

1 the case has been referred from Intake for an investigation, bar counsel no longer
2 has the authority to enter into a diversion agreement with the respondent without the
3 authorization and order of the Attorney Discipline Probable Cause Committee
4 (“Committee”). The operational review identified this as an inconsistency in the
5 rules and recommended that the diversion rule be amended to allow bar counsel to
6 have the authority to enter into a diversion agreement, without an order, whether the
7 case is in Intake or has been investigated. That amendment would create consistency
8 in the rules and would further result in a shorter overall processing time for those
9 cases. Currently, it can take several months for a recommendation for diversion to
10 be placed on a Committee calendar, to be heard and an order issued. Allowing
11 diversion agreements without seeking authorization by the Committee would reduce
12 the overall processing time by several months.

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16 Attached as Appendix A is a copy of the current rule in legislative format,¹
17 reflecting the proposed amendments to Rule 56. Attached as Appendix B is a clean
18 copy of the proposed rule.
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24 ¹ Additions in the text of the rule are shown by underscoring and deletions from
25 text are shown by ~~strikethroughs~~.

1 **II. Explanation of the Proposed Amendments.**

2 Rule 56. The amendment to Rule 56 removes the requirement that bar counsel
3 make a recommendation for an order of diversion to the Committee for authorization
4 if the case was investigated pursuant to Rule 55(b).
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7 **III. Request for Expedited Consideration.**

8 Petitioner requests expedited adoption of the proposed rule amendment as
9 permitted by Rule 28(h), Ariz. R. Sup. Ct. Following the operational review of the
10 lawyer regulation process, the Court held a meeting to review the recommendations
11 made by the auditors. The Chief Justice, Vice Chief Justice, Director of the
12 Administrative Offices of the Court and the State Bar met to discuss the operational
13 review and the specific recommendations made. At that meeting, the Court and the
14 Director of the Administrative Offices of the Court suggested that a petition to
15 amend Rule 56 could be filed and considered on an expedited basis.
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18 The President of the State Bar, Brian Furuya, is aware of this petition and
19 authorized its early filing with the Court subject to the State Bar Board of Governor's
20 anticipated approval on September 27, 2019.
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APPENDIX A

Rule 56. Diversion

(a) [No change]

(b) [No change]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to submission of the matter to the committee, an investigation pursuant to Rule 55(b), the agreement shall be between the attorney and bar counsel. If bar counsel recommends offers diversion after an investigation pursuant to Rule 55(b) and the attorney does not accept the offer of diversion, but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) [No change]

(e) **Dismissal.** After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude bar counsel from using the fact of an agreement or an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the agreement or the order shall not be considered as a prior disciplinary offense in aggravation.

APPENDIX B

Rule 56. Diversion

(a) [No change]

(b) [No change]

(c) **Diversion agreement or order.** If diversion is offered and accepted prior to submission of the matter to the committee, the agreement shall be between the attorney and bar counsel. If bar counsel offers diversion after an investigation pursuant to Rule 55(b) and the attorney does not accept the offer of diversion, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

(d) [No change]

(e) **Dismissal.** After successful completion of diversion under these rules, the matter shall be dismissed by bar counsel or by order of the committee, the presiding disciplinary judge, a hearing panel, or the court. Dismissal under this rule shall not preclude bar counsel from using the fact of an agreement or an order of diversion and the facts of the underlying matter in other discipline proceedings, except that the agreement or the order shall not be considered as a prior disciplinary offense in aggravation.