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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-18-0014

10 **SUA SPONTE PETITION TO**  
11 **AMEND RULES 32, 46-49, 53, 55-**  
12 **58, AND 60-63, ARIZONA RULES**  
13 **OF THE SUPREME COURT**

**COMMENT OF THE**  
**STATE BAR OF ARIZONA**

14 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar  
15 of Arizona (the "State Bar") hereby submits the following as its Comment to the  
16 above-captioned Petition.

17 The State Bar generally supports the Petition and only comments on the  
18 proposed creation of Rule 49(e) Attorney Discipline Oversight Committee. The  
19 creation of an Attorney Discipline Oversight Committee, comprised of State Bar  
20 Board members with very broad authority to review individual disciplinary cases  
21 and to evaluate bar counsel performance, inevitably creates conflicts of interest or  
22 the appearance of conflicts in the regulatory process and would undermine and  
23 interfere with the prosecutorial independence of bar counsel.  
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1 The proposal provides that, "...[i]n order to help ensure that the discipline  
2 system is adequately protecting the public, the committee shall periodically review  
3 the effectiveness, efficiency, and quality of bar counsel's performance. The  
4 committee may make recommendations to the executive director and the board  
5 regarding bar discipline activities..."

### 7 History of Board Involvement in Disciplinary Cases

8  
9 Dating back to the 1970's, the State Bar's Board of Governors had a  
10 substantive role in the investigative and adjudicative functions in the disciplinary  
11 system. Over time, the Court removed the Board from those adjudicatory functions  
12 and, by the late 1990's, the only remaining role of the Board was to serve in the  
13 probable cause function. In 2009, the Court created the Attorney Discipline Task  
14 Force and directed it to propose a new attorney discipline system to include, among  
15 other things, a committee, appointed by the Supreme Court, to determine probable  
16 cause. The primary reason for directing the Task Force to modify the existing  
17 probable cause function was to eradicate the appearance of impropriety or unfairness  
18 to the respondent lawyers. It was no longer tenable to have a Board member impose  
19 informal sanctions and authorize bar counsel to file formal cases. The Task Force  
20 made the recommendation to move probable cause findings from a Board member  
21 to a nine member committee appointed by the Supreme Court. This provision was  
22 adopted as part of the new lawyer regulation system implemented in 2011, and  
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1 thereby removed the last vestige of the Board's role in the disciplinary process.

2           Contemporaneous with the changes happening in Arizona in the early 1990's,  
3 the American Bar Association established the Commission on Evaluation of  
4 Disciplinary Enforcement ("McKay Commission"). The task of the McKay  
5 Commission was to study the functioning of discipline systems and evaluate the  
6 condition of disciplinary enforcement. The McKay Commission Report  
7 recommended an expanded system of lawyer regulation that remained under the  
8 authority of the judicial branch of government and provided for an expanded  
9 structure for the administration of lawyer discipline systems. In 1992, the ABA  
10 House of Delegates adopted the majority of the recommendations made by the  
11 McKay Commission as part of the Model Rules for Lawyer Disciplinary  
12 Enforcement. The Model Rules for Lawyer Disciplinary Enforcement set forth a  
13 comprehensive structure for the administration of lawyer discipline systems.  
14 Arizona incorporated a majority of the recommended features of the ABA Model  
15 structure. However, the Court delegated the regulation of the practice of law to the  
16 State Bar.

