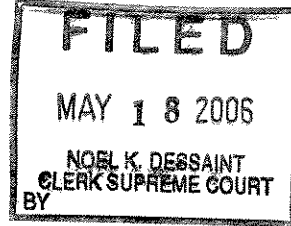


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May 18, 2006

Supreme Court of Arizona
C/o Clerk of the Supreme Court of Arizona
1501 W. Washington
Phoenix, AZ 85007

Re: Comment to Petition to Amend Rules 32(c), 45 and 64(f),
Arizona Rules of the Supreme Court, Petition #R-05-0034.

Dear Chief Justice McGregor and Members of the Court:

Although I am opposed to the Petition of the Board of Governors for substantive reasons, the purpose of this comment is to request that you return the Petition to the Board for further investigation and for the Board to obtain a consensus of the Bar membership in an objective and meaningful manner on these issues. I am not currently affected by the proposed rule changes but I am getting closer every day.

I have reason to believe that neither the membership nor many members of the Board of Governors were given an opportunity to investigate the issues presented by the Petition before the Board approved the filing of the Petition during its November 2005 Board Meeting. The vote of the Board was apparently taken primarily on the basis of the recommendations of the Board's Finance Committee. Interestingly, although it is the Board's position as written in the FAQ's (see attached FAQ's) and answers to them which the Board has published, that finances have nothing to do with the reasons why the Petition was filed, the facts and inferences may indicate otherwise. Perhaps this is one of those "permissible inferences" which we lawyers are always talking about to judges and juries. It is further my understanding that the Board was encouraged to file the Petition before the first of the year so that the matter could be considered by the Court during its first opportunity in 2006 and a vote of the Board was taken on or near the same date that the Board received the Committee's report.

As you also may know, the Petition was filed on December 7, 2005, long before there was any opportunity for the members to express their views to the Board. I submit that the membership may not have had a fair opportunity to have notice of and express its views to its elected representatives on these important issues. Furthermore, it might be helpful for the Court, the Board and the membership to know how many members will be affected by these changes and what the financial impact will be to the Bar's Treasury. The FAQ's also point out that during

Page 2

Comment to Petition #R-05-0034

the last 5 years there were "...about 160 discipline cases involving lawyers age 70 and over." Certainly that is disappointing but I wonder how this compares with discipline cases for the rest of the Bar and also what the results of those "over 70" cases demonstrate. I believe that during this same period of time there may have been as many as 11,000 "written charges" for disciplinary matters. See 2005 Annual Report of The Office of Lawyer Regulation.

Respectfully,



Robert D. Myers

Original and seven copies filed with the Clerk of the Supreme Court
Copies mailed to Robert B. Van Wyck and Helen Perry Grimwood

Question and Answers
Regarding the State Bar's Dues and MCLE Petition

Q1. Why doesn't this proposal "grandfather" those who have already reached age 70 from paying dues?

A: The Board believed that it was unfair for active members to be relieved from paying dues, simply based on their age. Additionally, after thoroughly researching the practice of exempting lawyers age 70 and over from paying dues, the Bar discovered that there was no Supreme Court rule or Administrative Order that allowed for this exemption. Under the existing rules, there is a separate membership category for retired members. The Board's proposal reduces the dues for retired members.

Q2. Why doesn't this proposal "grandfather" active members who have already reached age 70 from the MCLE requirement?

A: The Board believed that all active lawyers need to stay up-to-date in their practice by continuously participating in legal education. This is essential for client protection and public confidence in the legal profession.

Q3. What is the rationale for requiring inactive and retired members to back-pay dues and make-up MCLE in order to reactivate?

A: The Board believed that MCLE for those re-entering active practice is important to client protection and public confidence in the legal profession. Additionally, this proposal will make it impossible for active lawyers to transfer in and out of active status at the end of each year to avoid Mandatory Continuing Legal Education requirements.

The Board also believed that lawyers who reactivate from "inactive" or "retired" status should pay some back dues. These members benefit from the programs and services which have been funded, at least in part, by dues paid by active members while the reactivating members were inactive or retired. It seemed appropriate to require some back payment of dues upon reactivation to reduce this partial indirect subsidy.

Q4. If some lawyers are transferring out of active status to avoid MCLE requirements why not penalize just those people rather than making a new rule for everyone?

A: The requirements are not a penalty, but an effort to ensure that all lawyers returning to "active" status are up-to-date on current law.

Q5. What is the rationale for requiring a greater back dues payment for "retired" lawyers who wish to reactivate?

