

*Changes proposed by the State Bar of Arizona
Consumer Protection Committee.*

September, 2001

(The Task Force of the Future of the Profession's original proposal is in black type. Additional proposals by the Consumer Protection Committee are in red type.)

RULES OF THE SUPREME COURT OF ARIZONA

~~V. ADMISSION AND DISCIPLINE OF ATTORNEYS~~

~~A. ORGANIZATION OF STATE BAR~~

V. REGULATION OF THE PRACTICE OF LAW

A. SUPREME COURT JURISDICTION OVER THE PRACTICE OF LAW

RULE 31 REGULATION OF THE PRACTICE OF LAW

~~(a) Organization of State Bar of Arizona.~~

~~1. Establishment of state bar. In order to advance the administration of justice according to law; to aid the courts in carrying on the administration of justice; to provide for and regulate the admission of persons seeking to engage in the practice of law; to provide for the regulation and discipline of persons engaged in the practice of law; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereon; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof may be more effectively and efficiently discharged in the public interest, and acting within the powers vested in it by the constitution of this state and its inherent power over members of the legal profession as officers of the court, the Supreme Court of Arizona does hereby perpetuate, create and continue under the direction and control of this court an organization known as the State Bar of Arizona, such organization which may be a non-profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes, and all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of Arizona in accordance with the rules of this court. The State Bar of Arizona may sue and be sued, may enter into contracts and acquire, hold, encumber, dispose of and deal in and with real and personal property, and promote and further the aims as set forth herein and hereinafter in these rules.~~

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THESE CHANGES HAVE NOT YET BEEN ADOPTED IN ARIZONA

~~2. Precedence of rules. The qualifications of attorneys at law for admission to practice before the courts of this state, the duties, obligations and certain of the grounds for discipline of members, and the method of establishing such grounds, subject to the right of this court to discipline a member when it is satisfied that such member is not mentally or morally qualified to practice law even though none of the specific grounds for discipline set forth in these rules exist, shall be as prescribed in these rules pertaining to admission and discipline of attorneys.~~

(a) Supreme Court Jurisdiction Over the Practice of Law

1. Jurisdiction. Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. Definition: Practice of Law. The "practice of law" means providing legal advice or services to or for another by:

- (A) Preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- (B) Preparing or expressing legal opinions;
- (C) Representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitrations and mediations;
- (D) Preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- (E) Negotiating legal rights or responsibilities for a specific person or entity.

3. Definition: Unauthorized Practice of Law. "Unauthorized practice of law" includes but is not limited to:

- (A) Engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or
- (B) Using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "JD," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

4. Definition of Paralegal/Legal Assistant. A "legal assistant/paralegal" is a person qualified by education and training who performs substantive legal work, which requires a sufficient knowledge and expertise of legal concepts and procedures, who is supervised by an active member of the State Bar of Arizona and for whom an active member of the state bar is responsible, unless otherwise authorized by Supreme Court Rule.

5. Definition of Mediator. "Mediator" means an impartial individual who is appointed by a court or government entity or engaged by disputants through written agreement, signed by all disputants, to mediate a dispute.

~~3.~~**(b)** *Privilege Authority to Practice.* Except as hereinafter provided in ~~subsection 4 of this section~~ ~~(a)~~**(c)**, no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar, and no member shall practice law in this state or hold himself out as one who may practice law in this state, while suspended, disbarred, or on disability inactive status.

~~4.~~**(c)** *Exceptions.* Notwithstanding the provisions of ~~subsection 3 of this section~~ ~~(a)~~**(b)**:

A.1. In any proceeding before the Department of Economic Security, including a hearing officer, an Appeal Tribunal or the Appeals Board, an individual party (either claimant or opposing party) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

B.2. An employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

~~C.~~ **3.** An officer of a corporation who is not an active member of the state bar may represent the corporation before a justice court or police court, provided that: the corporation has specifically authorized such officer to represent it before such courts; such representation is not the officer's primary duty to the corporation, but secondary or incidental to other duties relating to the management or operation of the corporation; and the corporation was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence which gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

~~D.~~ **4.** A person who is not an active member of the State Bar may represent a party in small claims procedures in the Arizona Tax Court, as provided in Title 12, Chapter 1, Article 4 of the Arizona Revised Statutes.

~~E.~~ **5.** In any proceeding in matters under Title 23, Chapter 2, Article 10 of the Arizona Revised Statutes, before any administrative law judge of the Industrial Commission of Arizona or review board of the Arizona Division of Occupational Safety and Health or any successor agency, a corporate employer may be represented by an officer or other duly authorized agent of the corporation who is not charging a fee for the representation.

~~F.~~ **6.** An ambulance service may be represented by a corporate officer or employee who has been specifically authorized by the ambulance service to represent it in an administrative hearing or rehearing before the Arizona Department of Health Services as provided in Title 36, Chapter 21.1, Article 2 of the Arizona Revised Statutes.

~~G.~~ **7.** A person who is not an active member of the state bar may represent a corporation in small claims procedures, so long as such person is a full-time officer or authorized full-time employee of the corporation who is not charging a fee for the representation.

~~H.~~ **8.** In any administrative appeal proceeding of the Department of Health Services, for behavioral health services, pursuant to A.R.S. § 36-3413 (effective July 1, 1995), a party may represent himself or be represented by a duly authorized agent who is not charging a

fee for the representation.

I. 9. An officer or employee of a corporation or unincorporated association who is not an active member of the State Bar may represent the corporation or association before the superior court (including proceedings before the master appointed according to A.R.S. § 45-255) in the general stream adjudication proceedings conducted under Arizona Revised Statutes Title 45, Chapter 1, Article 9, provided that: the corporation or association has specifically authorized such officer or employee to represent it in this adjudication; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation or association; and the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation. Notwithstanding the foregoing provision, the court may require the substitution of counsel whenever it determines that lay representation is interfering with the orderly progress of the litigation or imposing undue burdens on the other litigants. In addition, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

J. 10. An officer or full-time, permanent employee of a corporation who is not an active member of the state bar may represent the corporation before the Arizona department of environmental quality in an administrative proceeding authorized under Arizona Revised Statutes, Title 49, provided that: the corporation has specifically authorized such officer or employee to represent it in the particular administrative hearing; such representation is not the officer's or employee's primary duty to the corporation but secondary or incidental to other duties related to the management or operation of the corporation; the officer or employee is not receiving separate or additional compensation (other than reimbursement for costs) for such representation; and the corporation has been provided with a timely and appropriate written general warning relating to the potential effects of the proceeding on the corporation's and its owners' legal rights.

K. 11. Unless otherwise specifically provided for in this rule, in proceedings before the Office of Administrative Hearings, a legal entity may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

L. 12. In any administrative appeal proceeding relating to the Arizona Health Care Cost Containment System, an individual may appear on his or her own behalf or be represented by a duly authorized agent who is not charging a fee for the representation.

M. 13. In any administrative proceeding before the Arizona Department of Revenue or before the Office of Administrative Hearings relating to the Arizona Department of Revenue, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including the Department, may be represented by a full-time officer, partner, member or

manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

N. 14. If the amount in any single dispute before the State Board of Tax Appeals is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by a certified public accountant or by a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1)

15.Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the rules of professional conduct.

16.Nothing in these rules shall prohibit the supreme court, court of appeals, or superior courts in this state from creating and distributing form documents for use in Arizona courts.

17.Nothing in these rules shall prohibit the preparation of documents incidental to a regular course of business when the documents are for the use of the business and not made available to third parties.

18.Nothing in these rules shall prohibit the preparation of tax returns.

~~16. (b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers:~~

~~1. "Board" means Board of Governors of the State Bar of Arizona.~~

~~2. "Commission" means Disciplinary Commission of the Supreme Court of Arizona.~~

~~3. "Court" means Supreme Court of Arizona.~~

~~4. "Discipline" means those sanctions and limitations on members and the practice of law provided in these rules. Discipline is distinct from disability inactive status, but the term may include that status where the context so requires.~~

~~5. "Discipline proceeding" and "disability proceeding" mean any action involving a respondent pursuant to the rules relating thereto. Further definitions applying to such proceedings are stated in the rule on disciplinary jurisdiction.~~

~~6. "Member" means member of the state bar, the classifications of which shall be as set forth in this rule.~~

~~7. "Respondent" means a member or non member against whom a discipline or disability proceeding has been commenced.~~

~~8. "State bar" means the State Bar of Arizona created by rule of this court.~~

~~9. "Non member" means a person licensed to practice law in a state or possession of the United States or a non lawyer permitted to appear in such capacity, but who is not a member of the state bar.~~

~~(c) Membership.~~

~~1. Classes of Members. Members of the state bar shall be divided into five classes: active, inactive, retired, suspended, and judicial. A disbarred person is not a member.~~

~~2. Active Members. Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, or judicial members.~~

~~3. Admission and Fees. All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar, the applicant shall pay a fee as required by the supreme court, which shall include the annual membership fee for active members of the state bar. If an applicant is admitted to the state bar on or after July 1 in any year, the annual membership fee payable upon admission shall be reduced by one half. Upon admission to the state bar, an applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court. All members shall provide to the state bar office a current street address, telephone number, any other post office address the member may use, and the name and address of the bar of any other jurisdiction to which he may be admitted. Any change of address shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.~~

~~4. Inactive Members; Retired Members. Inactive members shall be those who have, as provided in these rules, been transferred to inactive status. An active member who has retired from or is not engaged in practice in Arizona may be transferred to inactive status upon written request to the executive director. Inactive members shall not practice law in Arizona, or hold office or vote. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Inactive members shall have other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and returned to active status as provided in these rules. Retired members shall be those who have, as provided in these rules, been transferred to retired status. A retired member who is not engaged in practice in Arizona may be transferred to retired status upon written request to the executive director. Retired members shall not practice law in Arizona, or hold State Bar office or vote in State Bar elections. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Retired members shall have other privileges, not inconsistent with these rules, as the Board may provide. If the retired member has not attained the age of 70, a nominal fee, if any, may be set by the Board. Incapacitated members may be transferred to disability inactive status and return to active status as provided in these rules.~~