17           In examining the role of state bar associations the Model Rules provide that,  
18 "[t]he disciplinary system should be controlled and managed exclusively by the  
19 state's highest court and not by state or local bar associations for these compelling  
20 reasons. First, the disciplinary process should be directed solely by the disciplinary

1 policy of the court and its appointees and not influenced by the internal politics of  
2 bar associations. Second, the disciplinary system should be free from even the  
3 appearance of conflicts of interest or impropriety. When elected bar officials control  
4 all or parts of the disciplinary process, these appearances are created, regardless of  
5 the actual fairness and impartiality of the system.” *See*, Rule 2 ABA Model Rules  
6 for Lawyer Disciplinary Enforcement, Commentary pg. 6.  
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9 For purposes of this comment the structure of Arizona’s regulatory system is  
10 not important. It is important, however, that the Court take every measure necessary  
11 to prevent conflicts or the appearance of conflicts, and ensure that (1) the regulatory  
12 process is not influenced by an elected board, and (2) there is no interference with  
13 the independence of bar counsel. Under the current proposal, the broad authority of  
14 the oversight committee to review any case, open or closed, at any stage of the  
15 process, leaves open the potential that Board members could deliberately or  
16 inadvertently, influence or otherwise interfere with the prosecutorial independence  
17 of bar counsel. Committee members may have personal agendas with respect to  
18 what actions they would like to see taken by bar counsel or, conversely, not taken  
19 by bar counsel. Personal agendas will inevitably lead to allegations of conflicts that  
20 interfere with the normal and orderly processing of discipline cases.  
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24 To provide context for this concern, recall that even at a time when no such  
25 broad authority existed within the Board, former Maricopa County Attorney Andrew

1 Thomas asserted that various Board members had personal political agendas and that  
2 those members were driving the disciplinary actions being sought against him.  
3 Despite the fact that the Board had absolutely no authority to direct bar counsel  
4 action, and that they did not review pending actions or have any authority to  
5 influence the proceedings, Thomas alleged that, because of the political motivations  
6 of the Board members, the State Bar had a conflict of interest such that any  
7 disciplinary case against him should be investigated and prosecuted by independent  
8 bar counsel. The Court, in an abundance of caution, directed that the case against  
9 Andrew Thomas be investigated and prosecuted by independent counsel from  
10 Colorado.  
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13  
14 The potential for this type of allegation increases exponentially when the  
15 Court rules articulate that the Board oversight committee has authority to review any  
16 and all discipline cases at any stage of the process to determine whether it is their  
17 personal belief that bar counsel is taking appropriate action. Any feedback from the  
18 committee regarding individual cases could have the effect of influencing future  
19 prosecutions and the independent decision-making of bar counsel. The fact that  
20 committee members will evaluate the “effectiveness” and the “quality” of bar  
21 counsel’s performance could easily undermine the professional independence of bar  
22 counsel decisions and create the perception that conflicts exist. The broad authority  
23 to evaluate the quality of bar counsel performance will result in the loss of  
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1 prosecutorial independence. If the committee member does not agree with the  
2 position of bar counsel in a case and bar counsel performance is viewed negatively  
3 due to that disagreement, the loss of independence could result in an ongoing case  
4 or in future cases. Bar counsel could be influenced to take a specific action in the  
5 future or refrain from taking action for reasons having nothing to do with the relative  
6 merits of the matter. A committee with this authority could impair the independent  
7 decision-making of bar counsel and undermine the effective and fair enforcement of  
8 the Rules. A committee with such broad authority will assuredly lead to allegations  
9 that the Bar has conflicts in prosecuting various cases because the prosecutorial  
10 function is being directed or influenced by the Board committee.  
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14 In addition, the State Bar's mission is to serve and protect the public with  
15 respect to the provision of legal services. The regulation and discipline of those  
16 practicing law is one means by which the State Bar serves its mission to protect the  
17 public. If there is even the appearance of impropriety in the way regulation is  
18 conducted the threat that the public will lose confidence in regulation and the State  
19 Bar's ability to regulate is real. Regulation must operate independently from the  
20 Board in order to ensure that the public has full confidence in the fairness and  
21 integrity of the regulatory process. Allowing Board influence on the regulatory  
22 process could significantly undermine public confidence.  
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1            **North Carolina Dental Board**<sup>1</sup>

