

1 to documents provided to the Attorney Discipline Probable Cause Committee
2 (“committee”) for its review and consideration, probation compliance records,
3 medical records, witness interview recordings and transcripts, or tax records.

4 The proposed rule will clarify the documents and records the state bar may
5 disclose to individuals and other entities prior to the record and proceedings
6 becoming matters of public record. It also addresses the public’s access to
7 documents while charges are being reviewed or investigated by bar counsel.

8 Attached as Exhibit A is a copy of the current rule in legislative format,¹
9 reflecting the proposed amendments to Rule 70. Attached as Exhibit B is a copy
10 of the proposed rule.

11 Rule 70(a)(3) should be amended to reflect that access to information
12 continues for six months from the date the committee dismisses a charge of
13 misconduct.

14 Rule 70(a)(4) should be deleted because Rule 70(3)(a) addresses the
15 timeframe that all dismissals are public.

16 Proposed Rule 70(a)(4) should be amended to address the availability of
17 information in contempt proceedings (Rule 47(h)(4)) and alleged violations of
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20 ¹ Additions in the text of the rule are shown by underscoring and deletions from
text are shown by ~~strikethroughs~~.

1 probation (Rule 60(a)(5)).

2 Rule 70(b)(1) should be amended to clarify and define the scope of the work
3 product exception to the availability of information to the public.

4 Proposed Rule 70(b)(3) should be adopted to clarify that written submissions
5 to the committee by the state bar, respondents, or complainants are confidential
6 from the public. Committee meetings are confidential pursuant to rule 50(f).
7 Submissions to the committee are maintained as non-public which is consistent
8 with the confidential nature of proceedings.

9 Proposed Rule 70(b)(8) simply changes the reference to the “Attorney
10 Consumer Assistance Program” to the “state bar’s intake department” to which
11 it is commonly referred. The current rules do not define “Attorney Consumer
12 Assistance Program.”

13 Proposed Rule 70(b)(13), (14) and (15) should be adopted to ensure that
14 medical records, recordings and transcripts of witness interviews, and tax
15 records, respectively, do not become matters of public record. These items are
16 currently treated as confidential work product or are frequently the subject of a
17 request for protective order.

18 Rule 70(c)(1) should be reformatted to clarify the rule as to when certain
19 information becomes accessible to the public.

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1 Proposed Rule 70(c)(3) should be adopted to note that matters under open
2 investigation by the state bar or in the prescreening process are not subject to
3 being subpoenaed.

4 Proposed Rule 70(c)(4) should be adopted to clarify the types of documents
5 and records that may be disclosed to other agencies and entities.

6 Proposed Rule 70(c)(8) should be adopted to clarify that documents sealed
7 pursuant to Rule 70(b) can be used in formal proceedings.


8 No petition to amend Rule 70 has been filed within the past five years.

9 **CONCLUSION**

10 The proposed rule amendments are intended to clarify the availability of
11 information, documents, records and other items kept by the state bar in its
12 normal course of business. It is not intended to substantively alter the manner in
13 which the state bar presently interprets Rule 70 or provides information and
14 records upon request.


15 The State Bar of Arizona respectfully petitions the Court to amend Rule
16 70, Ariz. R. Sup. Ct., for the reasons stated herein and as proposed in Exhibit B.

17 RESPECTFULLY SUBMITTED this 10th day of January, 2019.

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Maret Vessella
20 Chief Bar Counsel

1 Electronic copy filed with the
2 Clerk of the Supreme Court of Arizona
3 this 10th day of January, 2019.

4 by: 
5 MV:jb

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Appendix A Blacklined Version

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

Rule 70. Public Access to Information

(a) Availability of Information. Except as otherwise provided in these rules, the state bar file, the record maintained by the disciplinary clerk, and all proceedings shall be open to the public upon:

1. waiver of confidentiality by respondent;
2. the filing of an order by the committee pursuant to Rules 55(c)(1)(~~B~~), (D); and (E);
3. dismissal by the state bar or the committee, following a screening investigation for six months from the date of notification to respondent or complainant (if any) of the dismissal;
4. ~~dismissal, in cases not resulting in a screening investigation, for six months from the date of notification to respondent or complainant (if any) of the dismissal;~~
45. the filing of of a complaint, motion, or petition in proceedings for summary or interim suspension or pursuant to Rules 47(h)(4), 54(g), 54(h), 60(a)(5) or 66;
56. the filing of an agreement for discipline by consent; or
67. the filing of an application for reinstatement pursuant to Rules 64 and/or 65.