~~5. Judicial Members. Judicial members shall be justices of the Supreme Court of Arizona, judges of the Court of Appeals and Superior Court of Arizona and of the United States District Court for the District of Arizona. Judicial membership status shall likewise be accorded to members of the state bar who are full-time commissioners, city or municipal court judges, judges pro tempore or justices of the peace in the state of Arizona not engaged in the practice of law, or justices or~~

~~judges of other courts of record of the United States or of the several states. Judicial members shall hold such classification only so long as they hold the offices or occupations entitling them to such membership. Judicial members shall be entitled to vote but shall not be entitled to hold office. Judicial members shall have such privileges, not inconsistent with the rules of this court, as the board provides. A judicial member who retires or resigns from the bench shall become an active member subject to all provisions of these rules.~~

~~6. Membership Fees. An annual membership fee for active members, inactive members and judicial members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. The annual fee shall be waived for members on disability inactive status pursuant to rule 59. Upon application, the Board of Governors may waive the dues of any other member for reasons of personal hardship.~~

~~7. Computation of fee. The annual membership fee shall be composed of an amount for the operation of the activities of the state bar and an amount for the funding of the Clients Security Fund, each of which amounts shall be stated and accounted for separately.~~

~~8. Allocation of fee. Upon payment of the membership fee each member shall receive a certificate issued by direction of the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Clients Security Fund shall be paid into the trust established for the administration of the Clients Security Fund.~~

~~9. Delinquent Fees. A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to rule 52(d), but may be reinstated in accordance with these rules.~~

~~10. Resignation. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed in the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such member shall be known as a "resigned member in good standing."~~

~~A. Such resignation shall not be a bar to institution of subsequent discipline proceedings for any conduct of the resigned member occurring prior to the resignation. In the event such resigned member thereafter is disbarred, suspended or censured, the resigned member's status shall be changed from "resigned member in good standing" to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member.~~

~~B. Resigned members in good standing may be reinstated to membership in the~~

same manner and on the same terms as members suspended for nonpayment of membership fees.

~~C. A member wishing to resign shall apply on a form approved by the board and shall furnish such information as is required upon such form and shall make such allegations, under oath, as are required on such form.~~

~~(d) Powers of Board. The state bar shall be governed by the Board of Governors, which shall have the powers and duties prescribed by this court. The board shall:~~

~~1. Fix and collect, as provided in these rules, fees approved by the supreme court, which shall be paid into the treasury of the state bar.~~

~~2. Promote and aid in the advancement of the science of jurisprudence and improvement of the administration of justice.~~

~~3. Make appropriations and disbursements from funds of the state bar to pay necessary expenses for carrying out its functions.~~

~~4. Formulate and declare rules and regulations not inconsistent with these rules, necessary or expedient to enforce these rules and by rule fix the time and place of annual meetings of the state bar and the manner of calling special meetings thereof, and determine what number shall constitute a quorum of the state bar.~~

~~5. Appoint such committees, officers and employees it deems necessary or proper and prescribe their duties. Compensation of employees shall be as determined by the board.~~

~~6. Appoint from time to time one or more executive committees composed of members of the board and vest in the executive committees any powers and duties granted to the board as the board may determine.~~

~~7. Prepare an annual statement showing receipts and expenditures of the state bar for the twelve preceding months. The statement shall be promptly certified by the treasurer and a certified public accountant, and transmitted to the chief justice of this court.~~

~~8. Maintain the Clients Security Fund authorized by the membership of the state bar April 9, 1960, and established by the Declaration of Trust of January 7, 1961, as amended November 26, 1971, May 31, 1974, and May 6, 1981, and as it may be further amended from time to time.~~

~~9. Have the power to form a non profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes upon a majority vote of the Board of Governors.~~

~~10. Implement and administer mandatory continuing legal education in accordance with rule 45.~~

~~(e) Composition of Board.~~

~~1. For the purposes of these rules the state is divided into eight bar districts, numbered one through eight as follows:~~

~~A. Mohave, Navajo, Coconino and Apache counties shall be district 1.~~

~~B. Yavapai county shall be district 2.~~

~~C. Gila, Graham and Greenlee counties shall be district 3.~~

~~D. Cochise county shall be district 4.~~

~~E. Pima and Santa Cruz counties shall be district 5.~~

~~F. Maricopa county shall be district 6.~~

~~G. La Paz and Yuma counties shall be district 7.~~

H. Pinal county shall be district 8.

~~2. There shall be a Board of Governors of the state bar which shall consist of twenty six (26) members, all authorized to vote. Four (4) members of the Board of Governors shall be designated as "public member." The public members shall not be members of the state bar, and shall not have, other than as consumers, a financial interest in the practice of law. Public members shall be appointed by the Board of Governors. No more than two (2) public members may be from the same district. Public members may be reappointed for one additional term of two years. No individual may serve more than four (4) years as a public member of the Board of Governors. There shall be three (3) at large members on the Board of Governors appointed by the Supreme Court for terms of two years. Nineteen (19) members of the Board of Governors shall be active members in good standing of the state bar designated as "elected members" and elected as follows:~~

~~A. From Bar District 1, one member.~~

~~B. From Bar District 2, one member.~~

~~C. From Bar District 3, one member.~~

~~D. From Bar District 4, one member.~~

~~E. From Bar District 5, three members.~~

~~F. From Bar District 6, nine members.~~

~~G. From Bar District 7, one member.~~

~~H. From Bar District 8, one member.~~

~~I. From the Young Lawyers Section of the state bar, its President.~~

~~3. At each annual meeting held during even numbered years, the Governors shall be elected from Bar Districts 1, 3, 4, 5 and 7 for terms of two years. At each annual meeting held during odd numbered years, the Governors shall be elected from Bar Districts 2, 6 and 8 for terms of two years. Nominations for Governors shall be by petition signed by at least five (5) active members, and each candidate named in a petition and all members signing such petition shall have their principal place of business in the district the candidate is nominated to represent. The election shall be by ballot. The ballots shall be mailed to those entitled to vote at least thirty (30) days prior to the date of canvassing the ballots, shall be returned by mail and shall be canvassed at the ensuing annual meeting. In other respects the election shall be as the Board of Governors by rule directs. Only active and judicial members shall be entitled to vote for the Governor or Governors of the Bar District in which such active and judicial members respectively have their principal place of business.~~

~~4. The President of the Young Lawyers Section shall be elected by a mail ballot to all members of the Section, such ballot announcing to all members of the Section that the President of the Young Lawyers Section will hold a voting position on the Board of Governors. The election of the President of the Young Lawyers Section shall be on a yearly basis and shall be completed within ninety days of the annual meeting.~~

~~5. Elected members of the board of governors shall hold office until their successors are elected and qualified. Should a member of the Board move his or her principal place of business from the district he or she represents, his or her~~

~~seat shall be declared vacant. A vacancy among the elected members of the Board of Governors shall be filled by the remaining members of the Board. A vacancy in a public member position shall be filled by the Board of Governors. A vacancy in an at large member position shall be filled by the Supreme Court.~~

~~(f) Officers of the State Bar.~~

- ~~1. The officers of the state bar shall be a president, a president elect, two vice-presidents, and a secretary/treasurer.~~
- ~~2. The term for the office of president shall expire at the conclusion of the annual meeting, and the president elect whose term expired at the same annual meeting shall automatically become the president and assume the duties of such office.~~
- ~~3. The president elect, vice presidents, and secretary/treasurer shall be elected from its membership by the board at the annual meetings. Such newly elected officers shall assume the duties of their respective offices at the conclusion of the annual meeting at which they are elected.~~
- ~~4. The officers of the state bar shall continue in office until their successors are elected and qualified.~~
- ~~5. An officer may be removed from his office by the vote of ten or more members of the board of governors cast in favor of his removal at a meeting called for such purpose.~~
- ~~6. A vacancy in any office caused other than by expiration of a term may be filled by the board of governors at a meeting called for such purpose.~~
- ~~7. The president shall preside at all meetings of the state bar and the board, and if absent or unable to act, the president elect or one of the vice presidents shall preside. Additional duties of the president, president elect, vice presidents and the secretary/treasurer may be prescribed by the board.~~
- ~~8. No public member shall hold office.~~

~~(g) Annual meeting. Annual meetings of the state bar shall be held at times and places designated by the board. At the annual meeting reports of the proceedings of the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received. Matters of interest pertaining to the state bar and the administration of justice may be considered and acted upon. Special meetings of the state bar may be held at such times and places as provided by the board.~~

~~(h) Administration of rules. Examination and admission of members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Discipline, disability, and reinstatement matters shall be administered by the disciplinary commission, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.~~

~~(i) Filings made. Papers required to be filed with the state bar under these rules shall be filed at the office of the state bar in Phoenix, except as is otherwise set forth in these rules.~~

~~(j) Formal Requirements of Papers Filed. All transcripts of testimony and all copies of recommendations, documents, papers, pleadings, reports and records required or permitted by any provision of these rules relating to admission,~~

~~discipline, disability, and reinstatement may be either typewritten or prepared by any mechanical duplicating process that is clear and legible, and if prepared by duplicating process no original typewritten copy shall be required.~~

~~(k) Payment of Fees and Costs. The payment of all fees, costs, and expenses required under the provisions of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement shall be made to the treasurer of the state bar. The payment of all fees, costs and expenses required under the provisions of these rules relating to application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of the courts.~~

~~(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, except that costs and expenses shall be taxed against a respondent lawyer or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission.~~

ORGANIZATION OF STATE BAR

RULE 32 Organization of State Bar of Arizona.

