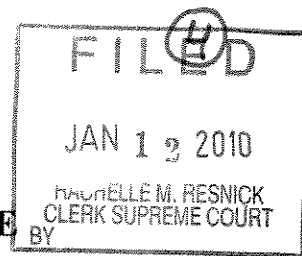


**CITIZEN RESPONSE TO:
REPORT OF THE ATTORNEY DISCIPLINE TASKFORCE
NOVEMBER 2009**



R-09-0044

Paragraph 1. (quoted). “Over the past decade the Arizona Supreme Court and the State Bar of Arizona have worked together to improve the processing of attorney discipline cases in an effort to meet the Court’s strategic goal of an efficient, timely and fair system. Particularly, Goal 5 of A Strategic Agenda for Arizona Courts, 2005-2010 states as follows: **SERVING THE PUBLIC BY IMPROVING THE LEGAL PROFESSION. A LISTED INITIATIVE OF GOAL 5 IS TO “WORK WITH THE STATE BAR TO IMPROVE THE ATTORNEY DISCIPLINE SYSTEM TO ENSURE THE EFFICIENT, TIMELY AND FAIR RESOLUTION OF COMPLAINTS.** Although significant progress has been made, it has not been possible to fully meet the Court’s goal.”

Comment to Paragraph 1. The key word is complaints and the goal is to resolve them fairly and quickly while simultaneously improving Arizona’s entire judicial system and image. Each year there are about 4,300 public complaints and only about 100 of them result in any action and typically it takes about two years to process each one.

Paragraph 2. (quoted). “On July 1, 2009, via Administrative Order No. 2009-73, the Court established the Attorney Discipline Task Force and directed the Task Force to draft and file, by December 2009, a rule petition to amend the current attorney discipline system, consistent with the Court’s strategic direction. The Task Force was specifically directed to include in its review the best practices currently being used in the Colorado attorney discipline system and to examine methods that would maintain due process and yet reduce the time and cost to process a case, especially those that proceed to formal complaints.”

Comment to Paragraph 2. Paragraph 2 is noble but the seven recommendations in paragraph 3 are essentially the same *status quo* with 1. continued “front loading”; 2. continued “communication”; 3. “restructure” of the probable cause personnel but not its focus; 4. compensation for a single presiding hearing officer; 5. “streamlining” only for the few “formal” cases; 6. one “review” of formal discipline is eliminated but another is opened up; A separate “conflict” category is split off by itself, etc.

Each year the State Bar gets about 4,300 Complaints but in 2008 and 2009 only 96 and 71 were deemed to be valid. Also, there was only punitive discipline for the lawyers and little restitution or relief either financially or judicially for the public. which views this dearth as only lawyers protecting lawyers while justice plummets.

For example, ER 3.3 violations alone cost millions in public losses each month yet the State Bar never considers these breaches that steal judgments. If a lawyer deceives a court with false information the lawyer must: “[T]ake reasonable remedial measures, including if necessary, disclosure to the tribunal.” These ER 3.3 violations are easy to pinpoint for relief but the State Bar fails this required duty which must now change.

False judgments occur at all levels and clog the appellate courts due to opposing lawyers who mislead the courts. This writer has filed against 7 lawyers for their gross ER 3.3 deceptions that caused false judgment but no bar action was even considered.

The State Bar Mission states: The State Bar of Arizona serves the public and enhances the legal profession by promoting the competency, ethics and professionalism and enhancing the administration of justice.

Enhanced “administration of justice” is egregiously damaged if the State Bar only washes out thousands of complaints each year which should receive relief. This Task Force should review this extremely probable failure that has escaped under the radar for years.

The Bar’s failure to police ER 3.3 deceptions which cause false judgment are legendary. See Complaint No. 09-1715, attached, which the Bar did not even send to the Respondent for his answer to then match with reality. The Capitol Times Newspaper, see attached, has spotlighted this case because of these well-known failures that continually harm the public. This Complaint focuses on only one of four major civil court cases that this writer lost due to astonishing false evidence from opposing attorneys that skewered true justice.