2            In a United States Supreme Court opinion issued in 2015, the North Carolina  
3 Dental Board was denied state-action immunity in a Federal Trade Commission  
4 antitrust action challenging the board's attempts to prevent non-dentists from  
5 providing teeth-whitening services. When a controlling number of the decision-  
6 makers on a state licensing board are active participants in the occupation the board  
7 regulates, the board can invoke state-action immunity only if it is carrying out state  
8 articulated policies and is subject to active supervision by the state. Lawyer  
9 regulatory boards are subject to antitrust scrutiny. Of concern in regulating the legal  
10 profession is the governance of lawyer discipline and the unauthorized practice of  
11 law.  
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15            In many states the highest court has given the responsibility of governing these  
16 regulatory activities to state bar associations. In the administration of the regulatory  
17 function, the Arizona Supreme Court has delegated regulatory activities to the State  
18 Bar of Arizona. The State Bar assists the Court with the regulation and discipline of  
19 persons engaged in the practice of law. *See*, Rule 32(a)(2)(D). The State Bar's  
20 governing body is the Board which is made up primarily of active market  
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25            <sup>1</sup> *North Carolina State Bd. of Dental Examiners v. Fed. Trade Comm.*, 574 U.S.  
                  , 135 S.Ct. 1101, 191 L.Ed.2d 35 (2015).

1 participants, i.e., practicing lawyers. The proposed broad authority of the Board  
2 oversight committee that would allow for the involvement and influence of the  
3 regulation of the practice of law could be problematic under the Dental Board case.  
4  
5 Given the delegation of state authority to an elected Board that has a vested interest  
6 in the market, there is a concern that the Board's action may be viewed as making  
7 regulatory recommendations or directives that are in the interest of lawyers and not  
8 in the public interest.<sup>2</sup>  
9

10 An analysis of whether state action immunity would be afforded to the  
11 Board's actions requires a specific set of facts in context.<sup>3</sup> Since there is not a  
12 specific factual scenario at play one is left to speculate on the potential for the  
13 proposed grant of authority to give rise to situations that could implicate the Dental  
14 Board case.  
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17 <sup>2</sup> Lawyers subject to discipline actions have started to raise this issue, albeit  
18 unsuccessfully to date. There are no published decisions in Arizona on this topic, but  
19 Bar Counsel is aware that several Arizona lawyers have raised the Dental Board  
20 matter to challenge the authority of the State Bar in discipline proceedings. Outside  
21 of Arizona *see, e.g., Board of Professional Responsibility v. Connie Reguli*, 489  
22 S.W.3d 408 (Tenn. 2015); *Paul J. Walwyn v. Board of Professional Responsibility*  
23 *of the Supreme Court of Tennessee*, 481 S.W.3d 151 (Tenn. 2015); *Disciplinary*  
24 *Counsel v. Tamburrino*, 2016 Ohio 8014, No. 2018-0858 (Supreme Court of Ohio  
25 2016)(judicial conduct matter).

<sup>3</sup> *See, e.g., FTC Staff Guidance on Active Supervision of State Regulatory Boards*  
24 *Controlled by Market Participants* (October 2015)(“FTC Guide”). The FTC Guide  
25 provides context, analysis, and examples of antitrust state action defense for  
regulatory boards controlled by market participants.

1                    **The Board’s Current Role in Oversight of Lawyer Regulation**

