

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
ESTABLISHMENT OF	)	Administrative Order
INDEPENDENT BAR COUNSEL	)	No. 2018 - <u>20</u>
AND INDEPENDENT BAR	)	(Replacing Administrative
COUNSEL ATTORNEY PANEL	)	Order Nos. 2014-11 and 2016-44)
	)	

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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 and its Lawyer Regulation Office.

The Court also has determined that the establishment of the position and Office of Independent Bar Counsel (IBC) and the appointment of the IBC Attorney Panel (IBCAP) is needed to handle matters in which the State Bar Lawyer Regulation Office has a conflict of interest 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.

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 is 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, reinstatement, and unauthorized practice of law 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)(A), Ariz. R. Sup. Ct., the executive director of the Arizona Commission on Judicial Conduct (“Commission”) shall review IBC’s decision to dismiss a charge. For purposes of an objection pursuant to Rule 53(b)(2)(B), Ariz. R. Sup. Ct., upon objection by complainant, the Arizona Discipline Probable Cause Committee shall review IBC’s decision pursuant to Rule 55(b)(2)(A)(ii) Ariz. R. Sup. Ct. 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 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; FUNDING. 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 make decisions regarding records request for records related to IBC handled cases. If the IBC denies access to records the request can be appealed to the executive director, whose decision shall be final. 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, reinstatement, or unauthorized practice of law 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 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.

IT IS FURTHER ORDERED that this administrative order is applicable to all pending and new matters assigned to the IBC.

Dated this 28th day of March, 2018

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SCOTT BALES  
Chief Justice

Attachment: Appendix A

**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