(a)1. Establishment of state bar. In order to advance the administration of justice according to law; to aid the courts in carrying on the administration of justice; to provide for and regulate the admission of persons seeking to engage in the practice of law; to provide for the regulation and discipline of persons engaged in the practice of law **and unauthorized practice of law**; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service, and high standards of conduct; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence, and law reform; to carry on a continuing program of legal research in technical fields of substantive law, practice and procedure, and to make reports and recommendations thereon; to encourage practices that will advance and improve the honor and dignity of the legal profession; and to the end that the responsibility of the legal profession and the individual members thereof may be more effectively and efficiently discharged in the public interest, and acting within the powers vested in it by the constitution of this state and its inherent power over members of the legal profession as officers of the court, the Supreme Court of Arizona does hereby perpetuate, create and continue under the direction and control of this court an organization known as the State Bar of Arizona, such organization which may be a non-profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes, and all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of Arizona in accordance with the rules of this court. The State Bar of Arizona may sue and be sued, may enter into contracts and acquire, hold, encumber, dispose of and deal in and with real and personal property, and promote and

further the aims as set forth herein and hereinafter in these rules.

2. Precedence of rules. The qualifications of attorneys at law for admission to practice before the courts of this state, the duties, **regulation of individuals and entities engaged in the unauthorized practice of law**, obligations and certain of the grounds for discipline of members, and the method of establishing such grounds, subject to the right of this court to discipline a member when it is satisfied that such member is not mentally or morally qualified to practice law even though none of the specific grounds for discipline set forth in these rules exist, **and grounds for sanctions for engaging in the unauthorized practice of law**, shall be as prescribed in these rules pertaining to admission and discipline of attorneys.

(b) Definitions. Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers:

1. "Board" means Board of Governors of the State Bar of Arizona.

2. "Commission" means Disciplinary Commission of the Supreme Court of Arizona.

3. "Court" means Supreme Court of Arizona.

4. "Discipline" means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from disability inactive status, but the term may include that status where the context so requires.

5. "Discipline proceeding" and "disability proceeding" mean any action involving a respondent pursuant to the rules relating thereto. Further definitions applying to such proceedings are stated in the rule on disciplinary jurisdiction.

6. "Member" means member of the state bar, the classifications of which shall be as set forth in this rule.

7. "Respondent" means ~~a member or non-member against whom a discipline or disability proceeding has been commenced~~ **any person subject to the jurisdiction of the court against whom a charge is received alleging a violation of these rules.**

8. "State bar" means the State Bar of Arizona created by rule of this court.

9. "Non-member" means a person licensed to practice law in a state or possession of the United States or a non-lawyer permitted to appear in such capacity, but who is not a member of the state bar.

(c) Membership.

1. Classes of Members. Members of the state bar shall be divided into five classes: active, inactive, retired, suspended, and judicial. A disbarred person is not a member.

2. Active Members. Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, or judicial members.

3. Admission and Fees. All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar, the applicant shall pay a fee as required by the supreme court, which shall include the annual membership fee for active members of the state bar. If an applicant is admitted to the state bar on or after July 1 in any year, the annual membership fee payable upon admission shall be reduced by one half. Upon admission to the state bar, an applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court. All members shall provide to the state bar office a current

street address, telephone number, any other post office address the member may use, and the name and address of the bar of any other jurisdiction to which he may be admitted. Any change of address shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

4. Inactive Members; Retired Members. Inactive members shall be those who have, as provided in these rules, been transferred to inactive status. An active member who has retired from or is not engaged in practice in Arizona may be transferred to inactive status upon written request to the executive director. Inactive members shall not practice law in Arizona, or hold office or vote. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Inactive members shall have other privileges, not inconsistent with these rules, as the Board may provide. Incapacitated members may be transferred to disability inactive status and returned to active status as provided in these rules. Retired members shall be those who have, as provided in these rules, been transferred to retired status. A retired member who is not engaged in practice in Arizona may be transferred to retired status upon written request to the executive director. Retired members shall not practice law in Arizona, or hold State Bar office or vote in State Bar elections. On application and payment of the membership fee and any delinquent fees that may be due under Rule 45(d), they may become active members. Retired members shall have other privileges, not inconsistent with these rules, as the Board may provide. If the retired member has not attained the age of 70, a nominal fee, if any, may be set by the Board. Incapacitated members may be transferred to disability inactive status and return to active status as provided in these rules.

5. Judicial Members. Judicial members shall be justices of the Supreme Court of Arizona, judges of the Court of Appeals and Superior Court of Arizona and of the United States District Court for the District of Arizona. Judicial membership status shall likewise be accorded to members of the state bar who are full-time commissioners, city or municipal court judges, judges pro tempore or justices of the peace in the state of Arizona not engaged in the practice of law, or justices or judges of other courts of record of the United States or of the several states. Judicial members shall hold such classification only so long as they hold the offices or occupations entitling them to such membership. Judicial members shall be entitled to vote but shall not be entitled to hold office. Judicial members shall have such privileges, not inconsistent with the rules of this court, as the board provides. A judicial member who retires or resigns from the bench shall become an active member subject to all provisions of these rules.

6. Membership Fees. An annual membership fee for active members, inactive members and judicial members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. The annual fee shall be waived for members on disability inactive status pursuant to rule 59. Upon application, the Board of Governors may waive the dues of any other member for reasons of personal hardship.

7. Computation of fee. The annual membership fee shall be composed of an amount for the operation of the activities of the state bar and an amount for the funding of the Clients Security Fund, each of which amounts shall be stated and accounted for separately.

8. Allocation of fee. Upon payment of the membership fee each member shall receive a

certificate issued by direction of the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Clients Security Fund shall be paid into the trust established for the administration of the Clients Security Fund.

9. Delinquent Fees. A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members and judicial members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to rule 52(d), but may be reinstated in accordance with these rules.

10. Resignation. Members in good standing who wish to resign from membership in the state bar may do so, and such resignation shall become effective when filed in the office of the state bar, accepted by the board, and approved by this court. After the resignation is approved by this court, such member shall be known as a "resigned member in good standing."

A. Such resignation shall not be a bar to institution of subsequent discipline proceedings for any conduct of the resigned member occurring prior to the resignation. In the event such resigned member thereafter is disbarred, suspended or censured, the resigned member's status shall be changed from "resigned member in good standing" to that of a person so disciplined. Such resignation shall not be accepted if there is a disciplinary charge or complaint pending against the member.

B. Resigned members in good standing may be reinstated to membership in the same manner and on the same terms as members suspended for nonpayment of membership fees.

C. A member wishing to resign shall apply on a form approved by the board and shall furnish such information as is required upon such form and shall make such allegations, under oath, as are required on such form.

(d) Powers of Board. The state bar shall be governed by the Board of Governors, which shall have the powers and duties prescribed by this court. The board shall:

1. Fix and collect, as provided in these rules, fees approved by the supreme court, which shall be paid into the treasury of the state bar.

2. Promote and aid in the advancement of the science of jurisprudence and improvement of the administration of justice.

3. Make appropriations and disbursements from funds of the state bar to pay necessary expenses for carrying out its functions.

4. Formulate and declare rules and regulations not inconsistent with these rules, necessary or expedient to enforce these rules and by rule fix the time and place of annual meetings of the state bar and the manner of calling special meetings thereof, and determine what number shall constitute a quorum of the state bar.

5. Appoint such committees, officers and employees it deems necessary or proper and prescribe their duties. Compensation of employees shall be as determined by the board.

6. Appoint from time to time one or more executive committees composed of members of the board and vest in the executive committees any powers and duties granted to the

board as the board may determine.

7. Prepare an annual statement showing receipts and expenditures of the state bar for the twelve preceding months. The statement shall be promptly certified by the treasurer and a certified public accountant, and transmitted to the chief justice of this court.

8. Maintain the Clients Security Fund authorized by the membership of the state bar April 9, 1960, and established by the Declaration of Trust of January 7, 1961, as amended November 26, 1971, May 31, 1974, and May 6, 1981, and as it may be further amended from time to time.

9. Have the power to form a non-profit corporation under Chapter 5 of Title 10 of the Arizona Revised Statutes upon a majority vote of the Board of Governors.

10. Implement and administer mandatory continuing legal education in accordance with rule 45.

(e) Composition of Board.

1. For the purposes of these rules the state is divided into eight bar districts, numbered one through eight as follows:

A. Mohave, Navajo, Coconino and Apache counties shall be district 1.

B. Yavapai county shall be district 2.

C. Gila, Graham and Greenlee counties shall be district 3.

D. Cochise county shall be district 4.

E. Pima and Santa Cruz counties shall be district 5.

F. Maricopa county shall be district 6.

G. La Paz and Yuma counties shall be district 7.

H. Pinal county shall be district 8.

2. There shall be a Board of Governors of the state bar which shall consist of twenty-six (26) members, all authorized to vote. Four (4) members of the Board of Governors shall be designated as "public member." The public members shall not be members of the state bar, and shall not have, other than as consumers, a financial interest in the practice of law. Public members shall be appointed by the Board of Governors. No more than two (2) public members may be from the same district. Public members may be reappointed for one additional term of two years. No individual may serve more than four (4) years as a public member of the Board of Governors. There shall be three (3) at-large members on the Board of Governors appointed by the Supreme Court for terms of two years. Nineteen (19) members of the Board of Governors shall be active members in good standing of the state bar designated as "elected members" and elected as follows:

A. From Bar District 1, one member.

B. From Bar District 2, one member.

C. From Bar District 3, one member.

D. From Bar District 4, one member.

E. From Bar District 5, three members.

F. From Bar District 6, nine members.

G. From Bar District 7, one member.

H. From Bar District 8, one member.

I. From the Young Lawyers Section of the state bar, its President.

3. At each annual meeting held during even-numbered years, the Governors shall be elected from Bar Districts 1, 3, 4, 5 and 7 for terms of two years. At each annual meeting

held during odd-numbered years, the Governors shall be elected from Bar Districts 2, 6 and 8 for terms of two years. Nominations for Governors shall be by petition signed by at least five (5) active members, and each candidate named in a petition and all members signing such petition shall have their principal place of business in the district the candidate is nominated to represent. The election shall be by ballot. The ballots shall be mailed to those entitled to vote at least thirty (30) days prior to the date of canvassing the ballots, shall be returned by mail and shall be canvassed at the ensuing annual meeting. In other respects the election shall be as the Board of Governors by rule directs. Only active and judicial members shall be entitled to vote for the Governor or Governors of the Bar District in which such active and judicial members respectively have their principal place of business.