2                    In addition to the myriad of issues implicated by such broad and unfettered  
3 involvement by an elected Board comprised of market participants into the  
4 regulatory process, the Board has already considered its fiduciary obligations and  
5 the appropriate level of oversight and adopted a specific oversight plan for lawyer  
6 regulation that includes ongoing education of the board members on the regulatory  
7 process, regularly-provided statistical information concerning regulation, budgeting  
8 and resource information as well as providing notice regarding issues that affect the  
9 regulatory process.  
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12                    In 1998 the State Bar Board created a Committee known as the “Discipline  
13 Oversight Committee.” The Committee was created in for the purpose of overseeing  
14 the processing of a backlog of cases. The backlog occurred due to underfunding and  
15 a substantial need for additional resources. The Committee met monthly to review  
16 case statistics to ensure that backlogged cases were being processed and discussed  
17 resource issues. The Committee never had access to specific cases or case  
18 information. After a number of years the backlog was resolved. And, after many  
19 years, greater efficiencies were realized through sufficient resourcing and  
20 modification to procedural rules related to the processing of disciplinary cases.  
21 Throughout, the Committee continued to meet and review statistics for the  
22 processing of disciplinary cases.  
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1 In 2014, Chief Bar Counsel recommended dissolving the Discipline Oversight  
2 Committee because the statistical information being reported to the Committee could  
3 be reported to the entire Board of Governors. In light of the recommendation, the  
4 State Bar President created a working group to consider the Board's role in the  
5 oversight of lawyer regulation. The working group included Justice Ann Scott  
6 Timmer, Geoffrey Trachtenberg, Paul Senseman, Amy Rehm and Maret Vessella.  
7

8  
9 The working group considered the historical changes in rules and policies that  
10 removed the State Bar Board of Governors entirely from the adjudicatory functions  
11 of lawyer regulation. The working group also considered the oversight practices of  
12 comparable jurisdictions where lawyer regulation is administered by an agency with  
13 oversight from an elected Board of Governors. Of the responding jurisdictions, the  
14 majority of those jurisdictions provide their respective Boards with statistical  
15 information concerning the processing of disciplinary cases. Most were provided  
16 on an annual basis but some on a monthly or quarterly basis.  
17

18  
19 The working group also considered the practices of comparable agencies like  
20 a county attorney's office. The working group consulted with the Pima County  
21 Attorney's Office. The office reported that the Board of Supervisors approved the  
22 budget and set regulations for the hiring and firing processes. The board had no  
23 other oversight and no other entity exercised any other type of oversight of the  
24 functions of the County Attorney's Office.  
25

1 The working group created a report for the Board regarding their review. That  
2 report is attached hereto as “Exhibit A.” In July 2015, the working group presented  
3 the Board with their findings and recommendations concerning the issue of Board  
4 oversight of lawyer regulation. At the September 2015 Board meeting the Board  
5 voted unanimously to adopt the working group’s recommendations which included  
6 the education of new members and ongoing education for sitting Board members on  
7 the lawyer regulation process, regularly-provided statistical information,  
8 information concerning budgeting and resources, as well as notification of rule  
9 petitions affecting the disciplinary process. The Board was active in determining  
10 the appropriate means to meet their fiduciary obligations to oversee regulation and  
11 adopted specific measures. It is therefore, unnecessary to include a provision that  
12 provides for an oversight committee.  
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### 16 **Oversight of Lawyer Regulation**

17 In addition to the oversight provided by the Board, there are other areas in the  
18 regulatory process that provide oversight for the work being performed by the Office  
19 of Lawyer Regulation. Any recommendation other than a dismissal is reviewed by  
20 the Attorney Discipline Probable Cause Committee (“Committee”). The Committee  
21 was established as a permanent committee of the Supreme Court. The Court  
22 appoints nine members, six lawyers and three public members to review the State  
23 Bar’s recommended disposition of all cases other than dismissal. The Committee  
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1 reviews the substantive work performed on the case and evaluates the recommended  
2 disposition. Many of the cases presented to the Committee receive a probable cause  
3 order for a filing of the formal disciplinary complaint. Those cases are presented to  
4 the Presiding Disciplinary Judge.  
5

6 The Presiding Disciplinary Judge is appointed by the Supreme Court and  
7 oversees all formal disciplinary cases that include contested, consent, default,  
8 interim, reinstatement, reciprocal discipline and disability cases. Many of these  
9 cases are heard by a hearing panel that includes the Presiding Disciplinary Judge, a  
10 lawyer member and a public member who are appointed by the Court as part of a  
11 pool of volunteer attorney and public members to serve on hearing panels.  
12

