

COMMENT TO ATTORNEY DISCIPLINE TASKFORCE

A serious flaw presently exists in the current State Bar procedure for determining lawyer discipline.

The State Bar receives more than 4,300 complaints each year from the public, which allege lawyer misconduct. However typically, less than 100 cases per year are deemed by the State Bar to pass an official investigation and result in actual published discipline. The point is, the vast majority of all cases are simply washed out and are summarily dismissed without action.

Clearly the State Bar – which is made up of lawyers and is wholly supported by lawyer dues – has a *conflict of interest* that reflects favoritism, protectionism and the shielding of lawyers by lawyers from their misconduct.

I ask that the public be better served by having the State Bar be removed from providing disciplinary duty over its own lawyers and that instead an independent agency be charged to investigate/determine attorney wrongdoing.

This is in keeping with “A Strategic Agenda for Arizona Courts, 2005-2010” which goal is: “Serving the Public by Improving the Legal Profession”, to particularly “ensure the Efficient, Timely and Fair Resolution of Complaints”.

ER 3.3 violations alone costs the public scores of millions per annum, yet the State Bar openly refuses to investigate these breaches of professional conduct. I.e., all of these complaints are only summarily dismissed out of hand.

As a refresher, ER 3.3(a)(1)(2) and (3) specify that a lawyer shall not bring or defend a court action based upon a frivolous or unsupportable basis, or give false or misleading information to a court to cause false judgment. Moreover, if this misstep should occur that results in a sham of justice, the lawyer is to inform the court of the false or misleading information, so that the court can correct its erroneous judgment that was based upon that false information.

Lawyers know that this profound and clear provision of the ER Rules is never policed by the State Bar, so many – but not all – lawyers systematically engage in this misconduct with impunity. The result is that myriads of cases are decided wrong by the courts, because the judgments do not match the true law or evidence of the case. Obviously, this causes public confidence and respect for the courts and lawyers to horribly plummet.

The solution to this problem is very simple. It is not a matter of creating any new rule, it is simply a matter of enforcing the existing rules, which the State Bar will not do. Consequently this is the reason why a new and independent agency should be installed to do what the State Bar does not do.

More specifically, when a non frivolous complaint is received against an attorney, the receiving agency should then accomplish Step One and forward the complaint to the complained of attorney for his or her timely response. Step Two is then accomplished when that response is forwarded to the complainant for a reply.

Step Three is accomplished when the Complaint, the Response and the Reply are then forwarded to a qualified investigator to determine if the charges are valid and if relief, discipline or both are warranted. This is all very straight forward, simple, fair and equitable. To do otherwise is the opposite.

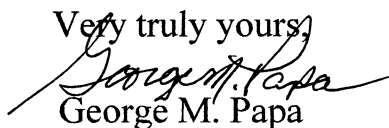
My seven complaints to the State Bar regarding ER 3.3 violations were all typically denied on the basis that the lawyer must not have given false or misleading information to a court, because the court agreed with that material. Hello, such successful deception by a lawyer to a court is the very reason why the violation of giving false material to a court should be enforced.

Also, quite deplorably and unprofessionally, in the above seven denials of my complaints against specific ER 3.3 violations, the State Bar investigators and chief counsel only leaped to gave false, inapplicable and unsupported case law, legal points and private argument to try and vindicate, defend, rescue and shelter the offending lawyer from my claims, without even allowing the lawyer to respond to my clear allegations and proof of wrongdoing.

I will be happy to share this documentation with anyone who inquires.

Finally, each side to the complaint should have a reasonable appeal path, in the event there is a basis for disagreement.

Very truly yours,



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