

TO:

Rule 28 Distribution
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ATTACHMENT¹

RULES OF THE SUPREME COURT OF ARIZONA

Rule 75. Jurisdiction; Definitions

(a) [No change]

(b) **Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. – 9. [No change]

10. “Order” means an order signed by the superior court, the court of appeals or the supreme court in unauthorized practice of law matters.

11. – 16. [No change]

Rule 76. Grounds for Sanctions, Sanctions, and Implementation

(a) **Grounds for Sanctions.** Grounds for sanctions include the following:

1. [No change]

2. Willful disobedience or violation of a court ruling or order requiring the individual, entity, or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.

3. – 4. [No change]

5. Violation of any cease and desist order or injunction imposed during an unauthorized practice of law proceeding.

(b) **Sanctions and Dispositions.**

1. ~~*Consent Agreement to Cease And Desist.*~~ Respondent and unauthorized practice of law counsel may enter into a “Consent ~~to Cease and Desist~~ Agreement” ~~prior to formal proceedings~~ that states respondent agrees to cease and desist from engaging in acts found to be the unauthorized practice of law, to refund fees collected, to pay costs and expenses, ~~and~~ to make ~~any other~~ appropriate restitution, to the entry of an injunction or finding of contempt, or any other lawful sanction agreed to by the parties.

2. *Cease and Desist Order.* The superior court may enter an order for a respondent to immediately cease and desist from conduct that constitutes engaging in the unauthorized practice of law. After entry of a cease and desist order or judgment, and service thereof upon the respondent, respondent shall:

A. – B. [No change]

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike through~~.

C. cease use of any reference to titles or descriptions prohibited in the order or judgment on all advertising, business cards, ~~and~~ letterhead, and Internet sites, including social media.

3. [No change]

4. *Civil or Criminal Contempt.* The superior court may issue a civil or criminal contempt citation and determine if the respondent is guilty of contempt and, by order, prescribe the sanction, including assessment of costs, expenses and reasonable attorney fees, and the imposition of any other sanction authorized by law.

5. [No change]

6. *Civil Penalty.* The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a legal paraprofessional shall be deposited in the fund established by the supreme court for that program. Civil penalties against all others shall be payable to the state bar.

7. *Costs and expenses.* Costs, expenses, and attorney's fees relating to the proceedings shall be assessed against every respondent upon whom another sanction is imposed, unless waived by the state bar. Assessment shall be included in the order or judgment.

(c) Implementation of ~~Cease and Desist Sanction Orders and Judgments.~~ Orders or judgments of the superior court ~~imposing cease and desist sanctions in unauthorized practice of law matters~~ shall be effective thirty days after entry, unless another date is specified.

Rule 77. Participants in Unauthorized Practice of Law Proceedings

(a) Complainant. The complainant is not a party to an unauthorized practice of law proceeding. However, by becoming a complainant, a person submits himself or herself to the jurisdiction of the supreme court and the superior court for all purposes relating to these rules. A complainant shall maintain confidentiality of proceedings, if so directed by the superior court. The ~~superior court~~ state bar shall send a copy of any answer or response filed by respondent, as well as a notice of the final disposition of the matter, to the complainant. The complainant may file a complaint on his or her own behalf in superior court if the state bar ~~does not proceed with the case~~ dismisses the charge prior to a complaint being filed in superior court.

(b) Unauthorized Practice of Law Counsel; Powers and Duties. Acting under the authority of the board, and under the direction and by appointment of the executive director, unauthorized practice of law counsel shall have the following powers and duties:

1. – 2. [No change]

3. ~~recommend dispositions prior to formal proceedings~~ enter into consent agreements with respondents;

4. – 5. [No change]

6. send to complainants a copy of any answer or response filed by respondents in superior court and promptly notify the complainant and respondent of the final disposition of each matter.

(c) [No change]

Rule 78. ~~Initial~~ Proceedings

(a) **Commencement.** 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 shall be disposed of by dismissal or by the filing of a consent agreement or complaint in the superior court seeking imposition of one or more sanctions as provided in these rules.

(b) **Screening and Investigation.** Upon the commencement of an unauthorized practice of law proceeding against a respondent, the matter shall proceed as provided in this section.

1. *Screening.* Unauthorized practice of law counsel shall evaluate all information coming to his or her attention, in any form, by charge or otherwise alleging the respondent engaged in unauthorized practice of law or violated any order or judgment previously entered in an unauthorized practice of law proceeding. If the allegations, if true, would not constitute unauthorized practice of law under these rules or contempt of court, the matter shall be dismissed. If the information alleges facts which, if true, would constitute unauthorized practice of law or contempt of court, unauthorized practice of law counsel shall conduct an investigation.

2. *Investigation.* All investigations shall be conducted by unauthorized practice of law counsel, volunteer bar counsel, or staff investigators. Unauthorized practice of law counsel may request information through an investigative subpoena pursuant to Rule 78(b)(4). Following an investigation, unauthorized practice of law counsel may dismiss the matter; enter into a consent ~~cease and desist~~ agreement with the respondent pursuant to Rule 78(c); ~~or~~ file a complaint in superior court seeking injunctive relief, assessment of costs and expenses, and restitution, or file an application for an order to show cause regarding contempt in superior court. Unauthorized practice of law counsel shall not commence a superior court proceeding until the respondent is afforded an opportunity to respond in writing to the charge. Respondent shall have twenty days from notice of the request for information to respond.

