

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF THE) Administrative Order
ATTORNEY DISCIPLINE TASK) No. 2009 - 73
FORCE, MEMBERS, AND SCHEDULE)
)
_____)

Over the past decade, the Arizona Supreme Court and the State Bar of Arizona have worked to improve the Court’s attorney discipline system. The Court wishes to maintain a fair and impartial discipline system while decreasing the time and cost to process cases, especially those cases that proceed to formal charges. While considerable progress has been made, the Court’s goal of processing cases within shorter time frames has not been accomplished.

The Court has determined the time has come to thoroughly review the attorney discipline system and consider whether significant changes are needed. The Committee will consider whether to adopt some of the features now used in the Colorado attorney discipline system. Key elements of that system are included in Appendix “A.”

Now, therefore, pursuant to Article VI, Section 3 of the Arizona Constitution,

IT IS ORDERED that the Attorney Discipline Task Force is established as follows:

1. **PURPOSE:** The Task Force shall draft and file, not later than December 2009, a petition to amend the current attorney discipline system rules, consistent with the strategic direction provided in Appendix “A.”
2. **MEMBERSHIP:** The membership of the Task Force is attached as Appendix “B.” The Chief Justice may appoint additional members as may be necessary.
3. **MEETINGS:** At the discretion of the Chair, meetings may be scheduled and re-scheduled, canceled, or moved. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.
4. **STAFF:** The Administrative Office of the Courts and the Staff Attorneys Office shall provide staff for the Task Force and, as feasible, conduct or coordinate research as requested by the Task Force.

Dated this 1st day of July, 2009.

REBECCA WHITE BERCH
Chief Justice

Appendix “A”
Strategic Direction for Arizona’s Attorney Discipline System

In reviewing the Arizona attorney discipline system, the Task Force shall incorporate best practices from the Colorado attorney discipline system and other states’ systems, including the following:

1. The intake process at the State Bar will be modified to allow intake attorneys to divert more cases. The goal is to reduce the processing time for cases and to reduce the number of cases proceeding to investigation, as is the case in Colorado. This would allow the more serious matters to receive more attention. (Colorado’s average time from the original call to Central Intake and an intake resolution is 1.5 weeks.)
2. Intake attorneys will have the authority to dismiss matters if there was no misconduct; to offer diversion if misconduct is minor; or to assign matters to a trial attorney if the alleged misconduct falls outside of diversion program guidelines or the Respondent rejects a diversion offer.
3. State Bar Counsel investigating a case will have eight months from the receipt of the complaint to bring a matter to probable cause.
4. The Disciplinary Commission’s duties will shift to the front end of the system. The Commission will determine probable cause, as does the Colorado Probable Cause Committee. The Commission will be appointed by the Supreme Court, meet once per month, and be supported by staff from the Administrative Office of the Courts.
5. If agreement is reached on a case, the case will bypass probable cause and will be filed directly with the Office of the Presiding Disciplinary Judge. Colorado refers to these plea arrangements as “conditional admissions.”
6. The Office of the Presiding Disciplinary Judge will be created in the Supreme Court (AOC). The Presiding Disciplinary Judge will be a full-time paid position. The Arizona Presiding Disciplinary Judge will have duties similar to the Colorado Presiding Disciplinary Judge, including ruling on all motions and pre-trial matters, deciding all questions of law before and during hearing, and sitting as the chair on the hearing boards.
7. An “at issues conference” will be required at which parties will be prepared to discuss potential settlement and related issues such as motions and discovery deadlines, and a hearing date. Cases not settled at least 30 days before the hearing date will proceed to hearing.
8. As needed, cases will be assigned to volunteer settlement officers. These volunteer settlement officers will be appointed by the Supreme Court and will have significant experience in the area of attorney ethics.

9. A three-person hearing board consisting of the Presiding Disciplinary Judge, a volunteer lawyer, and a public member will hear any cases proceeding to hearing. The Presiding Disciplinary Judge and the hearing boards will have the authority to impose all sanctions, including disbarment.
10. Strikes of the Presiding Disciplinary Judge and the other members of the hearing board will be permitted for cause only.
11. The Presiding Disciplinary Judge will issue the decision in a case within 60 days.
12. Hearings held in Phoenix will be recorded using a digital audio record. Transcripts will be prepared as needed. Outside of Phoenix, a certified reporter will be used if electronic recording equipment is not available.
13. Proportionality arguments will be eliminated. Sanctions will be imposed pursuant to the American Bar Association guidelines. Mitigating and aggravating evidence may be presented.
14. Either party may appeal to the Supreme Court. The Court may increase, reduce, or modify sanctions. The Court need not write an opinion in each case, but may choose to do so.

Appendix “B”
Membership of the Attorney Discipline Re-Engineering Task Force

Chair

Dave Byers, Director
Administrative Office of the Courts
Arizona Supreme Court

Alan Bayham
State Bar of Arizona
Probable Cause Panelist and
Board of Governors Representative

Don Carson
Public Member

Honorable H. Jeffrey Coker
Arizona Supreme Court
Hearing Officer Representative

Vice Chair

Nancy Swetnam, Director
Certification and Licensing Division
Administrative Office of the Courts

Jeffrey Messing
Arizona Supreme Court
Disciplinary Commission Representative

J. Scott Rhodes
Respondent’s Counsel Representative

Maret Vessella
Acting Chief Bar Counsel
State Bar of Arizona