4. The President of the Young Lawyers Section shall be elected by a mail ballot to all members of the Section, such ballot announcing to all members of the Section that the President of the Young Lawyers Section will hold a voting position on the Board of Governors. The election of the President of the Young Lawyers Section shall be on a yearly basis and shall be completed within ninety days of the annual meeting.

5. Elected members of the board of governors shall hold office until their successors are elected and qualified. Should a member of the Board move his or her principal place of business from the district he or she represents, his or her seat shall be declared vacant. A vacancy among the elected members of the Board of Governors shall be filled by the remaining members of the Board. A vacancy in a public member position shall be filled by the Board of Governors. A vacancy in an at-large member position shall be filled by the Supreme Court.

(f) Officers of the State Bar.

1. The officers of the state bar shall be a president, a president-elect, two vice-presidents, and a secretary/treasurer.

2. The term for the office of president shall expire at the conclusion of the annual meeting, and the president-elect whose term expired at the same annual meeting shall automatically become the president and assume the duties of such office.

3. The president-elect, vice-presidents, and secretary/treasurer shall be elected from its membership by the board at the annual meetings. Such newly elected officers shall assume the duties of their respective offices at the conclusion of the annual meeting at which they are elected.

4. The officers of the state bar shall continue in office until their successors are elected and qualified.

5. An officer may be removed from his office by the vote of ten or more members of the board of governors cast in favor of his removal at a meeting called for such purpose.

6. A vacancy in any office caused other than by expiration of a term may be filled by the board of governors at a meeting called for such purpose.

7. The president shall preside at all meetings of the state bar and the board, and if absent or unable to act, the president-elect or one of the vice-presidents shall preside. Additional duties of the president, president-elect, vice-presidents and the secretary/treasurer may be prescribed by the board.

8. No public member shall hold office.

(g) Annual meeting. Annual meetings of the state bar shall be held at times and places

designated by the board. At the annual meeting reports of the proceedings of the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received. Matters of interest pertaining to the state bar and the administration of justice may be considered and acted upon. Special meetings of the state bar may be held at such times and places as provided by the board.

(h) Administration of rules. Examination and admission of members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Discipline, disability, and reinstatement matters shall be administered by the disciplinary commission, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

(i) Filings made. Papers required to be filed with the state bar under these rules shall be filed at the office of the state bar in Phoenix, except as is otherwise set forth in these rules.

(j) Formal Requirements of Papers Filed. All transcripts of testimony and all copies of recommendations, documents, papers, pleadings, reports and records required or permitted by any provision of these rules relating to admission, discipline, **unauthorized practice of law**, disability, and reinstatement may be either typewritten or prepared by any mechanical duplicating process that is clear and legible, and if prepared by duplicating process no original typewritten copy shall be required.

(k) Payment of Fees and Costs. The payment of all fees, costs, and expenses required under the provisions of these rules relating to membership, mandatory continuing legal education, discipline, **unauthorized practice of law**, disability, and reinstatement shall be made to the treasurer of the state bar. The payment of all fees, costs and expenses required under the provisions of these rules relating to application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of the courts.

(l) Expenses of Administration and Enforcement. The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, **unauthorized practice of law**, disability, and reinstatement of lawyers, except that costs and expenses shall be taxed against a respondent ~~lawyer~~ or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission.

RULES OF THE SUPREME COURT OF ARIZONA
VI. UNAUTHORIZED PRACTICE OF LAW

Rule 76. Jurisdiction, Venue and Definitions:

- (a) Jurisdiction. A person or entity engaged in the Unauthorized Practice of Law in the state of Arizona as defined in Rule 31, Ariz. Sup. Ct. R., is subject to the jurisdiction of this court in accordance with these rules.
- (b) Venue. Venue shall be in the county in which respondent resides or maintains an office or in Maricopa County, provided the principles of forum non-conveniens shall apply.
- (c) Powers not assumed. These rules shall not be construed to deny to any court the powers necessary to maintain control over its proceedings.
- (d) Definitions. The following definitions shall apply in all Unauthorized Practice of Law proceedings.
1. All definitions in Rule 31 and 32, Ariz. Sup. Ct. R.
 2. "Bar counsel" means staff counsel employed by the State Bar appointed to represent the State Bar in Unauthorized Practice of Law proceedings. "Chief Bar counsel" means that person employed by the State Bar to administer the discipline and disability system and the Unauthorized Practice of Law regulatory system under the direction of the Executive Director.
 3. "Board" means Board of Governors of the State Bar of Arizona.
 4. "Charge" means any allegation of misconduct or incident of Unauthorized Practice of Law brought to the attention of the State Bar.
 5. "Clerk" means an individual designated by the Court to be the custodian of the record in all Unauthorized Practice of Law proceedings who shall maintain the records according to the common practice of clerks of court.
 6. "Commission" means an Unauthorized Practice of Law Hearing Commission comprised of two members of the State Bar of Arizona and two non-lawyers appointed and serving pursuant to these rules. "Commissioner" means a member of the Unauthorized Practice of Law Hearing Commission.
 7. "Complainant" means a person who initially makes a charge or later joins in a charge to the State Bar regarding the Unauthorized Practice of Law, and his or her status shall be as provided in the rules of construction. The State Bar or any Bar counsel may be a Complainant.
 8. "Complaint" means a formal complaint prepared and filed with the Clerk pursuant to these rules.
 9. "Court" means Arizona Supreme Court unless otherwise specified.
 10. "Expenses" means all obligations in money, other than costs, necessarily incurred by the State Bar and the Clerk's office in the complete performance of their duties under these rules. Expenses shall include, by way of illustration and not limitation, administrative expenses, necessary expenses of Hearing Commissions, Bar counsel or staff, charges of expert witnesses, charges of court reporters and all other direct, provable expenses.
 11. "Filing" or "File" means delivery of the original document, exhibit or thing to the Clerk for inclusion in the record, or delivery of the original document, exhibit or thing

to the State Bar for inclusion in the State Bar File, as provided for in these rules. All papers filed shall comply with the requirements of Rule 31(j).

12. "Order" means an order signed by the chairperson of a Hearing Commission.

13. "Notice of Appeal" means the Notice of Appeal from the Order of a Hearing Commission to the superior court.

14. "Panel" means a Probable Cause Panel comprised of two members of the State Bar of Arizona and two non-lawyers appointed and serving pursuant to these rules.

15. "Record" means the complaint and other documents that commence formal Unauthorized Practice of Law proceedings, and every later-filed document, exhibit or thing, but shall not include work product of Bar counsel. Tape recordings shall not be submitted to the court as part of the record unless the court directs otherwise in a specific case.

16. "Respondent" is any person subject to the jurisdiction of the court against whom a charge is received for violation of these rules.

17. "State Bar file " means the original of every document, recording and transcript of testimony, exhibit or thing created or received by the State Bar in relation to an unauthorized practice of law proceeding, but shall not include work product of Bar counsel and working files of State Bar staff.

Rule 77. Hearing Commissions, Probable Cause Panel, and Bar Counsel

(a) Unauthorized Practice of Law Hearing Commissions

1. Appointment of Unauthorized Practice of Law Hearing Commissions. The Court may appoint Hearing Commissions as necessary. Each Commission shall consist of two active members and two non-lawyer members. Any appointment may be terminated, at any time, by the Board. A lawyer member of each Commission shall be appointed chair by the Board. If a vacancy occurs in the membership of any Commission, the vacancy shall be filled in the manner provided for the original appointment.

2. Terms of Office. The terms of office for Hearing Commissions shall be three years. No person shall serve for more than two consecutive full three-year terms, except that a person may be reappointed after the expiration of one year following such terms. A person whose term has expired may continue to serve until the conclusion of any proceeding commenced prior to the expiration of the term, and decision thereon, and until a successor is appointed.

3. Transfer of Matter

A. Transfer for Cause. If good cause exists for the removal of a matter from one commission to another commission, or for replacement of a commission member(s), the Board may order such removal or replacement.

(1) Grounds. Grounds for proceedings based upon cause are stated in A.R.S. § 12-409 and proceedings under that statute shall be governed by this rule.

(2) Filing and Service. An affidavit shall be filed with the Clerk and copies served on the parties, the presiding officer of the Board in accordance with Rule 5, Arizona Rules of Civil Procedure.

(3) Timeliness and Waiver. An affidavit shall be timely if filed and served within twenty days after discovery that grounds exist for change of commissioner. No event occurring before such discovery shall constitute waiver of rights to change of commissioner based

on cause.

(D) Hearing and Assignment. If a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409, the presiding officer of the Board or that officer's designee shall forthwith conduct or provide for a hearing to determine the issues connected with the affidavit. The officer or designee conducting the hearing shall decide the issues by the preponderance of the evidence. Under § 12-409(B)(5) the sufficiency of any "cause to believe" shall be determined by an objective standard, not by reference to affiant's subjective belief. Following the hearing, the presiding officer or that officer's designee shall expeditiously reassign the action to the original commissioner or file a request with the Clerk to make a new assignment, depending on the findings of the officer or designee hearing the evidence.

B. New assignment of commissioner. Upon the filing of the request to make a new assignment, the Clerk shall transfer the matter from the Hearing Commissioner to another Hearing Commissioner as if making an initial assignment.

4. Powers and Duties. Unauthorized Practice of Law Hearing Commissions shall have the following powers and duties:

A. Commissions shall have state-wide jurisdiction over proceedings on complaints of unauthorized practice of law, upon assignment by the Clerk.

B. Prepare findings of fact, conclusions of law, and issue orders consistent with these rules and, in appropriate cases, prepare and forward to the superior court findings, conclusions and recommendations, together with the record on appeal.

C. Impose sanctions as provided in these rules. Orders of a Commission shall be signed by chairperson of that Commission.