A: The Board believed that "retired" status is intended for lawyers who do not intend to return to practice. The higher fee set by the Board to return from "retired" to "active" status is designed to encourage lawyers who are likely to reactivate to select "inactive" rather than "retired" status.

- Q6. Is it true that I need to know two years in advance before I want to go “active” so I can start taking MCLE again?**
A: No. A lawyer who wants to reactivate can complete the required number of MCLE hours in a relatively short period of time. The rule would simply ensure that practitioners who have not been practicing are up-to-date on the law in their areas of practice.
- Q7. If approved, when will the MCLE proposals take effect?**
A: The proposal to repeal the exemption from MCLE requirements for active lawyers age 70 and over would take effect July 1, 2007. All other provisions would take effect January 1, 2007.
- Q8. Why are the dues different for inactive and retired statuses?**
A: The difference in dues for “inactive” and “retired” members recognizes the intended difference of the categories. Lawyers who become “inactive” pay higher dues than retired members, but they also secure a place-holder to return to active practice. Much of their dues support lawyer regulation, which continues to ensure the public’s trust and confidence in the profession and the State Bar. Lawyers who choose “retired” status wish to maintain contact with the Bar but do not intend to return to practice.
- Q9. Why not merge the inactive and retired membership and treat them the same?**
A: The “inactive” and “retired” membership categories serve different purposes and are designed for lawyers at very different stages of their careers. The “inactive” category is designed for individuals who are in the midst of their careers but who, for reasons such as a temporary relocation to another state or a temporary engagement outside the profession, wish or need to place their active license to practice law effectively on hold for a period. The “retired” category is intended for individuals who are at or near the end of their careers but who wish to maintain some contact with, and receive some services from, the Bar. Merging the two categories would make the Bar unable to accommodate the needs and desires of individuals in these very different situations.
- Q10. Why are Arizona’s dues higher than many other states?**
A: While it is tempting to compare Bar dues with other states, it is difficult to make accurate comparisons. Some Bars are responsible for a lawyer discipline system, while others are not. Bars also have a variety of different requirements and provide very different types and levels of services to their members. The Board actively monitors State Bar budgets and is confident that the organization is fiscally conservative and responsible.
- Q11. Has a study been done to determine if CLE is effective in protecting the public?**
A: The Arizona Supreme Court created the MCLE rules in 1989. The Board supports these requirements as a necessary and responsible requirement of the legal profession. The Bar has not performed any related studies. Virtually every profession has some form of continuing education requirement, many of them more onerous than the current MCLE requirements.

Q12. Would the Bar consider a dues category for part-time lawyers?

A: Creation of such a category of membership would present at least two challenges. The first would be to settle upon a definition of what constituted “part-time” practice with which most members could agree and which was fair to all those who might consider themselves to be engaged in the practice of law on less than a full-time basis. The second would be to develop a program for supervising and monitoring such a category that did not impose undue burden upon Bar staff and undue cost for other membership categories. No proposal that adequately addresses these and other issues has ever been considered by the Board.

Q13. Are these changes being proposed just to generate revenue for the Bar?

A: The original intent of the dues/MCLE study began with the proposal to reduce dues for “retired” members. Further study revealed a wide variety of issues that needed to be addressed. These proposed changes did not originate with a desire to raise money. The Bar is fiscally sound.

Q14. How many discipline cases are there involving lawyers age 70 and over?

A: Over the last five years, there were about 160 discipline cases involving lawyers age 70 and over.

Q15. Will this plan prevent inactive and retired lawyers from doing pro bono work?

A: The current proposal states “retired” lawyers may provide volunteer legal services to approved legal services organizations as defined in Rule 38(e). Otherwise, “inactive” and “retired” members may not practice law.

Q16. Can lawyers who are active military members be exempt from the proposed retroactive requirements for MCLE and dues?

A: Some exemptions exist for lawyers serving in the military. Those exemptions are made on a case-by-case basis, with appropriate proof of military service. Contact our Membership Records Department at (602) 340-7239 for more information.

Q17. Can lawyers receive CLE from the State Bar at reduced cost based on hardship?

A: Under some circumstances, yes. Please call the State Bar CLE Department if you need help with the cost of CLE.

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As you also may know, the Petition was filed on December 7, 2005. President Grimwood's letter to you of that date was sent long before there was any opportunity for the membership to express their views to the Board or before the Board itself had an opportunity to investigate the issues in a meaningful matter. Yet the Board had already voted in favor of the filing of the Petition. I submit that the membership has not had a fair opportunity to have notice of and express its views to its elected representatives on these important issues.

Respectfully,

Robert D. Myers

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