13 The Presiding Disciplinary Judge has served in that capacity since the new  
14 system was implemented in 2011. Judge Lawrence Winthrop has served as the Chair  
15 of the Committee since 2012. Both have appeared before the State Bar Board of  
16 Governors to provide feedback and report on their observations of the regulatory  
17 work being performed.  
18

19 There are also cases that are appealed to the Court. Either party has the right  
20 to a direct appeal to the Supreme Court. For that reason a number of cases are  
21 reviewed by the Court each year.  
22

23 The Attorney Regulation Advisory Committee (“ARC”) was created in  
24 accordance with Administrative Order No. 2011-44, to assist the Supreme Court and  
25

1 the Chief Justice on issues relating to attorney regulation. The composition of ARC  
2 generally reflects stakeholders from specific areas of admissions and regulation  
3 including the Committee on Character and Fitness, Examinations, Presiding  
4 Disciplinary Judge, Attorney Discipline Probable Cause, Lawyer Regulation, State  
5 Bar Board of Governors, the Arizona Judicial Council and the public.  
6

7 One of ARC's purposes is to make recommendations to this Court regarding  
8 "how [the] rules of the attorney regulation system can be revised to reinforce lawyer  
9 competency and professionalism and strengthen the Supreme Court's oversight of  
10 the regulation and practice of law in this state."<sup>4</sup> As part of that oversight ARC also  
11 collects statistical data to provide the Court in an annual report and reviews any  
12 petitions that affect admissions or the regulatory process. The main purpose of ARC  
13 was to provide a level of oversight of the admissions and regulatory processes.  
14  
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16 Given the Board's current oversight policy and the oversight that is built into  
17 the regulatory process, a Board discipline oversight committee is not necessary.  
18

### 19 CONCLUSION

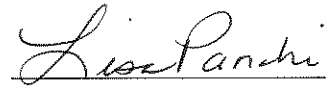
20 The State Bar of Arizona respectfully requests that the Court remove proposed  
21 Rule 49(e). If the Court declines to do so, the State Bar would request that the rule  
22 be modified to limit the Board's oversight to budget, review of system resources,  
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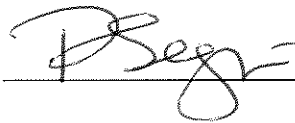
25 <sup>4</sup> Administrative Order No. 2011-44, establishing ARC.

1 statistics, and rules relating to the disciplinary process.

2 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of May, 2018.  
3

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5   
6 Lisa Panahi  
7 General Counsel

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11 Electronic copy filed with the  
12 Clerk of the Supreme Court of Arizona  
13 this 21<sup>st</sup> day of May, 2018.

14 by:   
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# **EXHIBIT A**

## Discipline Oversight Working Group Report

In December 2014, State Bar President, Richard Platt, empaneled a working group of Board members and State Bar staff that included Geoffrey Trachtenberg, Chair, Justice Ann Timmer, Paul Senseman, Amy Rehm and Maret Vessella. The group was to consider the Board's responsibilities and role relating to the oversight of the regulatory functions. The working group met and considered the issue and will discuss herein the requirements created by Rules and other directives; the history of Board oversight as well as jurisdictional practices and comparable agency oversight. The working group discussed whether to define "fiduciary duty" and address whether that term applies to the Board's oversight of Lawyer Regulation. It elected not to do so as that issue is under consideration by the Anti-Trust Task Force.<sup>1</sup> The working group assumed, without deciding, the existence of a fiduciary duty and will make recommendations to the Board regarding its oversight responsibility at the July 2015 Board Retreat.