D. Commissions shall file with the Clerk the originals of all documents, exhibits and things received or created that are part of the record on appeal.

E. Notices and Orders shall be signed by the chairperson of the Commission upon approval of the Commission members, who shall have authority to make and enter all procedural orders.

F. Issuance of Subpoenas. Commissions may issue subpoenas as set forth in Rule 80(2)(e).

(b Probable Cause Panel)

1. Appointment. An Unauthorized Practice of Law Probable Cause Panel shall be appointed as follows:

A. Probable Cause Panel. The Board may appoint one probable cause panel which shall consist of two active members of the Bar and two non-lawyer members. Any appointment may be terminated, at any time, by the Board. A lawyer member of the panel shall be appointed chair by the Board. If a vacancy occurs in the membership of any Commission, the vacancy shall be filled in the manner provided for the original appointment.

2. Terms of Office. The terms of office for Probable Cause Panelists shall be three years. No person shall serve for more than two consecutive full three year terms, except that a person may be reappointed after the expiration of one year following such terms. A person whose term has expired may continue to serve until the conclusion of any proceeding commenced prior to the expiration of the term, and decision thereon, and until a successor is appointed.

3. Powers and Duties. The Unauthorized Practice of Law Probable Cause Panel shall have the following powers and duties:

A. The Probable Cause Panel shall have state-wide jurisdiction over matters as assigned by the Clerk.

B. Review Bar counsel's notices of dismissal. The Panel may approve the dismissal or disapprove the dismissal and find probable cause for proceeding before the Hearing Commission.

(c) Bar Counsel

Acting under the authority of the Board, and under the direction and by appointment of the Executive Director, Bar counsel shall have the following powers and duties:

1. Investigate all information coming to the attention of the State Bar which, if true, would be grounds for sanctions for engaging in unauthorized practice of law.

2. Request one or more staff examiners to aid them or volunteer Bar counsel in conducting investigations. Staff examiners shall work under the supervision of staff Bar counsel. Staff examiners may be, but need not be, members of the State Bar and may be selected from the regular employees of the State Bar.

3. Recommend dispositions prior to formal proceedings.

4. In appropriate cases, dismiss proceedings as provided in Rule 79 (b)4.

5. Represent the State Bar in and prosecute Unauthorized Practice of Law proceedings before Hearing Commissions, superior courts, and this Court.

6. Promptly notify the Complainant and Respondent of the disposition of each matter.

Rule 78. Grounds for Sanctions, Sanctions, Notice and Order

(a) Grounds for Sanctions. Grounds for sanctions shall be misconduct occurring as follows:

1. Any act found to constitute the Unauthorized Practice of Law pursuant to Rule 31.

2. Willful disobedience or violation of a rule or order of a Hearing Commission or court requiring the individual to do or forbear to do an act connected with the Unauthorized Practice of Law.

3. Failure to furnish information to or respond promptly to any inquiry or request from Bar counsel, a Hearing Commission, superior court or this Court, made pursuant to these rules for information relevant to complaints or matters under investigation concerning conduct of a Respondent, or failure to assert the ground for refusing to do so. Upon such inquiry or request, every Respondent:

A. Shall furnish in writing, or orally if requested, a full and complete response to inquiries and questions;

B. Shall permit inspection and copying of his or her business records, files and accounts;

C. Shall furnish copies of requested records, files and accounts;

D. Shall furnish written releases or authorizations where needed to obtain access to documents or information in the possession of third parties; and

E. Shall comply with discovery conducted pursuant to these rules.

4. Evading service or any other refusal to cooperate with officials and staff of the State Bar, Hearing Commissions acting in the course of their duties.

5. Violating any injunction imposed during an Unauthorized Practice of Law proceeding.

(b) Sanctions.

1. Assurance of Discontinuance. Respondent and Bar counsel may enter into an

Assurance of Discontinuance prior to formal proceeding that states Respondent agrees to cease and desist from engaging in acts found to be Unauthorized Practice of Law, to refund fees collected, to pay costs and expenses, and to make any other restitution.

2. Cease and Desist Order. A Hearing Commission or superior court may enter an Order for a Respondent to immediately cease and desist from engaging in the Unauthorized Practice of Law and order a Respondent immediately to cease and desist such conduct.

3. Injunction. A superior court, at any stage, may enjoin a Respondent from engaging in the unauthorized practice of law and order a respondent immediately to cease and desist such conduct.

4. Civil Contempt. A superior court may issue a civil contempt citation and determine if the Respondent is guilty of contempt and shall, by Order, prescribe the sanction, including assessment of costs, expenses and reasonable attorney fees.

5. Restitution. An injunction or order to cease and desist may be issued without proof of actual damages to any person. In the event of actual damages, restitution may be ordered to any individual of monies, properties or other items of value received and retained by a Respondent.

6. Costs and expenses. Costs, expenses, and attorney's fees of proceedings shall be assessed against every Respondent upon whom another sanction is imposed. Assessment shall be included in the order or judgment.

7. Judgments. Any order for costs, expenses, attorney's fees or restitution shall become a judgment of the court in thirty days and shall be enforceable like any other judgment.

8. Enforcement. Execution and other post-judgment remedies may issue out of a proceeding before the superior court as in civil cases for the enforcement of any judgment entered under these rules. Such matters shall be docketed in the superior court without filing fee as though the Complaint had originally been filed in that court.

(c) Notice of Sanction.

1. Effective Date. Orders of the Hearing Commission or judgments of any superior court imposing cease and desist sanctions shall be effective thirty days after entry, unless the Hearing Commission or superior court specifies another date.

2. Respondents, after entry of such an Order or judgment shall:

A. notify existing customers, opposing counsel or opposing parties, if not represented by counsel, of such sanctions;

B. return to all customers in pending matters any documents or other property to which they are entitled, including their files; and

C. cease use of any reference to titles or descriptions prohibited in the Order or judgment on all advertising, business cards, and letterhead.

Rule 79. General Procedure in Unauthorized Practice of Law Matters

(a) Generally. An Unauthorized Practice of Law proceeding commences upon receipt by the State Bar of a Charge against a Respondent. An Unauthorized Practice of Law proceeding, and a Complaint if one is filed, shall be disposed of by:

1. Dismissal or

2. Imposition of one or more sanctions as provided in these rules.

(b) Initial Proceedings. Upon the commencement of an Unauthorized Practice of Law proceeding against a Respondent, the matter shall proceed as provided in this section:

1. Screening. Bar counsel shall evaluate all information coming to its attention by charge or otherwise alleging the Respondent engaged in Unauthorized Practice of Law. If the allegations, if true, would not constitute unauthorized practice of law, under these rules, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law, Bar counsel shall conduct a screening investigation.

2. Investigation and Recommendation. All investigations shall be conducted by Bar counsel, voluntary Bar counsel or staff investigators. Bar counsel may request information through an investigative subpoena pursuant to Rule 80(2)(e). Following a screening investigation, Bar counsel may recommend dismissal or one or more of the following: (1) injunctive relief, (2) assessment of costs and expenses, (3) restitution, (4) stipulated agreement to discontinue engaging in unauthorized practice of law, or (5) the filing of a Complaint. No disposition adverse to the Respondent shall be recommended by Bar counsel until the Respondent shall have been afforded an opportunity to respond in writing to the Charge. Respondent shall have twenty days from mailing of the request for information to respond.

3. Informal request for information. When a Respondent has failed to comply with any request for information made pursuant to these rules for more than thirty days, Bar counsel may notify Respondent that failure to so comply within ten days may necessitate the taking of the deposition of the Respondent pursuant to subpoena.

4. Dismissal by Bar Counsel. After conducting a screening investigation, Bar counsel may dismiss an Unauthorized Practice of Law proceeding if there is no probable cause to determine that unauthorized practice of law occurred. Within twenty (20) days after notice of dismissal is mailed, the Complainant shall have the right to proceed with a private action before the Probable Cause Panel or the superior court for the county in which the respondent does business or resides. Bar counsel shall provide Complainants with a right-to-sue letter upon dismissal of the charge.

5. Probable Cause Review. Within 20 days after notice of dismissal is mailed, the Complainant may file a request for probable cause review with the Clerk. Such requests for review of Bar counsel's recommended disposition of dismissal shall be referred to the Panel for decision. The Panel may approve the dismissal or find probable cause for proceeding before the Hearing Commission. If the Panel finds probable cause for proceeding, Bar counsel shall initiate formal proceedings.

6. Assurance of Discontinuance. If Bar counsel or the probable cause panel finds probable cause and does not recommend the dismissal of the Unauthorized Practice of Law proceeding, Bar counsel may offer the Respondent an opportunity to enter into a written assurance of discontinuance that states respondent agrees to refrain from the

conduct in question, to refund fees collected, and to make any other restitution. Such assurance of discontinuance agreements, when executed by Bar counsel and Respondent shall be filed with the Clerk and shall become an Order of the Hearing Commission and judgment of the superior court enforceable like any other judgment.

(c) Formal Proceedings. Formal Unauthorized Practice of Law proceedings shall be instituted by the Bar counsel filing a Complaint or agreement by consent with the Clerk of the Supreme Court and serving a copy upon the Respondent. The Complaint shall be sufficiently clear and specific to inform a Respondent of the alleged misconduct. Upon receipt of the Complaint, the Clerk shall assign the matter to a Hearing Commission.

