

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-06-0035
PETITION TO AMEND RULES 43, 44,)
46-48, 53-58, 60, 61, 64, 70-72,)
75, RULES OF THE SUPREME COURT)
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_____)

CORRECTIVE ORDER

On September 16, 2008, the Court issued an order amending the above captioned rules. Inadvertent errors have been discovered in the order, necessitating further amendment. Therefore,

IT IS ORDERED further amending Rules 47, 48, 53, 54, 57, 58, 64, and 65, as set forth in the attachment hereto, effective January 1, 2009.

DATED this _____ day of September, 2008.

RUTH V. MCGREGOR
Chief Justice

TO:
Rules Distribution

ATTACHMENT

Corrections Shown to Text as Amended by Order dated September 16, 2008*

RULES OF THE SUPREME COURT

Rule 47. Rules of Procedure

(a)-(i) [No change in text.]

(j) Informal Request for Information. When a lawyer has failed to comply with any request for information made pursuant to these rules for more than twenty (20) days, bar counsel may notify the lawyer that failure to so comply within ten (10) days may necessitate the taking of the deposition of the lawyer pursuant to subpoena.

1.-3. [No change in text.]

(k)-(l) [No change in text.]

Rule 48. Rules of Construction

(a)-(k) [No change in text.]

(l) Immunity from Civil Suit. Communications to the court, state bar, commission, hearing committees or hearing officers, mediators, the client protection fund, the peer review committee, the fee arbitration program, the committee on the Rules of Professional Conduct, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists or state bar ~~and~~ staff relating to lawyer misconduct, lack of professionalism or disability, and testimony given in the proceedings shall be absolutely privileged conduct, and no civil action predicated thereon may be instituted against any complainant or witness. Members of the board, commission, hearing committees or hearing officers, mediators, the peer review committee, client protection fund trustees and staff, fee arbitration committee arbitrators and staff, the ethics committee, monitors of the Member Assistance or Law Office Management Assistance Programs, probable cause panelists, state bar staff shall be immune from suit for any conduct in the course of their official duties.

(m) [No change in text.]

* * *

Rule 53. Grounds for Discipline

* Changes or additions in the text from the September 16, 2008 order are indicated by underscoring and deletions from the text are indicated by ~~strikeouts~~.

Grounds for discipline of members and non-members include the following:

(a)-(g) [No change in text.]

(h) Conviction of a Crime. . . .

1. *Procedure.* Upon conviction of a lawyer of any crime, the clerk of the court in which the conviction is entered shall, within twenty (20) days thereafter, transmit to this court and to the state bar a certified copy of the judgment of conviction, and the convicted lawyer shall, within twenty (20) days after entry of judgment of conviction of a misdemeanor involving a serious crime or of any felony-, provide the following information to chief bar counsel: (a) name, bar number and address of record with the state bar, and a current address if different from the address of record; (b) the name of the court in which the judgment of conviction was entered; (c) the case or file number in which the judgment of conviction was entered; and (c) the date the judgment of conviction was entered. Receipt by the state bar of a certified copy of the judgment of conviction, or other information of conviction of a lawyer, shall be treated and processed as is any other charge against a lawyer, except that the sole issue to be determined shall be the extent of the discipline to be imposed. Proof of conviction shall be conclusive evidence of guilt of the crime for which convicted in any discipline proceeding based on the conviction.

2.-4. [No change in text.]

(i) [No change in text.]

Rule 54. Investigation; Initiation of Proceedings

(a) [No change in text.]

(b) Initial Proceedings. Upon the commencement of a discipline proceeding against a respondent, the matter shall first proceed as provided in this section:

1. *Screening.* The state bar shall evaluate all information coming to its attention by charge or otherwise alleging lack of professionalism, misconduct or incapacity. The state bar:

A. [No change]

B. Shall close the matter if the allegations would not constitute misconduct or incapacity under these rules, even if found to be true. ~~The state bar may refer such matters to the peer review or fee arbitration committee;~~

C.-D. [No change in text.]

E. May refer for fee arbitration any charge that, in the state bar's opinion, primarily involves a fee dispute, provided both the respondent and complainant agree to participate in fee arbitration.

2.-3. [No change in text.]

4. *Probable Cause Review.* Any recommendation by the state bar for a disposition other than dismissal shall be reviewed by the panelist or the panelist's designee. The panelist or designee may approve, disapprove or modify the recommendation and shall file the decision with the Records Manager of the Lawyer Regulation Office of the state bar. The state bar counsel may appeal a decision to disapprove or modify its recommendation to an appeal panel composed of three members of the board of governors, who shall either approve bar's recommendation, approve the action of the panelist, or require any other action that ~~might~~ could have been recommended by the state bar.