### I. Arizona Rules of Supreme Court, Bylaws and Articles of Incorporation

Rule 32, Ariz. R. Sup. Ct., establishes the State Bar and directs its activities. The purpose of the State Bar, among other things, is to provide for the regulation and discipline of persons engaged in the practice of law. Rule 32 sets the composition and powers of the Board. The articulated powers include: to fix and collect fees approved by the Supreme Court; promote and aid in the advancement of the science of jurisprudence and improvement of the administration of justice; make appropriations and disbursements from funds to pay necessary expenses to carry out its functions; formulate and declare rules and regulations consistent with the rules necessary or expedient to enforce the rules.<sup>2</sup> Other than providing for the creation and maintenance of a system to regulate the practice of law, Rule 32 does not provide specific guidance as to the Board's role in the oversight of the regulatory function. The Articles of Incorporation and the Bylaws are consistent with Rule 32 and also establish no specific responsibilities beyond that in Rule 32. Both the Articles of Incorporation and the Bylaws are attached hereto for reference.

The Arizona Nonprofit Corporation Act, specifically Chapter 31, Article 3, §10-3830, governs the State Bar of Arizona. According to John Furlong, General Counsel, when the State Bar's Bylaws and Articles of Incorporation are silent with respect to an issue, the Act's directives apply. While the Act does not use the term "fiduciary duty," it clearly sets forth required duties of non-profit directors (State Bar Board Governors in our case). These duties include acting in good faith, with honesty and in the best interest of the corporation; and, maintaining a relationship of loyalty and trust. Arizona Revised Statute, Chapter 31, Article 3, §10-3830 sets forth the general standards for non-profit directors:

- A. A director's duties, including duties as a member of a committee, shall be discharged:

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<sup>1</sup> Geoffrey Trachtenberg is the Co-Chair of the Anti-Trust Task Force.

<sup>2</sup> Rule 32, Ariz. R. Sup. Ct., includes other duties such as setting annual meetings, making committee appointments, preparing annual statements of finances for receipts and expenditures and the creation of the Client Protection Fund. Rule 49, Ariz. R. Sup. Ct., sets forth the powers and duties of the Chief Bar Counsel and references that the Chief Bar Counsel acts under the authority of the board, and under the direction and by appointment of the executive director.

1. In good faith.
2. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
3. In a manner the director reasonably believes to be in the best interests of the corporation.

The Act provides further guidance concerning how a non-profit director can meet his or her obligations. According to the Act, it is reasonable to rely on information provided by officers or employees of the non-profit in meeting the required duties. Significantly, the Act provides:

- B. In discharging duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by any of the following:
  1. One or more officers or employees of the corporation whom the director reasonably believes are reliable and competent in the matters presented.
  2. Legal counsel, public accountants or other person as to matters the director reasonably believes are within the person's professional or expert competence.

In light of the fact that the State Bar's Bylaws, Articles of Incorporation, and the Supreme Court Rules do not address how to provide oversight of lawyer regulation, the Board should be guided by the Act.

## **II. History of Oversight**

At last year's Board retreat, a presentation was made regarding the rule changes and policy changes that led to the most recent structure of the Disciplinary Oversight Committee. In sum, dating back to the 1970s, the Board initially had a substantive role in the discipline process. This entailed substantive adjudicatory functions as well as appointing other lawyers to serve in various roles. Through a series of rule changes by the Supreme Court, the Board's role in discipline was minimized. By 2000, the only role of the Board in discipline was serving the Probable Cause function. That last role was eliminated in the Rule changes that went into effect in 2011.

Along the way, the Board created the Discipline Oversight Committee in 1998. That Committee was created as the result of the need for substantial increased resources and a sufficient budget to handle a backlog of cases that were the result of the increased population in Arizona. Since its inception, that Committee has met monthly. At those meetings, the Committee has been presented with case statistics and has discussed resources. The Committee, over the years, has also addressed special issues such as random trust account audits, rule changes, and discipline on the web. The Committee has never been provided with substantive information on cases.

In 2014, the Board President, at the request of Chief Bar Counsel, suggested sunseting the Discipline Oversight Committee as its work had been minimized by the creation of the ARC Committee. The proposal included that Chief Bar Counsel provide the exact same information that had previously

been provided to the Committee to the entire Board on a quarterly basis. That suggestion was tabled pending a recommendation by this working group.