1. Complaint and Summons. When the Complaint is filed, the Clerk shall endorse thereon the day and hour on which it was filed and the number of the action, and shall forthwith issue a summons. The party filing the pleading may present a summons to the Clerk for signature and seal. If in proper form, the Clerk shall sign and seal the summons and issue it to the party for service or for delivery to a person authorized by Rule 4(d) of Ariz. R. Civ. P. to serve it. A summons, or a copy of the summons if addressed to multiple persons, shall be issued for each person to be served. The summons shall be signed by the Clerk, contain the name of the Hearing Commission and the names of the parties, be directed to the person to be served, state the name and address of the attorney, if any, for the party on whose behalf service is being made, and otherwise that party's address. The summons shall state the time within which these rules require the person being served to appear and defend, shall notify that person that in case of a failure to do so judgment by default will be rendered against that person for the relief demanded in the pleading served, and shall notify that person that if judgment is entered against that person and that person fails to obey that judgment, a contempt proceeding may issue. A summons, or a copy of the summons in the case of multiple persons to be served, shall be served together with a copy of the complaint to be served. If a summons is returned without being served, or if it has been lost, the Clerk may upon request issue a replacement summons in the same form as the original. A replacement summons shall be issued and served within the time prescribed by Rule 4(i) of Ariz. R. Civ. P. for service of the original summons. The summons shall state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least three (3) working days in advance of a scheduled court proceeding."

2. Answer, Discovery, and Motions. Respondent shall file an answer with the Clerk and serve copies upon Bar counsel and Hearing Commission within twenty days after service of the Complaint, unless the time is extended by the Hearing Commission or by stipulation of the parties. Procedural or substantive motions may be filed and shall comply with the requirements of Rules 7(b), 12(b) and 56 of Ariz. R. Civ. P. Discovery shall be in conformance with Rules 26 through 37, Ariz. R. Civ. P.

3. Default Procedure. If no timely answer is filed, Bar counsel may file with the Clerk an application for entry of default, serving a copy on the Respondent. A default shall not be entered if the Respondent files an answer prior to the expiration of ten (10) days from the filing of the application for entry of default. Otherwise, a default shall be entered by the Clerk ten (10) days after the application is filed.

4. Prehearing Conference. At the discretion of the Hearing Commission, or upon request of either party, a conference may be ordered for the purpose of obtaining admissions or

otherwise narrowing the issues presented by the pleadings. The conference shall be held before the Hearing Commission or a person designated by the Board.

5. Cease and Desist by Consent. If the Respondent agrees to cease and desist from such conduct, and returns any monies and/or property obtained therefrom to any individuals, the matter shall be closed by agreement. Such agreement shall be in writing, submitted to the Hearing Commission, shall constitute an admission of violation of these rules, and shall become an Order of the Hearing Commission. A violation of such agreement shall prima facie establish that the Respondent knows that he or she has in the past violated or is violating these rules.

6. Summary Judgment. If there is no issue of material fact, the Hearing Commission may, upon motion of Bar counsel, Respondent or sua sponte grant summary judgment. Summary judgment procedures shall be in conformance with Rule 56 of Ariz. R. Civ. P.

7. Hearing. If there are any material issues of fact raised by the pleadings, or if, following the entry of default, the State Bar or Respondent requests the opportunity to be heard within ten (10) days after the entry of default, the Hearing Commission shall serve upon the State Bar and Respondent a notice of hearing stating the date and place of hearing at least twenty-five (25) days in advance thereof. The notice of hearing shall advise the Respondent that he or she is entitled to be represented by a lawyer, to cross-examine witnesses and to present evidence in his/her own behalf. Such witnesses and evidence, in addition to the Respondent's own testimony, shall be admitted at the discretion of the Hearing Commission. The hearing date may be continued by the Hearing Commission upon its own motion or by stipulation, but in no event longer than sixty (60) days from the original hearing date without approval by the Board.

8. Order. The Hearing Commission shall prepare and file with the Clerk a written order containing findings of fact, conclusions of law and sanctions within sixty (60) days after the conclusion of the hearing, and shall serve a copy of the order on Respondent and on Bar counsel. The Order of the Hearing Commission is final, if no Motion to Reconsider or Notice of Appeal is timely filed.

9. Motions for Reconsideration. A party seeking reconsideration of a ruling of the Hearing Commission may file a motion for reconsideration. All motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply, unless the Commission otherwise directs. No motion for reconsideration shall be granted, however, without the Commission providing an opportunity for response, a motion authorized by this rule may not be employed as a substitute for a motion pursuant to Rule 50(b), 52(b), 59 or 60, Ariz. R. Civ. P., and shall not operate to extend the time within which a Notice of Appeal must be filed.

10. Time to Appeal. Respondent and the State Bar shall have fifteen (15) days after issuance of the Hearing Commission Order to file a Notice of Appeal with superior court. Failure of Respondent to do so shall constitute consent to the sanctions ordered by the Hearing Commission.

11. Preparation of Transcript. When a Notice of Appeal is timely filed, the Clerk shall cause a hearing transcript of the hearings to be prepared and filed, and shall serve a copy on Respondent and Bar counsel, together with copies of all documents and exhibits filed from the hearing.

(d) Review by the superior court.

1. Scope of Rules.

(a) These rules shall govern the procedure in all appeals from Unauthorized Practice of Law Hearing Commission decisions taken to the superior court pursuant to these rules.

(b) Except to the extent inconsistent with these rules, the Arizona Rules of Civil Procedure, the Uniform Rules of Practice of the Superior Court of Arizona, and the Local Rules of Practice for the superior court in the county in which a Hearing Commission appeal is filed shall apply

(c) Unless otherwise ordered by the court, the following Rules of Civil Procedure shall not apply to appeals from an order of a Hearing Commission: Rules 16, 16.1,26-40, Ariz. R. Civ. P.

2. Time Enlargement. Upon motion for good cause shown or upon stipulation, the superior court may extend any period of time, including the time for filing an answer or the record on review, but it may not extend the time for the filing of a Complaint.

3. Stay of a Hearing Commission Decision

(a) Stay Upon Appeal. A motion for stay of a Hearing Commission decision shall not be granted without good cause and without reasonable notice to all parties.

(b) Bond on Appeal. A stay of a Hearing Commission decision may be conditioned upon the filing of a bond in superior court by the moving party or upon such other conditions as the court directs. A stay, if granted, shall be effective upon compliance with all conditions imposed by the Court.

(c) Judgment Against Surety. By entering into a bond given pursuant to this rule, the surety submits itself to the jurisdiction of the trial court to the same extent and under the same conditions as set forth in Rule 65.1, Ariz. R. Civ. P.

4. Unauthorized Practice of Law Hearing Commission Appeal; When and How Taken. Plaintiff's Complaint shall be filed within the time required by these rules be captioned "Complaint for Judicial Review of Unauthorized Practice of Law Hearing Commission Decision." The Complaint shall conform to the following requirements and any other applicable law:

5. Record on Review

(a) Composition of Record on Review and Transmission of Record on Review. In filing the record on review, the appellant shall file with the record a document entitled "Certification of Record on Review" signed by the appellant or other person authorized by law. This certification shall include an index of all materials contained in the record on review and shall include certification that the materials included in the record on review are originals or accurate copies. The record on review shall also include a transcript of the administrative hearing, or specified portion thereof, when designated as part of the record.

(b) Copies to Parties. The Clerk shall serve on all parties a copy of the "Certification of Record on Review" filed with the court.

6. Appellate Briefs; When Filed

(a) Time for Filing Appellate Briefs. The opening brief of appellant shall be filed within forty-five days after service of the Certification of Record on Review. The brief of defendant shall be filed within forty-five days after service of plaintiff's brief. Within twenty days after service of appellee's brief, appellant may file a reply brief.

(b) Consequences of Failure to Timely File Appellate Brief. If appellant does not timely file an opening brief, the court, upon notice, may dismiss the complaint. If appellee does not timely file a responsive brief, the appeal may be deemed submitted for a decision upon appellant's opening brief.

7. Appellate Briefs; Contents

The parties shall file appellate briefs in the following format:

(a) Appellant's Opening Brief. The opening brief of appellant shall concisely and clearly set forth:

1. A short statement of the case, indicating briefly the nature of the case, the course of the proceedings and the decision of the Hearing Commission as to which judicial review is requested.

2. A concise statement of the facts relevant to the issues presented for review, with appropriate references to the record. This statement shall not contain evidentiary matter unless material to a proper consideration of the issues presented, in which instance a reference shall be made to that portion of the record on review where such evidence appears.

3. A statement of the issues presented for review.

4. An argument, which shall contain the contentions of appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record on review relied upon. The argument may include a summary.

5. A short conclusion stating the precise relief sought.

6. An appendix if desired.

(b) Appellee's Answering Brief. The answering brief of appellee shall conform to the requirements of subparagraph (a), except that a statement of the case, a statement of the facts or a statement of the issues need not be included unless appellee finds the statements of appellant to be insufficient or incorrect.

(c) Appellants Reply Brief. Appellant may file a reply brief. The reply shall be confined strictly to rebuttal of points urged in the appellee's brief.

8. Appellate Briefs; Length

Appellant's opening brief and appellee's answering brief each shall not exceed thirty-five typewritten pages, exclusive of pages containing any table of contents, table of authorities, or appendix. Except by permission of the court, appellant's reply brief shall not exceed fifteen typewritten pages.

9. Oral Argument. A party may request oral argument by stating on the first page of the party's brief immediately below the title of the brief "(Oral Argument Requested)", or by filing, no later than 10 days after the time for filing the reply brief, a separate instrument requesting oral argument. The court may limit the time for oral argument or the court may make provision by order for the submission and determination of the appeal without oral argument.

10. Admission of New or Additional Evidence. Evidence not presented to the Hearing Commission shall not be presented to the superior court on appeal. Neither party may request a trial de novo.

11. Waiver of Formal Requirements. Upon a showing of exceptional circumstances or lack of training in the law of a party not represented by counsel, the Court may extend the time set forth in Rule 5 of these rules for filing of briefs, and may accept a brief or

pleading which does not conform to the formal requirements of these rules but which is otherwise legible and understandable, and the court may modify the procedural requirements of these rules in order to insure that a fair and just determination of the administrative appeal on its merits can be made.

12. Motions for Reconsiderations. Any party desiring reconsideration of a decision or order of the superior court which finally disposes of the Unauthorized Practice of Law Hearing Commission appeal, except for an order denying a motion for reconsideration, may file a motion for reconsideration pursuant to Rule 7.1(e), Ariz. R.Civ. P.

