

1 DISCIPLINARY COMMISSION
Supreme Court of Arizona
2 1501 West Washington, Suite 104
Phoenix, Arizona 85007-3231
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6 **IN THE SUPREME COURT**
7 **STATE OF ARIZONA**

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9 In the Matter of
10 **PETITION TO AMEND RULES 43,**
11 **44, 46-48, 53-58, 60, 61, 64, 70-72, 75**
12

Supreme Court No. R-06-0035

DISCIPLINARY
COMMISSION COMMENTS

13 The Commission had an opportunity to submit written comments and meet with
14 members of the State Bar's Discipline Oversight Committee to discuss a prior version
15 of the proposed rule change. Most of the Commission's concerns were resolved
16 through that process and the Commission concurs in virtually all of the proposed
17 modifications and agrees they will help streamline the disciplinary process. It does,
18 however, have a few remaining comments.

19 **Rule 54(c)**

20 Under existing Rule 54(b)(5), if Bar Counsel's recommendation of informal
21 reprimand, probation, restitution or assessment of costs and expenses is approved by a
22 probable cause panelist, a Respondent has ten days to object and demand that a formal
23 proceeding be instituted. At that point, the Respondent would be entitled to a full
24 evidentiary hearing and could seek review by the Commission or the Court. Under
25 proposed Rule 54(c), Respondent's rights would be limited to an abbreviated
26 evidentiary hearing before another probable cause panelist (who would have the power

1 to expand its scope) with no right to appeal. Probable cause panelists are members of
2 the State Bar’s Board of Governors who may or may not have extensive hearing
3 experience.

4 Although informal reprimand is the least serious of formal sanctions, it can still
5 have serious repercussions for an attorney. Similarly, although restitution orders
6 usually involve relatively modest amounts, the Rules do not contain a dollar limit. A
7 lawyer could, therefore, receive a substantial monetary penalty after a presumptively
8 abbreviated hearing with no right to appeal. Although the Commission agrees it is
9 important to streamline the process, the proposed Rule achieves that goal by eliminating
10 too many procedural safeguards.

11 **Rule 56(3) & (f)**

12 The proposed modifications would legitimize the use of standardized agreements
13 which are explicitly approved for incorporation into hearing officer reports. The note to
14 proposed Rule 56 explicitly states that the modifications are intended to facilitate use of
15 check off boxes for aggravating and mitigating factors. Those changes run contrary to a
16 long line of Commission and Court decisions condemning the use of conclusory
17 language to “establish” such relevant factors as remorse, absence of selfish motives, and
18 rehabilitation. In many cases, closer examination has revealed such conclusory
19 statements had little or no evidentiary support. Although the Commission understands
20 and shares the Bar’s desire to streamline the disciplinary process, it does not believe that
21 increased efficiency should be achieved at the cost of transparency or accountability. If
22 the disciplinary process is to maintain legitimacy, the sanctions imposed in each case
23 must be commensurate with the facts and circumstances of that case as established by
24 evidence in the record. The Commission believes reliance on standardized forms and
25 check off boxes undermine that overriding policy interest.

1 RESPECTFULLY SUBMITTED this _____ day of April, 2007.

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4 J. Conrad Baran, Chairman
Disciplinary Commission

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