### **III. Jurisdictional Practices**

In an effort to determine how other states with similar Board structures handle oversight issues, bar counsel posted an inquiry on the National Organization of Bar Counsel's list serve asking for input. The inquiry specifically limited the responses to those jurisdictions in which discipline is handled by the State Bar with oversight by an elected Board of Governors. Ten jurisdictions responded. In the majority of those jurisdictions, the Chief Bar Counsel in each jurisdiction provides the Board with either written statistics and/or a verbal report concerning the processing of cases. These are generally done on an annual basis, although some jurisdictions reported quarterly/monthly. In many states, these reports are made in executive session. In some states, the Board also discusses budgeting/resources.

### **IV. Comparable Agency**

The working group discussed the oversight exercised by other comparable agencies, like a County Attorney's office. We contacted Amelia Craig Cramer, Deputy Pima County Attorney, to discuss the oversight on the functions of the Pima County Attorney's Office. Ms. Cramer indicated that the Board of Supervisors approves the budget and sets regulations for the processes of hiring, firing, promoting, demoting and terminating employees. The board has no other oversight on the functions of the office. There are no other entities that exercise any type of oversight on the office. Ms. Cramer also mentioned that the County Attorney's office reports publicly their statistics, which include information of the number of criminal cases filed, segregated by felony and misdemeanor designations, and resourcing for the office's activities. Attached is an excerpt from the 2014 Report of the Pima County Attorney's significant accomplishments.

### **V. Current Statistical Information Reported to Board**

As of January 1, 2015, Chief Bar Counsel is scheduled to provide quarterly reports to the Board. The information contained in the initial two reports included the number of charges received; number of charges resolved in Intake; average number of days to resolve in Intake; number of lawyers investigated; average time to complete a full screening investigation; number of cases heard by the Attorney Discipline Probable Cause Committee; sanctions issued by Committee, number of State Bar recommendations modified by the Committee; Number of formal complaints filed; average time to complete a contested discipline case, a default case and those resolved by consent agreement and the sanctions imposed for the year.

### **VI. Recommendations**

Based on the foregoing and the working group's discussion and evaluation of the issues, our recommendations are:

1. The Board should disband the Discipline Oversight Committee as unnecessary.
2. The Board should adopt the following as a statement of its goal in the oversight of lawyer regulation: "The Board oversees lawyer regulation to ensure an efficient and equitable process for the regulation and discipline of persons engaged in the practice of law."

3. The Board should fulfill its oversight responsibility primarily by ensuring that processes are in place to facilitate the efficient and equitable processing of regulatory and disciplinary matters and that skilled employees are responsible for these processes. For the most part, there is no need for the Board to be involved with the facts and issues in a particular case.
4. The Board should ensure that Lawyer Regulation is funded with appropriate resources to support the efficient and equitable processing of lawyer discipline cases.
5. On a bi-annual basis, Chief Bar Counsel should present statistical information to the Board through a written and verbal report;
6. On an annual basis, Chief Bar Counsel should present and explain the Attorney Regulation Advisory Committee Annual Report to the Board;
7. Any information presented to the Board regarding the regulatory functions should be simultaneously reported to the Supreme Court.
8. The Board should be made aware of, and provided opportunity for input regarding, any requests/petitions for rule changes regarding the disciplinary process; if necessary, a task force or working group of the Board may be appointed for input;
9. Any additional issues (such as discipline on the web, etc.) regarding substantial and substantive changes to the discipline process should promptly be brought to the Board's attention by Chief Bar Counsel for input by the Board;
10. Any additional internal issues, such as budgeting and resources, needing Board input should promptly be brought to the Board's attention by Chief Bar Counsel for input by the Board.
11. On an annual basis, all Board members should attend an educational program on the discipline process (this may include, as appropriate, presentations from the Presiding Disciplinary Judge and/or Attorney Discipline Probable Cause Committee chair);
12. At the start of their term, all new Board members should participate in an orientation regarding discipline to ensure an understanding of the oversight role.