Accompanying the motion shall be a memorandum which states, with particularity, the points of law or fact which the movant contends the court has decided incorrectly. Within 10 days thereafter, an opposing party may file a response to such motion. On a motion for reconsideration, there shall be no oral argument unless otherwise directed by the court.

13. Superior Court Ruling. Within sixty days after final submission of the matter, the superior court shall prepare and file a written ruling, affirming, reversing or modifying the findings of fact, conclusions of law or order(s) before it, remanding the matter for further proceedings before the Hearing Commission, or dismissing the Complaint. A copy of the superior court ruling and any order shall be served upon the chairperson of the Hearing Commission from which referred, Respondent, Respondent's counsel, if any, and the State Bar. The decision of the superior court shall be final judgment consistent with Rule 58 of the Arizona Rules of Civil Procedure. On motion, the Hearing Commission or the court may relieve a party or a party's legal representative from a final judgment, order or proceeding consistent with Rule 60(c) of Arizona Rules of Civil Procedure.

(e) Enforcement Proceedings. Disobedience of an injunction or Order entered by a Hearing Commission may be enforced by the superior court as a civil contempt.

1. Contempt proceedings shall be instituted by Bar counsel filing an order to show cause with the clerk of the superior court in which the Respondent does business or resides or in Maricopa County. The contempt action shall be filed under the same cause number of the underlying action, where applicable.

2. When Bar counsel files an affidavit that the party against whom the Order or injunction was issued is guilty of disobeying the Order or injunction and describes the acts constituting such disobedience, the superior court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the superior court or tribunal which issued the order.

3. The order to show cause, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the Order.

4. If such person fails or refuses to make return to the order to show cause a warrant of arrest may issue directing the sheriff or any constable of the county where the alleged contemnor resides or may be found, to arrest and bring the alleged contemnor before the court at a time and place directed by the court, and such person may be required to give bail for attendance at the trial and submission to the final judgment of the court.

5. If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.

6. Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the person enjoined has disobeyed the order that person may be committed to jail until that person is purged of the contempt as may be directed by the superior court or until that person is discharged by law.

(f) Supreme Court Review.

1. Petitions for Review. Within thirty days after issuance of a superior court final judgment, Respondent or the State Bar may file with the Court Clerk a petition for review by the Supreme Court. A cross-petition for review may be filed within fifteen days after filing of a petition for review.

2. Form and Contents of Petition. The form of a petition or cross-petition for review shall comply with rule 6(c) of the Rules of Civil Appellate Procedure. It shall not exceed twenty (20) pages, exclusive of the appendix, and shall contain concise statements of the following:

A. A synopsis of the superior court judgment. A copy of the judgment shall be attached to the petition.

B. The issues which were decided by the superior court and which the petitioner wishes to present to the court for review. The petitioner shall also list, separately and without argument, those additional issues which were presented to, but not decided by, the superior court and which may need to be decided if review is granted.

C. The facts material to a consideration of the issues which are presented to the court for review.

D. The reasons why the petition should be granted.

All references to the record on appeal shall be supported by an appendix, with appropriate copies of the portions of the record which support the petition. The petition shall not incorporate any document by reference, except the appendices. If the appendices, exclusive of the copy of the superior court judgment, exceed fifteen pages in length, such appendices shall be fastened together separately from the petition and the copy of the Commission decision.

3. Transmittal of Partial Record Upon Filing of Petition for Review. Upon the expiration of the time for filing a cross-petition for review, the clerk shall transmit to the Clerk of the Court a partial record of the case consisting of the original and all copies of the petition or cross-petition for review and one copy of the Commission decision.

4. Service and Response. The petitioner or cross-petitioner shall serve a copy of the petition or cross-petition on all parties. Any party wishing to oppose the petition or cross-petition may file with the Clerk of the Court a response within thirty days from the date upon which the petition or cross-petition for review is served. The response shall comply with rule 6(c) of the Rules of Civil Appellate Procedure and shall not exceed twenty pages, exclusive of any appendix. All references to the record on appeal not contained in the petitioner's appendix shall be supported by an appendix to the response. The response shall not incorporate any document by reference except the appendices. Failure to file a response shall not be considered an admission that the petition should be granted. If the appendices exceed fifteen pages in length, such appendices shall be fastened together separately from the response. If a response is filed, the response shall list, separately and without argument, those additional issues, if any, which were presented to, but not decided by, the superior court, which were not listed by the

petitioner, and which may need to be decided if review is granted. No reply shall be filed by petitioner unless the Court has so directed by specific order, in which event a reply may be filed within the time set by the Court.

5. Order Granting Review. If the Court grants review, its order shall specify the issue or issues which are to be reviewed. The Court may order that the parties file additional briefs or that oral argument be heard, or both. If the order granting review does not provide for supplementation of briefs or for oral argument, either party may, within 15 days after the Clerk mails notice of the Court's order, request the Court to do so by a motion specifying the reasons for supplementation or for oral argument.

6. Transmittal of Remaining Record. Upon notification by the Clerk of the Court that a petition or cross-petition for review has been granted, the Clerk shall transmit the remaining record on appeal to the Court.

7. Agreements for Sanctions by Consent. Agreements for sanctions by consent may be reviewed or appealed only to the extent that the stated form of sanction is subject to review or appeal under these rules.

8. Applicability of Rules of Civil Appellate Procedure. Unless otherwise provided, rules 4 through 6 of the Rules of Civil Appellate Procedure shall apply to matters before this court.

9. Standard of Review. The Court reviews questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

Rule 80. Rules of General Construction for Proceedings before a Hearing Commission, Rules of Procedure and Access to Information

(1) Rules of Construction.

(a) Nature of proceedings. Unauthorized Practice of Law proceedings are neither civil nor criminal, but are sui generis.

(b) Rules of evidence. Except as otherwise provided in these rules, the rules of evidence applicable in the superior court shall be followed.

(c) Standard of proof. Allegations in a Complaint shall be established by preponderance of the evidence.

(d) Burden of proof. The burden of proof in the sense of burden of persuasion in proceedings seeking sanctions for unauthorized practice of law is on the petitioner/plaintiff.

(e) Related pending litigation. The processing of an Unauthorized Practice of Law matter shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the Hearing Commission, in its discretion, authorizes a stay for good cause shown.

(f) Status of the Complainant. The Complainant as such does not become a party to the proceeding before the Hearing Commission or Superior Court. By becoming a Complainant, a person submits himself or herself to the jurisdiction of this Court, the Commission, and the superior court for all purposes relating to these rules, including the duty to maintain confidentiality of proceedings, if so directed by the commission. A copy of any answer or response filed by Respondent shall be sent to Complainant. Complainant shall receive notice of the final disposition of the matter. The Complainant may file a Complaint on his or her own behalf if the State Bar does not proceed with the

case.

(g) Non-abatement. Unwillingness, failure of the Complainant to cooperate with the State Bar, withdrawal of a charge, settlement, compromise between the Complainant and the Respondent, or restitution by the Respondent shall not abate the processing of any charge or complaint.

(h) Effect of time limitations. Except as is otherwise provided in these rules, time is directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator, but does not justify abatement of any Unauthorized Practice of Law investigation or proceeding.

(i) Validity of proceedings. No action taken by the Hearing Commission on any complaint, or thereafter by the superior court, or this Court, shall be subject to challenge because of defective or insufficient service if, in fact, the respondent had ample notice of the Unauthorized Practice of Law hearing and full opportunity to be heard. No findings or recommendations made in any proceeding shall be invalidated because of an error in pleading, or in procedure, or upon any other ground, unless upon review it appears from the entire record, including the evidence, that error has been committed which has resulted or will result in a miscarriage of justice.

(j) Disqualification. Hearing Commission and Probable Cause Panel members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. The procedure provided in rule 42(f)(1), Ariz. R. Civ. P. shall not apply.

(k) Effect of dismissal, mediation, and prior sanctions.

1. The determination by Bar Counsel, Probable Cause Panel, or a Hearing Commission before a hearing that no probable cause exists shall not be a bar to further action based upon the same facts.

2. A dismissal or involuntary imposition of sanctions by the Hearing Commission or the superior court after an unauthorized practice of law hearing shall be a bar to further proceedings based upon the same facts before any Hearing Commission.

3. The acceptance by Respondent of a recommendation by Bar counsel of sanctions shall be a bar to further action based upon the same facts.

4. Prior sanctions imposed on Respondent, with or without his or her consent, may be considered by the Hearing Commission, the superior court, and this Court in recommending or imposing sanctions.

(l) Immunity from civil suit. Communications to the Court, State Bar, Hearing Commission, Probable Cause Panel, Bar counsel, volunteer Bar counsel or investigators relating to 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, Hearing Commission, Probable Cause Panel, Bar counsel and staff shall be immune from suit for any conduct in the course of their official duties.

(2) Rules of Procedure.

(a) Pleadings Allowed. There shall be a Complaint and an answer and no other pleadings. Rule 15, Ariz. R. Civ. P. shall apply in Unauthorized Practice of Law proceedings. At any time prior to the conclusion of an Unauthorized Practice of Law hearing, Bar counsel or Respondent may move to amend the pleadings. The complaint may be amended to conform to the proof or to include further charges, whether occurring before or after the

commencement of the unauthorized practice of law hearing. If an amendment to the Complaint is made, Respondent shall be given reasonable time to answer the amendment, to produce evidence and to respond to the charges.

(b) Service. Unless otherwise provided, papers shall be served in the following manner:

1. Service of Complaint. A summons and Complaint in an unauthorized practice of law proceeding shall be served together. The party procuring service shall comply with Rules 4.1 and 4.2, Ariz. R. Civ. P.

2. Service After Complaint. After filing a Complaint, the party filing shall serve one copy of every document filed on Bar counsel, Respondent or Respondent's counsel, and the Clerk for the Hearing Commission. Rule 5(c)(1), Ariz. R. Civ. P. shall apply to the manner of service. All documents served on Respondent shall be mailed to his or her last known address.