3. – 4. [No change]

5. *Dismissal by Unauthorized Practice of Law Counsel.* After conducting an investigation, unauthorized practice of law counsel may dismiss an unauthorized practice

of law proceeding if there is no probable cause to determine that unauthorized practice of law occurred or that the respondent has failed to comply with an order or judgment previously entered by a court in an unauthorized practice of law proceeding. Unauthorized practice of law counsel shall provide complainants with a right-to-sue letter upon dismissal of the charge.

(c) ~~Consent to Cease and Desist Agreement.~~

1. ~~Consent to Cease and Desist.~~ A respondent against whom a charge has been made or a complaint has been filed may tender a conditional admission to the charge or complaint or to a particular count in exchange for the imposition of a stated sanction at any stage of the proceedings. In contempt proceedings, Unauthorized Practice of Law Counsel and respondents may enter into consent agreements, which may be in the form of a stipulation, in exchange for the imposition of stated sanctions.

2. ~~Procedure.~~ A ~~tender of admissions and~~ consent to cease and desist agreement, signed by respondent, respondent's counsel, if any, and unauthorized practice of law counsel, shall be filed with the clerk of the superior court. ~~All agreements must be accompanied by a joint memorandum in support of consent to cease and desist agreement, as set forth below.~~ Exhibits in support of the agreement or the sanction to be imposed must be filed with the agreement and joint memorandum, in addition to a statement of costs and expenses on proven counts. The agreement must state that the agreement and joint memorandum have been approved as to form and content by the chief bar counsel.

3. *Form of Agreement.* All consent agreements must include the following:

A. Rule, Order or Judgment Violation. Each count alleged in the ~~charge or~~ complaint or application for contempt must be addressed in the agreement, including a statement as to the specific rule, order or judgment that was violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count. Pre-complaint consent agreements must include a statement as to the specific rule, order, or judgment that was violated and the facts necessary to support the alleged violation or conditional admission.

B. Form of Sanction. The form of sanction to be imposed must be set forth in the agreement, along with an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.

C. – D. [No change]

4. ~~Joint Memorandum in Support of Consent to Cease and Desist Agreement.~~ Each ~~agreement must be accompanied by a Joint Memorandum in Support of Consent to Cease and Desist Agreement that includes an analysis of the proposed sanction, including a discussion as to why a greater or lesser sanction would not be appropriate under the circumstances of the case.~~

~~45.~~ *Superior Court Hearing.* The superior court may hold an evidentiary hearing within thirty days of the filing of the consent agreement to establish a factual basis for the agreement and may accept, reject, or order the agreement modified.

A. [No change]

B. Modification. The superior court may recommend the modification of ~~an~~ consent agreement and shall clearly state the nature and substance of the proposed modifications and give the parties not less than ten nor more than thirty days to execute the proposed modifications and file the amended agreement and joint memorandum for consideration. If the parties fail to submit a modified agreement within the time provided, and no request for additional time has been submitted, the agreement shall be deemed rejected. For good cause shown, the superior court may grant one thirty day extension of time to file the agreement.

C. Rejection. Upon rejection, the agreement and all admissions contained therein are withdrawn and cannot be used against the parties in any subsequent proceeding. The parties may file ~~an appeal for review by~~ a special action with the court of appeals within ten days after service of the superior court's report. If a special action is not timely ~~appeal is not~~ filed, the superior court shall proceed with a hearing on the merits ~~the adjudication hearing within thirty days~~.

~~56.~~ *Judgment.* Upon the acceptance of the consent ~~to cease and desist~~ agreement by the superior court the clerk of the superior shall promptly enter a judgment that includes a cease and desist order and an order enjoining the respondent from engaging in the unauthorized practice of law, and stating that the respondent shall remain subject to the jurisdiction of this court with respect to unauthorized practice of law matters. Unless otherwise ordered, no further sanctions shall be taken in reference to the matters that were the subject of the charges or complaint upon which the consent agreement ~~to cease and desist~~ and the judgment enjoining the respondent from engaging in the unauthorized practice of law were based. The form of judgment signed and entered by the superior court clerk for cease and desist orders and injunctions shall be:

This matter having come on for hearing before the superior court, said court having duly rendered its decision.

IT IS ORDERED, ADJUDGED AND DECREED that (Respondent) must cease and desist engaging in activity that amounts to the unauthorized practice of law.

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

(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 _____.)

(IT IS FURTHER ORDERED that (Respondent) is (specific language of other sanctions))

Rule 79. Formal Proceedings Before the Superior Court; Appeal

(a) **Commencement.** Formal unauthorized practice of law proceedings shall be instituted by unauthorized practice of law counsel filing a consent ~~to cease and desist~~ agreement or a complaint with the clerk of the superior court.