(b) Exceptions to Availability of Information. Notwithstanding other provisions of these rules, including Rule 123, Rules of the Supreme Court, the following do not become public:

1. work product of state bar staff, and bar counsel, including but not limited to internal memoranda, internal correspondence, internal emails, notes, and similar documents and files;
2. work product of the committee, the settlement officer, the presiding disciplinary judge, hearing panel members, court staff, or the court;
32. documents submitted to the state bar and the committee pursuant to Rule 55(b)(2); mediation records and proceedings;
43. diversion records and proceedings;
5. probation records regarding compliance, including evaluations and monitoring records, except for documents filed with the disciplinary clerk;
64. deliberations pertaining to decisions of bar counsel, the committee, the presiding disciplinary judge, a hearing panel, settlement officer, or this court;

75. information with respect to which a protective order has been issued pursuant to these rules;

86. records of ~~telephonic~~ requests for information received by the state bar's intake department ~~Attorney Consumer Assistance Program~~;

97. deliberations and work product of the client protection fund staff and board of trustees;

108. trust account records, ~~trust account summary of findings, or and~~ trust account reconstructions;

119. an individual's social security number (if a social security number must be used, only the last four digits of that number shall be used); ~~or~~

1210. financial account numbers (if financial records must be used, only the last four digits of that number shall be used);

13. medical records;

14. recordings and written transcripts of audio and video witness interviews or statements, unless offered or admitted as exhibits in formal proceedings; and

15. tax returns and official tax records.

(c) Authorized Disclosures. ~~Before~~ The state bar file, the record, and/or proceedings are made public, they shall not be disclosed by the state bar or disciplinary clerk or committee, except that:

1. before the state bar file, the record, or proceedings are made public

A. the name of the member under investigation and the matter under investigation may be disclosed to such member and the persons whose services or testimony are necessary in connection with the proceeding;

B2. the state bar may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;

23. for matters in which the disposition is confidential under these rules, the state bar, disciplinary clerk, or committee may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and that the matter is closed but has not public disposition;

34. the state bar, disciplinary clerk, or committee, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b); except for charges under investigation or in the prescreening process;

45. the state bar, disciplinary clerk, or committee may disclose ~~the documents or records~~ related to discipline or reinstatement matters, including documents deemed confidential under subparagraph (b), unless sealed by protective order, and proceedings to

A. other lawyer disciplinary entities or agencies;

B. client security or protection funds programs;

C. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;

D. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment;

E. public or prosecuting authorities if it appears that the lawyer has engaged in conduct that may be criminal in nature;

56. if the proceeding is based on allegations that have become generally known to the public, the board may authorize disclosure of the record or other information; and

67. the board may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession; and

7. documents deemed confidential under subparagraph (b) can be used in formal proceedings.

(d) Disclosure by Others. Unless otherwise ordered by the committee, the presiding disciplinary judge, a hearing panel, or this court, nothing in these rules shall prohibit the complainant, respondent, or any witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(e) Disability Proceedings. Proceedings and records relating to transfer to or from disability inactive status are confidential, except that orders transferring a lawyer to or from disability inactive status are public.

(f) Effect of Disclosure. The disclosure of information under these rules shall not constitute a waiver of any evidentiary, statutory, or other privilege that might otherwise be asserted.