5. *Disposition Prior to Formal Complaint.*

A. [No change in text.]

B. Within ten (10) days of service of an order of diversion, stay, probation, restitution, or assessment of costs and expenses entered by a panelist or an appeal panel, respondent has the right to appeal pursuant to subsection (c) of this rule. Within ten (10) days of service of an order of informal reprimand entered by a panelist or an appeal panel, respondent has the right to demand that a formal proceeding be instituted, whereupon such order shall be vacated and the matter disposed of in the same manner as any other matter instituted before a hearing officer.

C. [No change in text.]

6. *Referral to Peer Review Committee, Fee Arbitration, or Mediation.* The state bar ~~counsel~~ may refer a matter to the peer review committee, the fee arbitration committee, or to mediation after dismissal of a charge.

7. [No change in text.]

(c) [No change in text.]

* * *

Rule 57. Formal proceedings

(a)-(d) [No change in text.]

(e) **Initial Disclosure Statements.** The state bar, at ~~filing of the time~~ filing of the time the complaint is served, and respondent, within thirty (30) days after filing the answer, shall each serve upon the other an initial disclosure statement. The initial disclosure statement shall include the following:

1.-6. [No change in text.]

7. The existence of prior discipline or a prior course of conduct ~~if not disclosed in the complaint, pursuant to Rule 57(a).~~

8.-9. [No change in text.]

(f) Discovery.

1.-2. [No change in text.]

3. *Sanctions for failure to make disclosure or discovery.* Following a good faith effort to resolve a discovery issue, either party may file a notice of failure to comply with discovery rules, which shall include a statement that an attempt was made to resolve the issue. A hearing, which may be telephonic, shall be held within five (5) days of the date the notice is filed. Evidence of compliance and non-compliance may be produced at the hearing. The hearing officer shall enter appropriate orders at the conclusion of the hearing, which are limited to the sanctions set forth in sub-sections (A) and (B) of this rule.

(A) [No change in text.]

(B) *Other violations of the disclosure or discovery rules.* The hearing officer may utilize any of the following sanctions for non-willful violations of the disclosure or discovery rules:

(i) An order refusing to allow the non-compliant party to support or oppose designated allegations, claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(ii) [No change in text.]

(C) [No change in text.]

(g)-(l) [No change in text.]

Rule 58. Review by the Commission

(a)-(c) [No change in text.]

(d) Briefs.

1. [No change in text.]

2. *Form of Brief.* Opening and answering briefs shall comply with the provisions of Rules 6(c) and 14(a)(1) and (b), Ariz. R. Civ. App. P. ~~not exceed thirty five (35) pages, exclusive of appendices, unless leave is granted by the commission chair upon a showing of good cause, and shall otherwise conform to the requirements set forth in Rule 14, Ariz. R. Civ. App. P., as applicable.~~ Appendices may contain excerpts from the transcript of the hearings, pleadings, orders, and authority that counsel wishes to bring to the attention of the commission but shall not contain arguments of law or fact properly included in the body of the brief. If the party appeals an order modifying or rejecting an agreement, a copy of the tender of admissions and joint memorandum shall be included in the appendix.

3. [No change in text.]

(e) Commission Report. Within thirty (30) days after ~~final submission of the~~ oral argument or consideration of the matter in executive session, the commission shall prepare and file a written report, affirming, reversing or modifying the findings of fact, conclusions of law or recommendation(s) before it, remanding the matter for further proceedings before the hearing officer, or dismissing the charge or complaint. If the report cannot be timely filed, the commission may file with the clerk of the supreme court an original notice and six copies stating the reasons for the delay. The notice must state the date by which the report will be filed. The commission shall submit a copy of the notice ~~and include a certificate of service on~~ to respondent, respondent's counsel, if any, and bar counsel of record. A copy of the commission report and any order shall be served upon the hearing officer from which referred, respondent, respondent's counsel, if any, and bar counsel of record. The decision of the commission shall be final as to dismissal, diversion, remand, probation, reprimand, restitution, assessment, and a censure that is not reviewed by the court, if not part of a sanction which includes disbarment or suspension.

(f) [No change in text.]

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Rule 64. Reinstatement; Eligibility

(a) General Standard. Except as provided in paragraph (e)(2) of this rule, in order to be reinstated to the active practice of law, a suspended or disbarred lawyer or a lawyer on disability inactive status must show by clear and convincing evidence that the lawyer has been rehabilitated and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. However, the requirements for reinstatement after summary suspension are as stated in paragraph ~~(e)~~(f) of this rule.

(b)-(e) [No change in text.]

(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement. [Putting "Reinstatement" in boldface.]

1.-2. [No change in text.]

Rule 65. Reinstatement; Application and Proceedings

(a) Application for Reinstatement. Except as may otherwise be provided in Rules 63(~~g~~) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

1.-5. [No change in text.]

(b) [No change in text.]