(b)–(d) [No change]

(e) **Order.** Within thirty days after final submission of the matter, the superior court shall prepare and file with the clerk a written order containing findings of fact, conclusions of law and ~~recommendations regarding~~ sanctions, and shall serve a copy of the order on respondent and unauthorized practice of law counsel. The order of the superior court is final if no motion for reconsideration or appeal is timely filed.

(f) **Enforcement.** An order or judgment of the superior court in unauthorized practice of law proceedings shall be enforceable like any other judgment, including through civil contempt proceedings pursuant to Rule 65(f), Ariz. R. Civ. P., or criminal contempt proceedings pursuant to Rule 35, Ariz. R. Crim. P.

(g) **Appeal.** Final orders or judgments issued by the superior court in unauthorized practice of law proceedings shall be reviewable by the court of appeals and this court pursuant to the Arizona Rules of Civil Appellate Procedure. Failure of a party to appeal timely shall constitute consent to the ~~discipline~~ sanction imposed by the superior court.

Rule 80. Rules of Construction and Access to Information

(a) **Rules of Construction.**

1. *Related Pending Litigation.* The processing of an unauthorized practice of law matter in superior court shall not be delayed because of substantial similarity to the material allegations of pending criminal or civil litigation, unless the superior court, in its discretion, authorizes a stay for good cause shown.

2. *Non-abatement.* Unwillingness or failure of the complainant to cooperate with the state bar, withdrawal of a charge by a complainant, settlement, compromise between the complainant and the respondent, or restitution by the respondent shall not abate the processing of any charge or complaint unless deemed appropriate by unauthorized practice of law counsel.

3. – 5. [No change]

6. *Immunity from Civil Suit.* Communications to the court, state bar, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, or investigators relating to

alleged unauthorized practice of law, and testimony given in the proceedings shall be absolutely privileged conduct as provided by law, and no civil action predicated thereon may be instituted against any complainant or witness. Board members, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, and state bar and court staff shall be immune from suit ~~as provided by law~~ for any conduct in the course of their official duties.

(b) Public Access to Information.

1. *Availability of Information.* Except as otherwise provided in these rules, the state bar file maintained by the state bar, the record maintained by the superior court clerk, and all proceedings shall be open to the public upon:

A. waiver of confidentiality by respondent;

B. dismissal by unauthorized practice of law counsel; or

C. the filing of a complaint, consent agreement, application for order to show cause regarding contempt, or other document in superior court.

2. *Exceptions.* Notwithstanding other provisions of these rules, the following do not become public:

A. work product and working files of state bar staff, bar counsel, unauthorized practice of law counsel, volunteer bar counsel, investigators, ~~a panelist~~, the committee, or a court or court staff, including but not limited to internal memoranda, internal correspondence, internal emails, notes, and similar documents and files;

B. deliberations ~~upon decisions to be rendered by~~ pertaining to decisions of unauthorized practice of law counsel, a panelist the committee, or any court;

C. information with respect to which a protective order has been issued pursuant to these rules; ~~or~~

D. records of ~~telephonic~~ requests for information received by the state bar's intake department ~~Attorney Consumer Assistance Program;~~

E. an individual's social security number (if a social security number must be used, only the last four digits of that number shall be used);

F. financial account numbers (if financial records must be used, only the last four digits of that number shall be used);

G. medical records;

H. recordings and written transcripts of audio and video witness interviews or statements, unless offered or admitted as exhibits in superior court proceedings; and

I. tax returns and official tax records.

3. Authorized Disclosures. The state bar file shall not be disclosed by the state bar, except that:

A. Before the state bar file becomes public:

i. the name of the person or entity under investigation and the matter under investigation may be disclosed to such person and the persons whose services or testimony are necessary in connection with the proceeding;

ii. the state bar may confirm, upon inquiry concerning the person or entity, and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;

B. The state bar, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph 2, except for charges under investigation or in the prescreening process;

C. The state bar may disclose documents or records related to unauthorized practice of law charges, including documents deemed confidential under subparagraph 2, unless sealed by protective order, to:

i. other lawyer disciplinary entities or agencies;

ii. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;

iii. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment; and

iv. public or prosecuting authorities if it appears that the lawyer has engaged in conduct that may be criminal in nature;

D. If a proceeding is based on allegations that have become generally known to the public, the state bar's board of governors may authorize disclosure of information;

E. the state bar's board of governors may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession; and

F. documents deemed confidential under subparagraph 2 can be used in superior court proceedings.

4. Disclosure by Others. Unless otherwise ordered by a court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

5. Effect of Disclosure. The disclosure of information under these rules shall not constitute a waiver of any evidentiary, statutory, or other privilege that might otherwise be asserted.

§ 6. *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 superior court or this court may order that a portion of the record and/or state bar file be sealed and take 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 a 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.

7. *Retention of Records.* Records of unauthorized practice of law proceedings maintained by the state bar are subject to the provisions of Rule 70(h) of these rules and administrative orders entered by the court.

(c) **Expungement of State Bar Records.** State bar records may be expunged as set forth in Rule 71 of these rules and administrative orders entered by the court.