The Bar should enforce ER 3.3 which *prohibits* and *remedies* fraud, deception and false evidence to a tribunal to hijack judgment and the Bar should begin by sending the above Complaint to its Respondent to account for each of its legally provable claims. The Bar must no longer shield lawyers, including opposing lawyers, who harm the public this way.

Paragraph 3. (quoted). “The Task Force has met six times since August of this year and has drafted a Rule Petition containing significant revisions to the Arizona attorney discipline rules. (Appendix “B”, here omitted)”

“The Rule Petition identifies the proposed reengineering of the attorney discipline system. The recommended changes would establish a system similar to the Colorado model, including the following key components.”

1. “front loading” of the system to provide the staffing and authority for Bar Counsel to engage the Respondent from the beginning of the process and seek early resolution where appropriate.
2. Ongoing and detailed communication between Bar Counsel and the Complainant;
3. Establishment of an independent probable cause committee. Appointed by the Supreme Court with representation by attorneys and members of the public.
4. Utilization of a paid hearing officer, the Presiding Disciplinary Judge, to preside over all formal cases.
5. A streamlined process for formal cases that encourages resolution of cases before the Presiding Disciplinary Judge and provides the judge with the authority to impose all sanctions, including disbarment.
6. Elimination of the Disciplinary Commission review and recommendation process and allow direct appeal to the Supreme court instead.
7. Appointment of counsel by the Presiding Disciplinary Judge for investigation of conflict cases.

Comment to Paragraph 3. Paragraph 3 must instead adopt new core procedures generally as follows in order to improve the judicial quality stated to be needed.

1. All Complaints and substantive communications shall be in writing.
2. The initial Case Worker will create a file and a log for the Complaint and send a form letter to the Complainant stating the receipt of the Complaint; its file number, and that the Complaint has been sent to the Process Center for review.
3. Complaints may also be received electronically by e-mail.

This action completes Phase One of the Complaint Process, and the entire Complaint file then goes to the separate Process Section.

4. The Process Section shall only screen out those Complaints that are narrowly frivolous. I.e., that the factual parties or factual events stated did not exist.
5. If the Complaint is denied for being frivolous, the Complainant shall be so notified, with an opportunity to refute that finding.
6. The Process Section shall not determine or evaluate the legal truth or legal impact of the Complaint at this stage of the Complaint process.
7. The Process Section shall forward the Complaint to the Respondent for a substantive Response to each point or numbered paragraph of the Complaint.
8. The Complainant shall be notified in writing that the Complaint was forwarded to the Respondent, and the date of that action.
9. The Respondent's timely Response shall be either a convincing refutation of each point or numbered paragraph of the Complaint or an admission thereto.
10. Any unanswered point or numbered paragraph shall be deemed to be an acceptance or an admission of the veracity of that point or numbered paragraph.
11. A Respondent's denial or refutation of any part of a Complaint must have viable documentation or evidence to fully substantiate that denial or refutation.
12. Once the Response by the Respondent is received by the Process Section, a copy shall be forwarded to the Complainant for his/her timely Reply.
13. Upon receipt of the Reply, the Complaint, Response and Reply are logged and forwarded to the Review Section with notification to all parties of this event.

This action completes Phase Two of the Complaint Process. The electronic filing and log accounting is now updated for internal and external purposes and the Complaint File then moves on to the Review Section for further processing as follows:

14. A qualified Investigator shall review the full file to determine the truth of the Complaint. In the event the Complaint is false then the Complaint shall be dismissed and the Complainant shall be so notified and be further informed as to the precise reason(s) as to why the Complaint was dismissed.
15. The Complainant shall further be told of and afforded an appeal opportunity to refute, with clear evidence, the reason(s) stated for dismissal.
16. Any appeal by a Complainant shall be submitted to a separate Reconsideration Section for a determination on appeal.
17. If the Complaint is found to be true, the Investigator shall itemize the violation(s) and determine the full relief and discipline and so notify all parties.

