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### 17A A.R.S. Sup.Ct.Rules, Rule 55

#### Rule 55. Initiation of Proceedings; Investigation

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▣ V. Regulation of the Practice of Law

▣ H. Proceedings

➔ **Rule 55. Initiation of Proceedings; Investigation**

**(a) Commencement; Determination to Proceed.** The state bar shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity.

1. If the state bar determines the lawyer is not subject to the disciplinary jurisdiction of the supreme court, it shall refer the information to the appropriate entity.
2. If the state bar determines the lawyer is subject to the disciplinary jurisdiction of the court, it shall, in the exercise of its discretion, resolve the matter in one of the following ways:
  - A. dismiss the matter with or without comment; or
  - B. enter into a diversion agreement or take other appropriate action without conducting a full screening investigation where warranted ; or-
  - C. refer the matter for a screening investigation as provided in Rule 55(b) if the alleged conduct may warrant the imposition of a sanction.

**(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.* The respondent shall provide a written response to the allegations to bar counsel within twenty (20) days after notice of the investigation is given.
  - A. *Extensions of Time.* Bar counsel may grant one extension of time to file a written response not to exceed twenty (20) days. Any additional requests for extensions of time must be approved by chief bar counsel for good cause shown.
  - B. *Failure to Respond.* If respondent fails to timely respond as provided in these rules, bar counsel may seek an investigative subpoena pursuant to Rule 47(h)(1) to compel respondent's attendance and production of documents. Respondent may be subject to contempt proceedings pursuant to Rule 47(h)(4) if he or she refuses to appear or comply with the subpoena.
2. *Action Taken by the State Bar.*
  - A. *Dismissal.*

(i) *Notice.* After conducting a screening investigation, if there is no probable cause to believe that misconduct or incapacity under these rules exists, bar counsel shall dismiss the charge, with or

without comment, by filing a notice of dismissal with the Records Manager of the Lawyer Regulation Office of the state bar. Within twenty (20) days of dismissal of a charge, bar counsel shall provide a written explanation of the dismissal to the complainant.

(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, 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. direct bar counsel to conduct further investigation;
- B. dismiss the allegations and furnish the complainant with a written explanation of its determination;
- C. refer the matter to diversion as provided in Rule 56;
- D. make a finding that probable cause exists and order an admonition, probation, restitution, assessment of costs and expenses, or a stay; or
- E. authorize bar counsel to prepare and file a complaint against the respondent or a petition for transfer to disability inactive status.

2. *Considerations in Authorizing Complaint.* In determining whether to authorize bar counsel to file a complaint, the committee shall first determine whether probable cause exists, and if so, shall consider the following:

- A. whether it is reasonable to believe that misconduct warranting discipline can be proven by clear and convincing evidence;
- B. whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings;
- C. the level of the actual or potential injury; and
- D. whether the respondent has previously been disciplined or participated in diversion.

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. Subject to the terms of this subsection, a decision of the committee shall be final with respect to dismissal, diversion, stay, admonition, assessment of costs and expenses, probation, restitution, and the filing of formal discipline or disability proceedings. Orders of diversion, stay, admonition, probation, restitution, and assessment of costs and expenses shall be signed by the committee chair or vice-chair.

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.

C. A recommendation of any sanction that is consented to by respondent, pursuant to Rule 57(a), before or while the matter is pending before the committee, other than those made final by decision of the committee, shall be submitted directly to the presiding disciplinary judge for review.

#### CREDIT(S)

Added June 9, 2003, effective Dec. 1, 2003. Amended Sept. 16, 2008, effective Jan. 1, 2009; Sept. 29, 2008, effective Jan. 1, 2009. Renumbered from Rule 54 and amended June 30, 2010, effective Jan. 1, 2011. Amended Aug. 30, 2012, effective Jan. 1, 2013.

#### HISTORICAL NOTES

##### Source:

Revisers' addition.

Laws 1933, Ch. 66, § 40.

Code 1939, § 32-340.

A.R.S. former § 32-268.

Rule 23, ARCAP.

ABA Model Rules 11, 14(F), 17(E).

Former Rules 33 to 37.

Former Rule 53.

Former Rule 54, amended Dec. 12, 1991, effective Jan. 1, 1992; Feb. 18, 1993, effective March 1, 1993; Jan. 30, 1995, effective June 1, 1995; July 12, 1995, effective Dec. 1, 1995; Oct. 30, 1996, effective Dec. 1, 1996, amended Sept. 24, 1999, effective Dec. 1, 1999; May 31, 2000, effective Dec. 1, 2000; May 31, 2002, effective September 1, 2002; Oct. 28, 2002, effective Dec. 1, 2002, was abrogated by order dated June 9, 2003, effective Dec. 1, 2003.

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Current with amendments received through 1/1/14

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