(g) Sealing the Record/Protective Orders. Upon request by a party or by a person from whom the information or evidence was obtained, or upon a request by an interested non-party or the presiding disciplinary judge's own initiative, and for good cause shown, the presiding disciplinary judge may issue an order in any pending matter, sealing a portion of the record and/or state bar file and taking other measures to assure the confidentiality of the sealed information. Material sealed shall remain confidential notwithstanding that the remaining record in the matter is made public. Sealed material shall be opened and viewed only by the committee, the presiding disciplinary judge, a hearing panel, the board or the court for use by such body and the parties in pending proceedings, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person who is the subject of the information. A party aggrieved by an order relating to a request for a

protective order may seek review by filing a petition for special action with the court.

(h) Retention of Records. Records of discipline proceedings maintained by the disciplinary clerk shall be retained as directed by the court, pursuant to Rule 29, Rules of the Supreme Court.

Appendix B Blacklined Version

(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)

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1. waiver of confidentiality by respondent;
2. the filing of an order by the committee pursuant to Rules 55(c)(1)(D) and (E);
3. dismissal by the state bar or the committee, for six months from the date of notification to respondent or complainant (if any) of the dismissal;
4. the filing of proceedings for summary or interim suspension or pursuant to Rules 47(h)(4), 54(g), 54(h), 60(a)(5) or 66;
5. the filing of an agreement for discipline by consent; or
6. the filing of an application for reinstatement pursuant to Rule 64 or 65.

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1. work product of state bar staff and bar counsel, including but not limited to internal memoranda, internal correspondence, internal emails, notes, and similar documents and files;
2. work product of the committee, the settlement officer, the presiding disciplinary judge, hearing panel members, court staff, or the court;
3. documents submitted to the state bar and the committee pursuant to Rule 55(b)(2);
4. diversion records and proceedings;
5. probation records regarding compliance, including evaluations and monitoring records, except for documents filed with the disciplinary clerk;
6. deliberations pertaining to decisions of bar counsel, the committee, the presiding disciplinary judge, a hearing panel, settlement officer, or this court;
7. information with respect to which a protective order has been issued pursuant to these rules;
8. records of requests for information received by the state bar's intake department;

9. deliberations and work product of the client protection fund staff and board of trustees;
10. trust account records and trust account reconstructions;
11. an individual's social security number (if a social security number must be used, only the last four digits of that number shall be used);
12. financial account numbers (if financial records must be used, only the last four digits of that number shall be used);
13. medical records;
14. recordings and written transcripts of audio and video witness interviews or statements, unless offered or admitted as exhibits in formal proceedings; and
15. tax returns and official tax records.

(c) Authorized Disclosures. The state bar file, the record, or proceedings shall not be disclosed by the state bar or disciplinary clerk or committee, except that:

1. before the state bar file, the record, or proceedings are made public
 - A. the name of the member under investigation and the matter under investigation may be disclosed to such member and the persons whose services or testimony are necessary in connection with the proceeding;
 - B. the state bar may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and is under investigation or in the prescreening process;
2. for matters in which the disposition is confidential under these rules, the state bar, disciplinary clerk, or committee may confirm, upon inquiry concerning the lawyer and the particular conduct, that a charge has been received and that the matter is closed but has no public disposition;
3. the state bar, disciplinary clerk, or committee, pursuant to a valid subpoena, may provide documents not otherwise confidential under subparagraph (b), except for charges under investigation or in the prescreening process;
4. the state bar, disciplinary clerk, or committee may disclose documents or records related to discipline or reinstatement matters, including documents deemed confidential under subparagraph (b), unless sealed by protective order, to
 - A. other lawyer disciplinary entities or agencies;
 - B. client security or protection fund programs;
 - C. agencies or individuals authorized to investigate the qualifications of persons for admission to practice law;
 - D. agencies or individuals authorized to investigate the qualifications of candidates for judicial office or governmental employment;
 - E. public or prosecuting authorities if it appears that the lawyer has engaged in conduct that may be criminal in nature;

5. if the proceeding is based on allegations that have become generally known to the public, the board may authorize disclosure of the record or other information;

6. the board may authorize other disclosures that are necessary to protect the public, the administration of justice, or the legal profession; and

7. documents deemed confidential under subparagraph (b) can be used in formal proceedings.

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