produce reports and statistics for the chair of the ADPCC, the Presiding Disciplinary Judge, or the Court.
- b. On or before February 1 of each year, IBC shall issue a report to the chair of the Attorney Regulation Advisory Committee (i) generally describing the nature and disposition of Qualifying Matters under sections 4(a), (b), and (c) resolved by IBC within the preceding year, and (ii) making any recommendations IBC may have for improvements to Arizona's lawyer admission, discipline, disability, and reinstatement procedures. The report shall contain case statistics on the processing of cases assigned to IBC. The report shall comply with Supreme Court Rule 70.

IT IS FURTHER ORDERED that the IBC Attorney Panel ("IBCAP") is established as follows:

1. PURPOSE. As to any Qualifying Matter assigned to IBC, the IBCAP, acting through one or more of its members, shall upon request of IBC assist and support IBC in the performance of the duties and responsibilities of that position. Members of the IBCAP shall, in assisting IBC, have all the powers and authority granted to Chief Bar Counsel and Bar Counsel pursuant to the rules, orders, and decisions of the Supreme Court. IBCAP members may also assist the Commission's disciplinary counsel in the investigation and prosecution of any matter within the Commission's jurisdiction and in that regard have all the powers and authority of disciplinary counsel to the Commission under its rules and policies.
2. MEMBERSHIP AND TERMS. The membership of IBCAP and the term of each member shall be as established in attachment "A." Candidates for the IBCAP may be recruited, sought, or recommended by IBC and the Board's Appointments Committee may recommend members for the IBCAP. All members shall be appointed by and may be removed at the discretion of the Chief Justice.
3. MEETINGS. IBC and/or the Commission's disciplinary counsel may schedule meetings or training events with the IBCAP as necessary.
4. POST-IBCAP SERVICE. At the request of IBC or the Commission, upon the conclusion of any member's service on the IBCAP, the Chief Justice may appoint that member to continue serving as volunteer bar counsel in connection with any Qualifying Matter assigned to IBC or to continue serving as volunteer counsel to the Commission in connection with any matter within its jurisdiction.

IT IS FURTHER ORDERED that IBC, members of the IBCAP, and any other person assisting IBC in the investigation or prosecution of a Qualifying Matter, including the staff of the Commission, shall be immune from civil suit and from disciplinary complaints as provided by Supreme Court Rule 48(1) and (m), respectively. Consistent with Rule 15 of the Rules of the Commission, IBC and members of the IBCAP who assist the Commission in the investigation or prosecution of any matter within its jurisdiction shall be immune from suit for any conduct in the course of their official duties on behalf of the Commission.

Dated this 15th day of June, 2016.

SCOTT BALES
Chief Justice

Attachment

APPENDIX A

MEMBERSHIP OF IBC ATTORNEY PANEL

Thomas Bayham
Bayham Law Office, P.L.L.C.
Tucson
Term Expires: June 30, 2019

Anne H. Phillips
Maricopa Legal Defenders Office
Phoenix
Term Expires: June 30, 2018

Mark I. Harrison
Osborn Maledon P.A.
Phoenix
Term Expires: June 30, 2018

Douglas F. Behm
Douglas F. Behm, P.L.L.C.
Phoenix
Term Expires: June 30, 2019

Frankie Y. Jones
Maricopa County Attorney's Office
Phoenix
Term Expires: June 30, 2018

Anne Chapman
Mitchell Stein Carey PC
Phoenix
Term Expires: June 30, 2019