18. If a Respondent's violations adversely affected a court action or judgment, then disclosure to the court under ER 3.3(a)(3) shall be implemented so the court may adjust its outcome. *See* Comment 10 and 11 to ER 3.3. Such disclosure "serves the public" and improves the full legal profession" as required by law.
19. The Respondent shall then answer the Investigator's findings in writing and may agree, or disagree only with documented substance as to such disagreement.
20. The Investigator shall send the Respondent's response to the Complainant. Whereupon, the Complainant may agree, or disagree in writing as to that Answer.
21. At any time during these proceedings either the Complainant or the Respondent can retain legal counsel.
22. Upon reviewing the Complaint, Respondent's Response and the Complainant's Reply to that Response, the Investigator shall then write the final Order to include full restitution, full costs to be born by the Respondent and all disciplinary action.

This action completes Phase Three of the Complaint Process. All parties are then mailed a copy of the Order and unless either party wishes to file a timely appeal, the case is closed. Should either party wish to appeal, their appeal must be in writing, and it must show substance as to why the findings of the Order should be changed. Whereupon, the appeal is then submitted to the Arizona Supreme Court Disciplinary Commission for additional review and final disposition. This action is known as separate Phase Four of the Complaint process and it is final.

23. After all appeals are exhausted, each disciplinary action shall be published in a proper publication and be made available on the internet.
24. The Arizona Supreme Court Disciplinary Commission may select any disciplinary action for published case law precedent.

NOTE – Discipline for attorneys is limited to the following measures:

1. A letter of censure. Provided, all restitution including full disclosure to a tribunal or financial restitution to the Claimant is accomplished by the Respondent.
2. Suspension from the practice of law for 30 days. Provided, all restitution including full disclosure to a tribunal or financial restitution to the Complainant is accomplished by the Respondent.
3. Suspension from the practice of law for 90 days. Provided, all restitution including full disclosure to a tribunal or financial restitution to the Complainant is accomplished by the Respondent.
4. Suspension from the practice of law for 180 days. Provided, all restitution including full disclosure to a tribunal or financial restitution to the Complainant is accomplished by the Respondent
5. Suspension from the practice of law for one year. Provided, all restitution including full disclosure to a tribunal or financial restitution to the Complainant is accomplished by the Respondent.
6. Indefinite or set disbarment for a minimum of one year, plus full financial restitution to the Complainant, plus full disclosure to a tribunal if appropriate, plus the payment of all investigative costs.
7. Any reinstatement after disbarment must be in accordance with those rules and procedures established by the State Bar.
8. There shall not be any probation or remedial classes under any circumstances.

9. Public service work may be in addition to any of the above disciplinary actions.
10. The cost any disciplinary action shall be charged to the Respondent.
11. The timeframes for each phase of the Complaint Process shall be as follows:

1. No more than 5 days to complete Phase One, and to send the Complaint on to the Process Section, provided the Complaint format is properly accomplished and there are no other mitigating circumstances.
2. No more than 60 days to accomplish Phase Two, absent other circumstances.
3. No more than 60 days to perform Phase Three, absent other circumstances.
4. No more than 60 days to accomplish Phase Four, absent other circumstances.

This new structure is fast, fair and economical. All Complaints can easily be remedied and disciplined in 4-8 months depending on the number and quality of Staff.

In the event a lawyer agrees with the complaint against him/her, and is willing to cooperate with the resolution process, the full Complaint and disposition of that Complaint can be accomplished in as little as two months.

Also, included for the first time will be State Bar enforcement of the existing but ignored ER 3.3 violation of misleading a court to steal judgment, which includes the remedy of full disclosure by the lawyer to the court so that a false judgment by this means can be corrected. The Arizona State Bar has NEVER enforced that when a lawyer gives false facts to a court to deceive that court – which then causes false judgment – that the lawyer must by ER 3.3(a)(3) disclose to the court that false information was presented, so that the court can repair its false judgment that was based upon that false information.

This unpoliced fraud victimizes the public and the judicial system more than anything else, yet the Bar refuses to review this infraction that is plainly on the books for enforcement.

The above input was provided by:

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