3. Subpoenas. Subpoenas shall be served personally, and may be served by Bar counsel, Respondent, or Respondent's counsel.

(c) Administration of Oaths. Oaths and affirmations in Unauthorized Practice of Law proceedings shall be administered by the Hearing Commission chairperson, court reporter, or a notary public.

(d) Transcript of Hearings. The record of all Unauthorized Practice of Law hearings shall be kept by means of a tape recorder/transcriber provided by the Clerk. If the record is not kept by means of a recording system, a court reporter shall be employed for such purposes upon authorization by the Clerk. Respondent may have a hearing reported by a court reporter, at his or her expense, but shall give written notice to the Hearing Commission of such intent at least three days prior to the date of the hearing.

Respondent's notice to have a hearing reported by a court reporter will not preclude the Clerk from recording the proceeding. The transcript of a hearing, if not ordered by the Hearing Commission or superior court, shall be made available to either party, at the party's expense, on request made to the Clerk.

(e) Subpoena Power. All Hearing Commissions shall have the power to issue subpoenas.

1. A Commission, may compel by subpoena any person, including but not limited to Respondent, to appear before the Commission for the purpose of giving testimony, and may compel by subpoena the production of documents, books, records, or other evidence pertinent to the matter. A subpoena issued by the Commission shall have the same force and effect as in a civil action in superior court, and may be enforced by order of the superior court for the county in which the person was served or in Maricopa County.

2. Investigative Subpoenas. During the course of an investigation and prior to the filing of a Complaint, Bar counsel may obtain issuance of a subpoena by filing a written request with the Hearing Commission, containing a statement of facts to support the requested subpoena. If approved, the subpoena may compel the attendance of witnesses and the production of pertinent books, papers, documents, tapes, electronic media, other evidence and answers to written interrogatories.

3. Hearing subpoenas. After filing of a Complaint, subpoenas shall be issued by Hearing Commission upon written request of Bar counsel, Respondent or Respondent's counsel, as provided above.

4. Contempt. When a person subpoenaed to appear and give testimony, to produce books, papers or documents, electronic mail or other evidence as required by the subpoena,

refuses to appear or testify, or to answer any relevant or proper questions, he shall be deemed in contempt of court, and Bar counsel shall report such fact to the superior court of the county in which the investigation, trial or hearing is being held, whereupon such court shall issue an attachment in the form usual in the court, directed to the sheriff of any county in the state, commanding the sheriff to attach such person and forthwith bring him before the court. Upon return of the attachment and production of the person attached, the court shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceeding shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil action before a superior court. The court, in its discretion, may immediately enjoin Respondent from engaging in the unauthorized practice of law.

5. Quashing subpoena. Any attack on the validity of a subpoena so issued shall be heard and determined by the Commission who issued it, or by the court wherein enforcement of the subpoena is being sought.

6. Deposition in Foreign Jurisdiction. Depositions may be taken outside the State of Arizona, and a copy of the Order of the chair of the Commission or certified by the Clerk shall be sufficient authority to authorize the taking of such deposition. If the deponent will not voluntarily appear, the subpoena may be enforced to the full extent and in the manner provided by the law of the jurisdiction wherein the deposition is to be taken.

7. Subpoena upon interrogatories. A subpoena may require a person to make written answers to written interrogatories. The answers shall be made under oath, signed by the witness, and filed with the disciplinary Clerk together with the interrogatories within the time and at the place therein set forth.

(f) Discovery. In proceedings before a Hearing Commission, Rules 26 through 37, Ariz. R. Civ. P. shall apply, so far as practicable, except that any testimony may be recorded by means of a tape recorder/transcriber provided by the Clerk and shall be admissible for the same purposes as transcripts provided by court reporters.

(g) Power to enter, amend or vacate. For good cause shown and in the interest of justice any Order or judgment may be entered, or may be amended or vacated by the officer or body that entered it or by a superior body. On motion and upon such terms as are just the Hearing Commission or the court may relieve a party or a party's legal representative from a final judgment, order or proceeding consistent with rule 60(c) of the rules of civil procedure.

(h) Computation of Time. Unless otherwise provided, Rules 6(a) and 6(e), Ariz. R. Civ. P. shall apply in all proceedings brought pursuant to these rules.

(3) Access to Information.

(a) Except as otherwise provided in these rules, the State Bar File maintained by the State Bar, the Record maintained by the Clerk and all proceedings shall be open to the public.

(b) Exceptions to Availability of Information. Notwithstanding other provisions of these rules, the following do not become public:

1. work product and working files of State Bar staff, Bar counsel, the Panel, work product and working files of court staff, Hearing Commissions, or a court;
2. deliberations upon decisions to be rendered by Bar counsel, the Hearing Commission, a superior court, or this Court;

3. information with respect to which a protective Order has been issued pursuant to these rules; or

4. records of telephonic requests for information received by the State Bar.

(c) Sealing the Record/Protective Orders. Upon motion by a party or by a person from whom the information or evidence was obtained, and for good cause shown, the commission, superior court, or this Court may make an order sealing a portion of the record and/or State Bar File and taking other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding the remaining record in the matter is made public. Sealed material shall be opened and viewed only by an Order of the Commission or Court for use by such body and the parties in proceedings then pending before it, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person furnishing the information.

FORMS:

(a) Subpoenas; Form.

1. Subpoenas for the attendance of witnesses and the production of books and records shall be in substantially the following form:

BEFORE THE STATE BAR OF ARIZONA
(HEARING COMMISSION NO. ____)
(THE PROBABLE CAUSE PANELIST)

In the Matter of Unauthorized)
Practice of Law of :)
(Name of Respondent)) SUBPOENA
) or
) SUBPOENA
) DUCES TECUM

STATE OF ARIZONA

TO: _____ (Name of Witness)

You are hereby directed to appear and attend before (Bar Counsel) (Probable Cause Panelist) (Hearing Commission No. ____) of the State Bar of Arizona at (address), in (city), _____ County on (day), (date) , 19____, at the hour of _____ o'clock ____ .m., then and there to testify in the above entitled matter.

(If the production of books, etc., is desired, add "and to bring with you the following:" and describe the same.)

BE WARNED THAT for failure to appear and attend as herein required, you will be deemed to be in contempt and answerable in court as provided by operation of law. By order of the Hearing Commission No. ____) of the State Bar of Arizona. Issued on _____, 200____, at _____, Arizona.

(Name)
(Commission Chairman)

Whose address is

_____, Arizona

2. The subpoena may, in the alternative, require the person to whom it is directed to make written answer to written interrogatories to be attached thereto. The answers shall be made under oath, signed by the witness, and filed within the time and at the place therein set forth. Such subpoena shall be in substantially the following form:

BEFORE THE STATE BAR OF ARIZONA
(HEARING COMMISSION NO. _____)
(THE PROBABLE CAUSE PANELIST)

In the Matter of the Unauthorized)
Practice of Law of:) SUBPOENA UPON
(Name of Respondent)) WRITTEN
) INTERROGATORIES
_____)

STATE OF ARIZONA

TO: (Name of Witness)

You are hereby directed to make written answers under oath, signed by you, to the written interrogatories (questions) attached hereto, and to file such answers with the Clerk at (address) , in the city of Phoenix, Arizona 85004, on or before _____, 2000.

(b) Cease and Desist Agreement and Order

Any respondent against whom charges have been made or a formal complaint filed may voluntarily agree to cease and desist from the misconduct alleged in the charges or complaint by filing with the clerk, in duplicate original, a written, verified agreement to cease and desist in the form prescribed in these rules or as otherwise approved by the court. The agreement to cease and desist shall be effective only upon acceptance by this court. The general form of an agreement to cease and desist shall be as follows:

IN THE SUPREME COURT OF THE
STATE OF ARIZONA

In the matter of Unauthorized)
Practice of Law of:) No. _____
(NAME OF RESPONDENT),)
Respondent.)
) AGREEMENT TO
) CEASE AND DESIST
_____)

I, (name of respondent), residing at (city and street address), voluntarily agree to cease and desist engaging in the unauthorized practice of law.
I acknowledge that (charges) a formal complaint have/has been (made) filed against me. I have read the (charges) complaint, and the charges there made against me are true in substance and in fact. I further acknowledge that I cannot successfully defend the charges made against me. I do not desire to contest or defend against the charges, but wish to agree to cease and desist engaging in the unauthorized practice of law. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to this agreement to cease and desist freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to the unauthorized practice of law, as set forth in the (charges) complaint (made) filed against me. The misconduct of which I am accused is described in the (charges) complaint bearing the number referenced above, a copy of which is attached hereto.

DONE AT _____, Arizona on _____, 200__.

(Signature)

(Name)

(Verification)

2. The disciplinary clerk shall immediately forward a duplicate original of the agreement to cease and desist to the clerk of this court, along with a copy of the (charges) complaint (made) filed against the member. Upon acceptance of the agreement to cease and desist by this court, the court shall promptly enter a judgment enjoining the respondent from engaging in the unauthorized practice of law and that the respondent will remain subject to the jurisdiction of this court with respect to unauthorized practice of law matters, and he or she shall immediately comply with the requirements relating to notification of clients and others.

3. Upon the acceptance of the agreement to cease and desist by this court, and unless otherwise ordered by this court, no further sanctions shall be taken in reference to the matters that were the subject of the (charges) complaint upon which the agreement to cease and desist and the judgment enjoining the respondent from engaging in the unauthorized practice of law were based.

(c) Judgment

1. The form of judgment signed and entered by the clerk shall be:

This matter having come on for hearing before the Unauthorized Practice of Law Commission of the Supreme Court of Arizona, it having duly rendered its decision/report and no discretionary or sua sponte review occurring.

IT IS ORDERED, ADJUDGED AND DECREED that (Respondent), is hereby enjoined from engaging in the unauthorized practice of law.

(IT IS FURTHER ORDERED that (Respondent) shall pay restitution (in the following amounts to the following individual(s):)

(IT IS FURTHER ORDERED that (Respondent) shall be assessed the costs and expenses of these proceedings in the amount of _____.)